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JACK & MAE
NATHANSON CENTRE
ON TRANSNATIONAL HUMAN RIGHTS, CRIME AND SECURITY

“Securitization in Germany and in the EU – Legal and Policy Implications for Canada”

EU Centre of Excellence York Law Workshop, Dec 2/3, 2011

The workshop is co-sponsored by:

the DAAD (German Academic Exchange Service) and
York’s Nathanson Centre for Transnational Human Rights, Crime and Security.

Organized by:

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CONFERENCE SCHEDULE

Friday, December 2nd:

Location: York University (Glendon College), Senate Chamber, York Hall C wing, building # 9 on the map:

http://www.yorku.ca/web/futurestudents/map/glendonmap_popup.html

8.30-8.45 Welcome and opening remarks

- **Dagmar Soennecken**, York University

8:45-9.00 Words of welcome

- **Ken McRoberts**, Principal, Glendon College

Part I: Smuggling vs. Securing the Citizen: Perspectives from Canada & International Law

9.00-9.50 – Chair: Dagmar Soennecken

- **Audrey Macklin**, University of Toronto: "Locking Up Asylum Seekers"

The Canadian government recently introduced legislation that would require automatic, warrantless, unreviewable detention of asylum seekers designated as part of a group of 'irregular arrivals'. In defending the "Preventing Human Smugglers from Abusing Canada's Immigration System Act" against claims that it victimized possible refugees, and was also unconstitutional, the government insisted that the detention provisions were less harsh than those of EU states. My presentation will explore the empirical validity of that claim, and also compare EU and Canadian jurisprudence on detention of non-citizens.

10.00-10.50 – Chair: Audrey Macklin

- **Scott Watson**, University of Victoria: "Human Smuggling and the Securitization of Asylum Seeking"

Among the most prominent challenges human smuggling presents to the state concerns how to prevent and punish smuggling while ensuring the rights of asylum seekers and refugees. Indeed, Article 31 of the 1951 Refugee Convention recognizes that refugees may need to enter states illegally or without authorization, and requires that states not impose penalties on these refugees. Yet, increasingly, states are enacting measures to prevent and punish 'unauthorized' migrants – including asylum seekers. Drawing on the Canadian case, this paper demonstrates how human smuggling has become the

dominant restrictionist discourse that operates in a similar fashion as other restrictionist discourses, such as those emphasizing the protection of communal health, culture, and national security, which justify both preventive and punitive measures against asylum seekers. Unlike these other restrictionist discourses however, human smuggling most directly confronts the rights of refugees to flee their home state and to enter another illegally. To overcome this obstacle, I contend that the human smuggling discourse relies on four ambiguities: 1) obfuscating the 'criminal' subject, 2) blurring security and criminality, 3) obscuring the source of demand for smuggling, and 4) confusing the distinction between various streams of migration.

11.00—11.50 – Chair: Scott Watson

- **Zeynep Kasli**, University of Washington: “Criminalising and Victimising the Migrant: Reflections on the UN Protocol and UNHCR’s Position against Smuggling”

Against the rising concern for the security of states and its 'people' with not much reference to the security of those who are on the move for various reasons, UNHCR, as the international organization, has been the highest global authority that protects primarily refugees as identified in the 1951 UN Convention. Nevertheless the strengthening of border controls and measures to deter people's entry into Western states has pushed people to search for other ways to enter even to acquire a refugee status and thus rely more on 'smuggling rings'. Due to stricter border measures, smuggling routes have become more dangerous for those who have to rely on them. Concomitant to an increasing number of 'smuggling victims,' like the act of trafficking, people smuggling has eventually become a matter of humanitarian concern for UNHCR and has been defined and protected by the UN Protocol against Smuggling. This paper discusses the ways in which the UN Protocol and its reception by UNHCR reinforce a certain image of the 'smuggled migrant' that emerges simultaneously as a 'victim' of smuggling and a 'threat' to the states' authority over border crossings. The paper further claims that such seemingly contradictory images in fact complement one another and provide the legal and institutional basis to 'manage' migration by securitising it.

12.00-12.45 Lunch

1.00-1.50 – Chair: Zeynep Kasli

- **Chris Anderson**, Wilfrid Laurier University: “A New Canadian Club: Fear and Loathing in Contemporary Canadian Citizenship Policy”

This early work in progress draws on Cynthia Weber's conceptualization of citizenship design (and redesign) to frame an investigation of recent developments in Canadian citizenship policy. The official meaning of "being Canadian" is undergoing a process of transformation defined by two strong impulses. The first is a dissatisfaction with (if not loathing of) how Canada has been understood in the past, both in terms of the emphasis on diversity and the relative ease of citizenship acquisition and retention. The

second is a disquiet with (if not fear of) what Canada has or will become, both in terms of social cohesion and the value accorded to the possession of Canadian citizenship. In response, the Canadian government has been redesigning citizenship along a number of dimensions - procedural, substantive and symbolic - aimed at establishing a more exclusive Canadian Club. At present, this research has two stages. The first is to describe and interpret these developments within a national context to assess their political justifications and consequences. The second is to consider the Canadian case within a comparative context to determine whether a perceived underlying commonality among Western states - the revalorization of national citizenship - hinders more than helps understanding citizenship redesign in Canada.

Part II: European insights: UK, France & Netherlands

2.00-2.50 – Chair: Anna Korteweg

- **Ewen McIntosh**, University of Edinburgh: “How to deal with the ‘Afghan Hijackers’? Contrasting political and administrative responses to judicial decisions on asylum control in the UK ”

For at least 15 years, asylum control in the UK has been inseparable from public and political debate on counter-terrorism and the ‘public good.’ Supra-national and municipal courts are also increasingly involved in determining the parameters of European states’ refugee and asylum policy. Yet, little academic attention has been paid to the impact of judicial decisions on changes to deportation policy, and its characterisation as a security concern. This is despite influential migration literature holding that liberal institutions, such as the courts, will constrain otherwise restrictive migration policies. This paper will argue that consideration of political and administrative responses to adverse judicial decisions on asylum control reveals a multiplicity of irreconcilable policy goals and interests involved in the governance of asylum. Such disparity may challenge depictions of a coherent securitisation of asylum control in the UK. As an illustrative case study, the paper will consider the British government’s response to the ‘Afghan hijackers’ case. Documentary evidence of changes to policy structure and political rhetoric will be marshalled to consider correspondent political and administrative attitudes to compliance with judicial decisions in this case. Arguably, a textbook case of securitisation, ad-hoc changes were made to policy on immigration status without the authority of parliament, judicial decisions upholding human rights were flouted, and ultimately, exceptional powers were legislated for the Home Secretary to limit the rights and freedoms of migrants considered a threat to national security. However, apparent governmental concerns over national security in this case can also be seen to fade over time into more fundamental underlying patterns characteristic of the political and administrative systems; governmental desire to fulfill symbolic policy pledges in the face of unwelcome judicial constraints; and an occasionally disparate bureaucratic will towards policy stabilisation.

3.00-3.50 – Chair: Chris Anderson

- **Anna Korteweg**, University of Toronto: “The Burka as Threat? Legal changes in France and the Netherlands?”

This presentation is based on an analysis of newspaper reporting and parliamentary discussions of the burka in France and the Netherlands. French parliament banned the burka in 2010, with the law taking effect in April 2011. The Dutch parliament first voted to ban the burka in 2005 in a law that was considered unconstitutional at the time. However, the attempts continue and a ban is expected to be passed by the current government. The question I seek to answer in this presentation: what does the burka threaten? I seek to move beyond the now-standard arguments about to “public security” to understand how media and parliamentary debates surrounding these (attempted) burka bans (re)produce distinctly national narratives about belonging and participation in these two states.

Part IV: More European Insights: Germany – Elites vs. Turks

4.00-4.50 – Chair: Ewen McIntosh

- **Phil Triadafilopolous** (University of Toronto): “Security Concerns and Elite opinion on Integration Policy in Germany”

7.00 **Dinner** (off campus, Pallucci’s: <http://www.pallucci.ca/>)

Saturday December 3rd:

York University (Glendon College), York Hall (C Wing), room C 202 (upstairs, other end of the hallway)

Part IV: More European Insights: Germany – Elites vs. Turks cont’d

9.00-9.50 – Chair: Adam Luedtke

- **Gül Caliskan** (York, CCGES): “Accommodating Berlin’s Turkish Ausländer: Judging by Appearance”

This paper examines everyday discourses that involve judging German-born Turkish Ausländer in Berlin by appearances, including their skin colour, gender, or clothing such as headscarves. It analyzes particular everyday practices which place Ausländer in separate and unequal relations to Germans, and to one another, along lines of gender, ethnicity, class, religion, and skin colour. It illustrates how the discourses involved in these practices operate to relationally mark some Ausländer as less threatening than others, some Ausländer as preferable, and some others as undesirable. Some are considered more valuable than others, and the status of one depends on the subordinate status of the other. The result is to deny the status of full partner to some partners in the interaction. Precisely because of these complexities, it concludes that it is important to

explore how interactive processes construct Ausländerness differently, but in relation to the norms that privilege the dominant subjects.

Part V: Europe, Security & Migration Governance

11.00-11.50 – Chair: Sasha Baglay (OUIT)

- **Martin Geiger**, University of Osnabrück/Carleton: “Securitization of Migration in Germany and Europe: What Role for Non-EU-Institutions?”

Migration management is a shift from traditional, mostly unilateral and purely state-driven forms of migration ‘government’, as well as more multilateral-intergovernmental modes of migration ‘governance’ to more technocratic, tool-based approaches to migration. These approaches are founded on the principle that international migration should be allowed and promoted as long as it is regulated as an orderly, lawful, humane, safe and for all stakeholders (receiving and sending countries plus migrants) ‘beneficial’ process. In recent years, intergovernmental organizations, including the International Organization for Migration (IOM) have become included in the regulation of migration in Europe. My contribution to the workshop will discuss the securitization of migration in Germany and Europe. I will highlight the complex and often contradictory interplay between EU institutions, national stakeholders (e.g. German government) and non-EU actors in the management of migration. Particular attention will be paid to Eastern and Southeastern ‘Neighborhood’ countries and the externalization and exterritorialization of EU migration governance.

12.00-12.30 Lunch

12.40-1.20 – Chair: Carolyn Armstrong

- **Adam Luedtke**, Stockton College: “Immigration, Security and International Cooperation: Towards a World Migration Organization?”

Human migration is one of the last frontiers of international cooperation. Despite massive gains that could result from creating institutions to regulate migration flows between states, such institutions have been rare and weak in terms of binding states to commitments. This paper analyzes the gains that could result from international cooperation on immigration, attempts to explain the dearth of such cooperation, and theorizes the conditions under which states would be more or less likely to create institutions to regulate migration. The issue of security plays a huge role here, because both immigrant-sending and immigrant-receiving countries experience multiple security threats relating to immigration. International cooperation could reduce these threats in a variety of ways, but also opens the door to liberalization of migrant flows in some respects, which could heighten (already high) security worries among publics and politicians. Supranational institutions, such as those in the EU, are the only empirical cases we have thus far of deep multilateral cooperation on (non-refugee) migration issues. While multilateral cooperation would seem to be easier in this case, due to Europe’s existing institutional foundations, the political costs in Europe would also seem

to be higher due to security-based worries over national identity, relatively generous welfare states and inflexible labor markets, radical right-wing parties, and Islam. If 27 nation-states are creating a political union, complete with rights of free movement for persons, then what are the costs and benefits of transferring immigration control to the international level? Can the enormous benefits to be reaped from cooperation (such as minimizing negative externalities and pooling security / border control resources) be overcome despite worries over loss of national sovereignty? The European Commission's strategy thus far seems to have been trading progress on security "toughness" policies for policy liberalization in other areas, including institutional changes that could expand immigrant rights and freedoms down the road. This focus on security through international cooperation on immigration, but with possible unintended consequences of liberalization, holds important lessons for Canada, the United States, and other immigrant-receiving countries.

1.30-2.10 – Chair: Martin Geiger

- **Carolyn Armstrong/Eiko Thieleman**, London School of Economics: “EU Internal Security Cooperation under the Dublin System: A Regional Public Goods Approach”

The Dublin Regulation is one of the cornerstones of the EU's internal security acquis. It covers issues of border control, asylum and irregular migration and is closely linked to the Schengen free movement provisions. While rhetorically trumpeted by the EU as a burden-sharing measure motivated by a principle of solidarity among Member States, it can be expected that, in establishing this mechanism, the Member States have placed the responsibility for (and the cost of) securing the EU's external border onto the EU's external border countries through the use of the 'first country of entry' principle. If that is the case, it is not at all clear why the external border countries agreed to such a regime, as Dublin would predictably reinforce the already highly unequal distribution of costs and responsibilities in this area. This paper therefore seeks to enhance our understanding of EU Justice and Home Affairs (JHA) cooperation through a regional public goods approach, highlighting both the collective action dilemmas that states have faced in this field and how they have sought to overcome these to achieve stable cooperation. We argue that the traditional assumptions regarding free-riding and exploitation dynamics may be less prominent than previously assumed and that more recent theoretical work that has relaxed some of the assumptions of the classic public goods approach can help to shed substantively more light on EU cooperation in this area and can help us gain a more concrete understanding of the origins and stability of what would otherwise appear to be highly inequitable and unstable collective institutions.

Part VI: Transforming Borders & Security

2.20-3.00 Chair: Can Mutlu

- **Ulrich Best**, York(DAAD)/**Radek Buraczynski**, TU Chemnitz: “Towards the “secure region”: Transformations of the German-Polish and Polish-Ukrainian borderlands”

Historically, the Polish east has also been known as the “Eastern Wall”, a term that is associated with remoteness, poor economic development, and backwardness. After 1989, discussions about the transformation of borders in Europe initially focussed on the German-Polish border as line of a “new Berlin Wall”, as the fortified outer border of the EU. Later, when this outer border was moved to the Polish Eastern border, this border came to be described as the “new Rio Grande”. Although there is wall or border fence, outside of the vicinity of checkpoints and road crossings, the border region has become subjected to a strict anti-migratory regime. In this paper, we will look at the evolution of the concept of a “secure region” – a concept that derives from EU-policy, is filtered and applied through the national level and reinterpreted on the local scale. How do different discourses on the region interact? How do they combine the image of the old “Eastern Wall” with the new role a fortified boundary, and the contradictory efforts to develop cross-border interaction?

3.00-3.15 Coffee Break

3:20-4:00 Chair: Ulrich Best

- **Karine Côté-Boucher**, York/YCISS: “Generational Struggles at the Border: Lessons from Fieldwork at the ‘Commercial’ Section of Canadian Customs”

Little attention has been paid in critical approaches to North American borders to the daily practices of border officers. These officers are often assumed to have smoothly adapted to a new policy and regulatory environment focusing on security and trade facilitation. In fact, the academic literature does not allow for much disconnection between policy discourse about borders and the daily reality of those whose work is to interpret and apply border regulations. Empirical research in border settings reveals that the transformation of border control along the Canada-United States border appears much more fraught with difficulties, tensions and contradictions than a simple look at the regulatory border regime would suggest. Consequently, border control cannot only be analysed through an examination of policies, laws and regulations; it is also shaped through the everyday actions of officers at border sites. Based on privileged research access obtained within Canadian border services, the paper builds on ethnographic interviews with 32 border officers in 5 ports of entry along the Canada-US border. These officers are primarily assigned to commercial operations, that is to the processing of truck drivers, shipments and other aspects of cross-border trade. The evidence of generational struggles between officers within Canadian border services represents one of the major findings of this doctoral research project. Interviewed officers expressed competing ethics and varied definitions of their role that were defined and explained in generational terms. These diverse attitudes to border control influenced their interactions with each other as well as their dealings with the public. The generational tensions between officers have much to teach us about how the border is produced on

a daily basis through contradicting readings of border regulations made by officers conceiving themselves as belonging to different generations.

4:10-5:00 Chair: Dagmar Soennecken

- **Can Mutlu/Mark Salter**, University of Ottawa: “Securitization and Integration: Frontex and the New Politics of Depoliticization”

Contemporary theories of securitization and European integration make the same fundamental argument: issues and sectors can be depoliticized, and removed from the public sphere. Both literatures are concerned with the processes – in both the public scene and backstage – by which issues cease to be publicly debatable and new measures become possible and appropriate. For securitization literature, depoliticization is a consequence of security concerns and exceptional measures used to counter those concerns. For European integration theories, however, depoliticization is a result of the desire for efficiency and stability. By putting together these literatures from critical security studies and European integration for the first time, we construct a unified theory of depoliticization, which explains how security and integration issues may move in the public imaginary. The case of FRONTEX, the European Union (EU) agency responsible for border security, and in particular the competing theses from these two literatures that explain the rationale behind the creation of this agency, illustrates our model.

5.00 **Brainstorming session re publication & Concluding remarks**

7.00 **2nd Dinner** (off campus) Kamasutra (Indian):
<http://www.thekamasutrarestaurant.com/>