

CITY RESPONSES TO MIGRANTS WITH IRREGULAR STATUS: REFLECTIONS ON DRIVERS, FRAMING, AND THE IMPLICATIONS FOR MULTI-LEVEL GOVERNANCE IN EUROPE

Sarah Spencer*

ARTICLE

Drawing on two studies of national and sub-state approaches towards migrants with irregular status, and on a knowledge-exchange initiative between 11 European cities launched in 2017, Sarah Spencer explored the constraints on city responses imposed by restrictive national legal frameworks; the pressures that are leading some cities to allow greater access to services and official documentation; and the implications for multi-level governance to which this can give rise. She expanded on the concept in the multi-level governance literature of “de-coupling”, contrasting vertical relationships of overt conflict with low visibility strategies of conflict avoidance; noting the differing forms this “shadow politics” of migrants’ rights and provision of services can take, including arms-length provision through NGOs.

My article explores national and sub-state responses towards migrants with irregular status: that is, towards those non-EU citizens who have not fulfilled their conditions of stay. The latest officially accepted estimate of irregular migrants is from 2008: 0.4%-0.8% of the population of the then EU27 but concentrated in some cities and neighbourhoods within them. Some enter without permission. Many enter legally to work, join family, study or seek refuge, but do not comply with conditions of their visa, or overstay. Recent refugees refused asylum are expected to swell these numbers, the average return rate across the EU being only 36%.¹

National legal and policy frameworks restrict access to welfare services as one means of deterring irregular arrival and stay. Yet, despite a focus on enforcement in political rhetoric and recent cuts in welfare provision which have disproportionately impacted on migrants, governments do maintain a level of entitlement to some services. Some sub-state tiers of government, moreover, challenge national restrictions where they impact on their capacity to provide a level of service to irregular migrants they judge necessary. This is not exclusion mitigated by informal inclusion through community networks or the discretion of service providers; but rather, as Chauvin and Garcés-Mascreñas note, formal exclusion and formal inclusion. The state, they write, appears to validate a breach of its own sovereignty.² The question that I explore is why?

* Director, Global Exchange on Migration and Diversity and Senior Fellow, Centre on Migration, Policy and Society, University of Oxford

¹ Clandestino. (2009). Size and development of irregular migration to the EU. Counting the Uncountable: Data and Trends across Europe. http://irregular-migration.net/fileadmin/irregular-migration/dateien/4.Background_Information/4.2.Policy_Briefs_EN/ComparativePolicy_Brief_SizeOfIrregular_Migration_Clandestino_Nov09_2.pdf; European Commission. (2017). Communication from the Commission to the European Parliament and the Council on a more effective return policy in the European Union – a renewed Action Plan, COM(2017) 200 final.

² Chauvin, S., & Garcés-Mascreñas, B. (2012). Beyond Informal Citizenship: The Moral Economy of Migrant Illegality. *International Political Sociology*, 6(3), 241-259. doi: 10.1111/j.1749-5687.2012.00162.x

There is much in the research literature to guide us to an answer. Analysis of migration policy that has identified competing aims within the state, and the trade-offs which national governments make in order to resolve them,³ poses the possibility that we shall also find this between the state at national and sub-state level. We know that sub-state tiers, whether regions or at municipal level, have differing mandates and territorial interests from national governments, are subject to differing pressures and constraints, and can frame the challenges they face differently from the framing at national level, pointing to different policy solutions.⁴ Policy divergence at municipal level can lead to tensions in multi-level governance⁵ and “de-coupling” where frames conflict and there is no effective institutional means for negotiation and resolution.⁶ We also know from Guiraudon’s work⁷ that where decisions are made that are protective of migrants’ rights they are more likely to be low visibility (“Shadow” policy-making) in contrast to the spotlight which policy-makers are happier to attract to enforcement measures.

Research and Knowledge-Exchange

In exploring these issues I drew in particular on two recent studies. The first, *Service Provision to Irregular Migrants in Europe* (Spencer, Hughes & Delvino), explored the extent of, and rationales for, national and local entitlements to service provision for migrants with irregular immigration status in EU countries.⁸ The second study, *Local Government Welfare Responses to Children and Families who Have ‘No Recourse to Public Funds’* (Price & Spencer) explored UK municipal responses to destitute migrant children and families who, because of their immigration status, have no access to mainstream welfare or public housing.⁹ In this article I set out the research questions the projects addressed and methodology used.

I also drew on a knowledge-exchange project I coordinate, the *City Initiative on Irregular Migrants in Europe (C-MISE)*, in which eleven cities are meeting over two years to learn from each other and from the research evidence; to raise awareness of the challenges cities face; to prepare guidance for municipalities across Europe; and to consider reforms at EU level which would help cities address the challenges effectively.¹⁰

Mapping national entitlements to health and education services in the first study confirmed that all EU governments recognise the need for migrants with irregular status to access some services. All of the EU28 allow access to emergency health care (although some require

³ Such as Ruhs, M. (2013). *The Price of Rights: Regulating International Labor Migration*. Princeton: Princeton University Press.

⁴ Hepburn, E., & Zapata-Barrero, R. (Eds.) (2014). *The Politics of Immigration in Multi-level States: Governance and Political Parties*. Basingstoke: Palgrave MacMillan.

⁵ Caponio, T., & Jones-Correa, M. (2017). Theorising Migration Policy in Multilevel States: the Multilevel Governance Perspective. *Journal of Ethnic and Minority Studies*. Published online: 2 August 2017.

⁶ Scholten, P. (2013). Agenda dynamics and the multi-level governance of intractable policy controversies: the case of migrant integration policies in the *Netherlands*. *Policy and Science*, 46, 217-236.

⁷ Guiraudon, V. (2004). Immigration Reform in Comparative Perspective: Sunshine and Shadow Politics in the US. In M. Levin and M. Shapiro (Eds.). *Transatlantic Policymaking in an Age of Austerity* (pp. 131-157). Washington, DC: Georgetown University Press.

⁸ <https://www.compas.ox.ac.uk/project/service-provision-to-irregular-migrants-in-europe/>

⁹ Price, J., & Spencer, S. (2015). Safeguarding children from destitution: Local authority responses to families with 'No recourse to public funds'. Oxford: COMPAS report. https://www.compas.ox.ac.uk/media/PR-2015-No_Recourse_Public_Funds_LAs.pdf

¹⁰ <http://www.compas.ox.ac.uk/2017/european-cities-and-migrants-with-irregular-status/>. Delvino, N. (2017). European Cities and Migrants with Irregular Status: Municipal initiatives on the inclusion of irregular migrants in the provision of services. COMPAS report for C-MISE project.

payment); and some variously allow access to primary care, hospital care, maternity, treatment for infectious diseases and full care for children. Ten countries grant a specific entitlement for the children of irregular migrants to attend school, and the law in most other states allows “all” children to attend, from which these children are not excluded.¹¹ Significantly, in recent years some governments have extended access: Sweden, in 2013, changed the law to allow access to health care “that cannot be postponed” and, for children, access to the same level of care as for Swedish citizens. Spain, in 2011, granted special residence permits for victims of domestic violence; and in 2012 the UK granted access to treatment for HIV/Aids. The reasoning, and the policy trade-offs it entailed, is interesting. In Sweden a key part of the rationale was concern that the NGO clinics that were providing care for those excluded from mainstream provision could not match the latter’s high standards of medical records;¹² while in the UK the rationale was public health – the growing body of evidence on the protection benefits of anti-retroviral drugs on onward HIV transmission. The UK outcome followed debate between the Department of Health and the Home Office, reflecting differing priorities; in Sweden, tension between national and sub-state tiers: “trade-offs” in which enforcement was the loser.

Challenge of Exclusion for Local Government

Nevertheless, the policy norm on access to services is highly restrictive, creating a range of policy challenges. At the local level, policy-makers say that the exclusion of irregular migrants present social, economic and legal challenges that impinge on their core responsibilities: social policy priorities like tackling street homelessness, protecting public health, social cohesion and crime prevention; economic priorities such as attracting investment or tourism to the city; and legal duties, such as the UK duty on municipalities to protect children “in need”. Municipalities also frame the rationale for provision of services in humanitarian, ethical and cultural terms: concern for the welfare of children, for medical ethics or that the exclusion of irregular migrants conflicts with their vision of the city and the role of migrants within it. Finally, inclusion is sometimes a matter of efficient public administration – to avoid irregular migrants relying on hard-pressed emergency services, for instance.

These local priorities can differ from those of national governments, some interviewees conveying concern that national governments do not understand the issues they face, such as from a Dutch city health worker (2013): “These people are here, some in desperate need, dying on the streets or involved in crime. The national government does not have to bother with the problems we have every day.”

As a result, some cities provide services beyond national expectations: from shelter to nursery education, language classes to skills training. Some provide access to legal advice to help migrants resolve their immigration status, seeking to address the underlying problem for the city not merely to provide services to ameliorate it. Spanish municipalities register irregular migrants

¹¹ Spencer, S., & Hughes, V. (2015). Fundamental Rights for Irregular Migrants: Legal Entitlements to Healthcare and School Education across the EU28. *European Human Rights Law Review*, 6, 604-616; and full report: https://www.compas.ox.ac.uk/media/PR-2015-Outside_In_Mapping.pdf

¹² Social Affairs Department. (2011). *Vård efter behov och på lika villkor – en mänsklig rättighet*. English summary: pp. 31-46. Stockholm: Social Affairs Department, Swedish Government. <http://www.regeringen.se/rattsdokument/statens-offentliga-utredningar/2011/05/sou-201148/>

in the civic register (Padrón) in order to have accurate information on all of the people in their area so that they can plan services accordingly; the same rationale used elsewhere for providing birth certificates, coupled with the humanitarian concern that every child should have one. Some services are provided directly by the municipality, others through funding of NGOs.

We know that divergence in local integration policies can lead to tensions in multi-level governance, Scholten finding (2013) that where there are no effective mechanisms to resolve the tension it can lead to a de-coupling in the governance relationship. We might expect to find that in particular in relation to irregular migrants and indeed there are examples in the Netherlands, Italy and the UK where policy divergence has led to litigation national and sub-state tiers seeking to establish the limits of local autonomy to provide a service or responsibility for its funding.

Cities have, however, also found ways to avoid overt conflict through low visibility provision. Rules are stretched to enable provision; a service may be provided with no paper trail; or provided through NGOs, an approach which can avoid controversy and any rules requiring municipalities to pass information on irregular migrants to the immigration authorities.¹³

Our second study, *UK Municipal Welfare Responses to Children & Families with 'No Recourse to Public Funds'*, explored the ways in which a municipal duty towards children in need (s17 Children Act 1989) relates to the children of parents who have no access to the mainstream welfare state. We found an estimated 5,900 children in such families supported in the year 2012/13 during the time that their parents' immigration status was being resolved. The study sought to explain variation in municipal responses when families seek their support.

Here the driver of municipal practice is their legal duty, but the study revealed the impact of staff attitudes towards the migrants concerned, and of NGO representation on behalf of a family. Assessing eligibility for support, some authorities gave primacy to the needs of the child, others to the "(un)deservingness" of parents. NGO representation was more likely to lead to a family receiving support; but the length of time that support has to be provided (for 7.3 per cent of families it was for more than 3 years), costing an estimated £28m per annum, was a significant deterrent. Communication with the national tier of government was found to be poor on this issue. Municipalities are caught between their duty to safeguard children and their inability to resolve the underlying cause of their destitution, a matter only the national government or the courts can decide.

In Conclusion

The research revealed that there are indeed tensions and trade-offs in managing irregular migrants: both within national states and between national and local tiers. This reflects their differing remits, pressures and constraints and the way these are framed by local policy-makers, shaped also by their perception of the place of migrants within their city, and the relative deservingness of irregular migrants and their children.

¹³ Spencer, S. (2017). Multi-level governance of an intractable policy problem: migrants with irregular status in Europe. *Journal of Ethnic and Migration Studies*. doi: 10.1080/1369183X.2017.1341708

The reasoning provided by local policy-makers can be categorised into legal, economic, social, cultural and governance factors: the needs of the city, primarily, rather than those of the migrants themselves. The local-national policy divergence that results can lead to tensions and some de-coupling in vertical multi-level governance. However, it can also lead to the avoidance of conflict through low visibility provision, in part through NGOs. Multi-level governance thus both shapes local responses to irregular migrants and is shaped by them.

As ever, the findings leave many questions unanswered for future research and policy agendas. Does the uneven geography of national entitlements reflect underlying legal, demographic, economic, cultural or institutional factors? Why do some cities with irregular migrant populations not respond with inclusive measures? How significant is the dynamic of an intermediary regional tier? What is the actual economic and social impact of exclusion – can we establish empirically whether city assumptions on the need for inclusive measures are valid? Is low visibility provision a sustainable long-term approach – what impact would greater transparency by municipalities have on the multi-level governance of this issue?

There is, however, a more fundamental question, that was posed by the legal scholar Linda Bosniak. If services are provided, what level of access is appropriate? How far should national governments and municipalities be prepared to go? When, in effect, is it legitimate to restrict migrants' rights as part of immigration control and when should the equality principle prevail?¹⁴

¹⁴ Bosniak, L. (2006). *The Citizen and the Alien, Dilemmas of Contemporary Membership*. Princeton and Oxford: Princeton University Press; Spencer, S., & Pobjoy, J. (2012). Equality for All? The Relationship Between Immigration Status and the Allocation of Rights in the United Kingdom, *European Human Rights Law Review*, 2.