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Understanding EU solidarity and migration in crisis

Dickson, Rachael

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Understanding EU Solidarity and Migration in Crisis: Narratives of Health as Tools of Governance

Abstract

The so-called European migration crisis has sparked significant attention from scholars and raises questions about the role of solidarity between states and the European Union (EU) in providing policy solutions. Tension exists between upholding the rights of those seeking entry and pooling resources between Member States to provide a fair and efficient migration system. This article deconstructs the shifts that have occurred in EU migration policy since 2015 to highlight how narratives of health have become as tools of governance. It does so to illuminate how health narratives operate to minimise the impact conflicts on the nature and substance of EU solidarity have on policy development in response to the perceived crisis. A governmentality lens is used to analyse the implications of increasingly prescribed policy applications based on screening and categorising, and how measures operate to responsabilise migrants and third-countries to act according to EU values. It is argued this approach to governance results in migrants facing legal uncertainty in terms of accessing their rights and excludes them from the EU political space, which is problematic for how EU governance can be understood.

I. Introduction

On 19th April 2015, an estimated 800 migrants lost their lives after the vessel they were travelling in capsized making the journey across the Mediterranean Sea from North Africa to the coasts of Italy and Greece. The event marked a turning point for migration policy in Europe which had been kindling since the “incendiary” Lampedusa disaster in 2013.¹ Tragedies like these signify how in recent times the issue of migration, particularly how it should be governed and who by, has become politically loaded and often at the crux of debates on national sovereignty, territorial integrity, Brexit, and the allocation of both economic and physical resources by governments. Health as a political issue is also highly charged, most commonly this is considered in relation to the role of the state to provide for the health of its citizens. This article aims to deconstruct European Union (EU) migration policy following the crisis in 2015 in order to understand how health is used as governance tool to overcome problems with solidarity between Member States.² Ideas traditionally associated with health policy are used to frame the governance pursued in relation to migration and better understand the way migration policy operates between the polity and the individual subject. This article investigates how the EU’s response to increased migration serves to preserve the EU project as a whole and argues that using tools of health policy to frame the governance of the migration crisis obscures the value conflicts that migration issues raise for the EU in relation to its constitutional system and a lack of solidarity.

How migration law and policy form part of the broader EU ‘project of government’ is examined and attention drawn to the tools used by the EU to resolve the migration crisis, particularly how these prioritise the EU system above the rights and obligations vis-à-vis migrants arriving into the EU. The contribution of van Kolfshoeten to this special issue also alludes to instances

* Research Fellow, University of Birmingham, contact: r.m.dickson@bham.ac.uk.

¹ S Stillman ‘Lampedusa’s migrant tragedy, and ours’ (*The New Yorker*, 10 October 2013) <<http://www.newyorker.com/news/daily-comment/lampedusas-migrant-tragedy-and-ours>> accessed 15 August 2019.

² European Commission, ‘A European Agenda on Migration’ (Communication) COM(2015) 240 final.

where EU governance is prioritised over individual rights. Research that opens up how we understand the nature and effects of EU governance, and the connotations of health this contains, is necessary for a number of reasons. First, examining policy and actions taken from a health perspective provides a different understanding of what a crisis is. The term arguably sums up the modern human experience and is used to describe circumstances ranging from global financial markets, to the rule of law, to local authority care provisions, and the effects of climate change. Common across the multiplicity of crisis is an assumption that the traditional methods of governance, regulation or systemic processes have broken down or are no longer fit for purpose. Crisis indicates a need to change tactics and realign in order to return to stability. The theoretical framing of both crisis and health is outlined in Section II.

Further, through the development of new frames of analysis it is possible to characterise the tools of governance utilised at the EU-level by analysing synergies between different areas of law and policy. As result, discussion of these issues can progress beyond the consideration of sheer numbers or the perceived impotence of certain actors, to reveal deeper issues with how the EU as an entity can mobilise. Thus, the literature of crisis develops beyond the dichotomy of survive or perish,³ a get out clause so existing law no longer applies,⁴ and a tool to make work relevant.⁵

The article proceeds by establishing a theoretical frame for the research, first by conceptualising the understandings of crisis and health that underpin the deconstruction of EU migration policy since 2015. Subsequently, the benchmarks for analysis that will be applied are outlined. The article then considers how these tools are used to advance a governmentality that operates on ideas of health in order to resolve the crisis and facilitate a return to stability in the EU. Two case studies are used that demonstrate how this governmentality operates in practice; the screening and categorisation of migrants at the EU border, and tools for self-management that are fostered through responsabilisation. The central argument advanced is that a lack of solidarity between EU Member States in terms of cooperation and integration in migration policy results in governance tactics that prioritise the preservation of the EU project over migrant rights. This governmentality operates to dehumanise the migration experience and relies on indicators, screening, and prescribed outcomes that treat people akin to the way medicine treats a disease. By drawing attention to these trends, the EU narrative of a holistic and comprehensive migration policy is challenged and attention drawn to the exclusionary and marginalising elements of the approach.

II. Theoretical frame

Crisis has become a common signifier of the EU in recent years and is used in relation to the overall project and actions in specific policy areas such as the constitutional crisis,⁶ the

³ R Koselleck (M W Richter (tr) 'Crisis' (2006) 67 *The Journal of the History of Ideas*, 357.

⁴ R Youngs, 'Fusing security and development: just another Euro-platitude?' (2008) 30 *Journal of European Integration* 419.

⁵ H Charlesworth, 'International law: a discipline of crisis' (2002) 65 *The Modern Law Review* 377.

⁶ C Church & D Phinnemore, 'From the Constitutional Treaty to the Treaty of Lisbon and beyond' in M Cini & N Perez-Solorzano Borrigan (eds) *European Union Politics* (5th edn, Oxford University Press, 2016).

Eurozone crisis,⁷ the disintegration crisis,⁸ and in relation to migration.⁹ Indeed, Brito Bastos and de Ruijter's article in this issue speaks to the constitutional aspects of responding to emergencies and crises in the EU. The aim here is to characterise more specifically how a crisis affects the EU's ability to operate its governance and examine the actions taken to overcome the challenges faced in resolving the crisis. In particular, mobilising Member States to act in solidarity and share responsibility for migration has been challenging with border states such as Greece and Italy expressing frustration at the assistance provided by fellow Member States.¹⁰ According to Roitman, using the analogy of an illness illustrates the dual nature of crisis. First, crisis can relate to the observable condition: the associated chaos, uncontrollable symptoms, the imminent threat to life that occurs when a person takes ill suddenly.¹¹ Second, crisis relates to the course an illness will take. Using this definition, crisis is the moment when either cure or death is determined. In other words it is the moment of decision that determines the future.

When applying this perspective to crises of policy or law, it becomes imperative to understand the governance that is mobilised to 'prevent death' and resolve the crisis; the cure if you will. The actions, policies and decisions that are taken to de-escalate the situation, and return to state of stability, a state of health, in the polity. By examining the nature of crisis governance, the power relations it contains and the position it creates for the individual subject, it is possible to reveal knowledge about the 'health' of the EU system of governance more broadly and expand understanding of how it operates in relation to its central values and individual targets of governance when under pressure.

To further conceptualise the health being examined. This article is not about migrants' right to health, or the EU's health policy towards migrants, but rather is about how ideas of health underpin the type of governance preferred in the response to the migration crisis. Therefore, the health being discussed is the state in which the EU project is in and a concern to treat the migration crisis in a way that protects the EU's integration goals. The rights, obligations and duties discussed are therefore broader than health and include access to justice, right to a fair hearing, right to an appeal, the broad spectrum of human rights of which tangible health is of course one.

The article, then, makes a contribution about health narratives as tools of governance in two aspects. The first is in relation to the practical tools of governance used by the EU in response to the crisis and how they operate towards migrants seeking entry to the EU. This contribution is empirical and involves analysis of the policy changes and developments that have occurred since the advent of the migration crisis. The second contribution is to the theory that helps makes sense of governance and the tools of analysis that help us to understand it better. Central

⁷ R Vilpišauskas, 'The Euro zone crisis and differentiation in the European Union: a threat to the goals of the EU or an instrument of managing the divergence of national interests?' (2014) 12 *Lithuanian Annual Strategic Review* 75; F Schimmelfennig, 'European integration in the Euro Crisis: the limits of postfunctionalism' (2014) 36 *Journal of European Integration* 321.

⁸ B Rosamond, 'Brexit and the Problem of European Disintegration' (2016) 12 *Journal of Contemporary European Research* 864.

⁹ L Buonanno, 'The European Migration Crisis' in D Dinan, N Nugent & W E Paterson (eds) *The European Union in Crisis* (Palgrave Macmillan, 2017) p. 100.

¹⁰ M Renzi, 'The Mediterranean migrant emergency is not Italy's. It is Europe's' (*The Guardian*, 23 June 2015) <<https://www.theguardian.com/commentisfree/2015/jun/23/mediterranean-migrant-crisis-not-italy-but-europe>> accessed 20 August 2019.

¹¹ J Roitman, 'Crisis' (2012) *Political concepts: a critical lexicon* <<http://www.politicalconcepts.org/issue1/crisis/>> accessed 10 June 2019.

to this approach are the ideas of governmentality, as both a lens for analysis and a variety of power relations characterising specific types of governance; how ‘governing occurs and how it is thought’.¹² Specifically, how the EU’s approach to resolving the crisis constitutes governmentality by seeking to alter how migrants and third-countries conduct themselves in relation to the EU. A rich scholarship on governmentality has developed since Foucault’s lectures in 1977-78. Recently the reflexive and continually evolving nature of governmentality has been stressed in the literature, as William Walters advocates:

If we take the view that governmentality is a ready-made framework that merely needs to be applied to migration research, we leave little room for the encounter. For governmentality to encounter migration there needs to be change on both sides: what we understand by governmentality should itself be modified and enhanced by the meeting with migration problems.¹³

Thus, the article contributes to existing knowledge and understanding of EU governmentality and how both its practice and perceptions are altered by its encounter with the migration crisis from 2015 onwards.

The article then differs from the trends identified in the existing literature on migration and health governance. This literature can be classified into five broad themes. First, studies on how to provide adequate healthcare to migrants. This research generally hails from healthcare practitioners and medical journals and discusses the approaches of professionals and healthcare services to increased migration.¹⁴ Second, and related, is a body of literature on migrant access to healthcare and services in host states. Many of these studies involve comparative case studies analysing variances across national policies.¹⁵ Others examine specific challenges faced by certain migrant groups when accessing healthcare services, for instance undocumented migrants¹⁶ and asylum seekers.¹⁷ A third literature clusters around questions of how healthcare systems can resource the challenges brought by increased migration.¹⁸ Fourth, some scholars have recognised that migrants face health inequalities as a result of their migration and seek to examine the impact and nature of these.¹⁹

¹² B Sokhi-Bulley, *Governing (through) Rights* (Hart, 2016).

¹³ W Walters, ‘Reflections on migration and governmentality’ (2015) 1 *Movements* 1.

¹⁴ P Mladovsky, ‘Migrant health in the EU’ (2007) 13 *Eurohealth* 9; C Maffia, ‘Health in the age of migration: Migration and health in the EU’ (2008) 81 *Community Practitioner* 32.

¹⁵ N Nørredam et al., ‘Access to health care for asylum seekers in the European Union – A comparative study of country policies’ (2005) *Journal of Public Health*; N Nørredam & A Krasnik, ‘Migrants’ access to health services’ in Rechel et al. (eds) *Migration and Health in the European Union* (2011, OUP: Oxford); C Björngren Cuadra, ‘Right of access to health care for undocumented migrants in EU: a comparative study of national policies’ (2012) 22 *European Journal of Public Health* 267; A Woodward et al., ‘Health and access to care for undocumented migrants living in the European Union: A scoping review’ (2014) 29 *Health Policy Planning* 818.

¹⁶ C Björngren Cuadra, ‘Right of access to health care for undocumented migrants in EU: a comparative study of national policies’ (2012) 22 *European Journal of Public Health* 267; A Woodward et al., ‘Health and access to care for undocumented migrants living in the European Union: A scoping review’ (2014) 29 *Health Policy Planning* 818.

¹⁷ M Nørredam et al., ‘Exploring disease trajectories according to migrant status – does the ‘healthy migrant effect’ last?’ (2013) 23 *The European Journal of Public Health* 234.

¹⁸ C Zimmerman et al., ‘Migration and health: A framework for 21st Century Policy-making’ (2011) 8 *PLoS Medicine*; B Rechel et al., ‘Migration and health in an increasingly diverse Europe’ (2013) 381 *The Lancet* 1235; S Kleinert & R Horton, ‘Health in Europe – successes, failures and new challenges’ (2013) 381 *The Lancet* 1073; W Riccardi, ‘Health in Europe – Policies for Progress’ (2013) 381 *The Lancet* 1075.

¹⁹ A Davies, A Basten & C Frattini, ‘Migration: A Social Determinant of the Health of Migrants’ IOM Background Paper (2006)

This fifth literature connects with another area of scholarship that examines the governance trends that operate in relation to migration and health. Pertinent to this article, is how scholars have made connections between migration and/or health and other policy areas or policy trends. For example, MacPherson et al. examine the influence of migration and mobility on the relationship between health policy and foreign policy.²⁰ Hollings et al. examine how health and migration encounter one another during border crossing procedures²¹ and McMichael et al. query the relationship between migration, health and climate change.²² From this literature, a fluidity in the governance styles across these policy areas can be detected which, along with other migration studies,²³ argue that tools of governance are co-opted across diverse policy areas when it is deemed useful and expedient to do so.

1. Governmentality of a crisis

Under examination here is the encounter between migration, crisis, and health in the EU. Specifically, the analysis focuses on the governance of the crisis and the action taken to bring it under control and avoid a recurrence. Alexander Betts proposed the idea of “survival migration” as a result of failed governance contributing to a crisis of displacement, indicating governance affects migration trends and feeds into potential future crises.²⁴ Indeed across legal and political scholarship, health concepts have been used to examine and understand governance trends. For example, Inda compared US border policy to prophylaxis²⁵ and Derrida understood crises in the political system as autoimmunity.²⁶ Here, tools of governance are identified that operate to facilitate a particular construction of health within in EU, specifically that the core value of solidarity between states can be mobilised when the EU faces a crisis. Thus the article addresses questions such as, how the governance techniques adopted in response to the migration crisis are based on ideas of health? Who do these ideas of health relate to? What understanding do these encounters of health and migration produce for both the *act* of governing, in other words how we understand EU governance, and the *individual* to be governed, in other words how we understand the migrant as a legal subject in the EU?

The approach takes as its object the practical tools of governance that maintain the discourse that EU solidarity can respond positively to crisis and the ideas, actions and techniques that

<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.462.6286&rep=rep1&type=pdf>; D Malmusi, C Borrell & J Benach, ‘Migration-related health inequalities: showing the complex interactions between gender, social class and place of origin’ (2010) 71 *Social Science and Medicine* 1610; D Ingleby, ‘Ethnicity, migration and the ‘social determinants of health’ agenda’ (2012) 21 *Psychosocial Intervention* 331.

²⁰ DW MacPherson, BD Gushulak & L Macdonald, ‘Health and foreign policy: influences of migration and population mobility’ https://www.scielosp.org/scielo.php?pid=S0042-96862007000300013&script=sci_arttext&tlng=pt.

²¹ J Hollings, M Samuilova & R Petrova-Benedict, ‘Health, migration and border management: analysis and capacity-building at Europe’s borders’ (2012) 57 *International Journal of Public Health* 363.

²² C McMichael, J Barnett & A J McMichael, ‘An ill wind? Climate Change, Migration and Health’ (2012) <https://ehp.niehs.nih.gov/doi/abs/10.1289/ehp.1104375>.

²³ P J Cardwell, ‘Tackling Europe’s Migration ‘Crisis’ through Law and ‘New Governance’ (2018) 9 *Global Policy*; R Dickson, *Migration in Crisis: Implications for European Union law, policy and human rights* (Routledge, forthcoming).

²⁴ A Betts, *Survival migration: Failed governance and the crisis of displacement* (2013, Cornell University Press: New York).

²⁵ J X Inda, ‘[Border prophylaxis: technology, illegality, and the government of immigration](#)’ (2006) 18 *Cultural Dynamics* 115.

²⁶ J Derrida, ‘Autoimmunity: Real and Symbolic Suicides – A Dialogue with Jacques Derrida’ in G Borradori (ed.) *Philosophy in a Time of Terror* (2003, University of Chicago Press: Chicago).

make this rationality of governance a reality. To do this, I analyse the changes made to migration policy after the crisis period in April 2015 until the end of the Juncker Commission in 2019. Governmentality emerged from the work of Michel Foucault and has been used by scholars to investigate and analyse a range of problems and circumstances. It offers an effective way of framing analysis as by envisaging the migrant crisis as a ‘problem of government’ for the EU and wishing to examine the response, the research methods must allow for a broad understanding of what constitutes government, where this government operates and who it operates for.²⁷ Governmentality involves a specific understanding of power and a way to better understand how people and objects are governed.²⁸ Government can be interpreted both narrowly and widely and extends beyond formal measures.²⁹ From this perspective government is “an activity that undertakes to conduct individuals throughout their lives by placing them under the authority of a guide responsible for what they do and what happens to them”.³⁰ Thus, governmentality denotes the “techniques and procedures for directing human behaviour”, ranging from children at school, to organised religion, the household and even oneself.³¹ Rather than explicit domination or authority, governmentality is concerned with the “conduct of conduct” in subtle ways whereby the individual to be conducted becomes complicit in the governing.³²

Work by others in this area forms a loose typography; the governmentality of unease,³³ the governmentality of risk,³⁴ and, as utilised here, domopolitics.³⁵ Different rationalities underpin these governmentalities. For example, the concern to manage the risk that comes from not screening blood that could be contaminated with HIV or the mitigating the unease that occurs when those who are sexually deviant are reintroduced into communities. Walters notes that part of governmentalities attractiveness as an approach to governing is its development during “a period of great change and instability in political, economic and social life” as in these times the impetus to return to stability overrides other concerns.³⁶ If the migrant crisis is conceptualised as a ‘problem of government’ then the response involves the EU attempting to “conduct the conduct” of the migrant subject through a complex governmentality.³⁷

Domopolitics is particularly useful when examining governmentality during a time of crisis as ideas of home, homeliness and belonging are at its centre.³⁸ If the traditional neo-liberal society can be “governed at a distance”³⁹ because of its well-developed economic and mature societal structures, the eruption of a crisis indicates that these structures and systems are for some

²⁷ T Lemke ‘Foucault, governmentality, and critique’ (2002) 14 *Rethinking Marxism: A Journal of Economics, Culture and Society* 49.

²⁸ T Lemke, ‘Varieties of materialism’ (2015) 10 *BioSocieties* 490.

²⁹ C Gordon, ‘Governmental rationality: an introduction’ in G Burchell, C Gordon & P Miller P *The Foucault Effect: Studies in Governmentality*. (University of Chicago Press, 1991) p. 5.

³⁰ M Foucault, *Power: Essential Works of Foucault, 1954-1984 Volume III*, (2000, The New Press: New York) p. 68.

³¹ *ibid*, p. 82.

³² *supra*, note 28, p. 5.

³³ D Bigo, ‘Security and immigration: toward a critique of the governmentality of unease’ (2002) 27 *Alternatives* 63.

³⁴ P O’Malley, ‘Governmentality and the risk society’ (1999) 28 *Economy and Society* 138.

³⁵ W Walters, ‘Secure Borders, Safe Haven, Domopolitics’ (2004) 8 *Citizenship Studies* 237.

³⁶ *ibid*.

³⁷ *Supra* note, 29.

³⁸ *ibid* & J Darling, ‘Domopolitics, governmentality and the regulation of asylum accommodation’ (2011) 30 *Political Geography* 263.

³⁹ N Rose & P Miller, ‘Political power beyond the state: problematics of government’ (1992) 43 *The British Journal of Sociology* 173, p. 175.

reason no longer working effectively. Domopolitics mobilises feelings of affect and belonging to reassert the ideals and values of the home to return to the stability that was previously enjoyed.⁴⁰ However, another rationality can be detected in domopolitics; the need to domesticate and tame any forces deemed threatening to the stable home.⁴¹ By identifying domopolitics, it is possible to draw attention to how the space granted through law can be squeezed and restricted by politics. Here, domopolitics illuminates how the EU's holistic approach to the migrant crisis operates in spaces of the EU home, hotspots within the home and even beyond the territory of the EU.

2. Domopolitics in migration policy

Previous studies of the governance of migration have drawn attention to the tactics of 'control' and the use of another of Foucault's ideas, disciplinary power.⁴² Other studies discuss the criminalisation of migration and the deployment of tactics of security. However, the EU's response to the migration crisis, as articulated in the European Agenda on Migration and subsequent documents, emphasises a "rights-based" approach underpinned by the value of solidarity and a desire for further integration at the supranational level. Thus, I argue that a medicalisation of migration can be seen. This results in a governmentality that deploys tactics that operationalise prescribed outcomes, aim to limit the physical effects of migration on the EU territory and deploy government of the self to alter migration behaviours to this end. Through this, the migrant subject is (re)conceptualised as something to be treated rather than being recognised as an individual to be granted access to and the ability to claim their rights. This (re)conceptualisation co-opts the target of domopolitical governance to participate in its construction and they provide and volunteer the information and data used by its tactics. This style of governance hinges on what Foucault termed "technologies of the self",⁴³ and involves the ways in which human beings come to understand and act upon themselves in relation to certain regimes of authority and knowledge, often as a result of tactics to advance self-improvement. The EU's use of domopolitics invites individual migrants into a system that presents possibilities of achieving a certain position if they change their body, thoughts or conduct. For instance, if a migrant complies with detention, submits to probing questionnaires, gives over their fingerprints and DNA to a database, then at some point in the future they might gain access to the rights and freedoms of the EU and enjoy a better quality of life. However, this raises questions about the nature of the EU as an international human rights actor that has been recognised and awarded for its promotion of rights, and has human rights as a foundational principle. Another problem, is that the tactics of governmentality operated by the domopolitics exclude migrants from decision-making processes and avenues for recourse.

In terms of the two case studies that follow, first domopolitics is used to deconstruct the processes of migrant screening and categorisation that occur when persons arrive into the EU. The analysis develops the domestication aspect of domopolitics to show how these procedures aim to render the migrant and migration as a knowable and treatable phenomenon so that an EU policy response can be readily deployed. I argue that this ensures the EU's weak solidarity is not jeopardised and prescribed solutions can be relied upon to de-escalate the crisis. Second, the approach of resilience building amongst individual migrants and third-country partners is

⁴⁰ supra, note 35.

⁴¹ Ibid.

⁴² M Duffield, 'Racism, migration and development: the foundations of planetary order' (2006) 6 *Progress in Development Studies* 68.

⁴³ L H Martin, H Gutman & P H Hutton, *Technologies of the Self: A Seminar with Michel Foucault* (University of Massachusetts Press, 1988).

deconstructed to show the self-responsibilising tendencies of EU policy and how these operate to shift responsibility for resolving the crisis away from the EU and toward the migrant or third-country, thus protecting the weak solidarity. The tools of governmentality here rely on the “government of the self”⁴⁴ and see the targets of governance becoming complicit with the EU in bringing the crisis under control.

III. The power of the health frame in migrant screening, categorisation and prescribed policy solutions

The tools of health that can be detected within the EU’s domopolitics are the cultivation of experts, the screening and categorisation of migrants, and the development of prescribed solutions. The language and narrative of the holistic approach is central. The EU commands a web of expertise regarding migration giving credence to the view that crisis is prime for expert intervention as it provides impetus and urgency for their work.⁴⁵ The holistic approach advocated by the EU crosses policy boundaries and brings together border policy, visa policies and initiatives, refugee law, anti-trafficking and smuggling measures, and irregular migration policies. Certain actors have seen their role be expanded and new competences conferred such as Frontex and the EASO as well as the development of new technological solutions to assist such as the EURODAC database, integrated border management systems and interoperability capabilities across policy areas including the Visa Information System, Schengen Information System and criminal justice systems. The article from Roberts in this issue speaks further to the surveillance that occurs through the use of algorithmic technologies and Dabrowska-Klosinka’s contribution discusses issues with information exchange.

This web of expertise, which is responsive and continually developing through systems of monitoring and analysis,⁴⁶ decentralises migration policy and distances it from the accountable decision-making institutions. This is not to say there is no accountability over the actions of these actors, there are internal procedures, codes of conduct, good governance and best practice policies but these are less transparent and accessible to the individual. Prioritising this type of governance is expedient for the EU in maintaining its health through its policies as it helps ameliorate issues with consensus and solidarity in the traditional decision-making arenas whereby Member States may not agree on the nature of action to be taken. However, the concern is that it has the effect of closing off, and rendering invisible accountability and access to rights for individual migrants. These subjects of government become passive and are anticipated to accept the decisions of the expert are the best available option. The hospital environment gave rise to the medical *gaze*⁴⁷ as the patient was positioned as subject for curing and learning, relying on the expertise of the trained to return them to health.⁴⁸

The screening and categorisation procedures used to identify migrants and determine how they should be processed as they arrive into the EU are utilise tools associated with maintaining health. The processes operate to reduce the migrant’s ability to control their personal narrative

⁴⁴ M Foucault, *Government of the Self and Others: Lectures at the Collège de France 1982-1983* (Palgrave Macmillan, 2010).

⁴⁵ P Redfield, *Life in Crisis: The ethical journey of Doctors Without Borders* (University of California Press, 2013).

⁴⁶ European Commission, Migration Profiles (2019) < https://ec.europa.eu/knowledge4policy/migration-demography/migration-profiles_en > accessed 27 August 2019.

⁴⁷ Penetrating, tangible observation by a clinician. M Foucault, *The birth of the clinic: an archaeology of medical perception* (tr. A M Sheridan) (Routledge, 2003) p. xiv.

⁴⁸ Simons J, *Foucault & the Political* (Routledge, 1995) p. 29.

and experience as computer information systems and algorithmic technology excludes them from the decision-making process. In terms of governance of the crisis, these screening techniques operate to reduce the threat of migration so that it is knowable and calculable and the EU home can be made resilient against it. These processes are central to the key purpose of the migration hotspots in Italy and Greece provided under the Agenda on European Migration, such as Lampedusa and Lesbos.⁴⁹ Further, the scope for using fingerprints and other biometric data has been expanded. The Commission proposes exploring their use in the EURODAC system by developing smart technologies⁵⁰ and using facial recognition software on digital photographs.⁵¹ Guidelines were issued in May 2015 to establish best practice when gathering fingerprints from migrants in order to improve consistency in the application of the legislative framework across Member States, who employed a range of approaches to gather this data including detention and coercion.⁵²

The collection of data is central to the EU gaining knowledge about the migrant, their activities, behaviours and habits. This knowledge is then utilised by the EU in its governmentality to bring the migration crisis under control, return stability in the EU home and protect itself from potential harm stemming from its lack of solidarity. The use of databases “creates relationships among pieces of information that do not exist in those relationships outside of the database”.⁵³ Thus, the rationality of collecting data centres less on physical sensory recognition and more on the stabilisation and ordering of identity.⁵⁴ Digital stores of information, such as EURODAC, “sorts, organises and produces subjects”.⁵⁵ On the basis of these subjects and the perceptions the data creates about them, the EU system of migration governance takes decisions about which channel of migration a person is allocated to.

This process of (re)conceptualises the migrant away from their physical body and thus limits the autonomy that can be exercised over the identity produced by the system. The discourse of data is a characteristic of the “postmodern, postindustrial mode of information” but “leads to an uncomfortable discovery that the population participates in its own self construction as subjects” by providing the information to be entered.⁵⁶ Further, there is no clear framework that guarantees the standards of screening and registration of migrants by the authorities so these tools are used in conjunction with use of expertise explained above. In cases where wrongful registration has occurred, it has been found to be due to lack of proper interpretation, arbitrary assessment, lack of presentation and the lack of qualified and trained personnel in issues of cultural and linguistic differences.⁵⁷ Yet many instances are also probably not picked

⁴⁹ DG Home Affairs, ‘Hotspot state of play’ 23 September 2016, <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_hotspots_en.pdf> accessed 29 August 2019.

⁵⁰ EURODAC, which stands for European Dactyloscopy, is the European fingerprint database for identifying asylum seekers and irregular border-crossers; European Commission, ‘A European agenda on migration’ (Communication) COM (2015) 240 final, p.13.

⁵¹ *ibid.*

⁵² *ibid.*

⁵³ M Poster, ‘Foucault and Databases: Participatory Surveillance’ in B Smart (ed) *Michel Foucault 2 Critical Assessments* (Taylor and Francis, 1995) 175, p. 197.

⁵⁴ B Simon, ‘The return of panopticism: supervision, subjection and the new surveillance’ (2005) 3 *Surveillance and Society* 1, p. 16.

⁵⁵ *ibid.*

⁵⁶ D Lyon, *Surveillance Society: Monitoring Everyday Life* (Open University Press, 2001), p. 115.

⁵⁷ Pro Asyl ‘Walls of shame: accounts from the inside: the detention centres of Evros’ April 2012 <<https://www.proasyl.de/wp->

up or are dismissed due to lack of knowledge on complaints procedures and opportunities for redress. Such an approach to governance has synergy with the idea of epistemic injustice proposed by Flear in this issue.

When considered cumulatively, use of such tools results in governance based on prescribed solutions. The narrative of the EU approach is constructed around gaining information and knowledge on patterns, behaviours and characteristics, much like the pathology of a disease. Understanding the EU's governance as treatment-like becomes particularly serviceable as decisions are taken clinically and outcomes predetermined and ready to be applied. This approach operates to medicalise, rather than criminalise or demonise, the migrant subject so it becomes knowable and treatable. The Commission's position is that, "A clear and well implemented framework for legal pathways to entrance in the EU (both through an efficient asylum and visa system) will reduce push factors towards irregular stay and entry, contributing to enhanced security of EU borders as well as the safety of migratory flows".⁵⁸ As detailed, this process involves tactics of governance that can be interpreted as contributing to the medicalisation of the migrant so that the crisis can be resolved in a way that causes minimal upset to the EU's fragile solidarity. The border guards who process arrivals at hotspots are thus central to the practical operation of this governance and are trained in how to operate such an approach.

The training guidance instructs that initial interviews with migrant arrivals should be carried out in full respect for fundamental rights; the communication should be as fluid as possible, open and non-threatening.⁵⁹ The process of assigning the migrant to the correct channel requires border guards to have knowledge of the diversity of migratory movements such as countries of origin, beliefs and language.⁶⁰ The guidance also encourages awareness of the possible reactions that people may display in interview scenarios.⁶¹ Thus, there is emphasis on what an individual implies by their appearance and demeanour in the interview; these insinuations are also to be gathered and documented in the records. Guards are encouraged to embellish the specific information provided explicitly by the interviewee with tactical and strategic information that could feed into the broader crisis management, such as information that could assist in countering the illegal activities of smugglers and traffickers.⁶² Information could be details on safe houses, meeting points or suppliers of forged documentation. Also encouraged, as strategic information, is deduced intelligence that points to the modus operandi of migrants, routes or push/pull factors at play.⁶³ This information is used in analysis of specific countries and the construction of Migration Profiles that inform foreign and development policy.⁶⁴

[content/uploads/2015/12/PRO_ASYL_Report_Walls_of_Shame_Accounts_From_The_Inside_Detention_Centres_of_Evros_April_2012-1.pdf](#)

⁵⁸ European Commission, 'A European Agenda on Migration' (Communication) COM(2015) 240 final, p.6.

⁵⁹ Frontex, *Fundamental rights training for border guards* (Frontex Information & Transparency Team, 2013) <http://frontex.europa.eu/assets/Publications/Training/Fundamental_Rights_Training_for_Border_Guards1.pdf> accessed 10 November 2016, p. 94.

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² *ibid.*

⁶³ *ibid.*

⁶⁴ European Commission, Migration Profiles (2019) <https://ec.europa.eu/knowledge4policy/migration-demography/migration-profiles_en> accessed 27 August 2019.

The Frontex Risk Analysis in 2016 admitted that it is not always possible to carry out thorough screening due to time constraints.⁶⁵ The Agenda does introduce vulnerability screening to assist the prioritising of cases and admissibility interviews in order to make the system more efficient.⁶⁶ However it remains to be seen whether additional resourcing will be able to resolve these issues and the expanded role for databases and algorithmic technologies will still dehumanise the decision-making that occurs on the basis of the interview data. By understanding the circumstances of information retrieval, it is possible to appreciate how a particular identity of the migrant is produced. The systems of digital surveillance establish a narrative that the EU has expert knowledge on migration traits and attributes that will enable migration policy to operate more efficiently and with better outcomes. The emphasis on having the maximum amount of knowledge possible on the migrant subject is important for the EU's domopolitics as this information domesticates the threat posed to the EU home. Relying on technological solutions also minimises the need for greater solidarity among Member States as they are less personnel dependent to operationalise. The following section examines the idea that the migrant is complicit in the EU's domopolitics by examining tactics of fostering resilience, shifting responsibility and promoting self-management to a responsabilised migrant subject.

IV. The implications of health governance for the legitimacy of the EU's role in the crisis of migration: tools of responsabilisation and complicit partners

Both the establishment of migration hotspots and increased migrant screening procedures have resulted in a greater emphasis on experts in the EU's approach to managing the migration crisis. The Agenda also attempts to relocate the governance of migration to what are termed as "partner countries",⁶⁷ "countries of origin and transit",⁶⁸ and "third countries".⁶⁹ The Commission advocates for a "more coordinated, systematic and structured approach" which matches the EU's interests and those of its partners, in response to the crisis.⁷⁰ Short term objectives centre on saving lives at sea and in countries of origin and transit, increasing return rate and enabling migrants to "stay close to home and to avoid taking dangerous journeys".⁷¹ The longer term objective is to reduce the root causes of irregular migration and force displacement by addressing deeper political, social and economic factors.⁷² A new Partnership Framework is envisaged as the way of meeting these objectives. This initiative includes developing greater capacity at the local level in the areas of border control, asylum, counter-smuggling and reintegration.⁷³

⁶⁵ Frontex, 'Risk Analysis for 2016' 04 May 2016 <<http://frontex.europa.eu/news/frontex-publishes-risk-analysis-for-2016-NQuBFv>> accessed 01 November 2016.

⁶⁶ European Asylum Support Office, 'EASO Hotspot operating plan to Greece – Amendment No 2' 1 April 2016 <<https://www.easo.europa.eu/sites/default/files/20160401%20Hotspot%20Operating%20Plan%20-%20Amendment%20No%202.pdf>> accessed 01 November 2016.

⁶⁷ European Commission, 'On establishing a new partnership framework with third countries under the European agenda on migration' (Communication) COM (2016) 385 final.

⁶⁸ European Commission, Glossary for the European agenda on migration (2015) <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/glossary_for_the_european_agenda_on_migration_en.pdf> accessed 01 October 2016.

⁶⁹ *ibid.*

⁷⁰ European Commission, 'On establishing a new partnership framework with third countries under the European agenda on migration' (Communication) COM (2016) 385 final.

⁷¹ *ibid.*

⁷² *ibid.*

⁷³ *ibid.*

This preference can be seen as involving the reverting of obligations and responsibility away from the EU and onto these third-country partners. Central to governmentality are technologies for “governing at a distance” and the creation of “locales, entities and persons” able to operate a regulated autonomy.⁷⁴ As high numbers of migrants continue to seek entry to the EU, the technologies for managing migration become increasingly apparent.⁷⁵ These tactics draw on previously established instruments of foreign policy and development strategy which have become underpinned by the rationale that “migration is difficult to manage without a policy structure established to guide managers” to extend their remit.⁷⁶ Thus, the Agenda proposes enriching existing bilateral and regional cooperation frameworks and stepping up the role of EU delegations in key countries to include a migration role.⁷⁷

In practice, the EU commits to helping third countries meet their obligations by offering support such as capacity building to manage returns and readmissions, information and awareness campaigns to educate individuals on the risks and realities of migration to the EU, and support for integration and community-building measures.⁷⁸ The Commission set out a strategic vision on how EU external action can foster resilience and self-reliance for forcibly displaced persons as close as possible to their country of origin.⁷⁹ The European Council summit in Valetta in November 2015 also emphasised that resilience was a useful tool to support “the most vulnerable”.⁸⁰ Specifically, it was advocated that resilience can be found through rural development, food and nutrition security, health, education and social protection.⁸¹ These preferences indicate that the production of subjects capable of living with abstract uncertainty is a new framework for achieving security.⁸² Rendering a non-resilient community as vulnerable follows the valorisation of the resilient subject, the former requiring intervention of some kind.⁸³

Central to this governance are tools for the migrant to change their understanding of their experience and alter their conduct accordingly. Foucault called this “governance of the self” as individuals are permitted to effective operations on their own being in order to transform themselves so they can attain a certain state of privilege or stability.⁸⁴ They imply certain modes

⁷⁴ N Rose & P Miller, ‘Political power beyond the state: problematics of government’ (1992) 43 *The British Journal of Sociology* 173.

⁷⁵ European Commission, ‘Managing the refugee crisis: a new partnership framework’ 2016 <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160607/factsheet_managing_refugee_crisis_new_partnership_framework_en.pdf> accessed 01 November 2016.

⁷⁶ Frontex, *Fundamental rights training for border guards* (Frontex Information & Transparency Team, 2013) <http://frontex.europa.eu/assets/Publications/Training/Fundamental_Rights_Training_for_Border_Guards.pdf> accessed 10 November 2016.

⁷⁷ European Commission, ‘A European Agenda on Migration’ (Communication) COM (2015) 240 final, p. 8.

⁷⁸ European Commission, ‘A European agenda on migration’ (Communication) COM (2015) 240 final, p. 10.

⁷⁹ European Commission, ‘Managing the refugee crisis: a new partnership framework’ 2016 <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160607/factsheet_managing_refugee_crisis_new_partnership_framework_en.pdf> accessed 01 November 2016.

⁸⁰ European Council, Valletta Summit on Migration Action Plan, 11-12 November 2015 <www.consilium.europa.eu/en/meetings/international-summit/.../action_plan_en_pdf/> accessed 01 October 2016, p. 2.

⁸¹ *ibid.*, p. 3.

⁸² P O’Malley, ‘Resilient subjects: uncertainty, warfare and liberalism’ (2010) 39 *Economy and Society* 488.

⁸³ D Chandler, ‘Resilience and human security: the post-interventionist paradigm’ (2012) 43 *Security Dialogue* 213; J Brassett & N Vaughan-Williams, ‘Security and the performative politics of resilience: critical infrastructure protection and humanitarian emergency preparedness’ (2015) 41 *Security Dialogue* 32, p. 38.

⁸⁴ *ibid.*

of training and modification in terms of acquiring new skills and attitudes.⁸⁵ Individuals then fulfil governmental objectives by conducting themselves responsibly.⁸⁶ The legal channels of migration crystallised by the Agenda on European Migration in essence create a system that affects how individual migrants conduct themselves.⁸⁷ Individual migrants are encouraged to adopt a certain form of practical relationship to themselves to advance the EU's governance of migration and de-escalation of the crisis.⁸⁸ However, the partnership alluded to in these policies comes with a price as individuals and third-countries must assume responsibility for the activities of migration, how they are carried out and the outcomes they produce.⁸⁹ The responsabilisation operates so the migrant adopts the values of the EU home and appear less threatening to its privileged citizenry, while remaining outside its system. The emphasis on resilience within the Agenda stresses how the migrant and third-countries can achieve their own 'home' and the need for large-scale migration will be negated.

The ideas of self-government and self-responsibilisation contribute to the medicalised reading of the EU's domopolitics as it operates to palliate the lack of solidarity between Member States. By responsabilising the migrant subject and co-opting them into the domopolitics, the practical demonstration of solidarity by the EU becomes less of an imperative so its weakness is palliated and the EU system less affected by the crisis. The tactics of responsabilisation are based on government of the self which is a permanent state where "one must become the doctor of oneself".⁹⁰ The extent to which these tactics produce a resilient subject. According to Anderson's view, such strategy operates on an assumption that the state has a duty to protect the population and the population can demand to be protected.⁹¹ Thus the ability of policy to foster a migrant to self-govern is less important and resilience becomes more of a tool for crisis management and the reduction of risk. If considered in relation to the palliative care of EU solidarity, resilient subjectivity understands that 'subjects that are capable of securing themselves are less of a threat and in being so are not a threat to the governance capacities of their States nor to the governance of the global order either'.⁹² From this perspective, resilience becomes a negative value because it produces "politically debased" form of subjectivity that secures neoliberal governmentality.⁹³ Thus, to return to Walters' view that governmentality is encountered, it is important to assess what this governance preference indicates about the EU.

Article 80 of the Treaty on European Union (TEU) establishes solidarity and the fair sharing of responsibility between Member States as central values in the EU system, providing a legal basis for the implementation of these principles in EU policies on asylum, migration and border control.⁹⁴ The European Parliament has articulated that solidarity can take both internal and

⁸⁵ *ibid.*

⁸⁶ M Foucault, 'The subject and power' in H L Dreyfus & P Rabinow, *Michel Foucault, Beyond Structuralism and Hermeneutics* (Chicago University Press, 1982).

⁸⁷ Burchell G, 'Liberal government and techniques of the self' (1993) 22 *Economy and Society* 267.

⁸⁸ *ibid.*

⁸⁹ European Commission, 'A European agenda on migration' (Communication) COM (2015) 240 final; European Commission, 'Managing the refugee crisis: a new partnership framework' 2016 <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160607/factsheet_managing_refugee_crisis_new_partnership_framework_en.pdf> accessed 01 November 2016.

⁹⁰ M Foucault, *The Government of Self and Others, Lectures at the Collège de France 1982-1983* (ed. F Gros) (Palgrave Macmillan, 2011).

⁹¹ B Anderson, 'What kind of thing is resilience?' (2015) 35 *Politics* 60, p. 65.

⁹² J Reid, 'The disastrous and debased...', p. 74.

⁹³ J Brassett & N Vaughan-Williams, 2015 'Security and the performative politics...', p. 34.

⁹⁴ Consolidated Version of the Treaty on the Functioning of the European Union [2010] OJ C83/01.

external forms.⁹⁵ The tactics of the Agenda emphasise the EU's ability to operate external solidarity through agencies and establishing relations with third-countries. The internal solidarity measures of relocation, mutual recognition, operational support and, generally, taking a proactive approach to migration policy are much more difficult to put into effect. This indicates dissonance amongst the EU's institutions with regards the level of solidarity it should espouse.

The Commission has struggled to implement policies in the AFSJ under the Tampere, Hague and Stockholm programmes across the 2000s, indicating that Member States do not see solidarity and cooperation on these matters from the same perspective. The European Parliament has called for creation solidarity in terms of upholding human rights so as not to undermine the EU's credibility.⁹⁶ The Commission proposes to reform the Reception Conditions Directive in order to increase the level of harmonisation of reception conditions and ensure dignified reception standards throughout the EU, reduce incentives for secondary movements and enhance migrant self-sufficiency by granting more favourable conditions for access to the labour market.⁹⁷ It believes this reform will contribute to a better management of the asylum flows and the proper treatment of applicants across the EU.⁹⁸ When an applicant is not in the Member State where he/she is required to be, he/she will not be entitled to material reception conditions or employment and vocational training. However, applicants will always be entitled to health care and to a dignified standard of living, in accordance with fundamental rights. Children will always have access to educational activities pending the transfer to the Member State responsible.⁹⁹ These proposals require a significant resource commitment from Member States and, even with the safeguards; it could be difficult to garner the levels of solidarity needed to implement them successfully.

Considering the tactics in the Agenda that emphasise "government of the self", it is unclear how these can be reconciled with solidarity. This raises issues for the EU's identity as an international human rights actor: if the Agenda is successful in realising the self-responsibilisation, and thus self-government, of migrants and third countries then the EU may lose its relevance in this area. In engaging in activities which operate a politics of exclusion in order to conceal its weak solidarity, it is perhaps making its position as a human rights actor obsolete. Therefore the implications of the EU's governmentality extends beyond the difficulty faced by individuals and speaks of a fundamental deficiency in the its capacity as a human rights actor to conduct the conduct of its Member States, and even institutions, to deliver on commitments beyond the rhetoric and narrative of rights. Thus, the EU has become reliant on forms of governmentality that mediate this resource deficit but maintain its relevancy through language.

⁹⁵ European Parliament Committee on Civil Liberties, Justice and Home Affairs, Report on the situation in the Mediterranean and the need for a holistic approach to migration' 23 March 2016

<<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bREPORT%2bA8-2016-0066%2b0%2bDOC%2bPDF%2bV0%2f%2fEN>> accessed: 01 November 2016.

⁹⁶ *ibid.*

⁹⁷ European Commission, 'Proposal for a directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)' COM (2016) 465 final.

⁹⁸ European Commission, 'Reception conditions: reforming the Common European Asylum System' 13 July 2016 <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160713/factheet_reception_conditions_reforming_the_common_european_asylum_system_en.pdf> accessed 01 November 2016.

⁹⁹ *ibid.*

V. Conclusion

This article has examined how the EU's governance of the migrant crisis constitutes a domopolitical governmentality based on notions of health. It is argued that the EU's domopolitics operates to resolve the crisis and return to stability while preventing negative repercussions for the polity due to its lack of solidarity. Rather than instigating measures that truly advance human rights and demonstrate solidarity with migrants and third-countries, the Agenda on European Migration focuses on preserving its internal health and employs tactics of governmentality to alter the conduct of migrants and third-country partners to this end.

A number of tools that help deconstruct the EU's narratives of a rights-based approach were detailed and two examples of this domopolitics in practice were provided: migrant screening and categorisation processes at the border and the use of responsabilisation and resilience-building of migrants and third-countries to circumvent internal solutions. Thus the possibility to expand how we can understand the encounter between health and migration has been shown, demonstrating wider implications of this type of governance for the EU as an international human rights actor. The response to the migration crisis by the EU targets the preservation of its policy relevance and the examples provided here demonstrate the difficulty migrants face in accessing and claiming their rights in a system where the objective is the preservation of its own health. Subsequently, the object and target of future migration policy developments must be deconstructed so their practical manifestation can be considered against the EU's central values.