Recuperation through Crisis-Talk: Apprehending the European Border Regime as a Parasitic Apparatus of Capture

by Stephan Scheel[1]

Abstract: The diagnosis of a *migration crisis* has prompted multiple processes of rebordering in Europe and beyond. These include the build-up of physical barriers like walls and fences, the tightening of asylum regimes, the expansion of biometric databases and the enrolment of authoritarian regimes in controlling Europe's borders. These developments have prompted a revival of the image of the 'fortress' in critical accounts of the European border regime. Building on existing criticisms of the metaphor *Fortress Europe*, this article proposes an alternative political imaginary of the European border regime. Starting from a version of the autonomy of migration approach that is based on the notion of appropriation, it proposes to apprehend the European border regime as a parasitic and precarious apparatus of capture. This apparatus of capture tries to recuperate migrants' practices of appropriation in order to turn the knowledge and creativity of these practices into a driving force for its own development. Important aspects of this dynamic are illustrated through two examples: the refinement of control mechanisms of the European visa regime and the repeated tightening of Germany's asylum regime since the 'summer of migration' in 2015. Taken together, these examples illustrate three aspects of processes of recuperation: first, that legal changes often only formalise previously informal practices of recuperation, secondly, that the framing of migration in terms of *crisis* functions as a vehicle for processes of recuperation which open up, thirdly, new opportunities for practices of appropriation as they are incoherent. In sum, the reading of the European border regime as an apparatus of capture paves the way for more assertive antiracist politics as it invites us to apprehend increasingly violent forms of border control not as signs of strengths of the European border regime, but as indicators of its increasingly desperate fight for survival.

Keywords: appropriation, asylum, autonomy of migration, crisis, political imagination

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'To write against the statist imaginary is thus intended as an act of resistance – though admittedly not the bravest act of resistance one might imagine, since the state aims to dominate the thought of even those who oppose it (indeed one might even say *especially* those who oppose it). […] One of the implications of this is that the statist political imagination has assisted the state in setting limits on the theoretical imagination, acting as a block on the possibility of conceiving of a society beyond the state' (Neocleous 2003: 6).

If one compares contemporary media accounts and images of migration to the European Union (EU) with those of the 'long summer of migration' in 2015 (Kasparek and Speer 2015), when hundreds of thousands of migrants travelled unauthorised via the Balkan route to Northern Europe, the contrast is striking. In 2015 images and media accounts of migrants predominate. People with tired but hopeful faces. People on the road. People in overcrowded trains. People climbing over border fences with makeshift ladders. People claiming freedom of movement. The most impressive images show what has become known as the 'march of hope' – a powerful demonstration of freedom of movement by thousands of migrants who had decided to walk along the motorway from Budapest to Germany to end their blockage in Hungary. The march prompted the Austrian and German governments to abandon a cornerstone of the EU's migration policy – the Dublin regulation – by opening their borders to the marching migrants.[i] The European border regime seemed to have collapsed. But only to re-emerge with unprecedented force and violence. This is at least the impression one gets if one compares the accounts above with images of subsequent years. Military personnel fending of migrants trying to cross the new barbed-wired fences at the border between Hungary and Serbia. A capsized boat with empty lifejackets floating in the waters of the Mediterranean. Cranes erecting concrete walls – financed with European money – along the Turkish border to Syria. Riot police demolishing makeshift houses during the eviction of 'the jungle' of Calais. A group of rounded-up migrants, sitting with hanging heads in the sand, after their interception by the Libyan coast guard.

These images of ever more laborious and increasingly violent forms of border control are often interpreted as evidence for a 'Fortress Europe in the making' (Jünemann, Scherer, and Fromm 2017). Indeed, the image of the *fortress* experiences a revival in light of the EU's efforts to restore the public's trust in the European border regime. Particularly the proliferation of walls and other physical barriers across Europe has contributed to the resurgence of the metaphor of the fortress in critical accounts of the European border regime (e.g. Amnesty International 2014, Carr 2012, Connolly 2015). The image of the fortress also proliferates in

slogans and leaflets of the antiracist movement.[ii] It is also not absent from academic works (e.g. Follis 2012, Jones 2016, Jünemann, Scherer, and Fromm 2017, Roos 2013).

What dominates in academic debates are, however, more nuanced conceptions of border regimes. To highlight the link between global inequality and the proliferation of border controls, Fabian Georgi (2017) diagnoses, for instance, the emergence of a dystopian 'fortress capitalism' in which islands of relative prosperity are defended like a fortress against the 'wretched of the Earth'. The European border regime has also been likened to a selective filter that renders Europe as a 'gated community' (Van Houtum and Pijpers 2007). Or it is depicted as a *banopticon* that does not aim at the repression of mobility but at its institutionalisation through the creation of a satellite population that is always kept 'in orbit' i.e. at a distance and on the move (Bigo 2007). What all these images share is that they are based on the assumption that the EU and its member states can regulate migration as they please. This assumption has however been revealed as a myth by the 'summer of migration' 2015 when nearly one million migrants entered Europe unauthorized. What is needed are therefore alternative imaginations of the European border regime that convey its imperfection, precarity and 'productive failure' (Papadopoulos, Stephenson, and Tsianos 2008: 166), which results in the refinement of existing logics and mechanisms of control, rather than their radical overhaul or abandonment.

Hence, this article seeks to develop an alternative imaginary that does not overrate, like the images outlines above, the coherence and efficiency of the European border regime. This is important because how we imagine the European border regime has practical consequences. It shapes how we evaluate its operational logic and its effectiveness. It also affects how we assess migrants' capacity to subvert mechanisms of regulation and control. This is why Sandro Mezzadra and Brett Neilson rightly critique the metaphor of the fortress for 'driv[ing] the political imagination in a too linear way onto mechanisms of control and domination' (Mezzadra and Neilson 2013: 165). For a political imaginary conveys, according to the social theorist Susan Buck-Morss (2002: 12), not only a particular *political logic*, but also 'a *political landscape*, a concrete visual field in which political actors are positioned.' Hence, political imaginaries are political in and of themselves. They affect political agendas and practices by shaping how we envision the actors, issues and problems that are associated with the entity that is imagined in a particular way. This is because political imaginaries carry certain, mostly tacit assumptions about the entity they are meant to convey and elucidate.

The imagination of Europe's borders as the impenetrable walls of a well-guarded fortress goes, for example, together with the imagination of the migrant as a weak subject in need of support (cf. Mezzadra 2005). In this way the image of the fortress continues to shape

the politics and campaigns of many antiracist initiatives in Europe. Inspired by the work of William Walters (2006), who already explored alternative ways of imagining the borders of Europe a decade ago, this article develops a political imaginary that emphasises the precarity, incoherence and constant readjustment of the European border regime to open up a horizon for a more hopeful and assertive antiracist politics.

The following three sections therefore develop a reading of the European border regime as a parasitic and precarious apparatus of capture. This apparatus of capture tries to recuperate the practices by which migrants try to appropriate mobility to Europe in order to turn them into a driving force for the refinement of the means and methods of regulation and control. In this way the article advances the reading of migration as a 'constituent force', which has been developed by the autonomy of migration literature (Andrijasevic 2010, Karakayali and Rigo 2010). It demonstrates, in brief, that we can actually observe a dynamic between migratory practices and their recuperation by the European border regime on the level of concrete tactics of appropriation of particular migrant subjects and not just the abstract level of migration.

This argument will be developed in three moves. The first section outlines a reading of the autonomy of migration approach (AoM) which is based on the idea that migrants, rather than openly contesting border controls, tend to silently appropriate mobility by repurposing the mechanisms of control into means of appropriation. Subsequently it explains how this version of the AoM permits us to read the European border regime as a parasitic apparatus of capture. The second section illustrates the dynamic of migrants' practices of appropriation and their recuperation by the border regime through an analysis of the refinement of control mechanisms in consulates in North Africa. This analysis is based on a multi-sited ethnography that studied migrants' encounters with the Visa Information System (VIS), one of the largest biometric databases in the world, to assess how migrants appropriate mobility to Europe within biometric border regimes. The final section turns to the legislative overhaul of Germany's asylum regime since the 'migration crisis' in 2015 to highlight three aspects of processes of recuperation: first, that legal changes often only formalise previously informal practices of recuperation, secondly, that the framing of migration in terms of *crisis* functions as a vehicle for processes of recuperation which are, thirdly, incoherent and produce new possibilities for the appropriation of mobility as they are disputed in a contested policy arena.

Abandoning Fortress Europe: Thinking beyond the dungeon of antiracist politics

Despite repeated criticisms of the metaphor of Fortress Europe as 'erroneous' (Van Houtum and Pijpers 2007: 292) and as an inadequate image that 'only vaguely conveys a sense of the mechanisms of power at stake' (Walters 2004: 240), the reading of the European border regime as a 'fortress in the making' (Jünemann, Scherer, and Fromm 2017) currently experiences a revival. To develop alternative imaginary this section therefore introduces the AoM which has been developed as a critique of the Fortress Europe discourse. This impetus can already be discerned from the AoM's main hypothesis.

As suggested by its name, the AoM claims that migratory practices feature moments of autonomy – that is moments of uncontrollability and excess – in regards to attempts of controlling or regulating them (Moulier Boutang 1993). Yet, the AoM is not reducible to this provocative hypothesis. It rather provides a 'heuristic model' (Moulier Boutang 2007: 167) to study border regimes and migratory processes from the viewpoint of migrants and with a particular focus on migrants' 'border struggles' (Mezzadra and Neilson 2013: 13). It is in this reversal of perspectives that the AoM's theoretical legacy of autonomist Marxism and Italian *Operaismo* come to the fore. In contrast to orthodox Marxism's assumption that the course of history is determined by economic laws inherent to the capitalist mode of production, Operaists regard the struggles of the working class as the 'motor of history'. Just like Mario Tronti (1979a) argued for making the struggles of the working class, rather than the composition of regimes of accumulation, the starting point of the analysis, AoM scholars argue for focusing on migrants' border struggles in the analysis of border regimes. This stance conflicts, of course, with the imagination of the European border regime as a fortress. Hence, the AoM's proponents have developed a nuanced critique of the metaphor *Fortress Europe* that can be summarised in four points.

First, the image of the fortress overrates the efficiency of the European border regime. By denying the relative autonomy that the AoM's proponents attribute to migration the image of the fortress would misrepresent the European border regime as an omnipotent control apparatus (Panagiotidis and Tsianos 2007). The AoM's advocates emphasise in contrast migrants' capacity to subvert border controls. This is why they conceive of Europe's borders not as the impenetrable walls, but as sites of struggles over mobility and rights (Mezzadra and Neilson 2013: 183). Hence, they argue that the imagination of the European border regime as a fortress is based on a *control biased analysis* that only focuses on the means and methods of control while largely ignoring migrants' proven capacity to render Europe's borders porous (Scheel 2013a).

Secondly, the AoM's proponents discard the political imaginary of *Fortress Europe* as misleading because it does not account for the productivity of border regimes which do not aim at the repression but at the valorisation of human mobility (Mezzadra 2011). To abandon the paradigm of exclusion that informs the imaginary of the fortress, the AoM's advocates argue that the European border regime follows a rationale of *differential inclusion*. This concept highlights the 'hierarchizing and stratifying capacity' (Mezzadra and Neilson 2013: 7) of border regimes which facilitate the gradual disenfranchisement of migrants. Working visa that tie a migrant's residence title to the duration of the working contract make the visa holder, for instance, vulnerable to blackmailing by the employer, thus creating labour relations that are unfree insofar as they feature coercive forces other than the economic need of selling one's labour power (Moulier Boutang 1998).

Thirdly, the image of the *fortress* attributes too much coherence, or even a systemic logic, to migration policy and border controls (Karakayali and Tsianos 2007: 12). Migration policy constitutes, however, a contested policy arena in which a multiplicity of actors compete over influence, budgets and agendas. To emphasise the incoherence of migration policies AoM scholars have developed the notion of the migration regime (Mezzadra and Neilson 2013: 178-179, Tsianos and Karakayali 2010). They draw on Giuseppe Sciortino's definition who stresses that 'a country's migration regime is usually not the outcome of consistent planning' but the result of 'generations of turf wars between bureaucracies and wave after wave of 'quick fixes' for emergencies […] (2004: 32-33). Thus, the notion of the regime analytically captures a multiplicity of actors without attributing a systemic logic to their practices. Instead, attempts to regulate migration become conceivable as temporary compromises and overdetermined condensations of the practices of a multiplicity of actors (Tsianos and Karakayali 2010: 376). A central theoretical reference point for this conception of border regimes is Foucault's notion of the dispositif, understood as a '*thoroughly heterogeneous* ensemble' that is characterised by a '*functional overdetermination* because each effect […] enters into resonance or contradiction with the others and thereby calls for a re-adjustment or a re-working of the heterogeneous elements that surface at various points' (1980 [1977]: 194-195).

Finally, AoM scholars criticise the metaphor of the *fortress* because it is interrelated with the imagination 'of the migrant as a weak subject […] in need of care and assistance […]' (Mezzadra 2005: 46). One factor explaining the continued popularity of the image of *Fortress Europe* seems to be that it creates, like any political imaginary a set of relational subject positions, 'a political landscape […] in which political actors are positioned' (Buck-Morss 2002: 12). These include, besides the migrant as a weak subject in need of support, the 'evil'

border guard as a stand-in for the fortress-like European border regime and, finally, the 'good' humanitarian aid-worker providing assistance to migrants or heroic antiracist activist fighting against an allegedly all-powerful border regime. In this way the imagination of the European border regime as a well-guarded fortress facilitates paternalistic proxy policies as pursued by many humanitarian organisations as well as some antiracist groups (Mitropoulos 2007).

Thus, the imagination of the European border regime as a fortress operates as a kind of dungeon for antiracists politics. Due to the control biased analysis that underpins the political imaginary of the fortress, and the related blindness to migrants' capacity to subvert border controls, the *Fortress Europe* discourse cannot but make the features of allegedly omnipotent border regimes the starting point for political campaigns and demands (Bojadžijev, Karakayali, and Tsianos 2001). Hence, the political imagination of the fortress results in campaigns and demands that tend to be defensive, reformist and reactive insofar as they appeal to governments on moral grounds to attenuate the restrictive effects of allegedly omnipotent border regimes.

The following attempt of developing an alternative political imaginary of the European border regime should therefore be understood as a response to a challenge that has already been formulated, more than a decade ago, by members of the research group *Transit Migration*. They regard the persistence of the inadequate and politically counter-productive metaphor of the fortress primarily as 'an expression of the difficulty to grasp the turbulence of migration' (Karakayali and Tsianos 2007: 13). Hence, they call for the imagination 'of a representational arrangement in which migrations change societies rather than simply bouncing off' (13).

To develop such an alternative political imaginary this article starts from the conception of 'migration as a *constituent force* in the production of the European polity and citizenship' (Andrijasevic 2010: 162). Migration operates as a constituent force in the development of the European border regime insofar as 'migrants, even when formally (i.e. legally) excluded from citizenship, are politically included in its domain to the extent that they contest the existing territorial distribution of membership and compel the legal and political space to reorganise itself around human mobility' (Karakayali and Rigo 2010: 127). This is why AoM scholars regard migration as 'the dynamic moment in a migration regime' (Karakayali and Tsianos 2005: 50). Rather than as weak subjects, migrants emerge as non-negligible protagonists in the development of the European border regime as their practices regularly escape and exceed the control capacities of the existing border regime, forcing the latter into a process of adaptation and reorganisation (Papadopoulos, Stephenson, and Tsianos 2008: 77-78).

However, this stance does not imply an undifferentiated celebration of migrant agency, in which autonomy is misunderstood as pure self-legislation or unrestricted self-determination

free of any effects of practices of government. Quite to the contrary, migrants' practices are shaped by the mechanisms and methods of control that they seek to recode into means of appropriation, as I explain below. Moreover, migrants are not able to usurp the mechanisms of control completely for their purposes. This is why practices of appropriation afford concessions and compromises on behalf of migrants and result in outcomes that are polyvalent, partial and contested. The successful entering of Europe via a Schengen visa that has been appropriated via manipulated documents supporting a fictive biography of a well-to-do traveler does, for instance, not signal an unequivocal victory over the European border regime. It rather results in a compromise: living and working in Europe as a 'visa-overstayer' are possible, but only under the precarious conditions of illegality and deportability. (Scheel 2018, forthcoming).

The crucial point is that migrants' practices of appropriation feature, despite these polyvalent and contested outcomes, moments of uncontrollability and excess that escape the capacities of existing mechanisms of control. And it is these moments of uncontrollability and excess that force the European border regime to reorganize and adapt the means and methods of regulation and control by trying to recuperate migrants' practices of appropriation. In this way the notion of appropriation refines the reading of migration as a constituent force as it permits us to locate the capacity of migratory practices to instigate transformation processes not only in an abstract social process – migration – but in concrete practices of appropriation of embodied migrant subjects. Consequently, contemporary mechanisms of border control emerge as recuperated forms of practices that were previously successfully mobilized by migrants to appropriate mobility (Shukaitis 2009: 48).

In general, the concept of appropriation highlights the intricate interwovenness of migrants' practices with the devices, methods and logics of control as it is based on the idea that migrants try to recode the latter into means allowing for the appropriation of mobility (Scheel 2018, forthcoming). For practices of appropriation follow a rationale of repurposing. Due to the asymmetrical power relations that characterise situations of border control, migrants are usually not in a position to openly challenge the actors and methods of control. Instead of openly contesting the rules and regulations of border regimes, practices of appropriation simulate compliance with the former, but only to clandestinely subvert them. In other words, practices of appropriation operate – like the tactics described by Michel de Certeau (1984: 37) – in an environment they do not own. They resemble manoeuvres 'within enemy territory' (37). The repurposing of the means and methods of control is possible because migrants are implicated in the control of their mobility not only as passive objects, but also as acting subjects because the capacity of border regimes to regulate human mobility derives from, but also

hinges on, the active participation of those whose mobility they are designed to govern. In consulates staff ask visa applicants for instance numerous questions and demand various documents to assess their 'will to return' to their country of origin. But the visa applicants are the ones who provide the answers and documents.

This article is however concerned with another important aspect of the intricate intertwinement of migrants' practices of appropriation with the means and methods of control. In brief, the former shape – via their recuperation through the border regime – the development of the latter. Put simply, practices of appropriation are enmeshed in a dynamic of subversion of and recuperation by the border regime. In contrast to de Certeau's idea of tactics, the notion of appropriation underscores that this 'art of the weak' (1984: 34) is not without effect on the border regime. Migrants' practices of appropriation emerge as the 'ghost in the machine' that animates the refinement of the mechanisms of control and the constant reorganisation of the border regime as a whole. The latter emerges as a precarious and parasitic apparatus of capture that leeches on the knowledge and creativity that is engrained in migrants' practices of appropriation, as the next section illustrates through an account of the development of the mechanisms of control deployed in consulates of EU member states.

Apprehending the European border regime as a parasitic apparatus of capture
One afternoon, I am sitting with M in his back office. M is the visa section's head of a consulate representing an EU member state in a country in North Africa (hereafter: consulate Z). He is processing visa applications from the past few days. This is a tiresome bureaucratic routine, largely determined by the computer software. Before M can mark a file as complete, the software searches four different databases, using as search criteria the first three letters of the applicant's name and, in the case of the VIS, the applicant's biometric data. Besides the VIS, the software also searches the Schengen Information System (SIS), the local 'black list' and a 'national list' containing data about all applications received worldwide by the visa sections of the country which consulate Z represents.[iii]

Suddenly M gets excited: 'Here you have a hit in the VIS!' He was just about to process an application by a young woman who is requesting a Schengen visa to visit her sister's brother in law. M flips through the empty pages of her brand new passport. 'See! She tries to hide the fact that she has already been refused a visa by [name of consulate]!' His computer screen shows that this refusal happened six months ago. But M can only see the name of the applicant,

her date of birth, the date she applied, the type of visa she applied for, the outcome and her application's file number. M calls his colleagues at the consulate that rejected the young woman's previous application. His colleague tells M that she previously applied for a family visit visa. She wanted to visit her sister, who lives with her husband in Europe. But consular staff assumed a high 'migration risk' due to the woman's age, her low income and her family ties in Europe. I ask M what he will do now. 'Of course, I will reject. She tried to cheat!'

This account demonstrates that migrants confront recuperated forms of previously successful practices of appropriation when they try to appropriate mobility within and against the European border regime (Shukaitis 2009: 48). The VIS illustrates this dynamic. One of its purposes is to forestall practices of appropriation subsumed under the pejorative label 'visa shopping' (EP and Council 2008). Among others, 'visa shopping' refers to lodging further visa applications at the consulates of different Schengen member states after an initial application has been rejected by another member state. Stamping applicants' passports can be read as an attempt to recuperate this practice of appropriation.[iv] The example of the young women highlights that migrants respond to this recuperation by using new passports to conceal stamps which indicate previous rejections. The VIS emerges as the latest recuperation of migrants' practices of appropriation in this conflictive dialogue of actions. Since the VIS also stores the digitized fingerprints of rejected visa applicants for a period of five years, consular staff can now check through a search in this biometric database 'if this fingerprint has already applied for a visa', as a border guards put it in an interview. Hence, the VIS can be read as a 'negative result' of previously successful practices of appropriation (Negri 2005 [1977]: 242).

This example illustrates that migrants' border struggles impose the need on the border regime to constantly adapt, update and refine existing mechanisms of regulation and control. Practices of appropriation that exceed and escape the capacities of existing control mechanisms are translated, via their stigmatisation in terms of 'fraud' and 'deceit' through pejorative labels such as 'visa shopping', in a call for more and 'better' border security practices and technologies to tame the allegedly excessive agency of migrants. In this way migrants are framed as cunning tricksters using all kinds of ruses to get a visa to Europe. What is concealed by this 'trickster narrative' is however that it is the highly restrictive Schengen visa regime that provoke practices of appropriation in the first place. In general, the Schengen visa regime renders mobility to Europe as a scarce resource through the introduction of an entry ticket whose receipt is subject to the fulfilment of numerous requirements that do not correspond to the living and working conditions of most of the people who are subjected to a visa requirement. Hence, the visa regime resembles a *machine of illegalization* that entices the

former to engage in delinquent practices like 'visa shopping' or 'document fraud' (cf. Scheel 2017b). Migrants' attempts to appropriate visa are subsequently mobilised – via their framing in terms of 'fraud' and betrayal' – as evidence for the claimed need to refine and expand existing mechanisms of control. Foucault (1980 [1977]: 195) describes this dynamic as the 'strategic elaboration' of the security dispositif. Ultimately, the European border regime emerges as a parasitic apparatus of capture that works through the recuperation of practices of appropriation which are provoked by the very *raison d'etre* of this security dispositif to render mobility to Europe a scarce and precious resource.

In this context it is crucial to note that the practices and technologies evolving from processes of recuperation are informed by the knowledge and modus operandi of the practices of appropriation they seek to capture and foreclose. In the example above the usage of biometric technologies for tracing rejected visa applicants responds to the latter's tactic to conceal previous rejections through the usage of new passports that do not bear a stamp signaling a negative decision by another consulate. Since a paper document can be manipulated or replaced by migrants in order to be recoded from a device of control into a means of appropriation, the border regime seeks to recuperate this practice of appropriation by resorting to a device of control migrants will find difficult to temper with: their own bodies which are used as 'an indisputable anchor to which data can be safely secured' (Amoore 2006: 342). Just as Mario Tronti describes the automation of industrial production in the 1970s as 'successive attempts of the capitalist class to emancipate itself from the working class' (Tronti 1979b), we can understand this instance of technologisation as an attempt to emancipate the border regime from migrants' capacity to act by rendering their very bodies as a means of control.

The example of practices stigmatised as 'corruption' illustrates, in turn, that practices of appropriation sometimes even shape the entire organisational and architectural structure of institutions of border control. The frequency with which 'visa scandals' are discovered indicates that the relationship between the visa regime and corruption is as 'paradoxical' as the 'the state-smuggler relationship' described by Peter Andreas (2000: 22). Corruption is pursued by the state, whose laws and regulations create the incentives and conditions for its existence in the first place. What is peculiar to this mode of appropriation is that it relies on the recoding of the agents of control into brokers of mobility (cf. Scheel 2018, forthcoming). What interests us here are the anti-corruption measures that have been implemented in consulates. They include the introduction of the 'four eye-principle' in the decision-making procedure. In consulate Z, which harbours a medium-sized visa section, members of staff receiving

applicants never decide on visa applications, but can only influence their outcome through an 'advice' they provide in the electronic file. The decision is taken by M who works in the back-office and is never in direct contact with the applicants. In large visa sections, which receive hundreds of applications every day the processing of visa applications is subdivided into numerous small tasks. In his study on a large French visa section Alexis Spire has aptly invoked the image of an assembly line to capture this division of the processing of visa applications into multiple minor tasks executed in constant repetition by specialised staff who are nevertheless subjected to a rotation scheme (2009: 93). The official reason for these measures, which shape the organisational structure of visa sections, is the prevention of corruption (Gouteyron 2007: 53, Spire 2009: 23). What these anti-corruption measures illustrate is that it is 'by means of a continual theft of the [knowledge] generated by [migrants'] struggles' that border regimes 'create increasingly complex mechanisms of domination' (Negri 2005 [1982]).

Recuperation through crisis-talk: protecting the asylum regime from refugees
The history of the transformation of Germany's asylum regime is a history of recuperation of migrants' practices of appropriation. This history began in 1993. In that year the constitution was changed to restrict access to asylum, which had become the main channel of entry after the end of the guest worker regime with the so-called recruitment stop in 1973. In the absence of other legal migration options 'labour migrants in the 1970s and 1980s had to invent stories of "political persecution"' to appropriate entry to and residence in Germany (Karakayali and Rigo 2010). In 1993 access to the asylum procedure was restricted through the introduction of the requirement that only people who had not entered Germany from an EU member state or another 'safe third country' could apply. These heavily contested changes took place in context of a surge of Neo-Nazi attacks on reception centers for asylum seekers. Critics accused the government therefore of rewarding the violent 'politics of the street' of the far-right.

After a phase of relative stability there have been no less than five law packages since the 'summer of migration' in 2015 that implicate significant changes to the German asylum regime. These include the 'Law for the Redefinition of the Right to Remain' (RRR) from June 2015, the 'Asylum Package I' (AP1) from October 2015, the 'Asylum Package II' (AP2) from March 2016, the Law on Integration (LON) from July 2016 and the 'Law for the better Enforcement of Returns' (LER) from June 2017. The overall impetus of these law packages is, without a doubt, to reduce the number of asylum seekers and to 'manage' the integration or

return of those who have already arrived.[v] This analysis focuses on three legal changes that are particularly serious from migrants' viewpoint (for a detailed account of all legal changes see: Lehnert 2017). It shows that, to achieve this overall objective, the proposed measures aim at the recuperation of migrants' practices of appropriation. Based on this analysis I will elaborate three important aspects of processes of recuperation.

Nearly all law packages feature measures aiming at a more 'efficient' enforcement of deportations of rejected asylum seekers. They seek to address the so-called 'deportation-gap' – the divergence between the number of migrants issued with a return order and the much smaller number of people who are actually deported (Gibney and Hansen 2003). Following a communication by the European Commission (EC), the so-called 'rate of effective returns' (the rate of deportable migrants who are actually returned to 'third countries' outside the EU) stood below 40% in 2014 and 2015 (EC 2017: 2). The most important obstacle for the execution of deportations are illegalised migrants' attempts to conceal their identity and country of origin if they are apprehended by authorities and to 'go underground' if the latter's efforts to re-identify them have been successful (EMN 2013). In interviews conducted in 2013, officials of two deportation departments in Germany confirmed that migrants would often 'claim to be citizens of a country to which we cannot deport them.' People from Morocco or Tunisia would, for example, claim to come from Algeria or Libya – and more recently Syria (cf. Scheel 2018, forthcoming). The posing of a citizen of another nation-state constitutes a powerful tactic by which deportable migrants try to appropriate a precarious residency in Germany.

Many of the recent legal changes respond to this mode of appropriation. They include the introduction of 'deportation custody' for deportable migrants to prevent absconding (RRR). Furthermore, the LER lays down that deportations have no longer to be announced in advance (Pro Asyl 2017). AP2 stipulates, in turn, that asylum seekers who fail to cooperate with authorities in re-identification procedures or have destroyed their identity papers have to live in reception centres that are located in remote areas. Thus, asylum seekers are prevented from forging social ties and cut off from support by other social groups which may hinder the execution of deportations (Lehnert 2017).

Another noteworthy revision concerns §48 of the residency law by the RRR. It allows staff of migration administrations (*Ausländerbehörde*) to search mobile phones, laptops and other data carriers for clues on the identity and country of origin of deportable migrants. The LER expands this prerogative. It enables the central migration administration (known as '*BAMF*') to search data carriers of all asylum seekers during the asylum procedure (Pro Asyl 2017: 17). This will allow authorities to look for evidence on asylum seekers' travel routes to

invoke the Dublin regulation if the person has entered Germany through another EU member state (20). These changes respond to the increasing use of smart phones and social media by migrants as means to exchange information on the travel routes and other 'best practices' of appropriation. The image of the 'smartphone-wielding migrant' gained particular prominence during the summer of migration (Gillespie et al. 2016: 23). Following media reports it was the circulation of a tweet by the BAMF on the temporary suspension of the Dublin regulation in social networks which prompted migrants to start the 'march of hope' (Ullrich 2017). The attempt to recuperate migrants' digital literacy for purposes of control confirms that smartphones and social media are ambivalent means of appropriation since the data traces migrants leave behind 'make them vulnerable to [...] unwanted state surveillance' (Gillespie et al. 2016: 9).

One of the most contested legal changes concerns the suspension of family reunification for a period of two years for people with 'subsidiary protection'. Since the introduction of this clause by AP2 the BAMF only grants subsidiary protection, instead of full refugee status, to asylum seekers from Syria. This measure responds to the tactic to send one family member on the expensive and demanding journey to Europe so that this pioneer can appropriate mobility to Europe for others by applying for family reunification. Hence, the restriction of family reunification will certainly generate 'a vast new business area for smugglers' (Lehnert 2017).

Taken together, these transformations of the German asylum regime illustrate three important aspects of processes of recuperation. First, legal changes may constitute the final, but by no means a necessary step of processes of recuperation. The legal changes permitting authorities to search migrants' data carriers only formalise a highly intrusive practice that had already been established on the informal level in local migration administrations (ANA-ZAR 2010). This example confirms that processes of recuperation are mostly initiated by street-level bureaucrats who develop informal practices that aim at the recuperation of migrants' practices of appropriation (Scheel 2017a). In many cases such practices are never formalised through legal changes, but rather become virulent on the street-level of policy implementation. The most adequate method to account for these informal practices, and the tactics of appropriation by which they are shaped and informed, is the ethnographic study of migrants' embodied encounters with the means and methods of control (Scheel 2013b).

Secondly, debates on the measures outlined above illustrate that 'crisis-talk' operates as a vehicle for processes of recuperation. The debate on the restriction of family reunification was for instance dominated by fear-mongering prognoses predicting 'another migration crisis' that would exceed the allegedly already exhausted 'reception capacities of Germany'.

According to these highly speculative predictions every refugee would bring three or more family members to Germany by applying for family reunification (Meiritz and Elmer 2015). This example demonstrates that the framing of migration in terms of '"crisis" […] appears to be precisely a device for the authorization of exceptional or "emergency" governmental measures – and their normalization – towards the ends of enhanced and expanded border enforcement and immigration policing' (De Genova et al. 2016). What explains its capacity to facilitate processes of recuperation is that the term *crisis* denotes 'a marked discontinuity', a disruption of the status quo (Lindley 2014: 2). Hence, the framing of migration events in terms of *crisis* generates an imperative to act that justifies the implementation of more and 'better' mechanisms of border control. This explains why 'crisis labelling in relation to migration has emerged over the past two decades as a routine practice in European governmental arenas' (Jeandesboz and Pallister-Wilkins 2014: 119). It also explains why virtually all major transformations of the European border regime in the same period have been accompanied by some form of 'crisis-talk'. The routine invocation of a 'migration crisis' points in turn to the recuperation of the term crisis itself. The latter has been transformed from a vehicle of radical critique and call for revolutionary change into a device of recuperation and depoliticised technocratic 'problem management' that aims at the restoration of the status quo, as Willem Schinkel (2015) rightly notes. By uncovering the processes of recuperation that are facilitated by the rather routine 'crisis-talk' about migration, the reading of the European border regime as a parasitic apparatus of capture has the potential to expand the horizon of 'political imagination beyond crisis recovery and beyond politics as problem management' (48).

Finally, recuperation resembles an active process of innovation whose outcome is not determined in advance. This is because processes of recuperation are neither fully determined by the modus operandi of the practices of appropriation they seek to capture, nor are they underpinned by a unified strategy. The European border regime is and remains a fractured and heterogeneous security dispositif whose functional overdetermination also characterises the constant repair work invested in its development. The question of how to harness migrants' practices of appropriation is disputed in a contested policy arena in which a multiplicity of actors compete with one another over influence, competence and funding. This is why logics of securitization, economization, marketization, humanitarization etc. intersect and conflict within processes of recuperation, producing contradictory outcomes and incoherent policies. The five law packages mentioned above include, for instance, a variety of changes that point towards the infusion of an economic utilitarianism in the asylum regime that sometimes counters their overall restrictive impetus (Scherschel 2016). For instance, AP1 opens the labour

market for temporary agency work to asylum seekers, while the LOI ties receipt of a permanent residence permit for recognized refugees to successful economic performance (Lehnert 2017).

The functional overdetermination and fragmentation of the European border regime also explains why the recuperation of migrants' practices of appropriation does not culminate in watertight controls or a 'fortress in the making'. Rather than insurmountable mechanisms of control, processes of recuperation generate ad-hoc measures and compromised policies that roll and tumble over each other, inescapably creating un-intended side-effects, inconsistencies and tensions, which open up new possibilities for practices of appropriation. The attempt to turn migrants' use of smart phones and social media into a source of surveillance and control opens up the possibility to appropriate refugee status through the provision of doctored mobile phones that contain pictures of alleged countries of origin and travel routes which provide evidence for a convincing story of prosecution (Rath 2017). Hence, the imagination of the European border regime as a parasitic apparatus of capture highlights, in contrast to the image of the fortress, the incoherence, precarity and unstable nature of this vast security dispositif.

Conclusion

This article develops an alternative political imaginary for the European border regime beyond the much critiqued but still influential image a fortress. The latter is based on a control biased analysis that overrates the coherence and efficiency of border regimes. It is also politically counterproductive because it facilitates paternalistic proxy policies and defensive antiracist politics that make the features of an allegedly omnipotent border regime the reference point of political demands and campaigns. Inspired by the AoM's conception of migration as a constituent force, the article therefore proposes to apprehend the European border regime as a parasitic apparatus of capture that strives on migrants' practices of appropriation as a driving force for its own development. This political imaginary envisions the European border regime as a fragmented and precarious security dispositif which is haunted by the need to recuperate practices of appropriation that escape it's the capacities of existing control mechanisms. It is the insubordination of migrants and their attempts to appropriate mobility within and against contemporary border regimes that force the latter into a permanent process of adaptation and reorganization. Migrants no longer emerge as weak subjects in need of help and support, but as non-negligible actors whose tactics of border-crossing shape, via their recuperation, the form and composition of the mechanisms of control. This is not to suggest that the image of the apparatus of capture accounts for all aspects of contemporary border regimes, or that it is the

only adequate figure of thought. As William Walters (2006: 145) points out, '[i]f borders are multiplicities then we need a plurality of concepts to think their different dimensions and changing functions.' A crucial advantage of the political imaginary of apparatus of capture is, however, that it can facilitate more assertive and hopeful antiracist politics. By shifting the focus on migrants' practices of appropriation and border struggles, it opens up the possibility for antiracist politics that would not only lose their often paternalistic character, but would also no longer be compelled to operate on the terrain of the border regime. Instead of appealing to governments on moral grounds to attenuate the restrictive effects of allegedly omnipotent border regimes, migrants' practices would become the focal point of an antiracist politics that demands nothing but the acknowledgement of what is already happening anyway: the mundane appropriation of mobility and residency by migrants. Just as Wendy Brown (2010) has shown that the proliferation of walls along national demarcation lines should not be taken as signs of unbroken state sovereignty, but rather as symptoms of its decline, the political imaginary of the apparatus of capture invites us to apprehend the resort to increasingly violent and indeed necropolitical forms of border control not as signs of restoration and strength of the European border regime, but as indicators of its increasingly desperate fight for survival.

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Endnotes

[i] The Dublin regulation sets out principles that determine which EU member state is responsible for the processing of asylum claims. The most central principle stipulates that this is the responsibility of the member state through which an asylum seeker first entered the European Union.

[ii] *UNITED for intercultural Action*, a European network against nationalism, racism, and fascism runs for instance the campaign 'The Fatal Policies of Fortress Europe' in which it documents all migrant deaths resulting from the European border regime. In 2015 the *European Grassroots Antiracist Movement* (EGAM) organised a conference entitled 'Dismantling Fortress Europe to build democracy!'. And in August 2015 the antiracist initiative *Melting Pot* started the campaign 'over the fortress' in which it tries provide independent monitoring of the situation along the Balkan and Central Mediterranean routes. Other examples abound.

[iii] The VIS stores the fingerprints and facial images of all visa applicants for a period of 5 years. The SIS is relevant for the processing of visa applications because it alerts consular staff on people with an entry ban. The black list is a local list with alerts on applicants who have previously been detected when they tried to appropriate a visa.

[iv] In practice consular staff stamp all passports on an empty page when the visa application is lodged. The stamp indicates the name of the consulate and the date of the receipt of the visa application. If the application is successful the visa sticker will be attached to the same page, thus covering the stamp. In case of a refusal the stamp remains visible, thus diminishing the passport holder's chances of success in future visa applications.

[v] This is not so say that all of the changes can be reduced to a restrictive approach, as I explain below. In sum, the law packages aim however at the reduction of arriving asylum seekers and the return of those whose applications have been rejected. This impetus is also highlighted by measures on EU-level that have been implemented in the same period. They include the infamous 'EU-Turkey deal' or the related 'hotspot approach' in the Mediterranean where arriving migrants are fingerprinted in closed detention centers to assure their deportability.