2 How ‘Low-Skilled’ Migrant Workers Are Made

Border-Drawing in Migration Policy

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Abstract

When discussing labour migration governance in Europe, many observers – including academics – rather intuitively take for granted regulatory distinctions. This includes schisms such as EU free movers vs. workers from outside the EU, or high-skilled vs. low-skilled migrant workers, and also a relative acceptance of the different rights regimes that apply across categories of migrant worker. This chapter challenges physically biased notions of borders, often featured in migration policy research, as territorial demarcation lines that lose their effectiveness when migrants cross them without authorisation. Instead, migration governance is conceptualised as a border-drawing activity by which migrants are classified and thus constructed as ‘legal’ or ‘illegal’ in highly selective and structurally embedded processes of ‘meaning-making’. Paul forges a conceptual hub for critically unpacking the normative underbelly of regulatory distinctions of migrant workers in European migration governance, and for discussing how such deeply political distinctions fashion (exploitable) positions for low-waged migrant workers.

Keywords: labour migration, governance, migrant categories, border-drawing, symbolic power, cultural political economy

1 Introduction

When discussing labour migration governance in Europe, many observers – including academics – rather intuitively take regulatory distinctions for

granted. Opposing categories usually include EU free movers vs. workers from outside the EU and high-skilled vs. low-skilled migrant workers. These schisms belittle, however, a) the creative activity of constructing these categories through regulation, b) their interaction with complexly stratified labour market relationships for both EU and non-EU workers, including wage biases based on the patchy recognition of non-domestic qualifications on European labour markets, and c) the ways in which formal and informal labour markets are themselves shaped by regulatory distinctions in migration law. This chapter conceptualises labour migration regulation as a powerful categorisation activity. It does so by interrogating the normative underbelly of migrant classifications as 'low-skilled' or 'low-waged' migrant workers in contrast to high-skilled categories, as well as in the context of the EU's free movement regime for EU citizens (who are not considered as migrant workers here, but as free movers). Such a critically minded unpacking of regulatory categories in migration policies towards so-called third-country nationals contributes, I hope, to an analytical framework for reflecting on the structural and discursive conditions by which low-skilled migrant workers' often vulnerable labour market positions – plentifully detailed in other contributions of this volume – are facilitated in the first place. It offers a way to acknowledge labour migration regulation as a complexly structured activity of statehood wielding far-reaching classificatory effects for migrant workers themselves. At the same time, such conceptualisation overcomes the physical concepts of borders that feature in much political sciences and migration policy research.

To do so, I propose to analyse migration policy as border-drawing.¹ With border-drawing, I mean the state's capacity to impose classifications – that is: categories of thought about how, and according to which criteria of distinction, to best categorise the social world – through immigration legislation. Based on a problematisation of the physical bias in border concepts, featured in the 'control gap' literature in migration research, Section 2 delineates a Bourdieusian reading of statutory classification activities. Rather than losing their effectiveness when migrants cross them without authorisation, borders are conceptualised as concerning the state's privileged symbolic power to construe and construct various 'legal' and 'illegal' categories of migrants, and to associate differentiated sets of rights to such classifications. Section 3 embeds the border-drawing concept in a cultural political economy

1 This draws on a larger research project whose findings have been published in a monograph: R. Paul (2015), *The Political Economy of Border-Drawing: Arranging Legality in European Labour Migration Policies*, Berghahn Books.

framework to highlight the selectivity of meaning-making processes underscoring migrant classifications – their normative underbelly – as well as the structuration of such meaning-making by existing institutions. Section 4 illustrates analytical uses of the border-drawing perspective through empirical examples from my past research, paying special attention to the volume's interest in low-skilled migrant labour markets. Section 5 concludes and discusses implications of the border-drawing concept for the analysis of 'low-skilled' and low-waged labour markets for migrant workers.

2 Migration Policy Research and a Physical Bias in Mainstream Border Concepts

Twenty-five years after Stephen Castles and Mark J. Miller first announced the 'age of migration'², research on the *regulation* of international migration has become a loyal analytical companion to migratory phenomena. Many social sciences accounts have since diagnosed a rather limited ability of statutory regulations to control migratory flows. From a Weberian reading, states rely on borders to delimit a) the territory they legitimately rule, and b) the individuals who acquire rights and access to public goods (including jobs and welfare) on this specific territory, and who are bound by the state's rules. The 'invention of the passport' has been crucial in statutory attempts to differentiate who is included and excluded from the *Staatsvolk*, fueling the 'state monopolisation of the legitimate means of movement' since the late eighteenth century in Europe.³ In line with Weberian thinking on the prerequisites of state sovereignty, most migration policy scholars start from the premise that governments 'want to be able to choose which people to admit, how many, for what purpose, and for how long. They do not want these decisions to be made by employers, other governments, or would-be migrants'.⁴

The diagnosis of a 'global migration crisis'⁵ rests on the assumption that migration challenges the states' monopoly to control movements into their demarcated territories. Examples include the 'unintended consequences'

2 S. Castles and M.J. Miller (1993), *The Age of Migration: International Population Movements in the Modern World*, Palgrave MacMillan.

3 J. Torpey (2000), *The Invention of the Passport. Surveillance, Citizenship and the State*, Cambridge University Press, p. 4.

4 M. Weiner (1995), *The Global Migration Crisis: Challenge to States and to Human Rights*, HarperCollinsCollege, p. 12.

5 Weiner, n. 4.

of Western European guest-worker programmes in the 20th century, where workers settled rather than returned to their countries of origin after their labour force was no longer needed⁶ (i.e. an alleged failure to enforce return); the prominence of mass regularisations of irregular workers (often in low-skilled labour markets) in Southern Europe⁷; the limited success of deportations of irregular residents⁸; or the policy and allocation dilemmas the EU is facing after the large-scale entries of asylum seekers during the so-called refugee crisis.⁹ Observations of limited control have provoked manifold scholarly efforts to explain the 'gap'¹⁰ between restrictive policy goals and rather liberal policy outcomes. They include rational choice political economy claims¹¹, neo-institutionalist arguments¹², and ideas from organisational theory.¹³

Rather than explaining an alleged control gap further, my premise is that such a focus risks missing some of the highly consequential effects of (potentially 'gappy' or not fully enforced) migrant regulation, notably for migrant workers and their employers. Of course, this is where we enter the terrain of critical legal scholarship, which has duly examined the effects of variable, complex, and often contradictory admission criteria as well as migrants' treatment in law depending on their legal status.¹⁴ By assuming

6 W.A. Cornelius and T. Tsuda (2004), 'Controlling Immigration: The Limits of Government Intervention,' in W.A. Cornelius and J.F. Hollifield (eds.), *Controlling immigration: a global perspective*, Stanford University Press; S. Castles (1986), 'The Guest-Worker in Western Europe – An Obituary', *International Migration Review*, 20.

7 E. Reyneri (1998), 'The Mass Legalization of Migrants in Italy: Permanent or Temporary Emergence from the Underground Economy?' *South European Society and Politics*, 3; S. Sunderhaus (2007), 'Regularization Programs for Undocumented Migrants', *Migration Letters*, 4.

8 A. Ellermann (2009), *States against Migrants. Deportation in Germany and the United States*, Cambridge University Press.

9 S. Carrera et al. (2015), *The EU's Response to the Refugee Crisis: Taking Stock and Setting Policy Priorities*, CEPS Essay.

10 W.A. Cornelius, P.L. Martin, and J.F. Hollifield (eds.) (2004), *Controlling Immigration: A Global Perspective*, 2nd ed., Stanford University Press.

11 G.P. Freeman (1995), 'Modes of Immigration Politics in Liberal Democratic States', *International Migration Review* 29 p. 881; G.P. Freeman and A.E. Kessler (2008), 'Political Economy and Migration Policy', *Journal of Ethnic and Migration Studies*, 34.

12 J.F. Hollifield (2004), 'The Emerging Migration State', *International Migration Review*, 38 p. 885; C. Joppke (1998), 'Why Liberal States Accept Unwanted Immigration', *World Politics* 50.

13 C. Boswell and A. Geddes, (2011) *Migration and Mobility in the European Union* (Palgrave Macmillan); C. Boswell (2007), 'Migration Control in Europe after 9/11: Explaining the Absence of Securitization', *Journal of Common Market Studies*, 45.

14 See, for instance, T. de Lange (2015), 'Third-Country National Students and Trainees in the EU: Caught between Learning and Work', *International Journal of Comparative Labour Law and Industrial Relations*, 31; also see T. De Lange and C. Rijken in the introduction to this edition.

that states have reached the point where attempts to control physical borders have become untenable, many political science approaches to migration policy tend to conceptualise borders as taken-for-granted, merely *physical*, demarcation lines that lose their functionality when someone crosses them without prior authorisation. Such an understanding tends to underestimate the powerful and consequential role of regulation in defining 'legal' and 'illegal' statuses, as well as many in-between categories of semi-legality, and in carving out a highly differentiated rights regime on the basis of such classification. As we will see later, classification crucially hinges upon migrant skill levels as a proxy criterion for distinction. Skill level thereby comes to co-determine the sets of rights available to incoming and resident migrant workers (and their families).

3 Conceptualising Migration Policies as Selective Border-drawing

To expose the normative underbelly and structural consequences of migrant admission regulation, I propose a Bourdeusian reading. This treats borders as complex regimes of highly differential rights and statuses for migrants, produced and reproduced through symbolic classifications that are themselves structurally embedded in existing institutions. Rather than taking borders for granted as physical demarcation lines, a border-drawing perspective highlights the analytical need to explore their mutual construction and structuration in highly selective classification processes.

Migration Policies as Bourdieusian Classifications

Pierre Bourdieu's reflections on classification and symbolic power¹⁵ help us carve out a basic concept of regulation efforts in the migration domain as *border-drawing*. Bourdieu sees classifications as social mechanisms by which positions and relations between individuals and groups are constructed and reproduced in the social world. He considers classifications as products of 'symbolic struggles' over the legitimate 'vision and division' of the social world. This means that the 'space of relations', later called 'social space', is not completely structurally determined, but is constantly constructed and

15 P. Bourdieu (1989), 'Social Space and Symbolic Power', *Sociological Theory*, 7 p. 14; P. Bourdieu (1991), *Language and symbolic power*, Polity Press; P. Bourdieu (1998), *Practical Reason*, Polity Press.

reconstructed in powerful 'symbolic' struggles over classification. While some properties of individuals, such as age, gender, race, and educational attainment, are perceived as ontologically real by Bourdieu and can have structuring effects on the agents' position in the social space, the specific way in which they structure these positions is not predetermined. Rather, a person's status and position in the social space depends, to a great deal, on the ascription of meaning to (some of) their individual properties in classificatory struggles, and in the recognition of these meanings as valid visions of difference. Policies, in this reading, are preliminary codifications of meaning, temporary winner stories in the struggle over legitimate classification. Whether my educational attainment, my professional skills, my age, my biological gender, or my nationality are advantageous for (or indeed detrimental to) my entry and residence in country X, is a matter of the value ascribed to these credentials in the countries' labour admission policies.

A second chief claim in Bourdieu's work considers the privileged role of the state in classificatory struggles. This is closely related to the condition of recognition that Bourdieu associates with 'winning' a classificatory struggle. His concept of symbolic power acknowledges that the state wields much classificatory authority: while anyone can say and mean anything semiotically speaking, not anyone can impose any vision of the world on a whole society sociologically speaking.¹⁶ Asymmetric power relations and unequal access to symbolic capital in the *espace sociale* found a particularly powerful role for the state in classificatory processes: 'In the symbolic struggle for the production of common sense or, more precisely, for the monopoly over legitimate naming, agents put into action the symbolic capital that they have acquired in previous struggles, and which may be juridically guaranteed'.¹⁷ States' relative authority to impose semantic visions and divisions of the world onto others, and to have such prescriptions 'recognised, that is misrecognised as arbitrary'¹⁸, relies on the 'monopoly over legitimate symbolic violence' and the power to pass collectively binding legislation. In Bourdieu's words: 'One of the major powers of the state is to produce and impose categories of thought that we spontaneously apply to all things in the social world – including the state itself.' It is therefore 'in the realm of symbolic production that the grip of the state is felt most powerfully'.¹⁹

16 P. Bourdieu, *Language and symbolic power*, n. 15 p. 74.

17 P. Bourdieu, 'Social Space and Symbolic Power', n. 15 p. 21.

18 P. Bourdieu, *Language and symbolic power*, n. 15 p. 170.

19 P. Bourdieu, *Practical Reason*, n. 15 p. 35 and 38.

In addition, when legislation engages in 'naming' and 'labeling', say through creating a legal category for nominally 'low-skilled migrant workers' and by its regulatory distinction from the category 'high-skilled migrant workers', this usually does not remain a merely semantic exercise. Rather, regulation typically attaches highly differentiated and structurally consequential sets of rights and obligations to semantic classifications. By linking the symbolically produced category of a 'low-skilled migrant worker', for example, to distinct sets of rights, such as access to the labour market, public welfare, public services, family reunion rights, or franchise, the state regulation powerfully shapes the socioeconomic and political position of the affected person in the 'host' country. Bridget Anderson has nicely summarised the status-producing effects of borders in this context:

'International borders are commonly presented as filters, sorting out the desirable from the undesirable, the genuine from the bogus, the legal from the illegal. [...] However, [...] borders are not simply territorial, but they reach into the heart of political space. [...] Laws and practices of citizenship [...] may be more usefully analysed as *producing* rather than reflecting status, as creating specific types of social, political and economic relations'.²⁰

Eventually then, the ability to classify and define 'legal workers' in official legislation – and to exclude all others from the scope of these definitions and the rights or duties attached to them – must be conceived as one of the most triumphant instances of the state's symbolic power in action. This, of course, is in dire contrast to the perception of powerless liberal states conveyed in the control gap literature.

Normativity and Institutions in Border-drawing

Two further specifications of the border-drawing concept are useful for empirical research, the first concerning the inescapability of meaning-making and the second concerning its structural embeddedness. The first claim relies on the insight that there can be no classification without a criterion for distinction, simple as it may be. The classification of migrants into different status categories – for example, using a legal distinction between high-skilled and low-skilled migrant workers – is not determined by any natural laws. Migrant categories come into being through a set of politically inaugurated principles that define the grounds on which a migrant *should be* classified as legal or illegal, as what type of legal and with access to

20 B. Anderson (2013), *Us and Them? The Dangerous Politics of Immigration Controls*, Oxford University Press, p. 2.

what kinds of rights, or with what type of sanctions in the case of 'illegality'. Legal migrant workers, for example, are typically selected and classified according to their skill level, but criteria for their distinction could also include, *inter alia*, their age, nationality, family status, language proficiency, or previous links to the country of destination.²¹ Anyone not matching the predefined skills profiles is consequently deemed either to remain outside the country or to occupy a notionally 'illegal' position without access to many fundamental rights. At the same time, any existing categories for admission can, of course, also be used strategically by prospective migrant workers, for example by entering through seemingly less stringent routes.

Classifications inevitably entail political choices about the norms that should guide regulatory divisions and access to rights in the 'host' country. As Chavez has suitably pointed out, 'illegality' is 'a status resulting from political decisions made by governmental representatives, who could just as well have decided to allow migrants to enter'.²² The specific combination of classification principles in the regulation of migrant admissions thus entails a highly *selective* normative vision of the world that cannot be taken for granted in scholarly policy analysis but instead requires critical reconstructing.

So how are specific credentials chosen to matter as markers of distinction in migrant classifications then? My second specification draws on the supposition that existing institutions structure, though never fully determine, the room of possible meaning-making in border-drawing. The normative underbelly of migrant classifications is not radically contingent but interacts with preexisting institutionalised sets of meaning and material structures of capitalist labour markets. This view borrows from the works of Bob Jessop and Ngai-Ling Sum²³ on cultural political economy, which I review more fully elsewhere.²⁴

21 R. Paul (2012), 'Limits of the Competition State: The Cultural Political Economy of European Labour Migration Policies', *Critical Policy Studies*, 6; R. Paul, *The Political Economy of Border-Drawing: Arranging Legality in European Labour Migration Policies*, n. 1.

22 L.R. Chavez (2007), 'The Condition of Illegality', *International Migration*, 45 p. 192.

23 B. Jessop and N. Sum (2010), 'Cultural Political Economy: Logics of Discovery, Epistemic Fallacies, the Complexity of Emergence, and the Potential of the Cultural Turn', *New Political Economy*, 15; B. Jessop (2009), 'Cultural Political Economy and Critical Policy Studies', *Critical Policy Studies*, 3; N. Sum and B. Jessop (2013), *Towards a Cultural Political Economy. Putting Culture in Its Place in Political Economy*, Edward Elgar Publishing; N. Sum (2009), 'The Production of Hegemonic Policy Discourses: "competitiveness" as a Knowledge Brand and Its (Re-)Contextualizations', *Critical Policy Studies*, 3.

24 R. Paul, *Limits of the Competition State: The Cultural Political Economy of European Labour Migration Policies*, n. 21; R. Paul, *The Political Economy of Border-Drawing: Arranging Legality in European Labour Migration Policies*, n. 1, Chapter 1.

At its most basic, cultural political economy (CPE) starts from an analytical distinction of two modes of complexity reduction, which actors, organisations, and social systems use to go on in an otherwise incomprehensibly and unmanageably complex world.²⁵ One is 'meaning-making' or 'semiosis', the other one is 'structuration'. Semiosis concerns discursive strategies of accentuating some selected aspects of the social world, while ignoring or silencing others, or combining and recombining sets of meanings. A selective stressing of the negative welfare effects of low-skilled migration that ignores its economic utility, in our case, would be a typical semiotic complexity reduction mechanism. Structuration concerns the 'extra-semiotic' or 'material' aspects of complexity reduction that can be found in institutionalisations of specific forms of social relations, such as relatively stable organisations or transaction models. Material structuration could concern, for example, the labour shortages and demographic decline on domestic labour markets – a macroeconomic factor that might then affect the extent to which the import of migrant labour is seen as a legitimate answer to so-called skill gaps.

A CPE approach joins both modes of complexity reduction in one analysis to acknowledge both (a) the *productive* potential of meaning-making processes (which we have captured with the Bourdieusian language of 'symbolic production' above) and (b) the impact of *structural preconditions* on the possibility for certain discourses to gain substantial influence beyond semantics. In a nutshell, this suggests that the institutional landscape delimits the range of possible (or 'compossible' in Sum and Jessop's words²⁶) social formations from which new meanings can be selected and vested in policies. Such understanding is also relevant for policy analysts in the interpretivist camp more generally. Henk Wagenaar²⁷, for example, highlights the power of often implicit 'presuppositional concepts' to offer patterns of meaning in distinct social or cultural contexts and thus silently shape our understandings of what a particular policy is – and indeed should be – about.

Overall then, border-drawing in migration regulation never acts in a vacuum and cannot create just any meaning. Rather, the moment of selectivity that is so crucial in classification processes is historically and socially embedded; it interacts with existing institutions and their normative foundations. At the same time, the view on structural embeddedness – and this is a clear departure from assuming institutional path dependencies – should not

25 Summary in B. Jessop, *Cultural Political Economy and Critical Policy Studies*, n. 23.

26 N. Sum and B. Jessop, n. 23 pp. 235-236.

27 H. Wagenaar (2011), *Meaning in Action: Interpretation and Dialogue in Policy Analysis*, M.E. Sharpe, p. 18.

lead to an underestimation of the powerful construction of ‘facticity’ through policy-making.²⁸ Facticity means that new taken-for-granted assumptions are brought into being through statutory classifications of migrant workers in regulations, which can create new statuses and opportunities or amend previous ones. CPE employs the term ‘sedimentation’ to capture the moment in which selective interpretations of the social world make it into the higher realm of ‘facticity’ to ‘give them the form of objective fact of life’.²⁹

Once created, migrant classifications such as the notion of a low-skilled vs. a high-skilled migrant worker tends to ‘become hard realities, facts that constrain us, not merely norms that guide our autonomous judgment’.³⁰ Low-skilled migrant workers will feel their inability to bring their spouses to live with them (such as is the case with migrants coming to work in the EU under the scope of the Seasonal Workers Directive discussed by Zoetewij in this volume), a direct function of the rights attached to their classification as ‘low-skilled’ migrant workers, as a very hard reality indeed. It is precisely such construction mechanisms by which the inevitably selective claims to meaning that underpin regulatory choices – e.g., ‘we do not need lower-skilled workers’ or ‘high-skilled workers boost economic growth’ – can acquire the status of tacit knowledge beyond contestation.

Eventually, border-drawing and respective migrant classifications are not just shaped by the socioeconomic formation in which they emerge, i.e. in contemporary capitalism. They simultaneously reconstitute this setting through the very process of producing or rearranging policy meanings and can hence come to shape future classificatory struggles. In other words: it might prove hard to retreat from the claim that ‘we do not need lower-skilled migrant workers’, once it has sedimented through legislation and related labour market positions with societal discourses having reached the stage of seemingly factual knowledge. While many contributions to this volume critically clarify such a claim through careful empirical analysis on real labour markets and in real work places, this chapter’s conceptual contribution lies in detailing how such classifications come about in the first place: in powerful statutory acts of border-drawing in which statuses are allocated in highly selective and yet institutionally embedded ways.

28 F. Fischer (2003), ‘Beyond Empiricism: Policy Analysis as Deliberative Practice’, in M.A. Hajer and H. Wagenaar (eds.), *Deliberative policy analysis: understanding governance in the network society*. Cambridge University Press.

29 B. Jessop, *Cultural Political Economy and Critical Policy Studies*, n. 23 p. 340.

30 N. McCormick (2007), *Institutions of Law: An Essay in Legal Theory*, Oxford University Press p. 33.

4 **Analysing the Regulation of Low-skilled Migrant Workers as Border-drawing**

How can a border-drawing lens, with its focus on selective meaning-making processes that are both structured by existing institutions and productive of new sets of meaning, facilitate critical analyses of the regulation of low-skilled migrant workers and their jobs? To illustrate the empirical application of the border-drawing framework, I rehearse key findings from a larger study I conducted from 2009-2012, comparing labour migration regulation in Britain, France, and Germany.³¹ This serves to demonstrate the reasoning and institutional logic behind a common regulatory distinction between high-skilled and low-skilled labour migration. It also indicates how the context of EU free movement structures entry options and statuses for those non-EU migrants classified as low-skilled workers.

The Relevant Other Category: Classifying High-skilled Migrant Work as Innovation-boosting

The first key finding concerns the structural and discursive conditions under which contemporary labour admission regimes for non-EU workers in European Member States classify lower-skilled migrant jobs as economically undesirable, by way of comparison with the nominally highly desired, high-skilled migrant workers. Labels and specificities of respective permits may vary, but the three countries I studied broadly structure the regulatory terrain by skill level as guiding criterion for distinction: 1) high-skilled professional routes, including post-study job search and intra-company exchanges; 2) shortage routes for skilled workers, and 3) lower-skilled routes that are sometimes inactive (Britain). Legislation in all three countries privileges high-skilled workers with more secure residence statuses (even including access to immediate permanent residency in Germany), easier and more comprehensive labour market access, but also encompassing family reunion rights. In contrast, migrants working in lower-skilled jobs are tied to their employers, at least initially, and they can usually only stay

31 R. Paul, *The Political Economy of Border-Drawing: Arranging Legality in European Labour Migration Policies*, n. 1; further findings in R. Paul, *Limits of the Competition State: The Cultural Political Economy of European Labour Migration Policies*, n. 21; R. Paul (2013), 'Strategic Contextualisation: Free Movement, Labour Migration Policies and the Governance of Foreign Workers in Europe', *Policy Studies*, 32; R. Paul (2016), 'Negotiating Varieties of Capitalism? Crisis and Change in Contemporary British and German Labour Migration Policies', *Journal of Ethnic and Migration Studies*, 42.

for the duration of the work contract. Any change of employers requires consent by the employment and migration authorities; a requirement that is certainly most pronounced in the British sponsorship certificate system. Additional labour market protection mechanisms in the guise of shortage lists, resident labour market checks, and bilateral recruitment agreements or country-specific quotas, further add to the impression of a tightly regulated domain.

This finding concurs with several studies³² evidencing that the rediscovery of migrant workers as 'potentially useful human resources' in the 1990s – after decades of official recruitment bans – came with highly selective admission regimes: 'migrants are welcome as long as they promise to contribute to the prerogatives of a business-friendly national economic growth strategy.'³³ Clearly, arguments of economic utility are not being accepted as sufficient for legitimising legal entry for migrants of *lower* skill levels. Unlike in the so-called guest-worker period after the Second World War, when countries such as France and Germany recruited mainly lower-skilled or unskilled workforce to build up flourishing postwar economies, active recruitment since the 1990s has been mainly focussed on high-skilled workers.³⁴

A border-drawing perspective helps exploring the seeming desirability of high-skilled workers as a selective accentuation of innovation goals in the context of the so-called 'knowledge-based economy'. For example, the European Commission, in a 2005 green paper, highlighted 'the need to review immigration policies for the longer term, particularly in the light of the implications that an economic migration strategy would have on competitiveness and, therefore, on the fulfilment of the Lisbon objectives.'³⁵ The normative underbelly of any migrant classification by skill level is shaped by the selective assumption that national economies compete desperately for high-skilled workers in a globalised 'knowledge-based economy', and that state policies ought to facilitate economic competitiveness and growth strategies by attracting high-skilled foreigners. As a British policymaker

32 cf. S. Castles (2006), 'Guestworkers in Europe: A Resurrection?', *International Migration Review*, 40; M. Ruhs (2013), *The Price of Rights. Regulating International Labour Migration*, Princeton University Press; M. Ruhs and B. Anderson (2010), *Who Needs Migrant Workers? Labour Shortages, Immigration, and Public Policy*, Oxford University Press.

33 G. Menz (2009), *The Political Economy of Managed Migration: Nonstate Actors, Europeanization, and the Politics of Designing Migration Policies*, Oxford University Press p. 31.

34 S. Castles, n. 7; A. Ellermann (2014), 'Do Policy Legacies Matter? Past and Present Guest Worker Recruitment in Germany', *Journal of Ethnic and Migration Studies*, 41.

35 Commission of the European Communities, *Green Paper on an EU Approach to Managing Economic Migration*, Brussels, p. 3.

highlighted in an interview, employers take the view that 'if someone in this field comes up then we hire them, not because we need a job, but because if we don't hire them General Electric will, and these people are like gold dust'. The hegemony of the belief in innovation-induced growth and competitiveness in contemporary capitalist economies and states thus gets imprinted on migrant admission schemes.³⁶

As set out in the introduction to this collection, the categorisation of a person as a 'low-skilled' migrant gives them little chance of entering the EU legally as a worker, and has direct effects on their labour market position if they enter via other schemes (e.g. students, family members, asylum seekers), or come as undocumented workers. While economic utility considerations do not feature prominently in the three countries' generic regulation for low-skilled worker admissions³⁷, the reality of informal cheap migrant labour suggests high economic utility of these workers in practice. Some have suggested this to be a 'malign neglect'³⁸ within migrant admission regimes, arguing that the illegalisation of migrant workers through restrictive policy-making serves hidden policy objectives of practically increasing the utility of cheap labour.³⁹ Indeed, the classification of someone as a 'low-skilled' migrant worker with less legal entry options than their higher-skilled counterparts, and less rights attached to the status, is itself shown to contribute to the 'fashioning of precarious workers'.⁴⁰ Scholars have, of course, also

36 P.G. Cerny (2006), 'Restructuring the State in a Globalizing World: Capital Accumulation, Tangled Hierarchies and the Search for a New Spatio-Temporal Fix', *Review of International Political Economy*, 13; P.G. Cerny (2010), 'The Competition State Today: From "Raison d'État" to "Raison Du Monde"', *Policy Studies*, 31; B. Jessop's notion of a 'Schumpeterian workfare post-national regime' depicts the role of the 'capitalist state' as one of securing the key conditions under which valorisation of capital and the reproduction of labour are possible. See B. Jessop (2002), *The Future of the Capitalist State*, Polity.

37 Of course, regulations like the EU's Seasonal Workers Directive create entry channels where the utility of low-skilled labour is officially acknowledged but these are regulated in highly confined manners and usually come with temporary residence and fewer rights than higher-skilled entry schemes; E. Carmel and R. Paul (2013), 'Complex Stratification: Understanding European Union Governance of Migrant Rights', *Regions and Cohesion*, 3.

38 M. Samers (2010), 'Strange Castle Walls and Courtyards: The Political Economy of Undocumented Migration and Undeclared Employment', in G. Menz and A. Caviedes (eds.), *Labour migration in Europe*, Palgrave MacMillan.

39 cf. A. Morice (1996), 'Précarisation de L'économie et Clandestinité: Une Politique Délibérée', *Plein Droit*, 31; A. Morice and S. Potot (2010), 'De l'Ouvrier Immigré au Travailleur sans Papiers. Les Étrangers dans la Modernisation du Salarial', in A. Morice and S. Potot (eds.), *Travailleurs étrangers entre émancipation et servitude*, Édition Karthala.

40 B. Anderson (2010), 'Migration, Immigration Controls and the Fashioning of Precarious Workers', *Work, Employment & Society*, 24.

traced ways in which ‘illegal’ or semi-legal positions can be negotiated in practice, mainly through proving economic utility and moral decency⁴¹, but potentially also by mobilising around notions of labour exploitation.⁴²

Structurally Embedding Low-skilled Labour Demands as a Matter of EU Free Movement

What of low-skilled migrant jobs in the dominant imaginary of the knowledge economy? It is certainly widely acknowledged that lower-skilled workers are economically useful by filling important shortages in host labour markets⁴³, even if they are not usually framed as ‘desired’ in policy discourse and meet much less benevolent admission schemes than their higher-skilled counterparts. For example, British food businesses are known to rely on a constant supply of flexible migrant workers willing to work for ‘the lowest possible wages and [in] poor working conditions’ in the attempt to keep food prices low, all while often facing much uncertain seasonal supply chains and consumer demands.⁴⁴

Yet, unlike in the global competition for high-skilled ‘gold dust’ workers, policymakers assume that lower-skilled labour is in abundant supply in domestic and European labour markets and therefore does not need to be imported from third countries: ‘they [European workers] do amply fill the gaps that would otherwise need to be filled by a greater number of residents and by non-European workers’ in the view of a British policymaker in 2011, talking before Brexit. The structural conditions that facilitate the ‘composability’ of such a rationale are shaped by the EU’s free movement regime. Where Europeans are concerned, individuals who would have counted as ‘foreign workers’ from a traditional, nation-state perspective, and could

41 S. Chauvin and B. Garcés-Masareñas (2014), ‘Becoming Less Illegal: Deservingness Frames and Undocumented Migrant Incorporation’, *Sociology Compass*, 8; S. Chauvin, B. Garcés-Masareñas, and A. Kraler (2013), ‘Working for Legality: Employment and Migrant Regularization in Europe’, *International Migration*, 51.

42 P. Barron, A. Bory, S. Chauvin, N. Jounin, and L. Tourette (2016), ‘State Categories and Labour Protest: Migrant Workers and the Fight for Legal Status in France’, *Work, Employment and Society*, 30.

43 cf. B. Anderson, n. 40; B. Anderson, n. 20; R. Paul, *Limits of the Competition State: The Cultural Political Economy of European Labour Migration Policies*, n. 21; M. Ruhs and B. Anderson (2010), ‘Semi-Compliance and Illegality in Migrant Labour Markets: An Analysis of Migrants, Employers and the State in the UK’, *Population, Space and Place*, 16.

44 A. Geddes and S. Scott (2010), ‘UK Food Businesses’ Reliance on Low-Wage Migrant Labour: A Case of Choice or Constraint?’ in M. Ruhs and B. Anderson (eds.), *Who needs migrant workers? Labour shortages, immigration, and public policy*, Oxford University Press.

have been selected, rejected, or expelled on the terms and conditions set out in national regulations, can no longer be treated as aliens in national legislation.⁴⁵

A border-drawing analysis indicates that the EU free movement regime serves as a selective structural point of reference that helps to justify restrictive admission policies for low-skilled labour from outside the EU. The selectivity of this legal condition becomes obvious when we highlight that the availability of EU workers is no criterion for exclusion from admission of third-country nationals who are high-skilled migrant workers, domestic graduates, or intra-corporate transferees.⁴⁶ The legal implications of an EU-wide labour market in which national regulators cannot discriminate other EU nationals, has provisionally constrained the applicability of the usual labour and welfare protection strategies for third-country nationals. It is important to note that some of them had enjoyed easier, or even privileged, access before, for example through guest-worker agreements (e.g. Turks in Germany) or postcolonial links (*Maghrebins* in France, New Commonwealth citizens in Britain). Therefore, some observers discuss EU free movement as a replacement of historical migration patterns with ethnicised stratification effects.⁴⁷

Yet, recent developments around Brexit clearly indicate that to treat non-EU migrants as legally secondary to EU free movers is highly contested and unstable over time. Unexpectedly high mobility, and its perceived adverse effects, were at the centre of a recent policy U-turn from liberal recruitment under New Labour to limiting net migration overall from 2010 onwards, under Conservative-led administrations in the United Kingdom.⁴⁸ The government's inability to restrict free movement directed regulatory

45 More detailed review of the mobility regime in E. Carmel and R. Paul (2013), 'Migration, Mobility and Rights Regulation in the EU', *Policy Studies*, 32; cf. D. Kostakopoulou (2007), 'European Union Citizenship: Writing the Future', *European Law Journal*, 13; and M.S. Houwerzijl and A. Schrauwen in this volume.

46 I speak of 'strategic contextualization' to explain the selective use of EU free movement in policies directed at non-EU migrant workers: R. Paul (2013), 'Strategic Contextualisation: Free Movement, Labour Migration Policies and the Governance of Foreign Workers in Europe', *Policy Studies*, 32.

47 cf. P. Hansen (2000), "'European Citizenship", or Where Neo-Liberalism Meets Ethno-Culturalism', *European Societies*, 2; P. Hansen and S. B. Hager (2010), *The Politics of European Citizenship: Deepening Contradictions in Social Rights and Migration Policy*, Berghahn; L. McDowell (2009), 'Old and New European Economic Migrants: Whiteness and Managed Migration Policies', *Journal of Ethnic and Migration Studies*, 35.

48 R. Paul, *Negotiating Varieties of Capitalism?*, n. 31.

repercussions mostly to non-EU foreign workers.⁴⁹ Interestingly, most legal changes to admission routes kept the basic classification by skill levels intact and curtailed routes by simply recalibrating skill requirements within the points-based system. For example, while New Labour had defined 'skilled' workers in tier 2 as those with school-leaving certificates and included 192 occupations on the shortage list in 2008, David Cameron's administration raised the skill requirements to professional diploma level in 2011 (121 occupations) and to graduate level in 2013 (89 occupations).⁵⁰ As a result, options for 'low-skilled' workers to enter Britain through the shortage route diminished without any migrants lowering their qualification level. More recently, of course, EU free movement itself became a major battlefield in the Brexit vote⁵¹ and delegitimised the previously hegemonic – at least under New Labour – construal and construction of EU mobile workers as useful, flexible labour supply, on low-skilled British job markets.

5 Conclusion

This chapter took issue with the taking for granted of legal distinctions of migrants in dominant political science research with their foci on the 'gap' between (tough) migrant regulation and its (lax) enforcement. Instead, I outlined border-drawing as a framework for (1) critically interrogating the ways in which regulation classifies migrants into various categories of 'legal' and 'illegal', usually with highly differential sets of rights, and (2) exploring the normative underbelly and strategically selective institutional embedding of such distinctions.

The border-drawing lens alerts the analyst that the contemporary positive framing of high-skilled workers as economically desirable should not be easily taken for granted, even if it seems to be normalised in several contemporary studies and consultancy reports.⁵² Rather, such positive meanings – and, by

49 R. Ford, W. Jennings, and W. Somerville (2015), 'Public Opinion, Responsiveness and Constraint: Britain's Three Immigration Policy Regimes', *Journal of Ethnic and Migration Studies*, 41.

50 Migration Advisory Committee (2013), *Immigration and the British Labour Market: The Role of the Migration Advisory Committee*.

51 J. Portes (2016), 'Immigration, Free Movement and the EU Referendum', *National Institute Economic Review*, 236; D. Wincott (2017), 'Brexit dilemmas: New opportunities and tough choices in unsettled times', *The British Journal of Politics and International Relations*, 19.

52 L. Cerna (2013), 'Understanding the Diversity of EU Migration Policy in Practice: The Implementation of the Blue Card Initiative', *Policy Studies*, 34; OECD (2011), 'Global Governance and the Regulation of Migration Flows', *Development Centre Studies* (Organisation for Economic

implication, the often negative framing of low-skilled migrant workers and the rather restrictive regulation of their entry in EU Member States – are selectively inscribed in regulation with the political intention of structuring the social world around selective norms of 'economic desirability'. Classifications emerge at specific moments in time and in specific places and are structurally embedded in hegemonic ideas about capitalism. Both the diminishing legal acceptance of low-skilled migrant workers as economically utile, from the so-called guest-worker period towards the contemporary 'knowledge-based economy', and the role of the EU free movement regime in structuring responses to still economically extant low-skilled labour demands, highlight the power of such selective structuration. By classifying 'low-skilled' migrant workers as abundantly available on EU labour markets, regulation also disadvantages the position of non-EU migrant worker residents, some of who have long-standing links to the 'host' country, and may thus wield ethnicised stratification effects. However, as Brexit has shown, such political structuration may also backlash when voters are unwilling to accept EU free movers' rights to fill low-wage job gaps and define the feared 'other' on socio-political or cultural – rather than economic – grounds.⁵³ At the same time, restrictive regulation contributes to the 'fashioning' of exploitable labour market positions for migrant workers in low-skilled jobs and might also lend these disadvantaged legal positions to strategies of victimization (as discussed in some of this volume's contributions).

Overall, classifying migrant workers as economically less desired, and granting them fewer legal entry options and fewer rights, in a structural environment where they are economically still utile (and potentially more so with a less secure legal status), implies wide-ranging and non-straightforward political ordering effects. It is by exposing these effects that the border-drawing perspective can contribute more intriguing accounts of regulation than a conventional focus on explaining unauthorised border crossing or visa overstaying. To analyse the position of low-skilled and/or low-waged migrant workers in European labour markets critically, I suggest, we require careful unpacking of (a) legal categories as constructs, (b) the markers of classification which distinguish on category from one another (as well as

Co-operation and Development 2011); M. Ruhs, n. 32; P. Zaletel (2006), 'Competing for the Highly Skilled Migrants: Implications for the EU Common Approach on Temporary Economic Migration', *European Law Journal*, 12.

53 My fieldwork unearthed plenty of puzzling and amusing anecdotes in which citizens of the UK with Jamaican and other New Commonwealth heritage wondered why the British government decided to bring in Eastern Europeans who 'don't even play cricket!'. Cf. R. Paul, *The political economy of border-drawing*, n. 1, Chapter 6.

from different classification regimes across time and space), (c) the structural conditions in which markers of distinction are selected and come to operate, and (d) the variable eligibility conditions and rights attached to different categories of migrant. Just like in Scott's famous account of state governance through cadastral maps, city plans, and scientific foresting, categories of migrants are thus understood as 'abridged maps' of the social world that 'enable much of the reality they depict to be remade'⁵⁴ through state regulation.

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54 J. Scott (1998), *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*, Yale University Press, p. 3.

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