

**Neutralizing Justice:
“Race” and “Religion” in the EU Migration Pact**

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ABSTRACT

The 2024 European Union Migration Pact is a significant new set of policies aimed at unifying the EU's approach to forced migration. This article argues that the Pact's neglect of the categories of race and religion is a consequence of the concept of justice that it implies. Assessing the Pact through John Rawls's conceptualization of justice behind a “veil of ignorance,” the article analyzes the ethical and political assumptions of the Pact to capture how the EU presents itself as a colorblind arbiter between members and migrants. This self-presentation allows the EU to ignore how race and religion continue to function as categories of deservingness in the EU's migration regime. A concept of justice that could take racialized and religious discrimination into account, the article continues to argue, would have to be conceptualized in terms of corrective rather than colorblind justice. Yet such a concept of justice is precisely what is prevented by the EU's self-presentation as neutral.

I. INTRODUCTION

The 2024 European Union Migration Pact is a significant new set of policies aimed at unifying the

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EU's approach to forced migration.¹ Drafted in the wake of the developments that came with the debates about allocating refugees across the EU following the so-called refugee crisis of 2015, the Pact has sparked controversy from the outset. Particularly organizations that have been working with people on the move are weary that the Pact concentrates on the protection of the EU's borders but comes at the cost of the people who cross them in search for survival.² However, even these organizations are torn. While the Pact is problematic, the alternatives discussed and demanded within the EU are likely to make the lives of people on the move even more precarious.³

¹ For information about the Pact, see European Commission of Migration and Home Affairs, *Pact on Migration and Asylum*, Directorate-General for Migration and Home Affairs (2024), https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en. Throughout, we use the shorthand "Pact" or "Migration Pact" to refer to the EU's 2024 policy framework. Specific documents are cited as "*Pact on Migration and Asylum*, EC, 2024, [document title]".

² Throughout, we use "migrant," regardless of whether the people on the move who are migrantized are or are not legally accepted as refugees, because the very question of acceptance or non-acceptance is at stake in the new Pact on Migration.

³ For advocacy and academic discussions of the Pact, see Chloe Bouvier, "More than 160 Civil Society Organisations Call on MEPs to Vote down Harmful EU Migration Pact," <https://picum.org/blog/81-civil-society-organisations-call-on-meps-to-vote-down-harmful-eu-migration-pact/>; Churches' Commission for Migrants in Europe, "Understanding the EU Asylum and Migration Pact – Influencing Its Implementation," <https://ccme.eu/storage/app/media/uploaded-files/pact-understanding-implementation-pract-guide-ccme-august-2024-final-002.pdf>; Guiseppe Gambazza, "The EU New Pact on Migration and Asylum: Policies and Discourses for a 'Fresh Start,'" *Space and Polity* 28, no. 2 (2024), 289–296; Jouni Häkli, Gintarė Kudžmaitė, and Kirsi Pauliina Kallio, "Devaluing Personhood: The Framing of Migrants in the EU's New Pact on Migration and Asylum," *Transactions of the Institute of British Geographers* 49, no. 4 (2024): e12676; *The EU Pact on Migration and Asylum in Light of the United Nations Global Compact on Refugees: International Experiences on Containment and Mobility and Their Impacts on Trust and Rights*, ed. Sergio Carrera and Andrew Geddes, (San Domenico di Fiesole: European University Institute, 2021); Natalie Welfens, "The EU's Normative Justifications of Refugee Resettlement," *Journal of Refugee Studies* 37, no. 2 (2024), 552–569.

With the exception of a few interventions by anti-racism think tanks, the categories of race and religion are conspicuous by their absence, both from the Pact and from the debates about the Pact. Given that European scholarship on the racialization of religion has demonstrated that these categories have been co-constructed in public discourse and political debate about migration into Europe,⁴ this absence is significant. As historian Rita Chin argues in *The Crisis of Multiculturalism in Europe*, the very constitution of the EU's migration policy came with a shift from what could be called color-coded racism to what could be called culture-coded racism revolving around religion. Chin captures this shift as a "new racism—a system of racialized thinking in which culture supplanted biology as the key marker of incommensurable difference."⁵

In what follows, we argue that the Pact's neglect of "race" and "religion" stems from the concept of justice that it assumes. We approach "race" and "religion" as constructed categories. "Racialization" comes into view as a process through which racial identities are ascribed to people.⁶ While the Pact avoids referencing "race" and "religion," its proposals for the regulation of migrants' entry into the EU often act as proxies for such processes. By presenting its proposals as grounded in a technocratic analysis that promotes procedural efficiency, the Pact distances itself from any ethical or political contestation about its contents. As such, the Pact is framed as a neutral solution to migration governance, despite the influence of biases linked to "race" and "religion."

We reconstruct the ethics of the Pact to capture how the EU presents itself as a "colorblind" arbiter between members and migrants, which perceives neither "race" nor "religion." This self-presentation allows the EU to ignore the racialized and religious discrimination

⁴ For a helpful overview of the debate, see the contributions to *Racialization and Religion: Race, Culture and Difference in the Study of Antisemitism and Islamophobia*, ed. Nasar Meer (London: Routledge, 2016).

⁵ Rita Chin, *The Crisis of Multiculturalism in Europe: A History* (Princeton: Princeton University Press, 2017), 140.

⁶ Here, we follow the argument made by Farid Hafez, "Schools of Thought in Islamophobia Studies," *Islamophobia Studies Journal* 4, no. 2 (2018), 210–225.

perpetuated by its own policies. “Neutralizing justice,” then, has a double meaning for us: the EU’s self-presentation as a neutral arbiter is what allows for the neutralization of any appeal to a concept of justice that accounts for racialized and religious discrimination, while the neutralization of any appeal to a concept of justice that accounts for racialized and religious discrimination is what allows for the EU’s self-presentation as a neutral arbiter. A concept of justice that could take racialized and religious discrimination in the EU’s migration policy into account, we continue to argue, would have to be conceptualized in terms of corrective rather than colorblind justice. But such a promotion of justice is precisely what is prevented by the EU’s self-presentation as neutral.

We advance our argument in three steps. First, we reconstruct the ethics of the Pact by analyzing and assessing the Pact’s normative assumptions about justice. Second, we fill the gap that the Pact has left open by characterizing the co-construction of “race” and “religion” as markers of discrimination in the controversies about migration in Europe. Third, we capture the consequences of leaving the race-religion gap open: justice between members and migrants becomes impossible to conceptualize.

To be sure, our aim is not to offer a conceptualization of corrective as opposed to colorblind justice ourselves, but to carve out the conceptual conditions that need to be met before justice between members and migrants can even be called for.

II. RECONSTRUCTING THE ETHICS OF THE PACT

On its website, the European Commission states that the Pact on Migration provides “a set of new rules ... establishing a common asylum system at EU level” which is meant to “amend previous reform proposals in the area of migration, offering a comprehensive approach that aims at ... integrating key EU policies.”⁷

⁷ *Pact on Migration and Asylum*, EC, 2024, “What is the Pact on Migration and Asylum?,” https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en.

Throughout, the Pact prioritizes centralized decision-making, which means that all EU agencies are asked to work with “expert” institutions—including Frontex, the EU’s border agency that has been accused of pushbacks⁸—which come to play a more prominent role in the EU’s migration governance.

While the objectives of the Pact are outlined in three distinct points—no EU country is left alone under pressure if the EU borders are strengthened in a way that guarantees people’s rights—the Pact’s main focus lies on the solidarity among EU members. The controversies about the allocation of refugees across EU member states that have been ongoing at least since 2015 are crucial here. The equilibrium of what the Pact calls “burden-sharing” is to be constituted or reconstituted across the EU as a mechanism of solidarity.⁹ This mechanism, the authors of the Pact aver, is what would allow for the strengthening of the EU’s borders, resulting in more efficient procedures and more effective protection of people’s rights. Solidarity, then, is at the core of the new Pact on Migration. According to the Pact, it is meant to benefit both members and migrants.¹⁰

However, considering the context in which the Pact has been worked out, it is reasonable to assume that it responds not to increased migration but to the controversies that have come with increased migration. The Pact is concerned with providing solutions to these controversies that cater to the member states of the EU: re-ordering the relations between members is a focus of the Pact, re-ordering the relations between migrants is a fallout of the Pact—at best. Hence, as outlined in our

⁸ Katy Fallon, ‘Revealed: EU Border Agency Involved in Hundreds of Refugee Pushbacks’, *The Guardian*, 22 April 2022, <https://www.theguardian.com/global-development/2022/apr/28/revealed-eu-border-agency-involved-in-hundreds-of-refugee-pushbacks>. See also, *Addressing Pushbacks at the EU’s External Borders*, Briefing (The European Parliament, 2025), [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2025\)772882](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2025)772882).

⁹ *Pact on Migration and Asylum*, EC, 2024, “Factsheet: Effective System of Solidarity and Responsibility,” https://ec.europa.eu/commission/presscorner/detail/en/fs_24_1948.

¹⁰ *Pact on Migration and Asylum*, EC, 2024, “Factsheet: Effective System of Solidarity and Responsibility.”

introduction to this article, we argue that the Pact circumvents any ethical and political contestation about justice between migrants and members of the EU by articulating its proposals through the promotion of a neutral(ized) technocratic approach to migration governance. This self-presentation as a neutral arbiter allows the EU to mask the normative assumptions about justice that are taken for granted in the Pact, ignoring the racialized as well as the religious discrimination of people on the move perpetuated by its own policies. Throughout, we explore and explain how the Pact's normative assumptions are shaped by understandings of justice, even if these understandings remain implicit rather than explicit in the Pact itself.

A. Justice in John Rawls

To analyze and assess the assumptions of the Pact, we argue that it comes close to John Rawls's concept of justice. In a way, it is no surprise that the Pact can be read through Rawls. His suggestions for a society governed by justice are supposed to be common sense to people who live in what he considers to be free societies. In his early essay, "Justice as Fairness," Rawls explains "that, fundamental to justice, is the concept of fairness which relates to right dealing between persons... The question of fairness arises when free persons, who have no authority over one another, are engaging in a joint activity."¹¹ While the EU is about relationships between member states rather than persons in member states, these states relate to each other like the persons in Rawls's explanation. The concept of justice that Rawls developed and defined throughout his career spells out the answer to the question of fairness in such relations. It has dominated debates about justice so much so that Rawls's suggestions have trickled down into political discourse and public debate without acknowledgement of their author. The EU's Pact on Migration is a case in point.

Of course, we are not assuming that the authors of the Migration Pact have read Rawls. Rawls is so influential that there is no need to read him to be

¹¹ John Rawls, "Justice as Fairness", *The Philosophical Review* 67, no. 2 (1958), 164–194, 4.

inspired by him. His concept of justice has been taken for granted in countless conversations both inside and outside the philosophy classroom—also in policy making. Hermeneutically, then, Rawls’s concept of justice is a helpful way for us to get at the understanding of justice that the Pact leaves implicit rather than explicit. Described differently, Rawls helps us to explain what is going on in the Pact.

In social, ethical, and political theory, there is so much literature about Rawls that it is impossible for us to offer even a short overview here.¹² Instead, we sketch the formulation and the function of one of Rawls’s principles of justice as it appears in the Pact: “the difference principle.”¹³

While it seems simple, the difference principle is one of Rawls’s suggestions most susceptible to misunderstandings.¹⁴ There are different minimalist readings (which are more accepting of social and economic inequality in a given society) and different maximalist readings (which are less accepting of social and economic inequality in a given society). As philosopher Philippe van Parijs puts it, “the difference principle comes in many variants depending on choices made along many dimensions.”¹⁵ And Rawls himself seems to have made different choices throughout his career.¹⁶

In *A Theory of Justice*, Rawls introduces the difference principle as “a principle of reciprocity” that allows for “a fair system of cooperation” among the citizens of a fair society.¹⁷ The principle is meant to address the question of whether and which social and economic inequalities are justifiable or unjustifiable in this society. Rawls’s answer is that “the difference

¹² For a helpful overview, see Leif Wenar, “John Rawls,” in *The Stanford Encyclopedia of Philosophy*, Summer 2021, ed. Edward N. Zalta, <https://plato.stanford.edu/archives/sum2021/entries/rawls/>.

¹³ John Rawls, *A Theory of Justice*, Rev. ed (Cambridge: Harvard University Press, 1999), 57.

¹⁴ For a detailed discussion, see Philippe van Parijs, “Difference Principles,” in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), 200–239.

¹⁵ Van Parijs, “Difference Principles,” 233.

¹⁶ Van Parijs, “Difference Principles,” 200–201, 232–233.

¹⁷ Rawls, *A Theory of Justice*, xv.

principle is a strongly egalitarian conception in the sense that unless there is *a distribution that makes both persons better off* (limiting ourselves to the two-person case for simplicity), an equal distribution is to be preferred.”¹⁸ The only justification for inequality, then, is that it improves the situation of the citizens of the fair society, both the well-off and the less well-off.¹⁹

It is well known that Rawls envisions the question of fairness to be asked and answered by citizens in a conversation about the society in which they want to live.²⁰ This conversation takes place behind a “veil of ignorance”²¹ which means that the citizens have no idea which privileges or which position in society they might come to hold. According to Rawls, the

principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the ... contingency of social circumstances. Since ... no one is able to design principles to favor his condition, the principles of justice are the result of a fair agreement.²²

According to Rawls, then, every citizen would agree to the difference principle because every citizen would benefit from the inequality between citizens that it justifies. The agreement makes sense, regardless of one’s privileges or one’s position.

What is crucial for any study of justice that considers the significance of the categories of race and religion is that Rawls insists that the veil of ignorance covers “race” as well as “religion” in order to avoid that

¹⁸ Rawls, *A Theory of Justice*, 65–66 (emphasis added).

¹⁹ Of course, Rawls outlines conditions and considerations that allow him to discuss the application of the difference principle to a variety of cases. However, given that our interest is not the interpretation of Rawls’s concept of justice but the interpretation of Rawls’s concept of justice as an inspiration behind the EU’s Migration Pact, this simple formulation of the difference principle is sufficient for us here.

²⁰ See Rawls, *A Theory of Justice*, 15–19, where he outlines what he presents as “the original position.”

²¹ Rawls, *A Theory of Justice*, 118–23.

²² Rawls, *A Theory of Justice*, 11.

racialized or religious discrimination is written into the fair society the citizens are creating.²³ “[S]ince the theory of justice relies upon weak and widely held presumptions,” Rawls summarizes, “it may win quite general acceptance. Surely our liberties are most firmly based when they are derived from principles that persons fairly situated with respect to one another can agree to if they can agree to anything at all.”²⁴

The significance of the veil of ignorance for Rawls’s theory of justice is one reason why he renders it “ideal” rather than “non-ideal” theory.²⁵ It is about principles rather than practice. By Rawls’s own admission, his theory ignores history.²⁶ He has nothing to say about racialized or religious discrimination. The conversation between citizens about the society in which they would like to live never took place. It is made up. But Rawls argues that the made-up principles “define ... a perfectly just scheme; they ... set up an aim to guide the course of social reform.”²⁷ The principles that Rawls is after, then, are presented as *neutral*. These principles are independent of one’s philosophy or place in society. Once one knows these principles, one can technocratically apply them in practice to make society perfectly just.

While there are very good reasons to criticize Rawls’s conceptualization of justice, particularly the difference principle,²⁸ here, we are concerned with the consequences that it has in the EU’s migration governance. Our target is the Migration Pact that can be read through Rawls rather than Rawls.

Of course, Rawls’s suggestions for the perfectly just scheme could guide social reform either in a way that does account for “race” and “religion” or in a way that

²³ Rawls, *A Theory of Justice*, 85–86 (on “race”), 193–94 (on “religion”).

²⁴ Rawls, *A Theory of Justice*, 214.

²⁵ Rawls, *A Theory of Justice*, 215–16.

²⁶ John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge: Harvard University Press, 2001), 12.

²⁷ Rawls, *Justice as Fairness*, 215.

²⁸ Particularly pertinent for the ethics of migration is the critique that Rawls’s theory of justice rests on methodological nationalism. See Speranta Dumitru, “Is Rawls’ Theory of Justice Biased by Methodological Nationalism?” *Dianoia. Rivista di Filosofia* 33, no. 2 (2021): 245–59.

does not account for “race” and “religion.” In principle, both directions are possible when the scheme is spelled out in terms of concrete policy proposals. However, turning from principle to practice, the very fact that Rawls dismissed any consideration of “race” and “religion” from the definition of the perfectly just scheme at the very least encourages a normative mood among policymakers that enables them to do the same. In practice, then, policy is made as if there were neither racialized nor religious discrimination. This plays out in the Migration Pact’s proposals for solidarity. Although Rawls says very little about solidarity—references to the term are few and far between in his work—the difference principle is a key to the solidarity that the EU envisions among members, on the one hand, and among migrants, on the other.

B. Justice Among Members

Justice among members is the focus of the Pact insofar as it aims at constituting or reconstituting fair burden-sharing across the EU. By introducing a mechanism for solidarity that allows members to allocate migrants across the EU, the Pact resonates with Rawls’s difference principle. Solidarity is meant to unburden member states with external borders and burden member states with internal borders so as to stabilize the system of migration governance. Inequality—in this case, the inequality that comes with a state’s distance from the EU’s borders—is justified by a mechanism that benefits both burdened and less burdened states. Thus, the Pact mirrors Rawls’s difference principle.

However, burden-sharing across the EU has been a contentious issue, with many countries resisting the relocation of migrants.²⁹ To avoid confrontation over relocations, the Pact introduces a “flexible” principle of solidarity.³⁰ This flexible mechanism involves a mix of

²⁹ Eleni Karageorgiou and Gregor Noll, “What Is Wrong with Solidarity in EU Asylum and Migration Law?,” *Jus Cogens* 4, no. 2 (2022), 131–154, 136. See also Eleni Karageorgiou, *Rethinking Solidarity in European Asylum Law: A Critical Reading of the Key Concept in Contemporary Refugee Policy* (PhD thesis – Lund: Faculty of Law, Lund University, 2018).

³⁰ *Pact on Migration and Asylum*, EC, 2024, “Factsheet: Effective System of Solidarity and Responsibility.”

voluntary and involuntary contributions from EU member states, giving them the freedom to choose from a range of actions, while ensuring that there remain actions that are institutionalized within the overall framework of the Pact.³¹ This means that member states can circumvent the relocation of migrants on their territory by contributing funding to capacity-building measures, depending on what is most appropriate or acceptable to them, including the strengthening of the EU's borders.³²

The EU Commission's insistence on flexibility clarifies that the Pact assumes that solidarity can be achieved individually rather than communally. Similar to Rawls's made-up conversation about justice, it rests on the freedom of members. Yet, the concentration on flexibility also clarifies a crucial shift in the way that solidarity is operationalized across the EU. By presenting solidarity as a free and flexible mechanism, the Pact conceals the significant amount of power that it places in the hands of the EU's executive, the European Commission, which is responsible for the Pact. As legal scholars Eleni Karageorgiou and Gregor Noll suggest in their striking study of the significance of solidarity for the Pact, the mechanism of solidarity that is meant to operationalize the burden-sharing among states is meant to be "responsive by design,"³³ meaning that it relies on expert decision-making regarding the propriety and proportionality of each member state's contribution, especially where contributions fall short. Accordingly, the EU's new solidarity mechanism can be seen as a departure from a notion of democratic solidarity, where decisions are made by the

³¹ European Commission, "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum," COM(2020) 609 final, September 23, 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52020DC0609>, 2.

³² European Commission, "Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management and Amending Council Directive," COM(2020) 610 final, September 23, 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52020PC0610>, 2.

³³ Karageorgiou and Noll, "What Is Wrong with Solidarity in EU Asylum and Migration Law?," 151.

EU constituency, to a notion of technocratic solidarity, where decisions are made by the EU Commission.³⁴

The shift from democratic to technocratic solidarity in the Pact shows the limits of the application of Rawls's concept of justice as fairness to the EU's migration governance. While a mechanism of individual decision-making may function behind Rawls's veil of ignorance, it is less convincing once this veil has been lifted. Since it is envisioned as ideal rather than non-ideal, Rawls's concept of justice cannot account for the advantages or disadvantages of member states that come with their position or their privileges. The Pact, then, exposes how Rawls's framework fails to capture the dynamics of practical as opposed to principled solidarity. The key issue is not that the Pact misapplies Rawls, but that the application of Rawls in a non-ideal rather than ideal context is bound to fail.

The Pact attempts to overcome this limitation by grounding its concept of justice in a mechanism of flexible solidarity: "With firm but fair rules, they are designed to manage ... migration for the long term, providing EU countries with the flexibility to address the specific challenges they face."³⁵ But as Karageorgiou and Noll suggest, the shift from the democratic to the technocratic operationalization of solidarity shows that it "lacks a self-evident community from which it emerges."³⁶ If such grassroots solidarity among members existed, the issue of burden-sharing would not be so contentious; it would simply be implemented without the conflicts that have surrounded the relocation of people on the move. Without such

³⁴ Karageorgiou and Noll, "What Is Wrong with Solidarity in EU Asylum and Migration Law?," 151.

³⁵ *Pact on Migration and Asylum*, EC, 2024, Factsheet: Effective System of Solidarity and Responsibility. See also European Union, *Consolidated Version of the Treaty on the Functioning of the European Union*, Part Three, Chapter 2, Article 80: "The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle." See also Karageorgiou and Noll, "What Is Wrong with Solidarity in EU Asylum and Migration Law?," 151.

³⁶ Karageorgiou and Noll, "What Is Wrong with Solidarity in EU Asylum and Migration Law?," 151.

solidarity, the Commission has no choice but to mandate solidarity through expert decision-making from above. Arguably, then, the solidarity mandated by the Pact is driven by the pragmatism of maintaining the free market within the EU, which requires compromise to function.

In sum, the EU's approach to justice among members that is reflected in the new Pact mirrors Rawls's concept in principle but not in practice. While the Pact appears to promote fairness through burden-sharing among the member states of the EU, the solidarity it relies on is technocratic rather than democratic, imposed through top-down decision-making of "experts." Once the veil of ignorance is lifted—as it always already is—"solidarity" becomes about securing advantages rather than sharing disadvantages within a competitive framework of migration governance.

C. Justice Among Migrants

As mentioned above, justice among migrants is the fallout rather than the focus of the Pact. Karageorgiou and Noll argue that since the start of the discussions about EU burden-sharing in the 1990s, solidarity has been seen as something that protects members from the migrants who have been excluded from free movement. "This logic has eventually determined the rationale of the systems allocating responsibility."³⁷ Accordingly, the Pact reflects on the relationship among migrants only in so far as they are or are not allowed to enter the EU. The EU steps in as a neutral arbiter to establish a fair equilibrium by distinguishing between deserving and undeserving migrants. Again, the Pact resonates with Rawls's difference principles but now applied to the relations among migrants rather than members.

The Commission suggests that safeguards to protect the fundamental rights of migrants are crucial to the new Pact. What the Pact calls "vulnerability checks" are

³⁷ Karageorgiou and Noll, "What Is Wrong with Solidarity in EU Asylum and Migration Law?," 134. For the connection between the removal of the EU's internal borders and the reinforcement of the EU's external borders, see also Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton: Princeton University Press, 2006), 332–335.

introduced into standardized procedures that are meant to come to similar conclusions about admission or non-admission of migrants into the EU across the continent.³⁸ The Pact claims that speed and screening for vulnerability work together because achieving swift processes speeds up admission decisions for all.³⁹ The EU's legislation is designed to prioritize the protection of people "in need," in particular the "most vulnerable," identified as "families with children."⁴⁰ Hence, in accordance with Rawls's difference principle, inequality is justified because both vulnerable and less vulnerable migrants are meant to benefit from the new standardized procedures introduced by the Pact.

However, what is meant by vulnerability is left vague. As a marker to distinguish between deserving and undeserving migrants, it is framed as a condition that lies beyond any migrant's agency.⁴¹ One cannot make oneself vulnerable. Yet, it is crucial to note that the Pact connects its concern with vulnerability with "compliance."⁴² The Pact uses "compliance" to denote cooperation with the procedures of the EU's asylum system, including identification, registration, and potential return. Here, agency is crucial: a person who is considered to be less vulnerable can increase their chances of admission by being more compliant, while a person who is considered to be more vulnerable can decrease their chances of admission by being less compliant. As a result, the distinction between the burdened and the unburdened—and, by extension, between the deserving and the undeserving—becomes

³⁸ *Pact on Migration and Asylum*, EC, 2024, "Factsheet: Fast and Efficient Procedures,"

<https://ec.europa.eu/commission/presscorner/api/files/attachment/878140/Fast%20and%20efficient%20procedures.pdf>.

³⁹ *Pact on Migration and Asylum*, EC, 2024, "Factsheet: Fast and Efficient Procedures."

⁴⁰ The European Commission, "Managing Migration Responsibly," https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/story-von-der-leyen-commission/managing-migration-responsibly_en.

⁴¹ The European Commission, "Managing Migration Responsibly," July 9, 2024.

⁴² The European Commission, "Managing Migration Responsibly," July 9, 2024.

one tailored to the EU's priorities.⁴³ Arguably, then, it is the EU that is the beneficiary of the standardized procedures introduced by the Pact.

The Pact's assumptions about deservingness and undeservingness resonate with migration scholar Elena Fiddian-Qasmiyeh's intersectional analysis of the reporting on migration in the European media. She emphasizes two ideal types that appear across outlets.⁴⁴ On the one hand, the image of the "good migrant" is frequently invoked, seen as female, in need of help, and passive, waiting for European assistance. This is a person who is presented as deserving of the EU's support, a person who is regarded as not having the agency to confront their vulnerability. On the other hand, the image of the "bad Muslim" is also frequently invoked, seen as male, not in need of help, and active, not waiting for European assistance. This is a person who is presented as not deserving the EU's support, a person who is regarded as having the agency to confront their vulnerability. Of course, empirically, these ideal types do not exist. Yet, according to Fiddian-Qasmiyeh, they impact jurisdiction on asylum in European countries. The Pact is a case in point.

The Pact's concentration on compliance connects to the significance of gender that Fiddian-Qasmiyeh has highlighted, with women and children being seen as more compliant (and more vulnerable) because they are deemed to have less agency, and men being seen as less compliant (and less vulnerable) because they are deemed to have more agency. We will return to Fiddian-

⁴³ The CARIN framework advanced by Wim van Oorschot accounts for the differentiation between deservingness and undeservingness. In addition to the criterion of need, the framework suggests that migrants are considered more deserving when they have less control over their circumstances, comply with host country laws, contribute to society, and connect to the culture of the host. See Wim van Oorschot, "Who Should Get What, and Why? On Deservingness Criteria and the Conditionality of Solidarity among the Public," *Policy & Politics* 28, no. 1 (2000), 33–48. The CARIN account does not fully align with the approach taken in the Pact.

⁴⁴ Elena Fiddian-Qasmiyeh, "The Faith-Gender-Asylum Nexus. An Intersectionalist Analysis of Representations of the 'Refugee Crisis'," in *The Refugee Crisis and Religion: Secularism, Security and Hospitality in Question*, eds. Luca Mavelli and Erin Wilson (London: Rowman and Littlefield, 2016), 207–20.

Qasmiyeh's highlighting of Islam for the distinction between deserving and undeserving migrants below, where we discuss the significance of "religion" for the EU's migration governance in more detail. Here, our point is that her typology points to the racialization in the EU's migration governance that operates underneath its concern with vulnerability. As the European Network Against Racism has suggested, the Pact aims at "keeping racialized communities out of Europe."⁴⁵ Europe's "borders are mirrors that reflect and represent ... racialized anxieties," which play out in the criteria for deservingness or undeservingness.⁴⁶

While the concentration on vulnerability seems to signify a concern for people on the move, it camouflages that the procedures are meant to protect the power of the EU to decide who is and who is not deserving of admission. The Pact uses the concept of solidarity to perpetuate a system that unburdens people on the move who do, and burdens people on the move who do not, fit the EU's concepts of deservingness.⁴⁷ Accordingly, Karageorgiou and Noll argue that solidarity is a misnomer when it comes to the EU's relation to migrants, "unless we understand it as synonymous to defense against an external threat risking to turn into an internal one."⁴⁸ The racialization of deservingness and undeservingness shows the limits of the application of Rawls's concept of justice as fairness to the EU's migration governance. Because "race" and "religion" cannot be hidden behind a veil of ignorance, the Pact does not simply balance the responsibilities and rights of members and migrants, but strategically shapes a set of criteria to control who can or cannot enter the EU. The Pact thus reinforces a racialized border control regime framed as a fair distribution of solidarity.

⁴⁵ Nabil Sanaullah, "The New European Union Pact on Migration: Racializing Migration To and In Europe," Policy Briefing (Brussels: European Network Against Racism, June 20, 2023), 4, <https://www.enar-eu.org/policy-briefing-the-new-european-union-pact-on-migration-racializing-migration-to-and-in-europe/>.

⁴⁶ Sanaullah, "The New European Union Pact on Migration," 4.

⁴⁷ *Pact on Migration and Asylum*, EC, 2024, "Factsheet: Effective System of Solidarity and Responsibility."

⁴⁸ Karageorgiou and Noll, "What Is Wrong with Solidarity in EU Asylum and Migration Law?," 147.

In sum, the EU's approach to justice among migrants that is reflected in the new Pact mirrors Rawls's concept in principle but not in practice. While the Pact presents its standardized scheme for swift and seamless processes that lead to comparable conclusions about the admission or non-admission of refugees across Europe as a scheme that benefits both members and migrants, it shapes a set of criteria to control who can or cannot enter the EU, reinforcing a gendered and racialized border control regime. Once the veil of ignorance is lifted—as, again, it always already is—solidarity benefits only those who fit the EU's criteria.

III. THE RACE-RELIGION CONSTELLATION IN THE PACT

In its ordering of the relations between members as well as its ordering of the relations between migrants, the Pact ignores “race” and “religion” as markers to distinguish between the deserving and the undeserving. A few anti-racism think tanks have picked up on the racism in the EU's new migration regime.⁴⁹ Drawing on philosopher Anya Topolski's critique of the separation of the categories of race and religion in European accounts of racism, we build on our reconstruction of the ethics of the Pact by arguing that its silence on these categories is precisely what enables the EU to present itself as a neutral arbiter, even as its policies impact racialized people, such as Muslim migrants, in particular.

Our argument that the Pact on Migration can be read through Rawls's theory of justice is important here. Rawls constructs justice for societies that he

⁴⁹ See Klara Avsec, “Structural Racism in the New EU Pact on Migration: A Devastating Blow to the Right to Asylum” (Brussels: European Network Against Racism, December 21, 2023), <https://www.enar-eu.org/policy-briefing-structural-racism-in-the-new-european-union-pact-on-migration-a-devastating-blow-to-the-right-to-asylum/>. The focus is on “race” rather than “religion” here. Dan Bulley, *A Relational Ethics of Immigration: Hospitality and Hostile Environments* (Oxford: Oxford University Press), 59–84, discusses the racism that runs through the EU's admission decision-making process. His comparison to the Canadian migration regime is particularly pertinent.

characterizes as “complete and closed social systems.”⁵⁰ As Seyla Benhabib has pointed out, there is no place for migration in Rawls’s construction.⁵¹ The same holds for race. In his seminal *Black Rights/White Wrongs: The Critique of Racial Liberalism*, Charles W. Mills has highlighted that Rawls “has nothing to say about racial justice.”⁵² Justice is mapped out in a colorblind world where there is no racism because there is no knowledge about the “race” ascribed to anyone behind the veil of ignorance. Mills claims that “the ignoring of race in Rawls’s work is structural and symptomatic of white political philosophy in general” which “sanitizes the history of the modern world.”⁵³ In turn, this sanitization of the history of the modern world “obfuscates the centrality of racial domination to its making.”⁵⁴ Without reference to Mills, Benhabib makes a similar case. Rawls’s construction of societies as complete and closed systems, she suggests, is a misconstruction that cannot but ignore internal and external conflicts about membership, past and present.⁵⁵ Without a consideration of these conflicts, migration cannot be engaged critically or constructively. This is precisely what can be seen in the Pact.

Topolski’s contribution to the philosophy of race is particularly promising to fill the gap that the Pact leaves open. Taking inspiration from W. E. B. Du Bois’s concept of the “race-religion constellation,”⁵⁶ Topolski highlights how “race” and “religion” have operated as overlapping categories in Europe’s history of racist

⁵⁰ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 40. See also Seyla Benhabib, “The Law of Peoples, Distributive Justice, and Migrations,” *Fordham Law Review* 72, no. 5 (2004): 1761–87, 1762.

⁵¹ Seyla Benhabib, “The Law of Peoples, Distributive Justice, and Migrations,” 1771.

⁵² Mills, *Black Rights/White Wrongs*, 139.

⁵³ Mills, *Black Rights/White Wrongs*, 147–48.

⁵⁴ Mills, *Black Rights/White Wrongs*, 148. Mills refers to the history of the USA here, but we see no reason not to apply his statement to Europe.

⁵⁵ Benhabib, “The Law of Peoples, Distributive Justice, and Migrations,” 1769–70.

⁵⁶ William E.B. Du Bois, “The Negro and the Warsaw Ghetto,” in *Du Bois on Religion*, ed. Phil Zuckerman (Oxford: Alta Mira Press, 2000), 197–201.

domination.⁵⁷ “[T]he term ‘race-religion constellation,’” she suggests, “is used to refer to the practice of classifying people into races according to categories we now associate with the term ‘religion.’”⁵⁸ Topolski maps the configuration of this constellation in the history of Europe, concluding with the Islamophobia that characterizes current migration regimes.

Historically, the connection between categories of race and religion can be traced back to the sixteenth and seventeenth centuries.⁵⁹ According to Topolski, Christianity was confronted by internal and external adversaries. Inside Europe, there was the Islamic threat. Outside Europe, there was the Indigenous threat that followed from the colonization of the Americas. These threats triggered a doctrinal debate about anthropology.⁶⁰

In *Christian Supremacy*, Jewish Studies scholar Magda Teter clarifies that the conceptualization of the continent as Christian comes to the fore only during the colonialist expansion of Europe. The so-called doctrine of discovery is crucial here. Developed through a variety of debates, it divided the world into Christian and non-Christian territories, defining Christians as the sovereigns who had the duty to subject places and peoples who knew nothing of Christ yet.⁶¹ Topolski contends that the question that the church had to answer was whether Islamic and Indigenous people

⁵⁷ Anya Topolski, “The Race-Religion Constellation: A European Contribution to the Critical Philosophy of Race,” *Critical Philosophy of Race* 6, no. 1 (2018): 59, <https://doi.org/10.5325/critphilrace.6.1.0058>.

⁵⁸ Topolski, “The Race-Religion Constellation,” 58.

⁵⁹ Anya Topolski, “Race, Religion and Refugees in Europe, Past and Present,” in *Living in A World of Neighbours: Activists and Academics in Conversation about Multi-Faith Refugee Relief*, eds. Ryszard Bobrowicz, Anna Hjälm, and Ulrich Schmiedel (Eugene: Pickwick, 2025), 56–71. There are studies that trace the invention of race even further back, such as Benjamin H. Isaac, *The Invention of Race in Classical Antiquity* (Princeton: Princeton University Press, 2004).

⁶⁰ See also the detailed discussion in Marianne Moyaert, *Christian Imaginations of the Religious Other: A History of Religionization* (Chichester: Wiley-Blackwell, 2024).

⁶¹ Magda Teter, *Christian Supremacy: Reckoning with the Roots of Antisemitism and Racism* (Princeton: Princeton University Press, 2023), 45–78.

ought or ought not to be considered people who can be converted to Christianity. If they are human, people endowed with a soul, they can be saved. If they are not human, not people endowed with a soul, they cannot be saved.

According to Topolski, there was no clear-cut conclusion to the doctrinal debate. Instead, Christians came to stand as having “pure blood” while non-Christians came to stand as having “impure blood.”⁶² This distinction—either visible on the skin or made visible on the skin by forcing people to wear markers of identification, such as yellow patches—legitimized their dehumanization. Crucially, Topolski concludes that this history is not over. “[T]here can be no doubt that Muslims living in Europe, regardless of their religious practice, are the victims of both implicit and explicit exclusionary practices.”⁶³ For Topolski, these practices are evidence that the “hierarchy between Christians and non-Christians ... has not disappeared; rather, as with all forms of racism, it has simply changed forms.”⁶⁴ It is the race-religion constellation, then, that operates in the making and the maintenance of migration regimes across Europe today.⁶⁵

Today, migrants are often read as Muslims, and Muslims are often read as migrants across the EU. Especially, people who come from countries in the MENA region are singled out, presumed to require adaptation or assimilation to European societies, which have allegedly relegated religion to the private rather than the public sphere.⁶⁶ Often, this presumption is made to present Muslims as incapable of such adaptation or assimilation precisely because of their “Muslimness.” “Muslimness”, then, emerges as the

⁶² See Topolski, “Race, Religion, and Refugees in Europe: Past and Present,” 59–61; Teter, *Christian Supremacy*, 55–56. See also the contributions to *Is There a Judeo-Christian Tradition: A European Perspective*, eds. Anya Topolski and Emmanuel Nathan (Berlin: De Gruyter, 2016).

⁶³ Topolski, “The Race-Religion Constellation,” 73.

⁶⁴ Topolski, “The Race-Religion Constellation,” 73.

⁶⁵ Topolski, “The Race-Religion Constellation,” 58–81.

⁶⁶ See also Thomas Lynch, “Social Construction and Social Critique: Haslanger, Race and the Study of Religion,” *Critical Research on Religion* 5, no. 3 (2017), 284–301.

marker that connects “race” and “religion” in the current configuration of the race-religion constellation.

As mentioned above, Chin has pinpointed this shift from “race” to “religion” in debates about European migration policy in the 1970s and 80s.⁶⁷ This shift was spurred by the “Rushdie affair” that revolved around protests triggered by the publication of Salman Rushdie’s *Satanic Verses*. Chin argues that it was not until the 1990s,

That the new forms of racialized thinking fully crystallized around ... the intractability of Muslim culture. This emerging consensus often treated Islam in much the same ways that earlier forms of racial science had presented phenotype and physiognomy—that is, as an inherited, unchanging boundary between groups of people.⁶⁸

Events, such as the terror attacks of 9/11 in the U.S. and of 7/7 in the U.K., further stabilized this racialized pattern of thought. It makes very little sense, then, to distinguish between religious and racist discrimination in the Islamophobia that targets Muslimness or perceived Muslimness today, because the categories intersect in the very construction of the marker. Religion is racialized. “Muslimness” is about *both* race *and* religion.

To be sure, we are not arguing that the category of religion is reducible to race or that the category of race is reducible to religion. Neither are we claiming to resolve issues around the race-religion constellation in the history of Europe. Rather, we contend that the Pact operates through categories that produce processes of racialization precisely because they appear to be neutral. Attending to these processes is crucial for understanding how in/justice is structured and sustained within EU policy frameworks, where the racialization of religion (particularly Islam) becomes a mechanism through which migration and migrants are governed. As Fiddian-Qasmiyeh argues, this process is

⁶⁷ Chin, *The Crisis of Multiculturalism in Europe*, 158–59.

⁶⁸ Chin, *The Crisis of Multiculturalism in Europe*, 195.

key to the distinction drawn between deserving and undeserving migrants in Europe.⁶⁹

One effect of the racialization of religion in Europe can be seen in the cases where politicians and pundits in Europe called for their countries to accept Christian rather than non-Christian—read: Muslim—people on the move. Victor Orbán’s program “Hungary Helps”⁷⁰ is perhaps the most prominent example, but the pattern has become particularly palpable after the Russian invasion of Ukraine that led to a differential treatment of Ukrainian and non-Ukrainian migrants across the EU.⁷¹ To return to Topolski: “The race-religion constellation makes clear that what is at the roots of this distinction is the privileging of Christianity (or in today’s discourse secularism) over the religion of Muslims.”⁷²

Crucially, the Pact accounts neither for the racialized nor for the religious discrimination so characteristic of the EU’s migration governance past and present. As far as we can ascertain, there is not a single word about “race” or “religion” in the Pact. On the contrary, the authors of the Pact approach migration as an irritation for a system that ought to be complete and closed without admitting that they themselves sit at the core of this very system’s closure and completion. They pretend not to be in the picture. In Rawls’s words, one

⁶⁹ Fiddian-Qasmiyeh, “The Faith-Gender-Asylum Nexus,” 226–42.

⁷⁰ For information on Hungary Helps, see “Hungary Has Helped More Than Two Million Christians in Distress,” *Hungary Today*, February 4, 2025, <https://hungarytoday.hu/hungary-has-helped-more-than-two-million-christians-in-distress/>.

⁷¹ One might argue that the differentiation reflects geopolitical considerations, guided by the assumption that the displacement of Ukrainians is temporary. However, a comparison with the Syrian case casts doubts on such arguments. This conflict also came with significant geopolitical stakes, including Russian military involvement. European leaders frequently framed Syrian displacement as temporary. Yet these considerations did not result in a comparably open response toward Syrian refugees. For a statement that highlights the differential treatment between Ukrainian and non-Ukrainian migrants, see Torsten Moritz, “European Church Leaders’ Statement on Response of Europe to Refugees,” World Council of Churches, <https://www.oikoumene.org/news/churchescommission-for-migrants-in-europe-release-european-church-leaders-statement-on-response-of-europe-to-refugees>.

⁷² Topolski, “The Race-Religion Constellation,” 73.

could suggest that the authors of the Pact position themselves behind a veil of ignorance in order to see neither the privileged position that members hold, nor the underprivileged position that migrants hold—let alone the power that they themselves hold as arbiters between members' and migrants' demands. Here, the fiction of the veil of ignorance plays out its ethical and political power.

Inasmuch as the EU approaches migration as a logistical issue to which the Pact provides efficient and expert solutions, it takes itself out of the relationships that are at stake when it comes to migration. The ethical and political consequence is that the Pact continues the practices of racialized and religious discrimination that have characterized the EU since the inception of its migration policy.

If our account of the ethical and political power of the veil of ignorance to circumvent justice comes even close to being correct, then it could be claimed that Rawlsian concepts of justice ignore racism because they do not consider migration, and that they ignore migration because they do not consider racism.⁷³ Both are connected in Rawls's theory of justice inasmuch as it abstracts from "otherness." Rawls's theory has no "other," neither on the inside nor on the outside of the supposedly free and fair society it envisions. This ignoring in Rawls's justice parallels the ignoring in the Pact. The Pact, however, is confronted with "otherness." In the Pact, members are presented as insiders who benefit directly from its reform, while migrants are presented as outsiders who benefit indirectly from the reforms. This clear-cut presentation of benefits—reading the Pact, one wonders whether there is anyone who would not benefit from it—works precisely because the Pact ignores the categories of race and religion in the construction of "otherness."

To sum up, like the Rawlsian concept of justice that runs through it, the Pact has nothing to say about "race" and "religion." Topolski's account of the race-religion constellation in Europe has shown that both categories have functioned as overlapping markers of discrimination. Constructions of European identity

⁷³ See Benhabib, "The Law of Peoples, Distributive Justice, and Migrations," 1761.

continue to link “race” and “religion.” Sidestepping the legacies of colonialism, the Pact avoids addressing how race and religion function as categories of distinction and deservingness in the European migration regime. By leaving these dimensions unnamed, the Pact conceals the ways in which its policies disproportionately impact racialized and religious minorities, especially (perceived) Muslims. It is exactly through this neglect of the intersection between “race” and “religion” that the EU presents itself as a neutral arbiter between members’ demands and migrants’ demands. However, this presentation strategically omits the question of justice between members and migrants.

IV. JUSTICE BETWEEN MEMBERS AND MIGRANTS?

The Pact’s silence on “race” and “religion” enables a double avoidance: the EU can speak of its migration governance without addressing racism, and the EU can speak of racism without addressing its migration governance. In doing so, it evades responsibility for the racialized differentiation of deserving and undeserving migrants that has shaped the EU’s migration regime from its very inception. Accordingly, the Pact aims directly at ordering the relationship between members and indirectly at ordering the relationship between migrants. But the Pact says nothing about the relationship between members and migrants. However, it is *this relationship*, we suggest by way of conclusion, that any concept of justice that accounts for racialized and religious discrimination in the EU’s migration regime would have to address. Such a concept would have to end the EU’s self-presentation as neutral.

With regard to Rawls, Mills questions: “How theoretically useful is it then going to be in the philosophical investigation of social justice to start from a raceless ideal so remote from this reality?”⁷⁴ If “the historic reality is that race ... has been foundational to the actual ‘basic structure’ of the society under question,” then any theory of justice that is meant to

⁷⁴ Mills, *Black Rights/White Wrongs*, 148.

address the society needs to address race.⁷⁵ Mill's argument works in two ways: a theoretical neglect of race leads to a lack of engagement with racism past and present, and a lack of engagement with racism past and present leads to a theoretical neglect of race. Transposed to the EU's migration regime, this double neglect prevents the EU from acknowledging and addressing—let alone accounting for—"imperialism as a central reality shaping the history of the modern world."⁷⁶

Mirroring this logic, Peo Hansen and Stefan Jonsson point out that throughout the history of Europe, European powers have assumed that the law applies to intra- rather than extra-European affairs. In *Eurafrica*, the two scholars of migration explore how Europe's engagement in Africa followed its own imperialist rules.

In standard histories of European integration, Eurafrica is scarcely mentioned, in spite of the fact that the European integration ... was purveyed and perceived as an integration of Europe and its colonies into a Eurafrican entity. This disregard of historical facticity justifies ... comparing much of canonical EU history to mythology.⁷⁷

This mythology connects to the colorblind justice in the EU's Migration Pact: mythologized history stabilizes neutralized justice. The consequence is that the EU can ignore what justice between members and migrants would mean. The whitewashed notion of justice with which the Pact works can apply to relations among members (with the EU envisioned as a neutral arbiter in fair burden sharing) and to relations among migrants (again, with the EU envisioned as a neutral arbiter in fair burden sharing), but it cannot apply to relations among members and migrants. Imagine the Pact had

⁷⁵ Mills, *Black Rights/White Wrongs*, 148.

⁷⁶ Mills, *Black Rights/White Wrongs*, 148.

⁷⁷ Peo Hansen and Stefan Jonsson, *Eurafrica: The Untold History of European Integration and Colonialism* (London: Bloomsbury, 2015), 20.

even asked what fairness in the relationship between members and migrants would demand of EU migration governance, given its history of racialized and religious discrimination. The entire Pact would have had to be rewritten from scratch.

A concept of justice that would be helpful here would have to call the EU's neutrality into question. It would have to be able to account for the impact of "race" and "religion" as dividers between deserving and undeserving migrants. Were the Pact to consider the categories of race and religion in this sense, it would—as Mills argues—"explode the foundations of a conceptual framework predicated on treating society as a 'cooperative venture for mutual advantage'" that Rawls assumes it to be.⁷⁸ In the ruins of that explosion, the EU could not uphold its position as the neutral arbiter. On the contrary, it would have to consider what Mills calls "corrective justice".⁷⁹ This would be precisely the acknowledgement of justice between members and migrants, which is ignored by the Pact.

As mentioned at the outset, our analysis and assessment of the Pact is not the place to discuss what "corrective justice" in EU migration governance could or should look like. But, at the very least, we would like to conclude by picking up ethicist Kristin Heyer's proposal that "more structural analyses suggest that migration policy should consider receiving countries' economic and political complicity in generating migrant flows rather than perpetuate amnesic scapegoating."⁸⁰ A consideration of the EU's complicity in generating migrant flows would force the EU to come face to face with the economic and political gains it has made.⁸¹ Building on theologian David Hollenbach's application

⁷⁸ Mills, *Black Rights/White Wrongs*, 149.

⁷⁹ Mills, *Black Rights/White Wrongs*, n. 38, a play on Rawls's "compensatory justice."

⁸⁰ Kristin E. Heyer, "Migrants Feared and Forsaken: A Catholic Ethic of Social Responsibility," *Interdisciplinary Journal for Religion and Transformation in Contemporary Society* 6, no. 1 (2020): 158–70, 164.

⁸¹ Here, our argument resonates with E. Tendayi Achiume, "Migration as Decolonization," *Stanford Law Review* 71, no. 6 (2019): 1509–74.

of Kew Garden Principles to migration,⁸² Heyer points out that any such consideration requires accepting accountability.⁸³ If one has dominated a nation, then one has “special obligations to people in flight from that nation.”⁸⁴ Going beyond nations, literary scholar Ian Almond has suggested an “instability tax” for governmental or non-governmental agencies, such as weapons dealers, that benefit from the destabilization of societies that causes migration.⁸⁵

These are points of departure for concrete policy proposals that aim at corrective justice between members and migrants. But Heyer points out that any such proposal rests on the assumption of a global common good. By contrast, the ethics of the Pact rests on assumptions that render the common good uncommon because it strategically silences the demands of people on the move who have been dehumanized through racialized and religious discrimination. Behind the veil of ignorance, the common good turns out to be for members instead of migrants.⁸⁶ Any account of corrective rather than colorblind justice for migrants, then, would have to start with the question of who is or is not included in the moral imagination. Here, serious thinking about justice in the EU’s migration governance could start.

⁸² David Hollenbach, SJ, “Borders and Duties to the Displaced: Ethical Perspectives on the Refugee Protection System,” *Journal on Migration and Human Security* 4, no. 3 (2016): 148–65.

⁸³ Heyer, “Migrants Feared and Forsaken,” 164.

⁸⁴ Hollenbach, “Borders and Duties to the Displaced,” 160.

⁸⁵ Ian Almond, “The Migrant Crisis – Time for an ‘Instability Tax’?” *Political Theology Network*, March 24, 2016, <https://politicaltheology.com/the-migrant-crisis-time-for-an-instability-tax/>.

⁸⁶ To counter such divisions, Heyer points to the solidarity that is lived in faith-based organizations, such as churches—she specifies “institutional” and “incarnational” solidarity that can come together in a “conflictual” solidarity—because it transcends borders. See Kristin Heyer, *Kinship Across Borders: A Christian Ethic of Immigration* (Washington, DC: Georgetown University Press, 2012), 134–71.