

Migration, sovereignty and agency in an anxious age: trafficking as a case study

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In the contemporary literature and public discourse on migration states are often presented as increasingly challenged by global migratory flows. One of the key texts on migration, for example, suggests that a defining feature of the contemporary world, particularly since the 1980s, has been ‘the challenge posed by international migration to the sovereignty of states, specifically to their ability to regulate the movement of people across their borders’ (Castles & Miller, 2009: 3). A contrary view suggests that migrants do not undermine state sovereignty, and in fact ‘controlling who enters the state and who does not is one of the few remaining powerful attributes of national sovereignty’ (Munck, 2008: 1238). While these different viewpoints diverge on their assessment of the relationship between sovereignty and migration, they concur in their focus on sovereignty as the power of the state to determine policy outcomes and in their counterpoising of state sovereignty and migrant agency. This article aims to promote new thinking on contemporary migration politics through questioning the idea that migration and sovereignty necessarily stand in direct opposition to each other.

The collection of essays edited by Bickerton, Cunliffe and Gourevitch provides the intellectual inspiration for this attempt to rethink sovereignty and migration (Bickerton et al, 2007). Bickerton et al provide a thought-provoking defence of sovereignty against its contemporary critics. In making their case they shift attention way from the *exercise* of state power to the *source* of that power; the authority of states, derived from the active political engagement of the people. They note that:

what makes the power of sovereignty distinct is its rootedness in human agency; it is a force that is only sustained by conscious human will... The ability to direct oneself only emerges in the self-creative process of acting politically. For all its historical imperfections... the framework of the sovereign state remains the best means of organizing and sustaining the process of politics (Bickerton et al, 2006: 14).

Their critique of the critics of sovereignty attempts to defend the space for political contestation. The contributions to their collection tackle a range of issues and institutions, from United States foreign policy, to the United Nations *Responsibility to Protect*. They do not, however, include the topic of migration. This article attempts to use the approach taken by Bickerton et al and apply it to the topic of migration.

In the literature on migration the view that immigration controls are a response to popular pressure is axiomatic. Massey et al, for example, in their magisterial work on contemporary international migration, suggest that attempts at controlling immigration have limited success because migrants quickly ‘adjust their behaviour in response to changes in laws, policies, and circumstances. These shifts in immigrant behaviour often provoke a hostile reaction among native voters, putting public officials in a difficult position that requires them to take some action to bring

immigration back under “control” (1998: 287). They indicate the speculative nature of this claim, however, when they go on and say that migration studies lacks ‘an adequate theory to account for the motivations, interests and behaviour of the political actors who employ state power to intervene’ in the management of migration (ibid: 292). This article does not pretend to fill this gap in current understanding, rather we suggest that challenging the idea that immigration controls are a response to popular pressure in migrant receiving countries is a useful step on the way to gaining a better understanding of the actions of states in the policy area of migration. We contend that the sovereignty of Western states is not being undermined by forces external to the state (migrants) but from within, by the twin processes of the decline of political contestation and the disengagement of political elites from the public. The first part of the article outlines the author’s approach to the relationship between migration, sovereignty and agency through a critical examination of the literature on human trafficking. The second part challenges the idea that contemporary immigration controls in the West are a response to popular pressure from the public. The third part briefly outlines three different ways in which states in the West participate in the erosion of state sovereignty. In the concluding section we reflect on the themes of migration, sovereignty and agency and consider how the material in the article may point some ways towards opening up space for political contestation.

Migrant agency

Contemporary representations of migrant agency, in academic writing and public discourse, tend towards extremes. Migrants are either presented as threats or as helpless victims (Anderson, 2008; Aradau, 2008; Gilligan and Marley, 2010; Pupavac, 2008). This tendency towards extremes, we suggest, is due to a broader cultural climate in which an ‘elevated concern with the self is underpinned by anxiety and apprehension, rather than a positive vision realising the human potential’ (Furedi, 2004: 21). In a situation where there is widespread disengagement from political life people tend to experience the world in a more alienated way. They are more likely to view other people as a threat or as people who are isolated, vulnerable and lacking in the power to change their lives. In this sense migrants act as a metaphor for a sense of diminished agency in society. This cultural framing of migrants, as threats or victims, tells us something about our self-conception as a society, but it distorts our picture of migrants. In this section we shall explore this issue through an examination of the policy area of human trafficking.

Migrant agency and human trafficking

In the literature on human trafficking we find representations of migration as a threat and migrants as victims. The claim by the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT, no date) that human trafficking ‘ranks as the third largest source of income for organized crime (exceeded only by arms and drugs trafficking), and is the fastest growing form of international crime’ is widely cited by newspapers, governments and NGOs. A recent report links the issue of trafficking to a threatening global context when it informs us that: [p]rotracted armed conflicts often determine a rise in demand for sexual services from troops, peacekeepers and humanitarian workers and traffickers that can take advantage of this by luring and

selling children into prostitution' (ECPAT/The Body Shop, 2009: 22). And that: '[t]he 'multi-billion dollar profits generated by this trafficking have induced some mafia-type organisations such as the Chinese Triads and the Japanese Yakuza to expand their illicit activities' (ibid: 27).

The corollary of presenting traffickers as a threat is the presentation of the trafficked as victims. One of the leading opponents of human trafficking in Europe, for example, argues that:

For victims, their families and relatives, the consequences of trafficking are such that there is often no prospect of simply forgetting and moving on... I have become increasingly aware of a second generation of victims who, after return are unable to escape the conditions which led the mothers to be trafficked, and so the children end up victims in the same or similar ways' (Sörensen, 2002: 4).

This presentation of the issue includes some common features of the representation of those who are trafficked. They are presented as vulnerable and as scarred by their experiences. The figure of the trafficked migrant is almost always presented as the 'weaker sex' (a woman) or a dependent (a child). And the most common portrayal is of women forced to work in the sex industry. They are presented as victims, and '[v]ictims are, by definition, passive objects... not active agents. They are defined by the mark that has been made on them rather than the mark that they have made on the wider world' (Gilligan, 2003: 28: see also: Aradau, 2004).

This representation of migrants who have been trafficked as victims has been challenged by a number of different authors who argue that 'trafficked' women do have agency. And that many of them 'know what is ahead of them, do earn a large amount of money in a short time selling sex, and do have control over their working condition' (Agustin, 2005: 101). Agustin quotes a Nigerian women, working in the sex industry in Europe, who says that 'Of course, as a job it's ugly... [but] With this job I have made it possible for all my brothers to study and I have supported my mother' (ibid: 106). For many women working in the sex industry it is not their ideal choice of employment – the job is 'ugly' – but it may be preferable to their other options. The extent to which migrant women who work in the sex industry are able to exercise agency varies significantly. Some may have started 'out doing domestic work but feel compelled to sell sex because of the differential in pay; others feel psychologically obligated but actually could physically escape; some connive with and manipulate those obligating them; others find no room to maneuver at all' (ibid: 104).

For anti-trafficking campaigners such as Sörensen the trafficked lack the capacity to transcend their experiences, they are crushed by their experiences and locked into the structures which constrain their ambitions and action. It is others who have agency – the traffickers who force women and children into prostitution, or anti-trafficking campaigners and state agencies who rescue the women and children. For critics of the 'rescue industry', such as Agustin, all actors have agency, but the resources available and the range of options open to different actors varies. Migrant women working in

the sex industry are able to exercise free will, but they do so within structures which constrain the options available to them. We find the approach of Agustin, which acknowledges the role of both structures and agency, more convincing.

The work of anti-trafficking campaigners tends to take an approach in which the politics of the issue is given: trafficking is bad, and women and children are exploited; end of debate. The views of migrant women working in the sex industry are only articulated in as far as these fit with the outlook of the anti-trafficking campaigners. The role of anti-trafficking campaigners is also given: they are compassionate humanitarians who want to help victims. The work of the critics of the rescue industry presents a messier picture. A picture without clear-cut moral absolutes. A picture which helps to explain why women might voluntarily seek and maintain employment in the sex industry. And a picture which suggests that the typical trafficker may be something much less sinister than the image that ‘mafia-type’ criminal gangs suggests (Agustin, 2005, 2006). The work of the critics of the rescue industry also draws our attention to the politics of anti-trafficking.

The politics of anti-trafficking

International concern with human trafficking developed in the 1990s and led, in November 2000, to the ratification of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* as a supplement to the United Nation’s (UN) *Convention Against Transnational Crime* (Gallagher, 2001). Since the ratification of the protocol a range of International Organisations (IOs), International Nongovernmental Organisations (INGOs) and national governments have developed a range of initiatives to tackle human trafficking. An indication of the level of activity can be seen in 2007 launch of UN.GIFT which ‘aims to mobilize state and non-state actors to eradicate human trafficking’ (2009: 1). UN.GIFT ‘is managed in cooperation with the International Labour Organization (ILO); the International Organization for Migration (IOM); the UN Children’s Fund (UNICEF); the Office of the High Commissioner for Human Rights (OHCHR); and the Organisation for Security and Cooperation in Europe (OSCE)’ (ibid: 1). The organisation also works with a range of partner INGOs and business corporations.

The growth of interest has been accompanied by a growth in funding, research, policy activity and publications. Kelly notes, however, that in ‘the increasingly competitive field of... (NGOs) and... (INGOs) activity... Publications may primarily reflect a claims-making process, vying for influence over how the issue is understood and where it is located intellectually, symbolically, and materially’ rather than providing insights into understanding how and why migrant women and children become involved in the sex industry (2005: 235-6). Feminist NGOs and human rights NGOs have been particularly active in lobbying and campaigning around the issue of trafficking. The success of the feminist campaigners can be seen in the fact that the UN produced two protocols: one on trafficking ‘in persons, *especially* women and children’ and one on human smuggling (which is non gender specific) (UNODC, 2004: 41; emphasis added). Agustin notes that the distinction suggests ‘a presumed greater disposition of women – along with children – to be deceived, above all about “prostitution”, and – somehow – a lesser disposition to migrate. In the “smuggling”

protocol, on the other hand, men are seen as capable of migrating but of being handled like contraband' (2006: 42). The key international protocol assumes that trafficking is something which happens to women and children, and trafficking is inextricably linked to prostitution. Migrant men who enter receiving countries by similar routes are not trafficked. Instead of being coerced or deceived, they are complicit in the act of crossing borders illegally. Trafficking is thus defined in a way in which research already assumes that those who are trafficked are victims (Laczko & Gozdzia, 2005).

Agustin also suggests some reasons why migrant women working in the sex industry have not formed an effective lobby against the anti-trafficking lobby. '[O]rganizing to resist exploitation' she notes 'requires the assumption of an identity, whether as "prostitute" or "sex worker", if only for strategic purposes' (2005: 110). For many migrants, however, this is not usually an option. Many see their involvement in the sex industry as a temporary expedient – to pay off debts, or to make large amounts of money relatively quickly – rather than a career. For these women 'identity with sex as a profession is unlikely' (ibid: 110). Even if that barrier were surmounted, however, and 'migrants were to assume a "sex worker" identity, their illegal status discourages most political action... In the majority of cases, these women do not have permission to work at *any* job but rather possess false documents, tourist visas, or permission to work at something specific that has been stamped in their passports' (ibid: 112; emphasis in the original). Most migrant women working in the sex industry face the threat of deportation if they are picked up on the radar of state agencies. Migrant women working in the sex industry face numerous structural constraints to their political mobilisation, the anti-trafficking lobby, by contrast enjoys the support of a range of IOs and national governments, which has enabled the growth of activity in this sector.

The rescue industry and anti-trafficking lobby are able to command considerable resources through which to pursue their objectives. In this sense they are more able to exercise agency than migrant women, because the exercise of their agency is augmented by the resources which they can command. If we view the issue of agency only in relation to structural constraints, or resource mobilization, however, we miss the question of the scale of ambition involved in the exercise of agency. The exercise of agency by migrants, like that of the non-migrant world, is overwhelmingly directed towards what Anderson (1980) calls private goals; such as paying for brothers to study, or supporting elderly parents. Private goals involve vast numbers of independent individual attempts to affect change, for a small number of people. These 'personal projects [however] are inscribed within existing social relations and typically reproduce them' (Anderson, 1980: 19). Private goals operate within the existing structures of society. They may involve conscious choices to exploit contradictions in those structures, such as entering a country on a fixed term work visa and then becoming 'illegal' by staying in the country after the visa has expired (Duvell, 2008). By definition, however, they do not attempt to challenge the existing social structure, they typically reproduce it. In this sense they are limited attempts at the exercise of agency.

The activity of the rescue industry, the anti-trafficking lobby and the national governments and IOs involved in attempts to counter trafficking has a more ambitious goal. Their consequences, if the goal is realized, impact on large numbers of people. Individual actions form part of a chain of connected and coordinated actions. The attempt to restrict the movement of large numbers of people around the world is an example of a public goal. With public goals, will and action ‘acquire an independent historical significance as causal sequences in their own right, rather than as molecular samples of social relations’ (Anderson, 1980: 19). Public goals involve a conscious attempt to reshape the world, for better or worse, for large numbers of people. They involve the creation of new institutions, or the refashioning of old ones for a new purpose. Public goals require the mobilisation of a significant level of human and financial (and sometimes military) resources. Only collective actors – such as states, corporations or social movements – are able to command the scale of resources required to realize public goals.

When we look at the goals of those who attempt to countering trafficking, however, we find a wide disparity between the goals and the reality. A few years before the UN Protocol a major study of international migration noted that attempts by the major receiving countries of western Europe, north America, Australia and the Gulf States to restrict the volume and composition of migrant flows – to fit with the labour market needs of the country – largely failed to achieve their intended outcome. The repressive enforcement favoured by these states, the authors noted, tended to push ‘immigrants towards clandestine existence that leaves them economically exploitable and socially vulnerable’ (Massey et al, 1998: 288). Or, in other words, ‘the growth of trafficking and smuggling has, at least in part, been a response to the growth of political efforts to stop less organized forms of irregular migration’ (Morrison, 2002: 3). Other authors have suggested that ‘[f]lexibilization of employment in the service sector across Europe has provided many opportunities for illegal working... [and created conditions] in which traffickers can play an active role’ (Salt, 2000: 36). In this way we can see that the actions of states in one area, undermine their efforts in another. There is also a disparity between the stated intentions of civil society actors in the rescue industry and the actual outcomes for migrant women working in the sex industry. O’Connell Davidson notes that in 2003 the police ‘and immigration service officers found 295 immigration offenders in the course of regular routine visits to massage parlours and saunas in London, of whom only four or five were identified as VoTs [victims of trafficking]... The rest were deported’ (2006: 5). For the vast majority of women who have been ‘rescued’ this has meant a loss of earnings and forcible removal to the country of origin they left in the hope of better opportunities.

One approach to dealing with the issue of trafficking would be to remove the structural factors which facilitate trafficking. The operation of policy regarding trafficking in Europe, Australia and North American, however, indicates that the issue is primarily viewed as an issue of border controls, and that women working in the sex industry are typically treated like other clandestine immigrants (Gallagher, 2002; Morrison, 2002; O’Connell Davidson, 2006). In the next section we shall critically examine the view that the attempt to restrict migration is a response to popular demands for more controls on immigration.

Immigration controls and popular sovereignty

In political theory sovereignty is the term used to refer to the absolute power of the sovereign. In the history of political thought the sovereign was initially the king. The absolute power of the king became challenged when other sections of society began to assert their agency and demand influence over the exercise of state power. These demands led to a shift from the monarch to parliament as the sovereign. The sovereignty of parliament is derived from its roots in society, it is, in the words of Abraham Lincoln in his Gettysburg Address, 'government of the people, by the people, for the people' (in the rest of this article we shall refer to this dimension of sovereignty as popular sovereignty). Popular sovereignty is the most developed form of collective agency in liberal democratic states. In the literature on migration the view that immigration controls in the West are an expression of popular sovereignty is axiomatic. In this section we challenge this claim.

In the first part of this section we argue that the evidence of popular hostility to immigration and demands for restrictive policies is more ambiguous than it might appear at first viewing. In the second part we argue that restrictive migration policy is accompanied by a constriction of the channels for the expression of popular sovereignty. In this sense sovereignty has been eroded, but it has been eroded from within, by national governments, rather than by migrants. We argue that the erosion of popular sovereignty has gone hand-in-hand with the disentangling of governments from their moorings in society. As a consequence policy – including migration policy – is increasingly irrational. Rather than addressing real problems in a realistic way policy comes to play a symbolic role, for imagined audiences. The consequences for actual people and for society more broadly, however, are real and often damaging.

Popular demands for immigration restrictions

Opinion polls consistently show that since the 1970s a significant proportion, often a significant majority, of the population of Western states support more restrictions on immigration. One comparative study of seven OECD countries, for example, found that in 2003 the proportion of respondents who thought that the number of immigrants to their country should be reduced a lot or a little varied from 32% in Canada to 78% in Great Britain (Simon & Sikich, 2007: 957). Canada and Australia were the only two out of the seven countries where less than half of respondents favoured reducing the number of immigrants (32% and 39% respectively). Even in the most liberal country, Canada, only 29% were in favour of increasing the number of immigrants (39% thought that the numbers should remain the same) (ibid: 957). This seems to suggest that restrictive immigration policy is an outcome of popular sovereignty. We argue that the data on attitudes towards migration policy is open to other interpretations.

In our own research we found that 73% of respondents in Northern Ireland surveyed in 2006 disagreed with the UK government's decision to not place restrictions on immigration from Poland and the other seven countries which acceded to the European Union in 2004 (Gilligan, 2008). The fact that almost three quarters of those surveyed thought the government should have placed restrictions on these immigrants

seems to suggest that the majority are hostile to immigration. The same survey also found, however, that while 48% thought that migrant workers take jobs away from people who were born in Northern Ireland, a much higher proportion (85%) thought that employers take on migrant workers because they are prepared to work for lower wages than local workers. This suggests 'that there is even more suspicion of employers than there is of migrant workers' (ibid: 4). The ambivalence is perhaps most clearly shown in the finding that 60% thought that migrant workers were putting a strain on health services, but an even higher proportion (83%) 'thought that it was good that migrant workers come to Northern Ireland to work as doctors and nurses when there is a shortage of medical staff' (ibid: 2). These contradictory findings suggest that the data which demonstrates support for restrictions on migration may be open to other interpretations. We suggested that 'the contradictory findings may be because people are not sure whether to blame the strain on services on the government or on migrant workers' (ibid: 4). Other research supports this suggestion. One British immigration expert has suggested that it was the government's mismanagement of immigration from the A8 countries in 2004, rather than the immigrants themselves, which provoked negative reactions from the public (Flynn, 2009). A Spanish based study concluded that 'negative attitudes of citizens is not so much directed at immigration, but at the government (and policies) and its (in)capacity to govern issues related to immigration and to respond to citizens' expectations' (Zapata-Barrero, 2009). This suggestion, that government appears remote from the concerns of its citizens, implies that immigration policy is not connected to popular sovereignty.

Cornelius and Rosenblum make a distinction between 'real' and 'perceived' impacts of immigration and suggest that many 'public attitudes about immigration reflect substantial misconceptions' (2005: 103). A number of studies show, for example, that the general public tend to overestimate, often wildly overestimate, the numbers of immigrants in their country (see e.g.: Zapata-Barrero, 2009). Cornelius and Rosenblum also suggest that the public tend 'to respond to migration on emotional (or affective) levels rather than on the basis of objective self-interest or personal experience' (ibid: 103). The significant role that perception, which is not based on personal experience or self-interest, plays in attitudes towards immigration may help to account for the ambiguities observed in attitude survey responses. It also suggests that 'immigration' and related terms may be acting as metaphors. Negative public responses to questions about immigration may be derived from concerns about the nature or pace of social change, with recent immigrants seeming to represent an embodiment of what is new in the society. Negative public responses to questions about immigration policy may be derived from a sense that the public is excluded from decision-making. Along these lines Zapata-Barrero notes that 'legislative changes and periods of political innovation are most likely to bring about more negative attitudes' (2009: 1105). The free-floating character of perceptions regarding immigration also suggests that media coverage, rather than direct experience, may play a significant role in shaping attitudes.

Opinion polls are not a good indicator of popular sovereignty because they involve a passive, static, one way, relationship to knowledge. The views measured in opinion polls are an aggregate of many individual opinions rather than an outcome of a process of collective deliberation in which views are challenged, defended, modified

and/or clarified. Along these lines Statham and Geddes suggest that ‘public sentiment about immigration is not equivalent to collective action, nor is its impact on elites likely to be the same’ (2006: 250). In their study they focus on ‘organised publics’, or ‘the public as a “collective actor” in the intermediary field of civil society that occurs between elite decision-making and the mass public opinion’, in the UK (ibid: 250). They found that in the UK attempts to shape the public agenda on immigration policies regarding refugees and asylum-seekers was dominated by state actors; accounting for 60% of all claims-making (ibid: 252). They also found that civil society activity was ‘dominated by NGOs which exist specifically to advance migrants’ rights and welfare. [And t]hese are strongly pro-migrant’ (ibid: 256). Anti-immigrant organisations, by way of contrast, ‘have a miniscule presence’ in public claims-making (ibid: 256). Pro-migrant groups, however, have ‘relatively few allies’ in wider civil society, as trade unions, churches, anti-racist organisations and ‘solidarity, human rights and welfare NGOs’ have not been ‘especially vocal’ on the issue of migration (ibid: 256-7). All of this suggests that the issue of immigration functions as a single-issue topic that fails to engage a broadly organised public; either for or against immigration.

The idea that immigration controls are a response to popular demands tends to be asserted rather than demonstrated. There may well be some instances where there is popular demand for immigration controls (Lahav, 2004). Even in cases where there is a popular demand for immigration controls, however, this does not mean that government policy is necessarily a response to these demands. State policy may be a response to public demand, but, as we shall go on to see, there are a number of factors which suggest that we should be sceptical about such claims.

Squeezing the public out of (immigration) politics

A number of authors point to the closing down of avenues through which the public have an input into policy formation and implementation. There has been a general shift in the locus of power away from the representative organs of government (such as the legislature, internal party democracy, declining levels of active membership of pressure groups and political parties), a growth of politics as administrative action (through, for example, the increasing role of the executive relative to the legislature, the professionalisation of parties, pressure groups and lobbying, the ‘audit explosion’, the outsourcing of policy delivery) and the erosion of civil liberties in favour of state powers (Heartfield, 2009; Lyon, 1994; Power, 2003; Sassen, 2008; Wattenberg, 1998; Webb, 1995). Some of these trends can be seen in the field of migration policy. Guiraudon and Lahav, for example, ‘identify the devolution of decision making in monitoring and execution powers [on immigration] upward to intergovernmental fora, downward to elected local authorities, and outward to private actors such as airline carriers, shipping companies, employers and private security agencies’ (2000: 164). The devolution upwards and outwards are particularly pertinent to the squeezing of the public out of the politics of immigration.

We might expect that the shift of migration policy *upwards* in the European Union (EU) would be driven by European ideal of supranational government. Lavenex, however, argues that the shift upwards to transgovernmental cooperation in European

institutions was not inspired by ‘the goal of a truly supranational immigration policy. Instead, it was followed by the desire of particular sections of national bureaucracies to circumvent domestic obstacles to political reforms... and their defence by political parties... the courts and fellow ministries’ (2006: 332). She notes that while the EU has made considerable progress in its attempts to develop a common immigration policy this has been very uneven. Agreements on issues relating to a common asylum policy – such as family reunification, refugee status and status determination and burden sharing – have been characterised by a lack of political consensus (ibid: 336-7). In contrast to this slow progress in matters which have a direct bearing on domestic policy, ‘the evolution of cooperation on immigration control, and, in particular, the greater involvement of sending and transit countries, has been formidable’ (ibid: 337). The member states of the EU have found it easier to agree on foreign policy as they can do so ‘without compromising sensitive domestic politics – or, as an official in the Council Secretariat put it: “it is easier to agree on things that concern a third country than one’s own”’ (ibid: 228). Guiraudon and Lahav note ‘the multiplication of intergovernmental cooperation groups on immigration, asylum, police and border control’ which have become institutionalised in order to ‘forward a more effective migration control regime’ (ibid: 178). They highlight the lack of public accountability of these bodies when they note that in them ‘decisions have typically been made behind closed doors with little or no formal debate in a public forum’ (ibid: 178).

Western states have shifted immigration policy *outwards* through the use of non-state or semi-state organisations. Guiraudon and Lahav, for example, note that states have employed the threat of sanctions to shift ‘liabilities for migration regulation outward to nonstate actors, such as private, societal, and business actors, as well as foreign actors in the form of cooperative arrangements’ (2000: 184). They note that despite the opening of borders to free movement within the EU ‘more stringent security checks at airports – of identity cards, tickets, boarding passes, baggage, and so on – have made the absence of passport controls virtually irrelevant’ (ibid: 185). Many Western states have passed laws which give them the powers to fine or prosecute businesses that employ immigrants who do not have the correct work documents and in the UK Higher Education Institutions are now required to monitor foreign students (Hartwich, 2009). In these ways a range of institutions in society have been pulled in to act as arms of state immigration policy. States have also created new quasi-autonomous bodies to implement immigration policy. In the UK, for example, government created the Borders Agency (BA) to centralise work on securing the border which had previously been conducted by the Border and Immigration Agency, Her Majesty’s Revenue & Customs, and the Foreign & Commonwealth Office (Cabinet Office, 2007). The movement of policy outwards makes it more difficult for the public to hold government to account by blurring the lines of political accountability. Hampshire notes that critics of shifting policy outwards identify what he calls three delegation strategies: managerialization, privatization and expertization. Each of these, he says, ‘can be seen in the UK migration regime... All three strategies can be (and are) justified in terms of improved policymaking and delivery; but all can be (and are) used to shift blame by elected politicians’ (2008: 17).

The state also increasingly employs NGOs to provide service delivery and to act as advocates for sections of society. In the UK the Refugee Council, for example, is funded by government to act as an advocate for the welfare of refugees and asylum-seekers. They are expected to be an independent body, but they are financially dependent on the state. This raises questions, however, about whether they act in the interests of their clients, or their paymasters. Statham and Geddes's study suggests that claims-making by civil society groups in the UK around the issue of refugees and asylum-seekers is composed of 'a relatively weak pro-migration lobby, which finds limited support from interest groups, but is dependent on the state's clientelism, operating in a political context that is strongly dominated by the state' (2006: 265).

Alongside the proliferation of bodies which lack accountability, or mechanisms which permit public deliberation, there has been a shift within governments away from the representative and judicial organs of government towards the executive organs of government. Statham and Geddes note that in the realm of political claims making on the issue of refugees and asylum-seekers in the UK the 'dominant actor is the government/executive with just under a third of claims making (30.1%) and a highly restrictionist stance' (2006: 254). This is in contrast to the judiciary (who account for 7.9% of claims making and take a position which tends to favour the rights of asylum-seekers and refugees) and legislative and political party actors (who account for 16.1% of claims, and take a position between the executive and judiciary, but closer to the latter). One implication of this is that policy implementation, by the executive, may be conducted in a more restrictionist manner than was intended by the legislators who were involved in formulating the policy.

Governments also play a significant role in agenda setting. They can frame both what policies are important for government and society and the ways in which they are important. In discussing migration, for example, European governments could highlight the issue of ageing populations and present a case for more immigration in order to help maintain an adequate ratio between the productive (i.e. working) and non-productive population. The World Bank, and a range of academic experts, have highlighted the role of migrant remittances in promoting development in the global south (see e.g.: Castles, 2007; de Haas, 2008; World Bank, 2006). Western governments could present immigration as a means to help achieve their commitment to policy objectives such as the Millennium Development Goals. The issue of immigration to the West, however, is dominated by a framework of restrictions. Morrison suggests that in the area of trafficking, for example, there are three dominant policy paradigms: human rights, migration management, and organised crime (2002). The latter two are restrictionist and are particularly favoured by governments in the West. The frameworks of managed migration and crime control are often combined in a security framework. The government document which make the case for creating the UK's Border Agency is a good illustrative example, the framing of the issue can even be seen in the documents title: Security in a Global Hub (UK Cabinet Office, 2007; for a critical analysis of the securitisation of migration in Europe see: Huysmans, 2007).

Stolz identifies five symbolic functions which legislation on trafficking has played in the United States: reassurance and threat; educative; simplifying the complex issue of

crime; moral educative, and; model of good practice (2007). In regards to the first symbolic function she notes that there was no public demand to address the issue of trafficking, hence 'it would appear that the primary audience that policymakers were seeking to reassure was not the general public' (2007: 324). Her analysis of the other functions suggest that the symbolic politics of trafficking was directed towards pressure groups who were already active on the issue and a range of different constituencies that should be interested in the issue of trafficking (such as elected representatives, health workers, teachers, clergy and government inspectors). In this sense the legislative process can be viewed as a precursor to the devolution outwards of policy on trafficking, and the drawing of selected members of the public into the implementation of policy.

The delegation of state sovereignty upwards and outwards can be understood as enhancing the exercise of state agency. Along these lines Guiraudon and Lahav argue that the 'multifaceted devolution of migration policy [in the EU] has not resulted in states losing control over migration. Rather it shows the adaptiveness of agencies within the central state apparatus... states may have ceded exclusive autonomy yet they have done so to meet national policy goals, regaining sovereignty in another sense: capabilities to rule' (2000: 164-5). National governments in the West are able to use their power, and their common interests with other states, to engage other actors in the task of carrying out their policy objectives. In doing so, however, they are undermining popular sovereignty through: evading mechanisms of political accountability; narrowing or denying opportunities for public deliberation; colonising civil society and engaging its most active members as agents of state policy, and; pushing restriction as the dominant frame through which migration policy is understood. In attempting to achieve the objective of restricting immigration states are also, however, eroding national sovereignty understood in other terms. In the next section we shall go on to look at some of these drawing on the policy area of trafficking.

Trafficking and the erosion of state sovereignty

Guiraudon and Lahav's claim about sovereignty as 'capabilities to rule' indicates that there are many facets of sovereignty. We have already specified popular sovereignty as a facet of sovereignty, and suggested that there has been an erosion of this facet of sovereignty, and further suggested that this erosion has come from within the nation-state rather than being externally imposed. The issue of migration, we suggest, is also bound up with the erosion of other facets of sovereignty in a number of other ways. In this section we want to briefly indicate three of these: the sovereignty of states in the global South; the fusion of territory and jurisdiction, and; capabilities to rule.

The sovereignty of states in the global South

The externalisation of immigration policy by Western states has often involved the erosion of the sovereignty of states in the global South. The EU has used the prospect of EU membership a leverage to compel candidate states to adopt more heavily regulated immigration controls, thus expanding 'the territory of immigration control beyond the circle of member states' (Laveneux, 2006: 335). EU institutions have

provided considerable sums of money to externalise border controls. The issue of combating trafficking, for example, features in the European Union's Stabilisation and Association Process (SAP) for South East Europe and its European Neighbourhood Policy (ENP) (Geiger, 2008). The use of EU funds to implement policy, however, has generally circumvented national governments in the country 'receiving' the funds. Geiger notes that '[w]hile the EU Commission is the main actor involved in providing financial aid [to Albania and Ukraine], the implementation of sponsored activities (and therefore most of the donor money) is in most cases entrusted to other external (non-local, international) actors' (2008: 99). Intergovernmental Organisations, such as the IOM and OSCE, are key players in countries on the EU's eastern borders. In the area of anti-trafficking INGOs, such as La Strada, Caritas and the International Committee of the Red Cross and Red Crescent (ICRC) have played important roles as 'intermediaries between donors, IGOs, local NGOs, and government Albania and the Ukraine.

Western states have also used threats to compel states in the global South to comply with their demands for more regulation of migration flows. The United States government, for example, has threatened Albania and the Ukraine with sanctions if they 'fail to develop adequate mechanisms to prevent trafficking and to enforce their anti-trafficking legislation' (Geiger, 2008: 102). In the Caribbean the US government has used the threat of economic sanctions to compel governments to 'report annually to the US State Department about unregulated migration and forced labour, especially within domestic and regional sex industries, and to develop strategies to fix these problems' (Kempadoo, 2007: 80). Most countries in the region have made efforts to comply with US demands and '[r]egional bodies such as the Organisation of American States, the Association of Caribbean States and the Caribbean Community (CARICOM) have shown signs of making human trafficking an issue' (ibid: 81).

Separating territory and jurisdiction

The pushing of migration management outwards beyond the borders of Western states has not only eroded the sovereign autonomy of foreign states, it has also eroded 'one of the fundamental principles of the modern state which is the unity of territory and jurisdiction' (Lavenex, 2006: 344). The Australian Government pioneered the use of off-shore centres for dealing with asylum applications (on adjacent islands, such as Nauru or Papua New Guinea). The EU has also promoted this idea. Jacques Barrot, the vice president of the European Commission Responsible for Justice, Freedom and Security, for example, proposed giving EURO 20 million to the Libyan government to build 'accommodation centers for asylum seekers' (Human Rights Watch, 2009: 32). Many asylum-seekers who are resident on European soil also inhabit an ambiguous zone. In the UK, for example, immigrants who are held against their will in immigration detention centres 'are not prisoners under domestic UK law, for then a court would have had to detain them for a specific criminal offence' (Fekete, 2009: 40). So although they should fall under the territorial jurisdiction of the state by virtue of their location, they are denied access to rights on the grounds that they are not citizens.

Incapable rule

The extent to which states in the West have been able to develop and enact more restrictionist immigration policy, and then globalise this policy, is impressive. They have managed to pull in a wide range of actors to promote, and enact these policies. The results, however, have been much less impressive. Geiger, for example, comments that despite 'the significant grants that are provided by international donors, the number of persons identified as victims of trafficking, and then assisted seems... astonishingly low' (2008: 103). Fernandez-Kelly and Massey note that 'the unilateral militarization of the U.S.-Mexican border has not been successful in reducing the inflow of undocumented migrants' (2007: 111). There has been international convergence on the use of immigration controls, but divergence 'between the goals of these instruments and actual immigration outcomes' (Massey et al, 1998: 288). The growing national and international institutional architecture of immigration control has also created perverse outcomes. They have pushed migrants towards illegal channels and are associated with 'lower wages, poorer working conditions, increased crime, more disease, and greater social marginalization' (ibid: 288).

The disjuncture between the stated goals of immigration policy and its actual outcomes has led some to suggest that immigration controls function as '*symbolic* policy instruments to create and *appearance* of control' (Massey et al, 2007: 288; emphasis in the original). The politics of symbolism, disconnected from outcomes, threatens to undermine sovereignty further. Stolz suggests that law which is unenforceable may reassure the public in the short-term, but 'in the long run may not only not reassure but also undermine public confidence in the law and the legal system's ability to combat the problem' (2007: 333). The disjuncture between the symbolic performance of control and the lived experience of the government's lack of control can also feed insecurity in society through seeming to confirm that the world is increasingly out of control and uncontrollable. In these ways current immigration policy in the West undermines sovereignty as capability to rule.

Conclusion: rethinking sovereignty, migration and agency

In this article we have sought to challenge the idea that state sovereignty and migrant agency stand in opposition to each other. In making our case we have presented a more explicitly differentiated understanding of agency than is usually found in studies on sovereignty or migration. In line with many existing studies we have differentiated between structures and agency and noted that there is an interplay between the two. Authors and policy actors differ in their conception of the extent to which migrants are able to exercise agency, or are shaped by structural constraints (including the agency of others). At one level these different viewpoints reflect different conceptions of the capacity of human actors to shape the world around them, at this level it is not something which can be resolved through empirical investigation. The different viewpoints reflect a range of different starting assumptions through which the evidence is viewed, as such these exist outside of the evidence. In as far as this is the case the position of the advocates of measures against trafficking and their critics are irreconcilable, but they do provide grounds for debate. Such debate can help to make the normative assumptions more explicit to both sides of the debate, and to the uncommitted.

At another level, however, these different viewpoints are based on different sets of evidence. Those who base their views on the evidence provided by women who have been coerced and brutalised, and those who point to a general absence of organisation on the part of 'trafficked' women, do have grounds for suggesting that migrant women lack agency. Those who point to the wide range of coercive powers that states employ against migrants do have grounds for saying that states are powerful actors, and migrants weak ones. These different viewpoints can, to some extent, be reconciled by drawing on a wider range of case studies and by using a more diverse range of conceptual tools to examine the evidence. We have suggested that thinking about agency in relation to the goals that it is directed towards enables a more sophisticated understanding of the exercise of agency. When we include the question of goals in our analysis states still appear powerful, in the sense that they are able to command considerable resources and are able to use them to coerce, cajole, imprison, deport, punish, co-opt many individual and collective actors. States also, however, appear weak, in the sense that despite this exercise of power they seem incapable of achieving their stated goals. Bringing the question of goals into the analysis goes some way towards explaining the paradox that migrants are viewed as undermining sovereignty and immigration controls are viewed as one of the few areas in which state sovereignty still reins supreme.

The relationship between migration and sovereignty also looks different when we shift our focus from sovereignty as the *exercise* of state power to the *source* of that power in the agency of citizens. This shift suggests that the erosion of sovereignty is intimately related to the squeezing of the public out of the political sphere. Taking this viewpoint suggests that immigrants and citizens of Western states share some common interests. The pursuit of restrictions on immigration has not only worked against the interests of migrants, through narrowing the legal channels through which they can migrate, but also against the interests of the citizens of states, through narrowing the channels through which they can have an input into the policy process. The ways in which migration policy is framed – in terms of managerialism or security – also inform the framing of a range of other policy areas, such as education and health. Immigrants and citizens alike have a common interest in challenging these policy frames. The promotion of anti-political frames, such as managerialism or security, which close down the space for political contestation, has gone hand-in-hand with the erosion of older ways of conceiving of politics (such as rights based ideas, or ideas about equality). Immigrants and citizens alike have a common interest in defending, and campaigning for, civil liberties and for equality. Immigration controls are anti-human in the sense that they view humanity as a problem to be controlled and properly regulated. A humanist approach would put people at its centre. This could, for example mean focusing on structural factors, such as the flexibilisation of labour markets, as a source of the problems that people in the West experience. Focusing on structural factors helps to challenge the idea that migrants constitute a threat (in this case a threat to job security).

Challenging the erosion of popular sovereignty is not a task that can be achieved through writing, it requires action in the real world. Human action, however, requires agents to carry it out, goals at which it is directed and a command of resources. Ideas

can be a resource as well as a framing device. The idea that restrictions on immigration are a response to popular demands cuts off a range of options by conceding that the interests of immigrants and citizens are opposed to each other. We have challenged this idea in the hope of opening up space for critical thinking and action on the topic of migration.

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