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Straus Working Paper 02/11

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**The Border:
Europe, The Immigration Dilemma and the State in France**

NYU School of Law • New York, NY 10011
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ISSN 2160-8261 (print)
ISSN 2160-827X (online)
Copy Editor: Danielle Leeds Kim
© Martin A. Schain 2011
New York University School of Law
New York, NY 10011
USA

Publications in the Series should be cited as:
AUTHOR, TITLE, STRAUS INSTITUTE WORKING PAPER NO./YEAR [URL]

**THE BORDER:
EUROPE, THE IMMIGRATION DILEMMA AND THE STATE IN FRANCE**

By Martin A. Schain*

Abstract

In this paper I analyze the policies and politics of border control and enforcement in Europe, and how the changing border architecture of the European Union has affected a single country within the Union. I focus on the French case, how France has managed its borders in the complex context of Schengen, and how the dynamics of the system provide both constraints on the management of entry, but also opportunities to strengthen border controls. I argue that, on balance, the Schengen system has enhanced the ability of France to control its frontiers.

* My thanks to Virginie Guiraudon, Simon Reich, Jean-Claude Piris and Joseph Weiler for their careful reading of this paper, as well as their thoughtful comments on earlier versions.

Introduction

This paper will focus on the politics of border control and enforcement in France, in the context of Europe. I will analyze cycles of border enforcement, the dynamics that have driven enforcement, as well as those that have driven member states towards intergovernmental cooperation within the European Union. Although the politics of the border are related to and sometimes overlap the politics of immigration, the political dynamics that drive each are often different. Immigration policy involves the rules of who should and can be admitted, as well as the logic of why certain categories of foreigners (rather than others) can make claims for admission. Border policy is the policy of enforcement at the point of entry. Generally speaking, immigration policy is developed in the legislative arena, and decided through a relatively open political process. Border policy most often is developed in a restricted administrative arena, and decided through a relatively closed process of decision-making. If immigration policy defines the broad rules for legal admission, integration and citizenship, border policy focuses on the rules and the enforcement of rejection. If the former is usually framed as domestic policy, the latter is often framed in terms of foreign policy.

Border policy is more complex than it appears. For example, a recent report points out that just because someone cannot enter according to the rules established by immigration legislation, this does not necessarily mean that they can be rejected and deported, particularly if they have already crossed the border either illegally or legally (and/or their authorization to remain has expired).¹ Moreover, although border policy has historically focused on excluding those without the right to enter, border enforcement has been extended well beyond the borders of the state and ports of entry (airports, seaports and railroad crossings), to countries of origin—a process often referred to as “remote control”— and to internal controls that often involve employers, local social services, and local administration.

In general, border management and enforcement has focused on verifying the documentation of those seeking to enter the country. However, this task has become

¹ *Pathways to Irregularity: The Social Construction of Irregular Migration, Comparative Policy Brief-Pathways and Policies*, Clandestino Research Project, October 2009, p. 3. (<http://clandestino.eliamep.gr>)

increasingly complicated by the very limited number of legal immigration channels throughout the EU. With the exception of highly skilled immigrants (*immigration choisie*), the principal channels of legal immigration to Europe are family unification, mandated by the courts and reluctantly accepted by the state, and limited numbers of workers and asylum-seekers. Moreover, as European governments have become increasingly concerned with questions of immigrant integration, they have tended to change the actors responsible for developing and enforcing entry criteria from domestic actors (education authorities and employers) to border authorities and consulates in sending countries. The border, then, has become an increasingly dense network of institutions that deal with strengthened criteria for entry and pressures for expulsion.

In this paper, I will focus on the French case, how France has managed its borders in the complex context of the European Union. The purpose of focusing on a single country is to analyze how the changing border architecture of the European Union has affected a single country within the Union. I will also analyze how a single country is able to use and manage the evolving border system, and how the dynamics of the system provides both constraints on the management of entry, but also opportunities to strengthen border controls.

Although scholarly literature during the past 25 years has often argued that embedded liberalism has made it difficult for liberal democracies in Europe (and North America) to limit and control immigration, I will argue that perceived pressure of immigration has resulted in a more muscular border that is increasingly more effective.² I will also argue that this buildup of the border is driven by a political process through which the state has created an arena of decision-making both at the national border and at the European frontier that is insulated from the parliamentary arena, and which supports policies that are increasingly framed in terms of security issues.

² See Martin A. Schain, *The Politics of Immigration in France, Britain and the United States* (New York: Palgrave, 2008), Chapters 1 and 3.

The Problem:

1. Immigration and constraints on border control

Scholarship on the border has focused on the legal and political problems that liberal states have in maintaining control. Even when their stated goal appears to be strong and restrictive immigration control, policies may be difficult to enforce. Control over borders—that essential aspect of sovereignty—it has been argued, is subject to legal and judicial constraints. Thus, what has been referred to as “embedded liberalism” in the legal and political systems—values that protect individual and collective rights—makes it difficult to pass legislation that restricts immigration, and makes it even more difficult to enforce legislation that has actually been passed.³ Indeed, this is at the root of arguments that policies may be less important than they appear to be when administration and court decisions loom more important.

Attempts to define and establish controls over immigration, over who has a right to cross national boundaries and settle in space within those borders, has often evoked impassioned debate and conflicting politics. Such issues raise basic questions about the nation-state: the control over the borders of the state and the identity of the nation. The core question is whether and how the capabilities of the state in liberal democracies to control immigration have been eroded by a combination of international agreements and the increased role of courts in establishing individual and collective rights.

On the other hand, “embedded liberalism” can also be seen more simply as a political and legal resource, among others that have determined the effectiveness of legislation on immigration control. In this sense, Christian Joppke argues that diagnoses of international constraints on the state’s ability to control immigration are highly overrated, either because they are based on erroneous assumptions of strong sovereignty that never was, or because the limits on border controls are more obviously domestic than international.⁴ Although notions of state sovereignty have been linked to control over borders since the sixteenth century, effective control through military and

³ James Hollifield, *Immigrants, Markets and States: The Political Economy of Postwar Europe* (Cambridge, MA: Harvard University Press, 1994).

⁴ Christian Joppke, *Challenge to the Nation-State: Immigration in Western Europe and the United States* (Oxford: Oxford University Press, 1998), Ch. 1.

administrative mechanisms goes back only to the late nineteenth century.⁵ Ever since state capabilities began to catch up with theories of sovereignty, the struggle to maintain the border has been a balance between what the state is capable of doing, and contradictory interests that support a more open or closed border.⁶ This political tension is the focus of what we will call the politics of the border.

Politically, are liberal-democratic regimes are more constrained in this sense than they were in the past? There may be transnational processes and transnational regimes that influence and constrain the national process, but has this not always been the case with regard to immigration control? Gary Freeman gives strong support to Joppke's argument that only by analyzing domestic politics—and the domestic forces of powerful economic interests, ethnic lobbies and civil libertarians—can we understand the changing political constraints on policy-makers, either for or against border controls. Why, for example, is the more or less consistent opposition of host populations to immigration frequently ignored by governments?⁷

For domestic political actors, the legal system and international accords can be understood as means and resources in the domestic political process. Therefore, the conditions within which immigration policy is being made and implemented today are imbedded in pressures of globalization, human rights accords and (in the case of Europe) Europeanization may be important, but not necessarily in the ways that are usually asserted. Limits on border access may be constrained, in part because the enforcement of immigrant rights supported by transnational human rights regimes is closely tied to national agencies that deal with domestic equity questions.⁸ On the other hand, Europe also presents a clear demonstration that border enforcement can be enhanced and strengthened through intergovernmental cooperation.

⁵ See John Torpey, *The Invention of the Passport* (London: Cambridge University Press, 2000).

⁶ See Didier Bigo and Elspeth Guild, *Controlling Frontiers: Free Movement into and within Europe* (Burlington, VT: Ashgate, 2005), pp. 55–57

⁷ Gary Freeman, "The Decline of Sovereignty? Politics and Immigration Restriction in Liberal States," in Joppke., pp. 101–104

⁸ Saskia Sassen, "The De Facto Transnationalizing of Immigration Policy," in Joppke, p. 68.

2. *The European System*

Has the process of European unity diminished the ability of states within the EU to control their own borders with regard to immigration, or has the process enhanced the security of the joint European frontier to the benefit of all? Within Europe the issue of sovereignty has become increasingly complex, especially with the incorporation of the Schengen Convention into the Treaty on European Union by the Amsterdam Treaty.⁹ Member states have made strides in cooperation on transferring some aspects of border control to the Union for the migration of EU nationals, but they have made lesser strides in the development of common policies for admission of non-EU immigrants or asylum-seekers (third country nationals—TCNs). As the crisis provoked by the war in Libya in April 2011 demonstrated, the policing of the “external” Schengen border in Italy had deep implications for France, as refugees from Libya moved rapidly from Lampedusa into France (see below).¹⁰

Rey Koslowski argues that agreements on harmonization effectively cede sovereignty, thereby weakening border controls.¹¹ Because of the dismantling of border controls among the countries that comprise the Schengen area it seems evident that controls over the external borders of the European Union are directly related to the variable ease of entry into different countries of TCNs. For this reason, differences among Schengen countries with regard to entry have created a disadvantage for those countries with relatively demanding criteria and more effective enforcement. Even among countries that have demanding criteria for entry and residence, there is considerable variation in enforcement rules and practices, variation that generally diminishes effective border control.

Thus, in both Germany and the UK, illegal immigrants can be and are granted toleration status. In 2006, more than 30 thousand asylum applicants were still awaiting

⁹ For an analysis of the emergence of the border system of Europe, see Ruben Zaiotti, *Cultures of Border Control: Schengen and the Evolution of European Frontiers* (Chicago: University of Chicago Press, 2011) esp. chapters 5-7. For the incorporation of Schengen, see Jean-Claude Piris, *The Lisbon Treaty, A Legal and Political Analysis* (New York: Cambridge University Press, 2011), pp. 170-171.

¹⁰ See Rachel Donadio, “Fears About Immigrants Deepen Divisions in Europe,” *New York Times*, April 13, 2011, p. 5; and Peggy Hollinger and Guy Dinmore, “France and Italy seek Schengen Changes,” *Financial Times*, April 23, 2011.

¹¹ Ray Kozlowski, “European Union Migration Regimes, Established and Emergent,” in Joppke, Ch. 5.

decisions in the UK, while almost 200 thousand had “exceptional leave to remain.” Some countries have, or have had, amnesty programs that grant legal residence under certain conditions for illegal immigrants who have remained in the country for a designated period of time (France and the UK, for example, and Spain of course).¹² As the Lampedusa crisis demonstrates, the evolving structures of the European Union have created a growing dependency relationship among the member states.

On the other hand, the system has also created changing opportunities for member states to influence the internal politics of their neighbors, generally in ways that have strengthened border enforcement. It has been argued that the implementation of Schengen has created pressure on border countries such as Italy and Spain to “do what they would not otherwise do” in terms of controlling immigration through their borders. The Lampedusa crisis also demonstrates the ability of border states such as Italy to pressure other EU member states. Since the end of December 2010, more than 20 thousand migrants (mostly Tunisians) have arrived on the small Italian island of Lampedusa. Italian authorities then moved large numbers of migrants to camps on the mainland, from which many have then moved to France. When French authorities then sent some of these back to Italy, the Italians retaliated by reducing security at the camps even further, the interior ministries of both countries agreed to enhance cooperation to reduce the flow of migrants across the Mediterranean.¹³

The dismantling of intra European border controls was also developed with “compensatory measures” that made entry into the Schengen area more difficult and that strengthened the ability of the police to track those who enter. The most important of these measures, agreed to by the Schengen partners on June 19 1990, is the Schengen Information System (SIS), a vast database (the Council of the EU reports that there are now 32 million entries and growing), nominally under French responsibility, and controlled by a committee that has the responsibility to protect the personal data

¹² See “Pathways to Irregularity...,” p. 4; Bastian Vollmer, *Undocumented Migration, UK Country Report*, Clandestino Research Project, July 2009, pp. 11, 20, 22, 46. (<http://clandestino.eliamep.gr>); Henri Courau, *Undocumented Migration, France Country Report*, Clandestino Research Project, January 2009, pp. 12-15. (<http://clandestino.eliamep.gr>)

¹³ See Rachel Donadio, “France to Help Italy Block Tunisian Migrants,” *The New York Times*, April 9, 2011.

collected.¹⁴ SIS is now being expanded, and has become a valuable tool available to police coordination throughout the Schengen area.

The second important measure elaborated in the 1990 agreement eliminates “asylum shopping” by making the initial country of entry responsible (according to its own rules) for any decision on asylum applications. This provision, further elaborated and incorporated into the Dublin Convention in 1997, effectively transferred major responsibilities to countries on the external European border.¹⁵

On high-salience immigration issues, intergovernmental cooperation on specific questions has tended to reinforce the capacities of states to control and exclude immigrants, leaving more expansive policies to the member-states themselves.¹⁶ We know from the French experience in 1993, when a right-wing government amended the constitution in order to circumvent a decision by the French Constitutional Council that overturned some elements of Schengen that these agreements have also become factors in a domestic political process that governments use to promote their own agendas.

On balance, immigration control has become embedded in a network of European and global institutions and rules that are as dynamic as they are constraining. They are not fixed in place, and can be used by domestic political actors to alter the domestic *rappports de force*. There has also been a tendency to try to avoid the pressures of domestic politics altogether by externalizing controls outside of the formal borders of Europe.

Border agents of European countries check passports and visas in a multitude of foreign countries, not just at their own ports of entry. To determine acceptable from unacceptable migrants, most countries have established procedures abroad that may include far more than processing visa applications by embassy personnel.¹⁷ Thus, what Aristide Zolberg called “remote control” entry regulation was imposed well before the

¹⁴ See Consilium-SIS: <http://www.consilium.europa.eu/showpage.aspx?id=1178&lang=en>

¹⁵ The process was stipulated in Chapter 7 (articles 28-38) of the Schengen Implementation Agreement of June 19 1990, and later incorporated into the Dublin Convention of 1997.

¹⁶ See Terri Givens and Adam Luedke, “The Politics of European Union Immigration Policy: Institutions, Salience and Harmonization,” *The Policy Studies Journal*, Vol. 32, No. 1, 2004, pp. 145–165.

¹⁷ Virginie Guiraudon and Gallya Lahav, “The State Sovereignty Debate Revisited: The Case of Immigration Control,” *Comparative Political Studies*, Vol. 33, No. 2, 2000, pp. 163–195.

current period of immigration, and has effectively extended the legal border to the points of exit for emigrants.

Remote control processing is only the most time-honored transformation of the border. In fact, in Europe there are different borders for different kinds of migrants. Citizens of the European Union (independently of Schengen) have an established right to move freely for employment under Article 45 of the Treaty on the Functioning of the European Union (TFEU), a right confirmed by the European Court of Justice in 1991.¹⁸ For those countries that are party to the Schengen Agreement,¹⁹ their citizens also have the right to cross the “internal” borders for any purpose (for all practical purposes, these borders are also open to the citizens of any country, who have already penetrated the external border).

However, primarily for political reasons, even after the accession of twelve new member-states to the EU in 2007, the free movement principle was not universally applied by each of the original EU 15. Therefore, within the EU, there are different borders for those who are tourists, those who wish to work, those who wish to settle, as well as those who wish to exercise fuller rights of citizenship.²⁰

3. An open Border or Fortress Europe

This still leaves us with the question raised above: Has the process of European unity diminished the ability of states within the EU to control their own borders with regard to immigration or has the process enhanced the security of the joint European frontier? The literature on European borders often seems to present two contradictory visions. On one hand, there is the image of an embedded liberalism that has left Europe

¹⁸ This was formerly Article 39 of the TEC. It is useful to note that free movement of people was not legally established in the United States until 1941, when the U.S. Supreme Court overturned a California depression-era law that made it a misdemeanor to bring into California, “any indigent person, who is not a resident of the State, knowing him to be an indigent person.” In *Edwards v. California* (314 U.S. 160 /1941), the Court unanimously overturned the law.

¹⁹ See *Consolidated Treaty on European Union*, Article 77.

²⁰ See Bigo and Guild, *Controlling Frontiers*, esp. pp. 59–91. There are now 26 countries that are in the Schengen Area, four of which are not members of the European Union (Iceland, Norway, Lichtenstein and Switzerland). The UK and Ireland have opted out. Bulgaria, Romania and Cyprus have not yet been admitted. In addition, in 2011, workers from Bulgaria and Romania enjoy rights of free movement only in 15 EU countries, and may have to wait until 2012 to have this right extended to other countries of the EU-27. See J-P Stroobants, “Schengen: les vingt-septs crispés sur le contrôle de leurs frontières, » *Le Monde*, June 11, 2011, p. 6.

without means to control its borders against the challenge of Islam. Christopher Caldwell, for example, carries the open border argument to its logical conclusion, by arguing that Europe appears to be without means to combat this rising “menace,” and without the political will to find the means. Europe can neither limit immigration, he writes, nor is it capable of shaping the lives of those who get past the gates. Instead, Europeans seem committed to protecting the very trends that would destroy European values, European liberties, and perhaps worse.²¹

On the other hand, there is a considerable academic literature that generally analyzes a movement towards a border policy in Europe that has been characterized as a new “fortress Europe.”²² The first analysis tends to focus on cultural conflicts resulting from changing population patterns, while the second focuses on the expanding instruments of member states, as well as the European Union that have been developed both to reinforce the border and to define new means for exclusion.

The permeability of the European border has generally been demonstrated by the policy gap between exclusionary policies and continuing immigration. The tightening of the controls of fortress Europe, on the other hand, has been seen in the institutional developments at the EU level, generally linked to policies of exclusion, although this has been challenged by some recent research.²³ Generally, both sides note the development of state instruments to control the border, but they disagree on the effectiveness of these instruments. Thus, we seem to have more state, but there is little agreement on either the role played or the effectiveness of the more muscular state in controlling the border. One way that we can approach this problem is by examining the case of France, which for more than a decade has declared its intention both to strengthen its border, and to impose more enforcement demands on border control authorities.

²¹ *Reflections of the Revolution in Europe: Immigration, Islam and the West* (New York: Doubleday, 2009), by Christopher Caldwell

²² Andrew Geddes, *Immigration and European Integration, Towards Fortress Europe?* (Manchester: Manchester University Press, 2000).

²³ See Eiko Thielemann and Nadine El-Enany, “Beyond Fortress Europe? How European Cooperation Strengthens Refugee Protection,” Paper prepared for the European Studies Association’s Biennial International Conference, Marina Del Rey, Los Angeles, April 23-25 2009.

Crossing the French Border

The ability of France to control its borders has been an important issue, both for scholars and for politicians.²⁴ Arguably, control over the French border has been eroded first by the pressures of immigration, both legal and undocumented; second by the constraints imposed by treaty obligations and court decision; and third by the opening of the internal borders of the Schengen zone countries and by the incorporation of the Schengen agreement of 1985 into the Treaty on European Union. In what sense, then, does France still have an enforceable border?

I would argue that aspects of embedded liberalism and protections by the legal system can be best understood as a part of the political context that has constrained how the French government controls immigration. Within this context, however, French governments have pursued statist policies that both limit and mold immigration across its borders. Governments have become increasingly creative in developing mechanisms of immigration control, most of which have been quite, if not absolutely effective. Parallel to the overall impact of the development of immigration and asylum rights has been the development of a stronger and more effective state in the area of immigration entry control.

Indeed, France still has a border, although the policing of it may not be simply controlling border crossings. In fact, the formal crossings-points—the roads and railway border checkpoints—are largely unmanned, and airline flights among the Schengen countries are treated as European domestic flights, without formal passport control. On the other hand, both the external border with the non-Schengen world and the internal controls of the non-EU population resident in France has been reinforced substantially. In addition, a significant amount of border policing takes place by “remote control,” in countries from which immigrants have come. Finally, rights to immigration (such as family unification) are constantly in flux, and, in significant ways have been reduced.

²⁴ See, for example, Elise Vincent, “Immigration: les chiffres du FN ne sont pas un ‘secret d’Etat,” *Le Monde*, February 23, 2011, p. 10.

1. *Levels of Immigration*

One way that we can evaluate the border is to look at the relationship between policy and outcomes. The impact of decisions taken in 1974 to suspend most categories of immigration was clear, and relatively swift. During the seven years before 1974, an average of 232,000 immigrants entered the country each year. During the seven years after suspension, this average was cut to about 105,000. If we also consider the rates of emigration (much more difficult to know), net immigration moved from an average of 130,000–139,000 to 29,000–40,000 per year.²⁵ After 1982, net immigration grew to an estimated 65,000 per year, and remained at that level through the last decade of the twentieth century. As one report has concluded, “France is certainly an old country of immigration, but for 25 years it is no longer a country of massive immigration.”²⁶ At least by this measure, there was a basic change during the years after the suspension of immigration in 1974.

Much has been made of the decision of the Conseil d’Etat in 1978 to block the right of the state to limit family unification as the key for understanding the limits inherent in liberal democracy for maintaining the border.²⁷ Indeed, the single largest category of (permanent) immigrants arriving into the country has consisted of various categories of family unifiers, and family unification is generally credited as the source of unwanted North African immigration.

However, the role of family unification has been more complicated than is generally acknowledged in the flow of immigration. At least through the mid-1970s, about half of those entering under family unification were Portuguese. Then, after the collapse of fascism in Portugal, this trend quickly slowed to a trickle, accounting for a sharp decrease in family migration (in absolute numbers) during the 1980s and 1990s.

Family immigration among North Africans did not increase after 1974, or even after 1978, and diminished during the 1980s. Nevertheless, because of the disappearance of Portuguese immigration, the inflow of family migrants from North

²⁵ Patrick Weil made these estimates in *La France et ses Etrangers* (Paris: Calman-Lévy, 1991), Annex VII.

²⁶ François Héran, “Cinq idées reçus sur l’immigration,” *Population et Sociétés*, No. 397, January 2004.

²⁷ See Conseil d’Etat, 8 décembre 1978 — G.I.S.T.I., C.F.D.T. et C.G.T.— Rec. Lebon, p. 493.

Africa (most from Morocco) grew to two thirds or more of the total of (the now reduced number of) family immigrants by 1990; this proportion has continued to grow since.²⁸

In this sense it is true that by 2000 the steady stream of immigrants from non-European countries were overwhelmingly family members of those already there. In 2003, 68 percent of total third country national (TCN) entrants into France were family members.²⁹ Therefore, the most that can be said about the Council of State decision in 1978 is that it enabled a steady number of North African family members to enter the country each year.

²⁸ In fact, most family migrants are not admitted under “family unification” rules, but under a category of “private and family life”. This category of admission was created in 1998. It usually involves temporary admission for foreign members of French families who do not easily fit the category of family unification. See Insee, *Les immigrés en France* (Paris: insee, 2005), p. 70-72.

²⁹ INSEE, *Flux d'immigration permanente par motif, 2003*, http://www.insee.fr/fr/themes/tableau.asp?reg_id=0&id=498 (accessed February 10, 2011)

Table 1**France: Stock and Inflow of North African Population**

	1964	1972	1982	1990	1999	2003-04	2007-08
Total N. African Pop. (étrangers)*	634,096	1,136,381	1,437,200	1,393,200	1,136,000	1,098,000	1,071,368
Total Imm Population (étrangers)*	2,214,132	3,705,804	3,714,200	3,596,600	3,263,200	3,510,000	3,682,218
% of Imm Population N. African (étrangers)*	28.64%	30.66%	38.69%	38.74%	34.81%	31.28%	29.09%
% N African among inflow of immigrants that year				33%	34%	42%	36%

*"étrangers" = non-citizens, residing in France, born abroad or in France." Does not include citizens of the European Economic Area.

**2008

Source: INSEE census figures (Insee, *recensement de 1999, enquêtes annuelles de recensement de 2004, et 2005; recensement de la population 2007, exploitation principale*, found at: <http://www.recensement.insee.fr/tableauxDetaillés.action?zoneSearchField=FRANCE&codeZone=1-FE&idTheme=11&idTableauDetaillé=34&niveauDetail=2>, accessed on March 11, 2011) OECD, *Trends in International Migration: SOPEMI 2003* (OECD, 2004), p. 343; and France Prioux, Magali Mazuy and Magali Barvieri, "l'évolution démographique récente en France," *Population-F*, 65(3), 2010, pp. 425-426.

Probably the best measure that we have of the effectiveness of efforts to control the border is the stock of the immigrant population in France since the 1970s. The foreign Population (étrangers) has diminished in absolute and relative terms since 1982, and the proportion of the population from North Africa has diminished as well. (See Table 1) The sharpest drop among different immigrant groups has been among Algerians. In 1982, there were more than 800,000 Algerian immigrants in France. This figure dropped to about 478,000 by 1999. About a third of the immigrant population in France, and about a third of the entrants each year, is North African. No doubt the changing proportion of North Africans can be accounted for in part by naturalization and intermarriage. However, there is no indication that naturalization is higher among North Africans than among other groups of immigrants, and there is a steady flow of new immigration from this region.³⁰

2. Asylum

In addition to family reunification, the right of asylum, under the European Convention on Human Rights as well as French law—a right enforced both by French courts and European courts—has been cited as another aspect of border control that cannot be easily controlled by the state. Indeed, applications for asylum have generally increased over time, from less than 20,000 in 1981, to over 60,000 in 1989. Within the following decade, applications declined once again to pre-1989 levels, only to increase once again after 1998 to around 50,000 in 2003–2004. At the same time, those requesting asylum changed from predominantly European in the 1970s, to predominantly Asian and African after the 1980s.³¹

After 1998, applications for asylum in France increased by more than 50 percent, compared with small decreases in the United Kingdom, Germany, and Italy. In fact, the absolute numbers were even higher than indicated for France because only adults are counted. Although the administrative structures that were set to deal with these applications were placed under great pressure by these numbers, they did not appear to

³⁰ See, insee, *Etrangers-Immigrés, Acquisitions de la nationalité française, 2000-2007*. http://www.insee.fr/fr/themes/document.asp?ref_id=T10F039, (accessed March 11, 2011)

³¹ All of these figures are taken from the Office Français de Protection des Réfugiés et des Apatrides (OPFRA).

have been overwhelmed. The principal result of increased applications has been a decline in the recognition (acceptance) rate.

Table 2
Asylum seekers and Recognition Rates: 1982-2009

	Number of Applicants	Recognition Rate	Number of Entries as Refugees
1982	19,863	73.9%	14,586
1984	22,350	65.3	14,314
1987	26,290	32.7	8,704
1990	61,422	15.4	8,770
1991	54,813	19.7	15,467
1999	22,475	22.8	4,698
2003	52,204	17	9,790
2008	42,599	27	11,441
2009	47,686	22	10,373

Source: OFPRA

If we look at Table 2, we can see that when applications were relatively low in the early 1980s, acceptance rates were well over 65 percent. By the late 1980s, as applications increased, acceptance rates declined to 15 percent, and then climbed somewhat higher as applications declined substantially in the 1990s. Then, acceptance rates declined again as applications increased once again after 1998. Application rates declined once again after 2004, but acceptance rates remained between 18% and 27%

between 2000 and 2009.³² Overall, the actual number of refugees accepted for entry into France is now far lower than it was when there were far fewer applicants in the early 1980s. The number of people residing in France with refugee status was almost halved between 1962 and 1993, while the demands more than tripled.³³

Given the ability of public authorities to adjust acceptance rates to applications, there is every reason to believe that the state is quite capable of controlling this volatile flow. Although France has a relatively low acceptance rate, above the European average in 2009 of 19%, above the Italian and Spanish rates, but well below the British, German, Dutch and Danish rates. In addition, it takes more effort for those claiming asylum in France than in most countries in Europe. France has one of the lowest recognition rates in Europe for “first instance” claims; it is only when we include successful appeals of recognition refusals that the French rates rise above the EU average.³⁴ On the other hand, its claims for asylum are second only to the United States. Together the United States and France receive a quarter of the claims of the 44 industrialized countries.³⁵

3. *Undocumented Entry*

This leaves us with the question of undocumented or “illegal” immigration. The political question of immigration has focused increasingly on illegal immigrants in France, as it has in the United States. There are, of course, immigrants who have entered illegally. although most have entered the country legally, but have overstayed their visas for a variety of reasons. Therefore, there are two dimensions to the status of legality/illegality. The first is the legality of the border-crossing itself. The second is how long the migrant has stayed. As one scholar has emphasized, “An immigrant in a legal situation can fall into illegality from one day to the next. For numerous immigrants, the situation of illegality can represent a temporary phase of the migration cycle, before obtaining a residency permit.” This was the case in France in the 1960s, when migrants

³² These figures can be found in the annual *Rapport d'activité* of OPFRA, as well as in the report of the UNHCR, *Asylum Levels and Trends in Industrialized Countries, 2009*, Division of Programme Support and Management, 23 March 2010.

³³ See Catherine Wihtol de Wenden, “The French Response to the Asylum Seeker Influx, 1980–93,” *Annals of the American Academy of Political and Social Science*, Vol. 534, July 1994, p. 86.

³⁴ See Eurostat Newsrelease, 89/2010, “Asylum Decisions in the EU27,” <http://ec.europa.eu/eurostat> (June 18, 2010).

³⁵ See UNHRA, 1999, p. 6.

who had entered the country could legalize their status with a work contract, and has been the case in numerous countries (including France) that have permitted periodic amnesties.³⁶

Estimating the number of undocumented migrants in France, or any country, is a formidable task, which always comes with political overtones. The task is complicated by a lack of any good way of knowing how many illegal immigrants have left the country. The difficulty is fully elaborated by Henri Courau, in his report on France for the European Commission *Clandestino Project*. After analyzing what would be necessary for a reliable estimate of the undocumented population in France (much of this reflects the methodology used by the Pew surveys in the United States), he concludes that “In reality, there is no statistical source that is able to quantify the population of irregular foreigners in France.” Nevertheless, he does piece together studies that focus on segments of the foreign population, and makes estimates from these. These estimates vary between 178 and 400 thousand, relatively close to the more political figures released by French governments during the past decade.³⁷

Government estimates vary with the political climate, and whether it is more politically advantageous to maximize the estimate (to support new budget allocations), or minimize the estimate (to demonstrate the effectiveness of border controls). Nevertheless, in similar political climates, when governments have been responding to charges that they are doing too little, they claim between 200,000–400,000 undocumented immigrants in the country. What is striking about both the scholarly and the political estimates is that they are relatively low compared to those of other European governments. 0.68 Percent of the population (on the high side) is considerably lower than that of Britain (550,000, or .92 percent) and far lower than that of the United States (11–12 million, or 3.8 percent).³⁸

³⁶ See Georges Tapinos, “Immigration et marché du travail,” *l’Observateur OCDE*, December 1999.

³⁷ Henri Courau, *Undocumented Migration, France Country Report*, p. 27; Clandestino Project Overview, p. 5, <http://clandestino.eliamep.gr>.

³⁸ The French estimate was given by the minister of the interior in an interview in the *Figaro*, May 11, 2005; the British figures were quoted by Professor John Salt in *The Sunday Times* as estimates that he did for the Home Office, on April 17, 2005; and the American figure was cited by Thomas Freedman in the *International Herald Tribune* on April 6, 2006. In each case, the government has argued that there has been an increase; in the U.S. case, this is double the numbers cited by Tapinos in 1999. In general, the

The relatively low proportion of illegal immigrants in France has been attributed—in part—to the fact that illegal immigrants, until 2007, were able to claim legal residency after ten years in the country. As a result, the number of illegal immigrants who have been legalized under periodic mass amnesties has been far lower than in other countries in Europe. It has also been attributed to the relatively small role that the informal labor market plays in France. “In general, the more a labor market is deregulated,” argues François Héron, “the more it attracts irregular migration.”³⁹

Does this indicate an inability to control the border? Of course, it must, at least to a certain extent. However, it is not the border that is at issue, since it is widely conceded that the border was crossed legally in most cases (90%, according to the Ministry of the Interior), but the ability of the state to keep track of immigrants once they already in the country. In this way, the French capability does not appear to be any worse than it was before the current wave of immigration, and may very well be far better. The agreement to abolish formal border controls within the Schengen area, which went into effect in 1995 in France, does not appear to have diminished French capabilities, and may very well have enhanced them.

4. Enlarging and deepening: The Barrier of the Border

Since 2002, French governments have made a concerted effort to focus on the border, to multiply “barriers at the entrance.”

...both at the national level and at the European and international levels: a new procedure to issue visas by consular authorities, increased cooperation with

comparison among France, Britain, and the United States—if not the exact figures—is confirmed in a massive report by the French Senate in April 2006. The report also deals with the complex problem of estimating the population of “irregular immigrants,” which includes both those who entered the country legally, and whose situation evolved into illegality (the majority), as well as those who entered the country illegally (a relatively small number). See *Rapport de la commission d'enquete sur l'immigration clandestine, créée en vertu d'une résolution adoptée par le Sénat le 27 octobre 2005* (2 volumes). In particular, see the testimony of François Héron in Volume II, and cited on p. 47 of Volume I. He also cites the United State as one of the countries where the informal labor market is most important. The data cited by the report (Vol. I, p. 47), indicates that no country in Europe has a lower rate of irregular immigration than France.

³⁹ See the testimony of François Héron, in Volume II of the Senate Report.

transportation authorities, reinforced collaboration among different police organizations and multiplication of “airport measures of dissuasion.”⁴⁰

Even before the agreement to abolish border controls within the Schengen area, France began to strengthen its controls at its “external” crossings, particularly at airports. By effectively moving the border to a no-man’s land at administrative retention centers, France established a new border. In France, the legal concept of administrative “retention” goes back to 1810. More recently, *zones d’attente* (waiting zones) and the *centres de rétention* (detention centers for foreigners waiting to be admitted or deported, where they can be held for up to five days-CRA) were created in 1981 and formalized in 1992 by socialist governments. In the 1980s there were reported to be seven or eight centers; by 2007 the number had risen to 28; and the most recent estimate` is at least 37: 10 in the Paris region, and 27 around the entire periphery of the country.⁴¹ Some of them already existed in the 1930s or the 1950s, but the newest version was an attempt to prevent asylum-seekers from claiming rights that they would have had once they formally entered French territory, or to hold undocumented immigrants and applicants for asylum whose applications have been refused, but whose cases may be under appeal.

Nevertheless, asylum-seekers can be detained for a limit of four days, and then the authorities must formally bring a request to increase that term before a special judge. In 2001 these requests reached a peak of 12,715, and then fell to 2,400 in 2005. In 2003, 6,765 persons were detained beyond the four-day limit by judge’s order, a figure

⁴⁰ Secrétariat Général du Comité interministériel de contrôle de l’immigration, Rapport au Parlement, *Les Orientations de la politique de l’immigration*, troisième rapport, 2007, p. 4

⁴¹ Reported in *Le Monde*, November 10, 2007, p. 19. Also see the book by the Socialist senator, Louis Mermaz, *Les Geôles de la République* (Paris: Stock, 2001). The figures for 2007 are from *Les Orientations de la politique de l’immigration*, 2007. The most recent figure of 37 is from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, UNHCR: www.unhcr.ch, and are made available by Migreurop (www.migreurop.org). A far larger number (78) is reported in a European Parliament report: Directorate-General Internal Policies. Policy Department C, Citizens Rights and Constitutional Affairs, *The Conditions in Centres for Third Country Nationals (detention camps, open centres as well as transit centres and transit zones) With a Particular Focus on Provisions and Facilities for Persons with Special Needs in the 25 EU member states*, (CONTRACT REF: IP/C/LIBE/IC/2006-181, 2007), p. 79. In addition the EP report notes that also 185 administrative detention facilities where TCNs can be held for periods of 48-96 hours.

that fell to 2101 in 2005.⁴² In part, this fluctuation can be explained by the rise of asylum requests after 1999, and the leveling off of these requests after 2001.

Although advocacy groups have helped to expand the legal recourses available to immigrants and asylum-seekers that have not been permitted to enter French territory, the struggle over rights on either side of a shifting border has been ongoing. The conditions in the detention centers under the Left in 2000 were called “the horror of the republic” by a former Socialist minister, and they were finally opened to surveillance by NGOs by the interior minister, Nicolas Sarkozy, in 2003.⁴³ After 2006, living conditions at CRAs improved somewhat, and rates of occupancy went down, although they remained high.⁴⁴ For the NGOs that deal with immigration on a daily basis, the conditions maintained in these quasi-prisons remained more important than the number of days of permitted detention.⁴⁵

The detention centers are the core of the more solid barrier of the border, but most people who pass through their doors are not those stopped at the border. All French governments during the past 25 years have resorted to various forms of expulsion (the most important category of which is “reconduite à la frontière”) of those deemed to be in the country illegally. Since the 1980s, the number of expulsions each year has grown somewhat, but the biggest change has been in the number of people who have been detained, but not yet expelled.

A major shift in policy took place during Mitterrand’s second term, between 1990 and 1991. The number of people detained for expulsion more than tripled, while the percentage of those actually expelled was more than halved. (See Table 3) This approach of mass roundups, while expelling about the same number of people, created the impression of greater effectiveness, even if the constraints on actual expulsions have remained the same. After 2002, with Sarkozy as minister of the interior, both roundups and expulsions increased, although the proportion of those expelled remained about the

⁴² “Rapport de la commission d’enquête sur l’immigration calndestine,” Sénat, 2005–2006, p. 83.

⁴³ See *Le Monde*, November 16, 2000 and March 17, 2003.

⁴⁴ Henri Courau, *Undocumented Migration, France Country Report*, pp. 43 and 48.

⁴⁵ See the comments by Cimade in *Le Monde*, May 2, 2003, that the vast majority of expulsions that place within the first week, and that the percentage of expulsions (of those detained) has remained generally constant—45–53%—through the vicissitudes in the law over a ten-year period.

same. Therefore, even if the process of mass roundups remains questionable from a legal perspective, France annually expels more than ten percent of the estimated illegal arrivals, but detains even a greater number.

In 2006 Ministry of the Interior Sarkozy announced that 20,000 people had been expelled in 2005, double the announced number in 2003, and 27 percent more than in 2004. The announcement noted that this was the highest number ever expelled, and also announced a goal of 26,000 for 2006. Certainly, this well-publicized statement was meant to support the emerging presidential campaign for the minister of the interior, but it also demonstrated the ability of the ministry to actually increase expulsions, even with the legal and political constraints in place.⁴⁶ Although the number of executed deportations has increased dramatically since 2002, the percentage of expulsions remains at or below, 25 percent of those detained, compared with double that percentage before 1991.

⁴⁶ The announcement was made on the Web-site of the National Police on January 18, 2006.

Table 3

ARTICLE 22 EXPULSIONS ("Reconduites à la frontière")

	Detained for Expulsion	Expelled	Percentage Expelled
1988	8992	5863	65.2%
1989	7669	4808	62,7
1990	9641	4567	47.4
1991	32673	5867	18.0
2000	36614	6592	18.0
2001	37307	6161	16.5
2002	42495	7611	17.9
2003	49017	9352	19.1
2004	69580	15536	22.3
2005	67158	17399	25.9

Source: Ministry of the Interior, Fichier GASCH3, A. Lebon, *Situation de l'immigration et présence étrangère en France* (Paris: La Documentation Française, décembre 1994); *Rapport de l'Haute Commission à l'Intégration 2002-2003* (la Documentation Française, 2004), p. 44. The 2004-5 figures are from. Henri Courau, *Undocumented Migration, France Country Report*, p. 45

5. *The New Remote Control: Incorporating Europe*

To strengthen its ability to deal with illegal immigration, the Ministry of the Interior created in 1999 a coordinated police unit to control the border: the Central Directorate of the Frontier Police (DCPAF). Although the actual number of police was increased only modestly after 1999 (from about 5,000 to about 5,500, out of a total of 7,327 personnel), the largest increase was in police “walking a beat.” Almost half the PAF are posted at airports, with another 30 percent at land posts and maritime ports.⁴⁷ However, the concept of “the border” has been changing. In 2000, the PAF was reorganized to give it a greater role in neighborhood policing (“police à proximité”).

. . . its involvement in urban settings, in the struggle against channels of illegal immigration, as well as its active participation in the removal of foreigners in an irregular situation have led the DCPAF to evolve in a context of growing needs linked to its European commitments, to deal with a strong thrust of irregular immigration, as well as a significant growth of asylum seekers.⁴⁸

By 2005 the PAF was directly involved in the management of detention centers, particularly those on the periphery of the country, and after 2005 with cooperation with FRONTEX. Thus, by 2005, the role of the frontier police had changed considerably. It was embedded within a larger Europe, on one hand, but coordinated with the police in urban neighborhoods on the other.

France has also strengthened its control over access to its territory by externalizing many immigration controls to the territory of the sending countries,⁴⁹ and by participating in the European Agency for the Management of Operational Cooperation of the External Borders of the Member States of the European Union (FRONTEX), operations since 2005. The old externalization, remote control, has existed for some time; the new externalization of the French border to the EU is more complicated.

⁴⁷ Ministry of the Interior, “Rapport d’activité de la DCPAF 2003,” p. 9.

⁴⁸ Ministry of the Interior, “Rapport d’activité de la DCPAF 2000,” p. 9.

⁴⁹ See Virginie Guiraudon and Gallya Lahav, “The State Sovereignty Debate Revisited: The Case of Immigration Control,” Virginie Guiraudon, “Before the EU Border: Remote Control of the ‘Huddled Masses,’” in Kees Groenendijk, Elpeth Guild and PE Minderhood, eds., *In Search of Europe’s Borders* (New York: Kluwer Law International, 2003).

Most visa applications are wholly process abroad by ministry officials, with variable results. For example, in 2002, 77.3 percent of visa applications in Algiers, 33.7 percent in Bamako, 40 percent in Dakar, and 33.7 percent in Fez were rejected. These rejection figures are considerably higher than those reported by Virginie Guiraudon in studies of applications for Schengen visas just a few years before.⁵⁰

In addition, the requirements of visa applications have become increasingly demanding, particularly for those who are seeking to enter the country for family unification. The Sarkozy law of 2003 requires *demonstration* of knowledge of rights and duties of French citizens, a requirement that was strengthened in the legislation passed in 2007. The latter law requires a contract for family unification, with sanctions for violation, and those applying were required to take two-month courses that constituted “an evaluation of language ability and the values of the Republic” in their home countries.⁵¹

Since 2005, FRONTEX has become one more institutional arrangement of the EU within which French authorities have operated. FRONTEX has slowly expanded during the past five years, and its budget has grown from about 6 million euros in 2005 to 88 million euros in 2009. The budget has declined since, except in spending on joint return operations. By 2009, FRONTEX had organized 25 border operations, in which France participated in 19. France was active in all of the eight operations at over 200 airports. In addition, FRONTEX organized 32 “joint return” operations of undocumented immigrants in which France participated in 16 (and organized one).⁵² FRONTEX operations are intergovernmental cooperation and entirely voluntary. It does not have means to implement any of its programs by itself, although some resources have been allocated by member states. In 2008, a European Border Surveillance System (EUROSUR) was created to focus on the southern and eastern EU

⁵⁰ See Cour des Comptes, *L'Accueil de immigrants et l'intégration des populations issues de l'immigration*, rapport au Président de la République suivi des réponses des administrations et des organismes intéressés, novembre 2004, p. 433.

⁵¹ *Le Monde*, October 23, 2007.

⁵² FRONTEX, Annual Report, 2009, pp.22, 35-39.

borders (almost all FRONTEX operations are in these areas), and in October 2010, FRONTEX organized its own expulsion charter for the first time.⁵³

The deputy director of FRONTEX saw this as an increased role for the EU, and

...will come as a relief to national governments who will no longer have to ‘carry the burden’ of negative public opinion, embarrassment and disapproval prompted by collective repatriation procedures.

In its report, *Le Monde* notes that the added weight of the EU will be important for exerting pressure on third countries to accept returns of their citizens.⁵⁴

FRONTEX, then, while still marginal in the development of French border policy, has offered French governments the opportunity to engage in joint enforcement and expulsion, while avoiding direct political responsibility. FRONTEX operations also both aid and pressure EU countries on the periphery of the EU to block the entry of migrants who might otherwise find their way to France.⁵⁵

6. The Schengen Effect?

In one respect, however, the French frontier has become far more open. The number of citizens of EU member states migrating to member states other than their own has increased by 10 percent a year since 2002, while immigration of non-EU nationals has remained stable since 2003. In 2006, EU nationals represented 40 percent of immigrants entering the (other) EU-27 countries. During the same period, EU nationals returning to their country of origin declined by 20 percent.⁵⁶ This percentage has continued to grow (44 percent in 2008), contributing to the growing proportion of the resident foreign population in EU countries who come from other EU countries. More than a third of the almost 12 million foreign nationals in the EU-27 in

⁵³ EUROSUR is not an operation directly run by FRONTEX, but it does give the agency greater weight in more vulnerable parts of the European border. See, “European Commission, “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, examining the creation of a European Border Surveillance System (EUROSUR), COM(2008) final.

⁵⁴ *Le Monde*, October 4, 2010.

⁵⁵ This is the general conclusion of Sarah Léonhard in “EU border security and migration into the European Union: FRONTEX and securitization through practices,” *European Security*, Vol. 19, No. 2, June 2010, p. 247

⁵⁶ See Anne Herm, “Recent migration trends: citizens of EU-27 Member States become ever more mobile while EU remains attractive to non-EU citizens,” *Eurostat, Statistics in focus*, 98/2008, pp. 1 and 3.

2009 were from other EU countries.⁵⁷ Therefore the general trend in Europe since 2002 has been for an increasing number of EU citizens to move to other EU countries for an extended period of time, indicating a relative success for free movement policy.

The impact of this trend in France, however, has been counter-intuitive. During the past decade, as the Schengen Accords have been implemented, the number of immigrants entering from other EU countries has declined from about 43 thousand per year in 1998-2003 to about 34 thousand in 2008; the proportion EU entries of all foreigners entering the country has also declined from 27.6 in 1998 to 20.2 in 2008.⁵⁸ In 1999 about 33 percent of foreigners in the country were from the EU; by 2007 this proportion remained at about 34 percent.⁵⁹ In other words, although borders were relatively more open for EU-27 nationals in 2008 compared with 1999, there was no increase of immigration movement towards France, nor did EU nationals as a proportion of foreigners in the country change.

7. Enlarging and deepening: The Politics of the Border

Increasingly, French immigration policy has focused on the instruments and the process of border control. In fact France has not been different from most countries in the EU that have been cooperating with France to impose more rigorous barriers in Europe. The evolving institutions of immigration control are generally institutions of border control that are structured to limit and exclude migrants. In France, illegal immigration is neither a major problem in terms of numbers nor in comparison with other countries in Europe, and entry of illegal immigrants does not appear to be out of control. Nevertheless the policy focus on illegal entry and relatively small stocks of undocumented immigrants has been an important political option, and has been linked to questions of identity and security.

⁵⁷ Eurostat, *Migration and migrant population statistics*, data from October 2010: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Migration (accesses April 2, 2011), p. 3

⁵⁸ Data for 2007 and 2008 is from OECD, *International Migration Outlook, 2010* (Washington DC: OECD, 2010), p. 205. Earlier data is from La Documentation Française, *Le chiffres d'immigration en France*: <http://ined.fr> (accessed April 5, 2011)

⁵⁹ Insee, *population-immigrés selon le pays de naissance*: http://www.insee.fr/fr/themes.asp?reg_id=0&ref_id=immigrespaysnais (accessed February 11, 2011)

This focus has been generally limited to third country nationals. However, the declining fortunes of the Sarkozy government in the midst of an election cycle convinced the president to expand its law and order stance during the summer of 2010. After an incident involving Roma during the Bastille Day holiday, Sarkozy shifted the focus to Roma (mostly Romanian citizens, but some Bulgarian as well) residing in France. In a major speech by the president in Grenoble at the end of July, he linked Roma to crime and immigration. This was followed by a *circulaire* of the ministry of the interior that directed prefects and the police to rapidly seek judicial action to dismantle 300 illegal encampments (“...those of the Roma *a priori*”), to prevent the establishment of new camps, and to prevent them from simply moving somewhere else. By September, more than 8000 Roma had been deported (evidently for having overstayed their three month entry permits).⁶⁰ They were, however, free to return to France under existing EU rules of freedom of movement.

The action quickly became Europeanized, and provoked a serious crisis between France and the European Commission, with the Commission accusing France of both poor transposition of the 2004 Directive on Free Movement as well as racial discrimination against Roma. In the end, France agreed to consider Commission objections, and the Commission set up a task force on Roma integration. What was largely missing from the heated debate was the widespread targeting of Roma in other EU member states.⁶¹

In a classic case of policy driving politics, the choice to focus on border control has driven institutional development and has shaped the politics of the emerging European arena within which policy is developed and decisions are made.⁶² Beginning with the implementation of Schengen, and its incorporation into the Treaties on Europe, border questions have become Europeanized. In the process, because the arena of

⁶⁰ Le Ministre de l'Intérieur, de l'Outre-mer et des Collectivités territoriales, *Circulaire IOC/K/1017881/J du 5 août 2010*, « *Evacuation des campements illicites* » In fact, France had expelled about 10 thousand Roma in 2009, but much more quietly. The *Circulaire* was modified (essentially withdrawn) in October, after a « dialogue » with the European Commission.

⁶¹ See Stanley Pignal, “EU Faces Threat to Migration Principle,” in *Financial Times*, September 28, 2010, and Pignal, “France Avoids EU Discipline Over Roma,” *Financial Times*, September 29, 2010.

⁶² Theodore J. Lowi, *Arenas of Power*, ed. Norman K. Nicholson (Boulder: Paradigm Publishers, 2009), p. 89.

decision-making has limited the participation of political actors in ways that favored ministries of justice and interior, the input of other ministries that deal with migration questions has been marginalized or eliminated. In addition, parliamentary actors have been by-passed, and presented with *faits accomplis* to ratify, although it is unclear if parliamentary actors would oppose exclusionary measures even if they did have greater input.⁶³

Since Schengen, French governments have favored a trend towards widening and deepening of European-level policy-making on immigration through intergovernmental cooperation. The development of a policy of civic integration, for example, was moved to the EU level at the initiative of Nicolas Sarkozy, (then) French Minister of the Interior. In March 2006, the interior ministers of the six largest EU countries (the so-called G6) agreed to pursue the idea of an “integration contract,” using the French model as a starting point. By the time of this initiative, the French model had already made evaluation of various criteria of integration a condition for entry. The initial step was to create a committee of experts to investigate the procedures used in all member states. They then planned to propose such a policy to the other 19 countries of the EU.⁶⁴ Indeed, one of the first initiatives of the French presidency in 2008 was to propose a comprehensive, compulsory EU integration program. The compulsory aspect was finally dropped in June, but a ‘European pact on Immigration and Asylum’ was passed by the European Council in October 2008. Three criteria were accepted for acceptance and integration in Europe: language mastery of the receiving country; knowledge and commitment to the values of the receiving country; and access to employment.⁶⁵

In this way, Europe has provided an arena for the development and enforcement of French policy priorities on immigration. The gap between policy goals and institutional means has continued to drive institutional development through cooperation oriented towards exclusion, and the basis for exclusion has become

⁶³ This pattern is nicely summarized by Virginie Guiraudon in Guiraudon, “Before the EU Border: Remote Control of the ‘Huddled Masses’” ...

⁶⁴ Hugh Williamson, “EU six consider introduction of ‘integration contracts’ for immigrants,” The Financial Times, March 24, 2006.

⁶⁵ See www.euractiv.com, 2 July 2008. European Pact on Immigration and Asylum (13440/08), approved by the JHA Council on 25 Sept. and adopted by the European Council. Statement issued by the French Council of Ministers, 12 Nov. 2008.

broader, with an increased focus on security issues. The creation of a European institutional capacity in this area has certainly not been driven by France alone, but France has been a core actor in the development of structures and policies at the EU level.

Even European institutions that have generally been sympathetic to immigrants and immigrant rights have recently provided an arena for the development of exclusionary policy. The British government has thus followed the lead of the French, German and Dutch governments in deepening the debate on national identity, multiculturalism and their relationship to security issues, a “debate” that clearly places immigrants outside of the national community. European level cooperation, however, has now been given added weight by the Council of Europe, which has appointed a committee to make recommendations on the challenges of cultural diversity.

While Secretary General Thorbjørn Jagland has warned of the dangers of diluting human rights in the name of condoning ethnic differences, he has also warned of dangers to European identity posed by diversity:

“As we understand it now,” he said in an interview published in the *Financial Times*, “multiculturalism allows parallel societies to develop within states. This must be stopped,” he said. “It is also clear that some parallel societies have developed radical ideas that are dangerous. Terrorism cannot be accepted.”

Jagland’s statement focused growing security concerns, and echoed that of Prime Minister Cameron (supported by President Sarkozy and Chancellor Merkel) a few weeks before, that called for “muscular liberalism” to bar state aid to groups that do not share Britain’s liberal values.⁶⁶ A week later, in a speech before the European Commission, he added that

Deep security is about building deeper and more sustainable relations between individuals, cultures, and religions. Europe has to develop a social model that is more advanced than multiculturalism. This model has to be built upon social

⁶⁶ Peggy Hollinger, “Council of Europe Warns on Multiculturalism,” *The Financial Times*, 16 February 2011. The sharp movement towards consensus and away from multiculturalism is summarized and analyzed in three recent articles in *Le Monde*, 26 February 2011, under the rubric, “Le multiculturalisme, entre modèle et crise.” Two articles of particular interest are: Eric Fassin, “Nicolas Sarkozy en marche vers le “monoculturalisme,” and Béatrice Durand, “En Allemagne, un mot d’ordre bien plus qu’une politique: l’idée de la nécessité d’une culture de référence l’emporte, » pp. 18-19.

justice and participation by all. Europe must rebuild a common sense of togetherness...”⁶⁷

In fact, The Council of Europe is now positioned to provide institutional cover and context for a broad policy movement in which France is a major player. This new role is in marked contrast to the role that it has historically taken, not only in defense of human rights, but in associating human rights with diversity. At the end of 2000, the Committee of Ministers issued a statement on cultural diversity issued a statement that recognized “...that respect for cultural diversity is an essential condition of human society.” It went on to develop the case that “...cultural diversity has always been a dominant European characteristic...,” and that the tradition of the Council of Europe was “...to protect and foster cultural diversity...”⁶⁸ This argument was further elaborated six years later, along with the broader assertion that “The Council of Europe has both the mandate and the experience to broker this.”⁶⁹ The institutional process remains the same, but the policy content is now more in line with how policies have developed in France, The Netherlands, Germany and the UK.

Conclusion

So, yes, France still has a border, one that has been increasingly shaped by its place in the European Union. In most respects it is as strong as it has ever been. The growth of emerging European border institutions is being driven by policy priorities consistent with those of France, but that are the result of cooperation at the European level. Moreover, the content of border policy has expanded as well. Entry requirements have become “thicker” and more demanding, and demanding integration policy is becoming the European norm for entry.

The structures and agencies that enforce the border, whether they are on the French border itself or removed to the external European border, increasingly reflect the enhanced ideas of security that are related to the development of a stronger border.

⁶⁷ See http://www.coe.int/t/secretarygeneral/sg/speeches/2011/20110301_Social_Cohesion_Brussels.asp (accessed April 7, 2011)

⁶⁸ Council of Europe, *Declaration of the Committee of Ministers on cultural diversity*, CDMM (2000) 44, 7 December 2000, p. 1

⁶⁹ *The Challenge of Transcultural Diversities: Cultural Policy and Cultural Diversity*, Council of Europe, 2006.

Frontier police, sometimes related to FRONTEX operations, patrol the ports of entry and beyond, while hundreds of detention camps are legally separate from national territory in terms of human rights requirements.⁷⁰

Rather than being weakened by embedded liberalism and the expansion of Europe, the border has been strengthened by creative new institutions at the national and European levels that tend to protect and enhance the government's ability to develop strong exclusionary policies. Therefore, the French border has become more complex, but not more compromised.

⁷⁰ The European Parliament estimates 220 closed detention camps within the countries of the European Union 25 in 2007. See Directorate-General Internal Policies, *The Conditions in Centres for Third Country Nationals*, p. 35