FROM FREEDOM OF MOVEMENT TO DETERRENCE, OBSTRUCTION, PUNISHMENT AND FREE RIDING/BREACH OF LAW

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Contribution to the panel: *Migration and Refugees as a Challenge or Reality of modern times - a broader perspective: philosophical, institutional and sociological aspects*

Prague, 12 November

THE HUNGARIAN EMBASSY IN PRAGUE
28 OCTOBER 2015

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Issues

- The myth of sovereignty

- The logic of securitisation

- An interpretation of Hungary's actions

- Outlook

THE MYTH OF SOVEREIGNTY

We must resign ourselves to the fact that the word *sovereignty* has no meaning of its own, cannot reveal its own content

Krasner's four types of sovereignty:

- the modern Westphalian system, that is, territoriality and autonomy,

- internal supreme power,

- the capacity to control movement across borders,

- international treaty-making capacity.

Immigration control is not an inevitable element of sovereignty

EARLY EXAMPLE

A „Wanderbuch" – a booklet for apprentices who had to wander across Europe before becoming a master
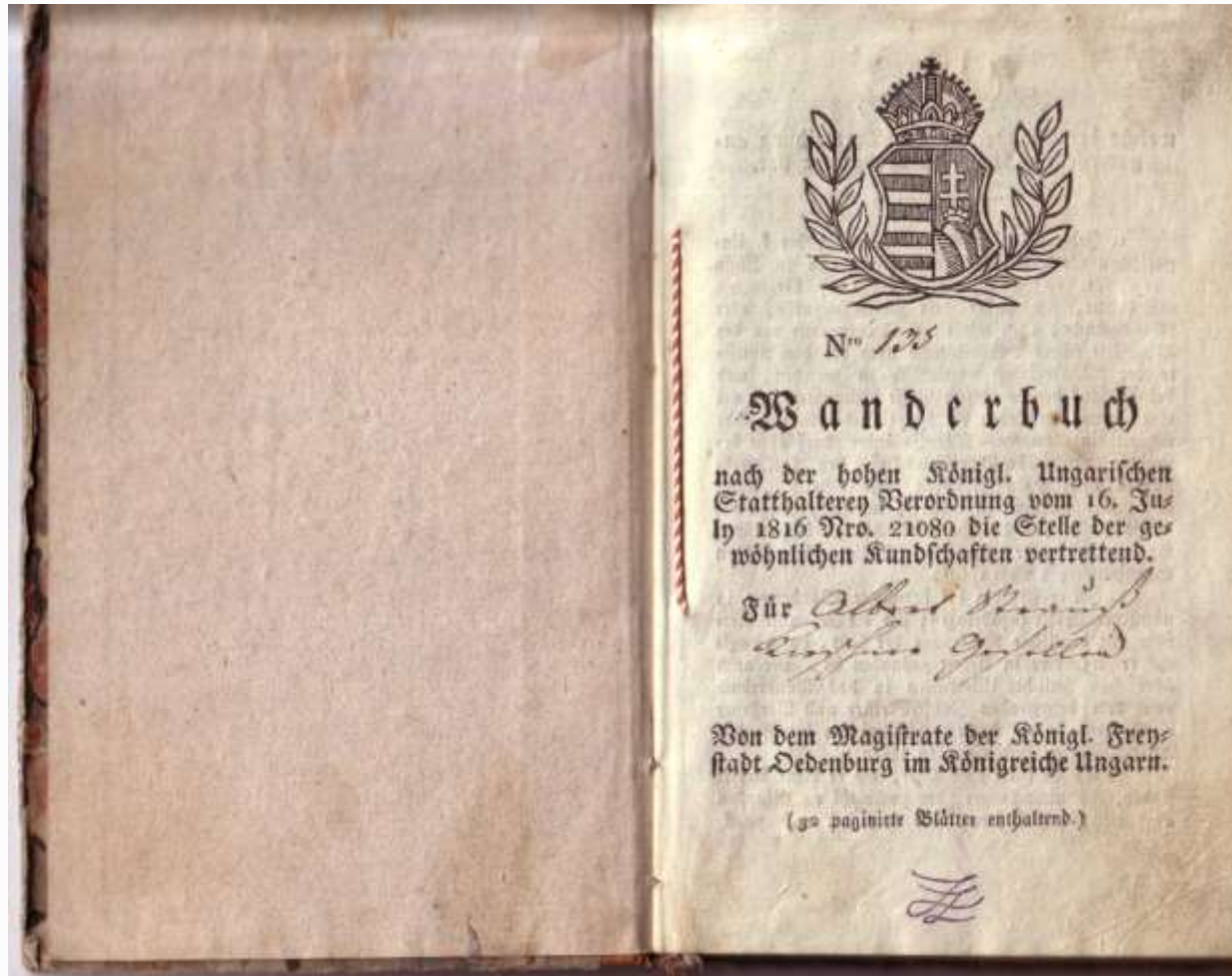
	In million
Great Britain and Ireland:	18
Italy:	11,1
Spain and Portugal:	6,5
Austria and Hungary:	5,2
Germany	4,9
Russia and Poland:	2,9
Sweden and Norway:	2,1

Source: Massimo Livi-Bacci

A világ népességének rövid története

Ostiris, Budapest, 156. old.

The 19th century saw the migration of roughly 100 million people (when the population in 1900 was only roughly 1 250 million)

In 1872 Lord Granville stated in a letter to Mr. Layard that 'by the existing law of Great Britain all foreigners have the unrestricted right of entrance into and residence in this country'.[44]

Richard Plender: International Migration Law

Martinus Nijhoff Publishers, 1988, 67. old

THE TERRITORIES OF THE HUNGARIAN CROWN – NO EXCEPTION!

The first passport law in Hungary was adopted in 1903 (VI. Tc.) and its Article 1. was clear: *"Usually no passport is needed in order to cross the borders of the state or in order to travel or reside on the territories of the countries of the Hungarian Crown"*

Edwin M Borchard, 1916 (The Diplomatic protection of Citizens Abroad, New York, 1916, 37. old.,)

http://www.archive.org/stream/diplomaticprotec00borc#page/36/mode/2up/search/36

At the present day the right of admission and sojourn on the part of unobjectionable aliens is almost universally recognized. Qualifications of the right, which are to be found in the possibilities of exclusion, expulsion and the fixing of conditions of sojourn by the state, must in practice be based upon reasonable grounds.

The dominant concern was the control on emigration: keeping workforce at home

THE IMMIGRATION CONTROL TURN

1882 US: First Chinese Exclusion Act (later extended to other Asian nations)

First World War:

„The generalized anxiety about borders that existed during the war did not subside with its end. Instead, the "temporary" measures implemented to control access to and departure from the territories of European states persisted into the shallow, fragile peace that was the interwar period." Torpey, 2000, p. 116

Maximum control: authoritarian and totalitarian societies (Eastern Europe, Gulf States, North Korea)

THE SECURITISATION

The Copenhagen school: new notions of security/insecurity

Border – migration – (organised) crime – terrorism continuum

"Migration is identified as being one of the main factors weakening national tradition and societal homogeneity. It is reified as an internal and external danger for the national community or western civilization. This discourse excludes migrants from the normal fabric of society, not just as aliens but as aliens who are dangerous to the reproduction of the social fabric. The discourse frames the key question about the future of the political community as one of a choice for or against migration. The discourse reproduces the political myth that a homogenous national community or western civilization existed in the past and can be re-established today through the exclusion of migrants who are identified as cultural aliens." Huysmans, 2000, p.758

Communitarian thesis:

"The distincitiveness of cultures and groups depends upon closure and, without it, cannot be conceived as a stable feature of human life. If this distinctiveness is a value, as most people (though some of are global pluralists, and other only local loyalists) seem to believe, then closure must be permitted somewhere. At some level of political organisation, something like the sovereign state must take shape and claim the authority to make its own admission policy, to control and sometimes restrain the flow of immigrants." Walzer (1983), 39

Three questions on culture

A
Do states have (a single) own culture?

B
Does a culture only survive within a relatively closed (bounded) community?

C
Is the stability (immutability) of a culture a value itself?

THE ARGUMENT AGAINST THE (COMMUNITARIAN) AND OTHER CRITICISM THE FATE OF THE CULTURE (OF THE BOUNDED COMMUNITY)

Ad A) Culture (whether understood as behavioural patterns or as normative prescriptions or as self image of the identity of the individual) is normally not an attribute of a state. (Even if states occasionally are engaged in creating a „national culture" – or groups are imagining such in the course of state-building)

Most states are home for many cultures, occasionally to hundreds. (E.g. India)

Ad B) May be that cultures need relative closure, but not legal borders. (Think of the Amish in the US!) Migration may only threaten their survival if out of proportion and seeking dominance.

Ad C) The stability of a culture s not a value in itself. (Think of the open racism of the US or of the Fascism, Stalinism in Europe, let alone the situation of women in preceding centuries).

Cultures of states/societies/cultural groups have immensely changed since 1945 even if they were hermeneutically closed (in migration terms)

CONCLUSION ON CULTURE

„States effectively lost any legal possibility to imagine themselves as rooted in homogeneous monocultural societies, unable to ask of their own nationals and of the growing numbers of new-comers anything more than mere respect for the liberal ideology..." Kochenov, 2011, p. 10

"Cultural continuity is perfectly compatible with cultural pluralism **and cultural stability includes cultural change.** *The core issue is not the preservation of an existing culture or an existing 'plurality of nomoi,' but the rate of cultural change or, more precisely, the avoidance of externally enforced, excessive cultural disruption.* Bader, 2005, p. 22

Generating xenophobia, establishing the migration - threat - terrorism continuum

1. The "questionnaire"

No. 2: "Do you think that Hungary could be the target of an act of terror in the next few years?";

No. 5 "We hear different views on the issue of immigration. There are some who think that economic migrants jeopardise the jobs and livelihoods of Hungarians. Do you agree?";

9. "Do you agree with the view that migrants illegally crossing the Hungarian border should be returned to their own countries within the shortest possible time?"

1. The billboard campaign

„If you come to Hungary, you must not take the jobs of the Hungarians".

„If you come to Hungary, you must respect our laws."
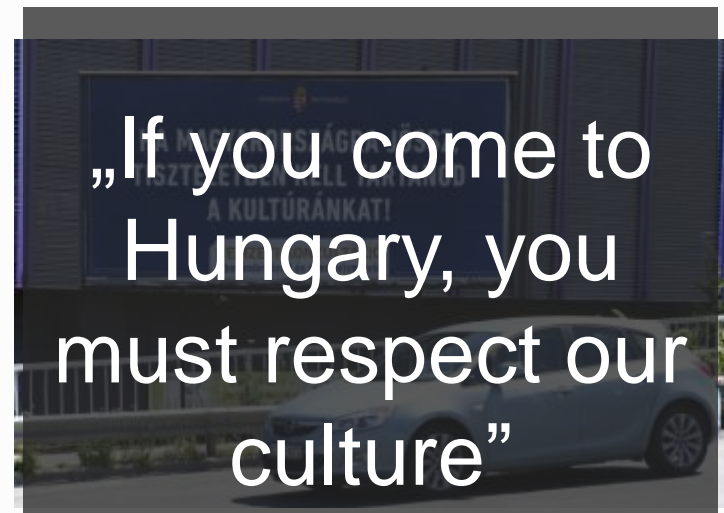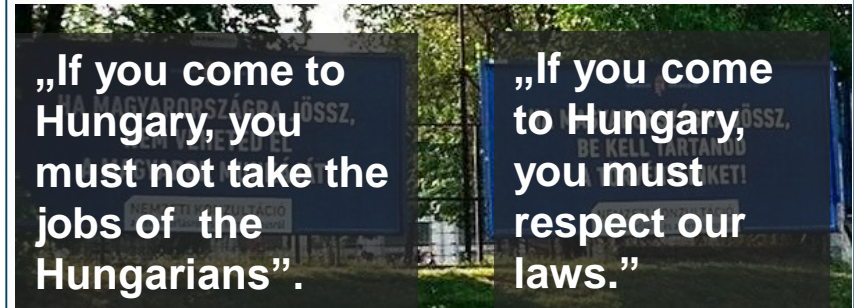
„If you come to Hungary, you must respect our culture"

Hungary needs culture

If You come to Hungary You have to sustain our elders

VIKTOR ORBÁN QUOTED BY GUARDIAN

"Those arriving have been raised in another religion, and represent a radically different culture. Most of them are not Christians, but Muslims," he said. "This is an important question, because Europe and European identity is rooted in Christianity.

"Is it not worrying in itself that European Christianity is now barely able to keep Europe Christian? There is no alternative, and we have no option but to defend our borders."

http://www.theguardian.com/world/2015/sep/03/migration-crisis-hungary-pm-victor-orban-europe-response-madness

THE NATIONAL LEVEL - HUNGARY

No genuine response to the increased flows with a view to protection

Instead of protection

DETERRENCE	OBSTRUCTION	PUNISHMENT	FREE RIDING / BREACHING THE LAW
Reluctant reception and transport to reception centers	No creation of new reception and processing capacities	Unauthorised crossing the „border closure" is a crime	Allowing two hundred thousands to cross the order b/w Hungary and Austria
Fence at the border	„Transit zones" with 100/day capacity	Ineligible applicants are banned from the EU	Not registering entrants
Non-access to basic services / inhuman treatment	Serbia declared safe third country	Applying to people-smuggler rules to volunteers transporting refugees	Transporting people en masse to the A/H border
Unpredictable denial/permission to move on to Austria	Attacking the relocation decisions	Unlawful detention of applicants in the transit zone (w/out court control)	By closing the Serbian border re-directing flow to Croatia, and then by closing the Croation to Slovenia
Crisis situation caused by mass immigration			Violating H. environmental and EU law on asylum

BROADER CONTEXT

Experiencing a large influx, not unusual in other regions (Afghanistan, Rwanda, earlier Bangladesh)

Real novelty: states (Turkey, Greece, Macedonia, Serbia, Hungary, Croatia, Slovenia, Austria) renouncing claim to control the presence of foreigners on their territories.

Threat: collapse of the Schengen zone

Fundamental issue: into which direction will the EU move:

* Re-nationalisation
* Dismantling Schengen
* Retreat into national existence
* Inter-state competition
* Shifting responsibility
   to others MS

FRAGMENTATION

* Creating a genuinely
    united European space
*Asylum seeker arrive
  thereto and the European
  demos offers them protection

UNION

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