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## EUROPE'S NEW TECHNOLOGICAL GATEKEEPERS. DEBATING THE DEPLOYMENT OF TECHNOLOGY IN MIGRATION POLICY.

*Huub Dijkstra\**

### **Introduction**

Migration policy has become one of the most controversial issues on the political agenda in the European countries over the last two decades. Discussions about desirable and undesirable migrants, the separation of migrants who apply for asylum for humanitarian reasons from those who are somewhat disparagingly called 'economic refugees' or 'fortune-seekers', and fear of an overwhelming influx of people from the poorer South to the rich West are just a few of the many vexed issues that have dominated public and political debate in recent years.

### **I. Migration Policy: from Political Goals to Technological Means**

Generally, the principal role in migration debates is reserved for the main objective: the limits that have to be set to manage the influx of migrants and asylum seekers. However, other matters also play an important role in migration policy, namely, the means used to implement that policy. To achieve these political objectives in today's harsh reality, technology is increasingly being deployed.

This technology is not only of the 'brute force' nature such as the ships, helicopters and airplanes deployed by the EU Frontex agency used to survey the outer borders of the Schengen Area (6,000 km of frontiers and 85,000 km of coastline). Much of the modern technology used to guard borders consists of more refined applications that make use of the information supplied by the human body.

Asylum seeking minors are subjected to a bone scan to determine their age. DNA tests can provide definite answers to family relationship questions and thus determine whether migrants are eligible for family reunion. Soon there will be a European Visa Information System (VIS) to store the biometric data on 70 million people. Migrants taking part in a civic integration examination begin their journey in their country of origin with the help speech technology, computers and telephones. The EU may have removed the internal borders, but meanwhile, a new technological wall is created.

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This new wall raises many questions. While privacy is a major concern, there are also issues of reliability, efficiency, efficacy, controllability, accountability and human rights. The possibilities to correct wrong decisions, the monitoring and evaluation of the systems, and the way the integrity of persons' bodies and private spheres is respected. To analyse some of the problems involved, it's useful to clarify the political context in which technologies are currently put to use in migration policy.

## **II. Closed Borders of the Open Society**

The problems many European countries face with regard to migration are, in a way, the result of a successful process of globalisation. The movement of people logically derives from globalisation: the creation of a world economy accompanied by social and technological networks. For a considerable part, this is sustained by the increase in international transport of capital, goods, services and information.

But globalisation has faced a development in the opposite direction: while national borders have opened up for economic reasons, an increasing amount of restrictions have been imposed on the free movement of people, especially the influx of migrants from less prosperous areas to Western countries. This tension between economic globalisation on the one hand and stricter national migration policies on the other has turned migration policies into a controversial topic.

During the past few decades, policies of many governments in Europe have consisted of measures to limit the immigration influx and, at the same time, to counter illegality. In order to achieve this, measures have been developed to check people who come into a country (external control), but also those already in a country (internal control). In addition, the restrictive policy is also becoming more selective. Not only is the number of migrants allowed into a country reduced, migrants are also examined more carefully according to the particular needs of those countries.

As well as becoming more restrictive and selective, migration policy has become increasingly entangled in issues relating to integration policy and security policy, specifically since the 9/11 attacks and the War on Terror .

As a result, three discussions have become progressively more interrelated. The first concerns migration policy and is mainly centered on the issues mentioned above: the influx of migrants and the separation of 'desirable' and 'undesirable' aliens. The second discussion relates to integration policy and is dominated in the media and politics by questions and problems related to social cohesion and civic integration among newcomers (varying from the obligation to assimilate culturally to the right to participate economically). The third discussion is on security policy, (such as risk analysis) especially on border control in the European countries and the outer limits of the

Schengen Area, and the screening and refusal of persons who are suspected of being a threat to society.

What these indications have in common is that migration, integration and security (certainly in political and public discussions) all have become regarded as part of the same problem, a problem increasingly controlled by technology.

### **III. Shortcomings in the Deployment of Technology**

The *raison d'être* of modern government is principally to manage a bureaucratic apparatus that helps to support the proper treatment of citizens. The use of information technology to achieve this task is a logical step, certainly in a modern and complex society. It is almost impossible to imagine how fundamental government tasks, for instance updating the Register of Births, Deaths and Marriages, or collecting taxes, could be performed without using some form of technology. Undeniably, there is certain logic in the use of technology in migration policy. Applying technological and computerised methods can help to ensure that borders are better monitored, that applications are dealt with more quickly, and procedures are used more efficiently.

However, technology is sometimes an unreliable ally, leading to undesirable side effects. If information files are unreliable, and impossible to adequately check or correct, migrants may unjustly be refused entry. Biometry can violate the integrity of the person or lead to the personal body being regarded as an instrument. Fingerprints can be difficult to read, someone's age may be difficult to determine by a bone scan, and errors can occur. Too much use of technology can put a disproportionate emphasis on the need to carry out checks. The reliability of many technological systems is far from evident.

For example, experts disagree on the reliability of bone scans by way of X-ray technology. This problem could be solved by exchanging the X-rays for MRI scans which give much more reliable results. This would also ensure that minors are not subjected to X-rays in the absence of a medical reason. However, this technology is much more expensive to purchase and to use, which is probably why this application is not currently considered to be an option.

Nearly every form of identification is inherently unstable. Speech recognition technology is deployed abroad in the civic integration examinations. However, there are still questions about whether or not this technology is sufficiently developed. Similarly, biometrics is not completely error-free, and in the present Schengen Information System (SIS), personal data is not always removed within the statutory period or according to conditions of use which can lead to a wrongful refusal of entry.

It is not at all clear how effective the various technological systems are. There are no clear statistics and evaluations, yet a new version of the SIS is already in development, even though the present system has not been sufficiently evaluated. There is also the danger that the objectives will change, just as they did with the civic integration examination. Although this examination is part of the integration policy, it has gradually changed (in a political sense) and is now part of the migration policy. Here it functions as a means of making migration more difficult and more selective by raising the required language levels.

Another problem is the danger of stigmatisation; exclusion of people on the basis of race, skin colour, ethnic or social background or religion. Of course, this is against the law, but databases and biometry make it increasingly easier to use such characteristics to distinguish between people. This leads to categorical surveillance and thus to discrimination of migrants who have limited possibilities to rectify or appeal this.

One consistent problem is the impenetrability of these technological systems. Two examples: the 'decision trees' used by IND (the Dutch Immigration and Naturalisation office) when deciding on a request for asylum, and the Information Systems used to verify asylum seekers' accounts of their escape. Automated decision-making is not allowed, so such systems should not substitute the civil servants, but in practice it is rather difficult to avoid the path laid out by the established information technology.

Finally, monitoring and public checking methods have their shortcomings. Supervisory bodies such as the European Data Protection Supervisor (EDPS) or the Dutch Data Protection Authority (DPA) have not been given the authority to provide legal advice. Therefore, their recommendations are often disregarded. In addition, insufficient supervision means that staff is not always competent to perform the necessary tasks correctly. Meanwhile, the European Court of Human Rights (ECHR) is very critical towards national governments which provide too few opportunities for supervision.

As a result, the use of these technologies brings new risks and inequalities. The integrity of migrants and their bodies, their privacy and the protection of their personal sphere is put to the test. It becomes harder to control, monitor, and correct the collection of data. There is less room for exceptions and in individual cases and, therefore, the decision-making process becomes increasingly standardised.

#### **IV. The Need for a Critical Public**

This is not a petition against technology. On the contrary, new technologies can make a policy more user-friendly. Take, for example, the reduction of the time required for processing applications, or the increased transparency of the legal process. Given the size and complexity of migration issues, the deployment of technology is almost unavoidable. This is precisely why it is

not surprising that new technology is being tested, especially when it might offer a solution to a topical problem. This does not only apply to migration policy; it concerns a more general phenomenon.

However, the manner in which assessments are made and the political decision-making process can differ enormously from sector to sector. This sort of decision-making is not confined to migration policy. The government is often faced with the same challenge. It is therefore a good idea to look at what other organisations do in similar situations.

Consider the tax office. Every year this office faces the challenge of accurately handling all tax declarations. Whether this (one of the oldest and most important tasks carried out by the state) is done adequately depends entirely on the information technology used. Unfortunately, that does not always go smoothly. However, the watchful eye of the general public guarantees that there is continuous pressure to perform well.

Migration policy lacks this kind of surveillance: those affected are not citizens of the country invading their privacies. Consequently, possible mistakes have to be brought to the authority's attention in alternative ways in order to make public surveillance possible.

For instance, the Dutch Railways organisation has postponed the introduction of a public transport chip card, a time-out, because the technical and managerial complexity was greater than foreseen. Thus postponement (but not cancellation) can be an option and may be a reason not to implement just yet. Similarly, the 'voting computer technology' which the Netherlands had planned on implementing, was deemed to be insufficiently developed to be deployed in the election process. Ultimately, this was not a success because a critical public test carried out by experts, activists and the media revealed insurmountable problems. Fortunately, the voting papers had not been destroyed when the computers disappeared from the polling booths. Critical citizens and experts are therefore certainly able to help monitor the quality of technology.

## **V. More Learning Capability and Public Testing**

All of the above examples are concerned with technological systems that can greatly affect the daily functioning of a large number of people. These systems also affect essential government functions: collecting taxes, public transport, and democracy. In every case, there needs to be an introduction procedure and a criteria framework to allow the reliability of a certain technology to be evaluated.

Merely setting up an experiment in a laboratory cannot guarantee the reliability of a technological application. Finding an answer to the reliability issue is not something we should leave to system developers, programmers or data managers. Instead, it is necessary to look at whether there are

sufficient possibilities available in practice for improving the technological system in question.

As stated above, this form of counter-surveillance is absent in migration policy. Those affected are not citizens of the desired country. The mechanisms for democratic control are absent. However, this control could be realised by direct or indirect means. A direct model of democracy that puts strong emphasis on citizen participation could give citizens a greater role in the choice and discussion on the functioning of a particular technology. An indirect model of democracy based primarily on representation and delegation to representatives could make the issue of technological borders an important election-theme.

In a technological society, however, it cannot be assumed that all public and technological issues will find their way into the democratic arena by way of representation, let alone to a public of non-state residents. Neither can we assume that such a diverse and fragmented group of people can participate in the creation of a new border system, including its entry procedures. Therefore, possible mistakes need to be brought to the authority's attention in alternative ways so as to enable 'actual' control. Opportunities for improvement are not hard to find.

In the Netherlands, speech recognition technology has not previously been used for a purpose that could invade a person's privacy (as opposed to its use in the civic integration examination in the country of origin). Have we acquired enough experience? Do we have sufficient knowledge of the problems undoubtedly present at these research locations? Have we learned from our mistakes? In order to learn, the government will have to develop the right sensitivity. Errors need to be made visible and publicised. Complaints should be heard and translated into constructive criticism.

Governments must ensure that a technique is tested thoroughly if transferred into a new context. Whenever a technological process is taken out of context and applied elsewhere, as is the case with speech recognition or bone scans, new problems may arise. Countries should learn from these problems and exchange views on a regular basis. Comparative research should be performed internationally, and Europe should not be ashamed to take the lead but *harmonise* where possible.

We know that small errors in a system can have enormous consequences. Crucial decisions depend on this realisation, for example, whether or not someone may enter the country. Furthermore, these are decisions that can have long-term and international repercussions.

It can also be said that migrants have less chance of obtaining rectification, compared to the native citizens of a country. That is why it is important to have back-up systems in place where a particular technology does not apply

to a specific person, for instance where a mother does not wish to undergo a DNA test because she suspects her partner is not the child's father.<sup>1</sup>

New alternatives should be offered to prevent people from falling into a 'technological gap'. We should introduce the topic of technology into the public debate by publishing successes and errors and ensuring the technology is well-known by the public. The decisions made regarding electoral computers have demonstrated that civic knowledge and civic action are worthwhile checking-mechanisms.

## **VI. Strengthening Public Control on the Technological Borders**

The borders of Europe and its member states are slowly but surely changing into 'technological borders'. The technological borders are turning a restrictive policy regime into a 'migration machine', putting a European-wide apparatus into operation to control and select persons at the border and regulate their mobility.

However, technology in migration policy lacks critical public testing. Because discussions on the political aims of migration policy demand everyone's attention, the spotlight is less focused on what happens during implementation, let alone the specific role of the type of technology used. More forms of technology are applied in a policy setting in which the political aim is limitations to be placed on migrants. This brings more urgency to the questions of how these restrictions and selections should be carried out, which resources should be used, and how they should function.

There is a risk that migration policy will start to function as a test lab for new several kinds of technologies, with the migrant as the test subject. This risk results from the increasing emphasis on 'control' by the interweaving of immigration, integration and security policies. A lack of public awareness of the technical aspects of migration policy and its consequences, and the weak position of migrants to give voice to the consequences, creates a situation of doubtful technical legitimacy, and also of questionable political legitimacy.

To technically and politically legitimise the role of technology in migration policy, mechanisms need to be developed to make such technologies become part of a more public endeavour.

Turning the deployment of technology into a 'public laboratory' by way of social learning means that techniques have to be developed to evaluate such technology. Learning from mistakes and making it a more public tool will strengthen its visibility and 'publicity', and thus allow for better public evaluation.

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<sup>1</sup> Examples include fingerprints that can be difficult to read, incorrect data recorded incorrectly in another country, and someone's age may be difficult to determine by means of a bone scan.

In such a scenario, an important role must be given to migrants themselves. Formally they may be outsiders of the democratic community; materially they are the most directly affected by the workings of the migration mechanisms. As such, they form a fragmented and excluded group of people. Currently, migrants are treated as the *object* of the migration policy. When they are treated as the *subject* not only will greater justice be done to their status as citizens, but also to their status as policy informants.

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