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The Transformation of European Migration Governance

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Abstract

This paper explores the role played by the production and use of knowledge about international migration – or to be more specific the incompleteness of such knowledge –in driving new forms of EU migration governance. The focus is on the transformation of modes of governance linked to the roles played by instrumental, social and communicative logics of institutional action. The paper shows that, while the key referent for migration governance in Europe remains the state and associated state-centered logics of control, it is now evident that both the understanding of the issues and the pursuit of policy objectives are clearly shaped by the EU. A key reason for this is the role played by uncertainty related not only to the causes and effects of international migration, but also about the actual numbers of international migrants living both regularly and irregularly in EU member states. In contrast to existing approaches that see uncertainty and incomplete knowledge as causes of policy failure, this paper sees uncertainty and incomplete knowledge as creating social and political opportunities for EU action linked to the quest for more and 'better' knowledge with resultant conceptual and practical space for 'transgovernmental' relations among government units working across borders.

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1.   Introduction[1]

This paper develops a practice-based account of the transformation of European migration governance. It asks what role the production and use of knowledge about international migration – or to be more specific the incompleteness of such knowledge – plays in driving new forms of EU migration governance. The focus is not on migration flows, but on the transformation of modes of governance linked to instrumental, social and communicative logics of institutional action. This is an important issue because sense-making processes within governance systems play a key role in defining the 'problem' to be addressed and thus shaping the response. The paper shows that, while the key referent for migration governance in Europe remains the state and associated state-centered logics of control, it is now evident that both the understanding of the issues and the pursuit of policy objectives are clearly shaped by the EU. A key reason for this is the role played by uncertainty related not only to the causes and effects of international migration, but also about the actual numbers of international migrants living both regularly and irregularly in EU member states. While EU governments profess their desire to regulate and control international migration, they have incomplete knowledge of both the structure and scale of the issue. In contrast to existing approaches, instead of uncertainty and incomplete knowledge being understood as causes of policy failure, this paper sees uncertainty as creating social and political opportunities for EU action linked to the quest for more and 'better' knowledge. The result is the creation of conceptual and practical space for 'transgovernmentalism', i.e. 'pattern[s] of regular and purposive relations among like government units working across the borders that divide countries from one another and that demarcate the "domestic" from the "international" sphere' (Slaughter 2004: 14).

The focus for this practice-based account of EU migration governance is the 'social containers' that bring political elites together in joint enterprises within which there is extensive mutual engagement that can lead to the development of a shared repertoire of resources such as data and underlying research (Wenger 2010). This paper shows how and with what effects a social definition of learning centered on interaction and engagement is a core component of the operation and effects of a 'community of practice' within which the competence and personal experience of participants has created a shared domains of interests, joint activities, discussions, information-sharing and a shared repertoire of resources. To illustrate these points the paper assesses the role, activities and effects of the European Migration Network (EMN) comprised by primarily state actors within which there is extensive information exchange and knowledge sharing.

2.   Diffusion and Convergence

Knowing, the production of knowledge and its use can be understood as acts of participation in social learning systems grounded in social structures (Wenger 1998: 226). Alvesson and Spicer (2012: 1195) write that 'one of the central leitmotifs of contemporary organization theory [is that organizations] thrive on the basis of their knowledge'. In organizational theory, knowledge is often not clearly defined with the result that definitions can be 'vague and all-embracing' (Alvesson/Spicer 2012: 1195). In the context of the

relationship between learning and public policy, a distinction has been made between 'lay' and 'professional' knowledge, although as Radaelli (1995: 161) notes 'the latter (professional knowledge) should not necessarily be considered as playing a pivotal or superior role' as there are 'reciprocal influences between the two, with social science as an aid, refiner, extender or tester of lay knowledge'.

The 'migration problem' in contemporary Europe is continuously structured and restructured by ideas and discussions, including reflections on the effectiveness of previous and existing approaches, as well as approaches in other parts of the world. These ideas and discussions can be understood as the attempt to develop 'stories' that construct causality in a way that is convincing (Stone 1988). A common narrative construction of the migration issue is to represent it as a threat both to the territorial border of European countries, but also to key organizational boundaries, such as those of the labor market and welfare state (Geddes 2005). Alternative constructions point to the economic benefits of migration or develop rights-based accounts linked, for example, to people fleeing persecution and seeking refuge.

Knowledge, its meaning, its use and the quest for 'more' or 'better' knowledge are central to the social processes that underpin inter-state co-operation on international migration in Europe (Boswell 2009; Boswell et al. 2011). The production, use and misuse of knowledge have been identified as playing a role in policy failure. This could mean the inability to produce the 'right' knowledge or to use effectively the knowledge that is produced (Castles 2004). EU institutions, particularly the Commission, have long been seen as reliant on expertise and the mobilization of knowledge (see, for example, Zito/Schout 2009). The most common and, in a sense, neutral use of knowledge is to inform the policy process and contribute to 'evidence-based policy-making'. However, as Little (2012: 3) notes, evidence can be highly contested while 'policy design, implementation and evaluation are bound up with a number of other contingent factors (…) such as the structure of power, the politics of influence and judgments about the contextual constraints in any policy environment' [all of which] have a direct bearing on whether the policies that are actually pursued are grounded in evidence or whether the evidence is manufactured to suit the policy agenda'. The instrumental view of the role of knowledge (evidence-based policy-making) can be supplemented by two other potential uses of knowledge. The first is to legitimate institutional roles by adding epistemic authority to policy choices while the second is to substantiate existing policy choices (Boswell 2009; see also Feldman/March 1981).

The EU is a new arena within which knowledge of and about international migration is gathered and diffused. Diffusion has been defined as 'a process through which ideas, normative standards (…) policies and institutions spread across time and space' (Börzel/Risse 2012: 5). How they spread is the key issue. Four mechanisms have been identified, each underpinned by a different (although not mutually exclusive) social logic. Coercion can take the form of a requirement to conform to EU law as a condition of membership or future membership. Manipulation of utility calculations can provide negative and positive incentives, such as financial and technical support. These are both informed by an instrumental rationality and by a consequential institutional logic. In contrast measures that change the interests and identities of actors as a result of interaction mean that the EU could become a 'gigantic socialisation agency', which fits with a normative institutional logic of appropriateness (Börzel/Risse 2012: 7). Communicative logics can arise when member states try to persuade each other about the precepts, principles and practices that should inform institutional and policy development.

These behavioral logics are not incompatible. Clearly there has been accommodation of member state preferences and interests at EU level both in formal structures, but also more informally dating back to the 1970s. These formal and informal structures were dominated by state actors from interior ministries and security agencies with powerful effects and legacies on the relationship between power and knowledge in EU migration governance. Another way of thinking about these interactions is to understand them as forging an 'elite consensus', as will be discussed more fully later.

Diffusion could also contribute to elements of policy convergence, which can be understood as: 'any increase in the similarity between one or more characteristics of a certain policy (e.g. policy objectives, policy instruments, policy settings) across a given set of political jurisdictions (supranational institutions, states, regions, local authorities) over a given period of time. Policy convergence thus describes the end result of a process of policy change over time towards some common point, regardless of the causal processes' (Knill 2005: 5). This definition of convergence leaves scope for a variety of processes across governance levels to drive convergence and for a range of possible convergence outcomes. Convergence can take three main forms: decreased variation between states leading to 'an inverse relationship between the initial value of a particular policy indicator and its subsequent growth rate or change' (Starke et al. 2008: 980); in relation to an exemplary model, such as the EU Treaty framework; and, as a result of changes in country rankings such as benchmarking exercises and indicators.

There is limited work on diffusion and on cross-national policy convergence in the area of migration governance with a tendency to focus on a 'horizontal' rationale linked to the characteristics of politics and policy in the major destination states and a strong focus on instrumental logics of behavior. For example, a convergence thesis was developed by Cornelius et al. (1994; updated as Cornelius et al. 2004) in which a persistent gap at state level in major destination countries in Europe and North America is identified between control-oriented rhetoric and policy outcomes that are more liberal both in terms of the numbers of migrants admitted and legal frameworks. No significant role in this 'gap hypothesis' was attributed to supranational governance. Similarly, Freeman (1995) identified cross-national convergence in liberal democratic destination states with migration policy outcomes that are more liberal in terms of both numbers admitted and policies than public attitudes to migration suggest would be the case. This was attributed to the underlying influence on policy in liberal democracies of pro-migration interest groups, particularly the business lobby. Freeman further specified this approach to account for variation in degrees on openness and closure for different migration types, such as labor migrants, family migrants and asylum seekers (Freeman 2006). For Freeman, the characteristic features of liberal democracy led to the diffusion of ideas, institutions and policies to induce convergence. Others similarly identify key characteristic features in the constitutive identity of liberal states *qua* liberal states as a factor leading to similar kinds of observed outcomes in the area of migration governance. For example, influential accounts have identified the role of national courts, 'rights based politics' and 'self-limited' sovereignty (Hollifield 1992; Joppke 1998). The embeddedness at national level of migration policy has also been a key theme. For example, Hansen (2002) identified nationally embedded path dependencies linked to particular kinds of migration flow (such as guestworker recruitment in Germany or post-colonial migration to the UK) and the governance structures that enabled them.

Those who do look at the EU level tend to be skeptical of its scope for the transformation of migration governance. For example, Cerna (2009) constructs a high skilled migration index to show continued divergence

between OECD states in their high skilled migration policies because of divergent preferences and differing domestic political and institutional contexts. She then expresses doubt about the possibility for realising a common EU approach to labor migration beyond the weak co-ordination introduced by the so-called 'Blue Card' directive, which merely seeks to 'approximate' member state laws on the admission of highly qualified people and has no say on the numbers of highly qualified migrants to be admitted.

The common denominator in all of these accounts is the limited role ascribed to the EU because of the continued centrality of the state as the organizing factor in contemporary migration governance. By definition, this observation is correct. Without states, there would be no such thing as international migration because it is states and their borders that make international migration visible as a distinct social and political process (Zolberg 1989). However, European integration changes border relationships within and between EU member states. This has also created space for the transformation of migration governance as the quest for more and better knowledge about international migration has acquired an EU dimension with effects on both diffusion and on the scope for elements of convergence in responses to international migration in EU member states.

3.   The Development of EU Migration Governance

In order to understand the role played by instrumental, social and communicative logics associated with the production and use of knowledge in regional migration governance in Europe, it is necessary to identify some of the key underlying dynamics and to consider explanations for these developments. A powerful and insightful body of work emerged in the late 1990s to explain the development of EU co-operation on migration and asylum. This saw the EU as a largely intergovernmental 'venue' to which actors located largely within the executive branches of national governments would 'escape' in order to circumvent domestic constraints on their ability to impose tough controls on immigration and to refine these restrictive approaches (Guiraudon 2000). This work was done in the late 1990s, but since then the scope and effects of European integration have been more deeply institutionalized with scope for more powerful effects on migration governance. Since the Amsterdam Treaty (1999), it has been possible to speak of a common EU migration and asylum policy with significant development of institutional roles and policy.

3.1 Institutional Development

Since the Amsterdam Treaty in 1999 there has been a common EU migration and asylum policy covering some but not all aspects of policy accompanied by the extension of qualified majority voting (QMV) to Council decision-making, co-decision to the European Parliament and a full role to the Court of Justice of the European Union (CJEU). The CJEU no longer has to wait for a reference from the highest court in a member state and can act on 'preliminary references' with the result that an EU rule of law has begun to emerge in the area of migration policy and has been applied to areas such as expulsion, family reunification and integration (Acosta/Geddes 2013). The CJEU is thus 'manifestly neither master nor servant of the

member states' (Garrett et al. 1998: 174-5), but its weight is - and will increasingly be - 'felt at all levels of the decision-making process' (Dehousse 1998: 177). However, there is an important caveat. Article 79(5) of the Lisbon Treaty (2009) affirmed that any EU-level measures on migration 'do not affect the right of member states to determine volumes of admission of TCNs [Third Country Nationals] coming from third countries to their territory in order to seek work, whether employed or self-employed' (Article 79(5)). This means that the core business of migration policy – numbers of people to be admitted – is not a matter for the EU. But, this does not exclude the EU from a wide range of other aspects of policy, such as family reunification, measures affecting the rights of long-term residents, asylum and expulsion (all discussed below). The accommodation of the preferences of member states at EU level has been facilitated by flexibility in the Treaty framework. Flexibility has allowed member states to opt in or out of Treaty provisions or to seek derogation from specific aspects of legislative measures. This could be seen as leading to fragmentation. Flexibility is 'a political rather than a legal concept' (Papagianni 2001: 127) and a potentially least-worst solution to the practical problems of co-operation and integration in contentious areas that has been particularly evident in areas defined as related to internal security, including migration. In such circumstances, flexibility is consistent with established norms and practices rather than a deviation from them. The Amsterdam Treaty formalized provisions for 'closer co-operation', which was 'the price to pay' for the agreement to proceed with the objective specified by the Single European Act (SEA) of creating an area without internal frontiers within which there was to be free movement of people (Papagianni 2001: 111). The most obvious manifestation of flexibility is the Danish, Irish and UK position in relation to Schengen and to Title IV of the Amsterdam Treaty. Denmark, for example is a Schengen member state but opted out of Amsterdam's Title IV provisions covering free movement, immigration and asylum. Ireland and the UK are not Schengen member states but can opt back in to measures that they support. Flexibility is a political device to accommodate diversity. It could be construed as a threat to the 'traditional Community model', but actually creates the possibility for attainment of objectives in areas of 'high politics' while also providing scope for the reluctant and recalcitrant to opt-in to those measures they feel able to support. Those that are 'out' can still use negotiations and derogations to define their position in relation to agreed measures and still adapt to new EU legislation (Adler-Nissen 2009: 69).

3.2 Policy Development

There is now a common EU migration and asylum policy, although a key omission is competence related to the number of migrants to be admitted, which is a matter for the member states. That said, the directive on the recruitment of highly qualified workers (the so-called 'Blue Card') provides a very limited foothold in this policy area. The Commission is also seeking to extend this co-ordination on a sectoral basis with proposals on seasonal migration and intra-corporate transferees. There has been a much stronger focus in EU migration policy on constraining or blocking flows defined by state policies as unwanted. The EU's self-declared 'fight against irregular migration' has had a strong focus on external frontier control and has sought to make it more difficult for migrants – including those fleeing persecution - to enter the territory of an EU member state. The EU's rhetorical commitment to the 'fight against irregular migration' is closely linked to EU enlargement to central, eastern and southern countries with linked attempts to strengthen operational capacity through creation of the EU border control agency, Frontex. Implementation does, however, remain

primarily a national responsibility. The Returns (i.e. expulsion) directive of 2008 institutionalized a common EU approach to expulsion that was widely criticized for its restrictive aspects. However, subsequent CJEU interventions have challenged the implementation of the directive, most notably in the case of Italy. Acosta and Geddes (2013) argue that the EU level can now provide a check on member state governments whose actions are deemed excessive in relation to the provisions of EU law. This doesn't mean that member states can no longer expel people, but it does mean, for example, that imprisonment of irregular migrants can be judged as inconsistent with the provisions of directive that seeks return.

Asylum is probably the most highly developed area of EU migration policy. A series of directives in the early 2000s laid down minimum standards in areas such as procedures, qualifications and reception conditions. More recently, the empowerment of the CJEU to act in this area by the Lisbon Treaty has seen decisions that limit the ability of states to return asylum-seekers to their first country of entry – a key principle of the one-stop system for asylum put in place by the 'Dublin II' regulation of 2004.

EU action on family migration has created pressure for newer immigration countries in central, eastern and southern Europe for a leveling up of standards (Migration Policy Group 2011). The family reunion directive (2003/86/EC) determined the right to family reunification of TCNs who reside lawfully in the territory of an EU Member State; conditions under which family members can enter and reside in a Member State; and rights of the family members once the application for family reunification has been accepted regarding, for example, education and training. The directive also recognized the rights of member states to impose conditions on family migration and gives them margin to do so in relation to factors such as the definition of the family, waiting periods and 'integration measures'. This negotiation was riddled with compromises because it potentially impacted upon admissions policy.

In 2003, a directive covering migrants with legal residence in an EU member state grants rights equivalent to EU citizens after 5 years of legal and continuous residence and allows those who qualify for this status to move from one member state to another while maintaining their rights and benefits. Once the status of long-term residence is acquired then there is a right to equal treatment on the same basis as EU citizens, meaning: access to employment and self-employed activity; education and vocational training; recognition of professional qualifications; social security, social protection and social assistance as defined by national law; tax benefits; access to goods and services, including housing; and freedom of association, affiliation and membership, including trade union membership. The directive also specifies that member states may require third country nationals to comply with integration measures, in accordance with national law, which may include language courses.

Integration policies concern themselves with adaptation by migrant newcomers and host societies to the effects of immigration. Policy frameworks across the EU are highly diverse and typically linked to traditions of nationality and citizenship, i.e. embedded at national level and often also salient in domestic politics. Formally, integration policies remain a matter for the member states, but the EU has also adopted some legally binding and also 'softer', non-binding governance mechanisms. Binding measures include two anti-discrimination directives agreed in June and November 2001 (2000/43/EC Racial Equality directive and 2000/78/EC Employment Equality directive) that applied to TCNs and were significantly rights-enhancing in that they went far beyond measures in most member states. The directives implement the principle

of equal treatment for all people, irrespective of racial or ethnic origin. They represent a significant leveling-up through their focus on civil remedies for both direct and indirect discrimination. They provide for protection against direct and indirect discrimination in employment and training, education, social protection (including social security and health care), social advantages, membership and involvement in organizations of workers and employees, and access to goods and services including housing. They cover EU citizens and legally-resident TCNs.

In summary, there are EU measures that embody both more and less formal migration governance encompassing action on irregular migration, asylum, family reunion, the rights of third country nationals, anti-discrimination directives and, more tentatively, attempts to co-ordinate admissions policies for the highly qualified. These have been accompanied by significant institutional development with application of the Ordinary Legislative Procedure (OLP) and the extension of full competencies in the area of migration policy to the CJEU. While there is a strong restrictive component to these measures, it is also the case that they do not all point in the same restrictive, exclusive and repressive 'fortress Europe'. Some EU measures extend rights to legally resident third country nationals while in some areas of policy it has been argued that there has been a leveling up rather than the pursuit of the lowest common denominator. The key point in the context of the analysis that follows is that all these areas have also been the subject for interaction within the EMN. Not only is the EU engaged in a quest for competence, but has also been engaged in the development of information and knowledge for and about migration.

4.   The Drivers of Diffusion

In order to specify the conceptual and practical space for transgovernmentalism, the paper now moves on to identify the operation and effects of four potential drivers of European migration governance. In Figure 1, below, a horizontal axis counterposes tendencies towards structure and agency with the structural dimension postulating external pressures on states to adapt while agency places more emphasis on the ability of states or particular communities of actors within states to choose amongst multiple policies. A vertical axis counterposes material and ideational factors. Material factors center on the ways in which migration flows are seen to affect the economies and security of member states. Ideational factors center on the ways in which states 'alter institutions and regulations because a set of beliefs has developed sufficient normative power that leaders fear looking like laggards if they do not adopt similar policies' (Drezner 2001: 56). Figure 1 creates space for four underlying dynamics that highlight the roles played by instrumental, social and communicative behavioral logics.

Figure 1: Drivers of EU-Wide Policy Convergence in Migration Governance
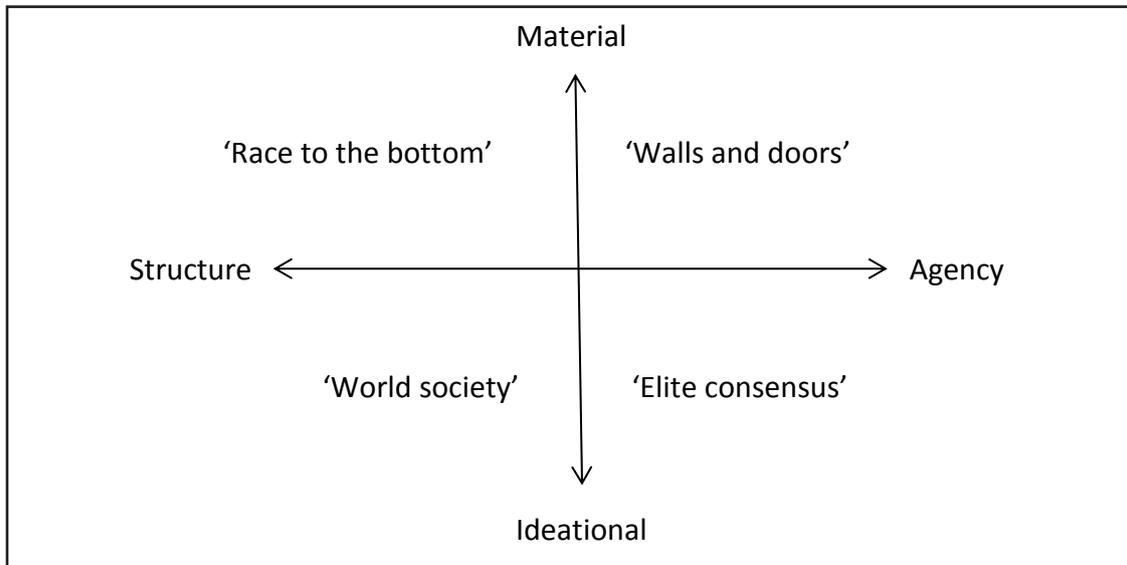
Source: adapted from Drezner, 2001.

Each of the quadrants in Figure 1 represents a potential outcome arising from the relationship between structural/agential and material/ideational factors as potential drivers of institutional and policy diffusion. A common, underlying point to each of the quadrants is that the EU reduces transaction costs between states, but with very different implications for governance modes.

The top left quadrant can be understood as a race to the bottom or lowest common denominator, i.e., 'a positive theory of regulation with strong normative disapproval of the predicted outcome' (Drezner 2001: 57) typically associated with exclusive and repressive policies and 'fortress Europe'.

The upper right quadrant combines agency and material factors to generate what is labeled as 'walls and doors'. The reference to walls and doors derives from the insight provided by Zolberg (1989) who argues that for advanced, capitalist democracies the core dilemma of migration policy is how high to build the walls to exclude those migrants defined by their polices as 'unwanted' and how wide to open the doors in those walls for flows of privileged migrants, such as the highly qualified. European integration does not change the nature of this underlying dilemma, but does create new ways of addressing it and pursuing EU-level approaches geared to this relationship between exclusion for the many and inclusion for the few. EU migration governance occurs in the shadow of hierarchy as a result of embedded regulatory modes embedded in historical and political frameworks at member state level that constrain actors and action at EU level. However, when compared to the upper left quadrant, there is a more complex setting at EU level with a greater number of possible policy outcomes, some of which may be more 'open' in terms of soliciting certain types of immigration.

In the lower left quadrant there is interplay between ideas and structures that can be labeled as the 'world society' account that focuses on 'worldwide models constructed and propagated through global cultural and associational processes' (Meyer et al. 1997: 144-5). In this quadrant, structure dominates agency as

pressures develop for states to conform with an ideal of the rationalized bureaucratic state. Evidence for this could be seen through development of a global scientific discourse, the growth of international organizations and mimetic adaptation of the migration policies of successful states.

The lower right quadrant specifies interplay between ideas and agency and is labeled 'elite consensus', which can also be understood as the space for transgovernmentalism with significant scope for social and communicative logics and the development of a relational story of convergence based on interdependence and perception of policy externalities (Drezner 2001: 63). Here, there is an important role for uncertainty and which then provides a central role to the production and use of knowledge, as well as to a quest for 'more' or 'better' knowledge. Uncertainty can play a key role in the constitution of networks of policy experts sharing 'common principled beliefs over ends, causal beliefs over means and common standards of accruing and testing new knowledge' (Drezner 2001: 63, see also Haas 1992). The use of expertise (such as academic research) can play an instrumental role in satisfying the demand for more knowledge, but can also legitimate institutional roles and substantiate existing policy choices (Boswell 2008, 2009; Boswell et al. 2011).

There is a powerful contrast between the left and right-hand side of Figure 1. The left-hand side - 'fortress Europe' and 'world society' - provides stronger, more positive theories of diffusion and scope for convergence with little scope for agency. However, the evidence presented in this paper will show that these provide less plausible accounts when placed alongside the more complex processes and outcomes associated with the right-hand side of the diagram and the relationship between hierarchical, state-centered dynamic in the top-right quadrant and elite consensus.

5.   Elite Consensus and the Transgovernmental Migration Governance

This section specifies how the production and use of knowledge about international migration, the contestation of this knowledge and its necessary incompleteness have all played a role in institutional and policy diffusion and thus contributed to the transformation of European migration governance. There are a wide range of ways in which the EU gathers data and develops the research base for policy. This includes research and data collection that occur within the EU, such as Eurobarometer or Eurostat data, as well as applied research linked to particular units within the EU or the funding of academic research with an applied component, such as through the Framework 7 program. For example, the EU has been interested in the role that temporary and circular migration could play in new approaches to labour migration. There has been debate at EU level about this. In 2013, funding was made available within the Framework 7 funding mechanism to support academic research into a series of issues that reflected this policy agenda.

The case of the EMN is now used to demonstrate the social basis for policy learning at EU level and to illustrate how elite consensus as a driver of institutional and policy diffusion creates the space for a practice-based account of migration governance that has the incompleteness of knowledge and the quest for more and better knowledge at its core.

A 'practice turn' in international relations has been reflected in recent work on the EU that explores at both the general and more specific level the development and effects of communities of practice (see, for example, Adler 2009; Bicchi 2011). Communities of practice are 'groups of people who share a concern or a passion for something they do and learn how to do it better as they interact regularly' (Wenger 2010: 1). Participating in a community of practice is an essential element of learning as such communities are the 'social containers' that bring people together with a sense of joint enterprise, mutual engagement and a shared repertoire of communal resources (Wenger 2010: 229). Such communities can reduce uncertainty and can make issues more 'tractable', by which is meant manageable, not necessarily that they are resolvable.

The social definition of learning in a community of practice has two components (competence and personal experience) combining with three modes of belonging (engagement, imagination and alignment). Competence is historically and socially defined: 'To be competent is to be able to engage with the community and be trusted as a partner in these interactions' (Wenger 2010: 229). Competence and experience are not necessarily congruent but when they are in close tension and either starts pulling the other then learning takes place. The simplest dynamic here would be 'newer' member states learning from 'older' member states as asymmetries in experience can affect the historical and social definition of competence.

The three modes of belonging - engagement, imagination and alignment - are seen as co-existing. Engagement involves people working together in ways that can shape experience. An imaginative leap can also be required to think of oneself as a member of a community of practice and to see a basis for shared membership. This leap may be large if the community is big (a national community) and members do not all meet, but is not such a large leap if members do meet on a regular basis (as in the EMN). The third mode of belonging is alignment understood as a mutual process of coordinating perspectives that may, at first glance, appear quite pluralistic, but will be embedded within social structures that do not evenly distribute resources.

The social definition of learning and the modes of belonging are the basis for communities of practice that have three characteristics: a shared domain of interest as membership implies a commitment to the domain; the existence of a community as evidenced by joint activities, discussions and information sharing; and, a community of practice is a community of practitioners with a shared repertoire of resources. Practices develop through problem solving, requests for information, seeking experience, re-using assets, co-ordination and synergy, discussing developments, documentation projects, visits, mapping knowledge and identifying gaps (Wenger 1998).

Transgovernmentalism also necessarily implies boundary interactions, understood as exposure to a 'foreign competence'. Within the EMN are various kinds of boundary interaction such as the sharing of information about national policy approaches, the development of glossaries of key terminology, the gathering of data, the funding of research and requests for information about how things are done in other countries. In the EU's transgovernmental system of migration governance, learning becomes linked to co-ordination between communities of practice, transparency in terms of securing access to information about various practices; and negotiability, which means making room for multiple voices. Ostensibly, this presents a very pluralistic vision of the learning process, although, migration governance is strongly state-centered with a powerful shadow cast by hierarchy.

To illustrate key features of a practice-based account of European migration governance, Table 1 plots key aspects of social learning in a community of practice (CoP) on the left hand side of the table against characteristic features of boundary interaction across the top.

Table 1: The Space for Transgovernmentalism: Communities of Practice and Boundary Interactions

	Coordination	**Transparency**	**Negotiability**
Engagement	Opportunities for joint activities and problem solving	Explanation of practices to each other to facilitate learning	Can multiple perspectives meet?
Imagination	Understanding of respective perspectives to present effectively and prevent misunderstandings	Artefacts etc that held build picture of another practice	Do both sides see themselves as members of an overarching community with common interests?
Alignment	Can methods etc be interpreted into action across boundaries?	Are the basis of CoPs clear enough to reveal common ground?	Who decides when negotiating between CoPs and searching for compromise?

Source: Wenger 2010: 235.

Boundary interactions can be stimulated by individuals acting as brokers across boundaries while 'boundary objects' such as the development of data and information can also facilitate boundary interactions as comparable data can also help to generate a sense of shared meaning (Star/Griesemer 1989).

The EMN does provide significant evidence of boundary interactions, but there are social and cognitive limits to learning that relate to the ways in which the field is constructed and constituted at EU level. Cognitive limitations can, of course, lead to 'bounded' or 'semi-rationality' (March 1978; Brunsson 2002). In such circumstances, a lack of time and resources inhibits knowledge utilization. Along similar lines, Lindblom (1959) refers to 'muddling through' while the 'garbage can' model of decision-making focuses on instability in organizational environments with ambiguity preventing people from fully mobilizing their cognitive capacities and acting rationally (Cohen et al. 1972). Smithson (1989) contends that the problem may be more than ignorance, although here again the emphasis is placed not on willfulness, but on a lack of knowledge or awareness of where knowledge is located. These perspectives tend to focus on impediments to learning such as lack of time and resources.

This leaves open the question of how power relations may lead to a disinclination to use intellectual resources (Alvesson/Spicer 2012: 1198). There may be circumstances within which organizational settings can stifle reflexive capacity with the result that 'cognitive capacities may be limited by relations of power and domination rather than a lack of time and resources, or cognitive fixations' (Alvesson/Spicer 2012:

1196). These amount to more than 'blocks' and are labeled as 'functional stupidity', i.e., as an inability to learn that may actually be functional to organizations because it reduces uncertainty. People may be unwilling to challenge the assumptions upon which their role and activity are based. This can take the form of a lack of reflexivity by not questioning knowledge claims and norms or a lack of justification in not demanding or providing explanations for action. These run counter to the logic of communicative rationality that involves giving reasons for actions or behaviour and seeking to justify them. A lack of substantive reasoning also means that questions can be framed in narrow ways that might even be misleading (Alvesson/Spicer 2012: 1196). In such circumstances, 'functional stupidity is organizationally-supported lack of reflexivity, substantive reasoning and justification. It entails a refusal to use intellectual resources outside a narrow and 'safe' terrain. It can provide a sense of certainty that allows organization to function smoothly. This can save the organization and its members from the frictions provoked by doubt and reflection' (Alvesson/Spicer 2012: 1196).

6. The European Migration Network as a Community of Practice

The EMN's origins were intergovernmental. In 1996, the Commission undertook a feasibility study for the creation of a European Migration Observatory, although in the end this was not established. The Laeken European Council meeting in October 2001 called for a system of information exchange on migration. In 2003, the EMN was launched as a pilot project and then as what is known as a 'Preparatory Action' between 2004 and 2006 during which participation was voluntary and the EMN was run from a research centre in Germany. The first topic for an EMN report was the ambitious question of the *Impact of Immigration on European Societies*. The report was controversial, much delayed and led to a re-evaluation of the EMN's role with a greater emphasis placed on work of a more technical nature (Boswell 2009).

The Hague Programme for Justice and Home Affairs covering the period 2005-10 included a plan for a Green Paper on the future of the EMN. On the basis of the Green Paper the Commission in August 2007 proposed to the Council the creation of a legal basis for the EMN, which was agreed by Council Decision 2008/381/EC. The decision to more formally constitute the EMN also gave it a stronger intergovernmental base as most of the national correspondents or National Contact Points (NCPs) as they are known are based in interior ministries.

According to the Council Decision the purpose of the EMN 'is to meet the information needs of Union institutions and of Member States' authorities and institutions on migration and asylum by providing up to date, objective, reliable and comparable information on migration and asylum with a view to supporting European policy-making in these areas. The EMN will also serve to provide the wider public with such information', by, for example: collecting, exchanging and updating data; analyzing data and providing it in readily accessible forms; contributing to the development of indicators; publishing periodic reports; creating and maintaining an internet based information exchange system to provide access to relevant documents. The EMN is coordinated by the Commission (DG Home Affairs) which is supported by two private sector contractors that assist with the exchange of information and with the development of the technology to support interchange. The work is supported by EMN NCPs in all member states (except Denmark, but

including Norway) with at least three experts, one of whom is the national coordinator. These are mainly from ministries of the interior and justice but also involve research institutes, NGOs and international organizations (the International Organization for Migration is the NCP for three member states). The intention to promote social learning as well as the EMN's intergovernmental orientation was emphasized by an interviewee from an international organization:

There is still a learning and exchange process that comes with that network. There is some kind of network effect to it, it's hard to put the finger on it, it's not a network that produces some groundbreaking new evidence that changes the course of policies, but that rather informs the policymakers and these people largely come from the institutions that also set policy course (…) (Representative of international organization, Brussels, March 2013).

Networking within the EMN is intensive and takes various forms:

- Regular meeting of NCPs (twelve in 2009, seven in 2010 and seven in 2011);
- EMN Studies drawing from information from all participants of which there are usually three each year;
- An annual EMN conference;
- Training sessions on technical or administrative issues;
- Twinning and collaboration meetings;
- Studies addressing specific themes;
- Annual reports from all participants that feed into the Commission's Annual Report on Migration and Asylum;
- The development of a glossary and thesaurus as the basis for improved comparability to develop common understanding of terms with the aim of harmonising policy concepts (EMN, Annual Report 2009, 17);
- An information exchange as a repository with a search function;
- Ad Hoc requests.

These Ad Hoc requests are particularly relevant. Of the 400 or so Ad Hoc queries that were made between 2008 and 2012, more than 260 have been published. Ad Hoc queries are grouped under various headings: illegal immigration, return, protection, economic migration, integration, borders, EU acquis, family reunification, residence, students, trafficking, visas and a general 'unclassified' category. An interviewee from an international organisation highlighted the role of Ad Hoc requests as follows:

my impression (…) is that the EMN in particular has become important through its more kind of research gathering, the ad hoc queries. There is an enormous amount of queries that are circulated and that are requested on a state basis (…) that really has become an important mechanism of policy learning (…) Member States who have an interest to make or change a policy on a particular issue, sometimes on very specific issues (…) even if it's just six or seven Member States replying to that, it's still something that you don't have, or something that individual Member States don't have the capacity to deliver in the same way. It's much more difficult for individual Member States to use their own contacts (…) to get that kind of information in that timeframe (Representative of international organization, Brussels, March 2013).

Two representatives of think tanks both highlighted a strong intergovernmental dynamic, but also the way in which the strategic context for national policy-making has changed:

It serves intergovernmental needs because it allows Member States to ask their ad hoc queries (…) they are very politically motivated (…) you can match almost every query to a national policy debate or national policy process (…) it allows them to then make the comparative claim themselves (…) In the UK there was a green paper restricting family reunification, with many proposals (…) and they were then using comparisons, you know, saying (…) other countries do this (…) and then they would give certain examples. Whereas they only chose very few countries in Europe that do this, not noting that all other countries do not do this (Interviewee from Brussels think tank, Brussels, March 2013).

Ad hoc queries are surprisingly useful because they tend to be linked to one particular Member State's deliberations at a given moment (…) last year when the Dutch were thinking about the integration of EU citizens, they had an ad hoc query (…) and they got a wealth of information back and it really helped them to think through what the key issues were (…) (Interviewee from Brussels think tank, Brussels, March 2013).

These 'regular and purposive relations' (Slaughter 2004: 14) break down barriers between national policy systems and serve as a mechanism for diffusion and convergence. As a NCP put it when referring to the EMN country reports:

I am an avid reader of the country reports because (…) I am interested in what works, so those country reports are extremely useful. There is a kind of hidden output of those. Are you aware of the informal networks? The integration contact points and the responsible authorities for the various funds that we manage have a number of informal networks (…) so for example I was in Bratislava back in the spring talking very specifically about the funding issues (…) that's a kind of offshoot of some of the work that's being done. You choose the networks you want to join on the basis of country reports (…) so this partic-ular network is Slovakia, Slovenia, Czech Republic, Poland, Netherlands, Austria and the UK (…) looking at common factors around the funding of projects. You have the background information from the country reports (…) so you can find out what are the similarities or what are the contrasts. We also have other informal bilateral relationships which are again informed by the country reports. I talk a lot to my opposite numbers in the Netherlands, in Germany, Italy, France on quite specific issues that come out of those reports (…) things that we want to follow up on (…) (Interview with EMN NCP, Brussels, June 2013).

The EMN breaks down barriers between national policy systems and changes the strategic context for the framing of policy, but there is less to suggest that it recasts or reshapes the fundamental dilemmas that shape policy that remain state-centered. It can, however, help with an enhanced understanding of how so-cial and communicative logics linked to interaction in transgovernmental networks leads to the production of knowledge of and about international migration that can legitimate institutional roles and substantiate existing policy choices.

7.   Conclusions

This paper has argued not only that there is evidence of policy and institutional diffusion leading to some elements of convergence in European migration policies, but also that the EU plays a role in determining the form that it takes. The transformation that is identified is consistent with interplay between instrumental, social and communicative logics that highlight both preference accommodation, but the forms of elite consensus-building that are enabled by the EU political system. These create the conceptual and practical space for transgovernmentalism.

The paper qualified stronger, more positive accounts of convergence emphasizing either lowest common denominator or 'globalist' outcomes, which were confounded both by the more varied range of policy outputs and by the ways in which specific features of EU migration governance account for both the embeddedness of migration policy, but also create new and distinct ways in which common responses can develop in areas where there is interdependence. The paper laid particular emphasis on the social context for learning and its effects on embedded historical and political frameworks. It also sought to identify mechanisms, processes and routinized interactions within which these play out. Emphasis was placed on the social context within which knowledge about international migration is produced. It was argued that state-centered logic remains to the fore and also suggested cognitive limits linked to the embeddedness of national-level approaches. However, it also showed that the context within which thought and reflection about migration occurs at official level has changed. Member states now systematically locate their views and conceptualizations of international migration and the 'migration problem' in an EU context. A key underlying explanation for this is the incompleteness of knowledge about international migration and the development at EU level mechanisms to gather more complete and 'better' knowledge. This amounts to a transformation of the ways in which European countries make sense of international migration with implications for both the underlying conceptualization of the issues and more empirically-oriented ideas about how governance systems should respond.

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