



A 'European Migrant Crisis'? Some Thoughts on Mediterranean Borders

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Abstract

This paper addresses the ongoing 'European Migrant Crisis' by, first, discussing the return of internal borders within the European Union as zones for controlling and sorting migrants, and then both internal and external borders as areas in which policing and national policy choices deeply challenge international law, which was designed to protect all human beings regardless of their country of departure. The primary argument developed here is that some EU countries neglect to abide by the European and international regulations on migration, asylum seekers, and human rights, with unprecedented consequences. Border policies are presented here as paradoxical governmental tools, which are not applied equally and uniformly. The main consequence is the growing gap between rights guaranteed under the law and their selective application within a border management where the state of exception is increasingly visible.

The border is a concept that continues to be questioned in the social sciences (Abbott 1995; Benhabib 2005; Fassin 2010; Lamont and Molnár 2002; Mezzadra and Neilson 2013). The term can refer to the geographical and administrative separation between territories or the outline of a nation-state. 'Border' can also refer to the cultural, religious, or ethnic characteristics that are supposed to define the contours of social groups and which governments use to distinguish and separate these groups. European Border Studies research has been particularly interested in the political and human implications of contemporary border management (Barker 2012), for borders both internal (Darley 2008; Van der Woude and van Berlo 2015) and external to the European Union (Aas and Gundhus 2015; El Qadim 2014; Walters 2006).

Whether political or symbolic, permeable or controlled, the border of Europe in the twenty-first century reflects a paradox. This society wants to be one in

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which people move freely and which is increasingly connected globally through transnational networks of all kinds. And yet human mobility has been accompanied by a set of methods for controlling and closing borders that seek to select and prioritize the individuals who are candidates for immigration (Agier 2011; Anderson 2013; Newman 2006).

Among the maritime borders that are the most dangerous, the most controlled, and despite this, the most crossed, the Mediterranean Sea has also become one of the most deadly over the last fifteen years: over 29,000 people have lost their lives there in the hope of reaching Europe, primarily by drowning but also from hypothermia and dehydration (Albahari 2015). As these crossings are unauthorized by the EU Member States, they are therefore organized clandestinely and are sometimes a boon for smuggling networks, who are central actors in the economy of the European border. Yet this economy is far from being merely informal and illegal: multinationals such as the French company Thales and Spain's Indra have specialized in the production, sale, and maintenance of IT tools and electronic and military equipment for border control (thermal imaging cameras, drones, etc.). These devices respond to a flourishing and continually growing market (Rodier 2012) funded by the EU and its Member States. Despite these investments dedicated to making European borders more controllable, the islands of Lampedusa, Kos, Lesbos, and Malta, as well as continental towns such as Ventimiglia, Calais, and Subotica, have become border areas for migrant transit. Starting in the summer of 2015, a 'European Migrant Crisis' has emerged into the political and media arena of the Old Continent.

This paper addresses this 'crisis' by, first, discussing the return of internal borders within the European Union as zones for controlling and sorting migrants, and then both internal and external borders as areas in which policing and national policy choices deeply challenge international law, which was designed to protect all human beings regardless of their country of departure. The primary argument developed here is that some EU countries neglect to abide by the European and international regulations on migration, asylum seekers, and human rights, with unprecedented consequences. Some border zones, such as the frontier between Turkey and Greece, or between Slovenia and Austria, are characterized by a state of exception (Agamben 2005) where law is suspended or applied in a discretionary way. Border policies are presented here as paradoxical governmental tools, which are not applied equally and uniformly (Basilien-Gainche 2015). The main consequence is the growing gap between rights guaranteed under the law and their selective application within a border management where the state of exception is increasingly visible.

In this context, a particularly salient episode in the recent history of the island of Lampedusa is discussed and compared with events in September 2015 on the island of Lesbos and along the route that migrants currently take through the Balkans to reach mainland Europe. Finally, I offer certain reflections on the material and immaterial aspects of the border, and invite readers to question the uses made of the border today by Member States and European institutions.

The Return of the Frontier

The deployment of procedures for controlling and sorting human movement is particularly visible in territories close to the EU's external borders, although not exclusively. It is nonexclusive because, within each Member State, the waiting areas in airports, the transit zones in train stations, and in police stations and detention centres also sort people. Moreover, in recent weeks the internal borders within the Schengen Zone,¹ whose existence Europeans had almost forgotten, have again become visible and closed if necessary. Ventimiglia, on the French-Italian border, is one example. Last June, nearly two hundred migrants camped along the Italian coast near French territory hoping to enter France and then, for some of them, to reach northern Europe. France invoked the Dublin Regulation² to justify its decision to close its border to migrants from Italy and to strengthen the police presence monitoring the coast and the train stations nearby.

In this regard, Casella Colombeau's research (2015) shows the extent to which French border police (PAF) have contributed to the re-materialization of the EU's internal borders and to the return of each Member State's power to decide who can and cannot enter its territory, despite the Schengen Agreement and end of systematic identity checks at internal borders. In fact, special circumstances such as 'disturbance of public order' and 'endangering national security' allow European States to implement exceptional border control measures, which that State's police forces are responsible for carrying out. Thus, the train stations in Menton, Nice (France), and Ventimiglia (Italy) were the scenes for a large deployment of police officers responsible for systematically controlling all persons having the appearance of a migrant. Racial profiling, therefore, has become more common (Gauthier 2015) and an integral part of a professional practice growing on the fringes of European Community law and based on the discretionary assessment of the ethnic and national origins of migrants (Rice and White 2010).

In October 2015, Slovenia, Germany, Austria, Denmark, and Sweden announced they would reintroduce border controls to better manage the flow of migrants wishing to enter their countries. On Friday 13 November 2015, the terrorist attacks that injured or killed hundreds of victims in Paris resulted in a State of Emergency being declared in France. The borders were closed and an unprecedented climate of suspicion reigns towards asylum seekers. The media has insisted on one element of the investigation, that supposedly some of the terrorists who took part in the attacks entered France by following the route taken by Syrian and Iraqi refugees. Public opinion in France and Europe has never been so favourable to the reintroduction of border controls, both for internal and external EU borders. And this is true despite the fact that it is clear to everyone that the asylum seekers knocking on Europe's door are precisely the men, women, and children fleeing war and these very terrorist attacks of which France was recently victim.

The Schengen Agreement is now being challenged. The vulnerabilities in border control and the danger they are supposed to represent for the safety of European citizens have shaken public opinion. This has reached the point that

some Member States, such as France, feel legitimized in extending the state of emergency and implementing exceptional control measures that are increasingly restrictive of personal freedoms, such as temporarily closing the borders and systematic identity checks. As for immigration, and under the pretext of defending free circulation inside the Schengen Zone, the European Commission has recently suggested creating a supra-national border guard force that would even be able to intervene outside the EU (for example in Serbia or Macedonia). These ‘defenders of Fortress Europe’ would have the distinctive feature of being able to be deployed in States even without their consent, prompting opposition from Member States who do not want to lose their sovereignty in controlling their own national territory. The management of borders and migration flows has never so challenged the unity of the EU.

However, before the attacks on 13 November, the internal borders of the European Union had also become materially visible by their reopening, considered exceptional and motivated by what the media has termed the ‘migrant crisis’. Beginning in September 2015, Hungary, together with Austria and Germany, decided to allow several thousand asylum seekers who were mainly fleeing Syria and the Middle East to transit through their territories. This choice also reflects those countries’ decision not to apply the same Dublin Regulation that France invoked last June. This regulation states that the first European country in which an asylum seeker enters is responsible for managing and processing that person. This is yet another example of the discretionary power of European States to open their borders to some and close them to others (Aas 2011), randomly and in violation of international law. Since the Schengen Agreement, European States have never before demonstrated so clearly their desire to abrogate the right to assess the situations that justify opening or closing their borders to Third-Country Migrants on a case-by-case basis and according to the interests of the moment.

European directives and national implementation policies are an important framework for institutionalizing the fight against illegal immigration and human trafficking, which have become a priority for the EU since the early 2000s. In particular, in the minds of European policy makers, this has meant changing the focus towards profit-making organizations responsible for promoting illegal immigration and for endangering the lives of migrants. This posture enables them to further legitimize the control of the EU’s internal and external borders. Their stated goals are to, first, identify and dismantle these criminal networks, and second, to continue sorting between migrants coming from a country at war who have the right to enter, and those who do not have the right to enter because they are considered economic migrants.

This policy framework, combined with governance mechanisms and several tools for border checks, remind us that the European territory is above all conceived of as a good to be protected. Two examples are the creation in 2004 of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) (Wagner 2012) and that in 2003 of the Eurodac system for recording and comparing fingerprints of migrants (Andersson 2015). Innovations have also emerged

recently: in early summer 2015 and following multiple deadly boat sinkings off the coast of Libya, the EU implemented EUNAVFOR MED, dedicated to fighting against migrant smugglers in the Mediterranean. During the first phase of the operation, the main emphasis was on gathering as much information as possible on the routes and means used by these traffickers. Then in a second phase, which began in October 2015 and during which EUNAVFOR MED was renamed Sophia, military forces took over the searching, seizing and returning to their country of departure the boats suspected of being used by smugglers to illegally transport migrants to Europe.

However, European institutions do not seem interested in the reasons why these smuggling networks are successful: it is now virtually impossible for a Syrian or Iraqi asylum applicant to obtain a visa to enter Europe from a European consulate in a third country, and it is therefore impossible to legally cross European borders. Moreover, Europe's neighbours, and especially Turkey, are under increasing pressure from Europe to tighten their border controls in order to minimize the flow of migrants heading for Europe. In the absence of legal opportunities to come to Europe or to transit through neighbouring countries, how can we think that controlling migrant smuggling networks can resolve the 'refugee crisis'? How can we not see that this deployment of control devices and selectively closing European borders will only ultimately deteriorate the travelling conditions for these asylum seekers? Behind this multiplication of efforts to protect European borders, how can we avoid seeing that we are violating the rights to asylum?

Discretionary Application of the Law: The Gap between Official Legal Rights and Rights in Practice

The consequences of the EU's closing its external borders are heavy on the humanitarian level, and the media has habituated public opinion in European countries to the litany of migration tragedies (d'Allivy Kelly 2014; Ferrer-Gallardo and van Houtum 2014). The southern border of Europe also means more than 29,000 migrants drowned or disappeared at sea while trying to reach European shores between 1988 and today, including 2,352 in 2011, 590 in 2012, 801 in 2013, more than 3,000 in 2014, and as many in 2015 (IOM, <http://missingmigrants.iom.int/>).

The survivors of these crossings have made it through one stage, but must then confront other dangers and obstacles before they can perhaps be granted refugee status or humanitarian protection. Among these dangers, first is exceptional administrative detention that prolongs the detention of migrants in centres where their rights are not guaranteed. Border zones and the detention centres in them are the theatre for deploying exceptional measures that reveal the gap between the official rights of migrants enshrined in national and international law and the rights that they actually have in practice. In fact, governments justify these exceptional measures by saying that the humanitarian and or health emergency prevents the normal processes of identifying, registering, and transferring migrants. Thus, administrative detention of a migrant who has just survived the crossing of the Mediterranean can last several months, while the law, even with its national variants, sets the maximum duration of confinement at a few days.

Next, the political control of immigrants in the EU is based on a proliferation of statutes that guarantee a varying and graduated range of formal and substantive rights to refugee candidates. The legal apparatus of host States assimilates people 'without rights' to people who are 'undesirable' in its territory (Agier 2011; Benhabib 2004), by promoting a de facto association between immigration and crime and by merging 'dangerous categories' of people with 'categories in danger' (Fassin 2013). A paradigmatic example of this combination is a recently proposed Danish law, which will likely be approved by that country's Parliament in January 2016. This law confiscates asylum seekers' liquid assets and valuables, considering it their individual contribution to the cost they represent for the State. The parallels with the treatment of foreigners during one of the darkest chapters in European history, Nazism, are clear. It is evident that the figure of the asylum seeker in such laws can only convey the idea that the people who seek refuge in Europe are potentially crooks, and at best, a burden to the State that hosts them.

Nevertheless, migration news and images of its mediatization appear to have had an informative effect: an increasing number of people in Europe are now familiar with the restrictions still in force from the Dublin Regulation, in particular the inability of an asylum applicant to settle legally in a member State other than that of his or her first entry into European territory. This inability creates an uneven distribution of responsibilities for welcoming refugees among EU States. The same news has also helped, gradually, to give space in national and international newspapers to events that were previously not publicized on this scale. One example is the protests of migrants detained in reception centres on border-islands, triggered because the time they were detained in those centres far exceeded the limits set by law and the conditions were harsh (lack of beds, medical care, etc.). Beginning in September 2015, several thousand migrants from the Middle East, having transited through Turkey, landed in only a few days on the island of Lesbos (Greece). Tensions were high between the police and the migrants, who asked to be transferred to the European continent to continue their journey. They were thus asking that the restrictions included in the Dublin Regulation not be applied, and that they be allowed to seek asylum in the country that was the destination of their journey (for many of them, Sweden and Germany). Today, the reasons for their determination to continue their journey and the legal obstacles posed by the Dublin Regulation are clear to most readers of the leading European newspapers.

Earlier in July 2013, however, the reasons why the migrants in administrative detention on the island of Lampedusa (Italy) protested were much less clear to the general public. There, two and a half years ago, about two hundred asylum seekers mainly from the Horn of Africa (Somalia, Eritrea, Ethiopia) had repeatedly protested by marching through the streets of Lampedusa to demand the right to leave the island without leaving their fingerprints, that is to say, without being identified as asylum seekers in Italy. Registering their fingerprints would have forced them to file their request with that country. Therefore, at the height of the tourist season, these migrants first managed to disturb public order and cause concern among shopkeepers and hotel owners. Then, by being discreet during the informal negotiations with the police, the government, and the Catholic

Church, they were granted transfer to the mainland without being fingerprinted, in order to leave Italy and seek asylum in another European country.

European borders, whether on the continent or on an island, have become even more important for observing strategies for circumventing, reinterpreting, and contesting prevailing norms. Inside migrant detention centres as well as in the street, protests are taking shape: hunger strikes, marches, inflicting self-harm, setting fires, as well as creating committees that fight against building radars and against the opaque management of reception centres. Borders can thus be seen as a lens through which general socio-political phenomena are brought to light, such as the emergence of collective movements (Barker 2015) and the gap between immigrants' theoretical rights and their actual rights in practice (Nash 2009).

The effective exercise of migrants' rights is addressed by an entire body of literature inspired by the pioneering work of Hannah Arendt (1973). Some research challenges the argument that citizenship has become transnational as a result of the proliferation of international law and, in particular, an international regime of human rights (Shachar 2009). These studies highlight the fact that the individual rights of non-citizens are not always recognized, and therefore these rights are only effective in the presence of a State willing to recognize them and enable them to be exercised.

While there are informal and official measures that finalize migrants' exclusion, immigrants are not entirely helpless and can sometimes make their voices heard about this unequal distribution of rights. Attention to these claims has led to a vast body of literature on the protest movements of immigrants (for Europe: Anderson 2010; Giugni and Passy 2004; Oliveri 2012; Ellermann 2010). In this literature, immigrants, including those without status, often turn to the government of their country of residence and more broadly, to the host society of the country that received them, to discuss the criteria for belonging to that society and to demand an increase in the rights they possess. In the end, the images of immigrants that emerge from this research are polarized around, on one side, immigrants who publicly express themselves to claim rights that they consider themselves unfairly deprived of, and on the other side, immigrants crushed by the injustice of the system that grants them no place in society and reduces them to a 'bare life' (Agamben 1998; Rajaram and Grundy-Warr 2004).

Although points of comparison exist between this literature and the case of the recent migrants' protests in Lampedusa and Lesbos, the latter merit closer attention because it sheds light on the conditions for how a protest emerges in a context of a state of exception, isolation, deprivation of freedom, and a particularly extreme lack of external support (Lendaro 2015). These cases are precisely located between the two extremes described above: immigrants are marginalized here as part of an island-border in which the state of exception deprives them of their freedom by locking them up in a detention centre. However, they are not completely bereft of resources for making a different vision of citizenship and rights emerge.

These cases invite us to investigate the process that leads groups to constitute themselves as 'being political' (Isin 2002).

Frontiers and Mediterranean Tragedies: Why and for Whom?

The tragedies that mark the recent history of Europe's Mediterranean borders reveal a gap between the stated rights of migrants and the actual rights in practice that migrants can benefit from. People who die at sea trying to cross the Mediterranean on overcrowded boats do not have any actual fundamental rights regardless of the circumstances. The effectiveness of these rights, in fact, depends on the nationality of the person and the State within which those rights are claimed. In particular, the right to leave one's country is enshrined in the Universal Declaration of Human Rights, which in Article 13 states that '1) Everyone has the right to freedom of movement and residence within the borders of each state; and 2) Everyone has the right to leave any country, including his own, and to return to his country.' While this right is guaranteed, putting it into practice, that is to say, the right to immigrate to a country other than one's own, conflicts with the power of the State of the immigrant's destination to choose the people it wants to allow in. Guaranteeing this right would mean restricting the State's sovereignty. In this sense, Hannah Arendt (1973) spoke of the paradox of human rights that are, in many cases, reduced to 'paper rights', since whether they become actual rights in practice is closely related to whether the person belongs to a political community that recognizes their possession of those rights—a recognition which is far from automatic (Benhabib 2009). Contemporary border policies often result in an unequal application of the law, which is supposed to protect every human being.

These tragedies also mirror a material and physical boundary made of walls, barbed wire, checkpoints, and police forces. Yet the geographical boundaries between nation-states are only one of the possible places for the political control of people's mobility. The border has, in fact, been dematerialized by the multiplication of control measures such as biometric devices, which enable borders to take form in a de-territorialized way in any space where human movement can be controlled. These two faces of the border, both physical and dematerialized, must be considered together because they are complementary elements for understanding the political uses that States and the European institutions make of the border.

The governance of borders touches on issues of justice, which call into question the legitimacy of Western governments and their federal institutions such as the European Union to decide who can move and settle freely in Europe and how they do so. Rethinking the meanings and the political uses of the border in the twenty-first century is a necessary challenge, as EU representatives increasingly struggle to balance the discourse of human rights and that of national and European security.

Endnotes

¹ Following the adoption (1990) and the entry into force (1995) of the Schengen Agreement, the Schengen Zone designates an area for the free movement of persons between the States who have signed the agreement. Twenty-six states on the European continent are signatories, which means that any individual (citizen of the EU or Third Country National), once having entered the territory of one member country can cross the borders of other countries without identity checks. A passport is thus not mandatory

for travel in this area and flights between two cities in the Schengen Zone are treated as domestic flights.

² The European regulation termed 'Dublin' (No. 604/2013 of 26 June 2013 in its current version) determines the conditions for granting refugee status and humanitarian protection in Europe. In particular, it identifies the Member State responsible for examining an asylum application, as it prohibits migrants from filing an application in a Member State other than the one in which they first entered European territory.

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