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Social Policies as a Tool of Migration Control

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KEYWORDS

Irregular migrants; rejected asylum seekers; welfare services; migration-control policies

Migration-control policies have become a topic of considerable debate among political actors in many European countries, increasingly, in the aftermath of 2015. Debates and policy measures focus on *irregular migrants*, a term that encompasses persons with different statuses, from those entering a territory without valid documents to rejected asylum seekers who continue to stay, to visa over-stayers, and to absconded persons. Politicians promote migration control measures in pursuit of a variety of goals, most importantly to deter migrants from entering the country or to deincestivize their residence and receipt of membership rights (Rosenberger & Müller, *forthcoming*). Moreover, migration control is increasingly carried out by proposing and practicing restricted irregular migrants' access to welfare services. The selective exclusion and inclusion of irregular migrants in welfare services has been identified as a tool of post-entry migration control (Bommes & Geddes, 2000).

A growing body of literature examines why states provide welfare services for officially declared “unwanted” (irregular) migrants in general and rejected asylum seekers (who continue to stay in the host country) in particular. Among others, migration scholars have conceptualized this issue as a gap between restrictive migration policy aims and the liberal outcomes of these policies (Castles, 2004; Joppke, 1998; Lahav & Guiraudon, 2006). Scholarship indicates that there are challenges between international obligations and human rights, on the one side, and political legitimacy and competition for votes at national levels on the other. The approach to the representative-politics/liberal-rights dilemma presented by Hampshire (2013) expresses the tension between liberal rights for all based on international regulations and representative politics encompassing parties and voters, who often express exclusionary behavior toward (irregular) migrants' social membership. Other approaches touch on the divergence of formal and informal inclusion/exclusion (Chimienti & Solomos, 2016), the gaps in policy formulation and implementation (Van der Leun, 2003), challenges with regard to the multilevel governance of this issue, especially the role of cities (Spencer, 2017), and humanitarian norms. These academic debates underscore the fact that irregular migrants have limited and precarious access to welfare services.

Against this scholarly background, the core aim of this special issue (SI) is to contribute to academic debates on the intersection of migration control and social policies by providing new empirical analyses on policies and policy making at various political tiers. The SI addresses three major issues: migration control, governance structures and policy designs:

First, it discusses welfare services as a tool for *postentry migration-control* aims. In this context, this special issue shows a range of social policies, covering both legal regulation and practical implementation across countries and cities according to the perspective of internal migration control, meaning that national border control is expanded from geopolitical borders to domestic institutions and individuals in order to deter unwanted migration within (Van der Leun, 2006; Boswell, 2007).

Second, it deals with *tensions, conflicts, and cooperation* with regard to the provision of welfare services for irregular migrants. Covering different European states and cities, this SI discusses the tensions emerging from two policy fields (migration control and social policy) with very different rationales and logics and offers empirical insight into the ways in which policy makers at different political levels deal with the political and social challenges. Covering state and nonstate actors, the articles analyze cooperation between actors in the field of provision of welfare entitlements and migration policies on the one side, and the conflict between the two, on the other.

Third, this SI collects articles that address the *policy designs* and strategies of actors that provide, limit, or expand access to welfare services for irregular migrants.

The articles have a regional focus on EU Member-States, plus Switzerland, are grounded in case studies and comparative designs, and cover different areas of welfare provision—education, accommodation, health care, financial allowances, and support for victims of crime. The articles draw on rich empirical data derived from expert interviews with stakeholders in the fields, with national, regional, and local policy makers, and with concerned individuals (irregular migrants) and from legal and policy documents.

The articles present findings on diverse policy outcomes for irregular migrants across countries and, in particular, across areas of welfare provision. Below, three accounts are discussed and evaluated for this variation in outcomes: first, policy designs that are guided by fragmentation, conditionality, and exceptions; second, the role of local governance and their deviant interests from national governments and a transnational perspective; and third, the level of practices in implementation combined with different uses of discretionary power by gatekeepers. Before examining these issues, however, we explain our focus on NRAS as a subcategory of irregular migrants and offer an introduction to the migration control–social policy nexus.

Irregular migrants and nonremoved rejected asylum seekers

This SI focuses on irregular migrants in general and nonremoved rejected asylum seekers (NRAS), in particular, as a subcategory bearing specific characteristics. Irregular migrants are defined as “residents without any legal residence status in the country they are residing in, and those whose presence in the territory—if detected—may be subject to termination through an order to leave and/or an expulsion order because of their activities” (Triandafyllidou, 2010, p. 3). NRAS are third-country nationals who have

received a negative decision on their asylum claim and are, therefore, under the legal obligation to leave but are not removed for humanitarian or factual reasons (Heegaard Bausager, Köpfler Møller, & Ardittis, 2013). Irrespective of whether a rejected asylum seeker has not yet been removed or whether long-term impediments to removal exist, he or she lives in a legal status of irregularity as long as the obligation to leave the country is upheld and no residence permit is given. Several articles in the SI address how asylum-related migration may be intertwined with irregular migration.

The transition from status as an asylum seeker to nonremoved rejected asylum seeker is not clear, and different paths can be found depending on whether the state recognizes this group and grants certain rights. NRAS is not a single group; it can be divided into distinct categories according to whether the state has recognized the NRAS' situation and/or guaranteed additional rights and access to welfare services among European countries. NRAS are subcategorized according to whether they have (a) an official postponement of return with additional rights, (b) an official postponement of return without additional rights, (c) no formal recognition of return with additional rights, or (d) no formal recognition of return with no additional rights (Heegaard Bausager et al., 2013). A mix of formal and informal instruments can result in *de facto* toleration and acknowledgment of the presence of these groups (EMN, 2016). Findings presented in this SI show that, especially in countries in which NRAS have access to accommodation services after their negative asylum application, they are *de facto* recognized and receive additional services.

The studies presented in this SI demonstrate that, compared with the generic group of irregular migrants, NRAS enjoy a higher level of international/EU rights regarding access to welfare services, especially in the fields of health and education. Article 14 of the Return Directive guarantees basic minimum welfare rights to NRAS, including emergency health care and access to education for minors. Notably, this list does not include access to accommodation. However, the Return Directive alone does not guarantee equal conditions for all NRAS. As the articles on NRAS by Ataç, Rosenberger and Spencer/Delvino demonstrate, both legal entitlements to social welfare and their enforcement differ across European countries and cities. Moreover, these articles show that policy proposals such as control and deterrence are particularly prevalent since 2015. Thus, NRAS are a group that allows us to study the strategies and social policies subject to migration control.

Migration control–social policy nexus

The inclusion and exclusion from welfare services of irregular migrants in general and NRAS in particular brings to the fore a tension between the aims of migration policy and the aims of social policy. Migration policy concerns a governments' laws, regulations, and measures to select, administrate, control and deport foreign citizens (Helbling, Bjerre, Römer, & Zobel, 2017). It is designed to facilitate mechanisms of territorial and social inclusion and exclusion (Ataç & Rosenberger, 2013). Social policies, in contrast, pursue the idea of equality of individuals and are designed to facilitate social inclusion and well-being (Kotkas & Veitch, 2017).

The term *migration control–social policy nexus* is an analytical framework for discussing the intersection of both fields, in particular, policy outcomes. Limiting social rights has been identified as an indirect means of immigration control (Hollifield, 2000). Social-policy instruments are used at the national level for the sake of control when entitlement to benefits is linked to immigration status. A widely cited example is the Linking Act of 1998 in the Netherlands. Through its installation, which links access to welfare services to residency status, the Dutch government established the legal grounds to exclude irregular migrants' access to public welfare provisions, with the exceptions of education for minors and medical care in emergency situations (Van der Leun, 2003; Kos, Maussen, & Doornik, 2015). In the United Kingdom and France, legal residence tests were introduced for limiting access to public welfare benefits (Geddes, 2003; Vonk & van Walsum, 2013). However, not only limiting but also providing welfare services may contribute to migration control when it is the policy aim to identify the person or facilitate the individual's return to their home country through adapting voluntary return programs. Moreover, access to welfare services can be dependent upon conditions such as cooperation with return. In this case, access to welfare services becomes a stick as well as a carrot (Rosenberger & Koppes, 2018).

When access to welfare services is used as an instrument of internal migration control, implementing policies as intended is not always possible. From the perspective of migration control, questions arise concerning the effectiveness and limits of using social policy as an instrument of control. In the Netherlands, the exclusion of irregular migrants from welfare services led to conflictual processes between local municipalities and the national government (Kos et al., 2015). There are also examples in which the introduction of such measures could not be adopted (Austria) or the regulation was withdrawn after a short time period (Norway).

Welfare provision to irregular migrants and NRAS serves not only the aim of control and deterrence but also public health, child protection, and other policy objectives (Spencer, 2017). Regularization policies can be expected to have a significant impact on enjoyment of economic and social rights in practice. In this way, these regularization may function as a social-policy tool beyond their immediate regulatory objective to adjust irregular immigrants' legal status and to address situations of hardship and the social and economic situations of target groups.

In the following section, we describe how the articles in this SI contribute to these ongoing debates and contribute to the understanding of providing welfare services for irregular migrants and NRAS.

Fragmented policy designs and regulation programs

The dominant feature of the modern social welfare system has been described as the complexity that organizes citizens and noncitizens into multilayered hierarchies in which immigration status and nonstatus open or close doors to access welfare benefits (Sabates-Wheeler & Feldman, 2011). The importance of conditions when providing social services to migrants, and to irregular migrants in particular, has been widely discussed (Dwyer, 2005). States have restructured their welfare approach by differentiating

between categories of migrants that lead to systems of stratified rights according to legal and residence status (Morris, 2006). This approach has been challenged by the idea that the trigger for social benefits for irregular migrants and NRAS is less the governmental arena of the nation-state and more the arena of humanitarian norms and their institutions. Enforced by international and national courts, humanitarian norms pressure for inclusion in welfare services of migrant-status people (Guiraudon, 2000; Boswell, 2007). The liberal human rights regime is viewed as a reason for the liberal state's partial loss of the capacity for migration control.

The provision of fragmented rights is a consequence of the politics of migration; parts of society and some political parties call for restrictions of social services for migrants, for those who do not belong to the national community, and for those who do not contribute to the welfare system. Rosenberger discusses how elected decision-makers translate the increasing public pressure to restrict irregular migrants' access to social services. She argues from the analytical perspective of policy designs that have the potential to reconcile demands of legitimacy deriving from liberal rights and representative politics. Rosenberger offers an analytical framework on fragmented policy designs for NRAS, composed of several conditions and exceptions that allow and limit the offer of social services.

Another facilitating factor of access to welfare services is the policy of regularization. Kraler's contribution provides comparative insights into the regularization policies and their social-policy implications in seven EU Member-States (Germany, France, Italy, the Netherlands, Poland, and Sweden) and elaborates on the impact of regularization on regularized migrants' access to social rights. By exploring regularization as an instrument of legal inclusion, his article addresses how access to social rights figures among the most important impacts of regularization noted by regularized migrants. In so doing, the article goes beyond existing analyses that largely focus on regularization as an instrument of migration management. Finally, Kraler's article depicts social and labor-market participation as formal conditions for regularization and informal ones, such as the possessing the qualities of a good citizen, for becoming eligible for case-driven regularization programs.

Local governance and transnational perspectives

Local actors within multilevel governance structures are of utmost relevance in welfare provision for irregular migrants. As migration control is largely executed at the national level, social policies are embedded in a multilevel setting between local and national governments with different responsibilities. However, competing policy priorities, diverging framing strategies, and overlapping responsibilities between national and sub-national entities may lead to conflict (Spencer, 2017; Scholten, 2013). In the context of migration-control policies, when the consequence of a national policy constitutes an increased burden on municipalities, local entities can provide a greater level of access to welfare services (Kos et al., 2015). Leerkes and colleagues (2012) showed that city governments may selectively apply restrictive immigration rules and execute local limits to migration policing when they have responsibility in a decentralized political setting.

The ways in which policy makers in European municipalities frame the reasons for provision of welfare services to migrants with irregular status is the topic of the article by Spencer and Delvino. They identify a tendency toward municipal activism by extending access to services for irregular migrants, often in the context of a restrictive national policy framework. By looking at the justification patterns and frames used by municipal policy makers in European countries, the authors identify a typology of six frames that emerge to support local welfare provision for irregular migrants: an inclusive security frame, a socioeconomic frame, an efficiency frame, a humanitarian frame, a human rights frame, and a deserving-workers frame. Drawing on interviews with local policy makers and documentary sources, the article contributes to our understanding of the reasoning for the formal inclusion of irregular migrants in welfare services at a sub-state level.

In contrast, starting from migrants' journeys that cross different national borders, Anna Wyss places migrants' experiences at the center of her analysis, which goes beyond a nation-state framework to capture the inherently transnational character of migrants' attempts to access support structures that secure basic needs such as housing, food, and health care. Based on multisite ethnographic research and interviews, she highlights their interrupted journeys and shows from a critical mobilities perspective how migrants use mobility to access social benefits and services and contest the migration regime that aims to control and limit their mobility. Wyss observes that the interrupted journeys of migrants with precarious legal status are defined by shifts between different legal statuses and between living in state-funded accommodations and staying with friends. Given these unstable living conditions, she explores the tactics migrants use to access support structures. Throughout, she shows how the migration regime generates both mobility and precarity.

Discretionary power in implementation

Researchers have analyzed the crucial role that individual service providers play in “gatekeeping access to services” for irregular migrants in light of their exclusion from the welfare state (Price & Spencer, 2015). Studies based on the influential work of Lipsky (1980) discuss variations in access to welfare entitlements as a result of the exercise of discretion by local service providers. Lipsky paid attention to “street-level bureaucrats” and how they influence the way policies are implemented. Van der Leun discussed (2006) street-level bureaucrats in the context of restrictive national welfare policies in the Netherlands. She showed that service providers with higher levels of professionalization in health and education, such as doctors and teachers, more often resist restrictive policies than service providers in occupations with lower levels of professionalization. As the latter acts more in compliance with restrictive law, leading to higher levels of exclusion, the former tends to act according to their professional ethics and with greater autonomy, resulting in the bending of rules and inclusion. These decisions are located within the scope of their discretionary power given by the state and/or their individual noncompliance with the existing legislation (see Goldring & Landolt, 2015). Explorations of different behavior between bureaucrats and elected representatives have

exposed how the former set their own agenda especially in service-providing jobs and can be more responsive to irregular migrants (Leerkes, Varsanyi, & Engbersen, 2012).

The role of implementation, specifically of the discretion that comes with working in various institutional settings, is discussed in the article by Reinhard Schweitzer. He focuses on street-level bureaucrats, in particular, on the issue of individual discretion and thus the possibility for official policy to be “watered down,” selectively undermined, or reinforced in the course of its implementation. By linking microlevel everyday practice to macrolevel policy making, Schweitzer analyzes how social organizations respond to contradictory external demands and pressures. If the responsible government is unable or unwilling to openly justify a certain inclusiveness toward irregular residents, much of the responsibility falls on implementation actors.

In the same vein, Ataç explores how the implementation of conditional welfare arrangements shapes access to state-organized accommodation. The article underscores the fluidity between legal, formal conditions, and informal, unregulated conditions. For NRAS, access to social rights is conditioned especially by the requirement of cooperation with return procedures. Besides that, vulnerability as a condition is relevant for NRAS. However, vulnerability cannot be defined legally to the full extent nor can it be precisely measured; rather, it is determined by street-level bureaucrats. Ataç explores how conditions are framed in terms of deservingness, based on humanitarian principles such as the rights of children and health-related vulnerability, on the one hand, and on performance (specifically, on cooperation) in the return procedure, on the other hand.

Both Schweitzer and Ataç deal with inclusion or exclusion from a social service, which often depends on how individual actors or organizations interpret a particular regulation and on how much room for discretion is left by legal frameworks. This leads us to the concept of deservingness, which aims to identify the motives and rationales behind the decisions of street-level bureaucrats. In addition to concepts of universal personhood, it is human rights and ideas of moral deservingness (Chauvin & Garcés-Masareñas, 2014) that allow for access to social welfare. Promigrant behavior is demonstrated when irregular immigrants are perceived as nonthreatening and deserving. An example is when female migrants are working in care activities; in this case, administrative street-level bureaucrats tend to be more generous in providing services (Ambrosini, 2015).

Conclusion

The intention of this special issue is to develop a more nuanced and comprehensive understanding of the mechanisms that regulate access to welfare services for “unwanted” migrants and of the tensions and consequences that arise when social policy serves as a tool for postentry migration control. The six contributions in this SI highlight the relevance of the migration control–social policy nexus as an analytical framework that sheds light on this intersection through which we may better understand it. While limitations to irregular migrants’ access to benefits are introduced, this limited access is secured through the activities of a wide variety of actors—local and national—through sophisticated strategies to design policies and through discretionary power in implementation. The articles focus on three major issues: national policy designs and programs, the role

of local governance and transnational dimensions, and gatekeepers' use of discretionary power in implementation practices. This SI thereby structures the debate around the migration control–social policy nexus and provides a rich basis for the further development of this highly relevant research field.

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