

*Paper prepared for the
Fifth Euroacademia Forum of Critical Studies*

Asking Big Questions Again

11 – 12 November 2016

Lucca, Italy

This paper is a draft

Please do not cite or circulate

Diagnosing the European Union's present: chronic solidarity disease, domopolitics and the migrant crisis

Rachael Dickson Hillyard, Queen's University Belfast

The perception of values, their content and meaning, is a problem for the European Union (EU) especially as the Member States and institutions have attempted to act in a spirit of solidarity. However, the adoption of a holistic approach to treat the migrant crisis has proven tumultuous and not without its problems. This paper will discuss how the EU's handling of the migrant crisis creates a façade of a 'turning point' in EU relations while grounding actions taken in a condition of presentism through the holistic treatment of wider afflictions through the narrative of crisis. It addresses the problem of understanding the EU's response as something beyond immediate action to save lives. It illuminates alternative narratives which speak beyond the governmentalities of security, unease and risk and go right to a crisis at the heart of the EU rights project – the understanding of solidarity.

The results of an empirical analysis of policy, the interpretations of law made to formulate it and articulations of key stakeholders and individuals it will be presented. The paper will address how the EU conceives of itself as a home and detail how the migrant crisis poses a threat to the values comprising this home. By analysing the articulation of the values of rights, solidarity and shared responsibility by the EU institutions and comparing them with the mandates of the actors delivering the response pragmatically, the paper will emphasise the presence of domopolitics. Therefore, the paper illustrates that the migrant crisis is a symptom of a greater condition affecting the EU. Due to this wider state of unwellbeing, the EU is engaging in a domopolitical governmentality in order to tame and domesticate migration that could intensify the symptoms of a chronic solidarity disease. Thus, the migrant crisis is a turning point, a moment where it can be either cured, or worsened.

Key words: European Union; domopolitics; migration; solidarity; governmentality

This paper presents an argument that the European Union (EU) is governing 'through crisis' in order to address problems of solidarity which exist between Member States, its institutions and, importantly, the actors through which it puts its policy proposals into action – in particular its network of agencies and experts.ⁱ By adopting a governmentality perspective, I propose it is possible to show how the governmental rationality of the EU is not 'crisis management' but rather an attempt to harness the momentum and will created by the catastrophes and disasters along its borders in order to forge an enduring approach to migration management within the EU. I argue that this position of the EU is problematic in four areas. First, it is problematic for prevailing understandings of crisis. The designation of an exceptional, turning point whereby action should be taken to ensure a solution and avoid a reoccurrence no longer seems valid (Kosselleck, 2006). Nor does the understanding of crisis as a time of innovation and creation whereby new methods are born (Kosselleck, 2006). Instead, I argue, what is witnessed is a shift to understanding crisis as a concept concerned with protection, stability, security and self-survival. Secondly, the EU's response is problematic for migration policy as the Union is proposing to create a 'holistic approach' which instead of 'treating' the problems of migration attempts to treat the problems of EU solidarity and thus migration becomes a test case for this style of governance. Thirdly, it is problematic for solidarity as the prominence given to rights within the EU's response draws into question the type of solidarity the EU espouses. Rights are envisaged as an indicator of solidarity but the tactics of governmentality operationalised through the policies and procedures established in response to the crisis create barriers for access to rights for migrants. This in turn is, fourthly, problematic for rights. It is problematic for those migrants who face barriers in accessing their rights or find their rights are denied. And it is, consequently, problematic for the EU's identity as an international human rights actor as it is involved in power relations which instead of fostering an environment which promote rights are in effect protecting solidarity between states.

The paper begins with a brief note on methodology and method and continues to outline the significance of the migrant crisis for the EU. The EU's response to this crisis will then be outlined, in particular the Commission's revised policy for migration management provided for in the 2015 European Agenda on Migration (The Agenda).ⁱⁱ I will specifically detail how the Agenda constitutes what William Walters (2004) has termed domopolitics; a specific governmentality which has as its concern securing the home. Therefore, I will then cover the nature of this EU home as envisaged by the Area of Freedom, Security and Justice (AFSJ) and how the Union's response to the migrant crisis is problematic for understandings of solidarity. I will undertake a domopolitical reading of the EU's response and show how this has implications for the Union's identity as an international human rights actor. I conclude that the EU's current condition of unwellbeing, and its attempts at treatment, produces unsettling outcomes for Union's system of rights protection.

On governmentality and critical empiricism

The paper presents the results of critical empirical research which combines Foucault's thinking on power, particularly governmentality, and EU legal and policy data. Governmentality (Foucault, 1977, 2009) is useful in two ways: firstly, as an understanding of decentralised power and, secondly, as a research perspective which allows interrogations of how this power operates. The EU is recognised as an entity which is interested in the activity of government which means the governmentality, the 'conduct of conduct', of its laws, policies and actions requires consideration in order to establish what type of governor it is (Gordon, 1991). Governmentality is particularly applicable to the EU context as it does not assume a state-centric view but rather engages beyond the state to examine procedural aspects of government and their effect on power relations (Foucault, 2001). Further, governmentality's gaze is not constrained to the supranational level but allows researchers to problematize the governance of spaces above, beyond, between and across states (Larner and Walters, 2004). Thus, the theoretical framework for the research has shaped the data determined worthy of study (Leonardo, 2010).

By viewing the migrant crisis through this particular lens, the concepts of crisis, solidarity and holistic can be imagined in concrete terms and the ability of this perspective to produce alternative truths explored (Sokhi-Bulley, 2013). A governmentality approach allows a better and fuller understanding of the EU response to the crisis as it encourages investigation of a wider definition of government which takes into account actors, legislation, policy, networks, procedures and practices which highlight power relations between the EU, its territory and migrants (Dean, 2010). From unpicking the Agenda, it is argued that the migrant crisis is a symptom of a wider 'disease' or condition affecting the EU, namely a chronic lack of solidarity or at least a lack of commitment to a shared understanding of solidarity. Examining migration management as domopolitics is a useful tool to adopt as it helps understand how the EU is attempting to palliate and bring under control phenomena that could intensify the signs and symptoms of the 'disease' i.e. an influx of migrants requiring a response and a positive solution. Thus, I contend the EU is acting in a way which seeks to cure its chronic solidarity disease rather than uphold rights and maximise right-entitlement and access to rights by migrants entering the EU in an irregular manner.

Problematizing the crisis

The events involving migrants in the waters and territory near the EU border have come to be understood as a crisis due to a number of factors. Firstly, the perceived slow and inadequate response from the EU institutions as reported by the media. Secondly, the calls from other international organisations for a 'European solution' to what has become known as a European problem and, thirdly, the admittance by the EU that current legislative and policy frameworks are inadequate to address the problem. I do not seek to further examine how the crisis has come to be constituted as such but how it can be used as an analytical tool to understand characteristics of governance and power relations in the multinational system and in turn help us understand the implications of increased migratory flows into the EU. The notion of crisis has exploded exponentially in relation to how we understand the EU; the Union's present has ostensibly been besieged by crisis. A series of consecutive crises for the EU can be identified from the failure of the Constitutional Treaty in 2005ⁱⁱⁱ, through the global financial crisis^{iv} and the Eurozone crisis.^v Ross (2011) has extorted these narratives in order to evaluate and analyse the performance and potential of the EU.

Reinhardt Kosselleck (2006) has traced the linguistic meaning of crisis through history. A range of meanings are highlighted from 'judgment' and 'decision' to a temporal meaning of a 'turning point', a time requiring action. He notes the dual nature of the meaning of crisis: the first relates to an observable condition and the second relates to the course of the illness, a moment in time which necessitates action. Political science research has arguably sought to operationalise the meaning of crisis and inspect it as something discernible from conflict (Jänicke, 1990). Kosselleck (2006, 399) warns use of the term has become so frequent it can almost be reduced to simply 'fit the uncertainties of what might be favoured at a given moment'. However, it should not be taken assumed without discussion that the concept of crisis has become redundant and invaluable. Conversely, the designation of crisis can now also indicate a place of productivity (not to be confused with positivity). At moments of crisis life itself is deemed on the line and the ordinarily uncomfortable facts of survival are forced onto the political agenda (Redfield, 2013).

Thus, it can be seen how crisis can be defined in different ways but further explanation is needed as to why such definitions are problematic. The fact the word crisis has become almost synonymous with the EU in recent years, has given weight to the position that a state of crisis is the not the exception but, rather, the rule. The argument of Hilary Charlesworth (2002, 377) that international lawyers have been able to manipulate the notion of crisis to foster a sense that their work is "of immediate, intense relevance" gains credibility. The creation of crisis, then, can be seen as a thing of convenience whereby action on issues can be taken where it would not normally occur. However, Charlesworth (2002: 377) argues crisis centric legislating restricts fundamental questions and enquiries and "shackles international law to a static and unproductive rhetoric". The difficulty is transposing such measures into long-term policies is explained by this view and also accounts for the decline in enthusiasm and commitment often experienced (Authers and Charlesworth, 2013). Yet, while it is worthwhile to assert investigation of a given crisis should not occur in isolation or void of contextualisation, dismissing crisis altogether could occlude subtle ramifications contained within the hype. Redfield (2013, 34) argues that crisis provides "the purest environment for a technical expert" and in relation to the migrant crisis the EU has established a position commanding a web of expertise regarding rights and

migration. Applying this logic highlights how the designation of a crisis creates a reason for experts to act and provides their work with a heightened sense of urgency and importance. Further, in the EU context, such experts are depicted as virtuous actors who not only bridge disparate policy areas but perform a unique role in delivering assistance. A correlation can then be identified between how the EU constructs its identity as a virtuous human rights actor by emphasising concepts such as solidarity and holistic management. On the surface, these present as aspects of ‘a cure’ to the crisis but under closer examination are exposed as parts of ‘the disease’.

The escalation of migrant crisis in 2014-2015 is, however, not the first time the EU has faced such a situation. Crisis management policies and procedures have existed in the Union for some time. The key provisions are found under the umbrella of the Common Foreign and Security Policy (CFSP) and particularly within the remit of the European External Action Service (EEAS) (2016a).^{vi} The TEU amended at Lisbon (2010) affirmed the Union’s aspiration of increased responsiveness to opportunities and challenges beyond the EU borders. The EEAS Crisis Response System (CRS) (2016b) was then established to cover crises occurring outside the Union which may affect the EU’s security and interests. The Crisis Response Cycle (EEAS, 2016b) indicates the dual-nature of EU crisis management indicating it exists to not only alleviate human suffering but to protect EU citizens. The special nature of crisis management in relation to other aspects of EU governance is articulated as the utility of ad hoc decisions and actions as well as medium- and long-term policy development are mentioned. The Crisis Management and Planning Directorate (CMPD) is assigned the important task of building a secure and stable neighbourhood in order to further develop crisis response capabilities which is indicative of the relationship and role of third-countries to the EU (Council, 2010). Mallaby reported, in an article in *The Guardian* on 20 October 2016, how other crises have contributed to the EU’s approach, during the financial crisis the utility of experts became a crucial tactic. Therefore, the problematic nature of the 2014-2015 migrant crisis, is that was deemed, as such, to require a different approach involving a different style of governance – namely, the ‘holistic’ variety. Further examination of the nature of the EU’s migrant crisis, would assist understanding about what the effects of the expertise employed are and their implications on the EU’s identity as an international human rights actor. For Redfield (2013, 34), it is in crisis that these experts come into their own; the reasoning being that in crisis “the stark line of existence offers lucidity” and provides grounds for judgment as well as action. The question therefore arises; how are the eloquent statements the EU made of a rights-based approach to the problem of migration being turned into action and what effects do these actions have on those subjected to them?

Envisaging the EU Home

The EU’s creation of an AFSJ, the programme of rights bestowed and the management that accompanies it forms a value-system upon which the EU project of governance can be interpreted as the constitution of an EU ‘home’. Article 67 (TFEU) states the Union “shall constitute” an AFSJ “with respect for fundamental rights and the different legal traditions and systems of the Member States”. Justice and Home Affairs (JHA), the umbrella under which the AFSJ falls, was developed as the third pillar of the EU and, as noted by Peers (2011), can be seen as a direct result of a spillover from the achievement of freedom of movement in the internal market. The areas encompassed in its remit touch on issues deeply embedded in national political and judicial systems and have strong connections to questions of state sovereignty (Lavenex, 2015). Cooperation in JHA also has direct implications for democratic values and for the balance between liberty and security. This area has been governed largely by intergovernmental decision-making and until recently (although exact levels of change are questionable) has privileged security considerations over those relating to ‘freedom’ or ‘justice’ (Lavenex, 2015). The AFSJ creates both a physical and conceptual space of an EU home based on commitments to shared values and affording rights to citizens in order to bring these values into effect. Under Article 67 TFEU, the home removes internal border controls for its inhabitants and commits to the establishment of a common policy on asylum, immigration and external border controls. The Treaty, under Article 67(2) also establishes solidarity as an essential foundation of this home and, interestingly for the subject matter of this paper, stipulates such solidarity exists *between* Member States but is *fair* to Third Country Nationals (emphasis added). The EU also developed its means for the governance of this home with citizens in mind. The White Paper on European Governance (2001) commits the EU to monitoring and evaluation of its ability to deliver on its commitments and operate in a manner which brings the Union “closer to its citizens”.

Problematizing Solidarity

If citizens are a key focus in the EU’s response to the migrant crisis, as it seeks to preserve and protect this home, the fairness aspect of solidarity towards third countries as stipulated in the TFEU becomes problematic. Further interrogation of the Union’s response to the crisis is required to unveil the type of solidarity being pursued. On 20 April 2015 the joint Foreign and Home Affairs Council meeting endorsed a 10 point plan of ‘immediate action to be taken in response to the crisis situation in the Mediterranean’.^{vii} This joint statement from High Representative Federica Mogherini and Commissioner Dimitris Avramopoulos emphasised the purpose of the 10 point action plan was “direct and substantial measures [...] to make an immediate difference.” Their statement also firmly placed the issue of solidarity at the centre of the response, avowing “this is what Europe taking responsibility is – all of us working together.” The European Council convened for a special summit on 23 April and endorsed the 10 point plan, reaffirming the immediate priority of preventing deaths at sea but stressing a need to “reinforce internal solidarity and

responsibility” by ensuring the Common European Asylum System (CEAS) was implemented by *all participating Member States* and options considered for emergency relocation *between all Member States* albeit on a voluntary basis.^{viii} These endorsements, even in the immediate aftermath of the 18 April 2015 sinking in which it is believed up to 900 migrants died off the coast of Italy, allude to the issue being one of solidarity rather than humanitarianism or disaster management as their goal is consensus and support between Member States. The European Parliament in its resolution of 20 April, however, contextualized the events within both EU human rights law (Charter of Fundamental Rights of the EU (CFREU)) and sources of international human rights law (Universal Declaration of Human Rights and the 1951 Geneva Convention and subsequent additional protocol). Solidarity appears in various configurations. The understanding, already discussed, from Article 67(2) TFEU outlines solidarity as the basis of a common asylum, immigration and external border control policy. Article 80 TFEU provides for solidarity as a governing principle of the AFSJ and indicates the importance of responsibility sharing between Member States. The Charter of Fundamental Rights of the European Union (CFREU) dedicates two paragraphs to solidarity in the preamble, signaling it is a founding value and the Union has a duty to contribute to its preservation and development. Not only have rights become commonly recognizable as tools of good governance (Crawford, 2002).^{ix} Rights have also found use as indicators of solidarity (Bulley, 2008). To further evidence this claim, the definition of solidarity contained in the Commission’s policy plan establishing the Common European Asylum System (2008) links solidarity with welfare and emphasizes the importance of solidarity not just between EU Member States but also with third countries.

A number of types of solidarity are articulated in The Agenda: firstly, *financial solidarity* as the EP called for both the EU and Member States to provide the necessary resources to finance search and rescue missions. Member States were specifically asked to “show solidarity and commitment by stepping up contributions to Frontex and European Asylum Support Office (EASO) budgets and operations”. Secondly, solidarity is conceived as *responsibility sharing* and the importance of adhering to obligations under Article 80 TFEU stressed (support between MS). It is under this banner that the European Parliament recommends the pursuit of a comprehensive approach to migration management. As a result of closer co-ordination of EU and Member State policies, the Parliament foresees strengthened internal and external policies, particularly the Common Foreign and Security Policy (CFSP), development policy and migration policy which will help tackle the root causes of migration.^x From this account of events surrounding the declaration of the European migrant crisis and the EU’s response a wide ranging scope can be detected.

Domopolitics and the EU Home

Domopolitics is a specific governmentality that aspires to govern the state as if it were a home (Walters, 2004). Similarities in language can be detected between the UK Home Office’s publication ‘Secure Borders, Safe Haven’, studied by William Walters, and the EU’s language in the Agenda for Migration under analysis here. The ‘Secure Borders, Safe Haven’ policy document was published in 2002. Over 15 years later, the European Commission (2015) makes the connection between the citizen, the territory and the outsider stating “Europe should continue to be a safe haven for those fleeing persecution.” In the foreword to ‘Secure borders, Safe Haven’, then UK Home Secretary David Blunkett writes “migration is an inevitable reality in the modern world and it brings significant benefits”.^{xi} This echoes the EU’s articulation of its desire to “reap the benefits” of migration in the Agenda (2015). The EU’s approach, however, seeks to manage all forms of migratory movement, not only asylum, thus this safe haven is to also be “an attractive destination for the talent and entrepreneurship of students, researchers and workers” (European Commission, 2015). Jonathan Darling (2014) suggests domopolitics creates specific types of marginality for those seeking asylum most notably around claims of ‘worthiness’ and ‘illegality’. Domopolitics helps us reach a better understanding of governmental rationalities wrought with issues of territoriality and citizenship, drawing our attention to politics of exclusion, externalisation and transfers of illegitimacy (Darling, 2011).

Understanding the EU’s approach to migration policy in the wake of the migrant crisis as domopolitics is linked to a need to protect and secure the ‘home’ created for EU citizens by the AFSJ. In media discussions and in response to public dissatisfaction with the EU’s approach to the migrant crisis, the Union has attempted to appeal to historical and emotional affinities with this home to garner solidarity amongst Member States, citizens and agencies such as Frontex and the European Asylum Support Office. As reported by Human Rights Watch (2016) the attempts by some Member States to reinstate internal border controls were met with appeals for solidarity and an urging not to sacrifice a privilege established for EU citizens. This speaks to Walter’s (2004) articulation of home as a place to be secured because its contents (in this instance, the privileges and perks of being an EU citizen such as visa-free travel) are valuable and envied by others. The EU’s response to the migrant crisis plays on a positive image of home, even if the positivity is not explicitly expressed by the inhabitants of said home.

The EU’s domopolitics is linked to a different understanding of social security than the UK and welfare entitlements (for this remains a national issue). Rather, a rationality of security concerned with attitudes and indicators of ‘wellness’ is prevalent. Manifestations of what constitutes societal security have moved beyond measures associated with purely physical health or mental health. The World Health Organisation (2014) defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” Public health campaigns have widened beyond just the prevention of illness. Wellness has been co-opted as a tactic by governments,

agencies, international organisations and corporations to ensure people operate at their optimum.^{xii} The wellness movement is as much about encouraging people into buying into a certain mentality that seeks improved mood, increased productivity and a more contented population. It is understood as an active process of becoming aware and making choices toward a healthy and fulfilling life. This aim has synergy with ‘government of the self’ (Foucault, 2010) where the role of the governing elite moves from coercive or punitive policies to self-responsibilising programmes through which subjects become educated and aware of accepted behaviours and adjust their conduct accordingly. In addition to producing greater productivity and efficiency, these strategies are also seen as ways of fostering resilience to life’s changes; reducing anxiety in periods of uncertainty and generating commitment to shared values in order to overcome challenges, disappointments and disaffection (Reid, 2012). The Agenda is developing a programme designed to make migration more efficient and effective, and create a state of wellness in the EU home, thus migrants are elements which must be effectively managed such as people smugglers and illegal migrants. The target of the EU’s domopolitics in the response to the migrant crisis is to tame the challenges in order to protect the fragile equilibrium of minimal solidarity between MS but also with Third Countries which exists within the EU.

The domopolitical character of the EU as a rights actor

The domopolitical rationalities of the migrant crisis, underpinned by politics of exclusion and illegitimacy, produce three significant outcomes which have implications for the EU’s identity as an international human rights actor. Firstly, the practical architecture of a holistic approach becomes equated with visions of unity which results in a discursive framing of the EU home along these lines. The Union’s response to the migrant crisis is not conveyed as a state of heightened emergency in the same way as traditional threats to security, such as terrorism, have been. Instead of restricting civil liberties, the EU voices a preference for a “coherent and comprehensive approach to *reap the benefits* and address the challenges deriving from migration” (The Agenda, 2015). Thus, the crisis is envisaged as an opportunity, not a threat. The Union acknowledges challenges exist but foresees that in dealing with them, a win-win solution can be found.

The second product is a stratified system of migration based on calculations of threat and risk to the home where the classificatory nature of domopolitics comes to the fore (The Agenda, 2015). This issue will be the focus of future research which will examine how the EU is reimagining the governable migrant subject. Thirdly, new spaces are created in which domopolitics can operate. Darling (2014) uses Isin and Rygiel’s (2007) definition of abject spaces to explain that these spaces produce depoliticisation for migrants. Abject spaces are defined as:

spaces in which the intention is to treat people neither as subjects (of discipline) nor as objects (of elimination) but as those without presence, without existence, as inexistent beings, not because they don’t exist, but because their existence is rendered invisible and inaudible.

Politics is seen to lie in the claiming of rights as it is through this action, a person enacts their political existence (Darling, 2014). This ability of migrants to operate in political existence is foreclosed by the EU’s domopolitics. The abject spaces created prevent individuals “from exercising political subjectivity by holding them in spaces of existential, social, political and legal limbo” as experienced in the processing centres, hotspots and detention facilities (Isin and Rygiel, 2007, 188-189). Darling (2014) identifies three forms of abject space: camps of detention and detainment; ‘frontiers’ of extraterritorial detention and ‘zones’ of containment within state territories. His work on asylum accommodation in the UK focuses on the latter. The EU’s response to the migrant crisis embeds a system which incorporates and ingrains all three. These spaces are important as they create a means of ensuring migrants’ whose status is yet undecided remain unaccounted for. They are essential for the effective operation and legitimisation of an exclusionary politics, as *the* way to manage migration (Darling, 2014). For the EU, these spaces create a means of palliating the symptoms of the solidarity condition from which it suffers through rationalities of exclusion.

From my reading, the EU’s holistic approach to migration sets out a domopolitical reconceptualization of the state-citizen-territory relationship by advocating the migrant crisis is a European problem which thus requires a European solution. In March 2014, a Commission communication entitled ‘An Open and Secure Europe: Making it happen’ stated that the EU recognises that “common European responses are needed to common challenges”.^{xiii} This statement, when read with the knowledge of the Agenda indicates the satisfactory resolution of the existing crisis specifics are not the issue but rather a reconfiguration of migration as a European, as opposed to a national, issue. The Agenda makes the case for a “coherent and comprehensive” approach to avoid “misguided and stereotyped narrative [which] often tend to focus only on certain types of flows, overlooking the inherent complexity of this phenomenon.” ‘An Open and Secure Europe’ acknowledged, in a somewhat self-congratulatory manner, the steps and effort the Union has made to “anchored in the respect for fundamental rights and based on a determination to serve European citizens.” The mention of European citizens speaks to the ever-enduring battle the EU faces to make itself culturally and politically relevant.^{xiv} The rise of populist leanings within many Member States over recent years has also seen the EU struggle to assert its position vis-à-vis citizens’ identity (Mudde, 2015). Thus, within the Agenda, a reconfiguration can be observed between the territorial and state aspects of migration (i.e. spreading the territory occupied by crisis management beyond Member States along the EU border and developing competency at the EU level as opposed to national, individual state policies). The call issued for “a set of core measures and a consistent and clear common

policy” also has as an objective, to restore confidence in the Union’s ability to, “bring together European and national efforts to address migration, to meet our international and ethical obligations and to work together in an effective way, in accordance with the principles of solidarity and shared responsibility” (The Agenda, 2015).

The argument can, therefore, be made that through the pursuit of successful management of the migrant crisis, the EU is seeking to alleviate the symptoms of a lack of solidarity. This operates on two levels; both among its constituent parts and in its relationship with its citizens. Thus, an attempt is made to secure the Union’s position as an international human rights actor. Domopolitics, then, is the means of achieving this end on the one hand, and upholding the Union’s image as an international human rights actor on the other. Rather than implementing overtly restrictive and punitive security tactics, the Union is able to simultaneously implement a ‘rights-based approach’ and tackle issues of illegality and illegitimacy. However, this reconfiguration is problematic as the migration it proposes to manage is a population of people not inanimate objects, thus in fully developing our understanding of its operation is how it seeks to “conduct the conducts” of the migrant subjects who attempt to enter the EU (Gordon, 1991).

In a practical sense then, a number of initiatives are presented which physically change the state-citizen-territory relationship. A provision which would allow for the mutual recognition of positive asylum decisions, as considered, would recast this relationship by reducing significance of the country of first arrival under the Dublin Regulations.^{xv} The Member State is not important if the asylum seeker is within the territory of the EU home. However, provisions for relocation schemes and quotas proposed in the Agenda maintain circulation of asylum seekers within this home, a tactic which has had its domopolitical significance raised by Darling (2011). However, asylum is not the only issue as the holistic approach also applies to the economic migrants rescued or entering the EU. The EU Treaties reserve the final decision on the admission of economic migrants for Member States. However, in its response to the migrant crisis the EU is looking at how to marry this limitation with the collective needs of the EU economy. The Commission is exploring the potential for an “expression of interest system” which would use “verifiable criteria to automatically make an initial selection of potential migrants, with employers invited to identify priority applicants from the pool of candidates, and migration taking place after the migrant is offered a job” (The Agenda, 2015).

The EU is thus establishing a system for migration management at the European level which reconfigures the relationship between state-territory-citizen and improves the condition of EU solidarity. In order to facilitate this the EU is not only creating a narrative whereby migration is a European problem requiring a cooperative and communal response but it is creating systems and mechanisms which it can offer Member States, thus carving out a position for itself as necessary in the management of migration. In particular, this manifests through the creation and exploitation of migrant data in all areas. In this respect, the EU is attempting to palliate the symptoms by making itself an integral element of the cure. The reconceiving of the relationship between state, territory and citizen is to be effectual in all areas of migration, thus the EU’s adoption of a holistic approach can be interpreted as a call to become ‘unified’, to present an impression of a harmonious home which despite a conflicting outward semblance, actually functions. Taking this perspective also correlates with the idea that the Union is not treating migration but is treating itself. As with Foucault’s understanding of the pathological, it is the patient who displays symptoms and feels their effects thus their experience is important in order for a doctor to treat it (Foucault, 1991). From this perspective then it is clear, migration is not the condition being treated but the condition of the EU itself as in this case, it is not the migrants who will judge whether the treatment of the crisis is effective but arguably the citizens of the Union. Controlling and manoeuvring the migrant subject according to domopolitics is then part of the treatment of ‘holistic governance’ rather than the ailment to be cured. An imperative for further research into how this domopolitical narrative alters the rights-bearing nature of migrants and how they are domesticated and subsumed into the ethos of the EU home is created.

Conclusion

This paper has undertaken an assessment of the EU’s present condition as an international human rights actor. It found that the EU is governing (through) crisis in order to address deficiencies in its migration management capabilities caused by the chronic condition of solidarity it faces. It was shown how the holistic approach to governing the crisis does not establish a rights-based system of migration management but operates according to domopolitics, a specific type of governmentality concerned with securing the home. Thus, the EU is still approaching migration with a rationality of security, however, rather than focusing on traditional threats to society it is now more concerned with how migration threatens the values of the EU home. It was argued this rationality is problematic for dominant understandings of crisis, solidarity and rights within in the EU. It was also shown, how the character of the EU as an international human rights actor can be re-interpreted from this perspective. The diagnosis of the EU’s present as being afflicted by a chronic solidarity condition establishes a research imperative to interrogate the tactics and technologies of governance deployed in response. Through critical reading we can improve our understanding of what effects are produced for the Union itself, its citizens and those attempting to cross its borders.

About the author

Rachael Dickson Hillyard is a final year PhD student at the School of Law, Queen's University Belfast. Her thesis is supervised by Dr Mark Flear and Professor David Phinnemore and is entitled *The European Union as an international human rights actor: Governmentality, domestic politics and the Mediterranean migrant crisis*. Rachael's research interests include the interaction between law and government, human rights, EU politics and policy and legal theory. She is an active member of the University Association of Contemporary European Studies and served on their Student Forum Committee from 2013-2015. Recently Rachael has presented at the Critical Legal Conference and an ESRC funded project workshop on 'Treating People as Objects'.

ⁱ Extending the work on governing (through) rights contained in Bal Sokhi-Bulley *Governing (through) rights. Human rights law in perspective* (Oxford: Hart Publishing, 2016).

ⁱⁱ European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration' COM(2015)240 final, 13.5.2015

ⁱⁱⁱ Church and Phinnemore (2016) detail the Constitutional Treaty (CT) was defeated in referenda in France and the Netherlands in 2005 and was readily abandoned by other member states alongside evidence of increasing euroscepticism. They report that the crisis was less dramatic than perhaps conveyed, after what they term a period of 'so-called' reflection the German Council presidency was able to push for a new deal which preserved many of the CT's innovations but without the 'constitutional' reference.

^{iv} Dabrowski (2010) notes the global financial crisis had significant implications for EU integration as the Union's limited fiscal capacity impeded its ability to respond in a co-ordinated manner. He advocates that the EU did not possess enough resources to rescue the troubled financial institutions and Member States which led to a nationalization of rescue operations. The Single European Market (SEM) was undermined by this process and the International Monetary Fund (IMF) was required to intervene in respect to distressed states. Dabrowski argued the EU must complete the SEM and contribute to the strengthening of global policy and regulatory co-ordination.

^v Diverging views exist in relation to the impact of the Eurozone crisis. Ramunas Vilpisauskas (2013) observes that the process of centralizing redistributive policies and the financial transfers between EMU states exposed 'territorial cleavages' which were a constraint on crisis response and pressurised further integration. Frank Schimmelfennig (2014) however identifies a neo-functionalism which explains the emergence of major new steps of technocratic supranational integration thus the Eurozone crisis can be said to be advancing rather than hindering integration.

^{vi} Article 47 of the Treaty on European Union (TEU) conferred legal personality on the EU which enabled it to conclude international agreements and join international organisations. The European Union External Action Service (EEAS) was established in 2010 to act as the Union's diplomatic service and ensure the voices of EU citizens are heard in world affairs.

^{vii} European Commission. 2015. "Joint Foreign and Home Affairs Council: Ten point action plan on migration." Last modified October 22, 2015 http://europa.eu/rapid/press-release_IP-15-4813_en.htm.

^{viii} European Council. 2015. "Special meeting of the European Council 23 April 2015." Last modified April 24 <http://www.consilium.europa.eu/en/press/press-releases/2015/04/23-special-euco-statement/>.

^{ix} Office of the United Nations High Commissioner for Human Rights (OHCHR). 2007. *Good Governance Practices for the Protection of Human Rights*. New York/Geneva. United Nations.

^x European Parliament. 2015. "Resolution of 29 April 2015 on the latest tragedies in the Mediterranean and EU migration and asylum policies." Last modified April 25, 2106 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0176+0+DOC+XML+V0//EN>

^{xi} Home Office. 2002. *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*. London. The Stationery Office.

^{xii} HM Government, Department of Work and Pensions and Department of Health. 2005. "Health, work and well-being – caring for our future" Accessed July 06, 2016. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209570/health-and-wellbeing.pdf.

^{xiii} European Commission, Communication from the Commission to the European Council, the Parliament, the European Economic and Social Committee and the Committee of the Regions: An open and secure Europe: making it happen, COM(2014)154 final, 11.3.2014.

^{xiv} European Commission, 2015. "Standard Eurobarometer Spring 2015: Citizenship" Last modified May 2015. http://ec.europa.eu/public_opinion/archives/eb/eb83/eb83_citizen_en.pdf.

^{xv} Regulation (EU) 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. OJ L 180/1

Bibliography

Authers, B and Charlesworth, C. 2014. "The Crisis and the Quotidian in International Human Rights Law". In *Netherlands Yearbook of International Law 2013*, edited by M.K. Bulterman and W.J.M. van Genugten, 20-39. The Hague. Asser Press.

Bulley, D. 2008. "'Foreign' Terror? London Bombings, Resistance and the Failing State", *British Journal of International Relations* 10: 379-394.

Charlesworth, H. 2002. "International Law: A Discipline of Crisis", *The Modern Law Review* 65: 377-392.

Charter of Fundamental Rights of the European Union OJ [2010] C 83/02

Church, C. and Phinnemore, D. 2016. "From the Constitutional Treaty to the Treaty of Lisbon and Beyond". In *European Union Politics*, edited by M. Cini and N. Perez-Solorzano Borragan, 30-49. Oxford: Oxford University Press.

Commission of the European Communities, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Policy plan on asylum, an integrated approach to protection across the EU COM(2008) 360final 17.06.2008

Consolidated version of the Treaty on European Union OJ 2010 C83/01.

Consolidated version of the Treaty on the Functioning of the European Union OJ 2010 C83/01.

Crawford, G. 2002. "Evaluating European Union Promotion of Human Rights, Democracy and Good Governance: Towards a Participatory Approach", *Journal of International Development* 14: 911-926.

Dabrowski, M. 2010. "The Global Financial Crisis: Lessons for European Integration", *Economic Systems* 34: 38-54.

Darling, J. 2011. "Domopolitics, governmentality and the regulation of asylum accommodation", *Political Geography* 30: 263-271.

Darling, J. 2014. "Asylum and the Post-Political: Domopolitics, Depoliticisation and Acts of Citizenship", *Antipode* 46: 72-91.

Dean, M. 2010. *Governmentality. Power and Rule in Modern Society*. London. Sage

European Commission, 'European Governance: A White Paper' 2001 OJ 2001/C 287/01

European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration' COM(2015)240 final, 13.5.2015.

European Council, Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ 2010 L 201/30).

European External Action Service. 2016a. "Common Foreign and Security Policy (CFSP)". Last modified June 16, 2016, http://eeas.europa.eu/topics/common-foreign-security-policy-cfsp/420/common-foreign-and-security-policy-cfsp_en.

European External Action Service. 2016b. "Crisis Management and Response". Last modified June 15, 2016, https://eeas.europa.eu/topics/crisis-response/412/crisis-management-and-response_en.

Gordon, C. 1991. "Governmental Rationality: An Introduction". In *The Foucault Effect: Studies in Governmentality*, edited by G. Burchell, C. Gordon and P. Miller, 1-52. Chicago: University of Chicago Press.

Foucault, M. 1977. *Discipline and Punish: The Birth of the Prison* London. Penguin.

Foucault, M. 1978. *The History of Sexuality Volume 1: The Will to Knowledge* London. Penguin.

- Foucault, M. (Gordon, C. (ed.)). 1980. *Power/Knowledge; Selected Interviews and Other Writings, 1972-1977*. New York/London. Harvester Wheatsheaf.
- Foucault, M. 1991. 'Introduction' in *The Normal and the Pathological*, G. Canguilhem. New York, Zone Books.
- Foucault, M. 1992. *The History of Sexuality Volume 2: The Use of Pleasure*. London. Penguin.
- Foucault, M. 1997. *Ethics: Subjectivity and Truth*. Edited by P. Rabinow. New York. New Press.
- Foucault, M. 2001. *Power*. Edited by J. Faubion. New York. New Press.
- Foucault, M. 2008. *The Birth of Biopolitics: Lectures at the College de France 1978-1979* Basingstoke. Palgrave Macmillan.
- Foucault, M. 2009. *Security, Territory, Population: Lectures at the Collège de France 1977-1978*. Basingstoke. Palgrave Macmillan.
- Foucault, M. 2010 *Government of the Self and Others: Lectures at the Collège de France 1982-83*. Basingstoke Palgrave Macmillan
- Human Rights Watch. 2016. "Hungary: Migrants abused at the border." Last modified July 13, 2016. <https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border>.
- Isin, E.F. and Rygiel, K. 2007. "Abject Spaces: Frontiers, Zones, Camps." In *The Logics of Biopower and the War on Terror: Living, Dying, Surviving*, edited by E. Dauphinée and C. Masters, 181-203. Houndsmill. Palgrave Macmillan.
- Jänicke, M. *State Failure: The Impotence of Politics in Industrial Society*, trans. A Braley. Cambridge: Polity, 1990.
- Koselleck, R (Richter, M.W. (tr)). 2006. "Crisis" *The Journal of the History of Ideas* 67: 357-400.
- Larner, W. and Walters, W. "Globalization as Governmentality", *Alternatives: Global, Local, Political* 29: 495-514.
- Lavenex, S. 2015. "Justice and Home Affairs: Institutional Change and Policy Continuity." In *Policy-making in the European Union*, edited by H. Wallace, M.A. Pollack and A.R. Young, 367-387. Oxford. Oxford University Press.
- Leonardo, Z. 2010. "Critical Empiricism: Reading Data With Social Theory", *Educational Researcher* 39: 155-160.
- Mallaby, S. 2016. "The Cult of the Expert – and How it Collapsed," *The Guardian*, October 20. Accessed October 20, 2016. https://www.theguardian.com/business/2016/oct/20/alan-greenspan-cult-of-expert-and-how-it-collapsed?CMP=share_btn_link.
- Mudde, C. 2015. "Populism in Europe: A primer," *Open Democracy*, May, 12. Accessed July 04, 2016. <https://www.opendemocracy.net/can-europe-make-it/cas-mudde/populism-in-europe-primer>.
- Peers, S. 2011. *EU Justice and Home Affairs Law*. Oxford. OUP.
- Redfield, P. 2013. *Life in Crisis: The Ethical Journey of Doctors Without Borders*. Berkley. University of California Press.
- Reid, J. 2012. "The Disastrous and Politically Debased Subject of Resilience", *Development Dialogue* 58: 67-80.
- Ross, G. 2011. *The European Union and its Crises: Through the Eyes of the Brussels' Elite*. London. Palgrave Macmillan.
- Schimmelfennig, F. 2014. "European Integration in the Euro Crisis: The Limits of Postfunctionalism", *Journal of European Integration* 36: 321-337.

Sokhi-Bulley, B. 2016. *Governing (Through) Rights. Human Rights Law in Perspective*. Oxford. Hart Publishing.

Sokhi-Bulley, B. 2013. "Alternative Methodologies: Learning Critique as a Skill", *Law and Method* 3: 6-23.

Vilpišauskas, R. 2013. "Eurozone Crisis and European Integration: Functional Spillover or Political Spillback?", *Journal of European Integration* 35: 361-373.

Walters, W. 2004. "Secure Borders, Safe Haven, Domopolitics" *Citizenship Studies* 8: 237-260.

World Health Organisation. 2014. *Basic Documents*. Geneva. World Health Organisation.