

SARKOZY'S LAW: THE INSTITUTIONALIZATION OF XENOPHOBIA IN THE NEW EUROPE

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Examining the new policy ramparts of Fortress Europe, Dominic Thomas finds the ratification of racial intolerance, the enabling of exploitative labour practices, and increasingly extreme legal 'security measures'; all of which culminate in 'round-ups' and 'camps' ominously reminiscent of one of the darkest passages in Europe's recent past.

France's hyper-president, Nicolas Sarkozy, assumed the presidency of the European Union on 1 July 2008 under acrimonious conditions triggered by the 13 June 2008 Irish 'no' vote on the Lisbon Treaty. Nevertheless, France was able to obtain virtually immediate consensus on two significant and connected initiatives: the European Union Pact on Migration and Asylum, and the Union for the Mediterranean project. Closer scrutiny of these French priorities provides interesting insights into broader debates on the contested parameters of a European identity.

Recent developments in Europe shed new and disquieting light on the original organizing principle of the European Union, according to which the EU was to become a 'family' of democratic European

countries. EU membership has continued to grow (adding new members in 2004 and 2007) and this growth has been accompanied by the liberalization of internal frontiers. These measures have also coincided, however, with heightened concerns over border control and the vulnerability of 'Fortress Europe'. At the same time, assertions of national sovereignty have taken on an increasingly shrill and reactionary intensity, raising important questions about belonging, cohesiveness, and the sanctity of the original structuring aspirations and objectives.

France has, historically, played an extremely important role in defining EU identity, and policies and measures concerning migration and security precede the Sarkozy administration. In the *Third Annual Report on Migration and Integration*, published 2007, the EU emphasized the point that the "integration of third-country nationals is a process of mutual accommodation by both the host societies and the immigrants and an essential factor in realizing the full benefits of immigration." However, French determination to impose and extend a key domestic policy agenda item throughout the EU zone must be understood as the outcome of electoral campaign promises made by then-candidate Sarkozy to his extreme right-wing constituencies. Polls conducted during the 2007 French presidential elections revealed that a majority of Sarkozy supporters believed there were "too many immigrants in France". In turn, this has resulted in a shift away from policies concerned with the integration of migrants towards an emphasis on protecting its 'own' citizens from migrants through more restrictive laws, regulations and restrictions.

THE POLITICS OF 'CO-DEVELOPMENT'

The creation in 2007 of the new Ministry of Immigration, National Identity, Integration and Co-Development essentially completed a project Nicolas Sarkozy started as minister of the interior (2005–07). In that capacity, he had already made the fight against illegal immigration a priority, resulting in dramatic increases in expulsions during both this period (35 921 in 2005; 34 127 in 2006; and 20 411 during the first six months of 2007, a 19% increase over the similar period in the previous year) and in the last couple of years. Under the leadership of his close friend and political ally, Brice Hortefeux, the new ministry has endeavoured to capitalize upon the widespread belief that national identity has been eroded. For example, DNA testing was proposed as a 'scientific' way for 'foreign families' to prove their ties to France, but instead has served to support prevalent assumptions that visible minorities and immigrants belong to a distinct social configuration, outside the dominant order of things. Likewise, reforms to immigration policy have overlapped with the consolidation of extreme right-wing positions in Europe or at the very least their mainstreaming by right-wing political parties; calls for increased border control, heightened security, and the expansion of police powers have become routine in many European countries. The new preoccupation with border security, while reviving discussions on European identity and integration, have encouraged monolithic interpretations of history that fail to account for the fact that European populations are more intimately related to non-European ones than some European people wish to believe.

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The structure of the new French ministry is organized around four main priorities: chosen/selective immigration based on certain skill sets; the fight over illegal immigration, the introduction of integration contracts (comprising language proficiency tests and a commitment to respecting Republican values and ideals); and measures aimed at co-development partnerships with sending countries. The key objective has been to reduce dramatically family-related immigration (that is, reunification) in favour of economic migration (that is, exploitation).

To this end, domestic policy and foreign policy can no longer be decoupled, since they unambiguously concern both facets of immigration: namely, the dynamics of internal race relations and policies aimed at controlling the entry of migrants into France. Naturally, these mechanisms reinforce existing paradigms concerning the criminalization of poverty in the *banlieue*, and these have been transferred to economic models that essentialize the criminality of immigrants. These labels emerge as inseparable components of the illegal migrant's 'clandestine' status in the EU, a presence that is therefore assumed a priori as a 'risk' factor, while also being structured around comfortable and shared negative representations. (A similar trend applies to the United States, where immigration discourse has moved away from seeing it as a positive historical phenomenon to viewing it as an undesirable component of globalization.)

The politics of 'co-development', meanwhile, essentially reproduce age-old patterns of labour acqui-

sition in the global South; all that has changed is that the coordinates of human capital exploitation have shifted from the healthiest and the strongest (slaves) to the best and the brightest (employees). Brice Hortefeux defends this dimension, arguing that these mechanisms do not entail a 'brain drain' but rather a 'circulation of competence'. This position entails consideration neither for the nature of neo-colonial relations and the circumstances that trigger migration, usually in the guise of perilous Mediterranean crossings whose recalibration echoes an earlier middle passage, nor for the broader uni-directionality of the process of labour circulation. In fact, France has been actively establishing quotas with African-sending countries, agreeing for example on 25 February 2008 with Senegal to issue 'competence and skills cards' to young Senegalese workers in return for assistance in fighting illegal immigration, improving border control, and streamlining the process of repatriating illegals (similar deals are being pursued with Benin, Congo Republic, Gabon, Morocco, Togo and other countries).

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Before looking at the ways in which the French government has sought to extend these policies to the EU, it is important briefly to consider earlier EU initiatives. According to the 'Freedom, Security and Justice' page on the EU's 'Justice and Home Affairs' website, in October 1999, EU leaders at a European Council meeting in Tampere, Finland: "called for a common immigration policy which would include more dynamic policies to ensure the integration of third-country nationals residing in the European



Manifestation des sans-papiers du 30-09-06
Photo: Flickr/Alain Bachellier

Union. They agreed that the aim of this integration policy should be to grant third-country nationals rights and obligations comparable to those of citizens of the EU. The European Union is keen to promote economic and social cohesion throughout its territory. As such, integrating third-country nationals has become a focal point of the European Union's immigration policy."

For many years, EU leaders have underscored the importance of fostering prosperity, solidarity and security alongside immigration. These guidelines have been both augmented and redefined, however, under the aegis of the new European Union Pact on Migration and Asylum, presented to the European Council of Ministers of Home Affairs/Interior and Justice on 7 and 8 July 2008 in Cannes, France. Brice Hortefeux underlined the imperative of achieving uniformity among the disparate national mechanisms currently in place and the need to regulate legal immigration and asylum policy concerning third-country migrants (that is, any person who is not a national of an EU member state). Proposed measures were targeted at developing a common and coordinated policy, one that would endeavour to harmonize approaches to legal and illegal immigration: the first to proceed through a European Blue Card Scheme designed to address internal labour shortages, the second to be controlled through a newly integrated series of ‘security measures’, consisting of deportation, detention, expulsion, regularization, repatriation, return directives. Approved in principle in July, these measures were voted on at the October 2008 EU summit meeting.

In some cases, at least, these tougher regulations have been counterproductive. In recent years it has become harder for immigrants to achieve regularization; expulsions are accompanied by a five-year ban from the EU, which, rather than solving the initial problem, merely ensures the illegality of returnees; many workers find themselves reduced to the status of illegals when they are made redundant; and, finally, ‘returning’ illegals to third-party states merely transfers their status, vulnerability and problems to another space. At the same time, the kinds of eco-

nomic disparities long observed in the global South are also increasingly in evidence in the economically prosperous regions of the North; riots in France during the autumn of 2005 underscored the class and racial marginality of disadvantaged populations.

WITHOUT PAPERS, OR RIGHTS

Economic migrants, faced with these new pressures, have recently become increasingly vocal in their demand for social and political rights. ‘Illegals’ around the world are slowly beginning to emerge from the dubious ‘safety’ of legal invisibility, and have begun to press more directly for public representation. During April and May 2008, several French businesses (with support from the CGT and other trade unions) went on strike to support the illegal workers known as the *sans-papiers*, and called for regularization. This action also served to counter popular misconceptions and stereotypes concerning illegals, bringing attention to the ‘legal’ work they perform and contributions they make, but also signaling the dangers of restrictive employment laws in exposing workers to exploitative employment practices that European workers would find unacceptable.

EU laws designed to punish abusive employers exist, notably Article 5 of the Charter of Fundamental Rights that concerns the Prohibition of slavery and forced labour: (i) No one shall be held in slavery or servitude; (ii) No one shall be required to perform forced or compulsory labour; (iii) Trafficking in human beings is prohibited. The European Court of Human Rights in Strasbourg is also committed to protecting human beings from slavery, servitude and forced or compulsory labour. Nevertheless, abusive practices have been widely tolerated, and extensively documented. As Hugo Brady reports in a briefing



Des Papiers Pour TouTEs
Photo: Flickr/William Hamon

document on EU Migration Policy on the Centre for European Reform website: “The Commission estimates that there are around 8 million illegal immigrants in the EU, and that this number increases by 500,000 to 1 million every year.... These workers are drawn to Europe mainly by the knowledge that they can find work illegally in the construction, agriculture, cleaning and hospitality industries. Many end



Anti Sarko Manifestation des sans-papiers du 30-09-06
Photo: Flickr/Alain Bachellier

up doing under-paid or dangerous work.”

In *L'Espresso*, on 4 September 2006, Fabrizio Gatti (recipient of a 2006 award ‘For diversity – against discrimination’) provides a compelling account of the glaring failure of the EU to address exploitative labour practices. Gatti equates current employment conditions with slavery: “In order to pass a week undercover amidst the slave labourers

it is necessary to undertake a voyage that takes one beyond the limits of human imagination. But this is the only way to report on the horrors that the immigrants are forced to endure They’re all foreigners; all employed as so-called ‘black workers’, the name used to describe illegal, untaxed and underpaid work scams Down here they also ignore the Constitution: articles one, two and three, as well as the Universal Declaration of Rights.”

Considerable disparities persist in the EU concerning integration and the required degree of adherence to national codes and values. The Union for the Mediterranean (in effect the culmination of the Barcelona Process that began back in 1995) was agreed on 13 July 2008 in Paris, and signed by the 27 EU members and 43 non-EU countries (except Libya): it extends both the economic and the social priorities of the EU Pact on Migration and Asylum, while simultaneously promoting the circulation of goods but not people. (France’s support for the Union for the Mediterranean project and its implicit position that Turkey’s proper role should be confined to this body rather than the EU itself, serves as a strong indicator as to what they will be prepared to accept in terms of future EU membership.) Efforts at defining a common or shared European identity have been informed by such categories as desirable and undesirable subjects, and Eurosceptics and repeated ‘no’ votes (France, the Netherlands, Ireland) have also contributed to feelings of dis-identification alongside rising xenophobic tendencies aimed at non-EU members. The very concept of ‘integration contracts’ reveals the degree to which the French authorities continue to subscribe to and embrace a long-held belief that such a European identity either exists or can be achieved. What is less clear is

the degree to which any such identity will depend on an increasingly rigid polarization of ‘insiders’ and ‘outsiders’, on the increasingly paranoid resentment that divides privileged members of the ‘family of democratic European countries’ from their extra-European cousins.

Repeated attempts have been made to connect the fight against illegal immigration to a discourse of human rights concerned with the protection of vulnerable subjects from fraudulent traffickers and employers. Abundant evidence of growing insensitivity to migrants demonstrates their ineffectiveness, as do the findings of demographers who have demonstrated Europe’s long-term need for cheap labour. Instead, obsessive concern with the apparent need to delineate a European identity in a newly ‘uncertain’ global landscape has encouraged legislators to approach immigration exclusively in terms of security and economic policy, without adequate mechanisms for ensuring that basic standards of equality and justice apply to the new global migrant working class. The resulting dehumanization of migrants and their characterization as economic burdens (immediately scapegoated during downturns in the global economy) have made it easier to expel them and to dissociate such harsh measures from any reference to the migrants’ own experience. Additionally, the commitment to a dramatic reduction of family reunification in favour of the economic migration needed to build a more cohesive ‘European family’ ignores and occludes the collective migration experience over a much longer historical time frame. If more attention were paid to this history, debates about European identity and singularity would be less distorted and short-sighted.

'NEW EUROPE', OLD HISTORY

In the absence of such attention, questions about the nature of 'Europeanness' are difficult to address. Current talk about the emergence of a new Europe remains exceptionally vague. EU member states have denounced evidence of ultra-nationalism and human rights abuses in countries seeking EU membership, but do not always adhere to those standards themselves. Proposed measures in Italy to fingerprint and register Gypsies (communities who were previously expelled by Mussolini in the late 1920s and subsequently exterminated during the Second World War), along with the similar treatment of Roma populations in Portugal, France and elsewhere, are a case in point. European immigration policy increasingly depends on multilateral and non-reciprocal Euro-Mediterranean agreements and partnerships that serve to restrict population movements and duplicate age-old historical patterns of exploitation and uneven exchange.

[EU subsidies and biased trade policies ensure that 'co-development' policies serve largely to perpetuate African poverty.](#)

French–African relations were conceived from the beginning in terms of racist and culturalist supremacy, and they continue to shape patterns of neo-colonial domination and exploitation that contribute directly to the very problems of destitution and emigration that France bemoans. EU subsidies and biased trade policies ensure that 'co-development' policies serve largely to perpetuate African poverty. EU immigration policies pay obsessive attention to the problems associated with poverty in the global South, yet, as Philippe Bernard revealed in an article

in *Le Monde* on 26 June, 2008, for every migrant who tries to move illegally from Africa to an OECD country there are more than four people who migrate illegally from one African country to another (4 million and 17 million people respectively). Although Europe has been and remains actively complicit in the destitution of large parts of Africa, the defenders of Fortress Europe cannot directly govern the behaviour of the people they exclude. As Bernard asserts: "In spite of all the obstacles, xenophobia and expulsions, when one considers the multiple forms of migration, Africans emerge as the most mobile inhabitants of the planet".

A speech delivered by President Sarkozy in Senegal in July 2007 ("The tragedy of Africa is that the African has never really entered history...") drew liberally on racist stereotypes recycled from colonial times. Much of the language used to describe today's clandestine and 'illegal' immigrants was first developed, in the nineteenth century, in response to those *indigènes* of Algeria or the Ivory Coast who stubbornly refused to appreciate the virtues of the French mission *civilisatrice*. Today, as Mauritanian filmmaker Med Hondo argues in Ibrahima Signaté's book *Med Hondo: Un cinéaste rebelle*: "seeing Africans chained together like criminals prior to forceful repatriation is a spectacle that does little to honour those states who claim to embrace the rights of Man and democratic ideals. Nothing is worse for a person than humiliation. This has become the daily lot of immigrants in the countries of the North." Drawing on more recent historical memories, the French government has also established target figures for the expulsion of illegal migrants that have resulted in often arbitrary *rafles* (round-ups) of subjects – a term that evokes the 1942 *rafle du Vel*

d'Hiv, for starters, which led to the deportation of French Jews to Nazi concentration camps.

The transhistorical connection to these 'camps' turns out to be all the more compelling today as a direct consequence of the toughening of immigration policy. Not only have border control mechanisms been enhanced as a way of managing the external perimeter of Fortress Europe and locking third country nationals out – but these measures have been accompanied by a dramatic increase in 'camps' throughout the European Union in the guise of detention zones, deportation centers, and refugee holding areas locking third country nationals in.

Europe cannot afford to ignore such antecedents when its leaders have recourse to terminology and procedures of this kind. The racial profiling of 'insiders', the return of biology and race, rising Islamophobia and anti-Muslim sentiment, the demonization of asylum-seekers – all these measures are directly related to the most troubling sequences in European history. Any searching genealogy of the European family yields a lesson, first and foremost, on the institutionalization of xenophobia.

[A version of this article first appeared in the British magazine *Radical Philosophy* \(Number 153 January-February 2009\), and is reproduced here with kind permission.](#)

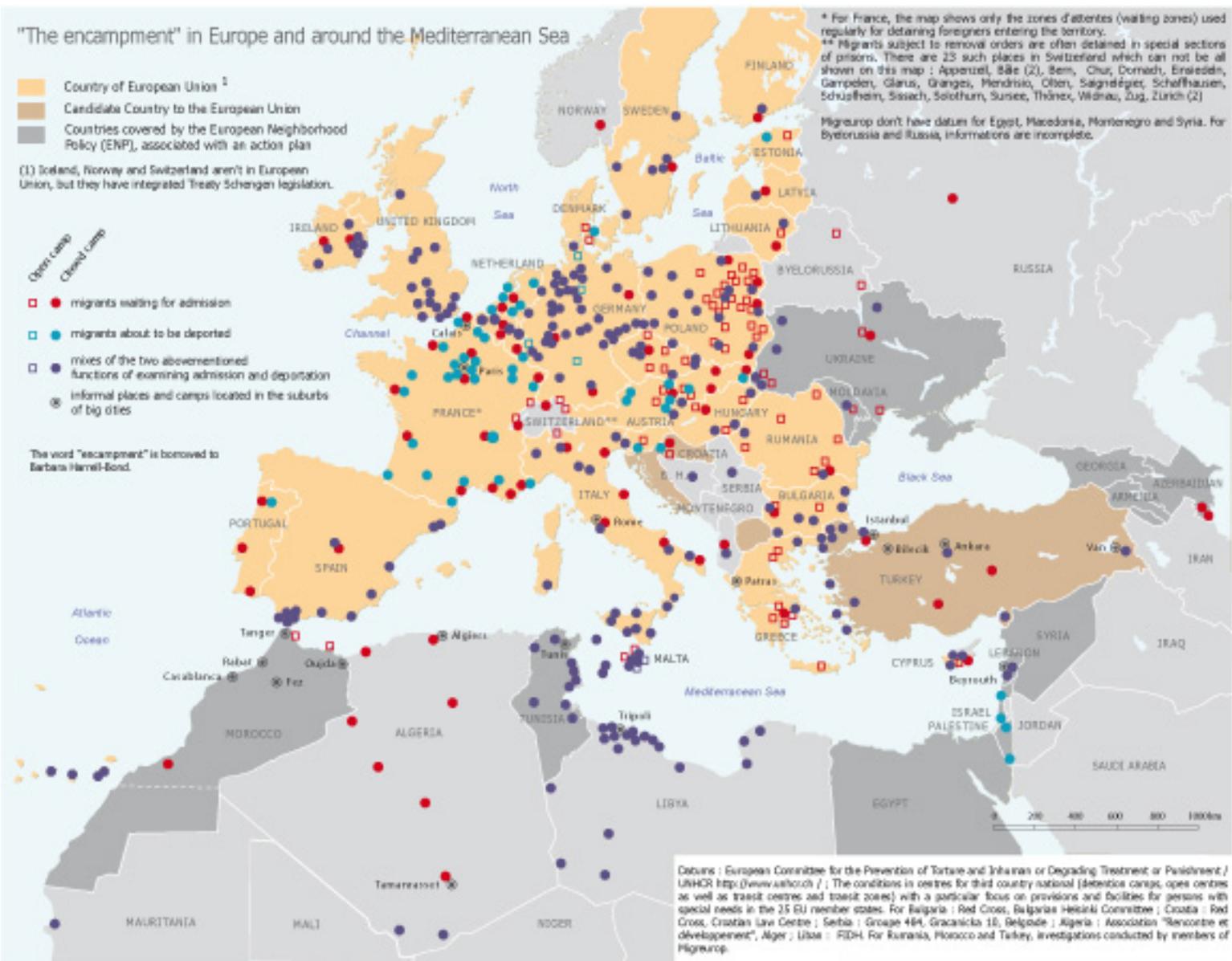
"The encampment" in Europe and around the Mediterranean Sea

- Country of European Union ¹
 - Candidate Country to the European Union
 - Countries covered by the European Neighborhood Policy (ENP), associated with an action plan
- (1) Iceland, Norway and Switzerland aren't in European Union, but they have integrated Treaty Schengen legislation.

Open Camp
Closed Camp

- migrants waiting for admission
- migrants about to be deported
- mixes of the two above-mentioned functions of examining admission and deportation
- informal places and camps located in the suburbs of big cities

The word "encampment" is borrowed to Barbara Harrell-Bond.



^{*} For France, the map shows only the zones d'attente (waiting zones) used regularly for detaining foreigners entering the territory.
^{**} Migrants subject to removal orders are often detained in special sections of prisons. There are 25 such places in Switzerland which can not be all shown on this map : Appenzel, Bâle (2), Bern, Chur, Dornach, Einsiedeln, Gampelen, Glarus, Granges, Mendrisio, Olten, Saignelégier, Schaffhausen, Schupfheim, Sissach, Solothurn, Sunsee, Thônex, Wilnau, Zug, Zürich (2)

Migreurop don't have datum for Egypt, Macedonia, Montenegro and Syria. For Byelorussia and Russia, informations are incomplete.

Courtesy : European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment / UNHCR <http://www.unhcr.org/> ; The conditions in centres for third country national (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. For Bulgaria : Red Cross, Bulgarian Helsinki Committee ; Croatia : Red Cross, Croatian Law Centre ; Serbia : Groupe 484, Gracanica 16, Belgode ; Algeria : Association "Rencontre et développement", Alger ; Libya : RIDH. For Romania, Morocco and Turkey, investigations conducted by members of Migreurop.

"The Encampments" in Europe and Around the Mediterranean Sea
 Photo: Courtesy http://migreurop.org/IMG/pdf/L_Europe_des_camps_2009.pdf)