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▶ **To cite this version:**

Kimberly Morgan. Policing Markets: Campaigns against Irregular Migrant Labor in Western Europe. 2016. hal-03459294

HAL Id: hal-03459294

https://sciencespo.hal.science/hal-03459294

Preprint submitted on 1 Dec 2021

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D'ÉVALUATION DES POLITIQUES PUBLIQUES

LIEPP Working Paper

June 2016, nº54

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Campaigns against Irregular Migrant Labor in Western Europe

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Policing Markets:

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Kimberly J. Morgan

Abstract

This paper investigates how European countries have responded to the issue of irregular migrant labor in recent decades. The European Union has declared that jobs in shadow economies are a major pull for undocumented migrants, and since the 1990s, a number of individual states and the EU have ramped up efforts to combat irregular migrant work. This paper charts and characterizes trends in these policy initiatives over time, and across countries, in an effort to understand both how states concretely go about trying to control irregular migration, and to shed light on the political economy of labor migration. I argue that European integration and asylum crises help explain the common trend toward hardening labor market controls, as well as the growing EU emphasis on the issue. Cross-national differences remain, however, in the level of effort expended on rooting out and repressing irregular migrant work; these differences reflect varying political dynamics over shadow economies and the institutionalized power of economic interest groups.

Border control connotes, in the minds of many, the "police dogs, electric wires, and helicopters…incarceration, deportation, torture, shooting on sight, and so on" (Abizadeh 2008, 46) that are deployed to keep non-nationals out and, in some dictatorial regimes, keep nationals in. Along with passport checks and visa requirements, these are some of the more visible means by which state officials attempt to preserve their monopoly over the movement of people (Torpey 1998). Yet, in Europe today, most undocumented migrants enter legally and simply stay (Triandafyllidou 2010). Moreover, the free movement of people within the Schengen zone has undercut the ability of many European states to physically bar unwelcome visitors from the territory. In response, many of these states have constructed a different set of barriers – walls around welfare states and labor markets in order to prevent unauthorized entry (Engbersen 2003). These efforts have been sustained and reinforced by European-level initiatives to combat undocumented migrant labor and shadow economies. The underlying aim has been to make life difficult for unauthorized migrants – creating a "hostile environment," in the words of British Home Secretary Theresa May – so that they will leave or be deterred from coming in the first place.

This paper explores the walls that have been constructed and fortified around labor markets in Western Europe since the mid-1970s – the time by which a number of states had closed their doors to large-scale guestworker and post-colonial migration, and immigration policy started becoming more restrictive. At first glance, it may seem self-evident that, once governments decide to limit labor migration, they adopt control mechanisms against future unauthorized workers. In fact, there are considerable differences in these efforts, both across countries and over time. Investigating these measures sheds light on how states actually go about enforcing immigration control.

This paper has both descriptive and explanatory findings. The descriptive findings concern overall patterns of state initiatives to combat undocumented migrant work over the past few decades and the timing

of these changes. Across Western Europe, there has been an increased focus on rooting out and repressing unauthorized migrant work that began in some countries by the 1990s, but that spread and intensified in the first decade of the 2000s. This agenda dovetailed with, and was fueled by, a wider mobilization of resources to combat undeclared work and the shadow economy. There is variation, however, in the degree of effort. In general, there is a North-South divide, as Nordic and continental European countries, as well as the UK in recent years, have been more vigorous in pursuing these initiatives than have governments in Southern Europe.

What is driving these developments and the differences in them? The explanation for the temporal trend lies in the very forces that can be said to undermine states – globalization and Europeanization. As these forces have eroded the power of states to directly control migration flows, the response of state officials has been to construct internal controls. In other words, as exterior walls have been lowered, or breached, states have built or reinforced internal ones. In particular, the push toward a border-free Europe, and its extension to new member states in the South and East, spurred a scramble by other EU states to construct higher internal barriers to migration. States in the North and West then worked through the European Union to pressure states in the South and East to impose stricter controls on undocumented work. The result has been a European-wide campaign against illegal work and shadow economies that is aimed particularly at the newer member-states and those on the Mediterranean rim.

Within this overall trajectory of growing controls on undocumented migrant labor, there remain cross-national differences in the extent of these efforts that reflect variations in the domestic political economy of irregular migration and power of economic interest groups in political systems. In Southern Europe, the large informal economy predates the inflow of migrant labor but has been reinforced by it. This generates political obstacles to repressive state policies toward undocumented work, including by businesses that rely heavily on it. In addi-

tion, labor unions in this region generally lack institutionalized power and have, in many cases, experienced organizational decline. Their interests thus have lain more in championing migrant workers (as future union members) than in what they see as futile efforts by state agents to enforce labor law.

In the Northern European economies, by contrast, irregular migrant labor is often in small, marginal firms that lack power in the economic sphere; employers' associations more often represent firms operating on the basis of high-skilled labor and whose interests lie more in repressing "disloyal competition" or "social dumping" from firms using immigrant work, either domestically or elsewhere in Europe. Their views generally align with those of large labor confederations that have some amount of institutionalized power over labor market policy. Unions in this context have been less inclined to reach out to migrant workers and more apt to push for, and even participate in, the enforcement of bans on the hiring of unauthorized migrant workers, although the behavior of unions in France and the UK has been more like those in Southern Europe, reflecting their lesser power.

These findings have larger implications for how we think about states in Europe and their relationship to economic forces. Against those who emphasize the erosion of state power in the face of neoliberalism, globalization, or European integration, this examination of the concrete practices of internal border control reveals instead the reconfiguration and resilience of state power. Particularly in Northern Europe, state officials have worked to build up their infrastructural capacities when it comes to irregular migration – their ability to reach deep into society and compel agents in civil society to do their work. Rather than the state being hollowed out, its power has been restructured, and in some ways enhanced, by the process of European integration.

Theorizing States and Borders

Studies of immigration policy and its determinants have been shaped by debates about the power of modern states and the workings of democratic politics. Some early efforts at theorizing immigration policy investigated whether states had lost the ability to control "unwanted migration" (Joppke 1998), and thus emphasized the constraining effects of globalization, European integration, and human rights-protecting institutions, domestic or international (Hollifield 1992; Sassen 1998; Joppke and Marzal 2004). Another line of argument pointed to the imbalance of interests in democratic societies when it comes to immigration – the strength of vested interests, such as business or ethnic lobbies, with a stake in more open policies versus the generally immigration-hostile, yet unorganized mass public (Castles and Kosack 1985; Freeman 1995). Many scholars thus highlighted various gaps – the gap between mass opinion and immigration policy outcomes, for instance, or the gap between stated policy goals and outcomes – that make immigration policy a case study of failure (Castles 2004; Cornelius and Tsuda 2004; Andreas 2009).

Others have countered that states are alive and well when it comes to immigration control (Guiraudon and Joppke 2001; Guiraudon and Lahav 2000), particularly when immigration flows and policies are viewed in a longer historical perspective (Zolberg 1999; Peters 2015). States did relatively little to police their frontiers during the 19th and early 20th centuries (Mullan 1998), and during the three decades after the second world war, a number of West European countries effectively opened their doors to large-scale migration from former colonies and other developing nations (Castles and Kosack 1985). Since the mid-1970s, however, many of these countries have significantly reduced immigration flows, and irregular migration, while spiking at some time periods and in particular parts of the continent, is not particularly high and lower than U.S. levels (Schain 2013). Particularly when viewed from the standpoint of those who experience immigration controls, the state seems hardly like a "zombie" category at all (Engbersen and Broeders 2009, 869).

The fact that states still have the ability to manage migration raises the question of how they actually control migration given the pressures that are supposed to be undermining them – liberal democratic politics, global economic forces, and the formal demise of borders within much of Europe. One way to investigate this question is to examine the concrete practices of immigration control, a subject that has generally received less attention from immigration scholars (notable exceptions include Hammar and Brochmann 1999; Guiraudon 2002; Ellermann 2006; Engbersen and Broeders 2009). An important step forward in this line of inquiry is the work by Guiraudon and Lahav (2000; and Lahav and Guiraudon [2006]) showing that European states have shifted immigration control to new sites and actors, including the European Union, transport companies, and local governments. Other work has focused on the development of new forms of identification control and surveillance using biometrics and computerized data (Engbersen and Broeders 2009). This research reveals that, while land borders in Europe may be under pressure, "re-bordering" is under way through the erection of digital barriers to entry and expansion of the state's reach through an array of governmental and non-governmental agents (Andreas 2000).

Labor markets are one important site of re-bordering that has received less attention thus far.[1] Yet, labor markets are at the center of the immigration problem as seen by state officials: many migrants move to seek out economic opportunities elsewhere, and those who are pushed out of their home countries by repression or violence, or are drawn in to new countries by family ties, are likely to seek a foothold in paid work. One way to combat undocumented immigration is to render these migrants' lives hopelessly precarious – to undermine their ability to earn a living so that they will choose, in the words of 2012 US presidential candidate Mitt Romney, to "self-deport." Closing off the doors to the labor market also excludes undocumented migrants from

[1] The most comprehensive work on this was done by Marie (1994), Miller (1995) and Martin and Miller (2000), and touched upon by Guiraudon and Lahav (2000).

much social welfare provision, as formal employment is usually essential in entitling one to a pension, disability insurance, unemployment compensation, and other social supports (Engbersen 2003). In general, policy-makers and many scholars view sanctions on employers who hire undocumented migrants as an important tool of immigration enforcement because they tackle the demand for this labor rather than solely going after the supply (Ruhs 2006, 16).

What is behind the move to erect walls around labor markets and determinedly police them, and why have some states done more in this regard than others? There may be international pressures on states, most likely stemming from European integration and the free movement of people, that have induced states to do more to police domestic labor markets. For example, the European Union has taken a greater role in immigration-related issues, and it could be pushing states to adopt tougher policies against illegal migrant work. Domestically, these measures could reflect the relative power of capital and labor, and/or the extent of left- and right-wing party dominance. Here, there may be cross-national differences in the interests of employers and labor unions in the treatment of undocumented migrant work, depending on how which sectors of the economy rely on this type of labor. Moreover, some scholars have hypothesized that the power and institutionalization of labor unions may influence their stances on migration, with politically weaker unions being more open to legal and illegal migrants as a potential source of future union members. The stance of the social partners may be especially important on this issue, because enforcement of labor law relies on the compliance, or even active participation, of employers and unions. Fierce opposition to employer sanctions laws is thus unlikely to undermine them.

To evaluate these arguments, the next section of the paper lays out and interprets some of the main cross-national and inter-temporal patterns of labor market controls. The succeeding two sections then move to evaluating evidence that would support or disconfirm various explanations for these patterns.

Patterns of Controls on Undocumented Migrant Labor

How can states prevent undocumented workers from gaining access to their labor markets? Doing so requires not just formal laws against hiring such workers, but also bureaucratic mechanisms and capabilities to enforce these laws. Typically, employers face sanctions – including administrative fines, criminal actions, and possibly even jail time – for hiring undocumented workers, but in some countries workers themselves can be targeted by fines, prison time, and/or deportation (Robin and Barros 2000). As ineffective employer sanctions in the U.S. have shown, however, policy-makers need to go beyond creating formal penalties and develop enforcement mechanisms with real teeth. This means directing labor inspectors, customs officials, border control agents, or other personnel to ferreting out and penalizing the hiring of undocumented workers. In many cases, these efforts require considerable bureaucratic coordination, with a willingness on the part of "street-level bureaucrats," employers, or labor unions to report violators to the appropriate authorities. Moreover, preexisting institutional capacity can matter a good deal: a state with a well-functioning national identification system, for instance, might be better able to locate and target undocumented migrant work than one without national identity cards or local registration requirements.

Finally, in many countries, the undocumented workforce is inextricably linked to the shadow economy as a whole. It is for that reason that the campaign against undocumented labor has, in many countries and from the standpoint of the European Union, become part of a larger set of initiatives against hidden work (Marie 1994; Commission of the European Communities, 2007). Thus, states can adopt broader efforts against fraudulent work that may include punitive measures but also inducements to bring shadow economic transactions into the light. Simplifying administrative procedures and/or subsidizing the social contributions and other costs of low-wage work, for instance, might induce those working in the underground economy to work above

board (Winkelmann, Schmidt and Leichsenring 2015; Morel and Carbonnier 2015, 8-9). This, in turn, constricts the space available for undocumented workers, as more employers – including those of individual household workers – might choose to declare their employee rather than hire someone lacking authorization to work. For the purposes of space, this paper focuses more narrowly on employer sanctions and other measures designed to ferret out and punish illegal work, but it should be noted that there is a broader campaign afoot in a number countries to bring illegal work into the light through mixes of punitive measures and incentive schemes (Williams 2008).[2]

There is considerable geographic variation across Western Europe in the extent of labor market control mechanisms (I am not addressing Eastern Europe in this paper given limits of space and expertise). In general, the level of labor market control diminishes from North to South, with the Nordic countries having the most tightly regulated labor market access and the Southern European countries having the least. In the Nordic countries, this is in part a reflection of preexisting state capacity to document and surveil the population. Nordic countries have comprehensive population registries that date back centuries and assign every resident a number that provides access to paid work, social benefits, schools, banks, and other types of services (Krogness 2011). Without a registration number, which is assigned at birth or else when one attains legal immigrant status, a person is effectively shut out of the main social and economic institutions, including the formal labor market (Brochmann 1999, 217; Hammar 1999, 187; Sigvardsdotter 2012).

There is considerably greater space for undocumented immigrants in Southern European economies, which tend to have large informal sectors that offer ample possibilities for undocumented work. Some estimate the size of the shadow economy as ranging from one-fifth to

[2] Examples include the creation of the mini-jobs category in Germany or the creation of *chèques-service* in Belgium and France that facilitate the payment of social contributions of domestic care and cleaning workers.

almost one-third of GDP in these regions (Figure 1), and irregular migrants are important to a number of sectors operating in these economic gray zones. In Southern Europe, one of the main policy mechanisms for dealing with undocumented workers has been to regularize them – to adopt large-scale amnesties for irregular migrants that then enable their work to be brought into the formal sphere of tax obligations and social rights (Papadopoulou 2005; Triandafyllidou and Ambrosini 2011). Outside of periodic amnesties, these countries long devoted relatively little attention to controlling either undocumented workers or combatting the informal sector more generally. Although Italy began increasing the numbers of labor inspectors in 2007 (Pastore 2008, 119), during the economic crisis it reduced workplace controls, seemingly because the undeclared economy was viewed as a kind of "safety net" during the downturn (Fasani 2010, 183). More generally, implementation has been impeded by an apparent lack of political will and the uneven distribution of inspectors and controls across the country and (Finotelli and Sciortino 2009, 131; Triandafyllidou and Ambrosini 2011, 270). Similarly, Spain has formally intensified its efforts against undocumented work since 2005, but bureaucratic weaknesses have impeded the enforcement of these measures (Gómez and De Carlos 2008, 160; Aparacio et al. 2008). Greece also has not devoted many resources to implementing controls on labor markets (Triandafyllidou and Ambrosini 2011, 262).

The remaining countries of continental Europe and the UK lie between these two poles, with some heterogeneity among them. Some countries with effective bureaucratic mechanisms for identifying and sanctioning illegal work include Austria, Belgium, Germany, the Netherlands (since the late 1990s), and Switzerland (Doomernik and Jandl 2008, 206; Düvell 2006, 190-1). Germany, for example, conducts identification checks in public spaces, and when social service or educational personnel encounter an undocumented immigrant in welfare or educational settings they are required to notify immigration officials (Glorius 2008, 91, 98-9). There also are considerable barriers to employing undocumented workers: before hiring, employers have

to see a person's wage card, health insurance card, and social security number, and cross-checking by computer systems linked to these different cards would likely uncover any effort to present false documents or numbers, triggering the attention of immigration authorities (Vogel 2000, 408; Glorius 2008, 97). Workplace investigations are conducted by customs officials who have police powers and the ability to check a person's residence status on-site (Glorius 2008, 97). This commitment to detecting undocumented work is not new: Martin and Miller noted back in 2000 that Germany appeared to spend "more to prevent the employment of illegal foreign workers than any other country" (21), and attention to this issue has hardly slackened since. In 2005, 6200 customs authorities agents were tasked with rooting out undeclared work and tax fraud, and 81,300 criminal procedures were launched in that year against violators (Volger-Ludwig 2007, 6).

Compared to Germany, France is often portrayed as somewhat less effective in controlling undocumented immigrant work (Martin and Miller 2000; Doomernik and Jandl 2008, 206), although it has steadily ramped up sanctions and devoted more resources to their enforcement. Control of undocumented migrant work is one component of two larger bureaucratic efforts – campaigns against illegal immigration, on the one hand, and a more general effort to uncover and penalize undeclared work and the shadow economy (Marie 1994). Both involve an array of different personnel operating under the ambit of the Ministries of Interior and Labor. Labor inspectors, customs officials, inspectors of the social security funds, and two branches of national law enforcement (*police nationale* and *gendarmerie*) are involved in efforts to identify, penalize, and thus deter illegal work. Both the gendarmerie[3] and border police have offices[4] that are charged with managing enforcement efforts, and a *Commission nationale de lutte contre le travail illégal* is charged with coordinating all of these actions, as are

[3] *Office central de lutte contre le travail illégal* (OCLTI).
[4] *Office central pour la répression de l'immigration irrégulière et de l'emploi d'étrangers* (OCRIEST).

department-level local committees against fraud.[5] Finally, employers must verify the status of foreigners they wish to hire; between 2007 and 2013, municipal prefectures received over 3-1/2 million checks and found more than 31,000 instances of fake documents, with the numbers of these documents unearthed declining significantly since 2008 (*Les étrangers en France* 2014, 100).

The UK offers an even more mixed picture of internal immigration control, at least until recently. One the one hand, its informal economy is smaller than that found in Southern Europe (Schneider 2015), yet like many Southern European countries, the UK has experienced significant migration since the late 1990s, and it often has lacked the political will or administrative capacity to impose significant controls on its labor markets. The UK was relatively late in adopting sanctions on employers who hire undocumented foreigners; a 1996 law instituted criminal penalties, but those penalties were rarely imposed until after 2008, when a system of civil penalties was adopted (Ryan 2014, 240-1). Still, employers were not required to check an employee's immigration status before hiring, and the UK opted out of the European Union's 2009 directive on employer sanctions (Ryan 2014, 240-1). After doubling the maximum fines on employers and increasing other control measures in 2014, the Conservative government is currently pushing through still more measures against illegal work in the Immigration Bill 2015-16. The bill makes illegal work a criminal offense and enables authorities to seize the wages of those caught engaging it, while employers face greater penalties and the threat of their businesses being closed. The bill also will create a new Director of Labour Market Enforcement to coordinate government action against labor exploitation, including that involving illegal migrant work. These proposed measures have been accompanied by tough rhetoric by the Tory government, with Immigration minister James Brokenshire declaring that the "full force of government machinery" will be deployed against "rogue employers" (Mason 2015).

[5] CODAF.

In sum, when it comes to labor market controls, cross-national variations follow a north-south axis, with France and the UK lying in the middle (and the UK devoting much less attention to this than France, until recently). While these differences have proven enduring, there also has been a common trend toward greater efforts to police and deter such work that is most evident since the mid-2000s, but that in some instances had begun already by the 1990s. The shift is evident in the Netherlands, which was relatively lax toward undocumented migration through the 1980s. Although employer sanctions have been on the books since 1979, they were not much enforced through the 1980s (Martin 2003, 60), and undocumented immigrants often could obtain a social-fiscal number that enabled them to work, and even pay taxes on that work. Since the early 1990s, only those lawfully resident are able to get these cards, and the 1994 Compulsory Identification Act mandates that employers keep records of the identification documents of their employees (Doomernik 2008, 137). These measures, added to the 1998 Linkage Act that excluded irregular migrants from accessing social benefits, have significantly constrained the earning abilities of these migrants (Van der Leun 2006; Doomernik 2008, 137-8). Sanctions on employers who violate the law also have been beefed up since 2005, when an administrative fine (€8000/worker) replaced a rarely employed criminal sanction (De Lange 2011, 187-8). The result was a dramatic increase in the application of these sanctions: between 2200 and 3000 fines were imposed each year between 2006 and 2009 (De Lange 2011, 188-9).[6]

In France, detecting and penalizing undocumented immigrant work has been a growing policy priority – one that dates from the end of large-scale labor migration but that clearly has gained steam since the 1990s. Employer sanctions were first legislated in 1972, and throughout the 1970s and 1980s, various steps were taken to increase the ca-

[6] As de Lange discusses, however, many of these fines concerned people from new EU member-states who were not yet entitled to work. With the opening of the labor market to people from these countries, the number of fines imposed has likely declined.

pacity of the labor inspectorate to uncover and penalize employers who hire undocumented workers (Marie 1994; Miller 1995). By the 1980s, this agenda started coming under a larger effort against *travail dissimulé* (hidden work) of all kinds (Marie 1994). More significant legislative shifts occurred in the 1990s, starting with a 1991 law against clandestine work and illegal immigration[7] that brought together dispersed efforts and instituted a requirement that employers file a formal hiring declaration before bringing someone on (Marie 1994, 125). This was followed in 1993 by a redirection of the border police so that they focus also on clandestine employment and effecting deportations (Inciyan 1994),[8] and in 1996, the creation of an office attached to the national police that targets illegal foreign workers.[9] In March 1997, another law strengthened the fight against illegal work[10] and created an interministerial entity to pursue this objective.[11] Further legislative action against undocumented migrant work came in the 2003 immigration law,[12] which increased penalties on the employment of illegal immigrants by instituting a five year jail sentence and 15,000€ fine (Coste 2008). In 2005, the *Commission nationale à la lutte contre le travail illégal*[13] began to meet annually, and governments now regularly develop national action plans for the fight against illegal work.[14]

[7] *Loi n° 91-1383 du 31 décembre 1991 renforçant la lutte contre le travail clandestin et la lutte contre l'organisation de l'entrée et du séjour irréguliers d'étrangers en France.*

[8] *Direction centrale du contrôle de l'immigration et de la lutte contre l'emploi des clandestins* (Diccilec)

[9] *Office central pour la répression de l'immigration irrégulière et de l'emploi d'étrangers sans titre* (OCRIEST)

[10] *Loi no 97-210 du 11 mars 1997 relative au renforcement de la lutte contre le travail illegal.*

[11] *Délégation Interministerielle à la Lutte Contre le Travail Illégal* (DILTI).

[12] *Loi n° 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité.*

[13] This commission was created in 1997 but did not meet until 2005.

[14] http://www.economie.gouv.fr/dnlf/plan-national-luttte-contre-travail-illegal-2013-2015

Other states have made similar shifts toward greater sustained fights against the employment of undocumented migrants and undeclared work more generally. Austria created an agency to combat undocumented foreign workers in the early 1990s, and then broadened its scope to all undocumented work in 2004 (Jandl 2008, 37). The staff devoted to the agency rapidly expanded in the 2000s, and there has been "enormous growth in the number of workplace inspections" and a concomitant increase in the number of violators caught, including those of foreigners working without authorization (Jandl 2008, 37-8). Belgium also has expanded its efforts against undocumented work since the 2000s, with stricter regulations and more personnel devoted to trying to locate and sanction illegal work (Gsir 2008, 54; van Meeteren 2014, 71-2). And the UK, as noted earlier, has intensified its efforts against illegal work since the 2000s, with the Gangmasters' Licensing Authority law of 2004 spurring a crackdown on the exploitation of foreign workers in agriculture and food processing, revamped legal authority in 2008 to sanction employers hiring illegal workers, and the 2015-16 immigration bill now working its way through Parliament. There also have been some efforts to expand controls over labor markets in Southern Europe as well. In Spain, fighting the illegal employment of non-natives "has been a constant feature of the policies of every Spanish government since the beginning of the 1990s," and penalties on employers hiring irregular migrants have increased since the late 1990s (Aparicio et al. 2008, 265, 291).

In sum, even with variations in the degree of enforcement, overall there is a trend toward the increasing surveillance and policing of domestic labor markets. Some have described this as a "privatization" of immigration control because employers are expected to do a good bit of the work that might otherwise lie in the hands of state immigration officials (de Lange 2011). Employers are supposed to check the eligibility of their employees to work, for example, and are liable for the employees hired by their subcontractors. As privatization connotes a shrinking of state responsibilities, however, a better concept is that of delegated governance (Guiraudon 2002; Morgan and Campbell 2011),

in that states are working *through* agents in civil society to whom they have delegated some responsibilities. States are thus potentially augmenting what Mann refers to as their *infrastructural* power – "the capacity of the state to penetrate civil society, and to implement logistically political decisions throughout the realm" (Mann 1984, 189). Labor inspectors cannot monitor every worksite to ensure compliance with labor laws, for example, so they must instead induce employers to voluntarily abide by these rules, and other actors, such as labor unions, to report any violations. In a number of cases, they also have augmented the central state's responsibilities, putting more resources into labor inspectorates, redirecting border police toward internal controls, and expanding the policing powers of existing inspection or security personnel. Although the continuing vitality of shadow economies across Western countries is a sign of some limits to the state's infrastructural power, policy-makers in much of Europe have refused to accept these limits, but instead have been mounting vigorous campaigns to uncover and repress undeclared economic transactions and bring informal or hidden work of all kinds into the formal economy.

This does not imply that states have complete control over "unwanted migration." Of course, achieving zero undocumented immigration should not be the standard for assessing state capacity in this area (Zolberg 1999), and it seems clear that liberal political systems will never able to fully root our and deport irregular migrants. Even so, immigration specialists often emphasize that, despite the often heated political rhetoric on the matter, European countries are hardly being overrun by irregular migration: during the first decades of the new millennium, for instance, levels of irregular migrants in the EU as a whole declined each year (Morehouse and Blomfield 2011), and estimates of undocumented immigration show this group to amount to under 1 percent of the national population in most countries, and reaching a high of around 1.3 percent in the UK.[15] Although there has been a steep increase in attempted unauthorized entries in the past few

[15] Author's calculations from European Migration Network (2012).

years, there also has been a sharp increase in border detections, and European states have shown themselves vigorous and fairly effective in their ability to deport unauthorized migrants (Schain 2013). Those who make it into European countries will then face impenetrable walls around the formal economy, and increasing risks of working in the informal one.

What is driving the growing emphasis on repressing undocumented migrant work? The next two sections put forward a preliminary explanation of both the inter-temporal shifts and some of the cross-national differences.

Explaining the Temporal Trend

For countries that have made considerable efforts to police their own labor markets, the timing of reforms corresponds with increased concerns about migration related to European integration and growing numbers of asylum claims. France, Germany, Austria, the Netherlands, and the UK all augmented their efforts to combat undocumented migrant work during the first half of the 1990s, a time of rising asylum requests and inflows of other migrants, owing to the collapse of communism and breakup of Yugoslavia (figure 2). It was also the period when a number of European countries were moving toward finalizing and implementing the Schengen accord. The initial five Schengen countries – France, Germany, Belgium, Luxembourg, and the Netherlands – signed a convention applying the agreement on June 19, 1990, and more countries joined over the next few years, heightening concerns about how states would maintain control on irregular migration as the zone enlarged further to the south and east.[16] Thus, starting in the early 1990s, states began adopting measures to strengthen internal labor market controls but also pushed for efforts by the European Union to address the problem of undocumented migrant

[16] Countries joined in the following order: Italy (November 27, 1990); Spain and Portugal (June 25, 1991), Greece (November 6, 1992), Austria (April 28, 1995), Denmark, Finland and Sweden (December 19, 1996).

work. It was also a period of other forms of increased border controls, with shifts of responsibility to the European Union, to transport carriers, and to local governments (Guiraudon and Lahav 2000).

Some initial reforms thus came in 1991 (France, the Netherlands) and then again in 1994 (France, the Netherlands) and 1996-7 (the United Kingdom; France). In one direct example of the redirection of resources, France in 1994 created a new force dedicated to uncovering clandestine employment and effecting deportations, but they did this by taking 6000 border control agents and shifting them toward these new objectives (Inciyan 1994).[17] In other words, as the traditional borders came down, new borders came up around labor markets, and enforcement agents were redeployed accordingly. Germany made a similar redeployment, moving 1000 former East-West customs officials to labor law enforcement (Martin and Miller 2000). It also instituted new short-term work contracts to try to bring out of the shadow economy the many Polish and other East European workers coming across the border for temporary work, often in the agricultural sector (Martin and Miller 2000).

By the mid-1990s, governments also began working through EU bodies to address the problem of undocumented migrant labor and other forms of "social dumping" in the EU.[18] The Commission had tried to promote common action against undocumented work in the mid-1970s,[19] but was stymied by member-state (and especially British)

[17] The agency, Diccilec, represented a redeployment of 6000 members of the *police de l'air et des frontières* (PAF), and was replaced in 1999 by the *Direction centrale de la police aux frontières* (DCPAF).

[18] Germany's urging led to an EU directive that targeted firms moving an EU worker from their home country to another, yet failing to pay the prevailing local wages of the new country (Miller and Martin 2000, 25). *Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services*.

[19] Commission, *Proposal for a Council Directive on the Harmonization of Laws in the Member States to Combat Illegal Migration and Illegal Employment*, COM (76) 331 final; Commission, *Proposal for a Council Directive Concerning the*

opposition to encroachment on sensitive domestic terrain (Ryan 2014, 240). By the 1990s, however, states increasingly recognized the utility of EU-level coordination on immigration and asylum policy (Lavenex 2006), and actors within the European Union started beating the drum about the problem of undocumented migrant labor and, more generally, all forms of undeclared work. This led to a series of recommendations, communications and reports on the matter,[20] and was echoed by the activities of other organizations, such as the OECD and ILO, on the same topics, spurred in large measure by the European Union's decision to make combating undocumented immigrant work a priority.[21]

A second wave of reforms came in the early-to-mid-2000s, as 10 new member-states joined the Union (May 2004) and nine became part of the Schengen zone (December 2007). Many of these new member-states had large shadow economies and potentially porous borders toward the East and South, and this heightened the perceived need to increase domestic control measures while also intensifying efforts at the EU level to fight undocumented work. There also was a renewed wave of asylum-seekers in the 2000s, although lower than the massive increase in the early 1990s (figure 1). During roughly the same time period, France (2003), Belgium (2001, 2003), Austria (2004), Germany (2004), the Netherlands (2005), and later the UK (2008) all adopt-

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Approximation of the Legislation of the Member States in Order to Combat Illegal Migration and Illegal Employment, COM (78) 86 final.

[20] *Council Recommendation on Harmonizing Means of Combating Illegal Immigration and Illegal Employment and Improving the Relevant Means of Control* 96/C5/01 (December 22, 1995); *Council Recommendation on Combating the Illegal Employment of Third-Country Nationals* 96/C 304/01 (September 27 1996); *Communication from the Commission on Undeclared Work*, COM(1998) 219 (April 7, 1998); *Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration* COM (2001) 672 final

[21] OECD, *Combating the Illegal Employment of Foreign Workers* (Paris: OECD 2000); *Labour Inspection in Europe: Undeclared Work, Migration, Trafficking* (ILO 2010).

ed measures to strengthen their system of employers sanctions and other labor market control mechanisms.

There also has been a continued focus on irregular migrant labor at the EU level, with the December 2006 European Council meeting including both a welcome to Bulgaria and Romania as new members of the EU but also a call for intensified cooperation in combating irregular migration, including through ramped up external controls and increased efforts against illegal employment.[22] The culmination of these EU-level efforts was the 2009 directive for minimum standards on sanctions and other penalties against employers who hire undocumented third-country nationals.[23] The directive requires states to bar the employment of third-country nationals (TCNs) lacking authorization, and to adopt measures that require employers to notify authorities when they hire TCNs and verify that they are lawfully able to work. The directive also made employers liable for the hiring practices of subcontractors, required that sanctions be levied against those violating the prohibition on hiring unauthorized TCNs, and laid out conditions for criminal sanctions. Countries also are supposed to make sure that the rights of the illegally-employed workers are protected and that they receive back pay they are owed, and that states arrange regular inspections of firms and workplaces so as to uncover these abuses.

The increasing activism of the EU against undocumented migrant work raises the question of whether it has exerted an independent influence on domestic policy change. If there has been an effect anywhere, it has been in Southern Europe, where a number of countries adopted employer sanctions, or increased the penalties for them, following the EU's 2009 employer sanctions directive. Nonetheless, in its 2014 communication to the European Parliament and Council

[22] Council of the European Union, *Brussels European Council* 16879/1/06 REV 1 (February 12 2007).

[23] *Council Directive 2009/52 Providing for Minimum Standards on Sanctions and Measures against Employers of Illegally Staying Third Country Nationals*.

about implementation of the directive, the Commission noted that it initially had to launch infringement proceedings against 20 countries for failing to transpose the directive into legislation on time, and that although those proceedings have been closed, many states are not providing regular inspection reports to the Commission that would show whether they have improved enforcement of employer sanctions (Commission 2014). Of those states submitting reports, the Commission noted widely varying levels of effort at enforcing sanctions on the hiring of irregular migrant labor (Commission 2014, 9). Thus, the direct effect of the EU on domestic policies in this area appears rather limited.

To sum up so far, in looking at the timing of reforms and overall trend toward greater policing of labor markets, there is a correspondence between challenges to external borders – deepening and widening of European integration, as well as spikes in asylum applications – and efforts to build up internal controls. However, even though the general movement has been in this direction, the degree of effort still differs among countries. What explains these differences?

Explaining Cross-National Differences

Few have sought to answer this question, but those who have for the Southern European cases often point to the magnitude of the underground economy and argue that this complicates efforts to locate irregular migrant workers and penalize them and/or their employers (Baldwin-Edwards 1999; Finotelli and Sciortino 2009; Triandafyllidou and Ambrosini 2011). Undocumented workers are typically found in worksites that are difficult to regulate – small enterprises, family-run businesses, farms, households, or at the endpoint of a subcontracting chain – and all are found in abundance in Southern Europe. Moreover, the highly segmented and regulated labor markets in this region encourage off the books hiring (and firing) and fuel the demand for immigrant workers that will accept ill-paid, insecure forms of employment (Mingione 2001; Reyneri 2002). Some argue that these differences stem from the particular economic development path taken

by Southern European countries (albeit with differences among them), marked by late industrialization, continued significance of the agricultural sector, traditional gender roles and family arrangements, and deep segmentation of the labor market. Where economic demand for large-scale migration declined in many Northern European countries by the 1970s, Spain, Italy and Greece all began attracting labor migrants by the 1980s and 1990s, reflecting the demand for labor in sectors eschewed by native workers (Baldwin-Edwards 1999).

While insightful about some basic structural features of Southern European economies, some of these accounts verge on the circular – with the lack of regulation of illegal work resulting from the lack of regulation that has produced large amounts of illegal work – and tend to leave political mechanisms underspecified. They also tend to obscure some commonalities between regions: Northern European economies generally do have smaller shadow economies than those in the South, yet the differences are perhaps not as marked as some might like to believe (figure 1). In the early 2000s when many governments began prioritizing the fight against undeclared work of all kinds, the shadow economy in countries such as Germany, Sweden, Finland, Denmark, and Belgium ranged from 17% to over 21% of the formal economy – not terribly far from Spain (22.2%) or Italy (26.1%). Recognition and measurement of the phenomenon is what led many of these countries to step up their efforts to combat undeclared work and the underground economy more generally, begging the question of why some states have prioritized the issue more than others.

One way forward is to examine differences in the landscape of economic interests that are due, in part but not solely, to the structural features described above. An informal economy that relies heavily on migrant labor generates employer interests in the status quo. Rarely are these views voiced as bluntly as they were in Italy following a crackdown on illegal work that led a group of employers to form a "Pro Illegal Labor Committee" in protest (Zincone 2006, 363). In general, the large sector of small employers favors a more open immigra-

tion policy in order to attract the necessary workforce, and is happy to turn to undocumented migrants to supply that labor (Watts 2002). Sectoral or local associations thus tend to advocate for more open policies, cutting against the views of national employer associations that tend to represent larger firms, but precisely because of these differences in opinion – and the political unpopularity of openly advocating more immigration – the national associations tend to keep quiet (Watts 2002). That makes it rather difficult to tell whether governments in this region are actually doing the bidding of employers associations, or simply anticipating the likely political and economic fall-out should they seek to more aggressively target the undocumented migrant work on which important segments of the economy rely.

We might expect the stance of employers to be different in Scandinavia, Germany, France, Austria, or the Netherlands, given the preponderance of firms relying on high productivity workers and the institutionalized influence of employers' associations in corporatist decision-making institutions. Employers' associations should therefore be less protective of firms taking the low road of hiring cheap, undocumented labor, and better functioning systems of economic management should help deliver workers to those sectors that need them, again obviating the need for a turn to illegal work. In Germany, we can find some support for this argument in the fact of employer support for the 2004 law against undeclared work and tax fraud that increased penalties on employers violating the law and enhanced the power of customs officials to enter and inspect worksites and vehicles (Vogler-Ludwig 2007, 6).[24] To address the continued demand for illegal work in certain sectors, alliances were forged between the German Federal government and social partners in the lower-skill/lower-wage construction and transport industries, committing business associations to push their own members to uphold the law (Vogler-Ludwig 2007, 6-7). Other government policies have sought to deliver legal workers to

[24] *Gesetz zur Intensivierung der Bekämpfung der Schwarzarbeit und damit zusammenhängende Steuerhinterziehung* of July 23, 2004.

these sectors and taken other measures to bring above ground this work in the shadow economy. Thus, a series of bilateral treaties with Eastern European countries in the 1990s brought in workers to the construction, agriculture, and tourism industries (Menz 2009, 180), while the creation of mini-jobs and other deregulatory labor market policies helped reduce the size of the black market economy.

Further research is needed to see whether there is a similar pattern of employer support (or at least passive acceptance) in other countries. But the general support – or non-opposition – of employers groups may help explain why political parties on the right in these countries have pursued stricter policies on irregular migrant work. In the Netherlands, for example, the shift toward more restrictive internal controls on immigration began in the 1990s, under mixed left-right governments, and there appears to be a wide consensus around vigorous German labor market control, including employer sanctions (Vogel 2000). In France, several of the most visible efforts to combat undocumented migrant work have come under conservative governments (1994; 1996-7; 2003; 2005). Although a 1997 French law against clandestine work was watered down following construction industry lobbying in the Senate (Monnot 1997), in the 2000s employers kept mum in the face of requirements that they help pay to expel illegally-hired immigrant workers (Portes 2005), and employers' associations and unions in the construction industry signed charters of good conduct against illegal work (Rey-Lefebvre 2005).

Another potential North-South difference lies in the standpoint of organized labor. Trade unions in Spain and Italy have generally been ambivalent, if not outright hostile, to campaigns to uncover undocumented workers. In part, this reflects their view of the perennial nature of the shadow economy and thus futility of efforts to target it (Watts 2002). But their perspectives may also reflect their structural position: unions in Southern Europe generally lack institutionalized power and thus have been unable to shape immigration policy in a way that would protect their own members. Moreover, in a number of these

countries, unions have experienced organization decline. Immigrant workers represent a source of revitalization, leading labor unions in both countries to oppose aggressive attempts to police the informal economy (Watts 2002). In Italy, for instance, where union bargaining power often lies at the sectoral or company level, they have sought to bring precarious workers into unions in order to help bolster their numbers (Pulignano, Gervasi and de Franceschi 2016). In Spain, undocumented workers are seen as potential future members, and in both countries unions have supported the regularizations that facilitate the empowerment, and unionization, of these workers (Watts 2002).

In several of the Northern economies, by contrast, unions often have a more institutionalized position – and thus fewer incentives to reach out to immigrant workers – and instead have pursued enforcement of sanctions on employers for violating labor laws. Krings (2009) finds that unions overall have been less supportive of undocumented immigrants in Germany and Austria, for example, and the same has been said of the Netherlands, where unions have put little energy into organizing migrant workers (Connolly, Marino and Lucio 2014). In general, unions in these countries have supported strict laws against illegal work and opposed regularization of the undocumented population; in Germany, for instance, labor unions supported the 2004 law increasing penalties on illegal work (Vogler-Ludwig 2007). In addition, strong trade unions embedded in corporatist institutions make it difficult for employers to violate rules with regard to illegal employment, as unions are liable to report them to authorities (Hammar 1999, 188; Brochmann 1999, 217). For years, Swedish unions have tipped off police about worksites with undocumented workers, although they have faced some pushback from within the union movement and by others on the left about this practice (Selberg 2014, 261-4). Similarly, German and Austrian unions in the construction sector collaborated with authorities in trying to uncover employers guilty of hiring of undocumented workers (Krings 2009, 133-6).

The stance of French unions on irregular migration and illegal work is, in many ways, more like that of unions in Southern Europe, and again reflects labor's structural position in the French economy. Lacking institutionalized power and facing organizational fragmentation and decline, unions are hardly in a position to shape immigration policy. They have instead become more supportive of immigrant workers and skeptical of government policies against illegal work (Haus 2002). In this, they not only seek to position themselves vis-à-vis immigrants as potential members, but also to put themselves on the side of the labor inspectorate (who are unionized themselves). Labor inspectors have repeatedly voiced discontent at being drawn into immigration control policy, protesting that undocumented immigrants make up a small share of illegal work, and that their first obligation is to protect workers' rights, not to facilitate deportations (Bernard and Herzberg 1996; Zappi 2003; Aizicovici 2007). Several unions have therefore stood behind the labor inspectorate when it protested becoming too tied up with the immigration enforcement agenda of the government.

The UK lies in a somewhat different position, perhaps reflecting distinctive aspects of its pluralist industrial relations model and its economic profile. With no guaranteed place in the political system, business and labor organizations lobby to be heard and are not infrequently ignored. For instance, both unions and employers have long opposed the imposition of sanctions on employers hiring illegal workers. Much as in Southern Europe, unions approach the labor migration issue from a position of weakness; lacking a guaranteed place at the bargaining table, facing organizational decline and neglect from the Labour party, unions have taken on the concerns of minority and immigrant workers. Business groups also have not favored government laws targeted illegal work, resisting the imposition of more red tape on the hiring process. Labor unions and business associations thus entered into an alliance against employer sanctions measures included in the 1996 immigration reform, arguing that they would turn employers into immigration control officers and increase discrimination against minority workers (Haus 2002, 173-4). Although somewhat watered

down, the 1996 measure passed anyway, and since 2008 both Labour and Conservative governments have worked to further toughen employer sanctions and other forms of labor market controls, regardless of the critical views of these measures by labor unions and business groups.

Features of the British economy may help explain this disregard: in contrast to the Southern European economies, the deregulated labor market in Britain offers considerable flexibility to firms when it comes to hiring and firing. There is less of a need for a low-wage illegal migrant safety valve – cheap, manipulable labor is assured through regular forms of employment (King and Rueda 2008) – and thus clamping down on undocumented migrant work is less likely to have the kind of reverberations on firm survival that it might have in the Southern European context.

Conclusion

Until the recent re-imposition of formal border controls by six EU member-states (and Norway) in the last year, the Schengen act had effectively removed formal borders between most European countries. But as official barriers came down, many states responded by imposing internal forms of immigration control. Building walls around welfare states and labor markets was one such response, the goal being to deny the means of sustenance to immigrants lacking authorization that could no longer be reliably stopped at the borders. Both the implementation of Schengen and subsequent enlargement of the border-free zone to the East, coupled with recurrent movements of people seeking asylum in Europe, have spurred the overall domestic and EU-level focus on undocumented migrant work. The resulting policies and campaigns represent an attempt to redeploy state power and resources, rather than a shrinking and hollowing out of the state, as some have proposed.

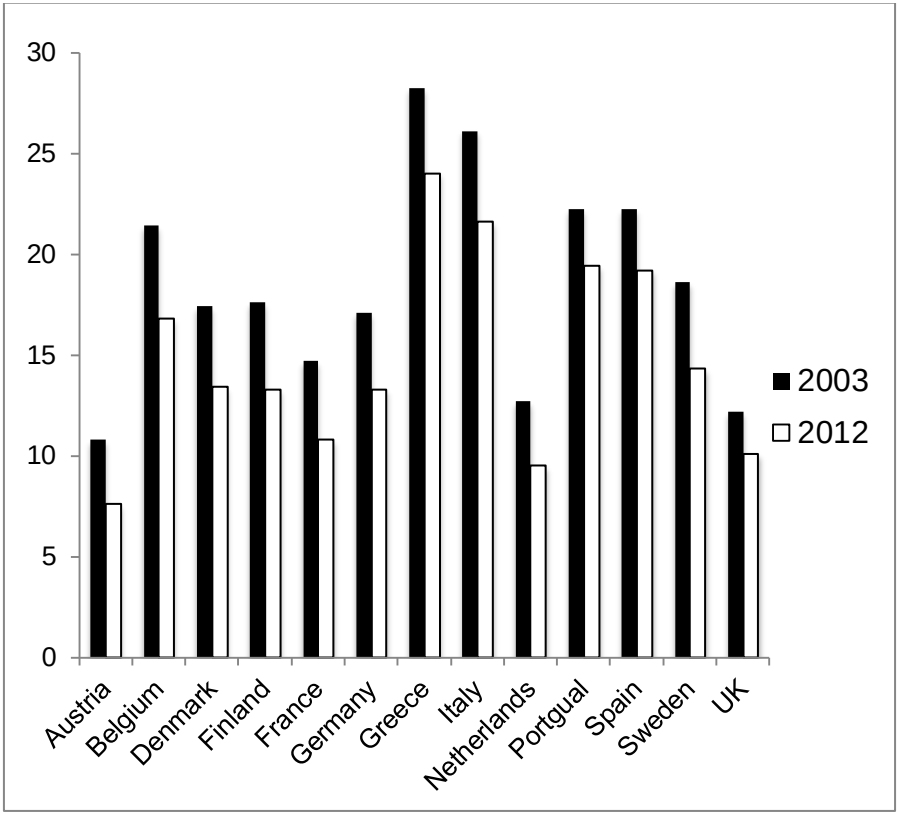
Nonetheless, there are variations in the degree of effort devoted to rooting out and repressing undocumented migrant labor and illegal

work more generally. The explanation for these variations is still preliminary, but it seems likely that the landscape of organized economic interests, reflecting in turn basic features of the political economies of these states, can help explain variations. Unions approach the issue of irregular migrant labor from quite different standpoints, as do employers. While those in more corporatist political economies of Northern Europe generally agree on the need for strict and enforceable controls, those in Southern Europe tend to favor a laxer policy. France is a bit of a mixed case – with employers looking more like those in Northern Europe, and unions more like those to the South – while in the UK, governments of all stripes seem increasingly inclined to ignore the preferences of both unions and employers' groups as they pursue stricter crackdowns on illegal work. The conservative government is currently enacting new measures targeting illegal migrant workers and those who employ them, regardless of employer protestations. This may be because the economic need for illegal migrant labor in a deregulated labor market is less pressing than in other parts of Europe, where labor protections create inflexibilities that employers chafe under.

Although immigration scholars have long made the distinction between external and internal forms of immigration control (Brochmann and Hammar 1999), thus far there has been relatively little research on how states attempt to limit irregular migrant work. That is somewhat surprising, given how often scholars and policy-makers assert that employer sanctions are vital for limiting the size of the undocumented migrant population. Even fewer scholars have investigated the political dynamics around this mode of immigration control. Among the many future directions for research could be greater analysis of how different policies intersect to shape the overall demand for and use of illegal migrant work. This paper has only passingly referred to one of the other ways policy-makers have targeted the shadow economy (and therefore irregular migration): deregulating labor markets (mini-jobs, temporary contracts, etc.) and subsidizing low-wage employment in order to bring this work from out of the shadows. These strategies

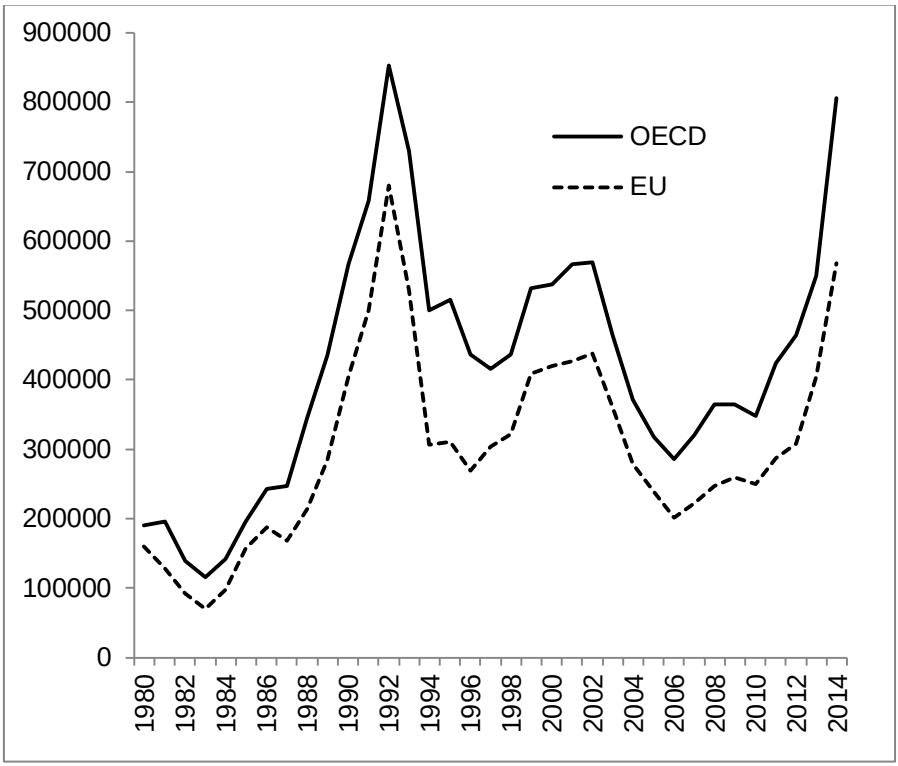
have been widespread in Northern Europe, and include efforts to encourage and subsidize domestic labor (Morel and Carbonnier 2015). Future research could profitably situate policies against irregular migrant work within a larger policy strategy vis-à-vis the lower end of the labor market. Doing so would shed light on a concrete mechanism of immigration governance, the political economy of low-wage work, and the implications of both for the well being of migrant workers and our theorizing about European states.

FIGURE 1. SIZE OF THE SHADOW ECONOMY (PERCENTAGE OF THE OFFICIAL GDP)



Source: Schneider 2015.

FIGURE 2. NEW ASYLUM APPLICATIONS IN THE OECD SINCE 1980



Source: OECD, *International Migration Outlook 2015*.

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Le LIEPP (Laboratoire interdisciplinaire d'évaluation des politiques publiques) est un laboratoire d'excellence (Labex).
Ce projet est distingué par le jury scientifique international désigné par l'Agence nationale de la recherche (ANR).
Il est financé dans le cadre des investissements d'avenir.

(ANR-11-LABX-0091, ANR-11-IDEX-0005-02)

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