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Summary

- 1. Immigration in Europe
- 2. A multilevel issue
- 3. The international level
- 4. The European level
- 5. The national level

1. Immigration in Europe

XIX Century

- The nineteenth century is the century of the great emigration from Europe to the New World.
- In the previous centuries, the international mobility characterized the European social context. However it took on dimensions and characteristics which make it not comparable to what can be called a real exodus from Europe, in particular to the Americas and Oceania.

XIX Century

- The migratory flows that developed in the seventeenth and eighteenth centuries were characterized by the fact that, predominantly, they were intracontinental and circular: the individuals were leaving for limited periods of time, reaching the main agricultural and manufacturing centers in Europe, and then they returned at their place of habitual residence. On the contrary, much more modest were the flows of people leaving Europe to reach the overseas territories; surely the great geographical discoveries, the improvements of the transports and the processes of colonization favored the development of this type of migration flow; however, the great European States were long reluctant in encouraging the emigration of their subjects, as the population of European countries continued to be rather small.

XIX Century

- With the beginning of the nineteenth century, a number of political, economic and social changes marked the emergence of the great transoceanic migrations.
- First of all, the nineteenth century is distinguished by rapid population growth in Europe: the population, in the space of a century, grew two and a half times, going from 187 million people in 1800 to 468 million in 1913.
- The other major driver of the development of migration flows was the industrial revolution, which shook the economy of Western Europe. The industrialization favored the increase in migratory flows in different ways: on the one hand, contributed to the economic development and therefore to population growth; on the other, he allowed the technological improvement of means of communication and transport, with the consequent reduction of time and risks associated with transoceanic voyages.
- The French Revolution and the Napoleonic Empire had been followed by the Restoration, which sought to restore the pre-revolutionary regime also through repression of the riots that would have multiplied in the early decades of the nineteenth century; this repression contributed to the development of another type of migration, a political one

XIX Century

- The sum of all these factors led to a veritable explosion of migration from Europe. If in the three centuries between 1500 to 1800 the number of individuals who left the Old World to the New World was almost negligible, since the nineteenth century, the stream took on the dimensions of an exodus, affecting in a hundred years more than 50 million of people. The quantitative development of migratory flows in Europe output is also accompanied by a qualitative evolution: the points of origin and destination of migration flows, as well as the social status of individuals who left Europe, changed.

XIX Century

- The main destination of immigration was, throughout the nineteenth century, the North America, confirming the trend evident in previous centuries; however, precisely in the nineteenth century there is an increase in migration flows to Latin America, as a result of gaining of independence of most of the territories and the growing economic importance of the new States; in the same period also the migratory routes in the direction of Australia and New Zealand strengthened, due to the fact that they were attractive places for the availability of raw materials and, above all, of territories to be occupied.
- Even the points of origin of migration flows changed during the century. Initially, the great mercantile and colonial European States, such as the UK and the Netherlands, had the highest number of departures: only during the nineteenth century the states of central, eastern and southern Europe became countries of emigration to the overseas destinations.
- This transformation is accompanied by another, which concerned the socio-economic characteristics of migrants: if, in the first decades of the nineteenth century, the emigrants were mainly merchants and landowners who moved to increase its capital, in the middle of the century, and increasingly, at the beginning of the twentieth century, the emigrants were of poor economic conditions, often of rural origin and low skilled workers.

XX Century

- The twentieth century is the century in which there is the gradual transition of the old continent from a starting place for the transoceanic migration to a destination place of migratory flows more and more massive and varied. The trend, moreover, had already begun the late nineteenth century: in the last two decades of the nineteenth century, in fact, Germany, England, Scandinavia and Switzerland recorded a positive net migration; in France, the number of immigrants exceeded that of immigrants already in the second half of the century.

XX Century

- It is in the twentieth century, however, that this trend is consolidated, with an evolution that historians of migration processes described and divided in different phases:
 - a first period, that between the two world wars, in which there has been a sharp reduction of the international mobility and migration in Europe;
 - a second period, which goes from the Second World War to the great oil crisis of the seventies, with an important immigration expansion towards the north-western Europe;
 - a third period, which until the fall of the Berlin Wall and the dissolution of the Soviet Union, during which there has been a further slowdown of migration flows and a first emergence of southern European as a destination for immigration;
 - a fourth period, which begins at the end of the century and continuing into the present, which marks the final transition of the old continent to a immigration area.

XX Century

- The factors that enabled the launch of the first phase of transition, characterized by the limitation of international migration, were different: political, economic and social motivations were the basis of a much more restrictive approach to the issue of immigration from countries that, throughout the previous century, had welcomed millions of individuals from Europe.
- A first element is the general feeling of xenophobia that spread, from the first world war, both among the middle classes and among the working classes. During the First World War, foreigners were viewed with suspicion, as potential enemies; with the end of the conflict, they were considered as bearers of subversive and radical ideas from Europe and as competitors in the labor market in recession; able, therefore, to increase social conflict of the host countries.
- This general reasons was strengthened and amplified by the political and economic changes taking place in Europe and the rest of the world; at the economic level, the Great Depression of the thirties led to the adoption of protectionist measures and had reflected on the labor market and the demand for labor from abroad.
- The concurrence of these factors led to a drastic reduction of migration flows, also obtained thanks to the approval of restrictive regulations at national and international level.

XX Century

- Only at the end of Second World War, the approach towards international mobility returned to be positive. Again, the change was roots into different elements, distinct but strongly connected.
- Politically, the years after the Second World War were those of the reopening of international relations and of the birth of the organizations of states at the global and regional level; this trend was particularly strong in Europe, where it was felt the need for greater integration to prevent the repetition of the situations of the two world wars. Economically, Europe in those years became the protagonist of an impressive growth: the European economic miracle led, in particular, to the expansion of the demand for labor with a major impact on international mobility.
- In this changed political and economic framework, the countries of Western Europe became important centers of attraction for migration flows from southern Europe: the wide range of applications and the increasing permeability of borders between European countries in fact favored the growth of migration, in particular to the UK, France and Germany.
- These migratory systems, of intra-European type, are accompanied by those from the territories of the European colonial empires in quick dissolution. Decolonization was, in fact, the other key driver of the recovery in international migration and the affirmation of Europe as a destination.

XX Century

- The oil crisis of the seventies, while marking a reduction of European economic growth and a relative decline in labor demand, didn't put an end to incoming flows in Europe.
- Certainly, during this period, the European countries adopted a more restrictive approach: the increasing social conflict, but also the growing cultural and ethnic variety that characterized the most recent migratory flows, convinced these countries to adopt much more stringent policies than in the past. All countries that had been affected by migration from southern Europe and from the former colonial territories placed limits on immigration of foreign workers; they also approved measures in order to encourage foreigners already present to return to their countries of origin.
- On the other hand, the countries of southern Europe, which after the Second World War were the point of departure towards the more industrialized part of the continent became in the seventies and eighties themselves the destination of migratory flows. In some states, such as Italy, this transition was made possible by economic growth. In other cases, such as Spain and Portugal, the growth of inflows was made possible by the opening of the political and economic system that followed the end of authoritarian regimes. Moreover, compared to Western Europe, immigration in these countries was facilitated by the presence of much more permeable borders and the development of an informal and flexible labor market.

XX Century

- In the late eighties and the early nineties the tension between the West and the Soviet bloc, which had marked the history of Europe since the second world war, came to an end. The fall of the Berlin Wall and the dissolution of the Soviet Union gave shape to a new Europe, which evolution is also favored by the progress in regional integration. The Single European Act of 1986 and the Treaty on European Union in 1992 strengthened the cooperation between Member States through the creation of the single market, allowing the free movement of people within the European Community; in 1985 the Schengen Agreement tried to simplify the free movement of persons and goods.
- In this changed political framework the ultimate southern European transition towards a destination of emigration area was achieved. The growing economic and demographic gap between the European continent and the poorest regions of Africa and Asia consolidated migratory inflows in this area, which is a kind of gateway to Europe. At the same time, the end of the communist regimes in Eastern Europe favored the arrival of migrants from these countries, which in turn also consolidated themselves as immigration destinations. With the end of the twentieth century, Europe's migration transition was thus completed.

XXI Century

- The early twenty-first century seems to confirm the trend already seen at the end of the previous century. In the first decade of the new millennium, the impressive economic growth known from Europe favored a rapid expansion of incoming migratory flows. The evolution of the European economic system has led to the creation of new jobs and the requirement of highly skilled workers. This type of immigration has been encouraged by the European governments that have created favorable measures to entry and stay on its territory for this category of individuals. On the contrary, the less specialized workforce, whose request was also in constant growth at least in the first years, has continued to enter in Europe on the basis temporary or seasonal visa, or in an irregular manner.
- Economic growth and the demand for labor were not, however, the main driver of migration flows into Europe. In particular, in recent years, a large proportion of these flows is made up of the families of the workers arrived in the old continent in previous years. Nevertheless, a significant component of immigration to Europe is made up of asylum seekers from Africa and Asia.
- The growth of migratory flows coming from the less developed areas of Africa and Asia and the enlargement of the Union caused a new massive displacement of people towards Western and Southern Europe, again moved for economic reasons and job search.

XXI Century

- The global economic crisis that has hit Europe since 2008 has marked a decline in growth of migration inflows. The economic crisis, which has had more serious effects in southern and eastern Europe, caused a decrease of migration inflows and the revival of emigration, especially towards the north-western Europe.
- The demand for skilled workers and students continued to grow and strengthened the flows to the richest countries.
- The other types of migration, especially those for family reunification and asylum applications, have instead stood at stable levels.

2. A multilevel issue

Immigration

- The regulation of migratory flows in the European Union countries is subject of a multi-level legislation due to the same nature of the phenomenon.
- On the one hand, Member States continue to exercise its competence in this area that, regarding border management, relates ultimately to the exercise of the sovereignty of the State on one of its constituent elements, namely its territory.
- On the other hand, several factors pushing to limit the discretion of States in this matter. The "rights of aliens", that is the set of rules regarding immigration and the legal status of foreigners, stop, under a variety of pressures, to be a matter reserved exclusively to the states.

Immigration

- First, economic globalization and the increasing mobility of people have consolidated the presence of a labor market increasingly less limited to national borders.
- The international protection of the rights constitutes a limit to the discretion of the States relating to immigration, requiring compliance with immigrants human rights.
- Finally, with specific regard to the European Union, the integration progress and the fall of the borders between the Member States have favored the creation of a common European area which requires a coordinated management between the different member countries.

Immigration

- The presence of this tension between national, European and international level has created a multi-level legislation that today implies that the field is regulated in the European Union member states, at least by five different types of legal sources:
 - the national law of Member States;
 - EU legislation, both primary law and secondary law;
 - treaties adopted within the Council of Europe, and in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);
 - treaties adopted within the UN, such as the Geneva Convention on the Status of Refugees;
 - bilateral and multilateral treaties concluded AMONG EU Member States and third countries.

Citizenship

- In contrast to the immigration field, the nationality matters still seem to fall fully and almost exclusively in the absolute competence of the States.
- A certain tension also in this case exists between the discipline of citizenship at national level
- The increased international mobility has posed important challenges to nation states, even in Europe: a growing number of people now lives on the territory of a State of which he is not a citizen.

Citizenship

- The tension between national, international and supranational levels of regulations of nationality matters is due not only to the increasing international mobility, but also to the same nature of nationality.
- On the one hand, it serves to indicate a status from which a series of rights and duties derive
- On the other hand, citizenship is considered itself a human right and as such is susceptible to additional protection with respect to national legislation: the right to citizenship has been defined as a “right to have rights”.

3. The international level

Immigration

- As for the international level of regulation of migration, we can observe the presence of different reasons behind the increasing of international legislation.
- A first reason is economic and it is linked to the attempt to regulate migration flows motivated by the search for work abroad.
- A second reason relates rather to the need to protect the human rights of migrants and, in particular, of certain categories of them as asylum seekers and refugees.

Immigration

- We can also observe a plurality of regulatory instruments.
- Already in the nineteenth century international law had begun to be used for the regulation of migration flows by signing bilateral or multilateral agreements;
- After the two world wars and the resulting territorial changes, such tools are also used to regulate the situation of those individuals who were in some way affected by these changes and the creation of new boundaries.
- From the second half of the twentieth century, the international protection of human rights imposed on the other hand the approval of treaties at the global and regional level in order to guarantee the rights of migrants.
- Globally, there are treaties specifically aimed at guaranteeing the rights of migrants, treaties that apply to all individuals regardless of their nationality, and treaties that deal with issues that are separated but related from those of migration.

Immigration

- In the first category we have four documents: the Convention relating to the Status of Refugees (1951), the International Convention for the Protection of the Rights of all migrant workers and their families (1990), the Protocol against the smuggling of migrants (2000), the Protocol to prevent, suppress and punish trafficking in persons, especially women and children (2000).
- If the protocols approved in 2000 contain provisions aimed at combating transnational crime in this area, the conventions of 1951 and 1990 seem to be animated by a different perspective, wider and more general, intended to enshrine and protect the rights of migrants. In particular, the Convention relating to the Status of Refugees defines the category of refugees and shall recognize the rights, both civil and political and economic and social sphere; the International Convention for the Protection of the Rights of all migrant workers and their family deals instead with work immigration, recognizing a series of rights for both illegal immigrants and for regular ones.

Immigration

- Among the general treaties who acquire relevance with reference to the phenomenon of migration we can remember the Universal Declaration of Human Rights (1949), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and cultural Rights (1966).
- They constitute, as a whole, a kind of universal declaration of human rights which, as such, should also be recognized by the signatory states to migrants: see, for example, the principles of non-discrimination, protection against arbitrary detention, freedom of movement and against arbitrary expulsions, freedom of assembly, association and expression, right to health and education.

Immigration

- Finally there are treaties that, guaranteeing specific rights, assume importance in view of the international discipline of immigration: we can remember the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the rights of the child (1989), the Convention against torture and other cruel, inhuman or degrading treatment (1984), the International Convention for the Protection of All Persons from Enforced Disappearance (2006), all able to integrate the rights already recognized in general to migrants as humans.

Immigration

- In the context of international legislation of migration framework we have also, at regional level, the ECHR. This Convention, approved in the framework of international human rights protection, contains provisions that restrict the sovereignty of states through the guarantees which recognizes to all individuals and then, between these, to the migrants: for example, the prohibition of torture, inhuman or degrading treatment (art. 3), the right to liberty and security (art. 5), the right to respect for private and family life (art. 8).

Citizenship

- The starting point for analyzing the relationship between the different legal systems in the definition of the rules on citizenship is the general principle of the States. It is a principle of customary international law, according to which the monopoly of the legislation on the conditions for the acquisition and loss of citizenship is an expression of the sovereignty of States.
- This principle has also been object of international treaties; the first multilateral agreement approved on citizenship, the Hague Convention of 1930, opens, significantly, stating that it is for each State to determine with its own laws which are its citizens.
- The same principle is moreover confirmed by the International Court of Justice in the Nottebohm case of 1955; it recognized the principle of effectiveness as a rule for the international significance of citizenship. The lack of a genuine link between the individual and the state implies that the individual's citizenship is considered irrelevant in terms of international relations, but this does not mean that states are not free to determine the acquisition and loss of their citizenships.

Citizenship

- The international importance assumed by citizenship, while not directly causing a reduction in the freedom of States, has pushed themselves to accept the provision of partial restrictions to avoid conflicts that may arise from this absolute freedom. It is precisely the possibility of these conflicts, positive or negative, to be the main factor in the development of (minimum) international rules on citizenship.
- The "positive conflict" refers to the situation according to which the individual is a national of several States: it leads to cases of dual or multiple nationalities.
- The "negative conflict" are that in which the individual does not possess any citizenship: the individual's status will therefore be stateless.

Citizenship

- Regarding the positive conflicts, the approach followed at national and international level has changed considerably over time. The multiple nationality has long been considered a legal anomaly able to undermine the authenticity of the relationship that binds the individual to the State and to create tensions in the relations between states. The first international conventions were targeted precisely to prevent positive conflicts of citizenship: this is, for example, the main purpose of the Hague Convention of 1930 or the European Convention for the reduction of cases of multiple nationality of 1963.
- Only more recently the multiple nationality status is commonly accepted and no more considered a legal anomaly. For example the European Convention on nationality of 1997 the phenomenon in ruled a neutral manner.

Citizenship

- A different path regards the debate about the negative conflict. Since the Universal Declaration of Human Rights of 1948 the citizenship has been recognized as a right of every individual. The same approach has animated the provisions of other documents adopted at the international level, such as the International Covenant on Civil and Political Rights of 1966 and the Convention on the Rights of 1989, which recall the right of the child to acquire citizenship at birth.
- More specifically, a number of international conventions such as the Convention on the Status of Stateless Persons of 1954 and the Convention on the reduction of statelessness of 1961 tried to solve the problem of negative conflicts of citizenship. However, it has been rightly pointed out that these documents do not constitute sources of obligations for the States: they do not provide how to achieve a specific citizenship, so the right to citizenship is an aspiration rather than a binding provision for States.

Citizenship

- Most significant results have been achieved in the Inter-American system of protection of human rights, in which today there is the highest level of international guarantee of the right to citizenship. The right to citizenship has been directly recognized in the American Convention on Human Rights of 1969, allowing the Inter-American Court of Human Rights to develop a jurisprudence which has effectively limited the exclusive powers of the States on the subject.
- Most modest advances are made at European level. Within the Council of Europe, the European Convention on Nationality of 1997, while reaffirming the right of every individual to citizenship, does not contain the necessary tools to make this right effective. Moreover, the choice to not include the right to citizenship in a protocol to the ECHR, but rather to recognize it in a separate Convention, doesn't allow to the European Court of Human Rights to guarantee its respect by the States.