

Sussex Migration Working Paper no. 5

Promised Borderland:

On the 'exceptionalism' of the UK system of migration control

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July 2001, revised April 2002

Summary

Compared to the two continental European cases of Germany and Austria, the system of migration control in (and outside) the United Kingdom displays distinct differences. In part, this results from the country's status as an island, which provides 'natural' borders. This is a geographical advantage, which can be exploited for the purpose of migration control concentrated on the ports of entry. On the other hand, migrants and their facilitators continue to find ever-new ways to undermine this border control regime focused on pre- and de-

List of abbreviations

AAPD	Asylum and Appeals Policy Directorate (IND)
ALO	Airline Liaison Officer
CIREA	Centre for Information, Discussion and Exchange on Asylum
CIREFI	Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration
ECO	Entry Clearance Officer
EEA	European Economic Area
ELO	Europol Liaison Officer
EU	European

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Preface

This paper is a result of a three month stay at the Sussex Centre for Migration Research from January-March 2001, which formed part of a larger PhD project comparing the different migration control systems in Germany, Austria and the UK. As in Austria and Germany the year before, much time in the UK was spent on gathering material and conducting interviews in different migration control or policy agencies (see Appendix), which form the primary sources of the paper. The paper provides a brief overview of the findings of this fieldwork, whilst situating them within a theoretical framework based on sociological systems theory. Secondary sources include scientific works, parliamentary debates and hearings, reports and coverage of migration issues in the domestic print media.

The paper aims to:

- show how the specific system of migration control works and the underlying policy guidelines on which it is based;
- explore both the efficiency of control measures and how they are viewed in both domestic and EU politics; and
- compare the UK case with the German and the Austrian systems of migration control

The author would like to thank Dr Richard Black for his kind guidance, staff at the Graduate Research Centre for Culture, Development and the Environment at Sussex for technical support and the European Commission for funding the stay by granting the author a Marie Curie Fellowship. Furthermore, I am grateful to Dr Adrian Favell, Prof. Michael Bommers and Prof. Stephen Castles for their support to get me to the UK. Last not least, my final thanks go to all of my interviewees in the different offices of the south-east area for their willingness to help and for providing valuable 'first hand' insights into how UK migration control works.

1. Introduction

At the time that fieldwork for this paper was conducted, the debate on migration issues in the UK was characterised by huge political and public concern about a sharp rise in the number of persons seeking asylum in the country - a problem that hardly seemed to exist even in the recent past. As in other Western European countries, there was a rise in the figures at the end of the 1980s because of the end of the so-called Cold War period and the opening of the 'iron curtain' (see Table 1). Some countries were able to restrict this rise in the early 1990s through new legislation to

'languages' in an abstract sense. In case of the *political* system, this is the language of power. Its specific function for society as a whole is to produce binding decisions and to carry them through at a local level. This is perhaps the most obvious reason why the political system consists of structurally similar segments called *states*. Only within certain territorial boundaries does the political system seem to be able to fulfil this function effectively. That is why states claim sovereignty not only over their people, which they have rather 'created' as so-called nations, but also over their physical territory. Apart from the fact that this is sort of basic state theory, it is moreover the reason why the political system can be regarded as the relevant sub-system of society if one is going to examine migration control. For this reason, it is of major importance here.

Migration itself is situated at the level of the individual who migrates, for whatever reason. While the state's aim is to maintain borders for the basic functional reasons mentioned above, namely to be able to know *where* and *to whom* its decisions can claim validity, the process of migration can transcend these borders. It thus can become a problem for the state and from the state's perspective.

At this point, it should be stressed that only territorial borders are considered here to be affected by migration control. Thus the paper focuses on matters of *primary* access to a territory and not so much on questions of *secondary* access either to public services or even to a certain national community through naturalisation. The transcending of further 'virtual' borders can be considered to occur

It should be stressed here that migration is conceptualised within this framework as a process that happens anyway, whatever the underlying motives of migrants. It is only at the policy level that a distinction is made between, for instance, so-called 'genuine' refugees and economic migrants. This is very much a political construction, with the 'true' motives of migrants remaining hard to prove. Indeed, the possibility cannot be excluded that both political *and* economical reasons motivate many migrants. The simple fact that migrants must take high risks to move shows that there must be reasons for their movement. Yet, the search for what those reasons are is a self-created problem of migration control, and not one that should necessarily concern the social scientist, still less attempts to distinguish them into right and false, eligible or ineligible to enter or stay in a chosen country.

The migration control dilemma consists of the fact that it is necessary to draw such distinctions between migrants - indeed this is a central part of efforts to control migration - but that this process makes it more difficult at the same time to be completely sure about the 'real' or 'true' motives of migrants. For sociology, this is very much a 'black box', which is why the level of the individual is put to one side in this study. Instead, this study focuses sharply on the more 'technical' mechanisms of interactive stabilisation of organisations. Whether intentional or not, these mechanisms help to preserve the phenomenon of migration that is deemed as, or indeed politically constructed as 'illegal'.

At the state level, there are certain national or even supranational policies, which help both to create 'illegal' migration, and then to control it. First, by establishing a strict 'no-entry' rationale for migration policy (Rasmussen, 1997) states ensure that 'illegal' migration is not so much 'irregular', as it is often described (International Migration Review, 1984; Gosh, 1998; Cinar, 2000), but rather very much the norm. In turn, the effect of these policies is to require migration control. The corresponding measures at the level of organisation, which need to be systematically distinguished from political decisions at the state level, are aimed at detecting exactly those mi-

plifies how migration is made illegal by certain policies not only at the national, but also at the EU level.

3.1 Migration policy as migration control

Considering the rather complex circle of mutual references and connections between the different levels of examination outlined above, a selected one week press coverage with regard to the subject by respected UK print media appears, unsurprisingly, to be a rough simplification. One of the main occasions for the large public coverage about migration related issues during this time was the publication of the latest figures of asylum applications lodged in the UK in 2000. These have risen to nearly 100,000 (see table 1) and compared to their decline in other countries this has widely been deemed as a warning signal

education and information technology. Thus, a programme to attract foreign specialist workers to the UK is in the making, similar to the one already administered in Germany. However, in Germany, nobody would call this programme a measure of migration control, since this expression is solely used for reactive measures to combat forms of migration deemed as illegal. Rather, Germans prefer a term such as 'steering' in order to describe such an active migration policy. There are also differences between Germany and the UK at the structural level, resulting in different national profiles of migration control. In sharp contrast to what has been observed in the UK, the distinction between migration policies and migration control is quite obvious in the German case. This is not so much an 'official' political distinction, coming from the policy level, but rather an empirical distinction, which seems common sense within the different control agencies within Germany. Many of those interviewed in German migration agencies argued that they just do their jobs and cannot really influence what is decided on the policy level.

So, the sharp distinction between migration policy at the decision level and migration control at the working level is *deduced* from the empirical level. However, on the other hand, it also fits into what has been conceptualised in the theoretical framework above. In the version of systems theory referred to in this paper, the phenomenon of (re-)drawing a distinction from the other side of exactly the same distinction is called a 're-entry', using an expression taken from a formal mathematical model by Spencer Brown (1969). In this case, such a re-entry can be, to use a methodological term by Luhmann (1993), 'observed' at the working level of migration control, explicitly distinguishing this from the policy level of decision-making.

In fact, in Germany, there has not been any 'real' immigration policy since the 1973 cessation of state organised labour migration from Southern

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seekers almost unavoidably illegal, yet the legitimacy of their stay might be fully legally backed by the Geneva Convention. To make matters even more complicated, these agreements and conventions are interpreted differently by the different member-states.

Table 2: Dublin Cases in Germany, the UK and Austria 1998-2000⁶

	Germany	UK	Austria	s	t	r	i	a
1998		A	u					

when the claim failed elsewhere. Now, not only is the claim itself outside the law, but a state also acts outside the European legal framework if it accepts an asylum claim that it is not responsible for under the Dublin Convention. This applies even though this national decision is backed by international legislation in shape of the Geneva Convention.

In addition, there are efforts to introduce pre-entry controls that are bilaterally negotiated. The most obvious example is a proposal to place UK immigration officers at seaports on the French side of the channel in order to allow them to conduct pre-embarkation controls. However, since there is significantly less migration branded 'illegal' in the other direction, this is a one-sided proposal, just as variations in implementation of the Dublin Convention are one-sided. A further form of preventive pre-entry control is the establishment of Airline Liaison Officers (ALO's) in selected countries who give advice to the staff of 'foreign' airlines on false and forged travel documents before they board a plane to the UK.

Another contrast is that whereas in Germany and Austria migration control is carried out by the police or armed forces, in the UK immigration officers are part of the civil service. Moreover, there is a form of passive privatisation of migration control in terms of controls by carriers bringing people to the UK. In the case of airlines, the underlying legislation which forced them to carefully screen passengers travel documents was the Carriers Liability Act (1987), the scope of which has been successively extended, effectively 'privatising immigration functions' (Nicholson 1997). Meanwhile, the Civil Penalty Law has recently been introduced to extend such provisions to drivers of all sorts of vehicles, most recently rail freight wagons coming through the Eurotunnel. While freight trains can now be fined under the Civil Penalty legislation, the Eurotunnel itself is not subject to the Carriers Liability Act⁸. This circumstance might explain why Eurostar has yet not introduced own, 'private' migration controls on top of the usual ticket controls, unlike, for example, the ferry operator P&O. An official of the Road Haulage Association (RHA), whose members are heavily affected by civil penalties for carrying 'illegal' migrants, put it quite simply by stating that 'they (i.e. the government) want us to do their job'.

To round off discussion of the general trend of passive, or forced privatisation of migration control in the UK, it should not be left unmentioned that the lack of workplace checks is in a way compensated by strict employer sanctions. However, since there are fewer checks than in Germany and Austria, the only way to make this work is simply to trust employers to report any illegal workers voluntarily. For this reason, the pressure to privatise these controls is not as heavy as in the cases of carriers, whose willing-

ness to check is encouraged by legislation.⁹ Meanwhile, in addition to various degrees of passive privatisation, an active privatisation of migration control can be found as well. Thus, contracts have been made between the UK government and the American company 'Wackenhut' to support the Immigration Service by providing security services accompanying migration controls at UK airports. In both Austria and Germany, it would be very unlikely to find an official who would even think about leaving migration control to the private sector. Yet this seems quite common and widely accepted in migration control agencies that have been visited in the UK.

4.2 Practising enforcement

The different fields of migration control, as described in section 3.2, are reflected, at least in the German case (and possibly the Austrian) in the variety of different units and sub-units in charge of specific measures. It is in Germany that this kind of organisational differentiation is most developed. There are 'traditional single federal agencies, of whom two are almost fully responsible for two of the three fields of migration control mentioned above: the Federal Border Police (BGS) is responsible for questions about border control; whilst the Federal Office for the Recognition of Political Refugees (BAF) is in a similar monopolist position regarding asylum questions. The tasks of this central German asylum agency include the reconstruction of an asylum-seeker's travel route. The existence of 'travel route experts' is a good example for how this institution is not willing to leave any responsibility in the field of asylum to other agencies. This is true, even if other organisations, such as the Federal Border Police and the Federal Criminal Office (BKA) might be better informed on specific or new itineraries or facilitators of organised trafficking.

But it is not only this specific indifference of one other or

⁸ *The Guardian*, Jan 24th 2001

therefore as a genuine threat to the inner security of the state. Regarding such cases, the criminal officers make a point of having 'better' resources of both staff and knowledge to tackle this 'problem', rather than leaving it to border control. But instead of making efforts to improve co-operation or increase information exchange, the relationship between these two agencies is better characterised as a struggle for responsibilities on the basis of their respective high self-esteem, leading to a kind of 'co-operation dilemma', as described by Vogel (2000: 416).

The Federal Labour Office (BfA) provides an illustrative example of organisational indifference rather than tensions. Its section for 'illegal foreigner employment' conducts regular workplace checks without needing any specific suspicions, which is a significant difference compared to the other two cases examined. In Austria, the corresponding control section at the 'central labour inspectorate' is not allowed to carry out checks without at least a tip-off from the public; and in the UK, the Immigration and Nationality Directorate (IND) does not really carry them out at all. In contrast to this, the detection of illegally working migrants by systematic workplace checks is a common and widely accepted issue in Germany. Nevertheless, the agency in charge does not seem to be particularly interested in exchanging information or experience with any other agencies nor do the labour controllers seem to care what other agencies do, although they quite often deal with exactly the same people.

In Austria, the entire issue of migration control is centralised around a massive ministerial bureaucracy in Vienna. Workplace checks are conducted by a sub-unit of the Ministry for Labour and the Economy (BMWA) whilst both asylum and anti-trafficking units have been established within the Ministry for the Interior (BMI) since the country joined the EU and Schengen. While the Federal Asylum Office (BAA) works solely on asylum cases, but less comprehensively than the German one (e.g. leaving the reconstruction of itineraries to security agencies), a 'Centre for Combating Smuggling Crime' (ZBS) is in charge of co-ordinating the various efforts related to this task. These

**Table 3: Enforcement action in the UK
1997-2000¹⁰**

	Cases Initiated	Persons Leaving
1997	20.000	6.610
(of whom:)		
Illegal Entry	14.400	4.540
Removed		5.250
Asylum-seekers	13.720	3.060
1998	21.100	7.300
(of whom:)		
Illegal Entry	16.520	5.580
Removed		6.100
Asylum-seekers	13.940	3.440
1999	22.890	6.380
(of whom:)		
Illegal Entry	21.170	5.220
Removed		?
Asylum-seekers	16.240 ¹¹	2.750
2000 (1st half)	17.290	3.830
(of whom:)		
Illegal Entry	15.870	3.200
Removed		?
Asylum-seekers		

journey can be regarded as smuggling or trafficking. If it is neither, it is likely that the driver has transported migrants unwittingly. But the fact that the drivers are fined in any case, regardless of their knowledge about their forbidden human cargo, has forced the RHA, as the organisation

Initially, the abolition of border controls was a bilateral Franco-German project, which soon afterwards incorporated the Benelux countries (which already had abolished border controls between them in 1948 and can therefore be described as a kind of nucleus for later European developments). Ironically, it was on the same Franco-German border that controls were reintro-

'joining-up' at the policy level, a rather high degree of differentiation between the agencies at the level of organisation, but a significantly weak differentiation between the fields of migration control. This is not least because the entire

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