

Why European immigration policies are converging.

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Draft for discussion only. Not to be cited.

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Introduction

This paper identifies convergence in key areas of European immigration and asylum policy and specifies the EU's role in both its generation and in the types of convergence. Through specification of the interests, ideas, objectives and governance norms configuring contemporary EU migration governance, a liberal institutionalist (LI) account of regionalised migration governance in Europe is developed. LI accounts apparently offer little scope for multi-lateral co-operation on immigration because of interest divergence and the effects of national political salience. However, this paper identifies interest convergence linked to the role played by immigration in post-Cold War European politics and the debate about immigration in a wider, enlarged EU. The onset of immigration, its effects in a wider EU of 27 member states are shown to combine with the existing sources of legal, social and political power to drive convergence. Material concerns linked to economic integration and security are shown to interact with member state agency to be key drivers of convergence. In terms its direction, the LI account of convergence developed in this paper challenges 'positive' theories of convergence with strong structural elements that posit either a repressive, race to the bottom in 'fortress Europe' or the ostensibly more progressive potential of globalisation and post-nationalism. While LI posits a bias towards the preferences of more powerful states within multilateral institutions, this paper shows that the EU governance system allows smaller and ostensibly less powerful member states to exercise more influence than size alone would predict. Further, the paper qualifies its LI account by arguing that in specific areas of action such as rights of residence and anti-discrimination the EU governance system creates scope for mobilisation of expertise and the development of new ideas about and understandings of policy issues shaped by the EU context.

This argument about convergence in a regional governance system also prompts a re-consideration of aspects of European migration policy and politics in the context of regional and international migration governance as convergence represents a shift in the locus of action as marked by a developing EU role that changes dynamics between EU states and thus the meaning of sovereignty in the EU system (Clark, 1999).

The argument is developed as follows. First, the paper explores existing work on international policy convergence and immigration policy convergence. Second, a framework is developed for the analysis of cross-national convergence that explores the relationship between material and ideational factors and between structure and agency in driving convergence. This framework is then specified in the EU context through specification of variables likely to influence the scope for convergence, its characteristics and effects. These are then applied to EU migration and asylum policy in empirical sections exploring EU action on *entry, residence and integration*.

EU migration and mobility

International migration is constituted by systems of governance. Zolberg (1989) wrote that that international migration is inescapably a political issue because it is made visible by state borders. Without state borders there would be no such thing as international migration with the challenge thus being to explore the meaning, location and effects of borders. Borders can be territorial (air, land and sea ports), organisational (labour markets and welfare systems) and conceptual (ideas about who 'belongs') (Geddes, 2005). International migration cannot be understood simply as some kind of external shock to governance systems; rather, it is inextricably connected to the development, consolidation and transformation of the European state system, relations to the wider world and to the inequalities that underpin relations within and between governance systems (Bade, 2003). The paper shows that constitution of the EU governance system now plays a role in constituting migration governance and driving policy convergence.

The EU is a remarkable and probably unique experiment in supranational governance within which 27 member states have reached agreement in public international law on a legal and political framework the outcomes of which can bind them (Sandholtz and Stone Sweet, 1997). No other regional organisation has these law-making and enforcement powers implemented through a common legal system and common institutions. Generally, the EU system accommodates the historical and political embeddedness of member state policy preferences across a wide range of policy areas and also provides a new strategic framework within which these objectives can be pursued and re-thought. The EU is not a system of governance distinct and detached from its member states. It is a hybrid in that it contains both supranational and intergovernmental elements and also has, over time, its

own executive, legislative and judicial functions and well-established policy-making processes across a wide range of areas, including since the 1990s migration and asylum.

Perhaps surprisingly given accounts of how the EU might struggle to move into areas of 'high politics' (Hoffmann, 1966), there is a common EU migration and asylum policy. This policy is partial in terms of policy coverage and differential in terms of effects on member states. There are also provisions on flexibility that allow more reluctant states to stand aside from developments.

In the area of migration policy the EU is driven by two core dynamics. The first is an economic dynamic linked to the market-making purposes that were central to the Common Market project initiated by the Treaty of Rome and consolidated by the Single European Act and the creation of an Economic and Monetary Union (EMU) in the 1990s. The second is a security dynamic linked, in particular, to the effects on EU action of the end of the Cold War. This security dynamic largely impelled the response to immigration and asylum developed by the Maastricht treaty and has had major effects on subsequent development. However, the neo-liberal market-making framework and associated rights that it created does institutionalise ideas about equal treatment and non-discrimination that have also informed action on migration and asylum, particularly on residence and anti-discrimination.

The Treaty of Amsterdam (1999) defined the EU as an Area of Freedom, Security and Justice and contained within Title IV provisions for a common EU policy on free movement, immigration and asylum. Amsterdam also built on existing provisions on visa policy contained in the Maastricht Treaty. A notable omission is admissions policy. Article 79 (5) of the Lisbon Treaty (2009) reaffirms that measures on migration 'do not affect the right of member states to determine volumes of admission of TCNs coming from third countries to their territory in order to seek work, whether employed or self-employed'. That said, the Blue Card scheme does 'approximate' (EU jargon for weak co-ordination) recruitment for highly skilled workers (CEC, 2005; Chaloff and LeMaitre, 2009).

The common EU migration and asylum policy was further institutionalised by the Lisbon Treaty (2009). Lisbon fully applies the Ordinary Legislative Procedure (OLP), which means a full role for supranational institutions such as the directly elected European Parliament and the European Court of Justice (ECJ). For example, the ECJ no longer has to wait for a reference from the highest court of appeal in a member state and has begun to intervene in domestic immigration policy in areas such as expulsion (Acosta and Geddes,

2012). This judicial role is significant because of the emphasis in the immigration literature on 'rights-based politics' with the ECJ in the area of immigration policy 'manifestly neither master nor servant' of the member states' (Garrett et al. 1998: 174-5), but whose weight is 'felt at all levels of the decision-making process' (Dehousse, 1998: 177).

There is flexibility within the EU system. Flexibility in the EU legal framework is not new. Hanf (2001: 7) shows that at least six of the ten protocols annexed to the Treaty of Rome in 1957 dealt with derogations, as did many of the protocols that were annexed to the various accession treaties as the EU expanded its membership after 1973. Flexibility is 'a political rather than a legal concept' (Papagianni, 2001: 127) and a potentially least-worst solution to the practical problems of co-operation and integration in contentious areas. Papagianni also notes that this has been particularly evident in the EU's more intergovernmental arrangements, such as internal security including immigration and asylum. In such circumstances, flexibility is best seen as consistent with established norms and practices rather than a deviation from them. For example, the flexibility provisions of the Amsterdam Treaty formalised provisions for 'closer co-operation', which was 'the price to pay' for the agreement to proceed with the objective specified by the SEA of creating an area without internal frontiers within which there was to be free movement of people (Papagianni, 2001: 111). The most obvious manifestation of flexibility comes in the form of opt-outs and opt-ins. Denmark, for example is a Schengen member state but opted out of Amsterdam's Title IV provisions covering free movement, immigration and asylum. Ireland and the UK are not Schengen member states but can opt back in to measures that they support (Geddes, 2005).

Flexibility within the Treaty is a political device to accommodate diversity and can facilitate convergence. There has been and continues to be significant scope for flexibility via, for example, opt outs, protocols and derogations entered by member states into the texts of legislation. These could be construed as a threat to the 'traditional Community model' but can also be seen to offer scope for attainment of objectives in areas of 'high politics' while providing scope for recalcitrants such as Denmark and the UK to opt-in to those measures they feel able to support. Those that are 'out' can still use negotiations and derogations to define their position in relation to agreed measures. Adler Nissen (2009) shows that Denmark and the UK do adapt to new EU legislation. In the case of the UK,

‘[a]part from staying out of the few protective measures on legal immigration, ‘the UK does not act like an opt-out state in this field’ (Adler-Nissen, 2009: 69).

Horizontal and vertical convergence

There is widespread interest in the public policy literature in the scope for cross-national convergence linked to globalisation and Europeanisation (Bennett, 1991; Knill and Lehmkuhl, 1999; Drezner, 2001; Börzel, 2002; Olsen, 2002; Radaelli, 2004; Busch and Jorgens, 2005; Heichel et al., 2005; Holzinger and Knill, 2005; Jordan, 2005; Knill, 2005a; 2005b; Lenschow et al., 2005; Starke et al., 2008). Convergence has been defined as:

... any increase in the similarity between one or more characteristics of a certain policy (e.g. policy objectives, policy instruments, policy settings) across a given set of political jurisdictions (supranational institutions, states, regions, local authorities) over a given period of time. Policy convergence thus describes the end result of a process of policy change over time towards some common point, regardless of the causal processes (Knill, 2005: 5).

This leaves open scope for a variety of processes across governance levels to drive convergence and for a range of possible convergence outcomes: (i) decreased variation between states as a result of application of the EU’s common legal framework and policy-making process; (ii) ‘an inverse relationship between the initial value of a particular policy indicator and its subsequent growth rate or change’ (Starke, et al, 2008:980) that could arise from a temporal dynamic linked to the application of the EU *acquis* in newer immigration countries in central, eastern and southern Europe; (iii) change in relation to an exemplary model that could be particularly evident in accession states required to adapt to the EU’s Schengen framework of border control; (iv) convergence as a result of changes in of country rankings that could occur as a result of the application of soft governance frameworks such as EU-wide benchmarking exercises and country rankings (for example, MIPEX, 2009).

Immigration has not been prominent in work on cross-national policy convergence, while immigration also has an uncertain place within work on the development of inter-state co-operation. Generally, it has been argued that multilateral institutions can ‘enhance the quality of national democratic processes, even in well-functioning democracies, in a number of important ways: by restricting the power of special interest factions, protecting individual rights, and improving the quality of democratic deliberation, while also increasing

capacities to achieve important public purposes'(Keohane et al., 2009: 1). However, the same authors argue that this rationale is unlikely to extend to immigration (by which presumably is meant admissions policies), as well as to taxation, social welfare, health care, education, and infrastructural spending. Such areas of national importance are likely to remain subject to national control (p.24). This LI reading sees divergent interests and the national salience of immigration as impediments to multilateral co-operation on immigration. The argument developed in this paper is that there are convergent interests within the EU on key aspects of migration policy relating to entry, residence and integration and that the national and Europe-wide salience of immigration has led to an increased focus on an EU role.

There is work on cross-national policy convergence on immigration, but this rests on a horizontal rationale linked to characteristic features of politics in destination states. For example, the immigration policy convergence thesis has been most notably developed in terms of inter-state analysis in Cornelius et al (1994, updated as Cornelius et al., 2004) which identifies a consistent gap at state level between control-oriented rhetoric and more liberal - in terms of both numbers and regulatory frameworks - policy outcomes. Little role in these accounts is attributed to supranational governance. Similarly, Freeman (1995) identifies cross-national convergence leading to immigration policy outcomes that are more liberal in terms of numbers and policies than public attitudes to migration suggest would be the case. This is attributed to the influence on policy of pro-migration interest groups such as the business lobby. Freeman further specified this approach to account for variation by migration type (Freeman, 2005). Others point to the role of national courts and to 'self-limited' sovereignty (Hollifield, 1992; Joppke, 1997) while there are accounts that point to path dependencies embedded in particular kinds of migration flow and the governance structures that enabled them (Hansen, 2002). Cerna (2009) constructs a high skilled migration index to show continued divergence between OECD states in their high skilled migration policies because of divergent preferences and differing domestic political and institutional contexts. She then expresses doubt about the possibility for realising a common EU approach beyond the weak co-ordination introduced by the 'Blue Card'.

When attention has been paid to the EU's role it has been as a largely intergovernmental venue to which actors within the executive branches of national governments 'escape' in order to circumvent domestic constraints and to better pursue

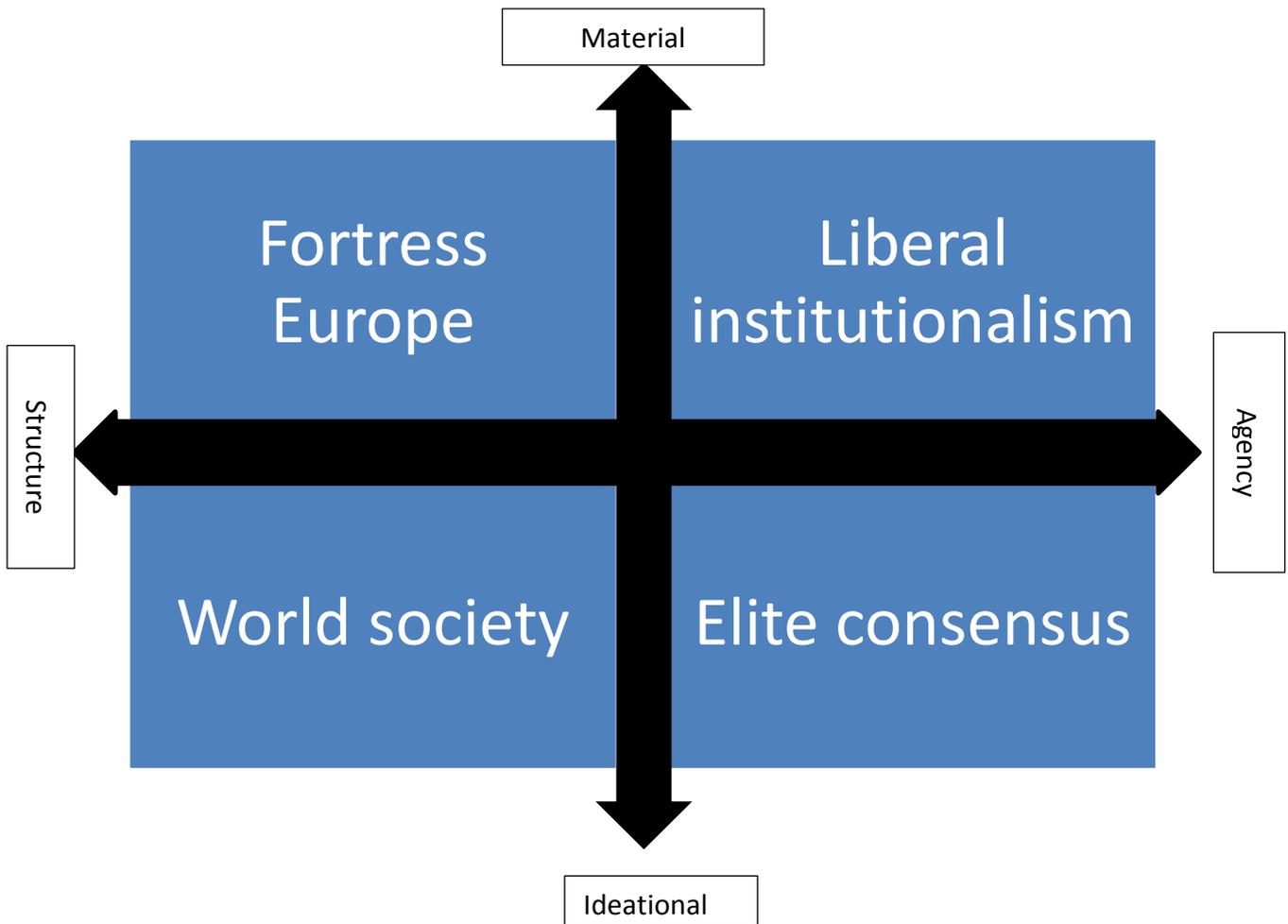
restrictive immigration policies (Guiraudon, 2001, see also Freeman, 1998). However, since much of this work was done the scope and effects of European integration have altered in important ways and leave scope for vertical convergence induced by the EU as a distinct governance system with its own sources of legal, social and political power.

Drivers of convergence

This section identifies potential drivers of migration policy convergence and specifies the implications for migration policy both in terms of policy outcomes and the underlying constitution of migration governance. This is done by developing a 2x2 schema that postulates a relationship between structure and agency (along the horizontal dimension in Diagram 1, below) and material and ideational factors (along the vertical axis). The structural dimension postulates external pressures on states to adapt. Agency emphasises the ability of states or particular communities of actors within states to choose amongst multiple policies. Material factors centre on the ways in which migration flows are understood as having effects on the economies and security of member states. Ideational factors centre on the ways in which states 'alter institutions and regulations because a set of beliefs has developed sufficient normative power that leaders fear looking like laggards if they do not adopt similar policies' (Drezner, 2001: 56).

Each square in Diagram 1 represents a potential convergence outcome with very different implications for the shape and form of migration governance.

Diagram 1: Drivers of EU-wide policy convergence in migration governance



The top left quadrant combines structural and material factors and can be understood as a race to the bottom or lowest common denominator outcome. This can also be understood as a 'a positive theory of regulation with strong normative disapproval of the predicted outcome' (Drezner, 2001: 57).

In the upper right quadrant, a combination of agency and material factors generate LI where national regulatory modes are embedded in historical and political frameworks that constrain actors. This creates a more complex setting with a greater number of possible equilibrium outcomes because of constraints on policy choices. Convergence arises as the result of conscious policy co-ordination and is more likely within international organisations with enforcement capacity which, in turn, is more likely to occur within regional institutions with reduced numbers of actors (Drezner, 2001).

In the lower left quadrant we see interplay between ideas and structures that can be labelled as the 'world society' account focused on 'the spread of models and ideas through global cultural and associational processes'. In this quadrant structure dominates agency as pressures develop for states to conform with an ideal of the rationalized bureaucratic state. Evidence for this could be seen through development of a global scientific discourse, the growth of international organisations and mimetic adaptation of the migration policies of successful states (Meyer et al. 1997).

The lower right quadrant specifies interplay between ideas and agency and can be labelled as 'elite consensus'. Here the emphasis is on the role of epistemic communities and a relational story of convergence based on interdependence and perception of policy externalities (Drezner, 2001: 63). Within this quadrant, there is an important role for uncertainty. In the migration literature, uncertainty is seen as a key driver of policy failure (Castles, 2003). In contrast, where there is uncertainty, networks of policy experts sharing 'common principled beliefs over ends, causal beliefs over means and common standards of accruing and testing new knowledge' can play an important role in driving policy convergence. (Drezner, 2006, see also Haas, 1992). The mobilisation of expertise has been a particularly important mode of legitimation within the EU system (Boswell, 2008, 2009, Boswell, Geddes and Scholten, 2011). There are also those who identify scope for functional logics to develop as a result of information exchange, development of best practice, and creation of non-binding codes of conduct. 'Softer' modes of international governance are seen by Martin (2005) as providing international legal instruments and resources for

advocacy at national level that potentially induce states to participate in international agreements and to take further practical steps. In similar vein, Newland (2005) argues that 'bottom-up' alternatives can promote intensive interaction among government officials with similar responsibilities. Significantly, Newland sees the EU as offering 'an example of government networks calling forth, over time, supranational institutions with legislative, judicial and executive responsibilities' (p. 5).

In all four quadrants, the EU can reduce transaction costs between states. The 'fortress Europe' and 'world society' approaches provide strong, positive theories of convergence but, it is shown, are less plausible when placed alongside the more complex policy processes and outcomes associated with the LI and elite consensus accounts both of which posit multiple possible points of equilibrium.

To apply and test the application of this framework four variables can be specified that affect the underlying processes specified in Diagram 1. First, the *time and timing* of immigration is likely to influence the dynamics of policy development and change and are integral to Freeman's (1995) analysis of cross-national convergence within which he distinguishes between settler societies, older European immigration countries and newer European immigration countries. The key point about newer EU immigration countries (from Greece in 1981 onwards) is that the onset of immigration is closely associated with membership of the EU and the obligations of membership. Second, proximity to the *EU acquis* of migration policy types will also have variable effects. The EU's core liberalising economic rationale has provided a powerful momentum for creation of an intra-EU mobility framework. It has also been used to legitimate proposals in areas that relate to extra-EU migration but can be claimed to relate to market-making, such as anti-discrimination legislation and the directive on the rights of long-term residents. The Treaty framework also empowers the EU to act on certain aspects of migration (asylum and irregular migration) while specifically constraining its ability to act on admissions policy. Third, *similar problem pressures* such as demographic change, skills shortages or high levels of irregular immigration could induce convergence. Again, these play out unevenly with differences between member states in population profile, labour market characteristics and exposure to irregular flows. Fourth *imitation, policy learning and transnational communication* has been most obviously apparent in the form of accession criteria for new member states as they face a steep learning curve as a condition of membership. In addition, there is also

scope for learning and imitation amongst member states. Transnational communication can facilitate lesson drawing and the diffusion of policy ideas and practices. The European Commission has played a key role in this, as have other international migration organisations such as the United Nations High Commissioner for Refugees (UNHCR), International Organization for Migration (IOM) and the International Centre for Migration Policy Development (ICMPD). The effects are particularly evident in newer immigration countries and accession states (Taylor, Geddes and Lees, 2012).

EU-led convergence governing entry, residence and integration

This section analyses three broad areas of policy. The first of these is policies related to *entry*. The EU does not have power to act regarding the numbers of migrants to be admitted, but has however, developed policies on asylum, irregular migration, family migration and higher skilled migration that relate to entry - or stemming it – and demonstrate the development of similarity in terms of policy objectives, instruments and settings. Second, EU action on residence is assessed. Here we see that the EU drew from a market-making frame related to notions of ‘economic citizenship’ to develop a framework granting rights equivalent to those held by EU citizens to non-EU nationals who are long-term residents. Material factors were particularly evident in accounting for EU action on entry and residence. Third, we look at EU action related to immigrant integration. Here we see relatively robust anti-discrimination legislation and a plethora of softer governance measures with significant mobilisation of expertise and a greater role for ideas.

Entry

A classic material account of entry policies represented the key dilemma for capitalist democracies as being to build ‘a protective wall against self-propelled migration, but with small doors that allow for specific flows’. The EU now squarely plays a role in the building of protective walls and has established a foothold – albeit limited – with measures relating to the recruitment of highly skilled workers via a ‘Blue Card’ scheme. One effect of EU action on entry has been elision between migration categories as asylum-seeking migration became linked in EU policy to irregular migration and border control. The EU’s self-declared ‘fight against illegal immigration’ has had a strong focus on external frontier control and

made it more difficult for migrants – including those fleeing persecution to enter the territory of an EU member state.

Interest convergence in this area arose as a result of the effects on policy-making of material factors linked to economic integration and security. The latter after the end of the Cold war was particularly significant in inducing security-oriented responses to immigration and prompting further consolidation of the EU role that built on early steps taken during the 1970s and 1980s (Geddes, 2008). The framework created for accession for the 12 central, eastern and southern European countries that joined the EU in 2004 and 2007 had a strong focus on adaptation to migration-stemming measures contained in Chapter 24 of the accession framework. Newer member states that also tended to be newer immigration countries were required to adapt to the EU framework. Various mechanisms for policy learning were created, although the learning environment was constrained and more akin to instruction. The Commission monitored policy development, other member states provided advice through, for example, twinning programmes. International organisations such as IOM, UNHCR and ICMPD were also active. There was evidence of imitation, learning and transnational communication in pursuit of policy convergence specified by the EU. All new member states have sought to develop capacity to control borders as a pre-requisite for EU membership.

The most highly developed area of EU action is asylum. A series of directives arising from the powers created by the Amsterdam Treaty laid down minimum standards in areas such as procedures, qualifications and reception conditions. Initial proposals from the Commission that were more liberal in their orientation towards, for example, the protection of the rights of asylum-seekers were watered down by member states (Boswell and Geddes, 2011). More recently, the empowerment of the ECJ to act in this area by the Lisbon Treaty has seen decisions that limit the ability of states to return asylum-seekers to their first country of entry – a key principle of the one-stop system for asylum put in place by the Dublin II regulation of 2004.

Irregular migration is strongly embedded at national level because of links to the operation of labour markets and informal economies (Reyneri, 1998; Zincone, 1999; Samers, 2004; CEC, 2006a; de Haas, 2007). Yet the EU's rhetorical commitment to the 'fight against illegal immigration' (CEC, 2006b) has been linked to enlargement to central, eastern and southern countries and exposure to irregular flows. There have also been attempts to

strengthen operational capacity through creation of the EU border control agency, Frontex, but implementation remains primarily a national responsibility (House of Lords, 2008; Vaughan-Williams, 2008; Neal, 2009). The Returns directive of 2008 institutionalised a common EU approach to expulsion that was widely criticised for its restrictive aspects. However, subsequent interventions by the ECJ have challenged the implementation of the directive. When the Lisbon Treaty came into force on December 1 2009, the ECJ gained normal jurisdiction on migration. In addition, an agreement on March 1 2008 implemented a fast track procedure for preliminary rulings in urgent cases (*Procédure Préjudicielle d'Urgence*, PPU) that could be applied to immigration and asylum and would require a decision within three months. The effects were immediate. In 2010, there was five references to the ECJ on migration issues. In 2011 there were 17. Of these 17, 14 came from a single country – Italy – and related to the Returns directive. A key case was that brought by a non-EU national resident in Italy, Mr El Dridi, who had entered the country clandestinely and never obtained a valid residence permit. In May 2004, a deportation decree was issued against him. In May 2010 Mr El Dridi received an order requiring his removal, but, because there were no spaces in a detention centre, Mr El Dridi was required to leave Italy within 5 days. He did not do so and, under the terms of immigration legislation introduced by the Berlusconi-led government, was sentenced to one-year's imprisonment. His appeal was referred to the ECJ by an Italian court in Trento that sought a ruling on whether imprisonment of a non-EU national was consistent with provision within the Returns Directive on detention. The Italian legislation was found to breach the Directive. The El Dridi decision also forced the Dutch government to amend detention provisions within the immigration legislation proposed by its government (Acosta and Geddes, 2012).

EU action on family reunion has been seen as creating pressure in newer immigration countries for a levelling up of standards (Migration Policy Group, 2011). The family reunion directive (2003/86/EC) determined the right to family reunification of TCNs who reside lawfully in the territory of an EU Member State; conditions under which family members can enter into and reside in a Member State; rights of the family members once the application for family reunification has been accepted regarding, for example, education and training. The directive also recognised the rights of member states to impose conditions on family migration and gives them margin to do so in relation to factors such as the definition of the family, waiting periods and integration measures. This negotiation was

riddled with compromises because it potentially impacted upon admissions policy. The Austrian and German government were particularly active during the negotiation on insisting on integration measures. A challenge from the Parliament on the grounds that articles on integration were not in line with fundamental rights was rebuffed by the ECJ which argued that member states must have regard to a child's interests, but the EU's framework of fundamental rights did not create an individual right for family members to enter the territory of a member state. The right to enjoy family life was not seen to create scope for the ECJ to intervene to create a right to family migration. EU member states were recognised as having a 'certain margin of appreciation' when examining applications for family reunification.

In summary, EU measures on entry do demonstrate a convergence dynamic that is grounded in historical and political frameworks with a strong national dimension, but within which there has been interest convergence as a result of the political salience of immigration in a wider Europe. The hybrid character of the EU as a system of governance was also made evident by the developing role of EU institutions. The EU is more than a venue for the pursuit of national policy objectives because EU institutions such as the Commission, EP and ECJ have acquired a stronger basis for action in this area.

Residence

EU action on residence is more directly enabled by the Treaty framework that has developed since the 1950s to support market-making and to the material basis for policy convergence identified in Diagram, 1. Within this framework notions are well-established principles of non-discrimination and equal treatment that are keystones of the legal framework designed to realise the ambition to create an integrated economic space within which people, services, goods and capital would be able to move freely. The issue was whether these rights and freedoms could be extended to legally-resident third country nationals. Prior to the Amsterdam Treaty it had been argued that a 'Residents Charter' could allow the EU to attain its economic objectives. This line of argumentation was strengthened by the development of legal competence on migration issues within the Amsterdam Treaty and by the EU's aim through the Lisbon process to pursue economic reform involving further liberalisation.

A directive on the rights of long-term residents (2003/109/EC) extends rights equivalent to EU citizens after 5 years of legal and continuous residence and allows them to move from one member state to another while maintaining their rights and benefits. Once the status of LTR is acquired then the TCN is entitled to equal treatment, which means: access to employment and self-employed activity; education and vocational training; recognition of professional qualifications; social security, social protection and social assistance as defined by national law; tax benefits; access to goods and services, including housing; and freedom of association, affiliation and membership, including trade union membership. Article 4.2 does specify that member states may require TCNs to comply with integration conditions, in accordance with national law, which may include language courses (Article 15.3). Particularly influential in the negotiation were the Austrian, German and Dutch governments.

Proximity to the market-making aspects of the EU *acquis* played a key role in the extension of rights to long-term residents. More positive theories of convergence such as the fortress Europe or globalist account have difficulty accounting for a policy framework that is rights expansive in the context of very specific features of the EU governance system and sources of legal, political and social power therein.

Integration

The EU has also adopted a range of harder and softer governance mechanisms related to the integration of immigrants and has played a part in constructing a distinct EU framework for imparting meaning to integration through its measures on anti-discrimination and softer governance mechanisms such as the Common Basic Principles on Immigrant Integration. Mobilisation of expertise by strategic actors at EU level played an important role in framing debate during the 1990s while a series of contingent political factors helped impel swift agreement (Geddes, 2000; Geddes and Guiraudon, 2004). The two anti-discrimination directives agreed in June and November 2001 (Directive 2000/43/EC Racial Equality directive and 2000/78/EC Employment Equality directive) that were significantly rights-enhancing and went far beyond measures in most member states. The directives implement the principle of equal treatment for all people, irrespective of racial or ethnic origin. They represented a significant levelling-up through their focus on civil remedies for both direct and indirect discrimination. They provide for protection against direct and indirect

discrimination in employment and training, education, social protection (including social security and health care), social advantages, membership and involvement in organisations of workers and employees, and access to goods and services including housing. They cover EU citizens and legally-resident TCNs. Anti-discrimination is particularly interesting because it is precisely the kind of issue area that is embedded at national level. The directives were a major development in that they confound notions of lowest common denominator policy outputs. They take from the British and Dutch legal frameworks notions of direct and indirect discrimination. Mobilisation of expertise facilitated policy development linked to specific aspect of the EU legal system. At the same time, the meaning of integration is closely linked to debate at national level and to the incorporation of integration measures within EU measures on family reunion and the rights of long-term residents. The issue of integration is highly salient at national level, but this has not precluded EU action. Moreover, ostensibly smaller member states such as the Netherlands have played a key role in policy development.

Conclusions

This paper has argued that European immigration policies are converging and that the EU as a distinct form of regionalised supranational governance plays a role in both generating convergence and determining the form that it takes. The account of policy convergence is consistent with LI approaches to inter-state co-operation in areas where interests are shared. It was shown that the historical and political embeddedness of approaches to immigration in national contexts need not necessarily impede policy integration and that the pan-EU salience of immigration is a factor that has driven convergence. It was shown too that smaller and ostensibly less powerful member states can exercise considerable influence in shaping the direction of EU policy. This was demonstrated in relation to partial, differential, flexible EU migration governance system. It was also applied to the wider EU within which there has been significant pressure for newer member states and newer immigration countries to 'catch up', i.e. converge, with policy responses in older member states and older immigration countries.

The paper rejected stronger, more positive accounts of convergence emphasising either lowest common denominator or 'globalist' outcomes. These approaches are confounded both by the more varied range of policy outputs than such structural accounts

would suggest and by the ways in which specific features of EU migration governance account for both the embeddedness of migration policy, but also create new and distinct ways in which common responses can develop in areas of shared interest. It was also shown that attention to the dynamics of the EU governance system also demonstrates scope for the mobilisation of expertise, which played a particularly important role in the development of anti-discrimination policies and has also informed various benchmarking and other soft governance exercises.

No account of the politics of migration in Europe is complete without attention being paid to the ways in which the EU has shifted the context for action and demonstrated that inter-state co-operation on issues of 'high politics' such as immigration policy is possible. At the same time, the paper has shown that it is necessary to pay close attention to the specific features of EU regional governance and that these are specific to the European context. There would likely be significant constraints on their replication in other regional groupings.

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