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(Article begins on next page)

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Between *logistification* and minimalism: migration policies in France and global justice

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Introduction

As a member state (MS) of the European Union, France's prerogative in managing its national borders has been inscribed in a European system of governance that both MSs and the EU have contributed to developing (Fassi and Lucarelli 2017: 4-5). In the field of migration policy this reconfiguration has meant the creation of European directives and regulations and a partial 'top-down' constraint on member states' autonomy. However, member states have also influenced the formation of a peculiar European framework. In both cases, member states are different entities that enjoy formal equal membership but carry unequal leverage and power. As a populous and powerful founding member state, France can be considered a key case study in a policy area where, as observed by Laura Block and Saskia Bonjour, "what is perceived among politicians as 'the European norm' consists not only of formal EU laws, but also and even primarily of what is common practice among EU Member States" (Block and Bonjour 2013: 217). France indeed has a strong tendency to describe its migration policies referring to the European dimension while, at the same time, advancing national priorities.

The aim of this chapter is to analyse how France's migration policies have changed over time in line with the unstable political meaning of both immigration and asylum, by using the European dimension as a legitimizing tool or, on the contrary, as a critical reference to shift political responsibility elsewhere. The use of the different conceptions of justice as illustrated in the introduction of this book, namely, justice as non-domination, justice as impartiality and justice as mutual recognition, helps to capture the ongoing shift towards a limited and narrow conception of justice by state actors and its consequences with regard to protection of migrants' rights, inter-state relations and the European dimension. By discussing the concept of *logistification*, a relatively new concept in the study of migration, the analysis undertaken in this chapter suggests the emergence of a minimalist understanding of what is 'just' in the field of migration policies, which is based on an operational logistical rationale and results in growing discretionary power in migrants' access to rights and protection (Altenried et al. 2018).

The chapter is organised in three sections: the first section introduces France's path to contemporary migration and asylum policies. The second section discusses recent developments

and reforms around the so-called 'migrant crisis'. The third section introduces the concept of *logistification* as a way to capture the emerging logic behind French migration policies. The fourth section discusses the implications in terms of justice of the previous analysis and the emergence of justice minimalism. A brief conclusion summarises the argument and findings of the chapter.

1. French trajectories

The formal recognition of the presence of foreigners in France dates back to the 1851 census. However, Gérard Noiriel explains that is not until the Third Republic (1870-1914) that the concept of 'immigrant' began to circulate as part of the effort to govern a mobile working population (Noiriel, 1988). In the early 20th century, after a period of unregulated immigration, the French state joined employers in an effort to recruit foreign workers to cover labour vacancies. As part of this effort France experimented with what is considered to be the first bilateral agreement for the recruitment of workers, signed with Italy in 1904 (Douki 2017). In the following decades the foreign workforce become an integral part of the French economy, valued or ostracized mainly depending on economic trends. The reconstruction after the Second World War and the subsequent period of economic growth also led in France to what is described as "the golden age" of labour migration and a flurry of bilateral agreements to attract fresh workers (Wickramasekara 2015: 17). These bilateral agreements in some cases implied forms of mass recruitment but were limited in scope to what was considered temporary labour migration.

The consequences of decolonization and the oil shock of 1973 produced a major turn, leading to a de facto suspension of regulated labour and family migration (Geddes, Scholten 2016: 52). The same period saw a gradual increase in the proportion of immigrants from non-European countries, with a rapid net inversion from the 1960s, and the adoption of new regulative frameworks that would eventually become the blueprint for future immigration laws.

The end of the French colonial empire, and most remarkably the independence of Algeria (1962), forced France to cope with the presence of millions of foreigners from former colonies and high mobility across countries. Different attempts to regulate the matter went from the recognition of social rights for Algerians in France, to specific bilateral agreements targeting Algerian workers, now migrants, and the introduction of different categories of residency permits differentiating between workers, students and trainees, including the regulation of family reunification (Raimondi 2016: 28-42). In particular after the so-called Marcellin – Fontanet (1972) circulars, respectively Ministry of

the Interior and Ministry of Labour, the release of a permit to stay was strictly related to the previous obtainment of a labour contract and lodging. This limited access for new immigrants but most significantly relegated thousands of migrants already present but irregularly employed in France to the shadows.

At the same time France was involved in the drafting of return agreements with countries of origin, particularly former African colonies (Wihtol de Wenden 2014: 66). These return agreements, which formed an integral part of French foreign policy in Africa, began to include training for workers before return as well as development aids, eventually becoming a precedent for contemporary bilateral agreements. Visa policies initiated at that time formed a relevant feature of what is known as *Françafrique*, a portmanteau that describes the particular regime of relations, criticized for its patronizing aspects and the dynamics of corruption it generated, formulated by France with the elites of former colonies and other francophone African countries (Verschave 1998; Bovcon 2011: 20-21).

While immigration become an increasingly prominent issue, the formation of specific regimes of mobility with former colonies and the absence of a comprehensive law led to the emission of dozens of decrees and circulars (Geddes, Scholten 2016: 55). The result has been a normative cacophony that increased the insecurity of the immigrant population and the contentiousness of the topic. These various elements contributed to the emergence of a political discourse based on the need to control (*maitriser*) the flux of migrants and to the assumption that France "cannot accept all" (Viprey 2010). In parallel, the social presence of migrants produced movements of support for their right to stay and made popular the term *sans-papier* (without documents), underlying their presence and the lack of recognition by the state (Cornuau, Dunezat 2008: 346-349). It is within this context that the socialist government in 1984 introduced a renewable residency card (*carte de sejour*) of 10 years, which granted migrants a set of rights not fully dependent on their working position (Lochak 2014). The shifting economic situation in the early nineties lead to a more tailored definition of the interests of the nation, where labour migration was linked to the restriction of migrants' access to the French social system.

With the adoption of the Maastricht treaty (1992) and the implementation of the Schengen convention France was finally included in an intergovernmental system, albeit migration remained a national domain (Wihtol de Wenden 2014: 69). The first laws adopted in France as part of the new European regime were the Pasqua laws of 1994, under the Gaullist government, which introduced restrictions on family reunification, limited migrants' access to welfare benefits and made the

concession of citizenship to children born in France dependent on their 'manifest of wish', thus suggesting their foreignness to French society (Geddes, Scholten 2016: 56). The Pasqua laws were almost completely reversed by subsequent measures, but the tendency towards stricter regulations remained. Nevertheless, the *sans-papier* made evident the fact that their precarious status was created as the result of previous policies. This led in the late 1990s to recourse to several waves of regularisation, mainly by socialist governments. In this period a different type of bilateral agreement with third countries, entailing lower numbers but including broader conditions and implications for the countries involved, was about to emerge (Panizzon 2012).

In addition to defining the conditions of regular stay, migration policies are formed by a larger set of ancillary policies. Nicholls described in this regard a shift, in the second half of the 20th century, from an 'exclusionary regime' when the politics of bilateral agreements was paired with an effort to silence the presence of migrants, to an integrationist phase as a response to migrant's increased participation in labour and social struggles (Nicholls 2012: 516-521). This different approach used social policy to indirectly regulate migrants' role in society, with access to housing becoming a tool of selection and surveillance. Starting in the eighties, affirmative action focused on redeveloping poor neighbourhoods and institutionalising solidarity associations as a way to channel and control migrants' activism (Ibid.: 522-526). By defining specific zones of intervention in areas densely populated by people with immigrant backgrounds, the French state attempted to contain the immigrant question inside the Republican discourse. It did this partly by mobilizing the concept of 'cohesion', a key word in the development of an EU territorial policy, and by renaming the 'social action fund' (FAS) as 'agency for social cohesion and equal opportunities' (ACSE) in 2005. However, Republican secularism (*laicité*) turned out to be unable to deal with the heterogeneous composition of French society and ironically contributed to the social segmentation that periodically exposes French suburbs to tensions (Ibid.: 527; Geddes, Scholten 2016: 50).

From 2002 to 2012 the debate around migration was catalysed by Nicolas Sarkozy, minister of the Interior in 2002-2007 and then President of the Republic. Sarkozy's discourse on "chosen immigration" (*immigration choisie*) openly affirmed the right to decide who to admit and the goal of favouring qualified economic migration over familial migration, which represented the vast majority of new permits (Viprey 2010). The Code for Entry and Residence of Foreigners and Right of Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*) or CESEDA, the law that collects the previously dispersed norms dealing with migration, was first adopted in this period. The competencies and talents residency permit (*carte de séjour 4ompetence et talent*), epitomising the

idea of 'chosen immigration' and predecessor of today's passport talent (*passeport talent*), was introduced in 2006.

French asylum policies developed in parallel and against the background of this emerging selective regime. While in the past asylum was somehow a marginal issue in comparison to labour migration, the figure of the refugee has gradually emerged as a crucial component of migration policy. This in spite of the presumption of an objective distinction between immigrants and refugees, which is often assumed without paying attention to the flexibility of these categories and the fact that they are historically and politically fabricated (Akoka 2016). France represents a peculiar case study in this regard. A 'French office for the protection of refugees and stateless people' (OFPRA) was created in 1952 under the tutelage of the foreign ministry and in cooperation with the UNHCR to apply the obligations of the Geneva convention, but the implementation of the right of asylum has always been the result of political circumstances and unofficial policies (Akoka 2013).

The study of OFPRA reveals how the entanglement between changing political scenarios, normative shifts and administrative practices led to a "juridical and positivist conception of the refugee, substantiating the idea of a procedure that would be neutral and objective" (Akoka and Spire 2013: 69-75). Throughout this process the meaning of asylum changed many times. At first the line between migrants and refugees was not entirely drawn, and a generally positive attitude towards people fleeing dictatorships resulted in a recognition ratio of 85% in the early '80s. The situation rapidly changed following the increase in applications in the late 1980s and the change in their composition, with the recognition ratio dropping to 15% (Ibid.).

At the same time OFPRA was reorganised, leading to the transformation of its employees into impersonal elements in a drawn out bureaucratic procedure and the gradual involvement of asylum service in the policies of migration control which formed between the end of the 1990s and the early 2000s (Ibid.: 75-76). As a consequence, the very status of refugee has lost its original character of political solidarity and protection and asylum became a "scarce" good with high value, difficult to obtain (Fassin 2013: 19). This restricted the category of refugee and shifted the normative and political attention to the figure of the asylum seeker, a gateway category to access the regime of protection. It also led to the progressive enmeshing of asylum policies in a wider government of mobility. As we will see, these transformations have a strong impact on contemporary policies and on the understanding of justice they entail.

2. Sorted by utility

This section analyses the French immigration and asylum system by exploring the recent dynamics of reform of both sets of laws. France has reformed the asylum and immigration system with adjustments of the CESEDA several times in the past years (Gisti 2018). But rather than departing from the abovementioned trajectories, these reforms took on a new twist in their implications. The Fekl report of 2013, from the name of the rapporteur to the Prime Minister on the functioning of immigration laws in France, identified the main challenges for the French system in the struggle against irregular migration, better integration for those who have the right to stay and the simplification of procedures (Fekl 2013). The declared goal was to clarify the distinction between regular and irregular migrants, providing the former with increased administrative security through multiannual permits and becoming more effective against the latter.

The reforms of the CESEDA fell short of responding to these priorities, as the conditions for the release of the multiannual permit and the number of attestations that can be requested before and after obtaining it resulted in further precariousness of regular stay (ADDE et al 2017: 49). The law prioritises the acquisition of French language skills and replaces the Reception and Integration contract (*Contract d'accueil et intégration*, CAI), introduced in 2006, with the Republican Integration Contract (*Contract d'intégration republicaine*, CIR), a personalized 5-year path to integration with compulsory duties. As a consequence, the traditional meaning of integration as something that concerns the capacity of public policies and national culture to include new members, is inverted in a duty to integrate for migrants, which must demonstrate their capacity to adapt and accept their position within society. This has much to do with the obstacles that migrants face with regard to their bureaucratic duties. From the incompleteness of certifications related to the CIR to problems with labour contracts and housing, or a simple communication problem regarding residence, the law builds on the 'chosen immigration' discourse by increasing the tasks for migrants to maintain their documents in order (Ambrosini 2016: 97). These conditions are made even harsher if we consider the strong distinction between migrants with a permanent job and those with temporary jobs: while the former can enjoy relative stability as wage workers (*salarié*), the latters' permit as temporary worker (*travailleur temporaire*) is strictly tied to their labour contract, thus further extending social precarity to status precariousness and vice versa.

The link between status and labour condition better illustrates the main axes of France's governance of migration according to the CESEDA and public practice, namely: a) the selection of foreigners according to the needs of the labour market, by means of bilateral agreements with countries of

origin, and the definition of a list of professions for which the labour office recognises a labour shortage and the direct selection of professionals or entrepreneurs with the passport talent; b) the proliferation of statuses, depending on a wide range of conditions and waivers for the issue and renewal of documents; and c) the strengthening of controls on entry into the country and the continuous monitoring of documents during the stay. The reinforcement of removal powers, including doubling fines for airlines or other carriers bringing foreigners to France without a regular visa, constitutes a corollary of the overall system. The result, epitomised by the institutionalization of the passport talent, is that of "recognising different rights according to people's economic 'utility'" (ADDE et al. 2017: 37).

It is against this background that we can grasp the logic behind the reform of the asylum system, and its inclusion in the wider governance of mobility. Since the early 2000s, when the goal of a common asylum policy became part of the EU strategy, France went through several processes of revision of the system of asylum, each time balancing the reception of European directives with the pursuit of a national agenda (France terre d'asile and Forum Montesquieu 2015; Charles 2011). It is thus important to understand which political priorities these reforms are intended to serve, and the framework built to sustain the present regime.

The report Létard-Touraine (2013), from the name of the two rapporteurs to the minister of the interior on the process of reforming asylum policy, described the reception of asylum seekers as a "tradition" of which France has to be "proud", but argued that this was "under threat" due to "massive economic migration" and a number of demands that "perverts" the reception rules. Furthermore, they argued that groundless demands caused delays and that these could be recognized earlier in the process (Létard, Touraine 2013: 5). The report called for "guided management" of asylum seekers entering France, "better geographical distribution" of reception in order to avoid the concentration of demands in and around Paris, and faster distinction between migrants who can be considered asylum seekers and others. Specific paths for return were suggested for these people as the rapporteurs observed that "their 'home' will not be in France" and the countries of departure should be sustained in their "efforts at development" (Ibid.: 6-7, 63-64, 77-79).

The Létard-Touraine report, which focused on potential refugees and basically ignored the massive presence of migrants already in France, is relevant for this chapter as it constitutes a conjunction between the historical trajectories and the present situation, and registers arguments that have occupied the stage in the last decade. The reform of the system has not simplified the process but

rather has made access to asylum more difficult in practice by increasing the duties and conditions of asylum seekers. One instance in this regard is the increased relevance of the principle of "cooperation" with the competent administrative authority. Lawyers concerned about migrants' rights have observed that the loose definition of what cooperation exactly means can result in random breaches of this duty: from ruined fingerprints to delays in communication and inaccuracy of written information, including misspelling (Gisti 2017: 17). The lack of cooperation and belonging to a country that is listed as 'safe' by the board of OFPRA, in compliance with the definitions and procedures described in the directive 2013/32/EU of 26 June 2013, are indeed two avenues towards a fast procedure that implies lower guarantees and acceleration of the whole process, including rejection.

On the other hand, the scarcity of available places in the reception system, selective procedures, and limited access to asylum in recent years have all contributed to the multiplication of new structures through "normative creativity" and informal arrangements, particularly in Île-de-France where most asylum seekers converge: emergency centres, temporary orientation centres, 'humanitarian' centres, along with the involvement of private structures such as hotels, social centres, community solidarity or outdoor settlements form today's composite "landscape of reception" (Tardis 2017). But even if France was only marginally affected by the surge in arrivals of 2015-2016, this situation has been considered by policymakers as the result of "unprecedented" migratory pressure and is listed as one of the main drivers of further changes in legislation (Gisti 2018). Critics argue instead that the structural scarcity of reception and the poor conditions of asylum seekers, along with the risk of detention before migrants' can to register the demand and repressive operations, such as evacuations of fortune camps presented as 'humanitarian', are deterrent and dispersal strategies employed by the state to reduce the attractiveness of the system and thus cope with the internal pitfalls of current asylum policies (La Cimade 2016). An accusation that proves to be accurate, if even president Macron, in a speech before the French prefects in September 2017, suggested that the "dogma" of "letting the line form so as to discourage applicants" has for years been an implicit guiding principle to discourage migrants in immigration offices (Macron 2017).

For migrants, this long-time practice has made the simple registration of a request for asylum into a race against time. Applicants struggle with deadlines for their registration *and* the obstacles interposed by public authorities. In case of delay, they risk the 'fast procedure', the rejection of their request and even arrest or detention. The condemnation of the prefect of Paris for delaying

practices in 2016 shows that, time being a critical issue, even the booking system set up by the prefectures can result in the practical obstruction of the right to asylum (Collectif asile en Ile de France 2016). The perennial stress of the reception system and state bureaucracy contributed nonetheless to shifting the attention towards the selection of admissible demands before their proper assesment, and consolidated the idea that faster and more selective procedures would change the situation. The argument that without a distinction between proper refugees and others, particularly economic migrants, "the right of asylum itself will be questioned" has become a shared discourse among policy makers, while the image of the 'bogus asylum seeker' has become the keystone of this perspective and one of the primary indicted for the so-called 'crisis' of asylum (Le Monde 2017, Akoka 2016).

3. Multiple scales

The situation described above is strictly related to the positions France has taken in recent years in the European context. A useful exercise here is to analyse the present situation in perspective: one can observe, indeed, how the current 'crisis' has been preceded by other 'crises', most notably the so-called Tunisian crisis in the aftermath of the Arab Spring in 2011-2012. French behaviour during the crisis reveals shifting interpretation of the Schengen space and different trajectories of Europeanization which are relevant to understanding the present positioning of the country. After the overturn of Ben Ali thousands of young migrants left Tunisia to reach the southern European shore of Lampedusa, mainly with the aim of reaching France where, due to historic ties and the shared francophone language, they had families and friends. The events saw Italy and France deploying conflicting strategies: while Italy issued six-month humanitarian permits as a way to let Tunisians legally get beyond the Alps, France responded with border patrols and pushback at the French-Italian border at Ventimiglia. In order to stop border crossings by Tunisians with temporary Italian permits, France threatened to withdraw from the Schengen treaty, *de facto* obtaining by the EU the possibility to reintroduce controls at the border for a period of up to two years (Geddes, Scholten 2016: 154). France justified its decision by defining Tunisians as economic migrants, thus anticipating the current distinction between economic migrants and refugees. France also pointed out that, according to the Schengen treaty, free circulation requires 'sufficient funds' and activated financial controls over migrants inside its territory and at the border. Just one year prior France had used the argument of the irregularity of a housing settlement of around 1,000 Roma people, EU

citizens, to sustain their expulsion, again in the name of Schengen. As observed by Garelli, "in both cases, French raids were performed with a rule of efficiency" which included monthly and yearly targets for targeted evictions of Roma and expulsions of Tunisians (Garelli et al. 2013: 75-95). The conflict eventually led to an intervention by the European Commission which fostered the already present plan to Europeanize the decision process in case of crisis and over the management of Schengen, but it also represented a push towards a more interventionist policy in the Mediterranean area, specifically focussed on selective migration policies.

The Tunisian precedent shows that this approach, and the very definition of what constitutes a 'crisis', are related more to changing political scenarios regarding the definition of a European regime, rather than the response to emergencies or specific European values. A legal assessment produced in the aftermath of the 2011 events argues that French authorities had to struggle in order to justify their actions according to the principles of urgency, proportionality and strict necessity associated with the possibility of reintroducing border controls in the Schengen space (Carrera et. Al. 2011: 18-21). At the same time, tensions between France and Italy revealed "a 'race to the bottom' […] as regards the principles of solidarity, mutual respect, loyal cooperation and fundamental rights protection" which are included in the Treaty of Lisbon, thus undermining "the overall consistency and legitimacy" of Europe's migration policy (Ibid.: 19). These events thus show how the 'crisis' of 2015 merely revived existing tensions, which have also been used to justify restrictive measures and interventions abroad targeting the 'root causes' of migration (Geddes, Scholten 2016: 59).

France has been particularly active in the attempt to promote intergovernmentalism of migration policies at the European level, especially in the field of asylum where international obligations are more visible. During its EU presidency in 2008, for example, France promoted the definition of 'five points' for a European pact on asylum which included the principles of selective admission, reinforced control of external borders, the fight against illegal migration, building a common policy and development of agreements with third countries (Wihtol de Wenden 2014: 66). Like other member states, France attempted to transpose to EU level its conception of selective migration management while at the same time being affected by the emerging EU border regime (Geddes, Scholten 2016: 67). While it attempted to externalize controls and activate a framework less dependent on the internal political debate, the implementation of a European framework in some cases reduced national discretion through directives and regulations and imposed supranational judicial controls through European institutions. For example, the extension of competence to the

Court of Justice of the European Union (CJEU) in the area of immigration policy contributed to the EU's normative framework penetrating the national context even beyond formal recognition of common rules, sometimes limiting France's policy of 'chosen immigration', for example in the domain of family reunification (Arcarazo, Geddes 2012: 187-188, 190).

The aftermath of the 2015 terrorist attacks confirmed these tendencies. The restoration of border controls and the declaration of a state of emergency, albeit without direct implications for immigration laws, affected the life of migrants and asylum seekers including potential asylum seekers, as they increased French intelligence agencies' surveillance capacity of and the police's discretionary power (Bertossi, Tardis 2015; Human Rights Watch 2016; Gisti 2016). However, studies of French parliamentary debates showed that discourse related to selective economic priorities remained overwhelmingly dominant when compared to other priorities, including security concerns and reference to national histories or civic values (May 2016). Thus, rather than a race to securitization, the justification for more restrictive immigration policies reveals a mind-set whereby immigration is considered almost exclusively as "a potential resource intended to benefit the host country's economy in global competition" (May 2016: 287). This translates into migration policies that promote skilled migration while exposing unskilled migration to arbitrary acts and limiting the policies of asylum.

A further element to be mentioned here is the close correlation between the external dimension of migration policies and a wider French international agenda, particularly in Africa, whereby France has signed at least 15 agreements that form part of France's specific 'sphere of influence' in the Maghreb and sub-Sahara. The general rationale behind these migration compacts is to redirect mobility to match economic migration with the needs of the French economy: these compacts thus follow the key orientations of French immigration law as it has emerged over the last decade. However, this goes along with the emergence of a direct role for the EU in the region. The discourses on co-development and chosen migration can thus be analysed as tools that reinforce unequal relations on a new basis, where historic ties of national patronage become more open to global market needs and are included in the discursive and policy framework of the EU (Bovcon 2011, Hugon 2010). With national interests at the forefront, the relationship between the national and European scale is thus twofold: on the one hand, France can be seen as acting as a *proxy* of the EU insofar as it is able to obtain conditions that the EU is not in a position to negotiate–such as third country national (TCN) clauses in agreements which allow the readmission of TCNs in signing countries–thanks to France's greater direct leverage in terms of incentives and labour market access

(Panizzon 2012: 122). On the other hand, France has had a pivotal role in promoting EU migratory policy abroad. For example, France and Spain led the launch of the Rabat process in 2006 – where shared responsibility in migration management, border controls, the fight against illegal migration and expulsions were declared an EU priority. Another recent example is the 2017 Euro-African meeting in Paris where the idea of a completely managed migration process, from origin to final destination, restricting asylum to people who are particularly vulnerable, was advanced (La Cimade 2016, Joint Statement 2017). We should also note that France, Spain and Niger have a joint police mission patrolling the northern region of Niger, a country by now deeply enmeshed in extended EU operations of migration control (La Cimade 2016: 25).

4. Logistification and crisis

In his speech before the French prefects in September 2017 president Macron outlined a "complete refoundation" of the system, stating that countries of origin and transit lie at the "heart" of migratory policies. He also argued for the effective management of the entire migration routes, instead of chasing an impossible 'zero migration' policy and struggling against what he called "the supply chain [*filière*] of clandestine immigration" (Macron 2017). He thus announced a plan to include those entitled to the reception system, to speed up the evaluation process for asylum seekers and to be more effective in the expulsion of irregular migrants. Without being more specific, Macron mentioned Germany several times as the good example to follow, particularly in the field of efficient management and expulsions. Throughout his discourse the issue of the need to 'protect' was framed so as to include the asylum system, the Schengen space, French citizens, and the future of the countries of origin and transit by providing an alternative for development, thus leaving the need to protect refugees as a *de-facto* side-element of a complex political matrix (Macron 2017b).
The goal of governing and selecting migration flows explains the attempt to limit family migration, the increasingly selective asylum system and the flourishing of detailed bilateral agreements. However, family migration and asylum are two examples of how migration escapes this governing logic: while the first reveals the relative stability of the immigrant community, the latter carries with it a content of rights that is difficult to restrict in the idea of 'chosen immigration' inaugurated by Sarkozy and pursued since then. This, in turn, produces pressures to limit and circumscribe the right to asylum so as to make it more predictable and manageable. Coupled with structural insufficiencies and the bureaucratization of welcome policies described above, this reinforces a "moral economy"

where asylum is becoming a conceded status, a hybrid between an act of benevolence and compliance with cold qualifications, rather than a proper right (Fassin and Kobelinsky 2012: 447). This marks an operative redefinition of the boundaries between immigration and asylum policies which implies a major shift in terms of the understanding of justice. The number and attempted meticulousness of bilateral agreements complements the tendency to imagine immigration as a fully regulated process, from origin to destination, thus pushing migration movements further towards the lenses of asylum. And while the process of regular migration becomes stricter and more specific so as to promote 'chosen immigration', the asylum seeker and the refugee emerge as flexible figures in a process of governance that is aimed above all at the efficient management of mobility, to the detriment of other concerns such as human rights, protection and global justice.

Critical scholarship has described the emergence of a discursive and legal framework focussed on the management of migration policies which overrides ethical claims and has been termed *logistification* (Altenried et al. 2018). Logistics is normally defined as an approach aimed at organizing a set of activities in order to "assemble and distribute the *right* products in the *right* amounts to the *right* locations in the *right* conditions" (Allen 1997: 116, Italics are mine). The concept of *logistification* of migration policies thus refers to an operational dimension that conflates the governance of migration with processes ideally 'to the point and just-in-time', and recognises the widespread adoption of concepts drawn from the science of physical distribution, such as hotspots, corridors, relocation or distribution centres (Kasparek 2016). The French case shows that this logistical fantasy, which considers migrants as mere objects of state policy and thus manageable as inert things, is one of the elements, in conjunction with other cultural, social and political factors, that made the relative increase in the number of arrivals into a "crisis of the politics of asylum" (Akoka 2016). The ongoing process of reform in migration and asylum laws thus reflects not only the political contentiousness of migration, but also the multiple tensions that arise between migrants' mobility and policies aimed at governing and, in bureaucratic and technical terms, optimizing dynamics that are by nature social and political.

Even if it is only a fantasy, the adoption of a 'subject-blind' discourse and the idea of fully governed mobility has deep implications in terms of justice. In fact, the declared aim of establishing a controlled supply chain of migration from the origin to arrival in France, which also assumes the logic of reverse logistics as incorporated in migration policies through readmission agreements and fast tracks for returns, implies the imposition of operational principles over other values, leading to a "simplified differentiation" between refugees and economic migrants (Tardis 2017c). This narrows

down the debate on legal economic migration to a discussion of highly qualified migrants, while the issue of asylum is trapped inside a paradigm of immigration control that makes rights and international protection increasingly empty principles. This also explains why France, the celebrated country of human rights according to Létard and Touraine, has passed from recognising 250,000 out of the 1.6 million global refugees in 1960, to recognising only 135,000 refugees out of the more than 10 million global refugees currently (Létard, Touraine 2013: 5, Fassin 2013: 8). This implies a radical inversion in the global distribution of refugees which runs contrary to the widespread announcement of the impossibility of "welcoming everybody", reiterated by president Macron in his first end of year speech (Bonnefous 2017).

The restrictions on access to labour markets for non-European foreigners, the redefinition of asylum as part of immigration control policy, limited access to asylum, the extension of waiting times and the overflow of reception facilities have become structural elements of French asylum policies (Fassin and Kobelinsky 2012). One can observe how this helped to create, rather than resolve, the physical sites of crisis observed at the French-Italian border, in Calais or in Paris. These are indeed "symbolic places" that illuminate structural elements which are hidden by administrative categories and political discourses (Tardis 2017b). Even if the state tries to break this deadlock by preventing the formation of sites that, due to their specific location and function, attract migrants, the fantasy of *logistification* is actually reproducing them or hiding them farther inside bordering or third countries (AFP 2017).

5. The emergence of justice minimalism

The following section discusses the French condition against the background of global justice, starting with the conceptions of *non-domination*, *impartiality* and *mutual recognition* as described in the introduction. Conceiving of justice as a contested and relational issue, these categories suggest that different voices and interests need to be considered when analysing a system of governance. As the French attitude towards migration is marked by different logics which can be broadly reassumed around the republican discourse and 'chosen immigration', one can begin by observing that the focus on the key values of French society and the republic, epitomised in the Republican Integration Contract (CIR), resolves the long debate over multiculturalism in the name of the colour-blind supremacy of secularism. This could be considered as going against mutual recognition, which implies the consideration of migrants' subjectivity. However, as the experience

of nationality-based associations exemplifies, conflating migrants' subjectivity to their national or cultural belonging can result in channelling, rather than recognising, their political voice and their specific claims, which often depend on their legal status rather than cultural aspects. On the other hand, the use of concepts such as that of 'safe' countries of origin, applied by France as well as other actors, imposes national belonging over other considerations as a way to discriminate, rather than recognise, paving the way to fast procedures and the rejection of asylum requests. This goes against the principle of protection as framed in the international regime of asylum, thus producing dominating effects jeopardising the very idea of "context-transcending principles" (Eriksen 2016: 14). Different approaches depending on migrants' nationalities, a long tradition in French migration policies, also run up against impartiality towards both migrants and third countries, as they build uneven avenues of mobility and influence as in the case of Franco-African relations.

In the international system states are entitled to regulate the access and status of non-citizens in their territories. So is France. However, this regulation may produce different layers of domination. The different durations of residency permits, of the certificate of asylum seeker with the normal procedure, the introduction of fast procedures and the suspended time of the so-called *dublinées* – migrants that according to the Dublin regulations should be returned to their first country of entry– show that each step of the process produces different forms of dependency on the state's administrative structure. Moreover, the structural power imbalance between migrants and state bureaucracy gives the latter the ability to manipulate, slow down or accelerate procedures following shifting political goals, thus building further layers of subjugation. French law and procedures are indeed increasingly strict and firm regarding migrants' duties with respect to time, but are far less persuasive when it comes to mandating time prescriptions for public authorities.

Asylum seekers' exclusion from any decision process is another element that runs contrary to both the idea of justice as non-domination and mutual recognition, because it implies the mere acceptance of rules and conditions imposed on them. Nevertheless, it must be said that this is a structural feature of migration law which imposes regulations on the dynamics of mobility that often follow unpredictable paths.

However, a discussion that remains focused on relations between states or supranational institutions runs the risk of being blind to the structural impact of international politics on migrants and asylum seekers. Indeed, a further source of injustice can be traced to the emergence of third countries as new actors on the international scene "inscribed in a politics of influence towards France, with the interposition of migrants" (Wihtol de Wenden 2014: 70). While vague references

and a lack of clarity concerning human rights and the respect of the *non-refoulement* principle in bilateral agreements can undermine migrants' rights and freedom, more subdued consequences are at stake. In fact, when migrants become bargaining chips in the relationships between states, what appear as domination among two states results, in practice, as an act of domination of both states over migrants, given that they become objects of international relations, rather than subjects of rights.

Furthermore, the analysis of the French system suggests that the idea of political and social neutrality of rights is partly responsible for the transformation of asylum into a bureaucratic matter, where efficiency concerns and formalism promote a minimalist approach to ethical issues and prevail over the possibility to enlarge, rather than restrict, ethical and moral duties in a global perspective. This produces specific forms of "structural injustice" where arbitrariness and dominance derive not so much from direct subjection, but as structural preconditions or outcomes of formally justified rules (Young 2003). By implementing a logistical approach France reiterates this structural ambivalence between legality and justice: it stands as an actor that complies with international commitments and follows a formal conception of justice as non-domination, but contributes to the reproduction of a system where relations of domination are present. This same ambivalence permeates French bilateral agreements, where uneven economic and military relations remain in the background, questioning the meaning of co-development, and its infra-European relations. Here the crises at the border of Ventimiglia are an example of how the exercise of a recognised prerogative by France can result in an arbitrary outcome for a bordering country like Italy, and vice-versa (Panizzon 2013). Dominating effects can also be seen in the French position towards a common EU asylum system, if we consider that France has for long opposed a reform of the Dublin system that would structurally shift responsibility from the first country of arrival to the whole EU, looking more worried by the 'burden' of so called 'asylum shopping' than European internal solidarity. This position, formally respectful of non-dominating institutional arrangements within the EU, would turn into an act with dominating effects if we take into account that France has basically no external border in the Schengen space and thus can hardly be considered a first country of arrival.

This chapter suggests that these outcomes can be better grasped as a result of specific normative claims influenced by the abovementioned search for *logistification*. What appears as a pragmatic and operational approach to dealing with ongoing 'crises' and emergencies actually entails the definition of normative claims which result in a minimalist approach to justice. The *right* qualities,

quantities and times included in the definition of logistics provided above, translate indeed into a set of implicit normative claims which constitute the structure of this minimalist approach to justice, namely: it is *just* to distinguish between 'economic migrants' and 'asylum seekers' on the basis of conditions which are presumed to be objective. It is *just* to refuse migrants that do not suit the needs of the national labour market and to strictly regulate and constantly monitor their right to stay. It is *just* to partition off legitimate asylum seekers from 'bogus' asylum seekers, recognising the former while moving the latter to a separate line as rapidly as possible and sending them back to their country of origin or a third country that is considered 'safe'. It is *just* to work in partnership with third countries of origin or transit in order to filter migrants–regardless of whether or not they are 'economic migrants' or 'asylum seekers'–before they reach the French border, or deport them back if they are already at the border or in France. Fifth, it is *just* to decide on the physical distribution of asylum seekers in the territory and to limit their right to mobility accordingly. Albeit affirmed as pragmatic necessities for the efficient governance of mobility, by now these claims have occupied an epistemic space where ideas of justice are depoliticised and deprived of their polemic content.

Conclusion

A country with a long tradition of migration, France has recently adopted a discursive and legal framework that implements a managerial dimension of migration policies which can be described as *logistification*, a concept introduced by critical scholarship to analyse developments and discourses in Germany and the European Union (Altenried et al. 2018). This marks a functional and flexible redefinition of the boundaries between immigration and asylum which raises questions about the relationship between migration and justice beyond any specific national scale. In fact, the emergence of ethical minimalism and a predominantly operational approach to asylum, points to the need to update the discussion on global justice, considering how different dimensions of mobility are increasingly included in wider schemes of migration control.

If this holds true, it implies that the peculiarities of the French case, including tensions around the Dublin regulation and the Schengen space, should be considered as integral to the formation of a new transnational setting in which the European Union Migration System of Governance, discussed in the introduction, has not yet found a balance. Rather than simple national resistance to common rules, the French case shows that immigration and asylum policies are becoming part of a

government of mobility in which moral and humanitarian standards are at stake. The contentiousness and deeply political nature of migration policies are indeed blurred behind the veil of a logistical fantasy where the political subjectivity of migrants is neglected, and rights constitute a *de facto* secondary variable. In a context in which efficiency concerns promote a minimalist approach, compliance with international standards thus prove to be largely insufficient to respond to criteria of global justice. In fact, while the UNHCR statute claims that the issue of asylum can be of an entirely non-political character, the French case confirms that it has a political nature and produces partitions that intensify "the precarious existence for many while offering protection to a few" (Casas-Cortes et al. 2014: 17).

The French case also shows that the claim to govern migration produces bottlenecks and breaches ideas of justice as non-domination, impartiality and mutual recognition, whereby faults with respect to one of these ideas can hardly be retrieved by compliance with others. The analysis advanced in this chapter suggests indeed that the pursuit of rules which are acceptable for all points of view actually results in temporary legal fixes, which are constantly challenged by the turbulence that migrants introduce into the national space and the international community. This political conundrum, and non-objective conditions, transformed the relative increase in the number of arrivals to France and Europe in a single year into a "crisis of the politics of asylum" (Akoka 2016). While this shows that any idea of justice is confronted with this turbulence, it also points to the need to open up the space for thinking about different understandings of justice which are not rooted in the political logic of sovereignty, whether it be national or translated into supranational institutions, and in the logistical fantasy of controlled mobility, but rather in its contentious and contradictory nature.

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