Crossing Conceptual Boundaries V

School of Law and Social Sciences

Cover Image: 'Crossing borders – Athena's voyage of discovery' by Sharon Gallagher

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Articles

Contesting Europeanism: Migrant Solidarity Activism in the European Union

Celine Cantat

Abstract; In this paper, I investigate the way in which legal frameworks concerning immigration and border controls have been transnationalised in the European Union (EU) and how migrant solidarity activists in EU member states have responded to this development. Taking the Eurozone crisis as a starting point, I first develop a critical analysis of the EU project as the regional expression of a set of economic and political developments generally referred to as 'neoliberal globalisation'. In this context, I propose to look at the dominant contemporary notion of European belonging as a legitimising discourse aimed at stabilising the particular social and political organisation of the region that the EU has established. I argue that bordering, borders and exclusion have been essential to the form of European identity that the EU has put forward. The Europeanisation of immigration law and border controls is presented as the material embodiment of this dominant notion of European identity. I then present my fieldwork, which consisted in interviews and participant observation with migrant solidarity groups and networks in three EU member states. One of the main focuses of the fieldwork was to investigate the ways in which migration-related activists and organisations have adapted their work in order to respond to the developments at the EU level. I present an analysis of my fieldwork data drawing on insights from social movement theory. In conclusion, I identify a process of pan-Europeanisation of migrant solidarity struggles and critically assess its resemblance to an emerging transnational social movement.

Since 2009 and the advent of the 'Eurozone crisis', the subject of 'Europe' and disputes over the required course of action to save the region have been regular features of the media and public debate. Yet, beyond the on-going controversy concerning the best ways to implement austerity measures and occasional high-level dramas in Brussels, the crucial questions of what the European Union (EU) represents, which power dynamics it enacts and what its relationship with the peoples of its member states is remain as vague and unclear as ever. Last April, the Spring 2013 Eurobarometer showed the lowest ever levels of popular confidence toward the EU in the six biggest European member states.[1] A polling system aimed at measuring popular feelings toward the EU, the Eurobarometer, was created in 1973 as Eurocrats and pro-Europe politicians were showing increasing concern regarding the growing popular discontent with the European project. Notions such as that of 'European democratic deficit' were gaining currency to describe the tenuous relationship between the then-European Community (EC) and the people of its member countries (Chalmer et al. 2006: 64). In a desperate quest for legitimacy, a series of measures were designed in Brussels in order to instigate a sense of European belonging or 'Europeanism' among the people of the region. In the absence of meaningful emblems of identification with the institutions of the European Community, a major identity-building enterprise, largely based on the reproduction of a series of national identity symbols at the supranational level, was put in place. Thus, a European anthem was adopted in 1972, followed by a European flag in 1983.[2]

In this paper, I will first look at how the process of creation of a particular sense of European identity and belonging has been put at the service of the European Union project. I will argue that the produced notion of Europeanism has mainly relied on identifying and excluding the non-European and on drawing borders between Europe and outside. The harmonisation of migration and asylum law across the EU will be analysed as the legal embodiment of this development. In the second part, I will look at how these forms of restriction and exclusion have been challenged. I will present and discuss the fieldwork research I carried out with groups and organisations working with migrants in the EU and investigate whether and how, in the process of opposing the EU exclusionary framework on migration and asylum, new transnational links have developed between these actors, leading to alternative forms of European solidarity.

The Politics of 'Europeanism'

It is perhaps not a coincidence that the growing dissatisfaction and disengagement towards the European project occurred as the EC was endorsing a distinctively neoliberal turn, in line with the economic orthodoxy of the time. The project of an integrated capitalist market in Europe in fact predated the European Community, but concrete steps in this direction had been hampered by the persistence of national capitalist interests. It is in the 1970s and 80s that the prerogatives of the new neoliberal form of global capitalism pushed national capitals into transnational alliances, leading to the 1986 Single European Act which placed firmly on the regional agenda the idea of a liberalised European market. This integrated market was to bring back economic growth to a Europe slowed down by 'incrusted and rigid structures of European labour and social regulations' (van Apeldoorn 2001). In practice, history has now shown that this meant the

[1] http://www.guardian.co.uk/world/2013/apr/24/trust-eu-falls-record-low
[2] http://europa.eu/about-eu/basic-information/symbols/index_en.htm

opening up of European economies to 'competitors', twinned with the dismantlement of national systems of social protection and welfare. Today, as the failures of the global capitalist agenda have become more striking than ever, the neoliberal nature of the European Union remains one of the main focuses of popular protests in Europe. From Greece to Portugal, from the UK to Spain, the last three years have seen waves of demonstrations and popular anger denouncing the capitalist EU and the dictatorship of the 'Troika' (the European Commission, the European Central Bank and the International Monetary Fund).[3]

In this context of on-going volatility, the afore-mentioned attempts to conjure a sense of European belonging must be seen as part of a vital struggle for meaning on the part of the EU, which I call the 'politics of Europeanism'. As Fran Cetti (2010) puts it 'the survival of locally or regionally based capitals in an internationally hybrid world of instability, regional conflicts and economic convulsions demands … an inherently ideological operation to postulate a unitary set of interests in the attempt to displace social antagonisms and secure legitimacy'. One of its crudest mechanisms has been the production a set of identity symbols at the European level reminiscent of the traditional appendages of national identities. Less immediately obvious, the attempt to inculcate a sense of Europeanism in the inhabitants of the region has also relied on the multiplication of narratives tracing back the roots of the Union to ancient times, drawing on European past to present the EU as the linear continuation of a European historical and cultural spirit in motion. The idea of a continuous Europe as an entity and as an identity is not a new one. Since the 1970s, it has been increasingly asserted as a possible antidote to the unconvincing reality of the European Community/Union. A crude example is Jordan's assertion that 'Europe is a culture which occupies a cultural area' (Jordan 1973 in Paasi 2001). But one can also note, particularly since 1989, a sharp increase in a 'culture-historical literature on the question of Europe' (Nowotny 2000). Nowotny examines the work of a range of European historians and intellectuals, specialised in an array of research areas, and highlights their tendency to concentrate on topics concerned with tracing a historical sense of European identity. He claims that:

> From the medievalist Jacques Le Goff to Rémi Brague, professor of Arabic philosophy, the "postmodern" conservative Peter Koslowski and the left-wing liberal Massimo Cacciari, this literature shares a specific interest in a historiologically decipherable "identity", as well as in culture-historical prototypes of Europe which are supposed to allow conclusions – or rather preconceived judgements – on the future shape of the EU (ibid, own translation)

A common trait of these researches is that a set of historical events and ideas are drawn upon to create a coherent narrative of the construction of Europe as one entity. They also sanctify Europe, upholding it as a desirable model with universal validity. In his account of Europe since 1945, Tony Judt (2005) praises 'Europe's emergence in the dawn of the 21st century as a paragon of the international virtues: a community of values … held up by Europeans and non-Europeans alike as an exemplar for all to emulate'. In the UK, no group expressed better the mythology of Europeanism than New Labour. In *Why Europe Will Run the 21st Century*, Mark Leonard (2005) invites his readers to share his dream: 'Imagine a world of peace, prosperity and democracy… What I am asking you to imagine is the 'New European Century'…' (in Anderson 2011: 47).

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[3] See this useful press review in French of articles against the Troika: http://actu-leplus.nouvelobs.com/troika-commission-europeenne-banque-centrale-europeenne-fmi.html

The Imagined Community of the EU: 'Fortress Europe'

In contrast with such essentialist narratives, a number of scholars have elaborated critical reflections on these attempts to form a European identity. Gerard Delanty (1995) claims that defining Europe has always relied on representations of what it is not and been characterised by the lack of European unity besides that achieved through adversity. He demonstrates that lines of exclusion/inclusion have always been at the heart of projects related to the idea of Europe and that Europe's cultural and political identity has historically been articulated through a process of constant re-construction of 'ins' and 'outs' reflecting particular sets of power relations at given points in time. Ideas of Europe have been characterised by their production of an excluded otherness, in both geographical and 'mythological' terms, which evolves in content throughout time (different 'Others' are mobilised towards the elaboration of different projects) but remains constant as a mechanism. His conclusion is that these dynamics of exclusion are more than ever at work in the EU project: 'who is a European is largely a matter of exclusion, and in the dichotomy of self and other which constitutes the discourse of European identity, Europeanness is constructed in opposition with the non-European, in particular Islam. This sense of the uniqueness of the European is today emerging as a basis for a kind of supranational identity and citizenship which European integration does not have' (Delanty 1995: 9).

In a similar vein, Marfleet (1999, 2002) examines the role played by Huntington's theory of a 'clash of civilisations' in the EU's attempt to construct a European identity. The clash theory relies on primordialist readings of history and of the world, which is seen as divided in hermetic areas of 'culture'. Those belonging to other 'civilisations' are erected as absolute Others and it is in the mirror of this produced image of otherness that Eurocrats have tried to anchor an ever-fleeting sense of a European identity. These observations are confirmed by the work of Liz Fekete. Looking at recent socio-political developments, Fekete (2001, 2009) examines the rise of 'xeno-racism' in Europe, 'a racism that is not just directed at those with darker skins, from the former colonial territories, but at the newer categories of the displaced, the dispossessed and the uprooted, who are beating at Western Europe's doors, the Europe that helped to displace them in the first place' (Sivanandan in Fekete 2001, 2009). Fekete provides evidence of the intrinsic relation that links, on the one hand, the media, legal, discursive and physical practices of xeno-racism in Europe and. on the other hand, the strengthening of a shared sense of European belonging and identity as a basis for European citizenship. In doing so, she demonstrates the importance and instrumentality of the (produced) figure of the non-European, the migrant, as a crucial ideological cog in the European discourse on identity and belonging.

Together with these authors, I argue that in spite of its claims to represent a supra- or post-national political entity freed from the exclusionary tendencies of the national form, the process of production of a European identity has relied on similarly restrictive mechanisms. In order to trigger a sense of allegiance within the population of its member states, the EU has resorted to the figure of the foreign Other, traditionally mobilised in national identity building enterprises, as an ideological counterpoint against which what qualifies as European can be defined. This Other has been revamped to fulfil the need of the large regional project and has been granted alleged civilisational and cultural features. The idea of the 'migrant', sanctified in European legislation as the 'third country national', has been of utmost importance in the construction of European self and otherness.[4] The migrant as a constructed figure, who comes from outside yet infiltrates the inside, also allows the articulation of two processes of identity

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[4] It is also important to remember that the EU project does not only erect external borders of absolute otherness but also creates internal borders. The use of the derogatory acronym PIGS (Portugal, Italy, Greece and Spain) to refer to

formation, that of the production of difference and that of the dialectics of the same. The importance of such figures in the construction of national identities has already been the subject of extensive scholarly attention. Balibar (1996), for example, has offered detailed historical and sociological analyses of the role of the border as the place where both difference and sameness are produced and has shown that the 'border is central' to identity formation in nation-states. What is striking in the case of the EU, is the reproduction of similar mechanisms at the supranational level.

The centrality of the border to the EU identity building process is also visible in another way. One of the key material embodiments of the European unity and identity that Eurocrats have been trying to produce is the suppression of national border controls between member-states, making it possible for EU citizens to travel across the EU without a passport and visa. This free travel zone, named the Schengen Area after the Treaty that created it, currently comprises the territories of 25 European countries, including three non-EU member-states (Iceland, Norway and Switzerland). Only two of the EU member-states, Ireland and the UK, have decided to opt out of Schengen (though the Treaty has been integrated into EU law) and three EU member-states (Bulgaria, Cyprus and Romania) have not yet implemented it, mostly due to restrictions towards the freedom of movement of their citizens imposed by other EU countries. The abolition of intra-EU national borders through Schengen has been heralded as the ultimate illustration of the progressive potential of the Union. However, a closer examination of the EU today reveals a very different picture that contradicts the idea that European nations and nationalisms are being replaced with progressive cosmopolitan forces. Schengen operates as a single state for international travel and has therefore matched the elimination of internal borders with a reinforcement of Europe's external borders (those with non-EU member-states) so ruthless that the term 'Fortress Europe' has been coined to describe this process. Only those holding EU citizenship – which is derivative in that it can only be acquired through citizenship of one of the member states – can benefit from the privileges of Schengen and of freedom of movement within the Area. For others, not citizens of a EU member-state, the exclusion from national communities is now exacerbated by an exclusion from the community of Europeans. The institutions and rules of the Schengen framework thus materially call into existence and embody the idea according to which Europeans share a common identity, setting them aside from non-European. In this regard, I argue that rather than making nationalism obsolete, EU integration is actually crafting a form of hyper-nationalism with similar exclusionary tendencies. European identity is thus created at its external and internal borders – in its regime of visa and residence permits, in its retention centres, in its discriminatory policies against migrants within member states. Haynes puts it very clearly:

> it is here, in both the ideas and practice of immigration control, perpetuated both at the intergovernmental level and at the level of the EU, that the new 'Europe' is being forged, as much as in the debates and celebrations of internal unity (Haynes in Dale & Cole 1999: 25).

Contesting the EU Border Regime

In this context, it is now possible to see why groups and movements contesting EU border controls and immigration policies engage with issues at the heart of the European project, unsettling one the key mechanisms used to justify and stabilise its existence. Between November 2011 and November 2012, as part of my fieldwork, I conducted interviews with activists engaged in migrant solidarity work in three EU countries, namely France, Italy and the UK, and tried to grasp the ways in which their activities challenged and destabilised the dominant European discourse. Groups working in solidarity with migrants in Europe are varied and plentiful: they range from Brussels-based organisations engaged in policy work and lobbying of EU institutions to research groups concerned with documenting and reporting on imprisonment practices in detention centres, to numerous community or activists groups providing day-to-day practical support to migrants. Before starting my fieldwork *per se*, I therefore took a while filtering these groups in order to select the type of practices and discourses I would be focusing on. My main criterion was that activist practices that would constitute my case studies had to conduct migrant solidarity work at the European level, rather than solely in local or national contexts. Through this pre-research process, I identified 11 groups and campaigns in the three above-mentioned countries. I then conducted 21 in-depth interviews, lasting an average of two hours, with representatives (members, staff or volunteers) from these groups and networks. In spite of the common objective of their activities, my participants display a high level of heterogeneity, with groups ranging from established charities with paid staff to loose activist networks with little formal structures. Three groups are France-based *associations*[5] (Gisti, Fasti and Migreurop) whilst one, the Migrants' Rights Network (MRN), is a UK-registered charity. No Borders, No One Is Illegal (NOII) and Stop Deportation are unregistered activist networks. Finally, PICUM is a Brussels-based NGO and European Alternatives calls itself a 'transnational membership organisation' that brings together local groups. These groups and networks greatly vary in terms of yearly income or budget, membership requirements and structures of participation. One of the main focuses of my research is the way in which these diverse organisations and networks develop transnational links in order to engage in European migrant solidarity work. I am also interested in investigating whether any form of grassroots alternative European identity linking activists across national borders has been emerging. I will however not be addressing this point in this paper.

In order to meaningfully investigate and study activist practices and examine whether and how a process of transnationalisation is taking place, I have used some selected tools and concepts developed by Social Movement Theory (SMT) scholars, particularly New Social Movement (NSM) theory. The main appeal of SMT was its flexibility, which allowed me to look at a wide range of discourses and praxes, varying in shape, method and location, whilst retaining a comparative dimension by conceptualising them as forming a continuum – linked by the commonality of their aims – rather than as isolated sites of action – characterised by the specificity of their approach. NSM theory, a branch of SMT, focuses on the new organisational forms developed by contemporary movements, often characterised by decentralised, polycephalous and reticulated structures (Freeman 1983: 204). NSM theory focuses on the way politicised actors organise in loose coalitions to promote the particular discourse and objectives

[5] Under French law, an association 'is the agreement through which two or more people decide putting in common, in a permanent fashion, their knowledge and/or activities for an objective which is not profit-oriented' (own translation from French law on association from 1901).

of a social movement but do so in less formalised ways than traditional organisations (Buechler 1990: 61). This has been of high relevance to the study of a variety of movements that emerged since the 1970s (Wiktorowicz 2004a: 12) such as women's movements (Buechler 1990; Staggenborg 1998), lesbian feminists (Taylor and Whittier 1992) and neighbourhood movements (Stoecker 1995). NSM theory is particularly adapted to the study of the nascent yet uneven network of varied initiatives that I have come across in the field of European migrant solidarity activism. The main conceptual tools developed within SMT and NSM theory that I refer to are the following:

Opportunities and Constraints: the notions of 'opportunities' and 'constraints' in relation to social movements emerge from the recognition that social movements do not operate in a vacuum but rather exist in social contexts characterised by complex configurations of possibilities and limitations, which play a part in structuring a movement's dynamics (Wiktorowicz 2004a: 13). Exogenous factors can be both a source of further empowerment or a source of constraint for activists participating in social movement politics (Tarrow 1998; Kolb 2007: 52). These exogenous factors influence a movement and its choice of tactics and actions, as well as the degree of public exposure and visibility it achieves. Generally speaking, these concepts are used to describe the level of (formal and informal) access to political institutions and decision-making structures; the degree of popularity of the movement's claims and objectives within the wider public; the type of political system the movement operates within and the level of political repression it can be exposed to. Often referred to as 'political opportunities and constraints', it is worth noting that they also consist of cultural, social and economic factors (Kurzman 1996; Mc Adam & al. 2001). Thinking in terms of opportunities and constraints is extremely relevant to understand the different ways in which the groups and networks participating in my fieldwork organise their campaigns and protests. Factors such as whether groups are acting on their national stage or engaging with the European level will determine their chosen methods of action. Moreover, a restrictive context in terms of opportunities will often lead groups and campaigns to seek new alliances in order to gain more leverage. The question of the transnationalisation of pro-migrant initiatives in the EU must thus partly be analysed in relation to this mechanism.

Frames: the concept of framing emerges from the observation that ideology is not the sole guiding reference for discourse and action. Rather than referring to ideology as the only explanatory factor of the way in which people understand their political identities and discourses, it is more insightful to understand the role of ideas as socially created, organised and disseminated variables (Wiktorowicz 2004a: 15; Oliver and Johnston 2001). The process of discourse-creation and construction results in what SMT sometimes calls 'packages', which refers to the way in which movements frame their arguments by articulating various references and ideological resources in response to a problem (Wiktorowicz: 9). One must also remember than social movements exist and develop in social, political and cultural fields where multiple actors with various agendas and perspectives are competing over 'framing hegemony', which means they engage in contests to influence the way in which a particular issue or set of issues is interpreted and understood (Benford 1993). This is clearly the case of the relationship between a movement and the dominant frame it opposes, but contests over framing also happen within movements between activists holding different positions (e.g. violence vs. non-violence, pragmatism vs. ideologism, engagement vs. non engagement with the authorities, and so on). A social movement can be seen as an attempt at disputing the 'official frame(s)' in a context where mainstream discourses will attempt to limit the institutional resources and the public spaces available for the spreading of alternative frames (Noakes 2000; Wiktorowicz 2004a). Selbin (2010)

insists on the 'power of story', that is to say, the importance of developing a frame of analysis of both domination and reaction that successfully compels people to act on their indignation. The narratives that activists develop are characterised by 'associations and connections across time and space that people deploy to construct a revolutionary imaginary comprising symbols, names, dates, places, grievances, stories, and means and methods, which they then draw on as they consider the world and their options' (ibid: 166). In this sense, frames are crucial interpretative devices that operate as translators of grievances and perceived opportunities into the mobilisation of activists and resources toward achieving a movement's goals. The issue of framing is central to the work of pro-migrant groups and campaigns I am working with. Not only do these organisations have the stated aim to challenge dominant frameworks on migration, I argue that they also engage in a work of 'reframing Europe' which relies among other mechanisms on presenting a different 'story' of what Europe represents in the world and in history.

Repertoires: the concept of the 'repertoire' (often discussed as 'repertoire of contentious' or 'cultural repertoire') of a social movement refers to the set of protest-related tools and tactics available to it in a particular context. Commonly used tactics, actions and tools that feature frequently in social movements' repertoires include public meetings, demonstrations and rallies, vigils and sit-ins, petitions and lobbying of governmental institutions, press releases and media statements, strikes and pickets, boycotts, among others. Repertoires evolve over time, in response to the opportunities and constraints and to the framing strategies chosen by a particular social movement (Tarrow 1998). New tactics are integrated into repertoires all the time, as illustrated by the recent scholarship around Internet-based tactics and 'hacktivism' (Samuel 2004; Knapp 2005). My fieldwork will look in particular at how groups develop and selectively use several repertoires, each adapted to a particular level or type of action, and how, in the process of collaborating with other groups, these repertoires often evolve and sometimes converge.

The Changing Context of Migrant Solidarity Practices

Solidarity campaigns and groups opposing and denouncing the way in which migrants are treated are by no means new. They have featured in Western European countries' political and social life in various forms since the emergence of immigration controls and the importation of migrant workers for industrial purposes as early as the late 18th and early 19th centuries.[6] However, I would argue that while solidarity movements opposing racism, immigration controls and discrimination against migrants have been important aspects of the European political scene for decades, the groups and movements I am looking at in my research present some qualitative differences with previous forms of migrant solidarity. The groups created recently specifically to address issues engendered by the Europeanisation of migration frameworks and those that existed before but have both been pushed into engaging with European issues have been shaped by the new

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[6] In his book, *No One Is Illegal: Immigration Control and Asylum*, Steve Cohen, one of NOII's founding members, provides a historical overview of such movements and groups in the UK. In a similar vein, in *Open Borders: The Case Against Immigration Controls*, Teresa Hayter traces the origins of pro-migrant campaigning in the UK and explores the emergence of an explicitly anti-fascist and anti-racist dimension to migration struggles in the 1970s (Hayter 2004). Similar developments can be identified in other European countries, including France, though they vary in form and content. The Italian context, like that of other southern European countries such as Spain and Portugal, is significantly different in that, until the 1970s, Italy was mostly a source of emigration rather than a destination of immigration. As Italy increasingly became a destination of immigration, the Italian anti-racist movement emerged throughout the 1980s and held its first significant protest rally in 1989.

political and social context of migration in Europe. Here, I would like to mention three recent developments that have affected the political identities of pro-migrant groups and activists.

First, there has been an irruption of migrant-led struggles, which have brought a new migrant subjectivity into the political discourse associated with migration. The intervention of migrant-led initiatives in the political space of European societies is a relatively new phenomenon that has nonetheless deeply affected the ways in which pro-migrant groups operate and conceptualise their work. Though the relationship of the organisations and groups I have interviewed with migrant-led groups varies, the conceptual recognition of a subjectivity and agency of migrants, as a diverse and heterogeneous group, is unanimously asserted.

> Since the 1990s, we have much more organic links with organised groups of migrants. This is not because we didn't work directly with migrants before, but… there were few self-organised groups… This has changed, we have partners and that means our work has to be always grounded on the daily reality of the lives of *sans papiers*. This was a very positive development.[7]

The way in which migrants are objectified by mainstream representations speaking of 'flows', statistics and numbers whose presence results from 'push and pull' factors, is also denounced and challenged (Walter 2003). A participant from Italy spoke of eight ways in which the mainstream media's language around migration was flawed:

> There are eight rules media follow to speak of immigration. I will tell you about them now (…) First, the use of shocking news: statements not corroborated by evidences. The phenomenon of irregular migrations is represented as a phenomenon of frightening proportions (…) Second, the use of a terminology that involves contempt, that dehumanises, that deprives of dignity (…) Third, the use of words with negative connotations (…) Fourth, the abusive use of a military terminology like, for instance, emergency, alarm, siege, invasion, landing. The message reaching the public opinion is that Italy is at 'war' and that migrants are 'the enemy'. Fifth, Italian media interpret the migratory phenomenon through the opinion of politicians. But migrations are a complex phenomenon requiring experts able to 'explain' it. Sixth, a biased selection of people participating in the debates (…) Then, the use of words denoting something abnormal or extraordinary. For instance: biblical exodus, humanitarian tsunami, earthquake, human weapons. Finally, there is a total lack of care and knowledge about the situation in the countries of origin of migrants. This calls into question specific political and historical responsibilities of Italy towards countries such as Libya, Somalia, Eritrea (…) which have a colonial past with Italy.[8]

This evolution has much to do with the irruption of migrant-led struggles on the national and European scenes, where non-citizens affirm their subjecthood and claim their 'right to have rights', even when and where the space for them to do so has to be claimed by force. The French *sans-papier* movement of the 1990s is a well-known example of this. A large part of the scholarship on the *sans-papiers* focused on the emergence of a new political subjectivity of non-

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[7] Interview with Gisti's Claire Rodier (Paris, September 2012)
[8] Interview with When We Don't Exist's Roberto Noury (Lampedusa, July 2012).

citizens and the disruption of the traditional understanding of democracy, civil rights, and citizenship (Wright 2003: 5).[9]

The second development is the emergence, since the late 1990s, of various contentious political and social interventions that can be loosely brought under the label of anti- or alter-globalisation politics. The inscription of migration-related struggles within the framework of the anti-globalisation movement has not been an obvious and unproblematic development. In fact, the earlier forms of transnational anti-globalisation political interventions largely left migration issues aside, as illustrated for example by the absence of specifically migration-focussed workshops in the earlier editions of the World Social Forum. This was mostly due to the fact that the 'globalisation' of immigration controls was not as obvious as that of trade and finance and is still characterised by a complex intertwining of national and supranational practices. However, both analytically and practically, this gap has been significantly bridged and migration has been firmly inscribed on the WSF's agenda since at least its fifth edition in 2005. In Europe, Sandro Mezzadra notes that the 2001 Genoa protests in Italy already saw the organisation of a large migrant rally, which he identifies as the first encounter between migrant organisations and the 'global movement':

> … the demonstration on 19 July 2001, which opened the protests against the G8 meeting in Genoa with the slogan 'Freedom of movement - freedom without boundaries', has put the issues of migrants before the 'global movement' born in Seattle for the first time. (Mezzadra 2004: 268)

The European Social Forum (ESF), the regional expression of the so-called Global Justice Movement, has thus been strongly influenced by anti-racist and pro-migrant themes and, reciprocally, anti-capitalist events and social forums have been important moments in the development of pro-migrant groups and networks working transnationally in Europe. Most of my participants had directly participated in an ESF or another large anti/alter-globalist gathering, and the discourse, analysis and tactics of the anti-capitalist movement have had a strong influence on the ways in which these groups understand themselves and their struggle and design their actions and tactics. This might not be immediately obvious with all the interviewed groups, yet my participants recognise the relevance of the anti-capitalist critique in order to understand the EU's immigration and border regime.[10] One of the participants summed up this close relationship as follows: 'we are anti-capitalist, feminist, anti-debt of the third world. These are our values. But we also are action-oriented in our local context. We merge the local and the global'.[11] Another one also stipulated that: 'one cannot understand migrations today without internationalising the issue. This is why we have a global, in fact alter-global, approach'.[12] In particular, it is clear to them that the border control practices of a given EU member state cannot be seen as simply the expression of an unjust national government. Rather, all the groups and networks inscribe their analysis within a larger reflection on the roles of borders globally, and their relationship with other global dynamics of domination and exploitation. Another aspect is the use by pro-migrant groups and networks in Europe of tools and tactics developed by anti-globalisation activists, such as transnational mailing lists and forms of action directed against non-state actors. The

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[9] See also McNevin 2006 and Lowry and Nyers 2003.
[10] For example, MRN's Director explained that the official narrative of his organisation tended to be more liberal and human rights-oriented but that it didn't invalidate a critical understanding of global migration nowadays.
[11] Interview with Fasti's Anna Sibley (Paris, September 2012)
[12] Interview with Gisti's Jean Pierre Alaux (Paris, September 2012)

intersection between the anti-globalisation movement's politics and tactics and the particular traditions and cultures of the various groups participating in the research is a complex one but it has been a key structuring factor for migration struggles in Europe.

Finally, the institutional terrain on which these groups and campaigns are fighting strongly diverges from that of previous pro-migrant initiatives. The participant groups and campaigns exist in particular local and national settings operating through their own political institutions but, at the same time, they all engage in a transnational political praxis. As previously mentioned, the transnationalisation of their work has been the result of the realisation that immigration and asylum controls had changed and had to be fought at different levels and by addressing different actors – in particular that there was a need to fight beyond national boundaries and to confront trans- and supranational institutions. The evolution of the centre of power and decision-making into a multi-layered and complex transnational and intergovernmental assemblage has thus called for new structures and tactics in order to efficiently address the new political and institutional setting in which they operate.

When and Why: The Emergence of Transnational Pro-Migrant Actors in the EU

In order to test the hypothesis that an increasing transnationalisation of migration struggles has been taking place in the EU in response to the harmonisation of immigration laws and policies in Europe, I asked my participants a series of questions concerning their relationship with the EU and the ways in which the process of communitarisation of legislative frameworks related to migration and asylum had affected their work. A strikingly consistent narrative emerged, identifying a number of key moments in the development of European legislation, which decisively encouraged activists to operate at the European level and to develop transnational links with groups in other EU member countries.

The Europeanisation of legislative frameworks governing issues related to migration and asylum has been a key area of cooperation between EU member states at least since the 1985 Schengen Agreement, which envisaged a zone of free movement between five countries of the European Community at the time (Belgium, France, Germany, the Netherlands and Luxembourg). The rationale for Europeanising immigration and asylum policies was that the free movement of people within the EU/ECC space could only happen if, first, all member states applied identical criteria regarding entry requirements into their territory for 'third country' nationals and, second, if the controls which had been waived at the EU's internal borders were reported and reinforced at its external borders. These legislations, which had started as inter-governmental regulations, were fully incorporated into European legislation with the 1997 Treaty of Amsterdam. The Treaty was implemented at the 1999 Tampere Summit, which was strongly criticised by European civil society organisations for its secrecy, lack of transparency and the association it made between 'immigration' and 'security' (Statewatch 2003). Subsequently, the harmonisation was further codified with the 2006 Schengen Borders Code[13] and the 2010 Schengen Visa Code[14] which legislate on border surveillance, joint controls and cooperation between member states regarding border checks and govern the role of the European external border agency, Frontex. Another development brought about by the Schengen Agreement is the

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[13] See *Schengen Borders Code* < http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:EN:PDF> [last accessed in March 2013].
[14] See *Schengen Visa Code* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995R1683:EN:HTML> [last accessed in March 2013].

Schengen Information System (SIS), a policing information network that was created to supposedly compensate for any security 'deficit' that could be engendered by the removal of internal border controls in the EEC/EU and which constitutes a transnational database storing information concerning various 'risk groups and individuals', accessible by Europe's police forces and security agencies (Lodge 2009: 142).

Several participants admitted that it was not until the mid- and late 1990s that they took full measure of what was happening at the EU level. They acknowledged feeling concerned following the 1985 signature of the Schengen agreement, in particular as it failed to address the issue of the status of 'third country nationals' and started to refer to the reinforcement of Europe's external borders, but it was not until the 1992 Treaty of Maastricht, which created the EU and European citizenship as an exclusively derivative status, that the discriminatory and exclusive nature of the Union was fully grasped. Soon after Maastricht, the process of Europeanisation of immigration and asylum laws was initiated, boosted by the 1995 implementation of Schengen. This process encouraged closer collaboration between activists in different EU member states, both to exchange information in order to understand what the effects of these developments were and to share ideas about how to resist them. An interviewee from Gisti summarised these evolutions as follows:

> At Gisti, there was a preoccupation since the late 1980s … regarding what would come out of the Schengen Agreement. Some of our members were paying close attention … to something which the French *associations* were not talking about - the implementation of this Schengen agreement, which was going to reorganise circulation inside what was then the Schengen area … and all the consequences it would have on the status of migrants in France… But it was really difficult to work with our traditional *associative* partners, because all this seemed very theoretical for these partners. It wasn't there… Contrarily to what was happening in other countries, the French government never publicly announced the negotiations or what was being talked about in Brussels about the implementation of this Schengen Area (…) But we quickly anticipated that from this system would come out many things which would have rather serious implications, and that we had to be ready for what would come next. And thus to find partners elsewhere, outside France…[15]

While it might have been the case that, at first, the developments were going unnoticed in France, participants in Italy which, like other Mediterranean countries, was suddenly turned into a border guard country for western and northern European member states, draw a very different picture:[16]

> In Italy, until the mid 1980s, we didn't have any immigration law. Issues to do with migration and residency were still governed through a royal decree from the 1930s, which basically gave administrative discretion on the matter. Of course, I am not saying that Italy was a heaven for immigrants. But that changed very rapidly after 1995, when the Schengen Agreement was coming into place, and Italy was told it had to adopt immigration policies that were along the lines of those that existed in northern European countries. Not only the law changed, there was a discourse to go with it, and you could see the change in people's attitude, you could see racist graffiti appearing on the walls …

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[15] Interview with Gisti's Claire Rodier (Paris, September 2012).
[16] Similarly, in Portugal, the post-Salazar immigration laws passed in the mid 1980s had to be strongly tightened under pressure from the EU in 1993, in preparation for the implementation of Schengen.

You know, there was definitely a new form of racist discourse in the media, by the politicians, that was being pushed forward, in the name of Europe.[17]

It is at the occasion of the 1999 Tampere summit that, for the first time, these diverse experiences were brought together by activists. Schneider, a No Border activist and blogger, remembers the days leading up to the formation of the No Border network before 1999 as follows:

It all began with a meeting in Amsterdam, at the margins of a big demonstration against the EU summit in 1997 … The priorities and objectives of the political work in each country were gravely different, but what the groups had in common was the demand for practical, political intervention at the base i.e. grassroots politics. The new network was … concerned with systematically creating the preconditions for a Europe-wide collaboration, whose purpose was in the first place to enrich the every-day activities in each and every country … Yet, although a regular exchange of information was arranged amongst the participants of the first network meeting, the initial zest soon died away … However, this was about to change: in 1999 the network was renamed "Noborder" and relaunched with the European-wide protest action to mark the occasion of the EU's special summit "justice and the interior" in Tampere. This latter was expressly dedicated to the aim of standardizing the asylum and migration politics in the European context. In the preparation some Noborder groups had managed to connect with promising contacts in France and, above all, in Italy. On this basis a common European day-of-action was arranged (…) to protest in a decentralized but coordinated manner against a new chapter in the politics of separation: (…) more exclusion, more control, more deportation.[18]

For these activists, the word Tampere became shorthand for the Europeanisation of immigration and asylum policy. It came to stand for the very process whereby a certain Europe, based on a system of segregation and discrimination and on a discourse of exclusion, was taking shape. It was a key moment in the history of many of the autonomous migrant solidarity groups: from then on, they started to consistently try to match the practices of national governments by making their tactics and activities similarly transnational. Following the Tampere counter-demonstrations, the European No Border network emerged. 1999 was also the year when PICUM was established in Brussels. PICUM came about at the initiative of a group of grassroots organisations from Belgium, the Netherlands and Germany, which shared similar concerns regarding the lack of protection for undocumented migrants in the new European legal framework on immigration and asylum. PICUM's Director explained that:

As the laws around migration were being transferred into the legal structure of the EU, groups in various member states realised that … the issue of undocumented migrants was left out of these juridical developments and that they would not gain any form of protection through the process of Europeanisation. We felt undocumented migrants and the problems they face had to be defended in the EU, and the best way for us to have

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[17] Interview with Italian activist Nidal (Rome, July 2012).
[18]http://www.tacticalmediafiles.net/article.jsp;jsessionid=82879400D2D0FFB4F4C701D6D2584FD7?objectnumber=44008

leverage was to join forces and literally 'turn up the volume': make our voices louder by shouting together.[19]

Tampere called itself a summit on 'freedom, justice and security', presented as core tenets of the European project. But activists were quick to denounce that the quest for a European identity was being led at the expense of many other European residents: all those who did not have citizenship in one of the member states. European citizenship did not therefore move away from the exclusionary features of national identity discourses but, in fact, added an additional layer of exclusion for non-citizens.

How and What: Activities, Tactics and Tools of Pan-European Pro-Migrant Actors

With the successful institutionalisation of the nation-state, peaking in the late 18th and 19th centuries, political action and affiliations had become increasingly concentrated at the national level. In this paper I have argued that, in the case of the supranationalisation of political frameworks that is taking place under the auspices of the European Union, the dominant attempts at fostering a sense of shared political destiny among the 'people of Europe has largely failed. Yet, a process of transnationalisation of contentious politics and identity has nonetheless been taking place in order to oppose and challenge discourses and policies coming from the EU. During the course of my interviews, I asked members of the participant organisations and campaigns to explain the ways in which they developed, strengthened and expanded pan-European links. The sets of activities, tools and tactics they described fall into three broad categories: communication and decision-making, network (building and expanding) and organising joint protests and actions. I am using this classification for the sake of analytical clarity but many activities fall within at least two of these categories.

Transnational communication
Communication tools used by pro-migrant groups across Europe can be divided into two separate, yet sometimes overlapping, categories: on the one hand, groups and campaigns develop internal communication tools and, on the other hand, they design ways to communicate with the wider public, the media, relevant political institutions and other groups focusing on different issues. As many scholars examining internal communication among activist networks have observed, mailing lists are the preferred communication tool for many activist groups and campaigns (Kavada 2007; Saeed, Rohde and Wulf 2011). For example, since 2003, Migreurop has run a public mailing list intended for the 'circulation of information and debates about the European externalisation policies and detention centres for migrants'.[20] The list currently has 982 subscribers,[21] which includes numerous groups. Subscription is opened to all those who are interested in receiving and sending relevant information. The average number of emails circulated is just over 100 per month. [22] However, Migreurop is organised through a number of working

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[19] Interview with PICUM's Director (Skype, June 2012).
[20] http://archives.rezo.net/archives/migreurop.mbox/Y5XOJHJPMKROR5HKN4OMMFDBI5N3LZPV
[21] Figures checked on 19 March 2013.
[22] These are my own calculations based on list circulation during six months (July to December 2012).

groups devoted to organising the network's activities related to specific topics.[23] All these working groups have their own private mailing lists.

Similarly, all No Border groups in Europe have set up local mailing lists where they exchange information relevant to their particular contexts, but there also exists a Europe-wide list, the Action 2 list, where information and announcements are exchanged between groups and activists across national contexts. The history of this list is an interesting illustration of the dynamics of transnationalisation of pro-migrant activists in Europe and the interaction between online and offline developments. It was agreed to set up the list in October 2004 in order to help coordinating a European day of action for migrants that had been called for at the European Social Forum (ESF) in London that year. This followed the success of the first European day of action 'against detention centres and for the legalisation of all undocumented migrants', which had taken place on 31 January 2004 and had seen demonstrations in 40 cities across Europe.[24] This day had been an important step in the networking process necessary for the Europeanisation of migration struggles. The callout for the second day of action aimed to build on this success in order to further develop communication structures transnationally. It was aimed at 'all groups, networks and social movements, not only the ones working on migration-related issues'.[25] At the time, groups from Italy, France, Spain, Germany, the UK, Greece, Portugal, Belgium and Slovenia joined the Action 2 mailing list in order to communicate with each other about the demonstrations and actions they were planning in their local and national contexts at this occasion. After the second European day of action took place, the Action 2 list remained active and it is used to this day.

Besides providing transnational communication structures, these mailing lists have also played in key role in 'Europeanising' issues, as one of the participants from Fasti put it:

> If we face a problem and we need other activists and organisations to know about it quickly, in order for example to elicit a quick response, well if we send an email to the list, the local problem becomes immediately European.[26]

In this sense, this communication process among activists and groups contributes to the construction of a more sophisticated analysis and a common discourse, based on the wide range of experiences and information circulated on the lists. It is worth noting here that this form of transnational communication tools were first developed and used by the anti-capitalist movement and later appropriated at various levels and in various ways by other types of groups and networks. They are another telling example of the influence of the 'global' anti-capitalist movement on activists in Europe and the West more generally.

In order to engage in external communication, different types of tools, platforms and activities are used. The more established and institutionalised groups, such as MRN and PICUM, often produce a regular newsletter to keep members and/or interested groups and individuals informed of their activities as well as of relevant political and policy developments. For instance, PICUM first started distributing its newsletter in 2004. In 2011, the organisation decided to set up two different platforms for its public communication work. An electronic bulletin is now circulated on a fortnightly basis in English and a newsletter is produced every three months in six

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[23] For example, Migreurop has a group working on detention, another on externalisation, as well as several working groups working on the different aspects of its campaigns.
[24] An archive of call outs for action can be found at http://www.meltingpot.org/rubrica119.html?art=30
[25] Ibid
[26] Interview with Anna Sibley from Fasti (Paris, September 2012).

languages (French, German, Spanish, Dutch, Portuguese and Italian) as a summary of the previous six English bulletins.[27] The bulletin focuses on significant developments concerning migrant rights at various policy levels (national, EU but UN). It also has a section session on events, publications and PICUM member organisations' activities. PICUM decided to have a more regular bulletin but could not afford fortnightly translation hence the recourse to a quarterly multi-lingual newsletter. [28] Similarly, MRN sends out a weekly newsletter to around 5,000 email subscribers in the UK, Europe and beyond. It focuses on policy development in the UK and the EU but instead of simply relaying information produced elsewhere it also contains MRN's own analysis of current topics and links to MRN's blogs these issues. This newsletter was quoted as a reliable source of information on the sector by other individuals working in similar organisations in Europe.[29]

External communication is also organised through events and publications, which groups, campaigns and organisations undertake in order to spread their message and discourse to a wider public, which might not be familiar with the issues they are working on. This type of external communication often requires a thorough work of 're-framing' so as to make the analyses more accessible and engaging for people who are familiar with pro-migrant work. The different ways in which activists and groups frame their discourse depending on their audience can be exemplified by Migreurop's 'Map of the camps'. The map, of which five editions have been published so far in several languages, [30] visually represents the various centres and sites of migrant detention in Europe and at its borders. While Migreurop also produces written literature on the issue of migrant detention, the addition of a map has been a key tool to translate often complex and detailed information into an accessible and easily communicable message.

Organising or participating in public events is also a common tactic used by groups and organisations in order to communicate their message to people who would not usually be on their mailing lists or read their newsletters. Events follow a wide range of formats, from academic-type seminars and panel discussions, workshops and stalls at festivals and conferences, to cultural events such as concerts, exhibitions and film screenings. When participating in events, organisations and groups might participate in an event that is not directly related to migration with the aim of bringing the issue to the attention of a new audience. This could be seen as public communication through a process of mainstreaming migration-related issues into various other circles. In this respect, it is interesting to know that, for many years, autonomous activists who then became part of networks such as No Border and Migreurop, were meeting at the fringe of other transnational manifestations, such as the ESF. This allowed them to meet without necessarily having the resources to organise transnational gatherings themselves. Yet, it was also a way to make sure migration as a theme was represented at these events. In a similar vein, groups and organisations participate in trade union conferences (NOII, Fasti, Gisti) and pan-European conferences (Migreurop, European Alternatives, PICUM).

Building and expanding networks

I have distinguished between communication and network-building activities in the sense that network-building work, both internal (consolidation) and external (expansion), has the clear intention of recruiting and retaining members. 'Maintaining a network alive' says Migreurop

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[27] Interview with Anna Sibley from Fasti (Paris, September 2012).
[28] Interview with Michele Levoy from Picum (Skype, June 2012)
[29] Interview with PICUM's Director (Skype, June 2012).
[30] The fifth edition is accessible online at http://www.migreurop.org/IMG/jpg/map_18-1_L_Europe_des_camps_2011_v11_EN.jpg.

coordinator Eva Ottavy, 'is not a small task; it is a systematic and organised job. This job requires structures and tools, which allow equal participation of all and solidify the links between our various members'. [31] The wide availability of online tools, which allow the active involvement of network members or fellow activists, is of course crucial in this regard. Eva Ottavy adds:

> We are not a political party, we are an associative network, and what that means is that we do not have a centralised decision-making power and then members implementing them. Our network is a horizontal platform, which means we need tools to allow horizontality in our everyday work. And if you want a network to be transnational, you must develop transnational horizontal networking tools. (…) This is why we have our working groups, and we internationalise the daily life of the network, we have more and more Skype meetings so that our colleagues in other countries can participate as much as people here in France or nearby. And we also do a big work of translation. [32]

Migreurop also organises yearly *rencontres internationales* ('international meetings') for its members. The first such meeting took place in Seville, Spain, in 2005. Given the network's wide geographical spread, it has since tried to have these meetings in various countries inside and outside Europe and to cover the travel costs of representatives from its member organisations. There have been *rencontres* in Rabat, Morocco (2006), Paris, France (2009), Istanbul, Turkey (2010) and Cecina, Italy (2011). The *rencontres* are, above all, the main opportunity for network members to meet each other in person and, therefore, play a vital part in the strengthening of the network. As the network's coordinator argues 'meeting in person adds something qualitatively different: it does not mean we cannot work with people we have only met virtually, but something gets strengthened when there is face to face contact'.[33] A number of partner and like-minded organisations are also invited to attend these meetings, which has been crucial to the expansion of the network.

One should not, however, forget the limitations of such inter/transnational meetings: they generally take place on a yearly basis and even where conscious efforts of inclusion are deployed, they will tend to exclude those who cannot obtain visas or whose individual situation prevents them from travelling (having children and so on). Those pragmatic constraints might shape, to an extent, activists' profiles. Though they can be successful at reinforcing links between groups in the case of a tight network like Migreurop, they can sometimes also be mere formalities, with little concrete outcomes. The Communication Officer at MRN admitted that

> some of these things [European meetings] are definitely over-estimated. (…) We still go, but I find very little value in that sort of, err… (…) It is sort of an external initiative: a "we need to share experiences, and we need to talk" (…). But it is always the same people, the Brussels people and a few more who are reps of big NGOs in member countries… Or maybe sometimes you meet groups that are so different to you that you don't really see the usefulness of meeting them… On the other hand, some of the less formal ways of collaboration have a lot more added value to them… the problem with that is that it is very difficult to sustain them because you kind of, I mean, you obviously need funding for pretty much everything you do. [34]

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[31] Interview with Migreurop's Coordinator Eva Ottavy (Paris, September 2012).
[32] Ibid.
[33] Ibid.
[34] Interview with MRN's Communication Officer, Jan Brulc (London, April 2012).

This quote above touches on three important issues characteristic of large transnational events: the risk that only a small cosmopolitan elite will be represented, the varied organisational models across the groups and the obstacles to collaboration that they can pause and the lack of autonomous resources available to most transnational networks and campaigns (see della Porta 2009: 34). However, the limitations that this type of events may entail can be contrasted with the efficiency of what we can call 'encounter in action'.

Building and strengthening networks can come as a positive by-product of initiatives or activities organising with other primary purposes, such as protesting, and the weaving of links does not only take place on the day and site of the action itself, but throughout the preparation process. Organising a coordinated day of action, for instance, may not eventually lead to a physical encounter between the various groups planning an event in their national settings, yet it may encourage people to be in contact with one another and to collaborate, hence producing and strengthening links and networks. Describing a ESF, Nicole Doerr (2006) notes that:

> Often, representatives of local groups or activists from different countries came together at the transnational level with more open-mindedness and curiosity about each other's histories than at the national level, where cleavages within and between social movements have consolidated along traditional fractures and personal enmities.

This is an interesting remark that can give us an indication of the importance of groups' participation in transnational events for the consolidation of networks. Almost all the participants to my research said they had participated in at least one transnational event or meeting, such as the World Social Forum, European Social Forum or a European Day of Action. In the section below, I will focus on a number of events and actions that have taken prominence in the migration struggles field in Europe and analyse their ability to disrupt dominant discourses and practices. While I will primarily discuss how tactics are used and shared by activists with the intended purpose of protesting and disrupting, it is also important to keep in mind their networking potential.

Transnationalising protest
Certain forms of European-wide protests have by now become strongly associated with the migration field. An important example in this regard is the No Border camps. No Border camps deserve particular attention as a form of politics and activism that redefines the scope of contentious action in the field of migration in Europe whilst at the same time following a long tradition of protest tactics, that of the protest camp. No Border camps are also of interest, I would argue, because they have influenced the discourses and practices of other pro-migrant groups by bringing direct action to the migration struggle field and by expanding the boundaries of the acceptable discourse when it comes to the issues of migration, sovereignty and citizenship. Before moving on to a detailed analysis of the No Border camps, it is useful to consider once more the specificity of No Border as a network.

It would be difficult to qualify No Border as a 'movement', at least in the traditional sense, due to its largely decentralised, diffuse and transnational nature. Many No Border activists consider 'No Border' as a label that can be claimed by anyone subscribing to such politics, which tacitly implies a strong anarchist affiliation. This anarchist tradition is better understood in terms of the tactics, methods and practices used by the network, rather than as a strictly defined

ideological position.[35] No Border activists believe in horizontal, non-hierarchical structures of organising and reject the binary identities of citizen/non-citizen, legal/illegal.[36] The network is a social and political site, that does not operate through a permanent membership model, but rather through a common thread of political beliefs and principles that links a number of radical migrant solidarity groups and campaigns together.

Pausing to reflect on the camp as a contentious political practice in the context of my research is particularly relevant, not least because of the symbolism associated with camps in the field of migration. Indeed, recent literature on migration controls and securitisation has focused on the camp as a 'zone of exception' paradigmatic of sovereign power (Agamben 1998). The image of a pro-migrant camp is in this sense highly powerful. On the other hand, the camp as a tactic of protest (exemplified by peace camps but also, for instance, in campsites set up by homeless people in urban centres[37]) also has a long history that has largely escaped scholarly examination. The camp must thus be examined as a political act establishing a site of solidarity that asserts the right to presence and belonging (hooks 1990) and proposes a space for the existence of new political subjectivities (Walters 2006).

No Border camps can be analysed within the tradition of camps as a political act: they are set up at particular geographical locations of symbolic relevance for the European border regime and emphasise the relationship between situational experiences and larger dynamics at work in Europe. They also aim to re-politicise the sanitised everydayness of repressive immigration and border controls by exposing their devastating consequences on people's lives.[38] No Border camps have taken place at physical borders, at immigration detention centres, near airports associated with forcible deportation and, as was the case with the Strasbourg and Brussels camps, at emblematic sites of EU power and decision-making. These camps can be looked at through Hakin Bey's notion of 'temporary autonomous zones' (Walters 2006) in the sense that they aim to create temporary spaces that elude formal structures of control. Typically, a No Border camp will be a horizontal space of experience-sharing and political debates, with various workshops and discussions, as well as a number of planned and spontaneous direct actions and protests aimed at the 'disruption of the running of the border regime'. [39] In addition to their protesting dimension, No Border camps are key moments in the consolidation of the network, with activists from the various groups operating under the label in different countries travelling to the camp. Whilst local and national groups have regular meetings, the camps are the most important occurrence of network-wide (European) meetings, bringing together people from different countries face to face to conjointly develop the analysis and tactics of the network as a whole. They are also moments when the network expands by engaging with the new activists, migrants and local communities and asserting a publicly visible presence through protests and actions in the cities and countries where they take place. The network has also adopted innovative tactics and technological tools to expand beyond the limitations imposed by geographical locations, as described by No Border activist Kuemmer:

> [No Border] actions were expanded and the ideas spread. This resulted last summer in a border camp chain, which started in Tarifa in southern Spain (Spain-Africa) and

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[35] Interview with No Borders UK's Sean (London, April 2012)

[36] Ibid.

[37] See for example in France: http://www.youphil.com/fr/article/04149-rencontre-avec-les-expulses-de-la-cite-des-4000?ypcli=ano

[38] Interviews and personal conversations with No Borders UK's activist (London, April 2012 and on-going)

[39] Interview with No Borders UK's activist Alex (London, January 2013).

continued through Krykni (Poland-Ukraine), Lendava (Slovenia) and the internal border at the Frankfurt airport (Germany) … Permanently crossing borders, the noborderTOUR connected border camps with other sites of resistance … Connections were also made in virtual space: the "borderstream" visualized three border camps that took place simultaneously ... Strasbourg 2002 is now the first event organized by the entire noborder network as a joint action with anti-racist social movements, groups and individuals from 15 different countries. [40]

Organising transnational events, campaigns and days of action is a crucial objective for all the participant networks and groups in a double sense: to stage various forms of public protest as well as to forge and consolidate transnational links and alliances. Eva Ottavy explains that inter-associative campaigns are an increasing focus for Migreurop, which used to primarily focus on internal networking work, but has now realised the 'complementarity between strengthening the network inside, and expanding it outside'. [41] The case of B4P is illustrative in this respect: the campaign was largely supported by Migreurop and its member organisations, but a number of other associations, groups and individual activists also supported it in a variety of ways. According to a participant in B4P:

> It was great to take part [in B4P] as it brought us closer to other activists and groups. We might have known them through emails but now we feel we have comrades. And new projects have come out of the campaign, like the Watch the Med idea. This campaign was just the start of something bigger! [42]

An interesting effect of the transnationalisation of pro-migrant protests in Europe has been the sharing and mixing of tactics and strategies between and across groups and networks. For instance, B4P's idea of a flotilla stopping over at various symbolic points of the EU border regime around the Mediterranean Sea, and staging symbolic actions and protests to denounce the effect of EU policies on people's lives, strongly inspired another campaign: one year later, in the summer of 2013, a new flotilla project called 'Voices from the Border' took place with participants from the Netherlands, Belgium, France and the UK. One of the 'Voices from the Borders' main members, a Dutch activist based in Amsterdam, was involved in B4P the previous summer and decided to initiate a similar campaign in his own context and with another set of partners. This is an interesting illustration of the ways in which tactics used by pro-migrant groups and campaigns travel beyond their original site and are re-appropriated and re-used in different spaces by other activists.

Another example of this has to do with the forms of actions that pro-migrant groups and activists stage. Organising conventional symbolic actions and protests has been a common tactic. For instance, at the launch of the Frontexit campaign, in Brussels in March 2013, fake migrant raids were orchestrated with Migreurop activists staging street arrests in public spaces in order to make this practice visible to passers-by. However, some groups and networks, such as the No Border and Stop Deportation networks, have focused on more unconventional direct rather than symbolic actions with the aim of actually interrupting immigration control practices. [43] These include actions intended to disrupt, delay or stop immigration raids and forcible deportations,

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[40] http://www.republicart.net/disc/hybridresistance/kuemmer01_en.htm
[41] Interview with Eva Ottavy (Paris: September 2012).
[42] Interview with a participant in B4P (Lampedusa: July 2012).
[43] Interview with No Border activist Sean (London: April 2012).

where activists attempt to physically block the arrests or deportation of migrants. An important aspect of direct action is that it does not try to pressure national and European authorities into stopping or changing their policies. Rather, it aims to disrupt the process through direct intervention, using various types of traditional and innovative protests, occupations and blockades. Such actions also often target other, non-state actors, such as the security companies, travel agents and airlines complicit in forcible deportations. Tactics include the occupation of the company's offices or calling for the boycotts of particular businesses.

This is perhaps the most visible illustration of the way in which migration struggles in Europe have been adopting some of the tactics from the global anti-capitalist or anti-globalisation movement, as well as of the new political and institutional terrain on which some pro-migrant groups are operating. This Europeanisation of immigration law has placed activists in the face of a new type of power and decision-making structure, characterised by its elusiveness and lack of transparency, as seen in the description of the EU as a political structure in earlier chapter. The issues of governance in the field of migration may not necessarily be the same as those in the areas of trade and finance, where anti-globalisation activists understood the unwillingness of individual states to apply pressure on corporate power and, thus, increasingly adopted direct actions tactics aimed both at disrupting international meetings (such as G8 and G20 summits) and at targeting and pressurising corporations. Yet, I would argue that the lack of representation mechanisms in the EU, as well as in national states applying European law, has led to the adoption of similar tactics. Indeed, the process of Europeanisation of migration law and of transnationalisation of migration struggles has led to the radicalisation of the 'repertoires of contention' used by pro-migrant activists and groups. For example, tactics originally used mostly by No Border-type groups, such as the denunciation of and 'reputational damage' to companies and businesses involved in the border regime and the 'deportation machine', are now commonly used by other more traditional pro-migrant groups and campaigns.

The history of this convergence of analytical, political and strategic frameworks and its relation to the Europeanisation of migration and asylum law on the hand and the development of other transnational social movements in Europe one the other hand was summed up by one of the participants as follows:

> Our first attempts (…) to work with European partners were a lot more difficult (…) I really think there was a shift, in the years 2000s, in the relationships we were able to establish with our European partners. I think one aspect is that indeed migration policies have Europeanised and that similar issues started to emerge (…) And there also was, as I mentioned with the European Social Forum and the World Social Forums, the influence of the social movements, that started developing in all domains, not only migration but a lot of domains – housing, women struggles… (…) It started mixing people, mixing activists, making them meet, speak to each other… (…) And this created a sort of culture that enabled the emergence of a common openness, of common values and of common actions.[44]

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[44] Interview with Claire Rodier (Paris: September 2012).

Conclusion

The process of harmonisation of migration and asylum laws in the EU has involved legal, discursive and practical developments, which have caused grievances and encouraged contentious reactions within the migrant solidarity activist scene in different European countries. The transnationalisation of resistance has been seen as essential in order to 'match the level of the attack', or has organically developed in response to some of the transnational practices of the EU. However, activists seem to require concrete examples of the consequences of the legal and discursive developments regarding migration and asylum in the EU for their awareness of the importance of activism at the European level to be raised. An important question that my research is also addressing is that of the emergence of collective, transnational European identities and alternative political subjectivities. Indeed, many of my participants only saw Europe as a negative reference point and not as a space where positive political interventions could take place. Instead, a series of regional, international or non-European cross-border identities were formulated and re-enacted. The question of whether migrant solidarity struggles in Europe can become a strong and robust social movement in the absence of a unified discourse and a shared identity thus remains to be explored.

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A Conceptual Lever and the Narrative Construction of the Cyborg as a Quantum Machine

Sabrina Liccardo

Abstract

Archimedes purportedly announced, "Give me a lever long enough and a fulcrum on which to place it, and I shall move the world." Archimedes was referring to how the use of a lever could provide leverage by amplifying an input force to create a greater output force executed against an object. Thus, the basic elements of a lever include effort, load or resistance, a lever arm, pivoting point and a fulcrum. In this theoretical paper, I have mapped several concepts onto the following elements of a lever; the psychological world onto '*effort*', the socio-material world onto '*load*', history, culture, and tradition onto the '*lever arm*', temporality onto the '*pivoting point*', narratives onto the '*fulcrum*' and a 'chronotope' onto the *ground*. Who is the 'One' that attempts to move the 'other' and how does he use the elements of a 'lever' to do so? In a phallocratic culture, the difference between a set of dualities is constructed as binary opposites and the positive terms, which dominate the binary, are linked to one particular sex. Thus, man (the 'One') is valued over woman (its negative 'other'). If we are to transform culture we need to destabilise the binary opposition that is founded in the male/female couple (Cixous, 1981). Thus, in this paper I compare mechanical nature of a lever with the dichotomous patriarchal social system, in which the masculine dominates the construction of meaning. I use the elements of a 'lever' to illustrate how the reproduction of a phallocratic culture might occur. This patriarchal social system follows the principles of digital computing in that it encodes 'data' that are associated with the masculine and feminine into binary oppositions. However, the 'cyborg' (Haraway, 1991) as a quantum machine, can exist in more than one state simultaneously. The cyborg maintains a state of 'quantum superposition' and 'quantum entanglement' because when it is in one state of a binary, it partly exists in the other state simultaneously. Due to this entanglement, each member of the binary must be delineated relative to one another. I thus conceptualise the cyborg at the centre of this lever as it embodies the self as a psychological, socio-material and cultural phenomenon thus providing an interpretive entry point to understanding ontology as the entanglement of subject and object, space and time, matter and meaning, history and fiction. Furthermore, the cyborg utilises narratives (stories) to reconstruct identity in the interplay of duality.

Keywords: binary oppositions, diffraction, cyborg, quantum superposition and entanglement, narrative identity, tradition and time-space.

Introduction

I have divided this theoretical paper into seven components. I begin the discussion with the practice of diffractive (Barad, 2007), which has been adopted in order to weave a polyphonic tapestry out of multi-disciplinary identity threads and diffractive patterns. Secondly, I explicate why multiple theoretical perspectives have been mapped onto the metaphor of a lever and the cyborg (Haraway, 1991). Next, I demonstrate that in a phallocratic culture the difference between a set of dualities is constructed as binary opposites and the positive terms, which dominate the binary, are linked to one particular sex. Man is valued over woman (its negative other). If we are to transform culture we need to destabilise the binary opposition that is founded in the male/female couple (Cixous, 1981). Thus in the fourth component of this paper, I explicate how the elements of a 'lever' could be used to portray the reproduction of a phallocratic culture. I then discuss how Haraway's (1991) notion of the cyborg is situated in a 'third space' (Bhabha, 2004) as it offers a way out of the dualistic traditions that have created boundaries between self/other, human/animal, organism/machine, culture/nature, physical/non-physical, and male/female. Building on the previous discussion of how a dichotomous patriarchal social system could be compared to the mechanical nature of a lever, I argue that this patriarchal social system follows the principles of digital computing in that it encodes 'data' that are associated with the masculine and feminine into binary oppositions. However, I theorise the 'cyborg' (Harway, 1991) as a quantum machine, as it can exist in more than one state simultaneously. The cyborg maintains a state of 'quantum superposition' and 'quantum entanglement' because when it is in one state of a binary, it partly exists in the other state simultaneously. Due to this entanglement, each member of the binary must be described relative to one another. Lastly, I elucidate how the cyborg utilises narratives to reconstruct identity in the interplay of these dualities.

The practice of diffraction

In line with the annual UEL yearbook title, "Crossing Conceptual Boundaries" I have adopted a diffractive methodology in reading identity through multi-disciplinary concepts in an attempt to "make evident the entangled structure of the changing and contingent ontology of the world, including the ontology of knowing" (Barad, 2007, p. 73). Barad (2012) notes that the entanglement of matter and meaning become evident in the "resonances and dissonances" (p. 50) of multiple interacting domains. Geometrical optics which is "completely agnostic about whether light is a particle or a wave or anything else" (ibid, p. 52) deliberates the subject as separate to the object; thus, knowledge is created at a distance. Whereas, in physical optics, diffraction enables one to examine the object as well as the apparatus, resulting in the entanglement of the subject and object (ibid). Barad writes: "Diffraction, understood using quantum physics, is not just a matter of interference, but of entanglement, an ethico-onto-epistemological matter … It underlines the fact that knowing is a direct material engagement" (ibid, p. 52).

In this paper, I do not use the practice of diffraction to theorise identity but rather as a tool to weave a polyphonic tapestry out of multi-disciplinary identity threads. These conceptual threads include the following; binarism (Rutherford, 1990; Barret, and Phillips, 1992; Cixous, 1981), cyborg (Haraway, 1991), digital and quantum computing, quantum superposition and entanglement, culture (Kuhn, 2002), tradition (Gadamer, 1982; Ricoeur, 1991), belonging (Yuval-Davis, 2011), imagined communities (Anderson, 1996), narrative (Andrews, Squire and Tamboukou, 2008; Bruner, 2002; Crites, 1986; Fay, 1996; Freeman, 1993; Josselson, 1995; McAdams, 1993; Polkinghorne, 1988; Reissman, 2008), idem-identity and ipse-identity (Ricoeur,

1991), narrative identity (Ricoeur, 1988; 1991), temporality, and chronotope (Bakhtin, 1981).

A metaphorical lever as a conceptual matrix of binary oppositions

These multiple theoretical perspectives have been mapped onto the metaphor of a lever and the cyborg (Haraway, 1991) for two reasons; firstly to determine the relational functionality of each element in the reproduction of a phallocratic culture and secondly to identify diffractive patterns in the formation of narrative identity. As mentioned, Archimedes purportedly said, "Give me a lever long enough and a fulcrum on which to place it, and I shall move the world." Archimedes was referring to how the use of a lever could provide leverage by amplifying an input force to create a greater output force executed against an object. Thus, the basic elements of a lever include effort, load or resistance, a lever arm, pivoting point and a fulcrum. I have conceptualised a diagram (see figure 1) that projects several concepts onto the following elements of a lever; the psychological world onto '*effort*', the socio-material world onto '*load*', culture, and tradition onto the '*lever arm*', temporality onto the '*pivoting point*', narratives onto the '*fulcrum*' and a 'chronotope' onto the *ground*. Who is the 'One' that attempts to move the 'other' and how does he use the elements of a 'lever' to do so?

Feminist theory is concerned with deconstructing the hierarchical binary oppositions that underpin Western culture (Barret and Phillips, 1992). Phallocentric patriarchies and dualistic traditions, which privilege the masculine and follow the logics of "domination of women, people of colour, nature, workers, animals" persist (Haraway, 1991, p. 177). Haraway (ibid) notes:

> To be One is to be autonomous, to be powerful, to be God; but to be One is to be an illusion, and so to be involved in a dialectic of apocalypse with the other. Yet to be other is to be multiple, without clear boundary, frayed, insubstantial. One is too few, but two are too many.

In a phallocratic culture, the difference between a set of dualities is constructed as binary opposites: culture versus nature, psychological versus social, reason versus emotion, whiteness versus blackness, mind versus body, active versus passive, subject versus object, self versus other, and male versus female. The hierarchal system of false polarities is created so the positive terms, which dominate the binary, are linked to one particular sex; thus, man (the 'One') is valued over woman (its negative 'other'). Males are situated in privileged positions of domination in a patriarchal social system as they occupy the space of culture, psyche, reason, 'whiteness', active, mind, subject, self, and sameness whereas women are set aside to occupy the space of nature, social, emotion, 'blackness', passive, body, object, other, and difference.

Echoing this view, Cixous (1981, p. 44) contends that if we are to transform culture we need to destabilise the binary opposition that is founded in the male/female couple:

> In fact, in every theory of culture, every theory of society, the whole conglomeration of symbolic systems –everything, that is, that's spoken, everything that's organised as discourse, art, religion, the family, language … it is all ordered around the hierarchical oppositions that come back to the man/woman opposition, an opposition that can only be sustained by means of a difference posed by cultural discourse as 'natural'.

I propose that the elements of a 'lever' (see figure 1) could be used to portray the

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reproduction of a phallocratic culture. The dichotomous patriarchal social system, which privileges the masculine in meaning making, is compared to the mechanical nature of a lever. I have placed the positive terms that are associated with the masculine on the dominant side of the lever arm that represents the self or '*effort/meaning making*'. Analogously, I have projected the negative terms that are associated with the feminine on the side that represents the other or '*resistance*'. Over time, individual memories extend into a web of meanings that bind the material/symbolic, social/personal, and historical/psychical. This network of interconnections coalesces in individual life narratives (Kuhn, 2002). The intertwining of personal and public histories that form cultural memory form the terrain, as represented by a '*lever arm*', of people's 'historically effected consciousness' (Gadamer, 1982). Narratives, as represented by the '*fulcrum*', are the point on which culture (i.e. *lever arm*) pivots.

Thus through tradition, we inherit prejudices or "fore-meanings" (Gadamer, 1982) that constitute our being. Tradition serves as the terrain for understanding and provides a 'horizon' or larger context of meaning from which we may view the world (Gadamer, 1982). Gadamer insists that prejudices, which are open to change, should be continually subjected to critical examination, "True prejudices must sill finally be justified by rational knowledge" (p. 242). Tradition is constituted by the interaction of sedimentation and innovation, as "[t]he phenomenon of traditionality is the key to the functioning of narrative models and, consequently, of their identification" (Ricoeur, 1991b, p. 24). Accordingly, through the play of sedimentation and innovation, we continually participate in producing, determining, and creating new ways of belonging to tradition. "Tradition is not simply a precondition into which we come, but we produce it ourselves, inasmuch as we understand, participate in the evolution of tradition and hence further determine ourselves" (Gadamer, 1982, p. 261). Belonging is constructed through narratives (stories) of individual and collective identities and emotional attachments (Yuval-Davis, 2011).

In addition, belonging is affected by the ways in which social locations and identities are valued and judged by society (Yuval-Davis, 2006). Social locations not only refer to people's positionality in the intersections of social divisions (i.e. 'race', gender, class, age, sexuality etc.) but also the positionality of categories along an axis of power in society, which changes with different historical moments and contexts (ibid). Hegemonic political powers maintain and reproduce categories of social divisions by the construction of boundaries that determine the standards of 'normality' and access to economic, political, social, intellectual, and cultural capital (Yuval-Davis, 2006; Bourdieu, 1983).

As the masculine dominates the construction of meaning in a phallocratic culture, narratives (stories) may be used as a tool to "reverse and displace the hierarchical dualisms of naturalized identities" (Haraway, 1991, p. 175). When narratives are used to assemble varied possibilities of meaning into fixed dichotomies it creates binaries, which reduce the "potential of difference into polar opposites" (Rutherford, 1990. p. 21). Following Rutherford's (1990) insight into binarism, he states that it:

> operates in the same way as splitting and projection: the centre expels its anxieties, contradictions and irrationalities onto the subordinate term, filling it with the antithesis of its own identity; the Other, in its very alienness, simply mirrors and represents what is deeply familiar to the centre, but projected outside of itself (p. 22).

Rutherford posits that when new identities that attempt to "break the logic of the otherness of binarism" (p. 22) are produced on the margins they are unable to fully articulate their own and others' experiences. As a result, language becomes a site of struggle because political ideologies attempt to protect the status of meaning from new identities that threaten to

deconstruct "those forms of knowledge that constitute the subjectivities, discourses and institutions of the dominant, hegemonic [and phallocentric] formations" (ibid). Williams (1989) delineates this "struggle for a voice as being at the very edge of semantic availability" (as cited in Rutherford, 1990, p. 22).

The cyborg as a quantum machine: superposition and entanglement

Kristeva (as cited in Moi, 1988, p. 6) recommends that feminist critique should be situated in a "third space: that which deconstructs [and denaturalises] all identity, all binary oppositions, all phallologenertic positions" and reveal the mechanisms of oppression in ideologies that are produced by phallocentric patriarchies. The aim is not to reverse or synthesise the binary oppositions, as this would maintain a hierarchal structure but rather to collapse them or find a way to accentuate their coexistence. I argue that Haraway's (1991) notion of the cyborg, a "cybernetic organism, a hybrid of machine and organism, a creature of social reality as well as a creature of fiction" (p. 149) is situated in this 'third space' as it offers a way out of the dualistic traditions that have created boundaries between self/other, human/animal, organism/machine, culture/nature, physical/non-physical, and male/female. Haraway writes:

> Cyborg politics is the struggle for language and the struggle against perfect communication, against the one code that translates all meaning perfectly, the central dogma of phallogocentrism ... Cyborg writing is about the power to survive, not on the basis of original innocence, but on the basis of seizing the tools to mark the world that marked them as other. The tools are often stories, retold stories, versions that reverse and displace the hierarchical dualisms of naturalized identities. In retelling origin stories, cyborg authors subvert the central myths of origin of Western culture ... Feminist cyborg stories have the task of recoding communication and intelligence to subvert command and control (p.175).

As discussed, the elements of a 'lever'could be used to depict the reproduction of a phallocratic culture. I argue that a patriarchal social system (as represented by a mechanical lever) follows the principles of digital computing in that it encodes data into binary digits. However the cyborg, as a quantum machine, can exist in more than one state simultaneously. Put differently, digital computing obeys the laws of classical physics and require data to be encoded into binary digits or bits (i.e. a unit of information that is represented as 0 or 1). However, quantum computing harnesses phenomena in quantum mechanics to perform operations on data and create a new mode of information processing. Its unit of information (i.e. quantum bit or qubit) is not binary but quaternary as a qubit can exist as a 0 or 1 or both 0 and 1 simultaneously (Dirac, 1947). This phenomenon is called 'quantum superposition' which maintains that when a physical system is in one state, it partly exists in each of two or more other states simultaneously (Dirac, 1947). Another phenomenon (which is a product of superposition) is called is 'quantum entanglement'. Schrödinger (1935, p. 555) notes:

> When two systems, of which we know the states by their respective representatives, enter into temporary physical interaction due to known forces between them, and when after a time of mutual influence the systems separate again, then they can no longer be described in the same way as before, viz. by endowing each of them with a representative of its own. ... By the interaction the two representatives have become entangled.
> The binary oppositions that are associated with the masculine and feminine are

represented as two states, 0 and 1 respectively (see figure 1). I argue that the cyborg maintains a 'quantum superposition' because when it is in one state of a binary, it partly exists in the other state simultaneously. Identity is (re)constructed in the interplay and entanglement of these dualities. I thus conceptualise the cyborg at the centre of this lever as it embodies the self as a psychological, socio-material and cultural phenomenon thus providing an interpretive entry point to understanding ontology as the entanglement of subject and object, space and time, matter and meaning, history and fiction. When one state (e.g. organism) interacts with the other (e.g. machine), each member of the binary must then be delineated relative to one another.

The cyborg imagery entangles these dualistic traditions by illuminating our embodiment of machines as an aspect of our being as well as the possibility of rewriting our bodies and history and creating new ways of being and knowing (Haraway, 1991). Identities are understood as relational, and (re)constructed in networks of relationships with others and language in time (Crites, 1986; Fay, 1996; Freeman, 1993). Thus, cyborg politics is a "powerful infidel heteroglossia" (Haraway, 1991, p. 181) that necessitates "both a destroying and a building of machines, identities, categories, relationships, space stories" (ibid) as well as being open to the "pleasure in the confusion of boundaries and [the] responsibility in their construction" (ibid, p. 150).

The narrative construction of identity in the interplay of duality

I now explore how the cyborg utilises narrative to reconstruct identity in the interplay of these dualities. I claim that narratives create the possibility for multiple selves to emerge in response to duality. As illustrated in figure 1, 'identity as sameness' (or idem) contains elements of self and other whereas the interplay between the same and other is ipseity or 'identity as self' (Ricoeur, 1991). The dual aspects of self and other in idem-identity enable the cyborg to approach the question 'what am I?' through the interplay of sameness and otherness.

Ricoeur (1991a) differentiates between the following four senses of 'identity a sameness': "Identification as re-identification of the same," extreme resemblance, discontinuity and "permanence over time" (p. 74). The fourth sense, 'permanence over time' causes problems to ipseity or the self because of the tendency to attribute "some immutable substrate" to this permanence (ibid). Ipseity and sameness overlap when one poses the question of 'who' in the domain of action, the action belongs to the agent or the self who did it (Ricoeur, 1991a). "Indeed it is legitimate to ask what sort of permanence belongs to a self in light of ascription … this self constancy … seems to be to the permanence over time of the idem" (ibid, p. 75).

This 'self constancy' offers a way out of sameness and otherness because the narrative plot facilitates the mediation of permanence and change which creates a model of "discordant concordance" (Ricoeur, 1991b, p. 32) upon which narrative identity may be constructed. Ricoeur (1988) remarks:

> Self-sameness, 'self-constancy' can escape the dilemma of Same and Other to the extent that its identity rests on a temporal structure that conforms to the model of dynamic identity arising from the poetic composition of a narrative text. The self characterised by self-sameness may then be said to be refigured by the reflective application of such narrative configurations. Unlike the abstract identity of the Same, this narrative identity, constitutive of self constancy, can include change, mutuality, within the cohesions of one lifetime (p. 246).

The cyborg maintains a state of 'quantum superposition and entanglement' because when it is in the state of 'ipseity', it partly exists in the other state of 'idem-identity' simultaneously. Due to this entanglement, 'ipseity' and 'idem-identity' must be described relative to one another. As illustrated in figure 1, narratives (i.e. *fulcrum*) is the point on which the cyborg is supported and on which culture (i.e. *lever arm*) pivots with time. Through narrative, cultural histories become socially embodied in the cyborg and embedded in temporality; thus, the cyborg epitomises the entanglement of the self and society, subject and object, culture and nature, matter and meaning, space and time, history and fiction.

"This cyborg is our ontology; it gives us our politics" (Haraway, 1991, p. 150) as it could be read as a history of our present state. I claim that the cyborg utilises narratives to destroy naturalised boundaries, subvert phallocentric patriarchies, create new ways of belonging to tradition, as well as make sense of her temporal experience and answer the question 'Who am I? "To answer the question 'Who?'... is to tell the story of a life. The story told tells about the action of the 'who'. And the identity of this 'who'therefore itself must be narrative identity" (Ricoeur, 1988, p. 246).

The activity of life through time is enacted in our psychosocial world which provides us with a lifetime of existential and material 'data'that we embody by reflecting on memories, and intentions during moments in which the questions, *'What am I doing?'* and *'Why am I doing this?'* compels us to make sense and meaning "to the primal stew of data which is our daily experience. There is a kind of arranging and telling and choosing of detail - of narration" (Rose, 1983, p. 6). Accordingly, if the " 'first order' activity of lives as they are lived is mirrored in 'second order' activities of reflection, representation, accounting and storytelling" (Andrews, 2004, p. 7). The question *'What am I doing?'*is then answered in the form a story about *'why am I doing this?'*Our answerability takes the form of narratives which could be described as "discourses with a clear sequential order that connect events in a meaningful way for a definite audience and thus offer insights about the world and/or people's experiences of it" (Hinchman and Hinchman, 1997, p. xvi).

In figure 1, narratives are situated on a *'chronotope'*because they are always told in relation to the self and other and in the context of a specific time and place. Bakhtin (1981) coined the term 'chronotope' translated from the Greek 'chronos' (time) and 'topos' (place) which means a 'moment' or reality in time-space (that is described by language and literature in particular), or as he elucidates: "the intrinsic connectedness of temporal and spatial relationships that are artistically expressed in literature [and in life] ... spatial and temporal indicators are fused into one carefully thought-out, concrete whole." (p. 84).

Constructing a life story or 'fictive history' requires imagination when organising and interpreting unrelated elements (events, actions, others, contexts) that follow the principles of 'emplotment' in which "sequences of events with beginnings, middles and ends, and generate intelligibility by organising past, present and future in a coherent way" (Ricoeur, 1984, 1985, 1988 as cited in Andrews 2004, p. 7). The notion of narrative identity, which is up bound in time, integrate both historical and fictional narrative as lives become more readable or intelligible when cyborgs use narrative models or plots from history and fiction to tell life stories (Ricoeur, 1991b). Thus, the struggle between sedimentation and innovation that constitutes tradition can be applied to our self-understanding (Ricoeur, 1991b). Therefore, cyborgs continually use culture to reinterpret their narrative identity. It is thus narrative interpretation that provides " 'the figure-able'character of the individual which has for its result, that the self, narratively interpreted, is itself the figured itself –a self which figures itself as this or that" (Ricoeur, 1991a, p. 80). The narrative construction of cyborg identity recognises the uniqueness of individual subjects, their intimacy with boundaries, and relationality with others, and the inseparability of technology as both a cultural fiction and material reality.

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Conclusion

In conclusion, I have used the elements of a 'lever' to portray how the (re)production of a phallocratic culture might occur. The dichotomous patriarchal social system in which the masculine dominates the construction of meaning has been compared to the mechanical nature of a lever. I mapped the positive terms that are associated with the masculine on the dominant side of the lever arm that represents the self or 'effort/meaning making'. Analogously, the negative terms that are associated with the feminine were mapped on the side that represents the other or 'resistance'. The intertwining of personal and public histories that form cultural memory form the terrain, as represented by a 'lever arm', of people's 'historically effected consciousness' (Gadamer, 1982). Narratives, as represented by the 'fulcrum', are the point on which culture (i.e. lever arm) pivots. I then explicated that through tradition, we inherit prejudices or "fore-meanings" (Gadamer, 1982) which should be continually subjected to critical examination. However, as the masculine dominates the construction of meaning in a phallocratic culture, narratives (stories) may be used to assemble varied possibilities of meaning into fixed dichotomies, which reproduce binaries. I have argued that this patriarchal social system follows the principles of digital computing in that it encodes 'data' that are associated with the masculine and feminine into binary oppositions. However, the 'cyborg' (Haraway, 1991) as a quantum machine, can exist in more than one state simultaneously. The cyborg maintains a state of 'quantum superposition' and 'quantum entanglement' because when it is in one state of a binary, it partly exists in the other state simultaneously. Due to this entanglement, each member of the binary is delineated relative to one another. Thus at the centre of this lever, I conceptualised the cyborg as it embodies the self as a psychological, socio-material and cultural phenomenon thus providing an interpretive entry point to understanding ontology as the entanglement of subject and object, space and time, matter and meaning, history and fiction. The cyborg utilises narratives to reconstruct identity in the interplay of these dualities. Whereas 'identity as sameness' (or idem) contains elements of self and other, the interplay between the same and other is ipseity or 'identity as self' (Ricoeur, 1991a). Following Ricoeur (1991b), I assert that 'self constancy' offers a way out of sameness and otherness because the narrative plot facilitates the mediation of permanence and change, which creates a model of "discordant concordance" (p. 32) upon which narrative identity may be constructed.

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From Hyperlink to Ink: Media Tactics and Protest Strategies of the UK Radical Environmental Activism Movement

Maxine Newlands

Abstract:

In a socially mediatised world, why do some environmental activists movements still think in terms of front page newspaper coverage? The movements' over reliance on social media as a media tactic, over time negated any genuine political strategy. Environmental activists and the traditional media have discovered there is a need to concentrate less on virtual and more on physical communities. Activists should concentrate on online tools, to get people off line, just as activists should know where and when to use technology. But, any media tactic is worthless, without a political strategy in which to hang it on.

Key words: social media, environmental activists, political strategy

"Whenever we think of an action, we envisage what it will look like on the front page" [sic] *—Eco-activists Dan Glass, 2011.*

Introduction

In a socially mediatised world, where twitter, Blackberry messaging (BBM), Facebook, the Internet, blogs, World Wide Web, open source, Wiki's and websites can make anyone a producer and consumer of news, why do some environmental activists movements still think in terms of front page newspaper coverage? Why engage with traditional[1] media (as the quote above shows) when there are other ways to influence public opinion? After decades of viewing journalists and media houses as the fourth estate, many contemporary environmental activists now hold a belief that "it was a mistake to reject the possibility of strategically using the mainstream media outlets to promote our ideas and tackle head-on the discourses of politicians, corporations/recipients of such media coverage to think differently outside their own comfort zone" (CSC, 2005:322). Like the direct action that marked out the early days of Greenpeace, post-2005 UK based eco-activist collectives such as Plane Stupid, Camps for Climate Action (known as climate camp henceforth), So We Stand, Climate Rush, and others are actively engaging with traditional media.

One example, Plane Stupid, are an eco-activists group that target airport expansion and pollution, and are renowned for their media tactics (Doyle, 2009, Gavin, 2009). Their media policy had ranged from a television advert with polar bears falling out the sky[2]; activists Dan Glass super-gluing himself to British Prime Minister, Rt Hon. Gordon Brown, MP (July 22nd 2008), and their activists protesting against a proposed third Heathrow runway, on the roof of Westminster Palace (February 27th 2008). Such actions are in addition to established repertoires of contention (direct action, marches, targeting of companies, chaining oneself to inanimate objects, climate camps, etc.). Each action has one objective - front page coverage. Through meticulous media tactics, aligned with a protest strategy, collectives such as Plane Stupid design deliberate and calculated media tactics that target front page coverage.

This paper will draw on original empirical data[3] with examples from activist collectives such as Plane Stupid[4], the Camps for Climate Action[5]; Reclaim the Streets[6], VisionON.TV[7], London Rising Tide[8], So We Stand[9] and HACAN[10] to examine: 1) why have contemporary activists developed media strategies that still think in terms of traditional media? 2) What effect

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[1] This paper will use the term 'traditional' media when referring to print and broadcasting journalism. Occasionally the term is called mainstream media in quotes, and refers to 'traditional' media.

[2] See http://www.planestupid.com/polarbears for more information (accessed January 2012)

[3] The method for choosing each participant[3] was based on those activists either quoted directly or indirectly by the traditional media.

[4] Plane Stupid is a network of grassroots groups that take non violent direct action against aviation expansion (see http://www.planestupid.com/aboutus for more information)

[5] The Camps for Climate change ran from 2006-2010. They were weeklong camps, workshops, and direct action aimed at raising awareness about climate change (see http://climatecamp.org.uk/about for further information)

[6] Reclaim the Streets (RTS) were a collective aligned to the rave and free music scene, with an environmental focus.

[7] VisionON dot TV(http://visionon.tv/mission) aims for the widest possible distribution of video for social change by creating social media toolkits around this content so that real communities of action can be built.

[8] London Rising Tide takes direct action on climate change, to promote ecological alternatives to reliance on fossil fuel consumption

[9] So We Stand is an environmental justice collective to support communities living in high emissions areas (for example near to power stations or airports), and other areas of environmental injustice.

[10] Heathrow Association for the Control of Aircraft Noise (HACAN)

does front page coverage have on the politics of environmental activism? And 3) does social media open-up any opportunities for genuine knowledge exchange between environmental activists and journalistic language? To examine why activists are returning to supplying traditional media when they have a plethora of alternative media platforms, this paper will draw on the example of the 2007-2010 Climate Camps. The paper is divided into three sections. The first section will examine why activists believed they had to re-engage with traditional media. The middle section looks at the impact of change on relations between journalists and activists. The final section examines if there are any consequences of returning to a "media-centrism" (Sobieraj, 2011:16) strategy, in view of social media and internet developments.

Re-engaging with traditional media practices

Early studies (Holloway, 1998, Marshall, 1994) show that during the anti-roads movements some activists began "to grow disenchanted and disillusioned with the mass media" (Marshall, 1994). Many protestors felt manipulated by journalists to increase the news value of the protest -"They very often expect us to perform… for the sake of providing them with a little bit of footage. In many cases, I have been to protests where the media even position people saying 'no, no, no you stand over there, this is what you say!" (Marshall, 1994). Marshall's finding echo those of Debord in his seminal work 'The Society of the Spectacle' (2000). Debord notes the objectives of the protests are often juxtaposed with an examination of wider social issues. In other words, the media use the spectacle of the protest as a counter point to the hegemonies position.

Whilst some in the Reclaim the Streets collective had "a policy of no contact with the media at all…there was officially no contact with the media" (interview with activists Michael), others met with journalists from national UK newspapers. This 'insider-outsider' distinction developed in an earlier period of pressure group politics (Grant, 2005) extends to the relationship with traditional media. However, in light of social media, such today's environmental activists understand that a "self-imposed isolation", a tactic of non-interaction with the mainstream media, was a "luxury that we [activists] could not collectively afford" (CSC, 2005:322).

Hutchins and Lester (2009) show that rather than challenging the protesters' need for access to traditional forms of new media, websites and the web provides an opportunity to "bypass corporate, multinational media" and to "become another device in the strategic toolbox of the environmental movement for gaining mainstream news media access" (2009:580-581). A simple website is easy to produce and with little need for any "formal organisation behind it…used as a node for organising protest campaigns" (Tarrow, 2009:137). The internet and World Wide Web provide an alternative to engaging directly with traditional media. Access to social media means some collectives can return to early media tactics, and still provided a direct voice for activists through blogs, websites and citizen journalism. At the climate camps, documentary maker, Hamish Campbell at VisionON.tv website encouraged activists to produce their own news media. Anti-aviation expansions collective, Plane Stupid's communication strategy uses websites to provide journalists with direct access to protesters. Doyle (2009) observes how Plane Stupid's website "constitutes its action…the website is action orientated…alongside press releases" (Doyle, 2009:113). For example, during the Westminster Palace roof protest, Plane Stupid provided the mobile phone numbers of the activists on their homepage. Thus journalists could speak directly to activists and bypass traditional gatekeeping practices.

The effect is to create "new hybrid forms of media consumption-production which challenge the entrenched division on labour (producer vs. consumer of media narratives) that is the essence of media power" (Couldry, 2003:45). For example, the Climate Camp began to

create "new hybrid forms of media" with a media tent, a journalist 'open hour', and a set of rules, to become their own gatekeepers by exploring the "emancipatory and democratizing potential of new media technologies" (Hutchins and Lester, 2009:581). In light of the opportunities to bypass traditional media then why do more contemporary collectives actively choose to engage with journalists?

Today environmental activist plan and organise protest as an image event by giving reporters direct access to 'action' through, their websites homepage, texts, social networks and citizen journalism. Yet, despite the open source opportunities, social media means activists can circumvent traditional media. As the quote at the beginning of this chapter shows, activists still devise tactics and media strategies to gain front page coverage.

Activists desire to gain front page coverage is a departure from the earlier relationships with journalists. The move to engage with journalist is a change from the outright rejection in the past, when journalists were predominantly viewed as the fourth estate. As the earlier discussions in this paper show with Marshall's study, activists have purposefully distanced themselves, or felt manipulated by traditional media. Indeed, the more anarchic elements of the 2009 summer climate camp had 'No Media' signs on the outside of their tents, especially the anarchist collectives. In general, the climate camps took engagement with journalists' one step further by devising an entire media strategy that became problematic to the movement. The introduction of a media team and spokesperson, led to an informal hierarchical structure that shaped power structures and divided the camp. There were already tensions in the camp over allowing guided tours for journalists. . The internet and World Wide Web may have opened up new media platforms, but have also created divisions between the 'older' activists and 'new' activists. Saunders and Price (2009) note "within the [climate] camp, the main tension is between the *ideal* anti-authoritarian *self* and those more sympathetic to corporate – or state led solutions" (Saunders & Price, 2009:118). Whether to engage or negate the traditional media is a source of division in most environmental collectives.

A media tent and gatekeeping tactics led to the creation of a brand- "climate camp, the institution" (Beaumont, 2009:27); and removed any autonomy for the activists as the media team became 'spokespersons' for the camp. Thus in- engaging with traditional media for front page coverage, activists had to accept and engage with traditional media practices, such as a media team. Climate camp activists also found that social media created as many problems as the publicity it generated. A consequence of such desire for front page coverage was the loss of autonomy for the climate camp activists or any acknowledgment of history.

The Impact of Change

Front page coverage did generate more column inches, it also removed the purpose of the climate camps and environmental activists' politics from the media coverage. Wider debates on environmental discourse were lost in a language of parties, festivals and 'youth'. This section looks to these consequences of developing media tactics that target the front page.

The Heathrow climate camp as a "watershed moment" (interview with John, August 2011) because it highlighted the states and business role in environmental discourse. The second climate camp at Heathrow, (2007) was seen by some activists as a successful camp[11]

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[11] Following the 2010 general election all plans for a third runway were shelved

Climate Camp only really had two things that I would call a success. That's not to say that there weren't other good things that came out of the two successes of it, and one is that, was Heathrow, 'cos I don't think any of the other camps, none of them achieved their day of actions, none of them were long-lasting, none of them were engaged with the local community beyond the actual week of the camp and some of them more likely did more damage than good in that sense". Erm, and the other thing is that between Drax and Kingsnorth, I think it really did transform the discussion and the narrative of media around environmental and climate change issues (Nim activists from So We Stand, interview August 2011)

Yet journalists still depoliticalised the camp as "the cheapest- and chic-est-date in the summer festival calendar" (West, 2009:30) as protesters are "nice, white and middle-class…students who have made their way to Blackheath via a summer of Glastonbury, Inter-railing, camping in the south of France" (Fryer, 2009), as the camps "looks more like a gentle middle-class festival than a political training camp" (Fryer, 2009).–

Consequentially, the front page coverage of the Heathrow Climate camp, led to a wave of new activists and interested people that had little interest in the politics of environmental discourse. The increased media coverage did led to front page coverage, but at the cost of objectives, and debates on wider political engagement with environmental discourse.

Consequentially media tactics that targets front page coverage has in this case resulted in a loss of autonomy and objectivity for the protest. The focus on media attention also led to loss of objectives which led to the branding of climate camp

Social media provides a platform of "horizontal communication networks and mainstream media to convey their images and messages" (Castells, 2009:302). The result is environmental activists can "increase their chances of enacting social and political change- even if they start from a subordinate position in institutional power, financial resources, or symbolic legitimacy" (Castells 2009:302). Contemporary, environmental activists realise there's a need to combine earlier media tactics (i.e. Greenpeace and Greenham Common Peace Camps), with the "collective learning via tactical experience" (Anderson, 2004:19). However, activists also realise that websites, social media and the World Wide Web is just one solution to influencing media coverage. The web is not a solitary force for mobilising new political forms, but a factor, and "success is conditioned by many factors that have little to do with the internet "(Gavin, 2009:130). Journalists and activists use of "the web is only trusted as an impartial source by 1 percent of the population (Worcester & Mortimer, 2001:15), and certainly by fewer than trust the conventional media" (Hargreaves and Thomas in Gavin, 2009:132).

Gavin (2009) observes that if traditional media sees the web as an add-on "an alternative transmission mechanism for these media, which are far and away the public's most trusted and most often used source of political information. This perspective sees the web as adjunct to conventional sources, rather than as an additional one" (Gavin, 2009:136). Moreover, in a time-conscious environment the media, rely heavily on PR sources, and it could be extended to relying on protest websites-as "The pressure placed on them [journalists] to produce additional web-based copy alongside conventional packages – with fewer resources and a in finite amount of time- can lead to a dependence on readily available PR sources that, some argue, compromises the quality and integrity of the resultant coverage" (Gavin, 2009:136). Thus, the internet and various sources on the web "does not in itself constitute usable information, any more than usable information constitutes a contribution to knowledge or to rational debate" (Gavin, 2009:138)

Activist have come to realise that in order to influence the front page, they need to "concentrate less on online communities and realise that we are communities ourselves …do more face-to-face stuff and, whatever means necessary, we are going to go to the actual mainstream media" (interview with Steve, august 2011). It can be used to be a parasite on the traditional media, but is equality too limiting in its range of demographics, and who it reaches. Hence in aiming for the front pages activists can widen their demographics, move on from 'the converted' and utilising both repertoire of tactics and new media. Thus social media should be a tool to facilitate a tactics not strategies.

Conclusion

The movements' over reliance on social media as a media tactic, over time negated any genuine political strategy. Environmental activists and the traditional media have discovered there is a need to concentrate less on virtual and more on physical communities. Activists should concentrate on online tools, to get people off line, just as activists should know where and when to use technology. But, any media tactic is worthless, without a political strategy in which to hang it on.

The internet has meant activist were wedded to the spectacle, focusing soley on media tactics, and consequently forgoting the objective for much of their protest. Slowly over time as Plane Stupid were planning how to superglue Dan Glass to the Prime Minister, or Climate camp were busy planning the annual event, it slowly turned into a brand, the very corporate-led solutions they were originally protesting about. The focus on the front page meant the movement lacked any political discourse or objective to challenge. Unlike the early movements whose desire to protest came ahead of the media strategy. Today's collectives think of a media strategy first and make the protest fit! As the older activists observe, there needs to be a return to tactics and planning, to face-to-face meeting, organised via social media, but not dependent on how many hits, tweets or face book 'likes' are a measure of success. Doherty had a valid point, that success shouldn't be measured by mediatisation (cited in Seel *et al*, 2000). Activists need to retain their 'insider/outsider' distinction through a combination of media tactics and community strategies. Despite attempts to avoid the 'Swampy' effect, the protest was still a depoliticalisation of the climate camps, framing the camps as a brand. In the drive to achieve front page coverage the objective of the movement is lost. Environmental activists may think in terms of front page reports but as empirical data shows, there needs to a combination of media and a non-media strategy, online and off line, media tactics *and* political strategies.

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"The Interests of Justice" under the ICC Prosecutor Power:
Escaping Forward

Farid Mohammed Rashid

Abstract: This paper examines the application of article 53 of the Statute of the International Criminal Court (ICC), which provides the prosecutor with the discretionary power to decline to investigate or prosecute, if the 'interests of justice' would not be served. First, it will analyse the scope of the concept of the 'interests of justice'. Second, it will consider whether the prosecutor should take into consideration alternative justice mechanisms when making the decision. It will further investigate whether 'peace processes' can be under the consideration of the prosecutor when deciding on the 'interests of justice'.

This issue is part of my wider research project, which provides an analytical discussion of the prosecutorial discretion of the prosecutor. It reflects on the approaches to the relationship between international law and politics advanced by Martti Koskenniemi. His theory aims to help decision-makers to work objectively whenever a tension arises between concrete and normative demands in international legal institution.

Introduction

The debates about the use of the discretionary power of officials within any legal system always raise the question of political influence. This is the case in international law, in general, and in the work of the International Criminal Court (ICC), in particular. Article 53 of the Statute of the ICC is one of the Statute articles, which raises such concern. Subparagraphs (1) (c) and (2) (c) confer on the prosecutor the prerogative to decline an investigation or prosecution in 'the interests of justice'. The article provides the prosecutor with a critical power, which she can exercise in a broad discretionary manner.

The significant aspect of article 53 is driven from two main issues. The first is that, since the establishment of the ICC in 2002, the prosecutor has not used her discretion to decline any investigation or prosecution in 'the interests of justice'. Despite the fact that the article has never been invoked, there has been much speculation within the Court and beyond about the scope of this article. Second, sub-paragraphs (1) (c) and (2) (c) of article 53 raises two main concerns, resulting from its non-application and the loose meaning of the term 'the interests of justice'. These concerns are related to questions over what is the scope of the 'interests of justice'? And when can the prosecutor decide not to open an investigation or prosecute a certain situation or a case? The next concern is that, if the prosecutor made her decision to decline a situation or a case, what other alternative justice mechanisms would be acceptable to the prosecutor? The latter concern opens another discussion about whether or not 'peace processes' can delay or cease the criminal proceedings.

Much of the current literature indicates concerns about the ability of the prosecutor to decline an investigation or prosecution, as they believe that the latter has no such a right.[1] However, other scholars argue that the prosecutor has a power of declination, and that such power would be consistent with the Statute.[2] My discussion will seek to interpret the scope of article 53, which apparently provides the prosecutor with this power, instead of discussing whether or not the prosecutor has such a right. It addresses the main problem, raised essentially by scholars who want to avoid politically motivated decisions. The paper will argue that the prosecutor can decline the proceedings, without being politically-motivated.[3] In addressing this

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[1] Policy Paper: The Meaning of "The Interests of Justice" in Article 53 of the Rome Statute, *Human Rights Watch*, June (2005), available at < http://www.hrw.org/legacy/campaigns/icc/docs/ij070505.pdf>, arguing in favour of committing to criminal justice. See also Martin Macpherson, Open letter to the Chief Prosecutor of the International Criminal Court: Comments on the concept of the interests of justice, *Amnesty International*, June 2005, available at < http://www.amnesty.org/en/library/info/IOR40/023/2005>. see also Richard J. Goldstone and and Nicole Fritz, 'In the Interests of Justice' and Independent Referral: The ICC Prosecutor's Unprecedented Powers, *Leiden Journal of International Law*, Vol. 13, Issue 03 (2000), 655- 667, see also Dražan Djukić, Transitional Justice and the ICC: in the 'Interests of Justice', *Centre Universitaire de Droit International Humanitaire* (2006), P. 1- 69 June (2005), available at < http://www.hrw.org/legacy/campaigns/icc/docs/ij070505.pdf>, arguing in favour of committing to criminal justice.

[2] Henry M. Lovat, Delineating the Interests of Justice: Prosecutorial Discretion and the Rome Statute of the International Criminal Court, *bepress Legal Series*, Paper, 1435 (2006), See also, Darryl Robinson, Serving the Interests of Justice: Amnesties, Truth Commissions and the International Criminal Court, *European Journal of International Law*, Vol. 14 (2003), P 481- 505, see also Matthew R. Brubacher, Prosecutorial Discretion within the International Criminal Court, *Journal of International Criminal Justice*, Vol. 2, No. 1 (2004), 71- 95

[3] These arguments will be presented by depending on the objectivity theory of an international legal discourse, advanced by Martti Koskenniemi. This theory provides helpful lens in understanding the exercise of discretion, as his complex defense of international law from just being politics is what such an exercise of discretion entails to consider. The objective international legal discourse needs two requirements: normativity and concreteness. The

issue, I draw on the experience of previous international criminal tribunals, where the prosecutors faced the same dilemma in an effort to establish whether any lessons can be learned. I will also rely on interviews I conducted with four members of staff of the Office of the Prosecution (OTP), as an inductive study that has had shaped my views on several points.[4]

Prosecutorial Discretion under Article 53

Article 53 first deals with the investigation stage and provides the prosecutor with a power not to open an investigation in a certain situation on the basis of 'the interests of justice'.[5] It provides two criteria that the prosecutor should consider when making a negative decision: 'the gravity of the crime and the interests of victims'. These criteria do not seem exclusive, as the article continues, 'there are *nonetheless* substantial reasons to believe that an investigation would not serve the interests of justice'. The word *'nonetheless'* indicates that the prosecutor could also consider other factors. This can give an implication that the Statute is inclined to adopt a wide interpretation of the meaning of 'the interests of justice'.

In sub-paragraph (2) (c), the provision also deals with the prosecution stage.[6] If the prosecutor decides to open the investigation in the given situation, she, then, will move on to the prosecution stage and may decide whether or not to prosecute. At this stage, the prosecutor is entitled to select cases within the given situation to which the prosecutor has opened the investigation. In addition to the above two criteria, this sub-paragraph adds two more criteria that the prosecutor is required to consider when making a decision: 'the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime.'

The wording of the text implies that the prosecutor may utilize a broad meaning of justice when making a decision not to proceed, as the Statute adds two further factors to be balanced. As Drazan Djukic expressed, 'the article speaks of "all the circumstances, including…" (emphasis added) which renders the list of factors illustrative instead of exhaustive.'[7] However, apart from the scope of the prosecutor's power in defining the scope of the 'interests of justice', the article subjects the decision not to proceed in 'the interests of justice' to the Pre-Trial Chamber, which

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normativity of international law assumes that international law should be based on principles and can be applied regardless of the subjective will, interest, and behaviour of a state. But in this case, this law, which is regulated and not based on actual practices of the state, is merely utopian, as it cannot be verified by reference to the actual practice of states. With respect to concreteness, it runs in an opposing way. It assumes that international law should be regulated and based in accordance with the actual practice of states in the sense that makes it able to be verifiable by reference to the will, interest, and behaviour of a state. But this law, which sets a distance between itself and a natural morality, seems mere apology. Koskenniemi opines that we need to balance between these requirements so we can come up with objective discourse, see Martti Koskenniemi, *From Apology to Utopia, the Structure of International Legal Argument* (Cambridge: Cambridge University Press, 2005)

[4] I conducted these interviews from 11th to 20th March, 2013. I followed semi-structured interviews with four members of staff of the OTP: Head, International Relations Task Force, OTP, Senior Appeal Counsel, Trial Lawyer, and Prosecutor during the trial stage. Each interview took around one hour

[5] The sub-paragraph reads 'In deciding whether to initiate an investigation, the Prosecutor shall consider whether: Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.'

[6] The sub-paragraph reads, 'If, upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because: A prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime;'

[7] *Supra* n. 1, Dražan Djukić, P. 26

can review the decision on its own initiative.[8] More than that, if the Pre-Trial Chamber dismisses the negative decision of the prosecutor, it can oblige the latter to proceed with the investigation or prosecution.

The Decision's Timing

The big challenge in this regard is when are the most appropriate times that the prosecutor can apply article 53? Drawing on my initial contact with the Prosecutor and other evidence in the public domain, it appears that the OTP would construe the term narrowly and not take into account any alternative to the criminal justice system, on the ground that the task of the Court is confined to criminal prosecutions.[9] The underlying reason behind this policy is the principal policy that the OTP has sought to develop. They seek to adopt a zero-tolerance policy against perpetrators of serious crimes of concern to the international community and, therefore, put an end to the era of impunity. While it seems that such a policy has merit, there is a doubt about its success, since, as a matter of fact, such tribunals, however, work within a political environment, and exercise their jurisdiction over crimes that also have, to a large extent, political dimensions.

However, article 53 still provides four circumstances in which the prosecutor might decline the ongoing proceedings. It is very important to bear in mind that most of these criteria are of a dual nature, and rather, could function in two different ways. The Statute does not show how much weight will be given to each factor. However, the OTP in its policy paper on 'the interests of justice' suggests three basic priorities will be considered when dealing with these criteria.[10] First is the exceptional nature of 'the interests of justice', which supposes that there is a presumption in favour of investigation and prosecution, even if the criteria are met. Second, the objects and purposes of the Statute will guide the exercise of the discretionary function when considering these criteria. Third, the OTP presumed that there is a difference between 'the interests of justice' and the interests of peace. The latter falls within the mandate of other international institutions, in particular the United Nations Security Council. It appears, then, that the OTP is inclined to favour the demands of criminal justice ahead of the demands of alternative justice.

a. The gravity of the Crime

The first factor is 'the gravity of the crime'. The inclusion of the gravity test within this article, where the prosecutor has a large discretion, indicates that the gravity concept serves a

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[8] The Pre-Trial Chamber is an important judicial part of the Court, whose function starts at the early stage of the judicial proceedings, when the Prosecutor presents a situation or a case to it, until the confirmation of charges. For more information about this body see, ICC, Pre-Trial Division, available at <http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/chambers/pre%20trial%20division/Pages/pre%20trial%20division.aspx>

[9] This was Prosecutor Fatou Bensouda's answer to my question about the prospects of the application of Article 53. She stated that if the current works of the Court disturbed national activities of the given situation, she would reconsider her proceedings and apply Article 53. This was during a lecture run by Prosecutor Fatou Bensouda at Birkbeck College on 29 November, 2012. For more information about the other evidence (such as the policy paper issued by the OTP), see, *Supra* n. 1 and 2

[10] ICC, Office of Prosecution, Policy Paper on the Interests of Justice, September, 2007, available at <http://www.icc-cpi.int/NR/rdonlyres/772C95C9-F54D-4321-BF09 73422BB23528/143640/ICCOTPInterestsOfJustice.pdf>, Pp. 3-4

discretionary function. [11] This criterion seems to function in two opposite ways. In other words, the prosecutor can consider the severity of the situation or the case as a basis for proceeding with the investigation or prosecution. This can be deduced from the general priorities that the OTP developed for the evaluation of 'the interests of justice'. On the other hand, the prosecutor may use the potential reverse effects of the initiation of the criminal proceedings, as a basis not to proceed with the investigation or prosecution. This seems a difficult assessment that the OTP might face. However, history has shown over time that there are some particular egregious offences, which are so grave in their nature, that should be always prosecuted, whatever the consequences of initiating criminal proceedings. The International Tribunal of Former Yugoslavia (ICTY) and International Tribunal for Rwanda's experiences have demonstrated several lessons that the ICC should develop. For example, these Tribunals have sought to concentrate on situations and cases that have 'particular historical resonance, such as the shelling of the marketplace in Sarajevo and the Srebrenica massacre.'[12] Although all crimes under the jurisdiction of the Court are serious enough, nevertheless, crimes such as genocide and crimes related to sexual violence should be always considered as grave crimes that warrant the attention of the Court.[13]

b. The Interests of Victims

'The interest of victims' is a second factor that the prosecutor can use to stop proceeding with either the investigation or prosecution. This particular factor was well established in the practice of the ICTY's jurisprudence. The decision not to indict Slobodan Milosevic on the eve of the Dayton Peace Agreement, although the latter was allegedly responsible for several serious crimes, is an example that showed how Prosecutor Richard J. Goldstone was aware of this particular criterion: 'the interests of victims'.[14] This decision was still necessary in order not to make the situation of the victims worse. This also shows how 'the interests of victims' and 'the role of the perpetrators' overlapped.

These interests are often varied across time and geography. While some victims of a certain situation might demand that criminal justice be done, 'others would prefer to bury the past'.[15] This prospect is highly likely linked to certain circumstances, where several factors can shape the demands of those victims. The most preeminent one is the role of the perpetrators in the given situation, where they still hold office or military command. For example, those perpetrators, by virtue of their strong positions, may oblige the victims to be satisfied with peaceful settlements, as a strategy to avoid a criminal justice fate. The absence of conditions, in which a criminal trial could be held, such as the lack or the unavailability of effective enforcement mechanisms, is another consideration that might make this approach inapplicable. So depending on the given factors, the prosecutor is required to determine which demands would be considered. The dual nature of this criterion makes the evaluation of this factor by the prosecutor

[11] Ignaz Stegmiller, The Gravity Threshold under the ICC Statute: Gravity Back and Forth in Lubanga and Ntaganda, *International Criminal Law Review*, Vol. 9, No. 3 (2009), Pp. 561-5

[12] Allison Marston Danner, Enhancing the Legitimacy and Accountability of Prosecutorial Discretion at the International Criminal Court, *American Journal of International Law*, Vol. 97 (2003), P. 543

[13] The crimes that are under the jurisdiction of the Court are: genocide, crimes against humanity, war crimes, aggression, see articles 5, 6, 7, and 8 of the ICC Statute

[14] Slobodan Milosevic was a President of Federal Republic of Yugoslavia, indicted by the ICTY for several international crimes, and died during his trial in 2006

[15] Making Kampala Count: Advancing the Global Fight against Impunity at the ICC Review Conference, *Human Rights Watch* (2010), P. 95, available at <http://www.hrw.org/reports/2010/05/10/making-kampala-count-0>

unpredictable. As the prosecutor is required to protect the victims by bringing justice to them, she might decide not to initiate a criminal prosecution. In the latter case, the prosecutor sometimes needs to consider any serious bad effect on the victims' life or dignity that could result from the investigation or prosecution.[16]

The prosecutor might be required to weigh these factors to adopt a certain strategy; not necessarily to stop a prosecution, however. This is exactly what happened in the ICTY's experience, where these two factors played essential role in mapping the strategy of prosecution followed by Goldstone, alongside with the then available enforcement mechanisms.[17] For example, although the position of Milosevic at that time constituted a fundamental reason that required Goldstone not to indict him on the eve of the Dayton Peace Agreement, this situation was changed later, when the Prosecutor found that his role no longer constituted any risk to the interests of victims. The availability of the political wills of powerful states was another critical factor that encouraged the Prosecutor, based on the other two factors, to make a case against Milosevic.

Such an overlapping relationship between these criteria requires the prosecutor to examine the given situation by considering all details of it, as these interests are 'by nature a case-by-case affair'.[18] It is not necessary that the prosecutor should decide not to prosecute to save 'the interests of justice'; she can also exercise a comprehensive strategy by depending on the relevant circumstances to decide on the issue. For example, the postponement of the decision, as in the case of Milosevic, can be one of the strategies that the prosecutor can follow. Thus, even if the initiation of investigation or prosecution is not in 'the interests of justice', based on the examination of 'the interests of victims', this does not mean that the prosecutor should make a final decision not to proceed. The prosecutor can utilise her power and exercise a comprehensive strategy and delay the timing of the decision, based on the given circumstances of the situation or case.[19]

c. The Role of the Alleged Perpetrators

'The role of the alleged perpetrators' is an additional criterion that was mentioned only in the context of the prosecution stage, along with 'the age and infirmity of the alleged perpetrator'. This criterion also can be interpreted by the prosecutor in two opposite ways. While it can be a reason for rejecting the case, it also can serve for initiating it. In other words, the duality nature of this test leaves the prosecutor with a broad space to decide on the issue. The ICTY again gives an example, where remarkably this factor again was tested. For instance, Goldstone indicted Ratko Mladic and Radovan Karadzic despite their role at the time of indicting them. There was a fear that the indictment of those people might have adverse effects on the then peace negotiations and that the prosecutor should consider the positions of those criminals. However, the prosecutor believed that the indictments of such people would help to weaken their role in the Balkan conflict. And this is exactly what happened. The ICTY's experience showed first how Goldstone first identified these criteria that have been codified now in article 53, on the international level, and, second, how these criteria can be used in opposite ways. However, it is very important to bear in mind that the political environment at that time was in favour of issuing

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[16] The English Code for Crown Prosecutors (2013) has mentioned this particular case, see P. 4.12

[17] For more information about prosecution' strategy of Goldstone, see Gary Jonathan Bass, *Stay the Hands of Vengeance*, (Oxford: Princeton University Press, 2002)

[18] Alexander K. A. Greenwalt, Complementarity in Crisis: Uganda, Alternative Justice, and the International Criminal Court, *Virginia Journal of International Law*, Vol. 50, No. 1 (2010), P. 145

[19] An interview with a staff member of the Office of the Prosecution conducted on 12 March, 2012

such decisions against those perpetrators, while the same environment was not conducive for indicting Milosevic.

d. The Age or Infirmity of the Alleged Perpetrator

'The age or infirmity of the alleged perpetrator' seems the clearest factor that is not open to various interpretations. Augusto Pinochet's case is a good example to discuss this factor. Although Pinochet was indicted for serious crimes, including crimes against humanity, he never stood trial.[20] It is true that the Spanish court had already issued the prosecution decision, and later on, the full trial processes were completed by British court. However, the trial process was ended when Pinochet appealed the decision on the basis of his health condition. Pinochet made two appeals, based on his health condition, before the British Home Secretary accepted it.[21] The latter rejected all appeals on the basis of humanitarian considerations, and decided to complete all judicial and appeal processes before making the decision on his health condition. On 8th of October 1999, the British Home Secretary, Jack Straw, announced that Pinochet would not be extradited, in view of his poor health.[22]

This example seems to indicate that the health condition should be interpreted in a narrow way. Although Pinochet was in a poor health, the full trial processes took place. Therefore, if poor health can exclude the individual criminal responsibility of the alleged perpetrator, that does not preclude the prosecutor from the very beginning of the criminal proceedings from prosecuting him or her. It is only when the investigative and/or prosecutorial proceedings affect the mental or physical health of the alleged perpetrator that the prosecutor should stop the proceeding with the trial.[23] However, the prosecutor is still able to exercise more than one strategy in such situation. The prosecutor, for example, can follow the policy of postponement, in the same way that the ICTY dealt with Milosevic's ill-health through adjournments and postponements.'[24]

Possible Alternative Justice Mechanisms

The next concern of the article is whether other alternative justice mechanisms would be acceptable to the prosecutor, as an alternative to ICC proceedings. The significance of this concern is the current discussions that argue that the prosecutor should not defer the situation or case to any alternative mechanism, and should commit only to the criminal justice approach.[25] Advocates of this view developed their arguments on a theoretical basis, which implies that the

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[20] For information about Pinochet case, see Eamon C. Merrigan, The General and his Shield: the Extradition Process Against General Pinochet Ugrate, *Temple International and Comparative Law Journal*, Vol. 15 (2001), 101- 119

[21] See R v. Secretary of State for the Home Department Ex p. Pinochet Ugarte CO/1786/99 (Q.B. 1999), or Pinochet Ugarte, R (on the application of) v Secretary Of State For Home Department [1999] EWHC Admin 505 (27th May, 1999), *Judgmental UK Case Law Made Public*, available at < http://judgmental.org.uk/judgments/EWHC-Admin/1999/[1999]_EWHC_Admin_505.html>

[22] See News Flash: Pinochet Case, Chile's request to release Pinochet on health grounds: a medical and judicial matter, not a political one, *Amnesty International*, AI INDEX: EUR 45/40/99 (1999), available at <http://www.amnesty.org/fr/library/asset/EUR45/040/1999/fr/dad588c0-aedf-447c-978f-4dd37540c126/eur450401999en.pdf>

[23] see P. 6.5 (g) of the Code

[24] Philippa Webb, The ICC Prosecutor's Discretion Not to Proceed in the "Interests of Justice", *Criminal Law Quarterly*, Vol. 50 (2005), P. 333

[25] *Supra* n. 1 and 2

retributive justice can serve better to end the era of impunity and violence.[26] In addition, they exploited the looseness of the meaning of the term 'interests of justice' and followed the aims of the given institution, as a second source for the interpretation of the norm.[27] By following this source, they found that the main aim of the ICC is to insist on bringing criminal justice to both victims and perpetrators.[28] Accordingly, it is the criminal justice approach that the prosecutor should consider, when making a decision. The arguments were mainly based on the indeterminate meaning of justice, which implies that the wording of the text of the article cannot be used to find out the exact meaning of the term. To reply to this inquiry, it seems that the interpretation of the wording of article 53 is possible, and can find out what kinds of mechanisms the prosecutor can defer to, without resorting to the purposes of the Court that are laid down in the preamble of the Court's Statute.[29]

To discuss the above point, we need first to distinguish between the investigation phase and the prosecution phase. From a legal point of view, before the prosecutor makes a decision to investigate, she first seeks to receive information, and collect evidence, via communications and referrals. This early stage of investigation is called a preliminary investigation. Now, the sort of decision that the prosecutor can make at this stage is the decision of investigation (investigative proceedings). At this stage (investigation stage), the investigative proceedings are not conducted, such as identifying alleged perpetrators, exact incidents, victims, the sort of criminal responsibility, the link between the incidents and their perpetrators, and bringing witnesses. Therefore, if the prosecutor decided to stop the investigation at this particular stage, then, it seems that any justice alternative may be acceptable, even if the latter alternative does not include any investigative proceeding. This can be deduced from the wording of the text of article 53.[30]

Now, the same argument made above can be applied to the second phase: the prosecution stage. However, this needs a further explanation. If the prosecutor decided to investigate the given situation and then decided not to prosecute any case on the basis of 'the interests of justice', different mechanisms would be relevant. At the prosecution stage, it seems again that the criterion 'the interests of justice' might be used to cease a prosecution, but not an investigation. The prosecutor, at this stage, completed the investigative proceedings and declined to prosecute any case. This means that the prosecutor, at this stage, can defer to other mechanisms that do not involve prosecutorial decisions. However, the alternatives do need to involve investigative proceedings. Therefore, the prosecutor should be strict, at this particular stage, when interpreting the term of 'justice'. For example, a truth commission approach, in its narrow meaning, which involves investigative proceedings and not the decision to prosecute, may be an acceptable

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[26] They found that the Preamble of the ICC Statute emphasises the necessity of providing criminal justice to both victims and perpetrators of any conflict, see supra n. 1 and 2 of the views of those authors

[27] They used Article 31 of the Vienna Convention on the Law of Treaties, which set out the general sources of the interpretation of treaties. These sources are in order. The second one is that, if the wording of the text is not clear, then, the main aims and goals of the given treaty can be utilised

[28] For example, Paragraph 4 of the Preamble of the Statute provides that 'the most serious crimes of concern to the international community as a whole must not go unpunished'

[29] Most of the scholarships and some international human rights organisations have initially argued against any decision that might stop the proceedings in 'the interests of justice'. Basically, the latter views were based on the lack of clarity of the phrase: 'the interests of justice' that is open for different interpretations. This pushed them to exclude the wording text to interpret the exact meaning of the phrase and use other sources, such as the aims of the Court, to build their views, See *supra* n. 1 and 2 to know further information about the arguments presented by those groups

[30] Public apologies, reparatory justice, National Remembrance Day, administrative justice, constitutional justice, historical justice, and peace process are some examples that can be relevant alternatives, as they, sometimes, might not involve any investigative or prosecutorial process or they might result from non-investigative mechanisms

alternative. The truth seeking approach is the ideal approach that refers to the process of investigation and does not end up with any prosecution decision. Ultimately, if the above interpretation is correct, then one can say that the first part of article 53 should be read in a broad way, but the second one in a narrow way. In other words, the discretionary function looks more significant at the prosecution stage than the investigation stage.

Is Peace Process within the Scope of 'the Interests of Justice?'

A third concern of article 53 is whether or not peace processes can be taken into account. Can the latter prospect come within the parameters of the broad meaning of 'justice'? Basically, the Prosecutor, the policy paper on 'the interests of justice', and most commentators have answered no.[31] However, the previous Prosecutor[32] and the incumbent one[33] seem inconsistent, as both have answered that they would consider the impact of the proceedings on national efforts to achieving peace on some other occasions.

To find out whether peace talks come within the confines of justice, we need to look at article 53, the policy paper on 'the interests of justice', and my own data, which I collected by interviewing members of staff of the OTP. Obviously, the wording of the text of the article does not make any reference to peace processes. However, the balancing test that article 53 provides might merit an examination of the position of peace within the article. Among the factors that the article suggests are 'the role of the alleged perpetrator' and 'the interests of victims'. These factors, as was explained above, have a dual nature in the sense that they are open to different interpretations. Having looked at history, one can see that these factors were taken into considerations when handling certain situations.[34] In other words, it seems that these factors may be used as bases to defer to peace negotiations, as will explained now.

In order to discuss this point in more detail, we need first to distinguish between stable and unstable situations, whether be it during ongoing conflicts or post-conflicts. During stable situations, criminal prosecution may become a desirable option. This happens, essentially, in situations, where the alleged perpetrators have been defeated, and have had no further role in the given society. The perpetrators usually cease to hold power and can be apprehended with no fear of the renewed explosion of violence. The prosecutor can then ignore this criterion (the role of the alleged perpetrators) and, therefore, proceed with the investigation of prosecution. "The

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[31] "I cannot adjust the law to the political interests. Those who manage political agenda have to respect the law", An answer of Moreno Ocampo to my own question about the application of Article 53 run via a webcast interaction. See this interview at: Webcast interview with ICC's former Chief Prosecutor, Luis Moreno Ocampo, International Bar Association, 17, October, 2012, at
<http://wcc.webeventservices.com/eventRegistration/console/EventConsoleMVC.jsp?&eventid=529206&sessioni d=1&username=&partnerref=&format=fhvideo1&mobile=false&flashsupportedmobiledevice=false&helpcenter=f alse&key=47F980F3BD93A69C4C205D63E8B92504&text_language_id=en&playerwidth=800&playerheight=690& eventuserid=70917034&contenttype=A&mediametricsessionid=56952751&mediametricid=963054&usercd=70917 034&mode=launch#> (Last Access: 10, October, 2012)
[32] See ICC, the Office of the Prosecution, Second Report of the Prosecutor of the International Criminal Court, Mr Moreno Ocampo, to the Security Council Pursuant to UNSC 1593 (2005) (13th December, 2005), P. 7, available at <http://www.icc-cpi.int/NR/rdonlyres/2CFC1123-B4DF-4FEB-BEF4-52E0CAC8AA79/0/LMO_UNSC_ReportB_En.pdf>
[33] Prosecutor Fatou Bensouda's answer to my question about the prospects of the application of Article 53, where she stated that if the current work of the Court disturbed national activities on the given situation, she would reconsider her proceedings and apply Article 53. This was during a lecture run by Prosecutor Fatou Bensouda at Birkbeck College on 29 November, 2012
[34] *Ibid*

interests of justice" during the Nuremberg and Tokyo tribunals were best promoted by simply delivering criminal justice to the perpetrators, who were not any longer in power. The same can be applied to the Rwanda situation, where the defeat of *genocidiers* made the criminal justice response an ideal mechanism to deal with the post-conflict transition without a fear about "the interests of justice".

Things look different when it comes to talk about unstable situations, however. Indeed, there are several historical examples that demonstrate that a variety of justice mechanisms (criminal and non-criminal mechanisms) have been applied to such situations (unstable situations).[35] However, there was a common shared feature that shaped this situation, where the political and military strategies articulated to end the violence or to boost the fragile peace processes played essential roles in the eventuality of prosecution on peaceful transitions. In other words, articulating "the interests of justice" was, to a large extent, affected by the accompanying political and military circumstances. For example, one of the worst atrocities that was committed in Bosnia and Herzegovina, the Srebrenica massacre by Mladic, happened only two years after the establishment of the ICTY.[36]

When the perpetrators of this massacre and other crimes, such as Karadzic, no longer held power, Goldstone developed his strategy and, accordingly, decided to indict those perpetrators, as there would be no further atrocity or threat to the ongoing peace talks.[37] This happened on the eve of the Dayton Peace Agreement, when Goldstone indicted only Karadzic and Mladic, and totally ignored Milosevic, who was still needed for the process of the Dayton talk.[38] It was only after the NATO intervention in Kosovo that made Milosevic no more dangerous for any violent backlash (interests of victims).[39] The latter environment, which obviously had political considerations, provided an ideal opportunity for the hunter to hunt his prey. These critical cases are examples that demonstrated that the pragmatic considerations were needed for a better strategy on a prosecutorial discretion. Further, considering these accounts was apparently a part of the decision-making process that provided the Prosecutor with a wide space to move without prejudice to the independence of the Prosecutor, as a body within a judicial institution.

The same argument could be applied to the Darfur situation, where the prosecution approach may have resulted in increasing the level of suffering (interests of victims), and those who were indicted by the ICC and are still in power have still been committing war crimes.[40]

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[35] El Salvador and Haiti adopted non-criminal mechanisms, while Uganda, Sierra Leone and Rwanda and Former Yugoslavia adopted a criminal approach

[36] See *supra* n. 17. Here, I am linking the crimes committed in Balkan wars to the establishment of the tribunal, as this was not all the time a case. Hazan said that 'The UN peacekeeping forces present in the former Yugoslavia reported that the warring parties took account of the legal risk during the first few weeks after the creation of the ICTY in 1993. They later realized that the Tribunal was weak and, confident of impunity, committed the Srebrenica massacres.' According to this statement, there was a link between the crimes committed and the establishment of the tribunal, at least, at the beginning of the conflict, see Pierre Hazan, Measuring the Impact of Punishment and Forgiveness: a Framework for Evaluating Transnational Justice, *International Review of the Red Cross*, Vol. 88, No. 861 (2006), P. 35

[37] *Supra* n. 17 Bass, Pp. 227-30

[38] *Ibid* P.237

[39] The NATO war in Kosovo changed the priorities of the war strategies, where Milosevic was considered to be an obstacle to the stability of the region, as he began to lose his power. Then, the political and military environment was ideal for the Prosecutor to indict him as "the interests of justice" were not at risk any more

[40] When the President of Sudan was indicted by the Prosecutor, who ignored calls by the Arab League, the African Union, several African States, and China not to indict him, Omer Al-Bashir responded to this indictment by suspending the operation of aid groups, which left thousands of people in Darfur, including IDPs with no life

However, there is a preeminent difference between Darfur and Yugoslavia, which is the enforcement problem. In the ICTY situation, despite the fact that the Prosecutor still used his discretion to select his targets in the most relevant circumstances, the Prosecutor was acting within an environment where effective enforcement mechanisms were available.[41] This, first, pushed the decision-makers to approach a criminal prosecution mechanism as a *de facto* approach to address the conflict. Second, it allowed the Prosecutor to use his discretion in a more convenient way, as the prospects of arresting the potential indictees were relatively high.

In the Darfur situation, the enforcement mechanisms are not effective, and the political environment is not helpful for the OTP, as most African states are against the policy of the OTP, in particular in the Darfur situation.[42] Further, *all* indictees of the Sudanese Government are still at large. Hence, the prosecutor decided not to apply article 53 and indicted the most responsible for committing crimes under the jurisdiction of the ICC, including the President of Sudan, although an effective enforcement mechanism is not available.[43] The SC's resolution referring the Darfur situation to the ICC did not provide any serious mechanisms for enforcing the decision.[44] In addition, the ICC entirely depends on the political will of states in enforcing its decisions. The consequences of this strategy were the failure of any peace process taken to end the conflict and a noticeable growth in the level of violence since the prosecution and indictment decisions against Sudan and those who are still in power, respectively.[45]

This does not mean at all that the Prosecutor should not have indicted the President; instead he could have exercised a better strategy if he had considered these pragmatic considerations. It is true that considering these accounts does not necessarily guarantee the capture of the alleged perpetrators. However, such a strategy, at least, gives a better chance of arresting the fugitives. In other words, bringing the political idea of justice within the legal framework of the ICC by emphasising the discretionary power of the prosecutor can help to exercise a better strategy. For example, he could consider the strong role and position of the President and, therefore, decide not to prosecute him until he has built the case against him when the pragmatic considerations are available.

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services, see Kate Allan, Prosecution and Peace: a Role for Amnesty before the ICC? *Denver Journal of International Law and Policy*, Vol. 39, No.1 (2011), Pp. 275-6

[41] The existence of NATO, and the effective supports that were given to the ICTY by the then Governments of the fighting states were some available tools at the time, see more *supra* n. 17

[42] Most recently, the Chad Government refused to arrest the President of Sudan, who visited the country recently, although Chad is party to the ICC and has an obligation to transfer the President to the ICC, see Chad: Hosting once again President al-Bashir would be a further insult to the victims of Darfur, *No Peace Without Justice* (8th April, 2013), available at <http://www.npwj.org/ICC/Chad-should-stand-justice-and-not-grant-impunity-President-al-Bashir.html-0> (Last Access: 12th May, 2013)

[43] There are huge concerns about the public nature, benefit, seriousness, and time of the indictment of President of Omar Al-Bashir, as such indictment has only accelerate the rhythm of the violence in Darfur, where people are in desperate need of humanitarian assistance as a consequence of the indictment, see Conor Foley, This Darfur Prosecution is deadly, *The Guardian* (27, May, 2009), available at <http://www.guardian.co.uk/commentisfree/2009/may/27/hay-festival-icc-darfur-sudan> (Last Access: 24, November, 2012). See also, James A. Goldstone, More Candour about Criteria, *Journal of International Criminal Justice*, Vol. 8 (2010), P. 385

[44] UNSC Resolution 1593 (2005)

[45] *Supra* n. 36, Hazan, P. 35, talking about how the warring parties to the Darfur conflict took the ICC's prosecution into account when committing further crimes. This argument was also asserted by a participant to a Regional Consultation Conference held in South-Africa, see Tim Murithi and Allan Ngari, The ICC and Community-Level Reconciliation: In-country Perspectives Regional Consultation Report, *Institute for Justice and Reconciliation Transitional Justice in Africa Programme*, (21st and 22nd February, 2011), available at <http://www.iccnow.org/documents/IJR_ICC_Regional_Consultation_Report_Final_2011.pdf>

Thus, the reference to pragmatic considerations does not necessarily prevent the prosecutor from making a decision to prosecute a certain perpetrator at all. Instead, it provides her with more options, so she can exercise a better prosecutorial strategy, based on the available options. This also reveals that the prosecutor at this stage is not politically-motivated, as the above strategy comes within the confines of the discretionary power. This is how Kenneth A. Rodman argued when he talked about the relationship between pragmatic and legal considerations by saying 'those episodes (the latter considerations) demonstrate that political factors -most notably the power of the perpetrators relative to the forces arrayed against them and the political strategies of the latter to address the conflict- determine when a criminal law approach is effective and whether it contributes to peace.'[46] However, sometimes, in particular, during a point where the alleged perpetrators are still holding significant power or retain remarkable power, the prosecutor might consider 'some compromises with criminal justice'.[47] This is a critical point, which it seems that the OTP would not consider, as the latter is quite strict about the policy of bargaining paradigm, where the perpetrators might use to simply avoid any criminal justice fate.

Then, how would the prosecutor behave in such circumstances? Is not the decision to refer to peace processes within the confines of justice (In its broad meaning)?[48] The probable answer to this inquiry is to know as to whether or not the victims seek the demands of peace ahead of the demands of justice. If that is so, then we can say that the decision to defer to what victims ask for is what justice is. This is not an easy hypothesis, since; first, the perpetrators might impose their conditions on victims as a bargaining chip for their freedom. Second, it is quite difficult to identify the real needs of victims. However, the policy paper that the OTP issued about the interests of justice has made it very clear that the application of subparagraphs (c) of article 53 is exceptional in nature.[49] This is also how several staff of the OTP answered my inquiry about the general application of article 53, where all of them confirmed that the OTP is extremely strict about the application of this article.[50] However, the exceptional nature of ceasing criminal proceedings requires additional and external responses so the OTP can exercise and insist on the criminal prosecution. It 'requires a commitment by international and regional actors to assume those risks', as the threats posed by the alleged perpetrators are usually 'proportionately greater' and imminent.[51] The availability of the latter support might also affect the decision of the prosecutor.

In short, the evaluation of the potential consequences of the decision of investigation or prosecution on the ongoing conflict or a political transition is a matter of policy and definitely not law. Basically, the Prosecutor is a legal body and has nothing to do with diplomatic and political affairs. But that does not mean that the prosecutor might 'act as both lawyer and diplomat in exercising his discretion, evaluating not only the gravity of the crime and the admissibility of the case, but also the likely impact of an investigation or prosecution on

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[46] Kenneth A. Rodman, Is Peace in the Interests of Justice? The Case for Broad Prosecutorial Discretion at the International Criminal Court, *Leiden Journal of International Law*, Vol. 22, Issue 01 (2009), P. 101

[47] *Ibid* P. 110

[48] It should be borne in mind that when the OTP decides to stop proceeding with the investigation or prosecution, the particular form of alternative would not be very important, according to an interview I conducted with a member staff of the OTP on 12 March, 2013. Basically, the concept of justice has broad and narrow meanings. The first consists of retributive, restorative, and reparatory justice, while the narrow one consists of only retributive justice. For more information about the meaning of justice see, Priscilla B. Hayner, *Unspeakable Truths: Facing Challenge of Truth Commissions* (New York, Routledge: 2002), and The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, Report of the Secretary- General, UN Doc. S /2011/634, 12 October 2011, at P. 17

[49] *Supra* n. 1

[50] Several interviews with members staff of the OTP conducted on 12, 14 of March, 2013

[51] *Supra* n. 46, P. 115

prolonging a conflict or undermining a political transition.'[52] In other words, the prosecutor sometimes might be in contact with the domestic, regional and international actors who are involved in the peace transition for the purposes of examining of the probable effects of criminal proceedings on the given situation.[53] This is without any prejudice to the independence of the prosecutor, as the above strategy is under the discretionary power of the prosecutor. Under this power and the above factors, the prosecutor might consider the domestic approach and, therefore, might delay any criminal proceeding or just decline totally the investigation or prosecution. Such decisions are made on a case by case basis, where the prosecutor is required to examine all legal, political, and diplomatic and any other relevant aspect of the situation, bearing in mind the exceptional nature of application of article 53.

The Uganda situation was among the first situations that raised the issue as to whether or not the peace process should be taken into prosecutorial discretion, in particular under article 53. Following the acceptance of Ugandan Government's referral in 2005, some people, including Betty Bigombe, a former Uganda minister, some NGOs, and the Acholi community, criticized this referral, as they believed that the referral would disturb the peace talks. The Court decided to indict several alleged perpetrators from *only* the rebels' side (LRA), including Joseph Kony who was mainly responsible for serious crimes committed against the Acholi community. While this conflict is still in progress, the Government of Uganda has led several initiatives to end the conflict by having a peace negotiation with Kony.[54] The latter has refused several times to sign any peace talk until the ICC withdraws the arrest warrant issued against him in 2005.[55] As a consequence, the Ugandan Government has provided a variety of alternatives to all perpetrators, ranging from blanket amnesty to punishment procedures against only those who committed the most serious crimes, without clarifying what kinds of punishments they are.[56] However, the dilemma of justice and peace in the context of Uganda situation is still unclear, as both sides are still fighting each other on the one hand and seeking for a peaceful solution on the other.[57] The question is how the prosecutor should respond to this situation.

To accept the peace process as a solution to handling the Uganda situation according to article 53, is only to accept that the peace process can come within the confines of 'the interests of justice'. The legal justification for such a suggestion is to factor the peace process into the decision-making process when the prosecutor evaluates the given situation based on her discretionary power. The objectivity theory advanced by Koskenniemi offers an essential theoretical justification to reflect on the Uganda situation. He stated that an international legal discourse (a decision-making) that is based on the pragmatic and legal considerations is an

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[52] *Supra* n. 46, P. 121

[53] An interview with a member staff of the OTP conducted on 12 March, 2013

[54] Situation in Uganda, *The Hague Justice Portal*, available at <http://www.haguejusticeportal.net/index.php?id=6175> (Last Access: 2, April, 2013)

[55] See *Prosecutor v. Kony*, Case No. ICC-02/04-01/05

[56] See Agreement on Accountability and Reconciliation Between the Government of the Republic of Uganda and the Lord's Resistance Army/ Movement, Juba Sudan, ICC-02/04-01/05-352-AnxA 18-11-2008 2/12 CB PT, available at <http://www.icc-cpi.int/iccdocs/doc/doc589232.pdf>, see also another agreement in 2008 about cease-fire, Uganda and Rebels Sign Cease-Fire, The New York Times (24 Feb, 2008), available at <http://www.nytimes.com/2008/02/24/world/africa/24uganda.html?_r=0> (Last Access: 26, March 2013)

[57] Both sides also signed another agreement on 2009; see Agreement on Implementation and Monitoring Mechanisms, Juba, Sudan, available at <http://northernuganda.usvpp.gov/uploads/images/vy0hCC-lHclHmwkfQyIbPQ/agendaitem6signed.pdf>. See also, Michael Otim and Marieke Wierda, Uganda: Impact of the Rome Statute and the International Criminal Court, *International Center for Transitional Justice* (May, 2010), available at <http://ictj.org/sites/default/files/ICTJ-Uganda-Impact-ICC-2010-English.pdf>, P. 2

objective discourse.[58] With respect to the pragmatic accounts, it is submitted that several pragmatic factors require the prosecutor to consider the peace efforts that have been called for by the main parties to the conflict. For example, the voice of victims is one important account, where several surveys have shown that a large number of them demanded the peace efforts ahead of justice demands.[59] The role of the civil society, NGOs, and other domestic actors, who are closely engaged in the conflict and strongly believe in a peaceful solution, is another pragmatic factor. This can be followed by the strong position of the rebels, who are still holding a strong power, as Kony, for example, has refused to sign any peace talk and, therefore, end the conflict until the Court withdraws the arrest warrants issued against his groups. On legal considerations, the prosecutor may consider two criteria provided by article 53 as bases to stop the proceedings against the given situation: 'the interests of victims and the role of the alleged perpetrator'. The consideration of the latter legal requirement alongside the pragmatic ones seems a possible approach towards handling the atrocities on the one hand, and on the other, avoiding the suspicion that the prosecutor is politically-motivated when considering those pragmatic accounts.

Conclusion

This paper sought to identify the potential prospects of the application of article 53. It showed that the exercise of the prosecutorial discretion in the context of evaluating 'the interests of the justice' should be based, at the most relevant circumstances, on legal and policy considerations. The two latter should be balanced in a way that enables the prosecutor to exercise a better strategy of prosecution that can help to give more effect to such a strategy, or find a better solution that corresponds with the national efforts to address the given situation. Therefore, the prosecutor, sometimes, needs to factor other concrete considerations, which are necessary for the exercise of the discretionary function. The unavailability of effective enforcement mechanisms obliges the prosecutor to defer her criminal proceedings and use a broad strategy when assessing the meaning of 'justice'. Until our global society finds more credible and effective tools, we need to accept both faces of article 53. By then, it could be possible to change the whole argument and to argue for the sole commitment to a criminal justice approach. It, finally, showed that the prospect of the influence of the prosecutor's decision, based on her discretionary power, by pragmatic considerations is inevitable.

[58] The Koskenniemi's theory is not taken for granted. His theory was criticised by a variety of sources, including realism theory and positivism theory, and from within critical legal theory such as Dencho Georgiev. He critised the approach of the arguments that Koskenniemi used to produce an objective international legal discourse, see Dencho Georgiev, Politics or the Rule of Law: Deconstruction and Legitimacy in International Law, *European Journal of International Law*, Vol. 4, No. 1 (1993), 1- 14. I also criticised him by developing a balance approach between the requirements of the objectivity of an international legal discourse, which I placed in my wider PhD project (Chapter 1)

[59] For example, two surveys conducted by a group of researchers in 2005 and 2007 showed that the responses of the affected societies are far from uniform. The first one demonstrated that most of the respondents support the criminal prosecution rather than peace talks, while the second survey showed the reverse, see Phuong Pham, Patrick Vinck, Marieke Wierda, Eric Stover, and Adrian di Giovanni, Forgotten Voices: A Population-Based Survey of Attitudes about Peace and Justice in Northern Uganda, *International Centre for Transitional Justice* (July, 2005), available at <http://ictj.org/sites/default/files/ICTJ-HRC-Uganda-Voices-2005-English.pdf>. See also, Phuong Pham, Patrick Vink, Eric Stover, Marieke Wierda, Andrew Moss, and Richard Bailey, When the War Ends: A Population-Based Survey on Attitudes about Peace, Justice, and Social Reconstruction in Northern Uganda, *Human Rights Center: UC Berkeley* (January, 2007), available at <http://www.escholarship.org/uc/item/8m56w3jj#page-2>

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Survey Protocol for Research on 'Vulnerability to Poverty: Insurance Role of Microsavings against Crises in Two Villages in Northeast Rural Bangladesh'

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Abstract: This protocol is a systematic narration of my fieldwork in Bangladesh for postgraduate research at the School Social Sciences, University of East London. Main aim of the research is to investigate crises coping strategies of households and insurance role of microsaving in reducing vulnerability to poverty in north eastern rural Bangladesh. Underlying research question is: How do rural people strengthen their capacity against vulnerability and how microsavings contribute in this process? There are three broad data requirement categories for this question: 1) Vulnerability to poverty 2) Crises management capacity and 3) Insurance role of microsavings. Data collection methods are both qualitative and quantitative in nature. Qualitative method uses Participatory Rapid Appraisal (PRA) and Focus Group Discussion (FGD). Quantitative method employs semi-structured questionnaire and Progress out of Poverty Index (PPI) for each randomly selected households. The survey was held in two randomly selected villages in north eastern region of Bangladesh.

INTRODUCTION

Microfinance Institutions (MFIs) and Non-Government Organizations (NGOs) organize the rural poor and provide development inputs such as microfinancial support, health and education programs for capacity building of the households in rural Bangladesh. Unlike banks, MFIs provide collateral free semi-formal microfinancial instruments to support their microenterprise and provide security against socioeconomic crises and shocks. They provide self-insurance products like microsaving and microcredit as well as insurance products like microinsurance and other social safety nets. This research is designed to study saving behaviour in northeast rural Bangladesh in view of their preferences and expectations in microsavings services provided by the MFIs. It would highlight on crisis management capacity of the rural households and potential use of microsavings in combating such crises. Focal point of the study is the insurance role microsavings against crises facing rural households in north eastern Bangladesh. This investigation will examine the capacity building mechanism of rural households rather than assessing the impact of MFI programs targeting poverty reduction.

Main objective of the study is to investigate the crises management capacity of households and the effectiveness of microsaving instruments in reducing vulnerability to crises in northeast rural Bangladesh. Its specific objectives are to:

- Investigate the socioeconomic factors responsible for risks and shocks driven vulnerabilities of   households in north eastern rural Bangladesh.
- Analyse the livelihood condition and coping strategies of rural households facing the crises.
- Explore perception and preferences of rural poor about the insurance role of microfinance.
- Examine the effectiveness of microsavings as insurance against vulnerability to poverty.

Major emphasis of the study would be the potential role of microsavings in capacity building of the rural poor. Underlying research question is: How do rural people strengthen their capacity against vulnerability and how can microsavings contribute in this process? Key questions this research sought to address are:

- What are the socioeconomic factors that generate vulnerabilities of households in north eastern rural Bangladesh regarding risks and shocks?
- What types of strategies do rural people use to cope with these crises?
- How effective are microsaving instruments in building resilience to risks and shocks?

Data required to find answer to these questions are both qualitative and quantitative in nature. Mixed method of qualitative and quantitative approaches known as Q-squared approach is used to justify the findings of this study. Key elements this research are: assessment of capacity building of poor households, utilization of microsavings as insurance against shocks, reducing vulnerability to poverty using saving-led asset based approach instead credit-driven liability based approach and self-reliant instead of aid-dependent microfinance.

THEORETICAL BACKGROUND

Objective measures of poverty depend heavily on the quantitative information contained in household survey on expenditure or income to draw an arbitrary line separating poor from non-poor. There are three most commonly used poverty measures in development economics literature: 1) Incidence of poverty (head count index), 2) depth of poverty (poverty gap) and 3) severity of poverty (squared poverty gap). Statistical formulae are heavily used in these measurements to assess the wellbeing of the households (Ravallion, 1994, Haughton and Khandker, 2009). Social scientists have been debating over the issue of income or expenditure deprivation as an appropriate yardstick to measure poverty during 1930s and 1990s. It gains momentum when Sen redefines poverty as deprivation of human capabilities in his seminal book *Development as Freedom* (Sen, 1999). The idea of subjective or qualitative measures of poverty based on people's perceptions about their situation and judgement of minimum standard and basic needs comes to forefront in early 2000s. Qualitative assessment allow poor to define poverty using Participatory Poverty Assessment (PPA) based on the idea that 'they are true poverty expert' so their voice should be included (Pradhan and Ravallion, 2000). Poverty measurement is now a multidimensional approach that includes all types of deprivation, insecurity, powerlessness and social exclusion. Two aspects of poverty emerged from the participatory assessments that are not covered in the conventional surveys: *first*, a concern about risk and volatility of income i.e. feeling of vulnerability and the *second*, lack of voice and socio-political rights i.e. sense of powerlessness (Kanbur and Squire, 2001). Poverty measures are generally fixed in time and thus poverty is essentially a static concept. By contrast, vulnerability is more dynamic concept that incorporates expected poverty i.e. probability of moving in and out of poverty (Lipton and Maxwell, 1992).

There are two dimensions of vulnerability: *sensitivity* or magnitude of a system's response to an external event and *resilience* or capacity of a system's recovery from stress (Blaikie and Brookfield, 1987; Bayliss-Smith, 1991). Robert Chambers describes vulnerability as a symptom of poverty which means defencelessness, insecurity and exposure to risk, shocks and stress. According to him, *"vulnerability has [thus] two sides: an external side of risks, shocks, and stress to which an individual or household is subject; and an internal side which is defencelessness, meaning a lack of means to cope without damaging loss"* (Chambers (1989, p.1). External sources of risk range from natural disasters and epidemics to crime and violence, financial insecurity, and civil conflicts. The author distinguishes poverty reduction by raising income and consumption from vulnerability reduction by making people more secure. Moser (1998) prefers using the term 'resilience' (or capacity to resist or recover) instead of Chambers' 'defencelessness'. Resilience refers to using assets and entitlements as means of resistance against shocks. More ownership and control over assets means less vulnerable the households or individuals are (assets based approach). On the other hand defencelessness has implicit meaning of seeking help from external sources (loans etc. in liability approach) which may end up with indebtedness or higher degree of insecurity.

Morduch (1994) tries to connect two well-developed notions in economics: Poverty and Uncertainty. He shows poverty-vulnerability linkage through the equation $y = x + \varepsilon$, where current income (y) depends on permanent income (x) and transitory shocks (ε). He argues that vulnerability and poverty reinforce each other and diminish expected welfare of the poor. In

exploring the linkage between poverty and vulnerability Dercon (2006) focuses on risk-related vulnerability instead of defencelessness of vulnerable groups. Such groups may face risks but their defining characteristics are not related to risk. The author argues that coping mechanism is a central part of people's livelihood. He recommends ex-ante and ex-post policies for reducing risk and supporting capacity building. *Ex-ante* measures are precautionary measures taken before the occurrence of the shocks such as insurance. *Ex-post* measures are for those who are already affected and uninsured e.g. targeted or conditional transfers to the poor.

RESEARCH DESIGN AND METHODOLOGY

Data Requirement: There are three major data requirement categories for this survey: 1) Vulnerability to poverty, 2) Crises management and 3) Insurance role of microsavings. For the first category, poverty likelihood as a proxy for vulnerability can easily be calculated by Progress out of Poverty (PPI) Scorecard developed by Grameen Foundation (Grameen, 2008). It includes 10 simple questions carefully selected from the Household Income and Expenditure Survey (HIES) of Bangladesh Bureau of Statistics. In-depth vulnerability measurement will be done using data from income and expenditure section of the questionnaire. Data required for the second and third categories include types of crises, resilience and coping strategies of the poor, sources and uses of microfinance, and insurance role of microsavings against vulnerability to poverty. These data were gathered by Focus Group Discussions (FGD) and survey questionnaire. Quick and cost effective instruments like PRA (Participatory Rural Appraisal) and PPI were used to back up information gathered by focus group discussion and survey questionnaire. Moreover, the risk of low response was mitigated by these two interesting, participatory and effective data collection methods.

Data Sources: Primary data are obtained from randomly selected households from two sample villages in north eastern Bangladesh. Respondents are clients of microfinance institutions (MFIs) and other formal and informal financial service providers. Other primary sources of information include officers and fieldworkers in MFIs, and other service providers such as moneylenders, rural doctor and member of local government. Secondary data are obtained from a review of literature on microfinance and risk and vulnerability in rural area. Annual reports of major MFIs, Statistical Year Book of the Bangladesh Bureau of Statistics (BBS) are other major sources of secondary data.

Sample Design
Sampling Frame: Sampling frame is a list of individuals, households or agents within a population who can be sampled. Current research project is about vulnerability to poverty assessment and risk and crises coping strategies of rural households with special focus on microsavings. The population of this study is the total number of households in two randomly selected villages in north eastern region of Bangladesh. It can be divided into subgroup of households such as ultra-poor, poor and non-poor based on specific inference about their poverty status. Sample frame was drawn from these sub-groups using appropriate sampling technique. There are two major sampling techniques in statistical analysis: 1) Probability sampling where every unit of population has a chance of being selected and 2) Non-probability sampling where some elements of population have very negligible or no chance. In order to avoid the risk of exclusion bias or

selectivity bias I use probability sampling which has various types such as 1) Simple random sampling, 2) Systematic random sampling, 3) Stratifies sampling, and 4) Cluster or multistage sampling. In this study, I use stratified sampling method where each subgroup or stratum is classified as an independent sub-population and then individuals or households are randomly selected from the specific sub group.

Sample Size: North eastern part of Bangladesh is known as Sylhet Division which has four districts: Sylhet, Moulovibazar, Habiganj and Sunamganj. Geographically, the north eastern Bangladesh has two main topographies: 1) High lands with high plains, hills and hillocks locally known as *Ujan* and *Pahar* or *Tilla* areas. 2) Low lands with flood plain and free water wetlands locally known *Bhati* and *Haor* or *Beels*. I have selected two remote villages from each of the region at random. One of the criteria for remoteness is the distance from the urban area that ensures the true characteristics of rural life. I assume that it is no less than 10 kilometres from of district town or 5 kilometres from local government offices. For each village I used stratified random sampling method for identifying sample households. By PRA wealth ranking exercise villagers classified their households into three strata: ultra-poor, poor and non-poor. From each stratum 35 households were selected randomly giving 35 X 3 = 105 households in each village and 105 X 2 = 210 households in total sample. Each household was surveyed by using PPI scorecard and semi-structured questionnaire. Respondents in each village participated in six PRA exercises (transects, social map, seasonal calendar, wealth ranking, mobility map and pairwise ranking) and seven FGDs (3 poverty groups, 3 MFIs field officers groups and one other service provider group). Participants in PRA are residents of the village, irrespective of age and social status, interested in engaging themselves in information sharing joyful exercises. In each FGD, 6-12 participants discussed about the issues initiated and prompted by the moderator.

Data Collection Methods
In this research I used four survey instruments: 1) Participatory Rural Appraisal (PRA), 2) Focus Group Discussion (FGD), 3) Progress out of Poverty Index (PPI) and 4) Household Questionnaire. Data collection methods are combination of both qualitative (instrument 1 and 2) and quantitative (instrument 3 and 4) methods. Qualitative components are designed to listen and learn from group of poor and non-poor rural people. Quantitative components are mainly household survey using semi structured questionnaire and poverty scorecard.

1) Participatory Rural Appraisal (PRA): PRA is a short cut method of collecting data quickly and accurately by learning from and with respondents. The role of the researchers is to facilitate rural people in collecting, presenting and analysing information owned and shared by them. Researchers are usually ignorant of the local condition, environment and knowledge and thus they are *outsiders and learners*. Respondents, on the other hand, are well aware of the local situation, knowledge and experience and they therefore are *insiders and preceptors*. In PRA outsiders establish rapport, facilitate methods, hand over the stick and then watch and listen to insiders who use map, model, and diagram to plan, discus and evaluate their livelihood and environment. PRA contains various exercises such as Transects, Participatory Mapping, Seasonal Calendars, Venn Diagrams, Flow Charts, Mobility Map, and Timelines. In this study, PRA includes following exercises:

a) Village transects – Research team met village leaders and senior persons to obtain general overview of the economy, history and geography of the village. They chose a person who led the team for an observatory walk through the residential area of the village. These transects provided

an 'objective' map that identifies village infrastructure including housing, drainage and sanitation and economic activities such as livestock management, rural trades and crafts.

b) Social mapping – Villagers were asked to prepare 'social map' of the village which includes topology of the village in social and economic terms, and inventory of village resources such as school, wells, hand pumps, community centres, religious centre, MFI groups, social capital etc. It identifies social networks and their uses in confronting social crises. Social maps also reveal the division of the village in poverty scale.

c) Seasonal calendar – In this exercise, villagers have drawn trends in their main economic activities, problems and opportunities throughout the year. It is used in assessing seasonal variation in crop production, livelihood, health and nutrition in order to identify frequency and magnitude of difficulties and vulnerability they face.

d) Wealth ranking – In this exercise villagers were asked to rank their households on the basis of relative wealth and level of poverty. Wealth ranking exercise provides valuable information on local views of wealth characteristics and perceptions in economic wellbeing in terms of their own poverty and vulnerability scale.

e) Mobility map – In a mobility map respondents explore movement pattern of individual, group or community searching for services, facilities and livelihood opportunities. In this exercise villagers were asked to draw a map of economic activities with symbols and explain in details such as purpose, distance, mode of transportation, importance and frequency of visits. Male and female mobility map are done separately to capture the gender difference in these activities.

f) Pairwise ranking – Pairwise ranking is a method of comparing pair of elements such as problems, potentials and needs. In this study, the research team let people recognise their need for financial instruments such as different types of microcredit and microsavings. They then put the items in row and column to compare each pair and finally enter the preferred item in the relevant grid. Client's preference score is drawn on frequency of the items in the grid.

2) Focus Group Discussion (FGD): FGD gathers information from a group of people directly affected by an issue or exclusively involved in a programme. In this research there were five focus groups in each village: Three poverty groups (ultra-poor, poor and non-poor), three service provider groups (MFI fieldworkers) and one other service provider group (village doctor, local government member, money lenders). Main topics in this FGD are types of risks and crises, coping strategies, perceptions and preferences about the microfinancial instruments for accumulating assets and managing risks. Participants also discussed about the role of MFIs in their lives, identify any shortcomings in MFI services particularly microsavings. In this FGD, both male and female participants are allowed to discuss on gender issues in microsavings and coping capacities.

3) Progress out of Poverty (PPI) Scorecard: PPI Scorecard, developed by Chen and Mark (2009) for Grameen Foundation, is a quick and cost effective poverty assessment tool for MFIs and NGOs that measures and tracks economic poverty levels of the clients (Grameen, 2008). It is easy to administer, only five minutes needed to conduct interview, tally the scores and compute the poverty likelihood in the field using paper, pencil and calculator. PPI constitutes a scorecard with 10 easily observable, quick to ask and readily answerable questions which have the close link

with the poverty status. For example, easily verifiable 'roofing material' is used instead of unobservable 'value of the house'. Final PPI score is the summation of response values from each question. Score ranges from 0 meaning the most likely poor to 100 or most likely above the poverty line. Poverty likelihood is estimated through a lookup table constructed on the basis of national poverty line and international benchmark adjusted for purchasing power parity (PPP). In this table total score from scorecard gives corresponding poverty likelihood of a household at a point in time or over time.

4) Household Questionnaire: Household questionnaire is designed to capture demographic, financial and social information including education, health, income and expenditure, loans and savings, crises coping strategies. After the qualitative data collection is complete, I analysed preliminary results to identify issues appropriate for follow-up in the household survey. This follow-up was required to maintain the sequence of the Q-squared approach in qual-quant order such that one method can clarify and enrich the result of the other. The Questionnaire consists of 'Closed' set of questions which are easy to understand and quick to answer at all literacy level. It is also easy to code and simple to create database for further analysis compared to 'Open' set.

Construct of Survey Instruments: Key constructs for PRA in this survey are participatory mapping, seasonal calendars, and wealth ranking which involve voluntary and joyful participation of respondents. Researcher's role here is to facilitate the sharing of knowledge and information of local conditions. Main constructs for FGD are types of crises facing the rural households and their coping strategies, perceptions and preferences of rural people about uses of microfinance in accumulating assets and managing risks. Key constructs for survey Questionnaire are income and expenditure, loans and savings, types of risks and crises, resilience and coping capacities of the poor. It also contains demographic data such as gender, age, marital status, occupation etc. Progress out of Poverty Index (PPI) includes 10 easily verifiable questions that have close link with poverty status.

PRA provides data on social structure, ethnography, power structure, poverty map, and financial portfolio of residents in a village. It supplies information that identifies focus poverty groups for the FGD. Discussions in FGD include types of risks and crises facing the rural poor, perceptions and preferences of rural poor about microfinance and their utilisation in coping with crises. Survey Questionnaire and PPI provide quantitative information on household demography and socioeconomic activities of rural people. Although PRA and FGDs are respondent driven exercises, facilitators need to limit the flow of outcome within the scope of the study. These exercises are designed in such a way that they provide information that cross check the information gathered by household questionnaires and PPI. This also mitigates the problem of missing or unavailable data.

Survey Administration

Survey Process: The survey was held in two villages in northeast Bangladesh during February to April 2013. Research team for the survey comprises three members: two data collectors and a principal investigator. As a principal investigator I was responsible for facilitating the PRA and

FGDs while data collectors assisted me in taking field notes, operating digital recorder and transcribing PRA exercises into newsprint. They also assisted respondents to fill up questionnaire as many of the respondents were not able to read and write properly. A pilot survey was done with 10 households before the data collection was started in February 2013. This has been useful in reshaping the survey questionnaire and reorganising PRA and FGD tools. Survey questionnaire, FGD prompt card and PPI score card have been developed before the start of the survey. These documents were printed in sufficient numbers keeping some spare copies in case of spoils. PRA materials were taken from village resources such as seeds, tree leaves, stones, pebbles, flowers etc. Data collectors were provided with paper and pencil, sharpener, eraser, ruler, writing pad, tape recorder, torch light and above all daily allowance. Training was organized for data collectors to minimise any information gap, overall low response and inconsistency in data collection process. Before we start with survey questionnaire we organised PRA exercises, facilitated FGDs and completed PPI score cards. Sample households were selected at random from the household groups stratified by PRA wealth ranking exercises. We finally distributed questionnaires to those households and sit with respondents face to face to assist him or her understanding the relevant questions.

Follow up: There was a follow up mechanism in the survey that minimises the risk of missing or unavailable data. Filled up questionnaires were carefully investigated to spot any missing or irrelevant data and respective households were revisited if necessary. Sometimes this problem arises when respondents incorrectly understand some specific questions or data collectors are not well aware of specific constructs of the questionnaire. To minimise the impact of these problems extra time were allocated to particular households. Data collectors were given proper training for thorough understanding of the questionnaire and efficient conversation with respondents. In case of any household unwilling to respond, the questionnaire was supplied to an extra household selected in the process of random sampling. In order to avoid any bias or time pressure this selection was held ex ante i.e. at the time of initial random selection and not ex post i.e. after the situation arose.

Pre-analysis Transcripts: After the data collection and follow up process was over, filled up questionnaires have been organised for coding, cleaning and data processing. Database has been created using the research package called Eviews. PRA exercises were transcribed in the newsprint just after respondents have finished the description of their drawings. Their explanations were recorded in the digital recorder and field notes of the data collectors. Participant's narration in Focus Group Discussion (FGD) has also been recorded in digital recorder and field notes. Their discussions have been transcribed carefully into written form for further analysis.

Data Analysis

In this research I use mixed method (known as Q-squared approach) combining qualitative and quantitative approaches to allow for triangulation in data analysis. Mixed approach ensures *validity* or appropriateness of the data to actual conditions through qualitative analysis. It also takes care of *reliability* of the data through quantitative analysis. Qualitative analysis utilises qualitative data collection methods such as PRA and FGD while quantitative method uses semi-structured questionnaire and Progress out of Poverty Index (PPI). PRA are used for topology of study area and random selection of respondents for survey and focus group. PPI are used for assessing the

poverty likelihood of the respondents. PRA, FGD and survey questionnaire together explore respondent's perception, preferences and attitude towards microsavings and its effectiveness in risk management strategies. These will generate information related to impact of microsavings on lives of rural poor. Statistical package, SPSS will be used for descriptive statistics on informal and formal coping mechanisms and insurance role of microsavings against shocks. A regression analysis will involve in quantifying demand for and impact of savings services for the poor using econometric research package like Eviews or Microfit. Logistic regression model may be used to find out the relationship poverty likelihood and use of microsavings in addressing socioeconomic shocks facing rural poor. Qualitative and quantitative analysis together will cross check the outcome of this study.

FURTHER AGENDA

Fieldwork was held in two villages in northeast Bangladesh during February – April, 2013. The survey includes qualitative instruments such as Participatory Rural Appraisal (PRA) and Focus Group Discussion (FGD) and Quantitative instruments such as Progress out of Poverty Index (PPI) and Household Questionnaire (HQ). I have following analysis plan in next few months before starting full-fledged thesis write-up. 1) In-depth understanding of rural people's analysis of PRA and FGD. 2) Measurement of vulnerability using the following equations: $V_{ht} = Pr(C_{h,t+1} \leq z)$ where V_{ht} = vulnerability level of a household h, at time t, $C_{h,t+1}$ = household's per-capita consumption level at time t+1, z = consumption poverty line and Pr is probability that the household will fall below poverty at time t +1, and 3) Logit/Probit regression of vulnerability on its correlates.

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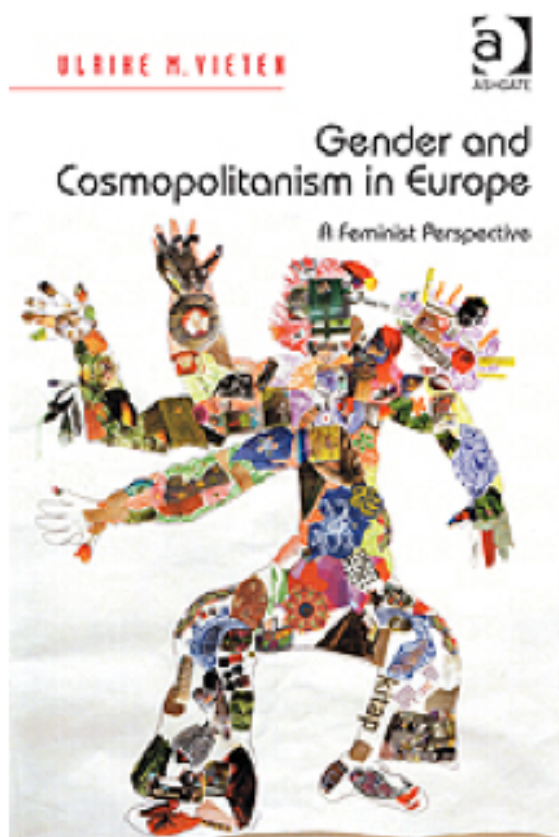e-mail: u1031761@uel.ac.uk

Publication news from UEL PhD Alumni and Alumnae:

2012-2013

a) Books and Edited Collections

Gender and Cosmopolitanism in Europe: A Feminist Perspective
by Ulrike M. Vieten, Vrije Universiteit Amsterdam, The Netherlands, 2012

The Author explores the highly contested concept of cosmopolitanism in this recent book. Through an indepth engagement with the work of key cosmopolitanism thinkers including Jürgen Habermas and Homi Bhabha, and considering feminist criticisms from Chantal Mouffe, Vieten provides an an engaging but challenging read.

Review:

This book combines a feminist critique of contemporary and prominent approaches to cosmopolitanism with an analysis of historical cosmopolitanism and the manner in which gendered symbolic boundaries of national political communities in Britain and Germany are drawn. Exploring the work of prominent scholars including Held, Habermas, Beck, and Bhabha, it attempts to deliver a timely intervention into current debates on globalization, Europeanization and social processes of transformation in and beyond specific national societies. (Joe Laking).

Dr Ulrike Vieten received her PhD in 2008 for the thesis, *Situated Cosmopolitanisms: the notion of the Other in discourses on cosmopolitanism in Britain and Germany*, the University of East London (UEL), Director of Studies, Prof. Nira Yuval-Davis

Oral History in the Visual Arts
**Edited by Linda Sandino and Mathew Partington, 2013**
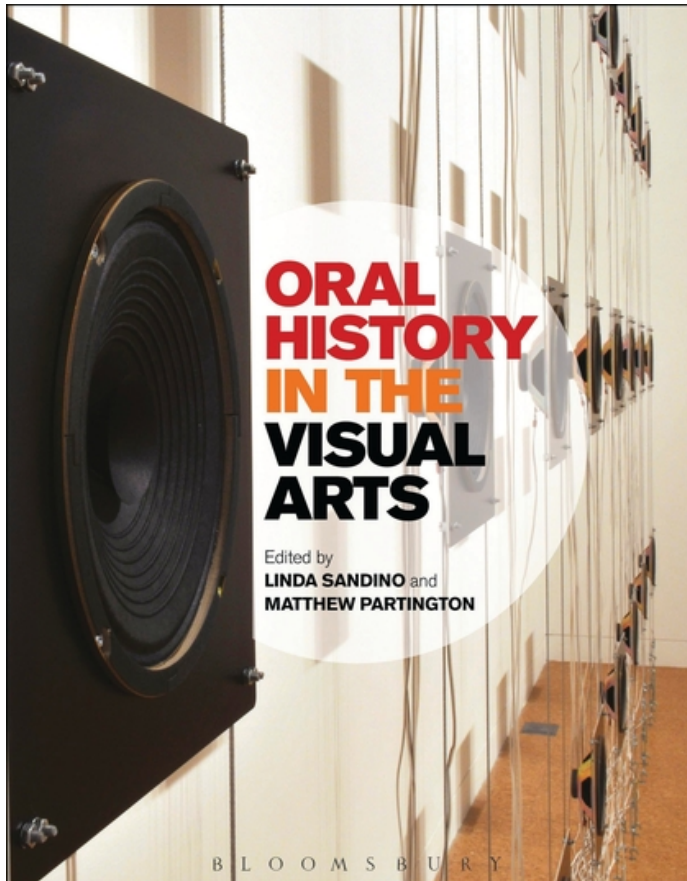
Interviews are becoming an increasingly dominant research method in art, craft, design, fashion and textile history. This groundbreaking text demonstrates how artists, writers and historians deploy interviews as creative practice, as 'history', and as a means to insights into the micro-practices of arts production and identity that contribute to questions of 'voice', authenticity, and authorship. Through a wide range of case studies from international scholars and practitioners across a variety of fields, the volume maps how oral history interviews contribute to a relational practice that is creative, rigorous and ethically grounded. Oral History in the Visual Arts is essential reading for students, researchers and practitioners across the visual arts.

Dr Linda Sandino received her PhD in 2010 for the thesis 'Life History Narratives in the applied arts' the University of East London (UEL), Director of Studies, Prof. Molly Andrews

Undutiful Daughters:
New Directions in Feminist Thought and Practice.

Edited by Henriette Gunkel, Chrysanthi Nigianni and Fanny Söderbäck, 2012
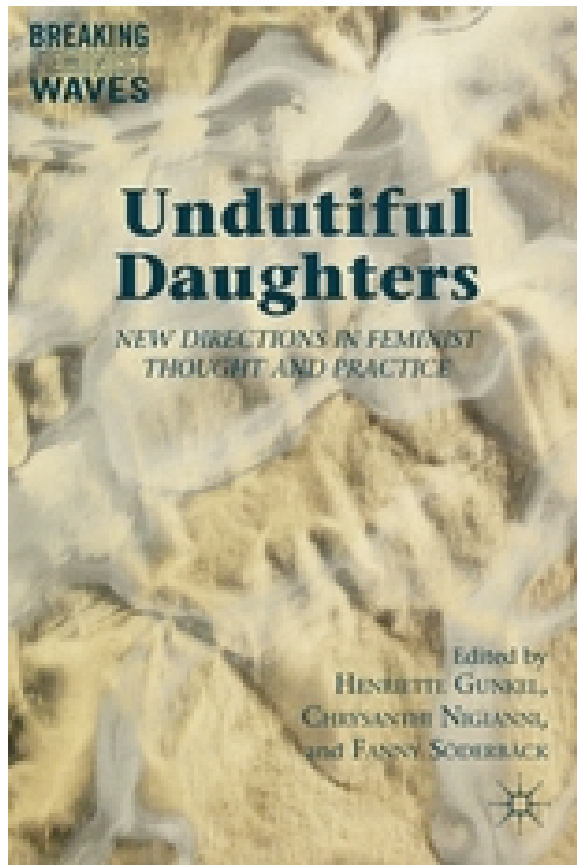
This exciting collection offers a range of perspectives from some of the most prominent feminist voices of our time, including Rosi Braidotti, Judith Butler, Claire Colebrook, Elizabeth Grosz, and Jack Halberstam. Employing experimental modes of thinking and writing, the contributors remain faithful to the feminist tradition of subversion and resistance, while refusing to submit to its political tradition of a loving sisterhood or dutiful daughterhood. Through productive disagreement and cognitive dissonance, the essays presented here reflect the specific circumstances of our present, and attempt to dream and envision possible alternatives for the future. The volume thus invites us to think of the becoming of feminism itself, and the possibilities of future feminisms-to-come.

Dr Henriette Gunkel received her PhD in 2010 for the thesis: *The cultural politics of female same-sex intimacy in post-apartheid South Africa*, the University of East London (UEL), Director of Studies, Prof. Nira Yuval-Davis

Dr Chrysanthi Nigianni received her PhD in 2009 for the thesis 'Queer: corporealising the Other', the University of East London (UEL), Director of Studies, Dr Merl Storr.

Adoption, Family and the Paradox of Origins:
A Foucauldian History
By Sally Sales, 2012
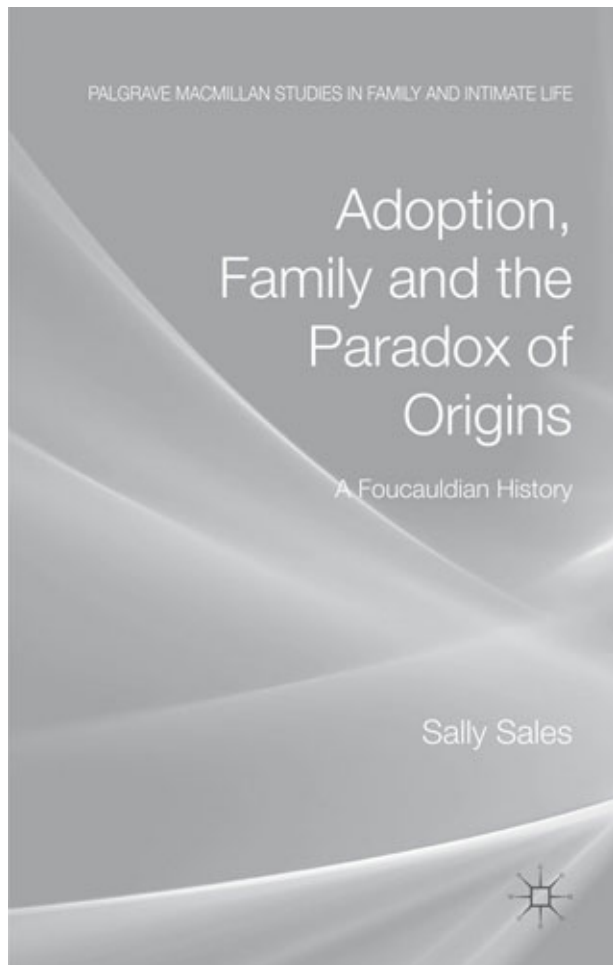
Applying Foucauldian methodology, this book explores why the practice of keeping adopted children in touch with their kinship origins is still so questioned in contemporary adoption work.

It is now over 20 years since 'open adoption' was first introduced, but it remains a controversial and contested part of social work practice. This innovative and far ranging book sets out to understand why the practice of keeping adopted children in touch with their kinship origins is still so questioned in contemporary adoption work.

Written by an experienced practitioner in the field, this book applies, for the first time, Foucauldian methodology to analyze and understand adoption social work, making it essential reading for a wide audience in the social sciences.

Dr Sally Sales received her PhD in 2009 for the thesis, *Paradoxes of adoption*, the University of East London (UEL), Director of Studies, Prof. Maria Tamboukou.

b) Articles and Chapters in Books

Esin, Cigdem and Squire, Corinne. (2013). 'Visual autobiographies in East London: Narratives of still images, interpersonal exchanges, and intrapersonal dialogues' Forum: Qualitative Social Research.

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