

# Mobilizing Against Mobility: Immigration Politics in a New Security World<sup>1</sup>

Gallya Lahav  
SUNY Stony Brook

Immediately following the terrorist attacks of September 11, 2001, the USA shut down its air traffic system for several days, and rerouted an estimated 45,000 passengers to Canada, which shut down its own airspace in order to serve as an American proxy landspace. The creation of Operation Yellow Ribbon by Canada's Department of Transport not only stood as testament to spectacular international cooperation, but also revealed the growing participation of foreign states and non-state actors, (e.g., airlines, private security forces, communications companies) in managing mobility and border control.

The surge of policy instruments at the national and international levels captured the dramatic realization of new world threats emanating from human mobility, which include terrorists, migrants, drug traffickers, human smugglers, and foreign students. They visibly exposed the changing nature of threats, while masking some of the dramatic qualitative changes and policy challenges incurred since 9/11.

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The involvement of migrants, foreign networks, and ethnic minorities in terrorist attacks across the United States and Europe consummated the link between security and mobility. It not only gave pause to a global world of people on the move (Zolberg 2001), but also challenged the liberal paradigm of human mobility, embedded in the post-World War II international order (see Hollifield 1992 for a discussion of embedded liberalism). The events sparked concerns that open economic borders and liberal immigration policies were increasingly at odds with the core responsibilities of liberal states and governments to provide security for their citizens. Signing the US Homeland Security Act, President Bush (2002) presented a new mobility framework aimed to “keep open the borders for tourism, business and even ‘good’ immigrants while closing them shut for terrorists, drug-dealers, and criminals” (in that order). Implicit in these claims were three assumptions: (1) that democratic governments could adopt strategic means to close their doors in a global world; (2) that security interests could be tied to mobility considerations; and that (3) liberal democracies could reconcile the cross-pressures between their liberal market and human rights norms with those to protect themselves for security (e.g., from terrorist threats, crime, deterritorialization, etc.) or for political interests (more commensurate with their publics).

This chapter addresses these assumptions. It argues that globalization facilitates new modes of regulation that trump other considerations when security looms large. Focusing on the migration case in the US and EU, the chapter disaggregates the triangulated neo-corporatist relationships between states and non-state actors. It assesses the comparative responses of liberal democracies to the mobility ‘trilemma’ between rights, markets, and security interests. To what extent can liberal states go to pursue their competitive interests in higher education, medical tourism, and global cities, for example, while simultaneously securing their borders, civil liberties, and citizen freedoms? Based on a neo-institutional analysis of formal and informal norms, I argue that national policy makers in a new security era have been able to overcome competing domestic constraints (e.g., civil liberties, economic costs, threatened publics) and mobilize against mobility.

## **Human Mobility in a New Security Context: What’s New?**

Although the security ramifications of human mobility and international migration have been evident for a long time, the changing scope and impact

of recent security perceptions has reframed the regulatory agenda.<sup>2</sup> Prior to the 9/11 “juncture,” the debate primarily involved economic and cultural fears aroused by mass immigrant settlement of ethnically and racially diverse minorities. It was not until the general public’s anxieties about “societal security” (Wæver 1998; Heisler and Layton-Henry 1993)<sup>3</sup>, and quality-of-life issues (see Alexseev 2005: 66–67) intersected with its fears about immigration as a threat to physical safety during the 1990s (Huysmans 2000: 752) that the social construction of migration as a security issue became firmly embedded within the domestic and foreign politics of advanced liberal democracies (see Lahav and Messina 2005).

This so-called “securitization of migration” exacerbated in the aftermath of 9/11 reinforced linkages previously drawn between immigration, crime, law and order, and security (Bigo 2002; Huysmans, 2005), and catapulted migration issues squarely onto the center stage of the foreign policy agenda (see Rudolph 2006; Geddes 2005, Pastore 2005; Adamson 2006). Epitomizing the changing political landscape, dominated by “new security” issues (e.g., ethnic conflict, terrorism, migration) on the political agenda (see Wæver 1998; Buzan et al. 1998), the migration issue was notably transformed from a traditional economic or cultural threat – associated with migration in post-World War II – to one of national security and physical security of the post-Cold War period. The dramatic events of 9/11 vividly reinforced the shift in migration issues from the predominantly technical domain of “low politics” (e.g., economic and social questions) to what international relations scholars refer to as “high politics” (e.g., issues pertaining to political and national integrity and security).

This salience of migration on the foreign policy and security agenda coincides with some notable institutional and normative developments in the policy environment of liberal democracies. As in other areas of mobility, noted in this volume, the framing of migration threats in a national security framework has invoked institutional changes, which reflect shifting values

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<sup>2</sup> The “securitization of migration” may be traced back to the infamous US trial of Italian anarchists and communist immigrants, Sacco and Vanzetti, during the repressive period of the “Red Scare” of the early 1920s. Notwithstanding, few scholars systematically developed the link between international migration and security until the 1980s. While Myron Weiner (1992; 1993; 1995) was the first political scientist to address the relationship between immigration and security issues, several scholars indirectly captured this linkage in their work on immigration and refugees in US foreign policy (Teitelbaum 1984; Zolberg 1995).

<sup>3</sup> According to Wæver (1998) and Buzan et al. (1998), immigration may threaten the sustainability or the identity of a society by causing the composition of society to shift in a manner that may undermine the hegemony of the prevailing socio-cultural model (Buzan et al. 1998).

and attitudes (Lahav 2004). As neo-institutionalists would suggest, mobility policies in this context could be understood to derive from changing cultural or national norms related to the dynamic process it has unleashed (see Thelen and Steinmo 1992).

First, while the terrorist bombings of 2001 in the USA and 2004–5 in Europe notably hastened the policy initiatives discussed earlier, they more importantly crystallized a shift in how the immigration debate was framed and perceived in Europe and the United States (see Huddy et al, 2005; Lahav and Courtemanche, 2012).<sup>4</sup> As public opinion was captured, electorates identified immigration not only as a serious problem, but as a “threat” (Commission of the European Communities, 2004’ **Council of Europe**). Political discourse around migration increasingly invoked talk of invasion, insecurity, loss of identity, sovereignty, control, and terrorism. In the United States, media content analysis of immigration coverage before and after 9/11 epitomized the changing context of the immigration focus. Before 9/11, immigration concerns were largely linked to the concepts of rights and integration; after 9/11, immigration-related news stories significantly focused on criminalization, borders, justice, and legal matters.<sup>5</sup>

Assuming that media coverage broadly affects and is shaped by underlying attitudes and norms, such changing discourse is suggestive of shifting preoccupations related to immigration and human mobility.

Furthermore, the prevalence of “new politics” and “new security” issues, (e.g., migration, terrorism, identity politics, environmentalism) on the public agenda reflect a changing political landscape, with new patterns of contestation (see Dalton 1988; 2008; Franklin 1992). Although partisan lines have been blurred since the 1980s, when ideological differences between parties became obscured (Schain 1988; Messina 1989; Simon 1989), ideological or partisan alignments have become decidedly more elusive. Broadly speaking, whereas on most issues programmatic distinctions among parties generally

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<sup>4</sup> The securitization of migration triggered by 9/11 has been said to have reverberated well beyond US borders. The European analogue to the 9/11 “turning-point” has often been described as taking place after 2004, with the Madrid (March 11) and London (July 7, 2005) bombings. Though years apart, and following different policy contexts and a different trajectory of historical explanations, the cases are here linked by their association to foreign networks, expression in public discourse on national security, and their link to foreigners (see Lahav 2010).

<sup>5</sup> The securitization framing of migration in the media varies across time and space. Media analysis in Europe has shown that the frames did not change immediately after 9/11, but had delayed effects after the Madrid and London bombings on European territory (see Ettinger and Imhof 2011).



**Figure 6.1a** Word Cloud: Pre-9/11 Media Content.



**Figure 6.1b** Word Cloud: Post-9/11 Media Content.

serve to organize political debate and ultimate policy resolution, on immigration the process has appeared less clear.

The tendency of immigration politics to straddle the ordinary liberal-conservative divide (Tichenor 2002) has been exacerbated by the securitization frame. The growing ‘trilemma’ has exposed policy conflicts and value trade-offs between distinct economic, security, and cultural threats and interests – especially around the security–rights axis (see Sasse 2005). In contrast to a liberal rights-approach to mobility, the security approach has emphasized

more control and exclusionary migration practices. Thus, on the one hand, the realist pursuit of state sovereignty to protect national territory has envisioned more protectionist approaches to international mobility. On the other hand, global economic imperatives of open markets, trade and tourism coupled with societal interests of civil liberties, social cohesion, democratic values, and constitutional guarantees have promoted liberal norms and practices (see Lahav 2004).

This security–rights debate has created a battle line between liberal interest groups and civil libertarians (and some conservatives) concerned about privacy and freedoms on one side, and conservatives who worry about the social moral fabric, national security, and terrorism, on the other. The first camp considers “Big Brother” – the central government – not terror to be the greatest threat to the preservation of security and especially democracy. The retort from the conservative camp is that freedoms and liberties are protected when security is strengthened. To these groups, the enlistment and collaboration of new actors in migration regulation is all-encompassing and intrusive. The migration axiom compounds and mitigates these divisions in interesting ways as it brings to the fore its own issue publics and “strange bedfellows,” as Zolberg calls them (2000) – between business groups on the right that rely on cheap labor but fear social dilution, and those on the left, including trade unions, where competition with native labor force is fiercest, and those more open to migrants, such as ethnic lobby groups and liberal interests. The proliferation of “strange bedfellows” coalitions on reforms has been particularly applicable to the US lobby structure, as opposed to Continental Europe, where business interests are more closely linked to the State.

In generating strange bedfellows, and new patterns of contestation, the framing of migration in a security context has not only inhibited traditional party and ideological alignments from structuring issue positions, but has inadvertently promoted party consensus. Indeed, as immigration scholars have previously noted, when immigration policy becomes more psychologically and/or politically linked to physical security, attitudes towards immigration tend to coalesce – especially around a more restrictive immigration policy (Hammar 1985).<sup>6</sup> In an era of increasing security threats, the tendency of governments to tie immigration to law and order and to frame the immigration debate in that context has yielded restrictive and exclusionary immigration practices (Koslowski 2001; Bigo 2002). Paradoxically, the salience of migra-

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<sup>6</sup> Empirically, there is a link between countries that have experienced terrorist attacks and those that experience border restrictions, as illustrated in the Israeli case of cyclically preventing Palestinians from working in the country (Bartram 1998; Arian 1995).

tion on the security agenda serves to depoliticize the immigration issue by limiting ideological polarization. As the research in political psychology and behavior has corroborated, attitudinal convergence around exclusionary and protectionist norms is more likely to occur when migration is conceptualized as a security issue than as a threat to the economy, national identity, or culture (Lahav and Courtemanche 2011). The “securitization of migration,” because it touches on physical safety, promotes cohesive opinion.

Such issue framing does not mobilize the ideological conflicts and values that fuel cultural threats, which in contrast, tend to polarize public opinion, which stems from prior ideological predispositions or values (Feldman and Stenner 1997). Thus, while in Europe, extreme-right parties have been able to capitalize on anti-immigrant sentiment with considerable success, they were quickly coopted (e.g., in Finland, Belgium, and Sweden) or eclipsed by the momentum towards securitization among their mainstream flank. Ironically, the securitization of migration may have somewhat displaced the fringe groups who long fought the perceived immigrant menace. In some of the European countries where the anti-immigrant extreme-right movements were most prevalent in the aftermath of 9/11, extreme-right party support has precipitously dropped (e.g., in the Netherlands, Spain, and Austria). A similar decline of protectionist or radical right parties after their 2004 peak was also evident in the “second-order national elections” (see, Eijk, Franklin, and Marsh, 1996) at the European Parliament, a popular outlet for these parties given their constraints at national level (see Figure 1 below). Some observers have suggested that the horrific terrorist attacks may have moderated these reactionary sentiments by introducing them to the mainstream political agenda (Lahav 2009). The securitization of migration and border control was embraced by mainstream parties (who in many cases stole the thunder of the radical groups after their initial peak in 2001–4). The reframed discourse on mobility and migration seemed to broaden and widen xenophobic attitudes (Chebel d’Appollinia 2008: 220), and lend support to more invasive regulatory schemes in an antimobility agenda.

Finally, these normative shifts reflect institutional developments, marked by the growth of institutional collaboration, comprehensive policy reforms, and the proliferation of diverse policy actors to implement them. The involvement of foreigner networks in terrorist attacks visibly disturbed an immigration policy equilibrium, which until the events of 9/11 appeared as relatively separate “epistemic communities” (Sassen 1996). In that setting, security, economic and rights/incorporation dimensions could be crafted and implemented in relative isolation from one another. Policy decisions along one



dimension of migration did not much affect or circumscribe policy decisions along other dimensions (Lahav and Messina, 2005). While this changing equilibrium was evident before 2001, it became formally manifest in institutional reforms to streamline and consolidate what were once separate axioms of the migration equation.<sup>7</sup> Across the board, liberal democracies responded by pursuing a comprehensive approach which conflated the three policy dimensions (security, rights, markets), with increasing burden-sharing philosophies to migration control.

Against the backdrop of the increasing intersection of the three dimensions of migration, a key question was how far could liberal states go in adopting a comprehensive approach that balanced national security interests with human mobility? More specifically, how has the mobility playing-field changed, in this context? By focusing on both formal and informal structures (institutional/policy and attitudinal responses), the next section shows that liberal states have reconciled these competing demands, and reinvented some control over human mobility by forfeiting certain democratic practices. They have done so by shifting the level of policy making and by enlisting a range of players that include private, local, and international actors, and sending or transit countries, who have assumed gatekeeping functions. The analytical framework below broadly delineates the new playing-field and the logic behind it.

## **Analytical Framework: The Institutional Expansion of the Migration Regulatory Playing-Field**

In the aftermath of 9/11, the most radical institutional changes were captured by the organizational restructuring of the US Immigration and Naturalization Service (INS) and the creation of a Department of Homeland Security which could be responsible for overseeing the multiple dimensions of migration. Bringing twenty-two federal agencies under one umbrella to coordinate activities, the formation of a new Office of Homeland Security represented the first significant addition to the US government since 1947, when Harry Truman merged the various branches of the US Armed Forces into the Department of

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<sup>7</sup> A vivid example of such institutional collaboration was the changes fostered by the 2002 US Foreign Intelligence Surveillance Act (FISA), permitting information sharing between intelligence agents and criminal investigations (Etzioni 2004: 31). While not completely eradicating turf battles, it fostered a new culture, removing barriers between various intelligence agencies and law-enforcement agencies (e.g., CIA, FBI, NSA, and DHS).



Defense to better coordinate the nation's defense against military threats (US Department of Homeland Security, [www.dhs.gov](http://www.dhs.gov)). Pursuing a comprehensive mission, the DHS Strategic Goals and Objectives identified its objective as being to ensure all-encompassing "protection" (see US Dept. of Homeland Security 2004).<sup>8</sup> In defining its mandate to protect from both physical harm and compromise of "freedoms," the American state exposed the contradictory challenges posed by the mobility trilemma.

In Europe too, the pursuit of a balanced and comprehensive approach to migration control was institutionalized in the Amsterdam provisions on migration and asylum (Council of the European Union, 1997). The Treaty laid out the European Union's objective for a vast area of justice and home affairs – now referred to as the Area of Freedom, Security and Justice – "to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the member-states in the field of police, judicial cooperation and criminal matters *and* by preventing and combating racism and xenophobia." The conflation of market, security, and rights interests, generated by such a comprehensive mission coincided with a flurry of policy initiatives focusing on human mobility.

Among policies developed towards containing human mobility in Europe, for example, were tighter border controls, increased visa requirements, readmission agreements, carrier sanctions, buffer zones, Eurodoc fingerprinting and Schengen Information System databases, "safe third country," and accelerated return procedures and coordination. In the United States too, increasing border patrols, employer sanctions, and labor enforcement, work authorization verification procedures, detention and removal of criminal aliens, changing benefits eligibility, and computer registration systems were evident by the late 1980s, but activity soared after 9/11. The Patriot Law of 2001 and the Enhanced Border Security and Visa Entry Reform Act in 2002 paved the way for electronic innovations, visa screening, racial and ethnic profiling, acceleration of asylum hearing procedures, and unprecedented security checks, the modernization of immigration controls with the latest technology, such as the use of biometrics, the SEVIS database for foreign students, as well as the reorganization of the entire INS under the umbrella of a central coordinating institution (the DHS).

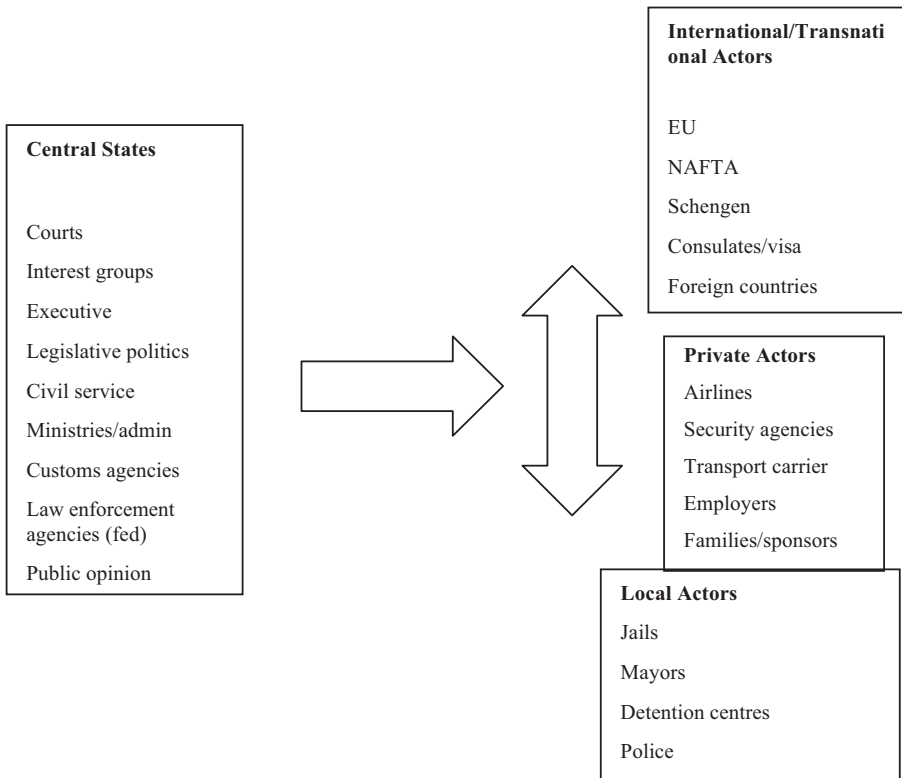
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<sup>8</sup> It outlined that protection entailed "safeguard[ing] our people and their freedoms, critical infrastructures, property and the economy of our nation from acts of terrorism, natural disasters, or other emergencies" (objective 3.7). But, in safeguarding ports and borders, the Agency noted that "the most innovative analytical tools can be ineffective or even harmful if implemented and deployed without regard to security and privacy considerations" (US DHS, 2004) p. 157).

While these initiatives represented the most obvious legislative responses to security concerns, what has gone largely unnoticed in all of these policy developments has been the marked reliance on the incorporation of non-state or private actors, who provide services, resources, technology, and nonpublic practices that are otherwise unavailable to central government officials (Gilboy 1997; 1998; Lahav 1998; 2003). Actors such as airlines and transport companies, travel agencies, hospitals, universities, employer groups, and foreign states have been coopted in an extended regulatory framework of migration and border control. The momentum towards a comprehensive approach has coincided with a sweeping expansion of the migration regulatory regime. This notably includes the widespread proliferation of actors (e.g., private, local, and international) involved in restrictive policy implementation (Lahav 1998; 2003; Guiraudon and Lahav 2000; 2006). In the literature, they have invariably been understood as “deputy sheriffs” (Torpey 1998), “agents” (Guiraudon and Lahav, 2000) and public–private partnerships in processes of “remote control” (Zolberg 1998), delegation (Guiraudon and Lahav 2000), venue-shopping (Guiraudon 2000; Lavenex 2001a–b), externalization (Lavenex and Uçarer 2002; 2004; Lavenex 1999; 2006; **Boswell, 2003**), and devolution and privatization (Lahav 1998; 2000; 2008). Since these non-state actors have the economic, social and/or political resources to facilitate or curtail entry and return, they provide states with different sites and tools to control mobility at the source (see Figure 6.2). Together with the state, they may manage the mobility control trilemma in ways that balance the multiple interests of the parties involved.

While the constellation of actors with diverse interests reflects the complexity of an extended regulatory playing-field, the dynamic is similar. In almost all cases, they are encouraged by states to promulgate extremely protectionist norms. Actors at different levels are reined in either through incentives or constraints (e.g., sanctions). Clearly, the effectiveness of such an expanded migratory regime depends on the nature of the relationships that keep these dynamics in motion, and the degree of collaboration, cooptation, or level of autonomy of each actor. The logic involves both a political desire to control movement, and agents willing and able to play on the link between mobility and security (see Guiraudon and Lahav 2000; 2006).

Through processes of decentralization, for example, national governments have delegated significant decision-making powers to local actors, such as elected officials, mayors, and police in ways that have been considered to be exclusionary and detrimental to foreigners’ rights and civil liberties. In France, for example, mayors have been actors in migration control through



**Figure 6.2** The new gatekeepers and the extended migration regulatory field: non-state (international, private, local) actors and control sites.

their authority over marital and residential certificates (see Guiraudon and Lahav 2000; Weil 1997). A major motivation behind this kind of decentralization is that nationally elected officials concur with and depend on locally elected officials, who are at the intersection of central governments and private persons, and who may be under financial and political pressure to attract more funds and votes by adopting exceptionally harsh measures against immigrants.<sup>9</sup> While the role of local actors in implementation functions has become pivotal, as immigration regimes fortify their ties to criminal justice systems (see Stumpf 2006, Lee 2009) and state and local enforcement officers are better placed to compete for limited budgets (Bigo 1996; Miller 1995)

<sup>9</sup> A 1993 law granted mayors the option of referring a marriage involving an alien to the Procureur de la République (state prosecutor), who can delay the marriage for a month and then, if they see fit, prevent it.

in order to provide screening services, central states have protected their policy authority.<sup>10</sup>

The aspirations of local actors to partake in gatekeeping functions is sometimes more enthusiastic than politically feasible or acceptable for national policy makers. Given that local actors are generally major fiscal and political stakeholders of immigration (Spiro, 1994), they are often eager to assume control over traditionally unfunded mandates. While such incentives have enabled national actors effectively to enlarge immigration control through burden-sharing, in some cases, collaboration has incited competition.<sup>11</sup> In the US federal system, the Supreme Court consistently supports the exclusive federal prerogatives in the area of immigration regulation, via the plenary power doctrine, and the dangers of state encroachment. The recent, controversial Arizona legislation, SB 1070, which was held up by the Supreme Court, epitomized the struggle between local and central state actors in monitoring human mobility. Although deemed unconstitutional in January 2011, legislators in more than twenty US states announced plans to introduce bills modeled after Arizona's controversial immigration law. Such political wranglings are seen not only to heighten turf wars, through the contradictory goals of different arms of the state (i.e., the police, judiciary, and public administration), but also to blur the lines between national and local mandates (and supranational, in the EU case). The costs of decentralization and incorporation of local actors for immigration flows are more diverse local outcomes and uneven integration strategies, which often give the semblance of policy incoherence. More substantively, such complicity between national and local actors, especially in cases of foreigner surveillance, has resulted in opportunities for inappropriate racial profiling, institutional discrimination, and the exchange and/or misuse of private personal information.

Through processes of externalization (Lavenex 1999; 2006; Cassarino 2005), liberal states have been able to "shift liabilities" outwards to third-party foreign states (Lahav, 1998) and international or supranational actors. In this way, they can extend their borders, well before immigrants even arrive and even after, by circumventing more liberal national jurisprudence (Guiraudon

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<sup>10</sup> In the US federal system for example, since 9/11, it may be argued that a shift towards a centralized model of security has occurred, as the TSA has assumed responsibility for setting and monitoring standards of key airport security. Similarly, the creation, under the Patriot Act of 2001 and Enhanced Border Security, of the Student and Exchange Visitor Information System (SEVIS) has been part of the effort of DHS to streamline and centralize control over mobility.

<sup>11</sup> The conflict over mandates is not new in the USA. Until the Civil War, local states carried a number of prerogatives in the area of migration as a way for those with slave populations to maintain control over nationality

and Lahav 2000). The abolition of routine checks at EU internal borders have been somewhat offset by the proliferation of intergovernmental and supranational actors who promote a more effective migration control regime. Border extensions may be said to exist in Europe as a result of the European Neighborhood Policy (ENP), or “Schengenland,” which potentially makes each member country the beneficiary of police-screening efforts of the others, long before incomers arrive at national borders. The launch of the ENP established by the 2003 Wider European Initiative on the eve of enlargement preparations reflected the new security environment of the post-Cold War.

In efforts to address both “soft” and “hard” security threats (economic and social development, political unrest, and military proliferation), the EU pursued readmission agreements with third countries, and widened the number of actors in border and migration management. By outsourcing the monitoring of mobility to less accountable countries in the Mediterranean, such as Libya or Morocco, EU states were seen to circumscribe their more democratic domestic constraints. Bolstered by the European project of regional integration, many regulatory actors and types of arrangements have now evolved in the image of the Schengen Group, representative of the administrative culture of traditional immigration decision making, where decisions have typically been made behind closed doors, with little or no formal debate in a public forum. Intergovernmental actors or foreign states do not have to answer to a more representative body or to international courts such as the European Parliament or the European Court of Justice. The lack of transparency of these negotiations not only makes it difficult for certain national actors to oversee the process, but may be used to circumvent even the most liberal national constraints on migration control (Bunyan and Webber 1995; Guiraudon 2000).

To a lesser degree, but in the same vein, the joint United States–Mexican border patrol taskforces have attempted to coordinate strategies to deal effectively with illegal migration as NAFTA has been consolidating (Andreas 2003; 2009). While negotiations between American President Bush and Mexican President Vicente Fox on the eve of September 11, 2001 for an amnesty program came to a crashing halt, a new focus was directed at the Canadian border. The revelation that several hijackers entered surreptitiously across the Canadian border led the USA to opt for some type of “joint security perimeter” in lieu of compromising a friendship and economic interest by resorting to physical and administrative barriers along the border (*NY Times*, September 27, 2001). In an effort to get the Mexico deal back on the table, resumed talks with President Fox also proposed the inclusion of Mexico in a security perimeter that covered all NAFTA territory.

The externalization of migration control, as it has been called (see Casarino 2005), by incorporating third countries or international spaces might not only be interpreted as a border shift *outward* (coupled with a strategy shift from apprehension after crossing to deterrence before entry). These measures also mean that governments may rely on “remote control” immigration policy (Zolberg 1999) or the creation of transnational zones (i.e., cyberspace, airspace, seas) or international zones (i.e., in airports) of juridical “no man’s land” where intervention by lawyers and human rights associations is almost impossible and thus foreigners’ civil rights are less transparent (Guiraudon and Lahav, 2000). Human rights groups have claimed that these types of spaces “create a corporate equivalent of Guantanamo Bay” – a virtual rules-free zone (*NY Times*, May 24, 2006, A16).

Finally, through privatization or outsourcing strategies (Lahav 1998), private actors, or independent authorities who rely on market forces, have become crucial immigration agents in extending the area of “remote control” immigration policy. These actors include airlines, shipping carriers, transport companies, security services for entry, employer groups and trade unions for work, universities, proprietary schools such as language or aviation facilities, hotels, health care services and civic actors, such as churches and families for immigrant stays. They also include detention centers, for-profit security services and space for deportation and exit. Often compelled by international agreements, these actors are either incorporated by the state or contracted out. To the extent that their functions have evolved from contractors into regulators – from the public to the private sphere, we can speak about these processes as a “privatization of regulation” (Feigenbaum and Henig, 1994). That they are compelled to cooperate, through economic incentives and sanctions or fines, means however that these private actors serve to renationalize and extend the reach of the state, rather than abdicate control. Thus, with little training investments, private carriers and agencies partake in an enlarged migration control as agents of the state. In return for government cooperation, they are assured a smoother flow of business, trade, labor, and tourism.

In all cases, the development of the relationship between states and non-state actors in meeting security and mobility goals captures a global era marked by intense pressures for collaboration and cooperation. Invariably, the dominance of the state in orchestrating and overseeing such compliance of non-state actors has become more pervasive. Of course, the proliferation of such control mechanisms does not necessarily mean that states have become more efficient in their overall response to migration. On the contrary, intensified regulation and limitation of entry access may in fact serve to dislocate the

pressure for mobility and have unintended effects, such as perpetuating the phenomenon of irregular migration, compromising states' capacity to satisfy economic demands (Castles 2004) and to fulfill humanitarian obligations, and undermining civil liberties (Lahav 2003). Notwithstanding, the dynamic is driven by the desire of liberal states to diffuse the costs of regulation, to derive substantial leverage in managing the migration trilemma, and thus to regain any legitimacy they may have lost since migration became securitized.

Non-state actors (such as civil libertarian groups) may have gained more visibility, but have also incurred significant expenses in the expansion of the migratory regulatory regime. For example, the organizational and technological challenges, introduced by innovative technologies, and new procedures in mobility have substantially increased costs to carriers, who are forced to bear the financial brunt of staffing, cockpit-door reinforcement, security training and insurance, surveillance, and general training.<sup>12</sup> In a corporate culture, travel industry groups have voiced concern that new airport security systems could hurt the industry (*CNN*, October 29, 2003). Private actors have been disproportionately penalized, economically.<sup>13</sup> Similarly, the focus on security concerns in regulating foreign student mobility has been seen to compromise the higher education industry in Europe and the USA, and to have diverted student flows to alternative entrepreneurial markets (Altbach 2004; *The Economist* 2010). For example, the creation of a Student and Exchange Visitors Program (SEVP), as part of the US Immigration and Customs Enforcement to centralize the control and monitoring of international students and scholars, has been seen as inefficient, costly, and intrusive. It has thus been deemed by some to have compromised the competitiveness of the American education market.<sup>14</sup>

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<sup>12</sup> It is a telltale sign of security and civil liberties priorities that a large part of increased air-carrier security expenditures does not go to personnel training. A study of European airlines revealed that among additional expenditures for 2002, more than fifty percent was delegated to insurance premiums, compared with two percent for training (European Commission, 2004 23).

<sup>13</sup> For example, the centralization of aviation security has spawned a whole new industry of surveillance, personal identity, and remote sensing technologies, with estimates reaching \$7 billion by 2007 (Lahav 2008).

<sup>14</sup> At a time when most countries worldwide have been experiencing dramatic growth in their overseas enrolments, the growth in foreign students in the US stopped in 2002–3, and has since plateaued (Altbach 2004). The UK, the world's second market in higher education, with an industry that generates \$39.4 billion of revenues (*The Economist*, August 5, 2010), has also been seen as victim of the UK Border Agency, which revoked the sponsorships of approximately twenty percent of the higher education sector (*The Guardian*, November 1, 2011). Controversial reform of the student-visa system to stop bogus student was said to have reduced the numbers of foreign students by 11,000 and to have led to more than 450 colleges pulling out of the market (*The Guardian*, November 1, 2011).



Security concerns have laid the grounds for collaboration and the enlistment of non-state actors in ways that not only undermine mobility and market interests, but rights norms as well. A major concern around the increasing participation of non-state actors stems from the fact that legal regimes governing privacy- and personal-data protection vary for public and private agencies. Another key concern for civil rights advocates is the application of standards of intelligence and information sharing for terrorism to issues of mobility.<sup>15</sup> Furthermore, the enormous responsibility given to untrained border agents, educators, or administrators of private agencies to sort out potential terrorists from legitimate asylum-seekers, foreigners, or legal residents has outraged civil libertarians and human rights groups. Finally, the security prevalence over mobility has challenged traditional human rights norms. In the United States, for example, critics claim that new security regulations requiring passengers to show identity proof before boarding flights is tantamount to an internal passport, and several lawsuits have been filed against the FAA, the Department of Justice, and others over the constitutionality of these measures. Broadly speaking, as controlling mobility has largely become synonymous with national defense, the enlistment of non-state actors represents a shift away from public or collective debate towards private decisions (Moore 2003). Such potential for abuse or non-transparency of decision-making authority over mobility unsettles democratic norms. The emphasis on collaboration has involved a complicity of actors that, while offering to streamline mobility concerns, has further threatened civil liberties.

The ability of democratic states to manage such trade-offs depends not only on the compliance of non-state actors, but also on their capacity to overcome certain normative constraints and to garner public support. The following section thus considers public opinion as a measure of democratic legitimacy.

## **Normative Shifts: Public Opinion Constraints**

The discussion above revealed that well before 9/11, but particularly after with shifting security-driven norms, liberal states have been oriented not only in rhetoric but also in capacities toward more control over mobility. This section argues that in an era dominated by a security agenda, liberal democratic

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<sup>15</sup> In the USA, critics of FISA's provision for information sharing have questioned the use of special powers and information sharing among government agencies for one pretext (e.g., catching terrorists) to pursue individuals for other crimes, including illegal migration (Etzioni 2004: 31)

states can go fairly far in regulating mobility, not only by the modes of implementation they have adopted, but also because they are sanctioned by their consensual publics to compromise their rights-based norms in these processes.

As security threats have risen to the fore, it is not surprising to expect that publics would support increasing mobility regulations, and especially, greater curtailment of immigration. But under what conditions would they agree to compromise civil liberties in order to achieve more controlled mobility? The effectiveness of states to manage the migration trilemma is largely dependent on the ability to respond to these liberal norms and overcome certain normative constraints.

While the impact of public opinion has been much debated in the literature (see Lahav 2004), concerning the degree to which democracies are accountable to their citizenries, the role of publics is unavoidable. Clearly, the ultimate source of oversight is the public or citizenry that may be informed and alerted by a free press and civil liberties groups. Some observers even argue that although civil libertarians typically prefer courts than government administrations, they fear judges who are publicly elected or politically appointed and thus subject to the influence of public opinion (especially since 9/11) (see Etzioni 2004).

In the immediate aftermath of 9/11, public opinion polls suggested that the role of civil liberties and human rights were seen as a price of shifting security concerns. In the United States, Americans reported support for racial and ethnic profiling of Arab Americans (through greater surveillance), greater FBI invasion of citizens' privacy, and a close monitoring of legal immigrants (Time Polling Report 2001). They were more likely to entertain national identity cards and to be inconvenienced by surveillance schemes for more security. Among a random sample of 1234 telephone interviews conducted in the United States between September 30 and February 3, 2002, public opinion revealed increased support for government, and for migration restrictions (especially for Middle Eastern migrants).<sup>16</sup>

Among all security measures, Americans expressed unanimous consent to the regulation of mobility. At the height of the "War on Terror," ninety-four percent of Americans identified that they were strongly in favor or willing to accept restrictions on air travel (including requiring earlier arrival at airports, metal detectors, random passenger searches, etc.). Only five percent of those surveyed reported such initiatives to go too far (Princeton Survey

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<sup>16</sup> This is based on a six-month NSF-sponsored telephone survey (rolling cross-section); see Huddy et al. (2005).

Research Associates, 2002). When Americans were asked about the ability of federal government agencies to obtain private telephone records, sixty-nine percent reported it acceptable because “fighting terrorism is more important, even if it violates civil liberties” (Gallup/*USA Today* Poll, May 2006). By 2010, American public opinion polls revealed support for full-body scans at airports (Poll Watch, November 21, 2010), as well as support for the Arizona immigration law, giving police increased powers to stop and detain people who are suspected of being illegal (Gallup, April 29, 2010). European publics have wittingly accepted the rights contractions accompanying mobility restrictions incurred by security-driven regulations (see Zureik et al. 2010) as well. Approximately forty-three percent of respondents in countries such as France, Japan, the US and Spain (forty-nine percent) agreed to extra airport security checks for visible minorities (Zureik et al. 2010: 33).

In Europe too, the events of 9/11 and particularly 2004 affected popular attitudes toward monitoring foreigners and minorities, especially European Muslims. Survey research showed that respondents were less likely after 9/11 to support the accommodation of Islam in state-run schools (Fetzer and Soper 2005). Public opinion polls in November 2001 (exactly 2 months after 9/11) revealed that despite national variations, Europeans overwhelmingly delegated to EU authority in some form or other (either exclusively or with national authority) the fight against terrorism (the EU average was eight-eight percent).<sup>17</sup> Notably, European masses became increasingly poised to defer greater powers to law enforcement following the deadly attacks that killed more than 300 people from November 2003 onwards in Turkey, Spain and Britain (Concord On-Line Monitor, January 23, 2005). As a large study on the British Identity Cards Scheme (LSE’s Identity Project ) revealed, public opinion towards increased regulation has not wavered. While media attention on issues of privacy and surveillance issues increased dramatically, and the impact of civil liberties has been catapulted on to the mainstream media agenda (Whitley 2008; 13), the decline in public support for a “surveillance society” has been rather inconsequential. The salience of a security–mobility link has served to reframe the liberties debate but has not generated much politicization, in terms of public reaction (see Zureik et al. 2008). The emphasis on surveillance (or social sorting) of movement since 9/11 has substantially reversed the order of priorities of free movement and travel over security within the context of “area of freedom, security, and justice.” Ironically, as

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<sup>17</sup> This derives from a short flash survey by the European Commission, *Eurobarometer* 114 on “International Crisis,” conducted during November 13–23, 2001.

noted above, these rights trade-offs and such public acquiescence were not accompanied by a noticeable surge in populist movements.

Several reasons may explain the informed consensus behind an extended mobility regime that devalues rights. First, as previously mentioned, when immigration policy becomes linked to physical security, the public becomes more consensual and favors more restrictive immigration policies which coalesce around a common national interest (Hammar 1985; Lahav and Courtemanche 2011). In contrast to cultural and economic threats, which result in greater internal divisions (and politicization) because they derive from prior political outlook and values, physical safety is a unifying threat that may result in cohesive public opinion (Feldman and Stenner 1997) Indeed, over the last decade, an era marked by relative physical security in most Western nations, national opinion over migration has been polarized and politicized. Thus, as immigration has shifted from a cultural to physical threat, immigration issues have become increasingly more salient (on the political agenda) but less politicized (divisive) (Lahav and Courtemanche 2011).

Second, even in the USA, where corporate culture has been traditionally strong, “big government” receives more support over business interests during times of heightened threat (Etzioni, 2004). Moreover, though most people across various democracies express skepticism of both government or private companies’ abilities to protect their personal information (see Zureik et al. 2010: 13), they are more likely to support information sharing between private actors and national governments than all other combinations.<sup>18</sup> Although attitudinal data varies according to question phrasing, there is ample evidence to support what de Tocqueville had presciently noted about democracies in the late 1800s. That is,

[T]he increasing love of well-being and shifting character of property make democratic peoples afraid of material disturbances. Love of public peace is often the only political passion which they retain, and it alone becomes more active and powerful as all others fade and die. This naturally disposes the citizens constantly to give the central government new powers, or to let it take them, for it alone seems both anxious and able to defend them from anarchy by defending itself. ([1840] 1969: 671)

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<sup>18</sup> According to the Surveillance Project survey, 34% of Americans, 40.6% of Spaniards, and 37.8% of French state that “under no circumstances should a private sector organization share information” with their national government, compared with 53%, 61% or 56% of respondents who thought that private companies should not share with other private companies, respectively (Zureik, et al., 2010: 28).

As more recently corroborated by empirical research, the willingness to compromise civil liberties and curtail freedoms in order to protect safety is great under conditions of perceived heightened threat (Davis and Silver 2004; Lahav and Courtemanche 2012; Huddy et al. 2005; Gibson 1996; 1998; Sniderman et al. 1996). According to Etzioni, the correlation between strong safety measures and democracy is the opposite of what civil libertarians may argue – that is, democracy is endangered not when strong measures are taken by government to enhance safety and to protect and reassure the public, but when they are not taken (Etzioni, 2004: 21). For example, in order to preserve democratic freedoms that include privacy, protection of innocents and fraud, new tools and actors may create less arbitrariness, and more reliable means of identification.

Third, consensus is promoted by security-biased mobility regulations, which tend to depoliticize civil liberties concerns. Such emergent norms yield a recalibrated mobility equation. Indeed, there is compelling aggregate evidence to suggest that policies towards human mobility and civil liberties may inextricably hinge on how closely they are linked with security. Preliminary studies have shown that issue-framing and media discourse can substantially influence mobility regulations. For example, in focus group analysis tested in an LSE study, presumptions that drive public opinion on biometrics are highly variable; “security” was a keyword for those who support the technology, while “surveillance” and “control” were key negatives for those concerned about technology (Hosain 2005: 140). As migration experts have noted, if migration is linked to security, we may expect more limited debate on democratic values or civil liberties, and ultimately depoliticization to take place (Liberatore 2005: 2).

Finally, in this security context of limited public scrutiny and debates, institutional dynamics related to mobility may reflect weak demand structure or client politics. The promotion of the EU as a foreign policy actor in mobility, for example, has coincided with the institutional dominance of security-dominant JHA, which has emerged as a pivotal actor in EU migration regulation. The democratic shortcomings of institutions include the marginal role of national legislatures and the European Parliament (EP), the non-accountability of Eurojust (EU Justice cooperation) to the European Court of Justice (ECJ), and the isolation of police cooperation (Europol) from the publics. The suspension of legal norms in light of the war against terrorism or security interests has been seen incrementally to reverse the institutional hierarchies of democratic political systems in favor of executive branches (Liberatore 2005, 2). An institutional security network gains the upper hand over the due process of law

and powerful bureaucracies emerge with their own corporate agendas. Often shielded from scrutiny for operational reasons, these agendas elude routine parliamentary oversight. To a large degree, the activity generated by a migration security regime has been determined by bargaining among networks of bureaucrats and professional elites – seemingly disconnected from publics.

By placing mobility on the security agenda then, liberal states have been able to mobilize a hostile anti-immigrant public opinion, skew and defuse political debate, diffuse the costs of regulation, and overcome liberal constitutional and market constraints. More importantly, these regulatory strategies enable liberal democracies to neutralize the contradictions between open borders for goods, capital and services and limited borders for the movement of people. The innovative technological support gained by democratically unaccountable non-state actors provide states the capacity to regulate borders more securely, in more flexible ways that can depoliticize the rights fall-out, and short-circuit public scrutiny. In the practice, liberal democracies have been able to deploy draconian policy instruments that are legitimized by widespread public opinion – thereby reconciling the trilemma between rights, security, and markets.

## Conclusions

The renewed and intensified linkage between mobility and security issues in a global world has put into question the notion of citizen “protection.” The protectionist requirements of security are often at odds with the openness of the political process, the liberal market, or rights-based order, and the trade-off for citizens often involves a security versus civil liberties calculus. Since free trade requires a degree of openness that impedes calls for tighter border controls, liberal states concerned with promoting modern trade and commerce and with protection of minorities cannot embrace policies that hinder or discriminate the movement of people across borders – in the form of racial profiling, deprivation of due process of law, extraditions, personal data collection, and data sharing mechanisms. Or can they?

Based on a neo-institutional analysis of formal policies and informal norms, this chapter suggests that liberal states in a new security framework *can* and *do* reconcile the mobility trilemma by shifting liabilities and sharing the burden with an array of non-state actors. Developed almost uniformly in the countries of Europe and the United States, liberal states have compellingly applied a security heuristic to mobility and adopted more collaborative

strategies with diverse actors, based on more stringent deterrent methods such as sanctions. As this chapter has shown, the deference of border regulation to security interests has enabled states to mobilize against mobility by more effectively diversifying their arsenal, intensifying the incentive structure for compliance, and generating public support or legitimacy.

Two sets of factors condition the effectiveness of these dynamics. First, the ability of states to enlist, outsource or privatize control functions by depending on market forces for the pursuit of social goods, has allowed states to extend their realm of action, despite divergent motives. While the dispersal of responsibility among actors whose interests do not necessarily coincide may be seen to compromise the effectiveness of the entire mobility regime, the increasing role of the state to absorb all the moving parts has been a key feature of this new regime. In contrast to traditional pluralist politics that tend to yield liberal norms or outcomes, a neocorporatist model suggests that as the state negotiates with interlocutors or stakeholders, it may expand, as links between officials and social groups proliferate. Indeed, the increasing density of gatekeepers is a testament to the “webbing” of the state apparatus, and may be interpreted less as an abdication of state authority and more as renationalization of mobility. These gatekeepers rely on strategies which operate *before* the border or at the control site to facilitate the movement of tourists and businessmen while preventing unwanted migrants. New procedures adopted by the White House and the FBI under Robert Mueller after 9/11 to prevent terrorist attacks *before* they occur rather than conducting prosecutions *afterwards* has facilitated the complicity of non-state actors, including local law enforcement, foreign states, and private agencies (Etzioni 2004: 33) In this way, liberal states can respond to the costs, benefits, imperatives, and consequences of globalization: sustained migration pressures, tourism, free trade flows, and global terror networks.

The second condition facilitating this new mobility regime stems from public opinion and lies in the emergence of new norms. These norms reflect higher levels of sensitivity and broader definitions of potential ‘security’ risks, but they have potentially negative implications for civil liberties. Thus, while non-state actors have facilitated mobility and control (i.e., the ‘good’ – lucrative migrants, tourists, and students) as a result of their situational position, and sophisticated new technology at their disposal, the bias of security over privacy has given them leverage and legitimacy due to the support of threatened publics. Security is a powerful issue that motivates voters to transfer such authority to bureaucracies and other non-state actors in the name of law and order. Although the proliferation of non-state actors in controlling mobil-



ity represents a trade-off of certain democratic values, it is sanctioned by citizens who exhibit a ready willingness to exchange civil liberties and personal freedoms for a greater sense of security from human mobility, immigration, terrorism, and globalization.

The increasingly complex web of actors, and incorporation of non-state, private, or third-state actors is not necessarily new, but its novelty lay in the traditional context of liberal norms (Lahav 1998), and particularly in the reversal of twenty-first-century priorities. The increasing formalization and institutionalization of the security agenda in migration regulation has challenged the normative framework of what Hollifield (1992) called “embedded liberalism.” The irony of the mobility–security link is that many of the control and surveillance techniques such as the census and civil registration which have developed as a way of granting civil rights, have become means for liberal states to gain more information and control over their citizens. Whereas the transformation of borders has been the mantra of “frontier-free Europe,” for example, today’s EU has witnessed a more systematic reappearance of passports or national identification cards as prerequisites for air travel – in many cases, for internal travel. The creation of the Amsterdam Treaty’s ‘area of freedom, security, and justice’ under a loose singular body reflected serious efforts to institutionalize a comprehensive approach, which substantially reversed the order of priorities of free movement and travel over security. In this way, the EU, like the USA (with its enlarged DHS) has opened opportunities for more controls to occur in the name of freedom (Guild and Bigo 2005: 223). Clearly, the elevation of migration from an economic and cultural threat to a physical threat has shed new light on the effects of threat perception on competing mobility norms and democratic values.

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