THE REGULATION OF MIGRATION: A GLOBAL CHALLENGE
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The Regulation of Migration: A Global Challenge

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One country declares a state of emergency because of the presence of undocumented immigrants in its territorial waters. Another dispatches asylum seekers to offshore islands in foreign jurisdictions before considering their applications. Genetic testing is seen as a proper tool for coping with possible abuses of family reunification laws. To paraphrase Shakespeare, there are serious problems in the “kingdom” of international migration and migration policies. This article is an attempt to identify and analyze these problems.

First, though, it is necessary to clarify one important thing: it is not our objective in what follows to take a militant view and evaluate migration policy in the context of a discussion on human rights, for example. Though this is an important exercise, it is not currently our aim. Instead, our objective is to measure the correlation between stated migration policy objectives and the actual results achieved. In other words, we are concerned here with what constitutes the political problem of the politics and policies of international migration today.

The analysis presented here will be mostly Eurocentric for two main reasons. First, because it is in a European context that the author has the most empirical and theoretical insight. And second and primarily, it is because the European Union represents the most advanced experiment of a process of regionalization, and migration policy has been of considerable importance in this process.

Nevertheless, the scope of the analysis will be much broader. It is not our intention to address one specific migration policy in one particular context. Because of the topic proposed by the editors of this volume, the aim is instead to identify some of the major blind spots in migration policies taken in general. This broad approach is useful since it makes it possible to identify the most critical shortcomings of migration policies.
This study’s working hypothesis is that it is impossible not to question the future and viability of migration policy due to three dynamic influences that today’s world has to deal with. First, since the end of the Cold War, the balance of power has shifted in the world, and migration is an issue that is inextricably bound up with this change. Second, the classical difference between the domestic and the international realms has increasingly blurred during the same period, creating new interdependencies that are forcing a reexamination of traditional migration policy frameworks. Third, in this new context, the relevant political scale for dealing with and regulating migratory patterns has grown broader. Consequently, difficulties in dealing with migration policies have become an issue of legitimacy for states.

Migration: Contradictory Globalization

The Migration Policy Paradox

First let us consider the paradox that spurs examination of migration policy. Since the 1990s, unprecedented efforts have been made to control the movement of people across state borders. Despite this, the number of migrants has increased at an unprecedented rate to the point that it is now a global phenomenon. A fenced border between Mexico and the United States, military patrolling of the straits of Gibraltar, biometric visas, databases for asylum-seeker applications, externalization of border controls from arrival countries to transit countries and countries of origin, detention camps for irregular immigrants in poorer countries – yet at the same time international migration has continued to rise, from 120 million people in 1990 to 200 million in 2007.

Another development has been the globalization of migration geography. There are no longer just a few “migration pairs” (Wihtol de Wenden, 2005) between sending and receiving countries linked by a common historical or colonial heritage, such as France and North Africa, the United Kingdom and the Commonwealth, Germany and Turkey, the United States and Mexico. Migratory flows have become more diverse, beating more complex and varied routes. In Europe, some countries have been transformed from emigration into immigration countries (Portugal, Spain, Italy, Greece, Ireland) (Vitorino, 2007; SOPEMI, 2007). Further south, other regions have become transit points, while themselves remaining large sources of emigration. This is documented in the Maghreb region (Lahlou, 2005; Kachani, 2003; Boubakri, 2004), and, for that matter, the Sahelian route used by migrants.
from the Indian subcontinent to circumvent the closure of Europe’s Mediterranean entry points (Bertossi, 2006). Migration is an issue that spans the globe and is symbolic of the new balances of power that have been generated by the international system since the end of the Cold War.

To understand this contradictory globalization, which seeks tighter border controls yet an even greater movement of people, it is necessary to consider the international context of migration. Migrants are themselves no doubt playing an important role in it as they are the primary expression of the links between states and markets (Entzinger et al., 2004). However, it is the states with their immigration policies that have played the central role, since they have essentially followed policies that have been out of step with the phenomena they have tried to regulate.

*Design Flaws*

If public policy is primarily “an indentation of reality through which the substance of the problems to be solved is sorted and informed” (Pierre Muller cited in Lascoumes and Le Gâles, 2007: 12), migration policies demonstrate a design flaw when it comes to rationalizing the policy issue of migration. Three major design flaws can be emphasized, as they have contributed to this contradictory globalization of international migration.

The first is what James Hollifield (1992) called the “liberal paradox” between free circulation of ideas, trade, and finance on the one hand and limits imposed on the movement of people on the other hand. While the right of departure (the counterpart, in international law, to the right of return [United Nations, 1990]) was generalized after the Cold War, with the proliferation of passports (in developing countries and former communist states), the right of entry and the right to residency have become increasingly restricted in developed countries, through the introduction of visas and border control systems (Bigo and Guild, 2005). Refugee policies have not been spared from this phenomenon. As Zygmunt Baumann (2000) highlights, access to international mobility has become, in itself, a new form of inequality in the distribution of wealth.

This is strengthened by another idea, one long considered highly significant in defining national migration policy: that territories, populations, and markets (including labor markets) must be protected by states against “migration pressure.” Such a rationale conceives the necessity of controlling borders against the so-called “threat” migrations are considered to be to a society: weakening of well-defined national borders and of the subsequent modern territory-based international
system; issues of integration of migrants and fears of a dilution of national identity; illegal workers and anticipated downward pressure on average incomes and national social security systems.¹

However, economies and labor markets are the main drivers of the international movement of people, even if this translates into irregular immigration as in the US, Spain, or Italy. Whole sectors of economies in receiving countries depend on this imported labor. Some industries demand that states open up their borders to migrant workers to absorb labor market pressures (e.g. agriculture, construction, hospitality, tourism, domestic services, as well as highly qualified professions). The demographic factors in the main recipient countries strengthen this dependence on migrants, who contribute substantially to population renewal while the populations of OECD countries age and decline.²

With these dynamics, states have only a limited degree of control. After having closed their borders to labor immigration during the 1970s, and established “zero immigration” targets in the 1980s, European countries decided to reopen their borders selectively to migrant workers from 2000 onwards. Whether the purpose is to achieve “zero immigration” or the targeted objectives according to the specific needs of European economies (such as quota or points systems), states have demonstrated the limited sovereign capacity that they really have when making decisions on the quantity and quality of migrants admitted through their borders. “Zero immigration” targets have never meant no immigration at all. Bound by international obligations and constitutional principles, governments have never been able to ban so-called “non-discretionary” migration (family reunification and asylum seekers). Along with market dynamics, the law is thus another fundamental constraint on national migration policies and works to counter the numerical targets drawn up by migration policymakers.³ National sovereignty is therefore only a limited factor in migration policy.

The third design flaw is that the volume of migration, which continues to increase, is seen as flowing from South to North to converge on the

¹ Even if it appears difficult to hold the contradictory viewpoints that migrants both work too much in their destination countries and that they take unfair advantage of social security systems.
² This issue was first raised at the 1994 International Conference on Population and Development in Cairo.
³ Charged by the President of France with formulating a “quota” policy in France, the Pierre Mazeaud Commission concluded that such a policy would be inefficient. On the possibility of a selective immigration policy, see Bertossi (2007).
northern shores of the Mediterranean, or the northern banks of the Rio Grande. This is often explained primarily by the wealth discrepancies between North and South. Hence, the widespread mantra that developed countries cannot possibly welcome in all the “misery of the world.” The politics of the North/South divide add a national security dimension to the debate on international migration.4

However, poverty is not the only factor that drives emigration. Other features are even more crucial, such as the existence of social and family networks woven by migrants, or a kind of “migratory imagination” nurtured by television satellite or Internet images of developed countries reaching new audience in the South (Wihtol de Wenden, 2005: 8). These images drive migrants to move to increase not only their economic and cultural capital but also their general “human capital” (health, education, career-advancement) (Fargues, 2003). The migration ideal is a plan of self-fulfillment, at once individual and collective. Political and environmental crises generate other kinds of forced migration.

While most immigration to the North comes from the South (and from the East in the European context), not all Southern migration heads North. Inter-South migration represents 40% of international migration flows, and Southern countries accept three-quarters of all the world’s refugees. Major inter-regional migration also takes place, notably in sub-Saharan Africa (Bredeloup and Pliez, 2006) and in Southeast Asia and China. Migration also concerns developing countries. This is an important factor in understanding the complex inter-relationships of international migration today.5

The Limits of Border Control Policy

Un-adapted But Highly Costly Policies

The large demand for human mobility translates into large flows of migrants through an increasing number of migratory routes in the world. In addition, there is an increasing offer of mobility opportunities with economic and market dynamics, which are increasingly dependent upon migrants. At the same time, the recipient countries have put in place immigration policies that oppose this supply and demand equation: a fast-circulating trading environment that allows free movement of everything

4. September 11, 2001 certainly had an impact on strengthening security regarding people movement, but it cannot be regarded as the founding date for this practice. The advent of policies to secure borders was in the 1980s.

5. In this connection, see the discussion of “mondialité” in Bertrand Badie et al. (2008: 16).
but people; attempts to protect national areas with no real impact on migration flows; and geopolitical narratives about international migration that do not accurately portray the migration phenomenon (the so-called Southern “invasion”).

With this complete disconnect between policies and migration dynamics, border controls have often contributed to the increase in flows at certain times, and fueled the globalization of migration channels. For example, the establishment of restrictions on air transport in the sub-Saharan zone (primarily from 2005 onwards) has led to a surge of people on other overland and sea routes: thus, the number of undocumented migrants arriving by boat on the Canary Islands increased dramatically in 2006, after having transited through Mauritania, Southern Morocco, or Senegal. As also evidenced in Ceuta and Melilla in 2005, containment policies increase irregular entries (Bertossi, 2006), with a tragic cost in human life (Carling, 2007).

Policies designed to tackle irregular migration exhibit another disconnect between the goals, the mechanisms, and the results of migration policy. Images of the cayucos washed up on the Canary Island beaches, or boats reaching Southern Italy, are the basis of a political tale in which the “security” of physical borders (presently the Mediterranean) constitutes the main issue to be solved. Irregular immigration is seen as a matter of border crossing, which policies should try to prevent. The fact remains, however, that the majority of irregular migrants are “overstayers” who enter countries legally, and exceed their right to stay. Undocumented migrants are rarely “adventurous risk-takers” (Pian, 2008), but are more likely to be legal migrants who have no opportunity to retain their legal status.

In other words, restrictive immigration laws in general, and refugee laws in particular, are the main factor that creates undocumented immigrants in a country. Irregular border crossings make up a minority of undocumented immigrants. At the height of the irregular entries on the Canary Islands, in 2006, the Spanish police registered 30,000 undocumented migrants (essentially from sub-Saharan countries). The year before, the Spanish government regularized 700,000 migrants.⁶ At this rate, it would take 25 years for the cayucos boat people to reach the numbers

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6. With a huge proportion of people originating from South American countries – who did not use the Canary Islands migration channels.
of all the people regularized in 2005, not taking into account previous waves of regularization since the 1990s. And yet, considerable energy has been spent in order to tighten the Canary Island coast borders. In 2006, the Frontex Agency, the European agency for the operational management of external borders, had a budget for operations in the Canary Islands (HERA I and II) amounting to €3.5 million. Between August 11 and December 15, 2006, no more than 3,500 migrants were intercepted in the joint HERA II operation (Frontex, 2006). The budget allocated to Frontex between 2006 and 2008 totals €47.6 million, to which a €13 million reserve was added in 2008. During this period, the irregular migration “problem” in European countries has not gone away, and continues to justify the securing of borders by police forces. Border security policies appear to perpetuate themselves endlessly.

High Risk Gamble

This is no doubt the most difficult dilemma currently facing policymakers: the strengthening of borders as a favored instrument by states to regulate the flow of migrants has strengthened the fluidity of international human migration. Such people movement has not been matched by appropriate governance and legal structures to regulate on a wider international scale a phenomenon that is already global. Tackling irregular immigration and documenting fraud has not addressed the issue in the slightest. It merely moves the problem around and ends up exacerbating it (Bertossi, 2006: 128–55). The financial, human, and political cost (not to mention security cost) of these policies is huge. Governments risk losing their political credibility and legitimacy in the public’s eyes, which are particularly sensitive to migration issues. 8

From this perspective, the migration policy gamble is very risky, because it makes states highly dependent on the successful achievements of their immigration policies to maintain this legitimacy. And yet, immigration policies have not succeeded in making controlled borders an effective instrument to regulate migration. This creates serious capability-expectations gaps, which end up eroding the political legitimacy that migration policies are intended to produce. In the medium term, this can weaken majoritarian liberal democracy and its principles. 9

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7. This is what explains, e.g., why the EU can be regarded as a “Fortress Europe” while it has become the biggest destination for migrants in the world after 2004.
8. Most of the time, political professionals anticipate and fuel this sensitivity of public opinion. See Duez (2008).
9. The political strength of extreme right-wing parties in Europe has increased by promoting “migration pressure” politics since the 1980s.
In truth, the challenge for states is not to reduce “migration pressure” through national policies that may (eventually?) prove effective. Instead, the real challenge is to reorganize the state’s role in the complex network of world interdependencies, where migration can be found at the intersection of all these linkages.

Migration does not threaten the role of the state vis-à-vis its borders. Rather, it questions the state’s ability to prove its effectiveness in today’s international order. The political stakes involved in regulating international migration are above all related to the legitimacy of states as players in international affairs. The paradox is that in order to establish this effectiveness, the state has to shift its policy perspective from border policies to a policy of “desirable mobility” (Badie et al., 2008). A loss of apparent sovereignty is needed to gain real policy efficiency. This is the major limitation of current policy: the political problem wrapped up in these politics and policies of migration is not being able to see migrants as anything other than a “problem.” Meanwhile, migrants are an indispensable element in the economic, social, cultural, scientific, and human development in receiving countries.

“Global Approach” or “World Governance”?

Faced with this series of contradictions, which trap migration policy in counter-productive dilemmas, it is necessary to translate into political terms the strengthening of relationships between different demographic, political, economic, social, and cultural (not to mention environmental) spaces. This suggests widening the political space of migration policy regulation.

Widening the Scope: The European Union Example

At this level the example of the European Union is interesting. A region without internal borders since the Schengen Agreement, the EU has developed policies intended to deal with two problems. The first was to solve its own “liberal paradox” by regulating internal movement of people within the Common Market framework, while establishing common controls at external borders. More recently, the second has been to harmonize the admission policies of Member States, where migration for employment purposes was reestablished in the 2000s after more than 20 years of closed borders to labor immigration (see EC/EU, Green Paper, 2005).
While states have resisted relinquishing sovereignty to EU institutions on migration issues, migration policies have constituted a third pillar of EC public policies, and the goal of a single European immigration and refugee policy was set at the Tampere Summit in 1999. Member States reached two conclusions: first, it was necessary to harmonize the management of their immigration (that is, the state was no longer to be the only unit taken into consideration when formulating migration policy); but, second, it was also necessary to establish a comprehensive approach to the regulation of migration flows by establishing partnerships with migrants’ countries of origin and transit (that is, the destination countries could no longer control immigration flows on their own). After many developments (Duez, 2008; Geddes, 2000), the Euro-African Conferences on Migration and Development, held in Rabat and Tripoli in 2006, resulted in objectives in cooperative and global management of migration, in partnership with African countries.

Is a Copernican Revolution in migration policies in the Euro-African region under way? Does the “global approach” promoted by EU countries solve the limits of the migration policies of individual states? Migration policymakers both at the EC level and in Member States support the idea.10

Nevertheless, the change in scope in regulating migration policy has not been followed up by a new paradigm governing people movement policy. The same attempt to bolster the security of borders dominates “global approach” thinking. Even if the Europeans ultimately rejected, at the Seville Summit in 2002, a proposal to make EU foreign relations contingent upon cooperation from sending countries in controlling migrant flows, the political reality is that this change in scope has resulted in an externalization of the control of EU borders, such that countries of origin and transit are now held responsible for the control of European borders. The three design flaws in national migration policies highlighted above have not disappeared. They have actually become even more significant.

First, the “global approach” does not remove the “liberal paradox.” People’s freedom of movement is still heavily influenced by a system that considers regional security in terms of border control. Although the EU is committed to a European neighborhood policy, in which the objective is to achieve security in its immediate regional environment, while sharing “everything except the institutions” with its immediate neighbors (Prodi, 2002), this EU foreign policy hardly seems to consider the movement of

10. The French plan for a “concerted immigration action plan” is entangled in this rhetoric.
people (Boswell, 2003). European foreign policy and immigration policy contradict one another: the former underlines the necessity to liberalize the movement of people in a common regional area, notably by facilitating the issuing of visas; the latter involves negotiations with countries of origin and transit, primarily through readmission agreements that are often difficult to impose on these “partner” countries, or through joint actions with Frontex. The idea of circular or pendular migration recently promoted by European institutions remains on the fringes and does not encompass the depth of the migration phenomenon in the region, either in the South or the East of the EU.

Second, the “global approach” does not break with the “migrant pressure” narrative, which exposes the inability of states to govern migration. If European countries have a hard time genuinely controlling migration flows at their borders, it would be surprising if African countries had any greater success. In the South, as in the North, the state is rendered ineffective by the reality of the flows, due to a lack of material means, particularly in the case of the vast desert and maritime areas, as in Mali, Senegal, or Mauritania. But the externalization of EU border controls has resulted in another cost that is linked to certain qualities of “partner” states that are not signatories to international conventions, such as the Geneva Convention. Some migrants in Libya are regarded variously as migrant workers to be used locally, undocumented migrants to be deported, or migrants to be prevented from illegally entering Italy under the agreement between these two countries. However, Italian authorities recognize many of the sub-Saharan migrants landing in Italy, after transiting in Libya, as political refugees under the Geneva Convention (Hamood, 2006).

Finally, the “global approach” does not solve the ambiguities of the North/South interpretation of international migration, but instead sanctions them by centralizing the notion of “co-development.” There is certainly a strong link between migration and development, which is actually concerned less with push factors than with the impact of people movement on the development of countries of origin, which are highly dependent on migrants’ remittances. On the other hand, no relationship exists between border security policies and the development of countries of origin: the view that greater development will lead to a reduction of

migratory flows is mistaken. Greater development will not reduce migration but merely transform the profile of migrants who manage to reach international migration channels (new emerging middle classes), while new relegated people, who will receive no share of the socio-economic development of their country, will be thrown on other more regional migration channels (OECD, 2005).

Towards Worldwide Governance of Migration?

Since the early 1990s, a new debate on international migration has been led by international organizations, especially the United Nations, ranging from the UN Population Division’s report on migration in 2000 (United Nations, 2000) to the High-level Dialogue on Migration and Development in 2006. The Global Commission on International Migration issued a report at the end of 2005 (GCIM, 2005). The first Global Forum on International Migration and Development was held in Brussels in July 2007. These exercises indicate how far migration patterns are already a reality at the heart of the international system and that they offer an opportunity for global development. From this particular perspective, development is not defined as an issue of border security. Rather, it requires that we “understand what we, as policymakers, can do to maximize the benefits of migration for development, while ensuring that development leads to qualitatively better migration” (Ki-Moon, 2007).

But this view is hampered by two major objections, which make it difficult for it to become a new working model for migration policies. The first objection is that states have yet to develop forms of political legitimacy other than those linked to national sovereignty, which results in a politicization of immigration and border security themes. Policies to attract immigration to address economic or demographic issues have not (yet) changed this situation. The politics of migration remain grounded on containment and security-based rationales that render migration policies ineffective.

The second objection centers on the mirror image of the first: the multilateral world has few institutions. There is still no political forum for debate that could unite countries wanting to reform their political approach to immigration. Furthermore, any means that could be used to organize the governance of international migration lack sufficient strength. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (United Nations,

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12. On these questions, see the summary in Bertrand Badie et al. (2008).
1990) has been signed, as to January 2008, by 37 countries and ratified by 15 others. Not one developed country is among them.

This illustrates the political imbalance concerning the issue of world regulation of migration, which represents both the causes and the consequences of the problems that have been mentioned in this article. To call for a “global approach” on migration without correcting this imbalance is a contradictory exercise with little chance of success. Also, outlining a “global approach” without thinking of the migrants themselves as partners in migration policy is problematic if states aim at gaining the benefits of genuine worldwide regulation of migration. Migration is a defining feature of the contemporary world. Now is the time for states to demonstrate their legitimacy and effectiveness in it.
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