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The Criterion of Knowledge in Accessing Citizenship Rights

Abstract
This text assesses the Portuguese position in regard to the challenges of brain circulation, from the analysis of a few set of public measures that have been implemented in the recent past. The management of brain circulation undertaken over the last years, along with the management of scientific and technological production and dissemination, access to education and training resources, compose a strategy that follows much of the international trends in regard to the states’ empowerment through the reinforcement of scientific and technological knowledge. However, as the text tries to show, such strategy in the Portuguese case, is also profoundly carved by the country’s semi-peripheral position in the World. The texts tries to bring some evidence of obstacles that may menace to jeopardise the eventual success of the country’s efforts to overcome its semi-peripheral reality. Finally, the text suggests also that we bring forward a new set of questions about the ethics underneath the assumption of certain forms of knowledge (in the case under scrutiny, scientific and technological knowledge) as superior to other forms. The suggestion for this new set of questions follows the analysis present in the text of how an economically selective policy of immigration as the Portuguese immigration policy, also shelters the present regime that facilitates de legal entrance and residence of highly skilled immigrants (HSI).

Key-words: highly-skilled immigration; post-national citizenship; Portugal.

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1 Paper sponsored by FCT (Fundação para a Ciência e Tecnologia- Foundation for Science and Technology) under the project Pest-OE/CPJ/UI0656/2011.
Introduction

The present text looks at Portugal and at its governmental answers to deal with its semi-peripheral position in the scientific and technological market in general (Gonçalves 1996a; Gonçalves 1996b); Nunes & Gonçalves 2001), and in the international market of human capital circulation in particular.

The main purposes of this exercise are:

- to help to understand Portugal’s dynamics in these markets;
- to call attention for the criteria of inclusion/exclusion (such as education) that the post-national paradigm of citizenship is fostering, and how this may subvert the normative ideal of post-national citizenship as being more democratically inclusive.

In the following two sections we will present what we consider to be the two pillars that structure the Portuguese reality in regard to its positions in the international market of highly skilled resources and in the international market of scientific and technological knowledge (section 1), as well as its answers to alter the fragilities of such positions (section 2).

1. The structuring pillars of Portuguese governmental approach to brain gain/brain drain

Portugal’s policy of brain gain is the detailed object of another study (Carvalhais, 2012). However, it would be difficult to make our argument without enunciating at least some of the main aspects of such policy. Hence the need to look at what might be called the essentials on the Portuguese policy in this matter.

1.1 First Pillar: Portugal’s semi-peripheral condition in the international scientific and technological markets

Our analysis of the policy that manages Portugal’s position in the international markets of R&D suggests that the country’s semi-peripheral condition (Wallerstein 1991; Wallerstein & Hopkins 1996; Santos 1993; 1994) in regard to various markets (economic, as well as cultural, scientific and academic) is the dominant pillar of its policy’s structuring. It is thus through the lenses of its semi-peripheral condition that much of the country’s answers (although not exclusively) become intelligible. Regardless of how close policy designs may be among developed countries, it still remains a fact that the challenges of brain circulation are felt more poignantly by semi-peripheral countries. Any country has to focus simultaneously on the brain gain and brain drain, but for semi-peripheral countries the equation is of more difficult resolution. Studies conducted earlier revealed that the difficulties in stopping the brain drain follow a European trend. Findings (Hansen et al. 2004: 17-18) suggest for instance that:

- a) studying abroad increases the risk of EU-born remaining abroad;
- b) there is no significant difference in the income of the EU-born and the US-born highly-skilled that work abroad, but there are large differences among the incomes of those working at home, with US-born earning significantly more than EU-born;
- c) one in three EU-born at home were planning to move abroad;
- d) only one in ten EU-born human resources may plan to ever return home (13 percent against 52 percent of US-born human resources willing to return home);
- e) having children does not increase the desire of the EU-born to stay home or to return home (59 percent of the studied human resources with children and working abroad had no plans to come back and 36 percent had plans to go abroad).

For extensive reading on the historical semi-peripheral condition of Portuguese culture, please read: Santos, 1993; Nunes and Gonçalves, 2001: 13-31; Santos, 1994; Pereira, 2001).
These are all very good reasons to suspect why so many felt sceptical about the success of the Lisbon’s Agenda from its very beginning. But these difficulties are even bigger for semi-peripheral countries such as Portugal as their pull capacity tends to be inversely proportional to their various structural constraints (Hansen et al. 2004: 13). Weiszäcker, who argues for the European blue card as means to improve the European attractiveness for highly skilled resources, signals Portugal as amongst those with the highest potential to attract highly skilled resources. According to Weiszäcker, in a group of fourteen countries, Portugal showed the lowest performance in higher education, with only 7.7 per cent of its native population holding a higher education degree. For Weiszäcker (2006a; 2006b), this demand for highly qualified resources, especially in comparison with its supplying capacity, explains why the country is well-positioned in the pull race for brain gain. It seems therefore that there are very good reasons for Portugal to keep betting on public measures that attract foreign (and Diaspora) experts, and to keep them for as long as possible. In other words, in theory at least, push factors can actually be turned in to opportunities. But the reality of obstacles is too evident and as long as it persists, it represents a consistent menace to any effort to fight back the country’s semi-peripheral condition. These obstacles are what literature has called push factors and which, in the Portuguese case, find echo in much of what the international literature has identified as such (Todisco, Brandi and Tattolo, 2003: 126; Favell, Feldblum and Smith, 2006: 9; De la Vega and Vessuri, 2008: 72; Rizvi, 2005; 176; Hansen et al., 2004; Kurka, Trippl and Maier, 2008). Here we present a few we deem as potentially more challenging for the country’s efforts.

Challenges embedded in the country’s economy

According to the Observatório das Desigualdades (Observatory on Inequalities, CIES) the percentage of Portuguese GDP allocated to R&D has been growing. In 1998 it was 0.65 percent while in 2008 it was 1.5 percent of the GDP (more than its neighbour, Spain, which went from 0.87 percent in 1998 to 1.35 percent in 2008) (CIES-Observatório das Desigualdades, 2010)\(^3\). Of course these percentages are not comparable to those of Finland (3.7 in 2008) or Sweden (3.8 in 2008). The distance between these countries is also evident when looking at absolute numbers: 1,058.20 Euros in R&D per capita in Sweden, 1,013.70 Euros in Finland, against 233.20 Euros in Portugal, in 2008. Portugal is also below the EU average (1.92 percent in 2008, and 2 percent in 2010, in the EU27) (EUROSTAT, 2012). Thus, despite the undeniable efforts to increase the investment rates in R&D, there is still a long way to go, the milestone of 3 percent of the Portuguese GDP by the year 2020 looking more and more difficult to achieve in the present context of economic crisis and necessity of budgetary consolidation.

The mentality of a substantial part of entrepreneurs about the need to invest more on R&D is certainly not strange to this. Studies conducted earlier show that, for instance, the connections between scientists in the Diaspora and the Portuguese entrepreneurial world represent only five percent of the total, in contrast with the connections of the former to higher education institutions, with universities gathering almost 80 percent of that total (Delicado, 2008 b). This goes along with the persistence of a strong academic culture in the country.

This is a major problem, one big enough to contradict Weiszäcker’s analysis on the brain gain potential of the country sustained on its low rates of education among the native population. Indeed, previous research on Portuguese reality show a major paradox: that although ideally the country’s deficit in training and superior education would mean it could be highly attractive for HSI (as result of both redundancy in home countries and of Portugal’s imbalance between its

\(^3\) The percentage of the GDP allocated to R&D activities seemed to reach a new peak in 2009 with 1.64 percent but it has decreased to 1.59 percent in 2010 and looks since then stagnating (EUROSTAT, 2012).
demands of human capital and its supplying capacity), the persisting low levels of income challenge such predictions (Peixoto, 2004: 2).

In other words, it will be difficult to attract highly skilled resources, whether national or non-national residents or individuals in the Diaspora, as long as the business sectors in civil society:

- resist investing more in R&D;
- resist increasing the number of companies specialised in the production of innovative products and services, based on high/medium-high technology;
- resist raising the wages of highly skilled workers.

Despite a significant evolution of the average wages earned by graduates in Portugal (Alves et al., 2010), companies in general are not the most attractive realm for researchers, who end up seeing the academic institutions as a better workplace to be. But even that may be about to change as the present domestic economic crisis is most likely to affect also the attractiveness of the academic world.

The persistent academic culture in the country is translated into a strong concentration of high-skilled resources in universities (especially public ones) and labs sponsored by the state, both strongly dependent on public funding. Parallel to this, the financial cuts in strategic sectors such as education (see ahead); the wage cuts in the public sector; recruitments and career progression frozen or cancelled; unemployment rates reaching 15.2 percent in 2012 (36.6 percent among the youngest, and 11.2 percent among people with superior education) (INE, 2012), are presently threatening to hurt the attractiveness of the country’s R&D activities.

**Challenges embedded in the academic environment**

Another challenge the country faces is the brain waste inside its academic culture. Generally speaking, Portugal shares the academic culture of the West (Teferra, 2003). One aspect though that has been characterising the Portuguese academic culture is the absence of a system of motivation for younger scientists and younger academic staff. Young academic staff, for instance, is frequently overwhelmed by excessive administrative work, too many teaching hours per week, short-term labour contracts, while they also face increasing demands in terms of scientific production according to the highest international standards. Most young European academics face similar fears, frustrations and distress, but this is something to be taken very seriously by a semi-peripheral country as it cannot afford to lose more qualified individuals. The absence of a culture of merit and motivation especially for younger generations is definitely a strong push factor that may lead ultimately to brain drain, or at least quite certainly to brain waste, that is, to the rapid degradation of intellectual power that is never fully explored.

**Challenges embedded in the attractiveness of other systems**

Push factors often have to do with the political and economic conditions of the sending country (Jalowiecki and Gorzelak, 2004; Thorn and Holm-Nielsen, 2006), as well as with the professional and scientific milieu of the sending country (Casey et al., 2001; Teferra, 2003; Todisco, Brandi and Tattolo, 2003). In the Portuguese case, and according to Delicado (2008a), Portuguese scientists seem to be attracted in general terms by central systems with more human resources; more employment opportunities; more investments on science and technology according to the percentage of GDP allocated to R&D; higher productivity rates (percentage of scientific outputs); and more internationalized higher education systems with stronger capacity to attract foreign students and foreign academics. As a result, Delicado notes that despite the relevant growth of the Portuguese academic and R&D performances, Portuguese high-skilled resources in the Diaspora still perceive the provided conditions as bellow those found in central systems (2008a: 126). But is this simply a mismatch of perceptions between what the country actually has and what its Diaspora is willing to see? In other words, is the Diaspora still attached to old
perceptions on the country’s conditions, which no longer find echo in present reality? We may
find the answer by looking into another study, on the presence of foreign high-skilled
professionals in Portugal. Marques and Góis stress that the presence of highly-skilled
immigrants in Portuguese R&D activities has increased significantly (Marques and Góis, 2008).
But this growth, however relevant, has not been translated into a substantial increase in the
country’s scientific and technological outputs. As these authors underline, the presence of HSI is
rather heterogeneous, with groups or at least with a significant number of individuals within
specific groups (for instance, HSI from Eastern European countries) experiencing great
difficulties in accessing the labour markets that match with their expertise. This is a clear case of
brain waste that corroborates the perceptions that the Diaspora still has on the capacities of the
Portuguese society to absorb their potential in the best ways possible.
If we define brain waste as the inability of a country to allocate highly-skilled resources to
activities compatible with its expertise, then brain waste can affect nationals as well as and non-
nationals, with civil society and governments sharing responsibilities for that. Portuguese civil
society is responsible for much of its brain waste, because part of its entrepreneurial structure
still tends to privilege education and training less than low wages. This puts a tremendous
pressure on graduates, especially more vulnerable groups such as the youngest and immigrants.
As a consequence, instead of a ‘top-levelled’ labour market, there is a tradition of a ‘bottom-
levelled’ labour market where employers often do not recognise the recruitment of highly
qualified resources as relevant. In this ‘bottom-levelled’ labour market, entrepreneurs follow
the old fallacious assumption that international competitiveness can be met by reducing costs in
human resources. Brain waste in Portugal may be considered an even bigger problem, if we take
into account that the country has been making a major effort to increase its levels of education
(UNESCO, 2010). If this effort on the side of education ends up wasted in low-waged and low-
skilled activities, one has to question how much the effort is actually worth.
Though governments are not exempted from responsibilities in fostering brain waste, it would
be a mistake to ignore the Portuguese public efforts to change the entrepreneurial
environment. The National Technological Plan (Plano Tecnológico Nacional) set in 2005 has
provided a series of measures to help companies increase their levels of innovation,
technological competitiveness and participation in R&D activities. This has been intertwined
with an attractive system of fiscal incentives to business sectors dealing with R&D, whether as
producers or as intensive users of R&D outputs.\footnote{On the fiscal system see Law 20/2005 and Law 10/2009 that sets the Programme of Initiative for Investment and Employment.}
It is also worth mentioning that the percentage of GDP public expenditure in R&D is bigger in
Portugal than in the EU27 - 1,1 percent of the GDP in 2010, against 0,8 percent in the EU27
(Pordata, Despesas em I&D e Dotações Orçamentais), which leads the Information Technology
and Innovation Foundation to underline Portugal’s excellent performance in a context of deep
economic crisis (ITIF, 2011: 6). In general terms, and taking into account the performance in
various items (from human capital training, higher education performance, number of
researchers per 1,000 employed; innovation capacity, business investment in R&D; government
investment in R&D; venture capital investment; and creation of new firms; development of
information technology infrastructures, including e-government and broadband
telecommunications; corporate investment in IT, etc, etc...), Portugal ranks 1st in terms of
overall change between 2009 and 2011 (ITF, 2011:2-12).
Challenges under the on-going economic crisis

These structural challenges here briefly presented have been fought back, with reasonable success we may add, over the last years. However, the present economic crisis is not that easy to discard in its potential long-term effects upon the achievements already made.

There is evidence already that Portuguese economy’s attractiveness has decreased, with the GDP suffering gradual contractions, the last being of 2,2 percent in the first trimester of 2012. There is also less investment in education and science in general terms. The public expenditure in public superior education (universities and polytechnic institutes) suffered a cut estimated in 8,5 percent from 2011 to 2012 (Público, 03.09.12), that may actually ascend to 11 percent according to the Council of Portuguese Rectors (CRUP, 2011).

Some effects are already visible: the number of scholarships attributed to graduate and postgraduate students has decreased (Público, 03.02.12)\(^5\) with the total of students with scholarships (around 56 thousand students) dropping to the levels registered in 2000 (Público, 09.04.12). The recent approval of a new regulation system for the concession of advanced fellowships and grants changes also dramatically the previous funding basis\(^6\). In the labour market, future perspectives are not better. Unemployment rates reveal that not even qualified resources with diplomas have been spared\(^7\). This scenario is taking place in a country that made a significant bet to increase the number of people with highly qualified education - from 61 140 individuals holding a superior diploma in 2000-2001 to 81 257 in 2009-2010, corresponding to an increase of 33 percent in one decade, with public universities and polytechnic institutes being responsible for almost half of that total. The number of diplomas in science and technology areas grew 193% (15 per 1 thousand aged between 20-29, overcoming the EU-27 average of 14 in 2008 (CRUP, Estatísticas)).

1.2 Second Pillar: The European context

A second dominant pillar is the European context and therefore the need to comply first with the expectations of the Strategy of Lisbon 2000 (that were supposed to be achieved by 2010), and more recently, with the expectations updated by the Strategy EU-2020.

The Lisbon’s Strategy translated the compromise taken in 2000 (and revised in 2005) by the European member-states during the Portuguese presidency of the EU Council of Ministers to make an integrated cooperative effort to develop the best answers to enable the accomplishment of highly ambitious economic and social goals. Economic goals included increasing the EU’s competitiveness in the global economy; while social goals included improving the European social model. Such ambitious goals were sustained on specific policy intents such as: to facilitate the generation and implementation of innovative ideas; to improve the dissemination and effective usage of new information and communication technologies

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\(^5\) The reduction of the number of scholarships is evident. What is not yet proved is the direct connection between this reduction, the rise of unemployment rates (15,2 percent of the total active population), the economic crisis of several families, and the rates of individuals giving up superior education. Another trend is also evident: universities complain insistently that increasing numbers of students are unable to pay for their tuition fees (Público,28.04.12) and some private universities are already cutting the wages of academic staff as result of the delayed payment of tuition fees (Público 16.05.12); while student unions, civil society, particularly the Catholic Church, have also been denouncing the incapacity of many students to go on studying at universities (Diário de Notícias, 2012).

\(^6\) As an example of this change, academic staff willing to proceed with doctoral studies abroad, will receive a grant only if they are on a non-remunerated leave at their workplace (article 14, point 4) and the maximum amount granted for tuition fees drops from 12 500 euros to 5000 euros annually.

\(^7\) The unemployment rate of people holding a superior education degree reached 11,2 percent in the first trimester of 2012, an increase of 2,7 points in regard to the same period in 2011 (INE, 2012).
towards a more inclusive information society; to implement employment policies towards a full employment scenario; to improve quality and productivity in the labour market; to broaden and increase the investment in human resources, especially by supporting and integrated approach to education and training on a life-long learning basis.

Just to understand the importance of this compromise, it is worth noting that the Lisbon’s Strategy forced to change the communitarian budget’s structure, through the inclusion of a new item titled Sustainable Development, initially proposed by the European Commission and confirmed by the European Council of Ministers of 15-16 December 2005. The strategy’s ambitions were thus meant to increase the EU’s economic competitiveness in regard to the major economic challengers of the moment and quite likely of the future: the USA, Japan, the BRIC (Brazil, Russia, India and China), as well as Australia and Indonesia.

The way the strategy envisages its economic competitiveness is through a massive investment in knowledge as the best ground to search for positive differentiation. Investing in knowledge, on the other hand, implies a series of intertwined measures involving articulation of national education and training systems, as well as continuous development of strategies to attract highly skilled resources. In other words, the battle for economic supremacy implies entering the battle for technological and scientific supremacies, a battle that cannot be won without highly prepared (and highly motivated) human capital.

Of course, many were and are sceptical about the capacity of the EU to win such battles and consider them already lost for countries such as Canada, the USA or most recently Brazil. Difficulties are even bigger for Europe if we consider that the United States policy to attract highly skilled individuals is much previous to the 9/11. This means that despite the negative impacts of the 9/11 on most immigrant policies in western countries, the USA were already much better positioned (along with Canada, Switzerland and Australia) when the EU came along with the Strategy of Lisbon in the year 2000.

As far as Portugal is concerned, the Strategy of Lisbon has worked fundamentally as a political binder that has enabled measures that would be otherwise too costly, while very much needed to bring its economy and education closer to an increasingly competitive global economy, and to the international market of scientific and technological knowledge. We put thus a special emphasis on the symbiotic relationship between these two pillars, and particularly on the benefits that the semi-peripheral condition has been taking from the back-up of the European context. The semi-peripheral condition of the country and the European context as set by the Lisbon’s Agenda, are thus the two main references of the Portuguese approach to brain gain - an approach here understood simply as part of a much larger strategy of economic empowering through human capital reinforcement.

2. The brain gain policy in action

The Portuguese policy of brain gain is based on a three-pillared challenge:

a) to re-captivate highly skilled Portuguese citizens that left the country in pursuit of better working conditions after or while they were still studying;

b) to attract highly skilled immigrants that may bring extra-value to technological and scientific areas in particular;

c) to prevent the loss of highly skilled Portuguese now integrated in the internal market, or who are still studying in the country.

Since at least the mid-1990s, Portugal tried to set a policy of advanced training for human resources, combined with the granting of sponsorships to foreigners willing to proceed with research activities in the country (Hansen et al. 2004). Though very important, these were rather random efforts that did not meet the quality standards of a much more articulated, focused and systematised policy conceived to answer the domestic challenges and European
demands in an integrated manner. Only recently, a systematic and integrated policy designed to reach such challenges has emerged, the best expression of which being the National Technological Plan (hereafter NTP) launched in 2005.

2.1 The governmental strategies under the NTP
In December 2005, the Government approved the NTP, a document meant to assure the country’s compromise with the Lisbon’s Agenda, as well as with the urgent domestic need to stimulate scientific and technological development, and to increase society’s levels of training, education and willingness to innovate. The higher level of political articulation became quite evident as most of the NTP’s measures implied integrated efforts between the ministry of science, technology and higher education, and the ministries of finances, economy, internal affairs, and external affairs, among others. Three axes of action compose the NTP’s structure: knowledge; technology and innovation.

A) Under the axis of knowledge, the country is called to improve the levels of knowledge of its population, especially by broadening and diversifying the paths to education and training on a lifelong-learning basis; and by stimulating the access to new technologies of information and communication;

B) Under the axis of technology, the country is called to overcome its technological and scientific deficits, notably by reducing the gap between entrepreneurial and research worlds.

C) Under the axis of innovation, the country is called to bring new impulse to innovation by making the entrepreneurial world more sensitive to creation, usage and dissemination of new services, products, organisational forms and managerial practices.

The main targets are citizens, companies, public administration, research and superior education activities. Each axis has specific goals and several measures designed to help the country meet such goals. We now take a closer look at some measures, particularly those underneath the axis of knowledge for the relevance this axis has in the context of this paper’s argument.

The Axis of Knowledge
A major axis of this national plan of action is the axis of knowledge, composed of several strategic goals, among which, to increase the educational levels of the population. One way to assess the governmental performance in regard to the strategic goals is to look at the impact indicators established for each goal; at the percentages set for each impact indicator as milestones for 2010 and at the percentages so far achieved.

In regard to increasing the educational levels of the citizens, the evolution has been quite positive. For instance, in 2003 only 10.5 percent of the population aged between 25 and 69 years old held a superior education diploma, while in 2008 it reached 14.3 percent, clearly overcoming the milestone of 15 percent set for 2010. It is still very distant, though, from the EU average percentage which was already of 24.3 in 2008 (last data available).

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8 Under the Centre-Right coalition Government lead by Passos Coelho, since June 2011, the former Ministry of Science, Technology and Higher Education has now been replaced by the Ministry of Education and Science that brings together also primary and secondary Education (traditionally with a ministry of its own).

9 The statistical data present in this sub-section may be consulted in the NTP – Indicadores e Metas available in http://www.planotecnologico.pt/InnerPage.aspx?idCat=121&idMasterCat=30&idLang=1
Another impact indicator is the percentage of people holding diplomas in science and technology per one thousand inhabitants. In this case too, the evolution has been notorious: from 8.2 percent in 2003, to 20.7 percent in 2008, overcoming the milestone of 12 percent expected for 2010.

A third impact indicator is the percentage of population aged between 20 and 24, with high school education. From 49.6 percent in 2004, it reached 55.5 percent in 2009, although the milestone for 2010 was set in 65 percent and the European average in 2009 was already of 78.6 percent. Again, the evolution is remarkable but still not good enough to annul the major gap that separates the country from most EU member-states.

A second strategic goal of the axis of knowledge is to foster lifelong learning. This met a rather modest evolution: 5.3 percent in 2008 against 4.3 percent in 2004, the milestone for 2010 being 12.5 percent and the EU's average 9.5 percent in 2008.

Finally, a third strategic goal is to prepare citizens for a society of information and knowledge, following the idea that the new technologies of communication and information are fundamental means to the post-industrial literacy that will empower the citizen at various levels in a highly competitive global world. In regard to this goal, all impact indicators reveal that this has been definitely a major governmental bet. For instance, the percentage of families with broadband internet connection has increased from 12 percent in 2004 to 46 percent in 2009, quite near to the 50 percent set for 2010 and not that far from the European average of 56 percent. The percentage of online public services available has also increased, from 40 percent in 2004 to 100 percent already in 200810.

Of course, these are remarkable efforts to improve the quality of the country’s human resources, but it is also important to see how much capacity the labour market has to absorb it and make the best of it. The present deep economic crisis is not the ideal period to make this assessment as it may lead to biased ideas about the market’s absorption capacity. Still, it is worth looking at some figures. The unemployment rate of people holding a superior education diploma reached 11.2 percent in the first trimester of 2012, an increase of 2.7 points in regard to the same period in 2011. The total population holding a diploma without a job is now 31.3 thousand individuals. Still, these figures are less worrying than those registered among people with basic education only (15.4 percent of unemployment in the first trimester of 2012) or high school education only (16.9 percent of unemployment in the same period) (INE, 2012, Estatísticas do Emprego - 1º trimestre de 2012).

The next step now is to identify, on the one hand, some of the measures that are enabling these various performances, and, on the other hand, how those are connected both to the country’s policy of brain gain and to the country’s policy of migration.

3 – Connecting the axis of knowledge to the special regime for HSI within the Policy of Immigration

The axis of knowledge includes 32 action projects among which ‘Attracting qualified human resources for Innovation/Adaptation of the legislation related to immigration and of the mechanisms for admission of immigrants of a high technical and scientific level’ (CNELPL, 2008). Underneath this project there is a political reading according to which to increase the levels of training and education, along with the communicational competences of the population, implies opening the doors to the entrance of highly-skilled human resources placed outside the country. What such political reading does not clarify however, is if it considers that the domestic

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10 In 2010, and according to the Report eGov Benchmark 2010, Portugal was ranking first within the European context in terms of sophistication and availability of online public services. In 2004, it ranked 16 in terms of availability and 14 in terms of sophistication (Portugal Tecnológico, Newsletter 14, 2011:1).
available human resources are failing in accomplishing such goals, and if so, whether these are failing due to quantitative reasons (connected for instance to insufficient number of diplomas) or due to qualitative reasons (connected to more complex phenomena such as individual competence or structures of collective mentality).

Regardless of the answers to these questions, the fact is that the Portuguese strategy to attract highly-skilled resources outside the country has been intimately tied to the creation of a simplified regime for the legal entrance and permanence of HSI. The terms of such regime are set in detail in the Decreto Regulamentar 84/2007, the legal decree that supports the operationalisation of the Immigration Law (Lei 23/2007).

The difference between the general regime for ordinary immigrants and the specific regime for HSI is quite clear in the reading of various articles. Article 20 of the DR 84/2007, for instance, sets the terms for the concession of temporary visas for subordinated or independent work and the intricate process ahead. The application for a temporary visa must be supported by the existence of a labour contract promise or labour contract (Article 20, 1, a)); whenever applicable, it must be supported by a declaration issued by the Portuguese authorities testifying the potential immigrant worker as able to exercise the activity according to any Portuguese special requirements (article 20, 1, c)); it must be supported also by a declaration issued by the institute of employment and professional training (IEFP) attesting that the labour contract promise or the labour contract itself refers to a job offer available for third countries’ nationals (article 20, 1, d)). The IEFP is responsible for evaluating the job offers for temporary activities as presented by the employers (under article 56 of the law 23/2007) and for publicizing them in the internet, 30 days after the presentation of the job offer. The embassies and consulates access the IEFP site and publish afterwards the offers, and make them publicly available in the third countries where they are located. Potential immigrants must then present their application preferably by internet. Employers will select them afterwards and make direct contact with the selected individuals. No reference is made in the article to how much time ideally the whole process should take. In contrast, article 21, in articulation with article 57 of the immigration law, makes no references to the IEFP-authorities-employers complex circuit. Besides, in case of a declaration from the Ministry of Education and Science is needed to clarify the terms under which a qualified activity may take place (following article 3, a) of the Immigration Law that defines what a highly qualified activity is), this must be issued within 20 days, or, in its absence it will be understood as favourable to the application under analysis. This same concern about time efficiency is also visible in article 56 of the DR 84/2007 on the concession of residence permits, which states that: research centres, superior education institutions and other private or public entities such as corporations welcoming highly qualified activities, may send the documents regarding the applications for residence permits directly to the Ministry of Science, and Education which in turn will send them, preferably electronically, to the SEF – Bureau of Foreigners and Borders (Serviço de Estrangeiros e Fronteiras), as to assure celerity to the process.

The concern about making the process of legal entrance and residence as efficient and fast as possible is evident also in the creation of a kind of ministerial troika (formed by the Minister of Foreign Affairs, the Minister of Internal Affairs and the previously called Minister of Science, Technology and Higher Education, now of Science and Education) organised to supervise the celerity of all applications submitted under this simplified regime of entrance of HSI.

The regime sets also the automatic terms that may be used to classify and verify the existence of highly-skilled activities to make the articulation between Portuguese services placed at home and abroad (consulates) quicker, while the applications of HSI are still under evaluation.

The previous legal frame was often referred as more costly, complex and time-consuming, especially for HSI seeking longer periods of residence, instead of shorter ones which could often
be solved with tourist visas. In contrast, the new regime is seen as a very positive step in the battle for brain gain\textsuperscript{11}. Not surprisingly thus, the Report of July 2009 on the Progress of the NTP signalled the approval of both the Lei 23/2007 (immigration law) and the Decreto Regulamentar 84/2007, as most relevant measures achieved for attracting HSI.

The new legal frame was clearly seen as responsible for the positive evolution of Portugal’s brain gain, with the report stressing that ‘Portugal has attracted in 2008 more than the double of highly-skilled foreigners in relation to 2007.’ (GCNELPT 2009: 63) while also underlining as a sign of success the fact that, on average, the concession of visas was now of eleven days against the twenty days registered in 2007. The report depicted the new immigration law as a rather positive step towards the creation of a more competitive and attractive regime for highly-skilled resources.

But, what the report did not mention is that the immigration law is also the one responsible for setting the terms of economic selectivity of immigrants\textsuperscript{12}. Therefore, the legal frame that supports the positive discrimination of HSI, on the basis of education as admission criterion to legality, is also the one that sets the negative discrimination of immigrants and the terms of their economic (in)utility on the basis of their lack of education. The positive discrimination of the individual on grounds of his/her utility in the context of a highly competitive and technology-based economy is not by itself problematic. However, when such positive discrimination is being legally sustained by the same instruments that in parallel promote the negative discrimination of all other individuals whose education is not positively valued, the least one can do is to put this rationale into question.

Education is not new as an exclusion-inclusion criterion within national citizenship, whether legally consecrated or socially assumed with more or less visibility. But over the last decades, it has been progressively standing as a clear post-national gate for the admission of HSI, facilitating quicker access to legal entrance, residence and to a varying set of citizenship rights within each receiving society.

Indeed, while liberal states have been developing increasingly restrictive immigration policies (Tushner 1995), they have also been contemplating specific regimes that ease and foster the entrance of HSI, a strategy meant to gain the battle for the best minds within the international brain circulation process. The liberal paradox (Hollifield 1992) where states base their economic lives and political discourses upon the liberal principle of freedom of movement (as so clearly

\textsuperscript{11} Other opinions suggest the present regime should go even further. The first coordinator of the technological plan, José Tavares, has argued for the establishment of a fiscal frame favourable to highly-skilled immigrants as a way to increase the country’s attractiveness in the international market. Of course, such an idea would have to face the impacts of negative discrimination on Portuguese highly-skilled citizens, along with a series of potential collateral effects such as the escape of Portuguese brains to other countries where fiscal systems would not penalise them on grounds of national belonging. Besides, it would have to face its own unconstitutionality.

\textsuperscript{12} Again, like in DR 84/2007, the distinction made between non-skilled and highly-skilled immigrants is clear through the reading of various articles of the law. There is for instance a substantial difference between the terms set for a permit of residence for a non-skilled immigrants (article 59) and those for a HSI (article 61). Article 59 sets the creation of a controversial figure that according to the previous socialist government was supposed to substitute the quota system, but which many evaluate as its legal continuity: the annually set of a “global contingent” of jobs that may have eventually not been taken by Portuguese nationals; by nationals from EU member-states; by nationals from third countries with agreements on free movement of people signed with the EU, as well as immigrants already legally residing in Portugal. So, although not directly called a quota system, the system is in fact designed to establish quotas that make rather difficult the entrance of any immigrants into the legal circuit of labour offers and residence.
seen in the case of the EU member–states) while being actively engaged in ever more restrictive policies of migration, is thus a paradox of greater complexity, as the states add in parallel their commitment to special policies of migration that benefit the HSI. This third variable goes hand in hand with the first one (freedom of movement) but it contrasts highly with the second, stressing the paradox’s profound inner tension.

The question to be made is thus how much education as a ‘new’ criterion of admission to legality may actually be subverting the democratic qualities presupposed in a post-national paradigm of citizenship.

4 - The post-national paradigm of citizenship

The question made implies that first we take a look at what we mean by democratic qualities of the post-national paradigm of citizenship.

We have argued elsewhere that post-national citizenship ‘(...) relies less on the progress of international structures and more on the internal efforts of political communities to overcome [the limitations of] the national paradigm.’ (Carvalhais 2007: 101). In other words, post-nationality is here defined more as a quality of the political praxis than as the condition that citizenship acquires as a consequence of the geographic level where politics takes place. Post-nationality stands here thus as a quality that helps defining the logic underneath the relation between state and society, one where both are confronted with the necessity of re-equating the integration of legal residents regardless of their nationality (Carvalhais 2007).

The post-national logic must not be mistaken therefore with ‘post-state logic’ or a ‘beyond the state’ logic. On the contrary, it does not presuppose its concretisation in (and through) an extra-state geography made of supranational or transnational spaces and actions. In this sense, it is a reading separated from other theoretical developments where the idea of territorial transposition is so strong that ‘post-national’ is made simply a quasi-synonym of ‘transnational’ (e.g. Soysal 1994). The idea on a post-national logic developed within the State-society relation, a logic that legitimises the access of legal residents to the traditionally national spheres of public life, is still quite a normative idea on a future that holds no guarantees that the political choices already made will effectively reveal themselves as fully compatibility with it. Indeed, when we say that during the last decades of the twentieth century several countries began denationalising political citizenship, that is not totally correct, since what happened was (and still is) often a mere flexibilisation of the admission criteria to nationality which in turn remains the main gate to enter citizenship. In rigour, that is not an expression of post-nationality, since

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13 The Portuguese law of nationality is a good example of a liberal law in regard to the acquisition of nationality, naturalisation, and receptivity to double-nationality strategies. According to Lei Orgânica 2/2006, and its article 8: ‘Those who, being nationals of another state, declare that they do not want to be Portuguese will lose Portuguese nationality.’ This means that the loss of Portuguese nationality is made dependent on the will of the individual and not on legal incompatibility with another nationality (Carvalhais, 2010: 14). The law has also changed the rules of naturalisation. A major novelty has been the introduction of a subjective right to naturalisation for minor children born in Portugal to foreign parents, if a set of requirements is fulfilled: that a) parents have not been convicted for crimes that carry prison sentences of three years or more; b) parents have sufficient knowledge of the Portuguese language; c) children have completed the first cycle of compulsory education (of four years) or that one of the parents has legally resided in Portugal for a period of five years previous to the application (art.6(2)). The law also recognises a subjective right to naturalisation for immigrants, following compliance with article 6 (1): to be legally emancipated or of legal adult age; to be legally residing in the country for six years; to have sufficient knowledge of the Portuguese language; to have a clean criminal record. Contrary to Law 37/81 (art.6 (1) no references are now made to the necessity of proving sufficient means of subsistence, proving the existence of a link to the Portuguese community or civic suitability (idoneidade), giving place instead
this is supposed to translate a condition where the access to (social and political) citizenship is no longer mediated by nationality.

Going back to the idea that post-national citizenship cuts ties with the national paradigm of citizenship and its traditional admission criteria, it is important to stress that by no means this implies that post-national citizenship lacks exclusion/inclusion criteria of its own. The existence of exclusion/inclusion criteria is as much a conceptual as it is a practical need for sustaining the integrity of post-national citizenship both as a concept and as a practical reality. But, whatever the admission criteria, these too have to be scrutinised in light of the post-national citizenship’s normative goal of being more democratically inclusive in comparison with its national version.

In the particular case of education, its use as a privileged gate to access legal residence and various forms of citizenship rights is therefore a political choice of great significance:

a) for the impacts on every immigrant who does not enter the categories of highly qualified labour;

b) for its impacts not simply on the selection of immigrants but also on the pre-selection of potentially new national citizens;

c) for its contribution to defining ultimately the profile of citizen and what this may actually mean in terms of building a sense of post-national collective membership.

States may show preference for HSI by easing the bureaucratic steps required to get legal residence, or by reinforcing the access to social rights, including the creation of more attractive fiscal systems for these immigrants. In parallel, a low-skilled or an unskilled migrant is lucky already to become simply legal. Simultaneously, while experiencing serious difficulties in keeping up with the demands of the labour market and in obtaining effective access to social rights, that same migrant may ironically have also access to parts of the political citizenship of the receiving society. This means that both a legal alien with access to particular social and political rights and a national citizen may in fact feel socially and economically less enfranchised, despite their legally granted rights of citizenship, than a temporary HSI.

In previous work we have suggested an exercise meant to assess the levels of post-nationality that State’s policies could actually reveal (Carvalhais 2007: 102-103). In the particular case of Portugal, this has met an extraordinary evolution of its legal and institutional building over the last fifteen years in regard to the integration of immigrants in the sphere of citizenship rights (Carvalhais 2010: 57-75).

Although the legal and institutional building has pillars conceived to sustain the integration of any legal migrant (and even illegal, as in the case of access to the public health care system and to public education for children of illegal migrants), it is mostly the long-term resident that benefits the most from the legal devices created to access various rights, political ones included at the local level (though in a limited manner). The existent devices have granted Portugal a high ranking position as far as policies and good practices of integration are concerned (Huddleston & Niessen 2011). The evaluation of the Portuguese case in terms of formal development of a post-national language of citizenship may thus be considered, a positive one.

But, the quality of post-national citizenship cannot be simply defined by policies of integration. Policies of immigration as means to regulate the legal entrance, stay, permanence and expulsion of aliens are also part of the equation and may compromise the overall quality of the post-national language present in the state-society relationship. For instance, a regime of social to the need for a clean criminal record under certain circumstances. Finally, second generation immigrants born in Portugal to foreign parents, may also access nationality by naturalisation if they have been residing regularly in Portugal, regardless of their legal residence status, for the ten years previous to their application. This is however not a subjective right to naturalisation, but one under the discretionary power of the state (Carvalhais, 2010: 15-16).
integration may be quite post-national in a first glance considering we look only at how it equates the non-nationals’ formal access to political and social commodities. Underneath, however, there may be a highly restrictive immigrant policy that has forced to the creation of an economically or culturally, ethnically and socially quite selective circle of non-nationals that can further access to full citizenship.

Our argument is that the Portuguese immigration policy is one of such cases, considering that it is a selective policy of immigrants from the point of view of their economic utility assessed on the basis of their education. As result, the dominant immigrant profile may not suffer directly from ethnic, national, or cultural restrictions (as it would be even against the Portuguese Constitution) but it suffers from educational and economic discrimination.

5 - Concluding remarks

Looking at the recent Portuguese governmental measures designed to gain the best position possible in brain circulation\textsuperscript{14}, one may think that these efforts are typical of a semi-peripheral state, or even that they are exclusive to the country under analysis. However these efforts equal those implemented by other European countries such as Ireland, Hungary, and central economies such as the UK, France or Germany. International trends reveal that governmental efforts usually include legislation designed to facilitate the entry of skilled foreigners, as well as less bureaucratic administrative measures to facilitate the transfers of human resources in the entrepreneurial sphere (Hansen et al. 2004: 21-22).

Regardless of the characteristics that bring the Portuguese regime closer to international trends, it has been mainly designed to solve the country’s semi-peripheral challenges in an increasingly competitive global economy. Before the economic crisis, the regime seemed to be working rather well. But, as the economic crisis began to deepen from 2010 on, and some of the structural obstacles here identified tend to persist, the gains from the recent past may actually be now under threat.

At the same time, questions regarding the impacts of the battle for brain gain on the profile of the future citizen, are still poorly debated and in need of greater attention. States are not unethical simply because of their interest in brain gain, nor are individuals acting in a despicable manner because they wish their education to be highly valued. But we must question the ethics that is underneath the assessment of certain forms of knowledge (scientific and technological forms at top) as being superior to others and as deserving therefore to be elected as privileged gates of access to legality and, subsequently, to citizenship rights. This questioning may take the form of at least five concerns that we could not address fully in the present text but which we would like at least to enunciate in the concluding remarks.

The first is an epistemological concern and derives from the uncertainty that other forms of knowledge should actually be considered less relevant in the organization and functioning of our individual and social existence;

The second is an ethical concern and derives from the uncertainty that discriminating the access of an individual to legal residence (and subsequently to citizenship rights), on the bases of a dominant “Geoculture” of ideas about what is valuable/valid knowledge, may be ethically acceptable, in the context of societies that claim to be politically but also ethically compromised with Human Rights.

The third is an economic concern and derives from the uncertainty that it may be considered in the long-run best interest of states’ competitiveness, to stimulate indirectly the flows of illegal

\textsuperscript{14} On brain circulation, see Teferra 2003; Ackers et al 2001; Delicado 2008 a); Delicado 2008 b).
immigration as a result of limiting the entrance of unskilled/low-skilled workers, while favouring the entrance of HSI.

The forth is a social concern and derives from the uncertainty that it may be in the society’s best interest to take silent advantage of the contributions of thousands of unskilled illegal workers, in the short run, as if no social outcome could result in the long-run from such strategy, tacitly supported by restrictive immigrant policies that in parallel sustain the positive discrimination of HSI.

The fifth is as much an economic as a political concern. While designed to foster highly-skilled migration, restrictive and selective migration policies end up contributing not only for the continuity of illegal flows of unskilled/low-skilled migrants, but also for the increment of Diasporas, weakening thus the State’s economic and political position in the international relations, especially if its economic attractiveness is comparatively lower than that of other countries. Finally, electing scientific and technological knowledge as a privileged gate to access legality and eventually citizenship, translates more than a questionable discrimination of other forms of knowledge. It translates also the public ethics that is underneath the political definition of the ‘worthy subject’, that ethics being a perversion of the democratic quality that ought to assist to the profile of the desirable citizen. Indeed, education as admission criterion seems presently embedded in a twisted reading of post-national citizenship, where its liberal dimension as facilitator of the conciliation of the State with the demands of global capitalism, gets brighter; but where its democratic dimension as facilitator of the conciliation of the State with increasingly diverse societies, fades away.

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