The EU and the Management of Immigration Risk in the Area of Freedom, Security and Justice

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I Introduction

Generally, security and freedom are considered to be contradictory values that present an irreconcilable and head-breaking trade-off to politicians and policy-makers. The choice seems either-or and the outcome is always an uncomfortable oscillating between the two extremes of absolute freedom (the Hobbesian state of nature) and absolute security (the Orwellian image of Big Brother). In this view, more security will come at the expense of civil liberties, while more freedom and less control will compromise security. Against this commonsense understanding of the relationship between freedom and security, this paper will argue that within the EU security is constitutive of the objective of freedom. Or as António Vitorino, the first European Commissioner for Justice and Home Affairs put it: "Security … is a means of achieving freedom. Security and freedom go hand in hand."[1] More specifically, then, this paper seeks to explain the paradox that the liberal objective of maximising individual freedom in the EU as an Area of Freedom, Security and Justice (AFSJ) is increasingly organised around a regime of security practices designed to monitor and control immigration and other issues that are identified as a threat to freedom and free movement. As such, it seeks to nuance the view that liberalism is a desecuritising project that can help mitigate violence in the interactions between people. The point is not to deny the achievements of liberalism in establishing the conditions for progress and wealth. To the contrary, liberalism has been very successful in narrowing the scope of issues which could be settled by means of violence. Indeed, by locating legitimate violence at the level of the state rather than the individual level of personal conscience, classical liberalism has created a space where disagreements between citizens were not settled by the sword but by the rule of law (see Buzan and Wæver 1998, Williams 1998). However, this paper argues that the liberal way of governing has also opened up a space for the emergence of a security regime to deal with immigration and other issues that are considered to interrupt the optimal conduct of freedom and free movement within the EU.

To understand how security discourses in the EU have become logically linked to the liberal objective of maximising individual freedom, the next section examines how freedom and security have been inscribed and re-inscribed within the rationality of liberalism. Drawing upon Foucault's (1991) account of liberalism as an art of governing, it will be argued that the meaning and function of security within the EU is instigated by the rationality of what has been called 'advanced liberalism'. While advanced liberalism is a form of governance that seeks to promote the autonomy and freedom of individuals, section III of this paper claims it also has given rise to practices of security that seek to govern (undocumented) immigrants, who are not considered capable of exercising autonomy in a responsible manner. This group of immigrants, it is argued, is governed by means of risk interventions that categorise and constitute undocumented immigrants as the 'abjects' of the AFSJ. Section IV and section V will discuss in more empirical detail the security regime that has emerged as a result of the advanced liberal way of governing the AFSJ.

II The Liberal Art of Governing: Framing Freedom and Security

The meaning and function of security in the EU, it is argued, can be traced back to the liberal art of governing that emerged in the 18th and 19th century. In his genealogical research on

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[1] See http://europa.eu.int/comm/commissioners/vitorino/index_en.htm (most recently accessed on 23 November 2004).

governmental rationalities, Foucault pitches the liberal art of government as the historical response to two sets of doctrines: The doctrine of the *reason of state* and the *theory of police*, whose origins he dates back to the early 17th century (Foucault 2000a: 314). At the time of their emergence, these two doctrines had a different meaning than what they are commonly taken to mean in contemporary language. Historically, the doctrine of 'reason of state' – which today usually refers to the arbitrary exercise of state power – emerged as an antidote to the Christian modality of governing. Where the latter was concerned with preparing individuals for the after-life (through confession, guidance and obedience), the reason of state referred to a rationality of governing a state and its subjects with the aim of making the state stronger: "The aim of such an art of governing is … to reinforce the state itself. This idea is a very important one. It is bound up with a new historical outlook; indeed, it implies that states are realities that must hold out for an indefinite length of historical time – and in a disputed geographical area" (Foucault 2000a: 316). The theory of police should be understood in relation to this. At the time, the term police did not so much refer to the functional strata occupied with the management of crime but to a governmental technology peculiar to the state. That is, policing had a moral function and referred to the development of knowledge needed for the exercise of correct government over subjects within a state.[2] As a way of knowing the undertakings of a population, policing thus referred to the domain in which central power could intervene with the aim of making subjects more productive and active: "As a form of rational intervention wielding political power over men, the role of the police is to supply them with a little extra life – and, by so doing, supply the state with a little extra strength" (Foucault 2000a: 319).

A key element in Foucault's genealogy of the modern state is the replacement of the governmentality of the police with liberal forms of governance. Although liberalism shares the police's concern with questions of wealth, health and productivity of the population, its view on governing is considerably different than that put forward in police theories. Most significantly, liberals depart with the view that order should be manufactured through continuous intervention in the affairs of society. Instead, they maintained that the state is limited in its capacity to know and control the social and economic affairs of its population. As Foucault states in an interview:

> It seems to me that at the very moment it became apparent that if one governed too much, one did not govern at all – that one provoked results contrary to those one desired. What was discovered at that time – and this was one of the great discoveries of political thought at the end of the eighteenth century – was the idea of *society*. That is to say, that government not only had to deal with a territory, with a domain, and with its subjects, but that it also had to deal with a complex and independent reality … This new reality is society. From the moment that one is to manipulate a society, one cannot consider it completely penetrable by police. One must take into account what it is. It becomes necessary to reflect upon it, upon its specific characteristics, its constants and its variables (Foucault 2000b: 352).

Liberalism, therefore, can best be defined as 'a critique of too much rule' or as 'the art of the possible'. It presents itself as 'steering' rather than 'rowing'. Refusing to prescribe in detail how individuals should conduct their affairs, the crux of the liberal art of government is "not to impede in the course of things, but to ensure the play of natural and necessary modes of

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[2] Hence, *Polizeiwissenschaft* was the title under which public administration was taught in Germany (Foucault 2000a: 320-323). Not unsurprisingly, this period also witnessed the birth of statistics – the 'science of the state' – as a means of producing rational knowledge about the population governed through the state apparatus (see Hacking 1991).

regulations which permit natural regulation to operate: *manipuler, susiter, faciliter, laissez-faire*" (Foucault, cited in Gordon 1991: 17, emphasis in original). Thus, as Karl Polanyi (1944) famously argued, *laissez-faire* is not a natural condition, but a political construction that followed from a redefinition of the exercise of authority in state-society relations, where the role of the state became to organise and safeguard the self-regulating market (Ruggie 1982: 386).

As a result, the security of the state is no longer to be guaranteed through constant interventions that seek to make it stronger. Rather, as suggested by the active meaning of *laissez-faire*, security becomes a question of securing the mechanisms that are already found within society. It is about enabling and assuring the free conduct of societal actors. The function of security, then, is no longer to 'create order' but to 'guide disorder' (Agamben 2002). In other words, the aim of liberalism is to ensure the freedom of individuals by securing the intrinsic processes and exchanges within society rather than to intervene too much in the affairs of individuals and the organisation of social relations. On the international level, this difference is aptly described by Barry Buzan, who distinguishes between mercantilist and liberalist ways of governing the economy. The first, he argues, works by subordinating the economic sphere to the objectives of the state. The economy, then, was merely a function of the social, that is, of the state's objective to preserve its national integrity and national economy. In distinction from mercantilism, liberalists do not put their own economy in the centre. To the contrary, liberals actively seek to detach or 'disembed' the economy from society through the creation of an "interdependent global economy which transcends the fragmentation of the international anarchy by encouraging trade in a world-wide market" (Buzan 1991: 252).

Although for all liberals the production and unleashing of freedom is a central element in governing, the way liberals have operationalised this function practically has developed over history. In fact, since its emergence in the 18th and 19th century, the liberal art of government has undergone some significant transformations, which can be roughly, and imperfectly, described as a move from classical liberalism (19th century) to social liberalism/welfarism (20th century) to the advanced liberalism (late 20th century) that also characterises EU governance. While social liberalism may not be characterised as specifically liberal today, one could perhaps follow Foucault and say that it nevertheless shares the typical liberal problematique of how to integrate *free* individuals within a political order. This problematique sets liberalism apart from other ideologies such as Marxism or fascism, which do not operate with a concept of the free individual. Thus while neo-liberals such as Hayek have portrayed welfarism as a totalitarian legacy, a genealogy of liberalism shows that social liberalism is better viewed as a particular historical solution to the liberal problematique of freedom (see also Gordon 1991: 47). What is central to this problematique is that liberals create freedom not only through the design of institutions that protect subjects against unlawful state intrusions, but also see it as an indispensable element in administering a population that depends upon the capacities of free individuals. As Gordon argues: "Liberty is the circumambient medium of governmental action: disrespect of liberty is not simply an illegitimate violation of rights, but an ignorance of how to govern" (Gordon 1991: 20).

It is important to note, then, that the liberal concern with freedom does not dismiss regulation *per se*. While it renounces the comprehensive regime of police regulation, it institutionalises a different type of rule, one that takes point of departure in the independent, autonomous liberal self as the norm against which the behavioural habits of individuals and groups is measured, calculated and, if necessary corrected (Dean 2002). Thus while liberalism is concerned with the free individual, Hindess has convincingly argued that "we should also expect to find the development of routines for dealing with deviant cases: those families thought to provide a poor environment for the care and, especially, the socialization of

children, immigrants who may not know the language, long-term unemployed people in danger of losing the habits of discipline required for regular employment, unemployed youth who may never have learned those habits, and so on … In place of the pervasive effects of discipline, an equally pervasive government of freedom is invoked, to similar effect" (Hindess 1996: 130, 131). The rise of social liberalism, therefore, may well be understood within the context of the government of freedom and the regulation of the unemployed and other deviant categories in an attempt to ensure that these individuals and groups start to conduct themselves according to the liberal standards of freedom and independence.

The objective of welfarism – itself a response to the flaws and imperfections identified within the rationality of classical liberalism (see Ewald 1993) – was to transform the state into a centre that could shape, guide, channel, direct, control and support persons within its sphere of authority. Aptly summarised by President Franklin D. Roosevelt, the welfarist principle assumed that "true security and individual freedom cannot exist without economic security and independence" (Roosevelt 1944) Indeed, Roosevelt even considered economic wellbeing to be an inherent part of national security, which he thus did not define solely in terms of military defence but also in terms of protection against economic hardship and hence 'unfreedom'.[3] As a consequence, the welfarist paradigm transferred responsibility for liberty from the individual to the social where liberty became re-inscribed as a right guaranteed to all. Hence, social liberalism was accompanied by the "multiplication of social rights and by the recognition of a sort of general right to indemnity for every mishap in life" (Ewald 2002: 273).

But if the collectivisation of security was welfarism's largest achievement, it was at the same time also criticised – from the left as well as from the right – for rendering the distinction between state and society increasingly invisible (see e.g., Koch 1979, Murray 1984, Cruikshank 1994, Giddens 1994). Rather than a precondition for promoting liberty, welfarism was increasingly seen as a barrier to the conduct of freedom, as something that enhances dependence upon the state instead of promoting liberty from the state. Against this background, the governmental rationality of advanced liberalism emerged. Advanced liberalism refers to the relatively new way of thinking about and acting upon individuals as subjects of freedom. Its origins can be traced back to the 1960s and 1970s when the liberal rationality of 'welfarism' began to attract widespread criticism. The aim of advanced liberalism is to transform the mechanisms of social security into methods that foster the energies and activities of individuals and collectives that together make up society (Dean 1999: 153). Advanced liberalism – identified with the thought of neo-liberals such as Hayek, Murray and the Friedmans as well as Third Way theorists such as Giddens – thus seeks to move beyond welfarism in an attempt to re-responsibilise the ways in which individuals conduct their freedom. It seeks to govern individuals according to the logic of individual *autonomy*, which promotes the activation of personal responsibility, choice and self-government.

III   Advanced Liberalism and Targeted Governance: Freedom and the Constitution of the Abject in the AFSJ

The governmental rationality operative in the EU shares many features with the rationality of advanced liberalism and its paradigm of autonomy. That is, EU governance does not seek to integrate free individuals into a political community according to the welfarist principle of

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[3] See also Wolfers (1952) for a discussion of the change from an economic understanding of the national interest to a more military understanding of the national interest as 'national security'.

solidarity; rather, it integrates EU citizens within the EU-order through the promotion of freedom and autonomy *qua* mobility.[4] Within the governmental programme of the EU, individuals are not only free to move, they are also expected to do so. They are, in other words, "*obliged to be free*, to understand and enact their lives in terms of choice. They must interpret their past and dream their future as outcomes of choices made or choices still to make" (Rose 1999: 87, emphasis in original).

Economically, the idea of freedom as mobility underpins EU-efforts to 'correct' excessive state interference in the economy in order to allow individuals to exercise their own economic freedom across national borders. Socially, the notion of freedom as mobility expresses the idea that the EU should become a kind of 'animator state' within which agents actively seek to implement appropriate strategies for social problems themselves (see Barry 1993). Hence the great importance the EU attaches to harmonisation – a process of deterritorialisation with the aim of ensuring that the mobility of capital, goods and persons within the EU is unimpeded by national economic, political or social constraints (Barry 2001). Individuals are not regulated by making them conform with social obligation but by motivating them to choose and live their own life style. Individuals are encouraged to become self-governing, self-regulating and self-securing by choosing and differentiating between products that are made available to them on the market place. Advanced liberalism, therefore, is a form of governance at a distance with which it becomes "possible to govern without governing *society* – to govern through the 'responsibilized' and 'educated' anxieties and aspirations of individuals and their families" (Rose 1999: 88, emphasis in original).

However, the exercise of freedom within the EU does not just depend upon facilitating measures that seek to establish the optimal conditions under which individuals actively start governing their own conduct of freedom; it increasingly also depends on the governance of what is considered to be improper and irresponsible exercise of freedom (see also Huysmans 2004, van Munster and Sterkx 2005, van Munster 2006). Freedom is not just something to be let loose and canalised in the internal market; it is also something to be managed through the constant monitoring of the things that are identified as a threat to the autonomous exercise of freedom and mobility. Advanced liberalism, then, gives a new content to security. Whereas in IR-theory security is defined as a game of war where the death of the other enables the self to live (Wæver 1995), advanced liberalism establishes a security relation between the self and other that is not based upon the logic of war but is mediated by the objective of freedom. The governance through the free individual with the objective to make live and contribute to the prosperity of the individual which is at the same time also the prosperity of society as a whole (the invisible hand turns individual gain into collective gain) thus involves the abjection of those that are considered self-abasing (Dean 2002, Foucault 2003). Thus Rose writes in the *Powers of Freedom*:

> Abjection is an act of force. This force may not be violence, but it entails the recurrent operation of energies that initiate and sustain this casting off or a casting down, this demotion from a mode of existence, this 'becoming abject'. Abjection is a matter of the energies, the practices, the works of division that act upon persons and collectivities such that some ways of being, some forms of existence are cast into a zone of shame, disgrace or debasement, rendered beyond the limits of the liveable, denied the warrant of tolerability, accorded purely a negative value (Rose 1999: 253).

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[4] Likely, the very creation of the single market as such has contributed to the demise of the welfarist paradigm insofar as the notion of free movement runs counter to the welfarist idea that economic processes can be directed and affected within the clear territorial borders of states.

In contrast to the solidaristic model of welfarism in which, at least ideally, everybody gives up some freedom in order to promote collective welfare provisions, the advanced liberal notion of the free, autonomous individual has come to depend upon the abjection, exclusion and control of groups who cannot be entrusted to enjoy these freedoms (Young 1999, Garland 2001).

At the same time, practices of abjection tend to refer and confirm the freedom of the offenders of freedom – or what the 1998 Vienna Action on how best to implement the AFSJ has referred to as those that 'abuse' or 'deny' freedom. Processes of abjection thus stress the responsibility of the abjected and regards the irresponsible conduct of freedom as proof of their inability to behave themselves as independent and autonomous subjects. Indeed, in the rationality of advanced liberalism, illegality is understood as a deliberate life choice, which in turn is seen as expressing irresponsibility and dishonesty on the part of the undocumented immigrant. More specifically, whereas humanitarian discourse generally represents the behaviour of illegal immigrants as acts of despair ('what else could force people to embark upon what often is a life-threatening travel to the EU?'), discourses of advanced liberalism construct illegality as the irresponsible conduct of autonomy. Thus, Jack Straw, in his former capacity as British Home Secretary, argued that the "terrible tragedy" of 58 Chinese deaths found in the back of a Dutch truck in Dover "must serve as a stark warning of others who might be tempted to place their fate in the hands of organised traffickers" (cited in Green and Grewcock 2002: 87). Similarly, acts of resistance (hunger strikes, the sewing of lips and eyes, and even suicide) by rejected asylum-seekers are seen not as expressions of extreme distress but as wilful, manipulative behaviour. Thus the Belgian Interior Minister Patrick Dewael described a hunger strike by 300 Afghans threatened with expulsion as a form of "blackmail", while Guy Verhofstadt, the Belgium Prime Minister, called the strike "unacceptable" (The Guardian 2003). Likewise, the Dutch Minister for Integration, Rita Verdonk, complained that the "media hype" about asylum-seekers' protests against her plan to expulse 26,000 undocumented asylum-seekers would merely cause these asylum-seekers "to believe that they can simply overturn the process by self-mutilation" (cited in Institute of Race Relations 2004). Equally, undocumented immigrants that cannot be expulsed to their country of origin are often detained in exit centres with the aim of 'convincing' them that return is the best way to exercise their freedom. Dorn Andras, director of Bern police, explains the function of exit centres in the management of undocumented immigrants in Switzerland, a country which has recently joined the Schengen agreements, as follows: "The asylum-seekers we bring up here are ones that should leave Switzerland. By putting them in the [exist centres], they will not feel comfortable and they will realise Switzerland doesn't want them anymore – so they will have to accept the decision and leave … The accommodation we provide for refugees is already very basic. So for rejected asylum-seekers I had to find something of an even lower standard, and that meant it had to go underground" (cited in Fekete 2005).

The welfarist ideals of solidarity have been overwritten by the more basic imperative of security and control on those who fall outside the world of freedom. To conclude, then, the governance of freedom introduces a break in life between forms of life that are described as responsible and those that considered abject. While it is not the objective of advanced liberalism (to the contrary!), governing through free individuals is a way of fragmenting populations into different categories which are then subjected to different forms of power, regulation and control. Although liberalism emerged as a critique of too much rule with the explicit aim of unleashing freedom, it has, paradoxically, also brought "life and its mechanisms into the realm of explicit calculation and made knowledge-power an agent of transformation of human life" (Foucault 1978: 143). When one understands the implementation of the AFSJ as being informed by the rationality of advanced liberalism, security is thus not so much about the staging of an existential threat as about a form of

'targeted governance' (Valverde and Mopas 2004) aimed at groups that are not deemed qualified for the autonomous exercise of mobility. Indeed, as the central reference object of security has shifted from the internal market to the vulnerability of the autonomous, law-abiding citizen, 'illegal' immigrants are made amenable to forms of intervention that are not only increasingly punitive and exclusionary. Moving away from war against an identifiable enemy, security rather takes the form of administrative risk-factor driven population management. Where the welfarist paradigm sought to integrate and normalise incapable individuals into the social fabric of life, security governance in the EU entails instead a limited and risk-driven intervention into society. These interventions are not experienced as something negative, but are viewed as positive attempts to guide disorder, that is, as attempts to reconstruct the 'natural' equilibrium of the AFSJ. Internal European security does not operate according to the sovereign logic of war that brings death into play through the staging of an existential threat. It operates, rather, according to the logic of abjection that originates from the paradigm of freedom: "It is no longer a matter of bringing death into play in the field of sovereignty, but of distributing the living in the domain of value and utility. Such a power has to qualify, measure, appraise, and hierarchize, rather than display itself in its murderous splendor; it does not have to draw the line that separates the enemies of the sovereign from his obedient subjects; it effects distributions around the norm" (Foucault 1978: 144).

Within the ideal of the AFSJ as a smooth, non-ridden space where individuals conduct their freedom in a responsible way, security thus reappears as an important technique in governing populations that are denied the exercise the conduct of freedom and mobility because of their purportedly irrupting effects. This is not to say that the logic of war has no validity anymore for understanding how security operates in the EU. A quick look at the metaphors deployed in discourses on immigration – the 'war' or 'fight' against immigration; 'Fortress' Europe; the 'combating' of immigration; 'flanking' measures; 'frontline' states – all bear witness to the continuing importance of the language game of war in structuring social relations between the EU and third country nationals. Nevertheless, on the level of practices (rather than speech) security has become more and more de-dramatised and integrated within administrative apparatuses whose function is not to wage a battle against an enemy but to regulate the conduct of mobility within and into the EU as an AFSJ. Within the rationality of advanced liberalism, then, security practices do not constitute the identity of the other as an existential enemy, but as a member of a risk class whose autonomous exercise of mobility has to be controlled and monitored. By effect of their risk class membership, the mobility of undocumented migrants is channelled through technologies of security which seek to render them increasingly immobile through preventing them from moving or, in case they moved anyway, by restricting and channelling their movement with help of technologies of risk management.

IV   Governing Risk, Targeting Immigration: Remote Control, Buffer Zones and Border Management

Immigration risk – the potential of undesirable movement into the EU by third country nationals – has increasingly become the principle according to which mobility is organised in the EU. By means of automated surveillance and verification technologies, specific categories of people are grouped together and singled out for risk-profiling regardless of whether or not they have committed a dangerous act. These technologies thus all operate upon the basis of mistrust where the possession of improper documents, short-term documents (which may entail the risk of visa-overstaying) and asylum-applications are all indexed as indicators of possible dangerous behaviour, whereas proper identification documents are taken as tokens of

trust between the EU and its external environment. Broadly, risk technologies can be divided in three strands, each of which constituting a separate filter or tier in the management of migration risk. Starting with pre-frontier measures and working our way back to the external EU-border, the most significant technologies are (i) carrier sanctions, visa-policy and liaison officers (remote control), ii) the proposal to introduce the camp as a buffer zone between EU-inside and EU-outside, and (iii) border management.

Remote Control: Carrier Sanctions, Visas and Liaison Officers

The externalisation of border management to third countries is a relatively recent but increasingly important node in the governance of mobility within and into the EU (van Munster and Sterkx 2005). Remote control takes place on the basis of the risk factor ascribed to certain places and people. Thus the comprehensive plan to combat illegal immigration and human trafficking speaks of "*targeted* measures in the countries of origin and transit" and, recognising the need to organise information campaigns in the countries of destination, calls for "*concentrated* initiatives *targeted* at specific groups such as the unemployed, women or students" (EU Council 2002e, emphasis added). At the same time, however, it is recognised that raising awareness is unlikely to prevent the immigration risk: "Does the public attention drawn by the European media to the serious accidents facing shipwreck victims on their journeys of despair affect the people attracted by the idea of immigration? By no means. Plans should be made to provide such people with specific information on this topic, but the impact would probably not be very great, given what successful migrants stand to gain" (EU Council 2003b).

In addition, therefore, the EU relies heavily on measures more directly related to control, surveillance and prevention. More specifically, the EU Schengen Catalogue on external borders control explicitly singles out the instruments of carrier sanctions, liaisons officers and the visa regime as the three core strategies in the control of immigration at a distance. In order to fully display the interconnectedness of these strategies, it is worth quoting the Schengen Catalogue at some length:

> The first measure required in terms of time and place is advice from liaison officers and document experts in third countries of origin or transit which are the source of the risks generated by illegal immigration … Officials working abroad for the Schengen States' consular posts and carriers will be trained by specialists in order to detect document forgeries before actual travel has started … In the second stage, a thorough inspection of the application documents submitted should be carried out by the Schengen States' consular representations when issuing visas … The systematic implementation of EC/Schengen visa regulations should enable the phenomenon of illegal immigration to be effectively tackled at its roots. The importance of intensive consular cooperation should be stressed in that context. Carriers are also obliged … to take all necessary means to ensure that third-country nationals carried by air, sea or land have the travel documents necessary for entry into the territory of the Schengen States (EU Council 2002d: 12-13).

By themselves, the idea to use carrier sanctions or identity-papers for the management of migration flows is hardly novel. The passport, for instance, has always been central in the management of population flows even though its function has changed significantly throughout history.[5] As for the concept of carrier sanctions, the 1905 UK Aliens Act already

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[5] For historical accounts of the passport, see Torpey (2000), Lloyd (2003) and Gulddal and Mortensen (2004).

obliged ship captains to provide a list of alien passengers to state officials. Furthermore, various states already had integrated carrier sanction stipulations in their domestic immigration laws already before the 1990 Schengen Implementing Agreement elaborated the notion of carrier sanctions on the European level.[6]

What is innovative about the European context, however, is the fact that carrier sanctions have been given an official status and high strategic significance in "curbing migratory flows" and "combating illegal immigration" (EU Council 2001). Where national control takes place largely at the geographical border, the EU has introduced a complex web of networked control where a transnational network of liaison officers assists consular officials and private carriers in the management of immigration. EU member states are sending and appointing liaison officers and document experts in third countries of origin and transit which are known as 'immigration hot spots'. Here, these specialists train airline security personnel in order to detect document forgeries before actual travel has started (EU Council 2002e: 17-18). Even the United Kingdom, a non-Schengen member, has acknowledged the importance of liaison officers within the context of EU cooperation: Our carriers' liability legislation places the onus on carriers to check that passengers are properly documented for travel to the UK. ALOs [Airline Liaison Officers] work in partnership with airlines abroad, offering advice on the acceptability of documents presented for travel. The Government is committed to playing a full part in the EU's action to improve the co-ordination of European ALO activities and enhance their training programmes (Home Office 2002: 92-93).

Moreover, while the control over access to territory has traditionally been a prerogative of states, the introduction of the visa has somewhat weakened the state's monopoly to decide who has the right to enter and leave their territory. Since the ratification of the Maastricht Treaty the European Commission determines the list of countries whose citizens require a visa for travel into the EU, which in turn entails that from then on the EU has been able to regulate movement into EU-territory. While not without significance, the passport is no longer considered a sufficient identity mark for many third country nationals. In fact, most non-Western countries (including those known to produce political refugees) are listed as countries whose citizens require an additional visa for movement into and within the EU. Citizens belonging to countries on that list now also require a visa, which complements and supplants the identification function of the passport to which it is attached. For although it is impossible to obtain a visa without a legally valid passport, the visa is increasingly becoming an indicator of a person's identity as well. Indeed, the visa has become constructed as an indispensable link in the management of undocumented immigration and identity (EU Council 1995). The visa has become part of the flanking measures designed to prevent the use of bogus or false identities. Indicative in this context is the decision to include pictures on visas, so that identity checks can be performed can be derived on the basis of the visa rather than the passport (EU Council 2002c). As the European Commission explains: "One of the weaknesses of the system then in use was that neither the visa nor the residence permit, in sticker form, included any sort of photograph or other reliable means of identification. Consequently, it was decided that at the very minimum, it was urgent to provide for the incorporation into both documents of a photograph, meeting high security standards" (European Commission 2003a: 2). To further enhance the security standards of the uniform format for visas and travel documents in general, the EU has recently decided to also include biometric identifiers in the visa and the residence permit for third country nationals in order to establish a more reliable link between holder, passport and visa (EU Council 2002e: 12). Both the electronic photo and the biometric data of the visa applicant are to be stored in a European Visa Identification System (VIS), which is currently being developed. The aim is to create a

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[6] For a comparative oversight of carrier sanctions regimes in the United States and EU member states, see Cruz (1995).

dual identification process based on secure documents and a database which contains details of visas applied for, issued and refused so that an integrated risk assessment of all visa applicants can take place:

> The main issues to be borne in mind when examining visa applications are: the security of the Contracting Parties and the fight against illegal immigration as well as other aspects relating to international relations … The diplomatic mission or consular post shall assume full responsibility in assessing whether there is an *immigration risk*. The purpose of examining applications is to detect those applicants who are seeking to immigrate to the territory of the Contracting Parties and set themselves up there, using grounds such as tourism, studies, business or family visits as a pretext. Therefore, it is necessary to be particularly vigilant when dealing with *'risk categories'*, in other words unemployed persons, and those with no regular income etc. If there is any doubt over the authenticity of the papers and supporting documents submitted, the diplomatic mission or consular post shall refrain from issuing a visa (EU Council 2002a, emphasis added).

Moreover, the visa regime enables a much more selective sorting and targeting of risky categories than the passport allowed for. Compared to the passport, the visa is able to prevent and channel movement in a much more detailed way through the specification of time limits and the modalities of movement. Indeed, to date the EU distinguishes between a (i) airport transit visa, (ii) transit visa, (iii) travel visa, (iv) multiple entry visa, (v) group visa, (vi) long-stay visa and (vii) a visa with limited territorial validity – all of which have different ramifications for the conduct of mobility within and into EU territory. A visa is only issued when the visa application, travel documents and supporting documents are approved. Moreover, the issuing of a visa also includes a verification of an applicant's good faith. Whereas a passport is obtained by birth, the visa is a token of trust handed out only to those who deserve it, that is, those who are considered not to constitute an 'immigration risk'. But since the visa is an individual document of trust, there remains a permanent need to police and control those that are not in the possession of such a token of trust, but which nevertheless decide to migrate.

Between Inside and Outside: Building Buffer Zones

The second technology to manage immigration flows into the EU that I would briefly like to discuss is the camp. Just as carrier sanctions and identity-papers, the camp is not a new technology in the management of refugee populations. Since World War II, the refugee camp has been viewed as an efficient means of distributing aid and managing displacement (Hyndman 2000). But the camp also had a more political function. It was the space where refugees were categorised and managed with the purpose of turning them into individuals well-suited for resettlement in other states. In this view, the camp operated in similar ways to the factory, asylum, the barracks, school and prison. As Lippert argues, "it was not just food, water, and medical aid that was dispensed through the camp; it was discipline" (Lippert 1999: 309). The overall objective of the refugee camp was to train and prepare individuals for a life outside this institution. Concomitantly, camp inhabitants were expected to remain in the camp for as short a period of time as possible, because – not unlike the welfare recipient in Western states – their dependence on food, water and other forms of aid was considered to turn them into dependent, unproductive individuals ill-suited and ill-prepared for resettlement.[7]

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[7] See Hyndman (2000) for an insightful discussion of the disciplinary function of the camp and its role in the management of displacement in post-World War II humanitarianism ideology.

Within the context of the EU, the camp has re-emerged first and foremost as a tool for guiding, steering and managing immigration flows. The objective is not disciplinary; rather, the primary function of these camps seems to be the prevention of spontaneous arrivals of asylum-seekers in the EU. Following the June 2003 Thessaloniki European Council which invited the Commission "to explore all parameters in order to ensure more orderly and managed entry in the EU of persons in need of international protection" (European Council 2003), the Commission has presented a communication in which it proposes that asylum claims should be processed outside EU-territory (European Commission 2004). As a space where good movement is separated from bad movement, the camps enables certain groups to be channeled into processing, while other groups – most likely undocumented immigrants – can be refused access to the EU before their claims are considered. As such, the objective of the camp is comparable to that of the visa regime and other forms of control that seek to separate desirable forms of movement from undesirable ones. In cases where these refugees cannot be returned to their country of destination, this could imply that immigrants – falling outside any legal framework – could be indefinitely detained within these camps.

The idea to process immigrants in camps specifically designed for that purpose was launched by the United Kingdom under the title of 'a new vision of refugees'. This plan calls for the establishment of a global network of 'safe havens' which were defined as "particular camps whose prime purpose is to provide a place of safety and process claims" (Home Office 2003: 10). According to the plan, asylum-seekers needed not travel to the EU but could (should) directly go to one of the camps where they could lodge their asylum claims. In addition, the plan suggests that any asylum-seeker that would arrive in the UK or elsewhere in the EU would be relocated to one of these safe havens. In a paper attached to a letter to the Greek Presidency during the first half of 2003, UK Prime Minister Tony Blair called for the improved regional management of migration flows and launched the notion of "transit processing centers" (Blair 2003). Rather than a temporary place for the disciplining of refugees, 'regional protection zones' and 'transit processing centres' just outside the EU territory are more like buffer-zones for the control and monitoring of migration flows. The re-allocation of all immigrants to process centres, moreover, is also meant to have a deterring effect on undocumented immigrants trying to enter EU-territory (The Observer 2003). In contrast to the functioning of the refugee camp as a place of discipline, the idea of transit processing centres would institutionalise the camp as places of exclusion, where undocumented or improperly documented immigrants can be refused entry without a prior evaluation of their reasons for moving.[8] The notion of the camp as a buffer zone between the EU (inside) and its external environment (outside) can be seen as a logical extension of both the Dublin Convention principle of country of first asylum and the readmission agreements concluded between the EU and third countries. But the camp also goes beyond readmission and the country of first asylum principle. The latter target immigrants upon arrival and can therefore be described as being largely reactive in nature. The camp, however, targets immigrants already before arrival and is therefore best described as a pro-active form of 'buffering'.

While the June 2004 Commission communication claims that regional process centres are beneficial for immigrants as "there would be no need for those in need of protection to pay traffickers thousands of Euros for a dangerous and illegal journey to the EU" (European Commission 2004: 6, see also European Commission 2003b), the overall objective rather seems to manage the immigration risk. First of all, the fact that immigrants have to turn to human traffickers is to a large degree the result of EU measures that make it increasingly

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[8] Arguably, the technology of the camp as an exclusionary buffer-zone is already deployed *de facto* within many EU member states insofar as the structure of the camp can be found at the border in the form of airport holding zones and migrant detention and exit centres.

difficult for asylum-seekers to enter the EU in a more conventional way. If the objective is to prevent human trafficking, it is thus very unlikely that the introduction of camps will contribute in any significant way to this objective. It is highly unlikely that immigrants that make use of the services of human traffickers will be deemed amenable for refugee status, which means that these immigrants would have no reason to make use of transit processing centres. Rather than the right to seek protection, then, the European Commission seems concerned more with establishing the conditions for decisions on access in the basis of the socio-economic and security needs of the state rather than those of refugees:

> [I]n general, the legal, orderly and managed entry to the EU would allow the Member States to anticipate the arrival of the persons determined to be in need of international protection. This advance notice could bring a number of advantages in terms of planning: for housing and the inevitable financial impact. The setting up of tailor made integration programmes for specific categories of refugees would also be much easier devised, if a country knew in advance who was arriving on its territory to stay. Resettling and allowing physical access to the territory of the EU of persons whose identity and history has been screened in advance would also be preferable from a security perspective (European Commission 2004: 6-7).

One of the central functions of the camp, then, is to carry out 'pre-arrival security checks' (European Commission 2004: 7) on immigrants whose 'dangerousness' has not been determined already at the root by means of visa-application assessments or other control procedures. Together with pre-frontier control measures such as carrier, sanctions, visa policy and liaison officers the creation of buffer zones in the form of transit process centres have a deep impact upon the space of the border and the geographical notion of border control.

Towards Knowledge-Based Border Management

The functioning of borders as sites of control and surveillance is not new. Especially airports have traditionally deployed a great assortment of technologies such as CCTV, passports, visas, baggage control, boarding passes and identity cards to govern and monitor the conduct of mobility (Lisle 2003: 18). In fact, borders have always performed a double function. On the one hand, they have enabled the conduct of freedom by making it possible for travellers to cross borders; on the other hand, borders have also played an important role in the surveillance and control of populations with the aim of protecting the national population from outside threats. Nevertheless, Schengen cooperation has fundamentally changed the essence of the geopolitical border in the EU. For while Schengen does not do completely away with material control and gateways, it nonetheless signifies a departure from the idea of the border as enclosing a territory that needs to be protected against outside threats. Schengen rather calls for knowledge-based border control, where borders are the final filter in the integrated management of migration risk.

Border crossing points have become an important node in the management of European security and mobility and the physical space of the airport, seaport and other official entry points have been redesigned and reorganised according to the multi-tiered approach to migration management. Thus the Schengen Catalogue calls for an interactive, management of borders based on risk knowledge and risk communication: "[V]arious methodologies should be applied at the borders. Terms such as risk analysis, intelligence, data-flow management, situational awareness, reaction capability and information exchange with other Schengen States can be used when evaluating and developing these methods" (EU Council 2002d: 16). As a result, border controls do no longer predominantly function as the site of extensive pass

controls and personal checks that bring into play the national sovereignty of the state. In fact, control increasingly takes place already before departure (by consulates, carriers, liaison officers or, perhaps in the near future, by professionals employed in offshore process centres), while border management has become a question of verifying the previously issued identity and travel documents on the basis of risk information stored in databases and the risk knowledge that circulates between different organisations.

This new function of verification, in turn, is supported and made possible by administrative and technological systems. For instance, Schengen requires airports and seaports to be designed so that the flow of third country nationals can be separated from intra-EU travel (EU Council 2002d: 25-26). This architectural redesign has enabled security verification procedures to target more directly the identity of persons originating from outside the EU. Secondly, new control boxes have been introduced where security officials can check identity documents against the data stored in the Schengen Information System (SIS). If in doubt about the authenticity of documentation, border guards are assisted by so-called Schengen documentation centres, which have specialised in the technological verification of identity documents (e.g., boarding passes, travel tickets, visas and passports).

Most significantly, however, is the fact that trust or mistrust in the individual is in the process of being replaced by trust in risk technologies aimed at the identification and authorisation of potentially dangerous groups. On top of the patrolling of territorial borders, border control has very much become about the collection and dispersion of knowledge on risky flows of mobility. Thus the Deputy Chief Superintendent of the Danish Border Police, originally responsible for physical border control, confirms that his task has increasingly moved towards the collection and dissemination of risk knowledge on immigration (Interview, 24 November 2004). As he defines his current job:

> Every month I go and find out what the travel trend is, on which weekdays they come, and things like that, which I then send out. On top of that, I send out an 'illegal travel trend' every Friday, where I take information from various national and international intelligence services and send them to all colleagues in the airport and I also send a copy to the three major companies operating in the airport. For often it concerns things, which they can prevent already from their destinations of departure before they get here … I put [the information] together in a monthly overview about what happened; how many asylum-seekers – almost categorise them. Can we see when asylum-seekers come? Which flights are they on? And things like that, so that one can perhaps make flight companies look more specifically into certain flight departures (Interview, 24 November 2004).

While this is perhaps most advanced in the case of air borders which, due to the organised nature of air travel and the enclosed space of airports are particularly suited for the application of high-tech control measures, the shift towards integrated risk management is also discernible for land and maritime borders (EU Council 2003b). Here, too, border control increasingly takes the form of managing abstract knowledge about the risk of certain flows which requires that border officials are in constant contact with liaison officers, foreign colleagues, private carriers and risk information centres such as the Air Borders Centre in Rome, the Centre for Land Borders in Berlin, Maritime Borders Centres in Madrid and Piraeus, COLPOFOR (cooperation of European railway police and security services) and the Risk Analysis Centre in Helsinki (see EU Council 2003c, 2003d, 2003a).

Working as a form of informational power, risk surveillance is moving away from concrete bodies and focuses instead upon flows of data as the stand-ins for real bodies. The best-known example is the SIS, which has become an important instrument in the stemming of migration flows. While the SIS is seen mainly as an instrument against organised crime (hence its

inclusion in the third pillar), 89% of the entries in the SIS are on undocumented migrants, which comes down to a total of 778,886 records related to 'illegal aliens' (Statewatch 2005).[9] The profiling of undocumented immigrants through SIS is further reinforced by the introduction of Eurodac and the planned introduction of the VIS, which store images and biometric data (fingerprints) of asylum-seekers, undocumented immigrants and visa applicants. These databases go a step further than the SIS. Whereas the latter only allows data to be recorded in relation to criminal matters (illegality is considered a serious crime in countries such as Germany and France but not in Belgium and Denmark), the only criterion for having fingerprints recorded in Eurodac and VIS is the fact that an individual has applied for asylum or for a visa. With the implementation of the Eurodac-database and the plans for a VIS, undocumented immigrants, asylum-seekers and immigrants more generally will thus be subjected to categorical suspicion and made amenable to targeted practices of risk management.

The border, then, is becoming a node in a transnational risk communication system where border police has joined up with other institutions in the search for perfect risk knowledge. For instance, the data used by the border police is also increasingly coupled to consumer data gathered by private carriers. For commercial purposes, private carriers often store information related to the purchase of a ticket. However, as identification and verification increases the importance of risk profiling, consumer data has become increasingly relevant for security officials in their attempt to assess levels of dangerousness of mobile flows. As the Deputy Chief Superintendent of the Danish Border Police claims with regard to the targeting of Chinese travellers:

> [E]very time you hear the word 'Chinese', you assume something is suspect about them … In Denmark we have thirteen flights from China a week, so we go through the passenger lists to see if some tickets are bought together. Can we see any groups, or any other things we can use for profiling? How are the tickets bought – are they paid cash or are they paid for three weeks in advance? We say that if something is paid cash, it could be human smuggling or something [because] large firms do not use cash today" (Interview, 24 November 2004).

Information concerning the payment of a ticket, the amount of tickets bought and under which names, the routes, transits and different companies involved, the historical record of a consumer – in principle, everything can be recoded as signs of the risk-level of people, activities and places.

V The Commodification and Marketisation of Immigration Risk

In accordance with the rationality of advanced liberalism, immigration management is constituted as a day-to-day responsibility not only for public but also for private institutions and organisations. Arguably, the threat of carrier sanctions has been the most direct mode through which the responsibility for immigration control has been delegated to the private sector. Through the threat of carrier sanctions, the identity and function of private companies

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[9] As 'illegality' constitutes an act of serious crime in some states but not in others, there is a large discrepancy in member state registration of illegal aliens in the SIS. However, because all countries work off the same database, the undesirability of an alien in one state implies that the same alien is also denied access to another state. As of 1 February 2003, Italy topped the list on registering undocumented aliens with 335,306 entries, followed by Germany with 267,884 (together 77% of all entries), while Belgium (367), Denmark (147) and Iceland (10) registered least entries.

without a stake in security management are recoded as those responsible for the management of migration risk. Faced with the high economic costs of carrier sanctions, private carriers have thus started to take additional measures to ensure that third-country nationals are in possession of valid travel documents upon entering the Schengen territory. These measures consist of tightened security and control checks at departure and sometimes arrival, the establishment of contacts with police authorities and liaison officers, risk profiling on the basis of consumer data and the training of personnel in document identification. Moreover, some airlines have also started to hire personnel with a background as security professionals. For instance, Air France's security department is now led by a former official from the Ministry of the Interior with previous work experience in the areas of border control and terrorism (Guiraudon 2001: 54). The carrier sanctions regime, in turn, is complemented by benchmarking and performance based evaluation schemes, which offer carriers partial or full relief from sanctions if they agree to fulfil certain conditions regarding immigration control. Typical for the advanced liberal way of governing, benchmarking, the setting of performance marks and 'best practice' seek to shape the conditions under which private actor start governing themselves in the most optimal sense. It seeks to create and subsume the specialised expertise of risk management to formal calculative standards that ensure efficiency, quality and effectiveness measured in terms of productivity. As the Facilitation Manager of British Airways, James Forster, explains: "Once the [best practice] status is achieved, the carrier will not be fined for passengers arriving from that airport without any documents" (Forster 2002: 28).

Yet, the involvement of private carriers in the management of migration risk has not just been encouraged with the 'stick' of carrier sanctions and benchmarking. The authority to issue visas on behalf of EU member states is a for carriers economically more rewarding way of becoming active as managers of the immigration risk. The consular instructions on how to issue a visa state that all applicants should be interviewed in order to assess whether or not the person involved constitutes a migration risk. The amount of work involved with the issuing of visa has overburdened many consulates as every individual applicant needs to be interviewed to verify the objectives of the journey. To relief consulates from this time consuming task, the EU has decided that these interviews may be delegated to private parties such as travel agencies and carriers. Originally, the scope for private involvement was limited to group travel only (EU Council 2002a: 5), but a Council Decision on the adaptation of the common consular instructions has widened the scope of private involvement beyond group travel:

> It is both common and useful, particularly in countries with a large surface area, for private administrative agencies, travel agencies, and tour operators and tour operators and their retailers to act as authorised intermediaries of the applicant … [T]he degree of solvency and reliability expected of them will, in principle, be directly proportional to their degree of involvement in the overall planning of the journey, accommodation, medical and travel insurance, and their responsibility for the client's return to the country of origin (EU Council 2002b: Article 2)

For private carriers and travel agencies, being recognised and authorised as a "reputable and trustworthy body [that] is able to vouch for the good faith of those persons concerned" (EU Council 2002a: 5) comes with important economic benefits. For carriers this means that fewer seats will remain empty as a result of persons not having been able to obtain a visa in time. This certainty makes it possible for them to operate with lower costs than competitors that have not been granted the trust status. Moreover, if airline companies manage to fill seats of their carriers with passengers with pre-approved documents, this will also reduce their vulnerability to fines and carrier sanctions payable for improperly documented travellers.

Simultaneously, it is also likely to increase the performance status of carriers, which may release them from paying fines in the cases where people of 'ill faith' have managed to board their vessels. Thus while the Council Decision explicitly states that the "purpose of defining the conditions for cooperation with travel agencies is not to inhibit free competition" (EU Council 2002b), a refusal to cooperate (e.g., by refusing to be involved in what companies may believe to be a public task or by refusing to treat their clients as risks), they are likely to suffer significant operation costs, resulting in a worse market position than competitors that have accepted their responsibility in the management of migration flows into the EU. Therefore, confronted with a series of interwoven economic incentives, carriers are pushed, without direct public interventions, to ensure that policies are in line with EU desires and objectives (Guild 2004).

Obviously, the privatisation of immigration control through carrier sanctions has not gone unnoticed the literature on immigration control (Lahav 1998, Miles 1999, Guiraudon 2000, Verstraete 2001). For instance, Virginie Guiraudon has identified privatisation as a means of 'venue shopping' by means of which states seek to circumvent national and international legal constraints on the control of immigrants (Guiraudon and Lahav 2000, Guiraudon 2000, 2001). Gallya Lahav, in turn, has conceptualised privatisation as an instance of state expansion, whereby state seek to obtain the state objective of immigration control through the creation of dense regulatory webs between public and private actors (Lahav 1998). Whether or not privatisation is indeed an explicit attempt to skirt legal obligations, this has very much been the outcome in practice. For while the 2001 EU directive on carrier sanctions stipulates that the directive "is without prejudice to the obligations resulting form the Geneva Convention relating to the Status of refugees of 28 July 1958, as amended by the New York Protocol of 31 January 1967" (EU Council 2001), the devolution of immigration control has severely limited the possibilities of immigrants to seek asylum. For example, James Forster, the Facilitation Manager of British Airways, states that airlines confronted with the real possibility of carrier sanctions have actually denied persons the opportunity to claim asylum by preventing them from flying:

> We understand that, since 1987, no fewer than 400 passengers, who boarded British Airways flights with apparently correct travel documentation and yet arrived in the UK without valid documents, have been granted refugee status in the UK ... As a direct result of carriers' liability legislation, British Airways and other carriers have refused carriage to thousands of passengers. How many of these would have been granted refugee status had they reached the UK is unknown (Forster 2002: 27).[10]

Private companies which detect undocumented migrants on board are first and foremost interested in determining and verifying their country of origin so that repatriation efforts can be undertaken before the sanctions regime begins to apply. Confronted with the burden of carrier sanctions, carriers are pushed to view prevention and repatriation in terms of loss prevention, while undocumented immigrants are constructed as operation costs rather than refugees. As a result, companies have no incentive (nor the means) to examine the legal rightfulness of asylum claims and tend to focus upon the control of immigration. Take for instance the case of Robmarine Shipping Consultants (RSC), a UK-based all-round shipping

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[10] In 2001, British liaisons officers refused 22,515 inadequately documented immigrants to board a carrier, which is seen as "a significant success for the network in stemming the flow of improperly documented passengers to the UK, which we intend to support and maintain" (Home Office 2002: 93). However, Forster (2002: 27) claims that the sanctions have encouraged the production of high quality fraudulent documents, stimulated human trafficking, while placing airline and government officials in danger.

assistance company which assists shipping companies in the repatriation of undocumented immigrants found on board of their vessels. Because undocumented immigrants are an economic risk, it is imperative for companies that find themselves confronted with the problem of stowaways to repatriate these immigrants as quickly as possible and before the sanctions regime starts to apply. To help companies with verifying the identity of stowaways, RSC argues that successful repatriation of a stowaway largely depends on the procurement of an emergency travel document, which in turn counts on acquiring high quality photographs and statements for use by embassies and consuls. To this end, RSC has provided a questionnaire of 68 questions that can help determining the stowaway's country of origin or transit. Because none of the 68 questions is related to the motives stowaways may have had for leaving their country, their possibility to seek asylum is reduced and made subordinate to the economic objective of repatriation.[11]

While the writings on the privatisation of immigration control have contributed significantly to our understanding of the ways in which immigration control functions and the effects it has on the human rights regime, two objections can be raised against the explanations for why immigration control has been privatised. The first one concerns the generally shared assumption that the objective of carrier sanctions is to make immigration control more effective and efficient. The second one follows from this and concerns the statement that privatisation strengthens rather than weakens the state and/or public authority.

Privatisation and the Argument of Policy Effectiveness

Generally, the privatisation of immigration control by means of carrier sanctions is justified as a means of policy effectiveness, whereby public actors can attain goals they are unable to reach themselves (Lahav 1998, Guiraudon 2001). While the argument of policy effectiveness no doubt underpins many decisions on privatisation, it is not totally convincing in the case of carrier sanctions and immigration control. For if policy effectiveness is the goal, it is somewhat unclear why railways, which are generally in the hands of the public rather than the private sector, have been exempted from the regime of carrier sanctions. For surely the threat of carrier sanctions would induce vigilance and precaution amongst railway personnel in ways similar to the shipping and airline industry? Carrier sanctions, then, are not just about policy effectiveness; they are also a way of engaging the private sector in the management of migration risk. They illustrate the advanced liberal motto of 'governing without governing society', that is, as the advanced liberal view on governing as being about self-government rather than direct public intervention. This ideal has been promoted, most notably, by what could be referred to as the 'marketisation of immigration risk', i.e. the inscription of undocumented immigration as a business risk or 'damage' against which insurance is possible. Marketisation can be defined as an advanced liberal means of steering private actors through economic incentives (carrier sanctions) that create conditions for the purchase and selling of security via the market place.

The involvement of insurance companies is interesting not only because it serves as an example of how private actors, through the selling and buying of the economic risk of

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[11] See http://www.robmarine.com/indexe.html, most recently accessed on 27 April 2005. To determine the nationality of stowaways, the questionnaire includes, amongst others, the following questions: Where were you born?; What is your home address?; What is your religion?; Which tribe do you belong to?; What languages do you speak?; What is your father's place of birth?; What is your father's religion?; What tribe does your father belong to?; What is the capitol of your country?; What languages are spoken in your homeland?; Describe your country's flag?; What crops are grown in your country?; Name any large company in your country?; What is your country's currency?; What is the name of your president?; What is the name of the international airport in your homeland?; Name any radio stations in your country?

stowaways on the market place, can earn money in the business of immigration control. It is also interesting because it turns insurance into a form of security governance beyond the state. That is, private insurance companies have started taking over the governing and monitoring role of public authorities by enforcing preventive security requirements upon the carriers they insure.[12] For instance, Club P&I, a specialised insurance company in the shipping industry, regularly reminds shipping companies in its StopLoss Bulletin "of the need for great vigilance to prevent stowaways gaining access to any part of their vessels before leaving port, especially in those areas of the world where stowaways are known to be a serious potential problem" (The London P&I Club 2004: 2). In association with Videotel Marine International, P&I Club has also designed a training video and booklet ('Coping with Stowaways') to instruct officers and crew on the problems caused by stowaways, including advice on how to prevent stowaways from getting aboard ships and the steps to be taken if stowaways are discovered.[13]

Through the marketisation of immigration risk, then, insurance companies rule the insured by fostering vigilance and precaution in an attempt to limit the frequency of loss. This points to an important contradiction in the rationality of advanced liberalism. While it promises less governance, the "liberal fear of governing too much is not so much a fear that the population is governed too much but that the state is doing too much of the governing" (Dean 2002: 42). It is not a fear of regulation *per se*; the marketisation of immigration risk has brought about a dense web of regulatory relations, where private insurance companies have assumed the governing role by making sure that the insured manage risks in the most optimal sense. Moreover, left to the private sector, the governance of immigration risk has important consequences for the securitisation of immigration and the public authority to define security.

Privatisation and the Authority to Construct Security

The argument that privatisation serves to increase policy effectiveness is closely related to the paradox that privatisation strengthens rather than weakens the state. Generally, the involvement of the private sector is explained as a process of state expansion whereby the state extends control by means of privatisation (Lahav 1998). However, a closer look reveals that this paradox is a false one for at least two reasons. The first is that privatisation entails that private actors may increasingly define threats through the collection, analysis and boxing of information about immigration risk. The second is that the privatisation and marketisation of immigration risk results in self-perpetuating market mechanisms that increase the demand for security and which cannot be controlled by the state or any other public authority.[14]

As regards the power to set the security agenda, private actors have begun to engage themselves in the business of risk communication and categorisation. Although it is still the case that clearing houses such as the Risk Analysis Centre, the Air Borders Centre, the Land Border Centre and the Maritime Borders Centres collect and disperse most of the information on immigration risk, private actors too have started to group and collect risk information on undocumented immigration. They have started doing so not because they have been hired to provide the information on immigration risk; rather, the commodification of immigration risk

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[12] On insurance as a form of governance, see the excellent work of Ericson and his colleagues (Ericson and Doyle 2003, Ericson *et al.* 2003). See also Ewald (1993) and Baker and Simon (2002).

[13] A preview copy of 'Coping with Stowaways' was made available to me by Videotel Marine International. The tape states that P&I Club sustains annual losses of US$ 5 million, with single losses up to US$ 250,000 as a result of 'stowaways'.

[14] This section is inspired by Anna Leander's work on Private Military Companies and the market for force (see especially Leander 2005b, 2005a).

has given the carriers industry and their insurers an economic incentive to invest in the gathering and dispersion of risk information. To return to the example of RSC, this company has started to produce data on stowaways, which can be freely accessed on the internet. Striving to provide their "clients with a service that is realistic yet challenging; practical yet innovative; sensible yet creative; sympathetic yet exciting", the more specific objective of the website on stowaways is to create a "multimedia library of information that all users, claims handlers, correspondents and agents can investigate and benefit from."[15] To date, the site provides detailed information on immigration 'problem nations' and immigration 'hot spots'. The website also gives computerised access to an "extensive computerised stowaway database consisting of photographs, travel documents and fingerprints based on nine years of stowaway documentation and repatriation."[16]

Although the risk analyses undertaken by RSC and others may well contribute to the objectives of public policy-making, it does not automatically follow that this also strengthens the public sector. To the contrary, if private firms start to gather, group and disperse the information on undocumented migration flows, their analyses may increasingly come to inform public decisions on what is or is not a threat, where threats occur and where targeted interventions based on risk information should take place. As the RSC explains, the aim of accumulating accurate data is, no doubt in the hope that governments will act on this information and re-allocate their risk interventions accordingly, "to provide governments with statistics that highlight the extent of the stowaway problem."[17] In such cases, the security agenda, then, would increasingly mirror business interests and focus upon those places where companies are likely to suffer losses because of the risk of undocumented immigration.

Secondly, the authority of the public sector is undermined because of independent market dynamics, which generate a constant supply (and demand) in technologies of risk management and risk communication. Risk is not only a technique of governing dependent populations under conditions of advanced liberalism, but also a profitable industry. The control of immigration is not only a burden for the private sector but also a potentially lucrative enterprise, where money can be made in border control, detention, repatriation and the development of new security technologies, (de Stoop 1996, Verstraete 2001). Or as David Lyon eloquently puts it, "places of high risk as danger are also places of high risk as economic adventure" (Lyon 2003: 47). On the market for immigration risk, sellers of surveillance and other security technologies (biometric systems, detection devices, etc.) have to convince their potential buyers that they provide the best answer to the immigration risk. As their expertise is based on claims to technological competence and economic efficiency, they will tend to stress the technico-managerial aspect of security (Leander 2005b). For instance, the Steria Group, the company that is in charge of implementing the Eurodac system claims that "[t]he identification system is exceptionally efficient and precise, with a capacity of about 500,000 comparisons per second and a precision rate of over 99,9%" (Steria 2003b). On the basis of these technological performance rates the "European Commission was convinced that the Cogent AFIS system [Automatic Fingerprint Identification System], the proposed architecture and the hardware and the flexibility of the team was the answer to their 'pain'" (Steria 2003a).[18]

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[15] See http://www.robmarine.com/indexe.html (most recently accessed on 27 April 2005).

[16] See http://www.robmarine.com/indexe.html (most recently accessed on 27 April 2005).

[17] See http://www.robmarine.com/indexe.html

[18] Similarly, the American company DielectroKinetic Laboratories (DKL), which has developed a remote sensing device ('LifeGuard') able to detect heartbeats through various kinds of barriers has started to advertise its device (originally used for rescue missions in earthquakes, sunken ships, fires, etc.) as an effective and easy-to-manage instrument for the "detection of stowaways in trucks and other vehicles"

As such, the failure of risk management and risk technologies do not necessarily undermine the risk market; it is more likely that these failures will feed back into the technologically driven imperative to tame uncertainty and master the hazard of immigration. Because a clear picture of the threat is missing, it is difficult to determine when a threat has past and surveillance can be terminated. Threats always remain potential, which justifies constant risk awareness. Once one is locked into discussions of immigration along the technical lines of argumentation, the failure to prevent immigrants from entering EU-territory may become a driving-factor for more advanced forms of risk management in order to decrease the likelihood of such events occurring in the future. In this view, uncertainty regarding the usefulness of these technologies widens the market for immigration risk. It gives sellers the opportunity to shape their clients' understanding of the threat as well as the most adequate responses to it. For instance, the decision to use fingerprints rather than iris-scanning (even though the latter is deemed more reliable than fingerprinting) as the biometric identifier for Eurodac seems based on the belief that fingerprint technology will provide the best conditions for interoperability and innovation (European Commission 2003a).[19]

However, it is important to note that the effectiveness of these technologies to alleviate the 'pain' of undocumented immigration remains uncertain. Nobody really knows the precise extent of undocumented immigration which, by its very nature, escapes measurement and calculation. It is unknown how effective technological solutions are in managing the immigration risk, simply because it is unclear how large a percentage of the total number of undocumented immigrants they actually manage to apprehend. Moreover, border control – no matter how technologically advanced – is highly unlikely to be effective in the management of immigration, which is a complex phenomenon that defies easy technological solutions {Andreas, 2000 #272}. To discuss immigration mainly in the technico-managerial terms of the sellers of risk technologies precludes public debate on the political, economic and social context of immigration and political action. Indeed, the marketisation and commodification of immigration as a risk to be bought and sold on the market place contributes to the securitisation of immigration because it creates (and not just responds to) the demand for the services they offer (see also Leander 2005a).

VI   Conclusion: Immigration Risk and the Contradictions of Advanced Liberalism in the AFSJ

This paper has discussed the ways in which security in the EU expresses and has been transformed by the advanced liberal view of 'governing without governing society'. Rather than a sovereign politics of exception, security has taken the form of knowledge-driven risk interventions targeted at risky places (borders, third countries), risky activities (unauthorised movement) and risky categories (asylum seekers, undocumented immigrants). Whereas traditionally the space of governance has been conceived in terms of a relation between a national population and national territory defined by the geographical border, security

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(http://www.dklabs.com/products.html#lifeguard1).

[19] Obviously, other arguments are utilised as well. A decisive factor for choosing fingerprints rather than iris-scanning seems to have been that the technology for the latter is in the hands of a US-based (Iridian) rather than a European company (such as Steria). While this is hinted at by the European Commission (2003a: 5), it is more explicitly stated in the Commission's research report *Biometrics at the Frontiers: Assessing the Impact on Society*, in which the 'emergence of a vibrant European biometrics industry' is named as one of the core reasons for the introduction of biometric identification. Because such a market is unlikely to emerge by itself, governments are called upon to support the industry. Interestingly, and in line with the advanced liberal motto that public intervention should be avoided, governments are referred to not as 'regulators' but as 'launch customers' (European Commission 2005: 10-11).

governance in the EU has been first and foremost oriented towards the problem of connecting and reconstructing the EU as a zone of mobility rather than a physically demarcated territory. In this image of the AFSJ, targeted forms of risk management are about ruling the interstices, and stitching the holes and breaches in the security system. As the comprehensive plan on illegal immigration and human trafficking argues: "The common security system is only as strong as its weakest point … Illegal immigrants take advantage of gaps at border controls and other deficiencies in control measures" (EU Council 2002e).

The advanced liberal rationality of managing the abject through limited risk-based interventions, however, has given rise to two major inconsistencies within advanced liberalism. First, the targeted management of immigration has led to an insatiable demand for risk information. Risk management presupposes total information awareness at all time and all places. As the Schengen Catalogue puts it: "Reliable estimates concerning border checks and surveillance measures should be based, among other things, on *complete* knowledge of regional and local circumstances … Valid and reliable data should form part of a *permanent* evaluation which could be shared by other Schengen States" (EU Council: 16, emphasis added). The information-governance paradox is captured nicely by Heidegger:

> The work for the securing of life … must constantly secure itself anew. The guiding word for this fundamental attitude of contemporary existence speaks: Information … In the first place, information means the reporting that instructs modern men, as quickly and as comprehensively as possible, as clearly and completely as possible, about the securing of his needs, their requirement and their provision … However, while information in-forms, that is, reports, at the same time it forms, that is, it organizes and directs (cited in Ericson and Haggerty 1997: 85-86).

In the context of the EU, the quest for more accurate and more detailed information has thus led to a multiplication of controls and surveillance, to more governance rather than less. Control now already takes place before travellers arrive at the border, while the border itself is increasingly an important nodal point in transnational networks of control that are made up of public and (more loosely) private actors. Proposals to create buffer zones between inside and outside (i.e. processing centres and regional protection zones) can be seen as a further indication of the desire to acquire risk information and to categorise populations accordingly.

The second contradiction of the advanced liberal project is that governance is not just encouraged by the public search for ever-better information but also by private actors who are increasingly taken over tasks related to immigration management. As the commodification and marketisation of immigration risk has extended the regulation of immigration risk to the private sector, private actors such as insurers that provide coverage against the risk of undocumented immigration have taken over the role traditionally performed by the public sector. The fact that commercial actors have moved into the immigration risk market has thus not led to the prevalence of autonomous, self-regulating private actors. Instead of public intervention, there now are dense webs of contractual obligations that monitor hierarchical relations in the private sphere.[20] Moreover, the technico-managerial practices of risk management tend to be self-propelling as a result of independent market dynamics by means

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[20] As it concerns a relatively new trend, the consequences of private forms of rule are not completely mapped out. However, it would be interesting to know more specifically the ways in which insurance governance operates: Do insurers constitute discriminate forms of rule favouring those who contribute to the goodness of the pool (and thus the wealth of the insurance company), while deselecting those that are not able or willing to contribute to the prevention of loss? And what are the effects of the commodification of immigration risk on the treatment of stowaways who present first and foremost an economic loss or damage?

of which the supply of technical security solutions creates the demand for these solutions and, hence, more governance.

Risk management encourages a technical debate and gives the impression that complex socio-economic problems can be solved by 'easy' technological solutions. The technico-managerial framing of immigration as a risk thus risks precluding a more fundamental process of public deliberation on how to mediate the relationship between self and other. For what may seem as a managerial question of security is in the end also a political question of who is allowed access to the social fabric of society and how society should be structured (Huysmans 1998: 570). To speak of migration in terms of risk, therefore, is also to articulate a particular politics of belonging. As this paper illustrated, the distribution of trust and fear has a fundamental impact upon how freedom is distributed. The Union's emphasis on autonomy qua mobility, then, leads to a form of 'negative solidarity', which creates a community whose only commonality is that of risk. In this community, the prevention of 'bads' rather than the production of goods' is the organising principle through which the EU seeks to integrate free individuals into the AFSJ (Beck 1992). Solidarity emerges not through the collective distribution of wealth, but arises from anxiety which is becoming an increasingly powerful political force within the AFSJ.

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