Beyond Fortress Europe

The theory and policy of European border control

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The implicit link between immigration and crime has found its way into the political mainstream in Europe, write lawyers Laetitia Sanchez Incera and Maria Vittoria Salvatori. Safeguarding the individual becomes a challenge to the 'politics of fear'.

Border controls are now irrevocably bound to contemporary security discourses. The link between immigration and crime, originally found only in the rhetoric of fringe parties, has found its way into the political mainstream and the general consciousness of European states, so much so that – from terrorism to petty theft – it is almost necessarily implied. The attack at Brussels airport in March 2016, for example, fuelled widespread criticism of immigration policies across Europe – a response entirely dismissive of the fact that the attackers were all European citizens. [1] The ethnic affiliation of the perpetrators, regardless of their nationality or upbringing, was used by politicians throughout Europe to call for a tightening of borders and the effective abolition of the Schengen system, despite clear indications that the problem derived more from integration (or the lack thereof).

Is the link between immigration and serious crime, such as terrorism, empirically valid? If not, how was it created? Although a comprehensive answer to the latter question is beyond the scope of this article, its first part will look at the conceptualisation of the foreigner as a danger to existing society. The second part will look at how the nexus between migration and security has been institutionalised, and the last part will analyse the implications of defining immigration policies as security measures.

Immigration and the ‘politics of fear’

All European immigration policies that have been drafted involve the constant reinforcement of external borders, the hardening of the conditions of entry, and the weakening of legal protection for asylum seekers. [2]While these concerns are arguably symptomatic of global trends, they result in a fear of others, positioning immigrants as potentially responsible for most contemporary social problems. Such channelling, however, is rife with contradictions. Indeed, while border control has made its way to the
top of political agendas throughout Europe, important aspects of immigration, such as overstaying and clandestine employment, have been repressed. This is probably attributable to the arrival of cheap manpower and its benefits to short term economic goals. [3] This is reflective of a significant divide between political rhetoric, perceptions, and the realities of immigration. How has such an altered perception been created?

Immigration plays a key role in political discourses and elections. It tends to absorb liability for many contemporary social problems, often presented by political actors as a three-dimensional threat: on a socio-economic level, immigration is presented as resulting in increased unemployment of nationals; on the level of security, it is depicted as a potential criminal threat, involving anything from petty crime to terrorism; and finally, on the level of identity, immigration is said to undermine the integrity of the national demographic balance. These three aspects are typically used to create a common enemy and a perceived threat that allows politicians to obtain consensus and legitimise their role in the face of eroding significance of nation-states. [4] This emotional rhetoric is commonly referred to as the ‘politics of fear’ and is obvious in the rising popularity of far-right parties across Europe. It aims at placing individuals on a security continuum, polarizing them as either threats or non-threats. [5]

Individuals are given titles such as ‘second-generation immigrants’ despite being, by and large, citizens of the state. These labels are normatively charged and have an effect on perceptions of both the individual being defined and their citizen peers. This discomfort is most evident in phenomena such as the coverage of the Paris banlieue disturbances in 2005, which were presented as a problem caused by immigrants rather than an integration issue within French society. In the name of collective security, measures are taken with direct and immediate impact on the security and freedom of individuals, notably foreigners. Safeguarding the individual thus becomes a challenge to the dominant framing of the collective security requirement. [6] A leading illustration of the tension between collective security and individual rights is the ‘Belmarsh 9’ case, where the United Kingdom House of Lords held that a law allowing indefinite detention without charges for terror suspects was incompatible with the European Convention on Human Rights.

In this climate of suspicion, asylum seekers are perceived as potential terrorists. In 2001, the United Nations Security Council released the resolution that states shall ‘ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts’. [7] Yet it seems unreasonable to make such a link. Seeking asylum requires gaining security clearance, giving personal information, and being localisable at all times. It is highly unlikely for terrorists to enter a state’s territory through such channels. As Howard Adelman points out, ‘any sophisticated terrorist would reasonably be expected to avoid such an exposure’, adding that there is virtually no evidence that links terrorism to refugees. [8] This is why security concerns may be described as a rationale rather than a reason for higher immigration controls.

The institutionalisation of the security-migration nexus

The end of the Cold War, globalisation and the inception of Schengen have unsettled national and European institutions, eroding national sovereignty and calling notions of
national identity into question. These processes have also fomented anxieties and irrational fears among European populations. [9] The establishment of the Schengen boundaries, which intended to facilitate freedom of movement, inspired many Europeans to call for stronger external borders in compensation for the ‘security deficit’ caused by the abolition of internal borders. [10] A study of the development of a common migration policy in the EU led Jef Huysmans to conclude that ‘the most significant steps in the Europeanisation of migration policy correlate with a growing consensus about the need to restrict migration and with an increasingly explicit politicisation of migration as a danger’. [11]

The latest risk assessment report of the agency that coordinates operational cooperation at external borders, FRONTEX, made stated that ‘the Paris attacks in November 2015 clearly demonstrated that irregular migratory flows could be used by terrorists to enter the EU’. [12] The report goes on to establish that ‘with no thorough check or penalties in place […] there is a risk that some persons representing a security threat to the EU may be taking advantage of this situation’. In reaction, EU countries asserted their sovereignty over their territory by identifying and detaining unwanted entrants. Measures were developed to enhance the exchange of information (through the Schengen Information System), as well as police enforcement and judicial cooperation. The creation of a common economic market has had the spill-over effect of creating a common security project.

Faced with the difficulty of maintaining open borders to those needing protection, whilst sealing them against unwanted individuals, the European Community developed the Dublin System. [13] The Dublin System attempts to enhance the security of the Schengen area by preventing illegal movement of people and goods, while meeting international legal obligations in accordance with the 1951 Convention for the Protection of Refugees and the 1967 Protocol. In the absence of a common mechanism of allocation of responsibility, each state would be in charge of processing asylum claims made on its territory, in accordance with the Refugee Convention 1951. The Dublin arrangement is based on a hierarchy of criteria that determine which state is responsible for processing the application of an asylum seeker, [14] none of which are related to asylum per se but rather to migration criteria. [15]

It follows that ‘the more a country opens its doors to a third-country national, the more responsibility it undertakes for that third-country national’s potential engagement in the EU asylum process’. [16] Refugee protection has financial, administrative and political costs. In the first months after the arrival of an asylum seeker, the costs may outweigh the benefits. [17] A short-term approach to the refugee crisis may indeed explain why states are reluctant to fully commit to welcoming asylum seekers. In effect, the Dublin System urges states to efficiently protect their borders in order to avoid the burden of processing asylum claims. A combination of border control institutions and policies has been developed to facilitate such a task. These include the European Border Agency, a common visa system, and the Common European Asylum System (CEAS), effectively making the Dublin System a cornerstone of the European Security Acquis Communautaire.

Numerous problems arise from the fact that some EU Member States carry disproportionate burdens, undermining their commitment to safeguard asylum seekers’
rights. The country of first entry remains in most cases responsible for processing and accommodation; Greece and Italy receive the largest numbers of people. [18] States at the external border are meant to take a considerable amount of responsibility under the Dublin system. The burdening of the administrative and judicial system is such that Italy and Bulgaria suffer systemic flaws in asylum procedure and reception conditions, resulting in a halting of transfers to the first country of entry. [19]

The Refugee Convention states that protection-seekers should not be treated as illegal immigrants. [20] The Dublin system does not offer any guarantees to enforce this principle and, in practice, asylum seekers and clandestine transnational actors (CTAs) are merged as one group. Instead, ‘prior to admission, refugees seem to have been assimilated to the broader class of (potentially illegal) immigrants and thus constrained to submit to general immigration conditions, including visa when required. Refugees appear to be distinguished from the immigrant mass only once the asylum request has been filed or the principle of non-refoulement finds territorial application’. [21] In treating all immigrants indiscriminately, Members of the Dublin System fail to acknowledge the distinctive needs of asylum seekers.

**Immigration control as a security policy**

Given that the system so often fails to meet the needs of asylum seekers, does it enhance security of the Schengen area by preventing the illegal movement of people? Tighter immigration restrictions make it more difficult for people to enter the territory legally, leading to an increase in the number of people attempting to cross the border illegally and often fomenting a market of smuggling operations. There is little reason to believe that ‘smuggling and trafficking operations, which themselves show little if any regard for human life or dignity, would not move terrorists along with economic migrants if the price is right’. [22] Moreover, the amount of funds and resources necessary to control borders, including ground, air and sea, makes it an impossible endeavour. This is the ‘delusion of maximum security’ that often takes place following a terrorist attack.

Terrorist groups build their networks on pre-existing kinship networks and social bonds. These networks and clusters are exploited by terrorist groups as a recruitment pool. For this reason, ‘if the migrants’ country of origin is prone to terrorist activities, terrorist organisations might make use of the social bonds existent in the influx of migrants to other countries, therefore spreading their activities across borders. Hence, migrants are then a vehicle for the diffusion of terrorism’. [23] Moreover, ‘immigrants are indeed a vehicle for terrorism to travel from one country to another, i.e. the level of terrorism “at home” increases with a larger number of immigrants from countries of origin where terrorism has been present.’ [24] This suggests that more restrictive immigration policies are not useful, since ‘what matters are the countries of migrants’ origins and how present terrorism is in those states’. Nor should immigration laws be enforced against citizens of states with terrorist activities. The network in itself is not negative, it is the way it is exploited by terrorist organisations. A blanket policy restricting migration for members of communities that suffer from terrorism would have a number of negative consequences.

There are several arguments to support the view that the arrest, registration and detention of immigrants has a negative impact on law enforcement. First, it may feed into the vicious cycle of isolating communities, reinforcing stereotypes and misunderstanding
between communities, and encouraging domestic xenophobia. Falsely linking immigration to terrorism might antagonise immigrant communities and curtail their cooperation. It is more likely that, 'counter-terrorism which enforces or tightens immigration laws will prevent immigrants from coming forward and reporting suspicious potentially terrorist activity in their community if they themselves face arrest, detention and deportation'. [25] The focus on security also evidences the unwillingness to address structural reasons, i.e. the incapacity of various value systems to share a space.

Analysis of the equation: controlled immigration = enhanced security reveals that the primary aim of anti-immigration policies is not to enhance security. There are no clear empirical links between migration and terrorism; in fact, border control discourse in Europe has largely become a security discourse, one rife with the ‘politics of fear’. This link is encouraged by politicians faced with concerns about the diminishing importance of nation-states. However, to frame these concerns as being tied to migration does not succeed in addressing their root causes, nor does it propose any solutions. Rather, it seems that immigration is now the appointed scapegoat allowing politicians to rally significant support by exploiting the real fears of their communities. The ‘politics of fear’ frames migration as a security risk, creating tension between individuals and society at large.

Footnotes


7. UNSC Resolution 1373


20. Refugee Convention provides in Article 31 that “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization”.


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