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Willy Brandt Series of Working Papers  
in International Migration and Ethnic Relations  
1/12



**MALMÖ UNIVERSITY**  
MALMÖ INSTITUTE FOR STUDIES  
OF MIGRATION, DIVERSITY AND  
WELFARE (MIM)

**Willy Brandt Series of Working Papers  
in International Migration and Ethnic Relations**

**1/12**

**Published**

2012

**Editor**

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**Published by**

Malmö Institute for Studies of Migration, Diversity and Welfare (MIM)  
Malmö University  
205 06 Malmö  
Sweden

**Printed by**

Holmbergs AB, 2012

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## THE END TO IMMIGRATION BY A THOUSAND CUTS? ON EUROPE'S BUREAUCRATIC GATEKEEPERS

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**Keywords:** xenophobia, Islamophobia, immigration, bureaucracy, European Union, integration.

### **The arguments**

Immigration will not endanger European society because it is dying the death of a thousand cuts. Bureaucrats administering immigration policy in ministries across Europe, in tandem with tactical allies, are devising disingenuous ways to end large-scale in-migration. A thousand rules and regulations have been adopted to ensure that Europe will no longer represent a pull factor drawing third-country nationals. Relative European decline and systemic economic crisis will solidify the sealing of Europe's borders.

This was my contribution to the debate organised by *The Economist* in August 2011 on the motion: 'This house believes that immigration is endangering European society'. The British weekly was itself a supporter of immigration and relatively open borders, but its editors expressed surprise at the split that surfaced in public opinion. Over the last seven days of voting, the knife-edge result shifted from 51-49 percent agreeing

that immigration was a threat, to the final 51-49 percent result believing that it was not. As noteworthy as the deadlock were the arguments presented: they ‘evolved from a mostly economic exchange to an essentially moral one - about how far (including geographically) European citizens and their states have obligations to others’. In this context, ‘the issue of Europe’s colonial past and its relevance to the contemporary immigration debate’ came up repeatedly (Miller 2011).

I wish to argue that a ‘revenge of the bureaucrats’ working in government ministries across European capitals, in European Commission (EC) headquarters in Brussels, and even as simple immigration officers at airports, land and maritime borders - has emaciated longstanding liberal policy on immigration. As this paper contends, bureaucrats have their own institutional and career interests in shaping immigration policy. But they also have derived support and received political cues from a variety of sources. A pivotal one is the European political elite at both supranational and national levels. Another is public opinion which, as seen in *The Economist* poll, has been divided on immigration – more so than elites have been.

The credibility of the European Union (EU) policymaking process has been under examination for some time. The financial crisis that fully emerged in 2008 triggered unprecedented critiques of the efficacy of EU governance structures. Not only that: questions have arisen about other policy areas in which the EU, and in particular the EC, regularly issues directives, standards, regulations, and guidelines. Among the issues put into question has been immigration.

If, until recently (Trauner 2012), the EC generally followed a liberal policy approach to immigration, the European public has increasingly not. To be sure, the policy preference gap between political elites and citizens has been narrowing. National leaders such as President Nicolas Sarkozy and Chancellor Angela Merkel have expressed doubts about the record of past immigration policy and the wisdom of future intake on a similar level. In addition, attention-getting anti-immigration parties and populist movements have become more influential in many countries. In this environment, bureaucrats are taking – or are encouraged to adopt, ‘technical’ decisions in Paris, London, Copenhagen, and other European capitals whose impact is to constrict opportunities for in-migration by non-Europeans.

Moral support for an administrative crackdown on large-scale immigration also comes from ‘losers’, or self-described ‘victims’, of liberal immigration policy. Whether rank-and-file bureaucrats bandwagon with immigration-skeptic citizens is a fuzzy subject difficult to dissect. It is likely

that the nexus between bureaucrats and citizens is mediated by politicians, and 'elected officials are likely to exert substantial pressure on bureaucrats to refrain from implementation' of socially coercive, costly policy such as deportation of illegals (Ellerman 2009:17). This oversight can limit opportunities for the expression of bureaucratic populism. Or it may be the case that 'gaps in implementation will be a function of the incapacity [limited resources], rather than the unwillingness, of bureaucrats to implement policies (Ellerman 2009:44).

Nevertheless, in reflecting on the future of European immigration, it seems reasonable to avoid overestimating the significance of elite discourse on the topic and instead bring the power of the bureaucracy back into view.

This working paper is designed as a thought experiment which is nonetheless anchored in a body of theoretical literature not usually associated with immigration studies. It also includes empirical findings that appear to support the 'ending of immigration' thesis. The paper addresses five interrelated topics in this order: 1) a review of the literature on bureaucratic politics and its relevance to the study of policymaking on immigration; 2) describing the factors which may make bureaucrats feel compelled to intervene in immigration policy; 3) identifying who the winners and losers from a liberal immigration regime are, and how the concentrated gains and diffuse costs that emerge can produce a popular backlash that implicates civil servants who manage immigration; 4) documenting how, at the EU level, immigration policy has become more restrictive and national – as opposed to liberal and transnational; and 5) cataloguing recent regulatory measures restricting immigration in which the hand of the mandarins is palpable.

### **Bringing bureaucracy back in**

The study of bureaucratic politics is familiar to us from the classic work of Max Weber (1997) written a century ago. For the German sociologist, bureaucratic administration could achieve a political domination through its control of knowledge and information. It is surprising that in the voluminous literature examining immigration policy in Europe, use of the bureaucratic model of politics has been infrequent and has generated negligible research. The preference has been for political, normative, moral, emotional, cultural, identitarian, and economic perspectives on immigration.

How salient and efficacious public debate is to the fate of immigration policy is dubious - just as it was largely irrelevant to the facilitating of large-scale, chiefly unmanaged in-migration into much of Europe

in the 1970s and after. An array of disincentives has been introduced today to discourage in-migration, and most of these are the products of bureaucratic regulations. Those who decide how policy is carried out - mandarins in the ministries - are the authors of these regulations. The model of bureaucratic politics would posit that they have appropriated for themselves the task of immigration policy *formulation* by devising the methods by which policy *implementation* takes place. The public mainly remains a bystander in the process; the absence of deliberative democracy means citizens' *views* can be disregarded, if their *votes* cannot.

If we recall what bureaucratic politics involves, then the proposition that administrative cadres shape immigration policy becomes less provocative than prosaic. Thus, one seminal study concisely described how 'The model of bureaucratic politics postulates that conflicts of interest and power games between different sections, departments, and agencies within a government administration are the most powerful determinants of policy choices' (t Hart 1991:249). What is extraordinary about this assertion is not its skepticism about the centrality of democratic politics to policy formulation, but the obliviousness of many immigration researchers to this proposition.

As a caveat, I recognize that policy may be too robust a concept to use for the many decisions made at multiple levels about immigration. Directives, regulations, rules, or guidelines which establish a basic level of common standards may be preferable terms; they would terminologically be more in keeping with what we think bureaucracies do. Nevertheless in this paper I refer to these various instruments as adding up to *policy*. This follows from the choice of conducting *macro* level of analysis rather than micro.

How bureaucrats can hijack policy at the implementation stage, and sometimes earlier in the *policy drafting* process, is a complex subject. Let me refer to the observation of an immigration attorney who described to me how far reaching the consequences can be of a minor 'technical change' in immigration regulations. For example, reducing the window within which an immigrant can file for benefits, increasing the number of years for eligibility for citizenship, introducing the need for added documentation of claims, or extending the period that immigration officials have for rendering a decision on a case, can have a major impact on the status of immigrants.

Two general techniques to deflect policy that immigration officials can employ are redaction and procrastination. Preston and t Hart distinguish between 'content slippage' - modifying the substance of a policy during

the implementation process – and ‘temporal slippage’ – time delays in implementing policies and decisions, as the example above reveals (Preston and ‘t Hart 1999:55). I suggest that these two strategies approximate the distinction between bureaucrats who work - that is, actively put their stamp on content - and bureaucrats who shirk - affect policy outcomes by not pursuing goals energetically or enthusiastically.

These two organisational behaviours represent efforts to undermine the coercive cooperation which bureaucrats believe is imposed on them. This type of forced cooperation with political superiors can be interpreted as the successful attempt by an actor to persuade, manipulate, or force another actor to adopt its strategy. Svedin explains how ‘For the discontented and manipulated actor, the implementation phase gives her a chance to retaliate, either overtly or covertly, by stalling or undermining the intent of a decision or a policy direction with which she disagrees’ (Svedin 2009:39). Applying this to immigration policy, high-level administrative officials come to resent the cooperation they are coerced into with partisan, ideologically-driven politicians.

If my hypothesis is correct that, at some tipping point, top mandarins conclude that liberal immigration policy pursued by rent-seeking political entrepreneurs is misguided and even injurious to the national interest and the common good, it is logical that, at a minimum, they may engage in temporal or content slippage. More probably, they will wish to reverse such policy. They, like all actors involved in the policy process, are convinced that their actions can make a positive contribution to the public good.

Much international migration and ethnic relations (IMER) research has positively valorised the activities of pro-immigrant human rights groups which promote the common good. But administrative officials alarmed at, for example, the unemployment, delinquency, or incarceration rates among migrants may feel compelled to act in the public interest. This may be construed as a need to rescue Europe from EU standard setters or, at the national level, to save a nation or culture that is under threat. Indeed, it may be the case that, if judged by congruence with popular opinion in a country, such bureaucratic thinking is more closely allied with average citizens than that of the pro-immigration activist is. To be sure, respect for fundamental human rights is incontestably a higher good than saving an ill-defined culture. What is important for us to recognise is the common motivation – serving the public interest - that a human rights activist shares with a bureaucratic official, causing each to act in accordance with his or her own beliefs.

### **Politicians, bureaucrats, and interests**

The dichotomy between politicians and administrators has often been cast as that between the competing imperatives of democracy and efficiency. It is sometimes constructed as a mutually excluding juxtaposition. Given such conceptualisations, Steinmo cautioned that ‘one should not build a false dichotomy emphasizing *either* strong bureaucrats *or* strong politicians’ (Steinmo 2010:103). The more important characterisation to keep in mind is, then, the competitive nature of the relationship.

Bureaucrats’ principal sources of power are control over information flows and their technical expertise. They embody rational-legal authority and possess high status as impartial, technical, problem-solving specialists. They enhance their power by creating the appearance of being depoliticised, neutral, technocratic, teleological. Widespread acceptance of these claims is central to their authority. Weber’s analysis of their striving for power penetrated through this smoke and mirrors.

Elected officials, by contrast, have sweeping formal powers in a democratic system. But they are hamstrung in its exercise by lack of incentives to see beyond their short-term electoral needs. In their quest for the popular vote, they can generally avoid having to come up with grandiose and ambitious plans, such as formulating comprehensive solutions to long-term problems; this function is usually reserved for special commissions and administrative panels. Only occasionally are elected politicians subjected to pressure to adopt longer-term agendas, and then they are ideologically-shaped ones.

Adopting a principal-agent model of policy choice in which voters are the principals and policymakers – whether political leaders or high-level independent bureaucrats - the agents draws attention to the ‘career concerns’ of each group. Politicians wish to please voters so as to win elections. Top bureaucrats want to fulfill the goals of their organisation so as to appear competent in the eyes of their professional peers. For them, career advancement lies in positive evaluations of their administrative competence (Alesina and Tabellini 2008:427). Following set rules and institutional ideas seem a surer way to demonstrate competence than following the often opaque policies of politicians.

From this account the following questions related to organisational politics become particularly important: What is the optimal distribution of policy responsibilities between politicians and independent bureaucrats? To ensure the quality of democracy, how does this optimal task allocation differ from one that elected representatives would choose? According to Alesina and Tabellini, ‘Advanced democracies delegate some key policy areas, such as monetary policy and regulation, to independent bureaucrats



who make policy decisions with little political interference' (Alesina and Tabellini 2008:426). In the formulation of immigration policy, it is politically unviable for bureaucrats to become such autonomous actors. But it is likely their influence increases 'downstream', when broad policy guidelines need to be interpreted.

Delegation to bureaucratic officials seems safe and uncontentious when society's preferences are known and they remain constant. Thus monetary policy can safely be delegated to an independent central bank. Foreign policy, on the other hand, involves high politics and shifting orientations, and politicians are convinced it is they who should formulate it (Alesina and Tabellini, 2008:434).

Immigration policy lies somewhere in between: it can be a highly politicised issue demanding leadership direction from politicians. But it has a technical side (determining eligibility for benefits, means testing, and so on) that bureaucrats are better equipped to manage. Immigration is a policy field that is susceptible to being controlled by government and administration. But the populist outcry about rising immigrant numbers has meant that public debate overshadows the tedious policymaking grind in which nongovernmental organisations, interest groups, diaspora communities, and religious associations are involved. Alongside administrative officials, these groups help prepare and comment on policy even as political rhetoric peaks (Spång 2008:172).

Immigration divides public opinion, as we have noted, and it also periodically evokes electoral surges for populist right-wing parties. As citizens discover the costs and benefits of increasing or restricting the influx of immigrants, their preferences change. At the same time, bureaucrats understand immigration policy as entailing safe delegation to them, and to their discretion: regulating the flow of immigrants or managing their social integration are self-evident goals, they believe, which promote the public good as surely as controlling inflation is.

If high-level bureaucrats possess considerable autonomy and authority, what do they do with it? Like the military in history, are they not occasionally tempted to step in to save the nation when a calamity seems imminent? Despite their bureaucratic character, can administrative elites sometimes not exhibit messianic passion?

In their analysis of the structure of international organisations, Barnett and Finnemore (1999) found that they, like all bureaucracies, play roles, develop social knowledge, define common tasks, construct new categories of actors, and create new interests for them. The same impersonal roles that bureaucrats play which make them valuable, and consequently powerful, can also make them unresponsive to their environments. For

these authors, they may become obsessed with their own *roles* – for instance, as a repository and protector of a nation’s values - at the expense of their primary tasks. Ultimately this may produce counterproductive and dysfunctional organisational behaviour.

The culture and material *interests* of an organisation can also lead to inefficiency and goal displacement. The rules, rituals, routines, and values embedded in a bureaucracy can add up to an internal culture at odds with effective goal-seeking behaviour. The extent to which a commitment to means rather than ends dominates also has a bearing on policy implementation: prioritising established procedures is generally likely to distort policy set by politicians. The internal organisation of different policymaking institutions clearly matters, therefore, as do informal aspects of autonomy (see Hall, Nilsson, and Löfgren 2011). This important issue has to be set aside given the main objective of this working paper is to describe how bureaucratic politics shape and are reflected in immigration policy outcomes.

A pathology of many organisations is that they may not end up serving the interests that they were created to serve. Bureaucrats take liberties with interpreting the will of politicians, as discussed already. In the case of implementing politicians’ immigration policy, high-level officials in national ministries may use their autonomy and authority to implement decisions in a way running counter to the interests of elected leaders. The reason for acting as a rogue bureaucrat may owe much to organisational behaviour, then. It can stem from an interest-based analysis of immigration policy in which top officials, privy to detailed data and having the analytic skills to parse them, conclude that large-scale immigration produces inefficiency, waste, and fraud.

Jettisoning inefficient policies on immigration may be in the ministry bureaucrats’ interests. In the case of liberal immigration policy which has become unpopular with citizens, we cannot exclude that a salvation impulse may be present, too. March and Olsen have highlighted the centrality for administrative officials of the goal-oriented logic of consequences as well as the rule-sensitive logic of appropriateness. I wish to underscore a third significant dimension - the normative one – in officials’ behaviour. It is likely to play an enhanced role in an emotive matter like national identity and, connected to it, the impact of large-scale immigration and patterns of social integration.

Top civil servants, often graduates of elite universities and coming from prestigious backgrounds (France furnishes the most notable example) are familiar with national narratives setting out the role and function of the state. These narratives are often converted into a set of institutionalised

ideas. Möller and Bjereld described how ‘An institutionalized idea is embedded in an institution or organisation and changes the motivation and perception of political actors over the long term. This kind of impact on policy can be described as path dependent’ (Möller and Bjereld 2010:368).

The belief in the existence of an identifiable national identity represents such an institutional idea. This identity is thought to be verifiable by empirically examining the measure in which policy reflects it. If identity is seen as at risk, not solely by right-wing populist politicians but by bureaucrats with *idées fixes*, a formative moment arrives when path dependency is breached. This creates an incentive for them to reformulate rules and conditions.

Administrative officials take advantage of other resources and opportunities they are given. They take cues from politicians but, in turn, they can give cues to others. They may target academics and scientists, for example, indicating what research *projects* - even research *findings*, are desirable. As an illustration at the EU level, Eurobarometer survey research has sometimes been viewed as suspect because both the survey instrument (the questions included in it) and the actual results appear designed to reinforce EU policy preferences, not to open them up to debate. In short, officials can ally with and utilise an epistemic community to further their own goals and interests.

### **Identifying winners and losers**

Bureaucrats do not operate in a vacuum. Like politicians, they are aware of the public mood. Indeed, insofar as their work is to promote the public good, this awareness is crucial to performing their jobs well.

Immigration has always been a mixed bag for a country. It produces economic gains as well as losses, and it boosts the position of those employed in certain occupations while undercutting those in others. Neither the nationalist protectionist dogma that understands immigration as a zero-sum game (in which immigrant gains must be natives’ losses), nor the liberal internationalist mantra that claims it is a positive-sum game (‘a rising tide lifts all boats’) can be accepted uncritically. Whether a cost-benefits analysis of immigration yields a positive or negative balance is something that has divided economists into two relatively equal groups.

Culturally, migrants enrich and diversify a society. In the process, they also raise existential questions about the host nation’s identity and its social cohesion. Politically, immigration benefits parties and politicians appealing to the ‘ethnic vote’. But its *scale* is exploited by right-wing anti-

immigrant movements and their leaders to boost their popularity and influence. The humanitarian consideration that open borders provide refuge, subsistence and dignity to the ‘wretched of the earth’ is at times contradicted by the fact of the inhuman conditions – in housing, type of job (when there is one), schooling, interpersonal relations, and social status – that many migrants are forced to suffer in receiving societies. Whether the decision to migrate was a wise one remains, for many migrants, an open question long after they have settled in an economically-stronger society than their country of origin.

Receiving societies also have winners and losers. A consensus among economists exists that winners are typically employers who hire immigrant labour. The primary beneficiaries of illegal (or irregular) immigration in particular are large-scale agricultural producers, food packers, factory owners, and the construction industry, all of which hire low-wage immigrant labour. Consumers who buy lower-priced goods and services produced by immigrants are also net gainers. Everything from agricultural products to new homes, and from restaurant meals to child care and house cleaning, become more affordable.

At a more ‘metaphysical’ level, winners may also include ‘emotional stakeholders’ – those who passionately believe that if a country ‘hadn’t admitted our ancestors as immigrants, we ourselves wouldn’t be here’ (Stoffman 2002: 27); it follows, therefore, that extending the privilege to others is the right thing to do. Emotional stakeholders repudiate a crude, calculating cost-benefits analysis of immigration and opt instead for a personal, concerned, compassionate response to immigration.

Certain occupations become more remunerative with the presence of a migrant labour pool: shop-floor managers and supervisors, immigration lawyers and social service workers, public school teachers and police officers, the judiciary and the incarceration industry - all experience greater recognition of the value of their work. In sum, an enlarged labour pool can translate into an increase in the overall size of the economic pie.

The major losers of large-scale low-skilled immigration are the more poorly trained workers who compete with immigrant labour for jobs. For example, in the US in 2010, when the official end to the 2008 recession was announced, native-born workers lost 1.2 million jobs while foreign-born workers gained 656,000 jobs (Rampell 2010). Even worse for native workers, according to Borjas, was the negative wage impact of immigration: it accounted for as much as a ten percent decline in salaries (Borjas 2001; see also his blog). This represents the underlying reason why prices for goods and services decline: a posited law of the economics of migration is that if immigration does not lower wages, it will not generate

any gains at all (Hanson 2011). One additional externality in admitting a large number of low-skilled immigrants may be that it exacerbates inefficiencies in the administration of the country's public finances which target needy residents and their families.

Taxpayers who fund social services, schools and entitlement programs for immigrants and their children also are usually net losers. If the costs are very high, increased expenditures on public services such as health care, education and social assistance can strengthen the economic case for cracking down on illegal immigration in particular. As Hanson observes, the question for policymakers then becomes whether the costs of regulating immigration outweigh the benefits produced by in-migration. A significant consideration today is that the enforcement costs of reducing the flow of illegal migrants have become significant and, if anything, are growing (Hanson 2007).

Most scholars agree that member states of the EU have, since at least the turn of the new century, made it more difficult for prospective migrants, asylum seekers, irregular residents and *sans papiers* – all of whom comprise immigrants *sensu largo* - to be legally admitted or have their residency status regularised. Stronger enforcement measures at borders and within states have also staunched the flow of irregular immigrants. Can it be that the permanent losers of liberal immigration policy in receiving societies – ‘immigration victims’ is what right-wing anti-immigrant parties sometimes call them - have registered successes in leveling the playing field? How has this come about?

It may provide added explanatory value to apply Olson's idea of diffuse costs, concentrated benefits, to interpret the awakening of social consciousness about the disadvantages of large-scale immigration. Neoliberal policy, especially connected to taxation and public expenditures, has provided benefits to a small, highly-concentrated group of people. Expanding the labour pool and driving down labour costs by permitting sizeable immigration is regarded, especially by the left, as a case of government policy maximising profits for a concentrated entrepreneurial class. Conversely, the costs of such policy to the general tax-paying population are widely distributed - the decrease in consumer prices notwithstanding. Individual taxpayers bearing the costs – reduced wages, fewer public expenditures that they benefit from – may fail to notice the increased burden-sharing they are allotted. More likely, they find it too costly in terms of personal time and resources to oppose this policy.

As Olson (1965) outlined, large groups face relatively high costs in organising for collective action; compact groups face comparatively low costs. The logic of collective action means that the incentive for group

action diminishes as group size increases. The result is that, independent of the existence of true or false consciousness, large groups are less able to act in their common interest than small ones. Collective action by broad groups bound by common interests becomes difficult to achieve. Conversely, a small minority held together by concentrated selective incentives can push through its policy priorities. This is the logic that sets the 99 percent of citizens at odds with the one percent even if, in real terms, the proportions may be not as stark.

How is the theory of collective action linked to bureaucratic politics? The part of the civil service administering immigration policy constitutes a compact group that incurs few costs in pushing its views on immigration. It is ideally positioned to shape policy in its own image – when it wishes to. The role it can play needs, therefore, to be considered when attempting to unravel the enigma of why immigration policy has changed from liberal towards restrictive in the past decade – as I document in the next section.

The change cannot be attributed to collective action on the part of average citizens. If there has been increased voting for anti-immigration parties and more negative views of ‘foreigners’ (Taras 2012), they are examples of electoral behaviour and attitudinal shifts, not popular mobilisation. Acknowledging that a disjunction has existed between citizen and elite attitudes towards immigrants is an explanatory starting point: as Freeman highlighted, ‘The central puzzle of the politics of immigration in liberal democracies is the large and systematic gap between public opinion and public policy’ (Freeman 2002:77-78). In the absence of mobilisation, the missing piece in the puzzle is which political actor has exploited the democratic deficit – the gap between what the public wishes and the elite delivers - to whittle down the power of policymakers.

It is relatively easy to explain why political elites at EU and national levels of governance adopted pro-immigration policies. European guilt about colonialism, racism, and nationalistic wars is central to explaining why amends, restitution, and redemption - in the form of liberal immigration policy, family reunification, accommodation of refugees, and often generous social assistance programmes – were undertaken.

A factor that should also be included in this explanation is the weight of better educated sections of society which generally have supported a liberal immigration regime. The effect of higher educational levels is one of the main reasons why immigration policy tends to be more permissive than the general public’s views on them are.

If educated people are simultaneously more supportive of immigration and more likely to participate in politics, then the *signal* being received by policymakers is weighted towards an immigration policy that opens the

'golden door' (Sides and Citrin 2007: 46). The capitalist conspiracy theory claiming that economic and political establishments enjoy concentrated benefits from large-scale immigration (summarised above) furnishes an ancillary explanation. Joppke's landmark study contending that liberal norms can entrap a state in, at some point, dysfunctional liberal immigration policy - as he believed had happened in Germany - also offers a persuasive interpretation (Joppke 1999).

If we know much about the process leading to pro-immigration norms, what of the dynamics underlying the retreat from them in recent years? It is as if a different decisionmaking actor – a *deus ex machina* - has taken charge of immigration policy. This actor seems to have been able to assume the role of principal agent on behalf of immigration skeptics. Can this principal be the administrative elite, then, as I have conjectured? Even if its own interests are neither threatened nor enhanced by a large influx of foreigners, can there be a grander 'national' vision dear to top-level civil servants accounting for their intervention in immigration matters?

Is it also plausible that, like the actions of military establishments in many parts of the world when they perceive that the policies of politicians are endangering their countries, bureaucratic establishments in Europe have stepped in, with little fanfare, to safeguard their societies in the face of perceptions that national governments are 'losing control' over borders? The securitisation of immigration, especially since 2001 (Alexseev 2006), provides an added, compelling rationale and legitimacy for the perceived need for urgent bureaucratic action.

### **Abandoning harmonised liberal immigration policy at the EU level**

I have been working under the assumption that immigration policy has been inexorably made less liberal over the past decade. Traummer (2012) claims that at the EU governance level, the turn to a restrictive policy was accelerated by communitarisation brought about by the 2008 Lisbon Treaty's co-decision procedure: the European Council, Commission, and Parliament now all accepted the need for a tougher immigration regime. I can identify no specific branching point at which liberal immigration policy was reversed, but it certainly took place prior to the 2008 financial crisis. To whom the hidden hand of policy change belongs is empirically hard to establish. But we can narrow down the possibilities. Because of their position in an epistemic hierarchy, ethos of rationality, institutional interests, cues they receive from politicians, divided state of public opinion, and overarching goal to serve the public good, bureaucrats who regulate immigration matters are a plausible candidate for effecting such a policy shift.

It is time to turn to the empirical evidence showing that immigration policy has indeed changed. Later in this paper I identify an array of measures undercutting immigration in recent years that has been taken and for which bureaucrats may be responsible. First, let me review the evolution of macro EU programmes related to immigration.

EU level approaches to immigration, I suggest, can be projected onto two general continuum. One is the extent to which immigration policy should be *harmonised* – that is, made transnational - across all member states. The second is the desirability of *liberalising* it so as to enable more immigrants to come to Europe; the other pole of this continuum entails instituting greater controls so as to restrict it.

#### *Harmonising EU immigration policy*

To illustrate the zigzags that have taken place along the harmonisation-of-immigration continuum, let us consider the following. In the 1970s, many new programmes (most importantly, affecting family reunification) were introduced so as to accommodate a rapidly growing immigrant population, especially in the more advanced economies of Western Europe. No new comprehensive programmes were launched after 1977. Existing ones were subject to regular review for programme efficiency through government audits and evaluations. Since they were entrusted precisely to the authorities responsible for implementing immigration policy, they resulted in a self-perpetuating cycle (Givens and Luedtke 2004).

As more non-Europeans settled in the EU, enticed by admittance policies, high standards of living, generous state social assistance programmes, and nongovernmental organisations campaigning for immigrant rights, the need for long-term blueprints on immigration policy became pressing. Since 1999 a series of five-year programmes have been drafted setting out the EU agenda for migration and asylum policies.

The significance of these programmes is underscored in a number of ways. For one, they have been placed under the EU pillar of justice, liberty, and security - usually termed justice and home affairs policy - which encompasses ‘a broad grouping of policies including fundamental rights, citizenship, security and counterterrorism policies, criminal and civil law and police cooperation, as well as immigration, asylum, border management, and visa policy’. These programmes’ importance is also underscored by the extent of legislative activity originating in the justice and home affairs pillar: ‘In recent years, it has become one of the most prolific policy areas in terms of both cooperation and legislative output’ (Collett 2010).



It is the shifting agendas and goals detectable in these programmes that, I contend, point to a slide towards increasingly gridlocked, less ambitious immigration policy. The first of these, the Tampere programme extending from 1999 to 2004, laid the groundwork for common (harmonised) immigration and asylum policies. One example was the adoption of common rules for family reunification, confirming at the European level an adherence to the fundamental United Nations principle of protection of family unity. But in preparing the programme, the EC had to compromise in order to get the common rules accepted by member states. One of these compromises comprised the 2003 Council directive limiting reunification to spouses and minor children (Bertozzi 2007:61). Another was the decision to give equitable treatment to non-EU nationals legally resident in the EU: the Long Term Residents Directive, issued by the EC and taking effect in 2004, granted resident status to non-EU nationals who had legally and continuously lived on the territory of an EU country for five years. But the grudging implementation of this directive by EU states whittled down the EC's inclusionary intent (Dahlström 2004: chapter 5; 2007).

The Hague programme which ran from 2004 to 2009 reiterated the need for greater coordination of EU initiatives on integration with member states' policies. Its most notable legacy was the ambitiously-titled 'A Global Approach to Migration' adopted by the European Council in 2005. The declaration highlighted the external dimension of the EU's migration and asylum policy. Partnership with countries and regions of origin and transit – many of those across the Mediterranean in North Africa - was regarded as critical to regulating migration flows. The Hague programme also proposed the idea of circular migration which would allow temporary legal residency in the EU for highly-skilled and seasonal workers.

The Stockholm programme introduced in 2009 and extending until 2014 has been negotiated under conditions of financial duress. Its longer-term perspective on migration is given passing recognition in the declaration 'Access to Europe in a Globalised World'. But a new pragmatic approach departing from earlier normative, humanitarian-oriented policy declarations is clear. To start with, the Stockholm programme states that legal migration can be a source of economic growth – an example of utilitarian discourse infrequently found in preceding policy documents. Furthermore, the individual member state is accepted as the basic level of competency on immigration issues – a reluctant acceptance that the ambitious goal of EU policy harmonisation needs to be scaled back.

The document is replete with textual references to control measures. Border control and surveillance is part and parcel of 'access to Europe in a globalized world'. Frontex – the de facto EU border agency - needs to be reinforced. Account must be taken of the long-term impact of immigration on the European labour market. The social integration of migrants is identified as of increasing concern. The need to find practical solutions at the European level to greater cohesion between, on the one hand, migration policies and, on the other, areas such as trade, employment, health and education, is set as an important objective. Explicit reference is made to combatting migration abuses such as trafficking in human beings and smuggling of persons. The development and implementation of a Common European Asylum System (CEAS), essentially a control measure, across member states by 2012 is identified as a priority. The securitization dimension is discernible in many of these measures.

In summary, if there is a trend line across these three programmes, it is increasingly to regulate all forms of immigration. If there is a lesson to be drawn about policymaking and implementation at the European level, it is that the EC has acquiesced to a chipping away at the expansive body of immigration rights and freedoms that had accumulated in earlier decades. The effort to set a common liberal standard for in-migration across the EU has been dropped.

#### *A liberal or restrictive EU immigration regime*

The second continuum for charting EU immigration policy that I have identified concerns whether it is liberal or restrictive in the admittance of immigrants. As with harmonisation, EU equivocation on this choice appears to have increased over the past decade.

Each of the EU's two leading institutions has appeared to appropriate one of the approaches as 'its own'. The EC is an appointed body specifically designed as a supranational, visionary agency. Commissioners from individual countries are required to place EU interests above national ones in policy making. EC headquarters in Brussels also testify to its administrative expansiveness. The EC's record was, as noted earlier, generally supportive of liberal immigration policy, but it has backtracked in recent years. The European Court of Justice (ECJ) has also usually prodded member states to adopt more liberal, 'postnational' norms on admission. This is reflected in much of its case law.

By contrast, the steadily more influential European Parliament, an elected and representative institution, is by its very nature susceptible to populist and nationalist pressures. An expanding block of MEPs, many from eastern European member states but also encompassing Nick Griffin,

leader of the British National Party, and Jean-Marie Le Pen, founder of France's Front National, come from explicitly anti-immigrant political movements. While the European Parliament still is controlled by moderate representatives from liberal, social democratic, and conservative parties, it has become a legislative body within which immigration skepticism has been articulated more frequently. Its approach to the subject was, until the adoption of the co-decision procedure in 2008, sufficiently distinguishable from the EC that it was possible even to speak of institutionalised differences (Stetter 2007).

The EU has become increasingly mindful of the security dimension of immigration (Feldman 2012). While far removed from the controversial policy statements of anti-immigrant politicians in the European Parliament, the EC has steadily given member states – above all those sharing borders with non-EU countries - substantial financial and regulatory powers to enforce tighter controls and implement more rigorous checks on cross-border transit.

These control measures both reflect and reinforce member states' general dislike of standardised liberal immigration policies. It is significant that where progress on standardisation has been recorded, it is on the technical issue of tightening border controls. Securitisation of immigration has, therefore, signified greater uniformity in the methods employed by member states, which in turn has led to more restrictive border controls.

Beginning with its formation in 1985, enforcement of frontier controls has incrementally passed to the Schengen system - the passport-free travel zone that has subsumed more and more European states, including non-EU members. Acclaimed for facilitating passport-free travel for citizens of most European countries, it has simultaneously evolved into a border control regime to regulate and even keep out non-EU nationals.

EU leaders have expressed little fear of a loss of control over Schengen borders. Furthermore, EU integration is promoted by the existence of secure community frontiers. Simultaneously, most members have insisted on exercising their sovereign right to control their own borders and immigration policies (Givens and Luedtke 2004). This is generally done in a restrictive way; an illustration is the 2011 case of France denying entry to many North Africans, an approach at odds with the Schengen regime (Denmark re-established border controls at around the same time, ostensibly to prevent smuggling). The compromise between liberal EU immigration policy and national sovereign restrictive policy is represented by the 2008 European Pact on Immigration and Asylum (Europa), whose architect was French President Sarkozy.

A key agency that is part of the Schengen system is Frontex, with headquarters in Warsaw. Set up in 2004 at the time of the EU's eastern enlargement, it functions as the EU's external border control force. Specifically, 'Frontex complements and provides particular added value to the national border management systems of the member states' (Frontex). Its chief operational objective is to ensure that all EU states having borders with non-EU ones exercise equally rigorous standards of control and scrutiny. As in the case of bureaucracies generally, however, how this operational objective is interpreted can lead to divergent perspectives.

As an example, one official involved in Schengen policy who I questioned in Warsaw identified as a major operational problem the pull factor caused by Sweden's exceptionally liberal immigration policy. It tempted unqualified migrants to enter the Schengen zone, often in illegal ways. By contrast, this official cited the exemplary border management cooperation displayed by Belarus with Schengen authorities. Policymakers in Brussels, Stockholm, and perhaps even Minsk would be surprised by this 'technical' evaluation of the best- and worst-performing countries in regulating trans-border mobility.

The view of Sweden as a magnet for prospective immigrants highlights how policy standardisation on control issues, such as the intake and movement of non-EU citizens across EU borders, has been minor. It can be argued that in legal terms the EU operates on two tracks when granting freedom of movement, residence, and employment: Europeans are able to exercise these freedoms with few restrictions; non-Europeans, including third-country nationals and illegal migrants, have their mobility closely controlled, restricted, and under certain circumstances even criminalised. At the EU governance level, the institutional capacity to protect non-European migrants' rights has waned.

In practice, of course, EU management of mobility reflects more than just these two distinctive tracks for Europeans and non-Europeans respectively. As the example of Sweden suggests, diverging national laws, different interpretations of European regulations, and varying applications of rules have spotlighted the limits of harmonisation. The European bodies championing standardisation - the EC, ECJ, and several liberal political blocs in the European Parliament - have suffered setbacks.

### **The turn against immigration by member states**

The Lisbon (Reform) Treaty that came into force in December 2009 overhauled many EU structures and processes. Some of the institutional procedures for the adoption of immigration policy were revised. However most of the fundamental features of EU immigration policy, encapsulated in tabu-

lar form by Adam Luedtke *et al* (Luedtke 2010:9-13), were left unchanged. Thus legislative competence in immigration and asylum law was not widened or modified: Article 79 obliges the Union to develop a common immigration policy ‘aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat illegal immigration and trafficking in human beings’ (Hailbronner 2010).

The most important technical change introduced by the Treaty was that the European Council now decides by ordinary legislative procedure on measures affecting the admission, residence, and rights of legal migrants. That is, a qualified majority vote is sufficient to adopt measures; unanimity is no longer required. As an acknowledgment that officials working for the Council had greater opportunities to steer policy their way where plurality rather than unanimity now obtained, the Treaty gave the European Parliament veto power over decisions reached by a qualified majority. The intent was to enable representative, democratic actors to shape legal migration policy.

The limits to uniform immigration policy in the EU were recognised in the Treaty. Article 79 did not impinge on member states’ ability to determine ‘volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed’ (Hailbronner 2010). Abandoning the effort to establish EU jurisdiction over immigrant admission means that the more restrictive regimes favoured by many states prevail. Not to lose face, the Treaty offered incentives to member states to comply with standardised EU norms on the social *integration* of third-country nationals.

This preference for the standardisation of integration policy of immigrants into receiving societies, rather than for control over the scale of immigration, reflected the political realism needed for the Treaty to be accepted by 27 member states. It offered the strongest evidence yet that EU policymakers were giving up the fight for liberal and harmonised immigration policy. The impact of Lisbon Treaty changes directly on migration policy has been, therefore, calibrated and selective.

Even with the spread of supranational and intergovernmental rules, procedures, and mechanisms of migration monitoring, it is at the national level that controlling migration remains rigidly enforced. Thus, the influxes of ‘traditional, poor, “ethnic”, extra-European immigrants from Africa and Asia... continue to be framed as the legitimate concern of national societies, not the EU’ (Favell 2009:171-172). So let us return to the central question which *domestic* actors exert the pressure to control migration. This takes us back to an interests-based analysis.

In every country, certain institutions have vested interests in maximising national sovereignty over immigration. These typically are the home ministries (also called ministries of the interior) as well as government departments and agencies responsible for national security and justice. Such financially well-endowed, leviathan, and esteemed state institutions shape immigration policy outcomes more profoundly than, say, pro-immigrant rights' groups, diaspora lobbies, and sympathetic lower courts (these frequently rule in favour of migrants' individual rights because of greater familiarity with their plight).

So far I have kept the role played by political parties – especially right-wing ones - out of my analysis. The reality is that if national governments have traditionally been more responsive to populist calls for restrictive immigration policy made by nationalist groups at home than they have been to exhortations by the EC in Brussels to adopt liberal policy, which political *party* is in power in the country has decisive importance. In addition, which other parties in the legislature that this main party depends on for support can also be pivotal in determining the direction of immigration policy.

Conservative governments, we know, generally favour stricter immigration controls more than social democratic ones. The policy differences between the two are starkest, however, on the issue of the social *integration* of immigrants. Governments composed of social democratic parties have traditionally espoused proactive forms of integration which entail increased social spending on immigrants: it is important to emphasise that even if it has been pared down, the welfare state remains a core institutional piece in left-of-centre parties' programmes. One of the modern welfare state's chief tasks is to assist immigrants in achieving socio-occupational mobility. By contrast, for right-of-centre parties - disregarding radical right-wing ones - the general approach can be summarised as *laissez-faire*, benign neglect of migrants, leaving them to fend for themselves.

As with policy on immigration intake, so too that on social integration reflects an interests-based cleavage between institutional actors. Generally, ministries of employment, education, and social services (and, self-evidently, those on immigration and integration) support robust social integration measures. The organisational logic is that the turf under these ministries' jurisdiction, as well as its budgetary magnitude, increases whenever proactive measures are taken to integrate migrants. Normative considerations are usually absent in such institutional calculations - their most prominent place is in discursive justifications advanced by politicians. Ironically, opposition to funding social integration programmes for

immigrants often comes from the same actors which oppose immigration in the first place.

To summarise, despite some progress EU policies governing third country nationals, asylum petitioners, and citizenship applicants have not become uniform and remain inconsistently applied across states. Giving up on harmonising immigration policy across the EU has created an opportunity structure for nationalist groups and institutions to slam the door on immigration and cut back on social spending for those already settled in a country. This may represent a failure of EU resolve or, alternatively, an achievement of member states jealously guarding their sovereignty. Either way, bureaucratic attrition – washing away at policy seemingly etched in stone - has been crucial to this result.

### **The counteroffensive**

In many European states, marriages of nationals to foreign citizens require ever more paperwork before the non-European spouse can move to Europe. In the Netherlands, a 2006 law requiring prospective immigrants to take integration exams based on Dutch language and culture in their home countries produced a steep dropoff in immigration numbers. The law also raised the bar on the age and the salary level of the Dutch citizen wishing to marry an immigrant, causing a significant drop in this type of immigration. In 2005, an estimated 2,500 immigrants came each month to marry a Dutch person; after passage of the law, over a six-month period only about 1,400 people supposedly immigrated to Holland in order to get married - a decrease of 90 percent.

In Denmark, immigration for reasons of marriage has also dropped. Data provided by the integration ministry revealed that the number of marriages in Denmark between foreigners and immigrants or their descendants fell from 63 percent in 2001 to 38 percent in 2005. A law requiring Danes and their immigrant partners to be at least 24 years old to marry (the Danish Peoples' Party has proposed raising the age to 28) and to legally reside in Denmark has throttled the rate of exogenous marriages. In addition to the age requirement, foreign spouses are now required to prove they possess ample financial resources to support themselves. Not only that, the married couple must demonstrate that their connection to Denmark is greater than it is to the foreign spouse's homeland. The bureaucratic calculation involves comparing total years and/or total family members in Denmark to the foreigner's country of origin. This is an assignment only a bureaucrat might become enthusiastic about.

The marriage law was designed to curb forced and arranged marriages between Danish children of immigrant parents and foreigners, but other

considerations were involved. Previously, concluding such a mixed marriage would give legal residence rights to the foreign spouse along with his or (usually) her family members. The Danish minister of integration expressed satisfaction with the effect of the new regulations: 'The immigration policy works exactly as it is intended. We've gotten a handle on immigration and broken the pattern where generations of young people primarily found their spouses abroad' (Denmark 2006).

Providing educational opportunities to nationals of other countries is not an international norm or right that a state must abide by; rather, it has been a value that a society holds dear as a way of providing a measure of equity for disadvantaged but earnest people from around the world. In recent years foreign students coming to Europe face soaring tuition fees; only Finland and Norway continue to offer tuition-free graduate programmes to non-EU citizens. Moreover, shady colleges promising foreigners admission to scam courses in return for facilitating student visas are being closed down. Dependents of foreign students can no longer count on accompanying them to Europe.

In 2010 the British home secretary reported that 30 percent of all migrants to the UK were on student visas; some 250,000 such visas had been issued in 2008-09. Many of the visa holders were adults registered in short courses, not degree programmes. How many overstayed their visas was unknown, the home secretary admitted. But the adoption of stricter rules on issuing student visas suggested that significant abuse had taken place. New rules introduced English-language competency at an intermediate rather than beginner level (as had been the case). Those registering for courses lasting less than six months could no longer bring dependants into the country. Dependants of students in non-degree courses would not be allowed to work. These new regulations complemented a crackdown on bogus colleges in the Britain, about 200 of which had been closed down in the preceding years (BBC 2010).

Hardening policies and rules affecting would-be migrants have been reflected in harsh, sometimes disingenuous measures. In some countries, foreign workers may soon be required to pay for their health insurance for the first three years of residency before they will be covered by the welfare state. Where has such a health coverage reform proposal been made? It is under discussion in Denmark, a Scandinavian state known for its robust welfare system but also infamous for anti-immigrant policies.

Asylum petitioners cannot count on health care while waiting for resolution of their cases; that approach taken with regard to Iraqi war refugees has earned Sweden international criticism. Those who gain asylum in that country will now be directed to employment boards rather



than social service offices, where they will not automatically be offered the same range of benefits as before.

These regulatory changes governing asylum tighten the screws that were initially put into place by the Dublin Regulation signed in 2003. It sought to prevent asylum claimants from submitting applications to multiple member states. It was intended to reduce the number of ‘orbiting’ asylum seekers who transferred from one EU country to another. An example of the Regulation’s impact is found in Iceland (not part of the EU but a signatory of the Dublin Convention): it has virtually no asylum claimants any more because logistically all asylum seekers have had to stop in an EU state – where they are required on arrival to file for asylum – before they get to Iceland.

Eligibility for full benefits in Sweden now requires proof that immigrants have registered in language courses; the elderly are not exempt. In France an anti-fraud measure that took effect at the beginning of 2012 authorised bureaucratic vetting of files listing legal foreign residents of France against files on social security claimants. The goal was to exercise ‘more effective means’ to combat benefits fraud (Guéant 2011). One of these is foreign residents claiming child benefits for their kids who live abroad; French law stipulates that family allowances can only be given to those residing in France.

Rules about who qualifies for family reunification have also been tightened. Referencing Canadian policy, Stoffman ironized that “‘family reunification’ has come to mean reuniting not immediate families that have been separated involuntarily but extended families that have separated voluntarily’ (Stoffman 2002:27). Again citing abuse, the French interior minister announced in 2011 that migrating family members would not have the same level of benefits as existing residents do: ‘the same rules do not apply, the resources and housing are not the same’ (Guéant 2011).

The thesis of the death of immigration by a thousand regulatory cuts is supported in many other areas of immigration. Amnesties for illegal residents are not as frequent or certain as in the past; Spain was heavily criticised for a cycle of amnesty programmes which it extended to irregular migrants. It is more frequently and explicitly stated today that the receiving society’s labour needs will determine who will be granted work and residency permits. *Immigration choisie* is, therefore, the choice of immigration policy for most EU states today. The judicial system, pro-immigrant groups, and third-country nationals are left few ways to contest it.

Even the highly-legalised process of awarding citizenship to foreign residents has occasionally been torpedoed. Birthright citizenship (based

on the *jus soli* principle) has been removed from many EU country's citizenship laws. Seen as immigrants choosing a nationality of convenience, Ireland for a time became a centre for what was pejoratively called citizenship or maternity tourism. In a referendum in 2004, Irish citizens were described as having voted away anchor babies as the basis for citizenship. Subsequently many countries adopted similar policy without as much drama.

A different if also highly-publicised controversy over citizenship involved the denial of Danish citizenship in 2011 to 36 Palestinians who had met all the requirements set by a UN convention: stateless people born and raised in a country have the right to obtain citizenship in it before they turn 21 as long as they are not convicted of any serious crimes. The controversy cost the integration minister her post, but it seemed likely that decisions taken in these 36 cases were made by immigration officials. More and more, ministries across Europe are devising ways to make citizenship more meaningful; obvious ways to achieve this are to make naturalization more difficult, and to force applicants to choose only one citizenship, not dual.

### **Lessons learned**

As more and more obstacles to legal immigration have been constructed, entry into Europe has begun to resemble a cat-and-mouse game, played out between the bureaucrat and the migrant. Politicians are bystanders to this and few of them voice objections to letting immigration officials deal with the matter.

The end to large-scale in-migration to Europe will likely be the result of Europe's general decline but, as I have contended, it will also be the product of the vengeful, self-interested, opportunistic ministry mandarin. Politicians and bureaucrats alike have a soft target: imposing costs on a non-enfranchised group like immigrants is easy. But immigrants are especially vulnerable to 'technical' decisions by administrative officials that affect them adversely. We might expect that the bureaucratic politics and public policy perspectives would require applying the same rational standards, measured through some variant of a cost-benefits analysis, to be applied to the non-enfranchised as well. But prospective immigrants do not appear to be included in these perspectives.

I have not been able to demonstrate incontrovertibly that Europe's mandarins have sabotaged the immigration policy preferred for many years - though now under attack - by elected legislators. Nor have I implied that, had they done so, they should be regarded as villains - or just the reverse, as heroes. Establishing the truth, or at least approaching it, is

difficult when it involves assaying bureaucracies. There are no bureaucratic discursive practices that we can observe for telltale signs indicating their preferences. There is no public record for the bureaucracy that is the equivalent of legislative debates or voting rolls. Amid this inscrutability, we can only surmise that bureaucrats act rationally, objectively, and for the public good. These may be the startling reasons why they have gone on the offensive against immigration policy as we have known it.

In applying a Weberian-inspired model of organisational politics, I have at least been able to cast suspicion on bureaucrats as seeking to subvert the perceived liberal European immigration regime over the last decade. But as I have suggested, they surely have accomplices in reversing policy. Political leaders may be one of them. At a time when Europe's good standing is under attack, primarily from external economic actors, the last impropriety that elected heads of government want to be accused of is adopting a hardline position towards the world's desperate refugees, destitute migrants, and members of families desiring to be reunited. The discreet way for elected representatives of 'respectable' parties to reduce immigration flows into Europe is to nudge or countenance public servants to do it.

In difficult economic times, citizens across Europe have developed different anxieties, fears, even dislikes and hatreds. Their skepticism about immigration is often misunderstood or misinterpreted, and the worst of motives are ascribed to them. They are not the primary agents of change, however. As a crisis of leadership, a series of governmental failures, a persistent democratic deficit, and an exhaustion of ideas have beset Europe, the unlikely actors appropriating the role of principal agents for change - and for the public interest, they are convinced - are appointed officials of all ranks.

At the top of the organisational structure is the highly-appointed civil servant. This official, in giving the subversively-obsequious response to the superordinate politician, 'Yes, Minister' - as in the celebrated BBC comedy series of the early 1980s - offers us a glimpse of why immigration policy has come to move in a different direction.

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