An Emerging Geopolitics of ‘Illegal’ Immigration in the European Union

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1. Introduction

There is now a wide and ample literature which has explored the relationship between a racialised, ethnicised and xenophobic construction of European identity, an emphasis on security, the absence of proactive human rights legislation, and the development of restrictive immigration policies in Europe (e.g. Balibar and Wallerstein, 1991; Cholewinski, 2003; Huysmans, 2000; Karyotis, 2003; Kostakopoulou, 2000; Tesfahuny, 1998). While these critical analyses are absolutely essential as an antidote to current EU policies, few academic studies have explored comprehensively European policy developments with respect to ‘illegal’ immigration since the Treaty of Amsterdam (exceptions are Cholewinski, 2000, 2003; and Mitsilegas, 2002). This paper seeks to redress this lacuna and outlines a new geopolitics of (‘illegal’) immigration that concerns both a re-scaling of decision-making (often referred to as ‘communautarisation’) and a little explored re-scaling of control to third countries.

In both cases, the evidence of ‘securitarianism’ is strong. As Cholewinski (2003) points out, overall, the bulk of legally-binding measures and ‘soft law’ that has emerged since 1999 has neglected human rights and is mainly concerned with preventing migrants without the necessary documents from entering the EU or facilitating their return or expulsion if they do. Drawing on some familiar concepts within the migration literature, and a theory of political economy from economic anthropology, I present a new conceptual frame for situating this securitarianism. Specifically, I deploy a set of processes that I shall call the ‘three Vs’: ‘virtualism’, ‘venue-

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1 In this paper, I shall use immigration and migration interchangeably, except where noted. In the latter case, immigration will refer to temporary or more permanent settlement while migration shall denote movements or intentions to move across international boundaries.
2 I use the term illegal between quotation marks because first, of the aversion to the term illegal by many immigrants themselves. Second, because of the claim by critical legal scholars that it is impossible to be illegal, in the sense that if an individual falls foul of national law, that individual becomes a subject of international law. Third, in the US, the term ‘undocumented’ is often used to denote illegal migrants, but this has a precise meaning in EU policy. That is, it refers to those illegal migrants who are without the necessary documents, and this has specific consequences for individuals, especially in terms of potential deportation (for a similar discussion, see Black, 2003). However, for the purposes of simplicity, I will cease to use quotation marks around the term illegal after this introduction.
3 Apap, De Bruycker, and Schmitter (2000) discuss regularisation programmes across EU Member States, but there is little discussion of EU-level developments.
4 Peers (2003) is an exception.
shopping’, and ‘(very) remote control’, in order to understand the emerging geo-
politics of ‘illegal’ immigration.

This paper is divided into three parts. The first part of this paper explores the
three Vs. I maintain that these three processes have shaped policy-making within the
two types of re-scaling alluded to above. I follow in the second section with a selec-
tive account of policy developments in the realm of ‘illegal’ immigration, especially
since the 2001 Laeken European Council. It charts the gradual communautarisation
of the control of illegal immigration (that is, the re-scaling of decision-making),
while the third part examines the re-scaling of control to third countries.

2. Theoretical Considerations: The Nature of Illegal Immigration and the
Three Vs

2.1. The Nature of Illegal Immigration

Illegal immigration as an analytical category is somewhat odd because ultimately it
is an epiphenomenon of migration and citizenship policy. Or as many observers
argue, illegal immigration is produced. There can be no illegal immigration without
immigration policy, and thus the definition of those who are deemed to be ‘illegal’,
‘irregular’, ‘sans papiers’ or ‘undocumented’ shifts with the nature of immigration
policy (Black, 2003; Cohen, 2003; Samers, 2003). Illegal immigration is thus inti-
mately connected with the policies of legal migration and citizenship more gener-
ally. Because of its epiphenomenal character, it also becomes an explicitly juridical
and police matter. The latter assumes two forms: prevention of entry and regulation
of settlement.

In this respect, there is considerable conflation within the popular press and actual
policy of the various types of ‘illegality’ (e.g. Huysmans, 2000). There are those
who ‘overstay’, those who have ‘lost’ their documents, those who falsify their doc-
uments, those who enter a national territory clandestinely, rejected asylum-seekers,
and more generally, the socio-legal ‘grey area’ between illegal status and asylum-
seeking status. These distinctions and the fact that illegal immigration is produced,
implies that Member States and EU-level institutions are attempting to halt a phe-
nomenon that they themselves produce. Certainly, it could be argued that this is
obvious – any regulations will therefore produce ‘illegality’, and it is much the work
of smugglers and traffickers and informal labour market demand, as it is the prod-
uct of state regulations. The response to this should be clear. Without immigration
controls, there would be no need for smugglers and traffickers and informal labour
markets in certain cities and agricultural regions would shrivel under the absence of
what Van Parijs (1992) has called ‘citizenship exploitation’ (exploitation based on
the distinction between citizen and non-citizen). And it is for this reason that I turn
to the concept of virtualism.