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The struggle for coherence in EU migration governance

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Abstract

Within the EU, there is currently an explicit struggle to articulate and render coherent a range of policies, definitions and processes for governing migration, and in particular for the insertion of new governing logics and relationships under the discourse 'economic migration'. The struggle to assert the 'management of economic migration' as a coherent object of governance involves combining and re-combining (assembling) different policy logics, institutional assumptions and relationships within the EU, and between EU and member states. These range across securitisation, economisation, and human rights and social inclusion agendas which interact with free movement requirements of the single market. Further, this struggle for coherence in governing 'economic migration' is interpolated into highly politicised arenas at national and local level, whose politicisation has profound personal and social effects for migrants themselves. Our paper traces the struggle for coherence across several institutional, policy and geographical terrains to note that its result is twofold. First, there is in the EU an incomplete but remarkably little contested set of claims, institutional re-orderings and contradictory logics which define the governance of migration. Second, there is a consequently ambivalent categorisation and stratification of migrants and their rights.

1 Introduction

In the several literatures which discuss public policy governance, including social policy governance, much is made of complexity. Thus *societies have become more complex*: no longer socially or politically organised or organisable by supposedly straightforward class and ethnic identities and facing problems no longer contained nor containable within the borders of national states. In addition (or ‘therefore’; the argumentation varies), *policymaking has become more complex*: as differentiated and changing socio-political interests are combined with uneven problem effects within states and problem-generation beyond states, the range and diversity of interested parties in public policy governance expands, shifts, and varies by location of policymaking and by policy definition. Finally, as peoples and problems have become more complex so have the dynamics between structures, organisations, discourses, processes designed to order, regulate and manage them: *governance has become more complex*.

We take issue with several aspects of this story – its ahistorical character; its inappropriate universalisation of European and ‘western’ developments through marked lack of attention to socio-political change and governance in the global south; and its causal direction. We take its end point – contemporary governance complexity – as the starting point for our analysis, without wishing to presume either the historical uniqueness of this complexity nor the universality of the form it currently takes in Europe.

In this paper we examine what governance complexity means in practice – in one of the most complex policymaking examples currently available to us. In particular, we are interested in the politics of this governance: what are the ways in power is distributed, organised and handled in EU migration governance. Our primary focus is on the emergence of legal migration as a relatively new field of governance in the EU, which from 1999 expanded the range and diversity of concerns legitimately considered part of the remit of the EU as a policymaking body.

Drawing on earlier work developed in a different context (Carmel and Harlock 2008), we argue that EU migration governance involves ongoing contestation and struggle

over the field of ‘migration’, in order to institute a governable terrain, identifiable as migration policy. This migration policy field is not without contradiction and instabilities, but the thrust of our argument is that an identifiable migration policy is being ‘assembled’ (Newman and Clarke 2009) from a rather diverse and contradictory set of impulses, interests and philosophies which intersect with, and inflect one another. Unusually for policymaking, indeed, this search for the imposition of coherence has even become an explicit figure in EU discourse, while also acting as a discursive and political tools with which to engage and negotiate with other actors.

The parameters of the definition of EU migration governance, its political, juridical, economic and social dimensions; the engagement of states in and outside the EU in various combinations; the search for knowledge about it; its insertion into member state politics; and its export out of member state politics into quasi-professionalised formal and informal authorities, are detailed below. Together, these elements of the political dynamics at play in developing EU migration governance all indicate that coherence is both a stake in political struggle, and a political tool to be used within that struggle. In our view in situations of marked governance complexity (organisationally, politically, structurally, procedurally), (in)coherence becomes a key marker of how social and political relations are ordered.

It is essential, however, that we place this (in)coherence in a context of power relations: (in)coherence as an objectified value and as a political weapon can involve several modes of governance with both individual and joint power effects and dynamics (ie it can affect individual policy actors and processes of governing). It is these which we seek to explore in this paper. To do so we borrow from Newman and Clarke’s (2009) work which uses the terms assembly and assemblage in order to identify the ways in which different elements of policy and policing shift over time. The paper proceeds as follows. In the next section we examine how treating governance as assemblages can draw attention to the flexible and unexpected ways in which policymaking has developed, and how actors, processes and practices intersect in the production of an assemblage of migration policy in the EU. Section three provides a summary ‘potted history’ of recent migration policy developments before going on to examine five elements of EU migration governance, their ambiguities, layered meanings and their interrelationships. They comprise the following

orientations and discourses: rights and equality; security and risk; economic and market-making orientations; and social inclusion and integration. These orientations frequently conflict internally, and inflect one another across varying aspects of migration policy. Perhaps even more significantly, they are used to address, or even create, different categories of migrant status, different categories of ‘Europe’ and different statuses of member states. Yet among the varying combinations of these orientations, there has been a persistent struggle to define and delimit an ‘EU migration governance’.

2. Governance complexity, assemblage and coherence

In this paper, we liberally adopt (and probably adapt) the term ‘assemblages’, and its verb ‘to assemble’ from Newman and Clarke (2009) in order to interpret how the Union in all its complexity has to date constructed and attempted to institutionalise a governable terrain which can be recognised articulated and acted on as ‘EU migration governance’. We endorse their assessment that processes of governing involve work; they involve the making and doing of politics in order to produce governing processes (ambiguous, fragile and contingent).¹ Different elements of governing can be assembled and disassembled as policies and politics change, and these elements are many – Newman and Clarke refer to people, place, technologies, images, resources among others, and yet more could be included, but most importantly for our paper, reference to assemblage draws attention to the constructed, but not necessarily coherent, character of governance (ibid: 9).

This paper is concerned with various elements which demarcate how different orientations are made practical and concrete and in this practice become inflected with other orientations via a range of governing elements (e.g. documents, statistics, programmes, institutions and agencies, networks, press releases, meetings, elections). Nonetheless, we wish to be clear that this process of assemblage is not at any particular point in time entirely open. Processes of assemblage and re-assemblage are inscribed within formal and informal historicised processes and structures; they are

¹ We believe that they involve several kinds of work – political, discursive, emotional, practical and ideological are just some. For the purposes of our paper, it is the political work in which we are most interested in exploring.

therefore inscribed within, and themselves shape, power relations. In this case, we refer to the struggle for coherence, but we do so in a knowing way – that is to say, we do so on the understanding that struggles for and over coherence are not about technical issues of tidying up the law, improving implementation or generating better-evidenced policy. Rather, and especially in diverse and complex environments, ‘coherence’ becomes a key means of undertaking the process of assemblage, of simultaneously doing politics and disguising how politics is done in any one policy field.

Coherence has different aspects which form part of the struggle to assemble a policy field, and the strategies and governing mechanisms which define it, especially in heterarchic governance processes. The struggle to create coherence overall, or to pursue an agenda of coherence against other actors can be about designating a terrain on which one can act; describing and delimiting the agents within this governing process and their roles; and/or it can be about the ways in which governing itself is to be extended/delimited, shared/contained, politicised/de-politicised. There is the issue of the coherence of a policy terrain in general: first, its limits and terms of reference, including geographical scope and extension; second, the strategies, goals and action which mark it out as a particular (governable) terrain. This is not to suggest that effective political action nor indeed effective governing requires coherence per se (see McKee 2009). Indeed we are rather sceptical that coherence in both action and in the delimitation of terms of reference of a field are really achievable. Our argument centres around the role played by the idea, purpose and valuation of ‘coherence’ in political struggles over governance.

In this paper we address both aspects of the struggle for coherence and their implications for understanding different orientations and how they help to organise various elements of EU migration governance. Before examining these in detail, we need to address some of the ways in which complexity of governance is manifested in our case, taking account of its EU-ness and its migration focus.

3. The EU, policies and institutions relating to migration: complexity in action

First, the *case of the EU*. Our study takes the view that EU governance – processes or results – cannot be read off from an explanation of interests according to varieties of

capitalism or of generalised dynamics of Europeanisation. Rather we view EU governance as the object of analysis: we seek to explain how EU governance is practiced as a whole – ie to view the Union as an entity which comprises member states, Commission, ECJ, parliament, agencies, networks of professionals, courts of auditors, expert panels, numerous committees, formally and informally recognised partners and ‘European’ networks and authorities which extend beyond the EU. As Kostakopoulou (2000: : 500) argues, the EU is a ‘complex strategic field’, where there

“exist several and distinct sites of power, a multitude of relatively independent and yet interdependent agencies having special and variable relations to each other and to other external sites of power. The density of their interconnections means that each of them cannot be studied in isolation from the rest. The field is heterogeneous, 'anisomorphic' and uneven.”

A central feature of this dense but variable configuration of actors is that policy actors contra both multi-level governance, and Europeanisation literatures, they always co-exist as elements of numerous simultaneous governing processes. It is the sum, and the particular configuration of these processes which at any one moment make the Union recognisable as such (e.g. Stone Sweet and Sandholtz 1998). These governing processes are produced over time and in concrete spaces through their structured but unstable relationships in a range of changing configurations (by policy area and their linkage across policy area and among policy actors).

This very complexity is part of what has to be managed and organised in order to produce the Union, and to produce its products (policies, directives, institutions). EU governance is an instituted set of practices, where the process of institution takes place most importantly through situated actors, whose situation is itself *always and simultaneously* national, European, local, political/ideological, professional, personal.

In addition to what be called the inherent or overarching complexity of governing in the EU, we can find additional complications arising from the *case of migration*. Migration and immigration policies are, even within national states, subject to highly conflicting tendencies and involve a multitude of actors and can engage numerous political perspectives (Sciortino 2000). Thus migration is a matter of international law: refugee and stateless persons’ rights are protected through international law. It is also

a matter of inter-state relations: historical (mostly but not always colonial) relationships between countries of origin and destination and relationships with neighbouring countries – both as countries of origin and countries of transit for migrants are vitally affected by, and themselves affect the treatment of particular groups of migrants on entry and during residence. Migration is also a matter of international trade: even outside the EU, but all the more within it, trade in services has become a significant point of controversy in assembling open ('liberal') markets but preventing social dumping (for the European Union, see Kvist 2004). Migration policy primarily involves ministries of the interior, concerned with regulation of citizenship, entry and crime, but even within one 'national' state in practice, the organisation of migration policy can involve numerous agencies, and thus numerous conflicting political, professional and personal orientations and possibilities for action (ministries of justice, interior, trade, foreign affairs, but also customs and social benefits officers, health, housing and social workers, employers trading locally or transnationally, in the formal or informal economies) (Crowley 2001).

Here we mention three sets of relationship which are significant here, all of which contribute to the complexity of EU migration governance. Following Kostakopoulou (2000: 500-01), we focus on the relational and contextual aspects of this complexity.

Member states, law, and the ECJ. All member states have more extensive governing authority in all policy areas than the quasi-federated, supranational authority. This is the case even where EU law is in place, and takes precedence of member state law. This is because, even in so-called hard law in the *acquis communautaire*, sanctions for failure to meet conditions are limited, and the distinction between federated EU law and soft law recommendations is not as clear as might be assumed (Falkner 2005). In addition, different member states with different histories, and different degrees of authority within the EU in are differentially subordinated to the *acquis*. More recently acceded states have differential access to apparently fundamental rights of the Union, notably free movement (e.g. Kvist 2004; for detailed discussion see (Carmel and Paul 2009), while the terms of absorption application and 'translation' of the *acquis* for more recent members are notably different from those applied to older members (Lendvai 2008). Furthermore, as Kostakopoulou (2000) outlines in some detail, unlike within member states, policies and laws affecting migrants in the EU are unevenly

applicable. The most obvious example is that the area of free travel in the Union (Schengenland) not only temporarily excludes citizens from the A8/A2, but also is granted the UK, Ireland and Denmark, but with strong limitations on their possible input into its governance. But Kostakopoulou further argues that the restrictions placed by member states on how the ECJ can be used in relation to the Area of Freedom, Security and Justice means that the European acquis on migration will also be unevenly applied, without easy recourse to European-wide judgements.

Member states, the Council and the Commission. In migration policy, there is much agreement that the Commission has quite consistently tried to push a more ‘liberal’, ‘human rights’ orientation, which has been persistently resisted by a security-oriented Council (Uçarer 2009: ; Niemann 2008: ; Groenendijk 2005). In some key aspects, we accept this argument, but we view it as partial. First it rests on too simple a distinction between rights and security, whichever ‘side’ of the argument one endorses (Sasse 2005). In addition Guiraudon (2000: ; 2003) argued convincingly that member states have delegated important aspects of ‘security’ control to networks of professionals (police, customs officers), who are both national administrators, but also, in this context, European policy-makers; member states are rather less protective of sovereignty than we might assume. The emergence of ethno-nationalist, xenophobic and racist parties as a normal, and even significant feature of the political landscape (see France, UK, Netherlands, Greece), and normalised as government parties in countries as diverse as Denmark, Italy, Poland and Austria) (cf Schierup, Hansen and Castles 2006: 3-10), has had sometimes unexpected effects. For example, the anti-discrimination Directive was finally agreed by the Council in a context where an explicitly racist party had been elected to national government in Austria (the first time in Europe since the end of world war 2); a demonstration of human rights or equality based principles as a proof of liberal democratic credentials. In a parallel argument, there has also been agreement that the trajectory towards EU market-making and free movement of workers has been constrained by sovereignty and protectionist resistance by the Council as a whole (Caviedes 2004: ; Baldaccini and Toner 2007: 16; Geddes, Andrew 2000: 174). However, it seems that sometimes it is individual (groups of) member states which resist such measures, rather than the Council (Menz 2009: ; Schierup, Hansen et al. 2006). In other cases, the interplay of member state positions, Council dynamics, Commission preferences, and changing

polymaking frameworks, have permitted the development of an approach where the Commission has generated policy coherence through institutionalising ‘selective gatekeeping’ of the European market (van Houtum and Pijpers 2007). We should also, however, keep in mind the importance not only of the inequality of member states (formally and informally), but also the uneven extension of European policy, even EU law, beyond the Community.

Representations Migration policy in the EU is not subject to co-decision, which means that the elected body of the Union has few rights over policymaking. Migration policy however, is not without the representation of interests, but again the multi-faceted and fragmented form of the field of migration policy means that integration of political forces is not aligned with the governing authorities of the Union in any straightforward way. Thus interest representations for liberalising and engaging in social integration of migrants have been active in the migration policy field for some time, but with little impact - at least until recently (Uçarer 2009: ; Geddes, A. 2000). Yet the representation of socio-economic interests is dispersed and fragmented. This dispersal is directly economic: European liberal international trading interests of capital are well-represented in Europe (notably through the European Round Table of Industrialists), but in migration policy, the requirements, attitudes and responses of particular kinds of capital to specific migration measures are shaped by sector, type and form of trade. In addition, however, there are marked dispersions of interest, between member states depending on both EU law regarding free movement (of people, good and services), national labour market structures and regulations, and national migration laws. Furthermore, the priority given to Community law on the single market has favoured some employers over others, and has strongly ambivalent results for workers with different countries of origin, working in different sectors or at different skill levels, whether they are EU citizens or Third Country Nationals (Carmel and Paul 2009: ; Triandafyllidou, Gropas et al. 2007). This makes interest representation regarding migrants and migrant workers in the ‘single market’ both singularly important and markedly difficult (Papadopoulos and Roumpakis 2009).

In what follows, we outline a range of elements (orientations, policy programmes and directives, funds, agencies and practices) which have been assembled and re-

assembled in a variety of ways in order to create either or both coherence in definition of the EU migration governance field or coherence of action.

4. Political, discursive and institutional complexity in practice: assembling EU migration governance

In what follows we identify three struggles over the coherence of the field of migration policy in the EU. These struggles concern three key features of migration policy complexity:

- Shifting borders of EU-Europe
- Shifting boundaries of ‘legality’ and ‘illegality’
- Shifting responsibilities for maintaining and organising the above borders and boundaries.

We examine these shifts in the institution of the migration policy field by examining five orientations, their variants, and their mutual inflection. This analysis then enables us to evaluate the ways in which (seeming) ‘coherence’ of 1) the terms of reference and 2) of strategies goals and action have instituted the terrain of migration policy in particular ways.

First we wish to provide a brief reference guide to history of the formal markers in policies which address issues of migration policy in the EU. The Schengen Agreement (1985) is widely seen as the first legal outcome of the Treaty of Rome’s free movement agenda for EC workers, but rather critically for our argument, it was not possible to gain agreement to apply this to all member states. Despite the centrality of the tenet of free movement to the founding concept of the EEC/EC/Union, endorsement and practice of this has been uneven, limited, and philosophically incoherent (see variable treatment of acceding member states from 1980s onwards (Guillen and Palier 2004). Interest in migration issues gathered pace during the 1990s – the Maastricht Treaty guaranteeing rights of free movement for EU citizen-workers, and velvet revolutions, collapse of the former Soviet Union and the wars in Yugoslavia all contributed to substantial increases in inward migration to EU member states, much of it on the basis of asylum, and some of it to countries more used to emigration than immigration (Finland, Greece, Italy, for example).

In 1997 the Amsterdam Treaty was agreed (in effect from 1999) which partially communitised some aspects of migration policy subject to a transition period. After 2005, the Commission had the sole right of initiative in this field. The Council has not been inactive either during nor subsequent to the transition period. After an initial flurry of activity in 2000-03, only some of which produced Directives, from 2005 onwards we can see that the Commission began to gather together the range of orientations, approaches and concerns in the field of migration to both be able to act coherently, to order and organise its activities in comprehensible ways among the various Directorates affected. Indeed by 2008, the Commission is even calling explicitly for a marking out of a ‘coherent immigration policy’ (Commission of the European Communities 2008b), also justified against poor quality output from the Council’s ‘Hague programme’ (Commission of the European Communities 2008a). Nonetheless, the Tampere (1999) and later the Hague (2004?) European Councils set significant parameters for the development of migration policy. Tampere interpreted migration primarily in terms of entry control but also provided the impetus to regulating and improving the status of legally resident third country nationals. But with the Hague we see new orientations appearing towards social integration and especially the management and generation of particular forms of economic growth.

Rights and equality orientations

There is in the literature a rather liberal use of the term human rights or rights agenda in relation to explanations of agendas which underpin individual migration policy developments. We have identified three rather different ways in which rights and equality orientations have been used and combined by different actors to extend, but also adjust and contain, rights and status of migrants in the EU.

First the human rights agenda is considered a driver for the adoption of family reunion rights for legally resident third country nationals in 2003 (Council of the European Union 2003b), and the Directive on the rights of residence for long-term resident third country nationals (Council of the European Union 2003a). The equal treatment agenda has more generally provided for the creation of a denizenship status which secures residence rights for TCNs in the absence of viable or desirable naturalisation

regimes ((Peers 2001). However, as these Directives are justified on grounds of limited interpretations of the equal treatment and anti-discrimination directives adopted in 2000 (Council of the European Union 2000a: ; 2000b), neither Directive holds ‘human rights’ status in EU or international law. In fact, more recently an additional Directive had to be adopted in order to protect the rights of refugees, some of whose rights had been relinquished by the adoption of the family reunion directive. What is concerned here is ‘fair treatment’, not equal treatment, and certainly not the inscription of ‘rights’. In addition, the status of LTR is granted *by individual* member states: there are limits to how long one can be absent from a MS without losing LTR status – even if one is resident in a second EU MS. Therefore one is clearly not a LTR of the Union but of a MS within the Union even though the status is regulated by the Union. The reason such details matter is that these regulations profoundly – and unevenly – structures the rights and status of LTR migrants in the Union.

Uçarer (2009) is clear that the rights orientation of the initial Commission proposal became subject to the logic of security due to the resistance of specific member states (see also Kostakopoulou 2002). Yet it was at Tampere that the Council specifically set the agenda for pursuing equal treatment for LTR-TCNs. In terms of a struggle for coherence, we can explain this as follows: in attempting to fix the boundary between legality/illegality, and the boundary between in/out of Europe, and drawing on the emergent economising agendas in several major member states at the time, the Council wanted to adopt a limited fair treatment agenda which would regulate and order the .

The second way we have found that an equality/rights orientation has been adopted is in the treatment of victims of trafficking, but here once again, we find inflections of other orientations; attempts to assemble policies from a range of perspectives and practices. Trafficking of human beings was treated in the 1990s as a criminal question and the need to police the perpetrators (related to sex industry in particular). It was indeed an archetypical case of Guiraudon’s (2000) ‘venue-shopping’ – this is not a migration issue, but a cross-border policing issue, dealt with by networks of professionals largely outside formal political negotiations. However, in the struggle for coherence, and for the presentation of a liberal democratic perspective, if one is to punish illegally resident migrants, how can one punish the forcibly moved? Here we

see a vision of human rights as inflected with the qualities of protection, rather than fairness or equality. At the same time, the Directive which protects victims of trafficking from expulsion from member states also requires their ‘co-operation’ and assistance in criminal investigations of traffickers. Given the especially vulnerable position of such people (frequently women and children in the sex industry), it seems that protection is also not rights oriented in such a fundamental sense. In this however, the attempt to cohere different orientations into a migration policy (rather than criminal justice policy) results in the generation of considerable ambiguity around legality/illegality for the person who is trafficked: protected from expulsion, but not necessarily granted legal residence. It can also mean that the variable construction of EU borders become in such cases the responsibility of the police officers and their decisionmaking – dependent not (only) on rights, entry, residence, country of origin, but on the progress of criminal investigations.

Third the role of ‘rights’ orientations in shaping the emergence of a coherent policy field is in the rather consistent reduction in the rights of those seeking asylum on the territory of the EU. Here, the construction of the EU itself, its borders and the policy terrain is at its most coherent. While embedded within commitments which extend beyond the EU into international law, the Union has extended the list of ‘safe’ third countries (a single list for all EU member states) common minimum procedures for deportation (including rights of redress and for procedural fairness), but has had no comment (as far as we are aware) on the long-term incarceration of children and adults seeking asylum (e.g. UK), the squalid informal camps where asylum seekers reside (e.g. Italy), and indeed it promotes the incarceration of asylum seekers outside its own jurisdiction, shifting responsibility for asylum seekers to near neighbours, such as the Ukraine.

Yet rights-orientations are more ambivalent still when it comes to asylum-seeking in the EU. Thus the projection of variable borders beyond and outside the EU, in order to manage, or better, get others to manage (contain/exclude) asylum seeking entry to the Union is now a well-recognised feature of the Union’s external governance (Lavenex 2006). It is also used as an element in other assemblages in EU foreign policy, notably in the uneven and highly politicised treatments offered in the

European Neighbourhood Policy. Boswell (2003: ; 2008) has written rather positively regarding the emergence of migration issues in EU development policy, as offering a liberal, rights-based perspective in contrast to the security orientations which dominate the lead Directorate in the Commission (DG Freedom Security and Justice'). Kostakopoulou (2000) offers a more sceptical view. She notes that arguments which started in the EU in 1994 (note the date) regarding the need to address the 'root causes' of migration and asylum seeking were less about the emergence of a development-centred, rights-oriented perspective than with the reduction of access to asylum in the Union in the context of rapid increases in inward migration in the early 1990s. Later, this apparent rights orientation has been refined to look more like conventional instruments of external governance: highly conditionalised funds available to specified and limited numbers of countries, who are effectively asked to police their borders (with financial and 'technical' assistance) as if they are neighbouring the EU. (The countries able to participate in these programmes may not actually be neighbours, as they are rather part of the ENP, and subject to/have access to different kinds of conditions, funds, programmes, incentives and so on.)

In this instance, asylum policy has been treated rather separately from other aspect of migration policy – subject to international law commitments, but it has in general marked by the political tendency to propose and intensify 'containment'; migration policy for migrants is assembled using elements from a limited, selective, and paradoxically highly conditional rights orientation according to a logic of security-as-exclusion – which treats the ambiguous and shifting borders of EU-Europe as malleable and portable. What has been extended and re-affirmed however, is the special treatment accorded to refugees. If an asylum seeker is lucky enough to be granted refugee status they are usually able to access social and political rights on better terms than other third country nationals (with special supports, priority housing language courses and labour market training for example). This is now also reflected in the EU with a) its affirmation of refugees as possessing special rights, above those of long-term resident third country nationals, and b) the institution of a new refugee fund, to assist the social integration and settlement of refugees in the Union.

Securities and risks

Securitisation has rightly been seen in the literature as a de-politicising orientation, which takes policymaking into the real of national security, the exigencies of protecting ‘national interests’, and also into the hands of professional security specialists, from border guards to intelligence agencies (Huysmans 2000).

However, we discern several different elements of a security agenda, and take on board Neal’s (2009) arguments that the process of de-politicisation is less one of exigency and crisis and rather more one of routinisation and regularisation of professional practice and ‘risk’ management. We find this most clearly in the first aspect of security orientations – that of ‘criminal justice’, concerned with cross-border crime and border definition/management. This has sometimes elided uneasily with questions of defining entry rights, particularly concerning questions of over-stay and deportation. Here the professionals involved are the police; they are not only imbricated in the complexity of EU and national frameworks, but forms of co-operation via Europol, and more widely Interpol and so on, and face a variety of legal and professional constraints on their cross-border practice (e.g. protection of privacy and protection of data protection). The element of criminal justice is then assembled as an element of migration policy intersected with rights of ‘crime victims’.

These legitimised ‘illegal’ migrants are then constituted in contra-distinction from visa overstayers, unsuccessful asylum seekers and undocumented migrants more generally. In addition, other actors, notably employers employing non-EU citizens without visas are brought into the assemblage of migration governance. Employers are to be active and are responsabilised as governors of ‘illegal migration’² Thus the distinction legal/illegal, and attempts to harden this distinction in the 2000-05 period can be seen as a way of clarifying the migration policy terrain on which criminal justice system and other ‘security’ professionals operate. Yet this terrain is also produced by the technologies of digitised visa records, accessible to other member states, where a migrant from outside the Union has their visa provided according to Union, not national regulation, and whose catalogue of rights and constraints is

² The linguistic elision here is no accident of course: migrants become illegal by undertaking work for which they do not have a visa, while employers act illegally when employing workers who do not have the ‘right’ papers. ‘Illegal work’ and ‘illegal migration’ are not merely articulated together, they are somehow melded together in a single condition jointly constituted from their migration and employment statuses which renders both employer and employee ‘illegal’. (see regulation on the responsibilities of employers)

marked on entry. Here national rights and regulations (categories of entry and stay for migrant workers, students, spouses etc) are simultaneously also EU-European, and are experienced as such by both migrants entering with visas, and by the services which police entry and stay. Plans for new directives on single visa applications, and increased funding to the EU border agency FRONTEX enhance this dual or even joint,

The second element of security orientation is closely linked to that of more general criminal justice concerns, that of 'public order'. Here we find important inflections of concerns about social integration and a link to national security. Public order securitisation can be addressed to contain the temporary cross-border movement of football fans, political protesters as well as elected politicians (see UK's refusal of entry to right-wing Dutch MP), and are generally directed at individuals rather than categories or groups of migrant. But it can also take on powerful racist overtones, for example with the expulsion of Roumanian Roma from Italy, and be linked to the even higher order of national security in the case of politico-religious preachers, particularly Islamic ones. Questions of public order do fall into the category of de-politicising exigency; the threat to public order can be articulated with national security, but also with concerns about (risks to) social integration and harmony, which are also frequently racist in overtone. It is vital to note however, that the element of security as the protection of public order is permitted by the Community, but solely exercised at member state level – public order is, it seems, by definition national (however problematic the association of public – national in general, and in this case in particular, see, e.g. Newman and Clarke, 2009: 35-9).

The third element of security orientation is rather different; this concerns national security. Here we expect, in the context of international terrorism the prevalence of powerful 'belief patterns' around (constructed) threats posed by migration supposedly sustain these concerns (Albrecht 2002). Yet the role played by 'security' discourse in EU governance, and how it plays out between the Commission, the Council and the member states is rather less straightforward than is sometimes assumed. First, there are rather strong limit conditions to the pursuit of a 'securitised' agenda even in conditions favourable to such an agenda. Boswell argues effectively that despite the notional crisis conditions applying in 2001, and later after the bombings in Madrid and London, the 'European' (Council and Commission, as well as other actors)

responses were relatively muted; no strong restraints on rights or even national security-oriented rhetoric emerged (Boswell 2007).

This is not to say however, that the Council, Commission, ECJ and advisory committees like the Economic and Social Committee are all in agreement, nor that ‘security orientations’ – in all their aspects are absent. There are tensions: recent articulations on community immigration policy requested by the *Council*, and produced by the *Commission* are marked by major discursive shifts, most notably the reference to irregular, rather than illegal migration (discussed below). At the same time, a recent communication from the Commission attempted to regulate and limit the broad ways in which *member states* have been interpreting the permissible exceptions to granting LTR status to third country nationals. It particularly referred to the overuse of national security and public order restrictions. In assembling its coherent ‘immigration policy’, the Commission is attempting to establish political limits on member state action, despite its limited capacity to do so. Yet at the same time, the restrictions on seeking asylum, attempts to prevent ‘illegal work’, more effective (but ‘humane’) deportation are necessarily part of this assemblage. Because political/policy debate about such elements is in abeyance, it does not mean that security elements are not present, nor available for

Economisation – EU market-making

Not accidentally in the period when the Lisbon strategy was being drafted, the Commission elaborated on policy orientations for a common migration approach and addressed links to the European Employment Strategy (EES) (Commission of the European Communities 2000: , 2003). It suggests a ‘coherent approach’ – or what it later dubs ‘intertextuality’ between economic, social and migration policies. The economic and demographic situation and prospect of the Union as well as of countries of origin make ‘zero’ migration policies are no longer considered appropriate. In 2003 the Commission offers a comprehensive redefinition of the migration agenda, examining the “role of immigration in relation to Lisbon objectives” (Commission of the European Communities 2003: 4). It also re-frames integration of migrants via their labour market participation. Migration is believed to “increase labour supply and helps cope with bottlenecks”; the promotion of migrant employment is thus framed as desirable for national economies and EU growth more generally, as well as the

integration of TCNs (ibid: 10). A Directive proposal for a common admission scheme for TCN workers first emerged in 2001. While this proposal was dismissed by a sovereignty-concerned Council, the Commission has further manifested the economisation agenda with a Policy Plan on legal migration and the Green Paper on an EU approach to managing economic migration in 2005. This marked the explicit linking of the new economised Lisbon Agenda post-2005 with the management of selective legal labour migration for the purposes of promoting economic growth and managing welfare state pressures (CEU 2005).

Since difficulties of member states to accept a broad approach like the Directive proposal of 2001 made the limits of common labour migration control evident, the Commission took a more selective approach on entries in the post-Hague period. Instead of generally defining entry criteria, it now sets out to address highly-skilled and other specific categories of workers. Both the Directive proposal and the Green Paper thus embrace a selective circumvention of the predominant security-orientation in case of economic need and labour market shortages. This is a development that might not only selectively swing open 'fortress Europe's' largely domestically controlled doors in case of workforce requirements (cf. van Houtum and Pijpers 2007), but it may also lead to a reconsideration of cooperation in the area of labour migration admission schemes, neither of which should surprise us given the market-making dynamic which is so fundamental to the Union (Favell and Hansen 2002). The latest proposal of the Commission of introducing an EU Blue Card (Commission of the European Communities 2007a) for highly skilled workers and the proposed regulations for seasonal workers, remunerated trainees and intra-corporate transferees is pointing in that direction. It also renewed and refined its proposal for a common admission scheme for third-country national workers.(Commission of the European Communities 2007b) Moreover, a general principle of admission for all categories of workers is seen in "the existence of a work contract" and the proposed "economic needs test" of the national labour market (Commission of the European Communities 2005b). Despite the current lack of progress in gaining agreement for such proposals, the proposals themselves, the Council continues to insist on the priority of migration management particularly to regulate selective migration according to skills with explicit reference to Lisbon targets for growth and employment (Council of the European Union 2008b: 9).

Social inclusion and integration

A striking feature of policy proposals, programmes – and even monies – in the EU from the mid-2000s onwards has been the increasing centrality of ‘social integration’ as an element in the assemblage of EU migration governance (the policy area now partly termed ‘immigration policy’).³

The Lisbon Agenda between 2000 and 2005 included the aim of generating ‘greater social cohesion’ in the EU. This led to the creation of the rather flexible Social inclusion OMC in 2001, with an elaboration of indicators, processes of peer review and so on, designed to lead to reductions in poverty and disadvantage, and to elaborate the interest of the Union as a whole in social wellbeing in a significantly new way. Initially this seemed disarticulated and distant from questions of migration: (im)migrants were mentioned as being among those social groups less likely to have access to social resources and employment, and as being more likely to face social exclusion and disadvantage.

A key difficulty remained however, and that was a) there were no resources or institutional space for consideration of migrants needs in the EU. All policy from the DG Freedom, Security and Justice (FSJ) was directed at the EU’s and member states’ requirements, and b) it was precisely those (im)migrants who were cited as most vulnerable (undocumented migrants, visa overstayers) who were also most likely to be the object of the punitive criminal justice mechanisms which had been at the central feature of EU migration governance. Social inclusion of migrants was then a thin or superficial interest. Migrants appeared in lists of ‘the excluded’ or the ‘most marginalised’, along with ‘young people’, ‘women’, ‘the long-term unemployed’ and notionally equivalent others. Such chains of equivalence are problematic for all these social categories, but for the irregular migrants, they ignore and therefore disguise their especially vulnerable legal situation (precarious or illegitimate legal status) and social position (subject to exclusion from social services and benefits; exploitation in

³ We use the term ‘partly’ here in order to emphasise that some aspects of migration governance (deportation, for example) are not included in the assemblage ‘immigration policy’. In this case, the attempt to render EU migration governance coherent requires the absence of, or silence about, significant aspects of this governance. (Should governance problems arise regarding these ‘absent aspects’, we would then expect to again see a re-working of migration governance, perhaps re-defining its parameters, re-naming it, including different elements as aspects of other governance, for example.

employment, housing etc without recourse to redress; subject to racist and xenophobic violence and exploitation without recourse to justice system). While the overall impact and role of the OMC/incl might be debated, the inclusion of migrants can be clearly evaluated as a sop, or an afterthought – not something to feature in pronouncements on migration policy itself (as evidenced in absence of these issues from statements on migration policy, and from proposals which focused on the need to generate selective (especially high-skilled) labour migration into the EU.⁴

From 2004 we see a major shift, as the centre of gravity of EU migration governance begins to move from one of criminal justice, to the assembly of elements around the node of economic development, social integration and managed exclusion. Endorsing Boswell's 2007 arguments regarding the lack of 'securitisation' of migration issues post-2001, we maintain, that the investigations into the attacks in the US, the bombings in Madrid and London, and intensification in the competition for highly-skilled labour, combined with the end of the transition period in policymaking after Amsterdam had the joint effects, of promoting a particular kind of 'social integration' as a key element in (coherent) EU migration governance.

It is 'particular' in two main ways. First, rather as 'integration' and cohesion are used in national and regional politics, it presupposes a homogenous entity into which migrants should (and should be able to) to 'integrate'. In the case of the EU, this presumed homogeneity is even less plausible than in other cases, but given this heterogeneity, then the integration imagined and articulated in EU migration governance is rather less demanding and perhaps less oppressive than integration strategies in some member states. Such an articulation does, though, imagine a unified, bounded and comprehensible EU-Europe, in ways which are not evident in those elements of migration governance oriented around criminal justice, rights, or even economic development and market making. In all of the above, EU-Europe has shifting borders, sometimes brutally rigid, and in other cases, for other migrants, or in other member states, permeable membrane. EU-Europe in the other elements of the assemblage appears uneven, contradictory, subject to member state policy whim. In

⁴ Indeed, before 2004, and even in 2005, the focus was not on integration of migrants but on creating 'circular migration', a policy strategy which was viewed as being rights oriented and being able to be inserted into broader external relations/development agendas. (The proposals discussed offering highly conditional 'rights' of return for migrants from co-operating countries..

assembling ‘coherent immigration policy’ as the form of EU migration governance, social integration is not only central but also performs the useful purpose of discursively imparting to the EU a solidity, comprehensiveness and comprehensibility which does not exist in the practices of member states not in the experiences of migrants themselves.

The second feature of social integration in the construction of EU migration governance is that the social aspects are strongly inflected with, and constrained by, the concerns and dynamics developed in the economic orientations. That is, integration in 2004 was, reflecting the status of Lisbon, primarily about employment, and the responsibilities of immigrants for ensuring their employability. We need particular kinds of workers, and these workers will have special social rights (see blue card proposal (Commission of the European Communities 2007a)). Since then, it seems that questions of social inclusion, and especially the social inclusion of migrant children, and the children of migrants has become more important. The riots in France in the later 2000s, create an additional public order dimension to the national security and economic orientations to ‘social integration’. Thus the Council in the successor to the Hague programme, the European Pact on Asylum and Immigration urged the Commission to work on organising legal migration; (with "due regard to *acquis communautaire* and Community preference"), it should “increase attractiveness to highly qualified workers, encourage circular migration, improve mutual information, integration and compulsory schooling for children” (Council of the European Union 2008a: 5-6). We might note though that even this integration of children is strongly associated with concerns about the employability of ‘second generation migrants’ for purposes of economic growth in general, and securing adequate pension contributions in the medium-term future. By referencing ‘irregular’ (rather than ‘illegal’) migration in its most recent proposals, the Commission has further articulated another implicit impetus to ‘social integration’ – as a way of managing and ordering the useful, but unregulated populations in all member states (but especially in Southern and parts of Eastern EU) – undocumented (im)migrants which avoids recourse to programmes of regularisation (Commission of the European Communities 2008b).

5. Conclusion

The struggle for authority in migration policy for the EU is one where the EC wants to assert its authority, and to do so, it must appear coherent – ie the disputes and differences in policy emphasis, the differing attempts to either use migration policy to further particular policy aims (eg in foreign and development policy to additionally carve out a role for the EU in external governance) or to use policy aims to stake a claim in the significant arena of migration policy (eg employment aims of Lisbon and economic development) or alternatively to use shared elite or economic fears and issues to make the case for an EU perspective on migration (referencing the social exclusion of migrants as a root cause for the ethno-nationalistic challenge to liberal political European project).

The creation of a socio-political space for consideration of migration matters as an EU concern not only brings into the political imaginary a bounded, populated territory comprising the EU, but it also creates a political dynamic to make possible and plausible consideration of the Union as a socio-political regulator, and organiser of the population order of that territory –even if this population order is uneven, patchy, contradictory and so on. From our perspective, the search, and even the current success in articulating ‘coherent’ policy field of ‘immigration’ is central to that ordering.

We believe this signals two political achievements. First, the valorisation of a particular self-image of the Union as socially integrative which disguises its exclusionary, racist elements and constructs the Union as a site of equality (between member states, citizens and legal residents). Thus EU migration governance as ‘immigration policy’ with specified ‘tools and actions’ is currently constituted as an eminently governable – and eminently ‘European’ – terrain. It appears to comprise a single European territory, is primarily concerned with migration as a means to promote economic growth, the key aim of EU policy, it demonstrates the ambiguous but apparently unimpeachable credentials of the European Social Model through its emphasis on social integration.

The assemblage of coherent EU migration governance centrally concerned with social integration is apparently overdetermined: it assists the contribution of migrants to economic growth – it will provide an incentive for (the right kind of) migrants to come to the EU, while assisting their ability to be subsumed into existing social structures. It will, by permitting the integration, education and training for non-EU-citizen children, secure the status and sustainability of welfare systems. It will, by being assembled with circular migration (for those migrants whose long-term residence is not desirable) permit both high and low-skilled labour market gaps to be filled. It will overcome the problems in Southern Europe of regularisations of migrant statuses that are considered so problematic for other states⁵ (social integration strategies and circular migration will resolve the problems of irregular migration and undocumented migrants in these countries)

Second, the assemblage of the governable terrain of ‘migration’ as ‘immigration policy’, where the traditional security–dominated elements are normalised and routinised, but not just as the Europeanised remit of police services and border guard services. More than this, they are articulated as strategies and actions which give form and content to the shifting boundaries of the EU as constituted in its ‘immigration policy’. That they are routinised, and under-debated should not blind us to the role of these orientations in continuing to shape key elements of EU migration governance, its discriminatory and restrictive character, and its insertion into the governance of states and peoples within and beyond its formal borders.

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⁵ And in practice are often opaque and unfair for migrants themselves.

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