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Broken systems: the 2014 humanitarian crisis in the US and policy insights for Europe

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Abstract Both the US and Europe are grappling with migration systems in need of reform and repair. The US has made several attempts towards a comprehensive reform of its immigration system, but partisan divides stand in the way. With large numbers of migrants and asylum seekers coming to Europe, EU leaders have been forced to address the broken Dublin system. It has become clear that the current refugee crisis is not just a European crisis. The US has also been facing a humanitarian crisis, one less noticed by Europeans. With an unprecedented number of unaccompanied minors trying to make their way to the US from Central American countries, the US—like Europe—is tasked with balancing humanitarian protection and border control requirements. In response, the US has employed policy responses to bring down the number of unaccompanied minors. These measures can provide insights for Europe.

Keywords Migration crisis | Migration policy | US | Refugees | Unaccompanied minors

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Introduction

If one were to sum up the transatlantic similarities regarding migration these days, one could easily say that both sides of the Atlantic are trying to repair broken systems. For many years now the US has been attempting, albeit unsuccessfully, to repair a dysfunctional immigration system. It has been trying to determine how to proceed with the country's 11 million undocumented migrants (whether to legalise them or not), how best to protect the border and how to coordinate with other countries on setting up better visa systems for high- and low-skilled immigrants. To these problems must be added the humanitarian crisis in 2014 when an unprecedented number of unaccompanied children tried to make it to the US, heated discussions on migration in a pre-election year and the current intense debates about taking in more Syrians amidst security concerns about refugees.

Across the Atlantic, European leaders have been more or less forced to address the broken asylum and refugee system as record numbers of asylum seekers and migrants have been coming to Europe. The 28 member states have been quarrelling about the Dublin and Schengen regulations; arguing over quotas, relocation and resettlement; building fences; assessing border security; and dealing with integration concerns against a backdrop of rising populist sentiment and heightened security debates. In the midst of all this, national interests continue to trump interests common to all Europeans, and seriously endanger the European ideal. The European Commission and the member states have feverishly tried to determine how to keep and resuscitate the Dublin regulations and how to maintain a common European spirit. But as with everything in need of major repair, the question is whether to fix it or to replace it with something new.

The US dealt with the 2014 humanitarian crisis against the backdrop of a broken immigration system. Three policy responses emerged that are worth considering in greater detail as Europe searches for policy options to solve the current migration and refugee crisis. While the partisan divide in the US continues to block any reform of the immigration system, three policies have been put in place that have contributed to bringing down the number of unaccompanied minors coming to the US:

1. targeted information campaigns,
2. increased cooperation with neighbouring country Mexico for the externalisation of border security, and
3. the in-country processing of asylum claims in countries of origin.

A closer look at the situation in the US can provide policy insights for Europe.

Failed attempts at a comprehensive reform of the US immigration system

About 320 million people currently live in the US. Of these about 42 million or 13 % were born outside the country. It is estimated that about 11.3 million people are living in the US without legal documentation, a drop from a peak of 12.2 million in 2007, when the recession started to hit (Passel 2015). The question of how to proceed with this large group of undocumented immigrants blocks any serious immigration reform—policy proposals currently range from regularising all those without documents to deporting them all. Furthermore, there is no agreement as to what should be given priority in the endeavour to fix the system: regularisation or securing the border. There is no compromise in sight that would meet both needs.

This has prompted some to argue for a piecemeal approach that would involve changing less contested aspects of the immigration law that are in dire need of reform, such as raising the low caps on immigration for the highly skilled. In June 2013 it looked as if there was a slight chance of immigration reform when a bipartisan Senate bill—coordinated by the ‘Gang of Eight’, four Democratic and four Republican senators—passed the Senate. This comprehensive immigration reform would have truly transformed most aspects of the US immigration system. The main provisions would have led to enhanced border security measures by doubling the number of border patrol agents to more than 40,000; expanding the current fence along the 3,000-km-long south-west border with Mexico by more than 550 km (at present it consists of a 1,000-km discontinuous line of fences and barriers); and providing additional surveillance equipment, such as drones and radar systems. It would have created a pathway to citizenship for undocumented immigrants as well as revisions of the visa programme with more visas for the highly skilled and a new temporary visa programme for less-skilled workers (Washington Post 2013). However, the Republican-controlled House of Representatives refused to put the bill up for a vote, which might have led to the bill being passed. Therefore, the bipartisan Senate bill was blocked, and once again no comprehensive immigration reform was in sight.

With Republican majorities in both houses of Congress and the partisan divide being so strong, in November 2014 US President Obama addressed the overhaul of the immigration system in the form of executive orders (White House 2014). These orders do not need the consent of Congress, which critics say undermines the democratic process, but they are subject to judicial review. They include regulations for increased border security, for prioritising ‘felons, not families’ for deportations and for making it easier for students and highly skilled immigrants to stay in the US. The more contested executive orders make way for the expansion of Obama’s 2012 *Deferred Action for Childhood Arrivals* (DACA) provisions, which stipulate that certain young undocumented immigrants who came to the US as children before 2007 are not subject to immediate deportation and can get a temporary authorisation to work. Another executive order, the *Deferred Action to Parents of US Citizens and Lawful Permanent Residents* (DAPA), contains similar provisions for parents of children with US citizenship. While precise

figures are lacking, it is estimated that about 4–5 million of the 11 million undocumented immigrants could benefit from such provisions. However, Texas and 25 other states filed a lawsuit against both the expansion of DACA and the implementation of DAPA, and these orders have been held up in court since February 2015 (Parser 2015). This is the political backdrop against which all current discussions on migrants and refugees are taking place and all discussions in the foreseeable future will take place: a heavily politicised situation in which reform is deadlocked.

Recent migration pressures in the US

In 2012 more than half of the unauthorised immigrants were from Mexico. However, patterns of immigration to the US have changed significantly over the past decade, with migration from Mexico now at a historic low. It was in the Fiscal Year (FY) 2014—a fiscal year runs from 1 October to 30 September—that for the first time the US Customs and Border Patrol apprehended more ‘Other than Mexican’ individuals than Mexicans. Irregular migration peaked in 2000 and has declined ever since. However, in 2014 there was an uptick in apprehensions at the borders, the parameter used to estimate the flow of irregulars coming into the country. While 421,000 people were apprehended in FY13, 487,000 were apprehended the next year, an increase of over 65,000 (US Customs and Border Protection 2014).

What had happened? While news in the summer of 2015 was dominated by reports about the refugee and migrant crisis in Europe, during the summer of 2014, news in the US was dominated by what Obama referred to as a humanitarian crisis: an unprecedented number of unaccompanied children, youths and family units crossing into the US mostly from Central America. Unaccompanied minors represent one of the most vulnerable groups as they are easy targets for trafficking and exploitation along the way. Once they are in the country of destination, they also require more attention and care than do other groups with special needs. This in turn translates into higher administrative costs. Almost 69,000 unaccompanied minors were apprehended by the US Border Patrol during FY14. This was a sharp increase over the 39,000 unaccompanied minors apprehended in FY13 and the 24,000 apprehended in FY12. As with the refugee and migration crisis in Europe, questions quickly arose as to not only the reasons for this sudden increase, but also what measures could be put in place to bring the numbers down. These discussions were especially sensitive and emotional as the group at hand were young children—some were just four years old.

The unaccompanied minor crisis in the US and key policy responses

The number of unaccompanied minors migrating to the US is in no way comparable to the numbers of refugees and migrants coming to Europe. All the same, the unpreparedness of US authorities and the policy responses taken show similarities to the situation

on the other side of the Atlantic. The majority of the unaccompanied minors trying to cross into the US are coming from the Northern Triangle countries of El Salvador, Guatemala and Honduras. The US is a major destination country, but other countries closer to the Northern Triangle—Mexico, Panama, Nicaragua, Costa Rica and Belize—have also become destinations. In 2013 asylum requests in those countries from individuals from Northern Triangle countries rose by 712 % compared to 2008 (Restrepo and Garcia 2014).

Among the main reasons for leaving their home countries were and are growing gang violence, rising homicide rates (Honduras has the highest homicide rate in the world), violence related to drug trafficking, slow economic growth rates with no economic opportunities or job prospects, the desire to be reunited with family members in the US and the availability of more professionalised smuggling networks offering door-to-door services. It has also been pointed out that Obama's DACA provisions—which permitted certain undocumented youths already in the US to escape deportation and obtain legal work permits—led to rumours that all children and youths coming to the US would get a legal status. Moreover, smugglers promulgated this same misinformation. Finally, asylum hearing processes were quite long due to larger-than-usual backlogs in the system. Some suspect that this might have acted as a pull factor for those wanting to be in safety, even if only temporarily.

Three of the main actions that the Obama administration undertook to bring down the numbers resonate with provisions in Europe in the current refugee and migration crisis.

1. *Dissemination of information.* Targeted information campaigns were launched both in the countries of origin and among diaspora groups in the US. They described the dangers of the journey, especially for children; made it clear that the chances of being deported are high; and countered rumours that children would automatically obtain a legal status. Diaspora groups were also asked to act as multipliers in bringing these messages to friends and families in the home countries.
2. *Coordination with neighbouring countries and countries of origin in Central America.* The US supports Mexico in its attempts to strengthen and implement the Mexican Southern Border Plan, which was initiated in July 2014 to secure Mexico's southern frontier. The logic behind this continuing support is that if Mexico's southern border is more secure, so too will be the US border. The US provides financial support for increased border security infrastructure, for example, for checkpoints, road blocks and inspection technology. As a result, apprehensions and returns along Mexico's southern border have massively increased. The State Department's budget for FY16 allocates one billion dollars to help Mexico secure its border and to provide funding for social, governance and economic issues in Central America to address the root causes of migration (US Department of State 2015).
3. *Providing for the processing of claims outside the US.* In September 2014 the US started in-country processing procedures at its embassies in select Central American countries. Those procedures are intended to prevent children and youth from taking the perilous journey north since they can file for asylum right at home. In-country processing has been a US practice since the 1970s. It is a vital part of the

US refugee admissions system for select countries suffering from war and conflict, widespread political repression or other humanitarian tragedies. It has been put in place in Vietnam, Haiti, Iraq and still other countries. In one such programme from 1979 to 1999, the US processed applications from more than 523,000 Vietnamese. To carry out the extraterritorial processing of various nationalities, the US also uses its military bases. One example is the base in Guantanamo Bay, which processes asylum requests from Haitians, Cubans and other people from the Caribbean (Rabinovitch 2014). However, in the recent case of the Northern Triangle countries, in-country processing is restricted to those children and youth who have a parent residing legally in the US. Therefore, the impact is deemed to be rather limited.

All in all, these measures have worked to bring down the numbers, although the dire situations persist in the Northern Triangle countries. About 35,000 unaccompanied minors were apprehended in the US in FY15 (to the end of August), a decrease of 46 % on FY14, when the number was 66,000 (US Customs and Border Protection 2015). However, the government was still accused of being too soft on the enforcement side, even though under Obama the number of deportations has been higher than under any other president. While 2 million people were deported from the US in 2009–14, over 438,000 people were removed in 2013, with two-thirds of the deportations being from the border region.

At the other end of the spectrum, there are criticisms of the current procedures and asylum laws. One criticism is that gang-based violence and persecution should be made valid grounds for asylum claims (Jesuit Refugee Service 2015). Others criticise the ‘expedited removal’ process. This fast-track procedure returns individuals apprehended at the border within hours or days of when they are taken into custody. Critics of the policy claim that this is done without properly assessing the asylum claims of the individual. Border patrol officers are required to refer to a trained asylum officer all those they apprehend who voice a credible fear of going back—irrespective of the reason given. This officer then conducts a private interview to assess whether there is indeed a credible fear of harm if they are returned. Where this exists, the asylum seeker can apply for refugee protection before an immigration judge.

Key takeaways for Europe from the US unaccompanied minors crisis

The policy measures the US government has taken to address the unaccompanied minors crisis are worth looking into as European policymakers struggle to find ways to address the current crisis. Europe, like the US, is caught between two obligations: to protect those who are in genuine need and to humanely deter and deport those who are not. The mixed migration flows on both sides of the Atlantic pose policy challenges as they require a mixture of policy responses. The first measure mentioned above in connection with the unaccompanied minor crisis, that of information campaigns, addresses

a factor in migration and migration management that is often underestimated. This is the role played by rumours, by misinformation that is intentionally promulgated and by mistaken ideas about immigration and asylum rules and regulations. It is of utmost importance to establish information centres and run campaigns outside of the EU that provide information on protection regimes, eligibility for asylum and legal pathways to enter the EU. These campaigns should also focus on the dangers of exploitation faced by migrants who seek to work irregularly in the black market. About 40 % of the migrants and refugees who arrived in Germany in the first seven months of 2015 were from countries of the Western Balkans. However, fewer than 1 % of applicants from these countries are actually granted asylum. Therefore, the German government increased their information campaigns in the Western Balkans to make it clear how small the chance is of receiving asylum protection. German embassies also had to start campaigns in other regions to counter popular rumours that Germany would send boats to the shores of Turkey or Libya to rescue migrants and refugees. It is impossible to pinpoint how effective any one measure has been in reducing migration numbers, but it is clear that providing information and countering rumours must be a vital part of any migration policy.

The second measure, coordination with neighbouring countries and countries of origin and transit, is one of the EU's key measures for migration control. Like the US, the EU is debating whether to increase border controls on its own borders. However, border security at EU borders is constantly facing criticism as not being very effective since migrants are still managing to get into the EU in large numbers. The deterrence effect is said to be low. Fences and border controls are rerouting migration flows rather than stopping them, and are contributing to a flourishing smuggling business. In the past, member states at the front lines, such as Spain and Italy, resorted instead to externalising border security to third countries outside the EU. To this end, they entered into bilateral agreements with countries such as Mauritania and Senegal, in the case of Spain, or Libya, in the case of Italy. The agreements stipulated that these third countries would monitor their own borders and stop migrants, regardless of their country of origin, from departing for European shores. They would also take migrants back once apprehended in open waters. In exchange these countries received financial aid.

In the case of Spain, the bilateral agreements are still in place. This explains why the route from the shores of West Africa via the Canary Islands, which used to be of central importance, has become less used and less talked about. It is a hard truth that these agreements, and especially the one between Italy and Libya during Gaddafi's dictatorship, kept migration flows at bay. But the agreements came—and still come—at the high price of detention, the neglect of the right to asylum and the physical abuse of migrants and refugees. After the collapse of the Libyan state, previous control mechanisms vanished: Libya has become a main departure point again. It is because of this same logic of externalising European border controls that negotiations with Turkey have increased. Ankara will play a crucial role in any solution to the current refugee and migration crisis in Europe. It is hoped that Turkey, as one of the main countries of transit, will be able to assist by controlling migration at its borders. In return, European states should provide major support for the refugees residing in Turkey—or 'guests' as they are called there.

Turkey has also brought other topics to the negotiation table, such as liberalising EU visa regulations for Turkish citizens.

Lastly, the tradition of extraterritorial or in-country processing that the US has expanded to select Central American countries for at-risk youth has numerous points of contact with a discussion that has been floating around Europe for many years but with no conclusive result. In the early 2000s, the idea of establishing processing centres outside of the EU was raised. Certain countries, including Italy, proposed establishing such centres in North Africa—an option that found support among certain German politicians. Proponents of such centres argue, first, that implementing this policy would lift the pressure from the EU border states. They also believe it would help to save lives as people would not have to take life-threatening journeys to file for asylum, especially if there were an in-country system implemented using embassies or EU missions.

It is not clear just how such systems and centres would work and which countries would be interested in cooperating with the EU on such a policy. Moreover, to date the EU has not carried out a feasibility study (Rabinovitch 2014). However, the idea has resurfaced in response to the high numbers of migrants and refugees coming to Europe—more than 700,000 came in the first 8 months of 2015, compared to 600,000 for 2014 as whole. There are both ethical and practical concerns. On the ethical side, human rights groups have argued that legal standards and human rights conventions would not be guaranteed if asylum procedures were ‘outsourced’. These concerns could be met, at least with respect to the legal standards, by putting the United Nations High Commissioner for Refugees in charge of such centres. On the practical side, two major roadblocks exist. One is how to prevent such centres from becoming the focal point for smugglers, who would have potential clients conveniently in one spot. The other practical roadblock is the lack of a quota system. Such a system is needed to determine which EU countries should take on those who are successful in applying for asylum in processing centres outside of the EU. But the acceptance in September of the quota system on the EU level—which will see 120,000 individuals who have sought asylum in Italy and Greece relocated to less burdened EU member states—might serve as a blueprint for a quota system for extraterritorial processing. Of course, questions remain: what happens to those whose asylum claims are denied, and what would stop them from heading to the EU nonetheless? These issues would be even more pressing if the centres were closer to the EU borders, for example, in Turkey or Serbia. The question of extraterritorial processing remains challenging, but it could present a way of making the process safer. And at this point in the crisis, all options need to be considered carefully.

Outlook for common action between the US and Europe

One cannot fully compare a single country’s—the US’s—history and experience of migration with the histories and experience of the 28 member states of the EU. But

as the unaccompanied minor crisis has shown, there are similarities in the challenges faced on both sides of the Atlantic, and this warrants a transatlantic exchange. The overarching question is how to balance humanitarian protection and border security. But further issues must be considered. What is the role of communication campaigns in migration control? How should states coordinate with third countries in the management of migration and asylum? What is the best way to process asylum requests outside the country and via embassies?

The humanitarian crisis also calls for common action between the US and Europe, as the crisis is not just a European one. Both Europe and the US have to lead a concerted political effort to stabilise the situation in Syria as long as a viable political option is not in sight. Together the US and Europe also have to make sure that the neighbouring countries remain relatively stable since they are bearing the brunt of the situation and are housing the main share of Syrian refugees. The US has long experience with resettlement processes, having resettled more than three million refugees since 1975. While resettlement should always be a last resort, the time has passed when nations could look away and refuse to take in more Syrian refugees than they already had. Lastly, the situation in Syria shows that international action or inaction in conflicts always results in migrations, and that it is high time for countries to consider mobility and migration more concretely within their foreign policy fields.

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