The Evolution of Sovereignty and Citizenship in Western Europe: Implications for Migration and Globalization

John D. Snethen
Indiana University School of Law

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The relevance of international migration to globalization derives from at least three sources: the global ramifications of what many authors deem a migration crisis, the permeability of national boundaries to market growth and expansion, and the permeability of national boundaries to the migrant populations that follow economic opportunities across borders. The study of international migration also poses an analytical challenge to current models of international politics and globalization, which tend to place changing migration strategies against the backdrop of the nation-state.

1. I define "migration" broadly to include economically-motivated movement by non-nationals across national borders.

2. "[G]lobalization is most often understood to mean the growth and interconnection in trade and financial markets across—and often irrespective of—national boundaries..." Adelle Blackett, Note, Globalization and Its Ambiguities: Implications for Law School Curricular Reform, 37 COLUM. TRANSNAT'L L. 57, 60 (1998). Jeffrey A. Hart defines globalization according to the following five elements: a global infrastructure, global harmonization of an important characteristic, the termination of borders, the spread globally of a local phenomenon, and the global dispersion of expertise. See Jeffrey A. Hart, Comments on "Changing Sovereignty Games and International Migration," 2 IND. J. GLOBAL LEGAL STUD. 171, 171 (1994).

3. See MYRON WEINER, THE GLOBAL MIGRATION CRISIS: CHALLENGE TO STATES AND TO HUMAN RIGHTS 186 (1995); Guy de Lusignan, Global Migration and European Integration, 2 IND. J. GLOBAL LEGAL STUD. 179 (1994). See also Mark J. Miller, Evolution of Policy Modes for Regulating International Labour Migration, in INTERNATIONAL MIGRATION SYSTEMS: A GLOBAL APPROACH 300, 302 (Mary M. Kritz et al. eds., 1992) (arguing that international migration should be studied "because the issue has long played a significant role in bilateral and multilateral relations among states.")

4. By "strategies" I mean any law or public policy aimed at influencing migration.

5. See, e.g., David Held, Democracy, the Nation-State and the Global System, in POLITICAL THEORY TODAY 197, 210 (David Held ed., 1991) ("[W]hile there has been rapid expansion of intergovernmental and transnational links...the age of the nation-state is by no means exhausted."); Alfred C. Aman Jr., Introduction: Migration and Globalization, 2 IND. J. GLOBAL LEGAL STUD. 1, 1 (1994) (noting the need
globalization claim that labor markets that are increasingly liberated from domestic and international regulations challenge the sovereignty of nation-states. Critics of such scholarship, on the other hand, refer to globalization as "globaloney" and claim that the nation-state remains the preeminent unit of analysis of global events. In particular, international relations scholars frequently place great emphasis on the nation-state, which limits their ability to explain certain types of change. For example, a realist "security and stability" analysis of migration accounts for the potential destabilizing effect of open borders on a nation-state, but such an analysis emphasizes State decisionmaking while downplaying the decisionmaking of non-State actors. Additionally, realists link change to vaguely-defined notions of military and economic "power" even though these so-called "powers" frequently fail to prevent migration and in many cases even cause unwanted migrations. Moreover, realists (and liberals) regard the causes of change as exogenous to their models, which gives their models descriptive value but little explanatory value—unless "power" is accepted as both the first cause and final explanation of all global events.

Nevertheless, the nation-state remains an essential analytical concept in the models of those who take globalization seriously. For example, the "hyperglobalist" thesis focuses on the eclipsing of the nation-state by an emerging global market, the "skeptical" thesis regards globalization as increased economic interdependence that occurs under the guidance of nation-states, and the "transformationalist" thesis claims that nation-states remain the...
ultimate sovereign in a world of flexible jurisdictions. Under each of these models, the metric of globalization is the nation-state, and the conclusions reached by scholars who use these models are cognizable only in terms of the nation-state. Such conclusions, however, fail to account for or even identify certain mechanisms of globalization that are not analytically dependent on State-centered concepts. Accordingly, it is relevant to ask under a rubric not pegged to the nation-state why migration strategies change and how this change helps us understand globalization.

In this Article, I adapt the evolutionary model developed by Professor George Modelski of the University of Washington, United States, to my analysis of globalization and the changes to Western European migration strategies since the era of mercantilism. In Part I, I describe Professor Modelski's evolutionary model and use his model to show that migration strategies have moved from little structure and sparse connectivity to complex structure and dense connectivity. In Part II, I discuss three centuries of changes to the strategies of national sovereignty and jus sanguinis and their relationship to Western European migration policies. I suggest that Professor Modelski's analytical approach possesses explanatory value because it highlights novel relationships between and among forces of globalization that are not otherwise cognizable if a nation-state analysis controls. I conclude that Professor Modelski's evolutionary model offers globalization scholars a useful framework and nomenclature for describing and analyzing change to the strategy of sovereignty and also provides a useful basis for describing the lack of change to the strategy of jus sanguinis.

11. The notion of majority rule additionally implicates the limitations of models that use the nation-state as their point of reference. "Problems arise . . . not only because decisions made by nation-states, or by quasi-regional or quasi-supranational organizations . . . diminish the range of decisions open to a given 'majority,' but also because decisions of a majority affect (or potentially affect) not only its own citizens." See Held, supra note 5, at 201-02.
12. I do not analyze refugees, who constitute an important factor in understanding contemporary migration strategies. Although the exclusion of refugees from this paper may weaken the analysis, my goal is to determine whether the evolutionary model proposed herein has explanatory power without making the analysis unduly complex to start with. If the model proves useful at this level of analysis, then there would be reason to apply the model to more complex analyses.
13. Latin for "right of blood." BLACK'S LAW DICTIONARY 868 (7th ed., 1999). "The rule that a child's citizenship is determined by the parent's citizenship." Id.
I. PROFESSOR MODELSKI'S MODEL OF EVOLUTION

Professor Modelski suggests that social systems, like biological systems, manifest directional change;\(^4\) therefore, scholars of globalization should be able to use the language of biological evolution to analyze changes to legal systems.\(^5\) Evolution, however, does not imply an ontological dimension to change; it only implies that change does not occur randomly.\(^6\) Though selection is the mechanism associated with classic Darwinism, variation sets the evolutionary process into motion. Certain selected traits enjoy a comparative advantage (i.e., "selective advantage") because repeated selection beneficially amplifies their prominence within a population.\(^7\) An evolutionary model, therefore, is well suited to the "task of rebuilding from the directly known elements the complex and unique structures which we find in the world, and of tracing from the relations between the elements the changes in the wholes."\(^8\) For those who take globalization seriously, a model of evolution gives them the language to "describe the nature and direction of changes in a complex phenomenon even though little is known about its constituent parts and the mechanisms connecting them."\(^9\)

Professor Modelski defines evolution as long-term change and posits the conditions necessary for "optimum" evolutionary fitness within a given environment.\(^10\) In analyzing change, he does not contemplate the discrete acts

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\(^{14}\) Id. at 324 (quoting R.C. Lewontin, The Concept of Evolution, in 5 INT'L ENCYCLOPEDIA OF SOC. SCI. (1968)). See also George Modelski & Kazimierz Poznanski, Evolutionary Paradigms in the Social Sciences, 40 id. at 315, 316 (1996). Change to social institutions possesses a temporal direction inasmuch as change systematically, and with a logic particular to its own inner workings, manifests itself as increasing complexity and innovation produced by a trial-and-error process of learning. See Modelski, supra note 9, at 323-25, 329. Learning itself possesses directionality inasmuch as learning is an orderly, phased process, which develops its own structure over time. Cf. id. at 324. See generally THE EVOLUTIONARY WORLD POLITICS HOMEPAGE, available at http://faculty.washington.edu/modelski/ (last visited Dec. 17, 2000).

\(^{15}\) See Modelski, supra note 9, at 327.

\(^{16}\) See Modelski, supra note 9, at 324-25.

\(^{17}\) Id. at 334-35.


\(^{20}\) See Modelski & Poznanski, supra note 13, at 316.
of individuals;\(^\text{21}\) rather, he studies certain strategy populations that the nation-state may or may not have created. He thereby avoids characterizing the nation-state as the force that globalization has overcome, or as the force against which globalization cannot prevail. As Professor Modelski notes, "[N]ation-states are not the basic units of world politics, even though certain nation-states may at times be carriers of global policies."\(^\text{22}\)

Changes to migration strategies can be thought of as the search for more effective institutions at the global level, the selection of institutional governing rules, and the institutional selection of strategies.\(^\text{23}\) Such institutions are among the components of the nation-state and may include nongovernmental organizations (NGOs) and loosely-organized migrant groups. In keeping with the analogy of evolution, these institutional strategies can be characterized as the DNA of migration,\(^\text{24}\) or as the "memes"\(^\text{25}\) of migration (i.e., self-replicating instructional sets "of global potential" that lay down the rules for behavior within the migration system).\(^\text{26}\) Nevertheless, this analysis is limited to the extent that social systems, unlike biological systems, do not undergo unitary change.\(^\text{27}\)

Four mechanisms cause change: variation (or innovation), cooperation, selection in its classic Darwinian sense, and reinforcement.\(^\text{28}\) Variation manifests itself as policy innovations, whereas cooperation entails the formation of alliances that enable the selection and survival of international and global strategies.\(^\text{29}\) The selection of strategies at the international and global level can occur by war, election, economic competition,\(^\text{30}\) or by the action of a "norm entrepreneur," which has been defined as "an individual or organization that sets out to change the behavior of others."\(^\text{31}\)

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\(^{21}\) Id. at 331.

\(^{22}\) Id.

\(^{23}\) See Modelski, supra note 9, at 321, 329.

\(^{24}\) See Murray Gell-Mann, The Quark and the Jaguar: Adventures in the Simple and the Complex 292 (1994) (quoting Hazel Henderson on "cultural DNA").

\(^{25}\) See Richard Dawkins, The Selfish Gene 189–202 (new ed. 1989). Evolutionary biologist Richard Dawkins coined the term "meme" to signify a self-replicating packet of information that can include something as simple as a chain letter to more complex information packets, such as religious beliefs. Id.

\(^{26}\) See Modelski, supra note 9, at 331.

\(^{27}\) Id. at 327.

\(^{28}\) Id. at 334.

\(^{29}\) Id. at 336.

\(^{30}\) Id.

\(^{31}\) Florini, supra note 9, at 374–75.
reinforcement of a surviving strategy occurs by rewarding selection and punishing non-selection. Path dependence, a phenomenon where "every successive act in the development of an . . . organisation, or an institution is strongly influenced by . . . the path (experience and evolution) previously covered," also reinforces a surviving strategy. Whether a strategy survives and reproduces depends on the sequential combined effects of the four evolutionary mechanisms of variation, cooperation, selection, and reinforcement.

II. SOVEREIGNTY AND JUS SANGUINIS—UNITS OF EVOLUTIONARY ANALYSIS

Sovereignty, with its embedded norm of the competency of the sovereign to assert its will, is a fundamental strategy that affects the selection of migration policies. The concept of sovereignty is also "closely related to the nature and evolution of the state." The link between the evolution of sovereignty and the migration policies of the State have been eroding. The link was never strong, in part because the modern notion that a State possesses the unfettered discretion to restrict migration has no ancient precedence.

32. See Modelski, supra note 9, at 336. See also Anthony D'Amato, Is International Law Really "Law"?, 79 NW. U. L. REV. 1293, 1303–14 (1985) (arguing that reinforcement of strategies occurs through threats of "reciprocal entitlement violation"). Reinforcement also depends on the compatibility of the new strategies with existing strategies, and the compatibility of those strategies with the environment in which they operate. Cf. Florini, supra note 9, at 377.

33. Salvator Rizzello, The Microfoundations of Path Dependency, in EVOLUTIONARY ECONOMICS AND PATH DEPENDENCE 100 (Lars Magnusson & Jan Ottosson eds., 1997).

34. See Modelski, supra note 9, at 335–36.

35. See generally JOSEPH A. CAMILLERI & JIM FALK, THE END OF SOVEREIGNTY? 11 (1992) (arguing that sovereignty "is a concept . . . about the way political power is or should be exercised.").

36. See generally Alden v. Main, 119 S.Ct. 2240, 2271–73 (1999) (comparing and contrasting the common law and natural law conceptions of sovereignty). See also Miller, supra note 3, at 302 ("[T]he significance of international migration to foreign policies is generally downplayed . . . for reasons which relate to sovereignty.").

37. CAMILLERI & FALK, supra note 35, at 15.

38. WINER, supra note 3, at 112.

The U.S. Supreme Court in *Nishimura Ekiu v. United States*, however, made the contrary—and erroneous—claim that

> [i]t is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.\(^{40}\)

The Court in *Ekiu* apparently misunderstood the writings of Emmerich de Vattel. Contrary to the implication that the whim of a sovereign justifies the migration strategy of a State, Vattel believed that the sovereign must justify the regulation of migration based on an advantage conferred to the State by the regulation. In Vattel’s words, “[t]he Sovereign may forbid the entrance of his territory to either foreigners in general, or in particular cases, or to certain persons, or for certain particular purposes, according as he may think it advantageous to the state.”\(^{41}\) Other international law scholars, such as Pufendorf, also recognized the restrictive right of the sovereign to exclude foreigners. The holding in *Ekiu*, therefore, appears to mark the birth of a policy mutation that continues to compete for selection today.\(^{42}\)

Throughout the twentieth century, numerous scholars and jurists have rejected the notion of absolute state sovereignty over migration policy. The Permanent Court of International Justice (ICJ), for example, held that although international law did not regulate nationality, the right of State discretion was “restricted by obligations which it may have undertaken towards other states.”\(^{43}\) Many contemporary scholars agree with the ICJ. For example,

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40. 12 S.Ct. 336, 338 (1892) (emphasis added).
43. See Advisory Opinion No. 4, Nationality Decrees Issued in Tunis and Morocco, 1923 P.C.IJ. (ser. B) No. 4, at 23–24 (Feb. 7) [hereinafter Nationality Decrees]. The idea was not a novel one. See The Schooner Exchange v. M’faddon, 11 U.S. 116, 137 (1812) (“A nation would justly be considered as
Professor Tomas Hammar of the Centre for Research in International Migration and Ethnic Relations, Stockholm University, Sweden, has said, "Although there are clearly autarchic elements in international migration policy and most states make serious attempts to control migration to their territory, they are evidently far from being truly independent and sovereign within the international political system." The belief in State freedom to unilaterally control migration "appears misplaced in the conditions of contemporary international relations." Nevertheless, the competition between the strategy of absolute sovereignty versus the strategy of restricted sovereignty has continued throughout the twentieth century.

A pair of other strategies—the ancient legal doctrines of *jus sanguinis* and *jus soli*—also affect migration because the former strategy contains the norm of consanguinity and the latter contains the norm of birthplace. The norm of consanguinity, for example, allows States to distinguish between acceptable and unacceptable migrants, which helps to select the migrants that States will naturalize. Therefore, migration policies and their effects on migrants and indigenous populations cannot be analyzed without analyzing the strategies of nationality. *Jus sanguinis* and *jus soli* exert tremendous influence on migration policies (*jus sanguinis* more so than *jus soli*) and particularly affect migrant children who are born in the host country of one or both parents.

### A. Sovereignty—A Rational Globalizing Force

My analysis of Western European migration strategies begins with a discussion of mercantilism, the economic strategy that dominated Europe from the sixteenth to the eighteenth centuries. During the era of mercantilism,
States competed for labor under conditions of slow population growth; consequently, migration strategies were designed to capture working populations by imposing strict exit prohibitions on nationals and providing liberal entrance policies for non-nationals.\textsuperscript{51} Competition between the strategies of monarchical sovereignty and national sovereignty distinguished the latter mercantile and post-mercantile eras; subjects of States found their allegiance divided between the crown and the kingdom.\textsuperscript{52} The contest would decide whether and to what extent a nation could claim absolute sovereignty as a justification for the exclusion of aliens.

National sovereignty eventually demonstrated greater evolutionary fitness than monarchy. Although scholars such as William Blackstone ascribed sovereignty to the monarch,\textsuperscript{53} monarchical sovereignty waned as national sovereignty grew. Professor Richard Plender notes that the strategy of national sovereignty gained a selective advantage in an environment that was ripe with innovation:

The re-birth of the classics, the growth of nationalism, the increase in international trade and the related temporary alliance between merchants and monarchs, the Reformation and the secularization of political theory combined to strengthen the idea of a State as a unified force. . . . The Civil War, The Leviathan, the propagation of Locke's thesis that the supreme power resides in the people and the resurgement of the view that the Original Contract is the basis of sovereignty all seem to have combined to weaken the theory that allegiance is owed to the King in person rather than the body politic represented in him.\textsuperscript{54}

It is significant that Professor Plender characterizes the nature of cooperation


\textsuperscript{52} See PLENDER, supra note 39, at 14. For a brief history of modern notions of nation state, see Delbrück, supra note 5, at 48–53.

\textsuperscript{53} "And, first, the law ascribes to the king the attribute of sovereignty, or pre-eminence . . . ." See 1 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 234 (1765).

\textsuperscript{54} See PLENDER, supra note 39, at 14–15.
during this period as one of temporary alliances between migrant merchants and monarchs. The evolutionary model suggests that cooperation will first stabilize, then grow more complex over time. The impermanent merchant-monarch cooperation of this early era was the beginning of modern complex notions of sovereignty.

By the end of the eighteenth century, the modern notion of "nationality," created by Article 25 of the French Constitution of 1793, would confer an additional selective advantage to the strategy of national sovereignty. Moreover, as the Peace of Westphalia enhanced the fitness of absolute national sovereignty, the growth of international relations enhanced the fitness of restricted sovereignty. Ultimately, three species of sovereignty evolved during this era: absolute monarchical sovereignty (which was losing evolutionary fitness), absolute national sovereignty (which was gaining evolutionary fitness), and restricted national sovereignty. The latter variant lay dormant until an evolutionary mechanism—international cooperation—triggered its availability for selection. Variation of strategies, therefore, existed during and immediately after the mercantile era, thus satisfying the first element of the evolutionary model.

The next step under the evolutionary model requires the identification and analysis of cooperation. Variation encourages cooperation to the extent that an effective alliance greatly enhances the survivability of a strategy. Many scholars view cooperation as a necessary component of evolution; therefore, selection can also be characterized as cooperative rather than competitive. Cooperation also necessarily precedes selection; without cooperation, the international selection of strategies could not occur, and migration policies would solely be domestic creations.

Migration policies themselves can lead to cooperation among States. Within the European Community (EC), migration policies are no longer

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55. Id. at 9.
56. See Models, supra note 9, at 336. Shared cultural and historical similarities between and among regions and countries also tend to facilitate cooperation in the form of bilateral or multilateral agreements. See Mary M. Kritz & Hania Zlotnik, Global Interaction: Migration Systems, Processes, and Policies, in INTERNATIONAL MIGRATION SYSTEMS, supra note 3, at 13.
57. See Models, supra note 9, at 334. Models also associates spontaneous organization with cooperation. Id. See also Rizzello, supra note 33, at 114-16 (arguing that spontaneous organization is a condition precedent to formalization of institutional rules).
58. See Weiner, supra note 3, at 112.
exclusively domestic, but have merged with the policies of other States.\textsuperscript{59} This “supranational” form of cooperation not only increases the complexity of migration strategies, but it also increases the likelihood that States will cooperate with other actors to ensure the fitness and survival of these strategies. State cooperation is not a foregone conclusion, however, inasmuch as relations among nation-states can be analyzed “along a continuum ranging from friendly or mutually beneficial relations to highly conflictual.”\textsuperscript{61} Nevertheless, once a population of migration strategies has changed, an analysis of the cooperation among nation-states and NGOs is the next step in the evolutionary model, with particular attention given to what form such cooperation takes.

The ascendance of national sovereignty over monarchy increased the possibility that cooperation would evolve between nation-states. This cooperation took the form of the bilateral treaty, itself a sporadically used strategy until the nineteenth century. Bilateral treaties, therefore, “carried” many, if not most of the selected migration strategies.\textsuperscript{62} Before the era of mercantilism, the prevailing form of cooperation was a unilateral grant from the monarch.\textsuperscript{63} During the era of mercantilism, bilateral treaties were used \textit{ad hoc}, although some treaties did contain migration provisions for the mutual admission of citizens.\textsuperscript{64} A more commonly used strategy by the mid-1600s was for States to combine most-favored-nation status with State treatment of foreign nationals on par with State treatment of domestic citizens. Thus began the modern legal strategy of using commercial treaties to regulate migration.\textsuperscript{65}

By the mid-nineteenth century, the regulation of migration within bilateral commercial treaties was the standard method to implement European

\textsuperscript{59} Id.
\textsuperscript{60} Id. at 119.
\textsuperscript{61} Kritz & Zlotnik, supra note 56, at 12-13.
\textsuperscript{62} See PLENDER, supra note 39, at 4. Bilateral treaties were the predominate form of treaty during the nineteenth century and the early twentieth century. \textit{See LIBRARY OF CONGRESS CONGRESSIONAL RESEARCH SERVICES, 103D CONG., 1ST SESS., TREATIES AND OTHER INTERNATIONAL AGREEMENTS: THE ROLE OF THE UNITED STATES SENATE 17 (Comm. Print 1993).}
\textsuperscript{63} J.W.H. VERZIJL, 5 INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE 429(1972).
\textsuperscript{64} Id. at 418. \textit{See also} Miller, supra note 3, at 304 (“With few exceptions . . . work available on bilateral labour agreements consists of case-studies, an approach that obscures understanding of parallels in the evolution of bilateral labour agreements on both sides of the Atlantic.”). Miller provides a bibliography of selected case studies of bilateral labor agreements.
\textsuperscript{65} \textit{See} VERZIJL, supra note 63, at 432.
migration strategies, in contrast to the earlier ad hoc and temporary uses of bilateral treaties. Nineteenth century treaties typically contained simple provisions that dealt with temporary labor shortages; over the decades, the complexity of these migration provisions grew. Meanwhile, because of growing bilateralism, in Europe there occurred for the first time since the Peace of Westphalia the “nearly free movement of people in that sector of the world which was becoming linked by the gold standard into a free-trade system.” With few exceptions, European migration strategies remained liberal until the latter part of the nineteenth century.

Prompted by economic crisis in the late nineteenth century, European bilateral migration policies grew more restrictive. The selective exclusion of aliens by asserting national sovereignty gained impetus from English and U.S. courts, whose case holdings amplified antimigration principles. Nevertheless, nation-states continued to enter bilateral commercial agreements that regulated migration. After World War I, however, many nations discovered that they could not adequately solve their migration problems by multiplying their domestic migration laws. Interdependence among nation-states required more than domestic migration strategies. Hence, post-World War I bilateral migration treaties started to include labor, social security, and workers’ compensation provisions.

By the post-World War I years, bilateralism had become the established cooperative method for implementing migration strategies. International cooperation conferred a selective advantage to restricted sovereignty; any claim of absolute sovereignty by a nation-state would have precluded cooperation on migration strategies with other nation-states. Although the choice of nation-states to cooperate appears to have been a de facto selection of restricted sovereignty, it is significant that there had been no de jure selection of restricted sovereignty by any nation-state during the pre-World

67. See PLENDER, supra note 39, at 308-09.
68. Zolberg, supra note 51, at 321.
69. PLENDER, supra note 39, at 67.
70. See THOMAS SOWELL, MIGRATION AND CULTURES 45 (1996); Zolberg, supra note 51, at 322.
71. See Nafziger, supra note 42, at 835.
73. Id. at 27.
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War II years. In evolutionary terms, it is more accurate to conclude that cooperation did not result in the passive selection of restricted sovereignty; rather, cooperation conferred a selective advantage to the strategy of restricted sovereignty.

By this time in the evolutionary history of migration strategies, logically coherent domestic and international evolutionary roles had supplanted the domestic regulation of migration. These decentralized cooperative processes "enforced" emerging global migration strategies, which suggests that the normative and functional basis for global migration law is cooperation, "by reference to which the validity of the other rules of the system is assessed, and in virtue of which the rules constitute a single system." Because the survival of a particular migration strategy enhances the likelihood that nation-states and other actors will cooperate, the principle of cooperation acts as an "ultimate provision" from which separate migration strategies derive their binding force. In other words, the analysis of strategy enforcement under Professor Modelski's model of evolution leads to an understanding of enforcement, not as coercion or threats to extinguish reciprocal entitlements, but as the consequence of evolutionary mechanisms. In keeping with the absence of teleology in the model of evolution, no preferred course of action should be inferred from the principle of cooperation. The principle of cooperation does suggest, however, that whatever course of action actors take, it will possess a fundamental element of collaboration upon which the survival of a migration strategy will rest and against which it will be judged.

The cooperative selection of migration strategies during the twentieth century has manifest itself as "[t]he rapid development of customary rules governing the opposability of nationality" and the "simultaneous development of treaty law" under the impetus of the League of Nations. The twentieth century migration controversy has been whether cooperating nation-states will retain absolute state sovereignty over domestic migration policies. By the time World War I broke out, many countries had placed legal limits on

75. Cf. id. at 229. See also James F. Hollifield, Migration, Trade, And The Nation-State: The Myth of Globalization, 3 UCLA J. INT'L L. & FOREIGN AFF. 595, 629 (Spring/Summer 1998) ("One of the principal effects of economic interdependence is to compel states to cooperate.").
76. See D'Amato, supra note 32, at 1310.
77. PLENDER, supra note 39, at 45.
78. Id. at 61.
foreigners, which provoked criticism from scholars who argued that international law restricted State discretion to impose such limits. After World War I ended, States again tried to liberalize migration policies for laborers, though without explicitly conceding national sovereignty to international law.

The cooperative selection of migration strategies prior to World War II was part of an indirect institutional regulation of migration by European leaders. Subsequent to World War II, however, Europe entered several periods of overlapping crises and conflicts that forced States to adopt "explicit migration legislation and administration." As part of the response by the international community to World War II, domestic controls over migration were strengthened, and laws that promoted the equality of all persons were strengthened. Hence, European treaties that included migration provisions also began to include human rights provisions. International human rights foreshadowed a growing global multilateralism by linking the migration policies of a State to the migration policies of all other States. The primacy of international human rights consequently enhanced the fitness of restricted sovereignty as the appropriate measure of State authority by which to enforce domestic migration policies. The deliberate selection of restricted sovereignty over absolute national sovereignty therefore occurred when Western European States explicitly adopted migration strategies negotiated by the international community and non-state actors.

The next step in Professor Modelski’s model of evolution requires an analysis of how the strategy of restricted sovereignty was reinforced.

79. See id. at 3.
80. See Hammar, supra note 44, at 251. By the 1920s, European states had dispensed with visa requirements, which was a wartime strategy that would be selected again during World War II and again discarded at the end of the war.
81. Id. at 245 (noting that European migration policy “has often been both a non-policy, implicit and unarticulated, and a non-political issue”).
82. Id. at 256.
83. PLENDER, supra note 39, at 80. Cf. Zolberg, supra note 51, at 317 (finding the post-war period uncooperative by virtue of each state pursuing its own migration policies in competition with other nation states to attract cheap labor).
84. See PLENDER, supra note 39, at 80.
85. Id. at 309.
86. See VERZIJL, supra note 63, at 437 (objecting to states being “allowed to take shelter behind the legislative and administrative regime meted out to its own subjects, in order to escape accusations from abroad for the manner in which it treats foreigners”).
Professor Modelski suggests that strategies will be reinforced when actors learn by adjusting their behavior to the new strategies. The reinforcement of a strategy can also occur by rewarding selection and punishing nonselection, by seeking efficiency through the harmonization of policies, \( \text{“[t]hrough centralization of regulatory power and the pooling of sovereignty,”} \) and by persuasion. New strategies are usually spread by the acts of enforcement agencies, social groups, and other non-state actors within a system of inheritance (i.e., legal codes, treaties, and legislative histories). As a consequence of these various mechanisms, a particular strategy typically grows in prominence, persists, and reproduces by transmitting a set of instructions to the following generation of strategies.

Subsequent to World War II, multilateralism begin to replace bilateralism. Although multilateral migration treaties existed at least as early as the late eighteenth century, these treaties prohibited or provided for involuntary migration (i.e., the importation of slaves). In the early twentieth century, States attempted to form multilateral migration treaties, but World War I interrupted these efforts. Nevertheless, by the mid-twentieth century, economic migration required more than domestic or bilateral migration policies. These requirements were first satisfied, first in 1947 when Belgium, the Netherlands, and Luxembourg formed the Benelux Customs Union, then in 1949 when the Council of Europe was established. For the remainder of the twentieth century, the Council would play a prominent entrepreneurial role in reinforcing European migration strategies.

87. See Modelski, supra note 9, at 335.
88. Id. at 336. See also D’Amato, supra note 32, at 1310.
89. See Hollisfield, supra note 75, at 629.
90. Id.
91. Cf. Modelski, supra note 9, at 336.
92. Id.
93. “Multilateral treaties on migration are not concerned with the particular interests of the nationals of certain States. They form a general field applying to several countries, whose migration regulations are thus standardised, extended, and more adequately enforced.” League of Nations Migration Report, supra note 66, at 27.
94. Cf. id.
95. Id. at 28. For edited copies of post-World War II multilateral migration instruments, see BASIC DOCUMENTS ON INTERNATIONAL MIGRATION LAW 1-81 (Richard Plender ed., 2d rev. 1997).
96. Cf. PLENDER, supra note 39, at 298.
98. See PLENDER, supra note 39, at 227.
Burgeoning multilateralism notwithstanding, numerous bilateral agreements were entered into during this time as European policymakers sought to recruit labor for the growing domestic markets of their States. Nevertheless, European multilateralism continued to grow more complex. For example, in the mid-1950s the multilateral European Economic Community (EC) was formed. Article 118 of the Treaty of Rome provides that EC Member States will harmonize their social policies: Article 48 provides for the "freed movement of workers," Article 52 provides for self-employment in a Member State other than one's own, and Article 59 provides for services among Member States. The provisions in the Articles had once been the strategies selected by the European States during bilateralism. Each strategy restricted national sovereignty, and each strategy possessed the selective advantage of residing within a written multilateral instrument. The 1950s concluded with the establishment of the multilateral Benelux Economic Union, a harbinger of arrangements to come within the EC.

With an established multilateral reinforcement mechanism in Europe, migration policy remained relatively static during the economic boom years of the 1960s. The 1973 oil crisis and subsequent economic recession, however, prompted widespread change to European migration policies. Primary migration halted after the recession, and more than a century of bilateral efforts to regulate migration in Europe ceased. Multilateral

102. Id. at 36.
103. Id. at 37-38. But see Elspeth Guild, Ed., The Developing Immigration and Asylum Policies of the European Union 369 (1996) ("[A]s a matter of principle third country nationals should not be admitted under an independent economic activity category if the activity is of no economic benefit to the state or its regions.").
104. See Treaty of Rome, supra note 100, at 40-41.
105. See Plender, supra note 39, at 273.
107. See Miller, supra note 3, at 300-14.
migration provisions, however, remained intact. The global scope of the 1973 crisis created an environment in which bilateral domestic solutions to migration problems lacked the evolutionary fitness to survive. Nevertheless, even multilateralism appeared threatened by the recession, which had prompted "widespread uncertainty about standards of international solidarity, mutual aid or cooperation, and burden sharing."

The 1985 Schengen Agreement, which provided for the abolition of national border controls among signatories, was the first successful multilateral effort to resolve the post-oil crisis uncertainty. Member States continued to create domestic migration strategies, but these strategies achieved mixed results. The reinforcement of restricted sovereignty occurred in 1986 when the European Court of Justice (ECJ) for the first time interpreted a legal text by applying a Community standard. The issue was whether a person should be characterized as a worker under Article 48 of the Treaty of Rome or according to the "freedom of establishment" clause in Article 52. In defining these criteria, the ECJ declined to interpret them according to the norms of the Member State parties to the dispute. Restricted sovereignty had thus been reinforced at the supranational judicial level.

In June 1990, Belgium, Germany, France, Luxembourg, and the Netherlands signed a Convention on the practical application of the Schengen Agreement. In 1992, the Maastricht Treaty was signed. This treaty

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108. See, e.g., The European Convention on the Legal Status of Migrant Workers, Nov. 24, 1977, E.T.S. 93. "The object of the Convention is to regulate the legal situation of migrant workers who are nationals of member States, so as to ensure . . . that they are treated no less favourably than workers who are nationals of the receiving States in all aspects of living and working conditions."


110. See Agreement Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Controls at the Common Frontiers, June 14, 1985, 30 I.L.M. 73 [hereinafter Schengen Agreement].

111. See Jean-François Bellis, Introductory Note to Belgium-France-Federal Republic of Germany-Luxembourg-Netherlands: Schengen Agreement on the General Abolition of Checks at their Common Borders and the Convention Applying the Agreement. 30 I.L.M. 68.

112. For example, employer sanctions against hiring illegal migrant workers were successful in France and Germany during this period, but failed in Spain and Italy. See Hammar, supra note 44, at 252.

113. See PLENDEER, supra note 39, at 195 (citing to Hoekstra v. Bestuur).

114. Id.


116. See Maastricht Treaty, supra note 100, at 573.
reinforced the strategy of restricted sovereignty by providing “for an intergovernmental system for making decisions in all these cases,” thereby requiring each Member State to concur on each decision before any Member State could take action. Multilateral control over migration grew even more complex in 1993 when freedom of movement, “which in the early years of the ‘common market’ was confined to workers in paid employment,” was deemed a general right within the EU. The multilateral control over migration grew more complex yet when, in 1997, the Treaty of Amsterdam provided for the removal of barriers to free movement.

Although the reinforcement of restricted sovereignty has occurred in the EU, the ECJ has held that each Member State remains free to impose limited restrictions at its border until the EU completely unifies its migration policies. Nevertheless, more than one scholar believes that “migration policy can no longer be decided simply on the basis of state sovereignty or the idea that a government need only control its borders.” In the future, market and political pressures may render the strategy of sovereign borders an anachronism and may even strip it completely of evolutionary fitness. In the meantime, the EU has chosen a strategy of harmonizing Member State

118. Id. There is today a strong presumption among Member States to favor multilateral migration strategies. See, e.g., Recommendation Regarding Practices Followed by Member States on Expulsion, in GUILD, supra note 108, at 222 (“Where possible, such agreements should be multilateral.”).
119. See Treaty of Amsterdam, supra note 100, at 86.
120. See EUROPA, Recent Case-Law of the Court of Justice and the Court of First Instance, Case 378/97, Florus Ariel Wijsenbeek, at http://europe.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&dcreqire=judgements&numaff=&datefs=&datefe=&nomusuel=Wijsenbeek&domaine=LCPE&nots=&resmax=100 (last visited Dec. 18, 2000).
[A]s long as Community provisions on controls at the external borders of the Community … have not been adopted, the exercise of those rights presupposes that the person concerned is able to establish that he or she has the nationality of a Member State …. Member States remain competent to impose penalties for breach of such an obligation …. However, Member States may not lay down a penalty so disproportionate as to create an obstacle to the free movement of persons, such as a term of imprisonment.
Id. (citations omitted).
121. WEINER, supra note 3, at 170.
122. Cf. id., at 201. See also Zolberg, supra note 51, at 315 (“Within a capitalist world economy founded on free-market principles, the persistence of barriers to population movement between countries constitutes an anomaly.”).
migration policies,\textsuperscript{123} which will result in the continuing reinforcement of restrictive sovereignty at the multilateral level.\textsuperscript{124} The relevance of national borders, particularly between Eastern and Western Europe, and the effects of national borders on non-nationals continues to play an important role in the evolution of European migration policy.\textsuperscript{125}

\textbf{B. Jus Sanguinis—A Non-Rational Counter-Globalizing Force}

Unlike the strategy of sovereignty, the strategy of \textit{jus sanguinis} cannot easily be analyzed under the rubric of innovation-cooperation-selection-reinforcement. Either the nomenclature of evolution is inadequate to account for the relationship of \textit{jus sanguinis} to the evolution of migration strategies, or the linear progression of \textit{jus sanguinis} requires a longer historical view than the one used in this Article to analyze sovereignty. Given that the strategy of \textit{jus sanguinis} is more than two millennia old, a longer view is unlikely to afford the analytical rigor needed to explain this doctrine in terms of evolutionary mechanisms. On the other hand, it may be possible to explain the resistance of \textit{jus sanguinis} to change in terms of its optimum evolutionary fitness.

States whose political and legal strategies have evolved from the Magna Carta, the Bill of Rights, and the tradition of parliamentary institutions share similar definitions of citizenship. State admission and naturalization strategies, however, demonstrate less coherence, regardless whether a State has inherited

\begin{footnotesize}

The pressure of immigration on most Member States has increased significantly in recent years. The conviction that, confronted with these developments, a strictly national policy could not provide an adequate response has been consistently gaining ground. \ldots \textsuperscript{[T]}he aim is to make the problems manageable for the entire Community. This will require instruments which are based on an extended form of co-operation among Member States.

\textit{Id.} at 458.

\textsuperscript{124} Cf. \textit{WEINER, supra note 3}, at 47. "Full harmonization of admission policy linked to employment presupposes that this policy will cease to be defined exclusively at national level, as it will no longer be possible unilaterally to extend or tighten the national labour market when conditions for admission are determined at European level." \textit{GUILD, supra note 108}, at 469–70.

\textsuperscript{125} See Hammar, \textit{supra note 44}, at 246.
\end{footnotesize}
a liberal tradition. While the European strategy of sovereignty during the eighteenth and nineteenth centuries moved from innovation to cooperation, the strategy of citizenship in Europe appeared to be heading in the other evolutionary direction. Germany, for example, began to imbue its formerly broad definition of "citizenship" with linguistic and cultural self-consciousness. At the same time, England discarded *jus soli* in favor of *jus sanguinis*, though the latter strategy competed with the former until 1981, when England altogether abandoned *jus soli*.

France also has switched between *jus sanguinis* and *jus soli* throughout much of its modern history. Only sixteen years after the French gave the world the first modern definition of nationality, the 1807 Code of Napoleon changed the rules of citizenship from *jus soli* to *jus sanguinis*. In 1851, *jus soli* was re-introduced for third-generation immigrants, followed in 1889 by the extension of it to second-generation immigrants. Meanwhile, Germany had progressively elevated *das Volk* to a mystical status that reached its epiphany in the Nationality Law of 1913, which permitted only blood descendants of Germans to receive German citizenship. Although nation-states throughout history have repeatedly swapped the strategy of *jus sanguinis* for the strategy of *jus soli*, the basic assumptions underlying *jus sanguinis* never evolved in the same manner as the assumptions underlying sovereignty.

During the latter half of the twentieth century, various naturalization strategies from the most restrictive to the least restrictive were based on *jus sanguinis* and *jus soli*. For example, EC Member States adopted the

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126. See WEINER, supra note 3, at 92.
127. Id. at 97.
128. See PLENDER, supra note 39, at 16.
132. See WEINER, supra note 3, at 97.
133. The most restrictive is not to admit migrants at all and to base citizenship on descent. Less restrictive options include admitting migrants to fill temporary labor needs, limiting their stay, and providing only minimal welfare benefits essential to their economic performance; permitting migrants to stay indefinitely and granting them many (if not all) of the entitlements provided to citizens but excluding them (and their children) from citizenship; and finally, enabling migrants to become
strategy of "guest worker" in the 1960s as a way to import labor without having to absorb it into society. In the 1970s, the same States denied guest workers the opportunity to become permanent residents. At the same time, migrant family reunification policies prevailed, though the survival of these policies had more to do with pressure from international human rights laws than with citizenship. Nonetheless, host country policymakers assumed that foreign workers would eventually return to their home countries and granted a concession to family reunification laws. Although strategies justified either by *jus sanguinis* or *jus soli* could lead to a denial of citizenship, *jus soli* justified the regulations that shortened worker stays as a way to avoid the birth of the children of migrants on the soil of the host country. Even after the international denouncement of Nazi racial policies, *jus sanguinis* has not undergone evolutionary change that can be analyzed in terms of innovation-cooperation-selection-reinforcement. All EC Member States except France and Portugal have adopted the strategy of *jus sanguinis* without changing the fundamental concept of *jus sanguinis*. In other words, a notion of

naturalized citizens or granting birthright citizenship to the locally born children of immigrants.

WEINER, supra note 3, at 93. Hammar divides the population of migration strategies into four groups: external controls (embassy pressure abroad, and border authorities), internal controls (internal state migration bureaucracy, which implements migration policy), the passage from temporary to permanent residence, and naturalization. See Hammar, supra note 44, at 252-53. Selection of the third and fourth strategies promotes integration; when the strategy is to encourage temporary residence, integration is discouraged. Id. at 255.

134. See WEINER, supra note 3, at 77.


136. See PLENDER, supra note 39, at 309.

137. See WEINER, supra note 3, at 82.

138. The distinction between *jus soli* and *jus sanguinis* has grown less relevant over the years as Western nations (with the exception of the United States) de-emphasize settlement of migrants and promulgate policies that make it difficult for aliens to naturalize. "Nowhere is this trend more evident than in the European community where member countries are seeking to eliminate restrictions of movement of people within the Community at the same time as they are standardizing and toughening their entry requirements for migrants from third countries." VERNEZ, supra note 7, at 5.

139. See SOWELL, supra note 70, at 46.

"restricted" *jus sanguinis* does not exist to offset the absolutist concept of blood ties to the State. Moreover, the strategy of European citizenship appears to be a vehicle for non-rational norms that place a value on consanguinity, race, and ethnicity. It is no surprise then, that implicit in the formation of the migration policies of most European nation-states are the policies of cultural homogeneity and ethnic dominance.

Viewed through the evolutionary lens, the DNA, or "meme," of *jus sanguinis* contains the instructions for xenophobia. Likewise, viewed through the same evolutionary lens, the meme of *jus soli* contains instructions for migrant assimilation. It is not surprising that in countries such as France where *jus soli* has been selected, the public policy toward migrants is one of assimilation. On the other hand, in countries such as Germany that have selected *jus sanguinis* the public policy toward migrants is one that resists assimilation. The economic crisis of the 1970s, during which time even France discarded *jus soli* and selected *jus sanguinis*, demonstrated that *jus sanguinis* encodes xenophobia. In some countries, politicians proposed the mass deportation of foreigners. Switzerland went beyond proposals and ushered 200,000 migrants out of the country. The Swiss antiforeigner movement was helped by growing concerns about overforeignization, or *Uberfremdung*. Consequently, the Swiss elected antiforeigner representatives to Parliament, where the antimigration forces nearly passed a measure to deport all foreign workers. The general trend throughout Europe during this time was to exclude migrants, which discouraged economic

141. For example, the metaphor of blood in the U.S. flag does not represent a citizen's blood ties to the United States, but the willingness of a citizen to shed his or her blood in service to the ideals of the United States. This dormant U.S. species of restricted *jus sanguinis*, if adopted globally, would favor the naturalization of migrants who have made or are willing to make sacrifices of "blood, sweat, and tears" to their host countries, and it would downplaying the importance of breeding to gain citizenship.

142. See WEINER, supra note 3, at 29-30; Hammar, supra note 44, at 256.

143. See DAWKINS, supra note 25, at 189-202.

144. Cf. WEINER, supra note 3, at 140.

145. See id. at 47.

146. See id. at 5.

147. See PLENDER, supra note 39, at 35.

148. Hammar, supra note 44, at 257.

149. Yerkey, supra note 135, at 8.


152. Fassman & Münz, supra note 99, at 461.
migration. The trend has not abated; xenophobia remains a serious problem in Europe. In France, for example, LePen’s National Front made the issue of naturalization central to the political debate and managed to weaken the principle of jus soli. There have also been outbreaks of xenophobia in the Scandinavian countries. No anti-immigration party has assumed power in Europe, however, the antiforeigner parties play a significant role in national politics. Jorg Haiger’s Austrian Freedom Party took second place in recent Parliamentary elections, and most European leaders have been troubled by Haiger’s praise for certain economic policies of the Third Reich.

The resistance of jus sanguinis to change cannot easily be explained by the linear four-part evolutionary mechanism. Nevertheless, European citizenship can be analyzed meaningfully in terms of its optimum evolutionary fitness. Professor Dawkins’ theory of memes does not provide an answer to the question of why some memes possess more evolutionary fitness, or have a greater “stability and penetrance in the cultural environment” than others. Professor Dawkins, however, offers a clue when he states that “[n]othing is more lethal for certain kinds of meme than a tendency to look for evidence.” In other words, rational inquiry can mutate memes that are predicated on the rules of reason—such as the national sovereignty meme that evolved out of the Peace of Westphalia. By predicing its instructions on the rules of reason, a rational meme contains a set of instructions for its own restriction. The absolute national sovereignty of Western European States was a rational

153. PLENDER, supra note 39, at 311.
154. See Nafziger, supra note 42, at 833. See also Fassman & Munz, supra note 99, at 476; Banton, supra note 106, at 9-11; CLAUDE-VALENTIN MARIE, THE MEMBER STATES OF THE EU AND IMMIGRATION IN 1994: LESS TOLERANCE AND TIGHTER CONTROL POLICIES 7 (1997). Not all authors agree on the scope of xenophobia in Europe. “The influence of the far right depends both upon the failure or refusal of mainstream parties to cater to any sense of grievance, and upon the activity of small numbers of extremists whose organizations tend to be short-lived since their leaders quarrel with one another.” Banton, supra note 106, at 18.
155. Delbrück, supra note 5, at 56.
156. Hammar, supra note 44, at 258.
159. DAWKINS, supra note 25, at 193. Dawkins suggests that a meme derives evolutionary fitness proportional to the psychological gratification it bestows on its host. Id. This fails to account for evolutionary fitness of a meme beyond the level of the citizen, but does underscore the subjective dimension to certain strategies.
160. Id. at 198.
strategy that checked State aggression after the Thirty Years War, but it eventually yielded to the rational demands of increasingly complex capital flows. Events in the EU show that the terms of national sovereignty can be negotiated.

In contrast to rational memes, non-rational memes by definition are resistant, if not immune to reason, which makes their restriction and negotiation difficult, if not impossible. As Sowell notes, "Not all immigration policies have involved ... rational calculations of national self-interest. Some policies have represented simply political expediency in giving in to the public passions of the moment."\(^{161}\) Is \textit{jus sanguinis} a non-rational meme propagated through "public passions?" Professor Dawkins has described non-rational memes as possessed of a self-referencing quality so that the memes become their own proof.\(^{162}\) In other words, an irrational meme is accepted on faith, not on reason.\(^{163}\)

Strategies predicated on \textit{jus sanguinis} reference the subjective quanta of human experience rather than the objective phenomena of globalization, such as the evolution of sovereignty or the growing permeability of national boundaries. My analysis suggests that \textit{jus sanguinis} possesses optimum evolutionary fitness because it is non-rational, which allows it to survive in otherwise hostile (rational) environments.\(^{164}\) If \textit{jus sanguinis} does evolve, it will start with bilateral negotiations over citizenship and naturalization justified by shared democratic ideals and the rule of law. To some extent, what has occurred in the EU is a movement toward this ideal. Yet, no person ceases to be German or French when he becomes a citizen of the EU. Being

\(^{161}\) Sowell, supra note 70, at 46. Sowell notes that policies of exclusion can be "emotionally satisfying but economically self-damaging decisions." \textit{Id.}


\(^{163}\) See Dawkins, supra note 25, at 330-31. The effect of faith over reason can be profound, as Dawkins notes: "[Faith] leads people to believe in whatever it is so strongly that in extreme cases they are prepared to kill and die for it without the need for further justification. ... Faith is powerful enough to immunize people against all appeals to pity, to forgiveness, to decent human feelings." \textit{Id.}

\(^{164}\) Contemporary theories of the law and economic evolution posit that a strategy possesses evolutionary fitness proportionate to its reduction of social costs. See Elliot, supra note 17, at 62-63. On the one hand, the foregoing suggests that by adopting a policy of xenophobia a culture that values homogeneity could conserve the psychic tension it spends when it is confronted by heterogeneity. On the other hand, such an analysis seems to beg the question inasmuch as xenophobia is the psychic tension triggered by heterogeneity within a homogenous culture. The question then becomes, under the law and economic evolution model, how does one distinguish a xenophobia meme as a means or an end? The current evolutionary model presents no such rational choice paradox, for it assumes that a meme of xenophobia exists to promulgate itself for itself, not to promulgate itself for the sake of efficiency or utility.
German, French, or any of the nationalities of the EC Member States is a necessary qualification to be a citizen of the EU.\textsuperscript{165} Perhaps this status quo is better characterized as a sort of "meta-citizenship" justified by the strategy of \textit{jus sanguinis} rather than as a mutation of \textit{jus sanguinis}.

My analysis of sovereignty and citizenship reveals that the forces of globalization fall into two categories: the rational and the non-rational. The rational forces of globalization extend markets and increase the complexity of economic interdependence, as can be observed in the negotiation of sovereignty within the EU. The non-rational forces, such as \textit{jus sanguinis}, can be described as counter-globalizing because they discourage the economic migration upon which expanding capital markets depend.\textsuperscript{166} Cults of consanguinity and racial superiority destabilize nation-states that rely on migrant labor, which subverts global market expansion. Rational and non-rational forces at the macro level of globalization can be inferred from observing these forces at the micro level. For example, although the \textit{jus sanguinis} meme encodes Western European xenophobia, there is a growing belief that Europe could benefit from the assimilation strategies encoded by \textit{jus soli}.\textsuperscript{167}

Even though \textit{jus soli} has not explicitly been selected by most Western European States, countries that exhibit xenophobia have brought some migrant workers into the national fold. For example, Switzerland during the 1970s developed the policy of assimilating migrant workers despite Swiss xenophobia.\textsuperscript{168} By the 1980s, the xenophobia of the 1970s yielded to assimilation policies when the guest workers who entered Europe in the 1950s and the 1960s were finally given permanent resident status, which was justified by the length of time the guest workers had lived in Europe.\textsuperscript{169}

\textsuperscript{165} See Treaty Establishing the European Community, Feb. 7, 1992, part II, art. 8, 1 C.M.L.R. 573, 593 (1992) (conferring EU citizenship on every person holding the nationality of a Member State).

\textsuperscript{166} Cf. James N. Rosenau, \textit{The Complexities and Contradictions of Globalization}, in \textit{ANNUAL EDITIONS: GLOBAL ISSUES} 88–92 (15th ed., Robert M. Jackson ed. 1999). Rosenau coins the term "fragmegration" to describe the dynamic tension between two distinct forces: globalization (the expansion of authority and interests beyond national boundaries) and localization (the contraction of policies below the level of national boundaries). \textit{Id.} at 90. He predicts that globalization will ultimately predominate over localization. \textit{Id.} at 90-91. See also \textit{VERNEZ}, supra note 7, at 6 (noting the countervailing effect of restrictive migration policies on global liberalization of international exchanges).

\textsuperscript{167} See Hammar, supra note 44, at 254, 257.

\textsuperscript{168} See Banton, supra note 106, at 15.

\textsuperscript{169} See Hammar, supra note 44, at 253.
1984, Germany declared a policy of assimilation without naturalization\textsuperscript{170} of long-resident migrant workers and their families;\textsuperscript{171} however, the \textit{jus sanguinis-jus soli} dichotomy remains a problem illustrated by the assimilation policies of Germany, which attach more significance to ethnicity than do the policies of France.\textsuperscript{172}

Xenophobia, which partly drives migration policies in Western Europe,\textsuperscript{173} stems from economic, political, and sociological reasons, even though "[t]here is . . . no economic, political, or sociological theory that specifies what would constitute an appropriate level of immigration or what kind of immigrants would be most desirable and acceptable to the local population."\textsuperscript{174} Economics probably play a less significant role in shaping migration policies than do ethnic affinity,\textsuperscript{175} nationalism, and the receptivity of a nation-state to non-nationals.\textsuperscript{176} As Professor Weiner notes:

\begin{quote}
[It] would be a mistake to think that the choices governments make are necessarily dictated primarily by economic considerations. Indeed, governments seeking to maximize values other than economic growth often choose entry and exit rules that economists would regard as inefficient. A productive minority may be expelled by a government to improve the status of a politically dominant ethnic group. Or a government may restrict entry because it fears the political
\end{quote}

\begin{thebibliography}{176}
\bibitem{170} \textit{Id.} at 254.
\bibitem{171} \textit{See} Banton, supra note 106, at 14.
\bibitem{172} \textit{Id.}
\bibitem{173} \textit{Id.}
\bibitem{174} \textit{Id.}
\bibitem{175} \textit{Id.}
\bibitem{176} \textit{Id.}
\end{thebibliography}
consequences of unwanted immigration, even though it recognizes that the migrants would contribute to national wealth.\textsuperscript{177}

In terms of evolution, the \textit{jus sanguinis} meme is analogous to a virus that promulgates through complex social intercourse. Xenophobia, by virtue of creating inhospitable environments for the selection of rational globalizing strategies, may lead to the social quarantine of migrants. In other words, xenophobia flourishes, not in the most homogeneous environments, which are immune to xenophobia, but in the most heterogeneous environments. The unanswered question is whether globalization will breed rational European migration strategies or European xenophobia.\textsuperscript{178}

\section*{V. CONCLUSION}

In this Article, I have attempted to demonstrate that the nomenclature of evolution can illuminate the mechanisms of globalization.\textsuperscript{179} Within Professor Modelski's model of evolution, the changes to sovereignty and the absence of changes to \textit{jus sanguinis} are cognizable as the consequences of selection and the evolutionary fitness of rational and non-rational forces. From the perspective of evolution, then, globalization is not a transcendent international quality or power politics in a state of anarchy. Rather, globalization is a coherent linear process of strategic cooperative selection at the domestic and international levels.

\textsuperscript{177} Id. at 120-21 (citation omitted).

\textsuperscript{178} There is other evidence, though not as compelling, to suggest that heterogeneity promotes assimilation. For example, Swiss multiethnicity makes acceptance of migrants easier than it is in Germany. See Weiner, \textit{supra} note 3, at 91. Weiner also notes that countries that regard themselves as immigrant societies are less likely to respond to immigration with xenophobia. Id. France does not consider itself an immigration country, and has seen the rise of xenophobic parties during the 1980s and 1990s, in spite of its strategy of inclusion. Id. at 100-01. See also Gell-Mann, \textit{supra} note 24, at 303 (1994) (noting that maladaptive strategies may survive, perhaps because the environment has changed more rapidly than the mechanisms of change can accommodate). Cf. Weiler, \textit{supra} note 173, at 250 (arguing that the very existence of immigration policies feeds xenophobia).

\textsuperscript{179} Cf. Modelski, \textit{supra} note 9, at 328.