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To cite this article: Katharina Natter (2021): Ad-hocratic immigration governance: how states secure their power over immigration through intentional ambiguity, *Territory, Politics, Governance*, DOI: [10.1080/21622671.2021.1877189](https://doi.org/10.1080/21622671.2021.1877189)

To link to this article: <https://doi.org/10.1080/21622671.2021.1877189>



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Published online: 15 Feb 2021.



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Katharina Natter 

ABSTRACT

This article conceptualizes the term ad-hocratic immigration governance to capture how states intentionally use policy ambiguity as a tool to secure their power over immigration. It does so by analysing the flexibility, pragmatism and informality with which Moroccan and Tunisian authorities have governed immigration since the turn of the 21st century. Drawing on over 100 interviews and in-depth policy analysis, the article shows that Moroccan and Tunisian authorities have privileged executive politics, exemption regimes and case-by-case arrangements on immigration over parliamentary law-making. It demonstrates how the intentional ambiguity created by such ad-hocratic governance allowed Morocco's monarchy and Tunisia's young democracy to respond to external and bottom-up demands for more immigrant rights while at the same time securing the state's margin of manoeuvre over immigration. Such theorization of ad-hocracy sheds a novel light on how immigration is governed not only across North Africa and the Middle East but also in their European neighbourhood.

KEYWORDS

migration; governance; public policy; Morocco; Tunisia; ambiguity; intentionality; global South

HISTORY Received 10 July 2020; in revised form 4 November 2020

INTRODUCTION: CONCEPTUALIZING AD-HOCRACY AS INTENTIONAL AMBIGUITY

Since the turn of the 21st century, Morocco and Tunisia have – once again – become migrant destinations in their own right. In response to external and bottom-up demands, authorities in both states have stepped up their efforts to govern growing immigration: in Morocco, the restrictive immigration law from 2003 was partly reversed by a liberal reform launched by King Mohammed VI in 2013. In Tunisia, the draconian immigration law from 2004 was complemented, yet never replaced, by a multitude of small-scale regulatory changes, both liberal and restrictive, after the 2011 democratic transition. What stands out is that – in both Morocco's monarchy and Tunisia's young democracy – legal reform has remained minimal over the past decade, as authorities have preferred to govern immigration through exemptions, informal

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arrangements and executive politics, that is, through presidential and royal decrees or ministerial orders instead of parliamentary law-making (Carey & Shugart, 1998; Lodge & Wegrich, 2012).

Drawing on extensive fieldwork and rich interview material, this article argues that immigration governance in Morocco and Tunisia is characterized by ad-hocracy. Originating from organization theory (Desveaux, 2007; Mintzberg, 1979; Toffler, 1970), the term ‘ad-hocracy’ has found its way into studies of bureaucracy (Chen, 2020; Rourke & Schulman, 1989) and public policy (Cullen Dunn, 2012; Miller, 1986). However, understandings of the term ad-hocracy differ in its (un)intentional character, the aspect of the policy process it affects and its consequences for state power.

On the one hand, the bureaucratic organization literature has conceptualized ad-hocracy as an *intentional institutional set-up*, which grants certain organizational units a great degree of flexibility and autonomy from bureaucratic hierarchy to better address a specific issue and adapt to complex, rapidly changing circumstances. Prominent examples include the creation of temporary special commissions, ad-hoc committees, advisory bodies or taskforces to circumvent the slowness and self-interest of existing bureaucratic structures (Rourke & Schulman, 1989). However, the autonomy of such ad-hocratic institutions also entails accountability and transparency issues that might ultimately weaken the rule of law and democratic oversight of policy processes (Chen, 2020). In this conceptualization, *state power is increased* through ad-hocracy, as autonomous institutions can develop more effective policy responses.

In contrast, public policy studies have conceptualized ad-hocracy as an *unintentional outcome* of policy implementation, arguing that the gap between policies on paper and policy practices is bound to create ambiguity, unpredictability and ultimately deviations from initial policy goals. In her analysis of humanitarian interventions in Georgia after the Russian invasion of Crimea in 2008, Cullen Dunn (2012) shows that the initially devised strategy to coordinate aid programmes did not survive in the face of aid actors’ improvisation, quick fixes and self-interested decision-making on the ground. Similarly, the analysis of labour migration policies in post-war Western Europe by Miller (1986), shows that flawed, outdated assumptions about migration dynamics led to a growing gap between official and de facto policies, and resulted in the largely unplanned increase of immigration and migrant settlement over the 1970s and 1980s.¹ In these cases, *state power is reduced* through ad-hocracy, as implementation dynamics jeopardize initial policy intentions.

This article combines these two understandings, arguing that ad-hocracy can be an *intentionally ambiguous* governance strategy to secure state power. In this conceptualization, the term governance is meant to capture the processes and dynamics characterizing the entire policy cycle, from agenda-setting to decision-making and implementation; and state power is understood as the capacity of institutions – both political actors such as the government, parliament and president/monarch, as well as administrative actors such as high-level civil servants and street-level bureaucrats – to reach their goals, secure control and enforce rules across its territory and population (Hanson & Sigman, 2013; Lindvall & Teorell, 2016).

Analysing the Moroccan and Tunisian cases, the article dissects the three core components of ad-hocratic immigration governance: (1) the flexibility of executive politics; (2) the pragmatism of exemption regimes; and (3) the informality of case-by-case arrangements. It argues that the intentional ambiguity created by such ad-hocratic governance tools consolidates the state’s margin of manoeuvre over immigration by performing, yet ultimately avoiding, compliance with external and bottom-up pressures for more immigrants’ rights. Table 1 summarizes the types of ad-hocracy conceptualized in the literature and in this article.

This analysis builds upon recent works on immigration and asylum policies in the Middle East and North Africa that – although not framing insights under the umbrella of ad-hocratic governance – empirically capture its core characteristics: flexibility, pragmatism and informality. Working on Morocco, Benjelloun (2020) analysed how authorities in charge of regularizing irregular migrants have adopted informal arrangements and extra-regulatory practices to reach the

Table 1. Types of ad-hocracy.

Intention by actors	Level of analysis	Effect on state power	Core dynamic
Yes	Institutional set-up	Increased	Intentional flexibility of institutions increases state power
No	Policy implementation	Decreased	Unintentional ambiguity of policy implementation decreases state power
Yes	Governance strategy	Increased	Intentional ambiguity of governance strategy increases state power

King's declared goal to regularize as many migrants as possible. Jiménez-Alvarez et al. (2020), in turn, argued how the incomplete implementation of the 2014 National Immigration and Asylum Strategy allowed Morocco's hybrid political regime to retain its margin of manoeuvre in navigating European and African foreign policy interests – at the expense of migrants' rights.

In a similar vein, Norman (2017) has suggested that Egypt consciously pursued a 'policy of ambivalence' towards refugees through a mix of formal and informal rules that fragilize refugee's lives. Working on Turkey, Biehl (2015) and Yüksel and İçduygu (2018) showed how the use of 'temporariness' in Turkish asylum and immigration policies – such as in temporary protection or transit migration policies – increases the power of the Turkish state over migrants and negatively impacts migrants' legal status and livelihoods. Lastly, analyses of Jordan's and Lebanon's refugee governance highlighted how institutional ambiguity, uneven implementation, as well as permanent temporariness are strategic components in the state's 'politics of uncertainty' aimed at reinforcing control over Syrian and Palestinian refugees (Nassar & Stel, 2019; Oesch, 2017; Sanyal, 2018; Stel, 2020).

By introducing the concept of ad-hocratic governance, this article seeks to consolidate and theorize these emerging empirical insights on migration control *beyond* 'Fortress Europe'. The relevance of ad-hocratic immigration governance however, is not limited to the Middle East and North Africa, but might also inspire future analyses of immigration governance *in* 'Fortress Europe', where states seem to increasingly and intentionally mobilize ambiguity to bolster migration control. The informalization of migration cooperation on return and readmission (Cassarino, 2007; Slagter, 2019), the executive's instrumentalization of travel visas as a quick and effective migration policy tool (Czaika et al., 2018; Laube, 2019), or the growing reliance on discretion in policy implementation to govern migrants' everyday lives across Europe (Bastien, 2009; Lemaire, 2019; Schultz, 2020) are just some examples.

The remainder of the paper is structured as follows. The next section outlines the empirical basis for the analysis of ad-hocratic immigration governance in Morocco and Tunisia, followed by a concise overview of immigration patterns and policies in 21st-century Morocco and Tunisia. The paper then delves into the three core dynamics of ad-hocracy – flexibility, pragmatism and informality – and showcases how they have allowed Moroccan and Tunisian authorities to secure their power over immigration through intentional ambiguity. The paper ends by inviting migration scholarship to break away from the exceptionalism of 'Southern' migration policies, and mobilize the concept of ad-hocracy to advance theory-building on immigration governance across the Global North/Global South divide.

RESEARCHING MOROCCAN AND TUNISIAN IMMIGRATION GOVERNANCE

In line with the broader ambition of this special issue and collective efforts at 'recentering the South in studies of migration' (Fiddian-Qasmiyeh, 2020; see also Stock et al., 2019), this

paper focuses on the intricacies of Moroccan and Tunisian immigration governance. By zooming into the institutional processes, practices and power dynamics around *immigration*, it actively contributes to recentering research on North African migration governance, which has predominantly looked at the drivers of *emigration* policies (Ben Khalifa, 2013; Brand, 2002; El Qadim, 2010; Natter, 2014a) or privileged *external* explanations for immigration governance by focusing on the externalization of European migration control (Cassarino, 2014; FTDES & Migreurop, 2020; Limam & Del Sarto, 2015; Roman, 2019).

The empirical analysis of immigration governance draws on a rigorous combination of 110 in-depth interviews conducted with representatives of state, civil society and international actors in Morocco and Tunisia between September 2016 and June 2017, as well as in-depth legal policy analysis covering the period from the late 1990s to 2020. Interviewees included high-level civil servants centrally involved in immigration governance (such as ministries of Interior, Foreign Affairs, Migration, and Social Affairs, as well as the National Council on Human Rights (CNDH) in Morocco), civil servants key for the implementation of migration policy (such as the ministries of Labour, Justice, Higher Education, or Health, as well as local administrations in Rabat and Tunis), representatives of migrant-led collectives and local non-governmental organizations (NGOs) working with or on migrants, as well as representatives of international NGOs and organizations such as the International Organization for Migration (IOM) or United Nations High Commissioner for Refugees (UNHCR).

Given that most policy decisions on immigration in Morocco and Tunisia cannot be found in law or written regulations but are rather part of a temporary political knowledge system, interviews provided the backbone for the analysis. The empirical material is analysed through abductive data analysis, ‘a qualitative data analysis approach aimed at theory construction’ (Timmermans & Tavory, 2012, p. 169) that advocates the iterative process between data collection, data analysis and theory-building (Charmaz, 2014). The fieldwork set-up and coding strategy facilitated such abductive analysis in two ways. First, while initial respondent sampling in Morocco and Tunisia was informed by existing immigration policy theories, the analysis of empirical material already started during and between fieldwork trips. In this way, new working hypotheses could be confirmed or refined with subsequent fieldwork. Second, the analysis of interview material was done in two rounds: A first analysis round stayed very close to the empirical data to allow the emergence of themes and categories, while a second analysis round privileged codes with the most theoretical significance to cluster insights according to immigration policy drivers and inter-actor dynamics.

Given that immigration is closely linked to issues of security, foreign policy and national identity, and that respondents – activists, politicians and bureaucrats – represent antagonistic interests on immigration in Morocco and Tunisia, preserving respondents’ anonymity is key. The article does thus not reveal respondents’ identity (names, job description, institutional affiliation), but instead identifies interviews through a code: the code T16-I1, for example, refers to interview 1 in the 2016 Tunisia fieldwork. Respondents’ identities are only revealed when statements were made during public events or when it is imperative to contextualize the quotation and does not in any way compromise respondents’ security. In these cases, the number code is retracted to avoid cross-referencing.

IMMIGRATION AND ITS POLICIES IN 21ST-CENTURY MOROCCO AND TUNISIA

Before delving into the intricacies of ad-hocratic immigration governance, this section provides a concise overview of Moroccan and Tunisian immigration patterns and policies over the past two decades. In Morocco, the authorities have responded to moderate immigration growth through a well-mediatised reform in 2013, as the monarchy has actively embraced and instrumentalized

immigration in domestic and global politics (Benjelloun, 2018; Natter, 2020). In contrast, Tunisia's political leaders have been more reluctant to recognize Tunisia's new status as a regional migration destination and have privileged a piecemeal approach after the democratic transition in 2011, geared towards avoiding the politicization of large-scale immigration (Cassarini, 2020; Garelli & Tazzioli, 2017).

Historical roots and immigration today

Media and policy reports that pin down the beginning of immigration to Morocco and Tunisia in the 1990s tend to disregard its historical roots: Morocco has always been a destination for West African merchants and Sufi pilgrims, while Tunisia has seen important immigration of Jewish merchants, Maltese labourers and Italian farmers over the 19th century (Bensaâd, 2002; Berriane, 2015; Perkins, 2004). Immigration was also a key feature of colonization: in 1950, nearly 300,000 French and 150,000 Spanish citizens lived in Morocco (SCS, 1954); and nearly 350,000 foreigners lived in Tunisia, mostly from France and Italy, but also from Libya and Algeria (Seklani, 1974).

With most Europeans leaving after Morocco's and Tunisia's independences in 1956, immigration continued on a smaller scale, with two trends dominating since the early 1990s: on the one hand, Morocco and Tunisia consolidated themselves as destinations for refugees, students and workers from Sub-Saharan African, particularly from countries not subject to travel visas (such as Côte d'Ivoire, Guinea, Mali, Niger or Senegal).² Part of them settled and found (mostly informal) employment in agriculture and construction, in the service and tourism industry, or as domestic workers (Mourji et al., 2016; TAT, 2016). Also, the privatization of Moroccan and Tunisian higher education has attracted growing numbers of Sub-Saharan African students, and the relocation of the African Development Bank from Côte d'Ivoire to Tunisia between 2003 and 2014 prompted the arrival of several thousand highly qualified Sub-Saharan African bank employees, as well as their support staff of drivers, hairdressers or cooks (Boubakri & Mazzella, 2005).

On the other hand, Morocco's and Tunisia's economic liberalization agenda and booming tourism sector attracted growing numbers of European high-skilled workers, entrepreneurs, retirees and also graduates. In the wake of the 2008 global economic crisis, low-skilled European workers have also started to migrate to Morocco (Berriane et al., 2015). In fact, Europeans are the numerically largest migrant group in Morocco and Tunisia, but as many Europeans live and work there irregularly or on a tourist visa, official numbers often underestimate the size European migrant communities (Garelli & Tazzioli, 2017; Therrien & Pellegrini, 2015).³ More recently, Morocco has also seen growing immigration from Asia, particularly by Chinese merchants and traders or Filipino female houseworkers (Berriane et al., 2015).

While immigration to Morocco did not structurally change since the early 2000s, Tunisia's 2011 revolution fundamentally reshaped immigration (Natter, 2015): with the fall of Col. Gaddafi's regime in neighbouring Libya, the ensuing civil war triggered a large-scale flight in 2011, with at least 345,000 people crossing into the Tunisian territory. Although the IOM returned 115,000 third-country nationals from Tunisia by December 2011 (IOM, 2012), many remained in the south-east of Tunisia, around Ben Guerdane and Medenine, or moved on towards Tunis. The protracted Libyan crisis has also led to the long-term settlement of Libyan citizens. As most live in Tunisia irregularly or on a tourist visa (Mouley, 2016, pp. 73, 91), the 2014 census data capturing 8772 Libyan residents largely underestimates Libyan immigration. In 2014, Tunisia's head of government, Mehdi Jomâa, in fact suggested that 1.2 million Libyans were living in Tunisia;⁴ and in 2015 the media reported that Ministry of Interior estimates reach 2 million.⁵ Thus, it is a conservative estimate to say that Tunisia's Libyan community encompasses around half a million people or roughly 5% of the Tunisian population.

The 2014 Tunisian census, which recorded 53,500 foreigners, is thus highly unreliable (INS, 2015), as it captures neither the Libyan nationals who came to Tunisia after 2011 nor irregular migrants from Europe and Africa. Regardless of real numbers, however, it is clear that the Libyan crisis has transformed Tunisia overnight into an important immigrant destination in North Africa – even if this is not reflected in the country’s continued self-understanding as an emigration country and the deliberate non-politicization of immigration (Cassarini, 2020; Cassarino, 2018; Natter, 2018). In contrast, immigration ranges high on Morocco’s political agenda even if it remains a relatively minor phenomenon statistically speaking: although Morocco’s 2014 census data, recording 86,200 migrants (HCP, 2015), also underestimates the size of Morocco’s migrant population, it probably does not exceed 250,000.⁶ This discrepancy between the magnitude of immigration and its (non-)politicization is reflected in Morocco’s and Tunisia’s immigration policy developments, discussed next.

Morocco: from generalized restriction to a liberal reform agenda in 2013

After independence in 1956, Morocco did not extensively engage immigration as a policy issue. Taken over from the colonial period, Morocco’s immigration regulations were complemented by administrative decisions, as well as bilateral agreements with a select number of European and African countries, negotiated behind closed doors and often implemented inconsistently. At the turn of the 21st century, growing European pressures raised the political stakes associated with immigration and its control (Belguendouz, 2003; Natter, 2014b). In particular, Spanish–Moroccan diplomatic relations tightened over increasing irregular migration across the Strait of Gibraltar.

Partly in response to such external demands, and partly to bolster population surveillance across the territory, the Moroccan authorities stepped up their control efforts in 2003 by enacting a restrictive immigration law. Law 02–03 sanctioned irregular migration with a prison sentence of one to six months and a fine of 2000–20,000 dirhams (€185–1850 at the time), as well as people assisting irregular migrants with a prison sentence of six months to three years and a fine of 50,000–500,000 dirhams (€4650–46,500). Also, the Directorate of Migrations and Border Surveillance was created within the Ministry of Interior. Although implemented inconsistently over time and across the Moroccan territory, the 2003 law heralded a decade of restrictiveness towards so-called ‘irregular transit migrants’ from Sub-Saharan Africa, who were subject to crackdowns, detention and expulsion by Moroccan police forces (CMSM & GADAM, 2012; MSF, 2005). Despite growing pro-migrant activism and tacit openings towards migrants and refugees by specific local authorities, Morocco’s official stance towards immigration remained restrictive.

Thus, it was rather unexpected when, in September 2013, King Mohammed VI announced a liberal migration agenda. As analysed elsewhere (Alioua et al., 2018; Natter, 2020; Norman, 2020a), this royal initiative was driven by a mix of geopolitical and domestic considerations, as the reform sought to showcase both the regime’s responsiveness to civil society pressure for more migrants’ rights and its commitment to human rights in front of European and African diplomatic partners. The reform’s centrepiece was a regularization, carried out in three steps: two ‘exceptional’ regularization campaigns for irregular migrants in 2014 and 2017, a special regularization for refugees recognized by the UNHCR, and the regularization of (previously illegal) migrant associations and migrant support organizations. Ultimately, 23,096 migrants from 116 nationalities were regularized in 2014 out of 27,649 submitted requests (CNDH, 2015), and throughout 2017, 28,400 migrants have submitted their applications, with more than 20,000 permits granted up to October 2018 (MCMREAM, 2018, p. 72). With an approval rate of 83.5% on average and 100% for women and children, the regularizations were dubbed a success in Morocco and abroad.

In parallel, institutional structures on immigration were (at least temporarily) upgraded: the Ministry in Charge of Moroccans Residing Abroad was renamed the Ministry in Charge of

Moroccans Residing Abroad and Migration Affairs (MCMREAM) and a Directorate for Migration Affairs was created, tasked with implementing the 2014 National Strategy on Immigration and Asylum. In line with this strategy, a range of integration measures were launched: the Ministry of Education opened public schools to migrant children regardless of their legal status; the Ministry of Health announced (but did not yet implement) the creation of a health insurance for regularized migrants and refugees; the Ministry of Labor exempted regularized migrants from the labour market test; and the *Entraide Nationale*, Morocco's public provider of social support services, opened its centres to refugees and migrants regardless of their legal status.

The discursive shift away from restriction and policy developments since 2013 underscore Morocco's efforts to develop a more open immigration policy. However, integration measures remain scattered and legal reform is still missing. While draft laws on immigration, asylum and human trafficking had been elaborated by the end of 2014 (Benjelloun, 2018, pp. 78–95), only Law 27.14 against human trafficking was enacted by the end of 2020. Apart from minor legal developments that only indirectly impact migrants, the legal immigration reform is stuck at the political level. Institutionally, the MCMREAM has been again downgraded to a Delegate Ministry in 2017 and the denomination changed back to Delegate Ministry in Charge of Moroccans Residing Abroad (leaving out Migration Affairs) in 2019. On the ground, migrants' physical security and access to services has improved across Moroccan cities, but the continued violence against irregular migrants in border regions clashes with the liberal reform promises (FIDH/GADEM, 2015; Jiménez-Alvarez et al., 2020). As argued in this paper, it is Morocco's ad-hocratic immigration governance – the preference for exemptions, case-by-case arrangements and executive politics – that limits the extent of liberal reform and increases state power over immigrants.

Tunisia: immigration as a 'non-issue' in public policy

As in Morocco, immigration was not a field of extensive public policy in 20th-century Tunisia. Although Tunisia reformed its immigration regulations in 1968 and 1975, and introduced a two-tiered immigration policy in the 1990s that sought to attract foreign competencies and investments while securitizing irregular migration, immigration remained largely unpoliticized in the public sphere. At the turn of the 21st century, immigration and its control became central to regional politics, raising its stake for the authoritarian regime of Ben Ali. In particular, Italian pressures on Tunisia to step up its controls of irregular sea-crossings multiplied, leading to the ratification of two readmission agreements in August 1998 and December 2003. Interviewees overwhelmingly cast these as precursors of the restrictive immigration law passed by Tunisian authorities in 2004. Law 2004-06 tightened sanctions for irregular migrants, as well as their supporters, with penalties ranging from 8000 to 100,000 dinars (€4800–60,000 at the time) and/or three to 20 years of imprisonment. It also denied migrants any possibility to appeal decisions, and granted no protection from expulsions for vulnerable group such as minors or pregnant women (Bel Hadj Zekri, 2008).

The law not only allowed Ben Ali to respond to European expectations and thus to consolidate the international legitimacy of his regime, it was also a tool for Tunisia's authoritarian state apparatus to increase societal surveillance and to pursue domestic security goals (Ben Jemia & Ben Achour, 2014; Boubakri, 2009). Although applied inconsistently over the years and across the Tunisian territory (Meddeb, 2012, pp. 380–392), the law created an overall climate of fear and suspicion towards migrants, in particular from Sub-Saharan Africa. In contrast to Morocco, however, immigration remained unpoliticized: anything related to immigration was managed solely by the Presidential Palace and Tunisia's security apparatus; and potential counterpowers, such as international organizations or civil society, were almost absent.

The 2011 revolution could have reshaped Tunisia's immigration governance, as political leaders and activists who had gone into exile during Ben Ali's rule returned and were keen to

integrate their migratory experiences into Tunisian democratic politics. Indeed, Tunisia's transitional government in March 2011 relaxed the dispositions of the 2004 law that criminalized irregular migrants (Boubakri & Potot, 2012, p. 136), and in 2012 created a State Secretariat for Migration and Tunisians Abroad (SEMTE) that started working on a national migration strategy, as well as laws on asylum and human trafficking. On the ground, the humanitarian situation triggered by the arrival of refugees and migrants from Libya broke the public silence on the topic, as people fleeing from Libya were met with open arms by the local population in southern Tunisia and civil society associations took on migrant protection issues.

Ultimately, however, democratization did not lead to a reform of Tunisia's security-driven immigration policy (Geisser, 2019; Natter, 2018; Roman, 2019). Starting in 2013, a series of political assassinations and the continuously struggling Tunisian economy pushed immigration off the public and political agenda. The protracted presence of foreigners strained Tunisians' welcoming attitude and with security concerns growing in the border region, popular solidarity faded away (Boubakri & Potot, 2012). Over the years, repeated governmental reshuffling prevented the political validation of successive drafts of the asylum law and national migration strategy. On the ground, the relationship between migrants and the Tunisian administration deteriorated, with migrants facing increasing bureaucratic hassling and the continuation of pre-2011 detention and expulsion practices (Garelli & Tazzioli, 2017). Together with the fizzling out of legal and policy initiatives, this showcases the persistence of Tunisia's pre-revolutionary immigration regime and security framing.

Since 2017, largely as a result of year-long, joint policy efforts by international organizations and civil society, public officials have started to acknowledge the reality of immigration to Tunisia. This discursive shift has been accompanied by incipient, yet limited, policy changes. In particular, policy developments have either remained group specific or at the level of informal arrangements, such as exemptions from the irregular stay penalties introduced in 2017 and 2018. Only on two issues – human trafficking and racism – has legal change been successful in 2016 and 2018, respectively. The centrepiece of Tunisian immigration policy, Law 2004-06, however, is still in force. As the next section shows, Tunisia's ad-hocratic immigration governance mobilizes ambiguity to secure state power over immigration – even one decade after the democratization of Tunisian politics.

AD-HOCRATIC IMMIGRATION GOVERNANCE: INSIGHTS FROM MOROCCO AND TUNISIA

Over the past two decades, Moroccan and Tunisian authorities have governed immigration through executive politics, derogations and discretionary decision-making. Policies targeting immigrants were either enacted through ministerial decrees that introduced exemptions for particular migrant groups without touching the overarching legal framework or were kept at the level of promises and case-by-case arrangements by individual policy-makers and street-level bureaucrats. This section zooms into these ad-hocratic governance strategies, arguing that their flexibility, pragmatism and informality allowed both Morocco's monarchy and Tunisia's young democracy to respond to civil society and international demands for more migrant rights while at the same time securing their power over immigration through intentional ambiguity.

Flexibility: the dominance of executive politics

The first feature of ad-hocratic immigration governance is the dominance of executive politics, whereby rules regulating the entry and stay of migrants are not enacted through legislative reform, but through presidential/royal decrees or ministerial orders that do not affect the legal framework governing immigration. The flexibility resulting from such executive politics allows

governments and bureaucracies to momentarily expand migrants' rights while guaranteeing the state's ability to backtrack on these rights in the future.

In both Morocco and Tunisia, legal change on immigration has indeed been minimal since the mid-2000s, and has only affected the fringes of immigration regimes – such as issues of racial discrimination, domestic work or human trafficking –⁷ with limited impact on the magnitude of immigration and enforceable residence rights at large. The absence of reform at the core of the immigration regime – entry and residence permits, asylum and immigration laws – shows the reluctance of authorities to set things in stone and enshrine rights that could give rise to more domestic demands or international scrutiny.

In Morocco, immigration laws have remained untouched, despite the fact that legal reform on immigration and asylum were key promises of the 2013 liberal reform agenda. A draft of Law 26.14 that would create a national asylum institution and refugee determination procedure was elaborated in 2014. It was set on the governmental agenda in December 2015, but removed again after the government decided to 'deepen the study of this text due to its importance' (UNHCR, 2015, p. 2). Other sources suggest that the draft law was rewritten overnight by the Ministry of Interior and caught in inter-ministerial conflicts. Draft law 95.14 on immigration intended to replace the restrictive 2003 law has been even less in the spotlight. In nearly 50 sessions between January and July 2014, an inter-ministerial committee elaborated a draft law – which was then shelved. Since 2017, work on both laws has been taken up again. According to the MCMREAM, by October 2018 the draft law on asylum (now Draft law 66-17) has been finalized and awaits the initiation of the legislative process, while inter-ministerial consultations on the immigration law (now Draft law 72-17) are still ongoing (MCMREAM, 2018, p. 92). However, no further details are known regarding the laws' content or timeline.

In Tunisia, the revolution kick-started work on the asylum law, as the refugee crisis at the Tunisian–Libyan border attracted continuous political attention and the 'post-revolutionary passion for human rights' (T17-I26) motivated policy-makers to translate Tunisia's ratification of the Geneva Refugee Convention into domestic law. A first draft finalized in the spring of 2012 by the Ministry of Justice's Centre for Legal and Judicial Studies (CEJJ) was withdrawn when UNHCR joined the law-making process. Between 2013 and 2016, the CEJJ and UNHCR revised the draft, but the government's economic and security priorities repeatedly delayed the process. The final draft law was forwarded to the prime minister's office in June 2016 and has since been under review. It has not been discussed in parliament, let alone enacted. One civil society representative summarized these dynamics: 'The law is in elaboration – so we see that there is a political will – but it is in elaboration since 2011, so we also see that there are political brakes at work' (T16-D9). The Ministry of Interior has been the main veto actor, reluctant according to interviewees to enact an asylum law because of its potential pull effect of attracting more refugees to Tunisia. Some civil society actors and Ministry of Foreign Affairs representatives have also highlighted the risk of Tunisia being instrumentalized for European migration externalization if it were to enact an asylum law. Lastly, while parliamentarians have been initially supportive of the asylum law, the post-revolutionary euphoria for human rights has waned and political leaders have adapted their priorities in the face of economic and security concerns: 'The bottom line is always control' (T17-I32), one respondent concluded.

The laws that have been enacted so far – on human trafficking in Morocco and Tunisia, domestic work in Morocco and racial discrimination in Tunisia – did not reform the policies on foreigner's entry and stay permits, and thus had a limited impact on immigration and immigrant rights. Interestingly, the laws that *were* enacted did not only protect foreigners, but also Moroccan and Tunisian citizens victims of human trafficking, racial discrimination or labour exploitation, hereby raising their societal relevance and engagement of national policy-makers. In addition, the laws on human trafficking and racial discrimination were 'low-cost-high-gains' laws: They brought geopolitical image gains for the political leaders that passed them, but had

little impact on public life due to the small number of people concerned. This suggests that laws that concern (potential) voters and/or that promise high gains in international reputation are more likely to pass – a finding worth investigating further.

Given the political deadlock on asylum and immigration laws, Morocco's 2013 reform agenda – both the 2014 and 2017 regularization programmes, as well as the expansion of migrants' socio-economic rights such as the enrolment of migrant children in public schools or the removal of the labour market test for work permits – has been implemented through royal decrees or ministerial circulars. Such executive politics allowed Moroccan authorities to avoid politicizing sensitive topics. As one respondent highlighted, ad-hoc exemptions of regularized migrants from the labour market test were an easy and effective alternative to labour law reform: 'There are no plans to change the conditions of employing foreigners, this would be very unpopular given the high unemployment rate. But it works very well like this, as there is a legal bypassing of the national preference condition' (M16-I15).

Executive politics also allowed to time policy announcements so as to maximize their symbolic effect on domestic and geopolitical arenas. For example, King Mohamed VI announced the second regularization campaign in December 2016 to showcase Moroccan hospitality and human rights standards, just before Morocco's reintegration into the African Union in early 2017 (Benjelloun, 2020). However, the unpredictability of such executive politics also increases migrant's vulnerability in front of the state. Talking about Morocco's regularizations, one respondent stressed: 'They occurred outside of the law, there is no legal basis for them. That's the fragility of it – it can be gone as quickly as it came' (M17-I4).

The consequences of such ad-hocratic governance are, however, most evident in Morocco's and Tunisia's approach towards migrant support associations: In Morocco, instead of reforming the law on associations that requires the president of an NGO to be a Moroccan citizen, an ad-hoc administrative decision permitted the legalization of migrant associations in 2014. In Tunisia, although authorities have tolerated civil society support of irregular migrants since 2011, they have not repealed the 2004 law that officially prohibits such assistance. Civil society work on irregular migrants thus remains fragile: 'the law is like a sword of Damocles ... it's true that the law is not enforced, but it is still there' (T17-I15). Repealing or replacing the law would give civil society new legal ammunition to make their voice heard. By not reforming the 2004 law, the Tunisian executive retains the power to enforce or suspend such dispositions at any time. It is this systematic preference for administrative decisions over legal changes that reveals the intention of Moroccan and Tunisian authorities to keep migration reforms as flexible – and thus as reversible – as possible to secure their margin of manoeuvre on immigration.

Pragmatism: the preference for group exemptions

The second feature of ad-hocratic immigration governance in Morocco and Tunisia is the preference of executive and legislative actors to grant particular migrant groups – such as certain nationalities or socio-legal categories like students and regularized migrants – exemptions from legal dispositions. The underlying pragmatism allows governments to respond to specific pro-migrant demands from civil society and the international community without touching the fundamentals of their restrictive immigration laws. De facto, this enables governments and their administrations to perform, yet ultimately avoid compliance with external or bottom-up pressures for liberal immigration reform.

In Morocco, almost all socioeconomic rights granted to migrants after 2013 were derogations. As one respondent criticized, 'instead of targeting the 100,000 foreigners in Morocco, [the reform] targets only the 20,000 that have been regularized' (M17-I17). 'Regularized migrants' emerged as a new legal category that was singled-out from the general legal framework to benefit from specific integration measures. By granting different sets of rights to different groups of migrants, the 2013 reform has fragmented immigration law: most strikingly, while

today foreigners are subjected to a labour market test in their application for a work permit in Morocco, regularized migrants and refugees are not. This overt focus on regularized migrants has shifted domestic and international attention: ‘No one is talking about irregular migrants anymore, all the focus is on those who got regularized’ (M16-I23). As respondents highlighted, this shift has overshadowed the hardship and violence faced by other migrant groups, such as Syrian refugees, Filipino domestic workers, or African (ir)regular migrants.

The preference for derogations is also visible in Morocco’s special regularization procedure for refugees. The Moroccan Bureau of Refugees and Apatrides (BRA), initially created in 1957 but closed in 2005, was reopened in October 2013 and an ad-hoc inter-ministerial Commission set up to interview refugees recognized by UNHCR. While UNHCR Morocco Director Jean-Paul Cavaliéri publicly praised Morocco’s efforts at ‘nationaliz[ing] the refugee status’, this also meant that ‘people now have to deal with the Moroccan state’ (M17-I10), with its arbitrariness and priorities. This has mostly affected Syrian refugees: Although UNHCR recognizes them as refugees, Moroccan authorities excluded Syrian applicants from the special regularization procedure, allegedly for security reasons. Instead, around 5500 Syrian nationals were regularized through the normal regularization procedure, regardless of whether or not they were meeting the criteria (Benjelloun, 2020; Sidi Hida, 2015). For UNHCR’s Morocco director, the decision to regularize Syrian refugees instead of granting them refugee status was ‘a pragmatic response of Morocco’; yet this regularization offers Syrians a much lower protection level than the one they would be entitled to as refugees and thus deliberately increases their vulnerability.

Morocco’s approach to Syrian refugees has been further tightened since. In 2015, Morocco imposed a visa requirement for Syria nationals, effectively blocking them from entering the country. In April 2017, this culminated in the ‘Figuig refugee crisis’, as 41 Syrian refugees were left for several weeks without food and shelter at the Moroccan–Algerian border because both Moroccan and Algerian security forces refused to accept them on their territory. The situation was resolved by the intervention of the Moroccan King who seized the opportunity of the World Refugee Day on 20 June to grant those Syrian refugees the right to enter Morocco, an ‘exceptional’ decision ‘dictated by humanist values’, as the press release of the Royal Cabinet specifies.

In Tunisia, the preference for group-based exemptions has been evident with regards to irregular migrants’ penalties. Since 1994, migrants have to pay a fee of 10 dinar for every week spent irregularly on Tunisian territory; in 2013 the fee was raised to 20 dinar per week (€9 at the time). While most migrants enter Tunisia regularly, more than 70% fall into irregularity at some point and are faced with penalties they cannot afford (TAT, 2016). Civil society and international actors have lobbied for abrogating the decree and granting migrants a general amnesty from the penalties, with partial success: in September 2017, the Ministry of Finance capped penalties at 3000 dinars (corresponding to roughly three years of penalties and an equivalent of €1000 at the time), and exempted refugees and victims of trafficking from penalties. In April 2018, students and trainees were also exempted (TAT, 2018, p. 29). Although a victory for part of Tunisia’s migrant community, the decree was not abrogated and the limited number of people effectively exempted by the revised decree underscores Tunisia’s ad-hocratic immigration governance.

Most striking, however, is Tunisian authorities’ tolerance towards Libyan immigrants. Making up at least 5% of the Tunisian population, Libyan migrants have affected Tunisia’s everyday life, in particular the rental market, private health sector, or food and oil prices (Mouley, 2016). Yet, their presence is not politicized: no political party has tried to capitalize on scapegoating Libyan migrants, and no government has tried to regulate or limit their presence in Tunisia. Instead, Libyan migrants are condoned based on an ‘administrative note that says – tolerate them and we will not be bothered to create rules’ (T16-I8). Interviewees highlighted pragmatism as key driver for this laissez-faire approach: As Libyans can freely enter and leave Tunisia, the

Tunisian government is not forced to act – ‘why make laws, procedures, residence permits if Libyans can circulate freely?’ (T17-I32), one respondent asked. Underlying this pragmatism are geopolitical and economic considerations: once Libya recovers from its internal crisis, Tunisia will be ‘the first one to profit’ (T16-I7). But with two Libyan governments next door, Tunisian governments’ foreign policy imperative is to remain neutral towards Libya’s internal conflict and to secure future economic cooperation no matter the outcome of the civil war.

Yet, while Libyans are tolerated in Tunisia and de facto exempted from irregular stay penalties and related detention and expulsion practices, this *laissez-faire* policy – in contrast to a liberal policy that would grant Libyans regular residence permits – ultimately subjects them to legal uncertainty, difficulties in accessing public healthcare and education, as well as the arbitrariness of Tunisian administration and security forces. Driven by pragmatism, such use of derogations and group-based exemptions reveals how authorities ultimately succeed in securing their power over immigration.

Informality: the prevalence of case-by-case arrangements

The third core feature of ad-hocratic immigration governance is the prevalence of case-by-case arrangements, whereby particular state administrations and individual street-level bureaucrats exercise their discretionary powers. The resulting informality and arbitrariness in immigration policies, however, are not side-effects of implementation dynamics, but strategic governance tools.

Discretionary decision-making was for instance key to Morocco’s regularization campaign. To ensure the campaign’s geopolitical success, the number of regularized migrants had to be maximized. Yet, authorities refrained from officially easing the strict regularization criteria, as this would have lowered the standard for future regularization campaigns. Instead, foreigner offices in charge of regularizing migrants were instructed to use their discretion and accept alternative – sometimes even forged – proofs for residency and work (Benjelloun, 2020). In addition, an ad-hoc National Appeals Commission was created in June 2014 to reinterpret the original regularization criteria for the appeals stage. As one commission member said: ‘The aim was to regularize as many people as possible’ (M16-I26). Ultimately, such use of discretion allowed to regularize over 80% of applicants during the 2014 and 2017 campaigns, turning them into geopolitical marketing tools. Although a positive outcome for the regularized migrants, the choice to use discretion instead of officially lowering the regularization requirements has effectively increased the dependence of migrants on the ad-hoc interests and generosity of the Moroccan King, as well as implementing actors such as the National Appeals Commission and street-level bureaucrats.

Arbitrariness also prevailed regarding the criteria for the yearly renewal of residence permits. Migrants were for instance required to hand in work or housing contracts for the renewal in Tangiers or Salé, but not in Rabat. As Diallo (2016, p. 8) showed in his study of decision-making practices on residence permit applications in Morocco, ‘each local service claims the monopoly of administrative know-how in the process of selecting those who are entitled to a residence permit’. By making it easier or more difficult for migrants to settle down in certain cities or regions, such local-level discretion effectively influences the geography of immigration across the territory and grants the Moroccan state room for manoeuvre in the governance of foreigners.

In Tunisia, the overall immigration policy continuity since 2011 has been accompanied by small-scale changes in policy practice, as Tunisian policy-makers have preferred informal arrangements over written commitments. As one respondent explained: ‘Tunisia does not want to be held accountable by something that is written, that is palpable, like a residence card, a law, a circular’, adding shortly afterwards: ‘Whatever domain you are looking at, you will find the same logic, keeping the ambiguity, so that discretion remains the basic framework for managing migration’. (T17-I32)

Tunisia's approach to refugees is exemplary in this regard: in principle, refugees with a UNHCR certificate do not receive a residence permit from the Ministry of Interior. But in practice, cooperation between civil society, international and state institutions has created openings on a case-by-case basis. Although not provided for by law, since 2015 the Ministry of Employment hands out work permits to refugees who participate in a labour market integration project led by UNHCR and the NGO ADRA, based merely on a UNHCR certificate and a work contract. The work permit, in turn, allows refugees to apply for a residence permit at the Ministry of Interior. While this has created an informal regularization mechanism for refugees via employment, refugees' access to residence permits remains highly arbitrary given its case-by-case basis.

Uncertainties also prevail regarding student visas. According to interviewees, receiving a Tunisian student residence permit amounts to 'fishing in the dark' (T16-I18): the Ministry of Interior requires a certificate of presence from universities to process a student's residence permit application, the universities deliver these certificates only after one month of class attendance, but often students receive only a seven-day visa at arrival (see also TAT, 2018, pp. 28–29). This makes it impossible for them to regularize their situation in time and avoid the Ministry of Finance's irregular stay penalties: 'You get the impression that the Ministries of Interior, Finance and Higher Education don't know each other at all' (T16-I25).

Civil society has extensively lobbied against these policy contradictions, but state commitments for reform have remained case-specific or informal. During a meeting between Médecins du Monde and the Ministry of Interior in February 2017, the Directorate of Borders and Foreigners committed to changing its practice of delivering seven-day visas to students at the airport and to grant them a one-month visa. However, as the representative of Médecins du Monde said at a public event in May 2017: 'The director committed to deal with this on a case-by-case basis. ... We did not get a written commitment from the Ministry of Interior, they did not want that.' In a similar dynamic, IOM and Terre d'Asile Tunisie were able to negotiate case-by-case exemptions from irregular stay penalties with the Ministry of Finance. According to respondents, this was an informal arrangement with one specific civil servant at the Ministry of Finance, who used his/her discretion to resolve individual cases. When s/he changed position in April 2016, this informal procedure was ended. It is such use of discretion and informality that expands effective state power over immigration.

CONCLUSIONS: THEORIZING ACROSS THE GLOBAL NORTH/GLOBAL SOUTH DIVIDE

Over the 21st century, Moroccan and Tunisian state actors have devised growing efforts to govern immigration. Drawing on over 100 interviews conducted throughout 2016 and 2017 and policy analysis covering the 2000–20 period, this paper showed that in both Morocco's monarchy and Tunisia's young democracy, the authorities have avoided parliamentary law-making and instead privileged executive politics, exemption regimes and case-by-case arrangements to govern immigration. Hereby, they have opted for flexibility, pragmatism and informality: rights can be gone as quickly as they came, and nothing is guaranteed in the long term.

The paper argues that the intentional ambiguity of such ad-hocratic governance allows state actors – both political and administrative – to secure their power over immigration by performing, yet ultimately avoiding, compliance with international and civil society pressures for more immigrants' rights. This conceptualization of ad-hocracy as an *intentionally ambiguous* governance strategy advances earlier discussions on ad-hocracy in the study of bureaucracy and public policy that have highlighted either the intentional flexibility of institutional set-ups or the unintentional ambiguity of policy implementation, but have not shown how they reinforce each other.

These insights on ad-hocratic immigration governance are not limited to Morocco and Tunisia: analyses of migration and refugee governance in Lebanon, Jordan, Egypt or Turkey have

yielded similar conclusions as to the state's intentional use of flexibility, pragmatism and informality in migration control, even if such analyses have mobilized different terms to capture dynamics on the ground, such as uncertainty, temporariness or ambivalence (Nassar & Stel, 2019; Norman, 2017, 2020b; Oesch, 2017; Sanyal, 2018; Stel, 2020; Yüksel & İçduygu, 2018). Encompassing these dynamics under the umbrella term of ad-hocracy provides fruitful ground to theorize immigration governance across the Middle East and North Africa more broadly.

Ultimately, however, the concept of ad-hocratic immigration governance also seeks to inspire future analyses of immigration governance in Europe, where states seem to increasingly and deliberately mobilize flexible, pragmatic and informal policy tools to bolster migration control (Bastien, 2009; Cassarino, 2007; Laube, 2019; Lemaire, 2019; Schultz, 2020; Slagter, 2019). Such analyses would allow migration scholarship to effectively break away from claiming the exceptionalism of 'Southern' migration control policies or from unilaterally transferring 'Northern' theory to 'Southern' case studies. Instead, it would allow the field to foster much-needed theoretical innovation through 'reciprocal comparisons' (Austin, 2007) across the largely artificial North/South divide.

ACKNOWLEDGEMENTS

I thank Lorena Gazzotti and Melissa Mouthaan for their wonderful collective work on the special issue of which this paper is a part, as well as on the workshop 'Governing Migration Outside "Fortress Europe"' we organized at the Centre for Global Human Movement, University of Cambridge, September 2019, and which kick-started our collaboration. I also thank all the workshop participants for the food for thought that their papers provided, as well as the two anonymous reviewers whose suggestions allowed the core argument of this paper to be further strengthened.

DISCLOSURE STATEMENT

No potential conflict of interest was reported by the author.

FUNDING

This research was part of the MADE (Migration as Development) Consolidator Grant project funded by the European Research Council under the Horizon 2020 Framework Programme [H2020/2015-2020/ERC Grant Agreement number 648496].

NOTES

1. A broader body of literature conceptualizes the origins and types of unintended policy consequences (Baert, 1991; De Zwart, 2015; Vernon, 1979) and analyses their role in migration policy (Burlyuk, 2017; Castles, 2004; Cornelius, 2001). Yet, such analyses have so far remained separate from discussions on (intentional) ad-hocratic governance.
2. Although still visa exempt, since November 2018, citizens from Congo-Brazzaville, Guinea and Mali need to fill in an electronic travel authorization 96 hours before travelling to Morocco.
3. For instance, while Morocco's 2014 census recorded 21,344 French citizens, the French Embassy in Morocco registered 46,995 French citizens in 2013 (Therrien & Pellegrini, 2015).
4. See <http://www.investir-en-tunisie.net/fr/index.php/2014/11/22/les-deux-tiers-du-peuple-libyen-vivent-en-tunisie-affirme-mehdi-jomaa/> (accessed on 20 July 2017).

5. See https://www.lepoint.fr/economie/societe-les-libyens-en-tunisie-chez-eux-pour-combien-de-temps-02-03-2015-1908957_28.php (accessed on 20 July 2017).
6. This includes the 86,200 migrants recorded in the 2014 census, the roughly 50,000 migrants regularized in 2014 and 2017, and the estimated 50,000–100,000 foreigners who live in Morocco either irregularly or on a tourist visa.
7. Moroccan Law 27.14 relative to the fight against human trafficking and Tunisian Law 2016–61 relative to the prevention and the fight against human trafficking, both enacted in 2016; Moroccan Law 19-12 relative to work and employment conditions of domestic workers enacted in 2016; and Tunisian Law 2018-50 for the elimination of all forms of racial discrimination enacted in 2018.

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