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Disciplining the Transnational Mobility of People

Edited by
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International Political Economy Series

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International Political Economy Series
Series Standing Order ISBN 978–0–333–71708–0 (hardcover)
Series Standing Order ISBN 978–0–333–71110–1 (paperback)

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palgrave
macmillan

Softcover reprint of the hardcover 1st edition 2013 978-1-137-26306-3

First published 2013 by
PALGRAVE MACMILLAN

Palgrave Macmillan in the UK is an imprint of Macmillan Publishers Limited, registered in England, company number 785998, of Houndmills, Basingstoke, Hampshire RG21 6XS.

Palgrave Macmillan in the US is a division of St Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

Palgrave Macmillan is the global academic imprint of the above companies and has companies and representatives throughout the world.

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ISBN 978-1-349-44243-0 ISBN 978-1-137-26307-0 (eBook)
DOI 10.1057/9781137263070

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources. Logging, pulping and manufacturing processes are expected to conform to the environmental regulations of the country of origin.

A catalogue record for this book is available from the British Library.

A catalog record for this book is available from the Library of Congress.

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List of Abbreviations and Acronyms

APMM	Asia Pacific Mission for Migrants
AVR	Assisted Voluntary Return
CARAM	Coordination of Action Research on AIDS & Mobility
CBC	Canadian Broadcasting Corporation
CBSA	Canada Border Services Agency
CIC	Citizenship and Immigration Canada
DHS	Department of Homeland Security (USA)
EC	European Community
ECRE	European Council for Refugees and Exiles
EEA	European Economic Area
ERF	European Return Fund (EU)
EU	European Union
FOM	Federal Office for Migration (Switzerland)
GCIM	Global Commission on International Migration
GCM	Global Coalition on Migration
GFMD	Global Forum on Migration and Development
GIS	Geographical Information System
HLD	High-Level Dialogue on Migration and Development (UN)
IAMR	International Assembly of Migrants and Refugees
ICC	International Criminal Court
ICMC	International Catholic Migration Commission
ICMPD	International Centre for Migration Policy Development
IGC	Intergovernmental Consultations on Migration, Asylum and Refugees
IGO	Intergovernmental Organization
ILO	International Labour Organization
IMA	International Migrants' Alliance
IMF	International Monetary Fund
IMIS	Institute for Migration Research and Intercultural Studies (University of Osnabrück, Germany)
INGO	International Nongovernmental Organization
IO	International Organization
IOM	International Organization for Migration
IR	International Relations

MFA	Migrant Forum in Asia
MRI	Migrants Rights International
NATO	North Atlantic Treaty Organization
NGO	Nongovernmental Organization
NIROMP	New International Regime for Orderly Movements of People
NNIRR	National Network for Immigrant and Refugee Rights
NSTC	National Science and Technology Council (USA)
NTFP	Non-Timber Forest Products
OSCE	Organization for Security and Cooperation in Europe
PGA	People's Global Action on Migration, Development and Human Rights
RANA	Return, Reception and Re-Integration of Afghan Nationals to Afghanistan
RCMP	Royal Canadian Mounted Police
SBIF	Swedish Forest Berry Industry Federation
UK	United Kingdom
UKBA	UK Border Agency
UN	United Nations
UNDESA	United Nations Department of Economic and Social Affairs
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGIFT	United Nations Global Initiative to Fight Human Trafficking
UNHCR	United Nations High Commissioner for Refugees
UNIFEM	United Nations Development Fund for Women
UNMIK	United Nations Interim Administration Mission in Kosovo
UNODC	United Nations Office on Drugs and Crime
US/USA	United States/United States of America
WB	World Bank
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WSFM	World Social Forum on Migration
WTO	World Trade Organization

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Introduction
Disciplining the Transnational Mobility of People

Antoine Pécoud

Until recently, one of the most popular catchwords in migration debates was "Fortress Europe". Borrowed from World War II military history, the term referred to European governments' aspiration to fully control their borders. The European continent was, in this respect, at the forefront of the "global migration crisis" (Weiner, 1995): Since the 1990s, the developed world in general has been characterized by increasing fears over the consequences of human mobility; the reaction has been the erection of "walls around the west" (Andreas and Snyder, 2000) and, more generally, a dramatic intensification and diversification of control strategies. While much has been said about the desirability and feasibility of such a political project[1], this book[2] attempts to shed light on the ways in which the objective of controlling migration has unfolded in a broader endeavour to discipline the cross-border movements of people. What this volume proposes to call the "disciplining of transnational human mobility" has, at first sight, little in common with the militarization of borders or the surveillance of foreigners. This is not to say that the fixation with control has disappeared, or that immigration and border policies have fundamentally changed. Rather, it is to recognize that the objective of defending receiving states from unwanted migrants is both embedded in, and complemented by, the larger goal to organize human mobility and discipline people's movements and behaviours.

"Managed migration" (or "migration management") is perhaps the new catchword here. It reflects the growing recognition that the risks linked to uncontrollable and destabilizing migration flows can be addressed by a deep reorganization of the patterns that govern human mobility; it also embodies the aspiration to both strictly control human mobility

and organize it in a way that makes it compatible with a number of objectives pursued by both state and non-state actors. These include the recruitment of foreign workers and, more generally, the realization of the potential benefits that labour mobility entails (e.g. on the economic development of sending regions). To a lesser extent, they also include the avoidance of some of the abuses and sufferings that affect vulnerable groups of mobile people (Geiger and Pécoud, 2010, 2012; Kalm, 2010). One of the core arguments of this volume is that such a political objective implies much more than the mere control of people on the move. It implies the disciplining of human mobility and the establishment of an ideal mobility regime in which control remains fundamental. The emerging new mobility regime unfolds and transforms itself in a range of practices which seem to disconnect from control and are commonly (and misleadingly) opposed to control.

The control (or management) of migration is therefore not only about inspecting people on the move; it is also about creating the conditions for human mobility to take place without what Nikos Papastergiadis calls "turbulence" (Papastergiadis, 1999) – that is, without disturbing the "national order of things" (Malkki, 1995), without challenging state sovereignty, without hurting the socio-economic interests of dominant groups, and so on. Disciplining is about introducing a specific rationality to what may otherwise turn out to be a disruptive process. This rationality implies the transformation of a complex, multifaceted, sometimes unlawful and always challenging process into "predictable", "sound", "manageable", "orderly" and rule-obeying dynamics. Relying on the key points discussed in this volume, this introduction outlines the major implications of this notion of disciplining and its relationship to the control of human mobility.[3]

Coercion – protection – persuasion

Disciplining human mobility relies on a range of methods, which vary from coercion to protection and persuasion. Importantly, these methods do not necessarily oppose each other, nor do they always display a perfect convergence. Different strategies, techniques and tools coexist and interplay. Thus, disciplining goes beyond a number of misleading oppositions that tend to characterize contemporary policy and academic debates.

For instance, a popular distinction in political discussions is between, on the one hand, the control of migrants and the repression of those who do not obey the rules and, on the other hand, the humanitarian protection of those who justifiably need to be supported (such as asylum

seekers, refugees or "victims" of human trafficking). It appears, however, that "repression" and "help"/"support" are part of the same dynamic; indeed, not all migrants can be "helped" and the existence of those who can benefit from protection presupposes the existence of those who must be repressed. In Chapter 7, Bethany Hastie shows the dual nature of anti-trafficking policies, which combines both help and repression according to a filtering process that aims at evaluating the specific situation and needs of each migrant; yet, this objective is ultimately challenged by the ambivalence inherent to real-life situations and the impossibility to genuinely protect those deemed to be vulnerable in a context pervaded by security objectives.

Moreover, while "help" and "control" may oppose or complement each other, in other situations they may also go hand in hand and pursue the same objectives. Giada de Coulon's ethnographic study of the treatment of rejected asylum seekers in Switzerland (Chapter 11) is illustrative in this respect. The Swiss government organizes both the expulsion of these people (as their claim for refugee status is deemed to be ungrounded) and their access to basic services (like housing, food or health care). This is both a legal commitment that state authorities must respect and a strategy that enables them to keep controlling these people even after they have been refused a legal status. The rejection of these asylum-seekers does not, therefore, prevent supporting them since such support is also a mechanism by which to maintain control. While this "regular irregularity" may at first sight look contradictory, it actually shows how the objective of disciplining the lives of people on the move can accommodate, and rely on, very different techniques and rationales.

Stephan Dünnwald further contributes to this discussion by analysing the conditions in which governments send unwanted migrants back to their country (Chapter 12). The capacity and legitimacy to do so are conditions for states to maintain their sovereignty over the entry and admission of foreigners. Such returns are, nonetheless, also a source of human rights abuses that can upset public sensitivities or be contested in front of courts, while also potentially creating diplomatic tensions with sending states. Governments therefore attempt to follow the narrow path between these diverging imperatives – a dilemma that is likely to be insurmountable, but to which "voluntary return programs" seem to provide a solution of sorts. Here too, "supporting" migrants and disciplining them to "voluntarily" return appears to be inseparable from "controlling" their mobility.

Another popular stance that pervades contemporary migration debates regards the distinction between "desirable" and "undesirable"

foreigners; in this respect, states should then be "open" to the migrants they need or want, and "closed" to the undesirable ones. Nonetheless, in both cases, the issue is not so much whether to let people in or out. It is, rather, to organize their movements and have them adopt the "right" mobility (or migratory) behaviour. Thus, some migrants are permitted to settle down on a long-term basis while others should "circulate", that is, remain within the territory of the receiving state only insofar as their presence is necessary. Others, on the other hand, should simply never gain entry and therefore be incited to view "staying at home" as their best option. This implies the disciplining of both mobility and immobility; it is not only the (potentially unlawful) border crossers who should be scrutinized but also those who have the potential to move but should not, those who have moved but shouldn't have, those who moved and returned, and so on. Public information campaigns to prevent human trafficking and irregular migration represent an example of how not only migrants but also all those who could possibly think of crossing international borders and migrating are tentatively instructed to think and behave in a specific fashion (Nieuwenhuys and Pécoud, 2007).

Disciplining and self-disciplining

This points to another feature of disciplining efforts, namely their two-way nature: disciplining mobility is a matter of both disciplining people and "self-disciplining" – that is, achieving disciplining by people themselves. This is a general characteristic of disciplining endeavours: disciplining a child, for instance, is about more than punishing, enforcing obedience or imposing certain patterns of behaviours; it is also about teaching him/her self-control, with the purpose of no longer having to intervene at a later stage (usually when the child becomes an adult). Disciplining transnational mobility thus implies the self-adherence, by people on the move, to norms and standards that are not necessarily coercively imposed.

For example, Robyn M. Rodriguez and Helen Schwenken document how, in India and the Philippines, to-be migrants' subjectivities are shaped even before they leave their country. Governments (at both ends of the migration process) and potential employers define the class- and gender-specific characteristics of the "ideal" subject (hard-working, remittance-sender, flexible, etc.), to which potential migrants are to bear resemblance (Rodriguez and Schwenken, 2013). The aim of disciplining efforts is thus not only to target the actual behaviour

of people but also the way in which they perceive themselves – and therefore what could be referred to as their personal aspirations, values or intimacy. An illustration is provided in this book by Anne-Marie D'Aoust who investigates the far-reaching implications of the treatment of migrants who move for for the purpose of marriage (Chapter 6). Living with one's family is understood as a human right, and also as a situation that fosters migrants' integration; family reunification should, therefore, be allowed. Nevertheless, there is a dark side to this seemingly indisputable principle: family reunification may lead to abuses like fake marriage, which in turn support irregular migration channels while also threatening the well-being of the migrants involved. This calls for defining what "true love" should look like, to check the genuineness of intimate feelings and to prevent family reunification programs from abuse by "sham" spouses. In turn, this generates norms and assumptions that shape the way in which applicants present their situations to authorities and, ultimately, how they perceive themselves.

The self-disciplining of potential people on the move is also a strategy to address the impossibility of checking the behaviour of every single potential migrant. Given the disparity in world development and the facilitated means of travel and transport, the number of people who might consider migrating, whether now or at some point in the future, is almost unlimited (although surely the intention to emigrate and the resources to do so vary greatly). "Controlling" or "managing" migration then implies the disciplining of all these people – whether mobile and immobile – and of their future choices. It is a way of "colonizing the future" (Giddens, 1991), and of calculating or "premediating" (de Goede, 2008) the complex set of risks and uncertainties that characterize present and future consequences of human mobility.

This combination of disciplining through (remote) control and self-disciplining through certain norms and behaviours produce highly ambivalent situations that are difficult to assess in political or ethical terms. By attempting to steer and shape the agency of those who are (or may become) mobile, initiatives to discipline human mobility operate "through" people/migrants themselves, "with their help" or even "in their interest". As Martin Geiger shows in Chapter 2, this echoes Michel Foucault's notion of "governmentality" and points to the possible emergence of a new "governmentality of transnational mobility". This also blurs both the boundaries between coercion and protection, and between states' and peoples'/migrants' interests.

The state and beyond

A distinct feature of the disciplining of mobility is its international scope. Within a nation-state, governments can rely on different institutions (schools, welfare mechanisms) to promote specific patterns of behaviour and discipline their population. This is not the case at the global level, as one state alone (or even a number of powerful developed states) cannot establish an ideal, disciplined, well-managed mobility world without the "cooperation" of a large number of other states across the world. It is in this spirit that one can understand the recent proliferation of agreements between states on migration-related topics. This points to the fact that, while states are the main actors that attempt to discipline migrants, they can also themselves be disciplined (or internationally "socialized", see Merlingen, 2003; Schimmelpfennnig, 2000). This is particularly visible in the case of "weak" sending/transit states which, through such agreements, are greatly influenced by more powerful states and may be led to enter into patterns of cooperation with receiving regions that are biased in favour of the latter's concerns (see, for example, Pina-Delgado, 2013).

Disciplining thus takes place not only within states but also in-between them, in a grey zone that is populated not only by governments but also by other non-state actors involved in what has been called the (global) "governance" of international migration. International organizations (IOs) play a key role here: Rutvica Andrijasevic and William Walters document how, for example, the International Organization for Migration (IOM) shapes migration policy in many sending regions in a way that fits into Western states' interests while seemingly also serving the needs of less-developed countries (Andrijasevic and Walters, 2010; see also Ashutosh and Mountz, 2011). To a lesser extent, nongovernmental organizations (NGOs) also play a role. As Stefan Rother documents in the case of the discussions at the Global Forum on Migration and Development (GFMD), so-called civil society actors and "stakeholders" have struggled to influence the discourses, norms, world views and standards that are produced in this framework (Chapter 3). While it would be naïve to conclude that the involvement of IOs or NGOs challenge states' sovereignty, it remains that such interstate cooperation enables a wide range of non-state actors to step into the policy-making process and contribute to the disciplining of transnational mobility.

Moreover, even powerful and developed countries may be the objects of disciplining. This is particularly the case when they cooperate with private firms in the field of security technology, which have their own

strategies and interests. In Chapter 5, Harrison Smith demonstrates how the private sector contributes to consolidating the notion that new information and surveillance technologies offer greater certainty in managing borders, and in turn in managing people and things across territories. Through the reliance on the technology produced by these private companies, states adopt world views that are aligned with market dynamics and the interests of such non-state private actors.

Maybritt Jill Alpes (Chapter 8) further establishes how states' decision-making capacities operate in an environment characterized by the presence and implication of a number of rather informal non-state actors. Her ethnographic study on the treatment of visa applicants in Western consulates reveals that government authorities interact dubiously with such actors as brokers, who often expedite the processing of applications. This shows how states' procedures to regulate the mobility of people are the object of constant negotiations that, to some extent, limit their autonomy.

Disciplining reality: categories and discourses

In a constructivist perspective, all states may also, to a certain extent, be disciplined by sets of representations, ideologies and discourses that shape their perception of problems and the solutions they bring to solve them. This illustrates how disciplining is about a broad set of cognitive assumptions and mental categories through which the world is apprehended, thought of, conceived and ordered. Disciplining is not solely a matter of transforming reality into what one wishes it to be; it is – in the first place – a matter of making sense of reality and of assessing both what it is and what it should be. Disciplining is therefore a prerequisite for control (as it defines the criteria upon which control is exercised) as well as a distinct activity that should not be confused with the implementation of rules. This points to the importance of representations, world views, ideologies or discourses and to their fundamental role in making the exercise of power possible.

Categories and discourses make mobility realities knowable, hence the existence of dichotomies (e.g. "migrants vs. refugees", "skilled vs. unskilled migrant workers", or "legal vs. illegal migrants") that attempt to put mobile people in categories, or boxes, to better define the treatment they should receive. New taxonomies are then elaborated to make sense of what is perceived as a growingly complex reality: recent decades have seen the emergence of categories such as "climate migrants", "trafficked migrants", "forced migrants", "internally displaced people",

"transit migrants", "stranded migrants", etc. The more categories that exist, however, the more the "in-between-ness" of people's situations becomes obvious and problematic; this calls for yet other notions (like "mixed flow" to overcome the migrant-refugee distinction) and to an almost endless process of categorization and labelling (Zetter, 1991).

As Bas Schotel observes in his contribution on the European Union (EU), the existence of categories implies a top-down and collective treatment of migrants by authorities (Chapter 4). This is most clearly illustrated by the notion of migration "flows", which apprehends migrants as a collective mass of indistinct people. This process obviously neglects the individual characteristics and specificity of people, while also transforming them into objects of policy interventions rather than individual subjects of law. This ultimately makes their protection problematic: Even when the creation of certain categories is meant to protect people (like in the case of "victims" of trafficking), the top-down, collective and one-sided nature of the labelling process jeopardizes the recognition of people as legal subjects with rights and duties.

In some cases, language and categories are performative. For example, the difference between a "forced" and a "voluntary" return lies mostly in the word that is used. As Dünnwald argues (Chapter 12), there is a wide spectrum of "voluntariness", ranging from "genuine" forms to partial, limited (or even imposed) patterns of voluntariness. A "voluntary" return is then a return that is labelled "voluntary" by those actors that have the labelling power and legitimacy (like states or IOs). In other cases, words/categories seem relatively straightforward, but actually fit within a distinct set of (geo-)political assumptions. This is the case of "transit migration", for example, which refers to the apparently unquestionable movement of migrants on their way to destination countries, but reveals a set of biases through which the North (and especially Europe) is perceived as under threat by irregular migration (see, for instance, Collyer et al., 2012).

By assembling words and categories in a specific manner, discourses thus shape and order reality. They play a crucial role as they may lead to "shared views" that support specific patterns of interventions on reality. They convey world views that shape the construction of both "problems" and "solutions", thus providing the cognitive framework that structures and legitimates political strategies. It is through this perspective that one can understand the production of a substantial amount of reports on migration by international and regional actors over the last two decades, as well as by states and nongovernmental entities (NGOs,

think tanks, policy-oriented academics and researchers and, to a lesser extent, the private sector).[4]

While they differ in terms of content and policy orientations, these narratives share a common objective: that of framing and making sense of puzzling and confusing realities. They aim at understanding what mobility and migration are all about (the causalities at stake, the why and how of their dynamics) and outlining what they should and should not be. They amount to "anti-policy" (Walters, 2008) when it comes to fighting what should not be, what is to be considered the negative or "evil" side of mobility, like human trafficking (Chapter 7, Hastie) or irregular migration (Chapter 4, Schotel). Yet they also aspire to outline what should be, hence the emphasis on consensual objectives toward which all stakeholders should progress (such as good governance, development, human rights, etc.). Rother speaks of "disciplining through normalization" to describe the way such discourses continuously reiterate the same points in order to reach a situation in which they end up being taken for granted (Chapter 3).

Importantly, discourses have the power to make some issues invisible, or at least to push them outside the frameworks through which reality is apprehended. Tanya Basok, Nicola Piper and Victoria Simmons thus speak of "disciplining by neglect", as some issues are "forgotten" and disappear from the policy radar screens (Chapter 9). They show how the situation of Bolivian migrant women in Argentina is conceptualized in a specific fashion by the state, with the active help of the IOM. The result is the hyper-visibility of human trafficking and irregular migration and the downplaying and invisibility of social and labour rights abuses. This points to the highly political nature of these narratives and to the strategic importance of seemingly straightforward and mundane activities like the commissioning of reports by an IO. This should also motivate researchers to be more cautious when relying on discourses and categories produced by institutional actors (see Chapter 8 by Alpes; Geiger and Pécoud, 2010, 2013).

Control versus discipline

The relationship between discipline and control is complex. On the one hand, in a perfectly disciplined mobility world, "old" forms of mobility and migration control would become obsolete. For example, if all employers were to have access to the foreign workforce they need through "managed" labour migration programs, there would be no demand for undeclared migrant labour. Similarly, if

information/awareness-raising campaigns on the risks of human trafficking and irregular migration were totally successful, there would be no more attempts to unlawfully cross borders – hence, no risks of unauthorized mobility and no need to control it anymore. In a world in which the synergy between mobility, migration and development would be entirely operational, "push" factors would diminish and ultimately reduce out-migration and the need to stop undesirable migrants. This is why "migration management" or "governance" narratives display this post-control spirit, as if new political strategies could make control unnecessary.

On the other hand, disciplining techniques remain fundamentally associated with the broad objective of migration control, as their aim is to check the mobility of people. Realists will also argue that the "tough" practices of border control have not disappeared; they could add that, undeniably, the budget allocated to border surveillance remains superior to the one dedicated to, say, inter-state cooperation or "migration and development" projects. Henk Overbeek thus notes that, given the demographic and economic disparities of today's world, any program of "managed" migration would require the persistence of strong methods of control, to make sure those left out do not attempt to move in an "unmanaged" fashion (Overbeek, 2002).

From this perspective, control and discipline go hand in hand. It is noteworthy, for instance, that "new" concerns over development and migration management have resulted in an emphasis on old-standing policy tools, like temporary labour migration schemes (see Chapter 10, Madeleine Eriksson and Aina Tollefsen); these have certainly long represented the preferred scenario for employers in need of a flexible foreign workforce and for governments concerned with control (Castles, 2006). It makes, therefore, little sense to oppose "old" ("simple") patterns of border control to "new" ("subtle") strategies of disciplining, or to argue that there is no longer direct control but only elaborate, indirect techniques of disciplining at work. The exercise of power always implies various kinds of techniques.

This is tellingly illustrated by the EU border agency "Frontex". This agency is mostly known for its military interventions off the coasts of Europe, around Malta, the Canary Islands and the Greece-Turkey maritime border – thus exemplifying the extreme measures taken by "Fortress Europe" and worldwide trends toward the securitization of borders. Yet, this is only part of the picture, as this agency also develops so-called risk analysis strategies which aim at conceptualizing the kind of migration problems that could threaten Europe (like scenarios of uncontrollable

waves of migrants) and at elaborating the tools and strategies to prevent them (Kasparek, 2010; Kasparek and Wagner, 2012). This exercise of "premediation" is very different from ship patrols at the geographical borderlines; yet, they actually complement each other. The development of visible and traditional forms of coercion relies on the disciplining of (current and future) realities, the construction of threats and the elaboration of the geopolitical world views that underlie them.

The issue would then rest on the respective weight of the various techniques employed, as well as on the distinct light that is shed on them. As far as migration is concerned, one can reasonably argue that "traditional" patterns of control have become so visible that they have perhaps eclipsed other forms of power. The securitization of borders, whether through their militarization or the reliance on technology to achieve so-called smart borders, has attracted much attention, to the extent that one may have forgotten that power is always more multidimensional and that there is a far more diverse assemblage of control and disciplinary techniques at play today. Even if they are overshadowed by more visible developments, other patterns of the exercise of power remain central in the way migration is apprehended – or develop hand in hand with more brutal or coercive patterns.

The contributions to this book therefore call for broadening and transforming the way in which the control of migration is thought about and researched. Human mobility has come to represent a major concern for states and to pervade a wide range of social and political issues. This spillover of control objectives into areas of public life hitherto unconcerned by people on the move fundamentally transforms the exercise of power. Given the ever-increasing number of tactics and techniques to discipline transnational mobility, it is not possible (and not the aim of this book) to provide a complete overview of all the ways in which disciplining efforts manifest themselves. Nonetheless, contributions to this volume nonetheless illustrate recent developments in the politics of mobility and document a number of mechanisms and tools that aim, in a more or less visible, subtle and direct way, to steer and "manage" the mobility of people. This is all the more relevant given that, unlike walls or cutting-edge technologies like biometrics, the dynamics investigated in this book are often much less visible and scrutinized. Intergovernmental discussions, marriage migration regulation and the production of institutional reports (to mention only a few examples) often fall under the "radar" of public scrutiny, media attention or even scholarly interest. Yet, they reveal specific sets of political rationalities as well as complex situations that bring together a wide range of both state and non-state

actors, each with their own world views and interests. This raises far-reaching questions about sovereignty, human agency, the exercise of power, migrants' rights, as well as the effects of these disciplinary techniques on individuals, societies and the state system.

Notes

1. See, for example, Cornelius et al. (2004), Freeman (1994) and Guiraudon and Joppke (2001).
2. The editors and authors of this volume would like to thank the editorial team of the International Political Economy Series of Palgrave Macmillan – Timothy Shaw, Christina Brian and Amanda McGrath – for the helpful support during the different stages of the publication process. We also cordially thank Dessy Sukendar and Simona Zarbalieva, two research assistants from Carleton University (Ottawa), that helped in preparing the manuscript for publication. This book has benefited from the support of the French National Research Agency (project 'Global Mobility and Migration Governance').
3. The notion of 'disciplining' can of course be associated with the work of Michel Foucault regarding different forms and effects of power; see, for example, Chapter 2 by Martin Geiger for a more detailed discussion.
4. One can mention in this respect reports by international organizations and other international bodies (IOM, World Bank, UNDP, GCIM, etc.) as well as by NGOs and private companies; see Levatino and Pécoud (2012) for an analysis of their content, as well as Chapter 2 by Stefan Rother and Chapter 9 by Tanya Basok, Nicola Piper and Victoria Simmons.

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2

The Transformation of Migration Politics

From Migration Control to Disciplining Mobility

Martin Geiger

The last decades have witnessed a profound transformation in the ways that states perceive and politically confront the cross-border movement of people. States keep insisting on their authority and independence in determining who is allowed to stay, who can work and who becomes a permanent resident or a new citizen. However, confronted with increased mobility and migration trends worldwide, and with what they perceive as a challenge or a threat to their sovereignty, states have started to engage more actively in multilateral consultations with the stated purpose of finding common answers and solutions. In this context, international organizations (IOs) such as the International Organization for Migration (IOM) and the UN High Commissioner for Refugees (UNHCR) have been able to strengthen their roles and capabilities. At the same time there has been a visible growth in the number of new policy actors in the area of mobility politics, examples include specialized regional agencies (e.g. the European Union border agency Frontex); international and local nongovernmental organizations (I/NGOs); migrant and diaspora groups; individual experts; business corporations; and private security providers – actors of different origins and orientations that assist states while also following their own agendas and vested interests within the framework of a newly emerging political economy of mobility management (or "migration industry": Betts, 2013; Hernández-León, 2013). New ways of understanding human mobility and of addressing it have consequently emerged and mobility politics has become, for many of these actors, an "entrepreneurial field" and a "testing ground" for new ways of "treating" and "managing" people on the move.

This chapter, in its first part, discusses the traditional rationalities and mechanisms of a national "government" of populations, flows of people and the presence of "outsiders" in the territory of nation-states. The second part provides a detailed description of the general debates concerning the perceived reduced capacities of nation-states to control, the rise of the governance debate and the birth of new ideas and principles concerning mobility, migration and the political regulation of the cross-border flows of people. On this basis, the chapter, in its third part, introduces the concept of "disciplining" as a new, indirect, subtle and often an almost invisible, form of governmentality. This new type of governmentality is constituted by various kinds of disciplinary tools: different "technologies" or "tactics" that have been invented to make sense of, order and, in the end, manipulate and discipline people's mobilities across borders.

The national order of things and the "government" of human mobility

The nation-state stands at the beginning of this short "archaeological inquiry" into the ways in which states have been addressing transnational human mobility. Historically, the Westphalian Peace Treaty (1648) and the French Revolution (1789) constitute hallmarks of a process through which, atleast in Europe, states gradually transformed from feudal/pre-modern states into bureaucratic, representational and, in some cases, welfare-oriented states (Bommes, 1999; Foucault, 1994; Giddens, 1987; Mann, 1984; Oltmer, 2003). According to John Torpey, the right to authorize and regulate the cross-border movements of people is 'intrinsic to the very constitution of states since the rise of absolutism in early modern Europe' and states thus acquired the 'monopoly of the legitimate means of movements' (Torpey, 2000, pp. 2, 5 and 6; see also Torpey, 1998). Nation-states came to be "imagined" as ethnically and culturally homogeneous political entities ("communities": Anderson, 1983), and as both territorial and social "containers". It logically followed that mechanisms and patterns of inclusion and exclusion, hence also of mobility and immobility, were soon to constitute the "quintessence" of nation-states (Balibar, 2005, p. 50).

The worldwide diffusion of the nation-state idea led to a new international state system based on the acceptance of territorial authority, integrity, sovereignty and non-interference. States had to develop administrative capacities to differentiate between citizens/subjects and outsiders (Hollifield, 2004, p. 888). While, to some extent, people used to be able to move rather freely across feudal state boundaries, they

gradually lost this freedom through a complex process characterized by the monopolization by states of the right to control human mobility, bureaucratic institutionalization and the "embracing of citizens and the penetration of the citizenry" (Torpey, 2000, pp. 1–16) coupled with the exclusion of non-citizens. State populations came to be seen as groupings of citizens, who were rendered dependent upon states and progressively placed under a strict regime of mobility control that required states' authorization when (and sometimes even before) crossing international borders. Retributions (up to capital punishment) became associated with unauthorized border crossing. As an inevitable consequence, the social identity of individuals was effectively bound to one (and only one) nation-state. This national identity soon proved almost inescapable since both personal features and biological identities became codified in verifiable "identity documents" (passports and identity cards). Travelling to other countries also came to require additional travel documents, such as visas.

While human mobility was always a close companion and driving force of human history and development, the authority acquired by states over the rights to enter (and, in some cases, even leave or return to) a country, as well as the rights to remain and work in a country, led to an increasing problematization both of people living outside their country ("outsiders" or non-citizens) as well as of the movements of people between nation-states (Behr, 2004, pp. 52–59; Weiner, 1996, p. 442). International mobility became a matter of concern and an issue for political planning and strategic intervention, whereas internal movements within states tended to be much less problematized (with exceptions like the Soviet Union/Russian Federation: Matthews, 1993; see also Light, 2010). In a world governed as an assemblage of distinct nation-states, international migration came to be regarded as a "deviant" process, as a social or political "risk" and as a dangerous challenge to territorially, ethnically and culturally "homogeneous" nation-states (Agnew, 1994; Bigo, 2002, p. 67; Zolberg, 1991, p. 301). International migrants were thus understood as potential "interferers", as "strangers" who "come today" but eventually quit being "wanderers", who decide "to stay on" and become "fixed" in a new country and society, amongst a new circle of people (see Georg Simmel's classical concept of "The Stranger": Simmel, 1971).

Since the seventeenth century, this tendency to problematize international migration and migrants showed, however, important fluctuations; the directions and volumes of international migration flows varied according to times and places. Accordingly, there was also

variation in the ways in which control was enforced and in the degree of political action that was put in place to address these flows. Restrictive interventionism was, for example, relatively rare during the period of European mercantilism and industrialization. At the time, foreign workers were mostly welcomed, accepted and sought after (Oltmer, 2003). As described at the end of the nineteenth century by Ern(e)st G. Ravenstein, himself a German immigrant to Great Britain, interregional and international migration flows constituted a main factor and driving force for economic and social development not only in England but all over Europe (Ravenstein, 1885). This was echoed in the work of other thinkers of the time, including Karl Marx and his contentions regarding the dependence of capitalism on the availability and flexibility of deliberately coercible "industrial reserve armies" (Marx, 1996).

Towards the end of the nineteenth century, access and employment authorizations for cross-border migrant workers underwent restrictions, under the influence of stronger regulatory tendencies. Prussia, for example, established a mandatory seasonal return requirement for most of its foreign workers accompanied by forced returns/deportation for those not following the rules; at the same time, the Prussian State also imposed bans on family reunification and marriages between foreign workers and foreign workers and native citizens (Oltmer, 2003). Moreover, it is also at the end of the nineteenth century that state bureaucracies and control practices became increasingly diversified, elaborated and rigorous in the "embracing" (Torpey, 2000, pp. 11–13) of both native citizens (by way of issuing passports and other identity documents) and foreign workers/immigrants (now required to possess passports and work permits). It is at this period that the "art of governing" international cross-border movements emerged as a coordinated form of state-driven intervention, linked with the expectation of a preferably seamless control and authority over access, stay and employment of people of foreign origin. Since then, nation-states have been intervening without interruption intervening in international mobility and employing more and more sophisticated tactics and means with the aim to control and order access, permanence of stay, employment and return of non-citizens (Düvell, 2006, pp. 113–116; Oltmer, 2003; Torpey, 1998). The various examples of an evolving "tool box" of interventionist instruments include identification documents, the mandatory (self-)registration of foreign workers, seasonal labour market agreements, return requirements or the prohibition of marriages (between foreign workers and/or foreign workers and native citizens) and family reunifications.

These instruments can be discussed, rightly in Foucauldian terms, as constituting a new "art of government" that started to target the access, stay and employment of foreign populations and to place non-citizens/foreign workers under state order, surveillance and control – "apparatuses of security" (Foucault, 1994, p. 219). It can further be argued that this "art of government", having evolved until the early decades of the twentieth century, was not exclusively a "government over foreign populations", but rather a set of more general governing techniques. Their ultimate purpose was not solely the government of foreign populations as such but, quite on the contrary, the "welfare" of the native [sic!] population,

> the improvement of its condition, the increase of its wealth, longevity, health, and so on' – a 'right disposition of things' on the basis of a 'wise government [...] for the common welfare of all. (Foucault, 1994, pp. 207–217)

The government of international migration and the treatment of foreign populations working and living within nation-states must therefore be understood as a form of governmentality that aims first and foremost for the preservation of the status and welfare of citizens. It is in this respect that one can argue that the government over migration across national boundaries and the "policing" and steering of foreign populations contribute, as Torpey notes, 'to constituting the very "stateness of states"' (Torpey, 2000, p. 6). The new "art of government", that according to Michel Foucault (1994, pp. 207–219) has unfolded over the last centuries and turned modern nation-states into "father-like beings", has made their populations (citizenry) their main target and hence their well-being and future development a core concern. Meeting this concern inevitably required the effective identification and constant control and surveillance of foreigners and regulation of those people's access, stay, employment and, eventually, return.

Even in the guise of the modern welfare state, states remained nation-states based on the inclusion of citizens, as "the established" in the words of Norbert Elias and John L. Scotson (Elias and Scotson, 1965) – that is, as those members fully able to benefit from the nation-state under the law (through the social or welfare-oriented system that characterize many contemporary modern nation-states) (Bauböck, 1999). This implies the corresponding strict control and exclusion of foreign populations and of migrants as non-citizens, "outsiders", non-members or only partial members ('denizens' or 'margins', see Hammar, 1990), prevented from

fully participating or perhaps even entirely cut off from any benefits. Even today, nation-states share this common feature of taking care of and defending above all the rights, privileges and welfare benefits of their citizenry, and therefore of closing off important rights, privileges and entitlements against (potential) immigrants, their non-naturalized descendants and any other non-citizens (Bauböck, 1995; Bommes and Halfmann, 1998, p. 22; Carens, 1989).

The political interventions that aim at controlling or regulating foreign populations therefore need to be understood as important constitutive components of nation-state government. The various tools employed to shape and steer cross-border migratory flows are essential to the territorial and social closure that supports the exclusionary treatment of non-citizens (Brubacker, 1989a, b; Carens, 1989; Hammar, 1990). The government of migration, the state-organized control and regulation over access, stay, employment and return, therefore, contribute to govern a fundamental process all nation-states are confronted with – a challenge that Jürgen Mackert subsumes under the term of a "struggle over membership" (Mackert, 1999).

In light of the vital role played by the regulation of international human mobility in the construction of nation-states, it is somewhat paradoxical that it started attracting the interest of social scientists only recently, in the early 1990s. The 'national order of things' (Malkki, 1995) has for long been largely taken for granted. It was hardly ever questioned and, in fact, rarely represented a methodological problem to be overcome. Indeed, until today, it remains difficult (and, in some cases, even impossible) to imagine societal processes such as migration without the fixed "template" of the nation-state, that is, to perceive these processes as transcending and actively challenging the naturalized "national ordering of things" and the neat segmentation of world society and processes into nation-state "containers". 'Methodological nationalism' (Wimmer and Glick-Schiller, 2002) and the so-called 'territorial trap' (Agnew, 1994) still shape the perception and discussion of social, economic and political processes as if they were strictly contained within a given nation-state.

The advent of migration governance and migration management

Governance as a supplementary mode in the government of population

The notion that international mobility is a threat to the very concept of the nation-state is closely linked to the idea that each nation-state

should effectively control and regulate movements and the presence of foreigners on its territory. Indeed, if all nation-states were to fail to do so, then the whole world order based on state sovereignty would be at risk. Moreover, the above-mentioned naturalized perspective, according to which social, political and economic processes all originate and occur within nation-states' boundaries, supports the assumption that it is also the nation-state that is in charge of, for example, controlling borders, issuing permits, deporting foreigners, etc. While historically "the state" has almost never been the sole actor having to deal with controlling and regulating (including arranging) cross-border mobility and migration (since private non-state entities, like recruiting agencies, chambers of trade or other intermediaries including emigration societies always had a role to play, and there was always something existing like a "migration industry" that tried to shape and arrange mobility), the prevalent viewpoint has long been that it is "the state" that regulates migration and that only nation-states can effectively do so. A "government" presiding over mobility and migration that would take place "beyond" the naturalized unit of individual nation-states has consequently long been almost unthinkable, both politically and intellectually.

Torpey (2000, p. 5) remarks that although nation-states have acquired monopolized authority over the legitimate means of migration, historically this has hardly ever meant that they were able to fully exercise that authority. This observation is a starting point for explaining another historical transition that already began to take shape in the context of the First and Second World War, as a result of decolonization (starting in the late 1940s), sharply increased refugee flows in the 1980s and the breakup of the Communist bloc (in the late 1980s until the mid 1990s).

In 1919, following the Peace Treaty of Versailles, the International Labour Organization (ILO) was created as an organization to promote social justice and workers' rights, including those of migrants and their families. Strong nationalist and protectionist tendencies in the context of an emerging world economic crisis, however, prevented an international consensus on the rights and the protection of migrant workers. The post-World War II context then saw the creation of the United Nations High Commissioner for Refugees (UNHCR) (Betts et al., 2012; Loescher and Milner, 2012), the adoption of the Geneva Refugee Convention and, outside the UN-system, also the founding of the first predecessor of what later became the International Organization for Migration (IOM) (Georgi, 2012; Perruchoud, 1989). In 1967, The New York Protocol added an amendment to the previous Geneva Convention that extended the geographical scope from Europe to all of the world's regions. Instead of

a single global agency, in the following decades the ILO, UNHCR, IOM and other UN and non-UN organizations emerged as major players, as leading international organizations in the area of migration, refugee and mobility politics. Though they often lacked the necessary funding for certain operations, they nonetheless witnessed an immense growth in regard to their budget, staff, in their number of operations and in their portfolio of activities rendering support and safeguarding the rights and interests of asylum seekers, refugees and migrants worldwide (Düvell, 2002; Newland, 2005; Pécoud, 2013).

Although these developments dramatically challenged the concept of a national "government" over foreign people and the flows of non-citizens, the "governance" of migration/refugees by these organizations and by instruments such as the Geneva Refugee Convention and its New York Protocol or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted only lately, in 1990; see Cholewinski et al., 2009) according to Douglas Massey and James F. Hollifield was barely ever an object of academic inquiry (Hollifield, 2000, pp. 138–149: Massey, 1999, p. 303). This rapidly changed in the early 1990s, following scholarly observations concerning a 'global refugee/migration crisis' (Loescher, 1993; Weiner, 1995) and the dawn of an 'age of migration' (Castles and Miller, 1993), and at the heights of a general debate on the immensely increased globalization of communication, transport, capital and exchange of goods. For some economists and scholars working on migration, this debate and the intertwined discussion on whether or not the nation-state is 'losing control' (Sassen, 1996) over these new global flows – and the increased mobility and migration flows of people following the break-up of the Iron Curtain – were the reasons why the traditional nation-state model of migration control was obsolete. Migration and the cross-border mobility of people should become regulated in a more (neo-)liberal, market-regulated fashion, in a framework of a new "world migration regime" (see, e.g., Bergsten, 1994; Bhagwati, 2003; Ghosh, 2000a, b).

The coming together of: (a) increased levels of migration, refugees and mobility flows in the post-Cold War context; (b) the acknowledgement of globalization as a profound challenge to nation-states and long-standing assumptions about the power and capabilities of nation-states to "govern" effectively; (c) the realization that democratic states possess less and less legal sovereignty to limit the acquired and, by now to some extent, already "globalized" rights – or "post-national membership" (Soysal, 1994) – of asylum seekers, refugees and migrants (including

even irregular migrants); (d) the growing awareness about transnationalism and the emergence of transnational social spaces (Faist, 2000; Pries, 2001; Wimmer and Glick-Schiller, 2002) together with; (e) the more general debate regarding governance (or "good" governance) as an alternative and/or additional mode to (unilateral) nation-state "government" constituted a set of processes that all fuelled the "internationalization" of migration policy – an increasing trend (and necessity) "pushing" migration and mobility politics "out" and "beyond" the naturalized national "containers" of policy-making (Betts, 2011; Grugel and Piper, 2007; Guiraudon, 2000; Koslowski, 2011; Newland, 2005). Nation-states, however, remained reluctant to follow the example of migrant transnationalism and to embark on a truly "transnational" regulation of cross-border mobility.

In 1995, the Commission on Global Governance in its influential final report explicitly mentioned migration as an important field in which there is a great 'need to develop more comprehensive institutionalized co-operation regarding migration', ideally including both 'formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interest' (The Commission on Global Governance, 1995, pp. 2, 206 and 207).

By recommending this, however, the Commission, while recognizing the important role of IOM, UNHCR and other agencies, failed to fully acknowledge the role of existing regional consultative processes (Hansen, 2010; Köhler, 2011; Thouez and Channac, 2005). These dialogues between states had already, mostly outside the UN system, emerged and started to influence migration policy on a regional and cross-regional/global level some time as early as the 1970s; they included the informal and highly secretive "Trevi" Group, created in 1975 by officials from different European Community (EC) member states, and the Intergovernmental Consultations on Migration, Asylum and Refugees (convening states from Europe, North America and Australia; IGC, 1985).

In the context of the recommendations by the Commission on Global Governance and last but not least, under the influence of a new consensus on a "real need" to find alternative ways to influence movements in the aftermath of the collapse of communist regimes, the result of all these developments was a process in which destination states became (even) more interested in a greater multilateral, interwoven, intergovernmental collaboration and coordination (e.g. with important countries of origin) (Ghosh, 2012). The previous, more unilateral

"government" of population flows became supplemented by new modes of governance, including more and more non-hierarchical, informal and non-binding "regional consultative processes" (e.g. the "Budapest Process" targeting Eastern and South-eastern Europe, launched in 1991; see, e.g. Georgi, 2004, pp. 20–40) or global policy initiatives like the Berne Initiative (2001; IOM and FOM, 2005) or the Global Commission on International Migration (GCIM; launched in 2003: see, e.g. GCIM, 2005) that proliferated rapidly from the mid-1980s on.

Interestingly however, though new multilateral policy mechanisms and (in-)formal intergovernmental dialogues experienced an immense growth in numbers and scope and 'suddenly, migration was everywhere' (Pécoud, 2013), the term "governance" and its use in the realm of migration politics from its inception received reluctant support among state stakeholders. Migration politics and the crucial issue of who would in the last instance "govern" and decide on flows and foreigners' territorial stay and employment was a last "bastion" of state sovereignty and remained to be seen as a highly sovereignty-focused and prerogative area of unilateral nation-state ruling and governing.

Until today, for most state policy-makers, it remained difficult and even impossible to think about new forms of migration "policy" beyond the nation-state, to take the discussion about transnational spaces seriously, or to admit that their state lacks the capacity to govern migration flows and therefore needs to share sovereignty to some extent with other states, even international bodies, without even mentioning the role of nongovernmental actors (see also Ghosh, 2012). Policy dialogues were mostly successful in that particular region that largely aimed for a common objective beyond migration politics and saw migration and border politics as something inevitable on the road ahead – it was mainly in Europe, within the circle of European Union (EU) member states, their future accession candidates and other neighbouring countries to the East, South and North that consultative processes (e.g. the Budapest Process) led to tangible effects. Examples include the elaboration of the Schengen Agreement (within the "Trevi" Group) and the reluctant harmonization of Central, Eastern and South-eastern candidate states with Schengen rules and the EU migration "acquis" (e.g. through the Budapest Process).

But even in Europe, these developments in the 1990s and early 2000s did not really challenge the nation-state's traditionally unique and central role in migration "government". As in other world regions, it was rather a transformation and diversification of migration politics that occurred under the umbrella of "migration governance" than a

real shift or transition towards a governance beyond the nation-state that would have turned the nation-states more or less "obsolete". This diversification of mobility- and migration-related politics became even more pronounced in the 2000s when yet another concept of migration governance gained prominence both in Europe and in other regions: the so-called "management of migration".

The emergence of a "post-control spirit" and the new concept of "migration management"

It was in the 1990s when states around the globe finally started to realize that the original idea of having 100 per cent control over human cross-border mobility, refugee movements and migration flows and the aim of some countries to completely restrict and discourage immigration are posing a tremendous paradox in a globalized and assumingly more and more "borderless world" (Ohmae, 1990, 1995). Globalization and economic neo-liberalism spoke in favour of a new approach to the cross-border flows of people based on the postulate that, 'in order to maintain a competitive advantage, governments [would need to open] their economies and societies for trade, investment, [but also inevitably] migration' (Hollifield, 2004, p. 885). What contributed to the new quest for alternative "governance" strategies was therefore not only the realization that states de facto were no longer able to fully control and prevent flows (or have never even been able to do so) but also the concession to globalization and the hard arguments of economics that 100 per cent control and preventative strategies might, in fact, be counterproductive to growth, trade, investment and most importantly, the future safeguard of employment, wealth and social benefits to citizens on the basis of a working, globally competitive and essentially (in all directions and towards all flows) a more or less completely "open" economy (Sassen, 1996, p. 59). It was increasingly more about how to lobby for and to realize a "post-control spirit" while remaining aware about citizens' fears and globally heightened security concerns, and therefore keeping (at least some) "control" and demonstrating this "staying in control" in regard to the national and outside/global public.

At least to some extent, many stakeholders remained reluctant to use the term "governance" in the realm of mobility politics themselves, insisting instead on the nation-state's principle autonomy and sovereignty in this policy area and simply refusing to acknowledge a supplementary "government-type" role to multilateral cooperation. For other states, international organizations, private companies or nongovernmental organizations, the emergence of the term "management of migration"

instead was considered a welcome and strategically-wise development (Ghosh, 2012). It simply "escaped" precise definition, was thus not challenging the traditional statehood concept and did not call into question the national sovereignty and "government" over foreign cross-border movers and migrants, while still allowing a certain flexibility and strategically "open" interpretation.

The debate on (good) governance on the global level, promoted by the Commission on Global Governance and other institutions, in fact, directly triggered the advent of this new approach to international mobility and migration. Few scholars today, however, are aware of the immediate and crucial linkage between the work of the Commission on Global Governance, the birth of the "migration management" concept and its resulting design, elaboration and practical testing and implementation: In 1993, it was the Commission on Global Governance itself that commissioned recommendations for an essentially 'better, comprehensive, coherent, and internationally harmonized regime' from Bimal Ghosh, at that time a senior expert of the United Nations (UN) (Ghosh, 2000a, p. 1; see also Ghosh, 1993, 2012). Following his recommendations for a 'New International Regime for Orderly Movements of People' (NIROMP), the International Organization for Migration (IOM) – at this time still a much smaller organization than nowadays – became the main responsible agency for further designing and later also testing and implementing new approaches to mobility under the label of "migration management" – a term that had at an early point, in the context of the NIROMP proposals, already come up. Towards the end of the 1990s, migration management swiftly became "the" catchword among international organizations within and outside the UN system and soon, with the help of the IOM and its transition as the global leader in providing practical solutions, also started to proliferate into national and regional (e.g. European Union) debates on migration and mobility (Geiger and Pécoud, 2012; Kalm, 2012a, b).

Despite the flexibility for which the management rhetoric allows, migration management entailed a powerful rationality from its inception as a concept. Speaking about management instead of actual policy-making and policy-implementation is based on the idea that cross-border movements should from now on be discussed in a less "politicized" way; the debate on these issues should to some extent, or even completely, move away from public scrutiny, normal mechanisms of making and implementing policy in liberal-democratic systems; and that all this would allow for the finding of more "pragmatic" solutions (Geiger and Pécoud, 2012, p. 11). Already in his proposals for a NIROMP, Ghosh

had actively lobbied for a more 'balanced approach': while this appeal was in the first instance meant to counter the over-problematization and "scandalization" of migration in the 1990s, it inevitably also meant that necessary policy debates were increasingly moved from public and parliamentarian debates towards exclusionary and highly secretive panels of mid- and high-ranking bureaucrats and "experts" with roots in international organizations and security-concerned think tanks rather than in academia. Today the great uneasiness about certain new actors such as, in the case of Europe, Frontex (the EU border agency), or "inventions" like "safe country of origin" lists, as one can argue, can be directly traced back to this move to "de-politicize", "hide" and "technocraticize" mobility-related policies and politics.

Ghosh and other proponents of migration management hoped that on the basis of a decreased problematization and a more pragmatic approach, nation-states or important groups, that is, economic corporations, would be more likely to successfully lobby for greater opportunities for persons to cross borders and to migrate "legally" and in an "orderly", "less disruptive" and less "dangerous" manner. The principle of a "regulated openness" that was another core feature of Ghosh's NIROMP proposal and the idea of a new management of flows are hence directly connected with the aim to channel, order and "cut" flows of people into certain categories: while preventing and countering "irregular" flows, all "regular" ("legal") and other movements such as refugee flows eventually should be allowed and facilitated. As a result, the whole system of migration management according to its proponents should promote a triple win; the principle idea is that a "balanced", more "open" attitude towards cross-border mobility of people would prove more beneficial for sending and receiving states as well as migrants than within the context of a closed, control-obsessive and essentially anti-migration/mobility world.

Disciplining the transnational mobility of people

Discourses, actors, practices

In the wake of recent debates on the effects of globalization, of new global or regional policy regimes (e.g. NIROMP, the EU Migration Regime), of how to achieve good governance and of the fear around uncontrolled migration and mobility flows (especially in the aftermath of the decay of Communist regimes in Eastern Europe), the new concept of migration management triggered some lasting changes and, as a whole, provoked a profound transformation of global, regional and national mobility politics.

This concept was quite successful not only in redirecting and shaping the discourses on migration and mobility but also in changing the qualitative nature of the meaning and content of the expression "politics" in the terms mobility or migration politics; in emancipating and supporting certain actors in their activities; in motivating and giving birth to new practices to practically "manage" flows and populations; as well as in "explaining" and justifying these practices and their outcomes. Migration management created and reinforced new discourses regarding (a) the necessity (and advantage) of fully realizing the benefits of mobility and migration (e.g. by imagining migration/mobility politics and development politics as two sides of the same coin), (b) the need for a consensus on and the realization of an effective obligation to save and protect the rights, liberties, health and life of people moving across borders and living and working in other countries (anti-trafficking initiatives, campaigns against the exploitation of migrant workers, unaccompanied minors, etc.), and (c) a new, more open, liberal and humanitarian attitude to mobility and migration.

While all this could have meant a radical political shift, the concept of migration management was, however, also performative in reinstating, reconfirming and reauthorizing the need of keeping border and mobility controls "robust"; note the idea of a "regulated", not unlimited, "openness" and the emphasis on prevention and the need to counter all forms of unauthorized access, stay and employment (sometimes under the label of "anti-trafficking" and "anti-smuggling" as an influence of the parallel discourse on saving lives, protecting migrants and people, etc.). The new global discourse on migration management and this novel concept also reiterated the prospect and practicality of imposing certain time limits to mobility, migration and settlement ("temporary migration", as a modern rebirth of "guest worker" schemes). Hence it contributed to the ongoing "securitization" (and technological upgrading) of borders, while another important effect was the creation of a state of constant exception and "deportability" for people crossing or having crossed borders (De Genova, 2002). The discourse and concept of managing migration were also "productive" in (re-)emphasizing the need for migrants, rejected asylum seekers and victims of trafficking to "voluntarily return" or "resettle" and effectively "reintegrate" in their home country/the country of resettlement and to refrain from executing unwanted "secondary movements" or "asylum-shopping". Migration management became also associated with the assumption that there is a responsibility of (temporary) migrants "to contribute" to the development of their home countries, to remitting wisely and productively

(for the society as a whole, not exclusively for the benefit of their own family), as well as to "successfully return" in an uncomplicated but also "beneficial" manner (Geiger and Steinbrink, 2012; Raghuram, 2009; Rodriguez and Schwenken, 2013).

Underpinning the powerful narrative of migration management are thus new assumptions and beliefs about what mobility and migration actually are, the benefits and utility of these flows, their characteristics, root causes and, lastly, how these processes need and, from a "humanitarian" and human/migrant rights perspective, even ought to be "managed". These assumptions and beliefs are propagated "truths" that are, in a Foucauldian sense, based on and nurtured by power – hence they constitute 'effects of power' while at the same time also shape and exercise power themselves (Foucault, 1977, 1986, 1991, 1994). A comprising factor of the new "truths" promulgated about mobility and migration and the "right" (or "most ethical" and "humane") way of "managing" cross-border flows are a greater awareness and new categorizations of and about the realities of mobility and migration (e.g. who is a "regular"/"legal" and who is a "irregular"/"illegal ", what is a "trafficked victim", how to differentiate "trafficking" from "smuggling", etc.), facilitated by knowledge and created out of the need to reduce complexity and to provide practical guidance. Statistics, fact-finding missions, expert reports (see Boswell, 2008; de Genova, 2004), maps (not only traditional, alternative geographical representations but also highly interactive and "real-time" maps based on sophisticated geographical information system (GIS) applications, e.g. the ICMPD's "i-Map", see Hess, 2012) and last but not least, the extensive practical experience of service providers "on the ground" in countries of origin and transit (e.g. IOM, UNHCR, local NGOs) have become extremely important in this respect (Caillaut, 2012; Geiger, 2010, 2011; Hyndman, 2000; Korneev, forthcoming; Scheel and Ratfisch, forthcoming).

Sets of data, interpretations of data, recommendations of individual experts, so-called best practice reports and "local" or "segment-specific" operative expertise "in the field" since the 1990s started to constitute one of the key pillars of migration management. In fact, all the policy dialogues surrounding migration management would prove difficult if it were not for the sizeable amount of convincing "proof" that migration management "works" or can, at least, deliver positive outcomes. Without the knowledge and some evidence of the effectiveness of at least some of these "truths", it seems simply unlikely that states would "buy" the concept and its message and would finance actors to carry out specific activities as they do.

Sustaining these proclaimed "truths" and sets of (expert) knowledge as pillars and reflections of new ideological beliefs, assumptions and political rationalities are, additionally, fundamental vested interests. Migration management and the new way to approach cross-border mobility politically is essentially about keeping economies and markets open by allowing the access of people, and by permitting the circulation of labour/work force, human capital and ideas. At the same time, however, migration management is all about maintaining control and about staying in charge over these flows. Interestingly, states, intergovernmental agencies and other actors involved in a new political economy of mobility and migration management – or "migration industry" (Gammeltoft-Hansen and Nyberg-Sørensen, 2013) – all endorse the message that one of their main goals is to respect the desire for mobility, to facilitate legitimate travel and migration and to realize the benefits of mobility for those who are the factual agents of mobility – temporary and permanent migrants, and anyone crossing international borders.

One should not, however, forget that migration management and all its new rationalities of why and how to encourage, allow, channel and restrict certain flows of mobility and migration are deeply shaped by the vested interests of actors beyond the realm of national state agencies and border guards. International organizations including the IOM and the UNHCR are in a constant competition over resources and donor access. International and local NGOs, humanitarian organizations, private security providers and businesses, as well all possess vested interests in a "proper" – and for them "beneficial" – management of mobility (Geiger and Pécoud, 2012). The overarching goals for all these actors include (a) to be involved in the design and implementation of new approaches to mobility, (b) to defend and expand their own "mandates" (whether formal or informal) and activities in the field, (c) to generate and secure funding from donors (mostly states) and (d) to demonstrate operational capacities, "usefulness" and "effectiveness" – hence political significance – to all the other actors taking part in this particular field of a new business or political economy of managing mobility and migration.

In a Foucauldian interpretation, it is the new discourse of migration management, the sub-discourses, truths and sets of knowledge that are associated with the practical concept of "managed" mobility and migration that, together with other all-embracing narratives of "good governance" (UN system) or, for example, "new political economy" (businesses), give life to and reinstate these actors. State agencies, IGOs, NGOs and other actors alike only have a chance to remain involved when conforming to the new narratives and "truths" of a "balanced approach" and a "regulated

openness", of the necessity for achieving a "triple win" and thinking about "migration and development" as a holistic whole. Actors such as the IOM or the International Catholic Migration Commission (ICMC) (for instance, ICMC, 2009) necessarily have to develop and promote the discourse further. In fact, most of the "truths" and new rationalities in approaching cross-border mobility are invented and experience a daily reconstruction outside the nation-state's shadow – it is intergovernmental organizations or IOs, NGOs and humanitarian organizations that have become pivotal agents in "doing" (performing) the discourse (Geiger, 2012; in the case of the ILO, see Amaya-Castro, 2012).

The operative practices are the third central component in forming a highly performative triangle of discourses, actors and practices (Geiger and Pécoud, 2012). By carrying out, for example, public information campaigns in well-known ("notoriously reiterated") countries of origin and transit, the public is made aware of the dangers and risks of non-legitimized, uninformed and unsafe travel and migration. At the same time, the IOM and other actors, by implementing these operational activities, reconfirm their own significance as well as the importance and "validity" of the overarching anti-irregular migration discourse. In other words: as discourses "feed" actors, their implementation of migration management and other mobility-related practices "feeds" again into the discourse while at the same time reinstating their very own agency as being important and relevant in this field of activity. This highly performative triangle of discourses, actors and practices is hence self-perpetuating due to the existence of these positive and interlinked feedback cycles.

Disciplining as a new governmentality of mobility

Migration management and, in general, innovative approaches to cross-border movements of people entail a package of specific practices or "tools" that include disciplinary tactics and technologies. These different disciplinary tools ranging from information campaigns and "pre-departure" instruments (such as language training and tests, marriage and health checks, or measures putting an end to migration and settlement such as "voluntary assisted return" or resettlement activities) are the outcomes, materializations and "effects" of power; they gain their power through discourse, claimed truths, sets of (expert) knowledge and by the innovations, justifications and activities of their creators, leaders and (end-)users. At the same time, they reinstate the discourse and proclaim and reconfirm the actors or "managers" in mobility politics. Based on disseminated truths,

underpinning vested interests and rationalities and brought into being by actors and their practices (tactics, technologies), migration management can, in sum, be seen as a new form of governmentality – a new "art" of governing populations and flows of people "through", "in the self-interest of" and "with the help of" the very individuals that (try to) cross national borders.

In recent years, a new strand of theory in migration and mobility studies started to stress the agency, autonomy and "willfulness" of people crossing international borders. Migrants and (im-)mobile populations of (potential) migrants, in this perspective, are no longer seen as the obedient objects of state control but as subjects that pursue their interests, adapt their "mobility-related behavior" to changing circumstances (e.g. control measures exerted over them), creatively exploring opportunities, comparing chances and finding venues (simply a "way in") despite all the difficulties and measures they are confronted with. Nonetheless, the growing discussion on this so-called autonomy of migration and the ever-growing literature on migrant transnationalism also form part of the previously-mentioned "post-control spirit". They are, in fact, echoed in most of the assumptions and proclaimed "truths" of migration management: Migration management as a concept takes these (theoretical) discussions rather seriously and acknowledges them – at least, at first sight. A common feature of migration management campaigns lies in repositioning the migrant as an autonomous, self-interested and capable subject into focus. Reports of organizations like the IOM regularly include "migrant stories": people crossing borders or trying to do so are given a "voice", while at the same time the "usefulness" and "benefits" of "managed migration" are legitimated with the help of individuals "telling their story" (with IOM; read such an interesting story for example in IOM, 2003, pp. 251–252). However, a closer look in most cases reveals that migration management and the "managers" of mobility and migration deliberately "play" with these individuals; they are mere objects and not real subjects because they become instrumentalized vehicles in the service of the above-mentioned vested self-interests (of promoting and justifying the organization's own agenda and activities, of securing funding, of staying/becoming more involved, of demonstrating organizational expertise and capacities, etc.). While migrants, at first sight, become "respected" (as to their interests and desires), "emancipated" and are given a "voice", the real goal is to keep them subordinated. An important aim of migration management lies in "educating" them (e.g. about the "risks" of mobility) as if they are naïvely uninformed and to "classify" them in certain groups ("potential

victim of trafficking", "irregular migrant", "over-stayer", etc.). In consequence, their agency and behaviour becomes very much "molded", manipulated and disciplined according to the proclaimed truths, aims and organizational goals of migration management. Examples of migration management include the examples of the promotion of "safe and informed migration" ("lesson-drawing" with the help of bad/good stories about irregular/regular migration), the transformation of people crossing borders into "agents"/"heroes of development" (Faist, 2008; Raghuram, 2009; Rodriguez and Schwenken, forthcoming) and the labelling of returnees as "successful" (not involuntarily deported) "returnees" (see, for example, the various "success stories" published in newsletters of IOM Austria: IOM, 2012).

Disciplining, in sum, is hence not replacing but rather complementing the more traditional tools of migration and mobility control, such as the checking of passports and visas at border crossings, the physical delimitation of borders, the surveillance carried out by border guards, etc. While in many cases new disciplinary tools make use of information technologies and other high-tech innovations (e.g. scanners and drones), they are not limited to such technologies in a strictly technological (high-tech) sense. It is rather typical that new disciplinary tools make active use of the migrant/traveller or (im-)mobile populations by various subtle, informal and indirect, not necessarily "high-tech based" means. Bodies and behaviours are turned into immediate targets for these even more sophisticated (often rather "psycho-sociological" than tech-based) techniques and tactics that effectively escape greater public scrutiny, media discourse or parliamentary or scholarly debate. However, while at first sight actively encouraging the self-governance of people, they aim quite openly at a specific form of compliant and conformist self-disciplining. The self-disciplining of persons crossing borders or aiming to do so thus remains clearly subordinated to the goals of keeping oversight, control and power to determine what claims of migration or mobility are "manageable", politically "wanted", "proven as being beneficial" – and, on this basis, consequently can be "allowed", "promoted" and "facilitated".

Conclusion

What began as a brief "archaeological inquiry" into the origins and rationalities of an intrinsic aspect of nation-state sovereignty – the control over borders and foreign populations/"outsiders" entering into, working and staying inside the territory of another state other

than their home country – continued with an account of the deep transformation of the "art of governing" people. Embedded in the ongoing transformation of mobility and migration politics, and being one major component and effect of this, the disciplining of mobility is related to and touches upon three cross-cutting and interrelated dimensions:

(a) Disciplining, in the first instance, is about shaping and ordering reality, which happens mainly through processes such as naming, framing, numbering or categorization. Overarching discourses of "managed migration" and their sub-discourses, together with related narratives in the global policy debate (e.g. "good governance") and the proclaimed "truths" and sets of knowledge underpinning disciplinary techniques and "moves", are a key element.
(b) While nation-states remain the key actors in governing, managing and disciplining mobility and migration, they have started to interact more actively with, and depend upon, a range of other actors operating beyond the realm of the state and state-driven mobility/migration politics. This leads to complex situations in which governments at the same time cooperate with key proponents of the management concept (such as IOM) while also encouraging and working with NGOs, migrant/diaspora communities and private businesses, as well as finding solutions on a strictly state-to-state level. By going beyond the traditional notion of migration (and mobility) politics or national border control, the notion of "disciplining" and the understanding of disciplining as a new governmentality of mobility help in shedding light on the more subtle and complicated mechanisms, tactics and technologies at work.
(c) Disciplining as a new form of governmentality challenges traditional assumptions of repressive state control. Disciplining is closely related and influenced by humanitarian, protection-oriented, "saving lives" and "promoting good governance" orientations, as well as new development-related discourses focused on, for example, "skill" or "brain circulation" and "making migration work for development".

The aim of critical scholarship lies in turning these often hidden ways and tools of "doing practical politics" with people and their quest for mobility/migration visible, and in building an independent, fact-based analysis and reflection of the management and disciplining of transnational mobility. This contributes to alternative sets of knowledge that can be used by other scholars, practitioners, experts and activists working in

the field or engaging themselves in the protection of migrants' rights, asylum seekers, refugees and, in general, all people crossing or trying to cross international borders.

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3

A Tale of Two Tactics

Civil Society and Competing Visions of Global Migration Governance from Below

Stefan Rother

The disciplining of migration includes the way this issue is framed on the global level: The securitization of migration, the technical concept of "migration management" and the promotion of the "migration and development mantra" were all put on the agenda by nation-states and international organizations (IOs). But in recent years, migrant organizations have increasingly worked on establishing a counter-discourse that questions or negates these "truths". Their aim is to shift the focus towards issues like human development, gender awareness, a rights-based approach to migration and the de-militarization of borders. While these goals may be widely agreed upon among many of those globally active organizations, there are significant differences regarding the strategies on how to reach them and contribute to global migration governance "from below".

In this chapter, the "agency-achieving measures" of two "clusters" of migrant organizations towards the Global Forum on Migration and Development (GFMD) are analysed:[1] The People's Global Action on Migration, Development and Human Rights (PGA) and the International Assembly of Migrants and Refugees (IAMR).

Disciplining of migration and migrants can happen in a number of ways, some of which are more subtle than others. The more obvious forms are regulations ranging from immigration laws to guest worker programs, technologies which are increasingly employed in border controls or various forms of "managing" migration. But the term "managing" is also part of the more subtle forms of disciplining: by framing migration as a challenge that can be managed, the discursive ground is laid for solutions "from above" while little is said about

the rights of those migrants involved. Migrant representatives or nongovernmental organizations (NGOs) that lobby on their behalf are thus reduced from subjects with whom one argues on an almost equal level to objects of these managing efforts. Many migrant organizations do not simply accept this role, though, but have rather developed their own counter-strategies to these disciplining efforts in order to achieve or increase their agency. The GFMD, although an institution introduced only in 2007, has become a place to highlight these competing strategies of nation-states and their international institutions on the one side and civil society on the other – but also within the migrant community.

This chapter discusses the attempts to discipline migrants within the emerging global governance of migration framework and then introduces their counter-strategies. By drawing from approaches in International Relations (IR) Theory and social movement studies, four agency-achieving measures are defined that civil society actors use to advance their rights-based understanding of migration: first, agenda setting, which includes framing as well as acting as norm entrepreneurs; second, the use – and creation – of political opportunity structures; third, alliance building ("islands of persuasion") and, fourth, "inside-outside" strategies. These four measures are analysed from the perspective of the networks behind the two major parallel events of the GFMD process – the PGA (People's Global Action on Migration, Development and Human Rights) and IAMR (the International Assembly of Migrants and Refugees). It is of high significance that in both cases the main impetus for collective action originates in the global South.

The disciplining nature of the migration-development nexus

After decades of inertia, at the turn of the millennium migration forcefully came to the international agenda, as was observed by Kathleen Newland from the Washington-based Migration Policy Institute: 'Suddenly, migration was everywhere one looked in the UN system and beyond' (Newland, 2010, p. 332). Several new initiatives and processes were begun, existing organizations like the International Labour Organization (ILO) took up the issue and new venues for addressing migration were formed. Among those were the Global Commission on International Migration (GCIM) and the aforementioned GFMD, a direct result of the High-Level Dialogue on Migration and Development (HLD) held by the United Nations (UN) General Assembly in 2006.

While previously the few debates on the international level were dominated by the "securitization of migration" (Huymans, 2000) – even more so after September 11 – this new discourse on migration has been characterized by what Devesh Kapur has poignantly termed the "new development mantra" (Kapur, 2003). According to this argument, migration – or more precisely: remittances – can lead to development and a "triple-win" situation benefiting the migrants, the sending and the receiving countries. In true "mantra-style", this argument has been repeated countless times in the past decade, although this has not necessarily led to more "enlightenment". Numerous reports have been published, many of them initiated by the non-UN agency International Organization for Migration (IOM) (Castles and Delgado Wise, 2008; Chamie and Dall'Oglio, 2008; DeWind and Holdaway, 2008). Most of these publications are characterized by a strong sense of optimism, as are the outputs of policy centers like the Migration Policy Institute that put their perspective in the context of "managing temporary migration" (Aguinas, 2008) and the "experiences of circular migration" (Newland et al., 2008). The latter report contains the bold statement that circular migration 'often contributes to the development of both home and host countries and likely reflects the natural preference of workers in the global economy' (Newland et al., 2008, p. 2).

This connection of the "migration-development-nexus" with the goal of "managing migration" and the stressing of the importance of "circular migration" by the Migration Policy Institute is hardly a mere coincidence. Rather, it mirrors the dominant agenda on the global level. This link is brought up so frequently when it comes to setting the agenda of reports, policy programs and global meetings such as the GFMD that it can be seen as an act of "disciplining through normalization".[2] If these two issues are brought into the equation often enough, over time it may seem "normal" that in order for migration to have a development potential, it has to be managed (i.e. managed "from above") and should be temporary in nature.

While for Michel Foucault disciplinary power lies outside the form of sovereignty (Foucault, 1986, p. 239), its main goal in the global migration governance discourse might be to protect exactly this sovereignty or what remains of it for the nation-states that dominate this debate; as Sara Kalm writes, 'It might not be migration which is the main object of government here, but perhaps the states system norm' (Kalm, 2008, p. 22).

This should not imply that some sort of conspiracy is at work here – although the more radical opponents of the GFMD might argue exactly

that – but rather that the discourse on global migration governance, development, circular and managed migration is obviously strongly influenced by representatives of power relations. In his article on Disciplinary Power and Subjection, Foucault argues with regard to "the phenomena, the techniques and the procedures of power" that:

> above all what must be shown is the manner in which they are invested and annexed by more global phenomena and the subtle fashion in which more general power or economic interests are able to engage with these technologies that are at once both relatively autonomous of power and act as its infinitesimal elements. (Foucault, 1986, p. 235)

These power relations become apparent not only in the unequal relations of sending and receiving states of migrants but also between the home countries of migrants and their citizens abroad – after all, it is usually due to development failures or bad governance that migrants leave their country in the first place (Rother, 2009b, d). But power is also exercised by making migrants the objects of the discourse while at the same time putting on them the burden to act as "agents of development" where their own governments and foreign development aid have failed.

And finally, there is disciplining by means of access to and participation and representation in the global spaces where migration governance is negotiated. Through this disciplining, the agency of migrants and their representatives may be denied or limited. But recent years have seen a remarkable level of migrant activism on the global level, applying various strategies to achieve a higher level of agency in the discourse on the way they are managed. There is also an increasing number of migration researchers who take a critical stance towards migration management (e.g. Geiger and Pécoud, 2010), circular migration (e.g. Wickramasekara, 2011) and especially the migration-development nexus (Brown, 2006; Bakewell, 2008; de Haas, 2010; Faist, 2009; Piper, 2009).

Thus, an important counter-discourse to in the rather narrow view that "remittances lead to development" is emerging in the discipline of migration research. Still, the political agency of migrants as it manifests itself in the collective mobilization efforts on the global level has so far received only scarce attention. Moreover, while the current discourse and interests by policymakers herald migrants rightly or wrongly as "agents of development", there is more to it than economics alone. Monetary remittances aside, migrants may also accrue political capital through the migration experience (Rother, 2009b, d) and by means

of involvement in political action and thus become political actors, especially when channeling political agency through collective organizations on the transnational, regional and global level (Piper, 2008; Rüland et al., 2009).

Four agency-achieving measures to counter "disciplining from above"

When IR scholars chose to look beyond material factors in the power relations between states, they have mostly focused on bargaining. Thomas Risse defines bargaining as a process guided by the logic of rational choice 'during which self-interested actors try to hammer out agreements of give-and-take based on fixed identities and interests' (Risse, 2004, p. 293). But there is more than bargaining to international negotiations and global governance, even more so when one adds non-state actors to the equation: recent approaches in IR have increasingly discovered "arguing and communicative action as significant tools for non-hierarchical steering modes in global governance" (Risse, 2004). Indeed, IR scholarship has witnessed a "communicative" (Albert et al., 2008) or "deliberative turn" (Neyer, 2006) for more than a decade that has put the focus on the role of arguing in international negotiations (Risse and Kleine, 2010) and global governance (Risse, 2007).

Many of these approaches base their framework on the work of Jürgen Habermas for whom, put very simply, individuals communicate in an "ideal speech situation" when their speech is governed by basic yet required and implied rules based on an assumed equality (Habermas, 1988). Obviously, most international negotiation processes are far from providing such ideal conditions for deliberations. But, as Risse argues in favour of arguing, these negotiations can still yield unexpected results which may not have been expected on the basis of the interests represented at the bargaining table and the give-and-take implied by pure interest-based bargaining:

> Actors come up with creative rules and norms suggesting that some of them might have changed their preferences endogenously to the negotiations and due to the arguments presented. (Risse and Kleine, 2010, p. 709)

An analysis that focuses on arguing and reason-giving thus enables researchers to shed light on an alternative mode of interaction different from bargaining.

Arguing can also be seen as a counter-strategy to the disciplining nature of the global discourse on managing migration by nation-states and international organizations. But to make themselves heard, migrant organizations have to try to influence this dominant agenda by framing it in a way that includes their own goals and norms. To be able to do this, they have to look for political opportunity structures. This concept has been well established in social movement studies (Meyer and Minkoff, 2004). While it may refer to a variety of opportunities including the establishment of a protest movement, in this chapter the concept is used mainly to describe "openings" for civil society actors in the fortress of governance of migration "from above".

As Nicole Deitelhoff has convincingly demonstrated, civil society organizations have played a significant role in establishing the International Criminal Court (ICC) by creating "islands of persuasion" (Deitelhoff, 2009). This observation of civil society organizations having built alliances with various stakeholders echoes the "power of persuasion" argument found in social movement studies (e.g. Klandermans, 1992). It is also related to the above-mentioned need for civil society actors to search for political opportunity structures and act as norm entrepreneurs to bring their agenda forward. This involves the framing of issues in a way that these become hard to refuse and are able to gain wider support. Deitelhoff showed how in the case of the ICC, civil society organizations were able to build an alliance with like-minded states, influence the agenda setting and act as a "transmission belt" for their constituency while using blaming and shaming strategies towards states initially unsupportive of the ICC like the United States. The like-minded states introduced the new norm into the negotiations and were able to establish this norm over the watered-down approach of the United States. This was a win–win situation for both parties. It provided legitimacy and a combination of sources for arguing and bargaining power for the like-minded states since they represented civil society interests; the civil society organizations on the other hand gained access to the deliberations by forming this alliance. It is argued that "shared life worlds" are among the foundations for these "islands of persuasion".

Jens Steffek and Maria Paola Ferreti point out that 'the different roles assigned to civil society organizations as "watchdogs" and "deliberators" are at times difficult to reconcile' (Steffek and Ferreti, 2009, p. 39). They distinguish public accountability of governance and quality of decisions as two major goals of participatory procedures and call the two underlying arguments for participation the accountability claim

and the epistemic claim. The accountability claim refers to democratic accountability where decision makers should be held responsible for their actions – this happens mostly "post hoc". The epistemic claim on the other hand requires involvement in the process, either by providing expert knowledge or 'people may either contribute by making relevant social and ethical concerns explicit, or by bringing to the forum arguments derived from local knowledge and everyday experience that specialized actors would otherwise ignore' (Steffek and Ferreti, 2009, p. 41).

In sum, while the literature on communicative action and deliberative democracy may seem rather abstract at first glance, there is an emerging body of empirical studies (e.g. Deitelhoff, 2009; Eriksen, 2007) based on the practical application of this approach. One can argue that these approaches help in identifying the various strategies by which migrant civil society actors aim to overcome their marginalization through disciplining and achieve collective agency. This chapter suggests subsuming these measures under four headings, with the understanding that they are intertwined and overlap in "real life": (1) "agenda setting" refers to the strategies of framing issues and acting as norm entrepreneurs. Analyzing political opportunity structures is a strategy well established in social movement research. The focus here lies on (2) "communicative opportunity structures" – looking for and trying to create spaces for communicative action. "Alliance building" (3) or, as Deitelhoff has called it, searching for "islands of persuasion", also shares similarities with social movement research; here, one can discuss if "shared life worlds" can be found among the stakeholders involved. "Inside-outside strategies" (4) can be seen as an answer to Steffek and Ferreti's discussion of the balancing act facing civil society organizations that aim to be "watchdogs" and "deliberators": The author of this chapter argues that while there is a tension between these two functions, some civil society actors aim to advocate simultaneously inside and outside the "official" process, while others remain outsiders by choice – or as a result of disciplining. Obviously, these measures are not applied in a strictly separate sense, but often influence and, when successful, support each other.

GFMD, PGA and IAMR

The past few years have seen the ascendancy of international migration on the global policy agenda. Much in contrast to other issue areas which are subject to global regulation such as trade (World Trade

Organization, WTO), finance (International Monetary Fund, IMF/ Worldbank, WB), health (World Health Organization, WHO) and intellectual property (World Intellectual Property Organization, WIPO), the movement of people is not governed by a formal international regime (except in the case of the Geneva Convention and the UN High Commissioner for Refugees, UNHCR – and even that is open to contestation). Unlike other subject areas in international relations, migration is characterized by a comparatively low level of institutionalized international cooperation. States are central actors in migration governance and have so far been reluctant to create binding forms of cooperation at the global level. For instance, there is no single UN organization devoted exclusively to economic migration as opposed to refugee or forced migration (Tamas and Palme, 2006). Recently, however, there has been an increased level of activity surrounding the governance of economic migration at the global level: many intergovernmental organizations (IGOs) are now actively involved in migration from their respective areas of expertise or interests, several international commissions and state-led initiatives have placed migration governance on the global policy agenda and a number of institutions for inter-state dialogue and cooperation have been established at the regional and global levels.

The most far-reaching one of these is the GFMD, which was established as a result of the 2006 High Level Dialogue on Migration and Development. Since no agreement could be reached to establish an agency or a forum within the UN process (Martin et al., 2007), the GFMD was established as a compromise and almost "ad hoc": a state-led, non-binding and informal gathering to discuss issues of migration and development. Belgium took the lead and in 2007 the first GFMD was held in Brussels, followed by annual meetings, all organized by state governments with some assistance from the very limited GFMD supporting framework. Although there have been some modifications, at the core the meeting is comprised of two main elements: a government meeting where mostly senior officials discuss issues related to migration at thematic round tables and development, primarily from a policy perspective. This meeting is preceded by the Civil Society Days, where delegates ranging from diaspora groups, migrant rights organizations and trade unions to a small number of private sector representatives meet and formulate a resolution that is presented to the government meeting. Increasingly, this space has been expanded and to a degree emancipated itself from the government meeting by formulating its own agenda and aiming for self-governance (Rother, 2012): while in the first

years, private foundations like the Ayala (Manila 2008) or the Onassis foundation (Athens 2009) organized the Civil Society Days. Since 2011, the International Catholic Migration Commission (ICMC) has taken over this responsibility.

Since the number of applications for participation is usually significantly higher than the slots available for delegates, and the selection of participants is naturally not uncontested, the GFMD has become, not unlike other global meetings, the site of several parallel and counter events. The first one of these can be traced back to the HLD in 2006: Unsatisfied with the limited possibilities for participation (only 12 civil society representatives were allowed to participate in the roundtables, 8 of them NGOs), several umbrella organizations of migrant networks joined forces

> to provide an alternative space to share perspectives on the current situation, challenges and proposed solutions around migration and of migrants rights from communities around the world. (Migrant Forum in Asia, 2007, p. i)

The founding networks were Migrants Rights International (MRI), Migrant Forum in Asia (MFA) and the National Network for Immigrant and Refugee Rights (NNIRR); the event was called the "Global Community Dialogue on Migration Development and Human Rights".

These actors continued to organize parallel events when the GFMD came into life; from the second forum in Manila onwards, they changed the name of the event to the People's Global Action on Migration, Development and Human Rights (PGA). The meeting is organized independently from the GFMD, but it has been recognized as an "official" event since the Mexico meeting in 2010. It aims to be more inclusive than the official event and to cover a wider range of human and migrant rights and development which is conceptualized as human development. Still, there are connections to the official GFMD meeting, as several PGA participants are also delegates or part of the organizational team of the Civil Society Days, thus following an "inside-outside" strategy (Rother, 2009c).

The second major parallel event is the International Assembly of Migrants and Refugees (IAMR). It was started at the Manila GFMD in 2008 and organized by the then newly established International Migrants' Alliance (IMA), a global umbrella organization of grassroots movements and their supporters whose very founding statement can be seen as a resistance to disciplining: 'For a long time, others spoke

on our behalf. Now we speak for ourselves' (International Migrants Alliance, 2008, p. 1).

There is no coordination between these two parallel events – on the contrary, over the years organizers and participants have become increasingly critical of the agenda of "the others". As the author of this chapter has elaborated elsewhere, this can partially be explained by the dominant role of Philippine-based or Filipino-lead organizations in both "clusters" of migrant activists; to some extent the cleavages between these two clusters mirror the ideological split of the Philippine left in the early 1990s (Rother, 2009a). The organizational form of these events is actually not that different from each other and the program consists in both cases of workshops, speeches, mobilizations like pickets and demonstrations as well as cultural evenings. But unlike the "inside-outside" strategy employed by the PGA, the IAMR completely opposes the GFMD and denies the process any legitimacy. What may be observed here, then, are not only agency-achieving measures to counter disciplining from above but also competing visions of "global migration governance from below", based on two different ideological backgrounds and the resulting strategies.

Four agency-achieving measures

Agenda setting (framing, acting as norm entrepreneurs)

Actors within the advocacy realm concerned with human rights can be seen as norm entrepreneurs who try to expand the human rights agenda by strategically building and promoting their specific human rights claim. New norms are found to be more persuasive if they "fit" rather than "clash" with already existing ones (Finnemore and Sikkink, 1998, p. 908). Tanya Basok distinguishes between hegemonic and counter-hegemonic human rights (Basok, 2009). The former are consistent with liberalism's focus on individual freedom and formal equality as well as with sovereignty, and enjoy wide recognition. The latter, in contrast, challenge the foundations of liberal democratic values and/or the principle of sovereignty, and are hence subject to much more controversy and dispute. According to Basok, migrant rights are an example of counter-hegemonic human rights, as they involve granting and expanding rights to documented and undocumented non-citizens (Basok, 2009, p. 188). This may present difficulties for advocacy groups. Therefore, at this stage they tend to resort to drawing on other, more established, rights in order to become persuasive for states (Basok, 2009,

p. 185) – as well as to the still very state-centric architecture of global migration governance.

One of the strategies of civil society organizations in promoting their rights-based understanding of migration is, therefore, to frame migration in the context of various more established international human rights conventions, that is, migrants rights as human rights, women's rights and children's rights, etc. By choosing these different avenues, the organizations aim to "borrow legitimacy" from widely acknowledged rights that are usually backed by conventions with a significantly higher number of ratifications than the 1990 UN Convention on the Rights of All Migrant Workers and Their Families. The slogan "migrant rights are human rights", promoted by the PGA and its members organizations, pertains to that. The aim at the GFMD is to remind governments of their general and comprehensive human rights obligations vis-à-vis migrants as workers, women, family members and human beings.

Agenda setting is one of the central goals of the different parties involved, as evidenced in several documents and statements. But there are significant differences when it comes to the question on how to influence the predominant agenda. For example, Ellene Sana, executive director of the Center for Migrant Advocacy (CMA) Philippines who has been active in the PGA and its predecessors from the start, defends engaging in deliberation with the "official" proceedings of the GFMD as "the best way to mainstream our agenda" (Rother, 2012).

A similar statement is made by John Bingham, head of policy of the International Catholic Migration Commission (ICMC), who had been active in the parallel events as well, was influential in connecting the PGA to the official Civil Society Days and is now coordinator of the GFMD Civil society activities. He highlights the importance of changing the discourse – and thus the agenda – when looking back at the developments since the first HLD in 2006:

> at the *international* level, there has been so much change at least in the *discourse* these past 6 years – some confidence building and common ground building. It has to make one wonder: what may be possible? – not by unanimity (never get it!); not by consensus (difficult to count on) but by *majority sense* and usually a smaller set of stakeholders together moving *forward*. (Bingham, 2012, p. 1, emphasis added)

The radical opponents of the GFMD share these assumptions but draw from them different implications. In April 2012, the Asia Pacific Mission

for Migrants (APMM) in Hong Kong, which is one of the main drivers behind the IMA and the IAMR, published an Impact Study of the GFMD and its Migration Paradigm (Asia Pacific Mission for Migrants, 2012).[3] In the foreword of the study, Ligaya Lindio-McGovern, who is professor of sociology at Indiana University and also an active supporter of the IMA and IAMR, provides an analysis that bears many resemblances to the concept of disciplining:

> The GFMD has become an ideological and policy tool of neoliberalism, which is increasingly being contested on an international scale. In this politics of contestation there occurs discursive struggles, where one sector – the migrants themselves – are claiming greater voice in the discourse of development and migration, as government entities dominate such discourses within GFMD. Discourses – where language is the means of defining or naming reality – can play a subtle but significant role in constructing consent to the ideology and policies of neoliberalism, as these discourses shape public consciousness or awareness about it. When powerful institutions, such as governments, institutionalize this kind of discourses, by creating entities, such as the GFMD that regularizes discussions about migration and development, they are actually creating an ideological apparatus with political power. (Asia Pacific Mission for Migrants, 2012, Foreword)

This highlights the main issue to which the disagreements between the two parallel events boil down to: is the GFMD a flawed but at least partially responsive venue where one can try to influence by acting as a norm entrepreneur within the process in the hope that a different framing of migration and migrant rights might become part of the mainstream agenda? Or, is it an entity that represents the ideology and policies of neoliberalism which are detrimental to migrants and therefore has to be opposed fundamentally?

PGA representatives point out the fact that their main issues of advocacy have increasingly made their way onto the agenda of the Civil Society Days and even the government meeting. Indeed, at the Mexican GFMD in 2010, topics like the importance of human rights, the treatment of irregular migrants, the criminalization of migrants, human development, migration and gender issues were at least discussed and brought up in some of the conclusions.

Likewise, some of the themes of the 2012 GFMD in Mauritius read as if the conventional "migration-management-development" paradigm had been infused with some of the advocacy goals of civil society actors;

among these were "Circulating Labour for Inclusive Development" and "Managing Migration and Migrant Protection for Human Development Outcomes".

IAMR representatives might counter this observation by arguing that these are just dressing-up measures of the uncontested underlying neoliberal paradigm that treats migrants as commodities. They fundamentally question the legitimacy of the process; at the first IAMR in Manila, T-shirts that denounced the GFMD as "Global Forum on Modern Slavery" were sold and in Mexico, The International Tribunal of Conscience (ISC) was held. This tribunal was started at the fourth World Social Forum on Migration (WSFM), which took place a few weeks before the Mexican GFMD in Quito, Ecuador. The aim of the Tribunal, which the IAMR organized in conjunction with several local and regional groups, was to document and denounce violations of migrants' rights all over the world. This event could also be seen as a framing strategy that contrasted the well-meaning but non-binding GFMD declarations with the harsh reality "out there". This criticism was also directed towards the Mexican government who had promised a more inclusive approach for the GFMD but at the same time continued to demonstrate a poor track record on protecting (transit) migrants. As a result, the "verdict" of the tribunal presented at the IAMR denied the Mexican state the right to hold a global forum on migration because of its actual policies.

It has to be stressed that in Mexico the PGA did not refrain from strict criticism by activists from the ground either: representatives from "frontline defense organizations and migrants' rights advocacy organizations", among them Muslim undocumented migrant workers in the United States, harshly attacked the policy of the US government and its continued framing of migration as a security threat. But the difference remained that, after almost one week of events and deliberations, several of the PGA participants boarded planes from Mexico City to participate in the Civil Society Days of the GFMD in the Puerto Vallarta convention center, while the IAMR and the Tribunal had chartered busses to bring a "protest caravan" of around 500 delegates and members of affiliated groups to the same venue in order to protest outside.

Communicative opportunity structures at the global level

As argued above, civil society actors may rely on communicative opportunity structures in order to advance their agenda – looking for and trying to create spaces for communicative action. The advocacy

work of the PGA is characterized by communicative action in the way Habermas/Risse envisioned it: by striving towards an "ideal speech situation" with rules based on an assumed equality. This equality is obviously far from being realized, but the PGA at least tries to move in this direction. To achieve this goal, in a first step the Civil Society Days had to gain more clout in the GFMD system so it could serve as a sort of transmission belt for the PGA agenda.

This has been achieved to a degree – certainly not exclusively through the work of the PGA, but there are overlaps: central actors in the PGA like William Gois from the Migrant Forum in Asia (MFA) had been members in the International Advisory Committee for the Civil Society Days from early on. And in the Geneva GFMD in 2011 Gois, who also is president of MRI, even served as the chair of the Civil Society Days.

One space that connects the Civil Society Days with the government meeting is the "common space". After rather humble beginnings in Manila and Athens where only a few government representatives joined the meetings with civil society (Rother, 2010), this space has been significantly upgraded since Mexico. There, a whole morning session was dedicated to the common space, and migrant representatives were not only allowed to read out a statement from the Civil Society Days (which in turn was based on a first draft developed during the PGA), but there were also fairly open discussions between civil society and government representatives. A similar session was held in Geneva; many shortcomings aside – such as the panel structure which was far too cramped and thus limited the time for open exchange – one cannot claim that the voices of migrants and activists were not heard at the GFMD at all.

"Voices" is indeed the keyword here, though, because obviously "the migrants" do not speak with "one" voice, although some representatives like to imply this. Thus, at the core of the competing visions on global governance of migration is a battle for legitimacy: who represents the migrants? The IAMR claims that it is the true grass-roots forum while the PGA is dominated by NGOs – and the Civil Society Day even more so. It is true that at some of the Civil Society Days the presence of "actual" migrants seemed rather small, but on the other hand the forum is envisaged as a multi-stakeholder process bringing together different sectors of civil society; in fact, representatives of the "migration industry" are largely absent at the Civil Society Days, very likely because they expect to become a major target of criticism.

And in a way, the GFMD presents a perfect communicative opportunity structure for the IAMR and its affiliates: they use the attention the event receives to make their voices heard, if necessary unilaterally.

Accordingly, when browsing through Mexican media during and after the GFMD, the spectacular tribunal and caravan seemed to have gained much more attention than the PGA – especially since police forces in Puerto Vallarta kept the caravan from coming even close to the GFMD venue. Thus, the IAMR grabbed the opportunity to communicate its agenda during the GFMD in a less-than ideal speech situation by making its voices heard through media, a staged tribunal, protests outside the venue, etc.

Persuasion through alliance building and alliance building through persuasion

The IAMR may fundamentally oppose the GFMD because it ignores the grass-roots level of migration, but that does not stop it from looking for allies from different sectors to support its advocacy. The same holds true for the PGA with the difference being once more that this network is also looking for allies to persuade "within" the GFMD process. There is a wide range of partners both processes aim to include in their proceedings or establish contacts with: global as well as national trade unions, development organizations and foundations (most importantly for the funding of the events) and church groups. While, for example, the PGA closely cooperates with the United Methodist Women, IAMR representatives attended an International Consultation of Churches with migrants in Athens and Mexico. In the latter, the important role of the Philippines become obvious once more by the participation of the National Council of Churches in the Philippines, a fellowship of ten mainline Protestant and non-Roman Catholic denominations.

There is competition between the two events regarding alliances inside and outside the networks: In regard to the former, when a representative of CARAM Asia (Coordination of Action Research on AIDS & Mobility) attended both parallel events in Mexico City, this was frowned upon. In regard to the latter, it was reported during the GFMD in Geneva that a major Swiss NGO that caters to undocumented migrants got so annoyed by the bickering between the two parallel events that it decided to support none of them.

And there is also competition in searching for allies in the academic realm, which has consequences for the disciplining of migration research. Being aware of the pitfalls of simplifying, the academic allies can be roughly categorized into three groups: at the GFMD government meeting and parts of the Civil Society Day a variety of academics is present, but the dominant ones seem to come from the mainstream of

the field, that is, the ones who take a top-down perspective on "migration management", focus mostly on the remittance aspect of development and express various degrees of euphoria over the development potential of migration. The latter holds especially true in the case of the representatives of think-tanks like the Migration Policy Institute. Also tellingly, a report by Philipp Martin and Manolo Abella on the Manila GFMD titled "Migration and Development: The Elusive Link at the GFMD" may raise some doubts about the migration-development nexus but makes no mention of either the PGA or the IAMR, both of which had their highest attendance so far during this event (Martin and Abella, 2009). From this perspective, the official events are seen as the adequate space for addressing migration.

A more skeptical group of academics is involved in the PGA, some of whom may also participate in the Civil Society Day but are rarely invited to the government meeting (or, as one researcher put it, may not be invited ever again, after he had questioned some of the fundamental paradigms of the forum during a roundtable session). Among them is Raúl Delgado Wise from the Universidad Autonoma de Zacatecas, who was one of the authors of the conceptual framework for the Mexican PGA whose title "Reframing the Debate on Migration, Development and Human Rights" (Delgado Wise et al., 2010) can be seen as being very much in line with the first agency-achieving measure. In his speech at the PGA, he made the rather strong statement regarding the migration-development nexus that 'there is no empirical claim to warrant this assumption – quite the contrary'.

Finally, the academics present at the IAMR can be situated on the junction between research and activism. While many academics present at the GFMD and the PGA may not even be aware of the IAMR, this is certainly not the case the other way round: in an opinion piece in the official Mexican IAMR program, Robyn M. Rodriguez from Rutgers University questioned the legitimacy not only of the GFMD but also of the PGA (Rodriguez, 2010). In sum, the disciplining of migrants has certainly become part of the academic realm.

There is of course also the strategy of looking for "like-minded states" as allies, which was one of the main goals in the search for "islands of persuasion" described by Deitelhoff in her research of the establishment of the ICC. Unlike this case, though, the GFMD is a non-binding process. Still, if civil society actors are willing to go the inside road, they can benefit from allying with nation-states. First among those are the ones who actually organize the particular GFMD; if they are supportive of a more inclusive approach as declared by the Mexican government, it is worthwhile to approach them for consultations and organizational

matters. When it comes to the sending states of migrants, one cannot assume that these are necessarily like-minded or share the same life-worlds as civil society organizations. Often, their failure in providing development perspectives is among the main reasons for the migrant exodus in the first place; also, they may weigh up the importance of migrants' rights against their goal to keep a steady flow of remittances running.

Still, several of these states have taken up the cause of the migrant activists or spoken out along lines similar to the PGA agenda during the GFMD, among them Bolivia and Ecuador. PGA and Civil Society Day delegates often try to get into contact with their government delegations before the event and sometimes there are side-meetings during the forum. In some instances, governments, especially from Scandinavia, have actually included civil society representatives in their delegations, demonstrating that alliance-building can also be a two-way process.

"Inside–Outside" strategies – conclusion

As mentioned above, Steffek and Ferreti point out the delicate balancing act facing civil society organizations that aim to be "watchdogs" and "deliberators" at the same time. For the PGA, this balancing act has been part of their strategy from the beginning of the GFMD process. The inside-outside approach was formulated by MFA, one of the driving forces behind the PGA, in their documentation of the PGA meeting held in Manila in 2009:

> Consistent with its multi-level stakeholder approach, MFA adopted an inside-outside strategy, which involved substantive engagement of both governments and the civil society's sectoral groups. In the context of the GFMD, MFA worked along two lines of action-first, with direct intervention in the official GFMD process and second, though the creation of a democratic space for an open multi-stakeholder civil society engagement. (Migrant Forum in Asia, 2009, p. 25)

The PGA represents such a democratic space and the inclusive approach. At the same time MFA also "strongly believes that civil society organizations must work with governments as partners in the policymaking process" (Migrant Forum in Asia, 2009, p. 25). This demonstrates how the PGA aims to be "watchdog" and "deliberator" both inside and outside the GFMD process. For the IAMR, this effort pertains to PGA trying to have their cake and eat it too. Indeed, it remains a delicate balancing act, since the higher the involvement in the official process,

the more the organizers are held responsible for its often meager outcomes. Still, as John Bingham has formulated regarding the GFMD and the upcoming HLD: 'Civil society's bottom line on these important global discussions is always to participate at the table; genuinely in dialogue' (Bingham, 2012, p. 4).

The IAMR, in contrast, remains an outsider; whether this is due to a strategic choice, or because of the rigid disciplinary power of the GFMD which does not allow for fundamental opposition, is open to debate. Examples for this disciplinary power certainly exist, since participants in the IAMR had repeatedly trouble entering the host countries of the GFMDs and were thus held back by the visa regime (although similar cases have been reported from the PGA as well). All opposition notwithstanding, the GFMD provides the IAMR with an opportunity structure to achieve agency of its own, albeit in opposition to the main event.

If this duality of parallel events will persist in the future remains to be seen. The IAMR during the GFMD in Geneva turned out to be a rather small matter, mostly due to financial restraints. This held even more true for the 2012 GFMD in Mauritius where no IAMR took place. There was neither a PGA, but several representatives of the newly established Pan African Network in Defense of Migrants Rights (PANiDMR) (that was initated as a caucus within the PGA) participated. Thus, the WSFM held in Manila in November 2012, one week after the GFMD, was the main focus of the global migrant alliances. By its nature, the WSFM is open to all stakeholders (except political party representations or military organizations), but because of the major involvement of PGA-related groups in its organization, only few IAMR members participated. Furthermore, the WSDFM was the site for the launch of the new Global Coalition on Migration (GCM), an attempt to establish a more permanent structure besides the PGA. Finally, the alliances may opt to focus their energy on forums where more concrete outcomes are possible, rather than on the exchanges which arise at the GFMD. Thus, both groups claim to have been influential in the 2011 adoption of the ILO convention 189 "decent work for domestic workers", which is of high significance for migrant domestic workers.

On the other side, the struggle for communicative action and an "ideal speech situation" at the GFMD remains. In the protocol of the Third Meeting of the GFMD Steering Group from June 2012, it is stated that

> On the role of civil society in roundtable preparations, the Assessment Team agreed that there should be no institutionalized participation by civil society. But to promote more efficient, more creative

> and more productive roundtables, the Chairs may have flexibility in optimizing inputs from varied non-government stakeholders, be it the civil society, private sector, or international organizations. (GFMD, 2012)

Furthermore, a government representative stated at the GFMD opening in Mauritius that civil society had 'no mandate'. Thus, forms of disciplining efforts are still very much observable in the agenda of the GFMD and some of the involved nation-states.

Notes

1. The research is based on the authors' participation in the past four meetings of the Global Forum on Migration and Development (GFMD) as academic observer/accredited journalist/delegate and in several parallel events and preparatory meetings organized by civil society organizations.
2. 'Disciplines are the bearers of a discourse, but this cannot be the discourse of right. The discourse of discipline has nothing in common with that of law, rule or sovereign will. The disciplines may well be the carriers of a discourse that speaks of a rule, but this is not the judicial rule deriving from sovereignty, but a natural rule, a norm. The code they come to define is not that of law but that of normalization.' (Foucault, 1986, p. 241).
3. Not surprisingly, in this report the PGA is not mentioned even once, while the IAMR is being lauded as a promising venue of migrant advocacy.

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4

From Individual to Migration Flow

The European Union's Management Approach and the Rule of Law

Bas Schotel

Over the years migration management has become – at least on paper – the leading paradigm for national and supra-national immigration policies (Geiger and Pécoud, 2010, pp. 1–3). With the entering into force of the Lisbon Treaty, the concept even gained official legal status in the European Union (EU) as it is now incorporated in the EU's Treaty on the Functioning of the EU. In effect, the EU undertakes to develop a common immigration policy aimed at ensuring 'the efficient management of migration flows' (European Union, 2010, Art. 79). In a way, this is precisely what many experts of migration policy and law have been calling for (Aleinikoff, 2003; Ghosh, 2000, 2007; IOM, 2004; Veenkamp et al., 2003). By the same token, recent critical scholarship has identified many issues associated with the discourse, actors and practices of migration management, for example, extra-territorialization, failing protection of human rights, seemingly apolitical and technical nature of migration management (Geiger and Pécoud, 2010; Inder, 2010; Kasparek, 2010; Walters, 2010). In line with these concerns, this chapter examines the uneasy relationship between EU's migration management paradigm and the rule of law. While it is an inquiry from the perspective of legal theory, it may shed some light on the "deeper causes" behind the issues that are also raised by scholars of immigration policy from the other academic disciplines. Particularly our understanding of the seemingly technical and political-neutral nature of migration management may benefit from this exploration.

The focus on migration policies and the rule of law is far from new. Many – often legal – experts of immigration policies have pointed out

the legal problems with immigration policies in the EU, mainly far reaching discretionary powers of migration authorities, legal uncertainty and the absence of effective and substantive judicial review of exclusion measures (Adam and Devillard, 2008, pp. 33–34 and p. 44; Brouwer, 2005; Cholewinski, 2005; Staples, 2003, pp. 225–228; Oosterom-Staples, 2009). In other words, effective legal protection for migrants seeking admission is lacking. While these analyzes are invaluable, only few scholars probed into the possible "structural" causes driving the lack of effective legal protection. So far the conclusions of these more fundamental inquiries suggest that effective legal protection of migrants is so problematic because of either the special nature of human rights (Noll, 2010) or the exceptional character of migration (Lindahl, 2005).

In contrast, this chapter[1] contends that the problem does not lie with the nature of law or migration. Rather from the legal perspective, there is something problematic with the structure of migration "policy", which is exemplified and reinforced by the logic of "efficient management of migration flows". The central contention is that a basic ingredient for legal protection is structurally pushed out of migration policy: legal norms directed at migrants. Paradoxically, the problem is not so much that there are no legal norms providing rights for migrants, rather there are hardly legal norms imposing "obligations" on migrants seeking admission.

The first section sets the stage for our discussion of migration management as it will briefly reflect on a general tendency with migration measures to move from "rule of law" to "rule by policy". The central problem is that legal norms directed at migrants as norm subjects become virtually irrelevant. The suggestion is that this shift from law to policy in migration matters paves the way and is reinforced by migration management. The second section will analyze the logic of EU's migration management by looking at the official documentation leading up to the incorporation of migration management in the EU Treaty. This analysis will characterize the logic of EU's migration management in terms of "comprehensiveness, realism and maximization". The third and fourth sections will explore why precisely this logic puts migration management on such uneasy footing with the rule of law. The contention is that "management" makes legal norms virtually obsolete, while the notion "migration flows" makes it difficult to understand migrants as individual norm subjects.

From law to policy

The underlying concern of this chapter is that under current migration policies in the EU migrants seeking admission do not have effective legal

protection. The contention is that the logic of migration management reinforces this tension with the rule of law. In effect, migration management helps us to see more clearly a general tendency with authorities to move away from the rule of law when it comes to migration. To set the stage for our discussion of migration management, this move away from the law is framed as a shift from rule of law to "rule by policy". Now, the notion "rule of law" may mean many things (see also Palombella and Walker, 2009). For purposes of this discussion, the focus stays on an uncontroversial and obvious aspect of the rule of law, namely, "rule through law". Indeed, the rule of law 'places a high priority on rule through the modality of law, as opposed to other modalities of power such as threat, economic incentive' (Walker, 2009, p. 122). In other words, the central tool of governmental action should be legal instruments. This principle relies on the two basic ingredients of law (and thus rule of law): legal norms and norm subjects. They are the "what and who" of the law. The legal norm states the "content" of the law: obligations (to do or not to do), freedoms, rights, competences, etc. The norm-subject is the one "who" bears these obligations, freedoms, rights and competences.

It is almost tautologically obvious that the rule of law is about legal norms, norm subjects and rule through the modality of law. Yet its deeper relevance may be illustrated by the example of speed ramps in the context of traffic policies (cf. techno-regulation). The introduction of a speed limit on the road assumes that authorities have road safety as the objective/priority in mind. The starting point for the policy may be to issue a legal norm prohibiting driving faster than a certain speed limit. Under normal conditions, drivers are in a position to obey or disobey this legal rule. In the case of disobedience, compliance may be enforced and violations penalized. By the same token, in this situation the disobedient driver may contest (ultimately before a court) the enforcement (e.g. there was an emergency justifying the speed excess) or even the rule itself (e.g. maybe the rule making authority lacked competence). Consider the situation where authorities construct speed ramps (i.e. factual action). Now, it is simply physically impossible to violate the norm. Imagine that the authorities withdraw the legal norm but keep the speed ramps. The authorities can still achieve their initial policy goal because drivers remain physically incapable of exceeding the speed limit. However, there is neither a legal norm nor a norm subject. The question is then how the driver can mobilize the protective and constraining mechanisms of the law.

Of course, the speed ramps example cannot be fully equated with immigration policies. There are still legal norms directed at migrants – most

prominently the prohibition to enter the territory without authorization. However, a closer look at key legal instruments reveals that the legal norms are mostly directed at officials, that is, the so-called instruction norms.[2] Moreover, there is a tendency to create a distance between the "factual" measures affecting migrants and the legal norms directed at migrants. This is reflected in the practices of extra-territorialization (den Heijer, 2012; Rijpma and Cremona, 2007) and "de facto" admission refusals.[3]

This distance between the factual measures affecting migrants and legal norms becomes relevant if one considers the signaling function of legal norms. First, often a legal norm signals that the arrangement in place is not a pure matter of coordination producing a win–win situation for all persons affected.[4] On the contrary, most legal norms structure an arrangement that may be detrimental to the interests of some individuals. Precisely because some individuals may not have a direct self-interest in keeping up a particular arrangement, the law "requires" from them to act accordingly. In short, a legal norm signals that preference is given to some interests at the expense of others: some lose out. Second, the legal norm also signals enforcement, which often takes the form of factual action. In other words, legal norms are the quintessential alert that force is or may be used. It immediately helps to identify factual actions by the government that may constitute a form of force or violence. In other words, legal norms signal why we have the rule of law in the first place: actions by the authorities are not beneficial to all and individuals may be subjected to coercion. In short, when policies start pushing out legal norms directed at individuals, not only does the trigger for legal protection disappear, but also it becomes increasingly difficult to see why legal protection is needed in the first place.

It may be insightful to understand the significance of the legal norm, norm subject and "rule through the modality of law" versus factual actions in connection with Michel Foucault's threefold structure of governmental power: law, discipline and security (Foucault, 1991, 2004). There have been various productive applications of this thesis to migration policy. Most authors concentrated quite rightly on the disciplinary and security aspect (Broeders, 2007; Epstein, 2007; Hamilton, 2009; Huysmans, 2006; Salter, 2006; Torpey, 2000; Walters, 2006). It is easy to believe that much of these analyzes apply "mutatis mutandis" to the paradigm of migration management (Kalm, 2010; Kasparek, 2010). However, there is a kind of anomaly that remains underexposed. It is well known that Foucault never understood

his thesis in a kind of chronological sense (Foucault, 1991, p. 266; Foucault, 2004, pp. 109–111). So the different paradigms did not substitute each other. Merely one paradigm becomes more dominant than the other. This is precisely the force of such Foucauldian analysis: one must remain attentive to all different mechanisms (or power plays) people may use to take up and change their power relations. Yet, when it comes to migration policy, it seems the threefold structure is missing: immigration policy almost skipped the law and started off immediately with a discipline and security paradigm. To render this suggestion more tangible, it may help to distinguish between two areas typically covered by contemporary immigration policies: admission of migrants and treatment of foreigners in the territory. The latter has a very long history going back thousands of years. It primarily concerned the legal status of aliens or foreigners "in" the host territory. The central questions were about the civil and public rights, privileges and duties of aliens. These were matters governed by highly complex and diversified legal regimes with long practiced traditions (Gilissen, 1984a, 1984b). Although the status of the alien was often inferior to that of a full citizen within a particular jurisdiction, the status itself was one of law and not pure policy. By contrast, the organization of the "admission" of aliens was a much more recent phenomenon, only taking off at the end of 18th century, with a full deployment at the end of the 19th, beginning of 20th century (Torpey, 2000). Contrary to the legal status of aliens already in the territory of the host jurisdiction, the admission of aliens was almost exclusively a matter of the executive branch of government, acting, for example, through the "police d'étrangers" (Néraudau-d'Unienville, 2006, pp. 18–19). Thus, the advent of migration policy coincided with the development of the "police" or "Policey". Although further "analytical" legal research is needed, legal historical research already suggests that the "logic" of the "police" stands on uneasy footing with law (Haerter, 2010; Mannori and Sordi, 2009; Stolleis et al., 1996). At the risk of oversimplifying the immensely complex history of the "police", one can identify two important dynamics: move towards organizing centralized governmental bureaucracy and maximum welfare of the population. The former explains the dominance of norms directed at officials (rather than non-officials), that is, instruction norms. The latter move announces the declining importance of "individual" (sic!) legal norm subjects for governmental purposes. In short, the seemingly harmless term "migration policy" conceals a logic and legacy that may hamper the basic protective mechanisms of the rule of law.

EU migration management: comprehensiveness, realism and maximization

Under Article 79 Treaty on the Functioning of the European Union, the EU undertakes to develop a common immigration policy aimed at ensuring 'the efficient management of migration flows'. The EU's migration management paradigm made it into the Treaty on the Functioning of the EU through the Treaty of Lisbon (signed in 2007, entered into force 2009). The Lisbon drafters did not put much effort in framing the notion migration management as it was an exact copy of the proposal for the Constitutional Treaty of 2003 (European Convention Praesidium, 2003, p. 41). Similarly, the drafters of the "Constitution" did not spend much time on the concept of migration management either.[5] In fact, it seemed they took over the notion "efficient management of migration flows" from the conclusions of the Council meeting in Tampere of 1999 and its follow-up documents, especially the Commission communication of 2000 (Council of the European Union, 1999; European Commission, 2000). These documents in turn relied amongst others on the Strategy paper by the Austrian Presidency of the Council of 1998 and two communications from the Commission of 1991 and 1994 (Council of the European Union, 1998; European Commission, 1991; European Commission, 1994)

Although the documents differ in tone, terminology and emphases, the structure and content are roughly similar. The structure of the documents follows by and large the three migration policy areas outlined by the 1991 Communication: (1) action on migration pressures in countries of origin, (2) control of migration flows and (3) strengthening integration policies for legal immigrants.[6]

The first area is about fighting the "root causes" ("push" factors) of migration. It has a twofold comprehensiveness. First, migration policy should include all other areas of external policy: foreign policy, trade, economic cooperation, security, development, human rights, etc. Second, this integration of policies is achieved through direct cooperation and agreements with and intervention in countries of origin. Such cooperation agreements are possible because allegedly migration policy is aimed not only at the interest of Europe but also at the development of the countries of origin. This motive seems fully compatible with the fundamental challenge underlying this policy area: 'how, in each of the countries concerned, potential migrant populations can be kept in their areas of origin' (European Commission, 1991, p. 20).

The second area refers to control or management of migration flows in the narrow sense. It should reflect the realism that there are different channels of migration and that they are related. One cannot deal with one without dealing with the other (for a critical take on this assumed connection, see Walters, 2010). Accordingly, the documents identify different types of flows that immigration policy must address: refugees, persons to be admitted on other humanitarian grounds, family members of EU residents, economic migrants and illegal immigrants (European Commission, 1994). The realism involved is twofold. Initially, policymakers became aware that it is simply not possible to fully enforce the restrictive immigration policies of 1980s and first half of 1990s; the migration pressures or root causes are too strong and can only be influenced in the long term. In addition, international obligations and humanitarian traditions prevent a full immigration stop. In short, 'controlling migration does not necessarily imply bringing it to an end: it means migration management' (European Commission, 1991, 1994, p. 20). One may construe this perspective as a kind of pessimistic or minimalistic realism. In contrast, things changed in the late 1990s when the economic boom took off and a more optimistic realism or self-interest appeared: certain forms of labor migration may actually be beneficial or even vital for the EU economic and demographic make-up (European Commission, 2000, p. 1). Moreover, these forms of migration are not only beneficial for the EU but may also be so for all stakeholders involved. This positive realism presumes the maximization of a win–win situation, as the documents call for

> accepting that immigration will continue and should be properly regulated, and working together to try to maximize its positive effects on the Union, for the migrants themselves and for the countries of origin. (European Commission, 2000, p. 3)

In order to realize the management or regulation of these different flows, various systems and measures must be put in place. First, in order to manage flows, it is important to see, know and understand them. Consequently, both at the level of root causes and migration channels, the policy documents emphasize the importance of adequate collection and analysis of migration data (Council of the European Union, 1998, par. 72–73; European Commission, 1991, p. 21). Second, following and directing the flows of migrants require that the border control system is integrated throughout the Member States and even beyond the territory

and agencies of the EU Member States, involving countries of origin and transit, as well as non-state agencies: 'overall concept of control of legal entry at all stages of movement of persons' (Council of the European Union, 1998, par. 62). Third, the proper management of the flows also implies that one can distinguish between the different kinds of flows. Consequently, migration management should involve a harmonized and ultimately a common framework for determining who belongs to what flow. From the outset, the policy documents call for standardization and ultimately integration of the criteria for and processing of the flows.[7] Finally, the management of the flows not only requires the involvement of source countries, transit regions and nongovernmental agencies but it should also engage with the migrants themselves. Accordingly, the documents call for information campaigns informing the potential migrants of the possibilities and the obstacles of migrating to the EU (Council of the European Union, 1999).[8]

The third policy area of migration management covers the treatment of migrants inside the EU territory, which bears on both legal and illegal migrants. The treatment of "legal" migrants fits the caption 'strengthening integration policies for legal immigrants' (European Commission, 1991) what became under the Tampere Conclusions 'fair treatment of third-country nationals'. Here the basic assumption is that the control of immigration flows is closely linked to the successful integration of legal migrants. First, there are only so much legal immigrants a host society can deal with.[9] Second, the readiness of society to accept legal immigrants depends on the government's capacity to control the influx.[10] Contrary to the legal immigrants in the host territory, those who are refused admission should (be) return(ed) to their country of origin. Thus, this policy area explicitly calls for programs of voluntary return as well as readmission agreements with source countries.

On the basis of the preceding descriptions, we may characterize the logic of EU's migration management as one of comprehensiveness, realism and maximization. The comprehensiveness means that migration management engages all relevant policy areas and stakeholders. The policy areas cover potentially all internal and external policy items. The stakeholders comprise first of all the Member States themselves. It explains the dominant logic of coordination and harmonization as a goal in itself. Second, the involvement of source and transit countries and, ultimately, the migrants is a "logical" part of the concept. Such involvement and cooperation is only conceivable if those stakeholders have an interest in the policy. The reality suggests that a full migration stop is not possible. However, migration can be managed. Allegedly

there is a capacity to direct and even prevent certain flows of migration. The maximization suggests that if migration flows are managed properly everyone wins, including the source countries, transit countries and migrants. This characterization of the EU's concept of management of migration flows based on the official documentation allows us to analyze its relation with the rule of law. To structure the discussion, in the following the concept is broken down into "management" and "migration flows".

Management: where are the legal norms?

The first section concentrated on a basic and uncontroversial aspect of the rule of law, that is, rule through the modality of law. It obviously implied the eminence of legal norms. One of the protective effects of legal norms is their signaling function: legal norms signal the possibility of organized enforcement. However, the logic of migration management makes legal norms virtually obsolete. The maximization perspective combined with the integration of stakeholders, including sending countries and migrants, creates a logic that has an uneasy relationship with the rule of law. Migration management holds the promise of not only promoting the interests of the host countries, but also if successful it should produce a win–win for all stakeholders involved. Quite rightly, critical migration researchers have pointed out how this logic seeks to treat migration policy as a purely technical and a political matter (Geiger and Pécoud, 2010, pp. 11–12). That same win–win logic may deactivate the rule of law. Of course, there are legal arrangements that can be understood in terms of facilitating a win–win situation as they seek to solve coordination problems (e.g. some arrangements from contract law, commercial law and traffic law). However, the starting point for the rule of law for public law is obviously not a win–win situation. The underlying assumption is a structural unbalance of powers and opposing interests between authorities and individual norm subjects. In such a context when the authorities act with regard to an individual norm subject, the latter does lose. This unequal relationship triggers the protective scheme of the rule of law. It explains why there should be legal constraints on the exercise of public powers in the first place. If we turn now to migration, it seems difficult to argue that migrants and the authorities are faced with a coordination problem, which may be dissolved into a win–win situation. On the contrary, as long as authorities deny migrants admission (justified or unjustified) and use violence to enforce the exclusion, there is clearly not a win–win situation: the excluded migrant simply

loses. The point is not that this "zero-sum game" is necessarily unjustified or unethical. Rather the concern is that if one treats migration policy as a potential win–win game, the essential trigger for the rule of law slowly disappears. In other words, if the pessimism underlying the rule of law makes way for an optimistic and maximizing view on migration policy, the very grounds for having the rule of law in the first place seem to disappear.

The maximization rationale of migration management points to another more hidden tension with the rule of law. The objective to maximize the benefits associated with migration operates as a substantive criterion for determining who is to be admitted and who is not. Migrants that are beneficial to the economy, pension scheme and health care are wanted, whereas migrants who are not beneficial in this respect are unwanted. The unwanted migrant should not receive the authorization to enter and stay because he or she is not beneficial to the socio-economic situation of the EU and its Member States. If he or she enters and stays without authorization, their entrance and stay become illegal. This mechanism enables a direct connection between illegality and not being beneficial to the host country. Similarly, legality corresponds with being beneficial to the host country.

There is an unexpected and underexposed consequence for the legal structure of the distinction between legal and illegal migrants. Illegality not only refers to non-compliance with migration laws, but it also has a direct socio-economic connotation. This connotation is not expressed in a minimalistic way but aims at maximization. So migrants are refused access not because they are "detrimental" to the host society, but because they are "not beneficial". There is a huge gap of discretion between "detrimental" and "not beneficial". This gap may increase depending on who carries the burden of proving whether or not the migrant is detrimental or non-beneficial: the migrant or the authorities. Unexpectedly, precisely the optimistic and positive perception of migration in a way offers – conceptually and potentially – more discretion to the authorities than a public order and security-oriented notion of legality and illegality. The maximization and socio-economic-oriented conception of migration – as opposed to the formalistic and control oriented approach – also paves the way for a paradoxical logic. If legality now corresponds with the quality of being beneficial, there is a question about what happens over time. What if during the legally valid period of stay the migrant ceases to be beneficial? In other words, the management paradigm assumes that it is possible to determine on forehand

whether or not a migrant is and will remain beneficial. This rather ambitious assumption is the direct result of the maximizing approach. By contrast, a minimalistic criterion for admission (e.g. "not detrimental"), though far from watertight, seems more stable. This stability is important in the context of legal certainty.

In a way, the fundamental problem with the logic of migration management is that the belief in integrated win–win situations and alignments of interests caters to a general marginalization of "legal" categories. This is reflected in the – maybe incidental – equation of admission on the basis of the right to asylum and right to family with admission on the basis of "other" humanitarian grounds.[11] This equation is highly problematic from the legal perspective as the "legal" grounds for admission are to be distinguished from the admission on "humanitarian" grounds. For only this distinction can explain why there is no legal right to admission on humanitarian grounds. The following quote is another striking example of this well-intended move away from the law in the context of migration management:

> [In] the context of a future comprehensive legal instrument, it will also be necessary to clarify the issue of whether the rule-of-law approach developed in Europe in totally different administrative connections and the model based on legally enforceable subjective rights are actually suitable as the sole instrument in the refugee sphere. Consideration could readily be given as well as to a reform of the asylum sector with a move to less rule-of-law oriented approaches to protection and more politically-oriented approaches. (Council of the European Union, 1998, par. 132)

In short, because the introduction of non-legal categories has been well-intended, one easily overlooks how this tendency can backfire on the rule of law.

Migration flows: where is the migrant?

The main omission in the management paradigm was the lack of legal norms directed at migrants. The legal norms are not so much banned by the management paradigm they simply become superfluous. The concept of "migration flows" takes out the other basic legal ingredient: the legal norm subject. While showing how "management" may put the rule of law out of order required some analytical detours, the argument against

"migration flows" is rather straightforward. We already referred to how a particular branch of immigration law has a very long legal tradition, that is, the legal status of migrants "in" the territory of the host jurisdiction. From this tradition come the so-called aliens acts. Now, there are different frameworks (political, anthropological, linguistic, etc.) for understanding the notion "alien". But what matters for our purposes is that the notion "alien" is also a legal category. In fact, it turns the person who is from elsewhere into a legal norm subject of the relevant host jurisdiction. For sure, the legal status of this norm subject may be inferior to that of local norm subjects. But at least the alien is a legal norm subject. The law governs his or her position. It means that the authorities should act with regard to that norm subject through the law. In contemporary Western societies, the notions "alien" and "foreigner" acquired a negative and stigmatizing connotation. Referring to someone as an alien or a foreigner is easily understood as an expression of xenophobia or racism. Hence, we prefer to use the "political correct" and neutral term "migrant". Irrespective of these legitimate and laudable motives, precisely this discourse can become problematic from the perspective of the rule of law. "Migrant" is a non-legal category. In effect, under EU law the legally proper way to describe a migrant is "third-country national". In a way, "migrant" is a "pre-"legal category, as one already identifies a migrant as a migrant even if his legal status is still undetermined. So the first mechanism that drives the legal norm subject out of immigration policy is the move from "alien" to "migrant". From here it is only a small step to "migration". Where the migrant still refers to an individual human being, "migration" is simply a phenomenon. It is clear that a phenomenon cannot constitute a legal norm subject, unless one ascribes some kind of agency to it. Obviously, immigration policy and law are not structured such that authorities claim obedience from "migration", or that "migration violates migration law".

The failure to treat the migrant as a legal norm subject is reinforced by the introduction of the notion "flow". The origins of its use in the context of European migration policy explain its radical non-legal character. The notion flow or influx was first used in official documentation in an outright negative sense. It referred to a great number of people trying to enter the Eastern Member States following the collapse of the Warsaw pact states, Soviet-Union and, later on, the Balkan states (Council of the European Union, 1998, par. 5; European Commission, 1994, par. 22 and 24;). These people were understood in terms of flows to express their extra-ordinary and undesirable character. The flows were a matter of emergence. The place, time, causes, quantity and quality of

the flow were not foreseen. The notion of influx reflected this irregularity. Equally extra-ordinary and non-regular was the legal status of the people trying to enter the Member States. They did not fall into the normal legal categories used for dealing with those seeking admission. Of course, previously Member States also received great numbers of migrants. However, this took place in the legally defined and planned framework of bilateral labor migration agreements with, for example, Turkey and Morocco. Another legal route that just became available was admission based on the right to family life, that is, family reunification. The remaining common legal route for admission was through the right to asylum. However, the new flows of people seeking admission did not fall under any of these categories. They defied the then existing legal logic. Hence, precarious and ad hoc grounds for admission were used, namely, the admission on humanitarian grounds. So the notion of flux represents a phenomenon that cannot be captured by normal legal categories (Lindahl, 2005). Placed in this context, the notion of flow both reveals its non-relation to the rule of law and the inadequacy of the law. As such, the concept of flow indicates that there is something not normal and even worrisome going on. This awareness may also extend to the rule of law: there is something not normal if the law is incapable of treating people as legal norm subjects. In other words, in its initial meaning "flow" already stood on uneasy footing with the rule of law, but at least it revealed this tension.

Paradoxically, the situation becomes really opaque and troubling when "flows" are normalized. The normalization or regularization of the flows started in the same documentation that warned for its irregular and unpredictable character. Indeed, when the first mentions of flows were made, the experts immediately called for initiatives to collect and analyze data on the causes, quantity and quality of the flows.[12] The point is that this move towards data collection and analyzes suggests that the flows are not so unascertainable and unpredictable after all. In fact, according to the official discourse, a better understanding of the drivers of the flows may actually allow authorities to manage the flows. Europe may (re-)direct and even prevent certain movements of the flows. In other words, the flows can be controlled or secured in a Foucauldian sense. This not only made the management of flows part of the "normal" business of government, but the notion of flow also lost its exceptional and abnormal connotation. From then on, it became equally normal or "logical" to construe migration policy as something that was no longer about individual legal norm subjects. The target of immigration policy is not a legal norm subjects who is required to obey

the law. The central target of migration policy is an object, that is, a flow, which "is to be managed".[13]

At this point, the logic of migration flows and management come together. For the idea that flows are beneficial, can be explained, predicted and even managed caters to an overall attitude of optimism and maximization. Here a quick empirical and critical check is needed. There are areas of governmental policy where optimism and maximization seem justified, for example, some forms of public education, traffic infrastructure and regulation, etc. It happens to be the case that in these areas the authorities have adequate and stable knowledge of the so-called success factors. Moreover, they are in a position to greatly affect those drivers of success. When it comes to migration policy, the situation is quite the opposite. Authorities neither have stable and adequate knowledge of the drivers of the "migration flows", nor the capacity to greatly affect those drivers.[14] Against this background, it becomes highly problematic to adopt an optimistic and maximization approach. Rather it seems more appropriate to have a backward-looking (ex-post) and minimalistic perspective, and focus on what authorities should "not" do – in any event. In other words, authorities could focus more on minimizing the adverse effects of migration policy. This perspective fits much better the logic of constraints designed and practiced in the context of the rule of law: typically legal constraints are more effective in ensuring that authorities refrain from certain actions rather than taking actions. However, in an environment of structural uncertainty about the effects (positive or adverse) of "active" policies how to constrain the authorities or hold them accountable if the objective is to maximize the benefits of migration? Since nobody knows what "will work" for all relevant stakeholders, there is simply not a stable criterion for holding the authorities accountable. The only criterion left is good intentions. However, precisely this logic puts the rule of law out of service. For the protective force of legal arrangements (competence, rights, proportionality, etc.) lies exactly in the idea that the authorities must refrain from taking certain actions even if they have all the best intentions.

The aim of this chapter was to substantiate the intuition that many of the concerns with contemporary migration policy culminate in the concept of migration management. The idea is that the official logic of management of migration flows marginalizes two basic legal ingredients: legal norms and legal norm subjects. To be more precise under "management of migration flows", the migrant ceases to be a subject of a legal norm that he is supposed to obey. There is a propensity to create an increasing distance between the factual measures affecting

migrants and the actual legal norms the migrant is supposed to obey. The greater this distance, the more the migrant is moved away from the protection of the law. Paradoxically, the analysis of the official documentation revealed that management of migration flows eludes the rule of law precisely because of the well-intended and common sense nature of management of migration flows, namely, comprehensiveness, optimistic realism and maximization. This logic drives the law out of migration policies and reinforces their seemingly neutral and technical character.

Notes

1. This chapter is the revised version of a paper that was presented during the international workshop 'Disciplining Global Movements – Migration Management and its Discontents' (University of Osnabrück, Germany, 2010, http://www.imis.uni-osnabrueck.de/IMISDayWorkshopNov2010.htm). The author and the editors would like to thank the German Robert Bosch Foundation and the Institute for Migration Research and Intercultural Studies (IMIS), University of Osnabrück, for their generous financial support.
2. Cf. Art. 3 Schengen Borders Code: 'This Regulation shall apply to any person crossing the internal and external border of Member States'. Art. 1 (1) Visa Code: 'The provisions of this Regulation shall apply to any third-country national who must be in possession of a visa when crossing the external borders of the Member States'. Art. 3 Blue Card Directive: 'This Directive shall apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of highly qualified employment under the terms of this Directive'. Under the conditions for the Visa, entrance or Blue Card the third country national are expected to ('shall') perform a set of actions. In this respect, the norms seem directed at migrants. Moreover, the instruments spell out the conditions for the authorization (visa, entrance or Blue Card). Those conditions must be fulfilled by the third-country national. However, these are not true obligations or norms for the third country national. On the one hand, he has no obligation meet the requirements. On the other hand, satisfying the conditions does not give him a right to entry. The true obligation lies with the authorities in the duty to refuse the visa, entrance or Blue Card. See European Commission (2006), Art. 13(1); European Commission (2009), Art. 32(1) and Council of the European Union (2009), Art. 8(1).
3. This explains why the Meijers Committee of migration law experts proposed in that their draft Directive should apply to all kinds and forms of admission refusals: 'In order to prevent that acts and measures that de facto have the same effects would be excluded from the applicability of this Directive, paragraph 2 explicitly includes de facto acts and measures in the concept of "decision"'. (Boeles et al., 2005, pp. 309–310)
4. Of course, there are some legal norms that may be understood as a pure coordination instrument not reflecting any other value or preference of interests other than the benefit of coordination, for example, traffic rules determining the driving side of the road.

5. According to the published materials, the notion migration management was not discussed. The matters of interest were primarily the qualified majority voting and whether the reference to the fight against illegal immigration and human trafficking should be included in the article on immigration (European Convention Praesidium, 2003, p. 30, with reference to proposed amendments; European Convention Chairman, 2002, pp. 4–5; European Convention Secretariat, 2002, p. 4; European Convention Praesidium, 2002, pp. 7–8).
6. When the documents explicitly mention "management of migration flows", they actually list items that were initially captured under "control of migration flows" (Council of the European Union, 1998, par. 72–84; Council of the European Union, 1999; European Commission, 2000). So, apparently migration management equals migration control. Yet this misrepresents the actual meaning of management of migration flows. First, the different documents do not mention the same policy items under the captions control or management. In fact, the only item all the documents have in common under the caption management or control of migration flows is combating illegal immigration. However, the tone of the documents suggests that the intention was not simply to replace one list of policy items with the next one. Rather they seem to supplement each other, while emphasizing some items that have become especially topical. Second, the notion management not only refers to a specific migration policy area (i.e. control of migration flows), but it is also an expression of the overall character and objective of migration policy. In other words, EU migration policy is a matter of management of migration flows and this involves actions on the three policy areas: migration pressures, control of flows and integration of legal migrants. This becomes most clear in the 2000 Communication where the term management or regulation of migration flows refers to all the various policy areas involved: 'In order to regulate migrant flows successfully, therefore, and to reduce illegal immigration, the EU needs to adopt a co-ordinated approach which takes into account all the various interlinked aspects of the migratory systems and to work in close partnership with the countries of origin and transit' (European Commission, 2000, par. 3.2).
7. The documents differ in their emphasis on types of flows (e.g. European Commission Communication, 2000 concentrates more on economic migration), and the level of integration of policies, as from the Amsterdam Treaty onwards the development of a common (and thus more integrated) EU policy became institutionally possible.
8. See also European Commission (2000) calling even for 'intensive dialogue' with migrants.
9. 'The equilibrium of our societies makes it vital to integrate immigrants, particularly where it is established that immigration is for settlement' (European Commission, 1991, p. 8) And '[a] society cannot afford to tolerate a split which would result in the exclusion of part of its population [i.e. legal immigrants]. There is a social imperative to maintain the equilibrium of societies' (European Commission, 1991, p. 4)
10. 'Society's readiness to accept the inflow of new migrant groups depends on how it perceives government to be in control of the phenomenon'. (European Commission, 1994, p. 32, par. 118)

11. For example, European Commission (1991) says 'exemptions on humanitarian grounds (right to asylum and family reunification)' (par. 5); 'humanitarian exceptions, which by definition cannot be easily controlled' (listing family reunification and right to asylum) (par. 17).
12. This initiative echoes the structure of the "discovery of the population" as described by Foucault (Reeger and Sievers, 2009, pp. 299–300).
13. This stands in stark contrast with the discourse on free movement within the EU. There is no mention of internal European migration flows. Rather it is about individual EU citizens using their right to free movement. Perhaps the references to the labor market(s) in the EU may come closest to this idea of flows. Even if so, the labor market is a highly juridical phenomenon – ranging from labor regulations, collective bargaining agreements and labor contract law. In other words, there is a strong legal tradition and practice that would resist a tendency to treat the different actors as flows – as opposed to legal norm subjects.
14. See Vogel and Cyrus, 2008. Also Franck Düvell: '[C]landestine migration exists because authorities are unable, or even unwilling, to efficiently and fully prevent this from happening' (Düvell, 2008, p. 486). More generally, see the reports from Clandestine project (Vollmer, 2008). Also migration researchers hesitantly start to raise questions about the proper grid to measure (and thus understand) migration (what are adequate differentiations in terms of who is still a migrant, e.g., third generation? What is proper administrative level to measure migration, e.g.,supranational, transnational or local?) (Reeger and Sievers, 2009, pp. 310–311).

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5

Overflowing Borders

Smart Surveillance and the Border as a Market Device

Harrison Smith

A fundamental problem in international border policy has been to address the uncertainties of global flows through the social and technological construction of borders. This chapter seeks to address how it is that the private sector as well as other state and international actors and networks have sought to instil the notion that new information and communication technologies offer greater certainty in managing borders, and in turn the management of people and things across territory. As international flows of people, commodities, capital and information become increasingly framed by notions of risk and uncertainty, a recent move to address such problems has been to reconfigure the socio-technical constitution of borders by introducing new measures for identification, classification and risk assessment of flows. A salient example of this is the need for a technological renewal of the border to become, at its core, fundamentally "smart" in its capacity to manage uncertainty, by enhancing the infrastructure to easily target, identify, authenticate, assess and intervene in border management. This chapter seeks to address how uncertainty, as an epistemological condition in global market relations, is altering the socio-technical fabric of borders towards new smart regimes, and in turn to consider the emerging types of disciplinary techniques for mobility governance being advanced primarily, albeit not exclusively, by transnational private interests. For brevity, the analysis will be concerned exclusively with North America.

While smart borders are demonstrably a new technique for disciplining mobility, more importantly, smart borders reflect a larger discourse of international political economy. Borders, and more

specifically the socio-technical regimes of border governance, play a pivotal role in influencing global markets; a key trend has thus been to increase the capacities to individuate and identify border flows, categorize and assess their potential risk and quickly intervene should a particular subject exhibit any deviance from institutional norms, in order to smooth out any frictions in border flows. In this way, smart surveillance will be understood and explored as a technique for mobility governance, which emerged from a problematization of borders in their relationship to markets, exemplifying how the economy of qualities and economic "overflows" are altering the socio-technical construction and stabilization of borders within global markets (Callon, 1998).

This chapter argues that borders – and more specifically permission to cross borders – are increasingly being defined at the ontological level as an economized service to be delivered by a hybrid of public, private and international actors. In this way, it is not simply that smart surveillance is an altogether new development, nor a paradigm shift in border management; smart surveillance is a layered approach to managing uncertainty through an increasingly heterogeneous and modular infrastructure of control. Moreover, it is an approach that follows a normative discourse wherein the market is synonymous with the proper techniques and frameworks for managing global uncertainty.

The first section explores the relationship between the construction of markets and the management of uncertainty through calculative agencies. This provides the necessary groundwork for understanding the reflexive politics of global markets. The second section briefly outlines how such theories intersect with larger socio-technical configurations of infrastructure, paying close attention to the layering of surveillance techniques to manage increasingly globalized flows of humans, commodities and information. The final section provides an overview of smart border practices within North America. The decision to analyse North America stems from the geo-political complexities of managing border infrastructures within a post-9/11 discourse; both Canada and the United States in particular have been strong advocates of smart borders, motivated by a belief that they will prove to be instrumental in securing territory, while also effectively managing the logistical systems of cross-border commerce. In effect, the move towards developing such smart border systems in North America demonstrates some of the key tensions currently unfolding within international political economy, as markets become increasingly enmeshed within global socio-technological conflicts such as securitization.

Framing borders, calculating markets: the border as a market device

Michel Callon's actor-network approaches to understanding the socio-technical construction of markets highlight an important relationship concerning how it is that uncertainty is managed through market practices. There are three primary reasons for drawing on Callon's work (e.g. Callon, 1998; Callon, 1999). First, Callon highlights the role of the framing of markets as an entry point for understanding larger social issues concerning the relationship between science, technology and society: a relationship that is arguably embodied in his understanding of calculation as a practice of social framing and exclusion. Second, Callon does away with an understanding that places markets at the mercy of economic actors alone. He does not believe that only economists can understand markets through their calculative tools, nor does he believe markets are socially "pure" spaces that determine the overall shape and direction of social life. In other words, economists alone do not have exclusive access to markets anymore than sociologists have with the social (see also Latour, 2005). Third, and of particular interest, Callon takes the notion of uncertainty as a necessary condition of market relations, indeed, as something which not only does not "go away" with proper calculation, but as something that is becoming ever more commonplace in contemporary markets and service-based economies, which he broadly refers to as the economy of qualities. Far from the promise of science and technology to dispatch uncertainty – it has become an increasingly omnipresent element by which actors frame the social world, and indeed has been highlighted as an important epistemological condition of global market relations that have become ever more disorganized and complex (Lash and Urry, 1987; Urry, 2003).

For Callon, economic markets can be understood as frameworks created through "calculative agencies" for managing uncertainty (Callon, 1998). Markets are therefore considered socio-technical assemblages: heterogeneous arrangements that organize the conception, production and circulation of goods, in effect, construct a space of confrontation and power struggles due to their contradictory definitions and valuations (Çalişkan and Callon, 2010, p. 3). Drawing on concepts of framing and entanglement, economic markets require that actors engage in practices of social inclusion and exclusion through the techniques and acts of calculation mobilized to frame objects into markets:

> A clear and precise boundary must be drawn between the relations which the agents will take into account and which will serve in their

> calculations, on the one hand, and the multitude of relations which will be ignored by the calculation as such, on the other. (Callon, 1999, p. 187)

Calculation oversteps qualitative and quantitative divides, enabling a definition of markets as organized collective devices of calculation across human and material devices (Callon and Muniesa, 2005). It further extends beyond the realm of discourse; Callon's framework for actor-networks, and in turn calculative agencies, has room for including the heterogeneous material agencies that constitute networks (Law, 1994; Callon and Law, 1997). In other words, Callon's approach to understanding how it is that markets are formed into coherent, stable networks can be understood as a process derived from social and material acts of calculation.

Such framing and disentanglement of constructing new markets extends beyond the mere cognitive capacities of economic actors, and includes a consideration of the various market "externalities" and "overflows", which perform a difference in calculating markets. For Callon, externalities can be understood as that which cannot be taken into account and exists beyond a particular market frame. Overflows represent unexpected results – typically inefficiencies in calculation – produced by the frame. Such "market failures" demonstrate how markets are constantly subject to revision due to the omnipresence of uncertainty, but moreover demonstrate both the power and limitations of calculation in enacting social life. As markets frame social actors into particular relations of practice, overflows necessarily develop which the original acts of calculation cannot properly contain. In simple terms, not only are markets actively shaped, created and maintained through social practices of calculation, but also such practices can be understood as a result of framing uncertainties in socio-economic relations. Such practices of framing markets thus tie into much larger theoretical frameworks of understanding how particular actor-networks become stabilized, while others are discarded. Markets, on the basis of their constitution, create powerful mechanisms of selection and social exclusion wherein goods and services become ever more differentiated and singularized from one another (Callon, 2007). This is more commonly referred to as the "economy of qualities", marked by the ubiquitous distinction of consumer products into goods and the development of sophisticated consumer lifestyles and tastes (Callon et al., 2001). The result is thus a network of market practices, logics and dynamics of framing and socialization, such that

> We are beyond classical mass customization, and even the co-construction of supply and demand in the strict sense of the term. What is at issue here is the creation of a subjectivity, of a form of active and interactive individual attached to product-services that singularize her and that she singularizes. Consumption denotes the engagement of singular people, at the end of which the consumer is caught up in her own world. (Callon, 2007, p. 148)

Overflows denote inefficiencies in the market, where new and often unexpected market relations emerge through practices of calculation, and Callon cites examples such as the polluting of local groundwater after the construction of a nearby factory, or emergence of low-cost generic drugs once a patent has been released by a transnational pharmaceutical corporation (Callon, 1998). Such overflows describe how information can destabilize and restabilize markets – how practices of calculation necessarily produce differences in the market, because market frames are never entirely completely successful, in turn enacting matters of concern between humans and non-humans. In simple terms, where as economists see markets as the norm and overflows as an aberration of calculation, for Callon, overflows themselves are the norm. Overflows are one of the defining features of contemporary market relations because markets, and most certainly global markets, are explicitly organized as networks allowing the coordination of large numbers of heterogeneous actors who define one another through the circulation of intermediaries, a phenomenon that has proliferated exponentially through the networking of information and communication technology, the rise of just-in-time production schedules. A multiplication of overflows becomes the result: emissions of greenhouse gases, climate change, biological or computer viruses, hackers, global mobility of people and commodities, terrorism and "paralyzing" amounts of data collection and processing, these are among the types of overflows and uncertainties emerging which trigger matters of concern that cannot be adequately resolved at the economic level alone (Callon, 2007). Overflows therefore reveal the controversies that arise from socio-technical relations in that they give prominence to unforeseen effects of market relationships, establishing matters of concern that are not reducible to "cold, distant, and abstract analysis" (Callon et al., 2009, p. 28). Instead, the controversies created by overflows allow us to develop an enriched understanding of the situated relationships certain social groups share with others, including institutional relations with bureaucratic forces of administration, relations of territory and sovereignty and relations with elites.

This controversy of uncertainty can be understood as a politics of calculation that has also manifest through other discourses such as risk management, and necessarily contribute to the social frameworks that structure practices of global forms of governance. For Ulrich Beck, the concept of risk is inherently tied to modern institutions of control, presuming a capacity to calculate the incalculable, effectively "colonizing the future" through decision making based on present calculations (Beck, 2002, p. 40). However, Beck's thesis of a world-risk society likewise emphasizes that there is something qualitatively different about the way in which risk, uncertainty and calculability are enacted: stating that we are living in an age of 'uncontrollable risk and we don't even have a language to describe what we are facing' (Beck, 2002, p. 41). However, Callon et al. (2009, p. 19) argues that risk is not synonymous with uncertainty, in that risk designates clearly identifiable dangers 'associated with a perfectly describable event or series of events'. This in effect places risk in close approximation with rational decision, whereby it is possible to conceptualize prior to enacting a market that a particular scenario might happen, and indeed, it can be to a certain degree managed through calculative probability. Uncertainty, on the other hand, is precisely the one that falls beyond the purview of calculation. At the same time, while Beck emphasizes the idea of uncontrollable risk, for Callon the economy of qualities is marked by a significant lack of consensus in professional knowledge or managerial practice. This constitutes the essence of his thesis of "hybrid forums": situations whereby there is a general lack of consensus between calculative agencies and the identification of externalities and overflows, meaning a general sense of uncertainty in market relations. These "hot" scenarios of calculation are, for Callon, increasingly becoming the norm in everyday global markets, not only because of the inherent "public" nature of uncertainty in the market, but also because of the multiplicity of actors involved in organizing new forms of economic activity (Callon et al., 2001, p. 195; see also Callon et al., 2009). In effect, this demonstrates how calculation is a politically contested subject whereby markets, and particularly the identification and framing of overflows, become subject to relations of power and domination through the mobilization of particular calculative agencies, and more generally to the "economization" of objects and things (Çalişkan and Callon, 2009, p. 2010). Overall, it becomes clear that uncertainty, as a general condition of contemporary global market relations, underscores the politics of calculation, and the capacity for goods and services to be identified and stabilized in the economy of qualities. Moreover, in attempting to open up the "black box" of markets, Callon's

perspective enriches our understanding of how complex assemblages of technology and calculative agencies intersect within the larger frameworks of production, distribution and consumption of goods and services. It therefore becomes possible to develop a theoretical understanding of the border as a calculative device that enacts and performs a difference in the constitution of global market practices and frameworks.

Smart surveillance: securitization, prioritization, access

Uncertainty has likewise become a key concern at nearly every level in border management, as well as a central rationale for new security practices (Daase and Kessler, 2008). Security studies have proliferated exponentially since 9/11, with many arguing that as a discourse, security has come to dominate the way in which states and international actors organize everyday life (Bajc and de Lint, 2011; Bigo, 2006; Bigo and Tsoukala, 2008). While it is perhaps obvious that security has become a paramount concern for sovereign states and international networks, it is also important to stress that as a concept, security is also being problematized, and subject to new forms of governance that are not otherwise reducible to sovereign power over territory, nor necessarily to one dominant discourse or speaker (Salter and Piché, 2012). Jon Coaffee and David Murakami Wood argue that security is undergoing a period of rescaling, de-territorialization and re-territorialization, wherein concerns of international security are penetrating structures of governance at every level (Coaffee and Wood, 2006). A result of this re-territorialization is that securitization is increasingly enmeshed with neoliberal economic competition, particularly as urban cities strive for increasing resilience in the face of global economic competitiveness (see also Coaffee et al., 2009). In turn, one finds an increasing ubiquity of security infrastructures penetrating across different geographic locales, including new investment into urban surveillance systems that further integrate local geographies with global institutions of securitization and risk management. Such efforts of security encompass multiple discursive and material strategies, and tend towards incorporating a hybrid of military forms of risk management with "splintered" urban infrastructures based on neoliberal institutions of prioritization (Graham and Marvin, 2001). In other words, not only do we see the emergence of entirely new infrastructures of security, such as widespread Closed Circuit Television networks, but also a layering of security rationales and technologies onto pre-existing infrastructures such as telecommunications, energy and, in this case, borders. This process of securitization has in effect

become tightly bundled with the framing of infrastructure towards an overall discourse of critical prioritization. Although in previous decades the notion of infrastructure was defined with respect to the adequacy of a nation's public works, since the mid-1990s, the growth of international terrorism and neoliberalism has led policy makers to increasingly redefine infrastructure within the context of "homeland security", such that now one finds a discourse that couples infrastructure with risk, embodied within the concept of "critical infrastructure" (Moteff and Parfomak, 2004). Indeed, the shift in discursive accent towards critical infrastructure, and with that critical infrastructure protection, signals a larger socio-economic trend wherein local infrastructures are under pressure to adapt to global flows of uncertainty. In turn, this suggests that mobility has become a paramount concern in theorizing the relationship between discourses of securitization, on the one hand, and global flows, and overflows, of economy and society, on the other (Urry, 2000).

It is in many respect precarious to assume that 9/11 represents the sole catalyst for understanding how securitization intersects with larger issues of political economy, and indeed as Stephen Graham and Simon Marvin point out that, from an infrastructural analysis, these changes have been ongoing prior to 9/11 (Graham and Marvin, 2001). Within critical security studies, Didier Bigo and Anastassia Tsoukala also argue that securitization is not reducible to a post-9/11 discourse, nor as a structural trend of modernity slowly eroding institutions of democracy (Bigo and Tsoukala, 2008); current and emerging restrictions on human rights stem from the professionalized management of unease and insecurity. Specifically, Bigo and Tsoukala see the role of transnational working groups: heterogeneous, public–private hybrid organizations, which are not reducible to an overarching logic or discourse, have become the primary managers of insecurity and unease within global flows. As such, the social and political construction of unease, the "(in)securitization process" should be understood by the everyday processes of bureaucratic management, and increasingly the use of technologies that permit communication and surveillance at a distance (Bigo and Tsoukala, 2008, p. 5). In other words, it is possible to see how trends within urban infrastructure and border security are connected to larger global practices of calculating and managing uncertainty. The role of markets, market actors and market practices, in effect play a larger, pivotal role in explaining the socio-technical constitution of border securitization. More importantly, like the calculation of markets, such professional managers of insecurity actively select and frame the conditions of possibility through

routine acts of calculation. While principles of risk management are no doubt present, uncertainty nonetheless persists as a necessary element in the framing of security practices.

Similar to John Urry's analysis of how globalization is contributing to the de-differentiation of public and private spheres (Urry, 2000), a recent trend within urban geography and surveillance studies has been the introduction of "topological" surveillance infrastructures, wherein public and private institutions increasingly enmesh at the infrastructural level. A transformation is currently unfolding within infrastructural governance marked by the "layering" of digital surveillance protocols, which have the capacity to continuously differentiate users based on socio-economic priorities (Graham and Marvin, 2001; Graham and Wood, 2003). Political and economic issues of risk, eligibility and access not only become highly individualized processes, but also have the capacity to transform particular spaces from universal public spaces based on notions of citizenship into markets or quasi-markets based on consumerism, which can prioritize access, granting them on an individual level based on the automated categorization of identity. Such automated surveillance systems, therefore, have the potential to "lock in" differences in the socio-economic divide in urban spaces and boundaries. Access becomes increasingly the function of encoded categorization, which for Graham and Wood represents a part of a broader edifice of a new infrastructure of social control. Here it is important to note that socio-economic values are embedded within the development of these programs; issues of marginalization, social exclusion and coercion are thus not necessarily inherent in automated surveillance, and it is how they are developed to serve particular political and economic purposes that are of primary concern. In effect, the emergence of topological surveillance infrastructures, coupled with an analysis of markets as calculative agencies, play a foundational role in understanding the theoretical dimensions of smart surveillance and smart borders.

Building trust, managing uncertainty: the political economy of smart border infrastructure

Although this exercise of sovereign power continues, an element of complexity has been introduced through the intersection of critical infrastructures and global uncertainty, wherein the private sector has likewise emerged as contender for bolstering the state's efforts to gather and analyse information about an increasingly mobile global population, including transnational business classes, global tourism

and migrant labour. The private sector, keen on capitalizing upon an emerging market for providing border security technology, has also had to position itself as a necessary actor in international border management. In particular, it has sought to mobilize strategies of building trust with state actors such that the private sector can effectively solidify its role within international border management. Thus, a dynamic and complex relationship between discourses of risk, uncertainty and trust become a key social force in the unfolding of international border management, and particularly within emerging smart border infrastructures.

At the border, concerns of risk management and reliable screening measures have become a key target not only by national and international border experts, policy makers and authorities, but also by private sector firms eager to capitalize upon the emerging markets required for such an infrastructural investment, such as biometrics, a market estimated to value $14.6 billion by 2019 (Frost and Sullivan, 2010). In many respects then, the uncertainties around problematizing and governing borders have become a key mechanism for recruiting the private sector as a necessary ally in developing new critical infrastructures of securitization, such as smart surveillance. Likewise, the private sector has been eager to capitalize upon this discourse of uncertainty in order to ensure future profits, through the continued commodification of risk management protocols and technologies. In effect, there is strong reason to argue that larger global trends within urban infrastructures, including the development of topological surveillance systems, parallel emerging socio-technological practices at the border. The final section of this chapter will therefore begin from a broad conceptual overview of smart borders, and will then refine its analysis to an understanding of biometric technology, which has been instrumental in enabling systems of identity management and social sorting (Lyon, 2003). The final portion will elaborate on the increasing integration of border infrastructure, and will focus on the emergence of hybrid public–private actor-networks that seek to maximize smart border policies.

The increasing mobility of capital, labour and information highlights the central importance of borders in managing global mobilities. With respect to border management, Mark Salter has identified an increasing emphasis on surveillance, not only at the border itself, but also towards a de-localization of the border, effectively creating an invisible mechanism of governance wherein mobile populations increasingly discipline themselves (Salter, 2004, p. 79; see also Foucault, 1977). Not only do previous border control practices such as passports continue to connect

people with policies of governance, and institutions of citizenship, but also increasingly we see the classification of mobile populations into categories of risk and desirability. For Salter, smart surveillance therefore concerns the increasing ubiquity of information technologies which systematically manage identity. More recently, Mark Salter and Genevieve Piché continue to examine the shift to smart borders at the level of official policy discourse, arguing that, at least within the context of the US–Canada border, smart borders are creating a shift from a border of "facilitation to one of defense in depth" (Salter and Piché, 2012, p. 924). Their analysis reveals that a substantial difference between the discourses, statements and arguments of securitization do not necessarily correspond to their historical and political contexts and realities, nor do they reflect the quotidian practices of border security on the ground. Overall, the primary concern has been to ask whether or not emerging smart surveillance practices actually increase or enable greater security at the border, or conversely, do they act more as a discourse, which may not necessarily reflect the political, economic and social realities of policing borders. However, while such questions are important, the primary emphasis here is to ascertain the dialectical relationship between a discourse of global uncertainty and risk, on the one hand, and increasing calls for smart border and critical infrastructure securitization, on the other. In this way, it will be possible to develop a conceptual and theoretical groundwork for understanding the socio-technical constitution of borders.

There are many ontological nuances to smart border infrastructures. As Karine Côté-Boucher argues (2008), smart borders such as Canada's emerging smart border can be understood as technological assemblages of mechanisms, institutions, discourses and practices – all of which play a role in constituting a border as "smart". At the discursive level, it concerns the shift towards framing the border as critical infrastructure. This necessarily involves a reconfiguration of institutional priorities in that concepts such as risk and uncertainty become central themes for legitimating new socio-technical practices revolving around surveillance and population management. Hence, new categories for classifying and managing travellers emerge, such as the so-called trusted traveller who is deemed to be of low risk to the state, and therefore eligible to pass through borders with little or no difficulty. Likewise, the ability to create new categories for population management, and calculate their potential for risk also means that other social groups, such as migrant labourers, are subject to increasing scrutiny, surveillance and discipline. In this respect, one finds an overall intensification of global market practices

where socio-economic status becomes a key factor to accessing mobility, and framing how the individual experiences the infrastructure.

Smart borders can be understood as a reconfiguration of surveillance infrastructures wherein institutions of advanced targeting, identification and screening transform the border into an assemblage of predictive intervention. The border is smart when it can automatically identify and differentiate flows of humans and non-humans, not only before their physical arrival, but also predict and prioritize access and exclusion. Advanced identification concerns primarily the novel ways in which identity becomes imbricated within a surveillance infrastructure, such as the integration of the corporeal body through biometrics (van Der Ploeg, 2006). Advanced identification also concerns the construction and analysis of identity through techniques for pre-clearance and pre-screening, such as when governments demand flight manifests prior to arrival. Differential screening concerns the measures by which flows are individuated and subject to mechanisms of response and intervention. The emergence of transnational trusted traveller programs such as the "NEXUS" program, for example, embody this facet of travel management wherein particular types of individuals and groups are subject to less state intervention when crossing borders, effectively allowing them to access institutions of mobility in a way that is both qualitatively and quantitatively different than other social groups (CBSA, 2012). Such programs, moreover, demonstrate the heterogeneity of strategies different geographic locales are mobilizing to address market overflows.

A defining feature of such identity management protocols involves the increasing interconnection of databases, such as through information-sharing agreements, in order to maximize the use and sophistication of profiling technology. The use of the profile arguably becomes a key modifier in managing uncertainty and legitimating strategies of advanced intervention. For William Bogard, the profile has emerged as a key means for the maximization of control (Bogard, 1996). Although profiling has been around throughout all of history, Bogard argues that profiling today has undergone a process of re-territorialization, embodies the idealization of a simulated panoptic visibility, allowing for a kind of "surveillance in advance of surveillance", a prior ordering that can organize multiple sources of information to provide a means of verification prior to identification (Bogard, 1996, pp. 20–21). Such advance surveillance exemplifies how smart surveillance systems seek to replace the "actual" with the "virtual" in order not only to push surveillance to its absolute limit, but also to legitimate practices of advanced intervention and control. A primary objective of smart borders then is to

identify threats before their arrival at the border, and deter rather than punish deviance. Practices such as information sharing agreements, identity management and complex algorithms for passenger profiling become key instruments in the smart border repertoire, and in effect serve to legitimate the pre-emptive management of risk in the name of protecting critical infrastructure. The possibilities for information sharing, and increasingly the emergence of cross-border enforcement teams, also suggest that smart borders diffuse the locus of control from any one particular region. Again to draw from Bogard, this means that users become merely a mobile node within a highly dispersed and ubiquitous control environment (Bogard, 1996, p. 28).

The capacities and simulations for identity management most notably include an increasing attention to the body as a document for identification and authenticity (van der Ploeg, 1999; Ceyhan, 2008). Biometrics has arguably become a key technology in making border infrastructures smart, in that it is believed to be more reliable in terms of authenticating identity. This is done literally by encoding the body, then resolving such codes with the identities stored within various databases. Biometrics has been socially constructed as a key technology for future border screening practices, but indeed there are many states currently employing biometrics. According to the US National Science and Technology Council Subcommittee on Biometrics and Identity Management, the advantage of biometric identification is its capacity to 'resolve and then anchor the identity of known and suspected terrorists' by combining information from multiple police, military and border agencies (NSTC, 2011, p. 3). In practice, however, while fighting terrorism may be a stated objective, the primary function of biometrics has been to govern the mobility of non-US citizens, migrants and visa holders. The Department of Homeland Security's (DHS) "US Visitor and Immigrant Status Indicator Technology" (US-VISIT), for example, employs the Automated Biometric Identification System "IDENT", which fingerprints and photographs every international visitor, with some exceptions to Canadian and Mexican travellers, in order to "accurately identify" travellers, and "determine whether those people pose a risk to the United States" (DHS, 2012a). Considered the largest biometrics database in the world, with over 130 million records, the information collected by "US-VISIT" is subsequently shared throughout US government agencies, which direct their focus towards immigration and law enforcement, including the Department of State, Customs and Border Services, Immigration and Customs Enforcement, and Immigration Services, the Department of Justice, the Coast Guard and the Department of Defense (DHS, 2012b).

The "US-VISIT" biometrics program can also be understood as being constructed by a handful of private sector defense and information technology firms eager to capitalize upon the post-9/11 security climate; indeed, biometrics have been engineered into a profitable enterprise for a select group of transnational defense and consulting firms. Understanding the role of biometrics therefore becomes a matter of understanding the political economy of smart surveillance, including an analysis of the processes of commodification and integration of firms currently unfolding throughout the biometrics market. In turn, this enables a thorough understanding of the ways in which capital intersects with governmental concerns with matters of global securitization, mobility and crisis, as well as transnational flows of commodities, labour and information (Bigo and Guild, 2005; Zureik and Salter, 2005). In other words, because smart surveillance is a highly complex and inter-related assemblage of technologies, discourses and practices, it is necessary to narrow the analysis for conceptual clarity. Biometrics arguably embodies many of the key themes outlined thus far, and most importantly, beyond the mere technological capacities, biometrics enables an understanding of the complex networks of state and private firms involved in creating smart borders.

In 2004, the global management consulting firm Accenture, along with sub-contractors Ratheon, SRA International and the Titan Corporation, formed the "Smart Border Alliance" of contractors responsible for developing the "US-VISIT" program (Accenture, 2004). From its inception, the "US-VISIT" program has guaranteed the private sector a footing into the border screening technologies, including the most recent $71 million contract awarded to Accenture to upgrade the biometric systems of "US-VISIT" (Accenture, 2011). The world's largest biometrics database is therefore not surprisingly a highly profitable one. Coupled with the political incentive to remain steadfast on the war on terrorism, both government and the private sector mutually exploit the potential for biometrics to offer the promise of securing territory and population from external threats. This has in turn presented a complex power relationship in which matters of territory intersect with identity.

The political economy of biometrics extends beyond the commodification of identity management, but has also seen a substantial restructuring of firms, resulting in the creation of powerful transnational actors seeking to develop the border into a market long-term biometrics investment. France's Safran Group is perhaps the most evident example, which in August 2011, acquired the US biometrics giant L-1 Identity Solutions for $1.09 billion USD (Business News Americas, 2011). Safran Group in turn merged three

former business divisions of L-1, and re-branded it as MorphoTrust USA, a Morpho Company, part of the Safran Group, which dedicates itself to developing biometrics technologies and identity management solutions to all branches of the US government. Most recently, it was selected by the Transportation Security Administration to pilot a new "Credential Authentication Technology/Boarding Pass Scanning System" to enhance identity and document authentication systems (SafranMorphoTrust, 2012). While owned by a French defense contractor, MorphoTrust is subject to the so-called proxy agreement with the Department of Defense, and a national security agreement with the Committee on Foreign Investment in the United States, as a means of addressing concerns of foreign security risks posed to such critical infrastructure. The proxy agreement, in short, ensures that MorphoTrust continues to play a role in future US Department of Defense biometric systems, effectively securing MorphoTrust as a default contractor for biometrics and identity management. For the US government, this proxy agreement ensures that MorphoTrust remains an entirely independent company from Safran, and that any personally identifiable information collected by MorphoTrust remains within the United States (MorphoTrust USA, 2012).

While MorphoTrust has actively sought to brand itself as a distinctly American identity company, Morpho itself is a part of the globalization of surveillance, delivering screening products to border and airport gateways throughout the world. MorphoWay, a product designed to offer automated border control, has already been implemented in Australia, New Zealand and France, and employs multiple biometrics including facial recognition, iris and fingerprint scanning, travel document readers and identity management solutions, with the promise of streamlining and securing borders (Morpho, 2012). Beyond the expansion of markets, such automated control systems exemplify how global corporations are actively involved in the globalization of surveillance, and moreover demonstrate how biometrics plays a central role in controlling global passenger flows. This continued investment into biometric market is only beginning to gain momentum. In 2010, the global civil and military biometrics market was assessed at $4.494 billion, expecting to rise to $14.6 billion by 2019 (Frost and Sullivan, 2010). The increasing reliance on biometrics in sum can be understood within a larger global regime of controlling spatial flows by national and transnational actors. As such, it can be understood within a larger shift in the political and economic configurations of urban infrastructures, towards topological control systems in which access to social resources or mobility becomes contingent upon one's relationship within an assemblage of surveillance.

The development of biometrics at the border can be understood as a regime of surveillance, which functions to maximize a service model based on flexible identity management practices. However, biometrics at the border have not been exclusively deployed against non-citizens or others deemed to be "at risk". An entire regime of "trusted traveller" programs such as NEXUS have emerged across North America, which combine biometric techniques for identity management with transnational data sharing agreements between state border and law agencies. The result of a continued effort by a state and corporate elite to entrench neoliberal business models onto border policy.

Such efforts have largely sought to produce a more flexible regime for mobility governance, epitomized by North America with the recent Beyond the Border Action Plan between the governments of the United States and Canada, which calls for closer harmonization of regulatory standards, increased screening and information sharing regimes, cross-border enforcement and a discursive shift away from "borders" to "the perimeter" in order to achieve economic competitiveness with greater security (Beyond the Border, 2011). The Beyond the Border Action Plan, a progeny of the Security and Prosperity Partnership of North America (itself a progeny of the North American Security and Prosperity Initiative), epitomizes how the state and corporate elite work together through informal strategic alliances to maximize particular market objectives through efforts of securitization. Such partnerships continue to press for further efforts of screening and surveillance at the border, particularly emphasizing "smart" measures of information sharing agreements, biometrics and trusted traveller programs. Such partnerships build upon the 2001 Smart Border Declaration and Action Plan that has sought to implement a detailed agenda for controlling the mobility of people, commodities and information.

Conclusion

This chapter has sought to provide a lens for framing future discussions concerning the intersection between international political economies and global migration management, by highlighting how the role of mobilization of a discourse of uncertainty in framing border infrastructure towards regimes of "smart" technological governance. Callon's thesis of market overflows and the economy of qualities was thus particularly relevant as it highlights how market actors seek to manage uncertainty through practices of calculation and framing. The move towards redefining borders and infrastructure along a rubric of

critical infrastructure and securitization arguably embodies this process of framing and calculating market overflows, and moreover highlights that it is not necessarily reducible to one overarching global discourse such as post-9/11 securitization. Instead, the contention of the second portion of this chapter argues that trends within smart borders mimic larger global changes within urban infrastructures, which seek to instil institutions of prioritization and access based around socio-economic status. The third and final portion of this chapter applied these principles to analyse recent changes in North American border surveillance and mobility governance. Here, a general overview of smart borders was provided, followed by a closer examination of biometrics, which has been instrumental in facilitating smart border surveillance, particularly the development of information sharing regimes and trusted traveller programs such as NEXUS. In short, the development of biometrics highlights the increasing move towards identity management protocols in managing uncertainty, and represents a key strategy for legitimating the use of profiling and information sharing practices across borders. Perhaps more importantly, the exploration of biometrics demonstrates how the private sector has continued to mobilize itself as a key actor in the creation of smart border regimes, effectively commodifying discourses of uncertainty and risk as a calculative market strategy to develop the border into a profitable enterprise. Moreover, the case of corporations such as MorphoTrust demonstrate the political and economic tensions of international and public–private efforts to manage global uncertainty, requiring that private actors such as Morpho undergo massive changes in global branding and corporate restructuring to form close ties with homeland security departments. In this respect, it is possible to see how social institutions and conflicts of trust and uncertainty between the public and private sector continue to underpin the global restructuring of international migration management.

This analysis has in many ways only scratched the surface of the profound changes in border governance. Future research must begin to consider how state-corporate strategies for calculating market uncertainty are manifesting itself at the global level, paying close attention to their implications for the ways in which global populations are increasingly subject to profiling, and in turn how this affects their capacity to access social resources and mobility. This can be a relatively difficult task in large part because of the growing opacity in both state and corporate institutions, suggesting a greater need for international political economists to critically evaluate and discuss the epistemological and methodological challenges for future research. However, Callon's insights into

assessing the ways that economic overflows are produced and managed through calculation arguably present a powerful lens for framing future research, in that it requires that social research begin by tracing the ways in which actors mobilize themselves around particular sites of uncertainty. It further requires a careful analysis of the strategies by which actors calculate and attempt to manage such problems. Finally, Callon's theoretical strengths also suggest a robust framework that problematizes epistemological reductionism, and recognizes the complex power dynamics of global economic and political actors.

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6

‘Take a Chance on Me’

Premediation, Technologies of Love and Marriage Migration Management

Anne-Marie D’Aoust

> It is simply that in such society the government, in dealing with the family, deals with something almost as permanent and self-renewing as itself. There can be a continuous family policy, like a continuous foreign policy. (Chesterton, 1920, pp. 39–40)
>
> Tout le monde a droit à l’amour, mais il faut respecter les règles. (‘Everybody has the right to love, but you have to respect the rules’. A reader’s comment to an article detailing increases of sham marriages in Belgium: RTL, 2011)

The steady decline of marriage rates in North American and European countries since the 1960s seems to have relegated marriage’s political role in relation to the state, a topic that deeply concerned prolific English writer Gilbert Chesterton in the 1920s, to a state of historical curiosity and obsolescence. If Chesterton’s words appear to have lost their relevance in regard to divorce, his initial object of concern, they nonetheless still appear to directly tap into the complex links, real or apprehended, that currently bind the state, citizenship, bodies and family when it comes to marriage migration. Indeed, though marriage migration was “relatively insignificant in the early phases of post-War immigration”, it has become the object of more intense scrutiny in the past twenty years, as family-related migration became the main legal mode of entry in Europe as well as in the United States (Kraler, 2010, p. 23). Even ignored in recent state-of-the-art surveys of migration governance (e.g. Betts, 2011; Kunz et al., 2011), such neglect certainly betrays assumptions about labour migration being the main concern of

migration controls. Empirically, the lack of attention paid to marriage migration (which is itself only one dimension of family reunification or formation[1]) as a valid "political object of political inquiry" certainly reflects assumed dichotomies, such as those between the rational and emotional realms, and between autonomy and dependency.

Immigration trends in European countries tell a different story. Marriage migration accounted for 40 per cent of migrant settlement in the United Kingdom in 2009, thus becoming the largest single category for migrant settlement (Charsley et al., 2011, p. 2). In France, labour migration only accounted for 7 per cent of total migration flows in 2010 (Kofman et al., 2010, p. 6), and family-related migration accounted for 41.4 per cent of all legal migration flows, of which 59 per cent are spouses and partners of French citizens and permanent residents only (Office Français de l'Immigration et de l'Intégration, 2010, pp. 51–52). In Germany, family reunification represents the most important category of entry for third-country nationals, with 23.3 per cent of all visas apportioned on such grounds (Bundesamt für Migration und Flüchtlinge, 2010, p. 36), and 78.7 per cent of all migration flows to Germany based on family reunifications in 2010 involved incoming spouses (Bundesamt für Migration und Flüchtlinge, 2010, pp. 113, 42).

Increased legislation pertaining to marriage migration regulations in various European countries such as France, Denmark, the Netherlands and the United Kingdom reveal a process of increased securitization and concerns over marriage migrants that belies assumptions of marriage migration being a private, apolitical issue. If anything, it seems that the last decades saw an over politicization of this form of migration, with various governments expressing an overt desire to curb it down. In France, former president Nicolas Sarkozy expressed a willingness to scale down what he saw as an "imposed" form of migration ("immigration subie") running contrary to a "selective" form of migration ("immigration choisie"), thus opposing family-related migration from labour migration. The category of "grey marriage" was coined in 2006 (Delauney, 2006) and politicized in 2010 to describe what interior minister Éric Besson called "sentimental frauds" ("escroqueries sentimentales"), and which would describe marriages involving a migrant pretending to marry a French citizen out of love, but really looking to secure immigration benefits. In Germany, new income and language requirements for spouses' visa application were adopted in 2007, targeting particular spouses coming from specific countries and without a university degree. Finally, preventing abuses and misuses of the right to family reunification by third-country nationals has recently been identified as a central

element of the safeguarding and protection of free movement, a strategic priority area of the Council of the European Union (Council of the European Union, 2012, p. 19).

All these recent legislation and calls for improved techniques of management and control aim, in complex ways, to differentiate, select, order and value certain marriages and modes of intimacies created by mobile subjects and established citizens. If these measures certainly discipline migration flows based on managerial criterion, one must also inquire about the logic of premediation which underlies this disciplining apparatus: 'Whereas the logic of risk and forecasting centers on "prediction" of the future', explains Marieke de Goede, 'premediation is more self-consciously "creative" in imagining a variety of futures – some thought likely, others far-fetched, some thought imminent, others long-haul – in order to "enable action in the present"' (de Goede, 2008, p. 159). This chapter proposes to examine how a logic of risk management and premediation permeates discussions, policies and practices that aim at disciplining marriage migration flows in various European countries. This logic of premediation, as the author suggests, relies on what can be called "technologies of love". The latter plays a significant role in stirring and disciplining specific migration flows (what kind of marriage migrants the state welcomes, encourages or keeps at bay), and optimizing management practices, namely the legislation, policies and practices implanted to gauge "true" relationships. Technologies of love will reveal the uncertainty inherent in policing "true love" and constitute an important interface of mediation between sexuality, identity, citizenship, institutions and territory.

The point here is not so much to provide a thorough overview of existing legislation or bureaucratic practices. Instead, the aim in this chapter is to illustrate that though migration management might have become increasingly tool-based, technocratic and depoliticized, emotions such as love nonetheless act as crucial technologies in regulating who can be let in, and who "belongs". As such, this chapter constitutes a first step in coming up with a theoretical approach to marriage migration that differs from legal analysis of current family migration policies in place in various European countries (see, e.g., Charsley, 2012; Kraler, 2010; Wray, 2011). The lack of theoretical diversity in thinking about marriage migration in Europe has notably been identified as an important limitation of current engagement with the issue (Bayley and Boyle, 2004; Kraler, 2010, p. 10), and hence requires further attention. Besides, by relying on an array of examples from different countries, the author wishes to draw attention to the fact that

it is not sufficient to speak of a "governmentality" of marriage migration in Europe as if it were a coherent whole. If we can recognize the development of "the problem of marriage migration" that extends well beyond national boundaries, we should nonetheless avoid any temptation of grand theorizing and be attuned to the local character and peculiarities that inform the identification of this "problem". Lack of space prevents from doing justice to the specificity of each case discussed, but this chapter can still be read as a gesture in the direction of avoiding such totalizing narrative and developing comparative cases within governmentality studies of migration, which still tends to privilege single case studies (Walters, 2012, p. 192).

Defining marriage migrants

While it is now well established that gender is a crucial factor in our understanding of the causes and consequences of international migration, the significance of marriage migration has received scant attention, and part of it is due to its association with female migration and dependency, as opposed to work and autonomy (Kofman, 2004, p. 248). In their overview of the study of international marriage migration, Gavin Jones and Hsiu-hua Shen note that:

> the trend, scale, and influences on women's international marriage migration from Vietnam, Philippines, or China to Taiwan, Japan, Korea, or Singapore are the foci of scholarly investigation. (Jones and Shen, 2008, p. 22)

Because most researchers easily acknowledge that access to citizenship through transnational marriage remains the main way through which women can access the labour market, working visa in most East-Asian countries is usually limited to six months. Yet, nothing precludes from thinking that similar considerations about work, marriage and citizenship could come into play in Europe. Such focus is actually needed, as "marriage has become, more than ever, the backbone of legal entrance in the EU" (the European Union) (Lutz, quoted in Kofman, 2000, p. 71).

Still, one has to be mindful of the fact that distinguishing "marriage migrants" from "labor migrants" (Kofman, 2004; Brennan, 2003) is more the reflection of artificial dichotomies anchored in bureaucratic systems of regulation and classification than an accurate representation of the actual lives of migrants, who navigate these categories in more "fluid" ways. As migration and mobility get increasingly understood

as a continuing process underpinned by several motivations and often entailing a transnational life-course rather than one simple move from one country to another, we need to be wary of the risks of distinguishing sharply between different "kinds" of migrants, as if they could easily be distinguished by one specific goal or identity exclusive of others. The author in this chapter hence uses the term "marriage migration" having in mind a migration process where the relationship constitutes the basis of a migrant's entry rights (Wray, 2011, p. 1), and where the migrant's spouse or partner is a national or long-term resident of a European or North American country (the cases examined here).

The author of this chapter is aware that there is no getting around the fact that invoking, even critically, specific identities such as "marriage migration" or "marriage migrant" can end up shaping and constraining our desires and our political imagination. Using these categories on the grounds of pre-defined entry rights might inadvertently invoke or preclude specific experiences and discourses as well as reinscribe the designation of specific migrants "as" marriage migrants (independently of their own experiences and motivations) and enable their further regulation through that designation. Still, the purpose here is to delve into the possibilities and limitations allowed by the use of this bureaucratic use of "marriage migration", and examine the actual or proposed implementation of several significant legal and technocratic changes that have recently occurred in relation to marriage migration and have made it a "problem", a site of regulation integral to the governmentality of immigration. Who is being targeted by such designations, and for what purposes? Why is intervention in regard to people thought of as "marriage migrant" necessary in the first place to promote "orderly circulation", and what forms do such interventions take? To understand this, one must understand how premediation and technologies of love are linked to the governmentality of migration.

Risk management and premediation

Governmentality entails a calculated "embrace of contingency" (Aradau et al., 2009, p. 148) and a focus on population and pools of risks. The administrative features of governmentality reflect a concern with orderly planning of space and time. With its focus on techniques and technologies of power, governmentality entails being attuned to disciplinary power. According to Michel Foucault, the latter has become the feature of an age of individuality and objectification, characterized by a need for identification, classification and registration of things, persons

and phenomena, all of this with the aims to discipline and optimize management and circulation through the identification of potentially problematic objects/subjects (Foucault, 1995, p. 189).

Regulations pertaining to marriage migration certainly build into this logic of risk management. Yet, it also relies on a logic of premediation that goes beyond the mere idea of immediate effective management. As de Goede explains, 'Premediation simultaneously deploys and exceeds the language of risk' (de Goede, 2008, p. 156). Regulations pertaining to marriage migration thence rely on "imagination" and on an extrapolation of risks perceived to be of dramatic consequences if no immediate actions are taken to put possibilities under bureaucratic control.

Indeed, identifying couples involved in cross-national marriages as being potentially risky or as a problem to be managed only makes sense if scenarios exceeding each couple's own stories and circumstances surrounding their marriage are already in place to form a backdrop in relation to which each couple's individual story and circumstances will be positioned: how likely is this peculiar couple to contribute to a catastrophic scenario? Such devastating consequences, as will be discussed, notably include the creation of communitarian ethnic enclaves escaping social controls and threatening current political stability, an increase in forced marriages in which young people's lives are threatened, the breakdown of an already fragile welfare state and a delegitimization of the immigration control system as a whole.

Projecting risks: the survival of the state at stakes

From the state's perspective, marriage migration entails risks of unknown futures, and catastrophic scenarios of "immigration flooding" that could follow waves of migrants whose entry rights are based on intimate relationships whose "reality" is hard to assess. Marriage migration is seen as the main trigger for so-called chain migration, a term with negative undertones that refers to the likelihood of future sponsoring of children, siblings or other relatives by the newly admitted spouse. In the case of marriage migration, the logic of premediation relies on naturalistic metaphors of catastrophic scenario usually involving the idea of "waves" and "floods" of migrants (Mezzadra, 2004, p. 269), which can only be stopped effectively through a multiplicity of border projections and sites. This complex relationship to spatiality also relies on a careful timeframe: premediation requires action "now" to prevent potential "flooding"

"ahead of time" and "before" arrival at the actual border in order to avoid potentially dramatic social changes.

Such anxiety about marriage migrants is not necessarily new. Helena Wray aptly notes that already in the 1960s following the Commonwealth Immigrant Act 1962, debates about the "frightful shadow" of dependents already present in Great Britain or waiting to come were raging (Wray, 2011, p. 44). The implantation of a compulsory entry certificate for spouses, which meant that their claim to enter the country would be decided in their own country before they could reach the United Kingdom, allowed the state to discipline marriage migration movement "from afar", before it actually took place:

> The fear seemed to be that permitting a few to enter would open a breach through which hordes might pour in, with dire consequences. ... The public person of spouse or dependent ... concealed a less-welcome identity as economic migrant and as a link in a never-ending chain. (Wray, 2011, p. 69)

If family migration was traditionally seen as a positive measure that could accelerate a migrant's integration in the community, what we see now is a move away from a positive understanding of family reunification, supposed to favor integration and social involvement in the migrant's family community, to a negative framing of it as a risky endeavor. What kind of new families and (potential future) citizens results from this migration, and with what consequences for the stability of the political order, is certainly at the heart of practices of premediation regarding marriage migration. As William Walters reminds us, the idea of migration chain or of migrants playing a specific part in a chain

> naturalizes an interdependence between a series of bad actors and factors at work in migration processes, and locates an 'origin', and a political responsibility to specific problems. (Walters, 2010, p. 89)

When it comes to marriage migration management, one of the major risks that aim to be assessed is the possibility of the creation of future community enclaves that would hinder the very social cohesion and stability the family is supposed to foster. In France, the "Haut Conseil à l'Intégration" published a report in 2011 to assess the state of migrants' integration policies in the last twenty years. Building upon an earlier 2008 report that called attention to the problem of "judicially but not

culturally-mixed marriages" (Mazeaud, 2008, p. 24), the "Haut Conseil à l'Intégration" suggests that matrimonial endogamy is a clear hindrance to integration and contains the seed of communitarianism and national instability:

> 'Without naturally questioning the right to marry the person of your choice', goes the report, "we might want to question the almost systematic practice of looking for a spouse in one's country of origin … . Ultimately, the generalization of such matrimonial practices could lead to the constitution of ethnic communities, more inclined towards communitarianism than integration. (Haut Conseil à l'Intégration, 2011, p. 19, personal translation)

Yet, earlier in the report, the authors contradict this potentially dangerous outcome by mentioning

> a statistic which, we believe, is a strong indicator of the reality of migrants' integration in our country … : 65% of migrants' descendants are in a couple with a partner from the 'dominant population' ('population majoritaire'). … Marriage has become the first entry door to France. Marriages with a partner from the migrant's country of origin are numerous and beg the question of integration. (Haut Conseil à l'Intégration, 2011, p. 5 and 8, personal translation)

The report refers to marriages between second-generation immigrants with men and women from the "dominant population" (used in quotation marks, and which can only refer to the "white" population of French or European descent) as a clear indicator of successful integration. Ethnic and cultural assimilation of "majority populations" are certainly heralded as catastrophic possibilities, the results of which could lead to even more unforeseen consequences. It is notably in that sense that tightened regulations of marriage migration in the name of protecting potential victims of forced marriage are as much about legislating love as about securing a racial project of whiteness (Fair, 2010; Myrdahl, 2010).

Even in the United States, where heterosexual marriage migration and family-related migration have mostly remained outside discussions centered on reforms of the immigration system (but see D'Aoust, 2010 on the important exception of so-called mail-order brides), reports have started to emerge about the dramatic possible consequences of "uncontrolled marriage migration" leading to chain migration and population

growth. Premediation is at the core of recommendations emerging from conservative organizations such as Negative Population Growth, whose report on the urgent need to reform family migration policies, including the sponsoring of spouses, oozes of apocalyptic consequences. Ultimately, states the report, family migration threatens an already fragile population stability, as migrants have higher birth rates and rely on family reunification policies to sponsor other family members, and could even lead to a shortage of water in regions already under pressure, and have major negative effects on the labour market (Vaughan, 2011, p. 2).[2]

Going beyond evidence of risk to prevent potential dangers was also a key element of the Dutch government's response to the European Commission's Green Paper on the right to family reunification of third-country nationals living in the European Union (European Commission, 2011). The government puts it squarely: individual states must be given the necessary latitude to control marriage migration flows and assess risks of fraud. It notably proposes that the Council Directive on the right to family reunification be modified to add that "reason to suspect" fraud or a marriage of convenience be not 'limited to actual evidence of fraud and that risk profiles, linked to digital data, can be used to establish that there is "reason to suspect" fraud so that further investigation is permitted' (Government of Netherlands, 2012, p. 13; personal emphasis). In the same pre-emptive vein, Belgium investigated 20 per cent of all marriages celebrated inside its border in 2010 (RTL, 2011).

Deploying premediation and risk management through technologies of love

Marriage migration management relies not only on a logic of premediation and risk management that notably gets deployed and enacted through technological artifacts, such as surveillance data and biometrics, but also through technologies of love. Following Foucault's understanding of the concept, technology here implies more than a practical rationality governed by a specific goal. Instead, it refers to contingent principles that organize life and orders it, while at the same time constituting subjects rather than simply affecting them.

These two dimensions are captured in Foucault's understanding of technologies of power and technologies of the self. Whereas the first one 'determine the conduct of individuals and submit them to certain ends or domination, an objectivizing of the subject', the second one

> permit individuals to effect by their own means or with the help of others a certain number of operations on their own bodies and soul, thought, conduct, and way of being, so as to transform themselves in order to attain a certain state of happiness, purity, wisdom, perfection, or immortality. (Foucault, 1988, p. 18)

These organizing features refer to notions of instrumentality and use, whereas the constitutive aspects direct our attention to the more productive aspects of the technology of love, as something that constitute the subject and participates in her transformation. As such, rather than understanding love as an ahistorical ontological emotion, the author of this chapter conceives of it as a technology that not only shapes conducts through expectations of its "true" manifestation by the "feeling subject" and others, but also cuts across and connect with citizenship and intimacy, simultaneously creating subjects, and restraining them by shaping their conduct.

The problematization of specific transnational marriages, such as "forced marriage", "arranged marriages" or "grey marriages" or "endogamous marriages", to name but a few examples currently debated in Europe, relies on as well as fosters a grid of intelligibility and scaling of types of marriage migrants that depend on the production of knowledge and the reliance on expertise that includes, but is not limited to, bureaucrats, immigration officers, academics and nongovernmental organizations' report. These marriages are part of the governmentality of migration, and are so through a complex interweaving of relations and comparisons with "what it is not", and love marriage is often used as the implicit criterion of normalcy. This love ideal is closely tied to idea of modernity and (neo)liberalism, and also encapsulates the idea of "white Europeanness" (Povinelli, 2006): "In its idealized version", argues Ellen Myrdahl,

> heterosexual romantic love signals an interior landscape of affect, one that is independent of the social, economic, or other attribute of the individuals. This independence is not incidental: it signals the 'trueness' of the love, as well as the autonomy – the liberal, modern personhood – of each individual in the couple. (Myrdahl, 2010, p. 103)

As such, "forced marriage", like "arranged marriages" or "grey marriages" do not emerge as independent objects of discourse and risk management policies. Rather, as Foucault explained, it is the outcome of the

establishment of relations of "resemblance, proximity, distance, difference, transformation" between them that enable these objects or "problems" to appear (Foucault, 2007, pp. 49–50).

For instance, in her survey of marriage migration in Germany, Mária Guličová-Grethe underlines that debates on marriage migration moves around a few key concepts that are distinct: the "love marriage" ("Liebesehe"), the "protection marriage" ("Schutzehe") also used as a synonym for "marriage of convenience/sham marriages" ("Scheinehe"), "marriage for a particular purpose/convenience" ("Zweckehe") and finally, "forced marriage" ("Zwangsehe") (Guličová-Grethe, 2004, p. 3). Differences between the use of term or another is closely tied to moral standings in regard to one's mode of conjugality, but what remains clear is that all declinations are put in relation to the ideal of the "love marriage". Yet, one quickly realizes how highly unstable each category is, with clear overlaps between them and such fluidity between categories is not acknowledged when it comes to marriage migrants, who have to fulfill implicit criteria of affection and love that are not required of German partnerships (Joo-Schauen, 2007, pp. 87–88).

Monitoring "true love": the problem of marriage fraud

Far from being merely rhetorical, this learning and recognition process of love is central to migration management practices aimed at rooting out fraudulent marriages. Indeed, despite the fact that several European countries have indicated since 2000 that marriage fraud was a governmental priority and that action ought to be taken in that sense, no statistical evidence on fraud cases in general is currently available in Europe (European Commission, 2012, p. 18). Still, in their answers to the European Commission's Green paper on marriage migration, the Irish and Dutch government consider the problem to be "widespread", and Belgium and Austria insisted that "the lack of statistics does not mean that there are few cases" (European Commission, 2012, p. 18), which is not without echoing United States Secretary of Defense (2001–2006) Donald Rumsfeld's (in)famous fallacious logic in Iraq regarding weapons of mass destruction of "absence of evidence" and "evidence of absence" and "known unknowns" and "unknown unknowns".

Out of concern for marriage fraud, France adopted a new legislation in 2003 requiring French citizen marrying non-citizens to go through a mandatory interview processes to confirm the spouses' identities and allow the consular authorities (for marriages taking place outside France) or civil officers (for marriages taking place in France) to evaluate the

sincerity of the spouse's feelings for one another. As of 2011, controls take place at every stage: before the marriage celebration, before the marriage's transcription in the French civil registrars, before a family visa gets delivered to the migrant spouse, before a first 1-year residence permit is issued to the spouse and every year the permit is renewed afterwards. The French NGO "La Cimade" also notes that several mayors systematically refer applications for marriage involving an undocumented migrant to the Prosecutor Office for further investigations – and potential arrest and deportation – despite the fact that they can legally prevail themselves of a right to marry (Ferran, 2008, pp. 6–10). Significant age gap between spouses, especially if the woman is older, along with a significantly improved lifestyle for one of the spouses following the marriage are identified as potential indicators of fraud that warrant closer scrutiny.

Other countries, like the United Kingdom, only conduct such interviews if an application raises "suspicions". British civil registrars have the obligation to report cases of suspicious marriages to the United Kingdom Border Agency (UKBA). Cases reported rose from almost 300 per cent between 2008 and 2010, rising from 344 in 2008 to 561 in 2009, to 934 in 2010 (Green, 2010; UK Border Agency, 2011a).[3] But whether mandatory or not, the effective materialization and quantification of love during such interviews is crucial to prove that the relationship is genuine. Such materialization can take different forms, ranging from the careful choice of "convincing photographs" and various receipts (restaurant and flowers receipts, for instance) acting as materialized testimonies of genuine feelings submitted with the visa application process, to the elaboration of a point-system where specific elements seen as proofs of the migrant's love of the potential country of adoption can add up to an acceptable threshold that can potentially lead to the granting of citizenship.

The materiality of "love" thus needs to be as much learned and recognized by the couple involved in the migration process, than by the various actors and administrative technologies involved in the evaluation process. For instance, wearing a "cheap" suit was perceived by a UKBA's regional director as being a possible indication of a fraudulent marriage (quoted in Charsley and Benson, 2012, p. 17), and having few guests on wedding reception's photographs is listed as being a possible indicator of fraud by the UKBA (UK Border Agency, 2011a, p. 17). The UKBA's guidance to the clergy concerning foreign nationals seeking to marry in the country also lists wedding dresses and wedding rings being absent or looking the wrong size as suspicious indicators of a sham marriage. Though civil registrars have the legal obligation to

report suspicious marriages, the Anglican church of England and Wales are under no obligation to do so. Still, the document insists that the members of the clergy can report suspicious cases and recommends 'that members of the clergy keep records of any identity or nationality documents provided when non-British nationals approach them seeking to marry' (UK Border Agency, 2011b, p. 2).

Receipts for roses, love letters where plans for common housing are mentioned and the use of the expression "I love you" are examples of proofs that are well looked upon by official. For instance, in France, a lawyer representing marriage migrants informed me that he pre-emptively suggests to couples to favour email exchanges over Skype when separated, as only the former could leave material traces of ongoing relationship, and might be used to make their immigration case (Personal interview in Paris, 29 May 2012). A careful alignment of the spouses' matrimonial practices with expectations of "normalcy" is thus expected (Shah, 2010), yet might lead to "self-disciplining". Not having a common bank account or talking about "superficial" things is deemed suspect. The regulation of intimacy that results is part of a process of constituting a political community that seeks to secure unity and identity by instituting insecurity when it comes to specific modes of intimacy that might challenge social, gendered and racialized boundaries. This is also reflected in presumptions about accurate "normal cultural practices" taking place in specific communities. Wray thus details several cases in the United Kingdom where claims of love made by applicants from the Indian subcontinent involved in arranged marriages were regarded as being a potential indication of fraud, as the two were seen as being mutually exclusive (Wray, 2011, pp. 97–99, see also Wray, 2006). Ultimately, these technologies of love managed at the micro-level of the couple connect with macro-level policy concerns "of public interest" about managing migration overall to preserve a given fragile unity perceived to be under siege.

Politics of protection as technologies of love

Though integral to the evaluation of couples involved in cross-border marriages, technologies of love also build in a logic of premediation when legislation and practices are justified in discourses of protection. Didier Bigo explains that the very concept of protection etymologically takes roots in three different discourses: (1) protection as discourses of sacred places ("pro-tegere", to "cover above"), (2) protection as discourses of defence, monitoring and surveillance ("praesidere", "to be place in front

of, ahead") and (3) protection as discourses of love ("tutore") (Bigo, 2006, pp. 90–92). Almost, if not all, studies on security, risk, management and governmentality have developed the idea of protection as "praesidere" and neglected how protection constituted as much a discourse of love as a discourse of risk management. Yet, Bigo insists, we need to think of protection as a triptych that aggregates all three dimensions:

> first a sovereign self with the capacity to shelter, to withdraw from something or someone, to become sacred and 'untouchable'; second a disciplinary technology which puts agents under a more powerful agent who will act instead of them, and who will lock them in indefinite detention for their own good; third a loving care that annihilates agency, in the sense that the protector as tutor organizes the life of the protected and channels the corridor of its freedom. (Bigo, 2006, pp. 92–93)

Politics of protection are as much about the protector as about the protected. In the case of marriage migration, various legislation are invoked or justified in the name of "women's protection", in the name of "protecting public finances" from abuse or in the name of integration to protect society and its assumed values. In all these cases, technologies of love are deployed in several ways. They act as an organizational matrix that justifies measures of tutelage: various practices monitoring and surveillance are reinforced, but "in the name of love". It is a caring voice which substitutes the will of the protected for the will of the protector (Bigo, 2006, p. 92).

Technologies of love deployed through politics of protection have been especially prominent when engaging the issue of "forced marriage". Forced marriage usually refers to a marriage

> in which one or both spouses do not (or, in the case of some vulnerable adults, cannot) consent to the marriage and duress is involved. Duress can include physical, psychological, financial, sexual and emotional pressure. [Forced marriage] is therefore distinct from arranged marriage, as in an arranged marriage the family will take the lead in arranging the match but the couples have a choice as to whether to proceed. (Kazimirski et al., 2009, p. 10)

While not restricted to Muslim communities, the practice of forced marriage was quickly associated in popular discourse with "radical Islam" and specific communities, such as the Turkish and Pakistani communities,

and to problems of lack of integration on their part. Concerns by the Danish Ministry of Refugee, Immigration and Integration Affairs over the perceived issue of "forced marriages" provided leeway for reforms in 2002, among them the imposition of a new minimum age limit of 24-year-old for both Danish citizens and their partners, should they be from outside Denmark, the Nordic countries or the European Union. As the Ministry explained in 2002,

> The age limit was set at 24 years because your people between the age of 18 and 24 normally experience a personal development ... that will help them resist possible pressure from parents or others so they can avoid marrying against their will. (Quoted in Bredal 2005, p. 343)

Such politics of protection clearly infantilizes migrants, and reaffirms that such measures of monitoring and exclusion are done out of love, for their own good. Denmark being the first European country to legislate on marriage migration in the name of protecting migrants from forced marriages, it created a precedent that was to be followed elsewhere. Yet, framing the issue of forced marriages as one of migration and integration is not self-evident. As Sherene Razack remarks,

> The integration argument is bolstered not with statistics on the number of forced marriages or the number of women killed but rather ... with surveys of the marriage patterns of immigrant groups living in Europe. (Razack, 2004, p. 154)

As a technology of community, love is central to the (multicultural) integration imperative of the state. Ahmed captures this well when she explains that to 'love the other requires that the nation is already secured as an object of love, a security that demands that incoming others meet "our" conditions' (Razack, 2004, p. 136). The multicultural nation is thus premised on the idea of conditional love.

What are "our conditions" in the case of marriage migrants? Exogamy (marrying outside one's ethnic group) is seen as good proof of integration,[4] whereas endogamous marriages, especially among specific communities, are perceived as a "risk" of failure: failure to abide by the idea of the normal and supposedly materially disinterested idea of "love marriage", failure to respect the equality of partners and democratic idea of freedom of choice in one's partner and failure to play a part in society by maintaining ethnic enclaves. It signals a refusal or an inability to love back presumed in the idea of integration:

> The others can be different (indeed, the nation is invested in their difference 'as a sign of its love for difference'), as long as they refuse to keep their differences to themselves, but instead give it back to the nation, through speaking a common language and mixing with others. (Ahmed, 2004, p. 140, her emphasis)

Those whose cross-border marriages respect these ideals will hence become welcomed migrants, who "play by the rules" of the welcoming society. Others, such as "suspicious" second-generation migrants marrying someone from their country of origin, will be seen as potentially risky citizens or citizens who must be protected from themselves through a politics of protection or "loving care": they must be carefully monitored and their circulation, carefully channeled in appropriate corridors where their attachment to their adopted country can be properly tested and confirmed.

It is in that very spirit that the Danish government adopted in 2003 a so-called rule of supposition to serve as guidelines for immigration officers in managing two specific circumstances that should result in the rejection of a spouse's application:

First, the authorities will automatically treat a marriage between "close relatives" (e.g. first cousins) as forced, even though marriages between first cousins are legal under Danish law. Second, if a family has previously undergone a transnational marriage (e.g. of an older sibling), the authorities will see it as a family pattern and an indication that the marriage is not based on a voluntary decision by the young couple in question. In this respect, the specific intention of the rule of supposition is to hamper the practice found among immigrant groups from Pakistan, Turkey and the Middle East of transnational endogamous marriages within family networks (Rytter, 2012, p. 100).

With this specific "rule of supposition", technologies of love deployed in the name of protection also work to secure a specific political order from future dangers, while also retrospectively reinscribing some marriages, previously seen as valid, as new elements of risk that can affect future generations' possibilities of mobility and settlement. As a result, several families have been exiled to Sweden and cross the Øresund bridge (now nicknamed "the Love Bridge") and cross the border on a daily basis, unable to live in Denmark, leading to new geographies of love and transnational marital practices.

From 1993 to 2003, Denmark moved from having "most humane Alien Law in the world" to the "strictest Alien Law in the world" (Kofod Olsen et al., quoted in Moeslund and Strasser, 2008, p. 13), notably

establishing in 2000 a new "attachment requirement" for the reunification of spouses and partners. This requirement requires that applicants make a convincing case 'that you and your spouse's/partner's combined attachment to Denmark must be greater than your combined attachment to any other country' (New to Denmark, 2012) to earn a right to stay in the country. Interestingly, for European Union (EU) and European Economic Area (EEA) citizens, the "attachment requirement" is not required and is instead replaced by a need to prove "genuine and effective residence". Affective belonging is taken for granted – it "is" (sic!) real love – and residence is only its residual spatial manifestation. To evaluate such attachment, the Danish government lists aspects that could be considered, such as: how long the spouses/partners have lived in Denmark? Do they have family or other acquaintances in Denmark? How well do the spouses speak Danish? Have some educational programs been completed in Denmark? How often have they visited the country?

Here mobility is interpreted as proxy for "true love", and suggests that the relationship between technologies of love, movement and spatiality goes beyond assessing whether a couple intends to live together. Overall, Denmark's policies were effective in curbing down marriage migration in the last ten years. They reduced spousal reunion as a legal form of entry by half (Fair, 2010, p. 148). Even more, of 'the population constituted by immigrants and their descendants from non-Western countries who wed in 2001, 2003 and 2006, the proportion who married persons living abroad dropped from 62.7 per cent (2,552 marriages) in 2001 to 37.8 per cent (1,369 marriages) in 2006' (Fair, 2010, p. 148).

If technologies of love are most obviously used in the case of Denmark's attachment requirement, they also take different and less explicit forms in other countries such as Germany; the German government decided in 2007 to implement a new law stating that foreign spouses of German citizen would from now on have to take a language test in their native country and prove a minimum of fluency in German when applying for a visa, thus "prior" to coming to Germany. The new law was officially,

> justified by three purposes: the need for promoting or demanding integration, the aim to provide protection from forced marriages and violations of human rights, and thirdly the need for protection of the social welfare state. (Strik et al., 2010, p. 25)

The same way that raising the age of marriage to 24 in Denmark was justified to help infantilized and emotionally fragile migrants, acquiring

German skills before entering the country was presented as the key solution to resist pressure coming from ill-intended in-laws, who 'use the lack of German language ability deliberately or indirectly to prevent the victims (mostly women) from having an independent social life' (Deutscher Bundestag, 2007, p. 173). Acquiring language skills would also curb down forced migration, so it was argued, because it would act as a deterrent: educated men and women would be judged "unattractive" as potential mates for a forced marriage because they are believed to be "too difficult to control" (Deutscher Bundestag,2007, p. 173).

Conclusion

On the immediate and performative effects of premediation practices, de Goede reminds us, is that that they end up feeding

> into popular feelings of insecurity. Premediation has the ability to foster societal fragilities and resentment, while disregarding its present victims as 'collateral damage. (de Goede, 2008, p. 171)

When it comes to marriage migration such collateral damages notably include husbands and wives being sent out to detention centers, husbands unable to join their wives and mothers giving birth and raising their children alone for years. Controls and strict channelings of movement are put in place in the name of love ('we care about you, therefore we are taking the following measures to make sure you are safe'), and migrants ultimately have to prove worthy of it. In the end, protection "in the name of love", is inseparable from premediation: 'Monitoring is not only about space but about time. It is about monitoring the future' (Bigo, 2006, p. 92). When it comes to marriage migration then, technologies of love can be deployed through discourses and practices of premediation, risk management and protection. Not only can they co-exist, but also they can also transact and sometimes conflict with one another while still having their own independent goals and rationales (Dillon, 2008, p. 326).

But beyond disciplining migration flows and transnational marital practices, marriage migration management reveals a new complex stratification of citizenship taking place that goes beyond the margins. Ironically, this might mean that despite the deployment of technologies of love aimed at testing, controlling and performing love at the border, 'nationality is becoming an enhanced immigration status rather than a final end-point, undermining government claim of a "civic nationalism" framed by legal citizenship' (Wray, 2011, p. 238). Citizenship and intimacy can be thought of as two forms of government that connect

though different technologies of love, and thus entail a rescaling of intimacy and citizenship that is not restricted to the "individual" or "state" level. Thinking about technologies of love allows us to ponder, as to "how" demonstration of love for one's country can be convincingly measured and done to lead to right claims – but more importantly, "why" such demonstrations are deemed necessary.

Notes

1. Family reunification is usually used as synonym for "marriage migration", as it involves the creation of a new cross-national family, rather than the reunification of a pre-existing family that is reunited after an initial migration. As Albert Kraler explains: "Marriage migration or family formation can be distinguished from classical forms of family reunification involving pre-existing families in that it involves both migration and a formation of a new family. In practice, however, there is a continuum between family reunification and family formation, in particular when it concerns first generation migrants involved in circular, transnational forms of migration and forming families after having spent some time as single migrants in countries of immigration" (Kraler, 2010, p. 23).
2. A similar link between marriage migration and water shortage was made by Conservative MP Julian Brazier on 16 May 2012 during the All-Party Parliamentary Group on Migration's roundtable on the government's proposed reforms to family migration in the UK. Brazier invoked overpopulation, lack of housing, job losses and water shortages as potential disastrous consequences if the British government did not adopt stricter policies regarding family reunification and marriage migration in the country (Personal interview with Helena Wray, 18 May 2012).
3. It should nonetheless be noted that the reported number cases fluctuated between 2001 and 2010. Registrars were first required to report suspicious cases under Section 24 of the Asylum and Immigration Act 1999. Reports thus rose from 752 in 2001 to 1,205 in 2002, to 2,648 in 2003. In 2004, a swooping number of 3,578 cases were reported, before falling sharply to 452 in 2006, and to 384 in 2007 (Green, 2010, p. 1). The drastic decline between 2005 and 2006 can be explained by the implantation of a Certificate of Approval scheme in 2005, which required non-European Economic Area (EEA) nationals to apply to the Home Office to be authorized to marry in the UK. The scheme was abandoned in 2011. It is hard to determine whether the steady increase until 2005 reflected increase in fraudulent marriages or greater awareness on the part of registrars faced with a new duty.

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7

To Protect and Control

Anti-Trafficking and the Duality of Disciplining Mobility

Bethany Hastie

Human trafficking as a distinct legal concept has received renewed attention in the past decade with the creation of the Protocol to Suppress, Prevent and Punish Trafficking in Persons, Especially Women and Children in 2000 (UN, 2000). This international instrument has resulted in states across the globe enacting domestic legislation aimed at combating this phenomenon as a "transnational crime". While a central focus of states has been on criminalization of the offence, legal and policy tools to protect victims and prevent their exploitation have simultaneously developed as a response to human trafficking. Within the realm of migration policy, anti-trafficking strategies have been developed under a banner of protection and paternalism, purporting to serve a victim's best interest. Yet, these strategies are necessarily rooted within traditional migration management regimes, which aim to regulate the transnational movement of people in and out of individual states.

As such, anti-trafficking strategies located within the migration realm are often developed with a dual nature – aiming not only to prevent human trafficking and protect victims, but also serving as disciplining functions to manage and control migration. Anti-trafficking strategies, like many other migration management measures, ultimately seek to discipline transnational movement by developing policies which aim to steer and organize the behaviour of individuals towards particular outcomes or decisions. Disciplining strategies thus look to the underlying motivations and meanings associated with migration and aim to alter those meanings and associations to reach a particular desired outcome. Disciplining strategies take not only the form of traditional coercive measures typical of "border control" models, but also adopt

subtle and indirect methods of influencing behaviour, such as through educational awareness. Through these less direct methods, particularly, disciplining is able to shift the burden of responsibility from the organizing migration actor, such as the state, towards individual migrants. Disciplining thus seeks to subtly manipulate the decision-making process of individual migrants while also proclaiming them as autonomous and independent agents. As such, disciplining rests largely on constructing migration policy which appears to "govern through freedom".

This chapter seeks to explore how anti-trafficking strategies cope with the dual role of protecting victims and disciplining migration, and specifically, how such strategies discipline the movement of individuals who are, or may become, victims of human trafficking. The first part of this chapter will outline the foundations of human trafficking as a transnational legal concept. The second part will explore the conceptualization of human trafficking within the framework of disciplining, examining in greater detail the use of "anti-policy" and paternalism in framing this issue. The third part will critically evaluate specific state-controlled anti-trafficking strategies operating within the North American context, including: information campaigns, pre-emptive removal at the border, imposition of visa and other travel requirements, and, victim management schemes. Finally, the last part will bring together the conceptual and legal analyses, evaluating the effectiveness of disciplining as related to anti-trafficking strategies.

The international foundations of human trafficking

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was created as a supplement to the United Nations (UN) Convention Against Transnational Organized Crime and came into force as an international instrument in 2003. The Protocol focuses primarily on the criminalization of all forms of human trafficking, which it defines as:

> the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery

> or practices similar to slavery, servitude or the removal of organs. (UN, 2000, article 3)

Under the Protocol, states are required to fully criminalize within their domestic laws all forms of human trafficking, as well as provide protection and assistance to victims, and undertake efforts to prevent human trafficking crimes (UN, 2000, Article 2). This approach, commonly referred to as the "3 P" approach: prevention, prosecution and protection, focuses primarily on two important facets of the issue as concerns international human trafficking: the co-optation of migration by non-state actors, specifically, organized crime; and the vulnerability of individual migrants involved who are, or may become, victims. As such, the criminalization or prosecutorial element of the Protocol seeks to address the element of organized crime and co-optation of migration, while the prevention and protection elements seek to address and serve the needs of victims or potential victims, and to reduce vulnerability to and risk of trafficking. As concerns victims, the prevention and protection components of the Protocol contain a number of recommended actions which are used as anti-trafficking strategies in North America today, including: information campaigns and educational awareness (UN, 2000, Article 9); and, the provision of temporary immigration relief and basic assistance (UN, 2000, Article 6 and 7).

In addition to the focal "3 P" components of the Protocol, several articles set out measures and recommendations related to border control and integrity, particularly as related to travel documents. The Protocol suggests that states both enhance the security features of travel documentation issued within its territory to prevent forgery or alteration (UN, 2000, Article 12), and cooperate with other states' requests for verification of the legitimacy and validity of travel or identity documents where such documents are suspected of being used for trafficking purposes (UN, 2000, Article 13). In addition, the Protocol recommends enhanced screening and verification measures for travelers, as well as contemplating the denial or revocation of visas for persons suspected of, or implicated in, the commission of any offences under the Protocol (UN, 2000, Article 11).

The additional emphasis on migration measures under the Protocol thus suggests that combating human trafficking is seen by the international community to be as much about migration management as it is about suppressing criminal activity and protecting migrants from victimization. The primary focal points of anti-trafficking policy as communicated in public and political discourse, namely combating

transnational crime and protecting victims of human trafficking, act as catalysts to develop migration management responses "in the name of" one of these other two targets. Yet, anti-trafficking policy as developed by the state takes on a significant migration control focus. These policies, as will become clear in the following sections, create inherent tension by attempting to address either the protection of victims or prevention of crime under a framework which ultimately seeks to discipline migration.

Conceptualizing human trafficking within the disciplining framework

Disciplining as a conceptual framework for understanding migration flows and management seeks to identify and appreciate the way power and influence are exercised in "steering" and "organizing" human mobility. While disciplining considers a range of actors involved in migration, this chapter focuses on the state as the central figure in disciplining movement with respect to anti-trafficking strategies. From the state's perspective, disciplining is focused primarily on steering and organizing migrant behaviour to reach outcomes which are desired by the state, and which preserve the state's role as the central actor in migration. State-centric disciplining strategies primarily focus on the construction of distinct migration categories which are seen as necessary in order to deal with the nebulous and complex world of human mobility. Thus, migration management from the state's perspective must be reduced to its simplest terms, which most often presents as clear-cut either/or scenarios: asylum seeker or economic migrant; trafficked person or irregular migrant; victim or criminal.

The ability to categorize migration flows is a vital and necessary preelement to effective disciplining from the state-centric perspective. Human trafficking as a distinct category within migration policy has been centrally constructed around a victim identity. Whereas other categories of migrants are seen by the state as autonomous agents, trafficked persons are distinguished on the basis that they cannot be said to consent to their situation because of the presence of force, fraud or coercion (Loftus, 2011, p. 145).

This distinction supports the notion of the trafficked person as a "victim", or "potential victim", and creates a foundation for the development of distinct policies and different treatment within the migration management paradigm. Thus, this construction gives rise to a precursory disciplining measure by creating an identity which enables

anti-trafficking policies to take on a paternalistic nature, steering and organizing the behaviour of this category of migrants "in their best interest" and in a way which can prevent dangers otherwise unknown to the affected individuals.

To reinforce the notions of "vulnerability" and "victimhood", human trafficking is often juxtaposed with "human smuggling", where migrants are seen as "implicit criminals" evading the law in order to serve their own interests. This dichotomous construction enables states to treat smuggled migrants punitively, while purporting to protect and serve a trafficking victim's best interests, despite similarities which may exist in the mode and surface appearance of both groups' migration. The individual migrants in each group are perceived as distinct and different by state actors on the assumption that smuggled migrants are complicit in the crime, whereas victims of trafficking are unaware of the criminal activities surrounding their situation. Ultimately, both anti-smuggling and anti-trafficking strategies aim to suppress the co-optation of migration management by non-state actors, and particularly by organized crime. This draws out a second primary consideration for state-centric migration policy aimed at disciplining transnational mobility. Increasingly there is concern about irregular migration, facilitated by actors operating outside of, or in contravention of, the state-imposed regulations and laws. This connection has been drawn specifically to human trafficking; for example, in the United States,

> government officials ... have made a number of statements suggesting that they understand the trafficking problem as best solved by attacking criminal smuggling networks. (Chacon, 2010, p. 1638)

Thus, while migration policies seek to discipline the movement of individual migrants, these policies also seek to discipline modes of migration and, specifically, deter non-state actors from co-opting migration practices from the state-centric model. Unfortunately, the result often means that disciplining as it relates to anti-trafficking policies pits the protection of victims against the prosecution of criminals.

Anti-trafficking strategies under this framework have flourished as a result of two critical factors: first, the construction of human trafficking as "anti-policy" (Walters, 2008), and second, the ability of the state to link such strategies with paternalism. Human trafficking is framed politically as a universal "evil"; as such, the issue appears depoliticized and measures taken to counteract the evil tend to experience minimal dissent.

State-controlled anti-trafficking strategies also have largely taken on a paternalistic role, which places both power and legitimacy in the state's hands to usurp the agency of individual decision-makers for their own good or well-being. Together, the construction of human trafficking as "anti-policy" and the adoption of a paternalistic role by the state have enabled the use of disciplining strategies within anti-trafficking migration policy, resulting in tension in the duality which anti-trafficking strategies must cope with.

Anti-policy 'identifies itself explicitly with the struggle against the bad, the evil, the dangerous' (Walters, 2008, p. 282). While this typically entails framing issues in terms of an externalized "bad actor", such as with anti-terrorism, anti-trafficking policy remains unique as placing the external focus on the "victim-subject". Creating this focus enables states to accord divergent treatment to this group of migrants, as discussed earlier with respect to categorization. The framing of human trafficking as "anti-policy" also lends legitimacy to the state and the use of disciplining in relation to anti-trafficking strategies by appearing to depoliticize the issue and therefore reduce dissent or criticism to the state's role and policies. Anti-policy derives legitimacy from the claim that "their objective is to repress bad things" (Walters, 2008, p. 270), and therefore often appears as a simple counter to the "bad thing". However, in reality, anti-policy often drives a much larger policy agenda while also minimizing the space for political debate (Walters, 2008, pp. 273, 282). With respect to anti-trafficking strategies located within migration management, it can be argued that the broader policy agenda of disciplining migration and mobility is facilitated by a focus on the "anti-trafficking" initiatives from a victim-centric perspective. In addition, an "anti-policy" approach places the focus and responsibility for the crime on external actors, including both the migrant and trafficker, which diminishes the role of the state in contributing to the issue, and generally fits more comfortably with the overall state-constructed narrative around irregular migration (Chacon, 2009, p. 1616).

The construction of a victim identity in relation to human trafficking enables states to adopt paternalistic measures aimed at preventing individuals from becoming victims of human trafficking, and protecting those who have become victims. Such strategies purport to focus on the migrant as a victim and therefore govern in a way in which the victim's best interests are served and are central to the adopted measures. In this way, paternalism is closely linked with the notion of disciplining, as the role of paternalism gives the state legitimacy and power to steer and

organize migration for individuals who would otherwise be vulnerable to unknown threats and danger. However, the "best interests" of individual migrants may also be at odds with the "best interests" of the state; thus, paternalism can also be used to support measures which discipline migrants in a way which does not serve their individual interests, or used to support sanctions against migrants who do not conform their behaviour to the desired outcomes presented by the state through particular disciplining measures. Through this role of paternalism, the state is also able to preserve itself as the central figure of migration management and regulation by portraying non-state actors, particularly smugglers, as criminal enterprises attempting to usurp the legitimate power of the state for ill purposes.

Anti-trafficking strategies as a disciplining function of transnational mobility

Drawing on the analysis and conceptualization presented, this section will examine particular anti-trafficking strategies developed within migration management regimes, illustrating the ways in which these strategies serve as disciplining functions and drawing out the tensions that exist as a result of the dual nature these strategies take on. Anti-trafficking strategies which fit within the discipline paradigm can be divided into three categories based on a migration pattern chronology: (1) pre-departure, (2) arrival at the border and (3) post-trafficking victim management. Although several state policies exist to discipline individuals who may be organizers – whether smugglers, traffickers or other related third parties – states have also enacted disciplining strategies aimed at the individual migrants who are, or may become, victims of human trafficking. The latter strategies are those which will be examined in this section.

Pre-departure strategies

Strategies that aim to prevent international human trafficking before the migration journey begins often focus on education and awareness in known origin countries or with respect to known modes of migration such as temporary foreign worker schemes.

> Information campaigns are considered an essential tool in fighting trafficking, as they contribute to raising awareness among potential victims regarding the risks of being caught in criminal networks and

> thus reduce their vulnerability. (Pécoud and Nieuwenhuys, 2007, p. 1679)

Thus, information campaigns 'assume that if people leave, it is because they do not know what awaits them; if they know, they will not leave' (Pécoud and Nieuwenhuys, 2007, p. 1684). This assumption reinforces the notion of victimization among trafficked persons by conflating their vulnerability and exploitation with ignorance (Pécoud and Nieuwenhuys, 2007, pp. 1684–1685) and therefore legitimizes state action as necessary in the interests of the potential victims. As a disciplining function, these strategies rely on indirect and subtle means to dissuade individuals from assuming certain risks in migration by not only educating but also instilling fear about potential dangers which may arise through particular types of migration.

Information campaigns have been used generally to warn potential trafficking victims abroad. For example, in Canada, a multilingual pamphlet was developed which informed potential victims of the dangers of human traffickers and of the relevant laws in Canada. This pamphlet was distributed through Canadian missions abroad as well as to nongovernmental organizations which may come into contact with potential trafficking victims abroad. Similarly, the United States has undertaken general international awareness campaigns, including multilingual television and radio announcements, billboards, newspaper advertisements and victim assistance materials (United States Department of State, 2011). Although specific target countries of these information campaigns are not publicized, it can be assumed that these initiatives have been implemented in origin countries with high suspected or known flows of human trafficking, human smuggling and labour migration to North American destinations, given the overlap that seems to exist between these modes of migration.

In addition to a general audience, government actors may undertake information campaigns specifically targeted to identified groups at risk. In Canada, targeted educational efforts have been undertaken in relation to individuals coming in through the Temporary Foreign Worker Programs, which have been identified as a potential migration channel for trafficking for forced labour (RCMP, 2010; Quarterman et al., 2012, pp. 17–18). Citizenship and Immigration Canada has provided pamphlets and information to temporary foreign workers which set out their rights and relevant Canadian laws, as well as information on where to seek assistance in case of exploitation or abuse (United States Department of State, 2011). Similarly, the United States has developed and distributes a

"know your rights" pamphlet through embassies and consulate offices worldwide, as well as conducting oral briefings for student or work-based visa recipients (United States Department of State, 2011).

What can be illuminated from these pre-departure information campaigns is a desire to both inform and scare potential migrants from becoming victim to human trafficking. While these strategies provide valuable information on legal rights and assistance providers, they also aim to warn migrants of the dangers of human trafficking, thus seeking to condition and influence the process of choice and planning an individual may undertake before migrating. The state's interest in ordering and disciplining migration is served by these strategies, which aim to create a more informed and cautious group of migrants, and reduce the number of potential victims that the state may be later required to assist.

Traditional border strategies

Though states have utilized indirect and subtle anti-trafficking strategies as with pre-departure information campaigns, the bulk of anti-trafficking strategies are developed as traditional coercive mechanisms within the "border control" framework. In the United States, for example, anti-trafficking efforts have been frequently mentioned within the context of "border security" in recent years (see Chacon, 2009, p. 1637). These strategies are perhaps the most effective way for state-centric policy to be implemented, and are enabled in large part because of the discourses which label and categorize types of migration as discussed earlier. With respect to specific anti-trafficking strategies, developments in Canada and the United States have seen the use of employment validation, employer prohibitions and, most recently, pre-emptive removal, as particular coercive mechanisms which seek to prevent human trafficking on the state's territory by stopping it at the border.

The imposition of particular requirements to validate travel documents is not a new strategy in migration management. However, the importation of this tactic into anti-trafficking strategies has created criticism and tension due to the fact that its use may result in punitive outcomes for potential victims who are unable to authenticate their travel documents. Where this is so, the individual would presumably be denied entry to the state. While such measures may prevent the immediately foreseeable exploitation of an individual, they may also have the unintended consequence of increasing the vulnerability or potential future victimization of the individual who is simply sent back to their

origin country without assistance and without support on return. In short, such strategies are effective at reducing trafficking from occurring within the state's borders, but do little to serve the potential victim's "best interest" beyond preventing a single or particular occurrence of trafficking, and likewise do little to address human trafficking as a global migration issue.

In Canada, procedures to validate job offers in connection with the exotic dancer visa program were introduced after an increase in migration flows from Eastern Europe under this program and increasing concern over abuse of this program (Government of Canada, 2010). In addition to new requirements regarding the validation of the job offer, the number of visas issued by the government under this program fell dramatically from 342 in 2004 to 6 in 2010 (Government of Canada, 2010), prior to the program's termination in 2012. Although this has undoubtedly contributed to a reduction of trafficking through this particular program, this mode of disciplining migration has done little to address the vulnerability of potential victims. Thus while the changes can be said to "serve the victim's best interest" by preventing trafficking from occurring through this particular channel, this disciplining function is limited by its need to order and manage migration before substantively serving the interests of the affected individuals. While this strategy likely has reduced the use of this visa program as a channel for human trafficking, it cannot be said that it has reduced the trafficking of women from Eastern Europe generally. This continues to be a region cited as producing trafficking victims to Canada (RCMP, 2010), thus it is more likely that traffickers have found alternative routes to bring victims to Canada.

In the United States, procedures exist to review and deny visas for workers of foreign mission personnel against whom serious allegations of abuse have been lodged, a program which, like the exotic dancer program in Canada, has received heightened attention and concern as a vehicle for human trafficking (United States Department of State, 2011). While this strategy may reduce the instances of abuse against domestic workers, it, too, does little to substantively address the needs of individual workers applying under this program. Rather, this program relies on a disciplining function aimed at the employers and potential abusers, using sanctions and revocation of use of the program against employers where there is credible evidence of abuse. Despite the fact that sanctions appear rarely, if ever, used to date, the government cites the "threat" of suspension as an effective tool itself to ensure proper treatment of domestic workers (United States Department of State, 2011). Canada has recently introduced amendments to its Temporary Foreign Worker

Programs, which, in part, creates a list of ineligible employers known to have abused workers, preventing these employers from accessing the government-run programs for a period of two years (Government of Canada, 2009);[1] however, there is little evidence of the effectiveness of this new strategy to date.

Taking traditional border control strategies further, Canada has passed a law which now allows for the pre-emptive removal of potential trafficking victims. New amendments to the Immigration and Refugee Protection Act enable immigration officers to refuse to authorize any foreign nationals to work in Canada if, in the opinion of the officers, the foreign nationals are at risk of being victims of exploitation or abuse (Government of Canada, 2010). This approach may create disproportionately punitive outcomes for migrants, rather than focusing anti-trafficking efforts on traffickers and other actors involved in the exploitation of others. Although the law does have the potential to reduce instances of trafficking through or into Canada, it does little to address the needs and vulnerability of potential victims, and also has the ability to punish a broader category of migrants beyond would-be victims. Thus, while this again can be seen as a strategy which "serves the victim's best interest", it only does so at the surface level. The result of such border control strategies, which rely on paternalistic notions of victim protection to justify tactics that are far more concerned with disciplining migration, is simply to remove the issue from the individual state, rather than addressing the real crux of the problem.

What is evident from the use of traditional border control strategies in relation to combating trafficking in persons is that such strategies are effective as disciplining functions only with respect to particular and singular instances of migration and potential trafficking. These strategies are limited in their ability to effectively address trafficking in persons as a larger and continuous global migration issue, and may do little to discipline the future decisions of migrants who may be potential victims of trafficking. This is primarily so because such strategies fail to address the underlying motivations of this group of migrants. Similar to pre-departure strategies, these tactics fail to understand the context in which many of these individuals are migrating, and therefore fail to appreciate the substantial amount of risk many of these migrants may be willing to take on. Additionally, traditional coercive mechanisms prevalent in the use of border control strategies risk the added negative consequence of punitive outcomes for migrants, further contributing to their vulnerability and victimization.

Post-trafficking victim management

Perhaps the most visible tension that exists under anti-trafficking strategies in the migration realm is in respect of those strategies that must address the migration status of victims after trafficking has occurred in the destination country. There are myriad complex issues that arise with respect to addressing the needs of victims after exit from a trafficking situation, both from the perspective of the victim and that of the state. Victims must cope with psychological and emotional trauma, as well addressing immediate basic needs, such as obtaining shelter, food and medical assistance. Yet, upon exit, victims often lack the requisite status to legally remain in the destination country. Thus, their situation is compounded by precarious administrative status and the resulting need for state intervention, despite the fact that such intervention is often at odds with the effective treatment of a victim. Anti-trafficking strategies which seek to address the precarious status of victims centre on the conditions required to issue an immigration visa.

Both Canada and the United States have developed specific visa issuance programs to assist foreign national victims of human trafficking found in their territory. Both systems provide temporary immigration relief to victims to allow for a period of recuperation, and both seek to provide basic necessities such as shelter, medical assistance and counseling to victims of human trafficking. In addition, both countries have developed paths to enable some victims to remain in the country on longer-term visas and to apply for permanent residency. However, the conditions attaching to the issuance process vary between these two countries and illustrate well the competing duality of migration management and victim protection that exists for anti-trafficking strategies in this paradigm.

In the United States, the "T-Visa" program, developed specifically for victims of human trafficking, provides victims with legal immigration status for up to four years where victims 'cooperate with reasonable law enforcement requests for assistance with an investigation or prosecution' (United States Department of State, 2011). Thus, cooperation with law enforcement and other authorities is a necessary condition to obtaining status to remain in the country for victims in the United States.[2] This has received attention and criticism from victim advocates who claim that this requirement is an inappropriate burden for victims to bear, especially in the immediate aftermath of their trauma. Victims often need time and space to come to terms with their experience, and the process of immediate involvement by and with police and other

investigative authorities may only add to the existing trauma. It is recognized that the goals of the "T-Visa" and other measures set out in the Trafficking Victims Protection Act, which purport to protect and assist victims thus often 'run squarely into the competing goal of enforcing immigration laws' (Chacon, 2009, p. 1614).

Requiring the cooperation of a victim with authorities as a necessary condition of remaining in the country serves to condition the outcome of a victim's decision-making process in a way that benefits and privileges the state interest in combating human trafficking on its territory. This strategy places primary importance on the criminal and prosecutorial aspects of human trafficking, which support the state's interest in reducing co-optation of migration by non-state actors and particularly by organized crime. While this is an important goal, the means used to achieve it cannot purport to serve a victim's interest in a meaningful way. Those victims who are unwilling or too traumatized to cooperate with authorities at the outset of the case are left without assistance and even without legal status, increasing the risk that they may be subjected to additional punitive action by being removed from the country. This, therefore, provides perhaps the starkest example of the problematic importation of disciplining strategies into anti-trafficking efforts.

In Canada, the determination process to provide a temporary resident permit to a victim of human trafficking is a separate assessment from any police activities. Citizenship and Immigration Canada (CIC) officials may provide an initial temporary residence permit to an individual when there is cause to believe that they may be a victim of human trafficking, which provides the victim with a 180-day reflection period and basic assistance (CIC, 2007, pp. 25–26). The stated purpose of the short-term temporary residence permit is to help the victim make an informed decision about whether to return home, remain in Canada to recover, to determine if they are willing and able to assist in the investigation and prosecution of their trafficker and 'for any other purpose… to facilitate the protection of vulnerable foreign nationals who are victims of human trafficking' (CIC, 2007, p. 26). At this stage, it is not necessary for there to be concrete proof that the individual is a victim of human trafficking, nor a requirement of cooperation, thus placing the victim's interest over that of the state.

CIC may issue a longer-term temporary residence permits to victims in consideration of particular criteria, including whether it is reasonably safe and possible for the victim to return and reestablish a life in their home country; whether the victim is needed, and willing, to assist authorities in an investigation or criminal proceeding of a trafficking

offence; and/or, for any other relevant reason (CIC, 2007, p. 27). Although victim cooperation is one consideration at this stage, two important distinctions from the US approach should be noted: first, this is a possible but not necessary condition to remain with legal status in the country; and, second, this assessment takes place after the 180-day initial reflection period, such that victims are not confronted with this issue during the immediate aftermath of their situation, which has been a strong criticism of the US approach.

Since the temporary residence permit system has been introduced in Canada, a total of 120 permits have been issued to 68 foreign national victims of human trafficking (Department of Justice Canada, 2012). Given the fact that there has only been two successful prosecution of human trafficking in Canada involving foreign national victims,[3] these statistics suggest that the independence of the temporary residence permit system from investigation and prosecution activities has benefited more victims than would otherwise be the case under a required-cooperation model like the United States. However, despite evidence of some success with this model, access remains a noted concern (Quarterman et al., 2012, pp. 28, 45).

For those victims who choose to repatriate to their home country after exiting a situation of trafficking in Canada or the United States, little evidence exists to suggest that these victims are provided with support or assistance in their return. This, too, is an indirect way of disciplining the movement of trafficking victims by subtly influencing their decision to remain or return. Victims who choose to remain in the country, and possibly assist with investigation and prosecution activities, receive a number of valuable benefits. However, victims who do not choose to assist the State and instead return to their home country likely receive little or no benefits.

Where migration policy issues come into play in a post-trafficking situation, the duality and tension of anti-trafficking policies as both disciplining functions and protectionary measures is most evident. As the affected individuals have already been victimized, there is a heightened burden on the state to consider their best interest and protection. Yet, the state interest continues to infiltrate the way migration issues are handled. As such, these measures continue to take on a role, albeit perhaps more subtle, of disciplining by seeking to condition or influence the outcome of the victim by leveraging the need or desire to obtain regularized immigration status and basic assistance towards particular desirable outcomes for the state, most notably, cooperation with investigation and prosecutorial efforts. Yet, as discussed, this often comes at a

cost to the victim's own interest in recovery. For those who cannot bear the burden of that cost, punitive outcomes may arise by being removed from the country, and receiving little or no assistance to return to their home country.

The [in]effectiveness of disciplining as a framework for anti-trafficking strategies

The strategies discussed above highlight a number of issues in importing the discipline framework of migration management into anti-trafficking policy. Two primary trends emerge from the response to date: first, a failure to appreciate the context and underlying factors contributing to a victim, or potential victim's situation; and, second, strategies with a restrictive or repressive purpose may not only result in punitive outcomes for individual victims, but may contribute directly to an increase in human trafficking on a large scale by making regularized migration more difficult.

Disciplining as a framework for migration management seeks to influence and condition the behaviour of individual migrants. As such, it necessitates an understanding of the underlying context and motivations in which migration occurs. Yet, with respect to human trafficking, the disciplining strategies discussed in this chapter appear to largely fail to appreciate these underlying factors and thus risk being ineffective at achieving their intended purposes. For example, while informational campaigns aim to educate potential victims of the dangers of human trafficking, these campaigns do little to influence the decision-making process of this group in terms of addressing their underlying motivations for migration (see Pécoud and Nieuwenhuys, 2007, pp. 1686–1688). These campaigns thus amount to little more than "scare tactics" which are likely to be ineffective for a majority of individuals who may view migration as the best option to escape risks and dangers present in their home country, such as political conflict, poverty, gender discrimination, racial or ethnic tensions, or social exclusion. As such, this disciplining strategy ultimately fails to appreciate the context in which migration may occur for a majority of potential trafficking victims.

Similarly, disciplining strategies that aim to influence behaviour at the post-victimization stage fail to appreciate the psychological and emotional context in which a victim may find him or herself in the immediate aftermath of trauma. These strategies establish a desired outcome of cooperation with authorities. Disciplining strategies affecting

a victim's status in the state or assistance with repatriation thus focused on obtaining cooperation. Yet, these strategies operate in a way which may not be conducive with the needs of a victim by attempting to intervene early in the process and operating in a way that may be perceived as an additional threat or coercion by the victim. Thus, these strategies also fail to appreciate the context in which they operate and thus may prove ineffective on a large scale. Further, these strategies appear to pit the needs of the victim directly against the interests of the state, leveraging the state's power for its own use. This not only reduces the potential effectiveness of the disciplining strategy but also erodes the perceived legitimacy of the state's role and policies as serving a victim's best interest.

Coupled with a failure to appreciate the underlying motivations and behaviour of the migrants these strategies aim to discipline, efforts to address trafficking within the migration management paradigm, in a time of heightened restriction and control, may in fact contribute to an overall increase in human trafficking, thus failing to achieve their primary objective. State-controlled anti-trafficking strategies under the discipline paradigm continue to operate predominantly by way of traditional coercive measures as discussed in part II. Restrictive migration controls are increasingly being cited as contributing to an overall increase in human trafficking (Chacon, 2009, p. 1609; Hathaway, 2008, p. 5). Because such policies decrease the available channels for regularized migration, more migrants utilize non-state actors to facilitate their migration journey (Gekht, 2008, p. 34), which enhances their vulnerability and risk of exploitation. Thus, anti-trafficking strategies within the "immigration enforcement" model have the potentially "unintended effect of reinforcing migrants' vulnerability to exploitation" (Chacon, 2009, p. 1615). Yet, rather than examining the role of the state in potentially contributing to this issue, discourse and policy around trafficking has continued to "focus on particular bad actors" (Chacon, 2009, p. 1616), reinforcing the externalization of the threat and supporting the "anti-policy" approach to human trafficking, rather than allowing for adequate introspection and evaluation of the state's own policies and practices in addressing this issue.

Overall, locating human trafficking within the disciplining framework, and more broadly, under the banner of migration management, has resulted in significant issues and tensions. State-centric anti-trafficking strategies have been largely successful because the issue has been framed as one of "anti-policy", thus appearing to depoliticize

the measures taken to combat human trafficking. Framed this way, the construction of the victim identity, the state's paternalistic and central role in addressing the issue and the subsequent specific policy measures have largely gone unchallenged. The categorization of human trafficking as a distinct migration group itself is problematic and can be difficult to discern in practice. Yet, even where this is successful, disciplining strategies which aim to address this phenomenon create inherent tension between serving a victim's needs and a state's interests in both managing individual migration and suppressing the co-optation of its role as "migration manager".

Conclusion

This chapter sought to explore the duality of anti-trafficking strategies as both disciplining functions of migration management and as measures of victim protection and prevention. Examining state-centric anti-trafficking measures in Canada and the United States, this chapter illustrated the myriad complex issues that attach to addressing human trafficking within the migration paradigm, and specifically with respect to attempting to serve victims' best interests while also maintaining the state's role as "governor" of migration. Despite the dual nature that anti-trafficking policies must cope with under the banner of migration management, the tensions experienced to date in effectively addressing the seemingly competing objectives of such strategies have perhaps as much to do with the political climate on migration generally, as with the specific phenomenon of human trafficking as a subset of migration. The contemporary trend towards restrictive migration and discourse of criminality undermines real efforts to effectively address human trafficking as a transnational phenomenon, and may even contribute to an increase in this crime. Further, constructions of the human trafficking victim as distinct from other migration groups can be difficult to observe in practice, rendering this group increasingly vulnerable under a migration regime primarily intended to restrict flows. Thus, human trafficking is ultimately as much about the politics of migration as it is about the reality facing migrants.

Notes

1. Several changes, including the list of ineligible employers, took effect 1 April 2011.
2. There are other potential visa streams that may apply to victims of trafficking: continued presence visas which are issued where the victim is required as a

witness in an investigation or proceeding; and the "U-Visa" scheme which has similar requirements as the "T-Visa" scheme but is applicable more broadly to victims of "serious crime". The "T-Visa" program is specifically targeted to trafficking victims. All the streams appear to require cooperation of and need for the victim-witness in investigation or judicial proceedings. See United States Department of State (2011); also, Chacon (2009, pp. 1625–1627).

3. One case involving at least 18 men trafficked from Hungary to Ontario; several accused in that case pled guilty to human trafficking amongst other criminal charges: see CBC (2012). Recently, a jury trial convicted a man in Vancouver with trafficking in persons under the Immigration and Refugee Protection Act. That case involved one victim from the Philippines. See Vancouver Sun (2013). A 2007 case involving charges of human trafficking under the Immigration and Refugee Protection Act was unsuccessful on that count at trial: see R.v. Ng.

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8

‘Why Do They Take the Money and Not Give Visas?’

The Governmentality of Consulate Offices in Cameroon

Maybritt Jill Alpes

> You pay for registration. They receive all the money and in the end they say you cannot go. They are making their money. They are thieves. Why do they take the money and not give visas?

This is what an informant in Cameroon had to say about consulate offices. The informant had in vain supported the visa applications of two of his younger brothers. Deeply sceptical of the trustworthiness of consulate offices, he understood the money given to the consulate office as a “prize” he had paid without receiving anything in return. Andre is a middle-aged businessman in Cameroon with several family members abroad. Although he had also several times given money in vain to migration brokers, his wife had in the end been able to leave Cameroon and travel to Dubai. ‘The agencies know the transactions. You just pay them that money’. Although discontented with some of the aspects of the work of his wife’s migration broker, he did recommend the broker to other people in his surrounding.

This chapter focuses on disciplinary techniques of consulate officers vis-à-vis migration brokers and cross-border travellers. It contributes towards our understanding of so-called migration management by questioning a truth regime about how and why to differentiate between different actors that discipline migration. Within the policy domain, migration brokers are framed in terms of crime and profit and state actors in terms of the law and transparency. This chapter openly asks what it takes to get a visa and in doing so queries connections between travel permits and money. Through this endeavour, this chapter engages

an ethnographic study of the governmentality of consulate offices. By unravelling the production of truths about monetary flows and forms of mediation, it is demonstrated how supposed boundaries between state and market actors are continuously under construction. An approach to consulate offices in terms of governmentality is useful here because it allows to shed light onto 'conditions under which the authority of truth is given to [certain] discourse[s]', such as the transparency of law, the fraudulent inclinations of visa applicants and the criminality of migration brokers (Bigo, 2002, p. 66).

By looking at how consulate officers relate to brokers, visa applicants and monetary flows, the author of this chapter demonstrates how accusations by states against migration brokers are better understood not as condemnations of mediation in general, but as disciplinary moves. The concept of discipline allows to move away from some of the assumptions inherent within the field of policy-making termed "migration control" or "migration management". Instead of merely focusing on visible acts of explicit regulation, a broader approach to the disciplining of migration sheds light onto more subtle, less expected, but nevertheless powerful ways in which subjectivities and migration flows are shaped. It can be argued that claimed "truths" and discourses (Foucault, 1991) can regulate migration, too.

This chapter notably focuses on truth claims about money and discourses about mediation. It is argued that money is a key technology that constructs boundaries between state and non-state actors, and by extension further constructs the state as the supposedly sole and unitary actor. Instead of taking the state's role within the disciplining of migration for granted, there is a need to pay greater attention to processes that construct the state as holding a monopoly position over the legitimate means of mobility control (Torpey, 1998).

The chapter draws on three weeks of research with the French and American consulate office in Yaoundé and also on ethnographic research with aspiring migrants and migration brokers in Cameroon (2007–2009). The author of this chapter was able to gain access to the US Embassy through a rather fortunate chain of personal contacts; access to the French Embassy was facilitated by her status as a graduate of Sciences Po Paris. As most embassy staff within the French system would have passed through that school, the author was easily credible as a potential "colleague" who observed their work. The author's research project represented an opportunity for both consulate services to explain the difficulties of their work and to show how prior institu-

tional reforms have tried to improve the quality of the services provided to Cameroonian visa applicants.

Seeing the state without "seeing like the state"

The question of why consulate offices take money and not give out visas is evocative and productive for a study of "migration control" and "management" in three ways.

First of all, the question of the informant at the beginning of this text seems counter-intuitive in that it offers a glimpse into how the family member of an aspiring migrant sees the state. More commonly, migration research within fields such as the political sciences illuminates how the state sees migrants. The often implicit standpoint of the state within much migration research (de Genova, 2002, p. 421) can be traced back to what Itty Abraham and Willem van Schendel term the symbiotic history of contemporary social sciences with the modern state and its interests (Abraham and van Schendel, 2005, p. 5). Problematic in particular is the uncritical usage of legal categories of the state by many scholars within migration studies (as pointed out, for example, by Malkki, 1995). Rather than studying migration through the categories and lenses of the state, the author of this chapter aimed to study the state's regulation of migration ethnographically and especially from the point of view of migrants (for a similar approach, see Kyle and Siracusa, 2004). Through this ethnographic approach, the attempt was made to see the state without "seeing like the state" (Scott, 1998).

The language that is available to scholars to analyse the disciplinary logics of "migration control" is in and of itself loaded with disciplinary ambitions of the state. Yet, because our mental structures are already adapted to the structure according to which the material reality of the state is constructed, we do not see clearly anymore the materiality of the state (Bourdieu, 2012, p. 96). In this chapter, the author takes multiple meanings of money apart and illustrates how the very choice of words like "prize" and "fee" lead to different assumptions about the legitimacy of monetary transactions within a migration trajectory. Without such a reflexive approach to the very terms used to analyse the disciplining of migration, scholars risk to reproduce disciplinary logics of the state.

Secondly, the informant's question does not take for granted the legitimacy of the workings of the state. John Torpey has put forward that 'analyses of migration and migration policies have tended to take the existence of states largely for granted' (Torpey, 1998, p. 240). Through

historical analysis, Torpey has illustrated how states have monopolized the authority to restrict movement. He does not argue that states have effectively monopolized control over movement, but that states have achieved a monopoly over the *legitimacy* of mobility control. He places his argument within the context of John Meyer's work on the de-legitimation of organizational forms other than the nation-state. While the attempts of non-state associations to control people are stigmatized as slavery (Meyer, 1987, p. 53), the state can under certain circumstances consider itself legitimated in preventing a person from crossing national boundaries. Indeed the perceived exertion of mobility control by state authorities feeds into the legitimacy and authority of the state per se.

In a similar vein, this chapter endeavours to examine *not* how states supposedly control migration, but how migration control feeds into the creation of a specific kind of state authority. The author considers both consulate offices and migration brokers as regulatory authorities that are involved with the disciplining of migration. migration. Not all regulatory authorities have to be official or authorities sanctioned by the state. The term regulation is used to refer to processes of control and governance in its broadest sense. Under this term, all authorities are considered that seek to rule, direct, adjust, influence and determine processes of mobility so that they are channelled as desired. The chapter considers not just intentional acts of regulation, but also constraints and difficulties that follow from the disciplinary logics of different regulatory authorities.

Thirdly, the question of the informant stems from an implicit comparison between the sum of money he lost on a visa application at the consulate and the money that he had given to a migration broker. In the latter case, the informant's wife had been able to travel out of the country. By approaching consulate offices in a similar manner to migration brokers, the informant's question opens up new, or rather old ways of apprehending the nature of relations between aspiring migrants and different regulatory authorities. In his historical work on the globalisation of borders, Adam McKeown has illustrated how state authorities have in the past competed and then sought to evermore regulate other mediators within the organization of human mobility (McKeown, 2008, p. 68). He in particular has elaborated on the extent of government regulation that was necessary to produce the ideal type of the free migrant that would move across borders without the mediation of non-state actors, such as for example planters, shippers, family and village networks. It is among others through the disciplining of migration that

state actors have been able to establish their authority over and above other mediators.

In the conceptualisation of this chapter's research material, the disciplinary moves of state and non-state actors are treated within a common frame of regulatory dynamics (Ferguson, 2006, p. 112). The author considers different regulatory authorities within a common framework even though regulatory instruments and ambitions are by far not all equal. Yet, while not all regulation is equal, these variations are not taken for granted. Instead, the aim is to study how differences in degrees of legitimacy and capacity between regulatory authorities are constructed. As this chapter will illustrate, the very construction of supposed boundaries between state and non-state forms of regulation can constitute acts of regulation that establish one regulatory authority as morally superior over another.

Law and technologies of mediation

Consulate officers refer to the cubicles where they interview visa applicants as the space "behind the window". While visa applicants in Cameroon are very clear about needing mediation to get a visa, American embassy staff denies the existence of mediation on their own side of the window, i.e. within the walls of the consulate service itself. Yet, in practice, consulate staff also uses mediation. By drawing on the notion of technologies of mediation, this contribution demonstrates how mediation by state actors gets framed as "non-mediation," as well as in opposition to illegitimate types of mediation. The construction of some mediating devices as commercial and others as transparent is crucial to understanding how political distinctions between – in this case – the state and the market – are produced (Mitchell, 2006, p. 170).

With mediation, the author in the following means the acts and factors that intervene for the purpose of bringing about a result. The chapter here draws from the specific usage of the terms mediation and brokerage by Olivier de Sardan. Writing about the field of development interventions, he discusses development agents (Sardan, 2005, pp. 166–167) and development brokers (pp. 173–178) under the same umbrella of mediation. Technology in the following means principles that both affect and constitute subjects (Foucault, 1988, p. 18). These technologies are considered in relation to governance (Salter, 2006) and in the broadest meaning of the term (Rose et al., 2006).

In their daily work, consulate staff relied on predominantly three types of mediating technologies. These three technologies were forms of

documentation, story telling and biometrics (i.e. the taking and storing of digital photos and fingerprints). At embassies, the identity of a visa applicant was operationalized through the information stated on the passport, the matching application form and other supporting pieces of documentary evidence, such as bank statements, pay slips, letters of invitation or tax receipts. As Irma van der Ploeg points out, these practices do not simply determine pre-existing identities, but "establish identity in the sense that "identity" becomes that which results from these efforts" (van der Ploeg, 1999, p. 300). It is because forms of documentation, interviews and fingerprinting establish identities that I take these technologies to be instances of mediation.

During the author's period of observation, there were two consulate officers conducting the visa interviews "behind the window". One of the American consulate staff members was in his late 30s, white American, married and a former Peace Corps volunteer. The other was older, not married and about to move to a new post on another continent. The young consulate officer was more advanced in his career and more professional and diplomatic in his conversations with me. In his explanations of his work, his intention was to inform and educate me, but he was simultaneously aware of how his interactions with the author also constituted an act of public relations. The older consulate officer was also white American, and more confidential and open in his remarks regarding his work and views on migration. He took the presence of the author as a somewhat pleasant diversion from his daily routines and an opportunity to share his grievances about his work and the problems of migration.

The interviews for non-immigrant visas that were observed "behind the window" at the US consulate office were all visa interviews for non-immigrant visas, thus for study, business or visiting purposes. On average, not more than three minutes was spent on a single case. Both American officers referred to their work as being similar to the work at an assembly line. The height of the piles of passports in front of the cubicles did not allow for much breathing space.[1] Two consulate officers worked with anything between 100 and 150 visa applications per day. The consulate officers proceed through a series of mechanical steps. Prefabricated refusal forms were available in both French and English. In the case of a refusal, the passport was handed back immediately. If a visa was granted, local American staff picked up the passports and processed the visa. Payments for the visas were taken before the interview and regardless of whether applicants would receive a visa or not.

Both officers would joke that they felt as if they were working at McDonalds. Instead of handing out burgers, they were deciding whether or not to hand out visas. In all their explanations, both officers stressed their ambition to be "user friendly" and "time efficient". The measurement of the quality of how they were treating application files and taking decision was in their minds similar to the one at McDonalds. The objective they were trying to achieve was one of good service in little time.

The older consulate officer very openly revealed how financial considerations were part of his decision-making process. He had hesitated on whether or not to grant a visa to a young man who wanted to travel to Las Vegas. When putting the passport of the applicant on the pile of successful passports, he turned and joked that a man in Las Vegas would surely guarantee an inflow of money into the national economy. Needing to release the pressure under which he was working, he added: 'I hope he won't spread AIDS all over the place'. Unpaid care work, by contrast, does not benefit the US economy. Visa officers do not like to give visas to elderly Cameroonian women who come to visit their daughters in the United States. They are suspected of overstaying their visas so as to take care of their grandchildren.

During the visa interviews that can be observed at the US consulate, consulate officials established firm boundaries between legitimate and illegitimate forms of mediation. Anybody or anything that could have interfered with the visa application process "in front" of the window was considered a potential source of distortion and fraud and viewed with great suspicion by consulate officers. Yet, translation by the consulate officer "behind" the window was considered neutral and transparent. One applicant, for example, worked with an NGO that was growing "eru". The consulate officer was lost and turned to me. The author of this contribution was able to confirm to him that "eru" was indeed an important vegetable in Anglophone Cameroon.

The man received his visa. Equally, when an elderly woman did not understand that her visa had been denied, the consulate officer called for help with his Cameroonian staff. The locally employed Cameroonian woman came to the window and spoke in Pidgin with the visa applicant: Mamie, massa don deny visa. You no go go America. Put all that paper dem back for your bag. May I no loss. Waka fine ('Mother, the man has denied your visa. You will not go to America. Put those papers back into your bag. They should not get lost. Take care'). Had this woman come in the company of an intermediary, this person would have had to justify his or her presence. Any person accompanying an applicant

"in front" of the window where the interview is conducted is scanned and greeted with great scepticism. They have to briefly explain who they are, how they relate to the visa applicant and whether or not they have received money in exchange for accompanying the visa applicant to the interview window. Consulate officers also receive money in exchange for translating and interpreting the application files. Yet, because they do so in the name of the state for which they work, this does not put their credentials at stake.

After the interview, visa officers took the fingerprints of the applicants and stored the digital photos of all applicants on their computers.[2] Biometric data was assigned to all bodies that ask for a visa and subsequently stored within databases. The biometric data of visa applicants was matched to a database with classificatory remarks. These classificatory included visa refusals, as well as remarks about potentially dubious papers within the application files. As pointed out above, visa decisions are taken under circumstances of time pressure, incomplete documentary evidence, as well as interpretations of applicant's physical posture. These momentary decisions were then stored and rendered permanent within computer systems.

While one can consider papers, interviews and fingerprinting as instances of mediation, US consulate staff put great efforts into portraying their own work to be unmediated. During an open day at the US consulate service in Yaoundé, the consul in chief explained to the journalists present that applying for a visa is a straightforward and transparent process. He furthermore stated that answering application and interview questions completely and candidly would allow them to give applicants the maximum benefit under the law, and help them to process their case quickly.

The press conference was an opportunity – as the consul in chief put it – to "explain the law". A great deal of energy was spent during the open day on condemning "mediation". According to embassy staff, mediation is commercial and necessarily external to the embassy. While referring to the law, the consul himself also drew on notions commonly associated with market dynamics. The consul in chief referred to the "business" of implementing and applying the law. He proclaimed that his consulate service provided excellent customer service. His statements reflect a belief in the market as a place of fairness and transparency. In his mind, business did not seem to contradict his simultaneous claim that the law guides visa application processes.

On the open day, application forms, supporting documents, interviewing and the storing of photos and fingerprints are all presented as

straightforward instruments in what is said to be a transparent process. Yet, to many visa applicants, the regulatory requirements of paper are at times far removed from local realities. Most consulate offices, for example, ask for bank statements. Bank statements are not only to prove the availability of sufficient financial funds. The function of bank statements – as explained by an American consulate officer – is the documentation of the economic activities of a person over the course of a certain amount of time.

As technologies of mediation, bank statements draw up portraits of people through the markers left on a piece of paper through money transfers, card payments and cash withdrawals. Yet, in Cameroon, only a small portion of financial activities and money exchanges pass through the banking system. Important savings occur through family meetings and so called "njangi" groups (= saving groups that are often, but not always ethnically organized and divided by gender, see for example, Ardener and Burman, 1996). Cash payments mean that most forms of economic activities remain invisible to the banking system. In such a context, profiles of people drawn up by a banking statement will be distorted. Most people's economic and financial activities thus remain unintelligible to a consulate officer who starts to read the applicant through the piece of paper that is a bank statement.

Other aspects of visa application forms require forms of mediation and translation, too. Just duped by a facilitator, one person stressed in conversation that one has to be very careful when trying "to fall bush". 'You can't confuse things.' 'Your names have to be intact.' In addition, even if one is working simultaneously in two professions, she told, it was better to just indicate one. Otherwise misunderstandings might occur as to the nature of your "real" work. This person experienced the regulatory demands of papers as in contradiction to her own realities. Yet, as she was beginning to understand these regulatory requirements, she was eager to do her best "not to confuse things". Hence, she decided do indicate only one of her two professions and made sure to stick to one particular order of her names.

As pointed out above, embassies also increasingly rely on technologies of mediation that are more sophisticated than mere bank statements and application forms. These shifts in types of technologies deployed occurred within a context in which embassies fashioned themselves as the protector of visa applicants who fall prey to the criminal work of migration brokers. During the open day, for example, the consulate service showed a video usually viewed in the waiting room where applicants sit before their visa interview. The video conveyed how

Cameroonian policemen arrest visa applicants involved with fraud. The video drove home the point of the criminality of migration brokers. In the perspective of embassy staff, brokers and intermediaries are obstructions to the otherwise "transparent" process of the application of the law within their decision-making processes.

In the video, visa applicants were simultaneously framed as both potential threats and victims. As always potentially implicated in fraud, all visa applicants were a priori criminalized and suspicious as potential threats to national security. Yet, while all aspiring visa applicants were considered to be potentially illegal immigrants, the discourse emanated during the open day also allowed aspiring migrants appear as potential victims of migration brokers. The naïveté of visa applicants let them fall prey to the deeds of both criminal and commercial migration brokers. As a consequence, consulate officers legitimate their work by means of protecting visa applicants from illegitimate forms of mediation – namely migration brokers and other types and causes of fraud.

Similar to the discourse and politics of human trafficking, the visa applicant "guilty" of having given money to a migration broker (i.e. of potentially committing fraud) can escape the status of "criminal" by becoming the "victim" to the criminal migration broker. This positioning of visa applicants lets the state take on the role of a double protector. Through the work of the consulate service, the state is either protecting itself from fraudulent visa applicants or it is protecting innocent visa applicants who have fallen victim to criminal migration broker. It is this double-role of protection that legitimizes the authority of consulate staff at embassies. By extension, this double-role of protection also legitimizes the state's monopoly over the legitimate means of mobility (Torpey, 1998).

Aspiring migrants, migration brokers and consulate officers are all involved with mediating technologies and in financial calculations so as to control uncertain outcomes and consequences of visa application processes. Through the criminalization of certain types of mediation, however, state officials draw a boundary between different types of mediation and thus legitimize the state's claim to the monopoly for legitimate control of mobility. This disciplinary strategy consists of dressing up regulatory practices of the state as unmediated. The second pillar within the continuous efforts of the state to monopolize the legitimate means of movement consists – as shall be deliberated below – on a particular way of framing monetary flows and selectively associating these with criminality.

Money as a technology of boundary making

Within its anti-fraud section, the US consulate service employs two Cameroonian members of staff. One of these Cameroonian staff members complained about acquaintances of his in the following manner: 'They just bring money and ask for how much and where they can get the visa. They are not even interested in information'. The quote of the Cameroonian consulate official at the US Embassy expresses outrage at the suggestion of aspiring migrants that visas could be attained through commercial means. Yet, it also implies a belief that information is key to mastering visa application processes. As an employee of the US embassy, he was willing to be a broker of information, but not of visas.

While consulate officers construct the distinctions between fees, commissions and bribes as self-evident, one can demonstrate here how these distinctions are the result of different ways of framing the role and meaning of monetary flows in relation to travel permits. By looking for continuities between supposedly illegitimate remuneration and supposedly just returns of brokerage (Olivier de Sardan, 2005, p. 168), the aim was to return to the informant's question of how consulates legitimize taking money for visas that are for many aspiring migrants in Cameroon often not granted.

When the author asked a sales woman `What is a visa', she replied in Pidgin: 'Visa I dey like identity card wey you e show am for police dem before you pass' (Visas are like identity cards that you have to show to the police before you can pass through). She later further elaborated and explained that 'visas are like tickets that you buy and then you can travel'. So the next question to her was 'How is a visa different from a flight ticket?' She was surprised at the question and did not have a response. In these answers, identity cards, visas and travel tickets all seem to merge.[3] These statements invite to reconsider the nature of travel permits in at least two ways: First, the roadside saleswoman can help us to rethink the connection between paper and mobility. Her response implies that visas are similar to travel tickets. As such, travel tickets constitute the permission to travel and visas are to be attained through money. The saleswoman does not seem to make distinctions between the travel papers given by state authorities or by market authorities. Both flight ticket and visa give access and allow for movement. Second, her statement implies that one "buys" a visa to travel out. She refers to the money that is given when applying for a visa as merely money, but not as a "fee ". Unwittingly, she challenges – or at least does not take for granted – the neat distinction that is otherwise maintained

between money that is given to embassies as "fees" and money that is handed over to brokers as a "price".

Price and fee are particular ways of framing monetary exchanges. Paying a fee confers the entitlement to have one's case processed – not necessarily approved. Paying a price, by contrast, implies the delivery of a service or of a good. Both labels express certain understandings and social meanings of money (Zelizer, 1997). The demarcations between money as a fee and as a price imply statements about the nature of the relationship established through the handing over of the money. Price establishes a supposedly commercial relationship and fees a bureaucratic or administrative one.

Both labels are legitimizing expressions that demarcate the nature of the authority of the person to whom the money is given. A person who receives a fee is authorized, restrained and guided by legal and administrative rules. A person who receives a price is placed within the logics of the market. These distinctive ways of framing money create divisions between various authorities that receive money. The framing of monetary exchanges in terms of either fee or price also legitimize and delegitimize an authority and notably mark them vis-à-vis the principles that are supposed to guide its action. Taking up the saleswoman's cue, what happens if we think of the money that is given to brokers as fees and of the money that is handed over to consulate staff as price?

While the money given to consulate officers is referred to as fees, visas nevertheless have an official revenue-generating function within consulate services. An accounting firm periodically comes and evaluates the cost of visa services of American embassies in the world. Visa fees are then established based upon these reports. In principle, the "visa function" is supposed to be 100 per cent financed through visa fees. At the US consulate, most of the salary of consulate staff comes from visa fees. Visa fees also serve to pay for computer facilities, Internet connection and some of the office furniture.[4] Strictly speaking, the US Embassy administration referred to visa fees as "user fees". The money does not pay for the issuance of a visa, but for the processing of the application and the interview. Money is not refunded if applicants do not receive a visa because the service was provided – even if not at all times to the satisfaction of the "customer", that is, the visa applicant.

Consulate staff from the US Embassy furthermore stressed in conversation that the above-described financial function of visa (or user) fees did not mean that US consulate services were local businesses. Money obtained by consulate services for the visa (or user) fees does not remain within the consulate service, but is wired to a central account in the

United States where it is distributed and dispatched globally to the various consulate services. Consulate services are thus not as local entities self-financed. Nevertheless, the amount of money consulate services receive back from this central account does depend upon the number of visa applications that were processed.

When considering the contrasting case of the French consulate service, the author of this chapter was able to witness similar financial dynamics. With respect to the connection between visas and financial procedures of the consulate service, visa applicants with the French consulate have to make their appointment through a call service that was entirely outsourced to a private company. Calling fees were high. This privatized call service company was entirely financed through the telephone charges of the visa applicants.

Furthermore, the consulate service of the French embassy was only very partially financed through money flows of the embassy. In contrast to the US consulate in which applicants always have their interviews with diplomatic staff, the French consulate service of Yaoundé only had one diplomatic staff. The other four consulate officers were French nationals that were employed on the basis of local contracts directly in Cameroon. The salaries of the locally employed French staff were not paid through the financial circuits of the diplomatic service in Paris, but through revenues created by the visa application fees. Every visa application contributes 40,000 Central African Francs (CFA) – roughly 60 Euros – to the maintenance of the consulate service.

In some cases, the refusal is immediately clear to the consulate officer. Yet, even if fraudulent traveller cheques have been found, all details of the applicant still need to be processed within the computer. A photo of the applicant was taken and stored in the computer system. With somewhat inefficient computers, these processes could take long and were frustrating. 'So much effort for a simple no!' was the complaint of a visa worker at the French consulate service. Yet, there was also a sense of relief in knowing that at least the efforts served to generate income. At the end of a long and frustrating intake procedure, the officer jokingly said: 'Another 40,000 for us'. As disciplinary technologies, identity papers and travel permits are also a resource in the literal meaning of the word.

All officers within the service have a very direct relationship to the money made within the service. If they forget to charge the 40,000 CFA, they themselves had to reimburse the missing money. The first step in the interview encounter was always the payment. At the end of the working day, all officers joined their cashiers and the revenue of the day

was counted. Disappointment or joy depended upon whether or not the magic limit of one million CFA (1,500 Euros) had been reached in a day. There are thus more similarities between money given to consulate offices and to brokers as one might at first sight suspect.

By targeting the meaning of monetary flows between cross-border travellers, migration brokers and consulate officers, state actors exert disciplinary control. Visas have an income-generating function for consulate offices. Money is thus not external or other to the interpretation and application of legal frameworks. Instead, the framing of financial flows to consulate offices as fees creates the appearance of money as external to consulate offices. The framing of money outside the consulate office as price produces boundaries between authorities. Authorities that receive money in the form of fees are constructed as "legal" and "transparent" and authorities in which money is framed as "price" are constructed fundamentally different and by extension as "illegal" and "commercial". In this manner, money serves as a technology of boundary making between state and non-state actors within migration control.

Conclusion

The question of the informant at the beginning of this chapter fulfils an important function in so much as it allows us as scholars to reconsider disciplinary tactics of the state that have become increasingly routinized and thus invisible. The first of these two disciplinary tactics concerns the farming of mediation by state actors as de facto non-mediation. The case study of the US Embassy demonstrated how the application of the law, too, is mediated through technologies. Therefore, what it takes to get a visa at a consulate office is the mastery of mediating technologies that can limit the degree of contingency. The second disciplinary tactic of this chapter concerns the meaning of monetary flows in exchange for travel permits. Both mediation and money are constructed as external to the consulate office. State actors seek to monopolize and thus legitimize state authority. In trying to do so, they accusingly ascribe monetary motives to migration brokers. Framings of money contribute substantially to the construction of state practices as supposedly disinterested, transparent and unmediated. The term fee legitimizes monetary transfers to consulate officers – even when the visa is not granted. By contrast, the term price delegitimizes monetary transfers to migration brokers – even if the travel project is successful.

The framing of money as "fee" legitimizes monetary transfers to consulate officers – even when the visa is not granted. When state officials frame migration brokers in terms of profit and crime, this disciplinary representation feeds into a truth regime about the immediacy and legitimacy of state regulation, as well as its supposed difference with non-state regulation. The demarcation of certain types of mediation as "commercial" and "criminal" brings into being the very idea of "the law" as an abstraction that is unmediated, impermeable to particular interests and "external" to monetary considerations (Fitzpatrick, 1992). In this sense, boundary making is productive of the narrative of legality that is assumed to characterize and govern visa application processes.

Studying the continuous construction of the state's quest for a monopoly over the legitimate means of movement allows us to also become aware of how some of the key terms through which we are used to look at migration are framed by state authorities in ways that legitimize its own authority. Scholars of migration can only begin to grasp the nature of the political and moral economy of migration if they agree to give up constructing their analysis from the assumed monopoly position of the state. Torpey has argued that studies of migration and migration policies have taken for granted the role of states and 'have thus failed to see the ways in which regulation of movement contributes to constitute the very "state-ness" of states' (Torpey, 1998, p. 240). Through the lens of technologies of mediation and multiple ways of framing money, this chapter sought to contribute knowledge to the construction of state authority and its supposed boundaries. Boundaries between state and market need to be studied as constructions that serve a function, rather than as self-evidently distinguishable spheres.

Notes

1. While the laws and procedures for non-immigrant visas are very different at the French and the American consulate service, both share very tight workspaces and heavy time constraints in their work.
2. At the French embassy, too, fingerprints are taken of all visa applicants and then shared with other European embassies. Through these fingerprints, consulate officers can among others verify whether applicants had already applied under a different name for a visa before.
3. The Pidgin word to catch all of these manifestations of paper is "book dem" or "doki". 'I don get i book' can mean that the speaker received his Bachelor degree, his passport, his vaccination card or even just a simple notepad. Given that Pidgin is not a fixed or closed system, it can always include words from other languages. Depending on the level of education, words from English can be borrowed and brought into Pidgin. Depending on the level of education,

distinctions between different forms of bureaucratic documentation can thus be made. Yet, the social context is such that people who only speak Pidgin and no English will resort to the word of "book" in reference to any form of documentation or paper.

4. See also http://www.state.gov/r/pa/prs/ps/2010/05/142155.htm

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9

Disciplining Female Migration in Argentina

Human Rights in the Time of Migration Management

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In recent years, international labour migration and its highly gendered nature have received an unprecedented level of attention by international organizations (IOs) and national policymakers in general (GCIM, 2005; IOM, 2009a; UN, 2004; UNFPA, 2006). This renewed attention to international migration at the global level has highlighted demographic and labour market changes which have resulted in labour shortages in certain sectors or skilled professions in richer countries as well as the continuing failure of development projects and the (perceived or real) pressure to outsource labour in poorer countries. The kind of migration that is of interest to IOs and national policymakers migration is the selection of persons who can meet temporary labour demands in host countries.[1] This approach is intolerant of unauthorized crossings by migrants, particularly given the hyper-securitized post-9/11 conditions. Thus, from the point of view of international and national policymakers (especially in destination countries), these "uncontrolled" types of migration are to be disciplined, that is, penalized, particularly when they involve smugglers or organized networks of traffickers.

Migration can be disciplined through official discourses, public information campaigns and particularly through specific policy initiatives. A range of actors and institutions are implicated in the dominant discourse and direction of migration policy and practices related to migration for work, or labour migration, that affect migrants at different stages of the migration process. Motivated by their desire to promote managed migration, these actors are involved in the practices aimed to discipline those

who subvert this managed approach, that is, those who assist migrants to cross the borders and remain in a country without authorization, as well as the migrants who do so with or without the assistance of others. Such disciplining strategies often draw on the human-rights discourse promoted by such international organizations as the International Labor Organization (ILO), United Nations Educational, Scientific, and Cultural Organization (UNESCO), United Nations Development Fund for Women (UNIFEM) and to a certain extent, the International Organization for Migration (IOM). However, as argued in this chapter, this human-rights language is used predominantly to justify the drive to manage migration and shape it to comply with established preferences. At the same time, international and national policymakers ignore many human-rights issues, such as migrants' labour and some social rights that are unrelated to the migration management objectives. According to the authors, by marginalizing migrants' social and labour rights, IOs and national policymakers discipline migrants to become docile and easily exploitable workers that contribute to economic growth while placing low demands on social welfare institutions.

Focusing on the migration of Bolivian women to Argentina, this chapter explores how IOM and the Argentine state discipline migration by problematizing and making hyper-visible human trafficking and status irregularity (i.e. "undocumented" migration), while downplaying abuses of migrants' social and labour rights, rendering them virtually invisible. Employing various disciplining strategies, such as the consolidation of "expert" knowledge, the dissemination of public discourses, public awareness campaigns and specific policy initiatives, these actors shape Bolivian migrant women to become law-abiding workers who do not question their conditions of exploitation and do not demand social protections from the Argentine state. The migration management discourse employed in Argentina draws on the language of human rights. But, as is illustrated in this chapter, only particular human rights that are consistent with the migration-management approach are of interest to policymakers. Drawing on Foucault's analysis of disciplinary power, the chapter illustrates how three forms of discipline – observation, punishment and examination – are applied to Bolivian female migrants in Argentina. In addition, it is argued that migrants are also subjected to "discipline by neglect" that involves ways of making the abuses they experience "invisible". The chapter is based on the analysis of published documents, official statements and interviews conducted between 2007 and 2010 in Argentina and Geneva with representatives of national governments, global governance

institutions, international Nongovernmental Organizations (NGOs) and Bolivian migrant women.[2]

The global migration-management discourse and the issue of human rights

The issue of how to deal with migration as a global phenomenon that implicates almost all countries in the world in one way or another has been subject to discussion and many activities over the last decade. The recently emerging discourse on "migration management" links migration to the need to administer highly selective flows of migrants destined to meet specific labour demands in receiving countries while simultaneously addressing the economic needs of sending countries (Geiger and Pécoud, 2010; Geiger and Pécoud, 2012; Grugel and Piper, 2007). International financial and trade institutions such as the World Trade Organization (WTO) and World Bank (supported by rich destination states or clusters of states such as the European Union (EU)), as well as the Global Forum on Migration and Development (GFMD), have been largely responsible for articulating this trend at the global level. However, this migration-management discourse has not entirely erased concern for migrants' rights. Advocated by IOs such as UNESCO, ILO, UNIFEM, and to a certain degree by IOM, and entrenched through the 1990 United Nations (UN) Convention on the Rights of Migrant Workers and Members of their Families, human-rights issues are found within the management paradigm.

Yet, as will be argued below, it is specific human-rights issues that have found a happy marriage with the management discourse while other such issues are marginalized. The migration-management paradigm revolves around the idea that managed, that is, orderly, legal migration schemes can benefit the developmental and labour market needs of sending and receiving countries while benefitting the individual migrants themselves – the infamous "triple win solution" (see GCIM, 2005). Allegedly based on shared sovereign interests and common principles, the claim of the managed migration paradigm is to allow both sending and receiving countries to regulate incoming and outgoing flows according to their economic and political needs (Chi, 2008). It is hoped that this management of migration will reduce the risks assumed by people who engage in irregular or undocumented movements and that migrants' remittances will stimulate economic growth in sending countries. Within this paradigm, individual migrants are celebrated as the "unsung heroes" (Ramamurthy, 2003; see also Rodriguez, 2002) or

agents of development, and the relationship between migration and development is now couched in positive terminology such as "brain gain", for instance, rather than "brain drain". This approach has clearly dominated the agenda of the GFMD, which has taken place annually since 2007 (Matsas, 2008; Rother, 2010).

Within the emerging migration-management paradigm, the direction of policy making on labour migration at the global level is predominantly shaped by state preferences and characterized by macroeconomic concerns while sidelining the social costs of migration for migrants and their families (Chi, 2008; Grugel and Piper, 2011). As a result, greater focus is placed on controlling access to labour markets and extracting economic benefits from it than on protecting migrants from rights violations stemming from exploitative practices by recruitment agencies and employers; a lack of job mobility in most temporary migration schemes; the dead-end, low-skilled jobs most migrants end up performing; non-coverage by labour legislation, especially in the case of domestic workers; separation from families for prolonged periods of time and the specific vulnerability of being undocumented when absconding from abusive employers or overstaying a short-term visa. Along with placing emphasis on the economic contributions of migration to both sending and receiving countries, this global governance of migration has neglected the structural inequalities that lead to migration in the first place (Delgado Wise et al., 2010).

The emphasis on the control of population movements also explains the widespread interest in combating trafficking and human smuggling (Dauvergne, 2008), which are first and foremost treated as a violation of states' sovereign right to border control rather than as a human-rights issue. In sharp contrast to the highly under-ratified ILO and UN migrant workers conventions,[3] the 2000 UN Convention against Transnational Organized Crime (also known as the Palermo Convention) and its two related protocols have been widely accepted. The Palermo Convention focuses on the criminal aspects of cross-border migration and is more concerned with national security and border control than the right-based protection of trafficked victims (Dauvergne, 2008; Gallagher, 2001). Diana Wong attributes the wide acceptance of the anti-trafficking convention to the US government's securitization agenda, as evident from its reporting on trafficking in persons and its three-tier classification of countries (Wong, 2005). Consequently, a huge amount of funding is made globally available for anti-trafficking programmes, even where there is very little, if any, clear evidence of actual trafficking taking place. It is hardly surprising, then, that trafficking-related issues tend to dominate

the agendas of national governments, IOs and NGOs working in the area of migration (Basok and Piper, 2012; Lindquist and Piper, 2007).

Yet, the migration management approach often mobilizes the human-rights language in support of its initiatives. Migration control measures are often justified by the concern for the safety of migrants who would otherwise risk their lives and fall into the hands of unscrupulous smugglers and traffickers (Geiger and Pécoud, 2010, pp. 13–14; Poutignat and Streiff-Fénart, 2010). Similarly, counter-trafficking discourses and initiatives are often expressed in terms of human-rights protections, thus concealing their securitization-related objectives (Dauvergne, 2008, p. 73). For Jacquline Berman, the trafficking narrative allows migration management to be seen as benevolent, progressive and understanding of migrants' needs and a helpful alternative for trafficked women (Berman, 2010). Yet, human rights are defined in a particular way in these discourses. As Wendy Chapkis argues, framing migration in relation to trafficking promotes a perspective in which abuse of migrants becomes fully the fault of traffickers who must be stopped and not a by-product of exploitative employment practices, restrictive immigration policies and vast economic disparities between rich and poor countries (Chapkis, 2003).

IOM has become an important political and administrative player within the migration management paradigm (Andrijasevic and Walters, 2010; Basok and Piper, 2012; Caillault, 2012; Chi, 2008; Geiger, 2010; Georgi and Schatral, 2012; Inder, 2010; Poutignat and Streiff-Fénart, 2010). Despite its rhetoric concerning migrant rights, the organization engages in practices in the area of migration control that prioritize the rights of states, including repatriation programmes dubbed as "voluntary ", the administration of detention and deportation camps as well as capacity building and technical consultation for states undergoing reforms towards more restrictive immigration and refugee policies (Ashutosh and Mountz, 2011; Georgi, 2010). This contradiction lies in the nature of how IOM operates: it is not autonomous but dependent on funding by states and the international financial institutions. With its hands tied, IOM's rights-based work tends to fall behind. At the heart of IOM's strategy of spreading a specific management approach to migration are first and foremost the interests of its main donors – the United States, Europe and Australia – who have a specific interest in asserting tight control over certain migration corridors.

Furthermore, even when IOM focuses on rights, it tends to underscore the need to control borders and prevent unauthorized migration, especially trafficking. In its 2009 report 'Working to Prevent

and Address Violence against Women Migrant Workers', for instance, IOM equates protecting migrant rights with managing migration and preventing unauthorized migration, particularly through trafficking (IOM, 2009b). This approach fails to relate violence against women to labour exploitation, xenophobia or forms of state repression of migrants, particularly unauthorized migrants. As Fabian Georgi and Susanne Schatral point out, the IOM's anti-trafficking work is characterized by a 'narrow, technocratic interpretation of human rights that limits the support for people affected by trafficking to physical and psychological elements of temporary well-being' (2012, p. 200). These tools are part and parcel of a spectrum of direct and indirect disciplining mechanisms, and as this chapter demonstrates later on, this is also true of IOM's work in Argentina. The following analysis of disciplinary practices draws on Foucault's conceptualization of discipline and various technologies of discipline, as well as on contributions from other researchers employing the governmentality approach, as outlined briefly in the next section.

Technologies of discipline

For Michel Foucault, disciplinary power aims to train or mould bodies in a way that individualizes them and addresses them 'both as objects and instruments of its exercise' (1977, p. 170). It is particularly effective because it employs three simple instruments or techniques: hierarchical observation, normalizing judgement and the examination. Hierarchical observation, involves technologies such as architectural design and a hierarchized network of actors involved in the continuous, functional, discreet and automatized surveillance of individuals. This surveillance aims to render all individuals visible and it aims to 'make people docile and knowable' (p. 172). In other words, surveillance produces knowledge about individuals which can then be utilized to develop new techniques aimed at further shaping or refining individuals' conduct in desirable ways. But for Foucault, surveillance and knowledge are not enough, since 'at the heart of all disciplinary systems functions a small penal mechanism' (p. 177). Disciplinary penalty, however, is, unlike repression and other forms of punishment. For Foucault, disciplinary power 'compares, differentiates, hierarchizes, homogenizes, excludes' and thus "normalizes" (pp. 182–183).

The third and final instrument or technique of disciplinary power identified by Foucault is, the examination, which:

> places individuals in a field of surveillance [and] also situates them in a network of writing; it engages them in a whole mass of documents that capture and fix them ... [and involves] a system of intense registration and of documentary accumulation. (p. 189)

In this way, Foucault explains, 'a "power of writing" was constituted as an essential part in the mechanisms of discipline' (p. 189) which opened up the possibilities of (a) converting the individual into a describable and analyzable object and (b) constituting 'a comparative system that made possible the measurement of overall phenomena, the description of groups, the characterization of collective facts, the calculation of the gaps between individuals, their distribution in a given "population"' (p. 190).

For Foucault, all people in the hierarchical network of disciplinary power both discipline and are disciplined and surveillance functions as 'a network of relations from top to bottom but also to a certain extent from bottom to top and laterally' (pp. 176–177). Yet, in reality, not all individuals wield equal possibilities for establishing the norm to be followed and the consequences for transgressing it. Unauthorized migrants are one of the categories of people who are more limited in their ability to set such norms and are more likely to face the consequences of transgressing them. Drawing on the works of various governmentality theorists (Dean, 1999; O'Malley, 1996; Rose, 1999), Jonathan Inda discusses how post-social regimes (i.e. regimes associated with the decline of the welfare state and the ascendance of neoliberal reforms) produce highly racialized divisions between: the prudent and the anti-prudent, the autonomous and the dependent, the ethical and the unethical or the citizen and the anti-citizen (2006, pp. 9–18). The anti-prudent, dependent and unethical "anti-citizens" are subject to certain disciplinary measures (such as remoralization), but they are progressively governed through crime (Inda, 2006, pp. 20–21; Pratt and Valverde, 2002). Inda illustrates how "illegal" immigration is rendered a target of discipline through certain mentalities and intellectual machineries. He explores how certain "intellectuals" have built up knowledge that constructs unauthorized migrants as an ethical problem to be corrected through various tactics, particularly border surveillance (2006).

Bolivian women in Argentina

According to its 2001 census, 4.2 per cent of Argentina's total population was born outside of the country, and migrants from Bolivia constituted 15.2 per cent of the foreign-born population. This same census

revealed that there were 116,000 Bolivian women in Argentina and that more than half settled in the Metropolitan Area of Buenos Aires and were employed predominantly in domestic work, the garment industry and as street vendors (Courtis and Pacecca, 2010; Texidó, 2008). According to the preliminary analyses of the 2011 census, the percentage of the foreign-born population had grown to 4.5 per cent by 2011. The growing Bolivian population, which grew by 48 per cent between 2001 and 2011, has contributed largely to this increment (Sandra Buccafusca, personal communication). In the last 20–30 years, the gender composition of Bolivian migration has changed, with more women arriving with their husbands and also independently. Whereas in 1980 for each Bolivian migrant woman there were 1.25 Bolivian men arriving in Argentina, by 2001 the ratio had dropped to 1.01 (Courtis and Pacecca, 2010, p. 160).

Bolivian women face many challenges in Argentina. In the Buenos Aires area, most live in shantytowns (*villas miseria*), often in overcrowded houses. One of the problems identified by the women interviewed in this study was access to healthcare despite the fact that, according to Article 7 of the 2003 Migration Law, everyone, regardless of legal status, is entitled to receive care at Argentine hospitals (Domenech, 2008, p. 7). As many as 19 of 50 women interviewed mentioned two main forms of discrimination they experienced in Argentine hospitals. First, some felt that Bolivian patients had to wait longer than Argentines regardless of the order of arrival or the urgency of care. Second, some were denied service because of a lack of documents. Also, some felt that the nurses were rude to them just because they were Bolivian. One Bolivian woman interviewed in our study described her experience at the hospital as follows:

> My baby got sick and the nurses were hostile … They are not interested, at least they are not interested in us, the Bolivians … They keep us waiting … They ask us to present our documents and if we don't have them, they say, 'come back' … and then if you come back next day, they tell you to come back next month and that's how it is. But the baby is still sick and you have to go to another hospital. They don't treat you well.

Some Bolivian women talked of being looked down upon because of their darker complexion or being ridiculed because of their inability to communicate well in Spanish.

Questioned about their experiences in the labour market, many Bolivian women reported having been abused, underpaid and/or fired without

reason. As many as 16 women in our study reported acts of aggression and/or sexual harassment by their employers. One story provides a vivid illustration:

> From the very first day I started working in this workshop, there was mistreatment and violence. The owner had physical contact with the girls from the workshop; they went out and went to some lively places. And sometimes, right there in the workshop. Some pretty ugly things were happening there, but I put up with them because I was little … When the owner had fights with his wife, she would come in and start screaming at the girls working at the sewing machines, saying 'hurry up', and like this. She tried to humiliate us.

As many as 15 women reported having problems with pay: some were paid late, others less than they expected and yet others were not paid at all. As one Bolivian woman interviewed in the study commented: 'They want to exploit you, they want you to work but, when the moment comes, they don't pay you or tell you that they would pay you little by little.' Another Bolivian woman presented a similar story:

> One thing is that they used to promise to pay us that much, but, at the end, they paid us only half of what they had promised. So, we were in trouble because we had to pay rent for the houses, house expenses, pay for food, and we didn't have enough. …

Furthermore, some Bolivian women reported having experienced sudden and, in some cases, violent dismissals by employers. One Bolivian woman was hired to work as a salesperson by a store manager. However, when the owner came three hours later and found out that she was Bolivian, the owner searched the worker's purse and pockets and, having found no stolen goods, still fired her without paying her for the three hours of work. As she put it, 'she kicked me out right away and told me that she didn't want any foreigners working there'. Finally, six women that were interviewed had experienced outrageous forms of exploitation and abuse (such as debt peonage, working without pay for family members, being urged not to leave the house, working for long hours or having identity papers detained by the employer). Many analysts and practitioners would argue that these forms of treatment constitute elements of human trafficking. Nevertheless, it is important to note that these cases usually involved family members or individual employers, rather than international trafficking networks.

The working conditions reported by the Bolivian women are consistent with other empirical findings (see Bastia, 2007; Caggiano, 2011; Fundación Comisión Católica Argentina de Migraciones, 2011, for instance). Tanja Bastia describes garment shops employing Bolivian women in Argentina as overcrowded, with limited lighting or ventilation. At the time of her research, most Bolivian women were undocumented and feared deportation. Thus, in order to hide the fact that they were employing undocumented migrants, shop owners limited the size of windows and lighting and restricted their workers' movements. Bastia also found that many workers lived at their workplaces and took turns sleeping on beds, which they shared with their co-workers. The employers provided food to the workers (which the latter found inadequate) and demanded that they work up to 17 hours daily. Although as many as 28 Bolivian women in our study had regularized or were in the process of regularizing their status through marriage or through the Program for the Regularization of Migratory Status (*Programa de Normalización Documentaria Migratoria*), discussed below, their working conditions had not improved much (Bastia, 2007).

Bolivian women who remained undocumented felt that without legal documents they had no legal right to complain. In fact, the 2003 immigration law explicitly prohibits undocumented migrants from working in Argentina and thus leaves those who work without authorization unprotected (Fundación Comisión Católica Argentina de Migraciones, 2011). Other Bolivian migrants mentioned that they did not know how to file a complaint. Yet others felt that public officials discriminated against Bolivians and that seeking help was useless. Only one Bolivian woman interviewed in this study denounced underpayment to the Domestic Worker Tribunal and was awarded back pay. In addition, Bolivian migrants are excluded from such social protection programmes as old age and disability pension and child benefits because of the lengthy residency requirements that recently regularized migrants cannot meet (Fundación Comisión Católica Argentina de Migraciones, 2011).

As can be seen from this discussion, Bolivian women experience several forms of rights violations in Argentina, including abuse in the labour market, blocked access to healthcare and denial of social benefits. Only in some cases can these conditions be attributed to experiences of human trafficking or to their undocumented status. However, even for women who have regularized their status, many problems persist. Despite this fact, IOM and the Argentine state tend to construct problems faced by Bolivian migrants (men and women) predominantly in terms of human trafficking and status irregularity. They discipline migrants

and flows of mobility that do not fit the ideal pattern of migration – that is, those movements that are facilitated by smugglers or traffickers and/or that result in status irregularity.

How, by commissioning and funding certain diagnostic studies and by constructing particular discourses, some actors, such as IOM and public officials, produce sets of knowledge they claim as "truths". These sets of knowledge make the problem of human trafficking and status irregularity visible; at the same time, they constitute and mobilize new strategies and technologies aimed to shape, influence or interrupt these unfitting types (or "anti-citizens" in Inda's terms) of mobility/migration. These new strategies and technologies are embodied in various programmes that call for the surveillance of the migrant population in order to identify and penalize the transgressors (in the case of human trafficking by imprisoning the traffickers and rehabilitating and returning the "victims" to their home communities). At the same time, as the problems of human trafficking and status irregularity are rendered visible, the violation of migrants' social and labour rights are rendered virtually invisible, as there are no diagnostic reports, public awareness campaigns or programmes put in place to address them. We argue that the invisibilization of these issues is another form of disciplining. By marginalizing these issues, IOs and government departments shape migrants to be docile and easily exploitable workers with limited or no access to social benefits.

Hypervisibilization of human trafficking

The issues of trafficking and irregularity by far dominate the migration agenda as set by IOM and the Argentine state. As an IOM official interviewed in our study put it:

> If we talk about women in particular one of the main problems we do have in the country is the issue of trafficking of women for sexual exploitation which is obviously a way of exploiting women and therefore of denying their basic rights. This is not something done by the state; it is done by a group of criminals.

As stated in a 2008 IOM report, in Argentina, human smuggling is

> a topic that constitutes the agenda of various state officials not because of the magnitude that this problem presents but rather because of

> evidence and characteristics that have been collected and that express certain particularities of this phenomenon. (Texidó, 2008, p. 48)

In partnership with other international organizations, IOM Argentina works with the United Nations Office on Drugs and Crime (UNODC) and the United Nations Global Initiative to Fight Human Trafficking (UNGIFT) to locate, dismantle and penalize the traffickers, thereby creating a hierarchical mechanism of observation, to use Foucault's terms.

One way IOM makes the issue of trafficking visible is by commissioning studies that document the characteristics of the "victims of trafficking" (see, for instance, IOM, 2006, 2008, 2009c) and making public statements about the phenomenon (i.e. IOM, 2007). In addition, IOM organizes public information dissemination campaigns. One such example is the Public Awareness Campaign launched in the city of Buenos Aires on 14 March 2012. Under the slogan of "No to Human Trafficking; No to Modern Slavery", this campaign aimed to make Argentines aware of the scale of sexual and labour exploitation that exists in the world. Eugenio Ambrosi, IOM regional representative for the Southern cone stated at this presentation,

> No to human trafficking, no to modern slavery is a responsibility of each of us. No one can stay calm while there is at least one person in the world who is subjected to these conditions of exploitation and violence produced by this crime. (IOM, 2012)

In this way, national citizens are drawn into this hierarchical network of observation and made responsible for watching migrants in order to identify and penalize transgressors (the "anti-citizens" and those who "aid and abet" them).

Various Argentine state departments have also been drawn into this network of surveillance. The Argentine state places the issue of human trafficking at the centre of its migration policy initiatives. Argentina has signed and ratified all UN conventions and protocols dealing with human trafficking and transnational organized crime, including the Palermo Protocol. Furthermore, the Argentine government has amended its penal code in order to criminalize human trafficking. In October 2007, a national programme for the prevention and elimination of human trafficking was set up. Two Argentine organizations have been placed in charge of counter-trafficking: the National Directorate of Criminal Investigation (Dirección Nacional de Investigación Criminalística; an organization in

charge of gathering intelligence on the trafficking networks) and Office for Integral Assistance to Victims of the Attorney General's Office (Oficina de Asistencia Integral a la Víctima del Delito de la Procuración General de la Nación; an organization in charge of investigating trafficking cases and assisting victims). Government officials interviewed in this study also assigned great significance to the issue of human trafficking. All but one of the interviews with national organizations in the field of migration in Argentina identified trafficking and/or smuggling (either for labour or sexual exploitation) as a problem facing migrant women and children in Argentina (the exception being a civil society organization).

Thus, as can be seen, a network that includes IOs, the national state, civil society partners and even the entire Argentine population (who are now told that they are "responsible" for eradicating human trafficking) constitutes surveillance strategies, creates knowledge and penalizes those who engage or engage others in those forms of migration which break with the norm. At the same time, individuals' mobility in general is shaped by disciplinary power to comply with the expectations of managed migration. However, while the counter-trafficking rhetoric and initiatives are clearly related to the managed migration agenda, as is clear from the quotes cited above, as well as various quotes conducted during our interviews, the rationale for these initiatives is often expressed in terms of protecting the rights of the "victims" of human trafficking. As discussed before, the migration management paradigm draws on the human rights discourses to justify the need to control and punish.

The regularization program and disciplinary examination

In the 1990s, many civil society organizations, particularly the Center of Legal and Social Studies (Centro de Estudios Legales y Sociales), pressured the Argentine state to revise its restrictive immigration law. Arguing from a human-rights perspective, these grassroots organizations were deeply concerned about the stigmatization, discrimination, extreme forms of labour rights violations, civil rights violations on the part of the police and other public officials and the denial of access to healthcare and other benefits that undocumented migrants in Argentina faced. These concerns were not unfounded. As we discussed above, Bolivian migrant women without legal documents felt particularly vulnerable to employers' abuse and denial of public benefits. The above-mentioned activists felt that status regularization would improve migrants' living and working conditions.[4] Partly under pressure from civil society organizations, the Argentine state revised it immigration

law. The new 2003 immigration law (Law 25871) made it possible for citizens of the Mercosur countries (including Brazil, Paraguay and Uruguay) and two associated countries (Chile and Bolivia) to obtain legal residency status in Argentina. Following this law, in 2004, a regularization programme (Programa de Normalización Documentaria Migratoria; also known as Patria Grande) was introduced and put into practice in 2006. Many government and NGO representatives expressed the view that Argentine identity papers would guarantee access to health, education and other social benefits to Bolivian migrants. An official employed in the Argentine Human Rights Office (Dirección Nacional de Derechos Económicos, Sociales, Culturales. Secretaría de Derechos Humanos de la Nación) interviewed in our study observed:

> What was happening is that the number of undocumented migrants was growing and that neither the government nor the society could offer any protection or direction to these clandestine people. It was not helpful that they inserted themselves in the labor market under the conditions of extreme precarity. They could not form unions and ending up pulling the wages down. In other words, it was a great disadvantage and it is extraordinary that we waited that long to introduce this law.

While at the rhetorical level, the rationale behind the new immigration law was expressed in terms of human rights, common citizenship and cultural pluralism, Eduardo Domenech observes that the Argentine state was motivated by the need to establish fiscal control over the migrants who, when employed "under the table", avoided paying taxes (Domenech, 2008). Thus, this status regularization programme can be seen as a measure to turn "irresponsible law-breakers' (anti-citizens) into law-abiding (and tax paying) – that is, "responsible" and "ethical" – citizens. Many Argentine NGOs and church-based organizations (estimated by the Ministry of Internal Affairs to be as many as 560; see Ministerio del Interior, 2010) set up offices to assist migrants to regularize their status, helping them to obtain the necessary documents (e.g. birth certificates and police clearance) from Bolivia and process their applications.

Migrants are encouraged to undergo this examination (in the Foucauldian sense) by providing information about themselves and, in particular, their criminal records and other related personal documents. In this way, "deserving" migrants are differentiated from those who are unable and/or unwilling to satisfy the established requirements, the

latter of whom are to be marked as "undesirable" and potentially subject to penalties in one way or another (i.e. banishment, denial of benefits and other such). In an interview conducted for our study, one official employed at the Office for Integral Assistance to Victims of the Attorney General's Office offered the following view on this process:

> The opportunity exists to be in Argentina with regular status. Let's see how many migrants have criminal records in their countries and don't come forward to regularize their status. That is the question we have in the department. And who will go to look for these people? Well, it cannot be done anyways.

In addition, as Domenech suggests, the regularization programme fits well with the securitization agenda. He quotes a National Department of Migration official who says, 'from the security point of view … the truth is that it is much better to know who resides on our territory, and have them documented and regularized in order to keep an eye on them' ("para poder hacer un seguimiento de los mismos'; Domenech, 2008, p. 10).

Even when the rationale is stated in human-rights terms, the control and discipline agenda can be easily detected in the official discourse. An official interviewed in our study stated in a quite similar way

> It is always good to have control over migrants and that's what we have in Argentina, just to have statistics … I believe the state requires this kind of information. So in Argentina we have a program called Patria Grande that is already at the second stage. At the first stage, we merely collected a type of census to get an idea of how many foreign migrants we had in the Mercosur and in what legal conditions … Now, we simply ask migrants if they wish to obtain Argentine documentation and if they do, we help them and this way they don't have to be in irregular conditions and they don't need to buy a document through a criminal network, the way they used to, and they don't have to be exploited because now they have rights just by virtue of crossing into Argentina.

The regional integration of the Mercosur countries was another motive behind the new immigration law in Argentina. The "Patria Grande" was introduced in the footsteps of the Mercosur 2002 Accord on Legal Residency for Nationals of the Mercosur countries, Bolivia and Chile. Interestingly, this accord, which made it possible for nationals of

Argentina, Brazil, Uruguay, Paraguay, Bolivia and Chile to move freely within this territory and obtain legal residency status, was also rationalized in terms of addressing the problem of illegality and, particularly, human trafficking. One of the stated rationales for introducing this Agreement was the search for "joint solutions", in accord with the adopted General Plan for Cooperation and Coordination of Regional Security, to the problem of 'human trafficking for the purpose of labor exploitation' (Mercosur, 2002).

Rendering social and labour rights invisible

Migrants and migrant organizations have brought concerns about the treatment of migrants in Argentina – including forms of labour exploitation and abuse – to the attention of national civil society and international organizations (Caggiano, 2011). When asked about migrant rights, an IOM official seemed well-informed about many of the problems they faced; he mentioned destitute conditions in the shantytowns and absence of public schools there, he also acknowledged that, despite legal rights granted to them, de facto "migrant rights are put in jeopardy". The IOM expert was moreover well aware of the exploitation of women in particular for 'sexual reasons or for labor exploitation'.

Recognizing these problems, IOM Argentina funds several projects that aim to address some of these problems, such as the eradication of child labour in the garbage collection and recycling and microcredit in some shantytowns. Yet, by comparison to counter-trafficking initiatives, IOM programmes that address social and economic rights are miniscule; they are assigned small budgets and do not involve as many institutional partners. IOM has not commissioned any diagnostic reports to create "expert knowledge" on the problem of migration exploitation and the denial of social and economic rights. Without such "expert" knowledge, IOM does not launch public awareness campaigns to question and change those conditions and policies that are responsible for the social and economic problems that migrants experience. Nor does it enlist average citizens to keep a watchful eye and denounce these rights violations in their workplaces and communities (like the anti-trafficking campaigns do).

Similarly, at the level of the Argentine state, awareness of the social and economic problems Bolivian women face is not translated into the creation of networks and knowledge to address them. Municipal and federal government officials identified the following problems: work exploitation, at times under slave-like conditions in sweatshops; denial

of access to healthcare (despite legal right to receive care at hospitals); denial of workplace benefits and domestic violence. Representatives of one government office interviewed in the study acknowledged the existence of extreme forms of labour exploitation (and even workplace violence) among Bolivian women in Argentina. Interestingly, however, instead of turning the gaze towards the violators of labour rights (or inexistent or ineffective labour-monitoring mechanisms), these representatives chose to problematize the Bolivian culture. As one of them said to us, 'Here in the Bolivian community there is a profound internal debate and the large part of the community maintains that it is part of their culture to work 15, 16 or 18 hours per day.' And another public official interviewed in our study observed,

> Yes, unfortunately, there are cases of labor exploitation in sweatshops. But it is complex because Bolivian citizens know perfectly well what they are getting into; they know that they are going to work long hours and that they will work in overcrowded conditions one on top of another.

By shifting the blame onto the Bolivian culture, the public officials thus absolved themselves of the responsibility to change these practices.

Several NGO representatives and public officials recognized that Bolivian women lacked awareness of their rights. One of them stated in her interview with us, 'It is difficult to come to another country and demand rights when in one's own country such rights are not available.' Another one observed that Bolivian women were 'individuals who come from the countryside with a strongly entrenched idea to work hard and without knowledge of their migratory rights'. In fact, one Bolivian woman interviewed in our study did mention how many Bolivian women accept working long hours as a norm (although this particular woman did not agree with this position). Yet, with the exception of one church-based NGO, no one mentioned the need to raise migrants' awareness of their social and economic rights.

Some organizations were concerned with one important civil right, namely protection from physical violence. Recognizing that the demand for assistance in cases of spousal abuse was "overwhelming", the programme "All" ("Todas") offered by the Department of Women's Affairs of the Buenos Aires municipal government, in cooperation with Bolivian women's organizations, has established a programme to protect women who have experienced domestic violence. And even though public officials recognized a widespread cultural acceptance of domestic

violence, they emphasized the importance of consciousness-raising by grassroots organizations, as one programme representative commented in her interview with us:

> There is a different type of consciousness among migrant women who are organized and who circulate through different environments in the public space. In this sense, there is a different level of consciousness of being a woman. They use the terminology and resources that they used to lack. They know of the existence of Committee on the Elimination of Discrimination against Women, the International Commission that Eliminates All Forms of Discrimination, the Convention against violence. They are aware of it and include it in their projects. They know that there are places available where they can present complaints even though at times they do not receive the needed assistance. They know that there are conventions and treaties. They travel and then they face a more difficult task of transmitting to other women the knowledge that ... there are international institutions that can help them and that have available resources. And in terms of the advancement of rights, it seems very important to me.

Unfortunately, very little is done to raise awareness about social and labour rights among Bolivian migrants. By making the violations of social and economic rights largely invisible, IOM and the Argentine state shape the Bolivian migrants into workers who are willing to accept the working and living conditions offered to them by the state and employers. Unlike the technologies of discipline that rely on observation, punishment and examination, as identified by Foucault; in this case migrants are disciplined by neglect. This "discipline by neglect" also constitutes an important way of shaping migrants into obedient and undemanding workers encouraged to fill shortages in certain labour markets through "managed" forms of migration.

Conclusion

Throughout the globe, IOs and national states have become progressively more concerned with migration management. This approach calls for certain disciplinary practices to shape migrants into law-abiding workers who do not cross the borders and/or remain in a host country without authorization and who do not challenge their employment and living conditions in the country that receives them. In the case of Bolivian migration in Argentina, three technologies of discipline, identified

by Foucault, are used by IOM and various government departments. Networks involving intergovernmental organizations, the state and NGOs were formed to collect information, establish "truths" and mobilize this knowledge to engage everyone in the surveillance of migrants. The transgressors are punished (or have faced a threat of punishment if caught) through repatriation (in the case of migrants) and incarceration (in the case of trafficking networks). Finally, all migrants were to undergo examination as a way of separating the "regularizable migrants" (to be offered some forms of state benefits – at least on paper) from those who were unwilling or unable to obtain legal papers (and thus subject to deportation if caught).

Although within the migration management discourse and policy practices the predominant concern is with control aspects around irregular border crossing and selective entry, humanitarian and rights aspects are not completely absent from the migration management paradigm. Rather, the discourse of human rights is invoked to legitimize the partial and highly selective trend towards liberalization of international movements. Drawing on empirical data concerning the case of Bolivian migrants in Argentina, it was demonstrated that the human-rights discourse is selectively appropriated. This invisibilization, as can be argued, constitutes another form of disciplining – "discipline by neglect".

With regard to the migration of women in particular, it is trafficking for sexual and labour exploitation that is being highlighted in the policymaking world and in the public realm, albeit by treating it more as an issue of irregular border crossing than as an issue of forced labour. Root causes of emigration, the employment relationship and broader social discrimination, by contrast, are issues that are not addressed. This has the effect of disciplining migrants in a particular manner: by avoiding discussions about the gross human-rights violations of some individuals, some of the most important concerns of every single migrant are being silenced – their social and economic rights. This turns migrants into subservient, docile workers charged with carrying out the most precarious types of work without having a political voice and without the chance to avail themselves of state-provided welfare services. Spreading the knowledge about rights and channels for claiming economic and social rights is not part and parcel of disciplining irregular or discriminatory practices by all those involved in migration (e.g. employers, public service providers). The disciplining is only directed at the migrant herself by keeping her ignorant of her rights as a worker, mother and human being.

Notes

1. Temporary migration, as often is argued, is also in the interest of policymakers in the sending countries as it ensures the maintaining of close relationships with origin countries or communities for the purpose of steady remittance flows.
2. This research was a part of a five-country comparative study funded by the International Development Research Council of Canada. Interviews with Bolivian women were conducted by two researchers of the Center for Latin American Migration Studies (Sandra Buccafusca and Myriam Sirulnicoff). Victoria Simmons analysed these interviews as well as official documents found on the internet. Tanya Basok and Nicola Piper conducted interviews with public officials and IOs.
3. The 1949 ILO Convention No. 97 concerning Migration for Employment, the 1975 ILO Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers and the 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
4. Compared to such measures as the securitization of borders and immigration raids, status regularization is considered by migrant rights activists as well as researchers a much preferred solution to the "problem" of unauthorized migration (see, for instance, Basok, 2009; Walters, 2010).

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10

Of Berries and Seasonal Work

The Swedish Berry Industry and the Disciplining of Labour Migration from Thailand

Madeleine Eriksson and Aina Tollefsen

A growing field of research has paid attention to new forms of labour migration to and within the European Union (EU). This research has been characterized by increased circularity, flexible forms of employment, guest-worker programmes and seasonal work, often undocumented, primarily within the service, agriculture, forestry and construction sectors (Castree et al., 2004; Castles, 2006; McDowell et al., 2007; Neergaard, 2009). For many years, the media has reported on the inhumane work conditions for berry-pickers (mostly from the Isan region in Thailand but also from Vietnam and China) and on repeated conflicts between berry companies and labour migrants in a number of Swedish municipalities. In light of these problems, labour unions and human rights organizations have criticized Sweden's new 2008 Law on Labor Migration for its failure to secure protection for migrant labour. The rollout of neoliberal immigration policy (Peck and Tickell, 2002) and the rightward political shift in Europe and Sweden has undermined traditional regulatory and safety net regimes. Even so, Sweden still represents itself as a national identity that is based on democracy, citizenship and modernity (Ehn et al., 1993; Pred, 2000).

Every year up to 30,000 tons of berries are picked in Sweden. The berries in northern Sweden are exceptionally nutritious due to their daily long hours of exposure to the sun; the berries develop vitamins and antioxidants not found in berries grown further south. Today these berries are not sold primarily to companies making jam and juice; instead the berries are sold more profitably to international medical and cosmetic companies located in China and Japan. The market for the processed

berries is highly profitable and, subsequently, the demand for berries remains high. Sweden and Finland are the largest bilberry exporters among the Nordic countries and in 2007 Sweden exported about 8,000 tons of bilberries. The 2005 crops seem to have taken the record with 9,500 tons; however, in comparison to 1996, the total exports were measured to 6,000 tons, showing that the industry has been increased and is expanding. Sweden is nonetheless not only an exporter but also an importer of wild berries, in particular of bilberries (Paassilta et al., 2009). The forest berry industry (as many other natural resource-based industries) is characterized by a so-called buyer-driven global value chain (Gereffi and Korzeniewicz, 1994; Porter, 1990) in which large buyers dominate the supply chain and put pressure on smaller berry companies to reduce wages and production costs (see Cervenka and Efendic, 2010, on the Swedish berry industry). This has made these kinds of industries highly dependent on low paid migrant labour, often recruited outside the formal labour market (Rogaly, 2008). New disciplinary forms of public interventions by various actors within this migration industry have accompanied the state's move away from enforcement of protective labour legislation. This chapter analyses the disciplinary techniques and diverging interests of different migration industry actors within the Swedish forest berry industry.[1]

The following pages discuss the theoretical considerations regarding the importance of space and place and inequality regimes for the disciplining of workers. The chapter then delves into the emerging disciplining technologies within the forest berry industry and how and why these practices emerged within this particular natural resource based industry. This is followed by a discussion concerning to what extent the implementation of the new Swedish law on labour migration has been instrumental in allowing for the racialized subordination of migrant workers in the Swedish labour market. Furthermore, it discusses what managerial practices are employed in order to discipline migrant workers. The chapter concludes by addressing the interconnections between the particular industry and the particular workers within a specific spatial context of a neoliberal migration regime.

The place and space of the wild berry industry

Many analytical approaches, such as world system theory or commodity chain analysis, simplify complex and relational circuits of economic activity into static frameworks where consumption is presumed to be located in the "core" while production takes place in the "periphery"

(Bair and Werner, 2011). In the case of the berry-picking industry, the "core" only possesses the crop, the berries. The bigger part of the production and consumption is done elsewhere, or in the "periphery". Following Jennifer Bair and Marion Werner, it is important to look at these relations and circuits of changing geographies as moments of inclusion and exclusion; processes by which regions and places may be connected to, or disconnected from, commodity chains (Bair and Werner, 2011). Moreover, there must be acknowledgement of the mutual exclusion and disarticulation of places all around the world; the place-making and subject-making which make the production of new uneven geographies possible (Bair and Werner, 2011; Eriksson, 2010).

An important argument of this study is that the representations of Swedish modernity and the rural north with its underdeveloped berry industry, may contribute to disguising Swedish racism and to obstruct improvements of the situation for precarious labour in the berry industry. Sweden has successfully marketed its image as a progressive, liberal and modern nation, exempt from racism, sexism and other inequalities (Pred, 2000). These representations form an imaginary contrast to the apparent "others": those that fail to meet the standards for what is considered modern. Sweden's internal others are, as in many other European nations, immigrants and refugees from non-Western nations, but also white (often rural) working class in northern Sweden – in Norrland. This region is increasingly viewed as an internal "other"; it is a place without a future, incapable of competing on a global market, with (higher) unemployment, out-migration and an elderly population (Eriksson, 2010).

While occupying different positions in the world system, both Isan in Thailand, which is the region most berry pickers come from, and Norrland in Sweden, which most berry pickers arrive at, constitute peripheral regions within their national contexts. They are both emigration areas where traditions of outmigration have evolved over time and become incorporated into socially acceptable and sanctioned economic strategies for male and female labour. In Isan, and to some extent in Norrland, return narratives of successful migrants legitimate and fuel the continuity of migration with the prospect of returning with high earnings. In the Isan region, high levels of female migration to Bangkok are socially justified through remittances, investments in housing, etc., while male and female labour migrations to other destinations have long been part of income strategies for people struggling with deteriorating conditions in rural Thailand.

Since the 1970s the Thai government reoriented the country's primarily agriculture-based economy towards a strategy of export-oriented manufacturing, which implied profound social changes, not least in the Isan region. Changes in land tenure, rationalization of agricultural production through new production techniques increased migration of male workers, but also women, who entered the wage economy in growing numbers (Esara, 2004). The recruitment of labour migrants from the Isan region must be seen in the context of their subordination as rural migrants within Thailand.

Thai seasonal migrants make up the largest group of labour migrants coming to Sweden; the largest flow of people between the countries, however, consists of Swedish tourists. Thailand is one of the most popular tourist destinations among Swedes (when it comes to number of overnight stays) and the migration network between Sweden and Thailand started with the development of Thailand as a tourist destination and later through the invitations from Thai women married to Swedish men. The berry picking in Sweden grew into an important supplementary income for small farmer families in northeast Thailand. The first to go in Sweden were the relatives of women married to Swedish men. Hence, the berry picking expanded to also involve farmers without any direct contact to Sweden. In 2009, the whole berry-picking industry then became a matter of partnerships between private labour recruiting agencies in both Thailand and Sweden. Since then, many poor farming communities have increased their debts after the involvement in the Swedish berry-picking industry (Network Against Trafficking and Exploitation of Migrant Workers, 2010; Woolfson et al., 2011).

The global processes and the social relations between Thailand and Sweden must be understood relationally and situationally in both space and time, and in terms of a variety of spatial scales. Thus, by understanding place as relational, places must be seen as arenas of negotiation; "meeting places", internally complex and always being negotiated and fought over (Massey, 2005). The social and political relations between places vary and responsibility derives from those relations through which identity is constructed. These relations often have a past, but have continued into the present and produced powerful and much less powerful places. Moira Gatens and Genevieve Lloyd argue that we are responsible for the past, not because of what we as individuals have done, but 'because of what we are' (Gatens and Lloyd, 1999, p. 81 – quoted in Massey, 2004, p. 9). Doreen Massey similarly argues that places ought to be responsible for the wider relations on which they depend. Massey's argument may imply a responsibility towards

areas within Sweden, such as northern Sweden with its regions and natural resources essential to the future of Sweden, but with limited opportunities for people to earn a livelihood. Similarly, this implies a responsibility towards Thailand and Isan, the poor region in the northeast of Thailand from which many Thai workers migrate to the forest berry industry in northern Sweden, or who travel to Bangkok to serve Swedish tourists in the highly exploitative Thai tourism industry. Massey asserts that we are all discursively subjected to 'a disempowering discourse of the inevitability and omnipotence of globalization' but that places are not simply subjected to globalization; since the degree of exposure and agency differ, the responsibility varies between places (Massey, 2004, p. 10).

Inequality regimes and temporary migration

This chapter argues that the expanding forest berry industry and its related emerging migration industry need to be analysed as spatialized processes that produce specific inequality regimes. Immigration policies have served as a mechanism, not only for managing labour flows but also for actively producing an "other", a labour force that can be viewed as undeserving of the rights and benefits given to citizens and that can be scapegoated during periods of economic downturn. The authors suggest that besides the disciplining framework, the framework of inequality regimes is suitable in order to capture the complex, interlocking processes and practices that result in the continuing exploitation of racialized migrant workers in Sweden. Joan Acker has theorized how inequality regimes are produced and maintained within specific work contexts (Acker, 2006). Inequality regimes emerge through a number of organizational practices and processes, which she categorizes as different steering practices, which in turn the authors understand here as synonymous to disciplinary techniques. First, there are major practices related to the selective recruitment of workers. These are basically class practices as their ultimate purpose is to reproduce capital owners' class interests. Selective recruitment focuses often on migrant workers, who are expected to be productive and disciplined through their vulnerable position (insecure legal positions, risks of deportation, etc.). Second, Joan Acker argues that the disciplining techniques can be direct, indirect and/or internalized. Direct disciplining takes place through laws and regulations, punishment and incentives, wage levels and threats of physical or psychological violence. Indirect disciplining is practiced through, for instance, surveillance and control

of information dissemination. Finally internalized disciplining takes place when workers themselves take part in the reproduction of their subordination. These practices can be related to constructing subordination as natural/normal and/or impossible to change. Internalized disciplining also takes place through fear, feelings of self-esteem as a competent worker and/or self-interest in terms of prospects of increased earnings. Moreover, this internalized disciplining also includes disciplining technologies that depend on discourses of neoliberal "trickle down theory" (Harvey, 1989); capital owner and other actors claim they "help" their workers by maintaining bad working conditions and low salaries. As Martin Geiger and Antoine Pécoud assert, this disciplining obscures the distinction between "repression" and "humanitarian protection" (Geiger and Pécoud, 2012). This chapter argues that all these disciplining techniques and practices are present in the Swedish wild berry industry.

The berry industry and emerging disciplinary technologies

For 25 years, a majority of the berry pickers arrived from Poland on tourist visas, and after 1991 many berry pickers began to arrive from the newly independent Baltic States. After the European Union (EU) expansions in 2004 and 2007 many of the former berry pickers from Estonia, Lithuania, Bulgaria and Poland chose other, better-paid industries and branches. Approximately 80 per cent of the labour force in the berry-picking industry consists of seasonal migrant workers coming from Thailand, Vietnam, China and from other Eastern European countries such as Poland, Ukraine and Lithuania; the Thai migrant berry pickers are the largest group of seasonal workers in Sweden (Migrationsverket, 2012). The Swedish wild berry industry has become a factor shaping the global movement of labour migration.

The type of work and lines of businesses involved in the recruitment of migrant workers shape the disciplining of migrant labour and its implications. While the exploitation and subordination of racialized labour is well documented within the Swedish labour market in general, it can be argued that the specific forms and empirical materializations of disciplining depend on industry and spatial contexts, in particular in terms of economic structures and legacies of investments and disinvestments. Natural resource-based industries in the periphery produce disciplining practices that may differ from those emerging within, for instance, urban based manufacturing, service and/or care work. The conditions for forms of resistance and adaptations to repressive practices also vary

between economic sectors, for instance, in terms of legacies of trade union activism, consequences of formality/informality of work, etc.

The wild berry industry can broadly be placed within lines of businesses dealing with Non-Timber Forest Products (NTFP), with sector specific characteristics. NTFP industries worldwide are particularly prone to engage in the exploitation of marginalized groups in society (Laird et al., 2010). While racialization can be understood as a general process and characteristic of capitalist societies in their "normal" working (for instance, also taking place within major regulated economic sectors, employing unionized labour), the forms of exploitation in NTFP industries take place in ways often hidden from public scrutiny and/or attention from protective state agencies, trade unions or human rights organization. The absence of "conventional" control actors is characteristic of NTFP industries and paves the way for a multiplicity of other actors and interests to exercise power, not seldom related to illicit economic activities (global examples include logging, land grabbing, over-harvesting, environmental crimes).

The various new techniques of disciplining foreign migrant workers should thus be understood as industry and place specific. The Scandinavian wild berry industry clearly shares characteristic with other industries that are based on NTFP globally. NTFPs are wild products that people depend on in terms of subsistence and cash income from mostly local trade. Their importance on a global scale has, historically, been overlooked and their governance usually neglected (Laird et al., 2010). Producers are usually politically and economically marginalized in a similar pattern in most countries, both in the South and in the North. The harvesting of NTFPs is generally conditioned on 'timber-centric forestry laws' (p. 1) and customary laws related to access are under pressure from forestry, agriculture and private land tenure laws. Currently, many countries are revising NTFP laws and policies, as increased commodification commonly produces corruption and exploitation of these resources, which further marginalize local producers/harvesters and create new inequalities. While past century developments in rural areas focused on timber and wood products for the forestry industry (with large-scale industrial products such as pulp, paper and refined wood products), it has become increasingly recognized that NTFPs may have higher commercial value (per hectare forest land) than timber. However, in many cases the increased NTFP production and commercialization conflicts with subsistence needs of poorer populations. Local elites and other actors attempt to gain control over the resource while limiting access for local populations. Thus, problems may arise from bad management, lack of

control and regulation of trade or production/harvesting, while at the same time new regulations may create new inequalities and discipline subordinated migrant workers and local populations.

As in the case of the Swedish wild berry industry, in the NTFP industries there are thus recurrent cases of exploitative labour globally (migrant and non-migrant) during processes of commercialization of common or public land, involving frequent struggles over distribution of income and benefits among involved actors. Sarah Laird et al. argue that the global importance of several species has made NTFP industries emerge from "invisibility" during the last decade, as these products are increasingly traded at important international markets (apart from their continued importance for local markets and subsistence) (2010). Additionally, another commonality with the wild berry industry is the dependence on subordinated labour for harvesting – in the Global South, industries use indigenous populations in rural areas and in the North, racialized migrant labour is employed. As wild berries are becoming products of high commercial value, a multiplicity of new actors are entering the industry in order to profit from the berry-picking activities.

Despite these changes, the importance of the wild berry resource for populations in Northern Scandinavia and Northern Russia should not be neglected. Rebecca Richards and Olli Saastamoinen note that 'the collection of wild berries in the boreal north historically has been critical to dietary sustenance and nutrition and well as supplementary household income' (2010, p. 290). While the volume of berries picked for household consumption among Swedish households declined by two-thirds between 1977 and 1997 (Lindhagen and Hörnstein, 2000), berry picking is still an important subsistence activity among households. Studies in Finland showed that the rates of household picking for both consumption and for sale were directly linked to regional differences in the standard of living. The regional distribution of income from wild berries and mushrooms correlated with higher unemployment levels, pensioner households and lower-paid workers (Richards and Saastamoinen, 2010).[2] Most importantly, this resource became the basis for an expanding forest berry industry when wild berry harvesting for commercial purposes started to gain impetus during the early 2000s and consequently the importance of the resource for some actors in the local economy has increased. The total wild berry production (bilberries and cranberries) in Sweden has been estimated to be up to 350–450 million tons per year (1975–1980) of which 75–80 per cent is classified as possible to harvest; usually around 5 per cent of the total yield is harvested. Studies during the 1990s showed a decline in wild berry production due to increased

nitrogen deposition in forest areas (Statistics Sweden, 2001); the overall developments point on the one hand towards lower yield and declining volumes of subsistence picking, on the other hand increasing harvesting for commercial purposes, based on migrant labour.

The specificities of wild berry production, consumption and distribution in Sweden relate, as mentioned, to the historical legacy of access to common resources through the Swedish Right to Public Access, which stipulates that anybody has the right to pick wild berries in the forests regardless of land ownership, public or private. There is an ongoing debate on the implications of the increased commodification of wild berries and whether these activities justify modifications to the Right to Public Access. Some argue that private landowners should be consulted and compensated for commercial harvesting of wild berries by other private actors on their property. Others defend the Right to Public Access and warn that restrictions to the Right to Public Access could lead to new enclosures of common resources by further privatizations of the production of NTFPs – an example of the current trend of increased accumulation by dispossession (Harvey, 2003). However, organized industrial berry picking by private companies is already taking place, made possible through lawful access to the commons and exploitation of subordinated racialized labour migrants, while taxation in the industry remains far below general standards.

Today the berry pickers become involved in the industry either by arriving in Sweden on a tourist visa or by getting invited and hired by a company. Until 2005 there were no tax differences between these two parallel systems. The state did not impose taxes on any form of berry picking and did not enforce taxation on the berry-picking companies such as general payroll taxes. It was also possible to recruit foreign workers without working permits. Hence, the berry-picking industry was not regarded as an industry by lawmakers and the labour was not regarded as labour. Then in 2005 the berry companies and buyers became employers in a legal sense and the berry companies were thus liable to pay general payment taxes; the biggest change was the Swedish Special Income Tax for Non-residents, where employers have to pay 25 per cent in tax when employing non-resident workers.[3] To bypass the law, the berry companies in Sweden hired Asian pickers through recruiting companies in their home countries or elsewhere; this became more profitable for the companies but it also dramatically changed the character of the Swedish berry industry. Despite media reports on human-rights scandals and complaints from receiving municipalities and the berry pickers, this system was recommended by the Swedish

Tax Agency, the Migration Board, The Swedish Finance Ministry and the Public Employment Service as late as 2009 (Migrationsverket, 2009).

The migrant labour force may travel to Sweden on a tourist visa and are allowed to pick and sell berries for less than 12,500 Swedish Kronor on a tax-free basis. The other way to get to Sweden is through recruitment companies and agencies, where workers earn a minimum salary of 16,372 Swedish Kronor if hired by a Swedish firm and 17,730 Swedish Kronor if hired by a foreign recruitment company. Workers in the second system also have to attain a working permit issued by the Swedish migration board. Working permits were given as a part of the Swedish Government's labour migration policy changes in 2007 that aimed to officially regulate the labour migration flow of foreign berry pickers from countries outside of the Nordic region and non-EU member countries by introducing working permits and resident permits (Government of Sweden, 2008). Since 2000, there has been an increasing number of Thai berry pickers, in particular from the rural sector, and farmers from the north-eastern parts of Thailand (Swedwatch, 2011a).

The new management of migration in Sweden

The new Swedish Law on Immigration from 2008, implemented by the new conservative government, meant additional changes of the Swedish labour law, particularly for berry pickers from third countries. During 2009 and 2010 the single largest group of workers granted work permits under the new 2008 law were seasonal migrant workers to the berry industry (Migrationsverket, 2009, 2012). In 2009, 6,180 Thai berry-pickers obtained work permits for temporary migration to Sweden.[4] Subsequent to new requirements on minimum wages and collective agreement in early 2010, the number of work permits issued to berry pickers decreased in the 2010 season to around 4,500.[5] The new law on immigration is said to equalize the rules for the employment of third-country nationals with those pertaining to EU/European Economic Area (EEA) non-Swedish nationals and Swiss citizens. However, importantly, as noted by Carl-Ulrik Schierup and Aleksandra Ålund, the law also works well with all the other temporary-worker systems currently developing across Europe (Schierup and Ålund, 2011, p. 59). Both authors argue that the new law 'represents a qualitative break with the inclusive regulatory and citizenship policies over immigrant labour, premised on union power and the expectation of full employment.'

The strong support of the union and the strongly regulated labour market have for many years made it nearly impossible to import labour

from third countries without a documented shortage of skilled labour (with the exception of seasonal workers such as berry pickers). With the new law, the authority to process cases involving residence and work permits has been transferred from the Swedish public labour market authorities, which undertook detailed structural inquiries, through to the rapid, far less probing management of the Swedish Migration Board or in the case of recruiting berry pickers, to certain embassies. Permits are granted on the principle that it is the individual employer's assessment of the need to recruit labour from a third country that must be the basis for the administration of matters of residence and employment permits. It is now free to hire labour from third countries when poor working conditions make it impossible to recruit workers from Sweden or the rest of the EU. The law also stipulates that in order to obtain a work permit, the temporary migrant worker is obliged to stay with the same employer throughout the period in Sweden, thereby creating exposure to further risks of abuse. This form of disciplining promotes what Diana Mulinari and Anders Neergaard call "subordinated inclusion" into the Swedish labour market (Mulinari and Neergaard, 2004): The migrant worker is granted legality and inclusion as long as she/he remains in a subordinated labour market position. While other groups of workers (young, white) are expected to move on from low-wage, low-skilled occupations, racialized workers are expected to "stick to the employer" (see Neergaard, 2009). The new law on labour migration has fundamentally changed the Swedish landscape of labour and discourses of work, mobility, race, gender and place.

As noted previously, the Swedish berry industry has traditionally paid less tax than similar industries. In addition the industry came in 2008 to possess a unique position in the labour migration process via Skogsindustrierna, or The Swedish Forest Berry Industry Federation (SBIF). SBIF was formed in 2000, the association's formal purpose being to inform about the forest berry industry and to pursue advocacy in trade issues of the interest to its members. In addition, the association should work to develop and promote knowledge building, development and research, as well as problem solving within the forest berry industry.

Swedish authorities relied on the berry industry itself to solve the problems with unserious actors in the business. Thus, the organizer of the Swedish berry companies, the SBIF, was appointed to solve the problems in the industry. Suspicions of human trafficking, deficient housing and dangerous transports were some of the main concerns, apart from the economic exploitation of vulnerable workers. SBIF should, among

other things, take a greater responsibility towards the housing situation for the berry pickers. Furthermore, the association also became responsible for dealings that are normally managed by government agencies (Swedwatch, 2011a).[6] The association decided on the number of berry pickers to be invited each year. Swedish agencies then teamed up with foreign agencies to not only recruit the berry pickers and facilitate employment contracts, but to also manage the logistic arrangements for potential pickers, negotiations with the Thai Ministry of Labor's Department of Overseas Employment, with the Swedish Embassy in Bangkok for visa applications and the booking and purchase of flight tickets (Network Against Trafficking and Exploitation of Migrant Workers, 2010). To avoid Swedish tax regulations there has to be a formal contract between the recruiting agency and the berry pickers.

SBIF also had the authority to determine the criteria and conditions to be fulfilled by Swedish companies with plans to invite berry pickers (via recruiting companies). The criteria set requirements for accommodation, transport and insurance but not for a minimum wage. Moreover, only members of SBIF could be granted permits to invite and it was required that the berry companies had agreements with one of the country's three biggest buyers of berries, making those buyers control the berry industry and to put even larger pressure on small berry companies. Despite the oligopoly and the substantial revenues, one of the big buyers, Polarica, has continuously between the years 2003–2008 bought berries for 50 million Swedish Kronor from berry companies not registered for company taxation, value-added tax (VAT) or as employers (Norran, 18 September 2009; Swedwatch, 2011a).

In 2011 SBIF shut down its operations, officially because the association no longer had any part in the process of deciding on the yearly number of berry-picking migrants. At the same time it is obvious that the association never came close to its declared agenda to clean up the industry and to make the industry safer for the berry pickers (Swedwatch, 2011a). For instance, in many cases the companies approved by SBIF facilitated poor housing and transport for the berry pickers.

One reason for its failure may be found in the associations' one-track solution of minimizing the taxes for the berry companies to the various problems. Besides this, problems of credibility among some of the members arose; for instance, prior board members of SBIF have been accused of favouring their own companies when granting permits to hire foreign berry pickers via recruiting agencies. Even more incriminating is that one of its earlier chairpersons was convicted of drug offenses and exposed to be a support member of a criminal motorcycle club.

Thus, the new law in 2008 contributed to making the blueberry industry into a moneymaking opportunity for new actors in the industry. In 2009 and 2010 the Network Against Trafficking and Exploitation of Migrant Workers in cooperation with the Thai Labor Campaign and the Migrant Workers Union in Thailand published two reports on the new form of labour trafficking in connection with industry demand for berry pickers in Northern Europe and Sweden in particular (Network Against Trafficking and Exploitation of Migrant Workers, 2010; Yimprasert, 2010). Also Swedwatch (2011a, b), an independent, non-profit organization reporting on Swedish business relations in developing countries, made an exception regarding geographical focus and reported on the berry picking industry in Sweden. These four reports have heavily criticized the Swedish blueberry industry, the recruiting agencies and particularly the web of middle hands involved in everything from the processes of recruiting in Thailand to, for instance, the additional fees regarding transport and food while in Sweden. The reports describe the irregularities and subhuman working conditions in 2009 and 2010. The combination of bad berry seasons, too many berry pickers and too many players attempting to profit from the berry-picking activity, resulted in a hopeless situation for many berry pickers.

In 2011, a number of new regulations on berry and recruitment companies were enforced (evidence of bank guarantees to cover minimum wages and requirements on staffing agencies to have a branch office in Sweden). Nonetheless, the numbers of so-called free pickers increased significantly during the 2011 season, indicating that lead companies in the berry industry have shifted towards buying berries from pickers travelling on tourist visas in order to avoid any kind of employer obligations. In 2011 the number of workers with work permits decreased to around 2,500 while the numbers of applications for tourist and resident visas by Thai citizens increased (Swedwatch, 2011b).

The developments during the 2011 season thus showed a partial dislocation of staffing companies, who are now under somewhat stricter surveillance, towards non-contracted pickers who sell to lead companies on their own account. Picking and selling of wild berries is allowed for non-EU members travelling on tourist visas, as long as it is not taking place as organized industrial berry picking. The current development is towards unofficial but clearly organized picking involving non-contract workers. Trade union representatives and human rights organizations point out how during the 2011 season the number of "free pickers" increased; workers who in fact become undocumented workers (as they lack work permits) working in Sweden with no protection at

all (Swedwatch, 2011b). Two of the four largest lead companies in the industry – Finnerödja and Skogsmat – declare that they buy berries exclusively from free pickers, while the other two – Polarica and Blåtand – buy both from free pickers and from Swedish berry companies that cooperate with Thai staffing companies. Clearly, these strategies serve to avoid any type of employer responsibilities or economic risks. As they do not buy from "workers" but from individual sellers of NTFPs, they are not obliged to guarantee a minimum wage or to safeguard the legal work documents of the seller.

The trend in the industry in terms of how migrant industry actors discipline labour migrants is thus two-fold: on the one hand there has been a sharpening of control by the Migration Board and other forms of public scrutiny of berry companies and staffing companies, which means that workers in this category now can be unionized and claim a minimum wage; a form of subordinated inclusion of racialized labour (Mulinari and Neergaard, 2004). On the other hand there is a strong trend towards lead companies' avoidance of responsibility and risk-sharing, which, together with their oligopoly-like position in terms of pricing policies, indicate that these companies have further consolidated their managerial power in the value chain. Undocumented workers risk criminalization, while the strongest actors in the industry are increasing their profits to unprecedented levels (Cervenka and Efendic, 2010).

Racialized migrant workers in the berry industry

Labour markets should be regarded as constructions imbued with profoundly asymmetrical power relations (Peck, 1996). The power asymmetry within the labour market lies not only in the asymmetry between capital and labour, but as already pointed out, of importance are also the power relations among employers and among employees. Relevant here are, for example, relations between those in stable and unstable product markets, between unionized and non-unionized sectors and workers, between documented and un-documented workers, between men and women and between different nationalities and ethnic groups. Thus, the berry pickers make up a vulnerable group since the berry industry is a highly unstable product market. Due to this weakness, the branch still does not have an altogether effective union and because of that the berry pickers often are undocumented; hence, the wild berry industry is one of the industries that are particularly prone to exploitation of marginalized groups in society (Laird et al., 2010).

For the last 15 years several hundred small farmers from the depressed, rural villages of primarily northeast and north Thailand have been travelling to Sweden with tourist visas to pick wild blueberries. The workers are mainly men and they speak no or very little English. Their earnings from two or three months of berry picking have helped some families to survive between harvest seasons in Thailand. They plant their rice in June and travel to Sweden for the berry season and then return home to harvest their own rice crop in the autumn. The "first generation" of Thai berry pickers to go to Sweden were mainly the families and relatives of Thai women who had married Swedish men. The second generation was people from the same or nearby villages who were assisted in their arrangements by the first generation, who in some instances began to charge the newcomers small sums for their assistance and, as has already been mentioned, by 2009 the berry industry had been formalized and the sums and also the number of intermediaries had grown. As a consequence, many berry pickers have been exploited in the Swedish wild berry industry (Network Against Trafficking and Exploitation of Migrant Workers, 2010). It has also been reported that the foreign recruiting agencies endorse people to "disappear", to use their service as a way to enter the European labour market, or that migrants seek other jobs (as undocumented illegal migrants) in Europe as a desperate way to make money to pay off the debts from a failed berry picking season (Radio Sweden, *Konflikt*, 19 February 2011).

The inability of the wild berry industry and the government to make prompt and actual improvements for the berry pickers may be understood within the framework of inequality regimes, the ways in which berry pickers are subordinated and disciplined, and more specifically how "the racialized other" has been reproduced in the Swedish context (Acker, 2006; de los Reyes and Mulinari, 2005; Pred, 2000). Many scholars have argued for the important place discourses on modernity hold in the geographical imagination of "Swedishness" (see, among others Ehn et al., 1993; Grinell, 2004; Pred, 2000;). Following Donald Mitchell, the discourse on modernity, as a part of Western culture, can be seen as a system of differentiation and a system of social reproduction (Mitchell, 2000); Traits that do not fit into the discourse of a modern nation are positioned to a specific group of "others". Hence, the problems in the berry-picking industry have not mainly been viewed as a problem of unserious actors in Sweden but mainly as a problem of corrupt intermediaries in the migrants' home countries, and alternatively as a problem of Thai women in Sweden exploiting their compatriots (Dagens Nyheter, 26 August 2009). Instead of regulating the industry and putting pressure

on SBIF, the government has endorsed the activity of a Swedish partisan interest at the expense of migrant others. Moreover, the berry companies have tried to obscure the employer-employee relation by using the well-being of the berry pickers as arguments not to regulate the industry with taxes, making the berry pickers take part in their own disciplining or to reproduce their own subordination on the Swedish labour market (Västerbottens-Kuriren, 22 June 2011). Due to the many intermediaries and since the berry pickers are not directly employed, these workers have no work relations with their real employer. Similar to subcontractors (Wills, 2009), recruiting companies are part of a neoliberal work regime and work to break the mutual dependency between workers and employers that has been so central to the labour movement in the past. This break facilitates different disciplining systems and strategies towards employees which otherwise would have been difficult to carry out and maintain.

The multiple ways in which the foreign berry pickers and the industry are represented become part of the disciplining technologies. Research by Tobias Hübinette shows how Western images of Asia (the Orient) have been characterized by particular stereotypes and myths (Hübinette, 2007). Representations of the always smiling and polite "Orient other" reproduced seasonally in media, both when promoting South-East Asia as a tourist destination as well as when representing the berry pickers' dreary work, have only very recently been accompanied by the representations of the angry and violent "Orient other". The poor harvest year in 2010 made some of the berry pickers desperate enough to resist and take action against their employers and against authorities. Hundred and seventy Chinese berry pickers began a 15-kilometre protest march carrying placards with the texts "SOS" and "Help", and in a small town in Västerbotten Vietnamese berry pickers marched in protest. Thai berry pickers also protested in 2010 when the Swedish berry company Lomsjö Bär withdrew the money from the company account and went into hiding, leaving 162 Thai berry pickers unpaid for most of their work that season (Woolfson et al., 2011). The responses from the berry industry on these events have been that these incidents are exceptions and that a few unserious actors make all the rest of the industry look bad. Members of the SBIF have also in some instances blamed the foreign recruiting companies for sending bad and inexperienced pickers (Piteå-Tidningen, 25 August 2009).

Not only has the Swedish media reported on the many scandals involving the berry industry, *The New York Times* and the *Bangkok Post*

also started to report on the many humanitarian scandals in 2010. These accounts may be a part of a process that will alter the image of Sweden as a fighter for justice everywhere. *The New York Times* asserts that:

> For Sweden, which prides itself on worker-friendly labor legislation – and which sent 20 members of a far-right, anti-immigrant party to Parliament in elections last weekend – the berry pickers quickly became the source of acute national embarrassment, with attention focused particularly on 190 Bangladeshi pickers who arrived in this modest town of pastel wooden homes earlier this year. (*The New York Times*, 20 September 2010)

Conclusions

Circular migration is the focus of an integrated EU strategy for "managed migration"; Schierup and Ålund argue that circular migration is a "pragmatic solution" for Sweden since it promises politicians an escape from the political dilemma between calming the populist movement by declaring "zero migration" and the need to maintain a global labour supply to a hyper-flexible labour market. They argue that,

> Under cover of the EU's overall program for 'managed migration' politicians can continue to remould Sweden's awkward 'problems' of asylum and 'illegal immigration' into a new business-friendly 'guest-worker' system. (2011, p. 60)

The previously inclusive and "exceptional" Swedish migration regime has transformed into a neoliberal migration regime where employers are given almost exclusionary rights to select categories and amounts of workers of their own liking and interests – with traditional safety nets and legal control mechanisms erased by the current right-wing government of Sweden. Research has shown how during the previous period of labour migration to Sweden (until 1972) workers were granted residence rights and protection in Sweden under processes that Diana Mulinari and Anders Neergaard have termed "subordinated inclusion" (2004): migrants were socially included, while at the same time relegated to subordinated work positions. During the 1990s, the conditions changed with the abandonment of the "full employment" policy of the then social democratic government, which meant that unemployment rates increased to unprecedented levels. These developments produced

processes of "subordinated exclusion" of racialized workers in Sweden, manifested in dramatically higher levels of unemployment among people of migrant backgrounds.

The authors of this chapter argue that through the implementation of the Swedish law on labour migration in 2008, a new and extreme form of subordinated inclusion of racialized workers has been produced in Sweden. These workers are employed with legal documents and are thus "included", but on unequal terms through their temporary status and limited citizenship rights. They represent an ideal form of recruitment for employers, as they are obliged to stay with the same employer as a condition for their work contract. This is an extreme form of disciplining of migrant workers, as they are not entitled to change employers and/or to better their work conditions or positions in the labour market. While racialized workers residing in Sweden are discriminated and excluded in the labour market, racialized temporary migrant workers are employed in subordinated positions with low wages, harsh working conditions and restricted labour and citizenship rights.

A large body of social science research has shown how the current dominant form of subordination of racialized workers on the Swedish labour market is linked to 'either a needed reserve army of labour and or labour in low-wage private-service production' (Neergaard, 2009, p. 210). This has led to processes of naturalization of racialized segmentation; these processes are, however, not uniform. This chapter has shown how disciplinary techniques emerge within a specific industry, the Swedish wild berry industry, which are both related to NTFP industry characteristics as such and to the particular spatial contexts of peripheral Norrland in Sweden and Isan in Thailand. Ironically, the formal system under the new law on migration is defended and presented by authorities as being orderly and functioning well, while yearly scandals and problems related to work and housing conditions have prevailed in various local contexts. A major problem is the lack of functioning mechanisms for controlling and sanctioning abuse by employers who do not comply with work contracts and/or collective agreements. The current government has outsourced regulatory capacities to weak or biased actors and interests. In addition to the trend discussed by the editors of this volume of "shifting up" regulatory capacity (to the EU) or "shifting out" this capacity to states bordering EU territory, the Swedish wild berry industry can be seen as an example of how regulatory capacity is shifted from public to private actors.

Despite both the government's and the industry's recent assertions that there now are sufficient mechanisms in place for the smooth management of temporary labour migrations to the Swedish wild berry industry, the

2011 season demonstrated recurrent problems of tax evasion, avoidance of employer responsibility and disciplining of migrant workers in precarious work situations. The monitoring and controlling of the mobility of berry pickers (increasingly through unofficial but clearly organized berry picking) reveals how a non-prioritized industry in one of the countries' peripheries (Eriksson, 2010) remains an arena for forms of exploitation taking place in ways often hidden from public scrutiny and/or attention from protective state agencies, trade unions or human rights organization. The absence of "conventional" control-actors characteristic of NTFP industries facilitates for a multiplicity of other actors and interests to exercise power, not seldom related to illicit economic activities.

This study argues that hegemonic representations of Sweden and the rural north may contribute to disguising Swedish racism and to obstruct improvements of the situation for precarious workers in the berry industry. In line with Massey's argument of how powerful actors and places ought to be responsible for the wider relations on which they depend, one can share the assertions of a "geography of responsibilities" that implies not only a responsibility towards peripheral areas within Sweden, with its regions, populations and essential natural resources but also towards the Isan region in the northeast of Thailand from which many Thai workers migrate to the forest berry industry in northern Sweden, or travel to Bangkok to serve Swedish tourists in the highly exploitative Thai tourism industry. Our study shows that rather than assuming increasing responsibilities, the actors in this new migration industry employ disciplinary technologies that reproduce unequal relations between centre and peripheries, and by doing so also "naturalize" discourses of racialized subordination within a country that prides itself on a longstanding history of civil and labour rights.

The Swedish berry industry has developed according to the capitalist logics of accumulation and competition. Seasonal labourers have been recruited to fuel a highly productive, labour-intensive accumulation regime in the Swedish forests, where processes of differential racialization solidified repressive labour practices. It is also necessary to note that the high profitability primarily applies to the lead companies.

Notes

1. This chapter is the result of a research project entitled 'Transnational migration in the forest berry industry, labor market deregulation and new spatial representations' and financed by the Swedish Council for Working Life and Social Research, Project No 2011–024.

2. A 2004 survey in Sweden showed that over 60 per cent of households in Northern Sweden pick berries and mushrooms regularly (Fjällmistra, 2004) and in certain northern municipalities the proportion is up to 85 per cent. In spite of the overall decline in the volume of berries picked by households since the 1970s, largely related to processes of urbanization and other socio-demographic changes, wild berries remain a critical resource for residents in a region of large forests and limited agricultural land.
3. The Swedish Tax Agency made a new interpretation of the law from 2000 (Government of Sweden, 2000, p. 980).
4. Most of them to the counties in the Northern part of Sweden, Västerbotten (3750) and Norrbotten (1503) (Migrationsverket, 2009).
5. Of which 1,200 worked in Västerbotten. The largest national groups of labour migrants during 2010 were from Thailand (3,520), India (1,853) and China (1,518); while in 2011 the numbers were Thailand (2,896), India (2,492) and China (1,458) respectively (Migrationsverket, 2012).
6. Vänsterpartiet (The Swedish Leftist Party) criticized this arrangement in a bill to the Parliament (Riksdag, 2009, p. 323). Also, Region Västerbotten (a co-operative body which is responsible of regional development in Västerbotten County) asserted in a memo to the then minister for industry, employment and communication that the authority of the SBIF restricted the principle of public access to official records and threatened the legal security of individuals (Norran, 27 August 2009).

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11

‘They Don’t Beat You; They Work on Your Brain’

‘Regular Illegality’ and the Disciplining of Rejected Asylum Seekers

Giada de Coulon

In 2006, Swiss citizens approved new asylum legislation which excludes rejected asylum seekers living in Switzerland from conventional state aid. The aim was to deter their will to stay. This new law was part of a general trend in Europe that aims to exclude ever more asylum claimants from the welfare state’s benefits. Analysis shows that European public opinion, media and politics feared that access to welfare states would serve as a magnet for undesired aliens (Bloch and Schuster, 2002). Nevertheless, in Switzerland, the application of this new law has been made difficult by Article 12 of the constitution, which guarantees anyone present on Swiss territory and unable to provide for his or her basic needs the minimal assistance required to survive with dignity. Consequently, illegalized migrants living in Switzerland have also access to this social right, independent of any existing cooperation with authorities (Sanchez-Mazas et al., 2011, p. 303). After a long political and public debate, special public assistance for rejected asylum seekers still residing in Switzerland was instituted. Inspired by Article 12 of the Swiss Constitution, the aid is called “emergency help”, alluding to its fleeting and minimal character. As a result, since January 2008, cantonal authorities have been appointing semi-public or private organizations to manage the population of rejected asylum seekers in collective centres and to offer them shelter, food and the minimum needed to survive in kind. Through the institutionalization of disciplinary living conditions (which will be detailed below), authorities are transforming what was once thought of as a humanitarian ideal into a tool of deterrence

in order to encourage rejected asylum seekers to leave the territory. (Gubler, 2009, p. 106). Nevertheless, several features reveal the apparent inefficiency of this measure. A recent report indicates that half of the population of rejected asylum seekers in Switzerland has asked to receive "emergency help" at least once and one beneficiary in ten is still present on Swiss territory after two years (Bolliger and Féraud, 2010; Efionayi-Mäder et al., 2010).

The following chapter[1] seeks to analyse this poorly documented and paradoxical situation. Rejected asylum seekers are considered illegal as soon as their asylum claim is rejected if they remain on Swiss territory. If the illegalization process carried out by national authorities conventionally aims to encourage the departure of remaining undesired aliens, it often leads in reality to their marginalization. Illegalized aliens tend to disappear – make themselves invisible to national authorities – in order to escape deportation. Nevertheless, since the institution of the "emergency help regime", the interplay between "being hidden" and "making oneself visible" is at stake. This is made possible through the disciplinary tool called "regular illegality". If every illegalized alien has access to this public assistance as long as they remain on Swiss territory, it implies the sacrifice of a certain liberty. The "beneficiaries" of the "emergency help" must accept being continuously controlled and pressured by state authorities, which differs from that of most undocumented workers, who hide from state authorities as much as possible (even if – as will be detailed further – their "illegality" is also incomplete). This creates a contradictory situation, as they are considered illegal but live partially on public assistance at the same time. The relative smoothness that exists in the categorization into legal and illegal made by national legislation has been subject of different studies (e.g. Coutin, 2003; Menjivar, 2006). In this respect, examining particular case studies is interesting in order to show the variability of the construction of "illegality" (Walters, 2010).

This chapter argues that this fluidity is not innocent. It may be devised as an "ad hoc tool" that has emerged from the nation-state's possibilities to regulate migration restrictively. Concerning the case study portrayed in this chapter, this porosity made the development of the "regular illegality" possible thanks to the application of the "emergency help" regime.

It is therefore proposed to contemplate the "emergency help" apparatus as a disciplinary tool. On the one hand, it permits the authorities to control the presence of rejected asylum seekers (and consequently their deportation). On the other hand, rejected asylum seekers, who subscribe to the "emergency help" regime, seem to look for this last possibility of

official visibility. As will be further detailed, many of them hope one day to be regularized thanks to this constant perceptibility.[2]

Rather than develop a monolithic "theory of the State", the present chapter aims to capture the practices developed by Swiss cantonal authorities for disciplining rejected asylum seekers. Inspired from works on governmentality, which 'explore how governing always involves particular representations, knowledge and expertise regarding that which is to be governed' (Larner and Walters, 2004, p. 496), the interest lies in analysing the creation of certain "truths" by state authorities concerning rejected asylum seekers. This first framework of analysis would not be complete without an effective focus on rejected asylum seekers' agency. This perspective formulates that rejected asylum seekers are capable of making decisions despite their administrative disqualification and lack of recognition. The concept of "agency" is thus understood as a relational property. Human beings may develop agency to 'process social experience and to devise ways of coping with life, even under the most extreme forms of coercion' (Long, 2001, p. 16). Juxtaposing both aspects – namely the governmentality perspective with the agency focus – is a way to afford a critical insight into a specific sociopolitical condition. The light shed on both processes aims to go beyond the structure/agency dichotomy in order to better capture the observed interactions of the two levels.

This chapter is based on a qualitative case study involving rejected asylum seekers living in public collective centres in the French speaking part of Switzerland. It is divided into three main parts: First, the concept of "regular illegality" is presented through a review of the scientific discussions on the legislative categorization between legality and illegality. Through this overview, it appears that the question of the illegality was mainly developed in study about undocumented workers. Nevertheless, the case study in this chapter – through the contribution of the "career" concept – argues for a scrutinized study of the specific illegalization process concerning rejected asylum seekers. Authorities classified them – and continue to do it – as different from undocumented workers, which tends to construct a specific relationship between asylum seekers and authorities. The second part of the article presents living conditions under the "emergency help regime". Finally, the third part of the article will serve to expose the field of tension that makes maintaining "regular illegality" possible. Why is it difficult to send a person who has not been granted asylum back to his or her country of origin? Contrary to what seems obvious from the perspective of an omnipotent national state, the analysis will serve to highlight the restrictive

framework of which each sovereign state is actually part. Parallel to this, the perspective of rejected asylum seekers will be considered. Why do some of them remain dependent on state authorities for years despite the constant pressure to which they are subject? Analysis will show that, despite this state control, rejected asylum seekers do develop an "agency" that guides them through their relatively limited choices.

The present research applies a bottom-up perspective through an ethnographical approach. Data collection and data analysis are based on an iterative process characterized by a back-and-forth movement between fieldwork, data analysis and scientific literature inspired by reflections emerging from the grounded theory perspective (Charmaz, 2002). In 2008–2010 intensive ethnographic fieldwork was conducted among rejected asylum seekers in a collective centre in the French-speaking part of Switzerland – a centre where rejected asylum seekers are required to live until their intended repatriation. The author spent hours in the refectory, watching TV and speaking with rejected asylum seekers, their friends and the guards in the centre. Each day, notes were added to a fieldwork journal that focused on everyday life in the centre; in addition ad hoc interviews were performed, face-to-face or in groups, with rejected asylum seekers about their current situation. This allowed for investigating social practices, routines, interactions and group formations in the centre and outside it. Additionally, the author carried out different types of personal interviews with rejected asylum seekers and with centre administrators, lawyers and state agents. Although this chapter refers to rejected asylum seekers, it should be noted that all interlocutors were treated as independent individuals with their own migration trajectory, sociocultural background and specificities. The same is to be said concerning regulation implemented by the nation-state; conflicting voices also exist among authorities. In this respect, the author chose to expose the main patterns implemented by the Swiss authorities. Finally, various Swiss jurisdictional, political or media documents that alluded to asylum policy implementation or conceptualization were methodically collected. In order to analyse data, a theoretical coding was applied that is inspired by the grounded theory perspective as well as the method of triangulation of data, which allowed to confront practices with discourses.

Theoretical anchoring the concept of "regular illegality"

In the social sciences, studies on "illegality" in the 1980s were often oriented around undocumented workers, assumed to be economic

migrants. The question thus focused on the need – or not – to take a census of them and about the political and ethical implications this would have. Another important field of study traditionally focuses on the impact of clandestine migration on the national market (Siméant, 1998). However, there is still a lack of studies concerning a global understanding of undocumented persons' social rights and on the role of the authorities towards them (Efionayi-Mäder and Achermann, 2003). Research on asylum seekers has traditionally focused on other topics. Perhaps because of the fact that they have in general only restricted or no access to work, asylum seekers seem to fit better in a field relating to *forced migration studies*: life histories, pathos and vulnerability, but also activism and ethnographies on the current comeback of "camps" (e.g. Bernardot, 2008; Le CourGrandmaison et al., 2007) have been the main areas studied by social scientists. However, little attention is paid to the transitional legal status of asylum seekers who are considered undocumented when their asylum claim is rejected. French-speaking scholars such as Carolina Kobelinsky or Jérôme Valluy have thoroughly investigated the way rejected asylum seekers are expelled from public asylum institutions in France (Kobelinsky, 2008, 2009; Valluy, 2007); however, their entry into the "illegal world" is still poorly documented. Focusing on rejected asylum seekers, two important studies have reflected on the possibility of their returning to their country of origin through the lens of international law (Noll, 2003) or through the application of assisted return programmes (Koser, 2001). Finally, although some national case studies have been recently published (Castañeda, 2010; Paoletti, 2010), there is still a lack of detailed analysis of how authorities manage rejected asylum seekers that are not deportable.

"Illegality"

The notion of "legality" is defined as obeying laws recognized as valid by the core society. In contrast, the concept of "illegality" designates not observing laws that are in force in a certain space at a certain time.[3] Generally speaking, "legality" and "illegality" are legally relevant concepts and are defined by nation-states; legality is popularly considered as being the norm to follow. However, the very notion of "illegality" is a social construct which is highly politicized. A historical perspective shows that the definition of "illegality" has been highly dependent on the context. This legal concept has been applied to persons since the twentieth century, when sovereign nation-states formulated rules governing the movement of people on their territory (Düvell, 2006,

p. 271). Today, in contrast to the globalized circulation of goods, the mobility of people is still governed by nation-states. They are considered to have huge discretionary rights concerning admission, residency, repatriation and naturalization (Aleinikoff, 2002, p. 60).

> When states began focusing their vision in the 1900s on managing and controlling migrants en masse, assigning a variety of legal status with or without the right to work, they created 'illegal aliens'. (Kyle and Siracusa, 2005, p. 153)

"Illegality" is not a fixed category, but rather one that changes along with legal regulation and along the paradigm of exclusion and inclusion (Schrover et al., 2008). It also depends highly on economic and political structures. For example, in Europe, the end of the 1970s witnessed huge numbers of people illegalized because of the economic crisis. Parallel to this, the collapse of the former Republic of Yugoslavia had a huge impact on legal entry conditions in Western European countries. Former seasonal workers were destitute because their country of origin was part of a new set of countries designated as "culturally remote".

> Determining thresholds of distinction – boundaries – between the legal and illegal will always come, in other words, by appeal either to powerful state interests or international social mores rather than by ability to 'know' in some objective fashion where the dividing line between the two lies. (Abraham and van Schendel, 2005, p. 24)

The distinction between who is legal and who is not thus depends on the economic and political framework of the determination and can vary from country to country.

"Illegality" can designate the entry, the permanence/stay or the work/employment of a person not observing the laws in force, but not the person himself. Most people enter a destination country legally and lose their legal status during their stay (which proved to be true in the case study of this chapter) (Walters, 2010). Many different ways of becoming illegal because of mere presence exist: overstaying a tourist visa, losing a residence permit because of divorce from a national, entering the territory illegally, having an asylum application rejected, etc. Nicholas de Genova brings the reality of this "illegality" to the forefront:

> When undocumented migrants are criminalized under the sign of 'illegal alien', there is an 'illegality' that does not involve a crime

> against anyone; rather, migrant 'illegality' stands only for a transgression against the sovereign authority of the nation-state. (de Genova, 2004, p. 175)

The specificity of "regular illegality"

This chapter proposes to focus the analysis on the specificity of what is called "regular illegality". If, as Albert Kraler states, there is a proliferation and fragmentation of residence statuses (see Kraler, 2009), the same process is at work for illegalization. Receiving countries are worsening living conditions for illegalized migrants because closing borders to unwanted aliens is impossible (Terray, 2008). Rejected asylum seekers have two options if they wish to stay in Switzerland: disappear "underground" or remain dependent on public aid. The first option implies that they are able to rely on a personal network as a substitute for the nation-state. As noted by Alice Bloch and Liza Schuster concerning Germany and England, friends, activists and religious associations are important actors that may take the place of public support (Bloch and Schuster, 2002). In this situation, people "disappear" from the oversight of the Swiss authorities. The reference to the interactionist notion of "career" in the last part of the article will serve to explain why this option is often the one chosen by people that have never experienced the asylum route. The second possibility represents a new paradigm emerging from the restrictive framework of current asylum policies. It is what in this chapter is termed "regular illegality", which represents care for rejected asylum seekers by state institutions despite the fact that these people are considered illegal.

The spatialized essence of legality is questioned through this case study: those who do not exist legally are not imagined "outside" or "not here" as is the case in the foundational study of Susan Coutin (2003); but are still fully part of the official support system. Many studies already clearly stated that "illegality" never fully shapes daily life. Kraler (2009, p. 10) notes the presence in Europe of 'informally tolerated persons [who] are technically illegally staying, but documented and known to the authorities'. Saskia Sassen (2002) refers to human beings "not authorised but however recognized', while Coutin (2003) evokes the "space of nonexistence" as the borderland between the legal and the illegal concerning Salvadoran undocumented migrants in the United States. Menjivar (2006) designates as "liminal legality" the lack of stability of the legal status. This in-between status seems to be observed in many sociopolitical contexts.

In Switzerland, this reality of back-and-forth takes a paradoxical shape through the application of the "emergency help" regime. As the name states, help is meant to be provisional until the person voluntarily leaves Swiss territory or until his or her detention becomes possible (something which is supposed to facilitate forced repatriation). Nevertheless, statistical figures (Bolliger and Féraud, 2010) and the detailed evocation of nation-state and actors' perspectives presented below explain why people remain dependent on this precarious aid for years. Normalization through habituation thus appears to be a way of controlling and disciplining illegalized persons. They are not just known to authorities, but also dependent on them and face their bureaucracy every day. It is a way to routinize "illegality" and consequently make it less questionable.

The concept of "regular illegality" intends to capture a reality in limbo. This tool seems to emerge as a measure of ad-hoc management at the social interface between the nation-state and unwanted aliens. As this chapter aims to show through empirical data, both the nation-state and rejected asylum seekers (even if their means are disproportionate) participate in creating a paradoxical situation arising from a process of illegalization and maintained in part by the hope of regularization.

Life under the "emergency help regime"

> It is nine o'clock on Friday morning. Outside, the weather is cold. I enter the collective centre for rejected asylum seekers that I have been visiting daily for two months. After showing my identity card to the guard in order to enter the first closed door of the building, I enter the common room. There, coffee, bread and marmalade are put out for residents of the centre. Only a few of them are here, all seated in different parts of the room. Two men are drinking coffee in front of the television where the only channel available is the regional one. Désirée now arrives and explains to me that this month, the bursar agreed to assign her the job of cleaning the centre every morning. She hopes to receive her wage of 200 Euros before the end of next month. Then she goes back to sleep. Half an hour later, Hamid arrives; he seems to have just woken up. He tells me that every morning, he wakes up at six, full of anxiety, because the police usually come to fetch people to deport to their country of origin at that time of day. Afterward, he usually falls asleep again. Slowly, he pours himself a cup of coffee with milk and sits down in a wooden chair. Today, he has to go to the population office to renew the "emergency help" claim that will enable him to stay in this collective centre for two

more weeks. He has been living at the centre for two years. Employees of this public administration regularly tell him that he has to return to his country of origin because his asylum application has been rejected. Hamid says that he does not respond to such assertions and just waits for "the white paper". Around eleven o'clock, I meet Jarek. He is on the way out. He has an appointment at the Section of Legal Help for Refugees. They are planning to help him write an appeal to the rejection of his asylum application he received two years ago. He has to deliver any new documents that would bring new elements into his asylum claim. He tells me that he has already drafted two unsuccessful appeals. The centre is quiet. At eleven, most residents come out of the rooms in order to fetch their usual tuna sandwich, always served with a fruit and chocolate. Before leaving the collective centre at midday, I meet Rokia in the main hall. She is nicely dressed and is carrying hand luggage with her. She explains to me that she is going out for the weekend to meet friends. They met six years ago because they belonged to the same church. Since then, she frequently spends weekends with them in order to relax outside the collective centre. She gives back her room key to the guard and he opens the door for both of us. (Excerpt from the author's fieldwork journal, 12 June 2009; translation by the author)

Control and pressure

Life in collective centres

In order to receive emergency help, rejected asylum seekers in Switzerland are required to live in collective centres or "spaces of confinement" (Kobelinsky, 2008)[4] where life is highly regulated. The only individual things left are a bed and shelter, and new residents have to give up a lot of property that represented part of their past. A guard supervises the entrance and exit. There are two video cameras in the collective areas. Residents are not allowed to spend more than two consecutive nights outside the collective centre. Meals are scheduled. Evoking this situation, residents complain to me of having the feeling of being treated like children.[5] These centres are often situated in the outskirts of cities. Even if the centres are not official prisons, the notion of "the non-right of being elsewhere" (Clochard, 2009) reflects the idea of control that lies beyond the creation of those shelters. This notion is central in the sentence often repeated by rejected asylum seekers: 'If the police want to catch me, they just have to knock on my door, they know where I am' (Personal interview with Mike, 12 May 2010). Although they do fear this

venue, this assertion reflects the difference in their situation from that of undocumented workers fearing identity checks in the street; rejected asylum seekers live in an atmosphere of unchanging control over their presence even when they are "at home". Many of them confessed the difficulty of maintaining existing social ties once in the centre. There is no intimacy because they sleep in dormitories. They have no money to pay for coffee. According to them, the impossibility of working legally cut them off from important social ties that they cannot regain through other activities because of the lack of money. They often complain that a person without work is not a human being. Their impression is that they have to beg all day long.

Loss of individuality

Conditions under the "emergency help regime" enumerated above make "illegality" the predominant feature of individuality (Le Courant, 2009). Even though they are considered illegal, rejected asylum seekers frequently (from every day to once a month depending of the will of the state agent) have to go to the population office to renew their emergency help claim. This apparent formality is often the occasion for state agents to repeat to rejected asylum seekers that their situation will never be regularized and that they are obligated to leave the country. The predominance of "illegality" to the detriment of individuality impacts rejected asylum claimants' administrative identities. They do not figure in the population register. If they are not recognized as people living on the territory, they cannot stand up for their rights or claim recognition. The illegalization process aims to erase their legal existence in Switzerland, which enables the state to disclaim any responsibility for protecting their rights (Gubler, 2009, p. 71).

The loss of legal individuality is particularly visible through the example of what rejected asylum seekers commonly call the "white paper" (to which I alluded in the extract from my field notes). While waiting for the answer to their asylum claim, they still have a residence permit. If their demand is rejected and they become dependent on "emergency help", they receive a white sheet of paper that merely states their name and affiliation to a collective centre as an attestation. One thing made clear during interviews is that the paper does not represent an identity card. In the minds of rejected asylum seekers, it states their "illegality" instead. For example, the absence of a photograph on this paper was pointed out several times by my interlocutors as a clear lack of recognition. Furthermore, nowadays, an identity card is a necessity for many mundane transactions: opening a bank account, buying

alcohol, visiting a prison, sending remittances and so on. All of these are situations mentioned during interviews where the white paper proved insufficient.

No time limit

What makes their situation and the wait especially difficult is the fact that rejected asylum seekers do not know when it will come to an end. As Menjivar described, it is often this long-term uncertainty that makes the position even more unbearable (2006). Their consequent inability to project themselves into the future is often underlined by my interlocutors as something that impedes their ability to invest in the present. The terminology used by my interlocutors to evoke this state of liminality is: a break, a prison, a retirement or a fence. In their minds, this is closely connected with the fact that they have no right to work. They often express that they feel like they live like caged animals because the only things they do are sleep and eat, but also because they perceive that they are treated and addressed as such by guards and administrative employees (a notion often repeated in the interviews conducted). Facing this paradoxical situation, a large majority of my interlocutors seem lost, desperate and anguished. A young resident in a collective centre expressed it like this: 'It is really difficult, because they do not beat you, they work on your brain, you know?' (Personal interview with Ben, 14 July 2010). He was clearly alluding to the moral pressure to which they are subject through their constant interaction with state institutions and individual agents urging them to leave the country.

Maintaining "regular illegality"

All that has been detailed above brings the following question to the forefront: why does this policy, presented by state institutions as purposefully disheartening, fail to reduce the number of rejected asylum seekers dependent on state institutions? The same could be asked concerning Swiss authorities. The cost of running such structures as well as the possible attraction that they represent for future migrants are often evoked as a problem by migration managers. The last part of this chapter will thus serve to illustrate the field of tension that has served to maintain this situation in Switzerland for the past five years. The answer seems to be that the structures exist partly because it is impossible for Swiss authorities to deport all rejected asylum seekers who are reluctant to leave, but also because rejected asylum seekers seem to see some hope in this situation, even if it is often described as painful.

The regulation of the Swiss state: constraints and sovereignty's implementation

While its intention was clearly to remove asylum seekers from welfare institutions, the "emergency help regime" stems from a constitutional obligation. Maintaining "regular illegality" despite its apparent inefficiency should be understood within the ideological framework resulting from the management of migration. The threat of deportation seems to be an important regulatory tool although an effective deportation is quite difficult to carry out.

Deportability

The designation of aliens as removable because of their "illegality" is an important dimension of the symbolic affirmation of sovereignty for nation-states. Nevertheless, even if the concept of "deportability" (de Genova, 2004), meaning the possibility of removing somebody from national territory, is present in political discourse or in laws, deportation is not that simple in reality (Paoletti, 2010). There are numerous factors that prevent states from deporting all rejected asylum seekers from their territories. Switzerland deports less than ten per cent of its rejected asylum seekers (Hofmann and Buchmann, 2008). If rejected asylum seekers do not present an official document indicating their nationality, Swiss authorities have to use (linguistic) expertise to identify the person's origin. At the same time, national authorities have to conclude "readmission agreements" with countries of origin in order to institute each country's duty to recognize and accept its nationals.[6] However, it is hard to conclude such agreements because of the political issues at stake. Up to now, Switzerland has concluded readmission agreements with 47 countries.[7] However, governments can be reluctant to welcome members of the opposition back into their country, and the economic interests of both countries are too high to permit definite international laws. Rejected asylum seekers are expensive for host countries and compensation such as development investment can be arranged with the country of origin. Nevertheless, without an agreement, Switzerland (like any other country) is unable to send anyone back against his or her will. In this respect, William Walters develops a historical perspective on deportation. According to him, deportation will always be susceptible to contestation at the international level because of its bilateral character (2002). Even if the necessary steps are completed and repatriation is planned, the rejected asylum seeker can still refuse to board a plane. If the deportation is supposed to take place on a regular commercial

flight, a pilot in Switzerland can refuse to take a resisting passenger on board. This information is part of the subjugated knowledge shared by rejected asylum seekers with others living in detention centres.[8] Some of them know that shouting and stating their reluctance to board openly may permit them to extend their stay in Switzerland. Taking this into account, Swiss authorities regularly organize special flights for "uncooperative" persons. These flights are often subject to criticism, both by right-wing politicians because of their very high costs and by nongovernmental organizations (NGOs) because of the humiliating and dangerous conditions in which reluctant, rejected asylum seekers are transported.

Finally, it is meaningful to refer to the system of universal human rights. These international rights do not depend on the legal status of the individual; one does not need to be a citizen to benefit from their protection (Aleinikoff, 2002). Most nation-states have signed international agreements guaranteeing human rights, but an international obligation still does not exist in that sense. However, even if application of the agreements is not compulsory for signatory countries, it places each of them under international pressure and observation. These norms often stipulate reasons (relating to the situation in the country of origin or to the personal situation of the rejected asylum seeker) that prevent states from deporting rejected asylum seekers. This means that states have to exercise other forms of pressure in order to convince the rejected asylum seekers to return home voluntarily, which would simplify the procedure.

The Swiss state does have a certain power of decision as to the removal of unwanted aliens. Nevertheless, its regulations are always influenced by international and diplomatic relations as well as humanitarian considerations. Rejected asylum seekers who refuse to go back to their country of origin often remain in Switzerland, sometimes in the long term, because it is impossible for the state to repatriate them. During this lasting temporality, authorities attempt to prevent their integration into the core society, but have no right to detain an illegalized immigrant in a detention centre for more than 18 months (Ligue Suisse des Droits de l'Homme: Commission Administrative, 2007). The compromise thus seems to be setting up collective centres which, thanks to their highly restrictive living conditions, make controlling the daily lives of undesired aliens possible and maintain the constant pressure of deportability on them.

The "agency" of rejected asylum seekers

There is clearly more than one reason that motivates rejected asylum seekers to stay in Switzerland under such conditions. Each individual

evokes personal reasons.[9] These reasons find their limit between two poles: the impossibility of going back and the possibility of staying. The axis ending between these two limits represents the framework of comprehension within which the discourses, practices and imagination of the interlocutors in this study are constructed.[10] Temporality is also a factor lying behind this framework. Length and wait are elements that permeate these reasons, influencing, through experiences and events, the perspective on the present, past and future. The reasons evoked about the impossibility of going back do not specifically explain why "regular illegality" has been chosen as opposed to living clandestinely. The author instead focuses on the reasons that the interlocutors mentioned for remaining dependent on state aid.

The notion of "career"

It appears that the very principles of "emergency help" place rejected asylum seekers in a situation of expectation that encourages them to remain dependent on this aid. Indeed, the chapter discusses a form of public assistance that can be claimed by anyone in a precarious economic situation. However, astonishingly enough, the only people who apply for this aid are rejected asylum seekers. An explanation may be that access to information is facilitated for persons who have been part of the legal system since entering Switzerland. State employees are obliged to inform rejected asylum seekers about their right to apply for this aid, whereas undocumented workers are not necessarily informed of such a possibility.

However, it needs to be stressed again that the notion of "career" provides a helpful concept to deepen understanding of this process; "career" has been treated by Howard Becker along the paradigm of a deviant "career" (1963): It requires considering a situation studied as the consequence of a social process. The person following certain stages will develop a certain "ethos" in accordance with it that is reflected through representations, opinions and acts. In the case presented here, rejected asylum seekers entered the territory legally and claimed asylum. This process seems to influence their relationship to the state, to administration and to legislation.

Indeed, the notion of "career" is interesting when one compares the situation of rejected asylum seekers to that of undocumented workers. The "illegality" of the latter is also incomplete. For example, paradoxical relationships with authorities can also be observed in the case of children of undocumented workers going to school or in the access of unregistered persons to health insurance. Concerning undocumented

workers in the United States, Sébastien Chauvin uses the terminology of a "career" of paper, referring to the evolution of the legal and social situation of an undocumented worker in the United States (2009). He exposes the difference between formal exclusion and informal integration. Many domains of social life are open to human beings regardless of their legal status, such as religious institutions, sport and leisure, and authorities seem to maintain this ambiguity. If undocumented workers have the same experiences, my case study represents an extreme that can be better understood through the idea of "career".

According to this chapter's analysis, since rejected asylum seekers have always been declared to the authorities and have followed the rules of the game (their words), becoming a full clandestine in Switzerland would deny, according to them, the entire asylum application process. This can be analysed as a form of legitimacy that they do not want to lose by hiding from the authorities. In other words, their "career" in Switzerland influences their relation to the State. In that sense, one can only agree with the argument of Menjivar stating the continued centrality of the nation-state in the lives of immigrants (2006).

The hope of regularization

When studying "illegality", the question of the possibility of regularization should be taken into consideration. Chauvin, referring to undocumented workers in the United States, also mentions that the mirrored possibility of regularization keeps many people in a precarious state (2009). Even if collective regularization as a special procedure has not been instituted in all European countries[11] as a way to manage illegalized migration, most countries do have mechanisms of regularization in their national legislation (Kraler, 2009). Individuals can apply for regularization if they fulfil certain criteria; merit is usually a key element of the process (Chauvin, 2009). Proof of successful integration and economic independence facilitates access to a legal residence status. This possibility keeps many in a situation of "illegality" which, in turn, denies them access to a decent life as they wait for a possible regularization. Both undocumented workers and rejected asylum seekers seem to remain in a precarious state of "illegality" in part thanks to the hope of regularization. The notion of "career" therefore becomes important. Undocumented workers and rejected asylum seekers do not consider the same options as they attempt regularization; it depends on each group's social and legal experiences after arrival in Switzerland. In the eyes of the law, concerning rejected asylum seekers, not having evaded the authorities is a crucial factor speaking in favour of their regularization.

Indeed, the possibility of individual regularization after five years of residence exists for all illegalized persons in Switzerland. Nevertheless, the residence proof is in practice more accepted for rejected asylum seekers living in collective centres because of the constant oversight of the authorities.

The interlocutors in this study refer being considered illegal in Switzerland as an injustice. They are convinced that they have always done "everything right", meaning they have made sure that the authorities have always known about them. Thus, they keep searching for a legal possibility to stay. In Switzerland, the process of rejection of asylum claims is not a definitive process. If the first response given by the authorities is negative, this does not yet signal the end of the procedure. There are various possibilities of appeal that a well-informed person, helped by lawyers, can undertake. The field is open to a "juridical nomadism": private lawyers, migrants' support associations (activists, believers, lawyers) and social workers are consulted for the best strategy of obtaining a residence permit through an appeal procedure. Reframing the first negative decision into a continuum of juridical appeal may allow asylum seekers to understand this announcement as less destructive and less irreversible than it might actually be. The author observed that rejected asylum seekers in Switzerland can receive a statement confirming that asylum has been denied and asking them to leave the country up to seven times before receiving a permanent residence status. The slight hope permitted by significant others living in the same collective centre encourages some rejected asylum seekers not to give up, because a mere negative response does not mean that there is no chance to obtain, perhaps several years later, the opportunity to remain in Switzerland permanently and legally. In cantons – the particular state authorities competent to make such decisions and whose laws vary – where the possibility of regularization is fully applied, rejected asylum seekers remain in the emergency help system longer on average (Bolliger and Féraud, 2010).

No other choice

Finally, rejected asylum seekers explain their tolerance of the situation in the centres as a tactic by default. They have no other choice to live or to have a decent life in Switzerland. They often view the possibility of returning to their countries of origin as difficult. Some of them, recently arrived or lacking social ties, cannot count on others to help them or do not have access to information about alternative support developed

by churches or activists. Because of these unchanging tensions, some of them search for ways to escape. Women often wonder if having a baby would enable them to obtain a residence permit. Many of them also evoke the idea of getting married. However, since January 2011, illegalized aliens no longer have the right to get married in Switzerland. Others obtain clandestine employment but usually mention cases of abuse from their employers; they are not paid enough (if at all), they are treated badly, they never know when they will have work or they work 20 hours a day.

Despite all that has been said, many rejected asylum seekers refer to the centre as "my place". Indeed, contrary to what seems obvious about such apparently difficult living conditions, the "emergency help regime" is often presented by the interlocutors as a form of autonomy. Being dependent on the state permits a certain autonomy regarding social ties, whereas choosing to live underground requires being able to depend on large social networks that are ready to help in case of difficulty. Despite the numerous complaints about ill treatment and constrained living conditions, many interlocutors referred to the fortune of having a bed and something to eat. They compared their situation to that of a Swiss homeless person, and several interlocutors, smiling with irony, told, 'In some ways, we are lucky'.

Conclusion

Nation-states and rejected asylum seekers seem caught in a paradox that crystallizes many of the issues at stake in modern migration. In a world of extreme differences in income levels between countries, people will continue to migrate in search of a better life. Structural disparities will not disappear and will continue to influence personal decision-making and migration chains despite the "technicization" and reinforcement of border control. Furthermore, once present in a country, human beings cannot simply be removed like objects but are part of a legal, social and humanitarian apparatus. The intention of this chapter has been to reveal the field of tension that made the creation and maintenance of what is called "regular illegality" possible. The perspective of "governmentality" served to expose the development of a set of practices implemented by local authorities that seems to be partly rational, even though the observation of its application reveals many arbitrary practices. The creation of a public assistance system for rejected asylum seekers was imposed on Swiss authorities because of a humanitarian

ideal in the Constitution. Today, emergency help has turned out to be a tool to put pressure on rejected asylum seekers and to make their lives less secure (Gubler, 2009). Authorities intend to marginalize residents in the collective centres, hoping that they will end up leaving. However, they do not fully succeed in this aim.

Focus on the "agency" of rejected asylum seekers completes the understanding of the "regular illegality" process. Even though a description of rejected asylum seekers' lives in "regular illegality" seems Kafkaian because of how great the paradoxes are, these people remain in this reality due to many reasons, which are in turn explained by their "agency". They deal with them in order to live as well as possible. Furthermore, the balance proposed by the use of the concept of "career" juxtaposed with the more individualistic notion of "agency" is a way to circumvent an overly narrow view of the two concepts. "Agency" is made up of constraints and opportunities and the notion of "career" can therefore be considered as a structure that allows an actor to make certain choices.

Scholars studying "illegality" should take into consideration the different routes that bring people to the illegalization process. Social reality is not clearly cut between legality and "illegality", as some migration management discourses would make us believe. Only social life as it is practiced daily helps us see that the two fields intertwine. There is always a certain ambiguity that can be exploited by human beings in order to find a place for themselves in the interconnected world and by authorities in order to maintain a certain illusion of sovereignty.

Notes

1. This chapter is the revised version of a paper that was presented during the international workshop 'Disciplining Global Movements – Migration Management and its Discontents' (University of Osnabrück, Germany, 2010, www.imis.uni-osnabrueck.de/IMISDayWorkshopNov2010.htm). The author and the editors would like to thank the German Robert Bosch Foundation and the Institute for Migration Research and Intercultural Studies (IMIS), University of Osnabrück, for their generous financial support.
2. The same hope has been analysed concerning undocumented migrants maintained in a liminal illegality in USA by Cecilia Menjivar (2006).
3. Here this notion will be explored in terms of people breaking the national law for the foreigners, but there are of course many reasons to be considered as illegal because of other law-breaking.
4. The chapter's author here translated Kobelinsky's terminology, which in French is "espace de confinement".
5. The same has been observed in Kobelinsky, L'accueil des demandeurs d'asile, 2009.

6. Although some specific diplomatic treaties seem to enable the deportation of illegal aliens even without readmission agreements, but it seems rather exceptional. See the official documentation on:www.parlament.ch/f/suche/pages/geschaefte.aspx?gesch_id=20113831, date accessed 27 May 2012.
7. www.parlament.ch/f/suche/pages/geschaefte.aspx?gesch_id=20113831, date accessed 27 May 2012.
8. Detention centres are, in Switzerland, closed structures aimed at detaining rejected asylum seekers shortly before their deportation. They are not the collective centres mentioned throughout the article.
9. Here, the author chose, on purpose, not to mention the main reasons that motivate an asylum claim (being persecuted by one's own government because of religious, political or ethnic affiliation) but to focus more on individual and personal reasons.
10. The possibility of fleeing to a third country must also be taken into account, although fieldwork indicates that this option seems rarely to be chosen.
11. Albert Kraler notes that the majority of collective regularization has taken place in Southern Europe, but that countries like France, Belgium and (on a smaller scale) Germany have also used it as a management tool. To date, Switzerland has not implemented such a collective regularization process (Kraler, 2009).

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12

Voluntary Return

The Practical Failure of a Benevolent Concept

Stephan Dünnwald

Is voluntary return the soft or more human alternative to deportation? Instead of deporting migrants, they are offered counselling and assistance. The idea of assisted voluntary return (AVR) is ambiguous: voluntariness is often limited, it is mingled with coercion and the actors involved are aware of the difficulties in the application of the concept. Nonetheless, the practice remains widespread and is rarely questioned. This chapter first analyses how the notion of voluntary return fits into the systematic approach of the European Union's (EU) management of migration. Taking Germany as an example, this chapter will then discuss some of the difficulties in applying this idea. Germany's policy of return assistance to Kosovo serves as a model in understanding how this scheme works on the ground.

Return and the voluntariness of return

The concept of return, in the context of migration processes, has developed a complex semantic. Basically, the notion of return rests on the assumption that first a migrant leaves and, after some time abroad, returns to the (country of) origin or "home". This can be seen as a set of disciplinary processes, conditioned by various circumstances, but guided mostly by the interests of the migrant.

In the case of return in international migration, that is, when international borders are crossed and residence permits are attained, the number of actors and rules involved multiplies. When legal residence provisions in the host country affect return, the concept splits up into simple return, voluntary return and forced return. These categories do not refer to the migrant alone, but also to the authorities in both the sending and receiving (and sometimes also transit) countries,

nongovernmental and international organizations or private companies. Nonetheless, returns can be simple returns: at a certain moment migrants might decide wilfully to leave and to go back to their home country. This simple return may include many factors conflicting with the migrant's personal interests, such as deteriorating economical situation, family pressure, illness and so forth, forcing him or her to return. In essence, this type of return rests principally on the migrant's decision and is private, in a sense.

When discussing voluntary or forced return, it is important to note that most returns are made up of these "simple" returns. Germany saw an out-migration of 670,000 in 2010, among them 140,000 were German nationals (Statistisches Bundesamt, 2011). In the same year, 7,576 persons were deported (Jelpke, 2012), while the number of so-called AVRs is even lower than that of those deported: 4,480, according to figures of the International Organization for Migration (IOM) (Bundesamt für Migration und Flüchtlinge, 2011).

Returns are difficult processes and once one starts to analyse them, for example, from the angle of sustainability, a great number of factors influencing them can be listed. Their complexity also makes it hard to estimate or even measure their relevance, as each return is conditioned by unique settings, and individuals are able to navigate more or less successfully through them with a varying amount of resources (Black and Gent, 2004). Nonetheless, a cluster of factors can be summed up into what Jean-Pierre Cassarino calls "preparedness", composed out of 'free will and readiness to return' (Cassarino, 2008, p. 101).

Rejected asylum seekers, among other individuals whose residence permit has expired, will not per se be wilfully ready to return. These people, living in a constant state of deportability (de Genova, 2002), fit within the target category for so-called AVRs. AVR appears to be a gesture of goodwill because it purports to ensure migrants make their way home smoothly; the arrangement often includes free airfare, counselling and even some financial or material assistance. Thus, it is not astonishing that in Germany, for example, all major charities engage in return assistance. In many cases, however, rejected asylum seekers are not ready to return, nor willing. Threatened by the withdrawal of social benefits and by deportation, they may finally consent to what is labelled as "voluntary return", a term which begins to appear contradictory. As Gregor Noll states:

> Conduct appearing to be voluntary compliance may be the product of an illegitimate threat. 'Voluntary' return under such conditions is

> certainly not to be judged in the same manner as a decision taken in the absence of such threats. (Noll, 1999, p. 10)

Although it is impossible to draw a clear distinction between voluntary and non-voluntary return, in practice voluntariness makes a difference. According to "Coming Home", the Munich office for return assistance, about 80 per cent of the clients are facing pressure to leave the host country (Coming Home, oral communication, 2007). In order to avoid an overly euphemistic description of voluntariness and to draw a distinction between that majority which travels on a voluntary basis and those who are targeted by "assisted voluntary return" schemes, it seems appropriate to speak of the latter case, following ECRE, the European Council on Refugees and Exiles, of "ordered" or "mandatory" return. ECRE distinguishes voluntary repatriation, which is the return of persons enjoying legal residence in host countries, mandatory return of persons who do not, and forced returns more generally (ECRE, 2003, p. 2).

The EU's Return Directive (European Parliament, 2008) is one of the latest attempts to systemize asylum law within the EU, at the same time surpassing the realm of protection towards general migration, as this category includes all persons without legal residence in member states, or so-called illegals.

The EU's Return Directive and the related European Return Fund (ERF) prescribe a broad set of rules and practices for (mostly enforced) return that seek to align the notion of return with a common foundation of minimal standards and to achieve an improved cooperation at the transnational, European level. This includes base standards on detention as well as joint deportation charters, in addition to cooperative efforts between national alien offices and institutions in the countries of origin. Within both the Return Directive and the ERF a small unit is dedicated to "voluntary return". Voluntary return shall take precedence over forced removal, though the corresponding time frame for voluntary return is narrow and might be completely abolished (European Parliament, 2008, Article 6, phrase 2 and 3).

The considerations regarding the instalment of a return fund as well as the return directive relate to the Green Paper on a Community Return Policy, published in 2002 (Commission of the European Communities, 2002) . In a hearing pertaining to this Green Paper, Jonas Widgren, then director of the International Centre for Migration Policy Development (ICMPD) in Vienna, formulated the aims and problems associated with return and repatriation. He describes his motive in dealing with the concept of return as:

> ...the basic ideological conviction that if returns of aliens without status will not take place, then this may threaten the whole fundament of fair asylum policies and active immigration planning within the EU. (Widgren, 2002, p. 1)

Increasingly more lucid than the Green Paper itself, Widgren here defines the state's (and the EU's) sovereignty in terms of return as the key factor for the construction of managed migration. The state, willing to control migration, is obligated to enforce return measures. Thus, it is not the migrant but rather the respective state authority that acts as the central figure in the return process:

> The whole discussion should revolve around the notion of integrity and credibility of asylum systems. It could even be said that there may be no need for asylum determination procedures according to the 1951 Convention and other subsidiary protection schemes if a negative decision does not have a consequence. Therefore, if we have procedures in place which offer sufficient and effective protection to those in need of it, those persons indeed have to return who have no legitimate claim for protection. (Widgren, 2002, p. 2)

This crucial "ideological conviction" is at the same time the central problem. Widgren, in his statement, summarizes additional aspects relevant for repatriation policy, among them cost efficiency. It is eminent to observe, however, that:

> The basic philosophical question which now arises is how to make return operations work, without violating fundamental human rights of the returnees, in order for States not to violate their international legal obligations. (Widgren, 2002, p. 3)

Despite that fact that deportations are usually kept far from the public and civil society's control, human rights violations during the process of removal are more often than not the rule rather than the exception. More and more, reports arise about deportees who, in the procedure of return, experience violence and excessive pressure; this places deportation policies into question and opens up the question of legitimacy. The duration of a migrant's stay and the degree to which they have integrated themselves into the host country also play a role, since the removal of well-integrated families might be neither understood by the families themselves nor by their friends, neighbours or their children's

class mates. Even if a removal is conducted lawfully, it disrupts social ties and places the legitimacy of removal procedures in suspect.

It is this "legitimacy gap" that will be filled by mandatory returns. Although not necessarily voluntary, proclaimed voluntariness cuts short any doubts regarding authorities acting too harshly. AVR thus transforms a direct state measure into an indirect tool, whereby the ambivalence of voluntariness plays a crucial role. In all relevant European documents on return, a paragraph always contains the phrase "giving preference to voluntary return" (e.g. Council of the European Union, 2008, p. 7). Voluntary return thus becomes a sort of kind advice to leave the country and returnees might even enjoy the assistance. Deportation as the secondary disciplinary tool would then only be used in cases in which a person refrains from leaving voluntarily; the discourse position of deportation thus shifts from being a standard practice to serving as method of last resort. The state's role within the mandatory return process is hidden behind the label of "voluntariness" which focuses on the returnee.

There is one supplementary aspect framing the usefulness of the concept of mandatory returns: deportations are not only highly questionable in terms of human rights and social integration; often, a removal fails because the country of origin cannot be determined or its government refuses the readmission of its nationals. Frequently, the migrant is blamed for the absence of necessary documents, which is interpreted by officials as insufficient compliance. Augmenting the pressure on potential returnees can only solve this lack of cooperation, in the eyes of "experts". In a hearing on return procedures in Germany, an expert stated:

> As return is impeded permanently when documents as well as true information from the persons concerned are missing, return motivation has to be encouraged with appropriate measures in all realms, including the repressive. (Bundesministerium des Innern, 2006, p. 207)

Alleged departure centres and frequent threats by offices for aliens shall increase cooperation and the "voluntary" return of failed asylum seekers and migrants without legal residence (Bundesministerium des Innern, 2006, p. 204; Noll, 1999). From the point of view of involved authorities, there is one more fact favouring mandatory return instead of deportation. While deportation orders are often impossible to carry out due to particular situations in the countries of origin, lack of transport or health conditions of the potential returnee, this does not affect mandatory return. In prevailing case law, clauses preventing deportation do

not affect the possibility of "voluntary" departure, a departure which is often encouraged by the withdrawal of permits for tolerated temporary stay.

These measures shall not only force migrants to reveal their identity, but shall also promote their departure. Departure counselling, carried out by authorities and the offices of charity organizations, is often already exercised at the arrival of asylum seekers. Refugees whose chances for protection status are estimated to be weak are subjected to intense questioning and return assistance counselling. In such cases, cooperation is rewarded and refusal is sanctioned. "Voluntariness in return", as seen in this context, means hardly more than return without direct physical force. Widgren underscores this attribution of "voluntary return" to the set of instruments of state regulation. His statement on the EU's Green Paper on Return (Commission of the European Communities, 2002) finishes with the sentence:

> Indeed, there seems to be a growing conviction among EU Member States that voluntary and non-voluntary returns or forced removals are part of the same concept, and that even voluntary return assistance programs need some elements of enforcement or force as otherwise such assistance schemes may not be as successful as they potentially could be. (Widgren, 2002, p. 4)

The notion of "enforced" voluntary return illustrates that the concepts of forced and mandatory return are bound together in a reciprocal way: not only would the offer of mandatory return legitimate forced return as a last resort, but the threat of forced return is also deemed as necessary to make mandatory return work.

Voluntariness, if it has any value within this discourse, is not given, but has to be "produced". This is the point where authorities realize their limits, as they stand for the more repressive, forceful part of mandatory return, and where nongovernmental actors step on the scene. AVR has the task of producing what in the beginning of this chapter was referred to, along with Cassarino, as the "preparedness" or "readiness" for return. Though the return is not voluntary, the returnee must be prepared and assisted for his or her return.

The charity of return

Mandatory return is actively promoted within the political framework. Today, a number of EU member states maintain general or refugee group

specific programmes to assist departure and return. The EU's Refugee Fund and, since 2008, the ERF offer financial assistance for projects and measures assisting mandatory return.

In Germany, charity organizations cooperate with governments on the basis of the subsidiarity principle: they are refunded by the state to cover a broad array of social services. Law pertaining to return counselling was introduced in the 1980s, together with a number of incentives to persuade (mostly Turkish) guest workers to leave. Although the incentives have since expired, return counselling is still covered by this law and was revived particularly in the mid-1990s when more than 200,000 refugees from Bosnia-Herzegovina had to return from Germany. Return counselling and assistance became an important task for not only charity organizations, but also for many associations, municipalities and so forth. Most of the existing return offices and experience in return counselling stem from this period and were renewed after the end of the NATO (North Atlantic Treaty Organization)-led war in Kosovo.

During the past two decades, a patchwork of projects and institutions started to offer return assistance, with some of them still in the process of institutionalization. Return assistance is differentiated into comprehensive programmes consisting of various disciplinary tools such as pre-return counselling and assistance, the organization of the return process itself and post-return measures in the country of return. Some efforts were made to organize these programmes and combine their strengths, but this mostly resulted in the establishment of a number of smaller networks comprising various offices of one of the bigger charity organizations. In general, return assistance gained political relevance and counselling improved, while financial assistance and training for returnees remained on a low level (see Dünnwald, 2008 for an overview).

Practical return assistance in Germany is rarely done by the state. Rather, nongovernmental actors, associations, charity organizations, or the IOM, fulfil this task. In Germany, IOM is the official operator for the state-funded programme REAG/GARP (Reintegration and Emigration Program for Asylum Seekers in Germany/Government Assisted Repatriation Program). The programme covers travel costs and depending on the return country a small amount of cash to be handed over to mandatory returnees after their arrival in the country of origin. IOM grounds its activities within the realm of return assistance on the concept of "voluntary return" which comes close to that of the EU and most of its member states (IOM, 1997). In contrast, charity organizations must deal with the dilemma of negotiating the interests of their

clients and their donors – in Germany, donors comprise mostly the federal government, some "Länder" governments and municipalities, as well as the EU Return Fund. As a result, charity organizations uphold the idea of voluntariness and try to clearly distinguish their activities from the repressive instruments of governmental pressure to return (Bundesarbeitsgemeinschaft Freie Wohlfahrtspflege, 2006). This effort to highlight a difference when it pertains to a state's interest in departure is often emphasized by setting higher standards in individual assistance as well as the proclaimed aim to assist with the (usually not clearly defined) humanitarian re-integration in the country of origin.[1]

The proclaimed notion of "assisted re-integration" is challenged by the systematic and practical principles of return policy. Charity organizations active in the field of return assistance rely heavily on funding by governmental or European institutions. Within this scope, re-integration is not a defined goal, neither in the European Commission nor, for example, in the German Ministry of Interior. Re-integration is a desirable prospect, but in reality return funding is restricted to the return process and the initial brief period of arrival. Supplementary means for re-integration are not among the measures supported by the EU Return Fund (Manfred Konther, Commission of the European Communities, Directorate for Justice and Home Affairs, oral communication, 2008). In only a few cases, return assistance comprises a component of re-integration. Due to the lack of adequate financial resources, this situation limits the engagement of most charity organizations operating in Germany and as a result, turns re-integration into a euphemism.

Though authorities in Germany were reluctant to enter the field of return assistance themselves, there are some remarkable exceptions. "The German Federal Office for Migration and Refugees" (in German: "Bundesamt für Migration und Flüchtlinge") offers a service for information on return for the countries of origin using a network of officers affiliated with German embassies abroad. In the German "land" of Rhineland-Palatinate, the government set up a fund for returns, which is coordinated by "Diakonie" Trier, a protestant charity, but which includes counselling also offered by the offices for aliens. In two major reception centres for refugees, asylum seekers are offered return counselling immediately upon their arrival. In Nuremberg, the "Arbeiterwohlfahrt" (= Worker's Welfare Organization) could be assigned to this task; in Bramsche, in the German "land" of Lower Saxony, the authorities conduct counselling. Thus, authorities become active in fields which go beyond the reach of charities, such as information on return pertaining to a country of origin, or they occupy spaces which charities are reluctant

to enter, as in offering return counselling before protection needs have even been checked.

It is, as charities say, a difficult task to find the balance between proper assistance for clients. On the one hand, assistance should not end at national borders, yet it is necessary to safeguard at least a minimal portion of independence within the return counselling and assistance processes. In a Caritas journal Rudi Löffelsend, who had managed for Caritas several ambitious return assistance programmes, described the difficulties charities encountered when engaging in return assistance, despite favouring this engagement. The main reason for these challenges, as he writes, is the obligation of charities to assist migrants in all situations:

> Naturally, real voluntariness is not given in cases when deportation orders are already issued. Nonetheless, these persons come to Caritas hoping for help in a seemingly desperate situation. Caritas should take over responsibility just as Caritas is calling for a right to stay for persons who are tolerated over years in Germany. A principal refusal of restrictive aliens policy may not lead into a refusal of counseling. (Löffelsend, 2006, pp. 18–19)

Löffelsend is transparent about the low level of assistance which could be given to returnees and he argues that return assistance has to be extended by charities into a proper re-integration assistance scheme, building up assistance networks and coordinated efforts within and across charities to gain the best support for returnees (Löffelsend, 2006, p. 19). This position (which stands as an influential opinion in a lively debate) builds the legitimacy of return counselling and assistance on the (future) support achievements in the countries of origin. One of the standout countries of origin, both in regard to the number of refugees (and potential returnees) as well as the number of corresponding return assistance schemes run by German organizations, is Kosovo.

Experimental grounds: return from Germany to post-war Kosovo

After a decade of nationalist atrocities under the rule of Slobodan Milosevic, the NATO-led war finally ended in 1999 with a situation that had almost escalated into a civil war between the Serbian and Albanian[2] inhabitants of this small province. On the grounds of the United Nations (UN) Security Council Resolution 1244, the UNMIK (United Nations

Interim Administration Mission in Kosovo) took over administrative power, assisting at the same time the building of (mostly Albanian) governmental structures. The Kosovo Force (KFOR) tried to de-militarize the zone and to suppress conflict, which arose mostly between Serbian and Albanian inhabitants. A large number of international organizations assisted the peace building efforts, reconstruction and foremost the return of displaced persons and refugees that sought protection in Serbia, Montenegro or Macedonia. A unique aspect regarding the provision of return to Kosovo was that return not to the country alone, but to the home town had to be offered, and ensured, on the basis of phrase 9 of Resolution 1244, '(c) Establishing a secure environment in which refugees and displaced persons can return home in safety, …' (UN, 1999). This clause was introduced to avoid ethnic separation and cleansing within the patchwork of different ethnic groups in Kosovo. Unlike Bosnia-Herzegovina, Kosovo should not be divided into major ethnic territories. One vital effect of this right to return home was the deceleration of returns of displaced persons as well as deportations from Western European countries.

Following the end of the war, Western receiving countries urged Kosovar refugees to go back home. Temporary residence permits were no longer prolonged and soon after the opening of the airport at Pristina, Kosovo's capital, deportations began. These returns followed an order of (ethnic) vulnerability negotiated with UNMIK: first, single Albanian men should return to Kosovo, then families and more vulnerable persons, members of the ethnic minorities Ashkali and Egyptians and finally Kosovo Roma and Serbs.

Deportations were monitored by a special office of UNMIK, which set up a number of criteria regarding the security, health issues and housing of the migrants. Before their readmission was accepted, all of the above criteria had to be checked by UNMIK staff for each single deportee in his or her hometown or village in Kosovo; these measures slowed down and often blocked the deportation process. Western governments grew distressed over the gridlock and over the years struggled against the activities of the UNMIK regarding return. Deportations continued, however, mainly from Austria, Germany and Switzerland, which hosted the biggest refugee populations due to a history of labour migration from Kosovo. Over the years, the UNMIK reduced the number and significance of criteria. Nonetheless, as procedures were slow, mandatory return gained prominence because it was seen as the primary way to ensure the reduction of Kosovo refugees in the host countries. It must be mentioned that particularly right after the war, return figures

also include the high numbers of voluntary returnees, persons mostly of Kosovo-Albanian origin who wanted to return, to rebuild destroyed houses, to help their relatives and to set up businesses and so forth.

URA – A bridge to Kosovo

Return as a policy means the departure – mandated or forced – from a host country and the entry into a country of origin [or alternatively, into a third country, as laid down in the EU Return Directive (European Parliament, 2008, art. 3.3)]. Though return as a rule is a mandate of internal affairs, the organized process of return goes beyond the host countries' borders. Through return policies, European states and the EU actively extend internal policies abroad. In Kosovo, a local branch of the German Federal Office for Migration and Refugees represents the German ministry of internal affairs. The German Federal Office for Migration and Refugees was initially responsible for asylum procedures only; over the years, however, it was assigned not only many practical issues regarding migration and integration, but also an expanding section of applied scientific research on migration issues. This office was present in Kosovo initially with one officer stationed in the German liaison office, responsible for deportation processing and negotiating with UNMIK. In 2006, two more persons were assigned, this time directly to the UNMIK office to assist UNMIK in dealing with deportation cases and to smooth out and accelerate procedures.

In 2007, the German Federal Office for Migration and Refugees started a project called "URA" (Albanian for "bridge") designed for the assistance of forced and mandatory returnees. Arriving returnees would be received at the airport, offered shelter for some days in the office where one room is equipped with beds and have access to further assistance. The project was run in cooperation with the return counselling office of the charity "Arbeiterwohlfahrt" Nuremberg, which hired and trained local staff in counselling and assistance. Furthermore, some staff received vocational training in trauma-therapy. The project, with an overall budget of 2.6 million Euros and financed mostly by the EU, should provide an influential contribution to the return assistance effort in Kosovo (see Dünnwald, 2008, pp. 66–75).

The "URA" project was by far not one of a kind in this small province of Kosovo. Already in 2003 "Heimatgarten", a return assistance project of the charity "Arbeiterwohlfahrt" Bremerhaven had opened an office in Prizren, in the south of Kosovo. At about the same time as "URA", the "Diakonisches Werk" (=the Social Welfare Organization of the Protestant Church in Germany) in Trier installed a counselling office

in Fushe Kosova, a town close to the capital Pristina, and known for the biggest still existing community of Ashkali, Egyptian and Roma minorities. The German Ministry for Internal Affairs estimated that in 2007 more than 50,000 persons from Kosovo, mostly minorities, had to leave Germany. This high number constitutes the context for the installation of so many German return assistance facilities in Kosovo.

Right from the beginning, "URA" experienced a series of setbacks. Initially the project was meant to be located in Prizren, but this site was abandoned because an offer from a German nongovernmental organization (NGO) promised better conditions. The departure from Prizren happened hastily and without explanations, which offended a number of important Kosovar politicians. Moving from the south to the north, the new seat in Mitrovica saw a grand opening, but just a few weeks later the hiring contract for the building was cancelled. The house used by "URA" in the Roma "Mahalla" (or quarter) of Mitrovica had been given to the German NGO for free from the municipality to offer activities for the minority. Employing the building for the purpose of a return assistance project incensed the municipality, which withdraw the right of its use. After half of the project's runtime had passed, "URA" finally found new premises in Pristina.

The author visited the "URA" project four times between the summer of 2007 and spring 2012. In 2007, the project had just started in Mitrovica and had about half a dozen clients only. The counselling team came from all over Kosovo and was hardly present at the centre on a daily basis. The lack of clients was not only the result of a poor information policy in Germany, but also mirrored the fact that the project had hardly anything to offer patrons. Only minimal material assistance could be given to returnees because it was not foreseen in the budget. Returnees were mostly offered counselling, along with business start-up training and financial assistance for about a dozen persons. For deportees, the project offered only counselling, shelter and food for some days. After the first visit in 2007, the project applied for a number of changes in the budget in order to improve its poor performance. IOM Germany passed along all the addresses of mandatory returnees to the project counsellors, which they could then use to contact the returnees after their return. During the second visit in the spring of 2008, the office served more than 400 clients. A co-operation with the IOM in Kosovo, which within the project was responsible for setting up a data pool of all institutions in Kosovo relevant for return and re-integration, was cancelled because the IOM did not deliver the required information. In addition, there was no demand for psychological assistance. The

persons trained in trauma-treatment had been chosen mostly because they spoke English, which often meant that they were young and did not have sufficient qualifications and experience. Half a year before the end of the project an array of assistance measures was introduced, mostly for income generating activities, but by the end of the EU's funding period of the project, all financing was stopped and the beneficiaries were left on their own. The follow-up project, "URA 2", had a different financing structure and could not take over the beneficiaries from the first "URA".

During this first period, "URA" amassed a long list of mistakes. The project had to be modified several times during its existence until it grew to be comparable to other return assistance projects in Kosovo. Cooperation with international and local NGOs in Kosovo was limited and ineffective. The persons spearheading the project were inexperienced, both in regard to return issues and the situation on the ground in Kosovo. A lot of money was spent on an expensive trauma-training programme in Germany, with hardly any proven results in Kosovo.

Return projects function to promote the successful and sustainable return and re-integration of migrants, which often includes tailor-made assistance. Regarding the "URA" project, there is little evidence that shows any of these standards were matched. The single successful case that the "Arbeiterwohlfahrt" Nuremberg widely publicized was that of a couple who run a pastry shop in their home village in the southern Dragash Mountains. After their return, the couple could rely on the premises and machines for production. Most of what the couple achieved was done on their own (and with the help of relatives) and drawn from personal resources. The assistance received from the return scheme was used to turn the shop into a small café. Similar to many practices in development cooperation, a particular case can often influence the reasoning of charities: the successful case is praised, when for instance a family that receives a cow and is therefore able to make a living, is left in the shadows despite its gratefulness towards the counselling office. In essence, the few cases that become widely recognized may often act as a facade to an overall unsuccessful operation (Dünnwald, 2009).

Sustainability in mandatory return is difficult to achieve even under ideal conditions. This becomes clear when comparing the rather poor assistance of "URA" with a project run by the Danish Refugee Council. This agency had a longstanding experience in Kosovo and with repatriation when in 2006 they started a project on assisted mandatory return from Denmark. They were able to assist 84 returnees in a variety

of ways, including pre-return counselling and close assistance after return, utilizing all possible measures to smoothen re-integration. Nonetheless, the project had only partial success. More than one quarter of the beneficiaries left the country towards Western Europe during the implementation of the measures (Chu et al., 2008; Danish Refugee Council, 2011).

Assisted mandatory return has a number of practical limits: children and teenagers, raised and schooled in Germany or Denmark, do not acknowledge or accept Kosovo as their country of origin; they head back to Western Europe as soon as they can. Single men and women do not see a prospective in the poor country that is marked by stagnation, frequent power cuts, lack of work opportunities and dismally low wages. What then should keep them there? The sheer lack of possibilities to earn a livelihood even drives families into re-entering the migration cycle, assuming they have relatives in the West who can provide them the money necessary to pay the smugglers. Many returnees can only make their living in Kosovo with additional financial assistance from abroad.

The German return offices are unsuccessful in Kosovo not only due to these conditions but also from the fact that return numbers remain low. When the offices were installed, most of the Kosovo Albanians had already returned and the Roma still enjoyed temporary residence without much pressure to return. Different legalization programmes further made it easy for former refugees in Germany to stay, in case they matched a number of integration criteria. All these factors diminished the success of return offices in Kosovo; lastly, there was no big wave of returnees in 2007 and 2008 as had been predicted by authorities and charities. Their dubious results notwithstanding, all German return projects, including the "URA" partners German Federal Office for Migration and Refugees and "Arbeiterwohlfahrt" Nuremberg, continue to offer their services in Kosovo. After the end of "URA", the German Federal Office for Migration and Refugees established "URA 2", presently without EU funding, but with the financial contributions of four "Länder" (states) where most Kosovo minorities in Germany lack secure status. The "Arbeiterwohlfahrt" Nuremberg rented an office close to the former "URA" premises where it offers assistance for mandatory returnees, most of whom come from Bavaria. Nonetheless, why this persistence? Why did neither the German Federal Office for Migration and Refugees nor the other project members decide to close the office?

The reason is of a political nature. Kosovo remains one of the countries of origin from where a high number of persons originate who are legally

obliged to leave Germany, particularly members of the Roma minorities. "URA", which offers first aid and psychological assistance for deportees and mandatory returnees, had to serve as a tool to circumvent legal impediments to deportation. A certain number of potential deportees can show a medical certificate that they suffer from post-traumatic stress disorder or other diseases difficult to treat in Kosovo. Since "URA" offers assistance in the country of origin, it could convince German courts to consent to deportation orders and thus render deportation procedures more efficient and allow for the pressurization of mandatory returnees. In 2003, a similar – and similarly questionable – project had been set up in Kabul. The RANA project (Return, Reception, and Re-Integration of Afghan Nationals to Afghanistan) was created to offer assistance to returnees. An officer of the German Federal Office for Migration and Refugees was shifted to IOM and, under the IOM umbrella, was responsible for the German portion of the project's realization. Afterwards the officer returned to the German Federal Office for Migration and Refugees and acted as the key eyewitness at higher administrative courts. Two courts determined that, within the scope of the RANA project, returnees are assisted after return to Kabul and thus deportation is legitimate (Schlung-Muntau, 2007). While the Kabul project premises were burnt down soon after the courts' decisions, the "URA" project builds on these experiences. The extension of home affairs is realized by the installation of field offices in countries of origin, with the German Federal Office for Migration and Refugees as the central figure acting as a subsection of the ministry of interior, together with charity organizations or, in the case of IOM, international service providers in the field of return assistance.

This is possible simply because information regarding these projects reaches Germany in a very filtered manner. Neither of the offices in Kosovo makes reports of any kind available to the public; existing information is scarce and not up to date. No independent monitoring takes place and charities speaking about their return assistance efforts in Kosovo rarely discuss their clients' accessibility to these programmes in order to secure their livelihood.

These projects do not see their primary influence within the framework of re-integration assistance. Whether proclaimed assistance reaches the beneficiaries or serves for re-integration is only a secondary aspect as it concerns the project managers. Their main goal is projecting the image of a well-functioning "bridge" into the country of origin of deportees and thus easing deportation procedures.

This raises the question about the interests of charity organizations as it pertains to participation in those projects. Contrary to public

authorities, charity organizations ought to act in the interest of their clients; in the realm of return assistance, proclaimed standards assert independence from governmental interests and the right of returnees to return in safety and dignity. Nevertheless, to quote Löffelsend once again, these rights are relative, not absolute criteria. Under the heading of "desirable minimum standards and reality" Löffelsend states:

> Who calls for return assistance only when security, physical and mental integrity, political and social participation of returnees in the country of origin are secured, could probably not even agree to a return to Germany. (Löffelsend, 2006, p. 19)

This statement levels out the clearly different standards between Germany and, for instance, Kosovo. The message, given to Caritas co-workers, is clear: don't ask for desirable human rights too much, but be realistic. To be realistic can be interpreted in many ways: German charities followed the government action of shifting funding from migrant counselling to return assistance. Thus, trying to ensure personnel keep their jobs, staying competitive in regard to other organizations and maintaining good relations to the government is one side of the coin. Being realistic also means that as the state takes decisive action in realizing returns, mandatory or by force, charities can only assist their returned clients by giving as much support as possible. This support might be modest, but based on experience with deportees mirrors that of the position of charities: assisted return is better than suffering the experience of deportation. Debates within German charities about engagement in assisted mandatory returns, whether charities are using or abusing the trust of clients, are ongoing. Meanwhile, all German charity organizations established structures for return assistance. A further instrument to ease this process is the ERF, where additional project funding might be obtained (though in 2012 none of the German return projects in Kosovo received ERF funding). Today Kosovo is hosting four German return projects, all of which are waiting for return pressure on the Roma minorities to develop so that clients will begin to flood their offices.

Re-integration in Kosovo revisited

In 2010, the government of Kosovo introduced a re-integration programme for returnees, which was adopted already as a strategy in October 2007 with the assistance of the Organization for Security and Cooperation in Europe (OSCE) and various UN bodies (see OSCE, 2009). After independence in 2008, Kosovo signed readmission agreements

with EU member states accepting the deportation of 5,400 persons per year, most of them minority members. Also in 2008, an action plan was developed (Government of Kosovo, 2008), but it took until mid-2011 for the 4.3 million Euros to be allocated. The re-integration strategy foresees a high number of integrative measures, labour market integration and financial assistance for business start-ups. It also includes education for school kids in Albanian, the most spoken language, or catch up classes, access to housing (including reconstruction) and health facilities. All in all it is a very comprehensive concept, but until April 2012, only some very basic elements functioned, such as renting flats for new returnees and the distribution of food packages or firewood. These measures are offered for an initial period of six months and can be extended for another six months.

On the local, municipal level, the community offices have to run the re-integration programmes. These offices had been established to include minority members into the local administration, but without a budget they were merely symbolic. Presently the employees in these offices have to deal with social work. As a result, it is not astonishing that in Pristina you can hear about the incompetence of municipalities to assist returned minority members. In the municipalities, complaints abound about the bureaucratic and incompetent central structures. Applications disappear in Pristina's office, it takes months until applications are processed, and it can take months until the money is then transferred to the municipalities. Thus, only about 10 per cent of the 4.3 million Euros for 2011 have actually been spent (Knaus and Kienzler, 2012; Mrs. Taki, UNHCR Kosovo, oral communication, 2012).

In part, these issues may relate to general start-up problems such as broad-level service and they may also reflect the weak position of minorities. On the political level, Kosovo's interest in this re-integration programme is strong, as the programme is a precondition for progress in talks with the EU about visa-liberalization. Thus, the EU and in particular the countries with higher numbers of Kosovo refugees, demand cooperation in returns using the process of visa-liberation. This is a key interest for Kosovo, where the economy as well as the livelihood of a great part of the population depends on remittances and money generated abroad.

On the practical application of re-integration schemes, it is possible to doubt if they will ever work in the manner foreseen in the re-integration programme (see Dünnwald and Emini, 2012, for details). The general obstacle for the proper implementation of the re-integration programme

again hints toward the political level and questions the mutual interest in re-integration both of the sending and receiving countries. Although Kosovo is under constant international observation, it is not very eager to assist minorities with broad integration schemes (OSCE, 2009). As depicted above, German return schemes in general do not comprise re-integration, but just cover the return and a maximum duration of six months of further assistance. Two officials of the German Federal Office for Migration and Refugees, one who had managed "URA" and the other working in the embassy as a deportation facilitator, were assigned to the Kosovo Ministry of Interior and assisted in the setup of the Kosovo re-integration office for more than a year. Since some of the very basic components were already installed, however, their employment was cut short. It appears that there is a silent understanding between states who conduct returns and Kosovo officials that minimum assistance standards, instead of re-integration, are sufficient to serve the interests of both.

In April of 2012, a delegation from the Parliament of Lower Saxony visited Kosovo to inspect the situation of deported persons, particularly of Roma origin, and had a meeting with the Minister for European Integration, Vlora Çitaku (who is head of the re-integration programme). Both the German delegation and the Minister avoided speaking on the subject of the poor functioning of the programme. The Minister charmingly underlined the importance of visa-liberalization for Kosovo and assured that re-integration is on the right path. Back in Germany, the head of the delegation Johann-Heinrich Ahlers, summed up the first outcome of the trip, noting, 'the Kosovo government offers good re-integration measures' (CDU, 2012).

Consequently, the responsibility for return is slowly shifted towards the authorities of the country of origin and cooperation is secured by bargaining over a more liberal visa regime for Kosovo citizens. Whether re-integration works and returned minority members have a chance to survive in Kosovo is not necessarily a question that is involved. The mere existence of a re-integration programme is what counts for political negotiations.

Conclusion: the obligation to leave

Within the triangle of sending state, receiving state and the migrant in mandatory return, there are two aspects underlined in particular: first the role of intermediaries, in this case mostly the charity organizations offering return assistance, and second the role of the returnee as more

subjected to than subject of the whole return process. Though this process is still called "voluntary return", it is predominantly the state organizing and structuring the process. The obligation to leave is the guiding principle behind forced and mandatory return. But in relation to deportation, mandatory return processes are more sophisticated and as a result need to be balanced between greater numbers of distinct partners.

This benevolent concept offering migrants a way to return "voluntarily" reveals a number of weak points after careful inspection. Mandatory return does not rely on pressure only, but also on consent and compliance. This cooperation is often achieved via intermediaries, mostly because counselling needs a trustworthy relationship which authorities have difficulties in establishing. In Germany, it is mostly charities that are engaging in this role, while the state commands the more direct parts of applying pressure and controlling the financing of assistance. This sharing of the job turns return assistance into an ambivalent task for charities; though they know better, charities have to stick to the fiction of voluntariness. This results in the splitting of mandatory return into two parts, one part that is visible and benevolent, and one that is hidden and more repressive.

The rather poor outcomes of AVR underline the limits of this form of managed migration. There is particularly one factor that seems to be responsible for the low success rates, the readiness to return. The migrant is, though less than in forced return procedures, subordinated to the return process. Compliance is demanded, but full agency shifts back to the migrant only after return. Migrants, though they might lack good reasons to stay (regarding positive integration records or perspectives in a broad sense), often have good reasons not to return. Many migrants develop a strong link to the country that hosted them. After return, young returnees who had grown up in a host country will make great efforts to escape from return. For others, their life's reality is transnational. A return concept which focuses on 'keeping them in their place' (Bakewell, 2008) and does not take into account a varying number of transnational relations cannot succeed.

Return assistance can hardly compensate for this lack of preparedness, nor can the small incentives offered. Seen in total numbers, mandatory returns remain low. Relating success to sustainability, assistance does not lead to a sustainable livelihood in the country of return most of the time. Re-integration in the country of return is more a euphemism than a goal in return policies, thus after the return the returnee is left as the sole responsible master of his or her misery.

Notes

1. The start page of the return project "Heimatgarten" begins with the words 'Welcome on the web pages of "Heimatgarten", a project of "Arbeiterwohlfahrt" Bremerhaven to assist voluntary return and humanitarian re-integration of refugees and migrants' (www.heimatgarten.de).
2. Albanian here refers to Kosovars of Albanian ethnic identity, not to Albanian citizens.

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