Immigrants and Minorities, Politics and Policy

Bridget Anderson
Matthew J. Gibney
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The Social, Political and Historical Contours of Deportation

Springer

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ISBN 978-1-4614-5863-0 ISBN 978-1-4614-5864-7 (eBook)
DOI 10.1007/978-1-4614-5864-7
Springer New York Heidelberg Dordrecht London

Library of Congress Control Number: 2012952020

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Introduction

Bridget Anderson, Matthew J. Gibney and Emanuela Paoletti

Over the last decade, scholarly writing on the subject of deportation in liberal states has expanded rapidly (Kanstroom 2008; Gibney and Hansen 2003; Schuster and Bloch 2005; De Genova and Peutz 2010). The growth has very much reflected a rise since the mid-1990s in the use of deportation by Western states over the same period. Under a range of different nomenclatures, including expulsion, removal, involuntary departures, and port of entry "turn-arounds", various categories of unwanted non-citizens, including as failed asylum seekers, convicted foreign nationals and irregular migrants, have been ushered from states in growing numbers. What has generally attracted state elites to use the power to deport—and scholars to study it—is that deportation (broadly conceived) is a particularly sharp and resonant way of asserting state power in the realm of border control. Deportation is an exercise of state authority that aims definitively to end the relationship of responsibility between the state and the non-citizen by forcing the non-citizen beyond the sphere of the state's authority.

No one feels the consequences of the use of deportation power more than the deportee him or herself. It is the individual non-citizen (or family, as the case may be) that is apprehended, detained and bundled onto an airplane by the agents of the state. It is the deportee who is forced to sever many or all of the ties to his or her place of residence, some of which may have been forged over many years of residence. Yet, significant as deportation's implications for the deported individual are, the aim of this book is to look more broadly at deportation's consequences for the society that does the expelling. Deportation, as the contributors in this work make clear, is a controversial and (at least potentially) illiberal practice that implicates and impacts upon a diverse range of actors and social and political institutions.

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B. Anderson et al. (eds.), *The Social, Political and Historical Contours of Deportation*, Immigrants and Minorities, Politics and Policy, DOI: 10.1007/978-1-4614-5864-7_1,

This work broadens the study of deportation in two major ways. First, a number of the contributors here pay attention to deportation's role as a membership-defining act whose subjects are often citizens rather than non-citizens. Over and above reinforcing immigration controls or ridding the state of troublesome, expensive or unwanted foreigners, deportation works for governing elites to reinforce the value and significance of national citizenship. It does so primarily by highlighting one of the few rights that distinguishes citizens from non-citizens—the (unconditional) right to residence in the state—and reminding citizens of the existence of shared societal values. By publicly defining some people as unfit for citizenship and even for residence in the state, the shared norms of the political community are publicly affirmed. Yet if elites attempt to use deportation to draw clear boundaries between the citizens and the others, just who is a citizen—and who is fit for membership—is, as is evident in this work, changeable, sometimes difficult to identify, and contested by various social groups.

A second way in which the contributors to this work expand the scope of the study of deportation is by looking at how the practice is negotiated and implemented in society at large. Some of the chapters that follow show how the recent turn to deportation across liberal states has impacted upon a diverse range of actors and institutions including the EU parliament, civil society, the courts, even the operators of call centres and those upon whom deportation has been successfully effected. The expanded account of who and what is touched by deportation offered in this work makes it evident that not only is deportation often debated and contested across different levels of society but the way non-citizens are treated often acts back upon the state's dealings with citizens themselves, unsettling social relations.

The chapters that follow track deportation's social and political effects through three different levels of analysis. The first set of chapters is *historical*. Recent scholarly writing on deportation has concentrated on the contemporary context, particularly in Western states. This focus is understandable given deportation's powerful current relevance. Yet, deportation did not, of course, begin in the 1990s. It is a practice with a history, indeed many histories. It has been an important part of the immigration control armoury of states ever since the modern era of migration restrictions commenced from the late 1880s, an event which itself coincided with the increasing consolidation and development of modern citizenship across Europe, Australasia and North America. Its use has been central in the construction of modern immigration power, not least the category of the illegal migrant him- or herself (as someone vulnerable to deportation) (Ngai 2004; Kanstroom 2007). Indeed, if we consider deportation as a subcategory of the broader expulsion practices of human communities, deportation can be conceptualised as the offspring of even such ancient practices as "banishment" (Gibney 2011). Almost every human community has used expulsion in some shape or form to define the contours and character of its membership and societal norms.

The first two chapters illustrate the ways in which deportation was the site of controversy in early twentieth century North America and in Europe. Deidre Moloney's chapter, "Muslims, Mormons and US Deportation and Exclusion Policies", focuses

on early twentieth century US immigration control, and specifically on how the issue of polygamy influenced state policies towards the entrance of (European) Mormons and Muslims. Defining deportation in broad terms to include those aspiring immigrants expelled at US sea ports, Maloney shows how polygamy served as an archetype of practices that defined the immigrant whose admission was, in her words, "incompatible with American society and its values" and potentially "threatening to social stability". As well as illustrating how the practice of deportation has been shaped by changing societal understandings of the nation as a "community of value" (Anderson et al. 2011), Moloney's chapter shows how these early concerns over the practices of Muslims on the US nation resonate in contemporary political debates.

Anne Marie Sammartino's chapter, "Deportation and the Failure of Foreigner Control in the Weimar Republic", on the other hand, discusses deportation on a different continent and foregrounds the difficulties regimes can face in using expulsion as a way of placating public concerns about foreigners. Sammartino is concerned to show why deportation never occurred on mass scale under the Weimar Republic of the 1920s, despite calls from the nationalist right and a febrile public to respond to rising numbers of Jews from Russia and other parts of Eastern Europe. She argues that the influx caught the National Interior Ministry between competing priorities including the well-being of its citizens, the country's international image, and its lack of personnel and weak financial situation. More specifically, mass deportation was problematical because Germany wished to remain part of the international community and potentially preserve its right to the future revision of its borders. This bind had important effects both for the German state, whose legitimacy was undermined by its appearance of impotence in the face of an important social problem, and for German Jews, to whom the animosity originally focussed on new immigrants was soon to spread.

The second section of this work elaborates on deportation's *institutional* dimension. In political science, institutions are generally defined as the practices, norms and values, whether codified or informal, those reflect the preferences and power of the units constituting them as well as shaping those preferences and that power (Keohane 1988). When it comes to migration, these units involve a multitude of actors both within nation states and beyond, including civil society organisations such as citizen movements. Deportation often reveals the contentious normative boundaries lying between citizens and non-citizens and within different groups of non-citizens. It thus invites reflection on the contours of membership where established state practices clash with changing norms. The three chapters in this section each unpack the multiple policy levels and the ways in which deportation both reinforces and transcends the confines of modern polity. Analysis of European decision making, the legal and administrative rules of the nation state, and the bottom-up dynamics of policy-contestation reveal deportation as contested site of power and notions of belonging.

An insight into deportation's effects on European institutions is provided by Ariadna Ripoll Servant in her chapter "The European Parliament and the 'Returns' directive: The end of radical contestation: the start of consensual constraints on

the EU Returns directive". This directive, approved in 2008, sought to harmonise the conditions determining the voluntary or compulsory return of third-country nationals (TCNs) staying unlawfully on the territory of EU member states. Servant's detailed analysis of decision-making processes uses deportation to show how norms and practices regulating the interaction between the European Parliament (EP), the Council, and the European Commission have shifted since the introduction of co-decision procedure in 1992, which gave an equal veto power to the EP. Servant argues that co-decision procedures have exacerbated a pre-existing bias towards security considerations at the expense of civil liberties in the realm of migration decision making. Despite their democratic appeal, the new consensual mechanisms have actually reduced the democratic standing of the EU. The Returns directive is thus indicative of the way that policies pre-empting the entry of migrants and promoting the expulsion of irregularly staying third-country nationals have gained ground across Europe.

In "Deportable and Not So Deportable: Formal and Informal Functions of Administrative Immigration Detention", Arjen Leerkes and Dennis Broeders examine informal institutions and their functions in terms of punishment. Using the Netherlands as a case study, they examine administrative detention (i.e. a mode of incarceration that is not formally a punishment, and does not require a conviction for a crime, and subject to administrative rather than criminal law.). To what extent, the authors ask, does the formal policy framework for administrative immigration detention constitute a sufficient explanation for actual detention practices? In the case of the Netherlands, immigration detention is intended to reinforce existing migration rules and procedures, including expulsion. It serves, the authors argue, to prevent social unrest against unwanted migration, deter irregular residence and, more broadly, demonstrate the control of the state over its borders. The susceptibility of irregular migrants to expulsion further strengthens the symbolic power of administrative detention, acting as a spectacle to compensate for the inability of states to enforce deportation powers. Consequently, detention serves as another way to punish those who are not formally admitted, but who are also difficult to expel.

In "Studying Migration Governance from the Bottom-Up" Gravelle, Ellermann and Dauvergne examine the extent to which institutional contexts give rise to distinct patterns of policy and contestation in the realm of deportation. Challenging mainstream accounts centred on nation states, they focus on multiple grassroots and local actors, including subnational governments and non-governmental and civil society organisations, as well as the courts. The authors suggest that grassroots responses to migration management (including deportation) are marked by *divergence*, rather than convergence, and that this divergence correlates with institutional variation across polities. The authors develop a framework for the study of subnational and local immigration governance built inductively and giving special attention to a comparative study of news media drawn from the United States, Canada, Australia, South Africa, the United Kingdom, France, Ireland, and Switzerland. Overall, the data presented shows that civil society and courts dominate public discussion of deportation and suggests that the role of subnational governmental actors in the politics of deportation is much less significant than in the area of immigration

as a whole. The authors hypothesise that this difference can be attributed to jurisdictional factors. Unlike most immigration-related areas, deportation is within the jurisdiction of the national immigration state. Unpacking the complexity of the migration policy space, the authors propose a theoretical framework to systematically study bottom-up institutional dynamics in the area of deportation.

The final group of chapters highlights the nature of deportation *experiences*. As one of the most visceral expressions of state power on an individual body, deportation manifests the state's monopoly of the legitimate use of force and of the means of movement (Torpey 2000). Those subject to deportation power are typically characterised as either villains or criminals who are a threat to the state and its citizens, or conversely as victims of state sponsored violence. This kind of binary also shapes the presentation of other actors in the deportation process. Those opposing deportation may be presented as gullible do-gooders, or as noble activists, those enforcing it can be seen as frontline protectors of the law or henchmen of the state. The last three chapters demonstrate that this picture of goodies and baddies, victims and villains may be engaging, but it is deeply misleading.

As de Genova and others (de Genova and Peutz 2010) have explored, the consequences of deportation extend far beyond the person who is deported to affect those who know the deportee, but also to create a sense of deportability for those whose immigration status is irregular. The enhancement of anxiety and insecurity can destabilise and undo efforts to build lives and communities as is demonstrated in Semprebon's chapter, "Between routine police checks and 'residual practices of expulsion power': the impacts of the Anti-terrorism law on phone centres and the resistance of owners. An Italian ethnography in the 'emergency season'". She describes the impact of Italian Anti-Terror Laws on phone centre businesses and their clients. These required that all customers be subject to identity checks, and resulted in regular police raids of particular establishments. Migrants, anxious about being discovered, began to avoid phone centres, which had served as meeting spaces, even de facto community centres where people could get information and support in their efforts to attain legal status. Before the crackdown, these migrants were not living lives of total clandestinity and their status was often known to the phone centre owners. Anti-terror legislation seems to have disrupted the equilibrium of transgression that enabled migrants to have some social contact, which could facilitate their legalisation but also was good business for phone centre owners. Moreover, the disruption did not only affect undocumented migrants. Citizens and tourists were also caught up in identity checks, creating further problems for phone businesses. Phone centres are mainly run by people of migrant origin and their response was driven partly by sympathy with migrants, but also from commercial concerns, and from the sense that they were being unfairly targeted. Their responses comprised organised and formal engagements with authorities, and more ad hoc arrangements that enabled undocumented migrants to continue to use their services without being identified. Some of these deliberate evasions were picked up by the police, but dismissed as poor (immigrant) business practices rather than recognised for what they were. The heightened policing of migrants through the implementation of anti-terror legislation affected citizens as well as

migrants, but also seems to have reminded settled migrants of their non-citizen status, partly because of the type of policing it encouraged.

Nicolas Fischer's chapter "Negotiating Deportations. An Ethnography of the Legal Challenge of Deportation Orders in a French Immigration Detention Centre" also focusses on the ways that those not subject to deportation manage its effects. He has conducted ethnographic work in detention centres in France, where one might expect the boundaries of citizen and non-citizen to be at their sharpest: deportees are the detained, citizens (or at a minimum the not deportable) are those employed to detain them and to provide associated services. He explores the work of Cimade, an organisation of independent lawyers working in detention centres who critically assess deportation orders. Like many of Semprebon's phone centre owners, these lawyers would position themselves on the side of the migrants, and they are directly concerned to, where possible, challenge their deportation. The difficulty lies with 'where possible'. To be a citizen, particularly if one is a lawyer, is to be subject to the law. As one lawyer confronted with a frustrated client put it: 'you have to understand that there is the law… I have to do something that is compatible with it if I want to help…'. These constraints mean that legal efforts to re-draw borders to include some of those who would otherwise be excluded become part of the endless making and remaking of state borders. 'Marriage to a French citizen' is one important ground of legal challenge, a recognition of the direct impact that deportation can have on French citizens in intimate relations with non-citizens. Successful contestations mean that the boundaries of citizenship are enlarged as a consequence of lawyers' efforts, and their advice also enables some non-citizens to actively engage with immigration laws and practice, meaning they can return even if they are deported. However, this serves to legitimate the borders more generally as they are revealed to be responsive to particular situations and claims.

Fischer's piece includes a reference to advice given to a migrant about the possibilities for return post-deportation, and this is dealt with in more detail in Lecladet's chapter "From migrant destitution to self-organisation into transitory national communities: the revival of citizenship in post-deportation experience in Mali". Those who are deported are often imagined as no longer existing, their case is over and their ultimate fate is of little interest. Her work examines political engagement post deportation and indicates the importance of recognising that deportees are not simply victims. It is a nuanced exploration of 'ghettoes' in a village in Northern Mali where people from a range of African countries who have been deported from Algeria congregate. Like migrants who organise in Europe, they too organise around their state of citizenship, but they go further and mimic—or satirise—state structures, in some cases complete with national anthems with smutty words. Their citizenship, which has been used to enable their deportation, is now used as a point of commonality and shared experience. These collective organisations, organised along principles of citizenship, facilitate survival (often in harsh conditions), and individual attempts to return to Europe. These most definitely are not passive victims, but people who are determined to pursue their goals in the face of extraordinary challenges. However, neither should they be seen as noble heroes. The ghettoes are places of masculine power, and in this, and

potentially other ways, they reproduce some of the exclusion and violence that has been perpetrated against their inhabitants.

The chapters in this edited volume illustrate the diversity of deportation and serve to enrich the study of deportation as an historical, political and social practice (Walters 2002). They analyse the multiple forms deportation has taken over time and across different countries, the institutional mechanisms it came to be associated with and the experiences of individual migrants and those who are connected to them. The study of deportation exposes the tensions between rights and identity, citizens versus non-citizens and the limits of state capacity both to define the essence of citizenship and to enforce physical borders. If expulsion has long played a central historical, social and political role in defining the boundaries of state membership, that role is as influential as ever today.

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Chapter 2
Muslims, Mormons and U.S. Deportation and Exclusion Policies: The 1910 Polygamy Controversy and the Shaping of Contemporary Attitudes

Deirdre M. Moloney

Abstract Since 9/11, Muslims and Arab-Americans living in the United States have faced intense scrutiny and sometimes been the targets of physical violence. They have been arrested, detained, and sometimes deported without the protections typically afforded to those suspected of criminal behavior. A controversy over polygamy in 1910 illustrates the historical and current limits of religious toleration of immigrants and others outside the mainstream Judeo-Christian tradition, including Muslims and Mormons, and that prejudice led to efforts to exclude, expel, or deport them from the United States. Both religions were therefore deemed un-American, tied to Orientalist rhetoric and imagery, and its immigrant adherents subject to exclusion or deportation by U.S. officials. Such fears about Muslims and Mormons have continued well into the twentieth century, have extended beyond immigration and related policy debates, and have been salient in both the 2008 and 2012 U.S. Presidential elections.

Since 9/11, Muslims and Arab–Americans living in the United States have faced intense scrutiny and sometimes been the targets of physical violence. They have been arrested, detained, and sometimes deported without the protections typically afforded to those suspected of criminal behavior. In the weeks following 9/11, the federal government requested that all Arab and Middle Eastern immigrant men voluntarily register with the Immigration and Naturalization Service. As a result of their cooperation, 13,000, or 16 % of those who complied, later faced deportation, even though they had no ties to terrorist organizations. Of the 82,000 men who registered with the federal government and many more who were scrutinized at

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B. Anderson et al. (eds.), *The Social, Political and Historical Contours of Deportation*, Immigrants and Minorities, Politics and Policy, DOI: 10.1007/978-1-4614-5864-7_2,

airports or border points since 9/11, very few have been accused of having links to terrorist organizations. In fact, many of those facing deportation after cooperating with federal government had visa violations that arose from governmental delays in processing their applications or simply from a failure to submit a timely change of address form to the INS. Once the number of Middle Eastern and Arab immigrants deported exceeded 1,000, the federal government refused to make public further information on how many Arab and Middle Eastern immigrants have been detained or deported.[1]

This essay argues that a controversy over polygamy in 1910 illustrates the historical and current limits of religious toleration of immigrants and others outside the mainstream Judeo–Christian tradition, including Muslims and Mormons, and that prejudice led to efforts to exclude, expel, or deport them from the United States. Although they belonged to a religion that was indigenous to the United States, members of the Church of Latter-Day Saints, or Mormons, also aroused suspicion because of their early practice of polygamy. Early on in the era of federal immigration regulation, some Mormons who lived outside the U.S. faced exclusion when they sought to migrate. Both religions were therefore deemed un-American, tied to Orientalist rhetoric and imagery, and its immigrant adherents subject to exclusion or deportation by U.S. officials. As I will discuss below such fears about Muslims and Mormons have continued well into the twentieth century, have extended beyond immigration and related policy debates, and have been salient in both the 2008 and 2012 U.S. Presidential elections.

In the United States, deportation is the state-mandated process by which noncitizen immigrants are expelled from a nation and returned to their countries of origin after residing in the state, on the basis of the administrative determination that they have violated immigration policy or committed a crime. In 1892, just 2,800 people faced deportation from the United States. But those statistics mask an array of closely linked administrative processes of expelling immigrants. More common in the nineteenth century was exclusion, the process by which immigration officials determine that immigrants should not be formally admitted to the United States upon arrival at the border because they are perceived as failing to meet the standards of admission set forth by immigration laws and policies. These immigrants were refused entry upon arrival or shortly thereafter. Until the mechanisms to expel those residing in the United States were in force, exclusion rates exceeded those of deportation.

The distinction between deportation and exclusion is not always clear in law and in implementation. Exclusion has not been a wholly separate process from deportation and makes the fine distinction among those allowed to enter the country and those turned away at the border or port of entry. At times, a clear

[1] *New York Times*, June 7, 2003.

distinction is made between those deported after being admitted into U.S. territory and those immigrants who were never permitted entry.[2]

Over time, the mechanism for exclusion and deportation expanded from an ad hoc, piecemeal process at the state level, rooted in European poor laws, to a national border-focused approach, to a sustained effort to regulate, and police the activities of noncitizens sometimes for decades after their arrival.

Deportation requires significant resources, especially personnel, to monitor immigrants, review documentation, detain and patrol, and coordinate with federal and local agencies as well as hospitals and charities. These resources were not always available to the immigration agency. The systemization of visa, passport, and communication channels remained rudimentary before the 1920s, a decade when the U.S. Department of State established a visa system in the ports of embarkation and established professional consular officers.[3]

Religion's role in shaping definitions of immigrants' admissibility or citizenship suggests a great deal about American belief systems in the early twentieth century. When religious beliefs and attendant cultural practices are closely regulated at the borders, it has major effects on the religious and racial composition of a nation, as well as profound ideological and political implications, even while religious freedom is espoused as a national value.

The federal government's early immigration policy, which included specific provisions for exclusion and deportation, clearly outlined a system of racial discrimination. A significant body of literature exists on how this system emerged. But the specific ways in which deportation and related immigration policies affected the ability of non-Christian groups (and some non-mainstream Christian groups) to migrate to the U.S. has not been explored fully.[4] But analyzing how immigrants bringing new religious beliefs and practices across the borders at a

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[2] Sarah Barringer Gordon, "The Liberty of Self-Degradation: Polygamy, Woman Suffrage, and Consent," in *Journal of American History* vol. 83, no. 3 (December 1996): 815–847. Quotes from 835 and 829. See also: Bruce Burgett, "On the Mormon Question: Race, Sex, and Polygamy in the 1850's and 1890's," *American Quarterly* vol. 57. No. 1 (2005) 75–102. On tensions between suffragists, temperance advocates, and immigrants, see for example my book, *American Catholic Lay Groups and Transatlantic Social Reform in the Progressive Era* (Chapel Hill: University of North Carolina Press, 2002).

[3] For more on this issue, see Kathleen Flake, *The Politics of American Religious Identity: The Seating of Senator Reed Smoot* (Chapel Hill: University of North Carolina Press, 2004).

[4] Over the past decade, several scholars have addressed the Chinese Exclusion Act directly or indirectly. They include: Erika Lee, *At America's Gates: Chinese Immigration During the Exclusion Era, 1882–1943* (University of North Carolina Press, 2003); Andrew Gyory, *Closing the Gate: Race, Politics, and the Chinese Exclusion Act* (Chapel Hill: University of North Carolina Press, 1998); George Peffer, *If They Don't Bring Their Women Here: Chinese Female Immigration Before Exclusion* (Urbana: University of Illinois Press, 1999); Adam McKeown, *Chinese Migrant Networks and Cultural Change: Peru, Chicago, Hawaii, 1900–1936* (Chicago: University of Chicago Press, 2001), and Lucy Salyer, *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill: University of North Carolina, 1995). On the Gentleman's Agreement, see: Eiichiro Azuma, *Between Two Empires: Race, History, and Transnationalism in Japanese America* (New York: Oxford University Press, 2005).

time when the federal system of immigration control was emerging, as well as the responses to those beliefs, helps us to understand about how those religions are viewed in the United States today.

This essay delineates the ways that certain immigrants faced barriers in their effort to settle in the U.S. and how they were perceived as adhering to belief systems deemed incompatible with American values. In this essay, I analyze the Bureau of Immigration's exclusion and deportation decisions about two groups: briefly European Mormon immigrants, and Turkish Muslims. Although the religiously based cases are small relative to those immigrants facing exclusion or deportation based on LPC or medical grounds, they suggest that religious bias was a more significant factor in early federal immigration policies than previously recognized.

The beliefs of many Asian, Eurasian, and non-Christian groups were viewed through the lens of Orientalism, a concept articulated by Edward Said. Said argues that especially following Napoleon's incursion into Egypt in 1798, Europeans (and subsequently, Americans) promoted a view of the Middle East and Asia that justified European expansionism, colonial rule, and war.[5] "These ideas," wrote Said, "explained the behavior of Orientals, they supplied Orientals with a mentality, a genealogy, an atmosphere; most importantly, they allowed Europeans to deal with and even to see Orientals as a phenomenon possessing regular characteristics".[6] Said argues that while Europeans included India in the framework of Orientalism, it posed less of a threat to European rule than it did to the Islamic world.[7] Immigration and local government officials, as well as the press, used Orientalist-inflected images and rhetoric to defend exclusion of those who espoused unfamiliar religious tenets. This Orientalism has been much in evidence in the rhetorical and media "othering" of President Barack Obama and in other recent controversies relating to the role of Islam, and to some extent Mormonism, in American society.

The United States' growing economic, military, and related interests in Turkey, Cuba, and Asia and elsewhere played a role in determining who from these regions would be allowed into the country and who would be considered a potential citizen. Historian Matthew Jacobson has discussed how racial perceptions and stereotypes served as justification for the U.S. expansionist project and conversely, the ways that U.S. imperialism influenced ideologies about race and ethnicity in the United States.[8] Immigration enforcement policy sometimes clashed with larger American foreign policy goals, while in other contexts it reinforced those goals. Many federal government officials did not acknowledge the inevitable flow of people, ideas, and resources that arose from global expansionism also extended to

[5] Edward Said, Orientalism (New York: Vintage Books, 2003, reprint of the original 1978 edition with new preface and afterward).

[6] Said, 42.

[7] Said, 75.

[8] Matthew F. Jacobson, *Barbarian Virtues: The United States Encounters Foreign Peoples at Home and Abroad, 1876–1917*. New York: Hill and Wang, 2000.

religious life. As the U.S. expanded its global reach by governing new territories and expanding its core markets and trade relations, people from a broader range of countries developed greater familiarity with American culture and products. Leaders and followers of those religions who arrived at the U.S. or returned from abroad, encountered federal immigration laws that had been undergoing significant expansion since the last decades of the nineteenth century. Adherents of those traditions and beliefs came into contact with immigration and other officials, who sometimes lacked the basic context in which to understand non-Christian traditions, their institutions, beliefs and practices. Nor did they always possess the vocabulary necessary to describe those systems.

Mormonism, Polygamy, and Immigration Regulation

As early as 1883, U.S. government officials had discussed polygamy as the basis on which immigrants might be classified as undesirable, laying the foundation for efforts to exclude some immigrants from the United States. The Church of the Latter-Day Saints was a relatively new religious organization that first originated in the United States in 1820s. Joseph Smith and his followers trekked across the continent, from New York, to Nauvoo, Illinois and ultimately settled in Utah Territory. By the end of the nineteenth century Mormonism became global, taking hold in Switzerland, Great Britain, and elsewhere in Europe. Some European adherents sought to settle in the United States, where there was a significant Mormon population in Utah. Yet, this aspect of globalization soon came into conflict with federal immigration policy, which imposed strict definitions of who qualified for admission. Therefore, even religions originating in the United States could be cast as un-American.

In 1883, a group of Mormon "proselytizers" arriving from Switzerland were the subject of official correspondence among government officials. Although much of the discussion between those at the U.S. Consul in Basel and those regulating immigration at the New York Custom House and at Castle Garden centered on whether they should be excluded based on the fact that they were "paupers". But the fact that the members of this group were Mormons, "proselytizers" seeking converts, and that their religious beliefs condoned polygamy were also cited as causes for concern. The Consul's Office further characterized this party of about 100 Mormons as among "the most ignorant and degraded classes of the Swiss profile" and are "being imported to the United States to strengthen the ranks of polygamists".[9] Ultimately the Commissioner of Immigration determined that the Swiss Mormon immigrants "were not paupers and thus could not be returned to Europe".[10]

[9] Letter to John Davis from the U.S Consul at Basel, Switzerland, dated May 9, 1883. File 715 Box 4, Entry 7 RG 85. NARA.

[10] Letter from W. Robertson to Charles Folger dated June 6 1883, and Letter from John Davis to Charles Folger May 22, 1883. Both in file 715, Box 4, Entry 7 RG 85. NARA.

When this group of Mormons sought to enter the United States, there yet existed no provision for excluding immigrants who were members of religious groups that allowed polygamy. But it was clearly a significant concern among some government officials that allowing a substantial number of Mormons to immigrate might strengthen the indigenous Mormon community in Utah and other parts of the United States.

Debates over polygamy revealed larger concerns about sexuality, marriage and religious traditions outside mainstream Christianity—whether those traditions were ancient, like Hinduism or Islam, or new, as with Mormon beliefs. The movement against polygamy reached its height in the 1880s, just as a comprehensive federal system for regulating immigration emerged. Widespread anti-polygamy activism emerged as a response to Utah territory's quest for statehood, but its roots were deeper. Polygamy was linked both to slavery and despotic rule, and to ancient Muslim traditions that were viewed by many as antithetical to democratic, civilized, and American values and traditions. Senator Justin S. Morrill, in a speech entitled "Polygamy and its License," defined polygamy as "Mohammedan barbarism revolting to the civilized world". As Said notes, Europeans had long viewed Mohammed as "the disseminator of a false Revelation, he became as well the epitome of lechery, debauchery, sodomy, and a whole battery of assorted treacheries, all of which derived 'logically' from his doctrinal postures".[11] Because polygamy was an acceptable doctrine both among Muslims and members of the Church of the Latter-Day Saints, they were linked together as unacceptable religions in the eyes of some Americans.

Anti-polygamy reformers condemned Mormon polygamists in the 1870s. In her petition to Congress for woman's suffrage in Utah, Angela French Newman criticized Mormons for exploiting immigrant women who were "wholly ignorant of our language or laws, or the significance of the franchise, with the odor of the emigrant ship still upon their clothing". Although European, such wives were "as far removed from our idea of womanhood as the earth is removed from the sun". Such fear of polygamy gave rise to the inclusion of polygamists as one of the excludable classes of immigrants in the 1891 immigration law. That tension between suffragists and immigrants was not new: many nineteenth century Protestant and elite women reformers active on suffrage, temperance and other social issues employed anti-immigrant rhetoric to bolster their positions, and this continued into the twentieth century.[12]

While the Church of the Latter-Day Saints was founded in the United States, because it allowed polygamy, it became widely categorized as a foreign and barbarian religion. In fact, very few immigrants practised or accepted polygamy. Anti-polygamy activism was not limited to Mormons, however. Rather, it was translated into anti-Muslim and anti-immigrant sentiment as it became enshrined in immigration law.

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[11] Said, 62.

[12] See footnote 2.

Turkey, Muslim Immigrants, and Anti-Polygamy Regulation

As early as 1910, Muslim immigrants arriving in the United States faced exclusion from the country's ports as a result of their religious beliefs. Islam was considered incompatible with American values, based in significant part on immigration officials' perceptions of Muslims as polygamists.[13] That year, 43 Muslims from the Ottoman Empire, soon to become the Turkish Republic, were barred from the United States over a 6-month period, based on their belief in a religion that allowed polygamy or on grounds that they were Likely to Become a Public Charge. In its enforcement of that policy, the Bureau had determined that simply adhering to the tenets of Islam, rather than actually practising polygamy, served as sufficient grounds for deportation from the United States. The Imperial Ottoman government, communicating through its embassy in Washington, registered a complaint with the U.S. Department of State about its policy toward Turkish immigrants. The American Embassy in Turkey and, in turn, the U.S. Department of State, advocated for a change in enforcement by Bureau of Immigration officials. The ban against polygamy was articulated in section two of the Immigration Act of 1907, having been originally addressed in the provisions of the 1891 law.

The law was a culmination of anti-polygamy activism in the nineteenth century, which was widely discussed in debates over Utah statehood.[14] That addition to the class of those who were inadmissable at the borders occurred in reaction to two episodes. The first was a controversy over the 1903 election of Senator Reed Smoot of Utah, a Mormon leader, and his remarks about the practice of polygamy, which had been banned in Utah.[15] A resulting bill proposed by Congressman Charles Snodgrass of Tennessee in 1900 sought to exclude polygamists from eligibility as Senators and Congressman. The second was President Roosevelt's 1906 State of the Union Address. That year he declared that it was the federal government's role, not the states,' to safeguard "the home life of the average citizen," by providing "Congress the power at once to deal radically and efficiently with polygamy…."[16]

From 1910 to 1914, the Department of State, under William Jennings Bryan, urged the Bureau of Immigration to clarify its position on polygamy. But the focus of polygamy had shifted from Mormons to Muslims. In 1910 George Horton, the

[13] "List of Debarred Aliens" dated August 12, 1910. Eight of the 43 Muslim individuals (all males) on this list were deported to Turkey on charges of polygamy. The remainder were deported on Likely to Become a Public Charge (LPC) grounds. File: 52737/499; The Turkish ambassador (representing the Imperial Ottoman Embassy) issued a formal complaint about deportations of Muslim immigrants and questioned whether Turkish immigrants were being treated unfairly by immigration officials. Letter to [William Jennings Bryan], Secretary of State from J.B. Densmore, May 9, 1914. File: 52737/499. Both files in RG 85. NARA.

[14] Burgett.

[15] See footnote 3.

[16] House of Representatives. Report No. 848. 56th Congress, 1st Session. 1900. Theodore Roosevelt, "State of the Union Address," 1906.

U.S. ambassador to the Ottoman Empire, had initiated an investigation into the Bureau's practice in this matter, a process that would endure for 4 years. The United States had extended most favored nation status to the Ottoman Empire, which was in the process of modernizing its infrastructure and offered substantial investment opportunities for U.S. multinational corporations. This controversy occurred in the decade and a half leading up to the transition from the Ottoman Empire, which had been established in 1300 A.D., to the creation of a modern republic under Mustafa Kemal Atatürk following World War I.[17]

The United States had significant economic interests in Turkey, so there was a strong desire on the part of the Department of State to protect that diplomatic relationship and to address any matters that might harm existing negotiations. Horton emphasized the importance of that economic relationship to immigration officials. He cited a few examples: a pending proposal by the Turkish government to increase customs duties by 4 %; the "desire of the Turkish Government to secure the abolishment of the Capitulations by virtue of which this government and other foreign powers now exercise extraterritorial jurisdiction in Turkey"; a $150 million railway contract to an American company; potential shipbuilding contracts for Turkish naval warships; and a contract to develop a telephone system in Constantinople by a company affiliated with Western Electric. Turkey also had the potential to provide U.S. corporations with access to oil through pipelines from Central Asian and the Middle East. Horton urged a quick resolution to the polygamy contretemps in order to avoid jeopardizing these interests, but the resolution was a prolonged one.

The controversy over the exclusion of Turkish Muslims first arose in the Turkish press. On February 22, 1910, *Progrès de Salonique* reported that in the previous few months, Turkish Muslims were being excluded from the United States upon arrival, based on the provisions of article two of the 1907 immigration law. "The measure which [the U.S. government] had just taken against them is consequently unjust and arbitrary and is prejudicial to the rights, honor and dignity of the Moslems and Turks". The article criticized the U.S. government for detaining the immigrants for a week and estimated that about 200 Muslims had been denied admission based on this provision, a figure that was later contested by the Bureau. The article argued that the practice of polygamy among Turkish Muslims was rare and growing increasingly less common, and was largely confined to high government and religious officials. Moreover, the article noted that this change in enforcement of policy was not a result of a decision by Congress, but as a result of the "chief of emigration in the U.S. who applied it without consulting any one". The author criticized the fact that Turkish immigrants had been making an arduous 15-day journey only to be turned back at the U.S. port of entry for reasons related to their religious beliefs.[18]

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[17] Caroline Finkel, *Osman's Dream: The Story of the Ottoman Empire, 1300–1923*. New York: Basic Books, 2005.

[18] "The United States and the Moslems," *Progrès de Salonique,* February 22, 1910. File: 52737/499. RG 85. Entry 9. NARA.

Such negative press in Turkey about U.S. immigration enforcement undoubtedly discouraged some Muslims there from attempting the trip.[19] Moreover, the vast majority of immigrants from Turkey were male, who arrived without their families, and most intended to work in the United States only temporarily, so their marital status was of theoretical, rather than of practical, importance at that point.

In recent years, much has been written about the influential role of the Muslim and Arab press in shaping global public opinion about American international policies. This controversy is an early example of the importance of the press in creating a perception of Western bias against the Muslim world. It also highlights the Department of State's public diplomacy role and its efforts to soften some of the hard-line policy positions advanced by other branches of the federal government.

In order to smooth diplomatic relations between the U.S. and predominantly Muslim countries, State Department officials addressed the immigration matter with Bureau of Labor officials. In 1913, George Horton wrote, "The Embassy requests that, in view of the marked difference between the creed of polygamy, which is admitted by the Moslem faith, and the practice of polygamy, this Department uses its good offices to the end that Ottoman emigrants be no longer subjected, upon their arrival in the United States, to measures excluding them from American territory on account of a purely theoretical consideration".[20] Moreover, there was an additional question as to whether or not the Turkish immigrants had been duly informed of their right to appeal the decision prior to being returned to Turkey. Concerns arising from this immigration controversy extended to State Department officials stationed at the American Consul in Cairo, though it is unclear to what extent, if at all, immigrants from Egypt were being excluded based on their Muslim beliefs.[21]

In response to pressure from Horton and other State department officials, the Bureau developed a scripted questionnaire for use during Board of Special Inquiry hearings that provided careful instructions about addressing the topic of polygamy. It was intended to distinguish between those who practised polygamy (or intended to practise it) and observant Muslims who did not intend to practise polygamy. The latter group would be allowed entry to the United States. After requesting that the immigrant explain his views on polygamy, the immigrant would be excluded if in the context of "his intent to sojourn or settle in the United States, if the alien believes it is right to take more than one wife". If support for, or intent to practise, polygamy while in the United States remained unclear in the immigrant's response, additional questions would be posed. The immigrant would first be asked whether he was aware that there were laws against polygamy in the United States to determine whether "it would be right for you" to have more than one

[19] *Ibid*.

[20] Letter to the Secretary of Commerce and Labor, from George Holt [?], January 3, 1913. File: 52737/499. RG 85. Entry 9. NARA.

[21] Letter to Nagel, from Huntington (Carlson? Assistant Secretary of State), April 21, 1910. File: 52737/499. RG 85. Entry 9. NARA.

wife while in the United States. Under this new policy, it remained unclear under which circumstances these questions would be posed—whether it would be limited to cases in which an immigrant was Muslim, from various countries with significant Muslim populations, or to all male immigrants arriving at U.S. immigration stations.[22]

Under this new line of inquiry, it appears that if an immigrant stated that polygamy was "right" or an acceptable practice, but had no intent to practise it, that response would serve still serve as grounds for exclusion. Further, those Turkish immigrants who relied on language interpreters or who knew only limited English would probably miss some of the nuances implicit in those questions. The questionnaire about polygamy arose in part because at least one Turkish Muslim immigrant was excluded after affirming that polygamy was acceptable practice within Islam. The transcript of Bou Haikel Darwish's testimony reveals that in response to the question "Do you believe it is right for one man to have more than one wife at the same time?" He responded, "Yes. It is legal to marry seven". The follow up question was "But do you personally believe it to be right?" Darwish responded "Yes". Based in part on his responses, Darwish was returned to Turkey.

Although Charles Nagel cited this answer as evidence that Darwish believed in polygamy, one could easily argue that he was simply affirming that, as a Muslim, this practice was deemed acceptable within his religion's belief system.[23] It remains uncertain whether the newly elaborated polygamy policy did, in fact, clearly distinguish between an immigrant's support of the basic tenets of Islam and his actual intent to maintain or enter into marriage with more than one woman while in the United States.

A similar case arose in Boston when, Ismal Mustafa, a widower, and his 3-year-old daughter, Haydish, arrived on a ship from Marseilles in 1913. He sought entry at the port of Boston with the intention of moving to the industrial city of Lowell to find employment as an iron worker, with the assistance of a half-brother who lived there. Mustafa was excluded after his first hearing. He then spoke to a lawyer and appealed the ruling. The Commissioner-General concluded that he had changed his story about polygamy in order to be admitted to the country. Initially, he stated that he believed in practice of polygamy, at least in theory. Mustafa was first asked "if it would be right" to have more than one wife while in the United States. The exchange proceeded as follows:

A. "Yes, sir; but as long as there is one child living I don't like to take another wife".

Q. If you didn't have this child, do you believe in plural marriages?

A. Yes, I would if I didn't have this child and my first wife was alive, I would have taken another wife.

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[22] "Examination of alien applicants for the purpose of determining whether a polygamist or a person who believes in the practice of polygamy". Dates May 5, 1913 and June 16, 1913. File: 52737/499. RG 85. Entry 9. NARA.

[23] Letter to the Secretary of State, from Charles Nagel, January 9, 1913. File: 52737/499. RG 85. Entry 9. NARA.

Q. As we understand it, you believe that you are at liberty, according to the Mohammedan Religion, to have four wives?

A. Yes, if I had money enough to support them.[24]

During his appeal, Mustafa stated that he did not believe in polygamy and later elaborated: "My decision is that I am not going to take another [wife] while I am alive".[25]

As a result of the continuing controversy about Turkish exclusion issues, Bureau of Immigration officials determined that the polygamy clause was just one strategy to exclude or deport Muslims. Commissioner-General Albert Caminetti noted that "Frequently, also, persons rejected on this ground [polygamy] could just as well be rejected on some other, such as likely to become a public charge or physically defective".[26] Caminetti offered a solution that would appease the Department of State by using equally effective, but non-religious, grounds on which to exclude Turkish immigrants from the borders.

By 1914, Turkish Muslims continued to be excluded from the United States based on their religious beliefs rather than on their actual practice of polygamy. Immigration officials had excluded nine Turkish immigrants at the Boston port who arrived on two vessels in January of that year and they were ordered to be returned to Turkey. Youssouf Zia, the ambassador representing the Imperial Ottoman Embassy in the United States, wrote to Secretary of State William Jennings Bryan in protest. He opened his letter by reminding him that Turkey had been granted most favored nation status and that there were explicit clauses in the treaties between the two countries that secured the right of Ottoman subjects to enter the United States as immigrants. He then protested the U.S. government's continued policy of excluding "those Ottoman subjects who profess Mohammedanism. In the absence of a discriminating clause that might justify this action of the authorities concerned and in view of the principle of freedom of conscience accepted by every State, I place sufficient reliance upon your Excellency's well known sense of justice and equity to entertain the hope that you will issue to the said authorities instructions strictly to observe existing treaties".[27]

The Bureau of Immigration defended its actions to officials at the Department of State on several counts. First, it argued that the numbers of immigrants who had been excluded and returned to Turkey was relatively small. In the year ending June 30, 1909, the Bureau of Immigration had denied admission to 24 "polygamists," only two of whom were from Turkey. The majority were from East India, with two each from England, Holland, and Syria. But by 1910, the total number of Turkish immigrants

[24] Memorandum for the Acting Secretary, Appeal of Ismal Mustafa, May 3, 1913. File 53595/110, RG 85, Entry 9. NARA.

[25] Rehearing Testimony of Ismail Mustafa, U.S. Immigration Station, Boston, May 14, 1913. File: 53595/110, RG 85, Entry 9. NARA.

[26] Letter dated May 19, 1913. Caminetti to Commissioner of Immigration, Ellis Island. File: 53595/110. RG 85, Entry 9. NARA.

[27] Letter to William Jennings Bryan, from Youssouf Zia, February 4, 1914. File :52737/499. RG. 85, Entry 9. NARA.

excluded based on grounds of polygamy had increased to 69. In defense of its policy, the Bureau pointed out that 864 Turkish immigrants had been admitted that year, so the excluded number was only a fraction of that total. Bureau officials continued to assert that the Muslims who were excluded were those who professed a belief in polygamy and that Turkish immigrants were not being singled out. Moreover, the officials stated that many of those who had been excluded on grounds of polygamy had also been excludable on additional grounds, most commonly those based on their being contract laborers or their likelihood of becoming a public charge.[28]

As this essay has detailed, the Immigration Bureau regulated the practice of new religious traditions in the U.S. by monitoring the flow of peoples who espoused those beliefs in ways that hindered the diffusion of non-mainstream, non-Christian beliefs. This religious diffusion was a direct result of American and European global economic and territorial expansionism and the ensuing cultural exchange that was its natural outgrowth. But for many, the importation of newer beliefs across the American border was perceived as a threat to American social norms. It also illustrates that federal agencies often clash over policies because their imperatives and cultural vary greatly. The State Department sought a more inclusive approach to Turkish immigrants because that region provided new economic opportunities. Immigration authorities, in contrast, focused on domestic concerns: the reaction of the American public to religious practices that seemed alien and disturbing since the debates over Utah statehood.

Among Muslims and other groups associated with polygamy, gender roles and behavior became an important issue of contention. Local officials, religious leaders, and the press highlighted the exoticism of these religions and called for the U.S. Immigration Bureau to intervene to protect existing religious and cultural norms. The impact that these religions had upon supposedly vulnerable women was another significant concern. Race had an important impact on larger public perceptions about these religious traditions, sometimes even when leaders or adherents in those communities were white. Therefore, Mormons were equated with Muslims because of their shared belief in polygamy and, by implication, exploitation of women. The enforcement of policies based on religion had long-term implications for American religious life.

Those facing bias because of widespread unfamiliarity or discomfort with their religious traditions do so in part because these religious communities have emerged as relatively recent features of American life. Although never as numerous as those excluded or deported on racial grounds, LPC, or medical grounds, such cases demonstrate how immigration authorities challenged the right of some religious adherents to practise their religion freely and to benefit from the cultural interactions that were an outgrowth of American expansionism. The charged and negative reactions to the early arrival of Muslim immigrants and others outside the Judeo–Christian tradition in the early decades of the twentieth century illustrate the level of Americans' deeply rooted concerns or suspicions about the place of those espousing unfamiliar religious beliefs and practices.

[28] Letter to William Jennings Bryan from Secretary [Charles Nagel?], April 14, 1910. RG. 85, Entry 9. NARA.

Politics, and Recent U.S. Public Opinion About Muslims and Mormons

Although the United States became a more religiously tolerant society in the decades after World War II and the immigrant population became far more diverse, national crises, such as 9/11 and more recently a major global financial crisis, created a climate that enables intolerance, both racial and religious, to flourish. This widespread fear of Muslims, and the stigma attached to their religion, soon had broader effects in the United States, such as by directly influencing the 2008 Presidential election. After Barack Obama announced his presidential candidacy, many of his opponents questioned whether he had been born in the United States, challenged the authenticity of his birth certificate issued by the state of Hawaii, and promoted rumors that he was in fact a Muslim. Although most promoting this view were conservative Republicans, even his Democratic primary challenger, Hillary Clinton, notably declined to repudiate unequivocally the "Obama is a Muslim" rumor in a televised interview. Ominous videos and brochures claiming to document Obama's Muslim beliefs, and by implication, his support for terrorists, were mailed to voters in heavily contested states in the weeks just prior to the 2008 Presidential election.[29]

The implication of this campaign was that had Obama actually been a Muslim, that fact alone would have rendered him unacceptable as a major Presidential candidate. Former Secretary of Defense and of State in the George W. Bush Administration, General Colin Powell, and an African–American, was one of the only leading political figures to challenge that essential view. In comments on the NBC network's *Meet the Press* program on October 19th, a few weeks prior to the 2008 election, Powell stated: "Well, the correct answer is, he is not a Muslim, he's a Christian. He's always been a Christian. But the really right answer is, what if he is? Is there something wrong with being a Muslim in this country? The answer's no, that's not America. Is there something wrong with some 7-year-old Muslim-American kid believing that he or she could be president? Yet, I have heard senior members of my own party drop the suggestion, 'He's a Muslim and he might

[29] On the Obama birth certificate controversy, see: the *Chicago Tribune*: http://www.chicagotribune.com/news/nationworld/chi-obama-birth-certificate1dec08,0,7258812.story Accessed on November 12, 2010. Ironically, John McCain, the 2008 Republican candidate, was born to American parents in the Panama Canal Zone, but the circumstances of his birth never became a major issue, even though the U.S. Constitution does state that one must be a "natural-born" U.S. citizen. Many argue that under 8 U.S.C 1401(c) McCain was eligible, but since there was never an official ruling on this situation, it was never fully resolved. On Hillary Clinton's CBS 60 min interview aired on March 2, 2008, see: http://blogs.abcnews.com/politicalpunch/2008/03/clinton-says-ob.html Accessed on November 12, 2010. I was one of those voters who received a professionally packaged mailing prior to the 2008 election that claimed that Barack Obama was a Muslim and insinuated that he was sympathetic to terrorists. On the origin and expansion of these rumours, see: http://dyn.politico.com/printstory.cfm?uuid=0DC14DF6-3048-5C12-0035AB25C1048717 Accessed on November 12, 2010.

be associated with terrorists'. This is not the way we should be which might have led him to understand very personally how race, combined with a recent family immigration history, could easily render someone as "other" and as un-American".

This political media campaign ultimately moved far beyond a small group of hard-line conservatives. In large part due to the 24-hour news cycle and the rise of blogs, these false claims introduced widespread confusion about his background; it successfully affected public opinion to such a degree that by August 2010 a Pew Center poll found that 18 % of Americans polled thought that Obama was a Muslim and 43 % could not identify his religious background. This was a significant change from even 2 years earlier, where a greater percentage of respondents correctly identified him as a Christian.[30] In some ways, the controversy over Obama's religion served as a proxy for race. His father's Kenyan heritage and Obama's self-identification as an African–American were no longer widely publically acceptable ways to oppose his election and to question his legitimacy as President. But his international background and identity—his Kenyan father and Indonesian stepfather—soon eclipsed his mother's Kansan family history—his maternal grandparents served in World War II—his grandfather as a soldier and his grandmother as a factory worker in the wartime production effort.

By the summer of 2010, fear about Islam's influence in the United States, and the conflation of Muslims and terrorism, had grown so intense that a proposed mosque located several blocks from the World Trade Center site in Lower Manhattan, characterized erroneously as the "Ground Zero mosque," became a major media controversy. Terry Jones, a Baptist minister from a very small Florida congregation of a few dozen members held onto the national spotlight for weeks when he threatened to burn a Koran if the New York building plans proceeded. That led General David Petraeus to intervene and to ask the minister to halt his plan because it posed a national security threat and placed U.S. troops in Iraq, Afghanistan, and elsewhere in harm's way. Secretary of State Hillary Clinton also condemned Jones' plan as "disgraceful" in a speech before the Council on Foreign Relations. The State Department briefly issued a travel warning to Americans as a result of the controversy. Again, mainstream media coverage inflamed the controversy by providing extensive coverage of Jones' plans, however localized and unpopular his actions might have been. Jones ultimately suspended his demonstration as a result of public pressure.[31]

Most recently, Republican Presidential candidate Mitt Romney's membership in the Church of the Latter-Day Saints has caused discomfort among many Republicans, beginning in the primaries, where Evangelical Protestants are particularly influential in the selection of that party's nominee. Through U.S. citizens, and not typically immigrants, Mormons also elicit feelings of discomfort or

[30] Pew Foundation. "Growing Number of Americans Say Obama is a Muslim". http://pewresearch.org/pubs/1701/poll-obama-muslim-christian-church-out-of-politics-political-leaders-religious. Accessed on November 12, 2010.

[31] On Terry Jones, *Wall Street Journal*, September 8, 2010. http://online.wsj.com/article/SB10001424052748703453804575479573649222094.html Accessed on November 12, 2010.

distrust among a significant portion of the American public. In a recent poll of Mormons by the Pew Research Center half agreed with the statement that Evangelical Christians are hostile to Mormons. More general polls of Americans in 2012 reflect significant percentages with an unfavorable opinion of Mormons (35 % of respondents) or an unfamiliarity with Mormon beliefs, with about one-third of those polled stating that Mormons were not Christian or indicating that they were unsure about the relationship between Mormonism and Christianity. Indeed, while the theological differences between most Christian denominations and Mormon beliefs are indeed significant, almost all Mormons consider themselves Christian.[32]

This essay illustrates that significant concerns over Islamic and Mormon influences in the United States emerged in the nineteenth century and analyses how those prejudices shaped immigration policy, especially exclusion and deportation. At the beginning of the twentieth century, Muslims arriving in the United States were viewed as incompatible with American society and its values and as having the potential to undermine social stability. Both these religions' tolerance for polygamy (a practice that is no longer acceptable in the Church of the Latter-Day Saints, but is practiced among some breakaway groups) was what prevented their wider acceptance in American society, deemed their religious beliefs incompatible with national values, and demonstrates the limits to religious tolerance as expressed in immigration patterns. The numbers of Muslim immigrants remained small prior to World War II, because the majority of those arriving from the Middle East were Christian, especially those from the region then known as Syria. Muslim immigrants, as well as others outside the mainstream Judeo–Christian tradition, remained a small minority of the U.S. population following the 1882 Chinese Exclusion law. The ways that religion was regulated at the borders in that early regulation era, however, had significant and long-term implications for the composition of American society and its social institutions.

Since the 1965 Hart–Cellar law, immigrants to the U.S. have been more racially and religiously diverse than earlier waves. Nevertheless, those early immigration policies shaped future demographic patterns for immigrants from Asia, the Middle East and other regions. By highlighting cases involving Mormons and Muslims, this essay demonstrates the significant role that the state exercises through its power to expel migrants by implementing deportation and exclusion policies, as well as the long-lasting effects that function can have. Moreover, immigration authorities' perceptions of religious minority groups highlight how the federal government's protection of religious freedom has been a relatively recent phenomenon. The events of the past decade and a half, including the wars in Iraq and Afghanistan, have also aptly demonstrated the significant tensions between

[32] Poll, Pew Forum on Religion, Pew Research Center, January 12, 2012. http://www.pewforum.org/Press-Room/Press-Releases/New-Poll–Pew-Forum-on-Religion—Public-Life-Surveys-Mormons-in-America.aspx and ABC News, "The Note," April 24, 2012. http://abcnews.go.com/blogs/politics/2012/04/when-should-mitt-romney-talk-about-his-mormon-faith/ Both accessed on April 24, 2102.

the U.S. State Department in its public diplomacy strategies and more domestically based agencies in the U.S. government that emerged so dramatically in the 1910 Turkish Muslim controversy. In the early twentieth century, it was Bureau of Immigration officials clashing with U.S. State Department imperatives. A century later, the Federal Bureau of Immigration and Department of Homeland Security, which had subsumed the immigration regulation function, found itself in conflict with the State Department, who sought to advance it public diplomacy strategies in the Middle East and elsewhere.

Chapter 3
Deportation and the Failure of Foreigner Control in the Weimar Republic

Annemarie Sammartino

The story of deportation in the Weimar Republic is of the "dog that didn't bark". The nationalist Right demanded the large-scale expulsion of Eastern European Jews. However, this strategy was generally not pursued except in cases of criminal behavior, and even when pursued, it was usually ineffective for a variety of reasons. The most important actors in migration policy during the early years of the Weimar Republic were the Prussian Ministry of the Interior, run by the Socialists Wolfgang Heine until 1920 and Carl Severing thereafter, and the National Ministry of the Interior, governed by a succession of ministers drawn from the SPD and the liberal DDP. These political moderates sought to balance a variety of factors, including the impact deportation would have on Germany's image abroad, its feasibility, and a humanitarian concern for the fate of East European Jews. As such, they shied away from deportation and internment, the alternative strategy encouraged by the radical Right. In this article, I situate both deportation itself and the decision not to deport within the larger context of foreigner control in early Weimar Germany. I explore both the reasons for the state's failure and reluctance to control foreigners and its consequences.

Several factors intertwined to create the refugee crisis after World War I. The creation of new states in Eastern Europe based on the principle of national self-determination unsettled millions of people who were living in the "wrong" state. The patchwork of Eastern European nationalities was a singularly inadequate canvas for the imposition of a model of national territory that imagined groups concentrated in areas with recognizable borders. Furthermore, with the collapse of the Russian Empire, millions of former subjects of the Czar fled civil war and Bolshevik control. These Russian refugees constituted a new category—the "stateless person". Finally, the Armenian genocide and its diasporic aftermath also contributed to the migratory movements across Europe in the immediate post-war years. The Weimar Republic

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B. Anderson et al. (eds.), *The Social, Political and Historical Contours of Deportation*, Immigrants and Minorities, Politics and Policy, DOI: 10.1007/978-1-4614-5864-7_3,

was primarily affected by these first two phenomena—the creation of new states in Eastern Europe and the Russian Revolution.

Germany had the largest number of refugees of any Western European state in the immediate post-war period. There were several reasons why Germany was such an attractive destination for many refugees, even those not of German descent: (1) Germany's loss during the war and the collapse of the Wilhelmine state meant that its borders were only controlled in the most perfunctory way; (2) Germany's economic woes and inflation (even if they had not yet reached the proportions of the hyperinflation of 1922–1923) meant that foreigners with either hard currency or items to sell could live relatively cheaply; (3) Germany's social democratic government was loathe to invite Allied retribution by taking drastic actions to limit or punish illegal immigrants; (4) there were already over a million Russian POWs living on German soil at the end of World War I, many of whom refused to return to Russia, and (5) and finally, simple geography: Germany was the first "western" country that the refugees reached moving westward from Russia.

Whether they were fleeing revolution or border revisions, it is exceedingly difficult to ascertain definitively the number of refugees who came to Germany during and after World War I.[2] A Memorandum commissioned by the Reichstag in 1920 and finally published in 1922 estimated the scope of immigration to Prussia from October 1919 till May 1920 as 219,310.[3] This number is extremely low and even at the time many officials did not take it seriously. As one official in the Prussian Interior Ministry wrote when asked to carry out this count, "it seems totally impossible to establish accurately a figure for the people who have immigrated without appropriate papers. It is precisely these people who avoid police control, as we have already experienced with the failure of the registration regulations".[4] In addition to Polish Germans and Russian Germans, the refugees in

[2] Looking at census figures, Gosewinkel states that the percentage of people with foreign citizenship and speaking foreign languages in 1925 was 2.1 % compared to 7.5 % in 1900. Gosewinkel, *Einbürgern und Ausschliessen*, 339. There was no census in Weimar Germany before 1925. According to these figures, the post-war German state was a much more homogeneous one than it had been prior to 1919. But leaving aside the fact that many immigrants probably tried to avoid the census altogether, this figure is misleading when used to look at the immediate post-war period, since the vast majority of refugees had moved on or been repatriated by 1925, due largely to the German hyperinflation of 1922–1923. While the limited inflation prior to that period created a situation that was relatively beneficial for foreigners who possessed hard currency and goods to sell, the breakdown of civil and economic order that took place with the hyperinflation caused many migrants to leave Germany. Furthermore, the *Ostjuden* were generally using Germany as a way station for the United States and Palestine, and their numbers decreased as well. The loss of the territories in the East, and the large number of Polish speakers who had lived there, further distorts this figure.

[3] "Reichstag Denkschrift über die Ein-und Auswanderung nach bzw. aus Deutschland in den Jahren 1910 bis 1920," 24–26. This figure included foreigners of every nationality, including Germans. The majority of immigrants was listed as originating in Poland (in particular former German areas such as Posen, East and West Prussia and Silesia) or Alsasce-Lorraine, and thus may be assumed to be of German origin. Of the Poles, 17,722 were listed as originating in "Russian Poland".

[4] Prussian Interior Ministry to the Reich Interior Ministry, March 8 1921. BA R 1501/113328, 307.

Germany were primarily former residents of the Russian Empire from a wide variety of ethnic backgrounds. The majority of these refugees arrived in Germany in 1919, as Russia plunged into fullscale civil war and the territorial revisions mandated by the Treaty of Versailles went into effect.[5] The number of *Ostjuden*, a group that figures prominently in discourse on migration, if not necessarily in the number of immigrants, is difficult to determine. The Jewish Workers Welfare Agency (*Jüdische Arbeiterfürsorgeamt*) claimed that 100,000 Jews had immigrated but as 40 % either returned to their home countries or went further, only 55,000–60,000 remained on German soil. Meanwhile, in 1921, the Prussian Interior Ministry cited a slightly higher figure of 70,000, which came to be widely accepted.[6] In any case, the highest proportion of these Jews lived in Prussia, with approximately 20,000 in Berlin. Cities outside of Prussia were the home of a significantly smaller numbers, with only 400 families of *Ostjuden* in Munich and only 800–1,000 people in Stuttgart.[7] The waves of refugees fleeing the Russian revolution and ensuing civil war arrived in 1919 and 1920. 1921 saw the onset of widespread famine in Russia and the arrival of yet more refugees in Russia. By 1922, Hans-Erich Volkmann estimates that there were as many as 600,000 residents in Germany.[8] Aftewr 1922–1923, the number of Russians in Germany began to decline precipitously due to a combination of increasing stability in the Soviet Union, and the economic problems and accompanying political turmoil in Germany during 1922–1923.[9] Yet even after this decline, the number of Russians in Germany did not dip below 150,000–200,000 during the entire Weimar period.[10] Historians and contemporary observers agree that by far the largest concentration of Russians was in Berlin, but the specific number of refugees was the subject of heated debate during the 1920s and afterwards. In 1921, an article in the *Berliner Tageblatt* claimed that there were 100,000 Russians living in Berlin.[11] This number surely grew in the coming years. Newspaper articles written in the aftermath of the assassination of Nabokov in April 1922 used a figure of

[5] Skran, *Refugees*, 34.

[6] Trude Maurer, *Ostjuden in Deutschland: 1918–1933* (Hamburg: Christians, 1986), 65.

[7] *Ibid*., 66.

[8] Hans-Erich Volkmann, *Die russische Emigration in Deutschland, 1919–1929* (Wurzburg: Holzner, 1966), 4. Claudena Skran posits a slightly different chronology. She describes a population with dramatic fluctuations during the period between 1920 and 1923. In the autumn of 1920, she says there may have been as many as 500,000 refugees in Germany, but that this number declined precipitously to a quarter of a million as many of them moved further west. During 1922, many refugees returned to Germany to take advantage of the inflation and the cheaper living costs this afforded to those with hard currency and then with the onset of hyperinflation and the ensuing instability, many of them left again for France. Skran, *Refugees*, 35. Volkmann's chronology is convincing because of the range of factors he takes into account.

[9] Volkmann, *Russische Emigration*, 10.

[10] *Ibid*., 6.

[11] *Berliner Tageblatt*, December 24, 1921.

250,000 émigrés in Berlin.[12] In June 1923, the German Embassy in Copenhagen estimated that 360,000 Russians were living in Berlin.[13] In the same year, the *Internationale Gemeinschaft zur Förderung der Heimatlosenfürsorge* also cited this figure[14] and a Catholic Charity, the *Päpstliche Hilfswerk*, estimated 300,000 Russians in the capital.[15]

The number of migrants and the speed at which these people were displaced from their homes was unmatched by any previous crisis. Up until 1914, the open borders that had predominated worldwide meant that migration was, from a legal standpoint at least, without major consequence.[16] This changed with the war. Citizenship was no longer an abstract quality; the war brought with it the reimposition of restrictions that had largely been abolished in the preceding decades. The institution of passports and visas meant that citizenship status now came to be of everyday importance for anyone who wished to cross a border. After the war, these restrictions were not relaxed. Instead, inspired primarily by the fear of Bolshevism, European states from Germany to the United Kingdom not only kept these "temporary" wartime restrictions but actually made them even more extensive.[17] Moreover, just as European governments were erecting these barriers to entry against foreigners, they were faced with a refugee crisis that was truly a European-wide phenomenon. The new states of Eastern Europe were inundated with refugees, and Western European capitals also became centers of the refugee diaspora.[18] The refugees that arrived in Germany and elsewhere during this period were in possession of a wide and confusing array of documents—baptismal records, documents certifying military service, passports issued by states that no longer existed, identity papers issued by community or charity organizations, etc.—but they were not citizens of any extant state.

The massive number of refugees inspired widespread fears about an inundation of the Reich with foreigners. Looking back from 1923 at the immediate post-war years, the national Interior Minister, Rudolf Oeser, spoke of a "flooding of the Reich's territory with foreigners". Oeser regarded this flood as part of a "massive migration of foreign elements from the East," which had begun during the war but

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[12] "So geht es nicht weiter," *Berliner Lokal Anzeiger*, March 29, 1922; "Russisches Flüchtlingsleben in Berlin," *Der Tag*, April 6, 1922.

[13] German Embassy in Copenhagen to the Auswärtiges Amt, June 19, 1923. AA R 83582, 50.

[14] Bettina Dodenhoeft, *"Laßt mich nach Rußland heim": russische Emigranten in Deutschland von 1918 bis 1945* (Frankfurt am Main: Peter Lang, 1993), 9.

[15] Volkmann, *Russische Emigration*, 4.

[16] It is important to note here that part of the reason for the relatively open borders in Europe prior to World War I is that most migrants did not intend on settling permanently in Europe, but instead America operated as an "escape-valve" that absorbed the vast majority of migrants. Marrus, *The Unwanted*, 39.

[17] *Ibid*., 92.

[18] See Chap. 8 of *The Impossible Border* for brief discussions of other nations that housed Russian refugees.

achieved "vigorous (*rege*)" proportions during 1919.[19] The German Society for Population Politics (*Deutsche Gesellschaft für Bevölkerungspolitik*) wrote to the national interior ministry about the deleterious effects this migration would have on the German population. "Since the end of the war, a great migration (*Abwanderung*) from Russia and the former Russian section of Poland to Germany has begun. From month to month, this migration is becoming culturally and economically more dangerous for the German people".[20] In February 1920, police in Frankfurt/Oder wrote a letter to the Prussian border policy headquarters admonishing them to defend the border, and providing a list of the hardships that migrants from the East were inflicting on the German people—everything from a worsening of the housing shortage and an increase in the pressure on the food supply to unscrupulous merchants to the importation of Bolshevik ideas.[21] These accusations against immigrants from Eastern Europe recycled familiar anti-Semitic stereotypes that long predated the Weimar era.

Anti-Semitic nationalists imagined Germans and immigrants engaged in a zero-sum competition for Germany's scant resources. The anti-Semitic *Deutschsoziale Partei* published a pamphlet asking Berliners, "How much longer do you want to be treated like foreigners in your own city? How much longer will you accept thousands of Galizian, Polish and Russian Jews arriving and taking your homes, your food and the clothes off your backs? Do you want to stand by until all of Berlin has become justified and you are thrown out?"[22] In the summer of 1919, several DNVP deputies in 1919 provocatively posed the following questions, "60,000 Eastern Jews… Is it right to hold the borders of the East open in a time when we do not have sufficient food for our own German population and a large emigration of Germans from the Fatherland appears unavoidable?"[23] This inquiry was typical of a growing tendency on the part of German right-wing nationalists to juxtapose German suffering and Jewish immigration and predation. The National Interior Ministry's response to this inquiry is telling. The Ministry accepted that these Jews were not desirable immigrants, insisted that border guards had not knowingly allowed Jews into the country, and defensively reiterated:

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[19] RMI to the Reichzkanzlei, January 21, 1923. BA R 43 I/594, 76.

[20] Deutsche Gesellschaft für Bevölkerungspolitik to the RMI, April 9, 1920. BA R 1501/114049, 135.

[21] Zentralpolizeistelle Osten, Frankfurt Oder to the Landesgrenzpolizei on February 5, 1920 provides one representative list. BA R 1501/114049, 13. These stories ranged from the seemingly banal to the ridiculous. One story circulated in the Right-wing press that Jewish immigrants running a factory were using cats, dogs and garbage to create aspic. Maurer, *Ostjuden*, 134.

[22] Deutschsoziale Partei poster, n.d. Landesarchiv Berlin [henceforth: LAB] Pr. Br. Rep. 30, Berlin C, Tit. 95, 21642, 151. The Deutschsoziale Partei was an anti-Semitic party founded in 1889 by the former army officer and agitator Max Liebermann von Sonnenberg.

[23] Nr. 513 Anfrage Nr. 192, July 7, 1919 from the DNVP deputies D. Mumm, Biener, Deglerk, Knollmann, Laverrenz, Oberfohren, Traub and Wallbaum. BA R 1501/118392, 48. According to Maurer, this was a common tactic of nationalist deputies to discredit the German government's ability to restrict, or they implied, even count, the numbers of Jewish immigrants. Maurer, *Ostjuden*, 233.

> The relevant national and state offices are united in believing that for the time being, as a result of Germany's internal difficulties immigration must be avoided whenever possible. The crossing of the Eastern border into Germany is regulated by specific passport regulations. In addition, the German representatives in the Eastern territories have been warned about immigration to Germany.[24]

On the one hand, the National Interior Ministry echoed the strident rhetoric of the Right in denouncing the immigration of Eastern Jews. On the other hand, beyond explaining that Jews needed passports and stating that they had warned neighboring countries about the immigration, it did not undertake many of the drastic policies that would have stemmed the tide of this immigration.[25] The Ministry was caught between competing priorities—the well-being of its citizens, Germany's image in the world, and its lack of personnel and financial weakness. In the impossible situation the Interior Ministry found itself, it is not surprising that it failed to satisfy nationalist critics. The Interior Ministry's response—to echo the rhetoric of the Right without pursuing the policies that would placate Nationalist critics—was paradigmatic for the way moderates responded to right-wing provocations throughout the early Weimar period.

Prussia was the state with the most immigrants, the state with the longest Eastern border and the most powerful state in the republic. Thus, the Prussians *de facto* set immigration and border policy for the entire Reich. The Prussian Interior Ministers, Wolfgang Heine until after the Kapp Putsch in March 1920 and Carl Severing thereafter, were the most important individuals in charge of migration. Both of them were Social Democrats, and as such, Prussia's supposed leniency made it a lighting rod for criticism from nationalists in the more conservative *Länder* and in the right-wing press. Contrary to nationalist accusations, Prussia's border police tried desperately to locate migrants and stop them from entering German territory. Prussian efforts to limit the size of the foreign population concentrated on trying to enact an effective border control, but because of both the lack of personnel and the size of the refugee population, the ability actually to enforce such control eluded the grasp of authorities.

Faced with what they believed was only the beginning of a massive invasion of Bolsheviks and Jews, a Prussian Order from January 27, 1919, less than 3 months after the cessation of hostilities, attempted to seal the border in both directions to all those who could not prove their German identity beyond doubt.[26] But this proved impossi-

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[24] Nr. 924. August 14, 1919. BA R 1501/118392, 158.

[25] *Ibid*.

[26] A report of a meeting on May 17, 1919 at the RMI about the recall of German troops from Kurland and Lithuania and the expected migration of the population there to the German Eastern border refers to this *Erlass*. BA R 1501/118392, 15. References continued to be made to this *Erlass* and the need to close the border once and for all. For example, a letter from Carl Severing, the Prussian Minister of the Interior, to the presidents of local governments, including the president of police in Berlin. Severing makes clear that he wants both a better surveillance of the border and the railways and a more tightly enforced registration regulation. GStA PK, 1 HA, Rep. 77, Tit. 1814, Nr. 3, 207–208. It is unclear exactly how an immigrant's German identity really would have been proven "beyond a doubt".

ble; 3 months later a variety of national and Prussian officials met at the Foreign Ministry and concluded, "[e]xperience shows that despite the closing of the border, foreigners crossed in droves". These officials blamed corrupt Polish and German border guards for the lack of success in sealing the borders, but with 900 officers expected to patrol Germany's 2,000 km eastern frontier, it was soon clear that control of the border would not be easily achieved.[27] Uncertainty about Germany's final borders persisted until the Versailles Treaty was signed in June of 1919. Although the principles underlying border control—namely the desire to seal the border—did not substantially change as a result of the treaty, the task of patrolling the German frontier was complicated considerably by the Polish German immigration. Officials did not know how to distinguish Germans (who deserved entry) from other migrants (who did not). One report warned that people coming from the East who claimed to be returning German citizens were most likely Jews who were lying to evade capture at the border.[28] As a frustrated official with at the Foreign Office wrote in 1922 about the failure of border control measures, "the stream [of people] from the East continues without hindrance".[29]

Despite attempts to end corruption at the border and increase the number of soldiers assigned to border patrol, Heine wrote in 1920 that "it is impossible to seal the Eastern border without any holes".[30] He and other officials called for a variety of approaches for managing the problem of illegal immigration. A meeting held at the National Interior Ministry in November 1919 ended with the suggestion that a station be erected behind the border in order to seize those people who managed to cross the border "without control".[31] Echoing this suggestion, in February 1920, a Prussian border official in Königsberg called for the erection instead of three concentric cordons at the border, each one designed to catch immigrants who managed to slip through the previous border.[32] In both of these cases, officials believed that establishing a new, more easily manageable border inside of Germany's own territorial frontiers would function more effectively than patrolling the actual border. It does not appear that either proposal, or other calls for increased surveillance of railroads, succeeded.[33] to the Landesgrenzpolizei in

[27] Auswärtiges Amt on April 10, 1919. BA R 1501/114061, 47. Regarding the number of border guards, see: Report of a meeting held at the RMI with the RMI, PMI, Reichsjustizministerium, and AA in attendance, December 22, 1919. BA R 1501/114048, 192.

[28] RWA to RMI February 8, 1920. BA R 1501/114049, 15.

[29] Summary of the entry visas granted to Russian citizens during 1922. BA R 43 I/594, 19.

[30] PMI to the Zentralpolizeistelle Osten February 13, 1920. BA R 1501/114049, 42.

[31] Report of the Results of a meeting held on November 12, 1919 at the RMI about measures to take with regard to the stronger flow of refugees from the Baltics. GStA PK, 1. HA, Rep. 77, Tit. 1146, Nr. 74, Beiheft 4, Bd. III, 152. See also the grab bag of measures—ranging from internment to registration and from border control to railway surveillance and deportations—proposed by the Prussian government in February 1920. Prussian Government's statement regarding deportation or internment of foreigners from the East, BA R 1501/114049, 120–132.

[32] Königsberg Landesgrenzpolizei Ostpreußen to the Landesgrenzpolizei Osten, Berlin, February 25, 1920. GStA PK, 1 HA, Rep. 77, Tit. 1814, Nr. 3, 29.

[33] Zentral-Polizeistelle Osten (Frankfurt/Oder) to the Landesgrenzpolizei in Berlin, February 22, 1920. GStA PK, 1 HA, Rep. 77, Tit. 1814, Nr. 3, 36b.

Berlin, February 22 1920) Instead, files of the Prussian and National Interior Ministries and border police are filled with frustrated accounts of officials who could not even manage to count the people they believed to be streaming across the border. Although the arrival of refugees would eventually abate on its own, neither Prussian nor national officials would ever find a successful means to seal their Eastern frontier.

Faced with a seemingly endless flood of refugees who passed through Germany's porous Eastern border, right-wing nationalists called for deportation, especially the mass deportation of Eastern European Jews. In a 1920 meeting of the fledgling Nazi Party, Hitler called for the immediate expulsion of all *Ostjuden*.[34] He was not alone in this call. The Berlin-based "Association of the Poorest of the Poor" warned Eastern European Jews that they would be killed if they did not leave Germany immediately, while the Bavarian People's Party demanded that "80,000 louse-ridden *Ostjuden*" be expelled or else Bavarian peasants would cease to deliver food to the cities that were largely where Jews resided. Anti-Semitic riots in Berlin's Scheuenviertel in November 1923 featured rioters screaming "Out with the Ostjuden!" as their rallying cry.[35] Despite this pressure, neither the national nor most local states pursued a policy of mass expulsion, and those deportations that were pursued did not lead to the alleviation of the immigration situation.

There was no overarching law that governed deportation during the Weimar Republic. However, there were two kinds of deportations practiced—one could be deported from the federal state (*Landesverweisung*), or from the Republic itself (*Reichsverweisung*). The second category was used relatively rarely, and only in cases of criminal conviction. Plans for a national expulsion of Polish Jews were developed in Spring 1919, but they foundered on both the fear that this would negatively affect world opinion of Germany, at the very time when delegates were deciding its fate at the Paris Peace Conference.[36] Given the massive amount of German resources that would need to be devoted and the refusal of Poland to accept deported Jews, large-scale deportations were not a practical reality.[37] Beyond these practical concerns, the national state found large-scale expulsions of East European Jews to be morally "indefensible".[38] Immigrants from Russia were equally difficult to deport. An order by the Soviet government in December 1921

[34] Eberhardt Jäckel and Axel Kuhn, *Hitlers Sämtliche Aufzeichnungen: 1905–1924* (Stuttgart: Deutsche Verlans-Anstalt, 1980), 119.

[35] David Clay Large, "'Out with the Ostjuden': The Scheunenviertel Riots in Berlin, November 1923," in Chirsthard Hoffmann, Werner Iegermann & Helmut Walser Smith, eds., *Exclusionary Violence: Antisemitic Riots in Modern German History*, (Ann Arbor: University of Michigan Press, 2002), 128.

[36] Protokoll der Sitzung über die jüdischen Ausweisungen im Auswärtigen Amt am 10 April 1919, AA R 78705, L348582–348706.

[37] Heine to Staatsministerium, February 23, 1920. AA R 70705, L348721–348232.

[38] Rainer Pommerin, "Die Ausweisung von Ostjuden aus Bayern 1923—Ein Beitrag zum Krisenjahr der Weimarer Republik," *Vierteljahrshefte für Zeitgeschichte* 34 (1986): 320.

stripped all anti-Bolshevik Russians of their Russian citizenship. Once this happened, they could no longer be sent back to Russia, and at the same time, it was also doubtful that another country would take them.[39]

While *Reichsverweisung* was relatively seldom applied, state deportations were more common, although they were not performed in a systematic way in order to achieve the goal of eliminating the Eastern European Jewish presence as right-wing nationalists hoped. As part of a Western European-wide trend of expelling Jews who had migrated during and immediately after the war, Prussia carried out individual deportations of Eastern Jews from Prussian soil. The Prussian border police also often seized illegal immigrants at the border and either interned them or sent them back to Poland. In 1920, 11,458 people were seized on the Eastern border, of whom 6,169 were immediately expelled. However, the April 1920 statistics note that only 62 of the 862 who were seized in April 1920 were Eastern European Jews, the group about whom authorities were most concerned. Moreover, there was little to keep expellees from returning to German soil at a later time.[40] In the first years of the Republic, both Heine and Severing resisted pressure to institute broader expulsions. Instead, they offered state protection *against* deportation to Jews who had not committed crimes, reasoning that the violence that potentially awaited them in Poland gave them a right to stay on Prussian soil.[41]

Deportations were carried out by the police in local communities without oversight from the national or state Interior Ministry and were often a product of local, economic interests that had little do do with national or nationalist concerns.[42] A USPD delegate complained to the Reichstag in 1920, "in no regard is the police so arbitrary as with the question of the deportation of foreigners….the individual states can deport a foreigner when any police officer decides that he appears '*burdensome*'. The idea of such a burden is such a catch-all concept that it can have it mean whatever one wants it to".[43] Since the deportations took place only from a specific locality, as one frustrated member of the Prussian border guard complained in 1920, illegal immigrants would merely "disappear in order to reappear later somewhere else or with another name".[44] In cases of expulsion, the president of the local government was supposed to inform the presidents of the other Prussian local governments

[39] "Besprechung über die vom PMI vorgelegte Denkschrift über die in Deutschland befindlichen Ostausländer, 10 Januar 1923." AA R 78705, L348516–L348517.

[40] Christiane Reinecke, "Riskante Wanderungen: Illegale Migration im britischen und deutschen Migrationsregime der 1920er Jahre," *Geschichte und Gesellschaft* 35 (2009): 89.

[41] See Sammartino, *The Impossible Border*, Chap. 8 for more on this tenuous right to asylum.

[42] Oltmer, *Migration und Politik*, 65–67. See for example the Prussian Ministry of the Interior's May 6, 1919 Richtlinien für Ausweisung, which largely exempted employed foreigners from deportation. BAL R1501/114061, 79.

[43] *Verhandlung des Reichstages*, 1. Wahlperiod 1920, 21. Sitzung, October 20, 1920, 755–756.

[44] Landesgrenzpolizei Ostpreußen in Königsberg to Landesgrenzpolizei Osten in Berlin, February 25, 1920. GStA PK, 1 HA, Rep. 77, Tit. 1814, Nr. 3, p. 29.

so as to avoid a situation where those who were expelled from one community just moved to the next.[45] However, considering the time that an expulsion procedure took and the fact that the expellee could easily change names and avoid detection, it is doubtful that this measure was actually effective. Furthermore, if the expelled foreigner went to a different federal state, he or she could avoid even this level of surveillance.

The one major exception to the general absence of a centrally coordinated policy of deporting Eastern Euroepan Jews came with the Bavarian expulsion of *Ostjuden* in Fall 1923. The Ostjuden who were deported were from 60 to 70 families of long-term residents, who largely had no or minimal criminal records. Although it is impossible to say how many Jews were deported due to the fact that many left "voluntarily," the number is, in a sense, less important than the fact that this was the one time in the Weimar Republic when Jews as a group were targeted for deportation as a group, rather than as a result of specific criminal actions.[46] The pretext for these deportations was the supposed Jewish responsibility for the inflation then devastating Germany. These Bavarian actions had one precedent—the German expulsion of Polish Jews during the 1880s. However, just as would happen in this case, Wilhelmine restrictionist campaigns foundered on fears that harsh treatment of Jewish immigrants could negatively affect Germany's image in the world.[47] Foreshadowing the Nazis in many respects, these Bavarian deportations also resulted in the seizure of Jewish property due to the supposed Jewish participation in "economically damaging behavior".[48]

But Weimar Germany was not the state that followed it, and Bavaria's actions were bitterly opposed by both the national and Prussian states, not least because they feared the Poles would respond by expelling ethnic Germans, further weakening Germany's claim for the revision of the Versailles Treaty. The comparative extremity of Munich's actions was underscored by the fact that the Prussian Minister President, Otto Braun, offered "asylum" to these Bavarian *Ostjuden*, despite his fear that doing so might further excite right-wing nationalists in his state.[49] As this offer suggests, drastic as Bavaria's policy was, even being expelled from one's federal state did not mean that foreigners would leave Germany. Instead, as the Saxons complained about earlier Bavarian deportations, foreigners

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[45] Prussian *Erlass*. November 17, 1920 GStA PK, 1 HA, Rep. 77, Tit. 1814, Nr. 4, p. 119.

[46] Pommerin, "Ausweisung von Ostjuden," 332.

[47] Jack Wertheimer, *Unwelcome Strangers: East European Jews in Imperial Germany* (New York: Oxford University Press, 1987), 36 and 40. For more on the Polish expulsions in the 1880s, see: Richard Blanke, *Prussian Poland in the German Empire (1871-1900)* (New York: Columbia University Press, 1981); Joachim Mai, *Die preussisch-deutsche Polenpolitik, 1885/87: Eine Studie zur Herausbildung des Imperialismus in Deutschland* (Berlin: Rütten & Loening, 1962); Oswald Hauser, "Polen und Dänen im Deutschen Reich," in *Reichsgründung 1870/71: Tatsachen, Kontroversen, Interpretationen*, eds. Theodor Schneider and Ernst Deuerlein (Stuttgart: Seewald, 1970), 291–318; Wehler, "Polenpolitik".

[48] Pommerin, "Ausweisung von Ostjuden," 315.

[49] *Ibid*., 326.

would just leave more restrictive states to resettle in ones that were more lenient.[50] In fact, often this was not even necessary, as unless one lived close to a border, deportation amounted to little more than receiving an order to leave, which could often be ignored.[51] In February 1924, Bavaria was finally forced to concede defeat after threats from the Foreign Minister, Gustav Stresemann of the center-right DVP that expulsions could trigger the expulsion of Germans from Poland.[52] Bavaria's action and the overwhelmingly negative response it engendered made it clear that federal states would not be able to pursue a unilateral policy of deportation of Eastern European Jews.

A good 2 years before the Bavarian debacle of 1923, it was already clear that the national state was unwilling to consider wholesale deportations of East European Jews. As a result, anti-Semites both within and outside the government argued that the establishment of internment camps was the only measure that could solve the problem of Eastern Jewish immigration.[53] Foreign Jews were interred in the Wünsdorf camp near Zossen in Brandenburg in the aftermath of the Kapp Putsch in 1920, but public protests led to their release after 1 week.[54] In February 1921, the Prussian Ministry of the Interior announced the opening of the Stargard camp in Pomerania, which was designed to hold 2,700 detainees. The camp was designed to hold only those aliens who had no residence permit or those who had received a deportation order but had not left Germany, as well as those convicted of a wide variety of minor crimes. It was not intended to solve the entire Eastern Jewish "problem," as many in and outside the government had called for, and even the Jewish press was relatively quiet about its existence.[55] While the establishment of the Stargard camp reveals that the interior ministry was responsive to concerns about Jewish immigrants from Eastern Europe, it did not go nearly as far as many on the right would have liked.

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[50] Saxon Interior Ministry internal report, April 30, 1920. SächsHStA Miniserium des Innern [henceforth: MI] 11718, 82. The fact that these concerns were not solely felt in Saxony is confirmed by the panicked correspondence of Bavaria's other neighbors with the national Interior Ministry during the 1923 deportations. Pommerin, "Ausweisung von Ostjuden," 326.

[51] Christoph Rass, "The 'Removal of Foreigners' from the German Empire (1871–1918) and its Implications for the Practice of Expulsion in the Federal Republic between 1951 and 2009," presented at *Living on the Margins* Conference at the German Historical Institute (Washington, DC), February 2012.

[52] Pommerin, "Ausweisung von Ostjuden," 333.

[53] Maurer, *Ostjuden*, 416–435. See Inquiry from September 27, 1921. *Verhandlungen*, Bd. 369, 2667. This is one particular example, but internment was suggested off and on by nationalists from 1919 onwards.

[54] Dirk Walter, *Antisemitische Kriminalität und Gewalt: Judenfeindschaft in der Weimarer Republik* (Bonn: Dietz, 1999), 70.

[55] Yfatt Weiss, "Homeland as Shelter or as Refuge? Repatriation in the Jewish Context," *Tel Aviver Jahrbuch für deutsche Geschichte* 27 (1988): 205–206. What criticism there was of the camp came from SPD, USPD and KPD delegates. Maurer, *Ostjuden*, 427–431. As a result of this criticism, in July 1921, only those Jews who were to be deported because of crimes they had committed could be interned in the Stargard camp. The camp remained in existence in this limited capacity until 1923. Maurer, *Ostjuden*, 432–433.

In addition to such punitive strategies as deportation and internment, regional and national officials considered registration as a means of control. In January 1919, Prussia made it mandatory for foreigners to register with the police within several days after their arrival in that state; throughout the year, other states followed with similar laws.[56] According to the Saxon Ministry of the Interior, the registration of foreigners and stateless persons was designed to combat the disruption of public order caused by these foreigners: "The insubordinate and disruptive activities of many foreigners that live unregistered in the Reich without any identification has become a very disturbing danger for public peace, order and security".[57] Yet, despite the threat of heavy fines and imprisonment for those foreigners who did not register with the police, registration appeared to do little to dampen the flow of foreigners onto German soil.[58] As a result, regional officials began to call for a centralized agency that would collect and manage the registration of thousands of foreigners.[59]

Heeding these calls, in October 1920, the National Commission for Civilian Internees and Refugees, an agency otherwise concerned with managing the *Heimkehrlager* for former German citizens from the Polish territories, developed plans for a national registration agency.[60] According to the Commission, this nationwide registration and tracking system "in which the foreigners are captured, registered and placed under permanent surveillance will have the effect of rendering these foreigners harmless to the interests of the [German] people".[61] The Commission, as well as the local officials who called for this system, believed that foreigners by definition compromised the "interests of the German people". In order to ease this burden, the Commission proposed an elaborate system of

[56] Prussia enacted such a registration policy January 31, 1919. Baden followed with its policy of May 22, 1919 and Bavaria on May 23, 1919. The Saxon "Meldepflicht der Ausländer und Staatenlose" followed on July 1, 1919. SächsHStA, MdI 11718, 4, 21, 15, n.p.

[57] Letter from the Saxon Interior Ministry to the Dresden Police Headquarters, March 6, 1919. SächsHStA, MI 11718, 6.

[58] The ineffectiveness of the threat of fines and imprisonment is referred to in a letter from the Saxon Interior Ministry to the Reichskommissar für Zivilgefangene und Flüchtlinge, February 22, 1921. SächsHStA, MI 11718, 102. The resentments of German–Austrians in a letter from the Saxon Interior Ministry to the Government of Aue relaxing the registration requirement for the Austrian Germans is referred to in SächsHStA, MI 11718, 31.

[59] The Bavarians had established their own central agency by April 1920. SMI, April 30, 1920. SächsHStA, MdI 11718, 82. For a sample of Bavarian pride in their agency, see the Bavarian Report from August 23, 1920 on the efficacy of foreigner control. SächsHStA, MI 11718, 85–89. For more on this attempt to improve registration practices, see the notes from a meeting held in the RMI about police measures to handle the immigration of foreigners held on February 16, 1920 (continuation of a meeting from December 22, 1919). BA R 1501/114049, 44.

[60] The agency remained in existence until October 31, 1924, when it was deemed no longer necessary because the tide of migration had subsided. For more see the records of the agency collected in BA R1501/18401.

[61] Reichskommissar für Zivilgefangene und Flüchtlinge, Denkschrift betr. Abänderung der Bestimmungen über die Meldepflicht und die Behandlung der Ausländer, October 30, 1920. SächsHStA MI 11718, 91.

registration and tracking. Each foreigner would register with the local police and receive an identity card complete with name, description, picture, and when possible, fingerprint.[62] A national database would house all of these identity cards. In consultation with one another, local authorities would assign each foreigner a tracking number, and in this way, could be followed as he or she moved through Germany.[63] The police would then be able to arrest any foreigner who sought to avoid registration and place him or her in an internment camp.[64]

While the entire justification for this registration plan rested on a belief that foreigners presented a burden on the German nation, the Commission's proposal did not actually solve this problem. The Commission was proposing that national and local officials coordinate in administering a hugely taxing system of national registration, but it only sought to count these "burdensome" foreigners, not to discipline or expel them. As it was, the Saxon Interior Ministry responded to this plan with guarded enthusiasm; while it welcomed such a system in theory, it was unsure whether its costs were "proportional to the goal" of foreigner registration.[65] Indeed, this skepticism appears to have been warranted, as neither the Commission nor any other agency actually enacted such a system of national registration.

Officials and critics swung back and forth, calling for border control, deportations and registration as alternative solutions, but none of these strategies worked particularly well at stemming the problem of illegal immigration from the East. Ironically, the largest number of refugees probably arrived during 1919, not because the border was better sealed after that point (although this may certainly have had an effect), but because that was the height of the post-war turmoil, with new borders being established and the Russian civil war at its height. An ironic consequence of the German inability to keep track of those who crossed the border was a tendency to overestimate the problem and also not to realize when the situation was abating.

Although the flow of refugees began to taper off after the European-wide convulsions of 1919, nationalist anxieties about immigration did not diminish accordingly.[66] Indeed, officials used the words Eastern Jew (*Ostjuden*) and Eastern Foreigner (*Ostausländer*) synonymously, and stereotypes about Eastern European Jews served as models for the entire migration from the East.[67] Although Jews

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[62] *Ibid*., 96–97.

[63] *Ibid*., 95–96.

[64] *Ibid*., 99.

[65] SMI to Reichskommissar für Zivilgefangene und Flüchtlinge, February 22, 1921. SächsHStA, MI 11718, 101.

[66] As I discussed earlier, it is very difficult to ascertain the actual numbers of immigrants, but evidence suggests that 1919 was the year of the highest number of refugee immigration. According to Ludger Heid, anti-Semitic agitation against the *Ostjuden* reached a fever pitch in late 1920. Ludger Heid, *Maloche–nicht Mildtätigkeit: Ostjüdische Arbeiter in Deutschland 1914–1923* (Hildesheim: Georg Olms, 1995), 158.

[67] Maurer, *Ostjuden*, 161–166. Paul Weindling, *Epidemics and Genocide in Eastern Europe, 1890–1945* (Oxford: Oxford University Press, 2000) has sought to explore this connection more systematically.

comprised only approximately 15 % of Russian immigrants, German authorities believed that the majority of the immigrants who arrived in Germany after the end of the war were Jews.[68] A description of the migration in the East and the difficulty of border controls often shaded quickly into a diatribe about the horrors of Eastern European Jewry and deployed stereotypes about Jews that long predated the current refugee crisis.

Stereotypes and anxieties about Eastern European Jewish immigration were a mainstay of German nationalist discourse in the Kaiserreich and even earlier. In one of Otto von Bismarck's first public addresses in 1847, he characterized the Russian Jews as "backwards, prone to political subversiveness and motivated to immigrate solely by the desire for financial gain in Germany".[69] These three charges—backwardness, political agitation, and profiteering—formed a remarkably stable set of stereotypes applied to Eastern European Jewry that remained salient for much of the next century increasing in virulence with the increase in Jewish immigration after 1880. Portions of this image waxed and waned according to the political circumstances inside Germany; for example, after the 1905 revolution, the supposed radicalism of the *Ostjuden* received increased scrutiny. Furthermore, the rise of racial science in the later part of the nineteenth century irrevocably changed certain aspects of this stereotype; for example, the association of Jews with backwardness led to suspicions that they also carried disease.[70] Anti-Semites in Wilhelmine Germany never managed to halt Jewish immigration; nonetheless, their incessant focus on the dangers posed by Eastern European Jews forced the few defenders of Eastern European Jewry into a defensive stance.[71] As a result of this constant pressure, no one in Germany either before or after World War I argued that the immigration of Eastern European Jews would benefit Germany and should be welcomed.

After World War I, officials from the socialist Prussian Interior Ministry and right-wing Nationalist pressure groups alike argued that there was a necessary and dangerous connection between Germany's hardships and the presence of foreigners on German soil, often using the vague term "burdensome" (*lästig*) to describe a diversity of dangers blamed on foreigners. An internal memorandum from the National Commission for Civilian Internees and Refugees in 1920 blamed

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[68] To get to this 15 % figure, I divided 70,000 (Maurer's estimate for the number of *Ostjuden* that immigrated to Germany after 1914) by 500,000 (Raeff's estimate for the number of Russians in Germany). Denkschrift from the Reichskommissar für Zivilgefangene und Flüchtlinge, October 30, 1920. BA R 43 I/594, 3. RWA to RMI from February 8, 1920 provides the completely exaggerated number of one million *Ostjuden* that had immigrated to Germany. BA R 1501/114049, 19.

[69] Jack Wertheimer, *Unwelcome Strangers*, 24.

[70] *Ibid*., 25. Regarding the connection of Jews and disease, see Weindling, *Epidemics and Genocide* for an account of German epidemiology and the associations that both scientists and politicians made regarding the susceptibility of Jews to disease and their role as carriers of epidemics to the German people. For the pre-World War I period, see pp. 3–72.

[71] Wertheimer, *Unwelcome Strangers*, 35.

"burdensome foreigners" (*lästige Ausländer*) for a range of offenses ranging from profiteering from the misery of destitute Germans, inciting revolution, and taking precious housing and food.[72] All of these accusations echo similar charges made against the *Ostjuden*, and they deserve to be analyzed a bit more closely. First of all, foreigners were accused of committing illegal acts; even Germans who were not supposed to engage in profiteering or other criminal behavior. Second, officials considered foreigners to be a source of subversive ideas and propaganda. These political activities of foreign nationals were not necessarily illegal, but they represented behaviors which many officials did not encourage for Germans either. Finally, critics of the foreign presence in Germany blamed them for taking precious jobs, housing, and food away from needy Germans. If an immigrant could refrain from profiteering or disseminating Bolshevik ideas, she could hardly be expected to abstain from consuming food. In other words, the mere presence of so many foreigners from Eastern Europe in Germany made them burdensome.

Although generally officials used the term "Ostausländer" to refer to all migrants from the East, they did occasionally draw distinctions between different groups of foreigners. Among ethnic groups, stereotypes about Jewish predation dominated the discussion of the dangers supposedly posed by immigrants. In a meeting held at the Foreign Ministry in April 1919, a representative of a Jewish aid organization complained that before the revolution Jews had been accused of spreading typhus, but now they were being accused of spreading Bolshevism.[73] In February 1920, the Prussian government issued a position paper, which argued that Germans faced threats from poor Jews, who preyed upon Germans as a result of their weakness, and rich Russians, whose threat stemmed from their economic strength.[74] Nevertheless, while the Interior Minister recognized these two potential burdens, they saw the Russian danger as an afterthought compared with the much more urgent threat posed by Jews. In this position paper, only 1 of 12 pages was explicitly devoted to the Russians, while the other eleven blamed the Jews for

[72] Denkschrift of the Reichskommissariat für Zivilgefangene und Flüchtlinge regarding Abandoning Regulation Restrictions for Foreigners, October 30, 1920. AA R 83812, 10. The term *lästige Ausländer* appears throughout discourse on foreigners in the Weimar Republic. For a few examples of the use of this term by a wide variety of officials, see: the Bavarian Ministry of the Interior's letter to the RMI's Abwicklungsstelle für russ. Kriegsgefangenen und Zivi-Interniertenlager, December 28, 1921. BayHStA MInn 71624, np. Letter from Landrat Wiedenbrück to Severing, April 21, 1920. GStA PK, Rep. 77, Tit. 1814, Nr. 3, Bd. 1, 45. Reichstag Inquiry, January 24, 1922. *Verhandlungen*, Bd. 370, 3336. Protocol of a meeting held at the RMI regarding the treatment of Russian POWs who did not want to return to Soviet Russia, January 10, 1921. R 1501/112383, 262. The term *lästige Ausländer* was so widespread that the *Rote Fahne* published an article saying that instead of the *Ostjuden*, the true "burdensome foreigners" were German capitalists. "Der lästige Ausländer (Eine aktuelle Legende)," *Rote Fahne*, September 22, 1920.

[73] "Protokoll der Sitzung über die jüdischen Ausweisungen im Auswärtigen Amt am 10 April 1919." BA R 1501/114061, 47.

[74] As I have discussed in *The Impossible Border*, the Russian émigrés were by no means all rich, but this image was pervasive in public discourse.

endangering the "peace, order and security" of the German people.[75] The Prussians underscored the history of the *Ostjuden*, their attraction to Germany, their dangerous activities once they arrived on German soil and the measures that could be undertaken to combat them. The Prussian government was not unsympathetic to the Jews, arguing that they were drawn to Germany because of its culture and because they faced persecution from the Poles and Russians.[76] Nonetheless, they made it clear that the *Ostjuden* were responsible for profiteering (*Schieberhandlung*), currency speculation and unscrupulous business practices.[77] Profiteering was a commonly used code word for Eastern Jews, and with the use of this word, a wide range of anti-Semitic stereotypes and dangers adhered to the image of the foreigner. And after the brief mention of "rich Russian refugees who increase the food shortages in Germany through their luxurious style of living," the Prussian position paper returned to consider which measures could be used to combat "the Eastern European immigration of mostly Jewish confession".[78] This emphasis on profiteering was shared by the Commissioner of Civilian Internees and Refugees, who argued that the fight against profiteering (*Schiebertum*) depended on a more strenuous control of foreigners.[79] And even in relatively tolerant Saxony, the Interior Ministry addressed the "unscrupulous" behavior of foreigners who engaged in profiteering.[80] Considering the amount of words spilled to describe the hazards supposedly posed by the *Ostjuden* compared to the relative absence of energy devoted to the Russian émigré "threat," the peril of the "overwhelmingly needy Eastern European Jews" was a much more present and pressing danger. As I have discussed elsewhere, both government officials and newspaper columnists were generally tolerant of the Russian émigrés, a far cry both from the anti-Slavic screeds that dominated wartime propaganda about the Russians and the bellicose rhetoric employed by nationalists and even many apparently more moderate officials regarding the Eastern Jews. Furthermore, even when officials made it clear that the German nation actually faced several different kinds of threats

[75] Explanation of the Prussian government regarding the deportation or internment of Eastern immigrants, February 26, 1920. BA R 1501/114049, 126.

[76] *Ibid*., 125.

[77] *Ibid*., 122–123.

[78] *Ibid*., 125 and 129.

[79] Reichskommissar für Zivilgefangene und Flüchtlinge Denkschrift, October 30, 1920, 92.

[80] Sächsisches MI to the Reichskommissar für Zivilgefangene und Flüchtlinge, February 22, 1921. SächsHStA 11718, 101. An interesting evolution in the Sächsisches MI's stance towards foreigners is also suggestive. When the Saxons initially enacted a registration law in early 1919, officials complaining of the dangers posed by foreigners singled out one group for special mention, the Czechs. As Saxony lay just over the border from the new Czechoslovak state, the *Polizeidirektion* in Dresden warned that Dresden and other cities near the borders could become "the capital of Czechoslovak agitation in Germany." Polizeidirektion Dresden to SMI, March 18, 1919. SächsHStA 11718, 7. The Interior Ministry's letter on the same topic from March 6, 1919 did not include any references to a specific ethnic group. SächsHStA 11718, 6. When this topic was address in 1921, it was clear that the suspect group of foreigners were Jewish, and Czech agitators did not warrant any mention.

from various immigrant groups, they generally classified these threats according to ethnicity. Jews posed one kind of threat, and Russians posed another. The Prussian position paper discussed above did not, for example, distinguish between long-term and short-term immigrants, or between immigrants with German cultural ties and those without them. Instead, ethnicity was the most important factor for determining the dangers represented by migrant groups.

Commentators on the nationalist right excoriated both the Weimar national and Prussian states for their paralysis in the face of immigration from Eastern Europe. They also used stereotypes about Eastern European Jewry to describe these immigrants, contributing to a dangerous and self-reinforcing process, in which the failures to control immigration were projected onto Eastern European Jews while anti-Semitic stereotypes imbued immigration policy with an increased sense of threat. The Weimar state was caught in a devastating spiral: lacking an aura of authority, its critics constantly hammered at its incapacity to control immigration contributing to its loss of yet more authority. In yet another dangerous cycle, critics of Germany's lax borders used assumed qualities about Jews to affirm the dangers of immigration, while at the same time, the dangers of migrants were easily translated as problems posed by all Jews. Told from this perspective, the failure to pursue policies like deportation contributed to the state's weak sense of legitimacy.

However, it is important to consider this supposed failure from the perspective of the state itself. The moderates in control of both the national and Prussian state in the early years of the Weimar Republic sought to weave a middle course between nationalism, practical limitations and a commitment to humanitarian restraint. Their reluctance to pursue extreme measures was a result of a number of competing pressures. They largely shared the desire to restrict immigration, limiting it to a small number of ethnic Germans. However, the German and Prussian states recognized what their Nationalist critics often refused to acknowledge: Germany was operating in a situation not of its making and did not have the luxury of easily choosing which immigrants to admit and which foreigners to expel. The Polish response to Bavaria's 1923 deportation of East European Jews bore out this stance. In reaction to the Bavarian deportations, the Poles threatened to deport ethnic Germans, a move which would have further weakened Germany's demographic claims to the territories lost to Poland as a result of the Versailles Treaty. A Germany that wished to remain part of the international community and potentially preserve its right to the future revision of its borders could not pursue a policy of mass deportation. Nor did the national and Prussian states necessarily want to expend the financial and manpower resources necessary to pursue such a policy. But rather than confronting the extremism of the Right, they often echoed extremist rhetoric, especially about the dangers of East European Jews, while not pursuing extremist measures. This had the unfortunate consequence of feeding into both the fantasy of Jewish predation and of governmental paralysis. The moderation of the national and Prussian Interior Ministries was not merely a consequence of weakness but a strategy in and of itself, yet it was framed in the language of impotence rather than moral conviction. And thus the failure of German moderates was not what their critics thought it was. They were not powerless, but rather they failed, and indeed did not even really try, to win a consensus behind their more restrained policies.

Chapter 4
The European Parliament and the Returns Directive: The End of Radical Contestation; The Start of Consensual Constraints

Ariadna Ripoll Servent

Abstract In 2008, the European Parliament (EP) and the Council approved a new directive that sought to regulate and harmonise the standards of deportation. The Returns Directive raised criticisms from various fronts but it also confirmed the EP as a new actor in the field. Thanks to its new co-legislative powers, the EP became an active promoter of EU-wide policies seeking to remove irregular immigrants from the territory. Interestingly, before turning into a co-legislator the EP had led a sustained opposition to the security-biased policies formulated by the Council. Given the substantial shift in the position of the EP, the Returns Directive is a good example to examine the changes in the political dynamics after the introduction of new decision-making rules and their impact on the construction of a new EU framework for deportation practices.

In June 2008, the European Parliament (EP) and the Council of the European Union (Council) approved a new directive that sought to regulate and harmonise the standards of deportation. The Returns Directive raised criticisms from various fronts but it also confirmed the European Parliament as a new actor in the field. Interestingly, before turning into a co-legislator the EP had led a sustained opposition to the Justice and Home Affairs (JHA) policies formulated by the Council.

An earlier version of this chapter has been presented at the summer school on 'Old and New Borders in Europe', organised by the Centre Marc Bloch Europa (Berlin) and Universität Viadrina (Frankfurt/Oder) and at the 'International Conference: Deportation and the Development of Citizenship', organised by the University of Oxford. It has also been published as a Sussex European Institute Working Paper (n° 117). I wish to thank all participants and reviewers for their comments and advice.

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B. Anderson et al. (eds.), *The Social, Political and Historical Contours of Deportation*, Immigrants and Minorities, Politics and Policy, DOI: 10.1007/978-1-4614-5864-7_4,

From the outset, these policies had been characterised by their bias towards security, especially since the attacks of 11 September 2001 (Den Boer and Monar 2002).

In contrast, since the start of JHA cooperation at EU level, the European Parliament appeared as a vocal advocate of more rights-based approaches to internal security. Its behaviour was defined by an almost constant confrontation with the Council (Elsen 2010). Therefore, in 2005, the introduction of a new decision-making procedure that turned the EP into a co-legislator together with the Council for most JHA matters related to migration and borders raised high expectations. One of the first measures subjected to the new rules was the Returns Directive (European Parliament & Council of the European Union 2008). The directive sought to harmonise the conditions determining the voluntary or compulsory return of third-country nationals (TCNs) staying irregularly on the territory of Member States. It aimed to achieve some minimum standards on how to deport those migrants staying on the territory without the necessary documents. This group included 'over-stayers' and immigrants that had crossed the border irregularly; it also covered those asylum-seekers whose applications had been rejected.

The Returns Directive is in this sense a good example to analyse the shifting patterns in the EU institutional balance and its effects on policy outcomes. The chapter examines the changing role of the European Parliament in the area of migration and borders. It aims to assess the rationale driving its positions while negotiating the Returns Directive, in particular in relation to its new empowered role in the EU decision-making process. In order to understand the EP's role and its mechanisms to influence policy outcomes, the first section presents how decisions are made in the EU, how procedural rules have changed over time and what implications these changes have had for inter- and intra-institutional relations. The second section examines how migration and border policies have been developed at the EU level and the role of the EP before and after their *communitarisation*. The last section concentrates on the Returns Directive in order to understand the changes in the political dynamics after the introduction of new decision-making rules and their impact on the construction of a new EU framework for deportation practices.

Policy-Making in the EU and the Increased Role of the European Parliament

The European Parliament has evolved rapidly since the 1990s. Once seen as a 'talking shop', the EP has now a say in most EU policy areas. The continuous empowerment of the EP reflects the evolution of European integration from an economic to a political project. The different treaty reforms have built a political system that does not fit either a parliamentarian or a separation-of-powers model, the result has been described as a 'compound democracy' (Fabbrini 2005; Schmidt 2006). Generally, three institutions are involved in EU decision-making processes.

First, the European Commission is in charge of proposing legislation and keeps ownership of the text until the last stages of negotiations. Second, the Council gathers the ministers of 27 Member States, who have legislative and executive powers. Traditionally, the Council has been the main decision-making body of the EU, which has given national executives an opportunity to shape and control the direction of EU policies. Finally, the EP has slowly gained a say in EU matters and is now a co-legislator together with the Council. The EP has control not only over most legislative issues but also over the EU budget.

The development of the current institutional triangle has not been uniform across time and policy areas. Until the mid-1980s, most policy matters were regulated by the 'consultation' procedure; the Council worked mostly under unanimity rules and the EP was only offered a chance to give an opinion on new legislative proposals. The Single European Act introduced the 'cooperation' procedure and ended the use of unanimity in the Council. As a result, most matters were decided by qualified majority voting (QMV) in the Council, which had to take into account the amendments proposed by the EP. The last step was to offer an equal veto power to the EP under the new 'co-decision' procedure, introduced by the Treaty of Maastricht in 1992 and modified substantially in the Treaty of Amsterdam in 1997. Co-decision was renamed as the 'ordinary legislative procedure' in the Treaty of Lisbon and now applies to almost all EU policy areas.

The co-decision procedure is formed of three legislative readings (see Article 294 of the Treaty on the Functioning of the European Union [TFEU]). The first reading offers the most flexibility to both the EP and the Council. Negotiations between the two co-legislators are not subjected to time limits and the EP must gather only a simple majority to pass its amendments. If no agreement is reached at first reading, the EP must reach an absolute majority to reject or modify the text in second reading within a maximum period of four months. Finally, the procedure also contemplates a third reading in the form of a conciliation committee gathering a selected group of Council and EP representatives. It is the last chance to reach an agreement before the proposal is abandoned or sent back to the Commission to be redrafted.

The introduction and gradual extension of the co-decision procedure has significantly changed the inter- and intra-institutional dynamics of all EU institutions, especially in connection to the EP. On the one hand, the inter-institutional relations have become more cooperative, since Council and EP are now forced to find a compromise. While, under the consultation procedure, the Council could ignore the opinion of the EP, under co-decision it has to find new ways of communication that produce positive results. In practice, this has led to an overspill of consensus-seeking practices developed inside the Council (Hayes-Renshaw and Wallace 2006), which are now applied to negotiations between the Council and the EP. As seen above, the differences in time limits and majority thresholds between the first and second readings have given rise to new negotiation methods. Crucially, Council and EP have increased the type and number of informal contacts (trialogues) from the earliest stages of the decision-making process (Rasmussen 2007; Settembri and Neuhold 2009; Shackleton 2000). The purpose is to avoid reaching the stage of conciliation (third reading), which is seen as a

failure to co-operate effectively within the 'rules of engagement' developed under co-decision (Shackleton 2000; Shackleton and Raunio 2003). As a consequence, the number of early agreements (at the first reading stage) increased steadily during the last decade; during the last parliamentary term (2004–2009), 72 % of co-decision procedures were agreed at first reading while only 5 % reached the third reading (conciliation) and none failed (European Parliament 2009, p. 14).

These changes produce new political dynamics not just between EU institutions but also inside the EP. The introduction and extension of co-decision have given rise to two main changes inside the institution. First, the patterns of behaviour of EP political groups have evolved into more consensual practices. The need to find an agreement not just among them but also with the Council, on the one hand, and the absence of clear political majorities, on the other hand, has often forced political forces to converge towards the centre of the political spectrum (Costello 2011; Kreppel and Tsebelis 1999). Therefore, co-decision increases the chances that an oversized coalition will be necessary to pass legislation. High thresholds mean that the two largest groups in the EP are essential to ensure that a majority is reached. Consequently, the European People's Party (EPP, formerly EPP-ED) and the socialist group (S&D, formerly PES) enjoy the "tyranny of the majority" (Hausemer 2006, p. 513), forcing smaller political groups (such as the liberals [ALDE], the Greens or the radical left) to find the support of at least one of those largest groups to reach the necessary majority in plenary (Farrell and Héritier 2003).

The second major development observed since the introduction of co-decision is the shift in internal structures and actors. Committees have become much more relevant in day-to-day decision-making. EP committees—organised around policy areas or specific thematic fields—are characterised for their high levels of internal consensus and autonomy (Neuhold 2007; Ringe 2009, p. 20); they are nonetheless highly representative of the EP's political composition (McElroy 2006). The representativeness of committees is crucial, since most political debates take place at that level. The leading committee is largely responsible for examining the details of the proposal and starting negotiations with the Council and the Commission. Debates in plenary rarely go into details and new amendments are seldom introduced at plenary level, where committee reports are treated as 'take-it-or-leave-it' options (Hix 2005, p. 93; Neuhold 2001). The centrality of EP committees has also reinforced particular actors inside them. In any committee, those in charge of negotiations—rapporteurs and shadow rapporteurs (to a lesser degree)—have a disproportionate amount of influence. Rapporteurs are Members of the European Parliament (MEPs) appointed to lead negotiations on a specific dossier. They are often supported by a 'negotiating team' of shadow rapporteurs, who represent the other EP political groups (Judge and Earnshaw 2011). In addition, each group has a coordinator in charge of organising its MEPs inside a given committee, which can exert influence on the choice of rapporteurs and on ongoing negotiations (Farrell and Héritier 2004; Whitaker 2005; Yordanova 2011).

The changes brought by co-decision to inter- and intra-institutional patterns of behaviour are essential to understand the chances that the EP currently has to oppose legislation and even change the established rationale in a given policy

field. Before co-decision was introduced, i.e. under the consultation procedure, the EP could be more confrontational, because its opinion would most probably be ignored by Member States in the Council (Jupille 2004). In this sense, when the EP did not share the policy rationale held by the Council, it could pursue strategies of contestation, acting as a policy advocate rather than a policy-maker. With the change to co-decision, such behaviour is often too costly in electoral or political terms or unacceptable in the institutional culture in which the EP acts (Ripoll Servent 2012). With this evolution in mind, it is interesting to analyse the opportunities of the EP to act as a source of policy change in the field of irregular immigration, the policy area framing the Returns directive.

Migration and Border Policies Before and After *Communitarisation*

Legally, the Returns Directive is based on former Article 63(3)(b) EC Treaty, i.e. under the irregular (illegal) immigration provisions, but in practice the directive was drafted and negotiated in a much wider context that concerned not only migration issues but also the construction of a common Schengen border. In this sense, politics of deportation in the EU are linked to wider dynamics of regional integration and the removal of internal borders. The creation of a free movement area under Schengen, at the turn of the 1990s, triggered a move towards the Europeanisation of EU borders. Domestic security actors in charge of developing Schengen considered that, in order to create a 'safe' inside, the abolition of borders between EU Member States had to be accompanied by 'compensatory measures' that would ensure an equal level of protection at the external border (e.g. Kaunert 2010; Monar 2001). The emphasis put on securing external borders prioritised the more security-oriented aspects of the new JHA field. Despite several attempts to regulate labour migration or integration measures, the legal and practical advances have lagged behind those proposals linked to the management of border control and irregular immigration (Canetta 2007, p. 447; Luedtke 2011).

As a result, the process of European integration in JHA has been characterised by two complementary processes that reinforce the exclusion of (particularly irregular) migrants from the territory of the EU. On the one hand, the process of entering the EU, i.e. the physical act of crossing the border, has been rendered more difficult through a combined effort to externalise and extra-territorialise border controls. The process of externalisation has shifted border controls to regions surrounding the EU (Lavenex and Uçarer 2003). The creation of safe-third countries and the development of an European Neighbourhood Policy (ENP) have facilitated the transfer of EU policy practices and created a 'buffer zone' between the EU and the countries of origin (Lavenex and Wichmann 2009). This process has been especially visible in the Mediterranean area, where pressure on North African countries and the presence of the new EU border agency (Frontex) have led to a shift in migration flows and increased controls at sea borders (Lutterbeck 2006; Wolff 2008).

At the same time, the EU has also started a process of extra-territorialisation of its borders, attempting to police migration flows at a distance (Rijpma and Cremona 2007). The two main tools used to prevent arrivals have been the use of visa policies and the shift of controls to private agents. EU visa policies have made it more difficult to even leave the countries of origin; "[g]etting a visa represents the first barrier or filter for certain TCNs wanting to enter the European Union" (Melis 2001, p. 133). The EU has reinforced the control at the source by introducing biometrics in visas and passports and linking databases such as the Schengen Information System (SIS) and the Visa Information System (VIS) (Mitsilegas 2010). To complement this strategy, the EU has shifted responsibility to the private sector, particularly travel agencies and carriers (Council of the European Union 2001). The latter are now responsible for controlling who is allowed to travel to the Schengen area and have thus become an "ancillary border police" (Zolberg 2002, p. 289). Given the potential risk of economic sanctions if they fail to implement the requirements set by the EU, private entities might prove even stricter when screening passengers than states.

More importantly, the efforts to prevent the arrival of migrants to the EU have been linked to their removal from the territory (Rodier 2005). In this area, the emphasis has been on making expulsion more efficient and improving voluntary return, while at the same time not excluding forced deportation (European Commission, 2002, p. 8). In order to implement these measures, the EU has promoted measures of coordinated removal, such as common return flights (Council of the European Union, 2003, 2004a) or guidelines to determine the point of origin or transit of migrants (Council of the European Union, 2002, p. 14). Finally, in order to render deportation feasible in practice, the EU has engaged in the negotiation of readmission agreements, i.e. multilateral agreements which ensure that third countries will accept those individuals that are returned either to their country of origin or to a country through which they have transited (Bouteillet-Paquet 2003).[1] After 1995, the European Community inserted readmission clauses into association and cooperation agreements, for instance with the ACP countries, but this policy was abandoned in 1999 (Monar 2001, p. 37) and a new policy of coupling them with visa facilitation agreements has been adopted, especially with ENP countries (Trauner and Kruse 2008).

In general, EU cooperation in migration issues reflects a preference for security-related matters and a shift of its external borders beyond its territory. These choices are not surprising if one takes into account the construction of the JHA field. Given its sensitive nature, especially in relation to notions of state sovereignty and security, EU Member States have been particularly reluctant to let these policies go. In consequence, JHA has been characterised by the persistence of intergovernmental decision-making processes and the continued presence of

[1] To this date, the EU has concluded agreements with Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Georgia, Hong Kong, Macao, Montenegro, Moldova, Russia, Serbia, Sri Lanka, Ukraine and Pakistan. Negotiations with Turkey have finalised and there are ongoing talks with Morocco and Cape Verde (European Commission 2011).

national security actors (Guiraudon 2000; Lavenex 2006). In contrast to the security rationale prevailing among traditional JHA decision-making actors—Council and to some extent Commission—, the EP tended to adopt more liberty-oriented views. In particular, the committee on civil liberties and justice and home affairs (LIBE) often acted as policy advocate and contested the policy rationale developed by the Council (Elsen 2010). This led to long-fought battles, especially in the field of data protection. Its fight against the introduction of *Passenger Name Records* (PNR) is a good example of such inter-institutional fights (Koesters et al. 2010). Generally, the EP adopted clear confrontational stances against the prevailing security rationale employed by the Council and became associated with a rights-based approach to migration (Canetta 2007, p. 447).

This long-term position raised high expectations when migration policies became fully *communitarised*. In 2005, co-decision was extended to most areas dealing with borders and migration issues. Although the Treaty of Amsterdam had transferred migration and border policies to the first pillar (i.e. the European Community pillar), it established a transitional period in which the old decision-making rules of the third JHA pillar remained in place. However, after a Council decision to end the transitional period (Council of the European Union 2004b), co-decision was introduced and the EP became a co-legislator together with the Council. Given the past positions of the EP, most observers expected that the intervention of the EP would help reverse the existing rationale in EU legislation, taking a step towards more liberal and migrant-friendly policies (e.g. Grabbe 2002; Guild and Carrera 2005; Peers 2005). However, it has become increasingly apparent that these expectations have not been fulfilled, since the outcomes of legislation agreed after 2005 still prioritise security over civil liberties. This reversal in the positions of the EP is particularly visible in issues dealing with borders and irregular immigration policies. Although the number of new legislative measures passed under co-decision in this field is limited, it is apparent that all of them show a consistent trend towards more consensual and centripetal policy outcomes. The Schengen Borders Code (European Parliament & Council of the European Union 2006) and the Sanctions Directive (European Parliament & Council of the European Union 2009) offer examples of this tendency; however, it is the Returns directive that presents the clearest case of change in the positions of the EP.

The Returns Directive: Legitimising Deportation?

The Returns Directive aims to harmonise national conditions dealing with the voluntary or compulsory return of irregular immigrants, that is, the periods of time during which irregular immigrants may voluntarily decide to go back to their country of origin as well as the stipulations to issue removal decisions, forcing TCNs to leave the country. The directive also regulates the conditions for detention while awaiting removal, especially in cases where it is suspected that the person may abscond. Those

that hoped for a directive introducing a higher protection of human rights and a harmonisation of Member States practices were severely disappointed (Baldaccini 2009). Most provisions are left to the discrepancy of Member States and except for some few issues (see below), the outcome keeps in line with the policy rationale of the Council.

Of the main six issues that created tensions between the EP and the Council, one can argue that four were eventually decided in favour of the Council, while only in two was the EP partially successful in raising standards (Acosta 2009). First, the directive does not apply to those immigrants who cross a border irregularly and are later apprehended or those who are refused entry at the border (Article 2). Member States can thus deport those immigrants who are not covered by the directive without applying the minimal guarantees ensured in it (Baldaccini 2009; Canetta 2007, pp. 439–440). Second, the Council was also successful in downgrading the option of voluntary return, since the right to decide whether to return of one's own accord may be withdrawn or the period given to make this decision shortened. In addition, they may be ultimately sent back to countries of transit instead of their countries of origin (Articles 3.3. and 7.4.). Third, the introduction of a re-entry ban of up to 5 years (or longer if the person is considered a public danger) is compulsory for those immigrants that are subjected to a forced removal—but it can also be issued in cases of voluntary return (Article 11). Therefore, the incentives to choose this last option are very much reduced. In practice, the introduction of a re-entry ban might reinforce irregular immigration (Baldaccini 2009, p. 9). Finally, the EP was also unable to change the provisions on detention. Although the Commission proposal was more restrictive—since immigrants awaiting removal would *have to* be detained (European Commission 2005, Article 14), the choice left to Member States does not solve the question of detaining individuals who have not committed a crime. Migrants can be detained for up to 18 months; there is no need for a judicial decision, an administrative decision is sufficient (Article 15). Allegedly, the harmonisation of a detention period aimed to decrease the length of detention foreseen in some national legislation. However, in practice, the directive offers more chances to increase the length of detention than to shorten it (Acosta 2009; Baldaccini 2009).[2]

The EP was able to raise standards in only two cases. The most successful modification provided for access to education and suitable institutions for unaccompanied minors (Article 17). Without the pressure of the EP, Member States would certainly not have included such provisions (Acosta 2009, p. 35). In the second case—procedural safeguards—, the success of the EP was more moderate. It introduced new provisions on free legal assistance, but these provisions depend on national conditions for legal aid. In addition, the final version does not envisage an automatic *suspensive* effect during appeals; as a result, the decision to return an individual is not put on hold whilst it is reviewed and remedies are not necessarily provided by judicial bodies (Article 13).

[2] In fact, during negotiations (and in view of the expected outcome) some Member States amended their national legislation in order to increase the length of detention. For instance, Italy proposed to up the length of detention from 60 days to 18 months in June 2008 (Senato della Repubblica 2008).

In short, after a protracted negotiation period of over 2 years, the achievements of the EP were limited, especially in its attempts to raise the standards of protection. The directive is characterised by high levels of flexibility and discretion left to Member States. It is thus far from the traditional positions of the EP, which originally aimed to raise standards of protection (Canetta 2007). Significantly, on 18 June 2008, the directive was adopted at the first-reading stage by the EP plenary with a large majority of 369 votes in favour, 197 votes against and 106 abstentions. The timing and extent of the vote raises crucial questions on the strategy followed by the EP during negotiations. Bearing in mind the long-term conflict between EP and Council in JHA matters, why was the EP unable (or unwilling) to challenge the rationale of the directive and push for a second and if necessary a third reading (going until the conciliation procedure)? Why did it accept a first-reading deal that reflected hardly any of its positions?

There have been several attempts to answer the puzzle looking at contextual factors and concomitant explanations. Acosta (2009), for instance, alludes to pragmatism (better to have something than nothing at all), fear [*sic*] of the upcoming French presidency (supposed to have more restrictive outlooks on immigration), pressure from national governments on MEPs, and procedural constraints (namely the different majority thresholds of the first and second reading). Although all these factors played a role in the negotiation process, they are rather a reflection of broader inter- and intra-institutional dynamics triggered by the introduction of co-decision (see also, Ripoll Servent 2011).

Inter-institutionally, the introduction of co-decision changed the stakes for the EP. Procedurally, the new decision-making rules required that EP and Council reach a compromise. In the case of the Returns Directive, negotiations were particularly difficult because the EP was more interested in having a common EU return policy than most Member States, which would have preferred the *status quo,* and therefore negotiated from a stronger position (Canetta 2007, p. 447).[3] As a result, the EP struggled until the last moment to convince the Council of the necessity to have such a directive. The inter-institutional agreement reached in the final trialogue was presented to the plenary as a 'take-it-or-leave-it' option: "[a]ny kind of revision or amendment to this text will signify a disagreement on the part of the Council, which of course will mean non-adoption of the directive at first reading" (Mate in European Parliament 2008). The threat of non-adoption rendered the content of the agreement a secondary issue. Since the Returns directive was the first issue on irregular immigration under co-decision, the EP was under particular pressure to make a success of these negotiations. Most considered it a 'test case' for further negotiations in the JHA area (Honzak 2008; Canetta 2007).[4]

Clearly, the EP faced a choice after the introduction of co-decision: it could either maintain its previous confrontational behaviour but risk ending up with no text or it could accept an imperfect text which would ensure the success of the first co-decision negotiation in irregular immigration matters. Manfred Weber (German

[3] Council official, interview, January 2009; Weber, EPP-ED MEP, interview, December 2009.

[4] Weber, EPP-ED MEP, interview, December 2009, Lemarchal, S&D political advisor, interview, March 2010.

EPP-ED MEP), the rapporteur of the LIBE committee, considered that the EP should not start negotiations with the same radical posture that it had used under consultation. He thought that a confrontational posture from the EP would only get a similarly confrontational answer from the Council, along these lines:

> "listen if you are coming with such unrealistic proposals and unrealistic demands, we just give up on it because the current situation is not problematic for us, we do not need at all price this European harmonisation. We keep people in prison as long as we like, we send home who we like and in which way we like and as long as this is in accordance with our own constitutions, don't bother us".[5]

It was important thus to demonstrate that the EP and especially the LIBE committee (previously an outlier in inter-institutional relations) had learnt the need to find a compromise required by the co-decision procedure. The EP had to show that it took co-decision seriously, especially in a policy field seen as very sensitive for national interests.

The trade-off between procedural and policy matters affected the internal politics of the EP considerably. It changed the dynamics of coalition-building, enhancing the role of previously marginal actors and breaking up the traditional left-wing coalition that had characterised the LIBE committee (Hix and Noury 2007). As mentioned above, co-decision reinforces the role of committees and of particular actors in charge of inter-institutional negotiations. Debates take place in committee, but it is the rapporteur who is in charge of negotiating the details of each legislative proposal and who has to make sure that the compromise reached will be acceptable for a majority of members both in the committee and in plenary. In the case of the Returns Directive, the rapporteur was a member of the EPP-ED, which regrouped Christian-democrats and conservatives. The EPP-ED had traditionally been closer to the Council (Hix and Noury 2007), and therefore it was considered a marginal group in the LIBE committee. The directive was a chance for the rapporteur and its political group to change the confrontational behaviour of the committee and seek a more consensual approach to migration policies. LIBE reports under consultation were characterised by their quite extreme positions; considered by their critics as "Christmas wish lists"—not 'pragmatic' enough for the new co-decision context (European People's Party 2009).[6]

The Returns Directive was therefore a good opportunity for the conservatives to redress the left-wing bias of the committee. Indeed, in issues such as detention and the scope of the directive, the EPP-ED group acknowledged its alignment with the position of the Council. They considered, for instance, that the directive would reduce the detention time in some countries (although as seen above, this does not seem to be accurate) and that the scope of the text was appropriate. For instance, in relation to the scope, the rapporteur and his political group shared the opinion of the Council that it is the right of Member States to decide who crosses the border and who does not, and in consequence who can and who cannot receive

[5] Weber, EPP-ED MEP, interview, December 2009.

[6] Speiser, EPP political advisor, interview, January 2009; Weber, EPP-ED MEP, interview, December 2009; Hennis-Plasschaert, ALDE MEP, interview, March 2010.

benefits and safeguards. Thus, in their view, the directive should "not just apply to anyone who is five kilometres away and waves his *[sic]* hands and says 'I want to fall under this directive'. Either you are in or you are out".[7]

However, the mere presence of a conservative rapporteur is not enough to account for such a large majority during the first-reading vote. Certainly, the EPP-ED was the largest group in the EP, but it still needed the support from other groups. It is thus thanks to the votes from the liberals (ALDE) and parts of the socialist group (PES), that the directive could be adopted. Their support is, however, surprising since both groups had been at the core of the long-standing left-wing or pro-civil liberties coalition (Hix and Noury 2007). Although some reasons outlined before can account for the decision of these groups to vote in favour of the agreement, the main reason behind their behaviour lies in the broader institutional context. Certainly, the decision of ALDE was partially based on pragmatism, since the group wanted to have a legislative text on returns. Similarly, the explanation behind which national delegations of the PES decided to vote for or against lies to some extent on national pressures. The Spanish delegation for instance (and possibly the British and German as well) seemingly received some pressure from its national government (Acosta 2009, p 38). However, the main split in the LIBE committee followed institutional lines, rather than policy lines. The strategic decisions to vote for or against the text were grounded on the necessity to show a more 'pragmatic' and consensual behaviour, rather than due to the content of the agreement.[8]

This was particularly clear in the choices of the liberal and socialist groups. For the latter, the concerns about procedural issues translated into a split vote in plenary. The group divided into those that could not agree with the content of the agreement and those wishing to portray a more 'pragmatic' behaviour. The first cluster was represented by the socialist shadow rapporteurs (French MEPs Adeline Hazan, substituted by Martine Roure). The resistance of the shadow rapporteurs to find a compromise[9] made coalition-building more difficult and raised doubts that the necessary absolute majority could be obtained if the text went to a second reading.[10] In the end, a large proportion of socialist MEPs abstained or even voted in favour of the compromise agreement, either due to pressure from national governments (especially for those MEPs whose national party also seated in Council)[11] or because they considered that the rules of the game had changed and the EP needed to adapt to them.[12]

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[7] Speiser, EPP-ED political advisor, interview, January 2009.

[8] Speiser, EPP-ED political advisor, interview, January 2009; Weber, EPP-ED MEP, interview, December 2009; MEP assistant, interview, March 2010; Sidenius, Greens political advisor and GUE/NGL political advisor, interviews, March 2011; Commission official, interview, April 2011.

[9] Speiser, EPP-ED political advisor, interview, January 2009; Hennis-Plasschaert, ALDE MEP and MEP assistant, interviews, March 2010.

[10] Sidenius, Greens political advisor, interview, March 2011; Commission official, interview, April 2011.

[11] Sidenius, Greens political advisor; GUE/NGL political advisor, interviews, March 2011.

[12] Sidenius, Greens political advisor, interview, March 2011.

The considerations of the liberal group were slightly different. There, the size of the group seems to have been a powerful argument to convince ALDE members of the necessity to abandon its past positions and become more consensual.[13] Liberal MEPs acknowledged that the directive was not completely to their liking,[14] but the group prioritised the need to find an agreement over its content. Their objective was to participate fully in negotiations, not just for this one time but also to avoid being marginalised in future occasions. As the shadow rapporteur confirmed: "for ALDE it was a victory to be in the coalition; it was important to be influential in negotiations and be part of the majority".[15]

With political groups polarised on migration issues and the institutional pressure to behave appropriately in order to ensure that the EP would have a chance to extend its powers of co-decision in the future, the EP was not in a position where it could convince the Council to change the substance of the proposal diametrically. Rather, some of the committee members, and most importantly the rapporteur, shared the position of the Council, making it even more difficult for those in disagreement with the content of the directive to engage the Committee into a radical change in the directive's rationale. Therefore, the introduction of co-decision effectively limited the capacity of the EP to change the direction of migration policies.

Conclusion

What does the Returns Directive tell us about migration and border policies and the chances to contest embedded policy rationales at the EU level? First, that it is quite improbable that these policies will become more open and liberty-oriented in the near future. The new working programme for Justice and Home Affairs (Stockholm programme) emphasises the exclusion of migrants from the EU territory. For instance, in relation to deportation policies, it underlines that "an effective and sustainable return policy is an essential element of a well-managed migration system within the Union. The European Union and the Member States should intensify the efforts to return illegally residing third-country nationals" (Council of the European Union 2009, p. 67). In this sense, it reaffirms past practices, which prioritise irregular immigration measures, while regular immigration remains linked to the reception capacities of each Member States. The working programme also emphasises the need to reinforce border controls and cooperation with countries of origin and transit in order to stop migration flows (Council of the European Union 2009, p. 61). In short, the Stockholm programme replicates the same dynamics developed since the start of EU cooperation in this policy field:

[13] Hennis-Plasschaert, ALDE MEP, interview, March 2010.

[14] Alvaro, ALDE MEP, interview, January 2009; Hennis-Plasschaert, ALDE MEP, interview, March 2010.

[15] Ibid.

pre-empt entrance by externalising controls and promote the exclusion of migrants from the territory.

If, until 2005, any possible blame or criticism for prioritising the more security-oriented face of JHA could be directed mostly towards the Council, this is not the case anymore. The European Parliament has become responsible in equal parts for the output of legislation. Certainly, the outcomes are the product of long and difficult negotiations striving to find a compromise that can be accepted by multiple parts, mainly Member States and EP political groups. Yet, given the strong position that the EP had before 2005 and its long-standing commitment to protecting civil liberties, it is surprising that the EP did not strive to change this policy area in more diametrical terms. The reasons behind this inability (or unwillingness) to produce major changes in the field of migration and borders are probably multiple but the example of the Returns Directive point at inter- and intra-institutional explanations as the main constraint. The introduction of co-decision highlighted the need to find a compromise with the Council—especially in an occasion seen as a 'test case' for further co-decision negotiations—and changed the patterns of coalition-building and the role of key actors inside the LIBE committee.

Certainly, outcomes were less restrictive than if the decision had been left to the Council; however, they did not fit either into the liberal image portrayed by the EP (and especially by the LIBE committee) under consultation. The EP managed to pass a compromise text that introduced common minimum standards regulating the conditions and safeguards of those migrants forced to return to their countries of origin or transit. However, the directive leaves substantial room for manoeuvre to Member States and does not cover a significant proportion of those detained and expelled from the territory. More importantly, it accepted certain practices—mainly the possibility to detain those awaiting expulsion—that had been questioned and heavily criticised before the adoption of the directive. Ultimately, the EP adopted a text that legitimised these practices and upped the detention period to a maximum of 18 months. The participation of the EP in such processes is particularly problematic, since it reduces the possibility of seeing extremely controversial practices (such as the detention of irregular immigrants or their deportation from the territory) put into question in future. As a consequence, the acceptance of such principles in EU legislation seems to normalise practices that ultimately reinforce the link between migrants and criminality. Once accepted, these practices and their underlying rationale might prove extremely difficult to unravel.

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Chapter 5
Studying Migration Governance from the Bottom-Up

Matthew Gravelle, Antje Ellermann and Catherine Dauvergne

Introduction

In this chapter, we argue that the local and subnational levels are of critical importance to the study of migration governance because it is there that policies are implemented and enforced. In order to better understand bottom-up dynamics in the politics of immigration, as well as the limits to top-down migration policy-making, we develop an analytical framework that identifies and critically appraises grassroots and subnational responses to migration policy in liberal democratic societies. Our aim in developing this framework is to build knowledge and theory relating to the systemic interaction between local, subnational, and national immigration policy actors across a variety of liberal societies.

Increasing attention has been paid to the difficulties that nation states face in governing migration. At the same time, a number of analysts have argued in favor of an emerging *convergence* of immigration policies across Western liberal democracies (Castles and Miller 1998; Meyers 2002; Cornelius et al. 2004). Our aim is to interrogate these assertions empirically and theoretically. We believe that in looking beyond the national level, it is vital to examine other actors, both subnational and supranational, who are involved in immigration governance. As such, the analysis presented here focuses on multiple grassroots and local actors, including subnational governments and nongovernmental and civil society organizations, as well as the role of the courts. Furthermore, our research suggests that grassroots responses to migration management are marked by *divergence*, rather than convergence, and that this divergence seems to correlate with institutional variation across polities. Examining the range of responses to national-level

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B. Anderson et al. (eds.), *The Social, Political and Historical Contours of Deportation*, Immigrants and Minorities, Politics and Policy, DOI: 10.1007/978-1-4614-5864-7_5,

policy yields a better understanding of the efforts undertaken by individuals and groups to resist measures of migration control, or, conversely, to force the hands of the state toward stricter enforcement. This offers a more complete picture of the policy-making environment in receiving countries.

We have limited ourselves to the study of liberal democracies for two reasons. First, a well-informed comparative analysis of the local level presupposes existing knowledge of the *national* politics of immigration which, based on the current literature, is only available for advanced democracies. A second reason is that immigration politics in liberal democracies follows a logic distinct from that of other regimes. For instance, the study of *illiberal* democracies is unlikely to uncover significant acts of judicial activism, just as the study of authoritarian regimes is less likely to expose sustained civil society activism.

In what follows we develop the analytical framework that we then use for our study of subnational and local immigration governance. We do this in three steps. First, we provide an overview of the literature on the subject and elaborate the case for subnational analysis. Second, we outline our analytical framework, built inductively and refined through a focused news media study. Finally, we apply our framework to a subset of country cases to analyze the governance of *deportation*. We then compare the findings of our deportation analysis with those of a full data set analysis of immigration-related events in eight countries. Our conclusions suggest directions for future inquiry.

Beyond National-State Centrism

While migration scholars have made great strides toward identifying and comparing patterns of immigration politics at the national and, in the case of the European Union, supranational level, we have yet a long way to go toward establishing a corresponding knowledge base of *subnational* policy dynamics. Despite the recent proliferation of local studies of immigration politics, scholarly work as yet lacks the systematic analytical, theoretical, and comparative[1] grounding of its national-level counterpart. On first consideration, the local level of politics may appear to be of lesser relevance to the study of immigration politics, given that decisions over territorial admission and exclusion generally are under national, rather than subnational, jurisdiction. Moreover, even if we concede the importance of the local level, the study of subnational immigration politics—like any bottom-up research endeavor—imposes daunting data gathering and fieldwork challenges, particularly where research involves cross-national comparison.

Yet, we argue, a bottom-up approach to the study of immigration politics is an essential complement to the long-standing national-state centrism for a number of related reasons. First, while national governments may be the dominant actor in the

[1] Comparative work to date has been largely limited to within-country comparisons; see Varsanyi (2010) and Good (2009).

politics of immigration, subnational actors nevertheless have important roles to play. Certainly, when it comes to admissions decisions, not all subnational governments enjoy the power of the Canadian provinces that hold some say over immigrant admissions (Boushey and Luedtke 2006). However, state and municipal governments frequently dominate the policy field of immigrant *integration* (Boushey and Luedtke 2006), and are increasingly involved in the *implementation* of migration controls (Lahav and Guiraudon 2000; van der Leun 2003).

Second, a systematic bottom-up approach is called for to account for both subnational policy initiatives and for local responses to national-level policies. We argue that local actors—both within civil society and within the state—respond to national policies in ways that obstruct, modify, or reinforce intended policy outputs. The array of responses is extensive and ranges from the militia-like activities of white farmers in South Africa who justify their pursuit of illegal immigrants by pointing to the failure of federal agents to control the border regions, to the establishment of "sanctuary cities" in the United States where municipal officials refuse to enter into cooperation agreements with federal immigration officials.

Our claims here are based on the belief that there is much more to the politics of immigration than can be observed by national-level studies. To the extent that local dynamics and policy outputs do not correspond to national patterns, national-level accounts will be systematically biased against subnational phenomena and will therefore imperfectly capture immigration politics across jurisdictions. To illustrate, one of the literature's central claims about the nature of immigration politics concerns a double bind confronting policy makers in liberal democracies. On the one hand, elected officials face electoral demands for territorial closure and rights restrictions. At the same time, policy makers are constrained in their ability to respond to these claims by the opposing demands of organized interests, by the imperatives of a global economy, and by judicial rulings that assert individual rights independent of citizenship status (Cornelius 1998; Cornelius et al. 2004 (2nd ed.); Freeman 1995; Gibney and Hansen 2003; Guiraudon 1998; Hollifield 1992, 2004; Jacobson 1996; Joppke 1998a, b; Money 1997, 1999; Sassen 1996; Soysal 1994).

Yet, looking at some of the few studies that have grappled with the local politics of immigration, we find that this pattern may not easily carry across jurisdictions. Ellermann, in her comparative work on the politics of deportation (Ellermann 2005, 2006, 2009), argues that the dynamics of immigration control systematically vary over the course of the policy cycle. Whereas, at the national level, the legislation of immigration controls is driven by a "demonizing" and generalizing public discourse that focuses on the control of unwanted migrants and associated behaviors, the politics of street-level implementation in many contexts is characterized by spontaneous public mobilization based on a "humanizing" discourse which seeks to prevent the implementation of controls. Ellermann argues that in contexts marked by local immigrant integration, the consequences of policy enforcement challenge the public to come to terms with two realities. First, many migrants do not fit to the criminalizing images conjured up by national debates surrounding policy reform. Second, the consequences of policy enforcement are harsh. In the words of Matthew Gibney, whose deportation research attests to a similar local-level dynamic:

> Deportation is a 'cruel power,' one that sometimes seems incompatible with the modern liberal state based on respect for human rights. Deportation tears individuals from families and cruelly uproots people from communities where they may have lived for many years, sometimes banishing them to places where they have few ties or connections. It requires the coercive hand of the state on what are often extremely vulnerable men, women and, perhaps most controversially of all, children. The coercion required for deportation may be contested in the courts or on the street. … Grassroots campaigns can turn local schools, neighborhoods and churches into formidable if unlikely sites of resistance to expulsion. (2008, p. 147)

What is important to note here is that these instances of grassroots "case mobilization" (Ellermann 2005, 2009) frequently occur in the absence of interest group lobbying. Instead, these pro-immigrant campaigns emanate spontaneously from the general public who, according to national-level studies, should be consistently in favor of *stricter* immigration controls. These findings are also supported by Miriam Wells' work on the grassroots immigration politics in San Francisco. Juxtaposing national and local understandings of civic membership, she writes,

> Immigrants' day-to-day involvement in economic life, in religious, educational, and political institutions, and in neighborhood activities […] can generate felt solidarity, responsibilities, and mutual dependencies that themselves become a basis for asserting and securing immigrants' rights. In such contexts, a range of community members, interest groups, and authorities—from employers, unions, and civil rights organizations, to politicians, religious leaders, school administrators, and co-ethnic legal residents—can come to perceive illegal immigrants as part of the public that the locality is pledged to protect. (2004, pp. 1314–1315)

Once we begin to study immigration politics from the bottom-up, we realize that not only do the dynamics identified in national-level studies no longer hold unconditionally, but immigration politics varies across locales. Ellermann argues that the local campaigns on behalf of particular immigrants are ultimately contingent on immigrant integration—a condition that varies locally, even neighbourhood to neighbourhood. Likewise, it likely is no coincidence that Wells' findings of local immigrant support are based on one of the most progressive of American cities. Ramakrishnan and Wong (2010) in their study of US municipalities find that partisanship plays an important role in accounting for why some municipalities adopt restrictionist ordinances while others choose to expand immigrant rights instead. The findings of these early studies of local immigration politics, and the questions about the sources of variation that they raise, demonstrate the need for a systematic bottom-up approach to the study of immigration politics.

In addition to local political culture and partisanship, institutions are likely a key factor in accounting for variation in policy responses and resistance strategies. At the most basic level, we would expect subnational governments in decentralized systems to play a far greater role in the politics of immigration than their counterparts in unitary systems of government. In addition to enacting and enlivening jurisdictional mandates, institutions also shape interactions between civil society actors and the state. Institutions affect who has access to policy makers, and which resistance strategies are most likely to succeed. Studying migration

governance across diverse political systems requires analytical strategies that can capture how diverse institutional contexts give rise to distinct patterns of policy and contestation.

A bottom-up approach also facilitates a more sophisticated understanding of the role that judicial institutions play in shaping immigration politics. There is significant debate in the immigration literature about whether courts, by upholding individual human rights claims, act against state interests, or whether the role of the judiciary is better understood as legitimating state action by showing deference toward executive immigration decisions. The former line of argument draws on citizenship scholarship and asserts that national citizenship has become less important in the late twentieth century because of the rise of human rights entitlements. Accordingly, courts use human rights standards—either domestic or international—to uphold protections for non-citizens, thereby thwarting national-level control over immigration policy. Some have analyzed this trend in positive terms, focusing on the power of international standards to assist non-citizens when national standards are of no avail (Jacobson 1996; Sassen 1996; Jacobson and Ruffer 2003). Others have observed the same trend but have lamented it as a loss of national-level policy control (Freeman 1995; Joppke 1998b).

Interestingly, this observation about the power of human rights is most commonly made by scholars in disciplines other than law. Legal scholars have been more cautious in assessing the relationship between national immigration policy and the courts. Legomsky's seminal argument (1987) that courts generally show more deference toward executive and administrative immigration decisions than to other administrative decisions has generally been supported (Aleinikoff 2002; Dauvergne 2005, 2008). Our framework is useful for the purposes of evaluating the tension between these two established scholarly trends. Several hypotheses could explain this apparent contradiction. For example, judicial deference could be the predominant reaction to case-by-case decisions while human rights arguments might prevail in respect to policy decisions. Another alternative may be that the contradiction in the literature is a result of case selection bias, as the human rights studies have focused largely on the American case alone. In other words, this trend may be somehow unique to the United States.

There is also recent compelling empirical evidence within the United States (U.S. Government Accountability Office 2008; The New York Times, May 31, 2007) and Canada (The Globe and Mail, July 24, 2004) that outcomes at the lowest level immigration courts vary enormously across regions (Globe and Mail 2006; New York Times 2008). High levels of local variation may also be part of the explanation for the contrasting trends in the literature. It is thus important to attune to which types of courts take which actions; whether local variation can be explained by either patterns of judicial deference to immigration decision makers or, alternatively, by the predominance of human rights arguments; and whether courts in decentralized nation states respond differently than those in highly centralized states. It may also be the case that court structures facilitate an entry point for nongovernmental advocacy. These empirical studies confirm our starting point for this work: understanding what happens locally is vital to having a clear picture of how immigration policy works. Analysis of national-level policy setting tells us little about policy effectiveness.

A Bottom-Up Framework for Migration Governance

In order to study immigration politics both within and across nation states, our institutional framework distinguishes between different types of state and non-state actors. First, we hypothesize that certain actors are likely to be relevant across all liberal states. The starting point here is the national state as the unit that originates immigration policy and has formal control over immigration decisions. In our framework, we use the term "*national immigration state*" to refer to those parts of the national-level legislature and executive that set immigration policy and law, with the term "*implementing state*" connoting those state agencies charged with its implementation. The precise names for these units vary across jurisdictions, but typically include the senior levels of the immigration bureaucracy, a legislative committee, and key cabinet ministers.

The complexity of the immigration policy space, however, is evident even at the national level, as legislative and executive units which do not have formal responsibilities in relation to immigration are sometimes implicated in policy development that affects immigrants and immigration outcomes. Examples include state units with responsibilities for policing, education, and other welfare state entitlements such as health or social services. We distinguish between state actors by classifying this group as the "*national non-immigration state*."

Moving beyond the national level, we anticipate that subnational state units may be involved in a number of ways. The units here include subnational governments of provinces, states, cantons, municipalities and others, all of which may hold some formal or informal jurisdiction relevant to immigration. For example, a municipal police force with no jurisdiction over immigration may or may not choose to inquire about immigration status when making an arrest, and may further decide whether to report its findings to a unit with formal responsibility. We gather all these units together in the category "*subnational state*." In addition to these units, we recognize that national-level policy makers delegate many enforcement decisions to a local level—even when the enforcing unit is formally part of the national state. The national immigration state delegates to a range of other actors both public (e.g. line agencies) and private (e.g. employers), each of whom may choose to respond more or less zealously to national (and possibly remote) directives.

In addition to state actors we anticipate that non-state actors also have, or seek to assert, some influence over immigration policy. In this category of "*domestic non-state actors*" we posited the presence of local nongovernmental agencies assisting in settlement or advocacy; church groups with an established role in local immigration politics, especially through the sanctuary movement; employers who are in many jurisdictions formally required to screen for immigration status when hiring; national and international nongovernmental agencies with an established voice in immigration matters such as *Amnesty International*, *Human Rights Watch* and others.

We also anticipate that actors operating primarily in the international sphere will be relevant to our analysis. Among these "*international non-state actors*" we

include agencies with strong state ties such as the European Union, the United Nations High Commissioner for Refugees (UNHCR), and the International Organization for Migration (IOM). Each of these is linked to the state in different ways. The European Union, with its direct elections, state representation, and formal responsibilities in some policy areas, is sometimes considered a supranational state. The UNHCR is a formal United Nations organization and the IOM is an independent international organization. In addition, international nongovernmental organizations such as *Amnesty International* and *Human Rights Watch* may operate in both the domestic and the international spheres.

Given the contrasting literature on the role of courts in immigration policy, we include the courts in our scheme in a category separate from the state. Setting the courts at arm's length from the state may ultimately prove incorrect, but it is useful for testing the hypothesis that the courts are capable of thwarting national policy, and actually do so. Within our "*court*" category, subdivisions will include national, subnational and international courts (e.g., the European Court of Justice and the European Court of Human Rights), as well as the distinction between courts that focus exclusively on immigration matters and generalist courts that may sometimes address immigration matters. Quasi-judicial bodies, such as immigration tribunals within the executive, will also be captured here to facilitate an analysis of their degree of independence from the executive. Table 1 presents an overview of all relevant actors in this framework of migration governance.

Data Collection

Our analysis is based on a primary data set of newspaper articles of immigration events in the year 2007 across eight countries. Employing an iterative method, we first coded for immigration actors identified in the literature and then further refined these actor categories based on our data set. Our country cases include the United States, Canada, Australia, South Africa, the United Kingdom, France, Ireland, and Switzerland. These cases reflect variation on two variables we hypothesized to matter in terms of cross-national variation in migration governance. Our cases represent, first, centralized and decentralized states, and, second, traditional and recent countries of immigration. The year 2007 was chosen because it represents a recent year without global watershed events. In total, we examined 199 newspaper reports, and found 174 which were substantive enough for coding within our framework.

Although this data set provides a useful basis for testing and elaborating our analytical framework, we recognize its limitations. The data are taken from the LexisNexis database and include only news coverage in English or French. The use of LexisNexis likely biases our data toward events which appear in the national press, thereby underrepresenting local immigration events. In addition, relying on the press quite likely biases our results toward conflict rather than cooperation. Given that the media thrives on stories of conflict and scandal, our

Table 1 Actors in migration governance

Title	Contents
National immigration state	Elements of the national-level legislature and executive with formal responsibilities for establishing immigration law and policy
Implementing state	Elements of the national state (including line agencies) with responsibility for implementation, including enforcement, of immigration policy
National nonimmigration state	National executive and legislative actors with nonimmigration portfolios whose decisions can affect immigration policy. Examples would include: national police force, public schools (in some states), health care agencies, welfare state agencies
Subnational state	This category includes all subnational state actors. Subnational units in federal states are included here, as are municipalities
Courts	This category includes all court actors at national, subnational and supranational levels. It includes immigration-specific courts and other courts which sometimes hear immigration matters or take immigration status into account (e.g. in sentencing)
Domestic non-state actors	Actors who influence or attempt to influence immigration policy; includes NGOs, lawyers, business actors, employers and other private sector actors
International non-state actors	Includes all actors in the international sphere: transnational civil society actors and INGOs as well as organizations with strong state ties such as the EU, the UNHCR or the IOM

findings concerning the modes of interaction among the various actors are likely to be skewed toward conflict, rather than cooperation, and toward state incapacity, rather than capacity.

To assess these data we began by positing that the national immigration state was the central actor with which all others must interact. Based on the existing literature, a reasonably complete understanding of the national state exists. It is the other actors that we are seeking to understand through this framework. Accordingly, after situating the national state as the policy originator, we coded each reported event as demonstrating "cooperation ," "conflict " or "incapacity" in relation to the national immigration state. Cooperation includes extending national authority at a local level, capacity sharing arrangements and shared preferences, and judicial decisions upholding national policy against other interests. Conflict included initiatives that impede, oppose or obstruct national authority; attempts to reject or block national policy choices or preferences; and actions that erode consistent application of national policy. Incapacity referred to any attempt to fill or expose a vacuum left by the national state's inability to exercise authority or actions showing *neither* cooperation *nor* conflict but simply an act of governance that the state cannot provide.

In the next section, we deploy our refined analytical framework in order to examine in detail the roles of subnational actors in deportation-related cases across a subset of four countries. Trends and national divergences are clearly discernible. Moreover, important contrasts are visible between our initial, generic immigration data set and the deportation-specific data set. This suggests a starting point for analysis and future research.

Migration Governance and Deportation

To explore migration governance in relation to deportation, we conducted a media analysis for a subset of four countries: Australia, South Africa, Ireland, and the United States. These four liberal democracies represent a variety of immigration contexts. Whereas the United States and Australia are settler countries, Ireland and South Africa are relative newcomers to the experience of large-scale immigration. The four countries further vary in terms of state strength. With its Westminster-style government, the Australian state is situated at the strong end of the state strength spectrum. By contrast, the American state with its separation-of-powers system is relatively weak and fragmented while the South African state is crippled by administrative incapacity and corruption. The Irish state with its mix of Westminster-style government, semipresidentialism, and coalition government likely falls somewhere in between Australia and the United States. In addition to reflecting variation in state strength, the four cases also represent different distributions of power between the center and the periphery, with Ireland at the centralized and the United States at the decentralized, ends. We will speculate on how these differences may be relevant for our findings in the course of this analysis.

The data here are drawn from our generic immigration data set, with the one modification that, because the US case yielded a large number of cases, we additionally restricted our search to the 6-month period January to June. This deportation subset includes all reports found searching the LexisNexis database using the search terms "country + deportation" and "country + asylum."

Before presenting our findings, it is important to consider the limitations of these data beyond the limitations of our broader immigration data set discussed above. First, the number of cases included in our deportation analysis is far too small to be considered representative (US 16, South Africa 14, Australia 12, Ireland 9). Second, all data present the number of coded interventions, not their impact. As a result, the data do not allow us to draw any firm conclusions about the political efficacy of the various interventions. Third, limiting our search to the field of deportation may yield findings that do not carry over into other areas of immigration policy. For instance, we would expect the politics of deportation to be biased toward "case mobilization" (Ellermann 2005, 2009): spontaneous instances of grassroots resistance to the deportation of particular individuals. Case mobilization represents highly visible resistance strategies by actors such as local civic groups, NGOs, and churches that are unlikely to feature in areas such

as visa policy. Similarly, given the fact that in most countries deportation is solely under the jurisdiction of the national state, we would also expect a lesser role for subnational governmental actors than in the field of immigrant integration, for instance.

One way of gaging the degree to which our findings may hold beyond deportation is to compare our subset with our original immigration data set (US 127, South Africa 23, Australia 7, Ireland 9). This comparison allows us to observe the extent to which deportation gives rise to unique patterns of resistance, leading to variation both across and within our cases from issue area to issue area. Conversely, the comparison also illustrates the ways in which resistance patterns remain similar across the broad immigration policy space and the more coercive and specific deportation policy space. In the course of our empirical analysis, we consider and offer some cautious explanations for both the consistencies and the differences in the patterns of resistance that we observe across the two data sets. In the process, a snapshot of the politics of resistance to deportation, and to immigration policy making more generally, emerges. Still, the small number of cases renders conclusions highly tentative.

We will now present the findings for the four countries of our deportation data set.

Australia

Among the four cases, the Australian data show the smallest number of actors (Fig. 1). Civil society actors clearly dominate the playing field, based on the number of interventions. What emerges is a picture of civil society activism among, first, affected migrants themselves—the formation of a human shield to prevent the deportation of a fellow detainee, or the staging of a large-scale hunger strike by detainees—and, second, NGOs that publicly critique government policy and appeal to third actors—domestic courts and the United Nations—to intervene in case decisions. Many of these interventions reflect desperate last-minute attempts to prevent deportation, which contrast with the government's willingness to ignore rulings by the Refugee Review Tribunal and to generally give the appearance of being relatively immune to public shaming.

The remaining two sets of actors are domestic courts, on the one hand, and the United Nations as an international non-state actor, on the other. Important to note is the complete absence of subnational governmental actors, likely reflecting the weak position of the subnational states. As expected, all civil society interactions with the national immigration state are conflictual, as is the relationship between the United Nations and the Australian government. The court data, by contrast, are mixed: of the two interventions, one challenged official policy whereas the other affirmed the government's position.

Comparing the deportation data with generic immigration data (Fig. 2), one similarity and two contrasts emerge. First, courts play a comparable role in both

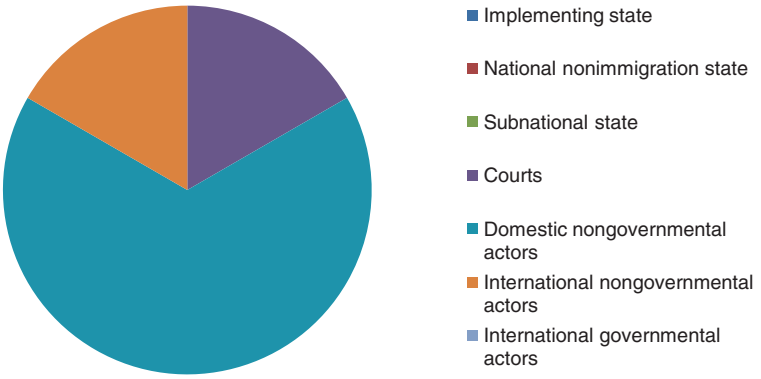

Fig. 1 Australia and deportation

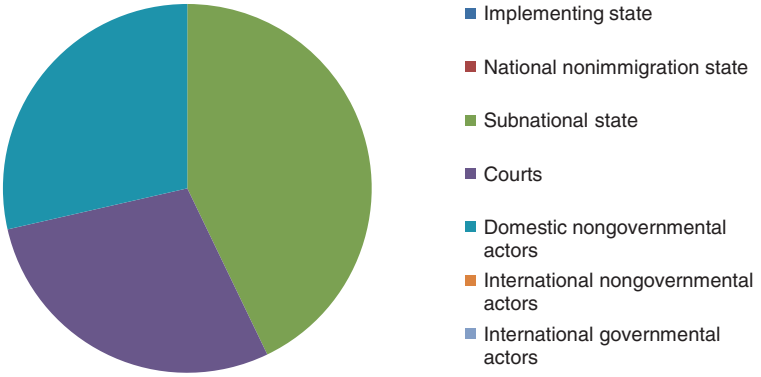

Fig. 2 Australia and immigration

analyses. By way of contrast, while the politics of deportation does not feature any subnational governmental actors, the latter accounts for nearly half of all interventions on nondeportation issues. At the same time, the interventions of subnational state actors are mainly limited to partisan "naming and shaming" in the media and in public debates and are devoid of policy content. Comparing the two datasets suggests that the area of deportation may be biased against subnational state actors, possibly for jurisdictional reasons. In a second contrast, civil society interventions appear to be concentrated on deportation issues and are far less prominent when looking at other immigration issues. It might be the case that this contrast reflects that fact that whereas the generic immigration data deals with a mix of policy issues, the deportation data exclusively concern highly restrictionist policy decisions that run counter to the interests of NGOs in particular. Thus, there may be a relationship between the incidence of civil society responses, on the one hand, and the degree to which a given policy represents a hardliner decision of a politically insulated government.

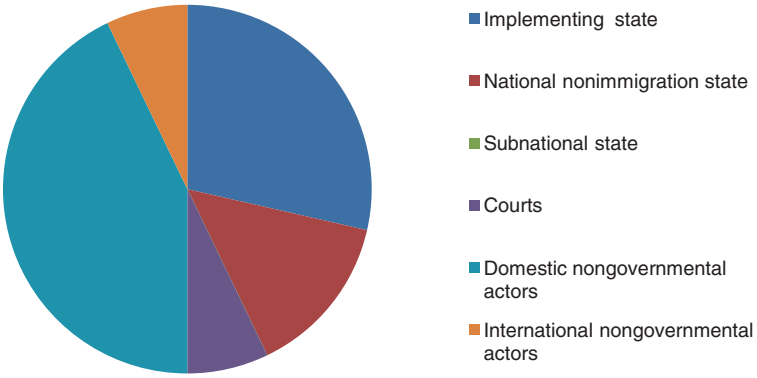

Fig. 3 South Africa and deportation

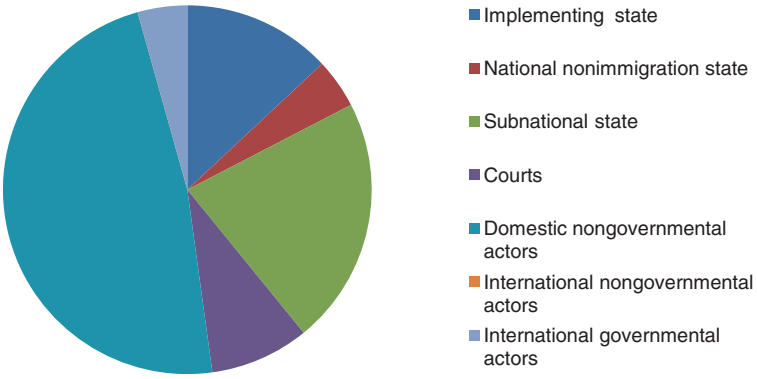

Fig. 4 South Africa and immigration

South Africa

Compared to Australia, the South African case displays a larger range of actors contesting deportation (Fig. 3). While domestic nongovernmental actors also dominate the playing field, in these data they operate alongside the national non-immigration state, the implementing state, the Refugee Appeals Board, and an international nongovernmental actor (a US. based NGO), each of which features a small number of interventions (Fig. 4).

What connects most of these actors, and what most distinguishes the South African case from the other countries, is the centrality of state incapacity as a focal point for intervention.

The vast majority of civil society interventions—by NGOs, immigration lawyers, and migrants—as well as all national nonimmigration state and all implementing state actions concern the incapacity of South Africa's immigration bureaucracy to process asylum applicants in a timely manner and to register

border crossers (mostly from Zimbabwe). As a result of this incapacity, many migrants are deported before they can even apply for asylum. Many also get deported while their applications are still pending, or are arrested while waiting in line for immigration services. For instance, as national nonimmigration state actors, interventions by the auditor general and the home affairs parliamentary committee focus on the state's inhumane treatment of migrants and its failure to process asylum applications in a timely manner. The parliamentary committee further exposes the incapacity of the Department to collect carrier sanctions from airlines.

Comparing these deportation data with South Africa's immigration data, four findings stand out. First, state incapacity features prominently throughout and can account for all intervention on part of implementing state actors. Second, courts play only a small role in both data sets, a pattern that contrasts with the findings from our other country cases. Third, civil society accounts for roughly half of interventions in both data sets. What distinguishes civil society responses from those in other countries, however, is the degree of polarization which is especially pronounced in the general immigration data. Alongside a vocal pro-immigrant NGO sector, civil society actors such as white farmers and local populations engage in xenophobic vigilante activities that flourish in the absence of state-enforced law and order. Finally, and mirroring the Australian case, while subnational state/government actors do not feature in deportation politics, they are a common actor in the general politics of immigration.

Ireland

The Irish universe of deportation actors appears somewhat more diverse than that of the preceding cases. While interventions by courts and domestic nongovernmental actors predominate, we also observe the European Union as an international nongovernmental actor alongside the national nonimmigration state and the subnational state. In fact, this is the first time that a subnational state actor features in our deportation data. The actor is a town council who, in the course of grassroots case mobilization, passes a motion that calls on the national Justice Minister to agree to a 2-year moratorium on a local family's deportation order. Interestingly, the same case also involves the national non-immigration state where a cabinet minister from a coalition party lobbies the Justice Minister to retract the family's deportation order (Fig. 5).

Comparing the Irish deportation data to the country's general immigration data (Fig. 6), we observe a difference in the relative incidence of interventions by domestic nongovernmental actors. Whereas in the deportation data these non-state actors account for about one-third of interventions, in the immigration data they amount to 80 % of all responses. More specifically, whereas the Catholic Church does not feature in our deportation data (which, however, is based on a very small sample), it appears as a dominant actor among the nongovernmental actors in the immigration

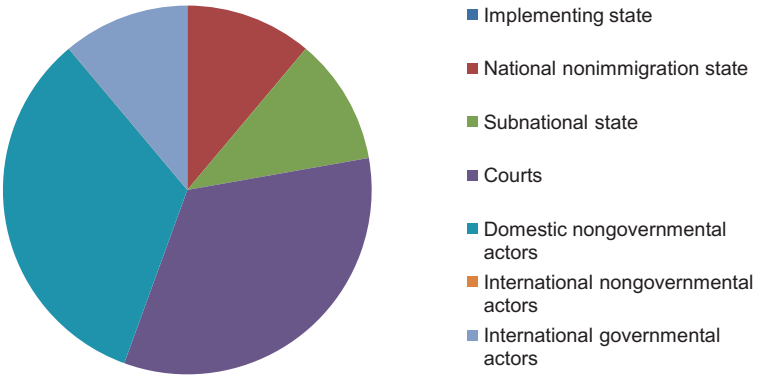

Fig. 5 Ireland and deportation

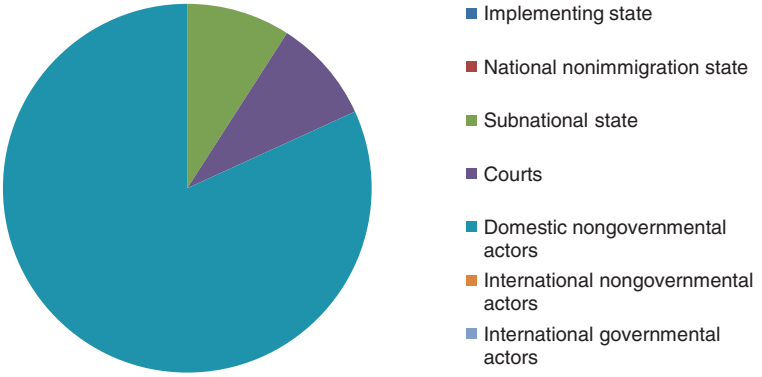

Fig. 6 Ireland and immigration

dataset. For instance, the Catholic Church is an influential actor in the area of immigrant schooling because of its reluctance to admit non-Catholic students. It also is a prominent advocate of generous family unification and refugee policies.

United States

The US deportation data show a strikingly similar pattern to the Irish case: both courts and domestic nongovernmental actors feature prominently in the contestation of deportation (Fig. 7). Court decisions pertain to a wide array of deportation-related issues and extend to both individual case decisions and larger policy rulings. Civil society responses cover much ground and range from NGOs critiquing government policy to large-scale protest marches and the establishment of a sanctuary network of local churches. Of the four countries, the US deportation

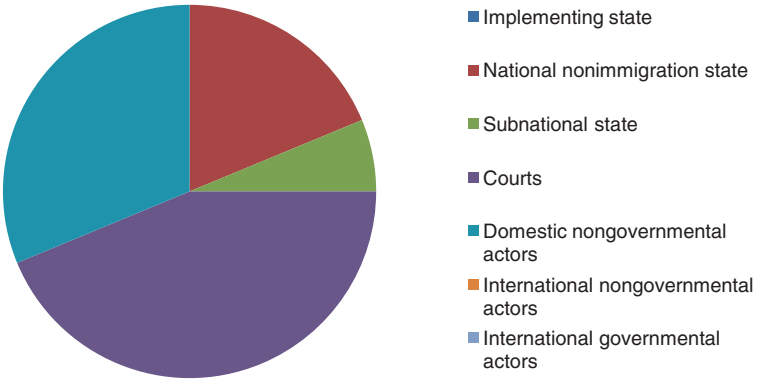

Fig. 7 United States and deportation

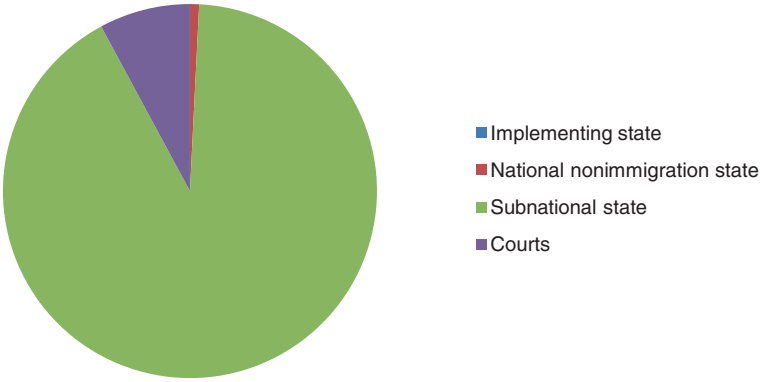

Fig. 8 United States and immigration

data show the greatest diversity of contested deportation issues, though this finding might simply be a reflection of the larger sample size. Another interesting pattern is the role of national nonimmigration state actors. Interventions range from the case mobilization campaigns of individual members of Congress to external audits of asylum processing procedures (focusing, like in the South African case, on issues of incapacity). International actors, by contrast, are completely absent, while subnational state actors feature only once, when the Massachusetts Department of Social Services complains that Immigration and Customs Enforcement is blocking access to detainees (Fig. 8).

Turning to the US immigration data, we are immediately struck by the unprecedented prevalence of subnational state/government actors. While there might be some overcounting of subnational actors relative to other actors,[2] the relatively

[2] If a news article mentioned a number of cities contesting a particular policy, each city was coded individually.

large sample size (n = 127) suggests that we can argue with some confidence that subnational state/government actors play a significant role in US immigration politics—probably more so than in the other countries. At the same time, these data support the above finding that subnational state/government actors play a much smaller role in the contestation of deportation. One issue that dominates the interventions of subnational state actors in both datasets concerns the role of local law enforcement, in particular the question of whether or not immigration enforcement tasks should be delegated to local police forces.

Taking a final look at the deportation data, one finding stands out that is consistent across all countries: interactions of the various actors with the national immigration state are consistently dominated by *conflict*. With less than a handful of exceptions—all pertaining to court decisions that affirm government policy—all cases reflect relationships that are either conflictual or, less frequently, defined by the issue of government incapacity. Bearing in mind the likelihood of a media bias in favor of conflict, the picture painted by these data is one of persistent and widespread conflict that emerges from the involvement of subnational and non-state actors in the politics of deportation. The bottom-up study of migration governance thus exposes a politics of conflict that is likely to have important implications for the national immigration state and that is worth pursuing in greater depth.

Conclusion

This study has sought to explore the deportation-related interventions of actors other than the national immigration state. There are four key findings in this analysis. First, the role of subnational governmental actors in the politics of deportation is much less significant than in the area of immigration as a whole. We hypothesize that this difference can be attributed to jurisdictional factors—far more than in most immigration-related areas, deportation is within the sole jurisdiction of the national immigration state. The intense jurisdictional debates surrounding the possibility of limited immigration enforcement by local police in the US further attest to this. To explore this difference further, it would be instructive to include a case that deviates from this pattern such as Germany, where the subnational states are charged with implementing deportations.

A second, and related, finding concerns the American case, where the role of subnational state actors in the politics of immigration is particularly significant. We suggest that this might be the result of institutional factors: because the United States is the most decentralized of the four cases, we would expect subnational state/government actors to play the most interventionist role. We could further explore this hypothesis by adding another decentralized country, such as Canada, as well as highly centralized cases, such as France or Britain.

Third, our analysis suggests that both civil society and courts dominate the playing field of deportation, with the possible exception of South Africa—probably not coincidently the least liberal of the four states—where court interventions

are few. In order to gain a better understanding of the role of courts, it would be useful to distinguish between levels of judicial decision making, and to consider degrees of engagement with human rights principles. As far as the role of civil society actors is concerned, we need to take into account the enormous polarization of this group of actors (most striking in South Africa, but also in the United States) and find a way of gaging the relative significance of restrictionist versus liberalizing interventions.

Finally, this analysis has exposed the need to examine more systematically the relationship between state capacity and policy contestation. The South African case suggests that incapacity might increase contestation and draw in additional actors. The Australian case indicates that a strong state that excludes non-state actors from decision making might inadvertently foster civil society opposition, though it is questionable how effective societal resistance can be.

These findings jointly contribute to our understanding of migration governance at subnational levels, but they are also marked by some key limitations. In particular, they tell us little about the *significance* of the interventions identified. In order to assess their significance, it is necessary to establish their policy impact, rather than simply count the number of interventions. Such an endeavor inevitably requires substantial and immersive fieldwork to build data sets that can be used for extensive process tracing. Each instance of case mobilization in a given sample could then be traced from beginning to end. In a similar vein, for each instance of public shaming by an NGO, the extent to which this strategy did result in policy adjustments is an important empirical question.

We have offered a bird's-eye view of the comparative politics of contestation. While we cannot draw any strong conclusions about the effect of this contestation on policy outcomes, we can confidently say that resistance is prevalent, and involves a significant range of actors. Who these actors are, and what relative role they play, varies across countries and likely across local contexts. It is these differences that suggest a bottom-up approach to studying deportation is fruitful, and helps us better understand not only what makes the contestation of deportation distinct within the larger universe of immigration, but more generally the extent to which policymaking by the national immigration state is only the beginning, rather the end, of the politics of immigration.

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Chapter 6
Deportable and Not so Deportable: Formal and Informal Functions of Administrative Immigration Detention

Arjen Leerkes and Dennis Broeders

Abstract In most EU countries and the United States, immigration detention is defined as an administrative, non-punitive measure to facilitate expulsion. This chapter argues that immigration detention in the Netherlands serves three informal functions in addition to its formal function as an instrument of expulsion: (1) deterring illegal residence, (2) controlling pauperism and (3) managing popular anxiety by symbolically asserting state control. These informal functions indicate that society has not found a definitive solution for the presence of migrants who are not admitted but are also difficult to expel. The analysis, which is placed against the background of the functions of penal detention, is based on policy documents, survey data, administrative data and fieldwork in a Dutch immigration detention centre.

Introduction

All over Europe new detention centres for immigrants are being or have been built in recent years (Gibney and Hansen 2003; Weber and Bowling 2004; Jesuit Refugee Service 2005; Welch and Schuster 2005; Calavita 2005; De Giorgi 2006; Van Kalmthout et al. 2007). In the United States as well, there has been a 'surge in the numbers of undocumented immigrants incarcerated in county jails, federal prisons and immigration detention centers' (Inda 2006, p. 116; see also Scalia

This chapter is a revised and updated version of Leerkes, A. and Broeders, D. (2010), (Courtesy of Oxford University Press).

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B. Anderson et al. (eds.), *The Social, Political and Historical Contours of Deportation*, Immigrants and Minorities, Politics and Policy, DOI: 10.1007/978-1-4614-5864-7_6,

2002; Ellermann 2005; Amnesty International 2009). Australia also has a notable capacity to detain asylum seekers and unauthorised migrants (Burke 2008). In other words, detention of 'unwanted' migrants is increasingly part and parcel of the governmental regulation of international immigration.

There are two main types of immigration detention (Hailbronner 2007; Cornellise 2010): (1) pre-admission detention at the border involving foreigners not admitted to the state's territory—in some countries this includes asylum seekers—and (2) pre-expulsion detention of foreigners whose stay in the territory is or has become unauthorised (hereafter: unauthorised migrants). This paper primarily pertains to the second type of immigration detention.

In most European countries, including The Netherlands, the detention of migrants for these migration-related reasons is defined as administrative detention, a detention modality that is formally not a punishment, and does not require a conviction for a crime. It is a matter of administrative and not criminal law. Although law stipulates that it be imposed in the interest of 'public order and national safety',[1] administrative immigration detention is defined as a non-punitive, bureaucratic measure that is meant to enable the enactment of border control: it merely ensures that 'unwanted' migrants can be located and identified and cannot abscond while the expulsion is prepared (cf. Noll 1999, p. 268). Given this rationale, immigration law prescribes that confinement has to be annulled as soon as the migrant's departure has been organised, or if an administrative judge decides that the chances of expulsion are too slim to justify continued detention.[2]

The question can be raised whether the formal policy framework for administrative immigration detention, in which detention is a non-punitive means to achieve the goal of removing unwanted migrants, constitutes a sufficient explanation for actual detention practices. In this chapter, we will be looking more closely at the case of the Netherlands where it appears that immigration detention serves informal social functions that are not codified in law.

There are three main empirical observations in the Netherlands that warrant an examination of de facto functions of immigration detention. First, the number of expulsions turns out to be relatively independent of the number of migrants who are detained; since the early 1990s up to 2006, there has been a steady increase in the capacity and actual use of immigration detention, while the number of expulsions went down in successive years. It was only after 2007 that expulsions increased again, but this happened in a period when detention figures actually decreased somewhat, mostly as an indirect effect of the EU's enlargements in 2004 and 2007, which legalised many Eastern European migrants overnight. Second, the average length of immigration detention in the Netherlands is reported to be substantially longer in the 2000s compared to the 1990s (Van Kalmthout and

[1] Dutch Alien Law 2000, clause 59.

[2] Detention may also be annulled when immigration authorities anticipate that an administrative judge will decide to annul, or when the acting immigration officer considers continued detention unlawful.

van Leeuwen 2004a, b). Third, if expulsion procedures fail, immigrants are released from detention, back on the streets. In the informal lingo in the field of immigration detention, this practice has become known as *klinkeren*—which roughly translates into 'cobbling', i.e., releasing somebody back onto the cobblestone streets. 'Cobbled' detainees are often re-apprehended and detained again in case of continued illegal residence.[3] To these practically 'undeportable deportable immigrants', the detention system risks becoming a revolving door (Broeders 2009, 2010; Leerkes 2009).

Localisation, identification and documentation of unauthorised migrants are a sine qua non for their expulsion (Broeders 2007; Ellermann 2008). No country of origin accepts undocumented returnees. Identification with a view to (re-) documenting an unauthorised migrant, takes place during administrative detention. The observations above indicate that the immigration authorities have great difficulties with the identification of unauthorised migrants who are reluctant to be sent home, hide their legal identity and have destroyed their papers (Broeders 2010). Countries of origin too may be reluctant to co-operate with repatriation. The International Organization for Migration (2008, p. 94), for example, reported that Chinese who have stayed in Western Europe for a longer period of time, "are often not allowed back into China, as Chinese authorities fear that their experience of democracy may make them dangerous." Thus, identification and compliance by countries of origin are the main bottlenecks of the expulsion procedure.

Because of these apparent irrationalities from the perspective of the official legal framework—why increasingly invest in immigration detention, if it does not lead to more expulsions?—it is worthwhile to explore other explanations for the use of immigration detention. Certain 'irrational' practices may make sense for certain actors when looked at through a different lens. As has been said, these alternative perspectives are unlikely to be codified in law. What interests us here are immigration detention's implicit or informal functions, i.e., the various de facto uses that it may have for relevant actors in this social field, such as national and local politicians, policymakers, policemen, immigration judges, and unauthorised migrants.

There is an extensive scientific literature on the functions of penal detention (for overviews see Rychlak 1990; Garland 1991; Carlsmith and Darley 2002). This literature provided the 'sensitizing concepts' (Blumer 1954) that helped us identify relevant informal functions of immigration detention. The study's empirical basis

[3] Research by Van Kalmthout and Van Leeuwen (2004, p. 60) suggested that at least 29 % of the administratively detained migrants have been detained repeatedly. The authors base this on the checklist used by the government to record information about the alien, filled in by the local aliens police. Out of 329 respondents who were researched by Van Kalmthout and Van Leeuwen, 95 respondents (29 %) had been previously presented, 13 respondents (4 %) had not and there were no data available for 221 respondents (67 %). Repeated immigration detention is allowed if a year has expired after a former period of detention has ended, or if new facts or circumstances occur that may lead to expulsion.

consisted of policy documents, survey data, administrative data and fieldwork in a Dutch centre for immigration detention.[4] To some extent, our distinction between formal and informal functions of immigration detention resembles Robert Merton's (1957) classic distinction between 'manifest' and 'latent' functions. Yet, whereas Merton stressed the unintended nature of latent functions, we allow for the possibility that some informal functions of administrative detention may be intended by the actors in that social field—politicians, policymakers, policemen, immigration judges, unauthorised migrants—even if such motives are not formalised in law. Thus, detention practices will be analysed "in relation to specific interests, specific social relations, and particular outcomes—bearing in mind that what is 'functional' from one point of view may be dysfunctional from another" (Garland 1991, p. 126).

In the next section, we briefly describe the main functions of penal detention that emerge from the academic literature. We next describe the main characteristics of administrative immigration detention in the Netherlands. In the remainder of the article we explore three possible informal functions, and present some suggestive evidence for each. These alternatives are (1) deterring illegal residence, (2) controlling the negative external effects of (unauthorised migrant) pauperism and (3) asserting symbolical control over unwanted immigration with a view to upholding popular support and trust in national government.

Functions of Penal Punishment

The social scientific literature argues that, on the one hand, punishment is meant to reduce deviance. Or, to be more precise, it can be said that practices of punishment are functional for the ideology that punishment decreases deviance, as there is considerable scholarly disagreement on the effectiveness of punishment in reducing deviance. This instrumental or utilitarian function of punishment includes notions of deterrence (punishment and the threat of punishment inhibit crime), rehabilitation (prisons re-socialise convicted offenders to prepare for their re-integration in society), and incapacitation (crime levels can be controlled by removing dangerous individuals from society). On the other hand, it is argued that punishment satisfies certain moral needs, regardless of its real or perceived effects on deviance levels. This expressive or deontological function of punishment includes notions of retribution (wrongdoers deserve punishment proportional to the moral wrong committed) and denunciation (law trespassers should be held up to the rest

[4] Empirical observation is crucial to avoid the fallacy of functionalism, i.e., the idea that practice Y must necessarily be functional for actor Z, given interest X, simply because Y can be expected to exert certain beneficial effects for X. It is desirable to demonstrate these effects empirically, for instance by showing that Z aimed for Y because of X (Levy 1968).

of society and denounced as violators of the rules that define what the society represents (cf. Rychlak 1990, p. 331)).

Admittedly, the functions mentioned are to some extent informal. For example, criminal law and penal law do not state that punishment is meant to deter or incapacitate. Yet, contrary to administrative law, most of the functions mentioned are clearly implied in criminal and penal law, and are widely agreed upon in the legal and penal field.

Many criminologists have noted and debated shifts in penal policies and practices concerning the functions of punishment. Under the headings of the 'new penology' (Feely and Simon 1992) and the 'culture of control' (Garland 2001) scholars have noted that ideals and practices of rehabilitation, which were central to penal practices during the 1960s and 1970s, have gradually given way to stricter and harsher policies that place the emphasis on incapacitation. Although these theories have also met with various critiques (see for example Matthews 2005; Cheliotis 2006; Reiner 2007) the shift from rehabilitation to a focus on incarceration remains a central hypothesis. One of the main indicators for this development has been the rising incarceration rates in Western Europe and North America (Feely and Simon 1992; Wacquant 1999).

Another claim of the new penology is that the net of the penal system has been cast wider. It has begun to target a wider range of 'dangerous' social groups apart from the individual criminal. Or, in the words of De Giorgi (2006, p. 106): '[i]t is not so much the individual characteristics of subjects that are the object of penal control, as instead those social factors which permit to assign some individuals to a peculiar risk-class.' In this way, groups that formerly were in the care of the welfare state or private charities, such as the poor, welfare dependents, and drug addicts are increasingly coming into contact with the penal system.

In this chapter, we will go into the question of whether the development described by the new penology is relevant in the case of unauthorised migrants in the Netherlands, as administrative immigration detention only started in earnest in the early 1990s. This roughly coincides with the period in which the shift from rehabilitation to incapacitation is supposed to have occurred. We will also relate the other functions of punishment to immigration detention practices in the Netherlands.

Immigration Detention in the Netherlands

In the Netherlands, as in many other EU member states, expulsion policies have become more prominent in recent years. Even though expulsion remains in essence a solution of last resort—voluntary departure is certainly preferred over expulsion—it has come to be regarded as the indispensable closing section of any serious restrictive immigration policy, which certainly characterises the Dutch policy with respect to non-EU nationals. In 2003, the Dutch White paper on Return even stated that 'return policy should not be a closing section but rather an integral

part of immigration policy itself' (Minister voor Vreemdelingenzaken en Integratie 2003, p. 5).

In the majority of the EU countries, including the Netherlands, illegal residence is, in itself, not a criminal offence, meaning that there is no ground under criminal law for detention (for a legal study on immigration detention in Europe see Cornellise 2010). The Rutte cabinet—a centre-right minority cabinet in office between October 2010 and April 2012 that was supported by the populist Party for Freedom (*Partij voor de Vrijheid)*—planned to criminalise illegal residence as a misdemeanour, which would be punishable with a €3000 fine, or 3 months of imprisonment. In a smaller group of EU countries,[5] including Germany, illegal residence is a criminal offence (Van Kalmthout et al. 2007, p. 64). Yet, even in Germany, immigration detention usually is administrative detention and does not take place under criminal law (Dünkel et al. 2007, p. 377).

The allowed length of administrative detention in the Netherlands is long when compared to most other European countries. Whereas in some countries administrative immigration detention is a matter of days, Dutch law had, until recently, no fixed duration (Van Kalmthout et al. 2007, p. 59). In principle, detention could be imposed until expulsion was realised or still remained a possibility. In light of the adoption of the European 'Returns Directive', which stipulates that the maximum length of administrative detention shall not exceed 18 months (Baldaccini 2009), Dutch law was adapted in 2011. Considering that the maximum was set at 18 months, detention practices will not have to change much as detentions of that length are exceptional, although they do occur (Van Kalmthout and Hofstee-Van der Meulen 2007, p. 650). At present, roughly 75 % of the total population is detained for less than 3 months (DJI 2008a, p. 13).

The legal framework for administrative detention has been translated into a detention practice that suggests that the Dutch authorities have great confidence in detention for the regulation of migration. During the 1990s, the cell capacity for immigration detention has been greatly increased. While in 1980 there were 45 places available for the administrative detention, (Van Kalmthout 2005) in 2007, the counter stopped at 3,807 places (DJI 2008b; see also Fig. 6.1). If we look at immigration detention as a percentage of the total prison capacity (i.e., excluding youth facilities and enforced mental healthcare) the share of immigration detention has risen from 9.1 % in 1999 to 18.1 % in 2006 (Broeders 2009). That trend was partially reversed after 2007. The 2004 and 2007 enlargements of the European Union had, in principle, given all migrants from the new EU member states legal residence as EU citizens. Furthermore, after 5 years of centre-right cabinets, the centre-left cabinet installed in 2007 gave an amnesty to a group of 35,874 asylum seekers who had been in the country for years (Wijkhuijs et al. 2012). The amnesty involved asylum seekers who no longer had legal stay, as well as asylum seekers who were still appealing to the decision by the government to reject their asylum claim, but who would normally have had a very small chance on obtaining

[5] Germany, Finland, Ireland, France, Cyprus and, since 2009, Italy.

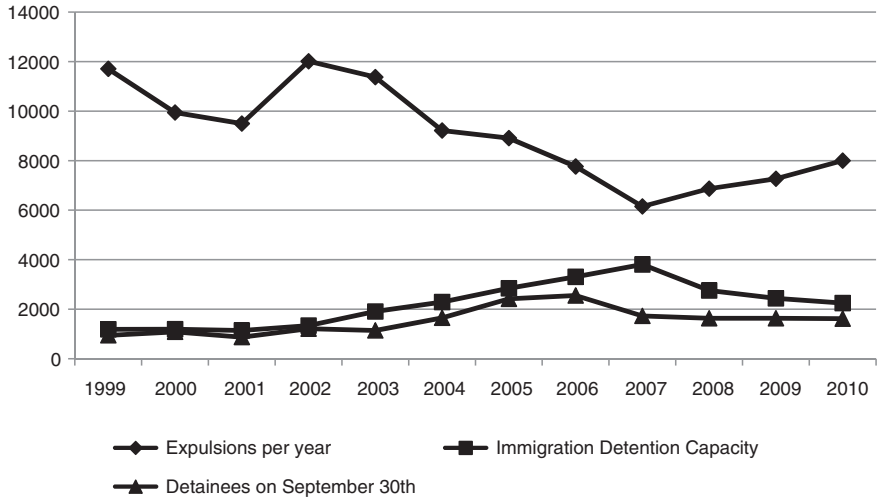

Fig. 6.1 Administrative detention and expulsions in the Netherlands, 1999–2010. *Sources* Data on detention capacity 2008–2010 (Kox 2011); data on number of detainees on September 30th from Statistics Netherlands, http://statline.cbs.nl (visited April 2012); data on expulsions 2008–2010 (Ministry of Justice 2011); for the data sources for 1999–2007 see Leerkes and Broeders (2010)

a residence permit. Between 2007 and 2010, the capacity for administrative immigration detention was gradually reduced to 2,249 places, which equals 10.8 % of the total prison capacity.

Over the years, the actual use of immigration detention has also become more prevalent, especially until 2007. While on September 30th 1994, there were 425 administratively detained immigrants, on September 30th 2006, the year immigration detention peaked, there were 2,555 detainees. After 2006, this figure dropped to some extent, and has now stabilised at around 1,600. The annual number of administratively detained immigrants developed from 3,925 in 1994 to 12,480 in 2006, to 7,812 in 2010.[6]

Most detainees in the Netherlands are in pre-expulsion detention. Pre-admission detention is relatively uncommon: asylum seekers are housed in open reception centres spread across the country, and human smuggling is less of an issue than in countries bordering poorer non-Western countries. Almost all administratively detained immigrants are adults (>99 %), about two-thirds of whom are between 18 and 35 years of age. Men predominate (90 %). Diversity in educational backgrounds is substantial: detention surveys held in 2004 and 2007 (see below) yielded the following distribution: 25 % of the detainees had no formal education, 15 % had primary education, 40 % had secondary education and

[6] Source for 1994 figure: Statistics Netherlands, http://statline.cbs.nl, visited January 2010. Source 2006 figure: Dienst Justititiële Inrichtingen, http://www.dji.nl, visited April 2010.

25 % reported having completed tertiary education. Thus, the share of the latter educational level was clearly elevated in comparison with regular prisons, which stood at 11 % in 2007. These figures confirm that it is not only, and not even primarily, the poorest who migrate to Western countries (De Haas 2005). Diversity in nationalities is substantial as well: in 2009, according to Ministry of Justice registrations, the majority of the administratively detained immigrants were born in countries that, on their own, represented less than 5 % of the detained population. The most prevalent country of birth was Somalia (12 %).[7] This variation in national backgrounds resembles the diversity of the unauthorised population in the Netherlands, in which over 200 nationalities are represented. This includes countries that have been a source of immigration for some time now (Morocco, Turkey, China and Surinam, a former colony), 'new' countries of labour migration to the Netherlands (Ukraine, India, Philippines), 'asylum countries' (Somalia, Iraq, Afghanistan), and countries that play an important role on the international 'spouse market' (Brazil, Thailand, Russia) (Leerkes 2009; Leerkes and Kulu-Glasgow 2011). The great diversity of countries of origin involved makes deportation an organisational and financial challenge that EU member states sometimes try to share by pooling diplomatic resources and joint flights for repatriation.

The increased use of immigration detention does not directly translate into high expulsion figures, which appear to have been on the downturn since the late 1990s until 2007. Perhaps tellingly, there is no official publication in the Netherlands reporting on expulsion trends. Thus, in order to create a time series, we had to 'excavate' relevant figures from various periodic reports by the Ministry of Security and Justice. The results, depicted in Fig. 6.1, indicate that the number of expulsions has been dropping since 2002, from a peak of 12,015 deportations in that year, to 6,150 deportations in 2007. After 2007, deportations are reported to have increased again. That increase may be due to the *Dienst Terugkeer en Vertrek* ('Repatriation and Departure Service') which was founded in 2007 as part of the Ministry of Justice, renamed to the Ministry for Security and Justice in 2010. This organisation coordinates (forced) departure, which used to be a shared responsibility of the Aliens Police, the Military Police and the Immigration and Naturalisation Service. Arguably, the efficacy of immigration detention in terms of repatriation rates also increased recently because of the International Organisation for Migration (IOM). Since October 2007, it has become possible for administratively detained migrants to return voluntarily from the detention centre with the assistance of the IOM. Annually, about 400 migrants make use of this alternative to being deported (Kox 2011). Working in detention centres must represent something of a conundrum for the IOM; it makes forced departure more humane, but also gives rise to questions about the organisation's independence vis-à-vis the state, as it contributes to the efficacy of immigration detention ('if

[7] Source: http://www.dji.nl, visited April 2010.

you return with IOM you will be free'). Or, as IOM Netherlands has recently put it: "The provision of Assisted Voluntary Return services in detention centres is perhaps the be st indicator of how intertwined forced and voluntary return have become in the overall Dutch return policy" (Mommers et al. 2010, p. 60).

Although deportation rates have been rising somewhat in recent years, there is evidence indicating that the Dutch authorities still have great difficulty expelling detainees. According to Dutch Immigration Services (IND) statistics, immigration detention resulted in expulsion for 60.7 % of all detainees in 2000 and for 56.9 % in 2001 (ACVZ 2002, p. 23). On the basis of his research, among 400 immigrant detainees in 2003–2004 Van Kalmthout (2007, p. 101) claimed the percentage of unauthorised migrants who are actually expelled is lower and may even be below 40 %. According to recent data, 49 % of administratively detained migrants were forcefully expelled in 2010, while 6 % was repatriated voluntarily from detention centres with the assistance of IOM (Kox 2011). The figure of 49 % includes repatriation as well as expulsion to other EU countries. (Expulsions to EU countries occur because of 'Dublin claims' or when migrants are apprehended upon arrival, and have entered the Netherlands through another EU country). There are no publications in which the total number of forced departures is broken down into repatriations and intra-European expulsions.

Clearly, although the official rationale for administrative immigration detention explains part of detention practices—expulsions do certainly take place—it does not give a full explanation of immigration detention practices. Given the gap between the large investments in immigration detention and the limited 'proceeds' thereof in terms of expulsions, the policy's rationality seems to be problematic. Therefore, other explanations for the practice of the administrative detention should be considered.

Deterring Illegal Residence

Although immigration detention is formally not a punishment, there are strong indications that detainees may experience it as a punishment nonetheless. It may even be hypothesised that administrative detention is meant to be experienced as a punishment, even if politicians and policymakers seldom state this intention explicitly.

Other researchers have already asserted that administrative immigration detention is meant to bring about specific deterrence (Van Kalmthout et al. 2007, p. 53). In this view, the regime of administrative detention is intended to increase the pressure on detainees to leave the country and co-operate with the expulsion procedure, just like criminal detention is intended to pressure criminals into law-abiding behaviour. We expand this view by proposing that immigration detention may also be intended as a form of general deterrence. In the latter sense, the perceived threat of administrative detention is meant to deter potential unwanted migrants from violating migration and residence laws, just like the threat of

criminal detention is supposed to suppress criminal behaviour in the non-criminal population.

One important reason for the claim that Dutch immigration detention is intended to be punitive is that the regime is modelled after the model of *voorlopige hechtenis*, i.e., the detention regime for suspects of serious crimes who are put in custody while awaiting their trial. As a consequence, the administrative detainee has to undergo a similar extent of deprivation as suspected serious criminals, when it comes to opportunities to communicate with the outside world, work, daily routine, choice of food, etc.

It could even be argued that administrative immigration detention is more of a punishment than staying in a regular prison, as the actual level of deprivation and degree of separation from local communities are probably higher in the former type of regime (with duration of stay held constant). For instance, although administratively detained immigrants have a right to be visited by family members or volunteers, they have no right to be visited without supervision, which, if it is considered beneficial for the rehabilitation of convicts, is allowed in some prisons. Furthermore, contrary to regular prisons, it is impossible to leave the immigration detention centre under supervision in order to attend important family events, such as attending the funeral of a direct family member. Moreover, in comparison with regular Dutch prisons, immigration detention centres in the Netherlands are characterised by a significantly lower level of facilities when it comes to work and schooling opportunities, sport facilities and single person cells. All centres have some sporting facilities and some type of day programme, but contrary to regular prisons, work opportunities are not always available. Also, it has been noted that there is often a relative lack of medical and legal aid, a risk of overcrowding and fewer well-qualified staff (Dünkel et al. 2007; Van Kalmthout and Hofstee-Van der Meulen 2007). Given these differences, it is not surprising that a place in administrative detention is significantly cheaper than a place in a regular prison.[8]

It could be argued that the elevated level of deprivation in administrative detention in comparison to regular prisons follows from the formal policy framework and cannot be taken as an indication that immigration detention is used for deterrence purposes. It could be argued, for example, that the relative lack of work and study opportunities in administrative detention is consistent with the objective to expel the detainee: the unauthorised migrant is, by definition, not supposed to re-integrate in regular Dutch society.

However, there is ample evidence that politicians and policymakers do use administrative detention for deterrence purposes. For example, Mr Nawijn, a

[8] In 2007, the average costs for immigration detention per place per day were 155 €, against 197 € in regular prisons (DJI 2008a, b, p. 61). In 2008, after fierce critique by Amnesty International Netherlands, the government decided to improve detention conditions somewhat (the most important change was that multi-person cells were reduced from 6 to 2 persons). In 2010, the average costs were 193 € against 222 € in regular prisons.

former Dutch Minister of Aliens Affairs and Integration[9], referred to this function when the Dutch parliament discussed the Ministry of Justice's budget for 2003, which included an increased budget for tracing and detaining unauthorised migrants: "The intensification of Aliens Surveillance will work from two sides. Because of the actual surveillance, when illegals are found and then removed, the number of illegals will decrease [AL/DB: here Mr. Nawijn refers to the formal function of immigration detention]. Furthermore, the realisation that there are more intensive controls—and that, therefore, the apprehension chance is increased—will have a deterrent and, therefore, preventive effect [AL/DB: here Nawijn hints at the informal general deterrence function we hypothesise, even if he does not speak of detention as such]" (Tweede Kamer 2002, p. 142).

There is also an indication that national politicians and policymakers became increasingly motivated in the late 1990s and early 2000s to use criminal law and the threat of detention to deter unwanted immigrants from the Netherlands: since 2000 in particular, there has been a marked increase in 'undesirable aliens' resolutions in the Netherlands. An unauthorised migrant who is apprehended repeatedly for illegal residence, or who has been convicted of certain crimes, can be declared an undesirable alien by the Ministery of Justice (legal migrants can also be declared undesirable aliens on the latter ground). Continued residence in the Netherlands as an undesirable alien is then regarded as a crime against the state, which can be punished with up to 6 months of imprisonment (usually 3 months). The annual number of undesirable aliens resolutions increased from 845 in 2001 to stabilise around roughly 1,500 resolutions per year in the period between 2006 and 2011 (Laagland et al. 2009; IND 2012). The annual number of convictions because of continued residence by undesirable aliens increased from 480 to 848 between 2001 and 2006 (Laagland et al. 2009).

Two recent studies have found indications that immigration detention indeed deters illegal residence to some extent. First, Leerkes et al. (2011) researched the determinants of return intentions among 108 asylum seekers who had almost exhausted all legal means. It turned out that fears about personal safety in the country of origin were the main obstacle to voluntary return. However, if respondents were relatively pessimistic and fearful about their life chances as an unauthorised migrant, they were somewhat more inclined to consider return. Second, Kox (2011) conducted 81 semi-structured interviews with migrants who were being detained in a number of Dutch immigration detention centres. The respondents were asked whether they were willing to leave the Netherlands at the start of their detention, and whether they were willing to leave the Netherlands at the time of the interview. The number of respondents who were unwilling to leave the Netherlands had indeed decreased from 64 to 45 during the detention period. Interestingly, the majority of the respondents who had

[9] Before becoming a cabinet minister, Mr. Nawijn had a career in the Dutch civil service at the department of Justice. He held various positions in the field of immigration policy, lastly as director of the Immigration and Naturalisation Service (IND).

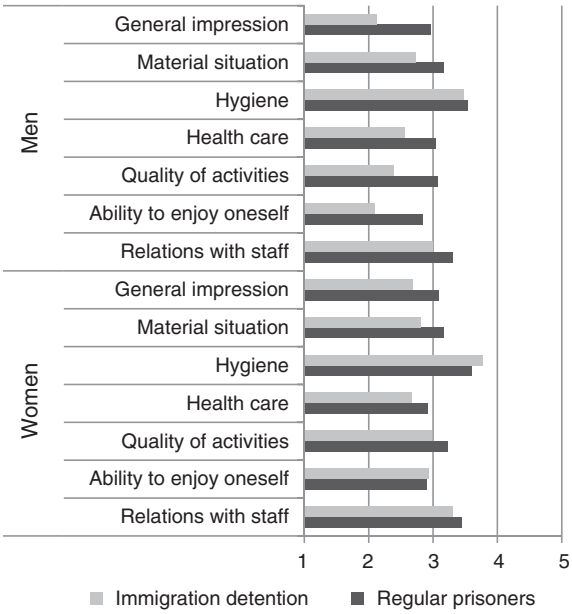

Fig. 6.2 Detention satisfaction among administratively detained migrants (2004 and 2007 combined) and regular prisoners (2007) by sex. *Source* DJI Vreemdelingensurvey (2004), (2007), and DJI Gedetineerdensurvey (2007)

become more inclined to leave the Netherlands were still not willing to return to their country of origin, but considered to migrate to another EU country. This shows national-level deterrence par excellence: even if countries of origin do not co-operate with repatriation, unauthorised migrants may still be deterred to other EU countries.

There are indications that the increased willingness to leave the Netherlands during the detention period is indeed due to what Sykes (1958) famously called the 'pains of imprisonment'. We know that administratively detained migrants in the Netherlands are substantially less satisfied about being imprisoned than regular prisoners. Moreover, it appears that the elevated level of deprivation in the immigration detention regime is among the principal reasons for the reduced level of detention satisfaction. This conclusion is based on the prison and immigration detention surveys that were conducted by the Ministry of Justice in 2004 and 2007.[10] Our secondary analyses show that the difference in imprisonment satisfaction between immigration detention centres and regular prisons is most marked for males. On an ordinal scale of 1–5, males in immigration detention centres rated their general satisfaction with the institution with an average of 2.1 (2004 and

[10] In 2004, 622 unauthorised migrants participated in the survey, and in 2007 575; in 2007 the number of respondents in regular prisons was 6,020. We are thankful to the National Agency of Correctional Institution's (DJI) for making the data available to us in order to conduct secondary analyses.

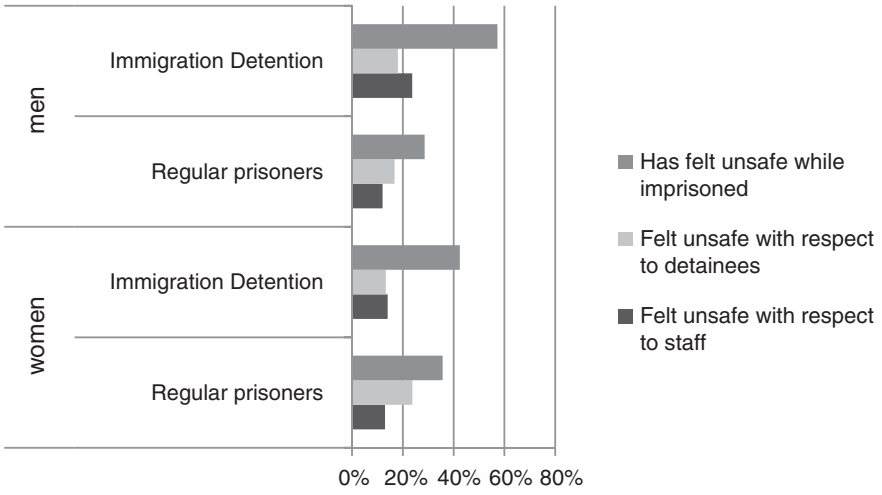

Fig. 6.3 Feelings of unsafety among administratively detained migrants (2004 and 2007 combined) and regular prisoners (2007) by sex. *Source* DJI Vreemdelingensurvey (2004), (2007), and DJI Gedetineerdensurvey (2007)

2007 combined), against 3.0 for regular prisoners (2007) (See Fig. 6.2). For women, these figures were 2.7 and 3.1, respectively. Similarly, we find that a significantly elevated percentage of administratively detained females—and even more so for male detainees—reported having felt unsafe while being detained (Fig. 6.3). These gender differences are consistent with the fact that the detention regime for administratively detained women is less restrictive than for their male counterparts. For instance, female detainees are less likely than male detainees to share a cell with more than one person, and more likely to have access to a shower of their own.[11] Moreover, in some centres for women, the detainees are allowed to do their own cooking and have their children with them. However, as we have seen before, the overall population is predominantly male (90 %).

The differences between immigration detention and regular detention tend to be most pronounced for precisely the dimensions of detention satisfaction where administrative detention centres are objectively outperformed by regular prisons (see the dimensions 'quality of activities' and 'ability to enjoy oneself' in Fig. 6.2; see note for details on the scales as there is even reason to think that the scores on

[11] About two-third (68 %) of the administratively detained females who participated in the Vreemdelingensurvey (2004) or Vreemdelingensurvey (2007) had a shower in their cell against halve (51 %) of the males. About a quarter of the females (24 %) had to share a cell with more than one person, against 46 % of the males.

'quality of activities' are an underestimation of the actual difference between regular prisons and the Aliens Custody).[12]

Managing the External Effects of Poverty

In the Netherlands, unauthorised migrants are excluded from formal welfare arrangements and (most) health care, since the Koppelingswet ('Linking Act') was implemented in 1998. As a consequence, unauthorised migrants who stay in the Netherlands in spite of its increasingly restrictive policies with regard to illegal residence have become dependent on informal social safety nets in case of unemployment, homelessness and/or illness. Moreover, the aforementioned restrictive policies also seem to increase the extent to which unauthorised migrants come to depend on relief as such: unauthorised migrants' access to the informal labour market and housing market deteriorated as a consequence of the Koppelingswet and other restrictive measures.[13] This policy-driven increase in social exclusion appears to have resulted in more marginalisation and a rise in (petty) crime among unauthorised migrants in the Netherlands (Leerkes 2009; Leerkes and Bernasco 2010; Leerkes et al. 2012).

[12] The scale 'material situation' (Cronbach's alpha = 0.74; listwise missing = 14 %) is the average of the scores for the items 'I get enough to eat', 'I am satisfied about the quality of the products in the shop', 'I can buy in the shop what I need', 'Warm food has the right temperature', 'I am satisfied about the eating times', 'I think the warm food is tasty', 'They take religious beliefs into account for the meals'. The scale 'hygiene' (alpha = 0.71; listwise missing = 11 %) is the average of the scores for the items 'It is clean on my unit', 'The showers are clean', 'the air space is clean', 'I can get my clothes cleaned sufficiently regularly', 'I can shower sufficiently regularly'. The scale 'health care' (alpha = 0.73; listwise missing = 18 %) is the average of the scores for the items 'I have been well-informed in this institution about contagious diseases (such a STD's, aids, jaundice)', 'I can get tested easily (for example for aids and hepatitis) if I want to', 'If I want to I can go to the doctor in this institution', 'I am satisfied about the work of the doctor', 'I am satisfied about the work of the nurse'. The scale 'quality of activities' (= 0.79; listwise missing = 21 %) is the average of the scores for the items 'I am satisfied about the sporting facilities', 'I am satisfied about the library', 'I am satisfied about labour facilities', 'I am satisfied about creative facilities'. It is probable that administratively detained migrant are even more negative about the quality of activities than the scores on this scale suggest. For this scale the number of missing values among the latter migrants is quite high (35 %), which may be due to the fact that several administratively detained respondents did not have access to labour and creative facilities. The scale 'ability to enjoy oneself' (alpha = 0.75; listwise missing = 18 %) is the average of the scores for the items 'I can enjoy myself in my cell', 'I can spend my free time with things that I like', 'In the evenings I have enough to do'. The scale 'relations with staff' (alpha = 0.86; listwise missing = 14 %) is the average of the scores for the items 'The personnel will help me if I have problems', 'The personnel are friendly to me', 'If I am down, I can talk with the personnel', 'The personnel treat me in a normal way'.

[13] In 1991, for instance, the use of social-security numbers was barred for unauthorised migrants, which made it much more difficult for them to work in the formal economy. In 2005, the fine for employers who hired illegal aliens was raised from 900 to 8,000 € per employee, and since the late 1990s the government increasingly allocated resources to enforce employer sanctions.

In spite of this restrictive legal framework, and partly because of it, substantial numbers of unauthorised migrants manage to be supported by non-governmental organisations. A 2002 case study in The Hague and Leiden revealed that there was considerable solidarity with unauthorised migrants at the local level (Rusinovic et al. 2002; Van der Leun 2003). A highly varied group of churches, civil initiatives, migrant organisations, left-wing activists and civil servants expressed support for unauthorised migrants. These institutions and individuals tended to specialise in the support they offered. Some donated meals, while others gave legal advice or information about health care, arranged temporary accommodation or offered language courses.

Interestingly, local governments—faced with the results of restrictive immigration policy in the form of homeless and criminal unauthorised migrants on their streets—have also begun to offer relief to specific categories of unauthorised migrants. For instance, many municipalities subsidise accommodation or have begun to organise accommodation themselves. According to an inventory by the VNG, the association of Dutch municipalities, 170 of the approximately 400 municipalities offered such support in direct or indirect ways, from which more than 2,000 persons benefited (Van der Leun 2004; Van der Welle and Odé 2009). Such municipal support is largely aimed at asylum seekers whose applications have been turned down. The VNG has also spoken out against the Rutte Cabinet's intention to criminalise illegal residence citing fears, among other reasons, that vulnerable unauthorised migrants will disappear out of sight and reach of government and non-governmental organisations.[14]

The local networks involved are quite loose and unorganised. Each of the individuals and organisations involved tries to take care of a small part of the demand. Moreover, not every applicant can be helped, as resources are limited. The organisations have to be selective and are forced to set criteria determining who may or may not be helped. The old distinction between the deserving poor and undeserving poor tends to return under these circumstances. Rejected asylum seekers, i.e., 'refugees', have a greater chance of being helped than other groups of unauthorised migrants such as those characterised as 'economic adventurers'. This is the case with municipal support, but also for support by churches. Women and children are helped more often than single men.

Thus, there is a growing group of vulnerable unauthorised migrants in the Netherlands, composed of people who cannot find sufficient employment, do not have a family or partner to support them and are to a great extent excluded from the informal social safety nets that NGOs and municipalities have developed. They are increasingly declared undesirable aliens due to repeated illegal residence, more or less serious criminal activities, or a combination of the two. The size of this group is unknown, but is believed to vary between several hundred and several thousand individuals. They are mostly, but not exclusively, adult males.

[14] Source: Brief VNG aan de Vaste Commissie Immigratie en Asiel van de Tweede Kamer der Staten Generaal over 'Implementatie Terugkeerrichtlijn en strafbaarstelling'. BAWI/U201100108, February 1 2011.

A considerable number of the members of this group are difficult to expel, because, as has been said, they manage to keep their identities secret, but also in part because countries of origin appear to be reluctant to take such marginalised unauthorised migrants back. They are also less likely to be granted residence rights under legalisation programmes which tend, in the Netherlands and elsewhere, to exclude migrants who have been convicted of crimes. Set against the background of previous regularisations in the Netherlands—there have been a few regularisations, but these were limited and politically contested—this group's chances for regularisation are negligible.

For these reasons, we hypothesise that detention—criminal detention as well as immigration detention—may also be used as a form of 'relief of last resort' for such strongly marginalised unauthorised migrants. The aforementioned forms of crime and public order disturbances generate anxieties among the established population, but are often not serious enough to lead to criminal imprisonment. In the general population such forms of deviance, such as homelessness, are often taken care of by social workers, or by means of granting unemployment benefits, but for unauthorised migrants that is increasingly impossible.

As will be elaborated below, our research suggests that the authorities as well as marginalised unauthorised migrants themselves contribute to the use of detention as a form of poor relief, albeit for different reasons. The authorities, including local policemen, use detention to relieve public order disturbances that are associated with immigrant pauperism. Seen from this perspective, it is noteworthy that the Dutch Expulsion Centres in Rotterdam and at Schiphol airport were introduced under the banner of a government programme that was called 'Towards a safer society'(Den Hollander 2004, p. 160). And a recent report by the Ministry of Justice (2009, p. 9) describes its programme 'expelling/detaining' as follows: "[a]ll efforts are aimed at expelling criminal and/or nuisance-causing illegals, and, if that is not yet possible… to detain them in order to take away the nuisance for society". In other words, it seems that Dutch authorities increasingly use immigration detention (and criminal detention) for incapacitation purposes, and not only as a measure of immigration policy.

We have already mentioned the increased average length of stay in administrative detention and the common use of 'cobbling', which may lead to repeated administrative detention. These practices may be the result of the informal function of deterring illegal residence, but are also consistent with the interpretation that administrative detention is used to relieve pauperism and its external effects. During our own fieldwork in the Immigration Detention Centre in Tilburg, which was conducted in 2005, we also found qualitative support for the latter hypothesis (for details on this fieldwork see Leerkes 2009). Several of the 26 men who were interviewed—only men who had been convicted of crimes in the Netherlands were selected for an interview—turned out to have been in immigration detention more than once. The clergymen and psychologists working in the institution turned out to know some of them quite well from previous stays. Institution staff members also told us that undesirable aliens are sometimes put in immigration detention by the police in the big cities during special festivities in town such as Koninginnedag, the national celebration of the Dutch queen's birthday.

Strongly marginalised unauthorised migrants, on their part, sometimes seem to 'use' detention—this goes for criminal detention and immigration detention—as a temporary relief for their lives outside of the detention centre. Most unauthorised migrants whom we interviewed found immigration detention a difficult and denigrating experience, which reflects the reduced level of detention satisfaction in administrative detention (Fig. 6.2). At the same time, some respondents judged it less negatively. An undesirable alien from Iran, who had for years been part of a group of street drug users in a deprived neighbourhood in Amsterdam, claimed that he sometimes pleaded guilty to offences he had not committed in order to recover in detention from his life on the streets. Staff members also claimed that detainees sometimes preferred a stay in immigration detention to life on the streets. Reputedly, there was even a case where a detainee who had been cobbled because no laissez passer could be obtained, set up camp in the bushes next to the institution.

The latter impression may also be confirmed by Fig. 6.2. Note that the difference in detention satisfaction between administrative and criminal detention is relatively small or non-existent for aspects of detention that may be related to poor relief (material aspects, hygiene, health care). It may also be that women, in particular, find relief and protection in centres for immigration detention.

In some respects, these practices share similarities with the poorhouses of the past, particularly the earliest variants such as the houses of correction or workhouses. The latter institutions were also meant to control the external effects of pauperism and were similarly characterised by a strong measure of social control and repression (Katz 1986; Wagner 2005). The current detention practices, however, are directed at aliens, at 'outsiders', and not at insiders. Contrary to the poor houses of the past, the present detention centres are not supposed to reform and discipline 'idle' unauthorised migrants into labour. Rather, they are kept off the streets as much as possible. This difference may also explain why labour is not mandatory in immigration detention.

In short, it appears that immigration detention has become a system of control that incapacitates marginal populations, while ideas of rehabilitation and correction disappear into the background. This is in line with the new penology hypothesis.

Managing Popular Anxiety and Symbolically Asserting State Control

International migration—especially migration from poorer non-EU countries—has become a highly politicised topic throughout Europe, including the Netherlands. While considerable parts of the established population continue to press for more restrictive policies, other groups advocate a more liberal migration regime. After years of intense debate the Dutch government regularised about 30,000 rejected asylum seekers in 2008. In general, however, public opinion in the Netherlands

has become increasingly negative towards migration from poorer non-EU countries since at least the mid 1990s. The minority Rutte Cabinet that fell in April 2012 was sustained by the support of the anti-immigrant Party for Freedom of Geert Wilders, reflecting a negative popular opinion of migration among significant segments of the Dutch population.

Social surveys provide clear indications of an increasingly negative public opinion regarding immigration from non-Western countries, especially for the period in which immigration detention increased the most. The European social survey (ESS), which has been carried out four times since 2002, includes the question to what extent 'migrants from poorer countries outside Europe should be allowed [to live in the country]'. In 2002, 43 % of the Dutch respondents (N = 2,364) answered 'a few' or 'none'. In 2004 (N = 1,881) and 2006 (N = 1,889) that share increased to 47 and 53 %. Interestingly, in 2008 that percentage had returned to the 2002 level (43 %, N = 1,778), paralleling the political decision to legalise about 30,000 rejected asylum seekers and the decreased use of administrative immigration detention after 2006 (Fig. 6.1). Additional indications for a negative public opinion towards (illegal) immigration can be found in the international social survey program (ISSP). As part of the ISSP, two representative surveys on 'national identities' were carried out, in 1995 and 2003, respectively. In 1995, 37 % of the Dutch respondents (N = 1,823) agreed or agreed strongly that immigrants increase crime rates. In 2003, this percentage had gone up to 45 % (N = 2,089). Also, in 1995 a large majority (81 %) agreed or agreed strongly that the government should take stronger measures to exclude unauthorised migrants. In 2003, this percentage remained unchanged, even though the Dutch government had in fact taken several measures between 1995 and 2003 to curb illegal residence. Thus, public pressure on the government to 'do something' about unauthorised migration clearly persisted in the face of an increasingly restrictive policy towards unauthorised migrants.

It is against this background of popular opinion that we hypothesise that immigration detention is not only intended to facilitate expulsion (the formal framework for immigration detention) and migration decisions (our hypothesis about immigration detention's covert function of deterring illegal residence); it also seems to have the function to regulate the more abstract social unrest regarding unwanted migration. The increase in immigration detention communicates the message that the State is still in control over the geographical (and social) borders that citizens want to maintain. Admittedly, the poor relief function of administrative detention, which was discussed in the previous section, also addresses social unrest to some extent, but social unrest in connection with pauperism must be distinguished from the more abstract and generalised anxiety about unwanted immigration that concerns us here. This third informal function of immigration detention is akin to the function of punishment as denunciation: it expresses the value that there should be borders demarcating the divide between who belongs to the society and who does not.

Compared to the other informal functions, the denunciation function may be relatively latent, i.e., relevant actors may not realise—or at least openly admit—that immigration detention is functional for denunciation. For this reason, empirical evidence is bound to remain somewhat speculative.

It is clear, however, that an increase in immigration detention is, par excellence, useful to appease citizens about unwanted migration: detention symbolises social exclusion in a straightforward way. Bosworth (quoted in Lee 2007, p. 850) puts it as follows: '[t]he point is that prisons and detention centers … are singularly useful in the management of non-citizens because they provide both a physical and a symbolic exclusion zone'. Zygmunt Bauman also characterises modern prisons as 'factories of exclusion' and links them with political reactions to popular sentiments: "To posit imprisonment as the crucial strategy in the fight for citizen's safety means addressing the issue in a contemporary idiom, using language readily understood and invoking commonly familiar experience" (Bauman 1998, p. 121).

Foucault (1977) is well-known for his argument that pre-modern punishments symbolised and glorified the political power of the Monarch. If we are right, immigration detention is—albeit to a more limited extent and with a more modern dramaturgy—being used to symbolise the power of the national State in times of heightened globalisation. In that respect, it is interesting to note that centres for immigration detention—especially the more punitive regimes for men—are spatially overrepresented in the Randstad, the densely populated Western part of the Netherlands. In contrast to this, reception centres for asylum seekers—which send a different message as asylum seekers may be admitted to the Netherlands—tend to be located in sparsely populated areas.[15] Moreover, it appears that most centres for immigration detention symbolise departure in one way or another. Several centres are located near airports (Schiphol and Rotterdam airport). Admittedly, this may be practical with an eye to expulsion. Yet, other centres are or located near harbours (Rotterdam and Dordrecht), even if no expulsions are carried out by sea. In addition, several centres for immigration detention have been built in the form of detention boats (Rotterdam, Dordrecht, Zaandam) since 2004. The official reason for the construction of these boats was that it was a quick way to increase the detention capacity, but this raises the question of whether there were no other ways to do so, for instance by building centres in less populated areas, and why no detention boats were built to accommodate the increased need for criminal detention capacity. The boats have been taken out of circulation, partly in response to a report by Amnesty International (2008), which criticised the human rights situation on the boats, because of the recent decrease in the number of detained unauthorised migrants, and because a new detention centre at Rotterdam airport have became available. Only the boat in Zaandam was allowed to stay, as its facilities were deemed superior to the other two detention boats; this boat is now called a 'detention platform' instead of a detention boat. The two other detention boats were recently sold to the United Kingdom. (The Netherlands first tried to sell them to Belgium, but that deal failed to go through because Belgium only wanted to buy one boat, while the Netherlands wanted to sell both boats in one deal).

[15] The latter centres are often located in out of the way places, on industrial zones or in abandoned military complexes; this is also done to discourage societal integration in light of the fact that the majority of the asylum claims will be rejected.

There is a final indication for the denunciation function of immigration detention: whereas the expansion of immigration detention capacity was quite well-communicated to the public, information on expulsion trends is certainly not.[16] The latter information is, as mentioned before, deeply buried in Ministry of Justice reports, which are not characterised by a very transparent presentation of expulsion figures, to say the least.

Discussion: Mixed Motives for Administrative Immigration Detention?

Immigrant detention in the Netherlands indeed constitutes a case of mixed motives. Its formal function is still firmly upheld, but does not explain detention practices completely. It has to be said though, that EU member states, including the Netherlands, have been investing heavily in the construction of new biometric identification systems to 'break down the anonymity' of unauthorised migrants (see Broeders 2007, 2009). This may strengthen the formal function by increasing the number and speed of successful expulsions.

Three informal functions have been discussed: (1) deterring illegal residence, (2) controlling pauperism and (3) symbolically asserting state control. There is an elective affinity between the functions mentioned. In many cases the functions need, and reinforce, each other. For example, in order to address social unrest about unwanted immigration, expulsions should occur, and immigration detention should try to deter illegal residence, but it also helps if nuisance-causing unauthorised migrants are kept of the street. There is, however, a tension between expulsion, deterrence and the management of popular anxiety on the one hand, and poor relief on the other hand. If administrative detention becomes too 'comfortable' the incentive to co-operate with repatriation is greatly reduced, and the general public will not be convinced that the state is in control over unwanted migration. If, however, immigration detention becomes too harsh, it will give cause for humanitarian objections, but will also worsen health and behavioural problems among 'cobbled' detainees, thus giving rise to more public order problems and more public anxiety about immigration. For this reason, it is likely that a certain balance between punitive and more humanitarian concerns is and will be considered necessary.

[16] The government's press release of 5th November 2004, which highlights the results of the Ministry's of Justuce report *Rapportage Vreemdelingenketen 2004, periode mei tot en met augustus*, is a fairly typical example (see http://www.regering.nl/Actueel/Pers_en_nieuwsberichten/2004/November/05/Rapportage_instroom_asielzoekers_daalt). The press release starts with stressing the decrease in the number of migrants applying for political asylum (in the period May–August 2004 there were 34 % fewer applications compared to the same period in 2003). Later on, the release mentions the increase in the capacity for administrative immigration detention and also lists the number of deported unauthorised migrants in the period May–August 2004. The release does not—contrary to the figures on asylum applications—mention that the number of expulsions decreased since 2003.

The informal functions mentioned have, in part, developed in relation to the phenomenon of the 'undeportable deportable alien'. This suggests that the institution of immigration detention, like immigration policy in general, is in flux: modern society has not yet found a definitive solution for the presence of migrants who are formally not admitted, but are also difficult to expel. Mixed motives for administrative detention are to some extent the result of different actors—state authorities, local authorities, citizens, unauthorised migrants—using detention for their own purposes.

There are clear analogies between the three informal functions of immigration detention and the functions of punishment described by the academic literature. First, there is deterrence in immigration detention, even if it is aimed at influencing migration decisions rather than at deterring criminality as usually defined. Second, there is incapacitation, even if unauthorised migrants qualify for incapacitation more easily than citizens and legal denizens, where minor offences and pauperism usually do not lead to prolonged periods of detention. Third, there is denunciation, though not primarily in connection with social values that obtain regardless of legal status—this tends to be more typical of criminal law—but rather in connection with values that are specifically related to 'unwanted' outsiders, expressing the condemnation of immigration and residence without the consent of the *body politic*.

These analogies question the seemingly clear-cut division between criminal and administrative law. In this connection, our analysis confirms De Giorgi's (2006, p. 133) claims that practices of detention and expulsion of immigrants are 'formally administrative' yet 'concretely penal', an opinion that is echoed in Ericson's (2007, p. 25) notion of 'counter law' in which "the traditional distinctions between the different legal forms of criminal, civil and administrative law" have become blurred.

The analogies raise the question of why immigrant detention is not integrated in criminal law, and why it tends to be dealt with under administrative law even in countries where illegal residence is defined as a crime (such as Germany). We propose that the full incorporation in criminal law risks being at odds with the sense of justice and proportionality that underlies notions of punishment as retribution. A detention lasting 3, 6 or even 18 months on account of the 'mere' crime of illegal residence would contrast strongly with the major—for example violent—crimes usually leading to such a (lengthy) sentence. It would bring illegal residence into a 'league' of crime where it does not belong according to most citizens, but especially in the eyes of criminal judges, academics, human rights organisations and advocacy groups. In this sense, administrative law provides the authorities with a flexible instrument of control (in terms of length of detention) that would probably be difficult to obtain under criminal law. If immigration detention would be completely transferred to the latter body of law, Western societies would have to admit that different standards of punishment and governmental control pertain to citizens and (unwanted) non-citizens (see also Walters 2002; Sayad 2004). In the legal and official policy discourse, this difference remains more hidden and implicit (cf. Bosworth 2007).

In the future, we may see a greater de facto and de jure differentiation in immigration detention. Some informal punitive aspects may become integrated in

criminal law, for example by making repeated illegal residence a punishable offence. Indeed, as was mentioned before, this was the intention of the Dutch Rutte cabinet, and also seems to be the trend internationally (illegal residence became a crime in Italy in 2009). At the same time, less punitive aspects may be organised in a system of control that is less modelled after criminal detention. While 'undeserving' unauthorised migrants—i.e., male unauthorised migrants, criminal unauthorised migrants, unauthorised migrants not co-operating with expulsion—are likely to be criminalised further (not only de facto, but also de jure), their 'deserving' counterparts may become decriminalised to a greater extent. Should such a development materialise, that would not be the first time in the history of the prison that institutional differentiation occurred: from the houses of correction, for instance, grew both the modern prison and the more humanitarian poor house (cf. Morris and Rothman 1998).

There are, in fact, a number of indications that this differentiation is already underway, both in the Netherlands and elsewhere. We already mentioned the gender difference in immigration detention regimes in the Netherlands and pointed at the increase in the number of aliens that are declared undesirable. Besides this, it is relevant to note that in 2006 the Dutch government started an experiment with what is called a VBL or *vrijheidsbeperkende locatie* ('freedom limiting location'). In this open centre, where clients can stay a maximum of 12 weeks, unauthorised migrants are not detained but nonetheless controlled: they have to report themselves to the authorities two times a day. Tellingly, the institution is reserved for rejected asylum seekers who no longer have a right to stay in the Netherlands and are believed to be willing to co-operate with 'voluntary return'. In 2011, the Dutch parliament adopted a resolution that required the Dutch Minister for Asylum and Migration to examine alternatives to immigration detention for 'deserving' groups. (The resolution was motivated by humanitarian as well as financial motives). At the time of writing, four pilot projects have been initiated: (1) increased use of a reporting obligation for migrants who have accommodation with reliable private persons or organisations (2) expanded use of the VBL for non-criminal unaccompanied minors who have applied for asylum and have exhausted all legal means, (3) the payment of a bail that will be repaid when the migrant leaves the territory of the European Union (4) the subsidising of NGOs that prevent immigration detention by developing projects with regard to voluntary return.[17] Likewise, in the United States, after complaints by civil liberties and immigrant advocacy groups (see Amnesty International 2009), the Immigration and Customs Enforcement (ICE) has declared its intentions to hold '*non-criminal immigrants* [our emphasis] in a smaller number of less prison-like settings'.[18]

Acknowledgments Arjen Leerkes is supported by a VENI research grant from The Netherlands Organization for Scientific Research (NWO).

[17] Source: Dutch Parliament 19637, nr. 1483.
[18] Source: Washington Post, August 7, 2009.

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Chapter 7
Between Routine Police Checks and 'Residual Practices of Expulsion Power': The Impacts of the Anti-Terrorism Law on Phone Centres and the Resistance of Owners. An Italian Ethnography in the 'Emergency Season'

Michela Semprebon

Introduction

Since 9/11, enforcement officers in many EU countries have made extensive use of anti-terrorism preventive powers by carrying out repeated identity controls targeted at people they presumed to be Muslim. Individuals were frequently stopped in the streets, as well as in places considered to be likely terrorist targets, such as metro systems, train stations, commercial centres, predominantly Muslim neighbourhoods, halal restaurants and mosques (Open Society Institute 2009).

In 2005, investigations into terror attacks in London and Madrid, lead to the arrest of a terrorist who was caught in a phone centre in Rome.[1] Following this, the Italian Government decided these shops were to be monitored. Anti-terrorism Law 144/2005[2] introduced specific requirements for the management of phone centre shops, requirements which were unique to Italy. It was made compulsory for

[1] La repubblica. Preso a Roma il quarto terrorista delle bombe del 21 luglio a Londra. 30th July 2005. Available at: http://www.repubblica.it/2005/g/dirette/sezioni/esteri/metrolon/ven29/index.html [Accessed on 2nd September 2009].

[2] Italian Government Legislative Decree 155, July 27th 2005: *Misure urgenti per il contrasto del terrorismo internazionale.*

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B. Anderson et al. (eds.), *The Social, Political and Historical Contours of Deportation*, Immigrants and Minorities, Politics and Policy, DOI: 10.1007/978-1-4614-5864-7_7,

owners to obtain police authorisation to operate their business.[3] In addition, article 7(4) required customers' operations be monitored, through the preventive acquisition of ID records, and their personal data stored.[4] The measures were specified a month later, in Decree 190/2005.[5] From then on phone-centre owners had to identify and register customers prior to their access to telephone and Internet services and to store their personal data for an undefined period of time.[6] Consistent with the implementation of the Anti-terrorism law, inspections of phone centres increased. Initially, they were organised by the National Police to ensure compliance with the Anti-terrorism law. However, they rapidly developed into an alternative tool to facilitate expulsion, thereby increasing migrants' sense of vulnerability to deportation, even in every day spaces such as these, which were normally not associated with it.

This chapter will explore the consequences of the implementation of this aspect of Italian Anti-terrorism law. Elaborating on the impact this piece of legislation and the resulting police inspections had on phone-centre customers and owners in Verona and Modena, this chapter will focus on the implications of what the author defines as 'residual practices of expulsion power'. It will also analyse forms of resistance to these practices by phone-centre owners. In particular, the ways in which 'residual practices of expulsion power' affected the life of migrants and phone-centre owners and how and why they were challenged by phone-centre owners.

After a short section describing the phone centre business, this chapter will introduce the notion of 'residual practices of expulsion power' and situate it within the literature on expulsion and deportation. A methodological section will explain the choice of the case studies and the limits of the data presented alongside the Italian political context. The presentation of the empirical findings will begin with an examination of the ways in which inspections were implemented by the police and their impact on owners and phone centre clients. It will then move on to consider phone-centre owners' resistance to residual practices of expulsion power including their motivations. The Anti-terrorism law lapsed at the end of

[3] I refer to owners of the activity, in the sense that owners owe the license released from the Ministry of Communication to manage. Owners of the shop itself are generally Italian citizens instead.

[4] In derogation of the personal data protection law. See articles 122(1) and 123(3) in Italian Government Legislative Decree 196, June 30th 2003: *Codice in materia di protezione dei dati personali.*

[5] Ministry of Interior Decree 190, 16th August 2005: *Misure di preventive acquisizione di dati anagrafici dei soggetti che utilizzano postazioni pubbliche non vigilate per comunicazioni telematiche ovvero punti di accesso ad Internet utilzzando tecnologia senza fili*.

[6] The decree required them to store data for 2 years, till December 31st 2007. As the decree was reconfirmed at the end of 2007, it was made necessary for data to be further stored for the period the decree would be extended, that is to say till December 31st 2009.

2010, but it has raised important and continuing questions that will be sketched out in the concluding section.

Phone Centres

Phone centres are family-run businesses. They are managed mostly by residents of immigrant origins who have been living in Italy for more than 6 years, who have a residence permit and need a job contract to have it renewed.[7] The vast majority of owners, in Modena, come from Bangladesh, but there are some from India, Pakistan, Nigeria, Peru, Morocco. In Verona, the majority come from Bangladesh, Senegal, Nigeria, and a few from Ghana, Pakistan, China.

Most phone centres are located in or close to the city centre or in areas where there is a large percentage of immigrant residents. This is hardly surprising given that immigrants make up, by far, the largest share of their customers. However, depending on where they are located, the customer base can change considerably: for those located in university areas, students are an important clientele, while in the centre of town it is tourists who substantially contribute to business earnings. Initially, phone centre businesses provided telephone and Internet services only. Over the years, they introduced additional services including video rental, and the sale of products like phone cards, food, handicrafts etc. Many also provide money transfer.

Customers came to use phone centres as meeting spaces: immigrant residents visited them to chat with friends, caregivers often met there on their day off, customers inquired after practical information on house and job hunting. Owners, for their part, have been offering support—often free-of-charge—to fellow immigrants by filling in forms, translating documents and assisting with other bureaucratic procedures.[8]

TThere were about 18 phone centres in Verona, in spring 2010, when the research was completed. To the author's knowledge, this compares with more than 40 in 2006, including both phone centres and mixed businesses.[9] In Modena in the

[7] According to the requirements of Law 189/2002, known as Bossi-Fini, permanent residence permits need renewal every 5 years. In order for them to be renewed applicants must have a job. At the same time, if their contract is over, it is difficult to get another one without a residence permit. According to an officer of the Chamber of Commerce in Verona (telephone interview March 18th 2010) most aspirant phone-centre owners that enquired about launching an entrepreneurial activity said they urgently needed to do so because their residence permit was expiring.

[8] While municipalities have specific offices that offer this kind of support to immigrants, they do not have the resources to cope with the high demand on their services.

[9] These include shops whereby phone centre services are associated with other services such as food store, dvd store, etc.).

same period, numbers decreased from 39 to 17. Precise data is not available but according to owners there were no more than ten in both cities in January 2011. Many closed because of difficulties deriving from a combination of factors: the crisis of the sector in connection with increasing competition from mobile operators and voice communication systems; an increase in rental rates; and the strict hygiene and structural requirements introduced specifically for this sector in Verona and Modena and their respective regions.

Residual Practices of Deportation Power, Expulsion and Citizenship

In the last two decades, many liberal democratic states, including the USA, the UK, Canada, France Germany and the Netherlands have been using deportation to control migration flows and Italy is no exception. Scholars from different disciplines have contributed to this field of research along three main lines of inquiry (Anderson et al. 2012). The first explores the vulnerability of individuals subject to deportation who enjoy very limited procedural protection (De Genova 2002; Krause 2008; Talavera et al. 2010; Kanstroom 2007). The second analyses the transformation of deportation from a state response to specific events to a normalised part of social control (Cornelisse 2010; Schuster 2005) with the growth of detention centres, private immigration enforcement agencies (Bacon 2005) and the emergence of new deportation agreements between states (Ellermann 2008). The third elaborates on the construction of the deportable subject, as an individual suitable for expulsion (De Genova 2007).

In spite of the richness that characterises the literature none of the above explores the implications of deportation and expulsion for how we conceptualise and understand citizenship (Anderson et al. 2012). More particularly, none of them, with the exception of Ellermann (2010), has investigated forms of resistance to expulsion and to the conceptualisation of citizenship it encapsulates. This contribution will elaborate on the implementation of the Anti-terrorism law on phone centres to demonstrate how 'residual practices of expulsion power' have developed alongside inspections, thus reinforcing and reproducing established conceptions of citizenship. It will also show the contradictions and tensions implicit in normative boundaries of citizenship which are evident in the entangling of multiple forms of belonging (Anderson et al. 2012).

Although deportation and expulsion may often be a radically individualising and atomizing event (De Genova and Peutz 2010), they are not always uncontested (Burridge 2011; Varela 2009; Talavera et al. 2010). They can generate conflicts among citizens and between citizens and the state over who is part of the national community. Phone centre owners and their resistance to 'residual practices of expulsion power is an example in this sense'.

These practices emerged with the implementation of inspections in their shops. As the latter grew more frequent, police officers began to realise phone centres

were an ideal place to spot undocumented migrants. While inspections were not planned with this in mind they came to be used in this way, arguably becoming practices more akin to 'ethnic profiling raids'. I call this, 'residual practices of expulsion power' because, as interviews with police officers and officials confirmed, they were not intentionally planned for the implementation of the Anti-terrorism law, nor of any immigration (and expulsion) law.

Deportation tends to be expensive, politically unpopular in local communities, and constrained by international and regional human rights law, such as the European Convention on Human Rights and the UN Convention against Torture (Gibney 2008). Given these difficulties, before 1990 most states tended to focus on the deportation of individuals who had committed criminal offences and came to their attention through the legal process. However, as issues of immigration and security came to be more important to voters, inspections in phone centres emerged as a relatively cheap and potentially effective tool to demonstrate to citizens that their fears were being addressed.

It must be specified that while little is known about the actual expulsion of individuals identified in phone centres the inspections made citizens and migrants fully aware of what De Genova (2002) terms the 'deportability' of migrants. Additionally, in spite of the importance they assumed for police officials, 'residual practices of expulsion power' have been secondary to other practices relating to terrorism law, the control of migration and expulsion. Nevertheless, they shed light on the trend towards the privatisation of migration control and the resistance to this, as well as the political agency of migrants whom are often considered as totally disenfranchised from politics.

Whereas critical theorists, such as Agamben, treat the state's denial of a legal identity—or of citizenship—to migrants as the end result of an all-encompassing state power, this contribution will illustrate that phone-centre 'owners' counteracted state power to facilitate the evasion of related controls. This is not to romanticise these actors, some of whom were, at least in part, acting in their own business interests, but rather to highlight how 'even in spaces of greatest powerlessness resistance is possible' (Ellermann 2010, p. 409).

Methodology and Context

The Case Studies and the Research Design

Verona and Modena are northern Italian cities and, when this research was carried out, they had a population of about 260,000 and 170,000 residents respectively. Immigrants represented over 10 % of the total (Istat 2010). These two cities are characterised by different political subcultures. In the initial years of the new millennium, Verona was governed by a centre-left Ulivo coalition. However, during its mandate, support grew considerably for the centre-right

Lega Nord coalition which in 2007 won the elections, in 2007 (60.69 % of votes) with a campaign based on an urban safety/anti-immigration stance. Modena has been for long the heart of the Italian Communist Party. To date, it is governed by a centre-left coalition, though the Lega Nord gained ground in the 2009 election (+10 %).

Data were collected in both cities from April 2008 to February 2010. It comprised over 80 semi-structured interviews, one third of which with phone-centre owners and customers, 15 with police officers and officials and the remainder with other actors including mainly policy makers, residents and shopkeepers. Participant observation was carried out principally at phone centres was also carried out, between November 2008 and May 2009.

Police officers and officials often refused to answer questions about inspections on the grounds that it is a sensitive and reserved matter. At first, phone-centre owners too were reluctant to talk about them and their consequences, not least because they feared retaliation from the police. Most of data reported below therefore derived from informal conversations undertaken more than a year after i had started with the research. Owners would be liable for some of the actions reported, so no details will be provided that can be linked to any individual or their city.

The data collected do not allow any generalisation, not only because they relate to Verona and Modena only—though several informants confirmed similar scenarios could be identified in other Italian cities—but also due to the limited evidence gathered. Nonetheless, the data raise issues of utmost relevance in relation to expulsion, both from the scientific and political point of view.

Context: The Italian 'Emergency Season'

Focusing primarily on the USA, De Genova (2007) has considered the pernicious role that terrorism, post-9/11 discourses of fear and insecurity have played in creating a rationale that supports increasing detention and deportation targeted at Arabs and other Muslims. A similar scenario can be recognised in Italy. However, in this country, the crucial interconnection between securisation, criminalisation and race dates back to the beginning of the 1990s, when urban safety came to be seen as a priority by political actors across the country, regardless of their 'political colour'. Immigration has been strongly associated with this, especially by extreme right parties, which have often used immigration as a populist theme for electoral campaigns. Although immigration is no longer a new phenomenon, no strategic long-term policy has been elaborated to manage it appropriately, thus, for many years, related issues have often been treated in terms of 'emergency' and security, in what has become popularly known as the 'securitarian season'.

In this way, fears deriving from a much deeper structural crisis (Palidda 2008; Petrillo 2000) have catalysed into an anti-social behaviour discourse which has diverted attention towards an imagined 'enemy', newcomers (Dal Lago 1999),

with the ultimate aim of reinstating an imagined original status quo (Petrillo 2000). Alarmist campaigns have been organised all over Italy and the 'Pacchetto Sicurezza' (the National Safety Law)[10] introduced in 2009 has demanded clamp-downs and strict enforcement of national immigration laws, including treating the status of undocumented as a crime and increasing police efforts to seek out illegal immigrants.

Empirical Findings

Inspections in Phone Centres and 'Residual Practices of Expulsion Power'

Responsibility for inspections in phone centres fell under different police forces. As set out in the Anti-terrorism law, the Dirigente della Polizia Amministrativa[11] was entrusted with their implementation. Following the approval, a few years later, of various regional and local pieces of legislation which invested police forces with specific responsibilities on phone centres, the Department of the Polizia Amministrativa has been providing coordination for all competent police officers (Interview with Dirigente della Polizia Amministrativa, December 16th 2008, Verona).

More specifically, the department's has included role in-depth investigation of prospective phone-centre owners to ensure their suitability to operate the business, that is to say if they have a clean record and are free from any relationships with criminal networks. It has also checked the shops' structural requirements (this is done in coordination with the Local Police[12]). Finally, until the Anti-terrorism law lapsed, it verified the adequacy of data transmission equipment, together with the Ministry of Communication and the Polizia Postale.[13] Whenever all requirements were satisfied, an authorisation was given to phone-centre owners to start working. This concluded the first set of duties of the Dirigente della Polizia Amministrativa.

[10] Italian Government Law 94, July 15th 2009: *Disposizioni in materia di sicurezza pubblica.*

[11] 'This is the chief of the Questura', the provincial headquarter of the National police force.

[12] The main functions of the Local Police are traffic control and the enforcement of local laws relating to commerce, legal residence and other administrative duties. In the last two decades, the Local Police has been increasingly entrusted with tasks relating to urban safety—included in integrated plans for security—carried out in coordination with the National Police. The Chief of the Local Police, the Comandante della Polizia Locale reports to the Municipality.

[13] This is a specific Department of the National Police that is responsible over the control and repression of illegal and administrative activities that fall within the complex area of communication, including first and foremost illegal activities perpetrated through the Internet.

The second covered the planning and implementation of inspections that were regularly conducted to ensure owners compliance with the Anti-terrorism law. If they were found guilty more than three times, their shop could be "confiscated" or legally required to close until further notification. Inspections were also organised pursuant to specific directions by the Ministry of Interior. They tended to be planned at regular intervals, and in response to terror attacks and other threats. In fact targeted inspections could—and can—be undertaken by specialised bodies of the National Police whenever deemed necessary.

Residents sometimes complained to the Dirigente della Polizia Amministrativa about disturbances caused by phone-centre customers. His Department conducted specific checks when these were likely to develop into a public order problem which required them to 'act tough' (Interview February 29th 2009, Verona). Otherwise, it was the Local Police who were charged with 'keeping the peace'.

Although no precise figures could be provided during interviews, all police officers confirmed that the frequency and number of targeted inspections rose consistently over time, following insistent demands by residents to monitor the shops. Press coverage and phone-centre owners, suggested that the frequency of visits rapidly increased to more than once a week, regardless of any irregularity being detected.

When explicitly asked for an explanation, the Dirigente della Polizia Amministrativa refused to reply, claiming the reserved nature of inspections, but again confirmed they were a response to residents' complaints and public order concerns. Interviews with the Dirigente suggested that increasing security demands had serious repercussions and meant the Polizia Amministrativa and other police forces had to rethink their interventions. They seem to have done so by relating citizens' fears to an anti-social behaviour discourse, as indicated in the press coverage on phone centres.[14] In contrast to the by then evident inability of government agencies to address structural problems, police forces found in the fight against microcriminality and problems of pacific cohabitation an opportunity to act tough and reassure voters that threats to their security were being addressed (Wacquant 2000). This included first and foremost the 'management' of immigrants, (Palidda 2008; Petrillo 2000) continuously identified as 'enemies' (Dal Lago 1999). In this way, government agencies arguably tried to

[14] La Gazzetta. Phone center, un boom pieno di ombre. 4th August 2005, 1; La Gazzetta. I gravi problemi di ordine pubblico connessi alle attività di questi esercizi, scrive Leoni, di Forza Italia, un dato di fatto oggettivo a incontestabile. 28th November 2006, 10; L'Informazione. Sono un disagio per i cittadini: rispettino le regole o chiudano. 27th June 2008; L'Arena. Giro di vite. Approvata dal Consiglio regionale la legge per questi esercizi commerciali, spesso fonte di proteste phone center, ecco le nuove regole. 8th November 2007, 15; L'Arena. Degrado. Due quartieri accomunati dagli stessi problemi come l'eccessiva presenza di stranieri irregolari e di negozi in precarie condizioni igieniche. Tombetta? Peggio di Veronetta. 28th September 2007, 8; L'Arena. Violazioni anche all'edilizia. Proseguono senza sosta i controlli nei *phone center e* nei negozi di merce e alimenti etnici della città. 21st July 2007, 12. [Accessed on 2nd September 2009].

neutralise potential allegations of ignoring citizens' preoccupations. Regardless of effective results, they could prove their capacity to exert (some kind of) control (Quassoli 2004).

Colleagues of the Local Police said that despite the original preventive and monitoring scope of the Anti-terrorism law, no phone-centre owner in Verona had been found guilty of any terror related offence. Similarly, a Local Police Inspector interviewed in Modena could not recall any phone centre connected to terror issues,[15] but rather that discourses of insecurity created a rationale for inspections in these shops which in turn transformed in an opportunity to spot undocumented migrants.

The narratives of various police officers indicated that phone centres came to be identified with 'sites of undocumented'. While undertaking checks, they became aware of the social function the social and congregation function they had for both documented and undocumented immigrants. A perverse mechanism turned inspections into a valid instrument to demand identification, even though they fell outside mainstream practices of migration control. This did not spring from any plan by police officials, but rather was the result of cumulative decisions taken by individual officers as the number of checks increased (see also Open Society Institute 2009). Many made reference to the positive outcome in terms of managing undocumented migrants, suggesting that the fight against against it became one of their (tacit) goals.[16] Police officers' careers could be furthered by clamping down on undocumented immigration (see for example Interview with Local Police Inspector, 24th April 2009, Modena). Conversely, failing to catch them because they escaped was regarded as a serious failure by their superiors (ibidem). It is therefore reasonable to think that this contributed to the development of 'residual practices of expulsion'.

Inspections and the 'residual practices of expulsion' were not performed in a vacuum but took place in the context of the 'Italian securitarian season'. This, as should be clear by now, had little to do with the fight against terrorism. Against a national scenario characterised by the interweaving of criminalisation, securisation and race, the presence and constantly negative representation by the media and political actors of the undocumented population resulted in the expulsion of the latter becoming a cornerstone of the internal control system in a growing police focus on identification.

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[15] Considering his team collaborates with that of the Dirigente della Polizia Amministrativa, it is reasonable to hold his answer as rather informed, in spite of the fact that specific competence on terrorism does not rest with the Local Police.

[16] It was certainly less tacit in the case of Verona where phone centres were actually explicitly indicated in the 2007 winning coalition's electoral programme as places 'at risk' because of the presence of undocumented. See Linee programmatiche di governo per il quinquennio 2007-2012. Session October 24th 2007, 79. Available at: http://portale.comune.verona.it/nqcontent.cfm?a_id=9229 [Accessed on 11th January 2008].

The Impacts of 'Residual Practices of Expulsion Power' on Phone-Centre Owners and Customers

In principle there is nothing illegal in inspections to fight terrorism, nor in the 'residual practices of expulsion power' that were carried out. The United Nations provides for states to suspend certain rights if confronted with a state of emergency—such as the threat of terror attacks—that would seriously jeopardise any country's security (Office of the High Commissioner for human rights 2003). However, the security threat posed to Italy by terrorism and undocumented migration is dubious. Furthermore, as the United Nations spelt out (ibidem: 103), generalisations should not be used in ways that over-target individuals, as this can lead to a decline in legal standards. In the case of inspections, any individual, independently of their legal status (see also Quassoli 2004), could be stopped by the police simply because they regularly went to a phone centre. As a result, the access of customers to these shops and to the 'social environment' they provided, was very much disrupted and constrained thus reinforcing established conceptions of citizenship by marking the exclusion of undocumented from access to everyday services. Moreover, constraints also inevitably fell onto documented migrants and citizens, as will be explained. In fact various phone-centre owners, in both Verona and Modena, insisted that police forces were constantly visiting their shops and putting them and their customers under severe pressure:

> Mamma mia, they come almost four times in a month! All of them come: Guardia di Finanza, Carabinieri,[17] Polizia Postale, Polizia Locale! Every month do they come, sometimes they come all together, sometimes only one police body comes. (…) And then every time they find an excuse to give you a fine. They do not care about it. Even if they find an undocumented outside the shop. They do not care about it, they just fine you full stop. (Interview June 26th 2008, Verona)

Owners commonly complained that fines were given with any excuse. Some owners felt 'lucky' whenever they were 'blessed' with an inspection which did not end up with a fine, suggesting it had become 'normal' that police agents would always find something wrong. Yet there were also owners who felt that police officers were only doing their jobs, by delivering fines whenever owners did not comply with the law (Interview June 13th 2008, December 15th 2008, Verona). In any case, the positive outcomes of various appeals against fines by owners suggests some claims about excessive and unjust fines were correct.

Besides pointing to forms of discrimination they suffered in the delivery of fines which severely affected the costs of their business,[18] owners stressed that the Anti-terrorism law had imposed onto them the task of identifying undocumented, as specified in preceding sections. This is arguably consistent with a more general

[17] These are specific bodies of the National police force.

[18] As spelt out in Ministerial Decree 2005, the violation of article one—which requires owners to identify and register customers—can result in the delivery of a fine of more than 1000 €; if they fail to do so for three times, as anticipated, their shop can be confiscated for 3 days or more.

trend of immigration policing. Customers were often very annoyed at constantly having to show documents in phone centres hence these shops gradually lost their function as meeting places, thus possibly running counter to efforts towards the integration of migrant communities, particularly in urban contexts, such as Verona and Modena, characterised by a shortage of meeting spaces for newcomers (Interview with President of the 3rd Circoscrizione December, 20th 2008, Modena).

Access to phone centres has been particularly constrained for undocumented immigrants. Yet, over time, immigrants with a regular residence permit and Italian citizens also became reluctant to go to phone centres as they did not want to be associated with inspections. Customers, particularly those who had experienced harsh police inspections considered not going to phone centres. Inspections were described as frightening, humiliating, or even traumatic events, particularly in Verona:

> When it happened to me to be there [in the phone centre during an inspection], I saw five policemen entering into the phone centre. They immediately asked everyone to stop doing whatever they were doing, including the owner and every single customer. Everyone was asked out of phone booths, without having the time to say bye bye to the person they were talking to. Even people who were there just to accompany them were stopped. Children too! Everyone was then asked for their ID and residence permit. It went on for an hour or so. No one was allowed in or out of the shop in the meantime, not even people that had to go back to work. It was really a nightmare! (Interview, May 12th 2009, Modena)

Customers reported that owners did their best to make sure checks were not too disruptive, by helping speed up police officers' work and challenging disagreeable conduct. However, owners' efforts were not always sufficient. As customers repeatedly suggested, inspections at times resembled 'racial raids'. The evidence collected is too unsystematic to allow for any speculation but the very fact they were so perceived indicate a cause for concern about police practice.[19] Regular inspections are very intrusive and when entire communities are targeted they can be subjected to a form of collective guilt (Costas 2009). This emerged quite clearly from interviews with customers who felt ill at ease with the image harsh inspections and related media coverage gave of residents of immigrant origins. Inspections have also had a negative effect on public confidence in the police. During informal chats with customers, some worries were expressed that the police could no longer be trusted for protection.

The Resistance of Phone-Centre Owners in Face of 'Residual Practices of Expulsion Power'

With the first run of inspections in 2005, some phone-centre owners began challenging the implementation of the Anti-terrorism law, and 'residual practices of expulsion power'. Chats with tourists made it clear that the identification

[19] This is all the more true for Italy, where police forces are not subjected to the principle of accountability and whereby there is hardly any system for monitoring discrimination by police forces.

requirement was unique to Italy and phone centre-owners in cities such as Rome and Naples reported that the Anti-terrorism law was less rigidly applied hence suggesting a 'localism of rights' (Zincone 2000). Phone-centre owners felt discriminated against and this provided the first motivation to act.

Their opposition to 'residual practices of expulsion power', was partly a response to the need to 'protect their business'. These shops were viable businesses and important for the renewal of their residence permits. However, owners were also clearly genuinely concerned at the disproportionate impact that these practices were having on their customers, and in particular on undocumented people.

Confronted on an everyday basis with the human face of deportation and the possibility of undocumented customers being expelled after identification in their own shop, they grew more and more sympathetic to them (see also Ellermann 2006). This applied particularly to those owners who had experienced what it means to be constantly asked for documents and to live under the constant threat of expulsion:

> I know what it feels like when they stop and maybe search you, anywhere, while you are simply walking down the street, just because you look foreigner or even just because you are unlucky to be there (…) You suddenly feel alarmed, even if you have valid documents with you or you are waiting for your residence permit to be renewed (Interview, November 17th 2008, Verona)

All the above fostered resentment among owners. A whole series of actions followed, but for the purposes of this chapter I will focus on those that specifically challenged 'residual practices of expulsion power'.

The implementation of the Anti-terrorism law was characterised by considerable confusion among police officers and it often resulted in discretionary powers being used differently. It was this 'shadow area' that facilitated the performance of 'residual practices of expulsion power'. At the same time, it provided owners with various coping strategies despite the possibility of very heavy fines being imposed for failing to identify customers[20] or to ask for their residence permit.[21] This is not to say that owners did not acknowledge the importance of complying with the Anti-terrorism law. On the contrary, they repeatedly declared themselves ready to collaborate with police forces, where necessary. In both cities, owners organised and called for meetings with the Local Police to find a compromise to manage the consequences of inspections. In Modena, owners were permitted to identify customers on a one off basis by means of a 'fidelity card' rather than having to do it every time they came. On the contrary, hardly any agreement was reached in Verona.

Regardless of the outcomes of confrontations with police officers, many owners refused to 'hunt' undocumented on the grounds that this was police business. As

[20] As spelt out in Ministerial Decree 2005, the violation of article one—which requires owners to identify and register customers—can result in the delivery of a fine of more than 1000 €; if they fail to do so for three times their shop can be confiscated for 3 days or more.

[21] Although checking residence permits is a task reserved to police officers, several owners were fined because undocumented were found in their shop, some even holding a valid passport.

they argued during interviews, the connection between identification and expulsion meant checking identity was too heavy a responsibility for them:

> It is for the government to control and manage undocumented! I am not supposed to ask them for any document, surely not for their residence permit! Who am I to prevent them from entering my shop? I am not and I do not want to be a policeman! They might just come into ask for an information, to meet a friend, to use the toilet! And if they need to use the telephone or Internet, as any other person could do why should I not allow them to do so? They are not criminals! (Interview, May 27th 2008, Verona)

Some owners were also very critical of Italian immigration laws and practices, as compared to those of other countries. Specific criticism was made of the Anti-terrorism law for acting against undocumented migrants who are living in the country and trying to integrate':

> Why do they welcome undocumented migrants in Lampedusa, give them bread and water and then let them disperse in cities, instead of doing like in England and Spain where they send them back or help them find a job and give them documents? I want a reply on all these questions from the Municipality! Why is it that in such a scenario they come and look for undocumented in my shop? First they welcome them and then if they come to this city and to my shop it should be my fault? (…) This is not 100 % fair because when an undocumented lives in a country this Anti-terrorism decree does not contribute in any positive way to integration… let's say I am an undocumented and I do not have valid documents [with reference to the residence permit] and still need to live day by day. I need to go to shops, not only to phone centres, but how can I do when I know I am hunted all the time? (Interview, December 2nd 2008, Modena)

As evident from the extract above, owners stressed the membership contradictions (see also Anderson et al. 2012) implicit in 'residual practices of expulsion power' with respect to the general integration goals of the Italian Government. Additionally, the perceived 'strategic' use of inspections was criticised as being ineffective and overly invasive for customers:

> If undocumented go to a supermarket, instead of a phone centre, they are not asked for documents and they are left in peace. Why doesn't the police try and catch undocumented on the street instead of insisting on phone centres thus making so many people uncomfortable? This is just another way to exclude people rather than encouraging them to settle and facilitate their way towards integration (Interview, December 11th 2008, Modena)

Owners invariably admitted they found it very hard to ask for documents. I repeatedly tried to investigate how phone-centre owners were actually dealing with undocumented when they entered their shops. At first, they were reluctant to discuss this, but as they became more familiar with me they opened up. They reported that responses included passive noncompliance, sabotage, subtle evasion, and deception (see also Ellermann 2010). Some owners gave undocumented migrants access to their services by registering fake credentials, or those of friends or relatives. We should remember that apart from being a meeting space, phone centres are places where immigrants get updates on their immigration status and related applications. This means most owners are well aware of the frustrations immigrants face, not only because they have often had similar experiences, but also because they are exposed to the frustrations of customers when they visit phone centres in their 'journey' towards settlement and integration.

Other strategies were used to avoid identifying undocumented. Phone centres' registration systems do not allow for phone booths to be unblocked unless the details of customers are first registered. Hence, some of them bought cordless telephones that could be used outside the shop. At first, these were useful for time intervals when the shop was full. After the introduction of the Anti-terrorism law, however, they became strategically useful to enable undocumented to make unmonitored calls. This made it easier for them to evade police inspection as long as they paid careful attention to any police cars.

'The trick of the mixed-business' was also adopted. While the requirement of identification applied to phone centres, it was not introduced for other types of commercial activity like food stores. Given that some owners ran mixed businesses this could justify the unregulated presence of undocumented immigrants. They could be there just to buy food and it was difficult for police officers to prove otherwise, unless they caught them in the act of making a call. Police officers reported this as a problem, but were unaware of it as a practice of resistance, attributing it to the general negligence of owners in conducting their business. Instances were also reported of owners allowing undocumented, along with other customers, to access services beyond the shops' closing time, when the police were less likely to inspect.

According to some interviewees, there were various other practices in cities across the country. In Pisa, for example immigrant and third sector associations took advantage of the fact that the Anti-terrorism law required the identification of customers only in shops with more than three terminal devices. Phone-centre owners pointed out the issues this raised for undocumented and associations worked out an alternative solution, by opening their spaces to them.

All these actions resemble those described by Ellermann (2010) in her research on undocumented and forms of resistance. In Ellermann's view, actions by those on the margins do not generally amount to collective acts of civil disobedience as resistance falls short of 'the resource-demanding standard of organised political action' (410). The same can be said for initiatives by owners, with one main difference. In spite of their own precarious status being repeatedly put at risk through their engagement, owners cannot be understood as marginal in the same way as undocumented migrants, as they do have a residence permit and it can be renewed, as far as they are operative. Another point should be made, which partly departs from the author: owners' practices draw from a shared body of knowledge and embody a critique of national immigration policies, thus pointing to the fact that, in spite of their exclusion from the mainstream channel of political participation, these actors were not totally disenfranchised from politics.

Against the above described scenario, Against the above descried scenario, all owners agreed that the law made it hard for them to operate. They often referred to the impolite and aggressive attitude of some police officers during inspections. In Verona, during the initial months of his mandate in 2007, the mayor took part in numerous inspections leading them in a rather patronising way (Interview, June 14 2008, Verona). Language difficulties made it hard for owners to communicate with police or to protest. The situation was not helped by their stress and fear of retaliation. A deep sense of frustration, anxiety and even rage was expressed by many

interviewees who resigned themselves to dealing with the situation day by day, convinced that police officers would continue harassing them anyway and that their only way out was to 'manage' their shop space as if they were police agents themselves:

> Why do they not simply ask us to close down the business? They are leading all of us in that direction anyway! If eventually they force me to close down and f*** up my business, my whole life's investment, I promise I will burn down the shop… but then I feel so helpless!'. 'I am so tired of being afraid all the time… you never know when there will be another inspection (…) nor do you know when the next piece of regulation will come up… (Interview 14th June 2008, Verona).I'm always very careful and make sure I check on everyone who comes in my shop. If an undocumented migrant comes in, I immediately send him/her away. If I realise that an undocumented migrant is hanging outside my shop I send him/her away too. I do not understand why I should be responsible for this but if the police comes and finds any of them around it blames me and it fines me and I run the risk of having my shop confiscated too. (Interview August 10th 2008, Verona)

Conclusions

Inspections were not effective in achieving set objectives nor unofficial expulsion goals. Nonetheless, they had a disproportionate impact on the everyday life of phone-centre owners and customers, whether undocumented migrants, resident permit holders or citizens.

Although critical theorists, such as Agamben, treat the state's denial of a legal identity to migrants as the end result of an all-encompassing state power, this contribution illustrates that 'residual practices of expulsion power', can be challenged and evaded. Attention to owners' forms of resistance can help us better understand the potential of marginal actors for political engagement. While formalised political participation was closed to them, they were still found to be active politically. Despite their own, sometimes precarious status, owners were not simply the passive objects of policy and practices conceived and implemented by others but often decided to react to 'residual practices of expulsion power', as active subjects of politics.

An analysis of citizenship and in particular of political agency enables us to broaden the debate over expulsion, and in particular over 'residual practices of expulsion power', shedding light on them not only in terms of numbers and individual traumas, but also in terms of the impacts that deportability has on the lives of migrants. It illustrates the boundaries of citizenship, their contradictions and the ways in which people can contest them. Having said this, while owners sometimes succeeded in thwarting the state's efforts at monitoring undocumented migrants, no form of empowerment has resulted, either for them or for undocumented. They could not offer undocumented customers what they desire most: a regular residence permit and access to national membership. Many actually still lack it themselves.

Two questions remain. First: what will happen to phone centres? The sector has been in crisis for several years. Competition from mobile operators and the international voice market is bound to grow fiercer. Many observers say that they will disappear. Others believe there is scope for business if they rethink their activities, and

emphasise the provision of ancillary services, such as money transfer, fax, photocopying, etc.—Internet points are already doing this in Italy and other European countries. The survival of phone centres also depends on whether the restrictions imposed by the normative framework will be loosened. For the time being they are still in place and there is no plan to review them. As far as emergency legislation is concerned, and in particular the Anti-terrorism law, it was repeatedly extended, in spite of its temporary nature, but it eventually lapsed at the end of 2010 and 'residual practices of expulsion power' are no longer implemented. Inspections in phone centres continue at less regular intervals.

The second question, relates to 'residual practices of expulsion power'and the 'Italian securitarian season'. Has the latter come to an end, with the elimination of the Anti-terrorism law? It is too early to say and these practices cannot be associated with the fight against terrorism only. Yet, 'residual practices of expulsion power', that can be best understood with reference to this scenario, are no longer implemented. In this sense, it is therefore legitimate to ask under what conditions they could be reactivated on the grounds of fighting terrorism or any other form of emergency. In a context in which many liberal democratic states have been using deportation power to an unprecedented level, efforts should be made to carefully monitor expulsion polices and associated practices, to ensure that legal standards are respected and that impacts on migrants and on the wider population are monitored.

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Chapter 8
Negotiating Deportations: An Ethnography of the Legal Challenge of Deportation Orders in a French Immigration Detention Centre

Nicolas Fischer

Abstract As most western countries, France has witnessed a general increase of legal control over unauthorized immigration in the past years. This crackdown on so-called undocumented foreigners resulted in a wide recourse to police round-ups, identity checks and custody, or the development of computerized files of foreign nationals designed to "secure the border" and detect unwanted immigrants on the French territory (Weil 2005;Guiraudon 2000;Hollifield 2004). Among those measures, the deportation process has been particularly enhanced, as it provides the most direct and clear enforcement of the "social closure" separating nationals from foreigners. If deportation is, indeed, a "bordering institution", the border that is at stake here is not merely geographic—it is as well a political, a legal, and more broadly a social one, setting those who may exercise the ordinary rights of citizens apart from those who may not (DeGenova and Peutz 2010) .

As most western countries, France has witnessed a general increase of legal control over unauthorized immigration in the past years. This crackdown on so-called undocumented foreigners resulted in a wide recourse to police round-ups, identity checks and custody, or the development of computerized files of foreign nationals designed to "secure the border" and detect unwanted immigrants on the French territory (Weil 2005; Guiraudon 2000; Hollifield 2004). Among those measures, the deportation process has been particularly enhanced, as it provides the most direct and clear enforcement of the "social closure" separating nationals from foreigners. If deportation is, indeed, a "bordering

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B. Anderson et al. (eds.), *The Social, Political and Historical Contours of Deportation*, Immigrants and Minorities, Politics and Policy, DOI: 10.1007/978-1-4614-5864-7_8,

institution", the border that is at stake here is not merely geographic—it is as well a political, a legal, and more broadly a social one, setting those who may exercise the ordinary rights of citizens apart from those who may not (De Genova and Peutz 2010).

This evolution has long been a focus of interest to social scientists, due to the interesting insight it provides on the recent transformations of state sovereignty and the use of force in the daily control of national and regional borders (Bigo 1996; Engbersen 2001; Andreas and Snyder 2000). Studies have analyzed how some of the institutions and police practices previously mentioned contribute to the enforcement of deportations—whether it be identity checks or judicial deportation hearings (Engbersen 2001; Willen 2007a; Hamel and Lemoine 2000; Coutin 2003). This contribution will draw on the material gathered for my Ph.D. dissertation, and discuss an ethnographic study of another of those bordering institutions: immigration detention facilities, legally referred to as *Centres de rétention administrative* (or CRAs) in France.[1] Officially created in 1981, these detention devices are placed under the responsibility of local government officials (in *préfectures*, the administrative units in charge of organizing publics services at the district—or *département*—level). As such, they are non-penal and non-judicial devices, and may be used to detain foreigners who await their forced removal up to 45 days—but more generally, for the time "strictly necessary" to the preparation of their deportation.[2] Twenty five of these *centers* are now in use in France; they offer a total of 1,574 beds and received 27,699 inmates in 2009, for an average time of 10 days (SGCICI 2011).

As other western immigration detention devices (Schuster and Welch 2008; Welch 2002; Pratt 2005), *centres de rétention administrative* may be considered as the ultimate incarnation of the legal and geographical border separating citizens from non-citizens generally enforced throughout the deportation process: it indeed deprives people of their basic right to move freely on the sole ground of their being foreigners *and* unauthorized people facing an order of forced removal (for most of them, because they are undocumented). I will nonetheless focus here on a peculiarity of French *centres de rétention*: the fact that, in each of them, a set of actors is specifically in charge of critically assessing deportations, and of legally challenging them if necessary. All 25 centers now in use indeed include a team of independent lawyers from various Human Rights organizations—although at the time of my survey only one of them was present, an organization called Cimade I

[1] I will here use the French expression *centre de rétention administrative*, and sometimes its English equivalent, "immigration detention centre". Detained immigrants will be referred to as "detainees", although this common English term fails to render the French legal distinction between *retenus*—foreign nationals locked up in non-penal facilities to await their deportation—and *détenus*—i.e. penal convicts serving a sentence in prison.

[2] This time is usually used for the booking of plane or boat tickets by a centralized immigration police agency, and the issuance of consulate international passes when the foreigner has no valid passport (as happens rather frequently).

will thus focus on in this chapter.[3] As permanent members of the staff, these lawyers daily perform the double official duty of surveying the general conditions of confinement, and of providing legal counsel to the detainees. The presence of these non-governmental actors at the very heart of the deportation process—and what's more, to perform a job that often leads to legal action against deportation orders, and their repeal by a judge—may seem paradoxical. It actually points to a broader evolution of immigration control in the recent years: while the deportation process became more and more sophisticated, state administrations were faced with the imperious public urge for them to be compliant with the principles of the "rule of law" (Joppke 1998; Hollifield 2004; Castles 2004).

This recent transformation of the deportation process in France should be connected to a broader evolution of the legal status of foreign people in Europe: starting in the 1980s, many states have granted resident aliens with more and more rights, bringing them closer to the full citizenship enjoyed by nationals (Soysal 1994). Although deported immigrants belong to the unauthorized and "unwanted" part of the foreign population, they have partly benefited from this evolution, while remaining non-citizens forced to leave the territory. This notably leads to the creation of legal provisions protecting against deportation certain categories of foreigners (such as parents of French children or spouses of French citizens) who were considered to be too closely linked to France to be removed (Weil 2005). In the same way, a judicial review of deportation orders was progressively instituted, until the possibility to legally challenge decisions of removal was made available for arrested immigrants even as they were detained in *centres de rétention*.

Having this legal protection enforced inside detention centers was precisely the purpose of the inclusion of lawyers from Cimade in CRAs, which started in 1984. An ethnography of this uncommon contention of deportations then proves to be interesting in multiple ways. It first involves a general questioning on the political use of legal expertise against the state in a democratic realm (Sarat and Scheingold 1998). As in most western democracies (Nyers 2003), various activist groups officially protest against forced removals of immigrants in France, through demonstrations or other forms of public expression—movements Cimade representatives very often join or organize themselves. In the case of *centres de rétention,* however, the critical actors have been integrated to the very enforcement of the process—while the form the contention takes has itself been institutionalized, through the widespread use of legal means by Cimade lawyers in their everyday challenge of deportations. I will then first analyze the institutionalization of this legal critic—which implies to make a combined history of the development of the judicial review over immigrant deportations and confinement, and of the corresponding development of "cause lawyering" practices among human rights organizations helping immigrants such as Cimade.

[3] Substantial information on this organization and the recent intervention of other groups will be given further in the contribution. As the acronym (which stands for *Comité inter-mouvements pour l'aide aux déplacés et evacués*) has now become a proper, feminine name ("La Cimade"), I will spell it this way here.

The second and main part of my study will be grounded on ethnographical material, and describe the everyday work of a team of Cimade lawyers in a French *centre de rétention*. The observations I carried out for 5 months will enable me to analyze how their legal activity both challenges and is part of the enforcement of deportations. I will then be able to focus on another interesting aspect of these independent lawyer's work in immigration detention: the impact of their legal action on the social production of the border. I will here draw on the ethnographic perspective proposed by Susan Coutin—among others—on state borders. In this dynamic analysis, borders are not seen as static and immutable dividing lines, but appear as provisional and mobile results of the joint social activity of multiple state or non-state actors, who daily interact to define, challenge, and reset them (Coutin 2000; De Genova 2002; Ellermann 2009). Seen from this angle, immigration detention centers are one of the places where this resetting activity takes place. They are indeed designed to perform the actual enforcement of deportations, but this enforcement never appears as the simple exercise of state force upon fully controlled immigrants. It may be better described as the result of a progressive, collective work—a work that includes different phases, involves a variety of different actors and power relations, and that in many cases will not be fully performed, leading to the liberation of the unauthorized immigrants on the French territory at the end of their detention time.

At the heart of this dynamic and nonlinear accomplishment, the activity of Cimade lawyers may be described as a contribution to this collective production of the border. They indeed first appear as critical actors, legally and politically independent from state administrations, and sharing a collective vision of legal action as an activist resource to challenge repressive immigration policies. At the same time, their legal skills turn them into experts among others (e.g., social workers or medical practitioners also present in detention centers) who take part, even if critically, in the differential enforcement of deportations and more generally in what Michel Foucault referred to as the "differential management"—in this case, of unauthorized immigration (Heyman 1999; Foucault 1977).

Ban Forced Removals or Control Their Enforcement? Deportation, Immigration Detention, and the "Rule of Law" in France Since the 1970s

As in most European countries, deportation law evolved in France from the old royal power to pronounce the banishment of any unwanted subject—this power being slowly turned into a executive power belonging to the French Home Office and local executive officials (*préfets*), while foreigners progressively became the only ones to be legally deportable from France (Lochak and Jullien-Laferrière 1990). Turned into a specific "technique" for the government of immigrant populations (Walters 2002), deportation (in French *expulsion du territoire*) remained in the hands of local and central civil

servants in charge of maintaining public order, with almost no legal provisions or judicial review to officially frame their discretionary power (Duroy 2001).

Deportation practices thus remained invisible to the public and legally unchecked up to the 1970s. This same decade, however, a broader change occured in the general economy of power relations between the various actors of immigration management. First, the old legal provisions on deportation that had remained unchanged for over 150 years were thoroughly developed, while their targets were progressively reconsidered. Originally used to deport foreign convicts, the old measure of *expulsion* was indeed turned into a means to repress unwanted immigration, until a specific provision—called *reconduite à la frontière*, "escort to the frontier"—was created to deal with undocumented foreigners.

Going along with this general tendency was another movement toward the "legalization" of immigration control—that is, an increasing demand for judicial review over immigration control, and for state compliance with the principles of the "rule of law" (Israël 2009; Joppke 1998). This lead to the progressive building of a genuine immigration law, the creation of legal provisions protecting certain categories of foreigners from being deported (or granting them the right to a residence permit), and finally, the increasing intervention of legal practitioners—ranging from judges to lawyers—in the daily relations between the state and both authorized and unauthorized immigrants.[4] These two dynamics are actually closely interrelated: Human Rights Organizations commonly used cause lawyering as their main form of action, thus contributing to the constant creation of immigration case-law and to the growing involvement of the judicial power in immigration issues (Joppke, 1998; Guiraudon, 2000). State officials now had to count with either new actors, or actors influencing the everyday enforcement of immigration policing with renewed and notably legal means of action, in a policy environment becoming itself more and more legally organized—a dynamics the recent history of immigration detention very accurately accounts for.

Institutionalizing Immigration Detention in France

Locking up deported immigrants for the time necessary to legally and materially organize their trip is an old police practice in France, which actually followed the same historical path as immigration control in general: after having remained informal and

[4] Starting in the early 1970s, administrative courts started repealing immigration orders which lacked sufficient and convincing grounds, urging the Home Office to legalize those foreigners who were considered as "undeportable" by a judge. As measures of removal were developed in the 1980 and 1990s, they where then systematically accompanied by the possibility for the deported immigrant to take legal action against his deportation order before an administrative court. It should be reminded here that for historical reasons, the French legal system includes a so-called "double system of jurisdictions", which supposes that conflicts opposing a private person to a state administration cannot be examined by the judicial power, but should be reviewed by special "administrative courts" (*Tribunaux administratifs* and *Cours administratives d'appel*), which have now become major actors of the protection of fundamental rights against government rule.

unchecked for a long time, it finally became a public concern in the 1970s, and got progressively legalized. The public debate originally focused on the case of a deserted warehouse of the southern port of Marseille, used for immigration detention since 1964. This "centre" without an official name at the time conformed to the image of an "exceptional" device: a precarious, informal place run by the police where immigrants awaiting their removal could be locked up indefinitely in very poor sanitary conditions—and without being entitled to any rights or protection, as the practice of confinement in itself was not authorized by any lawful text. These were precisely the dimensions emphasized in the campaign to close the center, first launched by left-wing newspapers and relayed by a local coalition of Human Rights advocates and lawyers, which quickly acquired national importance. From 1974 to 1979, the Marseille warehouse was publicly denounced as a "clandestine jail" and an outrage to the principles of the "rule of law" (Etat de droit-for a study of the wide circulation of the concept in the French public debate during this period, see Agrikoliansky 2005).

The paradoxical outcome of the movement was actually the "legalization" of *rétention* as a confinement practice, by two laws of January 1980 and October 1981. But as they went public and official, the centers could not go on with the informal and unchecked running of the former years. Up to the present day, what was now officially designated as *rétention administrative* was then involved in a triple dynamic: first, the centers were slowly institutionalized, as the legal framework defining their everyday enforcement went more precise—until a nationwide model for their internal rules officially defined the "rights of the detainees" (*droits des retenus*) in 2001. Second, they became at the same time perennial institutions, slowly moving out of the former informality of emergency camps. Third, they grew more and more specialized, involving professional actors for the control of the confined migrants, but for their relief, care, and legal aid as well. This last dimension is of major importance. It first indicates that the principles of the "rule of law" and the existence of legal provisions protecting the immigrants are not an actual obstacle to the creation and enforcement of immigration detention devices. On the contrary—they do represent a new inflexion in the way these devices help to manage unauthorized immigration. In this case, the imperative for the state to look after the migrants and to protect them while actually deporting them was integrated to the very organization of *rétention* (Fischer 2013). As a result, centers nowadays include the intervention of a medical staff, and of social workers form a state agency. But above all they include the presence of independent lawyers, originally from Human Rights organizations, in charge of both checking over the general conditions of detention, and of providing the detainees with individual legal counsel.

The Evolution of Non-State Intervention Inside Detention Centers

As hinted earlier, Cimade lawyers intervened alone from January 1984 to 2010, when members of four other groups replaced them in part of the 25 detention

centers.[5] The origins and evolution of this non-governmental intervention inside *centres de rétention* are again highly representative of the transformations of immigration policing since the 1970s. The first organization to have been part of the process, Cimade (*Comité inter-mouvements pour l'aide aux déplacés et evacués*) is a protestant organization initially formed in 1939 at the outbreak of WWII to intervene inside refugee camps—a peculiarity that went on for the following years to become part of the organization's activist identity, rooted in the idea of critical cooperation with state authorities[6] (Drahy 2004).

This partly explains why its members chose to participate in the organization of *centres de retention*: the organization collectively accepted the end of legal immigration and the legitimacy of border control in the beginning of the 1980s, and its representatives agreed to enter detention centers as long as they were made legal and controlled, as early as 1983. Their attitude toward the state and immigration policies is, however, more complex. A generally left-oriented organization, Cimade regularly participates in public campaigns and rallies against immigration repression—as such, it was involved in the 1970s contention against immigrant detention in Marseille. Throughout their intervention in detention, Cimade officials thus maintained a critical autonomy, publicly denouncing government initiatives they considered were violations of Human Rights, and releasing an annual report on the state of detention whose critical tone often earned bitter comments from government officials. This tension between contention and cooperation enabled Cimade representatives to play a direct, critical role in the conception and enforcement of deportation policies.

Getting in touch with the French ministry of social affairs as early as 1983, Cimade officials thus played an active part in the initial creation and the various reforms of *centres de rétention*, through direct negotiation sometimes combined with an official campaign. In the same way, Cimade lawyers working in detention signaled situations they saw as abusive or unlawful, but were progressively accepted as part of the ordinary detention staff and created connections with local civil servants as well as other Human Rights advocates, lawyers, and journalists. On both a local and a national level, members of the organization thus progressively built a policy network with various state and non-state actors around the everyday running of immigration detention and deportations, which consolidated their existence but maintained a public concern over their enforcement (Marin and Mayntz 1991).

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[5] These organizations are Forum Réfugiés and France Terre d'Asile (two organizations specialized in the relief of asylum seekers), the Association service social familial migrants (Assfam), and the Ordre de Malte, two organizations working for the social relief of immigrants and, for the latter, for medical care in the Third World. All five organizations intervene alone in five separate sets of detention centers, regrouped on a regional basis. Cimade still intervenes on eight centers out of 25 nationwide, and in four other centers located in the French "overseas territories".

[6] Members of the Cimade were indeed present in various internment camps to assist the detainees up to 1941, and resumed the same type of activity in French internment camps during the Algerian war in the early 1960s.

Very significantly, the recent government attempts to limit this independent control over detention could not frontally ban it, but attempted to reorganize it in reference to the "rule of law". In 2008, the then French minister of immigration indeed submitted the independent relief of detained immigrants to the common law of public procurements, with the official argument that free competition between organizations and a plurality of checks over detention could only result in better transparency and protection for the detainees. The unambiguous purpose of the reform was however to replace Cimade lawyers by members of supposedly less radical organizations, while trying to officially rename the mission of legal counsel into one of humanitarian relief. Cimade officials answered to the initiative by launching a campaign sustained by a set of other Human Rights organizations and attacking the reform before the Conseil d'Etat—the French administrative supreme court—, obtaining the judicial confirmation that the mission in detention had indeed to be one of legal aid and expertise. As a number of other organizations—indeed less involved in the activist contention of immigration policies—nonetheless answered the government offer and were officially authorized to start working in 17 of the centers, the modification was actually enforced. Its results however remain ambiguous: although they have different backgrounds and commitments, officials from all five organizations joined in a common "steering commitee" in 2010. In December 2011, they released a common report which organization and openly critical tone pursued the logic of public voice Cimade had previously established.

In spite of those recent changes, immigration detention is then still enforced in a complex local and national context, involving civil servants as well as non-state critical actors specializing in legal action. From a political science perspective, this presence of permanent, non-governmental legal experts inside detention devices indicate a major shift in the articulation between government and expertise: as Foucault states, the "good government" of the detainees supposes to create "a coherent system of power […] by integrating to this system a plurality of powers, different from one another and possibly opposed to one another or even opposed to the main, central power" (Foucault 2004, p. 55, my translation). In this case, the progressive emergence of a legal framework for the practice of deportations was both a result of and a strong incentive for the intervention of new, specialized actors in the everyday enforcement of immigration control. This empirical evolution changes the way social sciences may address *centres de rétention* as a research object: the problem here is not so much to describe them as opaque, exceptional facilities, than to analyze the ordinary work of a group of actors whose daily job is to run an office inside the center and use the law to spot, label, and repel potentially "exceptional" or "arbitrary" practices. Cimade lawyers indeed commonly examine the legality of deportation and detention practices, to point some of them as "unlawful" in reference to precise legal provisions, and possibly to file a motion against them before a judge. The ethnographic inquiry I conducted in a center in 2005 precisely aimed to describe the impact of this new organization on the deportation process.

Legally Managing the Border: The Collective Government of Immigration in a French *Centre de Rétention*

The fieldwork this section draws upon was conducted during the spring and summer of 2005 in a *centre de rétention*—designated here as "Le Sernans", a fictitious name—which location, size, and history are of a particular interest. Opened in 1988 next to the main runways of the international airport of a major city, this center is one of the largest in France, receiving up to 140 detainees at a time, with an occupation rate of more than 80 % each year. These characteristics make this *centre de rétention* a strategic facility in the enforcement of deportations nationwide, and gives even more importance to the local contribution of Cimade lawyers—along with other states or non-state actors—to the everyday management of irregular immigration and deportation.

Making sense of this contribution first requires a description of the general organization of the center and of its effect on the confined population: le Sernans is, indeed, designed to socially reproduce the legal and geographical border between deportable and non-deportable immigrants. In this context, the strategic use of immigration law by Human Rights lawyers from Cimade will then be described as a way to affect, shift, and eventually reproduce this border.

The Detention Centre as a "Border Zone"

Analyzing the irregular strategies of undocumented immigrants, Susan B. Coutin mentions their relegation into "spaces of non-existence"—e.g. the absence of official, legal existence acknowledged by the state—which they can also use as a resource to travel or work illegally, while remaining invisible to public authorities (Coutin 2000). The logic of immigration detention actually reverses this dynamic of invisibility: the presence and activity of arrested undocumented migrants is made sustainably visible, while the state regains definite power over the management of their existences. The arrest indeed reaffirms simultaneously each immigrant's deportability from a legal point of view—by leading to a deportation order against them—and physically, by cutting them from all social networks they might have used "outside". At Le Sernans, these direct social effects of immigration detention were actually inscribed in the very organization and zoning of the center. As many facilities built especially for *rétention*, Le Sernans was divided in two great areas. Passing the main entrance gate, each newly detained immigrant first entered the "police zone", a small area consisting of housing facilities for the mobile police units assuring the guard of the center, and of a single-story administration building where deportation files were being processed by other police officers.

Going through this building, deported immigrants were slowly being turned into detainees, in a both legal and physical series of operations. On the legal side,

they entered the center along with their deportation file. As its legal contents were being processed by police officers, they then lost their former condition of "non-existence", while the state reaffirmed on the contrary its own monopoly over the allocation of legal status, and the ability to travel (Torpey 2000). This legal takeover was materialized here by the precise identification of detained foreigners, and by the registration of their legal characteristics in the local computerized police files—enabling officers to follow their case, and take into account each new development of their deportation process: a judicial decision over their case, the delivery of a consular pass replacing a deportee's missing passport, or the booking of plane tickets for the forced removal itself.

When the soon to be deported immigrants were finally transferred to the next zone—known as the "detainee zone", where the everyday life of the confined foreigners was managed for the time of their *rétention*—state officials had then taken control of the major aspects of their existence, and of all capacity for them to design their own future. The organization of the detainee zone itself was designed to complete these legal operations. In its limits, confined immigrants were to remain permanently visible and available for police action: each legal evolution in the deportation process had to be immediately translated into a physical grip of state officials over the concrete existence and body of the inmates—resulting in their convocation to the police desk, and their taking to the courthouse or to the airport to board on a flight.

This is why the detainees' legal control went along with the enforcement of a physical control over them. When entering the center, each detainee was then imposed a "degradation ceremony" (Garfinkel 1956) where he or she was neutralized as a body: deprived of most personal belongings, searched for any object that may be used as a weapon, and medically checked in order to detect heavy and contagious pathologies such as tuberculosis or aids. In the same way, the detainee zone itself was organized to create a relatively liberal confinement regime—supposedly more "liberal" than penal detention—while permanently keeping immigrants under control. Located in a huge outdoor square closed by a double fence topped by barbed wire, this zone was dedicated to the management of the detainees' everyday life. Its daily activity revolved around the six single-story buildings were the detainees' bedrooms were located, as well as the separate buildings of the mess room, recreation room, and finally, the open-access "administration building" where the different forms of relief were concentrated: a dozen employees from a private company managing the logistical aspect of housing, a team of four permanent nurses from the closest hospital, five social workers, and finally the five lawyers from Cimade, present two at a time everyday.

In daytime, this same area was a free-circulation zone,[7] enabling detainees to walk freely in and out of the different buildings, and to wait for their turn to be received by the different practitioners. This seemingly "open" organization was nonetheless combined with various "remote control" devices that ensured at the

[7] The expression "free circulation" [*libre-circulation*] was itself used by members of the staff and officials in the center.

same time the visibility of the confined populations. If no policeman was actually present inside the detainee zone itself, all common areas were permanently checked through a network of cameras, while the external limit of the zone was constantly patrolled and screened from surrounding watchtowers. In the same way, every move of a detainee inside the zone could be checked and "organized" through the use of individual "detainee cards"—literally, identity cards from the center that all immigrants were provided with when they first entered Le Sernans, and that they had to show in order to get their meals or take care of their laundry.

While being materially free to move inside the center, detainees were therefore kept under the constant gaze and control of the police, for their deportation to be enforced anytime. The "bordering" logic of the *centres de rétention* was thus inscribed in its very architecture, and its general organization. Unlike prisons, its main goal was not the punishment or probation of the confined immigrants, but to reaffirm and enforce state monopoly over the definition and the actual performing of international movements (Walters 2002). The detainee's future moves were now determined by police, prefecture or consulate officials whose decisions appeared to be practically out of reach.

As we have seen, this "border effect" relied on the visibility—both legal and material—of the immigrant, which constantly reaffirmed their non-citizenship. But the *centre de rétention* also included other expert visions of the detainees—namely, other ways to analyze and qualify their situation, and to deal with it. The detainees' deportability might thus be evaluated medically by the nurses of the center, or cared for by its social workers. The last part of this presentation will nonetheless focus on the legal relief provided by Cimade lawyers, for the particular form of expertise it represents: in this case, the official goal of the support was not to relieve the detainees locally—or possibly to ease their deportation by making it less painful—but to check the legality of the deportation order itself, and to challenge it legally if necessary. As the only independent and critical experts in *centres de retention*, Cimade lawyers were then the only precisely entitled to challenge the state monopoly over the definition of the border and of non-citizenship—in short, who should be deported, and who should have the right to stay.

Challenging and Reassessing the Border: Cimade Lawyers in Immigration Detention

When my observations were conducted in 2005, the five lawyers from Cimade have been part of the immigration detention staff since the opening of Le Sernans. Their intervention had been long integrated in the everyday routine of the center. All members of their team were considered as colleagues by all the non-police actors of the administrative building in the detainees' zone, sharing with them a professional familiarity I was slowly socialized to myself. All Cimade lawyers nonetheless had a professional identity of their own, the key dimension of which was the capacity to master and use immigration law. Three of them held a master's degree in law, and one

a degree in political science. The last member of the team happened to be the only man among a team of four women, but was also older (around forty while all women lawyers were in their 30s) and had been part of Cimade for a longer time. This last characteristic mainly explained his practical, non-academic knowledge of immigration law—which he learnt through teaching sessions internal to the organization, and through the practice of legal relief in *rétention*. Along with this special expertise in law came a high level of politicization among all team members: to them, performing legal support was mainly seen as a way to challenge state decisions, each legal action taken against an allegedly abusive deportation order being commonly presented as a "fight" against state officials, ending up in either a "defeat" or a "victory".

Carrying out this critical job then required from Cimade members a tactical use of legal provisions designed to organize deportations and protect certain categories of immigrants. This practical use of law has already been described in different studies (see Coutin 2000; Hagan 1994; and in France Drahy 2004; Agrikoliansky 2003). When performed in a place originally designed to complete deportations, it nonetheless induces particular social effects.

The first characteristic of legal relief in *rétention* was the extreme pressure under which lawyers had to work. Starting in 2003, the spectacular raise in number and intensity of deportations raised in the same proportion the number of daily interviews lawyers had to carry out.[8] This emergency work was accentuated by the way interviews were organized in the center. As I described before, detainees who wished to meet Cimade lawyers (whose presence was signaled to them when entering the center) had to make it to the administration building in the detainee zone, where they would still have to sit in a waiting room before being received individually. This most serialized form of help explains why the lawyers often described their own job as "assembly line-work" (*travail à la chaîne*), forcing them to see up to 30 different people a day.

In this peculiar configuration, Cimade lawyers had to act fast, and use every resource they had access to. Having worked in immigration detention for many years, they could rely on a rather stable network of outside NGO activists—whether from Cimade or other organizations—and could also count on the help of various professional lawyers. In the same way, they had become familiar with local immigration judges and civil servants, in a complex set of relations that included both mutual respect or trust, and mutual defiance. As a result, the everyday activity of Cimade lawyers included the solicitation of a favor for a deported immigrants from local states official, but it could quite commonly involve direct judicial action before a judge against a legally dubious deportation order at the same time. In these cases, the tactical use of legal provisions was limited to what was essential to frame legal action when possible.

This appeared clearly in the interviews I observed day after day at Le Sernans. When taking their seat in front of the Cimade lawyer, detainees usually came with

[8] The total number of deportation orders issued in France indeed went from 49 124 in 2002 to 94 693 in 2009, for a relatively stable rate of execution of those measures (20.5 % of issued deportation orders where actually enforced in 2002, against 22.2 % in 2009) (SGCICI 2011).

questions, and a personal story to tell—but whether those questions were precise or not, the conversation would be quickly reoriented by the lawyer's own questions, which only aimed at checking whether the immigrant's life story could fit in one of the categories of foreign nationals legally protected against deportation. This appeared for example in the case of a young man from Kosovo, received one afternoon by Hanna, one of the Cimade lawyers. The young man, facing deportation for being undocumented, first indicated he wanted to file an asylum claim. Being questioned by Hanna on his "political problems" in Kosovo, he answered that his problem was not really political—that above all, he did not have a home and that there was "nothing for [him] over there". Hanna immediately stopped him: "This is not an asylum case. We can do it if you want, but I can guarantee you a hundred percent it won't work". As the young man clearly showed his disappointment, she went on with a series of legally oriented questions: "How long have you been in France? Do you have any family in France? Somebody to house you ? Are you married or do you have a girlfriend; do you have children here?". The young man's answer to each question was negative. Hanna finally told him there was not much to do in his case—which brought him to remark that he could still refuse to board on the flight to Kosovo that was to be booked for him. Hanna nodded: "Yes, you can do that, but just remember you can be prosecuted for this—it can lead you to jail…". The young Kosovar finally said he would "see", and left the office (fieldnotes, Le Sernans, 11/04/2005).

In this interview, the information the detainee provided on his situation was immediately framed and selected by Hanna in reference to a series of legal provisions that might protect him against deportation. The young man was thus granted with a series of potential "legal action identities" (Lascoumes 1990) that his own story never happened to exactly fit into. He first could not be a credible asylum seeker, which lead Hanna to review all other legal provisions available against deportation: at the time the observation was conducted, immigrants who had been living in France for more than 10 years, who were married to a French citizen—or planned to marry a French partner—or finally had French children, could not legally be deported. In the same way, deported immigrants who could prove they had a stable address in France could be at least freed from immigration detention and allowed to prepare their departure at home—another legal situation the young Kosovar, again, could not match.

Many similar examples could be provided of the way Cimade lawyers organized interviews according to the legal resources that could be used to challenge each decision of removal, in the minimum time. Questions were often presented in a precise order, from the most efficient against the state to the least susceptible to "work". As it has just been described, this systematic legal expertise of the detainee's legal situation may be both seen as a way to *challenge* the border, as a way to *shift* it, and finally, as a way to *reaffirm* it. In the precedent case, the deportation seemed to become more and more unavoidable and legitimate as the interview went on and none of the "protective" categories seemed to fit the detainee's situation. In the very dynamic of the action, the legal border between deportable and non-deportable foreigners was then reasserted, and

finally re-instituted. In the particular configuration of *rétention* where the entire organization of the center aims at materially enforcing legal decisions, this legal review of deportation was always simultaneously a re-negotiation of the material use of force to effectively remove the immigrant—a use of force that could be challenged and eventually stopped, or, in this case confirmed. Quite significantly, the last possibility that was indeed left to the immigrant at the end of the conversation was the physical confrontation with state force—the rebellion against police escort at the moment of forced boarding, which could hardly bring to a "victory" against state authorities, as it might itself be considered a felony and legally prosecuted.

Cimade lawyers in *rétention* can then be considered as both challengers and contenders of the way the border is being officially proclaimed and materialized in immigration detention, and as co-producers of this same border. At the same time, this "negotiation" of border enforcement is also a negotiation of the differential legal belonging of immigrants to the nation-state: in other words, it is a negotiation over their capacity to righteously claim, if not full citizenship, at least certain rights and the right to stay in France in the light of their family ties to the country, the time they have spent on the territory, or the protection they may obtain as asylum seekers. In the case examined here, the interviewed immigrant did not happen to own any of those social bonds to France, and therefore remained—legally and physically—outside the nation state as a community of citizens. Throughout my observations, this situation, where there seemed to be no way for the lawyers to legally challenge the deportation, was overwhelmingly frequent.[9] But even when the removal order itself could not be legally repealed, the small office of the Cimade at Le Sernans remained a place where the differential "belonging" of deported immigrants to the French society, and their individual immigration strategy, could be debated and modified. The last section of this contribution will briefly address the consequences of this kind of debate on the immigrants' own immigration project.

Negotiating Immigration Strategies: The Consequences on the Immigrants' Perception of Their Own Career

Indeed, a Cimade lawyer's legal expertise might influence the immigrant's subjective perception of his own immigration strategy, both past and future. The notion of "institutional career" (which Goffman borrowed from Everett Hugues and used in *Asylums*) proves very useful when addressing these individual changes brought by the experience of *rétention* and a passage through the Cimade office (Goffman 1961). The notion refers in general both to the succession of objective

[9] On a total of 190 cases of *reconduites à la frontière*, only eight legal motions were filed against the deportation order (4 %). In 100 cases (53 % of the total), no intervention (whether legal motion or else) was started by the lawyers (Fischer 2013).

positions that actors occupy during their life, and to the way they consider them subjectively. But in the case of immigrants, such a career is always—to quote from French political scientist Alexis Spire—a "paper career" (Spire 2005): each phase of the migration process involves a relation to the state, where each attribution or denial of a legal status influences the way immigrants coin and modify their own migration strategy and their projects. In this perspective, the arrest, *rétention,* and interviews with Cimade lawyers are another phase of this same problematic relationship to the state (Peutz 2006): while modulating state enforcement of the border, Cimade lawyers also reorient the immigrants' social trajectory and immigration strategies.

In many cases where no actual legal action was possible, the lawyers indeed acted themselves as "strategic advisors", providing detainees with practical tips on the best way to act in their situation. This happened for example in the case of a 21-year-old man from Burkina Faso whose deportation could not be challenged, in spite of his projected marriage with a French young woman. After telling him that he did not "fit the conditions required to stay in France", the Cimade lawyer who interviewed him concluded by saying: "Well, if the consulate issues you a pass, you will be deported, but—this doesn't stop your girlfriend to come and meet you in Burkina, and get married with you over there. You get married before the French consulate (e.g. so that the marriage will be legally recognized by French authorities) and with that, you can ask for a visa to come back to France". The young man finally agreed to choose this solution in case he was eventually sent back (Fieldnotes, Le Sernans, 05/04/2005). In this case, the interview was then the occasion for a re-arrangement of the migrant's personal immigration strategy, finally accepted by him, but originally imposed by the lawyer's own vision of the available legal resources. Although the young man was then plainly "visible" to the state and his deportation order could not be legally challenged in itself, the strategy was here to use another set of legal provisions to counter the legal removal: marrying a French woman in the country of origin could enable the migrant to legally go back to France—and stay there as a resident alien, as the spouse of a French citizen.

In this situation, the legal strategy was all the more easily accepted by the migrant as it remained coherent with his own project: eventually stay in France and get married. The forced return to Burkina did not mean to him the definite loss of all control over his destiny; it eventually was a costly, but altogether acceptable incident within his career. In other situations, however, the solution—and in many cases, the absence of solution—proposed by Cimade lawyers accentuated the despair of deported immigrants already stressed by their arrest and confinement. This happened for example when Hanna received a 25-year-old man from Cameroon, and had to tell him that no legal action was possible in his situation. In a very tense tone, he answered by detailing his immigrant background: he had come to France through a Franco-Cameroonian agreement, and at this time he felt "directed, confident, there was someone to counsel [him]". He then entered the country legally with a visa, and asked for a residence permit which was finally refused to him. In the meantime, he discovered that the cousin who housed him

stole money from him (as he said, she "betrayed him"), so he left her apartment and began to work without authorization, while staying at various friends'. He finally was arrested in a supermarket for shop-lifting—a felony he strongly denied—was first sent to prison and then in different *Centres de rétention* before winding up at Le Sernans. He concluded his story on a bitter statement: "So now, my dear lady, you are here helping me and it's all very nice, but I have done all this, tried everything and now I am told I have to go back—well, what will I do in Cameroon? I am here and I can be sent back any moment, I don't know what to do, I need someone to give me directions". Facing him, Hanna had to insist on the legal dimension of her intervention to justify her treatment of the case: "I know it's tough—I am sorry, but you have to understand that there is the law, and a civil service to enforce it. We at Cimade disagree with that law, but all the same, I have to do something that is compatible with it if I want to help…" (Fieldnotes, Le Sernans, 15/02/2005).

The immigrant here subjectively saw his own background as the loss of direction and "confidence", simultaneously in his legal relations to the institution—the loss of his formerly legal status and legal job—and in his social life that went more and more precarious—the collapse of family solidarity, the loss of a stable home, and finally the sending to various confinement places concluded by forced removal. The effect of legal expertise and counsel was then lived as an even more brutal rupture in his personal life story. On the other hand, Hanna's answer had to refer to the public criticism Cimade spokespersons had been publicly formulating over the government's immigration policy (speaking from a collective "we"), in order to justify her own tactical use of current legal provisions. Her paradoxical legitimization of the deportation order was made all the more obvious. The legal ground was here seen as the only legitimate field of action: in the face of legal decisions taken by civil servants, all non-legal arguments were disqualified in advance, while the legal defence of the Cimade lawyer actually proved inefficient.[10] In the emergency situation of immigration detention, the impossibility to legally challenge the decisions from the administration quickly made them unquestionable.

In these two cases, the issue for Cimade lawyers was to renegotiate the immigrant's "deportability"—and to oppose to his deportation order the social links he had built and kept with France, whether they referred to a family or professional relationship, or to an asylum claim for political protection. As we have seen, these links had to be "translated" into legal categories they had to fit in order to be taken in consideration by a court or any state authority. But—as I have just shown—this very activity of counselling had a direct consequence on the immigrant's subjective perception of his own "career" as a migrant, and on his future strategy of immigration and stay in Europe.

[10] Interestingly enough, Hanna's justifications are significantly close to some self-justifications of street-level bureaucrats in immigration services ("I just stick to what is legal"). For French examples, see (Spire 2008).

Conclusion

I wish to propose a broader view of the overall picture this independent legal support for detained immigrants is part of. First, as I have shown human rights lawyers rely on both local and national networks whose composition and complexity vary with the political positioning of each organization, and with its history in the practice of legal expertise. Among the various interventions of all the state and non-state actors involved, the legal activity of these independent advocates indeed represents another inflexion in the enforcement of deportations, and in the social production of state borders—an inflexion that has become even more complex with the 2010 transition from a single to five different organizations acting as legal counsellors in detention.

Second, this "inflexion" should by no means be considered as insignificant: it contributes to the actual enforcement of the different legal checks which are, in most liberal states, one of the reasons for the limited efficiency of deportation policies (Joppke 1998). This inefficiency is obviously related to other factors—notably the material impossibility for police forces to detect all unauthorized immigrants, a task that would require tremendous capacity to screen and check public spaces without even mentioning the impact of such control over civil liberties; or the attitude of foreign consulate officials who often refuse to readmit deported immigrants, prompting their release on the French territory (Castles 2004). To draw on the most recent government statistics I have already hinted at, in 2009 94 693 deportation orders were released, while 21 020 were actually carried out, an overall rate of efficiency of 22.2 %. Of the 27 699 immigrants who were actually arrested and sent to a *centre de rétention*, this rate raised to 40 %, the remaining 60 % of detainees being released in France after at most 45 days (and usually less) in a center (SGCICI 2011). More attention should then be devoted to the main result of this gap between deportation measures and their enforcement. In the case of France as in other national situations studied by various authors (Coutin 2000; Willen 2007b; Calavita 2005; Engbersen 2001), the consequence of this differential enforcement is to perpetuate an underclass of precarious, deportable immigrants who may not be legalized, but who will very unlikely be ever removed from the territory. The deportation process, in this case, acts more as a way to "manage" and remotely control this vulnerable population.

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Chapter 9
From Migrant Destitution to Self-organization into Transitory National Communities: The Revival of Citizenship in Post-deportation Experience in Mali

Clara Lecadet

Abstract Through a study of the construction and political evolution of the American nation, recent historical works have given a new focus to measures taken in relation to the expulsion of foreigners. The part played by the distinction between citizens and foreigners also appears in numerous works on the political history of European nations. Generally speaking, studies concentrating on deportation measures aim to establish a link between the political history and political construction of nation states, and the emergence and diffusion of discriminatory measures against foreigners. If these studies raise the question of the relationship between citizenship and the exclusion of foreigners from social and political rights, they also show the room for negotiation, the different types of mobilization, and the opposition that have been formed within western nations to counter such measures. The expulsion of foreigners thus seems to be one of the principal sources of division, dissension, and polemic at the heart of liberal democracies, and it fosters not only political debate, but also community and humanitarian commitment as well as academic critique. While expulsion may be the engine of internal debate for liberal societies, its impact on the social and political life of the countries from which the expelled migrants originally come, or through which they pass, remains an area that has attracted relatively little attention.

Through a study of the construction and political evolution of the American nation, recent historical works have given a new focus to measures taken in relation to the expulsion of foreigners (Kanstroom 2010; Ngai 2005). The part played by the distinction between citizens and foreigners (Noiriel 2006) also appears in numerous works on the political history of European nations. Generally speaking,

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B. Anderson et al. (eds.), *The Social, Political and Historical Contours of Deportation*, Immigrants and Minorities, Politics and Policy, DOI: 10.1007/978-1-4614-5864-7_9,

studies concentrating on deportation measures aim to establish a link between the political history and political construction of nation states, and the emergence and diffusion of discriminatory measures against foreigners. If these studies raise the question of the relationship between citizenship and the exclusion of foreigners from social and political rights, they also show the room for negotiation, the different types of mobilization, and the opposition that have been formed within western nations to counter such measures (De Genova and Peutz 2010; Gibney 2003, 2008). The expulsion of foreigners thus seems to be one of the principal sources of division, dissension, and polemic at the heart of liberal democracies, and it fosters not only political debate, but also community and humanitarian commitment as well as academic critique (Hesse 1959; Fekete 2006). While expulsion may be the engine of internal debate for liberal societies (Freeman 1995, 1998), its impact on the social and political life of the countries from which the expelled migrants originally come, or through which they pass, remains an area that has attracted relatively little attention.

Reflection on the reconfiguration of citizenship is generally grounded in the context of the countries receiving immigrants and calls into question their status and place therein, but the meaning of citizenship for those who are forcibly sent back remains partly unexplored. Insofar as the individual and collective consequences of deportation on emigration and transit countries remain relatively unobserved, the question of the role of citizenship in the expulsion process and of the eventual revival of citizenship in the post-deportation period is generally avoided. The situation of Mali, which has a very liberal migration policy and which does not deport foreigners, provides a useful context for analyzing not only the process of arrival of expelled migrants of various nationalities, but also the process of social and political reorganization following deportation. Based on extensive ethnographic fieldwork carried out between 2007 and 2011[1] in the three major locations of expulsions in Mali, at the cross-roads of Algeria and Mali, Mauritania and Mali and in the capital, Bamako, and an examination of the places and associations formed by expelled migrants, this chapter focuses on the importance of

[1] This fieldwork was carried out for my PhD thesis, entitled "The moving tide of expelled migrants. Centres of displacement, collective mobilization and the risks experienced by expelled migrants in Mali." and was based on a multisite ethnographic approach. Its aim was to offer a general description of places, networks, and associations formed by expelled migrants after deportation. This analysis is grounded in three major locations, where deportations, either by air or by road, are taking place:

- the capital city Bamako where expelled migrants are flying back mostly from Europe and America but are also returning after having been expelled from neighboring countries like Mauritania, Libya, and Algeria,
- the border zone between Mauritania and Mali and especially the border town of Gogui and the city of Nioro du Sahel, where expelled migrants from Mauritania are passing through,
- the border zone between Algeria and Mali, in the area of Tinzawaten where the ghettos described in this chapter are settled, but also, more generally, in the cities of Kidal and Gao, in Northern Mali, where expelled migrants from Algeria are passing through, and in some cases, settling for long periods.

citizenship in the deportation process and on the revival of ideas and forms of organization linked to citizenship in the precarious situation in which migrants find themselves after deportation.

First, we will try to examine how citizenship, conceived as the formal link to the State (Anderson 2013), is reactivated in the area of expulsion itself, when migrants are dropped by Algerian police in the Sahara and pass through or settle in the ghettos formed by expelled migrants on the border zone between Algeria and Mali. In this particular situation, citizenship indeed appears as a decisive factor in bringing together expelled migrants, who identify both individually and collectively with their country of origin. In their self-help organizations, they imitate the rules, functions and protocol of government, an obvious irony given their exclusion from mainstream politics. Citizenship and the intimate bond it creates between people experiencing deportation from Algeria becomes an important tool of survival. This demonstrates how citizenship can be used as a temporary response to the politics of rejection by foreign states. The self-help organization of migrants after deportation and on the road, indicates, however, the reactivation of the formal affiliation to the State and the revival of attributes closely linked with the idea of citizenship in a situation of state rejection, and offers a form of opposition to the state's practices and politics which may seem minimal, but is nonetheless symbolically powerful in this context.

We will also, however, try to assess the link between the expulsion of undocumented migrants and the question of citizenship, through the demands emerging from expelled migrants' associations. As expulsion appears to be symbolic of complete rejection from the privileges of the state, collectively organized migrants are calling for increased protection against these measures by their State of origin. The movement to collective action on the part of some expelled migrants seems to reactivate the idea of being citizens of their own countries, through the desire for participation and representation within the political community, and also suggests how a State should prevent the deportation of its citizens.

From Deportation to the Ghettos

How can the attributes which traditionally accompany citizenship be revived in the radical situation of expulsion? The regular flow of expulsions from Tamanrasset in Algeria to Tinzawaten, a village located on the border zone in Northern Mali, offers an exemplary case of the kind of self-help organization invented by expelled migrants facing deportation. This constant deportation stream is easily implemented as it takes place unobserved in the desert. Migrants expelled from Algeria to the northern border of Mali are mostly arrested and imprisoned in Algeria before being deported. But there are also a significant number of migrants arrested in Morocco and Libya, who are transferred and put into detention centers in Algeria, before also being deported to Mali, so that the Tamanrasset–Tinzawaten axis in the Saharan desert functions as a gathering place for disparate national

groups deported to Mali. Military convoys of prisoners from Tamanrasset (generally 3–5 military trucks each carrying approximately 40 people) make the 300-km journey to the Malian border.

There are no official statistics on the precise number of expulsions in this area as this process of collective deportation was until recently largely ignored by both public authorities and NGOs settled in the North of Mali. According to the police registry held since 2003 on the personal initiative of a police officer in Kidal, a town in Northern Mali of approximately 6,000 inhabitants, 400 km south of the border where migrants are expelled, and through which some of the expelled migrants pass on their way home or elsewhere, there are an average of 2,000 people expelled from Algeria every year. These are mostly young men, doing unskilled manual labor. Those commonly repatriated come from Mali, Gambia, Burkina Faso, Ghana, Cameroon, Congo, Nigeria, Guinea, Senegal, Côte d'Ivoire, Benin, Sierra Leone, Liberia and Mauritania but also, more surprisingly, from Pakistan or Bangladesh. They are undocumented, either because they lost their papers on the way or because they had their papers confiscated after their arrest (suspicions and rumors abound of document selling among Algerian officials). If these migrants have not lost their citizenship, they have lost the proof of it. Some historical studies have analyzed the crucial role played by identity papers in the shaping of contemporary social and personal identity and in the process of social identification (Noiriel 2006).

The loss of documents and civil status is only one aspect of the dramatic and precarious situation that expelled migrants encounter when they are left in the desert by the Algerian army. The intensity of the material loss and the harshness of the conditions in the desert make the period that follows the process of deportation a phase of complete abandonment. Expelled migrants are dropped by the Algerian officials in the abandoned village of Tinzawaten, on the Malian side of the border, which is marked by a dried wadi. They have occupied a small block of six ruined houses near the border in Tinzawaten, where the hard conditions require organization to survive. These migrants have gradually made the ruined walls of the houses their own, putting large, thick plastic covers in place of the destroyed roofs, and painting or engraving the walls of each house with specific recommendations and rules. Thus, each house becomes the place for one of the various national groups which are regularly facing deportation from Algeria. The Nigerians have established the most durable housing, with a café and a shop selling small items. The Malians, who are sent back in their own country in large numbers, also have a well-established base in Tinzawaten.

Expelled migrants use the term *'ghetto'*, to designate the shelters in which they have settled to face the consequences of deportation. The use of this word is highly symbolic, as it suggests both rejection by the State and the situation of isolation, loss and exclusion caused by it. The term ghetto also suggests the emergence of protest in the area of expulsion, as it recalls the ghettos of apartheid or the ghettos inhabited by black people in the suburban areas of large American cities. In terms of race, it implicitly refers to the poor conditions generally reserved for black Africans in many host countries. This symbolically and historically rich context, even if never explicitly referred to by expelled migrants, gives the ghetto a shared, internal meaning for those within.

The emergence of ghettos at the Malian border with Algeria is linked to the reinforcement of measures to expel foreigners from Algeria. At the start of the twenty-first century, when expulsions began to intensify, many people died in the desert. The increasing organization of the different ghettos, their regulation, and the strengthening of various groupings are intended to compensate for the state of extreme abandonment in which migrants in the zone find themselves. It has only been progressively that every one of the big national groups subject to regular expulsion measures from Algeria has acquired its own representation in Tinzawaten; Liberian, Cameroonian, Guinean, Nigerian, Malian expelled migrants constituted their own ghettos under the constraint of deportation. The strength of national bond is present here from the point-of-view of a sense of belonging to a country, its history, its landmarks, but also, and perhaps especially, from the point-of-view of the recognition of it as a community of similar people, of 'brothers'. The regularity of the expulsions seems to have revived this sense of community, and the necessity for it.

Thus, microstates are created across these ghettos, ensuring the recognition of national groups at the place of their rejection and abandonment by both the Algerian state and their state of origin. These precarious communities maintain this sense of belonging and reassure the migrants that despite extreme regulation they remain the citizens of somewhere. By these inventions of state, they are able to affirm their autonomy and their capacity to organize and survive, even when their own state is clearly completely absent. In the ghettos, conflicts are solved collectively through national communities run by "ministers" and "presidents" who mimic the processes of government. These transitory and ephemeral groups help the migrants to survive, as there is no simple return after these expulsions. Some migrants finally reach their home countries after a long journey, some stay in Tinzawaten in order to leave again for Algeria in spite of one or sometimes many previous expulsions, but many instead settle in nearby Kidal or Gao, where they manage to find jobs and sometimes start a family.

If at first sight the ghetto appears to be simply a place that people pass through, it is also a place where people settle, where certain migrants stay for up to several months. The relatively long-lasting quality of the organization is surprising in the light of the essentially fluctuating, ephemeral nature of its membership, subject to arrivals, departures, those passing through and those staying. The regrouping of expelled migrants thus seems to follow an *organizing principle,* continually subject to the renewal and movement of its members (for want of any obviously organized, settled community in the classic sense), the size of which can vary enormously from a dozen to hundreds when Algerian officials bring new convoys of deportees to the border.

Alongside the hierarchies and positions of power that are in place in the various ghettos of Tinzawaten, with their high stakes in terms of negotiating departures to Algeria, solidarity and hospitality are to the fore in these uncertain communities. Welcome rituals precede the period of rest needed by each new group who arrive exhausted at the end of their journey. Each nationality has its greetings and rituals of safe arrival. In the Cameroonian ghetto, the welcome is rather solemn since the new arrivals are favored with a "national anthem" which is in fact a humorously smutty schoolboy song, with rather dubious observations on the travelers' journey.

The name "national anthem" is indicative of the derisive humor with which political terms and symbols are taken over and then twisted and subverted by the migrants. Tragedy and comedy, together with a sense of subverting the political order of states, underlie the organization of migrants. The way in which they appropriate the patterns of politics, subverting them and making fun of them, is the most stinging criticism of the strategies and instruments of power. Here, where they have no rights, the migrants recreate the prerogatives of citizenship, but are well aware of—and make fun of—the fictitious terms and symbols on which those in power build their legitimacy and ensure their supremacy.

The mimetic nature of this organization in relation to standard political and military institutions may be seen as an attempt to distance itself from, and to deride, the repressive, state control which migrants have to face head on. The amount of humor and positive energy at work in this appropriation of politics should not be underestimated. A serious sociopolitical analysis would classify these methods of collective reorganization as strategies or forms of resistance without, perhaps, recognizing the element of gameplaying and inherent irony in this kind of countermeasure. Such organization, typical of migrants, is by its nature ambivalent, however, since it puts them firmly back into a relationship with politics, with all that this entails by way of constraint, arbitrariness and submission.

Interban: The Collective Organization of Liberian Expelled Migrants or the Rule of War

> We're one family of ban some say, it's better we use the name Interban[2]

Here, we want to highlight the organization chosen by Liberians to face up to deportation in Tinzawaten, as an example of the fact that each ghetto creates an organizing pattern impregnated with the political and social references of the country of origin of the expelled migrants. The International Brothers Association Network, better known as Interban, was created in 2006 by Liberian migrants in order to deal with the harsh consequences of deportation from Algeria. The generic appellation includes women, even if they are scarce among the mostly masculine deported population. Through Interban, Liberian migrants managed to transform the ghetto from a place of pure rejection into an organized society based on solidarity and enabling survival in the desert. Rules and hierarchy are tough: the Liberian ghetto in Tinzawaten is regulated by military discipline and hierarchy. This discipline recalls the war that affected Liberia for 15 years; the imprint of the war can still easily be seen in the way that Liberian migrants help themselves to survive and move on. Yet, the bond with their fellow citizens that helps them survive in the desert is not without violence or obligation. It gives the

[2] Quotation from an interview with Steve Ninza, a Liberian expelled from Algeria, January 2010, Gao.

Liberian migrants who go through deportation a powerful and collective sense of belonging, which binds them to one another, but it also obliges them to share their funds in order to pay for food and for the journeys of other members of the group through the desert. Interban can be seen as a means used by Liberian migrants in Algeria to organize themselves, but it is above all a rallying cry for survival once they have been expelled into the desert. Here national allegiance is revived outside the country in order to deal with the consequences of expulsion, thereby defining forms of belonging and convergent association.

The allegiance of each individual to this method of collective organization in the Liberian ghetto appears to be crucial according to the accounts given by migrants, and is claimed as such; the watchword of the Liberian ghetto, "obey, obey and obey", is the touchstone of this group and was accepted unquestioningly by all those spoken to. The organogram of the Liberian ghetto and the hierarchy of the various positions is made up as follows and is decided collectively according to the will and the capacity of the Liberians to settle for some time in the ghetto: General (no.1), Chief of Staff (no. 2), Defence (no. 3), Advisor (no. 4), Grand Commander (no. 5), Ex-Force (no. 6), Chief of Operations (no. 7), Military police (no. 8), Task Force (no. 9), Chaplain (no. 10), Doctor (no. 11). It is of course worrying that all these military titles should make explicit reference to strength and leadership in a context in which the migrants themselves have just felt the use of state force. This perhaps shows that over and above the possibility of survival, there is here an equally urgent, symbolic need to reaffirm the power of the group, the power of an essentially masculine community. It is fascinating to see these migrants reproducing this sort of gathering and saying how much meeting together gives them energy and renews their strength and fighting spirit in their situation of extreme vulnerability, degradation, and sometimes death. The resources of survival include politics: the organization of the Liberian ghetto at the frontier shows the transition that operates between the place of rejection and the pooling of material and human resources in order to survive and start all over again.

Behind the grandiose nature of these military titles lie very everyday concerns. The ghetto can be empty or be full with up to 50 people, according to the arrivals and the departures from the expelled Liberian migrants in Tinzawaten. Most of the migrants are passing through the ghetto and their stay will not last more than a few days. Those who are staying longer, up to several months in some cases, are the ones who hold positions in the ghetto and organize the transportation and subsistence for the others. Meetings in the Liberian ghetto usually take place on a Friday and follow a very precise pattern. The "golden pan" is in the center of the Liberians who are in a circle. The three people who carry out the highest functions in the ghetto are placed in a triangle or pyramid (the triangle and the pyramid being the archetypal symbols of power and the constitution in the life of a community). At the top of this hierarchy is the General, to the left at the base of the triangle is the Chief of Staff and on the right, Defence. These meetings take stock of the resources of the group, each individual being duty bound to put all or part of what he has into the central reserve. In addition, admission to the Liberian ghetto on arrival (government registration) is conditional upon the payment of a contribution

amounting to 200 Algerian dinars or 1,500 CFA (ground fee). Thus, the Liberian migrants become members of the ghetto; thereafter, each morning they must pay the sum of 50 Algerian dinars which is used primarily for buying food which the Ex-Force or Food Supplier fetches from the market in the nearby Algerian village. This shared money is vital for the survival of the group and the person buying food is closely supervised. If he is suspected of keeping some of it for himself, he is accused of corruption and relieved of his duties. In addition, the money is checked by the Secretary. There are also arrangements for ensuring order and justice within the ghetto. The money that is collected is used to organize survival from day to day and to finance transport for a new departure either to Algeria, or to other destinations. Thus, the ghetto becomes in part a base camp for those looking to set off again for Algeria, expulsion being only one stage in their migration which is constantly interrupted and hindered by the risk of deportation. Very often deportation is merely a part of migration and does not necessarily mean return.

It is as if the patterns described above belonged by rights to Tinzawaten and to that tragic moment experienced by all the migrants at the end of their journey, when they are abandoned in the desert. The existence of these patterns lives on in the accounts of those migrants who have, some for only a day, others for longer periods, passed through this place. But if individuals move on and the groups formed in the ghetto break up as a result of the complex and particular journeys of each person, the structure of the ghetto remains as a sort of reference point: a way of organizing things which allowed them all to survive in a place widely considered impossible to live in, a place to which those who may again try to set off for Algeria will perhaps return, or to which others may find themselves once again dispatched. The powerful national feeling that belonging to the ghetto inspires those migrants who pass through Tinzawaten, will fade as they again set off on their travels. Even if the Liberians often travel together in small groups or meet up in the towns along their route, they do so because they know one another or are friends, and there is no longer that feeling of power which is engendered by the distribution of roles within the ghetto. In this sense, Tinzawaten is very much a place of reaffirmation of community and political values in the face of the Algerian state‘s rejection of foreigners. The very barrenness of Tinzawaten makes it a place where identities are reaffirmed and where migrants make a political statement of their refusal to be abandoned; national ghettos are a response to repressive policies, they testify to the fact that the migrants are not completely outside politics or outside the state, because they have found a way of using and even playing with those categories to ensure their own survival in an extreme situation.

Facing Deportation: Citizenship as a Tool of Survival

The gathering of expelled migrants in Tinzawaten on the basis of their formal relationship to their State of origin, is prominent in the ghetto, to the extent that it seems to exclude, at least provisionally, quarrels or divisions linked with ethnicity,

which is never directly referred to. Everything happens as though rejection by the State were somehow comforting, and even reinforced the logic of the State, particularly in the forms of grouping chosen by the expelled migrants and in the expression of their organization. The regrouping of migrants by State of origin can be seen to have a political as well as a social significance. The migrants gather in small transitory groups that are structured by their State of origin, deeply rooted in a sense of recognition that goes far beyond the possession of official identity papers. This creates a zone where citizenship cannot be described as merely granted by the state, nor as a simple individual attribute. The moment when these migrants lose everything—including their civil status—is also paradoxically the moment when they reconstitute a civil society, albeit one that is temporary and designed merely for survival. Strong national feeling compensates for the total absence of institutional support. Although the Malian Red Cross has, from 2009 to 2011 been going to the border zone twice a month to pick up those who are considered the most vulnerable deportees, the ghettos have remained the most stable form of organization enabling the expelled migrants to deal with the period of deportation.

The role of citizenship in strengthening the internal organization of the expelled groups in Tinzawaten is also reflected in the relationships between the ghettos, whose proximity and boundaries are conceived following the interstate relationship pattern. In January 2010, the migrants proposed the creation of a CEDEAO ghetto which would accept migrants from countries that did not have an established ghetto in Tinzawaten. While the internal rule of each ghetto is about avoiding conflicts or sanctioning them, they are an unavoidable component of every organized group. They also occur between the ghettos and are called “civil wars” by the expelled migrants. This mimicking of traditional forms of power and of relations between states is constant, in part serious and in part derisive. The use of political “names” in the organization of the different ghettos testifies to this process of ironic appropriation and distancing, notably in the measures taken to resolve conflicts, which generally have their origin in a domestic or personal relationship dispute.

The members of the Liberian ghetto talk about the ECOWAS[3] force (Economic Community of West African States), which is responsible for conflict resolution and which offers a common reference point for most of those migrants whose nationality is represented in the various ghettos of Tinzawaten; equally involved in conflict resolution is ECOMOG (Economic Community of West African States Monitoring Group), which is a force led by Nigeria, a national group with a strong representation among the migrants. While it never comes to the point where national ghettos replicate interstate disputes, their common order is directly

[3] ECOWAS is a multinational African force created on 28 May 1975 at the signing of the Lagos Treaty, which provided for the advancement and economic cooperation of its member states. These states signed a number of non-aggression treaties in 1978, 1981, and 1990, as well as a mutual support and defence agreement on 29th May 1981 in Freetown (Sierra Leone) which led to the creation of an allied armed force.

inspired by the African organizations for peace keeping. Steve Ninza, an expelled Liberian migrant, I met in Gao in January 2010, here describes the common law that maintains order between the different ghettos:

> The Nigerian ghetto will call the peace keepers ECOMOG because the self Nigeria as a country is part of ECOWAS that serve as ECOMOG because Liberia has been in 1990 war, so wherever we meet then we have organization we always use that as ECOMOG that is in a sense where maybe if there is… in tough problem in our midst, we contact other ghettos because we are in collaboration one another, so we contact other ghettos to give assistance, maybe somebody will come in a midst of us who don't want to accept the rules and regulation that govern us and want to do things out of the way, so if we can't handle that person we will call the assistance of another ghetto and they will come and pull that person.

The main ambiguity of migrant ghettos lies, of course, in the fact that by appropriating and simulating political processes, these microcommunities end up reproducing on a small scale the same failings and abuses that are at work in more organized societies. Violence against women, which was pointed out in a report from the French NGO Médecins du Monde on the situation of women migrating in Morocco[4] but remains silent on the specific context of Tinzawaten, is probably the clearest sign of this, but there are also conflicts between individuals as well as the abusive treatment of the weak and helpless. Nor is the citizenship that is reinvented in this post-expulsion context free from the risk of authoritarianism or the domination of one individual. There are internecine fights and those who are only just emerging from coercion and repression seem very intolerant of any one person taking advantage of others.

From the "Phantom Citizenship" of the Ghettos to the New Demands for Citizenship by Migrants in Immigration and Emigration Countries

Through the ghettos, expelled migrants invent a form of phantom citizenship, even though it has very real effects in terms of organization and survival. By phantom citizenship, we mean that the idea of citizenship, taken out of its usual frame (the territory of the State), still brings its norms and patterns to the organization and to the need for survival of migrants after deportation. Rights and duties attached to citizenship are activated in these microorganizations, which tend to illustrate the fact that the norms of institutional politics are a significant means of bringing groups together.

The traditional dichotomy between those included and those excluded from political systems obscures the more underground and less visible methods of noninstitutionalized reorganization that continue to work from the inside to bring together individuals marginalized by state politics. The reappropriation of politics by expelled migrants demonstrates the strategies of resistance that are put in place not only to counteract the most dramatic effects of expulsion, but also to facilitate

[4] "Violence sexuelle et migration. La réalité cachée des femmes subsahariennes arrêtées au Maroc sur la route de l'Europe. ", March 2010.

some form of mobility denied to the migrants by the process of expulsion. The organization of migrants on the Malian–Algerian border develops as a counterbalance to the measures that seek to expel and distance them. This is not a matter of resistance in the directly voluntary, protesting sense of the term, but a collective response to the elementary need to survive and move on.

Many academic works have sought to characterize the journeys of migrants attempting to reach Europe. The motives for these journeys are threefold: economic backwardness, war, and persecution in the migrants' home country. These journeys, though sometimes supervised and controlled by large international institutions, nevertheless defy definition by the usual political categories, as they overturn the accepted concepts of political sovereignty. One school of thought places emphasis on the repressive policies employed by large western countries for whom these expelled migrants are an undesirable element, but rarer are those who have attempted to give these migrant departures their own meaning (De Genova and Peutz 2010). Some authors have employed political vocabulary to define what is really at stake in these migratory processes. The choice is not insignificant, as this latter approach adopts the point-of-view of the migrants themselves rather than that of the public bodies that guard foreign countries, deny migrants entry and expel them. When Serge Daniel speaks of the 'Republic of migrants' to designate the organizational methods employed in the area around the borders, or when Smaïn Laacher entitles a work '*Le peuple des clandestins*', their use of this terminology appears to be an attempt to give the displacement of migrants a real political dimension and dignity (Daniel 2008; Laacher 2007).

The idea of a phantom citizenship has implications that can be extended beyond the strict case of people deported from Algeria to Mali, as it also appears as a major characteristic of the ways in which migrants gather on their way to immigration. There are indeed connections, from the point-of-view of their organization and of its working, between the ghettos of expelled migrants at Tinzawaten and the informal camps of Gourougou and Bel Younès which were dismantled following events at Ceuta and Melilla in 2005, as well as the homes of migrants in transit. The grouping of migrants by nationality, the designation of a leader, the hierarchy and the collective resolutions to conflicts all constitute common traits. These places maintain a link both marginal and mimetic with political power, as in these places migrants constitute microsocieties (Pian 2008).

But the deportation process certainly has a greater impact on the issue of citizenship than simply the question of migrants' social and material organization on the road to immigration or after deportation. It has indeed given form to new demands, both in emigration and immigration countries that directly concern the status and the rights of the citizen. "What do these illegal immigrants lack?" : This was the question the philosopher Jacques Derrida asked in a speech he gave in a theater in 1996 to protest against the vulnerable situation of migrants, a short time after the police expelled them from the Saint-Bernard Church in Paris where they had found shelter (Derrida 1997). He was trying to analyze the strange and problematic French expression of '*sans-papiers*' (without papers), which seems to reduce all of civil existence to having the correct documents, when in fact such

documentation is only one aspect of this. The expression '*sans-papiers*' defines a negative social existence for illegal immigrants. But in so doing, it likewise confers a social status onto a group of people. Through this grouping, illegal migrants have become a constituency in themselves, instigating new forms of social and political struggle, which in France have had a strong impact on the unions and certain political parties, and which have influenced decisions concerning the regularization of illegal workers on strike. The protest movement of workers without papers, which began in France in 2008, is one example among others of the new forms of visibility that illegal migrants are inventing to affirm their social existence and to make a claim for their civil rights (Barron et al. 2011). Through activism and campaigns the '*sans-papiers*' create a category of people seeking political and social recognition[5] (Lecadet 2009). The name '*sans-papiers*' gives a social existence to people who are denied citizenship, eventually becoming a term of struggle (Lecarpentier 2003) and a sign of power in itself (Foch-Remusat 2009) through the political and social influence gained.

In the meantime, taking account of this emerging protest from undocumented migrants, scholars started to develop new conceptions of citizenship, which would not be exclusively dependent on the legal status of immigrants but which would include personal, social and political ties with the immigration country. Etienne Balibar developed the idea of a "republican citizenship" (Balibar 1999), which would for instance allow immigrants to vote in the country where they are living, and which would put an end to the exclusive connection between nationality and citizenship in terms of civic and political rights. These reflections take account of the exclusion of foreigners from the rights attached to citizenship and at the same time are an attempt to ground the idea of citizenship outside national belonging. Migration studies thus became an ideal field for exploring the tension between nationality and citizenship (Leca 1992).

The citizenship of undocumented immigrants, conceived as a formal link to the State, still plays a central part in the process of expulsion itself. It is formally, "a legal status that operates within a supranational system of states" (Anderson 2013, 165) and as such, is decisive in the deportation procedure. When the undocumented migrants are arrested, processed and expelled, they are considered by the authorities to be nationals of their native countries and have to be identified as such. This process of identification becomes crucial when expelling people legally from Europe and it also presents a major problem for all those who cannot be identified nationally. From the migrants' point-of-view, the recognition of their citizenship is one of the first dangers in the process of expulsion.

In her work on detention centers in Austria and the Czech Republic, Mathilde Varley has demonstrated the strategies developed by imprisoned illegal migrants to prevent their deportation (Varley 2009). Among the individual and collective strategies of resistance to deportation is the hiding or destruction of documents, such as a passport or

[5] In the occupation of the Bourse du travail (Trade Unions Centre) in Paris in the course of 2008 by a collective of illegal migrants asking for mass legal regularization, protesters expressed their desire to be a socially and politically autonomous force.

national identity card, in order to make the identification of a migrant's country impossible by the police or the court. The question of a migrant's citizenship is generally superseded by that of their undocumented status, and yet it plays a crucial role in the process of deportation from Europe, where the recognition and issue of a consular pass by the state of birth is necessary for the expulsion of migrants. In his article about the key role of consulates in the process of identification and the issuing of the necessary consular pass, Alexis Spire explains that there are huge differences between the practices and policies of consulates (Spire 2004). For countries that have signed readmission agreements with European countries, such as Senegal and Turkey, this process of recognition and the delivery of a pass is a routine procedure, while other countries, such as India, Cameroon and Egypt, are reluctant to facilitate the deportation of their own citizens and rarely issue such passes.

This tends to illustrate the fact that citizenship is not only an integral part of the inscription of an individual within the State, but also defines, as Hindess pointed it out, a general interstate system which characterizes contemporary mobility at an international level (Hindess 2000). This has for instance created a new kind of international power relationship between countries that expel migrants and those that allow or do not allow them to go back. This systematic acceptance or refusal contributes to a reshaping of the purposes of migration politics. Adopted in 2008, the European Pact on Immigration and Asylum attempts to avoid the difficulties inherent in the process of recognition by, for example, pushing transit countries to accept non-national expelled migrants on their territory. Local European policies have also been strengthened in order to remove failed asylum seekers without documents. For example, UK asylum legislation has now made it an offence for asylum seekers to be without identity papers and for failed asylum seekers to refuse to be expelled. In the 1990s, the Swiss government "deported rejected African asylum seekers with no papers, irrespective of nationality, to Ghana or the Ivory Coast" (Fekete 2006). In a wide range of agreements on migration flows, there is a clause on readmission in order to facilitate the issue of the consular pass that is necessary in the deportation procedure from Europe.

New forms of protest are also aiming to put pressure on consulates to stop those printing passes that facilitate deportation. In 2009, the French association Droit Devant organized a campaign denouncing the role of consulates in the deportation process of their own citizens; several demonstrations were organized outside consulates, including those of Mali and Algeria, and the protesters managed to obtain appointments with officials in some of the consulates targeted by the campaign.

Furthermore, hitherto unheard of mobilizations, led by expelled migrants of long standing, have come to light since the end of the 1990s in Mali (Lecadet 2009): the pioneering initiative of the Malian Association of Expelled Migrants, set up in 1996 in Bamako by a Malian merchant recently expelled from Angola and who was willing to create a sense of solidarity between expelled immigrants, has contributed to the increased visibility of migrants and to the formulation of independent demands. Their action is part of the issue of marginalization, widely publicized by the alter-globalization movement, but it also poses the more general question of the appearance on the social and political scene of categories of people

judged to be of secondary importance, whose rights are denied and whose existence passes unnoticed (Spivak 1988, 1999). The emergence of "expelled migrants" as a militant group is also part of the growth of new causes and new grounds for social and political demands, and part of the creation of political places and events which are outside the institutional framework of politics (Ranciere 2007).

At the end of the deportation process, some expelled migrants have come together and have created associations to defend their rights and to highlight the situation they are in. In this regard, deportation has given a new impulse to political commitment among expelled migrants. Subsequently, the experience of deportation may become a source of affirmation of a kind of lost citizenship in the countries of origin of expelled migrants. Through collective action, expelled migrants are becoming political actors in their own societies. This not only revives participation in the political community among those who are forcibly returned, it also gives shape to demands concerning the State's protection of its citizens. The protest campaign, led by the Malian Expelled Migrants Association (Association Malienne des Expulsés) and the Forum pour un Autre Mali (FORAM), which took place in Mali at the beginning of 2009 against the signing of readmission agreements (which were indeed subsequently not signed by the Malian government), show for instance that expelled migrants are pushing the government of their country of origin to be more involved in their protection and to prevent the deportation of their own citizens.

In Mali, members of the Malian Expelled Migrants Association speak about the feeling of *double abandonment* that numerous migrants experience after being deported. They feel abandoned by the country that expelled them because they were non-citizens, but also by their homeland, which did not help in preventing this process and did not support them after their return. The expulsion is thus experienced as a double rejection from the usual prerogatives of citizenship and the protection that goes with it. In Togo, an association similar in its terms to the Malian Expelled Migrants Association, called the Togolese Expelled Migrants Association, was created in 2008 to bring to public attention the feeling of loss and misery experienced by expelled migrants returning to Togo. Through the questions raised by the process of identification linked with the deportation of migrants from Europe, new demands are appearing in the countries to which migrants are being returned; they have a strong link with the notion of citizenship and the responsibility of the state. These new forms of mobilization and protest, both in immigration countries and in the countries to which migrants are returned, illustrate how the condition of immigrants and the expulsion process give rise to demands closely linked to the question of citizenship for those who are generally excluded from its privileges.

Conclusion

Citizenship can be a source of protest in immigration countries or in the countries of origin of migrants, whether it produces claims for regularization or demands for more protection from the state once migrants have been expelled. National

identification is a major component of the institutional dimension of the deportation process but is also appropriated in other ways, as we have shown with the case of expulsions on the Malian border with Algeria, by expelled migrants in return or transit countries. Therefore, the different phases of the deportation process highlight different aspects of the notion of citizenship. The link to the state is pragmatic, almost instrumental. Citizenship in this context cannot be defined as the position of an individual in a national community, as classical political philosophy would have conceived it. Rather, citizenship appears as a constituent element of a civil existence which people invent in order to survive in the face of expulsion, material loss, and civic dispossession. Undocumented people in Europe experience a kind of impossible Odyssey to an unattainable citizenship, but at the same time their nationality plays a key role in the process of expulsion from Europe. The example of the deportation process from Algeria to Northern Mali shows how national feeling can be revived through forms of self-organization and the prerogatives of citizenship enacted through the rules and the order of the ghettos. Citizenship for undocumented people appears to be both unattainable in its normative form and indestructible as a defining criterion for individuals and groups. This tends to confirm that, within or outside the State, citizenship remains a major criterion of personal and collective identification.

Citizenship remains the most vital factor in the way that the expelled migrants group themselves following their expulsion at the border. This common citizenship creates certain networks that allow for reorganization and solidarity. One case of this is a group of well-known Nigerians at Gao, who have their own socioeconomic strategy to deal with expulsions: a number of hairdressing salons which are staffed by expelled migrants who stay and work until they have saved up enough money to return to Algeria.

Migrant experience in Mali after deportation tends to illustrate the fact that in a situation of complete rejection and abandonment by the state, citizenship remains the main criterion of positive identification, both individually and collectively, following the idea of Abdelmalek Sayad that, if the issue of citizenship has had different meanings and had been subject to changes over the past century, it was still the only means of affirmation and recognition of a political and civil existence (Sayad 1999).

The significant paradox of migration and its repression is that both activate citizenship and some of its prerogatives in circumstances generally characterized by the abandonment of the state and the dispossession of those expelled.

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B. Anderson et al. (eds.), *The Social, Political and Historical Contours of Deportation*, Immigrants and Minorities, Politics and Policy, DOI: 10.1007/978-1-4614-5864-7,