MIGRATION POLICY IN AN INTEGRATING EUROPE

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Introduction

This paper examines the Europeanisation of migration policy. It explores state-centred approaches to analysis of the development of EU free movement, immigration and asylum cooperation and integration that focus on institution formation and on the motives for member states to act collectively on migration policy issues at EU level. The paper then moves on to examine actual and potential consequences of policy cooperation and integration on laws, institutions, policies and collective identities in the member states. Thus the decisions by member states to cooperate at EU level are an important part of the story, but may well not be the whole story either now or in the future. The paper begins from the supposition that national policy models are likely to be resilient, particularly in older countries of immigration where these responses are well-established and connected to long-standing ideas associated with the nation and national belonging.1 Indeed, a school of thought has developed that sees European integration as a device for attaining national policy objectives and thus in a sense sustaining these national models in slightly amended form via an 'escape to Europe' that allows for a European reconstruction of migration policy in line with the security and economic interests of member states. This view will be considered in the paper's next section.

I then consider this perspective and seek to account for a number of factors that suggest scope for European integration to impact upon member states. Thus rather than seeing the delegation of functions from member states to EU level as the end of the story. I discuss the possibility for EU competencies to have effects (sometimes unintended) on institutions, laws, policies and collective identities in the member states. These include: the effects of EU policy on newer immigration countries in central, eastern and southern Europe: new patterns of interdependence that arise as a result of European integration; possibilities for an 'implementation deficit'; and the emergence of pro-migrant political action addressing EU institutions and a supranational opportunity structure. The paper thus seeks to move beyond analysis of the motives underpinning the move/escape to Europe by asking 'what happens next' and considering the Europeanisation of migration, understood as the potential effects of European integration on domestic structures in the member states, and on surrounding states and regions.²

Recent background and explanations for policy development

The European Council meeting in Tampere, Finland in October 1999 declared that 'the separate but closely related issues of asylum and migration call for the development of a common policy. On the basis of this declaration the Commission published two Communications in November 2000 that brought forward proposals in the areas of immigration and asylum policy.3 The Tampere meeting and the subsequent work programmes placed the creation of 'an area of freedom, justice and security' at the top of the EU's political

¹ On the diverse hinterlands of national policy styles in Europe see Richardson (1982). For a recent account of diverse European responses to the regulation of migration see Brochmann and Hammar (1999).

² Cowles, Caporaso, Risse (2000) p.1

³ CEC (2000)

agenda and thus set out to realise the ambitions of the Amsterdam Treaty. Amsterdam had created a new Title IV of the Treaty of Rome that brought immigration and asylum into the main body of Community decision-making processes (and out of the intergovernmental ghetto where they had resided since Maastricht). Article 63 of the Amsterdam Treaty required the Council within five years of Treaty ratification (by May 2004) to adopt measures on asylum, the temporary protection of displaced persons, and illegal immigration. A number of other measures are not subject to this five-year deadline, including conditions of entry and residence and the issuing of longterm visas (valid for more than three months) and residence permits, as well as the conditions under which third country nationals (TCNs) who are resident in one member state may legally reside in another. During this five-year period, however, decision-making will be based on unanimity. Also, member states will share the power of initiative with the Commission, thus reducing the Commission's ability to shape policy. Indeed, a British MEP described Title IV as 'the ghetto of the First Pillar'.4

Given the salience of immigration and asylum as political issues in most member states during the 1980s and 1990s and with the development of EU policy in these areas, increased academic attention has been paid to the development of an EU response. In answer to the questions of why, when and how policy developed a state-centred line of reasoning has emerged that offers a powerful explanation for policy development and that runs broadly as follows:⁵

Why? Member states have in a sense 'escaped to Europe' and reinforced their ability to achieve domestic policy objectives centred on the restriction of 'unwanted' immigration. New EU 'policy venues' for immigration and asylum cooperation allow states to avoid domestic legal and political constraints that inhibited their ability to restrict 'unwanted' immigration.6 They can move to European level where these constraints from, for instance, the European Court of Justice or European Parliament, are small to vanishing. The German asylum compromise of 1993 is a good example of this. The move to bring German practices into line with common European measures such as the definition of 'safe countries' and fast track rejection of unfounded applications allowed Germany to use the EU as a way of maintaining the commitment to asylum of Article 16 of the Basic Law while making it more difficult for asylum seekers to actually enter the state territory. In this case, European cooperation allowed Germany to escape from the unique impediments imposed upon it in relation to asylum by the Basic Law. More than this, European cooperation has strengthened the state; more particularly, it has strengthened national interior ministry and officials who have colonised this policy area and shielded themselves from legislative and judicial oversight.

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⁴ Graham Watson MEP, Chair of the European Parliament Committee on Citizen's Freedoms and Rights, Justice and Home Affairs, in evidence to the House of Lords Select Committee on the European Union, published in <u>A Community Policy on Immigration</u>, Session 2000-1, 13th Report, HL Paper 64, p.9.

⁵ See, for instance, Freeman, (1998); Hollifield, (2000); Joppke, (1998); Guiraudon (2000).

⁶ Guiraudon (2000)

⁷ Joppke (1998)

- When? The shift to European cooperation and integration occurred since the early 1980s when domestic constraints and their inhibitory capacity had become clear. Judicial interventions in France, Germany and the Benelux countries, for instance, had reduced the restrictive capacity of governments.⁸ In addition to this, there was an already existing security frame centred on the anti-terrorism actions of the Trevi Group that had developed since the 1970s and that provided a normative and factual understanding of migration issues as security concerns and thus conditioned responses to these policy problems, as defined.⁹
- How? Via cooperation between ministers and officials that has reinforced executive authority particularly interior ministries, as Virginie Guiraudon has shown with minimal legislative and judicial oversight at either national or European level. The Commission, European Court of Justice and Parliament have been granted very little autonomy in these areas thus allowing the member states to keep a tight grip on policy and diminish the scope for unintended outcomes. In these terms, European cooperation has strengthened rather than weakened the state.

The result has been that, as Jim Hollifield puts it, immigration and asylum policies have been 'externalised' through policy cooperation at EU level. This cooperation allows member states to pursue their domestic policy objectives by other means. Hollifield also argues that liberal states will prefer this escape route because the alternative is to roll back the rights of their resident foreign populations, which is likely to be legally and politically untenable. This state-centric line of reasoning offers powerful explanations for why, when and how states sought this 'escape to Europe', as well as for the normative and factual understanding of migration issues that underpin a securitarian policy frame and restrictive policies. Member states can thus maintain, for instance, their symbolic commitment to the right of asylum while using European cooperation as a device for ensuring that asylum seekers have diminished ability to access adjudication procedures in member states by entering the territory of those states.

This 'externalisation' thesis does, though, appear to run counter to a developing literature on Europeanisation that emphasises the scope for the EU to impact on laws, institutions, policies and collective identities in member states. ¹³ If the EU is just a place to which member states 'escape' in order to attain their domestic objectives then the impact on domestic structures in those member states is likely to be minimal. This runs counter to historical institutional perspectives on European integration that discuss the possibility

¹¹ 'The Schengen agreement is a classic example of extra territorial control. It has helped to create buffer states, and to shift some of the burdens and dilemmas of control outside the jurisdiction of liberal states in western Europe', Hollifield (2000: 110).

12 'Ideas, institutions and culture, as well as certain segments of civil society, which may resist encroachments by the state on negative and/or positive freedoms, impose limits of control' (Hollifield (2000: 110)

3 See for instance, Green Cowles, Caporaso and Risse (2000); Dyson (2000); Radaelli

(2000), Cole and Drake (2000)

⁸ Guiraudon, (1998)

⁹ Huysmans (2000)

¹⁰ Moravcsik (1994)

for unexpected outcomes to occur as a result of initial institutional choices, as well as the likelihood that European integration will itself become part of the preferences and identities of member states rather than an external, foreign policy issue.¹⁴

The 'escape to Europe' approach also tends to focus on older immigration countries in north-west Europe. Policy responses are of more recent provenance in central, eastern and southern Europe. These states are on a relatively steep 'international policy learning curve' that can lead to strategic readjustment in light of EU requirements or to a more fundamental change in goals and preferences as a result of EU obligations. In such circumstances, EU obligations can become internalised as a component of the policy preferences and identities in these newer immigration countries. The EU is then not just an external issue; rather compliance with EU obligations is an issue that goes to the heart of domestic politics.

New Interdependencies

The impact of European integration may not only be felt in newer immigration countries that are playing policy catch-up with the 'older', north west European countries of immigration. The posted worker issue provides an example of this whereby workers from one EU member states work in another. Under Treaty of Rome provisions guaranteeing free movement of services, construction workers from Britain, Ireland and Portugal have sought employment on construction sites in Germany. Germany has experienced a post-reunification construction boom, particularly in Berlin. The pay and social contributions of these posted workers are, however, calculated in their country of origin and they undercut German workers. This led to debate in Germany about the erosion of the German welfare state and of the mechanisms of 'consensus capitalism'. 20 Indeed, Thränhardt argues that the posted workers issues led for the first time to a debate about intra-EU migration and its potentially corrosive effects.21 Unlike the earlier 'guestworkers', who complemented the German workforce by plugging labour market gaps and doing the jobs that German workers did not want to do, the posted workers were labour market competitors with German workers.

Interdependencies within the EU are illustrated by the fact that at the same time as sending workers to Germany, Portugal was also experiencing a boom in the construction sector due to the receipt of EU structural funding for regional development. This led workers from Portugal's former colonies and east European countries to move to Portugal to work on construction sites.²²

¹⁴ Pierson (1996); Sandholtz (1996)

¹⁵ With the exception of the awkward British who have opted out of Title IV because of a desire to maintain external frontier controls that are incompatible with the EU policy frame. Because of the common travel area with the UK, Ireland also remains outside of Title IV.

¹⁶ See Lavenex (1999)

¹⁷ Baldwin-Edwards and Schain (1994)

¹⁸ Sabatier and Jenkins Smith (1993), Sandholtz (1996)

¹⁹ Grabbe (2002 fc)

²⁰ Hunger (2000)

²¹ Thränhardt (1999)

²² Baganha (2000)

Portugal is, though, a far less regulated society. As Maria Baganha has noted, it's easier to be an illegal immigrant in Portugal because migrant workers can 'simply disappear into a highly concentrated residential area of the metropolitan area of Lisbon where members of his/her group already reside'. Baganha also goes on to argue that while Portugese people have not fully internalised their own citizenship rights then they are hardly likely to press for these rights to be extended to immigrants; and, on the other side of the coin, are less likely to view the state as possessing the capacity to regulate immigration.²³These interdependencies highlight 'chain effects' of European integration, as well the problems of incomplete European integration where free movement is supranationalised while welfare systems and fiscal systems are not (and seem unlikely to be).

While social dumping has become an issue because of certain types of intra-EU migration, the perspective that immigration erodes the national welfare state is too general. Rather the effects of migration on national welfare states need to be specified in relation to types of migration and types of welfare state organisation.²⁴ European integration has, though, reshaped the principle of welfare state territoriality by creating portable social entitlements for those who exercise their right to free movement.25

Implementation deficit

The attainment of EU objectives will depend upon compatibility between these objectives and domestic structures in EU member states. It has been argued that the 'goodness of fit' plays an important part in adaptation to Europe. Moreover, it should not be assumed that European integration locks member states into a trajectory the end point of which is policy convergence. For one thing, 'history matters' in the sense that policy responses to immigration are well established in some EU member states. For instance, French debates about immigration and nationality law have drawn from long established practices and discourse that lead to ideas about the nation, the state and democracy/inclusion within it.26 These may well be resistant to the effects of European integration. This is, however, more likely to apply in older immigration countries where policy responses are long established.

A problem for newer immigration countries is that implementation problems can arise because of a lack of fit between domestic structures in the member states and EU objectives. Even if the EU had a common immigration and asylum it would be national level agencies that would be responsible for onthe-ground policy implementation. To paraphrase the sub-title of a famous study of policy implementation in the US federal system: great expectations in

²⁴ Bommes and Geddes (2000, conclusion)

⁶ Feldblum (1999), Favell (1998)

²³ Baganha (2000), pp. 184-7.

²⁵ It's also important to note that levels of intra-EU mobility have declined rather than expanded with single market integration. This may reflect a narrowing of the wealth differentials between member states. It is also interesting because the accession of Greece, Portugal and Spain was seen as potentially unlocking large-scale migration from these poorer to richer EU member states. This never happened and is a salutary lesson in the light of predictions about large east-west migration when the EU expands to the east in the next few years, see Muus, 1997.

Brussels may be confounded in Brindisi.²⁷ Institutional incompatibilities can be grouped under four headings: the management of policy implementation; external circumstances; policy learning; and cause and effect problems.²⁸

Management of policy implementation Attainment of policy objectives will depend upon clear specification of objectives and effective procedures for communication of these objectives. The elaboration of a post-Maastricht immigration and asylum policy framework has been characterised by an array of non-binding recommendations that renders less likely the clear definition of objectives. It's also the case that the attainment of policy objectives is more likely when the EU has direct powers over implementing agencies. This is unlikely to be the case for any future immigration and asylum policy where national agencies (as well as non-state agents such as airlines, shipping companies and even truck drivers) over which EU institutions have little direct control will acquire some responsibility for implementation.²⁹ Moreover, at EU level the Commission is not a monolith with the result that conflicting intraorganisational objectives can prompt segmented 'orders of comprehension' regarding key policy issues and lead to separate 'universes of discourse'.30 The EU pursues a range of policy objectives in the fields of economic. welfare foreign and security policies. Migration is an aspect of all these, but it is a distinct feature of migration as a social and political issue that it is central to none of them. The recent re-structuring of the Commission has led to the creation of a Justice and Home Affairs Directorate within the Commission that brings immigration and asylum more directly into the Commission.

External circumstances The sheer extent of border controls and the cost of policing can impose constraints on policy implementation. As too will be the requirement for additional funding at national level to complement and reinforce attainment of EU policy objectives. These problems are likely to be particularly evident in newer immigration countries. Southern Europe, for instance, has become a major destination for immigrants from neighbouring states and regions. It may not always be easy for these states to regulate access to the state territory. First, because the sheer extent of the task may defy the resources available for attaining it. The Greek coastline, for instance, presents formidable difficulties for an immigration control policy. Moreover, there may well be continued demand for migrant workers in southern Europe. particularly in seasonal and/or low paid employment such as agriculture, tourism, construction and domestic service. 31 Italy illustrates this point very well. There are labour shortages in the north of Italy and unemployment in the south but southern Italians are no longer prepared to move north in large numbers to do low paid and menial work. Immigrants fill the gaps. Meanwhile, in 'older' immigration countries, the other side of tighter external frontier regulation coupled with some moves towards deregulation of some economic sectors has been increases in migration defined by state policies as illegal.

²⁷ Pressman and Wildavsky (1973).

²⁸ Gunn (1984); Richardson (1996); Geddes (2000b: 24-6)

²⁹ On the privatisation and decentralisation of immigration control Guiraudon and Lahav

⁽²⁰⁰⁰⁾ ³⁰ Dunsire (1978)

³¹ South European Society and Politics (1999)

Between 1992 and 1995 immigration to France fell from 135,000 to 68,000. Hollifield suggests that the other side of these restrictions was an increase in illegal immigration. As an indication, the arrest figures for illegal immigration into France have grown from 1,450 in 1996 to 8,500 in 1999 and an expected 13,000 in 2000 (Migration News, October 2000). Thränhardt refers to 'illegal immigration' as 'the blind spot' of German policies because tougher control policies have closed off the channels for legal migration while migration pressures remain. The numbers of migrants defined as illegal by German state policies is, of course, difficult to measure. The number of persons trying to enter Germany illegally can be taken as one indication: the number increased from 8,300 in 1997 to 11,000 in 1998 while in the same year 39,700 people were caught in the country.³²

Policy learning Since the 1980s southern European EU member states have been on a fairly steep international policy learning curve as they have adopted the immigration and asylum policy frameworks of 'older' countries of immigration. 33 The potential for large scale migration feeds anxieties in existing member states and prompted German government calls for a seven year moratorium on free movement for citizens of central and east European countries following accession. Predictions of large scale migration can of course have effects because as Codagnone notes: 'such scenarios have been at least partially instrumental in legitimating and reinforcing the concept of 'fortress Europe' and the restrictive immigration policies derived from this construction'.34 The Iron Curtain between east and west Europe has fallen. but new barriers are being constructed between the EU and non-EU member states.35 Three types of institutional isomorphism have been identified: coercive, mimetic and normative.³⁶ In the case of adaptation to EU norms among central and east European countries, there is a strong coercive element because adoption of the immigration and asylum acquis is a requirement for accession. Mimetic isomorphism arises because of the fragmentation and blurred transfer of competencies that have been features of this policy area. This lack of clarity has led to pressure to imitate policy frameworks in older immigration countries, particularly with regards to the control of immigration. Finally, there is also a normative element because of the political importance to central and eastern European countries of joining the EU. That said, adaptation can be frustrated by the scale of the task, as well as by cause and effect problems.

Cause and effect problems Tighter regulation of migration can actually contribute to the problems it seeks to solve by contributing to 'new' migration challenges with the result that 'illegal immigration' and 'bogus asylum seeking' can become more pronounced as a result of regulations supposedly designed to deter. The costs of migration rise for those people unable to enter EU member states by regular routes, as too do the profits for 'entrepreneurs' who enter the migration industry. In February 2001 the UK Home Secretary, Jack

³² Thränhardt (1999:44)

³⁵ Grabbe (2002 fc)

³³ Baldwin-Edwards and Schain (1994)

³⁴ Codagnone (1998)

³⁶ Di Maggio and Powell (1991: 74-7)

Straw, painted a picture of European nation states beleaguered by criminal gangs to argue for a revision of the Geneva Convention that would actually have the effect of further strengthen the hand of the executive in EU member states. It seems fair to say that stringent immigration controls can fail in their restrictive terms while also ratcheting-up the level of antiimmigration/immigrant rhetoric. Indeed, the current European Commissioner with responsibility for Justice and Home Affairs, Antonio Vittorino, made this point when arguing that an opening to new economic migration could meet the labour market needs of EU member states while also easing some of the migratory pressure facing the EU.

New forms of political action

Finally, I consider the question of whether EU migration policy is leading to new forms of political action that seeks to draw from EU resources as the basis for claims for inclusion of migrants and their descendants. It can thus be asked whether the EU is an arena within which new forms of transnational advocacy are developing by which pro-migrant NGOs make claims for inclusion in relation to EU competencies. Moreover, there could be the potential for a 'boomerang effect' to feed back into domestic contexts because the deployment of material and symbolic EU resources can strengthen NGOs in EU member states. 37

Alternatively, European integration may offer only weak weapons for the weak' because of the lack of the strong securitarian policy frame and associated restrictive policies that pay little attention to immigrant integration. The dense hinterlands of national policy styles associated with immigrant integration make it difficult to meld a common European response, and indeed question whether such a response would be desirable. If claims for inclusion are to be made then they are more likely to draw from the forms of 'market citizenship' created by European integration whereby the civil right to enter into contract is a key element rather than intervention to alter the outcomes of these market relations.

It is certainly the case that EU level resources are limited. For instance, legally resident third country nationals are not allowed to move freely irrespective of their length of residence. The Amsterdam Treaty did, though, contain a new Article 13, which prohibited discrimination on grounds of racial and ethnic origin, as well as religion and belief. 38 The Directive agreed in June 2000 did proceed at almost record pace with a time period of only 6 months between the Commission's proposals and an agreed Directive.³⁹ The Commission's communication on immigration policy also argued that the Charter of Rights attached to the Nice Treaty could be the basis for a form of 'civic citizenship' that would essentially Europeanise the notion of denizenship by allowing legally resident third country nationals after a certain period of residence the right to move freely - and other associated rights - as EU citizens.

³⁷ A term used by Keck and Sikkink (1998). On the EU and transnational political action by pro-migrant organisations see Favell and Geddes (1999, 2000)

³⁸ Chopin and Niessen (2001) 39 Council Directive implementing the principle of equal treatment of persons irrespective of racial and ethnic origin (OJ L 180, 19 July 2000).

A strong intergovernmental impetus lay behind these moves. The French and German governments had been instigators of the Kahn Commission's enquiry into racism and xenophobia following a series of racist outrages. This led to the establishment of a racism and xenophobia monitoring centre based in Vienna. Moreover, the election successes and entry into the Austrian governing coalition of Jorg Haider's Freedom Party also helped speed the anti-discrimination legislation. 40 In addition to these intergovernmental impetuses there has developed a pro-migrant NGO network at EU level. An interesting feature of these NGOs is their close relation with the institutions they seek to influence. The development of a Brussels based political field with its own forms of culture, capital and habitus was the focus of Adrian Favell's analysis of the EU citizenship agenda. 41 There can be a close relation between the NGOs and the Commission because the Commission creates and/or funds umbrella groups organisations of NGOs with the express purpose of establishing channels for consultation and thus adding a veneer of legitimacy to policy processes that are rather detached from the lives of migrants and their descendants in EU member states.42

Conclusions And

In this paper I have argued that rationalist, state-centred accounts of cooperation and integration in the areas of immigration and asylum offer a powerful explanation for the time, content and form of policy cooperation. They help explain why the EU was an attractive venue for member states seeking to diminish domestic legal and political constraints on their ability to restrict immigration. I have also argued that this is only part of the story and that there some weaknesses with this approach, which largely centre on the questions of 'what happens next' i.e., on the potential for feedback effects arising from Europeanisation that impact upon domestic structures in member states and surrounding states and regions.

I began with the assumption that these effects are unlikely to be too great in older immigration countries such as France and Germany. Not least for the reason that history matters to the extent that these countries have long-established patterns of immigration related politics that, although not immune from change, are underpinned by strong social and political idioms. Moreover, there is also the possibility for states to opt out of EU developments, as the British have done from Title IV of the Amsterdam Treaty because of an incompatibility between UK external frontier controls and a frontier free EU. Indeed, this suggests that the future of EU immigration and asylum may well be 'variable' or 'differentiated'. Even so, for long standing states member states such as France and Germany it is possible to argue that European integration has itself become part of the preferences and identities of these states and that 'Europe' is more than an external venue to which they 'escape' to pursue their domestic policy objectives.

⁴⁰ Information from interview with Commission official

^{&#}x27;' Favell (1998)

⁴² For further information see Niessen (1999); Chopin (2001); Geddes (1998, 2000)

I then moved on to argue that state-centred, rationalist accounts leave us less well placed to account for the effects of policy cooperation and integration. I have not tried to over-dramatise these effects or pretend that European immigration politics has been reinvented as a result of European integration. I have, though, argued that these accounts tend to equate Europe with France, Germany and perhaps the Benelux countries without really thinking about the ways in which EU immigration and asylum policy has had tangible effects on policy developments in southern, central and eastern Europe. I then argued that specific aspects of European migration policy cooperation and integration have contributed to new policy interdependencies, such as the chain effects of the posted workers issue; to an implementation deficit, and to new forms of political action that address EU sources of power and a nascent EU level structure (now backed by legislation covering opportunity discrimination on grounds of race and ethnicity). These developments create some space for a thicker, more sociological account that explores the extent to which European integration has become part of the preferences and identities of actors in EU member states and thus has Europeanised migration policy. In a sense, I have argued that there has been a European reconstruction of migration policy driven by the pursuit of state interests in older countries of immigration and a desire to ensure that newer immigration countries picked up their policy preferences. Yet, these EU level competencies have the potential to impact upon domestic structures. EU immigration policy has not just been an escape to Europe. That is only part of the story because European integration feeds back into domestic contexts. It does not affect all member states in the same way and is not part of an inevitable process of convergence; but even in an area as intergovernmentally dominated as immigration and asylum, the effects of Europeanisation can be observed.

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