The Transformation of European Border Controls

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1. Introduction

The issue of extraterritorial border controls appears daily in newspapers and other media throughout Europe. The image of people hanging on the tuna nets floating in the Mediterranean stands out as one of the most shocking of 2008. This externalization is the result of policy choices made in Europe both by the Member States and the EU. In this chapter we will examine how those choices are made and how the consequences lead inexorably to the people on the tuna nets. At the core of our argument is the contention that European (but also US) authorities have made choices about where their border controls will be carried out and developed forms of remote controls to check the identity of people who want to enter or transit through their territory before they travel, instead of checking them at the border, when they arrive.

The argument of the authorities is that to check the legality of people’s movement before they embark, with the help of the local authorities and with the air or land carriers, avoids the painful and expensive problems related to sending them back if they are not those who should be traveling. The argument of many non-governmental organisations is that this policy puts refugees at risk especially if they are blocked in their country when they try to escape by this “upstream” policy.1 The discussion is then sometimes reduced to finding a way to control,

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1 See for example European Commission: Third annual report on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders, and the return of illegal residents (SEC 320, 2009): http://www.statewatch.org/news/2009/mar/ eu-com-illegal-imm-sec-320-09.pdf (accessed 4 November 2009). For a critical assessment see European Parliament calling for more in-depth discussion on new measures for border management: “Every year, 160 million EU citizens, 60 million third country nationals (TCNs) who do not require a visa, and 80 million requiring a visa, cross the EU’s external border…. [and] “does not believe that the proposed system will put an end to the ‘overstay’ phenomenon as such”. According to an expert report for the Commission the total number of “illegal” immigrants in the EU 25 in 2006 was estimated to be over 8 million. Tony Bunyan, Statewatch editor, comments: “The intriguing category is the 60 million visitors a year from countries not requiring visas to enter the EU – from countries on the EU “white list” including people from Canada, Australia, Japan and the USA. How many of these have overstayed over the years? Are they to be subjected to the EU’s Returns Directive which would see them hunted down, put
but in a humanitarian manner, with more attention to the exceptions, such as the refugees; to give access to justice to the people who want to present asylum claims, who have relatives in the EU or who are genuine tourists with enough money to purchase goods.\(^2\) This is most efficiently done at the borders of the receiving country, but it looks more efficient for governments to do it at the point of departure, i.e: state consulates in the countries of origins of the flows, and along the way following the flow through new policing activities and engaging the private companies of transportation. This policy of “remote control” by Western governments varies in intensity, from the very harsh policy of interdiction outside territorial waters initiated by the US against the Haitian refugees, the Australian authorities “excision” strategy of some of their islands, to the more or less prolonged hostility of the Greek, Italian and Spanish authorities towards Maghreb, with the help, in some cases of the European border management agency (FRONTEX).

To analyze the forms of policing at a distance only as remote control public policy, while important, is nevertheless insufficient.\(^3\) The answer it demands is a humanitarian exception to the right of the state to control its borders. It reflects sometimes on the trade-offs between efficiency and state brutality. But it does not challenge the reasoning of the primacy of state and interstate order, and the legitimacy of the policy of externalisation of controls. It does not address the central relations between order, border and identity and fails to understand that the violence the Western societies project, or the freedom “we” want to spread by measures of policing are often two faces of the same coin, i.e.; the incapacity to have a cosmopolitan identity assumed through the values of freedom, equality and justice while living in a world where inequality is just next door. What to do with the “poor”? What to do when they want to move?

By using the notion of policing at a distance, we want to go a step beyond and to address these questions of our identity, the form of governmentality we develop
