ALEX BALCH

IMMIGRATION AND THE STATE

FEAR, GREED AND HOSPITALITY

Immigration and the State

'This excellent book points up the huge gap between the rhetoric of the UK as a welcoming refuge for those fleeing violence and the reality of racism, destitution and despair facing those, from the Jews of 1905,through post-war refugees from Stalinism, Ugandan Asians expelled by Amin to present-day seekers of asylum.'
—**Gary Craig**, Professor of Community Development and Social Justice, School of Applied Social Sciences, Durham University, UK

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Fear, Greed and Hospitality

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Acknowledgements

There was once a time, not that long ago, when one might have received strange looks for admitting to spending a large part of one's life studying the politics of immigration. Of course, in the context of the topic's steady rise up the agenda, and with the political turmoil in the USA and Europe over refugees and irregular immigration in 2014 and 2015, the decision by an academic to immerse oneself in such a subject (and write a book about it) is no longer unusual. Indeed, as a specialism, immigration politics has a growing appeal within academia but, as is becoming clear, the behaviour of states towards immigrants has a deeply personal resonance for many people. My interest was first of all inspired by my experiences as a migrant English teacher in Chile, Spain, and France. It was the disadvantages and injustices experienced by other immigrants that I met along the way that so impressed me at the time. This interest was then nourished, developed, encouraged, and guided following my subsequent decision to return to post-graduate studies. I should also add that, as one part of a multinational European family, there are always directly personal reasons for considering the implications of politics and policy where immigration is concerned. A decade or so later, and following a PhD and several post-doctoral jobs, I was appointed a lecturer in a politics department, so it has now become my job to talk about the politics of immigration. My enthusiasm for the topic only grows as I find it such a uniquely useful entrance or window into all aspects of politics and the shifting role of the state.

This book is the result of a natural development of my central interest in immigration and politics. It seeks to explore and explain the myriad ways in which politics and immigration connect; why immigration systems

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Abbreviations

ACCESS	Agreements of Cooperation in Communities to Enhance Safety and Security
ACLU	American Civil Liberties Union
AFL-CIO	The American Federation of Labor and Congress of Industrial Organizations
BNP	British National Party
BPT	British Political Tradition
CARRP	Controlled Application Review and Resolution Program
CEAS	Common European Asylum System
CEDARS	Compassion, Empathy, Dignity, Approachability, Respect and Support
CIR	Comprehensive Immigration Reform
CIS	Centre for Immigration Studies
CoE	Council of Europe
DACA	Deferred Action for Childhood Arrivals
DAPA	Deferred Action for Parents of Americans and Lawful Permanent Residents
DFT	Detained Fast Track
DHS	Department of Homeland Security
DREAM	Development, Relief, and Education for Alien Minors
EEA	European Economic Area
ECHR	European Court of Human Rights
EU	European Union
FAIR	Federation for American Immigration Reform
FBI	Federal Bureau of Investigation
FCN	Friendship, Commerce, and Navigation
GCIM	Global Commission on International Migration

HSMP	Highly Skilled Migrant Programme
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICE	Immigration and Customs Enforcement
ID	Identification Cards
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act (1996)
ILO	International Labour Organisation
ILPA	Immigration Law Practitioners Association
INS	Immigration and Naturalization Service
IOM	International Organisation for Migration
IPPR	Institute for Public Policy Research
IRCA	Immigration Reform and Control Act (1986)
IRO	International Refugee Organization
JCWI	Joint Council for the Welfare of Immigrants
JHA	Justice and Home Affairs
MAC	Migration Advisory Committee
MOU	Memorandum of Understanding
NAFTA	North American Free Trade Agreement
NCADC	National Coalition of Anti-Deportation Campaigns
NF	National Front
NGO	Non-Governmental Organisation
NHS	National Health System
NSEERS	National Security Entry-Exit Registration System
OAS	Organization of American States
PPACA	Patient Protection and Affordable Care Act
SNP	Scottish National Party
TGWU	Transport and General Workers' Union
TUC	Trades Union Congress
TVPA	Trafficking Victims Protection Act
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office for Drugs and Crime
UNRRA	United Nations Relief and Reconstruction Agency
USA	United States of America
WVS	World Values Survey

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Introduction

When Chae Chan Ping, a Chinese national who had worked in California for 12 years, was returning by ship to the USA from a visit home to China, he surely did not realize how significant his trip might be for the history of immigration law. While he was away, a piece of legislation (the Scott Act) had been passed. This law barred him, and thousands of other Chinese immigrants, from entering the USA, even if they held a re-entry certificate. The date was 8 October 1888. The USA had shifted its policy towards Chinese immigration from 'restriction' to 'exclusion' (Lew-Williams 2014), a situation that would only change in 1943 (through the Magnuson Act).

The California State Legislature had demanded these laws to actively discriminate against Chinese immigrants in order to stop what it called an 'Oriental invasion', described as 'a menace to our civilization'.[1] Chae Ping fought his case and took it all the way to the US Supreme Court. He was defeated, and the arguments used against his case were explicitly based on racist fears about the consequences of immigration for the country (Carter 2013). For all the harshness and, some would say, injustice of the Supreme Court's decision for Chae Ping, and the Chinese Exclusion Act itself, we know now that California ultimately failed to stop 'Asian' immigration. People from China and Japan continued to arrive and work in the USA after the rules had been changed, many entering via the southern border, some fleeing from the Mexican Revolution (Urban 2011). In the early twentieth century, many people from these countries ended up incarcerated in detention centres in Arizona, California, New Mexico, and Texas.

One was on Angel Island, San Francisco Bay, described by one immigration official as 'wretchedly filthy' and an 'outrage on our civilization' (Daniels 1997: 4–5).

From the vantage point of the twenty-first century, the pattern is one that seems rather familiar. We continue to hear politicians presenting immigration as an existential threat to society; some immigrants arrive only to end up in detention centres. The ideas and rhetoric used to pass and defend US legislation in the late nineteenth century now echo and reverberate around the major industrialized nations we commonly label as 'liberal democratic states'. In June 2015 the British Prime Minister David Cameron described a 'swarm'[2] of immigrants coming from across the Mediterranean that were 'marauding'[3] towards Britain, according to another government minister. In the same month, Republican presidential candidate Donald Trump warned that 'criminals, drug dealers, rapists'[4] are crossing the border into the USA.

Despite their divergent migratory histories, a common aim has emerged in countries like the UK and the USA on immigration: to make life as difficult as possible for 'unwanted' newcomers and to create an environment so hostile that it acts as deterrent for others considering the journey. This is a long way from the descriptions that political leaders in those countries have used in the past to describe the welcome people will find there. To what extent has this quest to become inhospitable resulted in a betrayal of those countries' liberal values? What does it tell us about the way the state would treat other groups, if they became unwanted? The way that states treat immigrants tells us something essential about the nature of power itself—immigration policy can be like a 'magic mirror' into the 'heart of darkness' (Johnson 1998).

Political debates over immigration involve many voices. At the same time as some politicians are warning of a 'migrant crisis' and calling for tougher punishments for those breaking the rules, others focus on the positive benefits of immigration, or the suffering of individuals caught up, and families torn apart by the same system. They criticize the immigration rules as 'callous, irrational, inhumane, and unjust',[5] and complain about the 'state-sanctioned abuse'[6] happening in immigration detention centres. There is an intense political war on immigration, and campaigners and campaigning groups form part of both sides of this debate. In countries like the UK and the USA, politicians are joined by a growing panoply of civil-society organizations, think tanks, academics, policy experts, journalists, and even celebrities weighing into the political fray; all passionately

believing and arguing that we are either too soft or too harsh on immigration and immigrants.

The data on immigration makes it clear that the issue of immigration is not likely to subside from the political agenda. Global population growth means that an increasing number of people are leaving their countries to start new lives as immigrants. Immigration has become a permanent feature of the modern state, and immigrants now form a significant part of populations in countries such as Britain and the USA. The United Nations estimated in 2013 that there were 232 million international immigrants, 50% more than in 1990. Of these, a majority (136 million) were in the developed or industrialized 'North', with 60% of that number originating from a less developed country (UN 2013). Immigration is at an all-time high in the USA, where around 41.3 million, or 13% of the 316 million population, are from other countries (CB 2014). The latest national census conducted in the UK (in 2011) recorded 7.5 million foreign-born residents in the UK, or 11.9% of the 63.2 million population of the country—a rise of over 50% on the figures gathered by the previous (2001) census (ONS 2012).

A QUESTION OF HOSPITALITY?

One of the reactions to the increasing number of people dying trying to cross the Mediterranean to reach Europe in 2015 has been to call for 'simple hospitality' (Jacobs 2015). Legal scholar Upendra Baxi called for critical migration studies to revisit the idea of hospitality as an alternative to the language of human rights. He argued this could provide a way of overcoming the limitations in the current arrangement of human rights—a system that, according to him, leaves irregular immigrants in slave-like conditions and in constant fear of detention and deportation (Baxi 2011: 230–231).

Since Derrida (2000) revived the topic through his re-readings of Kant, Levinas, and Heidegger, there has been much written about hospitality as a means of critically exploring the political dilemmas over immigration, and also of developing a progressive alternative to the politics of fear and greed. Discussions about hospitality stretch back to classical literature (Bolchazy 1995), form part of early religious teachings (O'Gorman 2007), and played a central part in Immanuel Kant's project for perpetual peace (Kant 1932 [1795]). More recently, the question of hospitality has become hotly disputed as part of contemporary discussions of immigra-

tion policies (Derrida 2000; Rosello 2001; Benhabib 2006; Yegenoglu 2012; Squire and Darling 2013), regional integration (Brown 2014), and international relations (Brown 2010; Baker 2011).

The communitarian tradition within liberal thought argues that states have a right to determine and decide upon hospitality (Walzer 1983: 61–62), and that these common principles should be agreed through historical tradition (Dworkin 1986: 215), but this is rather vague—it tells us little about the actual principles upon which this hospitality should rest. Is this an *unlimited* right for states to control admissions and exclude *anyone* they wish? Some would say yes, and that 'legitimate states are entitled to reject all potential immigrants, even those desperately seeking asylum from tyrannical governments' (Altman and Wellman 2009: 188). Others concede there are certain moral constraints such as the duty of mutual aid and protection of refugees (Walzer 1983: 62).

Immanuel Kant famously argued for a cosmopolitan right to hospitality where states allow all citizens to move freely and exchange goods and ideas (without, as Doyle points out, the obligation to trade [Doyle 1986: 1158]). Kant demanded that the stranger not be treated 'as an enemy', advising that 'so long as he conducts himself peacefully in the place where he may happen to be, he is not to be dealt with in a hostile way', but added that 'he may be turned away, if this can be done without involving his death' (Kant 1932 [1795]: Third definitive article). Even Kant was not arguing for unfettered immigration or 'no borders'—his vision of hospitality was limited to the right of visitation (*Besuchsrecht*), and not the right to reside (*Gastrecht*).

Following Kant's ideas, many different contemporary 'cosmopolitanisms' have developed where hospitality is often central to a critique of modern nation states and their treatment of immigrants and refugees (Derrida 2005; Yegenoglu 2012). Kant's concept, with his system of conditions and limits to the rights of residence for foreign visitors, can thus be seen as one solution to the problem of hospitality. The subversive notion of a universal hospitality remains an important topic of political theory. This is because, as Derrida argued: 'there is no culture or social bond without a principle of hospitality. This principle demands, it even creates the desire for, a welcome without reserve and without calculation, an exposure without limit to whoever arrives' (Derrida 2005).

The apparent impossibility of a welcome without limits leaves us with imperfect hospitality: conditional, limited. In practical terms, it means that states are left with having to continually make decisions over the extent

and ways in which any welcome is to be offered. The idea of universal hospitality remains essential because the laws of hospitality are reduced to mere 'exchange' without some gesture or reference towards that which exceeds them (Haddad 2014: 127). For Benhabib, hospitality helps us to search for 'the mediation between the ethical and the moral, the moral and the political' (Benhabib 2006: 158). This happens via what she calls 'jurisgenerative politics'—a progressive engagement between 'insiders' and 'outsiders' where differences are mediated and negotiated, and where immigration transforms the state.

One way of thinking about hospitality is that there are multiple traditions, from its classical origins to newer formulations combining with universal ideas about humanity, equality, and the individual. The contemporary migrant crisis demonstrates how deeply politicized hospitality has become in both the UK and the USA; the concept of fairness has shifted over time, becoming distorted and twisted. The topic of immigration is capable of bringing out the worst in governments, but what can explain the choices that states make about how hospitable or inhospitable they are towards immigrants? Politicians stress that however harsh their policies are, they are always 'fair',—but what exactly do they mean by 'fair'? Where does this concept of fairness come from, and how does it change over time? Critics are very sceptical of the reasons behind immigration policies, but are the politics of immigration really driven by fear and greed, as they often argue?

The main goal of this book is to provide a fresh approach to the study of immigration politics. It re-frames the 'migrant crisis' as one of liberal democratic states and their treatment of immigrants. It asks why the international system of human rights has not established a situation of equality or non-discrimination for immigrants and explores how the 'liberal' quality of liberal democratic states explains government approaches to the issue. It looks at the cases of the UK and the USA and shows how the development of their immigration systems can be explained through combinations of fear, greed, and hospitality.

CASE STUDIES

The approach is to use a mixture of the theoretical and the empirical. Case studies and the majority of the empirical material used in this book come from the UK and the USA. In one sense, this selection follows the tendency in migration studies to focus on Western European and North

American states (Boucher and Gest 2014). However, these cases are arguably those where immigration politics have been salient for longer, especially when compared with new immigration states such as China, Brazil, Turkey, or the United Arab Emirates. As others have argued, a significant group of European and North American (the USA and Canada) countries face similar challenges when it comes to immigration and increasingly tend to implement similar policies (D'Appollonia 2012).

The selection is also informed by the fact that, for all these similarities, they represent different kinds of immigration regime: the important historical experience of the 'settler state' for the USA versus the UK as a comparatively 'reluctant' country of (post-war) immigration. Both also conform to traditional notions of the nation state but have experienced different kinds—and degrees—of international and regional integration and cooperation. These forms have inspired much scrutiny in the field of immigration politics, particularly with the regional dimension and Britain's membership of the European Union—the only modern polity able to (partially) dissolve or remove state borders, albeit with a compensating strengthening of its peripheral boundary. Together, the case study material incorporates diverse political histories, frameworks, and structures, but they are joined by the theme of liberalism and a concern over immigration together with the advantage that they have been subject to a long history of research.

The USA: A Nation of Immigrants?

There is, at least rhetorically, a tradition of expressing sentiments of fairness and empathy towards immigrants and immigration that can be traced throughout the history of the USA. When President Obama announced an executive action on immigration in November 2014, he spoke of the 'tradition of welcoming immigrants' and offered a 'fair' deal for undocumented immigrants who 'work hard, often in tough, low-paying jobs', people who 'support their families' and 'worship at our churches' (Obama 2014). He was self-consciously echoing the sentiments of George Washington who in 1783 famously declared that:

> The bosom of America is open to receive not only the Opulent and respectable Stranger, but the oppressed and persecuted of all Nations And Religions; whom we shall welcome to a participation of all our rights and privileges, if by decency and propriety of conduct they appear to merit the enjoyment.[7]

These kinds of sentiments have been frequently reiterated, for example, in the US Congress in 1868, when it was argued that:

> The right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty and the pursuit of happiness, and in recognition of this principle, this government has freely received immigrants from all nations. (Henkin 1994: 1019)

Yet, these noble statements tell only part of the story. The USA is normally defined as a 'country of immigration' or a 'settler-state', so the history of the state is a history of immigration (Handlin 1952). But the story of immigration controls is also one where the legislative process has seen the deployment of nativist and even eugenicist arguments (Higham 1955). History shows us that, as in other liberal democratic states, the apparently universal welcome offered by Washington and others was already highly selective, pre-conditioned by the prisms of race, gender, and class. What we see is clear conflicts between the doctrines incorporating the liberal values of universal equality as espoused by the US Declaration of Independence (1776) and Constitution (1787) on the one hand, and the actual implementation of immigration policies on the other. At the core of this inequality lies the Supreme Court's judgement in the case of Chae Chan Ping mentioned at the beginning of this book. It was at this point that the 'plenary powers' or 'sovereign powers' doctrine was established which: 'expanded over the years to bolster the absolute power of the federal government to control immigration and to diminish the rights of aliens and the participation of courts in immigration decisions' (Salyer 1995: 23).

Britain: A Bastion of 'Fairness'?

The question of immigration as a permanent part of law and policy arrived much later in Britain than in the USA, but by the late twentieth century, it had risen to the top of the political agenda and, as with the USA, the language of fairness has been equally resonant. When the 2010–2015 Coalition government's Immigration Bill received Royal Assent on 14 May 2014, the Minister for Immigration, James Brokenshire, promised it would make the system 'fairer to British citizens and legitimate migrants and tougher on those with no right to be here' (Brokenshire 2014). He is probably aware that he was not the first minister to utter such a pledge,

and he might guess that he may not be the last. Since the early 1990s, in the UK there has been, on average, a piece of legislation on immigration every two years.

However, by raising the issue of fairness, and the fair treatment of foreigners, he was (perhaps unwittingly) touching upon a theme widely and vividly depicted throughout the history of English literature. A collection of essays titled 'Shakespeare and Immigration' explored how strangers, 'other-ness', and values around fair treatment of foreigners permeated much of the famous bard's work (Espinosa and Ruiter 2014a). The usual Shakespearian reference for the treatment of foreigners is 'The Merchant of Venice', since used to raise the issue of anti-Semitism, but perhaps, a better example is provided in one of Shakespeare's lesser-known plays: Sir Thomas More. At one point, the main protagonist admonishes a rioting crowd baying for the expulsion of immigrants. In a device employed in other Shakespeare plays, after the audience is drawn unwittingly into the emotion and rage of the crowd, the lead (More) castigates them, asking them to consider how they would feel were they to be immigrants:

> Would you be pleased/To find a nation of such barbarous temper/That, breaking out in hideous violence/Would not afford you an abode on earth/ Whet their detested knives against your throats/Spurn you like dogs/… What would you think/To be thus used? This is the Strangers' case/And this your mountainish inhumanity. (cited in Espinosa and Ruiter 2014b: 3)

Compare this plea for sympathy for the other, the strong exposition of common humanity with a contemporary commentary on the tyranny of the immigration system. One of the twentieth century's most (in)famous novels, Salman Rushdie's 'The Satanic Verses' includes a powerful passage that connects the modern experience of British immigration control with the tragedy of hope, and the reality of fear and inhumanity for the world's poor and dispossessed. The story tells of an aspirational young Indian immigrant, filled with a naïve admiration of England's history and myth, who becomes crushed, tortured, and dehumanized in a 'universe of fear' peopled only by police and immigration officers (Rushdie 1988: 158–160). Rather than adopting Shakespeare's wagging finger, Rushdie instead calls upon a sense of injustice by simply recounting the lived experience of an individual unlucky enough to have the wrong papers, leaving the reader to draw his or her own conclusions.

The Academic Study of Immigration Politics

A relative silence of 'gap' in political thought could lead us to conclude that general theories or theoretical approaches in political philosophy are of no use when thinking about immigration (Huemer 2010: 430), or alternatively to find that the subject actually reveals deep and even fatal flaws in these approaches (Cole 2000). While it might be true that, historically, very little work within political philosophy has addressed immigration, this is far from saying that there is a complete absence. The comparative *silence* of many key thinkers on the issue, particularly those writing before the end of the twentieth century, has simply left the door open for others who come later.

Academic work on immigration has developed massively since the 1990s, when the subject of 'migration studies' was in its infancy. There is now a vast and growing field of knowledge looking into the social, economic, cultural, political, and environmental processes and effects linked to migration. There is an array of different disciplines and theoretical schools that examine all different types of migration: for work, family reunion, due to forced displacement or almost all other regular and irregular forms of international movement one could think of. Governments and international organizations publish ever greater quantities of data on all these categories; publishing houses produce books and journals that carry articles reporting the latest research—into the economic consequences of migration, analysis of legal developments, or explorations and discussions around pressing moral questions, for example, on the ethics of naturalization, welfare, asylum systems, detention centres, forced and voluntary removal, among many others.

In the field of political studies, immigration has emerged as a subject of growing interest, not least because of its seemingly inexorable rise up the political agenda. It is now considered a topic of high importance in the mind of the voting public and, therefore, a factor in electoral results and a serious matter for political parties. As a topic of research within political studies, immigration has provided fertile ground for examination of, inter alia, questions around state power, identity, nationalism, racism, public attitudes, and all imaginable aspects of the political machine and any combination of political, social, and economic relationships.

While this work has achieved a great deal in a relatively short period of time, there of course remain gaps, and there are also deeper concerns

about migration scholarship. Ironically, considering the topic, there are conceptual problems to do with boundaries, including methodological nationalism (Wimmer and Schiller 2002), and the disciplinary specialization that divides, parcels up, and scatters knowledge, thus obscuring the bigger picture. Another problem is the danger, or 'illusion', that there can be a completely depoliticized research programme on immigration. As Foucault demonstrated so clearly in 'Madness and Civilization', apparently rational (but actually incredibly cruel) government policies towards differentiated societal groups survive precisely because of the support of established systems of expertise (Foucault 1967). Perhaps unintentionally, but through the exigencies of career progression, in the rush to disciplinary expansion, and with the inevitable specialization and demands for 'usable knowledge', migration experts risk simply facilitating and enabling technologies of state control (Hatton 2011).

When writing about a topic such as immigration, it is worthwhile reflecting critically about the role of knowledge in analysing and evaluating policies. There is a growing role for academics and organizations in policymaking that aims to draw on expertise, utilize 'best practice', and look at templates and road maps for ways forward (Hess 2010). This book contributes to a switch in focus for scholarship away from the 'policy gap', or the inability for states to do as they say on immigration. There has been a remarkable expansion in state interventionism and innovation over how to best manage immigration. The ideas that underpin this and the effects of these policies on different communities demand to be examined. Work on the international level has informed analysis of how immigration policies impact on justice in wider global trade and development regimes (Castles 2011; NNIRR 2011). Work on the effects for immigrants has identified how policies act to create or maintain social structures of exploitation and 'precarity' (Neilson and Rossiter 2005; Anderson 2010). Considering the contingent and constructed nature of immigration systems, the role of knowledge and knowledge production on the topic becomes crucial. This is not only in terms of the turn to expertise in times of uncertainty over what to do about immigration (Balch 2009; Balch 2010). It is also because of the observation that society is co-produced because 'the ways in which we know and represent the world (both nature and society) are inseparable from the ways in which we choose to live in it' (Jasanoff 2004: 2).

Structure of the Rest of the Book

The book is organized into three parts.

Part 1 is divided into three chapters. The first (Chap. 2) explores in greater detail the so-called 'migrant crisis', which is reconsidered as a 'catastrophic equilibrium' of immigration politics in liberal democratic states. Chapters 3 and 4 explore preliminary explanations for this situation, beginning with (Chap. 3) the international system of universal human rights as it relates to immigration, before looking at (Chap. 4) the connection between immigration and theories of the liberal democratic state.

Part 2 develops the comparative study of the development of immigration politics in the UK and the USA. It starts with methodological questions about studying immigration politics and the comparative approach (Chap. 5) before Chaps. 6 and 7 summarize the main developments and key phases in immigration politics in the UK and the USA from the eighteenth to twentieth centuries (Chap. 6) and then the twenty-first century (Chap. 7).

Part 3 assesses the arguments that immigration policies are a function of the politics of fear (Chap. 8) and greed (Chap. 9), dividing these into stronger and weaker versions and examining their relevance to the case studies. Chapter 10 explores how different traditions of hospitality have framed and shaped the way that the UK and the USA have dealt with immigration. Chapter 11 recaps and asks how fear, greed, and hospitality explain what constitutes fair treatment of immigrants. It discusses how these principles have evolved in the cases of the UK and the USA, before finishing with reflections on the main questions.

Notes

1. The Chinese Exclusion Case, 130, U.S. 581 (1889) p595.
2. Mr Cameron made the comments in an interview with ITV News on a state visit to Vietnam, 30 July 2015: http://www.itv.com/news/update/2015-07-30/pm-a-swarm-of-migrants-want-to-come-to-britain/.
3. Foreign Minister Philip Hammond made the comments in an interview with the BBC on a visit to Singapore, 9 August 2015 http://www.bbc.co.uk/news/uk-politics-33842861.
4. The comments were made by Donald Trump during the announcement of his campaign for the presidency, 16 June 2015: http://time.com/3923128/donald-trump-announcement-speech/.

5. Statement by Democratic presidential candidate Governor Martin O'Malley, 15 July 2015.
6. Statement by shadow Home Secretary Yvette Cooper, during parliamentary debate, 3 March 2015, on the Yarl's Wood Immigration Detention Centre, http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150303/debtext/150303-0001.htm#150303-0001.htm_spnew153.
7. 2 December 1783, Address to the Members of the Volunteer Association and Other Inhabitants of the Kingdom of Ireland Who Have Lately Arrived in the City of New York.

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PART I

A 'Migrant Crisis'?

What sort of a problem is immigration? What sort of challenge does it present to the rich, industrialized world in the twenty-first century? Like many other countries, Britain and the USA seem to be facing a never-ending series of crises when it comes to immigration. Indeed it has become common among politicians and commentators in the media to combine these as if there is now a single conflagration—a 'migrant crisis'. As we will see, examples of different kinds of crises relating to the international movement of persons have long existed, but a crisis for whom? The answer to this question greatly influences the kinds of laws and policies developed or rejected, proposed and implemented, or ignored and forgotten.

This book is about why liberal democratic states treat immigration and immigrants the way that they do. This will hinge to a large extent on the way that the 'problem' of immigration is understood in the first place. As mentioned in the opening chapter, there are a multitude of voices, positions, and perspectives on immigration. No single book could possibly cover all aspects and dimensions of immigration and its processes, causes, and effects. The decision taken here is to focus on one of the most difficult political questions for those rich industrialized countries that are facing the 'migrant crisis': how to react appropriately, responsibly, and humanely to the challenges and opportunities of immigration.

This chapter outlines a migrant crisis of a different kind—a crisis of immigration politics in liberal democratic states. The rest of this chapter outlines the key indicators of this crisis. It begins with four areas where the crisis has direct consequences for immigrants: death, illegalization,

unfreedom, and exploitation. It finishes with further crises relating to public opinion: a public debate made toxic by a critical absence of empathy towards immigrants and a crisis of confidence in the political system itself.

INDICATORS OF THE CRISIS OF IMMIGRATION POLITICS

There is growing attention and scholarship devoted to how immigrants are treated by states, re-balancing a perception that their experiences have been too easily dismissed or rendered invisible to most of our everyday lives. One of the reasons for this is the growing numbers of immigrants and children of immigrants now living in places like Britain. Immigration policies now no longer simply affect a small minority of residents—not only has that number directly increased but also there are indirect effects on a much greater population due to the sheer number of people connected to immigrants. Added to this is the globalization of communications and the increasing ability to make and share news of human rights violations. Mostly, however, it is about careful and methodical investigative research piecing together evidence; hard work carried out by academics, journalists, activists,[1] NGOs, and others putting together grim ledgers about detention, deportation, and mounting deaths at international borders (Fekete 2005; Weber and Pickering 2011; Brian and Laczko 2014; EMN 2014; Krogstad 2014). It is thanks to their work that we are now more fully aware of the human price of developed countries' immigration systems.

Death and the Border

The key land and water crossings to Europe and North America have become the most visible and deadly indicator of a migrant crisis. Still, it is only sporadically that news of fatalities in the Mediterranean or at the US–Mexico border break into the public consciousness, it tends to be only for the most spectacular tragedies, where large numbers die in single incidents, such as the over 360 people in October 2013, the 500 in September 2014,[2] or the over 1000 who died in April 2015.[3] But these shocking events are only the tip of the iceberg. A report by the IOM (International Organization for Migration) estimated that, in the first 14 years of the new

century, there were likely to have been over 40,000 border-related deaths (Brian and Laczko 2014).

How does this relate to the politics of immigration in liberal democratic states? First of all, there are questions around causality: it seems reasonable to ask how the specific make-up of immigration regimes might bear part of the responsibility for the human costs that we witness at the border. This is certainly not commonly conceded by governments. Instead, their explanations are more likely to lie in the interaction of various push and pull factors, some within their control, most beyond it. The standard strategy for twenty-first century liberal democracies is to implement policies to reduce pull factors—making it more difficult to make the journey or make life more difficult for newcomers once they have entered states' territories. Push factors are more difficult to deal with, because this can mean intervening in other states' affairs. Rich receiving states can play a role in forced population movements from the usually poor sending states. This is most obviously through the consequences of war, conflict, and international intervention—or non-intervention (e.g. Iraq, Libya, and Syria), problems of failed governance, global economic inequalities, environmental issues, and so on. This is not just related to the obvious cases of military interventions, although that is clearly important. It can be about global economic development strategies. A group of investigative journalists claim to have shown that projects funded by the World Bank physically or economically displaced around 3.4 million people between 2004 and 2014, forcing them from their homes, taking their land or damaging their livelihoods (Chavkin et al. 2015).

Secondly, there is the issue of how to respond to a migrant crisis. Whatever the case about 'push/pull' factors, is there not some level of responsibility on receiving states to adjust, loosen, or open up their borders—to respond and react in a humane way? Even if we could know or understand all the causes of increased immigration, this does not explain or excuse why borders should bear witness to such carnage. Explanations that rely on push and pull factors are seductive because they are so reductive. They are simplistic, and they also dehumanize—denying the agency of immigrants and complicity and responsibility on the part of receiving states. This is both in terms of the conditions leading people to immigrate and with respect to the systems and mechanisms that make such behaviour so risky.

The sometimes deadly risks associated with the immigration process and the conditions experienced by immigrants can be linked directly to the

politics of immigration in liberal democratic states. Research into deaths at the US–Mexico border concluded that it was increased enforcement activity that meant 'migrants are being forced to travel for longer periods of time through remote areas in an attempt to avoid detection by US authorities, thus increasing the probability of death' (Martinez et al. 2014: 258). There is overwhelming evidence that 'the strategy of prevention through deterrence has been increasingly deadly for migrants' (Brian and Laczko 2014: 69).

By far the most deadly crossing in the world for migrants is the Mediterranean Sea. The increase in numbers attempting to cross in 2014–2015 was clearly linked to civil wars and conflicts in Syria, Libya, and in other parts of Africa. There might not have been much that European states or the European Union (EU) were able or willing to that in the short term to resolve these internal conflicts and civil wars, but there remains a political decision to be made over what to do about the migrants that come. What sort of reception or welcome should be extended to those that arrive? Should, for example, resources be committed to a humanitarian effort? Should this be done at the local (Lampedusa, Catania?), national (Italy?), European (EU?), or international (UNHCR?) levels?

Italy initially responded to the tragic losses of life in October 2013 by launching a maritime operation—'Mare Nostrum'. This operated in Italian and international waters but was ended a year later after rescuing no fewer than 150,000 people. The reason for this was that agreement had been reached for the EU (FRONTEX) to take over with 'Operation Triton'. This was something the Italian government had always demanded, but the FRONTEX operation was smaller in size and would not extend beyond Italian waters. Two NGOs, ECRE and Pro Asyl, argued that 'refugees still have no other choice but to risk their lives in order to seek protection' and that the switch from Mare Nostrum to Triton would mean 'the death toll in the Mediterranean will rise' (ECRE 2014). The British government disagreed, supporting the ending of Mare Nostrum, as they saw it as another 'pull factor'. The then-Minister for Security and Immigration James Brokenshire said, 'we believe that the operation is having the unintended consequence of placing more lives at risk'.[4] Unfortunately, the predictions of ECRE and Pro Asyl were more accurate with several large-scale losses of life happening in the early part of 2015. In 2014, the IOM reported that 3281 lost their lives crossing the Mediterranean, and by August 2015, the total was already 2373 and likely to rise by several thousands more by the end of the year (IOM 2015).

The response to death in the Mediterranean from the UK and the EU was to turn to security-related measures, using the language of anti-slavery to legitimize military action against the boats which they claimed were controlled by 'trafficking networks' (O'Connell Davidson 2015). Another 'migrant crisis' flared up in the summer of 2015 at the juxtaposed UK border in Calais because of strikes by French ferry workers, which closed the Channel Tunnel, leading to long queues of lorries. This provided opportunities for some to risk entering Britain by clandestine means and adding to the number killed trying to use this method.[5] As with the Mediterranean crisis, the government's response was increased resources to enhance security measures (the creation of a 'secure zone' complete with fencing and razor wire) and the targeting of 'criminal gangs' (May 2015).

It is self-evident that rules in immigrant-receiving countries are designed specifically to make certain forms of movement difficult—namely for people from certain parts of the Global South to reach the territory of countries in the Global North. Levels of regular and irregular migration have increased in nearly all developed states since the end of the twentieth century, and most have developed new policies to attract the immigrants they want (see e.g. OECD 2009). For some this means the migrant crises we are now witnessing are just the start of an 'exodus' that will have very negative global effects (Collier 2013). However, this rise in the number of immigrants world-wide has coincided with a corresponding increase in global population levels. It does not seem to reflect an increasing propensity for people to migrate—it is just that a rising population means a larger number of people are on the move (de Haas and Czaika 2014).

Most people do not migrate—the proportion of immigrants in the world has remained stable at around 3% of the world's population (UN 2013). Contrary to the belief that globalization has caused a massive increase in the scale and diversity of immigration, there is little evidence of such an acceleration (Czaika and de Haas 2014). Despite this, immigration systems appear to be predicated on fears that people from poorer parts of the world will come in large numbers to claim asylum, overstay, or otherwise abuse the 'welcome' of richer states. This possibly betrays a Eurocentric worldview, considering the shift many countries in Europe have made from sending to receiving countries (ibid. 314). It is also ironic considering the sophistication of increasing restrictions on current and would-be immigrants. Politicians and their opponents often paint a picture of an immigration system 'out of control'[6] in 'intensive care'[7] or as being

in some kind of 'lawless chaos'.[8] The tragedy of these kinds of discussions is that they create a vicious circle with fatal consequences. The deaths of immigrants attempting to cross borders, along with pictures of large numbers of the rescued and bedraggled, are presented as concrete proof of the need for further restrictions: if the medicine does not work, increase the dose. As one study exploring the correlation between deaths and government responses to immigration noted, there is something rather unique about a policy area where human costs are so ruthlessly excluded from policy calculations:

> When it is clear that a particular set of State policies will lead to increased fatalities, it seems reasonable to take account of this in policy debates. Until now, however, this has not happened in the debate about border control. (Spijkerboer 2007: 13)

Human Illegalisation

Death at the border is not the only indicator of the migrant crisis in liberal democratic states. Another relates to the issue of irregular immigrants. On the one hand, this is about how many people are in an irregular status—something which could be used as a proxy indicator of government effectiveness in 'enforcing the rules'. On the other, it is about the way that the state chooses to deal with this situation, and how this affects the conditions in which people in this situation live and work. It is thought that numbers of irregular migrants have been increasing across receiving states, often in line with economic growth, but this is of course by definition something unrecorded and difficult to accurately ascertain. According to an estimate published by the IOM in 2010, around 10–15% of the global 214 million immigrants are irregular (IOM 2010: 29). In the UK, one estimate using the ten-yearly census put the figure at between 310,000 and 570,000 in 2001 (Woodbridge 2005). An update a few years later estimated that, by 2007, this had risen to between 417,000 and 863,000 (Gordon et al. 2009). In the USA, studies carried out by the Pew Hispanic Center estimated that the irregular population increased from around 3.5 million in 1990 to a peak of 12.2 million in 2007, before falling back slightly to around 11.2 million in 2012. They suggest that this reduction is mainly due to reduced immigration from Mexico following the economic recession (Passel and Cohn 2015).

This population has become subject to a growing array of policies to make life as difficult as possible, to reduce numbers through the creation of a hostile environment, a strategy often referred to as 'enforcement by attrition' (Kobach 2008). This could be in the denial of fundamental human rights such as due process, contract or property rights, or access to public goods such as education and health (Bosniak 2008). As will be explored later, systems designed by liberal democratic states to control the international movement of persons have morphed out of all recognition from the first laws passed in the nineteenth century. They have expanded and shifted outwards with the construction of the 'transit' country (Oelgemöller 2011) and inwards through the creation of borders within the state (Bommes and Geddes 2000). Alongside this, there has been a securitization (Wæver et al. 1993) and criminalization (Legomsky 2007) of immigrants via systems founded on the principle of political membership by legal status. This has directly affected the way that immigrants are treated, because the system has become very effective at creating hierarchical and differential legal status. In order to be treated equally, immigrants pass (or do not pass) through a gradation of 'concentric circles' until eventual inclusion in national citizenship (e.g. through naturalization).

This 'status-oriented' approach to membership is criticized by many who claim it creates a 'caste' system and should be replaced by membership based on territorial presence (Bosniak 2007). Ultimately, legal status-based immigration systems have proven very effective in separating those 'inside' from those 'outside', immigrants/aliens/non-citizens from citizens. One of the consequences of this has been to maintain ever larger numbers of people in an 'irregular' status from which it is difficult to escape. This might be because they are non-compliant with immigration regulations, and there is a lack of pathway to 'regularize' their status. As we have seen in the case of Chae Chan Ping, this can often happen even without the person realizing it. Alternatively, it might be a rational choice for individuals who want to work or live in a country that would not offer them a legal avenue for entry, residence, or access to the labour market. Either way, liberal political theorists, even those that vehemently defend the right of states to control immigration, argue that for immigrants to live and work without any recognition of membership in the community is 'nothing short of "tyranny"' (Walzer 1983: 59).

Unfreedom

The third indicator of a migrant crisis is in the extent to which states are turning to increasing usage of detention and deportation. The use of detention for immigration has expanded massively in the twenty-first century—to accelerate the removal process (normally of asylum-seekers) and to manage populations with an irregular status. The usage of private sub-contractors has also been marked (Flynn and Cannon 2009). It is interesting that the UK and the USA as quintessential liberal democratic states should be at the forefront of these developments. The USA has long been fond of using 'off-shore' immigration detention facilities, a recent example being Guantánamo Bay, Cuba—which has been operating since the early 1990s to detain asylum seekers and refugees—it is only since 2001 that the location has become synonymous with the 'war on terror' (Dastyari and Effeny 2012). Ellis Island, in New York harbour, is probably most often associated with the welcome of immigrants from Europe from the late nineteenth century onwards, but it was transformed into a deportation processing centre after 1924. Angel Island in San Francisco Bay is also a telling example. Here between 1910 and 1940, it served as a detention centre for Asian immigrants—mostly Chinese men and Japanese women (Daniels 1997). In the contemporary era, immigrants in detention centres in the USA often work for less than $1 per day: in 2013, more than 60,000 worked in the federal network of detention centres (Urbina 2014).

The UK has created the largest immigration detention estate in the EU (Silverman and Hajela 2015)—in 2013 and 2014, around 30,000 people entered immigration detention, with about 10% of that total detained at any one time under the immigration rules. Unlike most European countries, Britain (at the time of writing) does not have an upper limit on length of detention, and there are serious concerns about the treatment of immigrants. Organizations such as the Institute for Race Relations (IRR) that have been monitoring deaths in custody for decades have begun to notice that since the late 1990s, many of the fatalities have been asylum-seekers or irregular migrants in detention centres (Athwal 2015). Several pieces of investigative journalism[9] have found evidence of sexual exploitation and degrading treatment. An inquiry by two all-party parliamentary groups found extensive usage of prison facilities and the widespread and systematic abuse of individuals (APPG 2015).

As with the treatment of irregular migrants, more generally, the questions here are why and how states have moved so far from compliance with those international human rights norms they have signed up to. Detention, particularly for lengthy periods, is known to cause severe mental and physical harm to those who are subjected to it (Robjant et al. 2009). For some, the increasing use of detention and deportation signals the emergence of a new global system of state power (De Genova and Peutz 2010). The aim is not necessarily to remove irregular migrants, rather to threaten and punish through 'intimidation and harassment' in order to create and maintain a compliant workforce (De Genova 2002: 438).

The 'deportation turn' is interesting in the context of immigration policy, because the practice has traditionally been considered difficult for democracies to carry out—'one resorted to relatively rarely and with a degree of trepidation' (Gibney 2008: 2). Countries like the UK and the USA have successfully overcome these difficulties to gear up the machinery to expand deportations significantly. In the UK, in 2013, there were 50,741 removals under immigration law (or individuals known to have departed under threat of such removal), an increase of 14.5% from 2012. The USA has increased the number of deportations from around 250,000 per year during the presidency of George W. Bush, to nearly 400,000 per year under the presidency of Barack Obama, leading to a host of human rights concerns. Janet Murguía (National Council of La Raza President) has named Obama the 'deporter-in-chief' (cited in: Krogstad 2014).

Exploitation

The fourth indicator of a migrant crisis relates to a more general 'lived experience' of immigration, namely the dereliction of protection within society and an abandonment to criminal levels of exploitation. Take what we know about the trafficking of human beings, for example. This is a heinous crime which involves the violation of human rights and extreme forms of abuse, but governments use the language of 'human trafficking' to further restrict international movement through immigration policies (O'Connell Davidson and Howard 2015). Research has identified positive correlations between these crimes and immigration policies. This is particularly in the way that these policies 'produce' irregularity: the greater the levels of irregularity, the more likely it is that there will be prey for the traffickers (Mahmoud and Trebesch 2010). In late 2014, the UK government published a scoping study exploring the extent of 'modern slavery' within

the country, which estimated that between 10,000 and 13,000 individuals were experiencing slavery-like conditions (HO 2014), nearly five times higher than was previously thought. While this problem is not exclusively confined to immigrants, a majority of known cases of forced labour in the UK have involved immigrants (Geddes et al. 2013). Moreover, immigration rules are thought to actively produce vulnerability to these kinds of crimes (Dwyer et al. 2011), something exacerbated by the fact that the state has withdrawn from regulating employment in those sectors where wages are lowest and risks of exploitation are highest (Balch 2012; MAC 2014).

A number of scholars have explored how immigration systems can work as mechanisms that push people into 'parallel communities' with alternative social and market systems—a group of people that some have labelled 'the precariat' (Standing 2011). This happens via (among other things) restrictions on entry and residence, the stratification of rights, increasing risks of non-compliance, and changing patterns of enforcement. Exploitation and worse awaits immigrants who are pushed into the situation of precarity, transformed into customers for legal and less-than-legal intermediaries and other brokers—many of whom indulge in the abuse of their disproportionate power:

> the irregular status of migrants, their lack of information and alternative options, means that they are particularly vulnerable to the whims of smugglers and have very little power to negotiate or determine the conditions of the journey, or insist upon the terms initially agreed to. Their irregular status also makes them unlikely to seek assistance of law enforcement authorities in the event that crimes are committed against them. (UNODC 2011: 24)

Often, the very government policies dealing with exploitation and criminality around immigration are seen as making matters worse. Aggressive enforcement actions against irregular immigrants and the businesses that employ them spread insecurity and distrust of the authorities (Theodore 2013). Measures to address trafficking add to the securitization of borders, exacerbating the problem they are purportedly trying to solve (van den Anker and Van Liempt 2011). The nineteenth century might have seen the end of state-sanctioned slavery, but as we know similar types of exploitation continued long after the laws changed (Blackmon 2008). In the twenty-first century, there is growing recognition of the state's role in modern forms of exploitation where immigration systems themselves operate like a conveyor of vulnerability.

Public Anxiety and Government (In)competence

Alongside the four aspects of the crisis of immigration politics outlined above, there is another dimension which incorporates two further challenges: public attitudes towards immigrants and immigration and the crisis of confidence in governments to fulfil their policy promises on the subject. These two factors are revealed mainly through the growing quantity of data available on public opinion, but this kind of information needs to be treated with a certain caution. We are, of course, limited in our knowledge of what people actually think about immigration and immigration politics and how this has changed since controls were introduced. This is not only because of the weaknesses of polling data but also due to the fact that it did not occur to many people to conduct methodologically robust surveys of public opinion in the eighteenth and nineteenth centuries. That which we do know, in the contemporary era, in survey after survey in Britain and the USA, is that high levels of anxiety are reported on the topic of immigration; this trend can be traced back to the 1990s and appears to have been fairly consistent throughout the following three decades.

Immigration Anxiety

The 2014 Transatlantic Trends Survey is typical in showing how high anxiety has become over immigration. It found a growing majority of people across countries in Europe and North America to be affected by underlying fears on immigration (TT 2014: 18). A preliminary point to make is that, even with the limited time series that we have at our disposal, it does not seem that the levels of fear have been constant. In Britain, immigration and race relations were rarely listed as one of the 'most important issues' before 2000 (Blinder 2014). In the USA, a rise in anti-immigration feeling was widely reported to have occurred in the early 1990s, where it was assumed that, underlying this, were a mixture of old and new forms of racism and nativism (Sanchez 1997; Jaret 1999).

Concerns about immigration in Britain seem to have risen slightly later, since around the late, rather than early, 1990s. Ten years later, in the late 2000s, when asked the standard 'what is the most serious issue facing your country?' the British public regularly placed immigration in the top three concerns, even occasionally above the economy (Duffy and Frere-Smith 2014). By the second decade of the twenty-first century, a steady three-quarters of people in Britain said they favour reducing immigration

(Blinder 2014). By comparison, in the USA, levels of concern tend to come out lower overall on the 'what is the most important problem' question, even if they have also risen markedly in recent years (Gallup 2015b). How can we account for these differences in worries over immigration between the UK and the USA?

There are various theories that attempt to explain the level of anxiety and the reasons behind its change. The most obvious linkages are with the political agenda and media coverage, which itself links with changing levels of immigration, or the emergence of particular immigration issues or dilemmas. For example, with the 2014 crisis of the migration of unaccompanied children at the US–Mexico border, the topic of immigration rose from 3% to 15% in the list of top problems facing the USA—moving into the top three (Riffkin 2014). In the case of Britain, pollsters have put an upward shift in concern down to increased levels of immigration and its rise up the political agenda, along with negative media coverage, particularly of asylum (Page 2009; Duffy and Frere-Smith 2014).

While it makes intuitive sense to link fears about immigration with actual immigration patterns, there is a problem with this explanation. There is strong evidence to suggest the existence of a 'perception-reality gap' over the levels and types of immigration that exist. It seems that people either do not know or are misinformed about actual immigration patterns, and this is a phenomenon observable in both the UK and the USA. An Ipsos-Mori project on the 'perils of perception' found wide divergence between perception and reality across a range of countries. In the case of the UK, the average guess was that 24% of the country's population is foreign born while the official estimate is 13%. On asylum seekers, 80% in one survey believed there had been an increase in applications from 2000 to 2005 when there had actually been a dramatic drop during that period (Duffy and Frere-Smith 2014: 76–77). In the comparative study, the USA came 13th out of 14 countries in terms of accuracy on a range of questions about population. As with the UK, respondents guessed a much higher level of immigration: 32.3%, compared to the real figure of 13% (Ipsos-Mori 2014a). Fears about immigration cannot, therefore, be simply attributed to actual levels and patterns of immigration; they relate to perceptions of that immigration—'imagined immigration' (Blinder 2013).

Another point to make about opinion polls is that they are aggregate figures, masking important internal variation. Different surveys naturally measure quite different things, and the way that these have been conducted have changed over time. As Scott Blinder notes in his study

of British public opinion on immigration, changes in question-wording and response options mean that it is often very difficult to compare attitudes over any reasonable length of time (Blinder 2014). Underneath the 'headline' figures, public attitudes on immigration are nuanced, complicated, and sometimes counter-intuitive. In the USA, variation in attitudes towards immigration is often assumed to be cross-related to race; so, opinion polls will split respondents into 'white', 'black', and 'Hispanic', looking to identify different levels of concern over immigration between them (Gallup 2015a). The explanation is derived from the assumed preferences that each group will have about different immigration policies. For example, when asked about Obama's executive actions in 2014 on immigration (assumed to largely benefit 'Hispanic' immigrants), 'white' respondents were found to be four times as likely to 'strongly disapprove' of the measures than their 'Hispanic' counterparts (Gallup 2015a). In Britain, older people and those with little experience of immigration in their neighbourhood appear to be much more concerned about the issue than younger people (Page 2009). There are also high levels of concern from the community of existing immigrants who have lived in the UK for more than 20 years (Duffy and Frere-Smith 2014).

Government Incompetence

The final indicator in our set is about public confidence. The fact that politicians generally accompany policy announcements on immigration with the explicit hope that they will 'restore' public confidence is certainly suggestive that there is a crisis of faith in the way that governments deal with immigration. This is slightly different to public anxiety about immigration, or the percentage of the population that approves or disapproves of measures and proposals, but they are all fundamentally connected. If there is no confidence in governments in the first place, then everything that governments have responsibility for is potentially spiralling towards disaster. The question of competence becomes particularly important if there is a consensus over what should be done about immigration, and it then becomes, in electoral terms, a 'valence' issue. Immigration is interesting as it has traditionally been thought of as neither valence issue nor one that neatly fits traditional left-right conflicts. It has been argued that Britain reached this point in the 1980s with a 'depoliticization' of race (Messina 1989), but others have pointed out the continued differences between the main parties in both policy and practice over immigration (Smith and

Marmo 2014). Research suggests that political parties that do best on the topic are those who have managed to gain 'ownership' or a strategic advantage compared with their rivals (Odmalm 2012).

'Owning' the immigration issue becomes difficult in the wider context of how people think about politics and politicians: their competence, their honesty, integrity, and consistency; and their ability and willingness once in government to carry through what they have said they will do. It could also be thought of as a problem of managing expectations, of transparency, and the communication of complexity and uncertainty. There is the 'chicken and egg' problem in terms of whether one lays the blame at the door of professionalized politicians and their attempts to 'depoliticize' (Hay 2007) or the growing apathy and disengagement of the general public in the context of declining social capital (Putnam 2000). Either way, there has been talk of a 'crisis of democracy' in both Britain (Parry et al. 1992) and the USA (Verba et al. 1995) since at least the mid-1990s.

In the USA, the inability for the federal government to pass comprehension reform on immigration has contributed to a general decline in confidence in Washington. As Senator Marco Rubio said following the failure of a 2013 Senate Immigration Bill to pass through Congress: 'there now exists an incredible level of mistrust on anything massive that the government does' (Cillizza 2015). A 2015 poll found that trust in the federal government had dropped by 10% between 2000 and 2012 among 19–29 year olds (Harvard 2015). When asked to name the most significant problem facing the USA in 2014–2015, top of the list (with 18%) was 'the government' (Gallup 2015b).

Only a small minority of the British public have confidence in the government's handling of immigration. A poll conducted on behalf of MigrationWatch in 2003 reported that 76% disagreed with the statement that the government is 'open and honest' about immigration (MORI 2003). The Coalition government of 2010–2015 made the regaining of trust over immigration a central objective, but dissatisfaction with the government remained high: over two-thirds (69%) still felt that the government was not being honest about the topic in 2014. When asked about government handling of immigration and asylum, 72% were dissatisfied in 2007, and this had fallen, but only slightly, to 64% in 2014 (Duffy and Frere-Smith 2014; Ipsos-Mori 2014b).

Conclusions

One of the central conceits of the contemporary immigration debate is that rich, industrialized countries in the Northern hemisphere such as the UK and the USA are facing a common threat: a migrant crisis. This veritable conflagration is endangering the modern liberal democratic state; pressure is building because of an inexorable rise of inward immigration of all types, particularly, irregular. The only reasonable and sensible policy response is to urgently implement tough (but fair) measures: tighter restrictions on entry for certain types of international movement, ever-more complex rules and obstacles to prevent permanent immigration, and a ratcheting up of enforcement measures within the state to ensure compliance with the rules—but more importantly as a deterrent to would-be migrants. This last point betrays the widespread belief that liberal democracies are attractive to aspiring migrants (sometimes fatally so) because, once present on the territory, they can take advantage of the many opportunities and protections that these countries provide.

Talking about a migrant crisis in this way thus allows states, by implication, to express pride in the quality of their economies, their social systems, and their record in providing their citizens with prosperity, rights, and freedoms. It also allows them to paint the rest of the (non-liberal democratic) world as a dystopian zone beset by persistent conflict, crisis, poverty, government corruption, and incompetence inevitably providing an increasing threat. In other words, it is a deeply political narrative. It rests upon an illusion of irresistible force (growing immigration) meeting immovable object (finite resources and geography of the liberal democratic world) resulting in a relentless magnetic pull to all those who have the misfortune to have been born in the wrong place and requiring a remorseless reaction to avoid collapse and catastrophe.

The language of crisis besets politics, more than ever following the financial turbulence and subsequent global recession that started in 2006/2007. This has been described as one of the 'three great crises of capitalism of the past 150 years' (Gamble 2009: 452). But what defines a crisis? As Colin Crouch has pointed out, the ideas often associated with the label of 'neoliberalism' were thought to be in crisis in recent years, but they appear to have survived their supposed collapse and failure (Crouch 2011). This leaves a situation of purgatory, or as Colin Hay puts it: 'our situation is one in which the old is dying and yet the new cannot be born—a 'catastrophic

equilibrium', in the terms of Antonio Gramsci, rather than a crisis per se' (Hay 2010: 3).

NOTES

1. E.g. 'MigrEurop' http://www.migreurop.org/, and others such as http://www.unitedagainstracism.org/campaigns/refugee-campaign/fortress-europe/.
2. http://www.theguardian.com/world/2014/sep/15/migrant-boat-capsizes-egypt-malta-traffickers.
3. http://www.independent.co.uk/news/world/europe/7000-migrants-rescued-from-stricken-boats-in-mediterranean-in-past-five-days-10176706.html.
4. Hansard, House of Commons, 30 October 2014: Column 397 http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm141030/debtext/141030-0001.htm#141030-0001.htm_spmin19.
5. Calais Migrant Solidarity has been recording deaths through personal testimony and press reports: https://calaismigrantsolidarity.wordpress.com/deaths-at-the-calais-border/.
6. See, for example, comments by Tony Smith (former head of the UK Border Force [UKBF]) in April 2013, http://www.workpermit.com/news/2013-04-17/former-uk-immigration-boss-says-system-has-been-out-of-control-since-2000.
7. Comment by Keith Vaz, MP, December 2014, http://www.bbc.co.uk/news/uk-politics-30550483.
8. See, for example, comments by US Senator Jeff Sessions, December 2014 http://www.independentsentinel.com/sen-sessions-u-s-immigration-system-has-plunged-into-a-state-of-lawless-chaos/.
9. Channel 4, 2 March 2015: 'Yarl's Wood: Undercover in the Secretive Immigration Centre http://www.channel4.com/news/yarls-wood-immigration-removal-detention-centre-investigation.

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CHAPTER 3

The Human Rights Deficit

Introduction

Human rights are for everyone, everywhere—or so we are told. They are supposed to offer universal protection, but immigrants are frequently denied them, even in countries that have signed up to international agreements that guarantee protections for all. This problem is particularly acute for not only irregular immigrants, asylum-seekers, and refugees (Dembour and Kelly 2011a) but also immigration that is legal and managed by the state (De Guchteneire et al. 2009). This chapter explores the system of human rights, claims that they are 'essential' or 'eternal', and how there are problems of consistency and implementation across the multiple regimes that have evolved and developed. It looks at two specific examples which have relevance for the protection of those who cross borders: the Geneva and Palermo regimes, which relate to refugees and human trafficking, respectively. It finishes by considering the key bilateral and regional arrangements that are of particular interest to the UK and the USA. It finds that human rights norms do have meaning and purchase at domestic and international level and that demands can be made upon national governments to address problems, or at least respond to claims of mistreatment. However, the pressure for states to comply with human rights norms does not ultimately prove decisive.

A. Balch, *Immigration and the State*,

Not One, but Many International Regimes

Compared with other issues like international finance or the environment where there is a defined system of cooperation between states, the international governance of immigration is left to a patchwork of agreements. In the light of the escalating politicization of the issue at nation-state level, there have been growing calls for this to change and a more coherent system of international governance to be applied. As Chap. 2 outlined, large numbers of immigrants are arbitrarily detained, criminally exploited, or insufficiently protected by either national or international institutions. Demands for international cooperation are increasing due to rising immigrant numbers, global structural and environmental factors, and levels of irregularity—all suggesting that national systems are inadequate or failing (Koser 2010: 302–303). Indeed, it has been noted that there has been a growing regionalization and internationalization of immigration policy issues in the last 20 years (Geiger and Pecoud 2014). So if a desire for international cooperation exists, can international norms carry meaning and affect decision-making at the nation-state level? How can we determine the extent of this influence and understand the ways in which impact occurs? This is no easy task considering the absence of an overarching global order of immigration governance—making it difficult to identify the dependent variable (Talani 2015: 25). For human rights advocates, the problem is fairly clear: they conclude not only that immigration itself is caused by a deficit of human rights but also that greater adherence to international human rights principles is absolutely necessary to enhance the conditions experienced by immigrants (Grant 2005; Weissbrodt 2008; Grant 2011).

Questions about the influence of human rights connect with enduring divisions over the impacts of international normative regimes. There are those who support the realist notion that states are unlikely to sign up to anything with significant obligations; they will be reluctant to ratify treaties if their domestic legal and criminal justice systems will be directly affected (Hill 2015). Then, there are others who claim that binding international agreement is not necessary: liberal structures within states can draw on human rights principles and the decisions of international human rights bodies to force concrete changes to state practices (Hillebrecht 2014). Despite this enduring liberal/realist division, research has highlighted a range of different kinds of mechanisms and explanations for states signing up to international human rights conven-

tions (Cole 2005) and identified how human rights norms can become incorporated into domestic politics (Risse and Sikkink 1999; Koenig 2008; Basok 2009).

The challenge in the case of immigration is practical as well as normative: there are clear gaps in every aspect of international governance, not just human rights standards. Immigration itself illustrates the interconnectedness of nation-states and demonstrates that governance is not simply about territorial borders. The international dimension incorporates different types of overlapping regimes in a complex, partial, and patchy framework.

There are many different kinds of international agreements that specifically mention immigration or relate directly to the international movement of persons. These range from the Universal Declaration of Human Rights (UDHR) at one end right down to narrow and specific 'return and readmission' agreements at the other. They include not only reciprocal arrangements including visas and labour recruitment but also regional arrangements achieved through the European Union (EU) and North American Free Trade Agreement (NAFTA). These involve competing, sometimes complementary, standards for states to draw upon in deciding upon the treatment of immigration, flowing from international norms that range from universal ideas about humanity, state-sovereignty, or liberalism and neoliberalism. The variable impact of these can be traced back to the success with which these norms have been established and consistently applied within international and regional governance regimes.

ARE MIGRANTS' RIGHTS DIFFERENT?

There is a consensus embedded in the post–Second World War formulation of human rights that all human beings are equal. It thus follows that the treatment of citizens and non-citizens, nationals, and immigrants should be based on the same core values. Human rights were certainly believed to cover both aliens and citizens in early drafts for the UN declaration. Evidence is contained in the submissions from both the UK and France and from the inclusion of the word 'dignity' in Article 1, which emphasizes that all human beings were to be included (Grant 2011: 25–28). Within the UDHR, there are specific relevant provisions, namely Article 13 (1) which states that 'Everyone has the right to freedom of movement and residence within the borders of each state' and (2) that adds 'the right of everyone to leave any country, including his own and to

return to his country'. Article 14 (1) states that 'everyone has the right to seek and to enjoy in other countries asylum from persecution'. However, there is a clear asymmetry between the right to leave and the right to enter states. This imbalance is seen in the International Covenant on Civil and Political Rights (ICCPR)[1] which states that 'everyone shall be free to leave any country, including their own' (Article 12) but does not offer any corresponding right to enter a country. There also remain serious limitations for certain immigrant groups in accessing these rights. As the International Commission of Jurists concluded, 'In this world, migrants have rights, but no or little way to make use of them or ask for their respect. They are legally voiceless' (ICJ 2011). In short, in the human rights regime, there is a serious flaw, or 'a gap between the promise of human rights for all, and the reality of discrimination and abjection routinely faced by many migrants' (Dembour and Kelly 2011b: 3).

How has this happened? There are two interconnected sets of problems within the international human rights regime that can explain why migrants' rights have not equalled non-migrants' rights. The first goes deep into the traditions or antecedents that are often said to have informed or preconfigured international human rights as we now understand them. The second relates to the internal inconsistencies in the documents, treaties, and agreements that form the basis of the international human rights system. As we shall see, while certain aspects of immigration such as the right to free movement and protection for refugees are covered, an actual right to immigrate is not recognized in contemporary human rights conventions; there is no such principle included in any of the constitutions of receiving countries. Notwithstanding this, the fact remains that whether someone is a non-citizen or an immigrant—or even what states refer to as an 'illegal immigrant'—this should be irrelevant when it comes to their treatment by the state. Contemporary international human rights are based on the notion of shared humanity rather than on the narrower basis of membership of a specific political community.

This has not always been the case. There are many supposed 'roots' of human rights. These include theories and practice regarding 'natural rights' and important statements about natural rights made through the ages—from the Magna Carta to the English Bill of Rights, declarations about the 'rights of man' during the French Revolution, and the US declaration of independence or indeed the US constitution. Each has meant something different, however. The retrospective connection between what we understand as the contemporary human rights regime and either the doctrine of natural rights or eighteenth-century declarations is spuri-

ous and misleading (van Dun 2001). While the construction of a doctrine of human rights via classical, Roman, Christian, and enlightenment phases creates a very recognizable 'hymn to the civilising progress of what we now think of as western statehood' (Gearty 2008), the invocation of a language of natural rights can also become a universalist camouflage for naked self-interest. For some, the last 500 years or so of the story we tell about human rights is at least half about the 'darker' side of modernity: colonialism. From this perspective, the UDHR was 'not only a Euro-American and North Atlantic invention, it was an invention to correct the errors and mistakes of a handful of Western European states and the United States' (Mignolo 2014: 161). Marxists have long been suspicious of the concept of human rights: they see it as a negative development: emasculating people to deny them the possibility of solidarity and collective action, thus continuing the problem of division between state and civil society (Marx 1975).

Do these critical perspectives on human rights explain why the system has struggled to become truly universal and cover non-citizens? For conservative critics of the French Revolution, the lack of coverage for non-citizens would not be a problem at all. They believed that rights were something you had by virtue of citizenship of the national community—they were inherited from the political labours of your forefathers (Burke 1834: 393). The perennial problem, noted by Kant and others, is the tension between the universalism within declarations and the reality of national political structures as underpinning those rights. The issue of the inhospitable treatment of foreigners emerged as a key aspect of Kant's cosmopolitan project (Kant 1932 [1795]). And as Arendt observed in her analysis of totalitarianism, the fact that humans exist in social orders means that this is the context within which they enjoy rights (the right to have rights). Without this, abstract ideas about human rights are useless, as demonstrated by the experiences of national minorities and stateless people in the 1930s (Arendt 1994: 292) and by refugees from the Middle East and Africa in the 2010s. These people have discovered that the existence of international human rights is insufficient protection without political recognition.

A Problem of Implementation?

Aside from the inconsistencies in the very foundations of the human rights regime, there is another problem in their implementation and enforcement by states. It is an enduring characteristic of the international system

of human rights that has developed over the last 50–60 years that it is the nation-state which interprets, protects, and enforces. States choose not to observe certain principles—the ICCPR outlaws arbitrary detention, for example, but it has been argued that many of the growing numbers of immigrants now in criminal justice facilities in the USA and across the world are being held arbitrarily (Weissbrodt 2008: 4). Human rights institutions such as the European Court of Human Rights (ECHR) often find poor implementation and enforcement of human rights by national systems governing immigration. This is difficult to remedy because of the limited power of international human rights guardians to penalize states, plus there are significant hurdles for non-citizens to challenge national governments on these issues in the first place.

The explanation for this situation is relatively simple, and it stems from the very principle of universality within international human rights law and the constitutions of liberal democracies. This has implications for state interests: once an individual is within a state's territory, it becomes difficult to deny that individual the same human rights as everyone else. This vulnerability of states to claims on the basis of human rights is why the USA maintains the notion that irregular immigrants are not officially on the US territory. It also explains why the right to enter became such a significant issue in the UK in the 1960s and 1970s in the context of an expansive notion of British citizenship that at one point seemed to cover everyone in its sprawling empire. One could point to several areas where there are tensions between the state's interests in controlling population movement and the individual's right to human rights and equal treatment. Certain rights in the UDHR remain vague (Article 3 on personal liberty, Article 4 against slavery, Article 8 on an effective remedy, and Article 12 on fair trials) because they could be seen as creating a right to free movement (Higgins 1973: 342–343). States negotiated clear exclusions in international human rights law to protect their power over population, for example, denying non-citizens political rights (such as voting) and immigration without documentation (Weissbrodt 2008: 35).

PROTECTING MIGRANT WORKERS?

The lack of protection for aliens or non-citizens contrasts with the steps that were taken to protect refugees and stateless persons. It was assumed that regular immigration could be regulated through bilateral agreements and labour standards via the International Labour Organization (ILO)

(Grant 2011: 33). The fact that this left significant gaps in protection for immigrants became abundantly clear when, in 1972, Uganda revoked residency and expelled 60,000 of the country's Asian minority, leading to many becoming stateless (see Chap. 6). The Human Rights Commission recognized there was a problem and asked Baroness Elles to produce a report for the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. The report concluded that:

> the problem of the protection and treatment of aliens is not transient, temporary or local, but continuing and universal. It is not an isolated problem in point of time or of place, and therefore a universal approach is needed and an effort to reach universal consensus on this problem must be made. (Elles 1980: 366)

One of the results of this report was the initiation of efforts to remedy the gap. On 18 December 2015, it will be the 25th anniversary of the adoption by the UN General Assembly of the Convention that came out of this process: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It is the main international human rights instrument that deals with the fair treatment of immigrants. The first thing to note about this instrument is the limitation which is made clear in the title—it relates only to workers or families of workers. The agreement was not designed to protect all immigrants or as a means of providing a general human right to migrate. These limitations in scope and aim clearly reflect the difficult balance that the drafters attempted to strike between human rights of immigrants and the economic interests of states in using immigrant labour. The final result has not met with universal approval. Indeed, it can hardly be listed among the more successful of the UN's Conventions. Despite the growing relevance of immigration to an expanding number of states, the agreement has attracted a relatively low number of state-signatories. None of those that have signed up include the traditional receiving states of the West or those emerging economies where immigration is likely to grow. Every year, the date on which the agreement was signed is celebrated by many across the world as 'International Migrants Day', but in many ways the celebration serves as a reminder of a 'culture of silence' over the rights of migrants (Freedman 2014).

There are, however, two further international regimes relating to human rights that impact upon the ways that states should treat immi-

grants. Both recognize that people who cross borders can be in real danger and need protection. The first of these concerns refugees and was founded upon agreement reached at Geneva in 1951. The second relates to human trafficking, and the victims of this crime, and was launched in Palermo in 2000.

THE GENEVA REGIME (REFUGEES)

There has long been an international norm concerning the special status of refugees. In the European context, this is often traced back to the flight of the Huguenots from France in 1685. Despite royal decrees preventing emigration, some 200,000 Huguenots escaped France following the removal of protections for religious minorities by King Louis XIV (the revocation of the Edict of Nantes). At this point, there was a 'laissez-faire' approach to border controls—governments generally welcomed newcomers as potentially beneficial new residents, considering they could afford to travel (Barnett 2002: 240). This changed with refugees generated by the French Revolution at the end of the eighteenth century—their welcome or rejection could be linked to that government's support for the revolution itself. The mixture of ideology and refugees continued in the nineteenth century with prominent refugees such as Mazzini ejected from France and continual pressure on Britain from its neighbours in 'continental Europe' to stop harbouring exiles (Porter 1979).

The international governance of refugees was established by the predecessor of the UN—the League of Nations. It created a High Commissioner for Refugees in 1921, under the direction of Fridtjhof Nansen, mainly to respond to population movements generated by the Russian Revolution. The creation of 'Nansen passports' was agreed in 1922, and these documents were given to Russian refugees. However, there was no agreed definition of what a refugee was—everything was ad hoc with arrangements for protection provided for particular categories, groups, or nationalities as the need arose. All states agreed to recognize the Nansen passports, but there was no obligation to admit the refugees. The weakness of this regime was exposed by Jewish refugees, highlighted by the failure of the US President Roosevelt to gain agreement on how to deal with the issue at a conference which took place at Evian in 1938.

Second World War and its aftermath resulted in more cooperation to deal with refugee crises, through the United Nations Relief and Reconstruction Agency (UNRRA) between 1944 and 1947, but Cold War politics had

already taken hold. The UNRRA and its successor the International Refugee Organization (IRO) were not recognized by the USSR (Soviet Union). The creation of the United Nations High Commissioner for Refugees (UNHCR) in 1951 was recognition that refugee problems had not been resolved, and the Geneva Convention of the same year finally established a definition. However, it was limited by the fact that it still focused on the European and World War origins of the problem; it only covered movements before 1951 and reinforced state sovereignty by only recognizing refugees who were outside their country of habitual residence. In short, it emphasized 'the territorial nature of the refugee regime reinforcing respect for sovereignty' (Barnett 2002: 246). These temporal and geographical limitations were eventually removed by the 1967 'Protocol Relating to the Status of Refugees'. Overall, the refugee regime initiated by Geneva became very much part of the story of the Cold War. The regime has always faced criticism for being universal in formal terms only; in substantive terms, the regime has been accused of being selective, Eurocentric, politically malleable, and dominated by domestic interests (Hathaway 1990). It focused on refugees from Soviet-bloc countries, and the UNHCR only grew because of support from the USA. It is only in the period after the Cold War that the regime could make claims to be international (Barnett 2002: 255).

One of the reasons the regime has provided much less than comprehensive protection is due to the maintenance of a distinction between refugees and asylum. The first refers to a category of people and the latter to the protection that the state may offer and that refugees benefit from. This is important because while states who sign the Geneva Convention might be obliged to recognize refugees, there are no corresponding obligations regarding what protections they should then give. This is why it is usually held that individuals only have the right to apply for or claim asylum and that this does not trump states' rights, for example, to expel aliens.

The evidence in the more than 60 years since Geneva show that the state can also innovate to avoid meeting its obligations regarding the treatment of potential refugees. As Matthew Gibney concluded in the case of the UK: 'the institution of asylum, while established to serve humanitarian goals, has become, in early twenty-first-century Britain, a justification for boosting the coercive powers of the state' (Gibney 2008). It is connected to the growing array of attempts by liberal democratic states to extend immigration controls beyond their own territory. The prospective refugee thus encounters 'the state' well before he or she arrives on its territory, through a consulate or at the departure gate, or even through those third

governments that the state has delegated its powers of immigration control. These 'offshoring' and 'outsourcing' raise concerns that states are finding ways of circumventing basic human rights obligations, 'thereby undermining the ability of the present framework to guarantee refugee protection effectively' (Gammeltoft-Hansen 2011: 3).

Some have suggested that, gradually, a right to asylum for refugees has developed as a norm under customary international law (Worster 2014). Ultimately, however, the refugee regime remains one subservient to the national politics of immigration. This is because the nation-state has maintained its control over how to treat immigrants, and the Geneva regime does not break this monopoly:

> whereas the human rights regime aspires to a solidarist world beyond the nation-state, the refugee regime rethinks the state as the solution to the problem. Refugee rights are an interim measure for those cases of disruption to the state system throughout which the state remains the ultimate goal and reference. (Haddad 2003)

The Palermo Regime (Human Trafficking)

A global 'anti-trafficking' regime has developed since a landmark agreement reached at Palermo, Sicily, in 2000 under the auspices of the United Nations Office on Drugs and Crime (UNODC) (Balch 2015). This agreement was important for two things: establishing a definition of human trafficking and setting out what states should do to tackle it. By 2014, it had been ratified by 159 states, and by signing up to this regime, states are saying that they will put in place certain legal measures (i.e. incorporate the definition of trafficking comprises and policy frameworks to tackle human trafficking. The definition comprises three components:

1 the recruitment, transportation, transfer, harbouring or receipt of persons
2 by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person
3 'for the purpose of exploitation'. (The protocol goes on to define 'exploitation' as 'at a minimum, the exploitation of the prostitution

of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'). (UN 2000)

The accompanying framework for action to tackle human trafficking was based on the three 'P's: prosecution, prevention, and protection. Signatories are required to incorporate these into their national responses. The important aspect in the context of this discussion is the third of the 'P's—protection. There were no specific obligations with regard to immigration systems, but some hopes that this might lead to greater respect for human rights of immigrants. It is fairly well established that there is a positive correlation between human trafficking and migration patterns, particularly irregular flows (Mahmoud and Trebesch 2010); this is especially the case when there is the possibility of visa-free travel and where the host country has poor institutional safeguards in place (Hernandez and Rudolph 2011). The uncertainty of legal status conferred by the state (via immigration systems) onto the individual (i.e. immigrants) has been shown to contribute to the vulnerability to trafficking and exploitation (Dwyer et al. 2011; Lewis et al. 2013).

However, there are doubts over the ability of the anti-trafficking regime to positively impact human rights (O'Connell Davidson 2010). There are also questions about effectiveness. A study of 180 countries between 2000 and 2010 found developed countries complied better than less-developed countries with Palermo, but mainly on prosecution rather than protection of victims (Cho et al. 2012). There is certainly a tension between the fight to eradicate human trafficking and core human rights goals (Hathaway 2008). Sovereignty and security were the 'true driving force' behind Palermo (Gallagher 2001) and attempts to assert the primacy of human rights were only later emphasized by the UN (e.g. Office of the High Commissioner for Human Rights [OHCHR] 2002). The regime is far from being the product of grass-roots activism; it is very much a state-led process (Chuang 2014) that demonstrates the strong influence of the USA (Balch 2015).

Despite the clear security emphasis of its genesis, the evolution of the anti-trafficking system provides 'unprecedented opportunities' to create an international regime that finally moves beyond 'platitudes' and the 'illusion of legal protection' (Gallagher 2009: 794). It is certainly the case that since the agreement at Palermo positive obligations to deal with the problem of human trafficking have been established for states through the rulings of international human rights tribunals (Piotrowicz 2012). The rights

created through the US anti-trafficking legislation also became significant in 2014 with an increase in child refugees (see Chap. 7). However, it is exceedingly difficult to establish the impacts of this regime in tackling the problem (McDonald 2014). There also remain questions over the power of international agreements on anti-trafficking to actually change the way that states treat immigrants—that is, as potential victims or deportable subjects (ATMG 2010).

BILATERALISM, CAPITULATION, AND GUNBOAT DIPLOMACY

There is another way of thinking about international protection of rights for non-citizens: one state's immigrant is another's emigrant. Reciprocal and business-related protections for immigrants long pre-date international human rights. Capitulation treaties, where a sovereign would grant a legal enclave to alien merchants, were used ever more frequently from the seventeenth century onwards, as trade expanded, particularly, between Europe and Asia (Lillich 1984; Weissbrodt 2008: 27–28). The principle of fair treatment for non-citizens was also included in Friendship, Commerce, and Navigation (FCN) treaties and other bilateral agreements, particularly those conferring 'Most Favoured Nation' status, which usually meant guarantees over the treatment of foreign nationals from the partner country. However, by the nineteenth century, capitulation treaties lost some of their attractiveness for the states receiving European migrants: they were perceived as unequal and were regarded as 'humiliating to non-Western States because they usually involved the derogation of the non-European State's sovereignty' (Weissbrodt 2008: 28). The first half of the twentieth century saw these bilateral agreements morph into attempts to cooperate at the regional and global levels—for example, through the International Conference of American States and also through the League of Nations. These had limited success until a new wave of global multilateralism was ushered in under the UN, alongside regional integration, or 'new regionalism' in Europe.

International conventions and treaties protecting the rights of non-citizens date back to the medieval period when specific practices emerged in order to protect trading communities abroad (Lillich 1984; Weissbrodt 2008). One of these was the issuance of letters by rulers enabling the injured party to execute 'reprisals', justified presumably on the basis of the 'zero-sum' mercantilist calculations of states. The system of letters was 'obviously prone to outright abuse in the worst instances, and to the generating of international ill will in the best of cases' (Lillich 1984: 8). There

were attempts to provide a more coherent principle of 'diplomatic protection', most famously attempted by the Swiss legal scholar Emmerich de Vattel in 1758. Vattel proposed that the State has a right to intervene if and when its citizens are treated unjustly outside its territory. The basis for this was the 'legal fiction' that injuries to such citizens were the same thing as injuries to the state. The problem was this could be used by foreign investors to 'strong-arm' weaker states and by states themselves as a pretext for war. Famous examples are the arguments stated for the declaration of war on Mexico by the USA in 1846 and by Britain leading up to the Boer War (1899–1902). This became a particularly sensitive issue in Latin America, and it led Argentine jurist Carlos Calvo to reject the Vattel doctrine, and the 'gunboat diplomacy' it became associated with, in favour of a radically nationalist alternative. Calvo sought to establish the primacy of national legal systems for resolving disputes, arguing that aliens should only be able to seek redress locally on the basis that they would be treated exactly the same as nationals and that foreign states could not intervene on behalf of their citizens in other countries (Lillich 1984, Daly 1994). Of course, the Calvo doctrine opens up a series of problems if the local courts are unjust, and particularly if they discriminate against immigrants. Its opponents point out that there must be universal norms of treatment for non-citizens, often referred to as the 'international minimum standard' (Lillich 1984: 16–17).

'New' Regionalism and Immigration

Continuing the focus on the UK and the USA as case studies, the next sections will examine these two countries' incorporation, respectively, into European and North American regional arrangements on immigration during the late twentieth and early twenty-first centuries. Each section will ask what sort of norms regarding treatment of non-citizens are established and embedded in the developing European and North American immigration and asylum regimes.

North America and NAFTA

The USA is subject to a regional human rights regime through the Organization of American States (OAS) and its Inter-American Commission on Human Rights (IACHR). This is weaker than the European equivalent with declarations non-binding, a lack of resources, and regular fail-

ures for state parties to implement or comply with standards (Goldman 2009: 882–886). However, it has published reports on the treatments of immigrants in the USA (IACHR 2010) and in Mexico (IACHR 2013), looking at the extent to which these countries comply with international human rights obligations with respect to the protection of migrants and asylum-seekers. The 'IACHR Principles' spell out the obligation for states to protect basic human rights for those in detention and include specific points about the treatment of immigrants. For example, the separation of those who are refugees or being held on immigration-related issues from criminal inmates (IACHR 2011). The evidence relating to the USA demonstrates that the impact of these is questionable. The detention and deportation system used by the USA to enforce its immigration regime clearly violates many international and regional human rights norms (Provo 2014). The most visible example of this is the detention centre at Guantanamo Bay, which has proven the weakness of the IACHR in defending the human rights of non-citizens (Buys 2013).

Perhaps, more relevant to immigration and immigrants is NAFTA which came into effect in 1994. Although not mentioned in the text, NAFTA was supposed to affect immigration between the USA and Mexico, by reducing it—something repeated by the respective leaders of the two states at the time it was signed (President Bill Clinton and President Carlos Salinas de Gortari). Among the aims behind NAFTA was that in the long run Mexico would become a more attractive destination for Foreign Direct Investment (FDI) due to its cheap labour and preferential access to the US market. There were some provisions for immigration, but they were relating to the politically less difficult questions of mobility of business owners and the highly skilled (Samers 2015). Regional economic integration in North America since the 1990s was supposed to accelerate convergence in terms of economic development thus reducing 'push and pull' factors behind immigration. The result, however, has been more or less the opposite. In the years after NAFTA, immigration from South to North between the two countries has continued to reflect the generation of employment in the USA. This meant that up until 2008, there was continued immigration growth (Flores-Macías 2008), but after the economic crash from 2008 to 2014, this fell off precipitously (Samers 2015). Possibly more concerning for those who supported NAFTA's aims to equalize economic conditions in North America, there has also been an increase in disparity in terms of economic development between the USA and Mexico (Delgado-Wise and Corvarrubias 2007).

Partly to compensate for the lack of substantive immigration issues within NAFTA (i.e. apart from the high skilled and movement of businesses) a few years later (1996), a Regional Conference on Migration (RCM) was held. The overarching aim of the conference was to promote regional cooperation on immigration in the context of economic and social developments. Sometimes called the Puebla process (due to the city where it took place), the event included the NAFTA partners along with representatives from Central America, and the UNHCR and International Organization for Migration (IOM). The resulting 'Action Plan' was notable for its lack of an agreement on legal migration: its contents consisted mainly of measures on human trafficking and cooperation on the return of migrants to countries outside NAFTA, along with vague declarations on human rights. The Puebla process did begin a regional conversation over immigration, but just like NAFTA, it failed to address anything relating to basic employment conditions and rights or problems such as child/forced labour (Pellerin 1999).

A new initiative on regional immigration cooperation was started by newly elected presidents Bush and Fox in February 2001, in a joint statement on immigration entitled: 'Towards a Partnership for Prosperity: The Guanajuato Proposal'. The proposals from the Mexican side were for an amnesty for undocumented workers, increase in legal migration routes, including temporary migration programmes, and improved safety at the border. In the end, there would be no agreement. The failure is often blamed on 9/11 (Alden 2008), but negotiations stalled just before this date and it is more likely down to enduring asymmetries between the two countries on the immigration issue and domestic political concerns in the USA (Delano 2009). The fall-out of 9/11 and the enormous effects of the knee-jerk closure of borders led fairly swiftly to 'smart borders' agreements with both Canada and Mexico characterized by the application of new technologies to border security practice.

A critical perspective places the development of bilateralism between the USA and Mexico on immigration very much in the context of the expanding influence of neoliberalism. International agreements on immigration such as those between the USA and Mexico simply serve the interests of capital in extending deregulation, providing ever more flexible and informal labour (Delgado-Wise and Corvarrubias 2007). As Samers concludes, NAFTA and other regional efforts to cooperate on immigration from the 1990s only really provided limited liberalization for the highly skilled and

no additional protections for low-skilled (i.e. Mexican) migrants, mainly due to domestic political forces within the USA (Samers 2015).

Europe and the EU

Regional integration in Europe stands in stark contrast to other forms of regional integration such as NAFTA. One only needs to consider the stated goals of the EU to create an 'Area of Freedom, Security and Justice' or a 'Europe of Values' to realize that, at least in rhetorical terms, there is a strong normative ambition. Some have argued that this is a key strength of the European version of regional integration (Manners 2002). The prospect of the EU joining the Council of Europe (CoE) and becoming subject to the ECHR could be seen as further proof of this normative dimension.[2] The EU certainly presents a unique and putative example of a post-national polity, providing a fascinating window to explore the evolving relationship between immigration and the state in the twenty-first century.

Often described as 'sui generis' given the lack of any similar comparators, the EU provides puzzles for International Relations (IR) theories (Phelan 2012) and carries additional analytical challenges in contrast with national case studies. One obvious risk in the field of EU studies is the fallacy of composition—that is treating the whole as a larger version of its constituent parts. There is also the question of multi-level and multi-speed complexity and variable geometry over immigration and asylum: cooperation and integration in Europe has proceeded faster in some areas than others. This has resulted in a variegated and fragmented jigsaw puzzle whereby certain competences are exclusive to the EU, others are shared, and others remain the sole domain of the Member States. In addition to this, there is a lack of uniformity in terms of how these apply or are implemented across the EU. The topic of immigration illustrates all of these complex features: some EU Member States (notably, the UK) can opt in and out of measures relating to the area; some aspects of international movement of persons, such as the mobility of citizens of the Member States have become 'communitarized'; others, such as immigration to and from third countries (i.e. non-EU states) have become partially subject to EU rule-making (Balch and Geddes 2011; Boswell and Geddes 2011).

This last point about the bifurcation of immigration by the EU institutions into internal 'mobility'—which relates to movement by nationals of one member state to another—and external 'immigration'—which relates

to the movement of nationals of 'third countries' (i.e. non-EU states)—is axiomatic. Indeed, it has been a key aim for the EU to separate the two aspects in order to 'de-toxify' intra-EU movement, at least partly through a re-positioning of it in more positive terms. This is as 'mobility' or the right to 'free movement'—an instrument for job creation (CEC 2008a, 2010) as opposed to the security-related demands and challenges associated with 'external immigration', where the appropriate approach is provided by the EU's 'internal security strategy' (CEC 2014a). Despite this apparently neat terminological and institutional separation, the EU somewhat confuses things by concluding 'mobility partnerships' with third countries on immigration and the Commission names its policy plans on immigration (i.e. not on intra-EU migration) 'Migration and Mobility'[3] (CEC 2014b).

Intra-EU mobility has developed since the original founding treaties of the EU included aspirations for free movement of workers as one of its four freedoms. It was only in the late 1990s that this gradually started being a general right of free movement, largely enabled by the Maastricht Treaty's creation of European citizenship and the Europeanization of related anti-discrimination norms. Legal scholars have been inspired by the novelty of European citizenship and its apparent power to erase the very status of immigrants and redefine who is inside/outside of the polity:

> There have not been many institutions regionally and globally that have had the capacity to transform 'enemies', 'aliens', 'migrants', or 'others' into fellow EU citizens and rights holders in a common geopolitical space in such a short period of time. (Kostakopoulou et al. 2014: 444)

This optimism contrasts with the generally pessimistic view of European citizenship in the 1990s and is partly due to decisions by the European Court of Justice (ECJ) and institutional developments that have strengthened and deepened rights and protections associated with the status (Kostakopoulou 2014). However, the development of European citizenship since Maastricht has been the one where the Member States have been particularly cautious, leaving the prospect of post-national citizenship as distant as it has ever been (Olsen 2012: 144). There is a powerful legacy from the initial market-building goals that underpinned the quest to achieve freedom of movement for workers—even after that was expanded to cover all European citizens. This can be observed in the rules for the economically inactive, which are particularly obscure. There also

remain potent questions regarding the extent to which states can discriminate against EU citizens when it comes to social benefits. In short, it is still unclear what sort of 'solidarity' European citizenship actually creates. The courts have established that free movement should not create an 'unreasonable burden' on the host state and developed 'tests' to decide whether states can discriminate based on the extent to which the individual has a 'genuine' link to the country of residence and can exhibit a 'certain degree of integration' (Thym 2015). These have become highly relevant considering the proposals by British politicians in the 2015 election campaign to restrict access to social assistance and housing for lengthy periods.

European citizenship is fragile because of the ability of Member States to derogate from free movement provisions on the basis of public policy, public security, or public health grounds. This has left a fairly wide hole, undermining the integrity of European citizenship status, and raising questions over what security of residence it actually provides (Ibid p459). One only needs to think of the actions of France in expelling European citizens from Bulgaria and Romania as a concrete example (Balch et al. 2014).

In contrast with the long history of cooperation on intra-EU migration, the developing regime on external immigration and asylum began with very loose and inter-governmental measures at Maastricht, a key impetus being the end of the Cold War (Boswell and Geddes 2011: 7). The Amsterdam Treaty (1997) added more competence for the EU, and by the Lisbon Treaty (2007), immigration and asylum had become core to the EU's business (Ibid.). This work has been carried out under the umbrella of 'Justice and Home Affairs' (JHA) in successive 5-year phases beginning with the Tampere Council programme (1999–2004) continuing through the Hague (2005–2009) and Stockholm (2010–2014) programmes (Monar 2014).

The influence of the emergent EU immigration and asylum regime is now a traditional question for EU studies scholars interested in Europeanization and policy change (Faist and Ette 2007). Hopes for a more liberal approach through the EU are continually dashed. Whether it is deaths in the Mediterranean, increasing use of detention, or the 'Franco-Italian affair',[4] there has been much despondency about the state of human rights in the European project (e.g. Ward 2012). The apparent 'race from solidarity' (Carrera 2011) and unsympathetic approach towards new migratory flows from Europe's southern periphery has prompted emotive language from inside and outside the EU. It is telling that the

Commissioner for Internal Affairs, Cecilia Malmström, described the French government's actions as a betrayal of the 'spirit of Schengen'.[5] As one of the cornerstones of free movement, the removal of some border checks by the Schengen agreement between many Member States exemplified the success with which internal EU mobility had been separated from external immigration.

It is difficult not to conclude that the EU has become a useful alternative 'venue' (Guiraudon 2000) for policymakers to either bypass democratic checks to enact unpopular policies or persuade their neighbours to join—and thereby bolster—populist and restrictive impulses over immigration. In short, the EU stands charged of enabling 'liberal' states to become more 'illiberal' (Guild et al. 2009). It would seem foolhardy to reduce the EU's influence in such a broad area to a single liberal/illiberal dimension, however, especially as the evidence is quite mixed. This is because when it comes to the EU's main powers to regulate and establish binding standards, there is inevitably a bit of 'levelling-up' and 'levelling-down' across the EU's member states (Boswell and Geddes 2011: 155).

Cooperation over irregular migration, asylum, and readmission agreements via the EU demonstrate how regional integration is an unlikely way to ensure greater observance of human rights norms. It has been argued that EU cooperation in these areas is dominated by the aim of restricting irregular migration coupled with hostility towards asylum-seekers (Guild 2006), constituting nothing less than a dismantling of liberal values such as those espoused by the Geneva Convention (Levy 2005). The deaths of migrants attempting to travel to Europe by sea in the Mediterranean have led NGOs to question the EU's 'double-speak' over humanitarian values and the inhumane treatment of immigrants and ask: 'do their actions stem from humanitarian concern, or from a cynical desire to limit the number of refugees, asylum seekers, and other migrants arriving on their shores?' (Sunderland and Frelick 2015)

While it appears that the implications of European integration for the treatment of immigrants are negative, it is important not to overlook certain aspects of what is a rather mixed picture. In the area of Justice and Home Affairs (JHA), the EU can act as an exchange for new ideas where policy learning and coordination can be informal as well as formal, and illiberal outcomes are not inevitable (Caviedes 2004). There is also the important dimension of judicial oversight, brought in by the Lisbon Treaty which incorporated a 'supranational' element (Kaunert et al. 2014). The ECJ can now be brought into play on JHA issues, and the Commission

(as 'guardian of the treaties') can bring cases against Member States that are over-stepping.

The issue of irregular migration provides a good example to illustrate this. One of the key instruments in the EU's fight against irregular migration has been the Return Directive (2008). This was condemned by many NGOs and civil rights advocates, not least because of its inclusion of a maximum detention period of some 18 months. However, for many EU Member States that had no limit to detention or judicial oversight of their processes, the EU rules constitute an 'improved' framework in human rights terms. Most Member States give their officials (police, immigration officers, etc.) powers to decide on detention or irregular migrants. The Return Directive does not stop this but at least imposes an obligation to provide judicial review of pre-removal detention or to allow those detained the right to a judicial challenge (Basilien-Gainche 2015). The problem is that this generates a need to provide legal assistance for individuals to pursue a case (EMN 2014). Its 'illiberal' aspects can be seen as simply re-constituting and Europeanizing the national framing of irregular migration, i.e. as a security threat (Askola 2010). There is some incorporation of minimum standards, but there is plenty of leeway for interpretation on national security grounds. This accords with decisions by the ECHR that have consistently underlined the sovereign rights of states to detain irregular migrants, even without any burden to prove whether it is 'necessary'. This explains, 'why immigration detention in general and pre-removal detention in particular have increased in Europe' (Basilien-Gainche 2015: 106).

The creation of the Common European Asylum System (CEAS) is another good example where the impact of the EU on treatment of immigrants can be mixed. On the face of it, the CEAS is a straightforward attempt to harmonize standards and practices across the EU. It has taken years to put together and has four main components: (1) the Dublin II Regulation, which requires asylum-seekers to make a claim in the EU state they pass through; (2) minimum standards for reception and detention; (3) minimum standards in processing of claims; and (4) minimum standards on granting or withdrawing of refugee status (Boswell and Geddes 2011: 151–152). As with the Return Directive, while NGOs are critical of a lowering of standards, research has found that the CEAS has not simply led to a 'race to the bottom'. It can be linked to some convergence in recognition rates across the EU, although differences remain (Toshkov and de Haan 2013). Overall, it does not seem to have had much impact at

all when it comes to numbers of asylum-seekers admitted by EU member States or in terms of the outcomes for asylum-seekers themselves (Ibid.). As with the case of irregular immigrants, 'in spite of some changes ensuring a stronger level of protection of asylum-seekers, the reform fails to provide the basis for ensuring an equal standard of protection across all EU Member States' (Velluti 2014: 1).

Finally, there are readmission agreements. It should perhaps be no surprise that these were one of the first common actions taken by the EU following the 'communitarization' of immigration policy after the Treaty of Amsterdam. They have now become a major instrument in the EU's cooperation with third states (Billet 2010). However, it has been argued that they are disproportionate and operate without the usual safeguards normally present in deportations (Cholewinski 2007). The European Commission itself has identified the risk that the agreements lead to actions that violate fundamental rights (CEC 2011). A study of one such agreement, between the EU and Albania, found no legal framework in place and a complete absence of any system to identify or protect the rights of migrants (and asylum-seekers) during, and particularly after, removal (Dedja 2012). The UK has opted in to all the EU readmission agreements,[6] but it has a few of its own (with Algeria, South Korea, and Switzerland) and also has MOUs with some 15 other states. As with the EU process, the UK government prefers a 'less is more' approach in terms of incorporating any specific commitments into the text of agreements.

How can we align the increasing use of the language of human rights by the EU on the one hand, with this apparent march towards a more illiberal treatment of immigrants and immigration on the other? Part of the problem is the false notion that some sort of solution is offered by usage of human rights language, when human rights norms 'paradoxically allow for pursuing both universal and particular goals' (Pirjola 2009: 356). This is not a paradox when one is fully aware of the pre-eminence of national sovereignty in the very formulation of those human rights norms. However, the gap between humanitarian rhetoric and inhumane practice is problematic for the EU: the region is likely to need large-scale in-migration in the future considering economic and social trends (e.g. an ageing population) (CEC 2008b). There are also serious longer-term consequences: restrictive policies have a pronounced and negative effect on the large number of migrants already resident in the EU and their families. The human rights deficit for immigrants naturally leads some to ask what sort of 'Europe of values' is being constructed and what this will mean in

democratic terms. The overriding sense is of a region storing up trouble for future generations—surely, it will only 'be possible to broaden and deepen democracy in the EU if full democratic citizenship also encompasses migrants—today's new EU residents need to become tomorrow's new EU citizens' (Ceccorulli and Labanca 2014: 1).

Conclusions

Proof of the relative under-achievement of international and regional norms over immigration is normally associated with a single document: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (which came into force in 2003). As discussed earlier, the agreement has not been signed by a single receiving country and 'the prospect of states happily accepting wider international human rights obligations to protect the well-being of non-citizens are dim' (Rubio-Marín 2014: 4). Yet, rates of immigration have been climbing in most liberal democratic states since the 1990s, and many immigrants enjoy a range of human rights in those countries. This has prompted some to propose that nation-state sovereignty is waning or dissolving. This might be linked to the forces of globalization (Sassen 1996), but it has been argued that power has been transferred—because of implications arising from the system of international human rights put in place following the Second World War (Soysal 1994). The findings of this chapter challenge this account and chime with other criticisms of post-nationalism as a proposition normally associated with realist claims about the importance of nation-states (Weiner 1995). Post-national ideas also run counter to the self-evident fact that it is the state that remains paramount in the governance of immigrants' lives and their access to rights (Joppke 2010). The evidence from this chapter is that the international system of human rights is far from offering a post-national 'solution' or protection for immigrants. Instead, there is a pronounced deficit for immigrants when it comes to protection offered by international human rights and other international agreements.

Regardless of the weaknesses in post-national arguments, however, states no longer enjoy a complete monopoly of power over their territories. While international norms in this area are complicated and patchy, there is no shortage of agreements establishing that human rights should apply to immigrants. As acknowledged in the final report of the GCIM (Global Commission on International Migration), 'the main obstacle to

the protection of migrant rights is not the absence of law, but the failure of states to respect those conventions, agreements and declarations that they have freely accepted' (GCIM 2005: 54). Chapter 4 explores how this failure can be related to the very nature of the liberal democratic state.

NOTES

1. Adopted 1966, entered into force 1976.
2. The commitment made at Lisbon (2007) for the EU to accede as 48th member of the Council of Europe ended up quite a complex process—a draft agreement was rejected by the European Court of Justice in December 2014.
3. At the time of writing (April 2015), the EU Commission was due to publish its 'comprehensive migration plan' in May 2015.
4. The 'Franco-Italian affair' refers to the closing of the border between the two countries after Italy had issued temporary residence permits to North African refugees.
5. EU Commissioner for Internal Affairs, Cecilia Malmström, on 25 July 2011 claimed the 'spirit of Schengen' had not been respected when the border between the countries was closed after Italy had issued temporary residence permits to North African refugees.
6. The UK is part of 14 such EU readmission agreements with: Albania, Bosnia-Herzegovina, former Yugoslav Republic of Macedonia, Georgia, Hong Kong, Macau, Moldova, Montenegro, Pakistan, Russia, Serbia, Sri Lanka, Turkey, and Ukraine.

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Illiberal Liberalism

INTRODUCTION

People regularly label or describe countries like the USA, the UK, and others as 'liberal democracies', but what is liberalism, what is a liberal democratic state, and how does this link to the way a country deals with immigrants and immigration? Chapter 3 questioned the power and influence of human rights as international norms directing states' policies. This presents an interesting puzzle: why do liberal democratic states admit large numbers of immigrants and grant them various rights in the context of significant popular pressure to reduce both numbers and rights to a bare minimum?

We know that many immigrants have been subject to violations of their human rights in liberal democratic states, but we also know that there have been significant changes to the way that these states treat immigration, where racist admissions policies are imposed and then removed (Scott Fitzgerald and Cook-Martin 2014). Immigrants in these countries have progressively enjoyed fairer treatment, fuller access to the labour market, have become protected by principles of equality and rights before the law, the criminalizing of discriminatory practices and behaviours, and benefit from pathways to membership through the granting of citizenship (Soysal 1994). Why have liberal democratic states established, developed, and put in place this particular mixture of measures? How can we explain this balance between the hostile and the hospitable? Can it somehow be traced or mapped onto something essential about their 'liberal-democratic' nature?

The first part of this chapter explores debates within liberal thought, including normative theories about how states should treat non-citizens, before turning to explanations from political science and political theory for the problem of hospitality. The second part turns to critical theories that adopt a different approach and seek to explore and explain the nature of the state itself on the basis of observed behaviour towards non-citizens. Before this, however, it is useful to briefly consider what we mean by the term: liberal democracy.

What Is Liberal Democracy?

The standard, textbook, understanding of the key principles of liberalism is usually drawn from the ideas about government put forward by John Locke and John Stuart Mill. The main thrust of both was to delineate the rights and freedom of the individual contra the state. Locke wrote of natural rights (life, liberty, and property), and the duty of governments, with the consent of the people, to protect these (Locke 2003 [1689]: s87–89). Mill wrote of principles under which power could legitimately be exercised over another—for what purpose and under what conditions. This included the 'harm principle' where the 'only purpose for which power can be rightfully exercised over any member of a civilized community, against his will' is to 'prevent harm to others' (Mill 1974 [1859]: 68). These ideas have been thought to form the basis of what is often referred to as 'liberal constitutionalism'—the set of rules and principles that provide a model for the legitimacy of government. This has an emphasis on the balance of power through institutions that is sufficient to both constrain the government and ensure the security of the individual (Bevir 2010: 796–797).

The definition of 'democratic' is perhaps more straightforward and widely understood, referring to universal suffrage, access to the holding of office, and free and fair elections. The marriage of the two terms is very common because countries that hold elections are generally more liberal than those that do not, and countries that are more liberal tend to hold free and fair elections. This is not to say that the relationship is automatic—there can be non-liberal democracies and liberal non-democracies. It is easy to forget how recently the norms of democracy we now accept as non-negotiable have become so widespread. In the USA, universal voting rights were only theoretically gained for men with the 15th amendment (1870) and women with the 19th (1920), and this was not even properly implemented until the Voting Rights Act of 1965. In Europe, up until

1945, most governments were semi-democratic at best, and often very far from democratic at worst. As Arend Lijphart wrote at the end of the twentieth century: 'democracy is a recent and rare phenomenon. Not a single democratic government can be found in the 19th century' (Lijphart 1984: 37). Not only is liberal democracy a relatively recent historical phenomenon, it is also fragile and contingent. For all the triumphalism within liberalism over a new wave of democratization at the end of the twentieth century (Fukuyama 1992), there have been growing concerns since the end of the Cold War about how older and newer liberal democracies might be taking a 'wrong turn' towards illiberalism (Zakaria 1997).

But aside from the concerns 'from within' about the implementation of liberal ideals, and the direction of liberalism and liberal democracies, there are also of course long-standing criticisms 'from outside' about the whole liberal project. The way that immigration has become politicized for some has become emblematic of an illiberal turn (Guild et al. 2009). Marxist and neo-Marxist analyses emphasize political alienation within liberal democracy and the domination of 'bourgeois' interests (Femia 1993). Long-standing critiques of liberal democracy (Schmitt 1996 [1927]) have provided ammunition for others to illustrate problems with the ways that liberal democratic states have responded to immigration and asylum (Agamben 2005). Critical analyses of immigration and the questionable association with security threats (Wæver et al. 1993) suggest something fundamental about the state and the way it accumulates and exerts its power. This links to broader critiques of the ways in which liberal democratic states have developed systems of control (Foucault 1979) which in turn can be applied to explain the politics of immigration in liberal democratic states (Koulish 2015). These are joined by historical accounts of liberal democracy that link the system to an intrinsic pre-disposition towards the exploitation and subjugation of certain groups (Anderson 2013; Losurdo 2014).

Part One: A Liberal Approach

The question of how liberal democratic states *should* treat newcomers is of course a normative one relating to issues of justice and rights of the individual. As Chap. 3 on human rights demonstrated, there is no universal consensus regarding the basic principles upon which immigration should be managed by the state. What we are left with as a guide are the main positions in philosophical debates over global justice, often divided into

cosmopolitan and communitarian positions. Communitarian liberals hold that the state is entitled to control admissions, prioritize its own citizens, and give less weight to the welfare of non-citizens (Walzer 1983; Pevnick 2011), but this does not provide a ready set of answers as to exactly how non-citizens should be dealt with and treated. It is also challenged by cosmopolitan arguments that question immigration controls on the basis of principles of individualism, universality, and generality (Pogge 2002: 169). These tend to agree that the rights of states to control admissions should be severely curtailed and to disagree that policies should discriminate in favour of one group over another.

Both positions have deeply political resonances: proponents from one side tend to accuse the other of various 'sins'. The very description or label of cosmopolitan is usually traced back to the famous declaration of Diogenes of Sinope (in the fifth century BC), who declared: 'I am a citizen of the world'. Was Diogenes celebrating universal humanity and freedom of movement, or was he guilty of disloyalty to his state? Communitarians might argue he was turning his back on the ties of loyalty to his polis—something potentially treasonous. On the other hand, Diogenes' declaration could be seen as the beginning of a global universal human consciousness. Cosmopolitanism is criticized for being too abstract and idealistic—ignoring the importance of community and the real and practical demands and differences, structural or otherwise, that exist in society. Communitarianism is accused of perpetuating injustices and inequalities, denying the importance of individual opportunity, emancipation, and social change.

How does this relate to the way states deal with immigration? Liberal thinkers dealing with justice have often excluded immigration—usually in the name of analytical clarity. John Rawls, one of the most influential liberal philosophers of the twentieth century, focused on big questions such as the relationship between freedom and equality, and how to organize redistributive justice, but hardly mentioned immigration. He preferred to conceive of society without the complications of international or cross-border migration. His theory of justice was conceptualized using an example of a single community 'isolated from other societies' (Rawls 1971: 7), 'viewed as a complete and closed social system' and 'closed… in that entry into it is only by birth or by death' (Rawls 1993: 41).

Joseph Carens fills in the gaps by imagining how different strands in the liberal canon might support arguments for open borders (Carens 1987). He applied Rawls' development of social contract theory, including the

famous 'veil of ignorance' to ask what it would mean for immigration. Rawls asked individuals to choose what sort of basic arrangements for societal relations they would agree to if they were unaware of their own actual position in that society (Rawls 1971). By raising the level of this 'thought experiment' from the national to the global level, Carens argues we might expect people to agree a basic right to migrate (Carens 1987: 258). Similarly, by taking some of the core principles of utilitarian positions (maximization of utility), Carens argues that if the welfare of immigrants are included in any calculation of utility, then a utilitarian position would lead to less restrictions and greater levels of immigration (Ibid.). Finally, he considers libertarian principles that 'self-ownership', property, and contract should come before other moral considerations requiring only a minimal state (Nozick 1975) to argue that if a business owner wished to employ a migrant, the government has no right to stop them entering into a voluntary transaction:

> So long as they were peaceful and did not steal, trespass on private property, or otherwise violate the rights of other individuals, their entry and their actions would be none of the state's business. (Carens 1987: 253)

While Carens' arguments are persuasive, they are only one interpretation of these thinkers' ideas. By treating them as 'virtual contemporaries' rather than contributors to the conversations of their time, there is a risk of ventriloquism. His arguments are also often quite heavily based on assumptions about the effects of migration, and ultimately show the difficulties in inferring a position on immigration policy from any particular political philosophy. Within the libertarian tradition, for example, some argue there should be a right to immigrate because immigration restrictions are harmful and coercive (Huemer 2010); other libertarians argue for restrictions based on the argument that migrants can negatively impact on the rule of law (Friedman 2011).

The argument that Carens went on to propose was that liberal democratic states joined by 'democratic principles' are constrained in what they do about immigrants and immigration. These are the 'broad moral commitments that underlie and justify contemporary political institutions and policies throughout North America and Europe', and Carens argues that these generate claims that include both admissions and access to membership (Carens 2013: 2–3). An example is liberty or freedom of movement, where a consensus in all liberal democratic states is that one should have

the liberty to move within the country, from place to place, city to city, in order to seek opportunities or otherwise satisfy one's plans and interests. If this holds for both free movement within a state and movement between states, why, Carens asks, should movement be curtailed?. What if two people fall in love from different countries or if there is an opportunity or a job in another country? The communitarian argument is that political communities have a right of self-determination and therefore to restrict international movement. From this perspective, just because someone has a personal interest in moving country, that does not necessarily generate a 'right'—especially if the interests can be satisfied at the nation-state level (Miller 2005). But, as Carens points out—there are plenty of examples of political communities at the level below the nation state, and we do not worry about restricting movement between those places (Carens 1992).

LIBERALISM AND RESIDUAL HOSPITALITY

The connection between liberalism and the liberal-democratic response to immigration is not only a question of the normative debate over global justice but also a question of public policy. As explained at the start, liberal ideas have been credited with the construction of liberal constitutionalism which itself relates to the regulation of politics and decision-making in societies. Political economy accounts of immigration policy refer to the liberal qualities of states to answer why states accept immigration, despite public pressure to restrict rights and access for immigrants. Also, why there seems to be a 'gap' between the aims and outcomes of policies that attempt to be more restrictive. The approach has been used with some success to both understand and explain some of the peculiar dynamics associated with immigration politics. The puzzle is set up first by presenting immigration as a challenge to, or as embodying a contradiction within, liberalism itself. This puzzle or 'tension' is then resolved by resorting to the liberal features and qualities of the state. This explains why states appear limited in their capacity to act autonomously because of the liberal values that are imprinted upon, and embodied by, the state itself.

James Hollifield's seminal work on the politics of immigration in liberal democratic states is one of the earliest and most widely cited versions of this approach. He compared the immigration experiences of three countries and noted that the subject appears to constitute or create a 'paradox', where liberal societies are both open and closed. This can be imagined as a series of oppositional dilemmas that generate political 'heat' because

they are irresolvable tensions within the different political 'wings' of liberal thought. So immigration initiates or worsens the conflict between different impulses associated with the left—raising the question of how to redistribute scarce resources (such as welfare) while maintaining solidarity with newcomers. For the right, there is a different kind of tension between the imperatives of economic liberalism (for a small state, and market-based regulation) with political nationalism that is based on identity (Hollifield 1992). This notion or theme of immigration as revealing conflicting dynamics, or the 'contradictions of the liberal state' has been extraordinarily influential, becoming a core assumption for many subsequent studies of the politics of immigration (e.g. Hampshire 2013). Scholarship in the field of political economy thus incorporates a supposed antagonism or opposition between liberal values and illiberal impulses. The former are seen as embedded in state structures and in rules and norms of behaviour, the latter animated or driven by the populism, nationalism, fascism, or other 'far-right' political forces and ideologies.

At least in recent times, the consensus seems to be that the forces of extremism are not having an undue impact on mainstream politics or dictating immigration policies (Carvalho 2013). From this analysis a type of residual hospitality emerges. It might be under attack politically, and vulnerable to populism, but it remains at least partially resilient due to the liberal nature of the state. This ultimately pre-conditions or pre-determines policy options on immigration—preventing countries from completely excluding their immigrant populations or achieving 'zero-immigration' aims. It explains the gap between restrictionist intentions and more expansionary policy outcomes. The key variable is that which is inherently 'liberal' to the courts and bureaucracies of liberal states—they operate to frustrate the executive's intentions over immigration (Guiraudon 2000b). This is most clearly the case with asylum-seeking where states seem determined to prioritize national interests and foreign policy objectives over the rights of refugees (and demands of their supporters) but face judicial checks (Gibney 2004: 150).

The discovery of the 'liberal paradox' and 'policy gap' has spawned a veritable sub-field of migration studies, the main task of which is to trace back the shape and form of immigration policies to the key common features of liberalism. One of the clearest examples of this is James Hampshire's analysis which links the politics of immigration to four fundamental 'facets' or features of the liberal state: democracy, constitutionalism, nationhood, and capitalism. As Hampshire puts it: 'while liberal states

undoubtedly vary in terms of their histories, economies, cultures, and so on, they nevertheless share certain features which enable their common labeling and moreover create similar political and policymaking dynamics in the field of immigration' (Hampshire 2013: 5).

The source of the central explanatory mechanism within these accounts (i.e. the importance of liberalism) is treated as a somewhat intrinsic feature of politics—neither dependent nor independent variable. We thus learn much detail about the constituent characteristics of contemporary liberal democracies, and how these shape the 'rules of the game'. By virtue of their very 'liberal-democratic'-ness, states have specific possibilities and limits when it comes to managing migration. Understanding the politics of immigration is therefore a straightforward case of understanding the essential features of the state. This ends up being a mammoth task, however, because of the institutional complexity of contemporary states—the impact of institutional changes occurring in other aspects or at other levels of governance; the intended and unintended consequences of previous decisions—the 'path-dependencies' of history. All of these factors, operating in the confines of a liberal democratic prism, help explain what is possible and what is not possible, and why politicians tend towards or away from certain policy choices. While these accounts have enabled a far greater understanding of the specificities and limits of policymaking on immigration in liberal democratic states, they tell us less about the source of those values and principles which influence the actual content of these policies and justify their effects on individuals and groups in society.

National Models as 'Grand Traditions'

Another strand of scholarship seeks to connect 'grand narratives' about the nation with the way immigrants are treated. Notable here are Rogers Brubaker's study of France and Germany (Brubaker 1992) and Adrian Favell's study of Britain and France (Favell 2001a). This research has successfully linked certain countries' approaches to the integration of immigrants with well-known 'traits' of liberalism that are normally associated with the national identity of each. So the ideas or values of republican France become a 'universalist public philosophy' leading to a more assimilationist approach to integration. Germany becomes linked with an ethnocultural national identity, explaining its more restrictive approach to naturalization. In Britain, integration has been seen as a question of

'managing public order and relations between majority and minority populations' (Favell 2001a: 4). The frameworks, then, are:

> found to rest on rather different 'philosophies', based on contrasting understanding of core concepts such as citizenship, nationality, pluralism, autonomy, equality, public order and tolerance. These elements fit together as a kind of underlying public political theory—a 'public philosophy'. (Favell 2001a: 2)

This connects approaches towards integration of immigrants to different philosophical roots and even specific authors. So we might turn to John Locke's ideas about natural rights, in the case of Britain, or Jean-Jacques Rousseau's ideas about sovereignty of 'the people', in the case of France. In concrete terms, this means linking, for example, the decision by France to ban wearing of the veil to Alexis de Tocqueville's observations on religion and the state and Germany's restrictive rules on citizenship through reference to the things Johann Gottfried Herder said about culture and nationhood.

There are various problems with the 'grand traditions' approach—it tends to rely on the existence of separate 'ideal-types' of liberalism and then explain everything through this prism, reifying and unifying when there may be conflicting traditions (Smith 1999). It treats the 'national models' as independent variables, rather than contingent and mutually constituted societal narratives (Bertossi and Duyvendak 2012). This means that it is difficult to explain the meaning and significance of evolution and change within these approaches or indeed the backlash against them—such as in Europe over multiculturalism (Vertovec and Wessendorf 2009). There is also confusion over what the 'grand traditions' approaches are trying to explain. Is it the specific characteristics of the policies adopted by states to integrate immigrants, or is it the extent to which these actually work? If the latter, how do we measure 'success' and how can we be sure what is the cause of that success (or lack of it)? It has been pointed out that in the case of Europe, where there is a 'natural laboratory' of various different approaches to immigrant integration, none of the stereotypical 'traditions' has been particularly effective (Malik 2015).

Alba and Foner (2014) stretch the notion of a 'grand narrative' beyond the usual reference to national philosophies to include several other 'grand ideas' or 'perspectives' that supposedly explain immigrant inclusion. One example they discuss involves the impact of different national types of

political economy leading to distinct welfare state models that lead to different labour market outcomes for immigrants (following the work of, for example, Esping-Andersen 1990). Another relates to countries' history of immigration that might lead to different pre-dispositions to integration. The classic case is the USA as a 'settler state' which due to its 'exceptional' circumstances and history is quicker at incorporating new immigrants (Mollenkopf and Hochschild 2010). The final 'grand narrative' is the idea that there is a convergence between liberal democracies over immigration—something which has been quite a staple for migration studies (Meyers 2002, Cornelius et al. 2004). Alba and Foner correctly point out the dangers in explaining state responses to immigration via reductionist accounts that focus on some 'essential' quality of the state. However, they rather repeat this by essentializing immigrants and:

> the characteristics or qualities immigrants bring with them, in terms of skills, education, skin color, religion, and culture, which shape the challenges and difficulties that they and their families face and the successes they achieve. (Alba and Foner 2014: 283)

Aside from the aforementioned difficulties in measuring 'success', this highlights several other problems with research on the integration of immigrants. A recent review of scholarship on immigrant political incorporation found 'almost as many usages for crucial terms such as immigrant, political, and incorporation as there are authors' (Hochschild et al. 2013: 6). Definitions matter, because, as Favell notes, the very use of a word such as 'integration' carries with it the baggage of the 'biologistic functionalist sociology of the Durkheimian tradition' (Favell 2001b). In other words, all the well-worn criticisms of structural-functionalism can be levelled at studies of immigrant integration.

PROFIT IN FAIR TREATMENT?

Another approach seeks a less 'political' explanation for the phenomenon of immigration politics. If states profit from immigration, particularly labour immigration, might it not also be in their material interest to treat immigrants fairly? Adopting this approach, an important contribution to the question of fair treatment of immigrants has been developed by Martin Ruhs (2013). As with many others (De Guchteneire et al. 2009), Ruhs' starting point is that which was outlined in Chap. 3—the international

human rights system is insufficient for securing immigrants' rights. For Ruhs, this situation is logical because we live in a realist world of nation states and their decisions over which rights to grant labour migrants is just one part of a rational decision-making process. It is not the only issue states include in their calculations—others include how many to recruit and what kind of skills immigrants should ideally have (Ruhs 2013: 3)—but granting or withholding rights can also be seen as part of the policy process because it will have consequences in terms of costs and benefits to the state.

Ruhs narrows down which rights should be inalienable, or 'core', and which could be reasonably withheld by the state, provoking criticism for excluding access to trade unions and collective bargaining (Alberti 2014). He uses quantitative methods to index policies and rights, which, as he admits, are difficult things to quantify (Ruhs 2013: 73). Nevertheless, his work does seem to prove a correlation or 'trade-off': as states receive higher numbers of high-skilled migrants, they grant higher numbers of rights, whereas as states recruit higher numbers of low-skilled migrants, they tend to restrict their rights. The central observation is the rational interest of the state to attract the migrants that it wants (by giving them rights) but at the lowest possible cost. The lesson Ruhs derives is that migrants' rights advocates should avoid demands for full equality because this stops states opening up to greater levels of immigration. Hardly music to the ears of those campaigning for migrants' rights, as Don Flynn from Migrants' Rights Network puts it:

> How are they [migrants' rights advocates] empowered by understanding that their predicament is the outcome of a trade-off between complex and conflicting interests in relation to which they are little more than passive bystanders? His [Ruhs'] interest in identifying core rights which seem less fussily bothered with the niceties of equality and the full panoply of human rights boils down to what, in most liberal democracies, is little more than the status quo. (Flynn 2013)

Embedded Liberalism

The final set of approaches are broadly institutionalist and try and explain how states treat immigration through reference to liberal norms that are embedded in domestic or international structures. The institutionalist

insight is that policies are affected by the legacy of previous decisions and policies that create structures (March and Olsen 1989; Lowndes 2002). These can incorporate game theory with ideas such as transaction costs, principal-agency effects (Hall and Taylor 1996: 10–13) to explain why policies get 'stuck', and why change is difficult. This can be because institutional rules and conventions act to limit the policy agenda, for example through constraints on parliamentary debate or if actors are prevented from participation through significant transaction costs.

Hansen (2002), for example, explains how flows of immigration continued to Europe in 1970s and 1980s, despite restrictive policies because of path-dependent effects related to the historical context of each individual country. For France and Britain, expansive notions of citizenship and empire at certain points in their development subsequently made it difficult for those countries to completely stop migration from their former colonies (Hansen 2002: 272–276). Using the same path-dependent analysis, the right to asylum in Germany, enshrined deeply in the constitution due to the experience of the Second World War, can be linked to the country's more generous recognition rates later on (when compared with other European countries) (Hansen 2002: 277).

Scott Fitzgerald and Cook-Martin (2014) argue that institutionalist accounts have ignored the importance of 'horizontal' (international) influences on the development of fairer national immigration policies, by concentrating on 'vertical' (domestic) influences (e.g. Joppke 1998). In a similar vein to 'world society' scholars, they demonstrate that, over the long term, this horizontal influence explains the timing behind states' dropping of the discriminatory practices of ethnic selectivity in immigration controls. The authors examine six (North/South/Latin American) case-study states to show how the anti-racist norm spread and became incorporated into different countries' immigration systems, with the USA being one of the first to adopt racist policies and the last to divest itself of them (Scott Fitzgerald and Cook-Martin 2014). According to the authors, this was at least partly because the USA was more democratic, and therefore put in place the racist policies that the voting population demanded.

So according to this perspective, democracy was at least partly to blame for racist immigration policies, but what about liberalism? The authors argue that there is an 'elective affinity' or correlation between liberalism and racist immigration policies—it was international society which was the source of fairer treatment of immigrants. They identify three main mechanisms by which 'horizontal' factors helped international society put

an end to the link between liberal democracy and racist selection of immigrants. This was first of all because countries intentionally tried to influence each other through various means, such as diplomatic, military, or economic pressure. Leverage was even achieved by less powerful sending countries fighting for fairer treatment of their nationals in receiving states. Second, ideas spread from one country to another—through international institutions such as the UN, but also through the emulation of policies, perhaps helped by the influence of transnational epistemic communities. Third, they found influence via strategic reaction—states responding to their neighbours' immigration policies because they were aware that these may have had direct and indirect consequences for them (Scott Fitzgerald and Cook-Martin 2014: 22–27).

The six-country study is a significant contribution to our understanding of how immigration policies have changed to become, in formal terms, less discriminatory and more egalitarian. However, there has been some criticism of the work on the basis that it uses rather narrow, legalistic criteria for establishing when racist selection started and ended, downplaying the ways that discriminatory practices have continued (Fox 2015; Motomura 2015). The precise linkage and commonality between liberalism and racism, as two sets of ideas which are described in the book as having an elective affinity, also appears ambiguous. In reviewing the work, Christian Joppke agrees that the two things co-existed, but questioned what they have in common at their core, arguing that 'they stand as radically opposed to one another as any two idea systems or visions of political order could ever be' (Joppke 2015: 1301). Ultimately by studying the institutionalization of liberal ideas, research can provide insights into the policy process and sources of influence on governments over immigration. The approach falls short when it comes to explaining the shifting balance liberal states adopt between hostility and hospitality towards immigrants— the political causes of the crisis outlined in Chap. 2.

Part Two: Critical Theories

The second part of this chapter looks at critical theories that take considerable issue with Joppke's sentiments about the inherent values of liberalism and liberal democracies. As we have seen in the first part of this chapter, studies of immigration have been used as cases to test and generate theories about liberalism and policy processes in constitutional liberal democracies. A significant amount of work has been devoted to explaining policy

convergence over immigration and to the task of trying to construct models and isolate principles and causal mechanisms. However, there is still the sense of a lack of a more satisfying explanation that encompasses the contradictions, the puzzles, and the paradoxes: between the terrible cruelties and injustices so often dealt out to those who migrate, the resilience of individuals to endure and overcome, and the ways that societies can morph, adapt, and absorb newcomers.

For some, immigration is a problem which liberal theory simply cannot solve. In his study of liberal political philosophy and immigration, Phillip Cole finds that the subject has been largely avoided:

> The vast majority of works in liberal theory do not address the question of national belonging and political membership… it becomes clear that there is an irresolvable contradiction between liberal theory's apparent universalism and its concealed particularism. (Cole 2000)

Rather than explaining state behaviour on immigration via the principles and ideas of liberalism or the structures of constitutional liberalism, critical theorists set out to uncover the problematic, deceptive, and ultimately dangerous essence of the liberal-democratic state. This is a disparate and varied collection of voices that draw from a range of theories and methods. Indeed, the only common factor here is a general scepticism of liberalism and liberal democracy as value based. Liberalism's avoidance of the topic reveals structural effects: the difficulty that many social scientific disciplines have faced in making what some have called the 'epistemological break'. In other words, scholars have been too ready to accept rather than question the government portrayal of immigration. It is a social, economic, and security problem to be 'solved' (Martiniello and Rath 2010) rather than a question of justice and fairness, inequality, and entitlement.

Liberal Democracy, 'Statehood', and 'Statecraft'

While highly critical of Marxist and liberal theories of the state, Michel Foucault was famously averse to enunciating his own, instead preferring an 'analytics of power' (Jessop 2007). This approach attempts to avoid any assumptions about the existence of a unified or coherent state in the first place. Instead, it points to the role of knowledge and political discourses in both the exercise of sovereignty and the constitution of the state. Foucault's study of 'governmentality' was primarily concerned with

technologies of control, but he was interested in the ways in which these political strategies ultimately produce the state. Through his work he demonstrated how techniques of power or 'biopower' (power over life) were dispersed, decentralized, and used to create social order (Foucault 1967; Foucault 1979). This is why Foucault's ideas have been so influential in work trying to explain the evolution of the state and of 'statehood'. He argued that the practice of power had shifted from specific locations (such as prisons and schools) to a biopolitics that regulated the entire life of populations. In particular, this has highlighted the co-development of new technologies of control and the neo-liberal 'turn' away from state-interventionism and towards private/individual responsibility. Work in this field highlights the new ways in which state power focuses on the marginalized in society—the unemployed (Henman 2004) and the immigrant (Koulish 2015).

The point here is that the way that governments behave, for example on immigration, needs to be explained and should not be assumed to be for the reasons normally given. Foucault's method has been described as 'historical nominalism'—a critical analysis of 'regimes of truth' which seeks to reveal and unmask the contingent and subjective nature of what appears to have always been the case. Key to this is the recognition that knowledge is political and co-constitutional of the state. Followers of Foucault such as Roxanne Doty highlight the importance of immigration in producing the state, albeit rejecting the existence of the state as a separate entity. Doty argues there is no neat division of politics and society, instead she claims that the state 'is nothing but a desire that is manifested in practices of statecraft' (Doty 2003: 12). From this perspective, any notion of justice purportedly linked to liberal democracy is overrun by a desire to produce and re-produce the state. The notion of public opinion as an intrinsic to state power accords with Gramscian theory which would consider 'the state' to be the combination of political society and civil society where consent, manufactured into 'cultural hegemony', is protective of the state (Gramsci 2005: 32). As Bonnie Honig points out, the 'foreign-ness' of immigrants is very powerful for the state because it can play a foundational role in the story of the life of a regime. The characteristics of foreigners can be used to remind us of things missing from the community leading to either xenophilia or xenophobia (Honig 2001).

Rather than a reflection of values or principles connecting with liberalism, this sees government policies towards immigrants as 'statecraft' that maintains the status quo. The emergence of popular anti-immigrant

sentiment then becomes 'statecraft from below'. This might include both officials and 'concerned citizens' such as the 'minute-men' in the USA who willingly overstep formal policies and indulge in acts of vigilantism against 'illegals' (Doty 2001). Thus, the creation and maintenance of anti-immigrant attitudes among the general public can be seen as a key contemporary practice of statecraft (Doty 2003: 14). The increasing use of detention in the case of immigration can be linked to the insights Foucault had when examining the development of the prison system (Foucault 1979). As with the prisons and criminality, immigrant detention does not achieve its objective of reducing irregular immigration. It instead succeeds in 'managing' (rather than resolving) and maintaining the illusion of immigration and irregularity as anomalous, rather than a normal state of affairs (Doty and Wheatley 2013).

Governments' fascination with—and fear of—immigration can thus be traced to its potentiality to both destroy and yet be foundational to the state. Critical theorists move beyond the traditional focus on the state as 'government' to a concern with 'statecraft'. Immigration as a public policy issue becomes fundamental to this process: it is exactly when flows of people are seen as problematic that the opportunity is created; policies against immigrants act to reconstitute the state because they are 'a referential resource… to which states turn for anchor and for their own empowerment' (Soguk 1999: 16).

Dominion Over the Dispossessed

Perhaps the chief framework for understanding the state in opposition to liberalism is that provided by Marxists. An obvious Marxist interpretation of immigration is that the policy response betrays an underlying desire of governments to exploit one class of people for the benefit of another. This is fundamentally an abuse of the position of domination, often in the name of maintaining 'order', but always to the benefit of those who enjoy the 'powers of ownership'. According to Marx, once the state had successfully laid claim to ownership of the land and the people living on it, the next stage was about exploiting all available human resources. This involved forcing people into wage-labour, ostensibly to avoid their indulgence in vagabondage and crime, and was characterized by 'bloody legislation' which:

refers to Acts outlawing vagabondage, begging, wandering, and myriad other 'offenses', but it also refers to the Acts of enclosure in which laws were passed separating people from subsistence on the land and its resources, an important point for what is to follow. The 'freeing' of the peasantry into wage labour is the forcing of the peasantry into wage slavery; liberation is subjugation. (Neocleous 2012: 949)

Neo-Marxists such as Wallerstein would point out that what we think of as 'liberal democracies', and certainly countries such as the UK and the USA, are actually better described as the developed 'core' of countries in a world economy. Systems of immigration can be understood as an instrument for the provision of compliant labour relations serving the macroeconomic interests of these core states (Wallerstein 1974). The relationship between migration and dual-labour markets or labour segmentation has long been noted (Salt 1990; Gordon 1995), and those interested in societal inequality have long considered immigration a central player in the 'sociology of globalization' (Appelbaum and Robinson 2005).

As Saskia Sassen points out (and as Marx might have agreed), states serve their constituent economic interests by using or 'creating' immigrant labour that is characterized by 'a particular form of powerlessness, associated with formal or attributed foreign status' (Sassen 1988: 37). Immigrants now fill new service-sector jobs, and fuel a downgraded manufacturing sector where declining industries need cheaper and cheaper labour in order to survive. The global economy and the 'global city' become a space where the contrast between high-income workers and low-wage service workers is most glaring. Immigrant workers in London and New York have more in common with each other than the countries their cities are based in. This creates a new geography of power where the traditional forms of state sovereignty are eroded but replaced by others that still rely on exploitation of the dispossessed (Sassen 1996). The dystopian version of globalization therefore sees these processes as making immigrants a kind of 'state-less' army of disposable labour. This echoes Arendt's concerns about human rights and her observations about dependency on political recognition, where a 'barbed wire labyrinth' awaits the stateless precisely as a result of the territorial organization of nation states (Arendt 1994: 292–293).

Ultimately, this is less about globalization 'weakening' or 'strengthening' the state and more about justice and power: the state as embodying and maintaining unequal social power relations resulting in dominion over

the dispossessed. If globalization creates weaker states, this can lead to greater levels of exploitation—the state less able to protect the working classes from the power of the lords (Gourevitch 1978). If it means strong states, this can also be useful for the coercion of labour. As Wallerstein noted: the seigneur turns 'to the state to force the peasant to stay on the land' (Wallerstein 1974: 103).

POLITICS OUTSIDE 'THE LAW'

For critics of parliamentary liberalism such as Carl Schmitt, it would be obvious why modern liberal democratic states are unable to resolve the question of immigration. It relates to the essence of liberalism and the parliamentary government it spawned in the nineteenth century. Schmitt wrote critically about the construction of the Weimar Republic and scorned its liberal fear of absolutism and the attempt to contain plurality within endless debate and consultation. For him, depolicitization was not possible—it actually avoids or denies the essential feature of 'the political' and of the 'political community'. That essential feature is the fundamental distinction between friend and enemy which Schmitt saw as primordial and existential in the sense that it comes before the state and overrides any other set of values and any other institution (religious, aesthetic, moral, or economic) (Schmitt 1996 [1927]). This fundamental distinction also of course renders meaningless any ideas about universal humanity and any attempts at international peace. One of Schmitt's most famous phrases was: 'tell me who your enemy is and I'll tell you who you are!' (cited in Lilla 2001: 56). Controversially, Schmitt also believed that the friend–enemy distinction applied to domestic affairs: 'as long as a state is a political entity, this requirement for internal peace compels it in critical situations to decide also upon the internal enemy'(Schmitt 1996 [1927]: 46).

The connection between the Schmittian analysis of liberalism and a deep antipathy towards immigrants is fairly obvious. For Schmitt, the liberal belief in the same-ness of all human beings meant that membership is extended too far: to those who do not 'belong'. This weakens the state and opens it up to attack from others more united and homogenous. Thus, liberalism negates democracy and democracy negates liberalism. The only part of the Weimar Republic that Schmitt retained any admiration for was the ability of the president to declare a state of emergency. For him, this was the most important sign of sovereignty: the sovereign is

'he who decides on the exception' (Schmitt 1985 (1922): 6). The purist example of 'the political' was when the friend–enemy relation intensifies to such an extent that the normal state of law must be suspended to face the enemy. Not only does the state of exception legitimize all forms of violence, it is supremely political because it allows for new forms of legal order to be created (Prozorov 2005). This was why Schmitt was critical of the decision of the drafters of the Weimar constitution (in Article 48) to circumscribe which basic rights the sovereign could suspend in a state of emergency (*enumeratio ergo limitatio*).

The response to Schmitt is usually prefaced by the fact that he was a supporter of the Nazi regime. In large part, his theories, in particular his recommendations for the 'total state', were proven to be morally repugnant and spectacularly wrong. However, there are other problems with his critique—not least that his approach in determining the 'essential principles' of parliamentary systems is metaphysical and so is open to questions about criteria, validity, and subjectivity. He also saw parliaments as synonymous with the nineteenth-century liberal era (when they pre-dated this) and failed to see how they were capable of transforming themselves and accommodating democracy in new ways (Keane 2011: 14–15).

Schmitt's critical perspective of liberal constitutionalism is shared by Giorgio Agamben, who also emphasizes the importance of the relationship between the political and the juridical. Agamben rejects Schmitt's conclusions and recommendations. Instead, he expands upon the notion of a 'state of exception' to try and understand the paradigm shifts behind legal-political change. In contrast with Foucault, who explored how sovereignty produced political subjectivity, Agamben sees power becoming visible through that which is excluded. He uses the Roman concept of 'homo sacer' (sacred man) to describe how excluding or 'abandoning' the individual outside the law creates 'bare life', or a state of mere survival, without fundamental rights. Those in this situation do not have recourse through law but paradoxically are still subject to it. In Auschwitz, it was all too obvious how the inhabitants were stripped of all political status and reduced to 'bare life' (Agamben 1998: 171). But while this is the most potent illustration, Agamben claims that the same rule extends to others such as refugees or even those in a comatose state in hospitals.

Others have enthusiastically applied Agamben's dystopian vision to examine the contemporary situation of asylum-seekers and those in immigration detention (Darling 2009; Hall 2010). It is easy to see why, when the policies of liberal democratic states mean that the lives

of asylum-seekers are restricted in so many ways that they become destitute; cast into a situation of desperate struggle for survival, as a means to forcibly coerce those seen to be unworthy of "our" hospitality away from "our" shores' (Darling 2009: 652). However, many have argued that Agamben and those employing his ideas go too far in comparing the treatment of asylum-seekers by liberal democracies with the Nazi camps. There do appear to be important gaps in his critique of sovereign power. The completeness of the exclusion he describes seems to overlook the 'resistance of the weak' (Bigo 2007: 12) and the role of society in mediating and even reversing the reduction to bare life (Huysmans 2008). His central claim is that the 'exception' of the camp has now become the norm—the paradigmatic form of modern politics. But this means that all citizens can potentially become 'homines sacri' (Agamben 1998: 111). As Lemke points out, there is a danger of over-generalizing and ignoring the significance of different levels of exclusion. Agamben equates hospital patients and asylum-seekers with those about to be killed in Nazi concentration camps, privileging 'exaggerated dramatisation over sober evaluation...' (Lemke 2005: 8).

Liberalism and the Exclusionary Principle

A historical approach can provide a different explanation for the paradoxes and 'irresolvable contradictions' of immigration highlighted by Hollifield and others. Perhaps, it is simply something intrinsic to the liberal project: the exclusion of 'the other' characterizes both the historical antecedents and the current workings of what we now call liberal democracy. This line of argument proposes that the philosophical tradition of liberalism itself has systematically been involved with (and irrevocably tarnished by) exclusionary and exploitative policies towards outsider groups. From this perspective, the institution of immigration, rather than representing an internal contradiction within liberalism, instead forms an active and essential part of the development of the modern liberal democratic state.

In his scathing attack on the 'twin births' of liberalism and racial slavery, Domenico Losurdo asserts this systematic relationship very clearly (Losurdo 2014). The triumph of civil society and property rights over absolutist regimes in Europe is linked by Losurdo with the systematic dehumanization and subjugation of what Europeans considered 'inferior races'. The standard analysis is that following the resolution of the American civil war liberalism formally broke with racial, hereditary slavery

(Losurdo 2014: 65). But instead of finishing with slavery, it simply morphs into another form. Liberals such as Locke, Smith, and Bentham saw no problem with state disciplining of the poor and unemployed through policies of forced labour (Losurdo 2014: 67–93). In the USA, the imprisonment of large numbers of African Americans (usually for minor or false charges), coupled with the 'convict lease' system, meant that governments, (white) farmers, and businesses had a ready supply of workers that they could use in conditions of forced labour right up until the twentieth century (Blackmon 2008).

In Britain, the condemnation of slavery in America would become an important part of the arguments over independence, but in that country some have argued that a similar 'caste-system' operated, governed by the poor laws and workhouses. One estimate is of nearly 2000 such institutions (and around 90,000 workers) in existence by the eighteenth century (Munck 1997). During the fight for independence, slave-owning Americans were fond of arguing that the poor and unemployed in England were worse off than slaves in America whose 'owners' at least had a cradle-to-grave responsibility to look after their 'property' (Losurdo 2014).

Critical historical approaches can highlight how power and control over the individual morphs to capture new 'outsider' groups—such as immigrants. There are many ironies when considering how European emigration was justified during the colonial era. It should not be forgotten that the roots of philosophical debates about rights of settlement and jurisdiction occurred in the context of the colonization of the Americas (Buchanan and Moore 2003: 4). Justification for the colonial expansion of Europeans in the Americas was often that the current inhabitants (the Indians) did not deserve to keep hold of their rich resources, mainly because of their failure to exploit them. Colonists therefore had the right to expropriate these people, and their land, to whip them into shape (i.e. enslave them). Grotius, for example, famously declared the right for the (European) immigrants to take possession of unused land, which should be 'given to Strangers, at their Request, or may be lawfully possessed by them, because whatever remains uncultivated, is not to be esteemed Property' (cited in Tuck 2005: 448). It was only a small intellectual leap to employ this notion of the appropriation of the 'uncultivated' to disabuse the poor and the mobile of whatever powers of ownership or other legal protections they might have. As the Puritan colonist Roger Williams remarked in 1652, the arguments supporting colonization could easily be transferred to 'undeserving' groups within the state: 'we have Indians at

home, Indians in Cornwall, Indians in Wales, Indians in Ireland' (cited in Neocleous 2012).

The link with immigration is made clear by studying patterns of control and the state-based domination of non-enfranchised groups. Bridget Anderson uses a similarly critical historical approach to examine the contemporary institution of immigration in Britain (Anderson 2013). She makes the link between the treatment of vagrants and working poor in England of the fourteenth century onwards and the ways that immigrants are later treated through the 'crime' of their status. For Anderson, there is a clear link between the treatment of non-citizens (i.e. migrants) and failed citizens (poor, unemployed) because both are placed discursively and institutionally in the category and status of 'undeserving poor'. From this perspective, the figure of the 'migrant' is not the result of the contemporary expansion of global mobility. Instead it can be located within the 'long historical concern of rulers with the mobility of the ruled' (Anderson 2013: 9), where there is a shift over time from state control over poor people to 'the mobility of non-citizens' (ibid.: p28).

The identification of an exclusionary principle through an historical analysis of the liberal state and immigration controls provides an essential corrective to other accounts that uncritically accept liberal values. It can, however, provide a rather dark and one-sided account if it denies any role for universal or moral principles in the process of state formation. As Larry Siedentop (2015) argues in his study of the origins of western liberalism, the progression away from states dependent on 'natural slaves' and then feudal modes of governance can at least partly be attributed to the impact of ideas about common humanity and the equal worth of the individual.

Conclusions

As Robert Schlaifer noted in his study of slavery in classical times, 'the first theories of any political and social institution are to be found long after it has been first established, when its validity and justice are first attacked and then defended' (Schlaifer 1936). This appears to have been the case with immigration, at least until the last few decades when scholars have increasingly addressed the topic. Despite disagreements, liberal theory with its normative debates over global justice appears to create room for an accommodation of immigrants in liberal democratic states. The inferior status of immigrants can be explained through the principles of communitarian liberalism, but there are limits and principles of

good governance, which should mitigate against exploitation and abuse. Likewise, the operation of politics and policy processes in liberal democratic states are subject to constitutional arrangements that shape and limit the options and protect the individual. From this perspective, the violation of fundamental rights of immigrants is an anomaly or an aberration to liberal democracies. It is something we should expect could ultimately be resolved by the operation of the system—something amenable to the light of rationality and logic, despite the sometimes conflicting interests between immigrants and states. As Carens (1987) proposed, underlying liberalism is a fundamental movement by liberal democracies towards an expansion of the franchise and therefore greater levels of protection and equality, even eventually for newcomers. However, this does not explain the growing levels of exclusion and irregularity experienced by immigrants in liberal democratic states.

What critical theories point out so clearly is that immigration has always been an essential symbolic resource for re-imagining the state. The creation of different hierarchies of status and rights for various types of immigrants is not accidental; it is a central part of the modern practice of statecraft. As Soguk argues, the stranger is an 'aberration' which the state seeks to solve, deploying 'its resources to resolve the aberration, close the circle, and affirm the hierarchy of citizen/nation/state once more' (Soguk 1999: 14). Immigration policies are productive of the very thing they also aim to resolve, which brings us to the question of how these hierarchies and inequalities are developed, encouraged, or diminished in the first place; what forces act upon the state to bring them about; and how those techniques are balanced against the values of liberal democracies. Chapters 5–7 of the book develop an historical analysis of the development of immigration controls in the UK and USA before the third part of the book explores how these are subject to the politics of fear, greed, and hospitality.

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PART II

Immigration Politics in the UK and the USA

Introduction

Over the years, there have been numerous calls to 'bring the state back in' to analyses of immigration. There was a feeling, accurate or otherwise, that the role of the state in immigration was both under-conceptualized and under-researched: 'only recently, in roughly the past 30 years, has the field of study begun to emerge, which we might call the politics of international migration; and theorists are scrambling…' (Hollifield and Wong 2015: 229). The subsequent scramble has achieved a great deal in a short period of time, but as outlined in Chap. 2, we still face a veritable crisis of confidence in the capacity for political action, and in the competence of politicians, to deal effectively with immigration.

Many of the measures that states adopt on immigration are considered to be merely symbolic (see, e.g. Massey et al. 1998), as is the use of evidence gathered up and fed to the public by governments to back up these decisions (Boswell 2009a). However, research into immigration policies does show clearly that the international movement of people cannot be explained by solely economic or social determinants. The political environment in destination countries plays a substantial role in observed patterns of international migration (Fitzgerald et al. 2014), and politicians and their political parties do 'matter', because they can alter this environment (Hampshire and Bale 2015). There is also a wider point here about the capacity for politics to affect people's lives. It is not just about the implications stemming from the political aims of immigration policies, it

is also about how non-immigration policies impact on immigration, about the unintended or 'side' effects of policies, the ways in which immigrants tend to avoid, circumvent or mitigate restrictions, and last but not least, the human costs of controls (de Haas 2015).[1]

The Importance of Politics

Politics as a calling, an endeavour or even a profession, has become derided by many—even dismissed as irrelevant. This is not just in the context of a general decline in legitimacy and public engagement with politics and political parties (particularly evident in Europe [Mair 2008]) or with the problems of congressional 'gridlock' in the USA (Mann and Ornstein 2006); it is about the possibility for politics and policy on immigration to actually make a difference. The position taken here is that politics are important and that we should pay close attention, not only to them, but also to the ideas that form the basis and content of political discussions and programmes. The fact that immigration politics inspire little confidence or respect among the general public makes this task all the more urgent. Indeed, it is especially important in the case of immigration because of the relationship between laws and policies over international movement and membership of the community: the constitution of the demos and polis itself. As Abdelmalek Sayad put it, drawing on the work of fellow French philosopher Pierre Bourdieu, thinking about immigration means thinking about the state, and it is 'the state that is thinking about itself when it is thinking about immigration' (Sayad 2010: 166). Evidence from opinion polls backs this up by suggesting that when most people speak of immigration, they are actually thinking about the state rather than how it affects them personally. A good example is provided by a Eurobarometer survey carried out in November 2013. The results of the survey showed that when Europeans were asked about the main problems facing their countries, immigration came relatively high—equal fifth (12%). However, when asked about concerns at a personal level, immigration dropped dramatically nearly to the bottom of the list (3%) (Eurobarometer 2013).

Key to understanding the political sphere is thus the ideational realm, but there is often a gap between ideas and the things they signify. So in the case of opinion polls on immigration, we are not really entering into a particularly meaningful communication. We do not know from what perspective or in what ways the respondent considers immigration as a 'threat' or a 'concern'. The same is true when politicians speak about immigration.

As the psychoanalyst Jacques Lacan noted, the discourse we use to explain and make sense of things can be very slippery, in particular the symbols and ideas that we use to refer to these things. 'Immigration' has come to acquire deep meaning, but these meanings—e.g. fear or threat—are just several possible ones and will mean different things to different people. Lacan's observation that there will always be a gap between the idea of the thing and the idea that is used to signify it does not mean we should give up on trying to decode politics. Quite the opposite, but it does mean that we should attempt to analyse state behaviour outside the language that the state itself uses. In the case of immigration, this means signifiers such as 'asylum-seeker' or 'illegal immigrant' need to be treated with extreme caution, otherwise we become caught in the trap of reifying state structures and state thought.

Tantalizingly for students of politics, Sayad's observation means that the topic of immigration provides an exceptional route to understanding conceptions of the state—whether in terms of government policies, in the mind of the general public, or in the practices and actions of those officials that implement and carry them out. Indeed, state immigration regimes serve the purpose of self-definition for the state—they can be seen as the de facto political solution to what Robert Dahl called the 'problem of the unit' or the 'boundary problem'. It is interesting then that Dahl complained that 'how to decide who legitimately make up "the people" … and hence are entitled to govern themselves … is a problem almost totally neglected by all the great political philosophers who write about democracy' (Dahl 1970: 60).

Approach, Methods, Disciplines,…

Crucial to the task this book sets out to achieve is the connection of political analysis to a thorough understanding of how politics are related to and grounded in historical experience. As Charles Tilly wrote in his seminal work on the development of the European nation-state:

> The analysis of political development has had about the same relationship to historical experience as a dog on a long leash to a tree at the other end of the leash. The dog can roam in almost any direction. He can even get the illusion of rushing off on his own. But let him rush too far, too fast and his collar will jerk him back; it may even knock the wind out of him. (Tilly, 1975: 3)

The position adopted here is that it is only through an appreciation of historical context that we can begin to observe how political development works. In this case, what forces are at work in the politics of immigration that we observe today, and how they are related to hospitality and the politics of inclusion and exclusion. These of course pre-date and have pre-configured the way that states deal with immigration and will doubtless continue to be relevant long after we cease to use the language of immigration. As Anderson explains:

> although mobility in the contemporary world is often regarded as a challenge to states, the control of mobility was a factor that facilitated the emergence of certain types of (nation) states. (Anderson 2013: 23)

By re-situating immigration as part of (and outcome of) the political development of the state, the identification of an underlying dynamic of fear, greed, and hospitality has potential beyond the explanation of the politics of immigration. The way that this dynamic operates could tell us something about the way that norms operate in this field but also point to deeper issues around the politics of the state itself.

The approach has both an explanatory and an interpretive value. The interpretive dimension responds to the desire for deeper understanding of immigration politics, beyond the open vs. closed debate. It achieves this by showing how, for states facing the issue of immigration, the politics of fear and greed are bound up with—and limited by—principles of hospitality. The explanatory value is in terms of identifying and tracing the root-sources of what appear to be puzzles and paradoxes by showing how these produce the political dilemmas and conundrums that face many immigrant-receiving states. The combination of insights from critical and radical analyses of immigration politics, alongside an historical appreciation of the state and practices of exclusion and inclusion allows us to re-consider and re-conceptualize the political when it comes to the subject of immigration. Central to this is the identification and unmasking of fear and greed and the re-casting of hospitality as fundamental (albeit hidden) principles of state identity in an era of globalization.

There are so many different kinds of questions we can ask about immigration and the state; it is important to try and be clear from the outset. The approach taken here implies a fusion of different methods generally adopted in the study of immigration politics, including mainstream, normative, and critical approaches. This is more fully laid out in the chapters

that follow, but at this point, it is worth dwelling briefly on some methodological issues.

STUDYING THE POLITICS OF IMMIGRATION

If a curious person were to ask how they could practically answer the question 'what are the politics of immigration?' he or she would normally be pointed in the direction of political science. It might seem surprising considering our current obsession with the topic, but research on the role of the state and the politics of immigration has only relatively recently interested political scientists (Hollifield and Wong 2015). Robert Dahl's complaint about the paucity of political philosophy on the boundary problem was mirrored by comments from political scientists searching in vain for comparative studies on the politics of immigration in the 1970s (Freeman 2011). Since that point, and particularly since the 1990s, scholars from within nearly all the branches and different sub-disciplines of political studies have recognized the gaps and begun to address them. From comparative politics to public policy analysis, political theory to international relations, immigration has moved from the margins to the mainstream of academic inquiry.

There have been several 'waves' of research activity, but it could be said that one particular wave peaked in the 1990s. At this point, it is possible to identify the key areas of interest that in some ways set in place the foundations of much that has followed. Within the broad fields of politics and sociology, the dominant notion was of migration flows as sources of instability, agents of change or 'challenges' to the established nation-state (sovereignty, identity) or states-system (Soysal 1994; Messina 1996; Sassen 1996; Portes 1997; Joppke 1998). The apparent failure of states to halt immigration in the 1970s and 1980s pre-occupied scholars. As Messina put it in the mid-1990s:

> Two questions preoccupy the subfield of immigration studies in Western Europe. First, why did the major labor-importing states incrementally lose control over both immigration and immigrant policy during the postwar period? And second, what have been the domestic consequences of this unanticipated loss of control? (Messina 1996: 133)

The surge in interest by European scholars in the 1990s was understandably later than across the Atlantic where immigration, and the poli-

tics around it, had enjoyed a prominent role in the public realm for a longer period of time. The observation of Messina reflected the fact that much of the early work comparing European immigration regimes were mechanistic accounts and, as such, they were missing an important ingredient: politics. This is not to suggest of course that the state has ever been entirely absent from discussions. One US political scientist famously remarked that the main reason for studying immigration policies was to understand and explain 'the walls that states build and the small doors that they open within them' (Zolberg 1989). But since the 1990s, and particularly in recent years, there has been a recognition that there was a need to 'bring the state back in' in order to develop a more thorough understanding of the politics behind immigration controls (Hollifield and Wong 2015).

In many respects, this call has been acted upon. The main concern of this book—on notions of fairness and the 'liberal' or 'illiberal' characteristics of politics on immigration—has now come much more to the fore in various disciplines (Gibney 2004; Weissbrodt 2008; Guild et al. 2009; Dembour and Kelly 2011a; Hampshire 2013; Ruhs 2013; Scott Fitzgerald and Cook-Martin 2014). It is to this excellent body of work that this book humbly aims to contribute.

One important observation is that there is no such thing as a single 'approach' to the politics of immigration. There are multiple approaches from multiple disciplines, for example, from political science, political theory, political psychology, sociology, or 'migration studies'. However, with this disciplinary reality, there comes a natural bias towards the examination of particular issues and questions. In the case of sociology and psychology, this might be on group dynamics, social identity, inclusion and exclusion; with political science, we might find a focus on the role of political parties, rules, institutions and structures, and preference-formation. The body of knowledge developed through these and other connected fields is enormously useful for understanding the broader questions posed here about immigration politics. It only, however, provides a limited or partial answer because of the exclusion of the point that the way the state deals with immigration is itself foundational to the state.

If one chooses to consider the normative aspect of immigration in isolation—that is to ask 'what should be done about immigration?' then the 'should' in the original question implicitly summons classical methods of political philosophy. Liberal theorists have traditionally attempted to con-

struct an account of the state which could be consented to by all citizens and which adhered to the enlightenment principles of individualism and reason. In the absence of a doctrine or ideology that everyone has to subscribe to, these theorists put all their analytical energies into appeals to universal premises—applying them in such a way that there could be no 'rational' objection. For example, starting with a general principle such as utility or natural right and then using deduction to come up with a satisfactory system of government. These hypothetical 'thought experiments' feature heavily in the work of social contract theorists.

A problem with the standard liberal approach (and one identified by Kant) is that social and political arrangements are inevitably dependent on contextual considerations. This makes it unlikely that we will be able to develop universal laws about those things (i.e. raise them to the level of the categorical imperative). Rawls indeed recognized this in his later work, conceding that a single and universally accepted form of government 'can be maintained only by the oppressive use of state power' (Rawls 1993: 37). This prompted a dramatic retreat from the ambitions of classical liberalism. The later Rawls instead re-directed his analysis away from the reasons why people should agree to a single system of government towards a more pragmatic search for how it can happen—focusing on legitimacy and stability of government via the concept of an 'overlapping consensus' (Rawls 1985).

A modern example of an author who attempts something similar to the liberal method on immigration, drawing on Rawls' overlapping consensus is Joseph Carens. He develops an ethics of immigration by drawing upon widely shared principles of democratic states (the overlapping consensus) to demonstrate how what he calls the 'conventional view' (that states have discretion over immigration) is wrong (Carens 2013). The potential rewards in pursuing this classical liberal methodology are considerable. If we can devise a standard that any reasonable person would agree to, then we can use this as a benchmark or yardstick to measure how well governments are doing and whether they are moving closer or further from that benchmark. But can we, as Carens suggests, dismiss those who hold 'conventional' views over immigration as mistaken?

The problem here is that the 'overlapping consensus' on democratic principles also includes the 'conventional view' on immigration, but as Carens and others demonstrate, this position is itself open to criticism on ethical grounds. It is difficult to defend an immigration policy that leads to large numbers of deaths at the border and appears to facilitate

the large-scale exploitation of migrant workers. In other words, the overlapping consensus in this case too regularly seems to lead to actions that are unreasonable or abridge what Rawls describes as 'basic liberties'. As Alasdair MacIntyre noted, liberalism is often successful in absorbing its critiques and re-formulating and re-configuring them as a debate that is in fact internal to liberalism:

> Contemporary debates within modern political systems are almost exclusively between conservative liberals, liberal liberals and radical liberals. There is little place in such political systems for the criticism of the system itself, that is, for putting liberalism in question. (1988, 392)

As explained in Chap. 4, in the case of immigration, one way of boiling this down is to divide into those who believe an expansionary inclusiveness to be inherent or embedded within liberalism (e.g. Carens 1987) and those who see the exact opposite: where inhospitality and exclusion are an essential part of the make up of the liberalist project (Losurdo 2014).

PROBLEMS OF DEFINITIONS AND CATEGORIES

It has become a truism to point out that states are Janus-faced over the subject of immigration: systems are set up to attract the wanted and repel the unwanted. This means actively encouraging and facilitating certain forms of international movement, protecting the rights for some while simultaneously (and often ruthlessly) seeking to remove rights and access for others. For those attempting to escape political conflict or environmental disaster through to those simply searching for a better life, the implications of being designated either wanted or unwanted can hardly be exaggerated. The category in which you are placed by the state can have serious consequences.

But what are we really talking about when we talk about immigration and immigrants? A key problem is that without some discussion of definitions we might be talking about different things. There exist UN definitions of long- and short-term immigrants and emigrants,[2] but different countries still often use incompatible measures, and, in some cases, there can be considerable confusion over immigration statistics due to, for example, the inclusion of foreign-born with foreign citizens. The reasons for this simply reflect the complexity of international movement and the

arbitrary nature of immigration controls themselves. As any self-respecting immigration expert would have to admit:

> The answer to the question 'what is immigration' is by no means straight-forward. International migration is a sub-category of a wider concept of 'movement', embracing various types and forms of human mobility (from commuting to emigration). What we define as immigration becomes an arbitrary choice and may be time specific. Migration streams are dynamic, involve different types of people and motivations, have different roles and different implications for host societies, and are influenced and managed by different agencies and institutions. (Salt and Millar 2006)

It follows that we should maintain a healthy scepticism about the extent to which the many different categories of immigrant that appear in debates are representative of something real. The contingent temporal, political, and context-specific nature of the category of 'immigrant' (and any sub-categories) means we should approach with extreme caution. Considering the human price that hinges upon such categorization, it is natural to challenge the notion that one can easily and without problem assign labels to individuals who cross borders, whether these labels be forced or voluntary migrant, labour migrant or refugee, high skilled or low skilled, asylum-seeker, or illegal (to name only the most commonly used sub-categories). These are of course only partial representations, 'false divisions' (Bakewell 2008; Schwab 2015) that simplify and mask reality; they are not 'natural' categories.

Once the arbitrariness of this labelling is recognized, our attention turns to the purpose for which this system of categories has been conceived and implemented; why has it become so commonplace to refer to immigration and immigrants in public policy debates; why it is so important to designate a different immigration status to one group or another? The answer lies in the realm of the political. Cognitive psychology teaches us that categorization has a number of benefits: it allows us to make sense of a complex world and it allows us to process and understand large amounts of information. Public administration rests on the ability for governments to categorize and count things and people—as Weber recognized, it is an essential technique that underpins bureaucratic power.

The problems arise when there are links between this desire to categorize and processes of stereotyping where there is an associated discrimination or pre-judgement. When categories or labels are used to express

and maintain power relationships, they operate by marginalizing certain groups, designating them as 'problematic', for example when dividing on the basis of 'race' (Hopkins et al. 1997). The designation of certain sections of society as 'out-groups' enables and facilitates the furthering of ethnocentric and particularistic interests of the advantaged at the expense of the disadvantaged.

Research has demonstrated the extraordinary resilience of social categories once they are embedded (Jost et al. 2004). This is presumably because of the strong interest to maintain them by those advantaged. However, there is evidence that members of the disadvantaged groups themselves for complex reasons can also favour retention. This could be because individuals calculate there is a stronger interest in maintaining or justifying a system rather than openly questioning that which is prejudiced (Ibid.). However, it would be difficult to underestimate the power of labels within the field of migration. The consequences for an individual or family fleeing persecution of the designation of 'illegal immigrant' or that of 'refugee' can be quite simply one of life and death.

COMPARING NATIONAL IMMIGRATION POLITICS

Britain and the USA are considered by some to be the archetypal liberal democracies. The two countries are often compared in order to analyse the global development of 'liberal capitalist' society (Englander 1997). They have also been used as cases for studies of immigration policy to develop models and illustrate the key characteristics and features of different national 'models' through comparative analysis. This is because they provide useful and interesting contrasts in terms of styles of governance and state capacity for intervention in society. The supposedly 'weak' capacity of the central US state compares with the supposedly 'strong' nature of the British state which enjoys greater reach and autonomy than its counterpart across the Atlantic (e.g. Freeman 1994). The two countries can also sometimes be lumped together as a certain type of liberal democratic state in contrast with others. A common comparator in this case is France with its Republican model, in order to highlight the different approach that country has adopted in relation to immigrant inclusion and societal cohesion (Favell 2001; Lieberman 2002; Geddes and Guiraudon 2004).

One of the interesting areas of comparison between Britain and the USA is the differential development of their respective welfare states. Why are provisions more, or less, generous in Britain compared to the

USA? Why did the welfare state develop earlier in Britain than the USA? Comparative scholarship can try and explain the significant differences in timing and extent of social entitlements in different countries. Usually, this kind of analysis can point to the role of different kinds of state structures or state–society relations in each country (Orloff and Skocpol 1984).

A recent example comes from the political conflict in the USA over the Patient Protection and Affordable Care Act (PPACA) (Obamacare) (Wear 2011). This legislation led to much comparison with Britain's National Health Service (NHS)—described as 'Communist' by some Republican commentators, and to the surprise of the British. Ultimately, these discussions can be traced to underlying ideas about national 'tropes' regarding countries' characteristics and governing styles such as US 'exceptionalism' or presidentialism, and the 'British political tradition' or 'Westminster model'.

The essence of the comparative approach is thus to draw on knowledge about differences in political systems to explain observed variations—in this case, policy development, outputs, and outcomes on immigration. This can, for example, connect different state types with different lived experiences for immigrants, even in terms of the chances of 'success' for different groups or categories of migrants. The difficulty is in deciding upon an appropriate measure to assess something as intangible as incorporation into society. This challenge does not stop the assertion of causal linkages in discussions about immigration.

A good example of this is the public debate on the integration of 'Muslim immigrants' in liberal democracies and which country's approach is the more successful. These discussions are often in reaction to specific events, such as the cartoons published by Danish newspaper Jyllands-Posten in 2005 or the terrorist attacks on France's Charlie Hebdo in 2015. Such debates inevitably result in a comparison of different national models of integration. Leiken asserts with some confidence that the USA has a superior model compared to European countries when it comes to the incorporation of Muslims into society (Leiken 2005). There have been various explanations put forward to try and back this up—one has suggested the lack of a strong state in the USA is counter-balanced by a strong sense of an 'imagined community'—providing newcomers with something they can easily understand, accept, and adapt to (Wright 2011).

The accuracy or otherwise of these claims is not the main point here, it is rather that a fundamental argument is being made about politics: national models or 'modes' matter because they explain what states do to

immigrants. These kinds of arguments are intuitively attractive because they help make sense of a complex world. The problem is that it is very difficult to establish these linkages at each end of the causal chain. It seems logical to assume that the practices, approaches, institutions, and rules which have developed over time in different countries will impact both upon the way that the state reacts to immigration and on the lives of immigrants and their families. However, there are several dangers: first of simplifying each country's full range of policies on immigration into a single 'type' or 'model', and second overlooking the considerable uncertainty over which should be the most appropriate outcomes to measure or record to ascertain 'success'.

One approach is to select policy indicators (rules on access to citizenship, family reunion, etc.) and then correlate them with economic and labour-market indicators (employment rate, earnings, etc.), but it is difficult to establish the precise connection between them. The Migrant Integration Policy Index (MIPEX) is an example of this kind of exercise. The first edition (the European Civic Citizenship and Inclusion Index) compared European countries across 5 'strands' and 99 indicators (Geddes et al. 2005). Ten years later, the fourth edition had expanded to 167 indicators across 8 policy areas and included comparison with several non-European countries such as the USA and Canada. Each indicator has three possible scores, with the highest score given 'when policies meet the highest standards for equal treatment' (Huddleston et al. 2015). This latest version of the index ranked the USA 9th (same as the previous edition) and lowered the UK to 15th (from 10th) out of 32 countries in terms of immigrant integration policies.

There are various limitations to these kinds of exercises: they rely on networks of experts to decide on indicators and to determine scores meaning they can be quite subjective. Given the background to the index the indicators are Eurocentric thus undermining trans-Atlantic comparisons, plus it does not include policies towards the population of undocumented immigrants (AIC 2011). However, the value of this kind of research is less in terms of generating rankings and more in demonstrating the fine grain of policy structures around immigration, how they differ between countries, and where there are areas of strength and weakness when it comes to treatment of immigrants. This provides useful support for the policy community that is campaigning on specific changes and can easily make comparisons with other countries (e.g. Brulc 2015). The most difficult assessment to make is about which country's particular policy

'mix' produces the best outcome. One could be excused for questioning the value of many countries' integration policies considering that in most countries and on most economic measures outcomes for immigrants are generally sub-optimal when compared with the general population, with some exceptions. If this holds true in all receiving countries, perhaps this is telling us that the whole idea of the 'integration of immigrants' (as a quasi-biological metaphor) is something states should simply steer clear of?

The *sine qua non* of these kinds of scientific approaches to understanding and analyzing immigration policies is precision in the conceptual categorization and disaggregation. This, according to the standard method, enables the isolation of dependent and independent variables which in turn contributes to the creation and testing of explanatory theories and models. But this raises the question of whether we should be even using state-defined categories of immigrant, legal/illegal, and asylum/economic. Returning to the example of the debate over Muslims and their integration, as Malik explains, the very idea of a monolithic (immigrant) Muslim identity in receiving states such as France or Britain is a recent fabrication rather at odds with the complexity and diversity of actual populations in each country (Malik 2015). Some will be 'immigrants', others will be 'citizens', some will self-identify as Muslim, and others will not. Another of the more common distinctions is that made between immigration and immigrant policies. The former normally refer to admissions or controls on entry, the latter to social policies targeting immigrants already present (Hammar 1984). Yet, as we know, the crossover between admissions and integration policies (where admission becomes conditional on passing tests supposedly linked to integration) has become a defining feature of policy developments in Europe (Joppke 2007).

National Models and Immigration Governance

Of course both the USA and the UK were at one point governed under the British monarchy until the late eighteenth century, but the subsequent split means that differences in governance arrangements are a recurring source of interest for comparative political scientists and historians. The presidential versus parliamentary debate is a traditional staple of political science (Linz 1990; Lijphart 1992). The perils of presidentialism in the USA are often compared with the greater restriction on the executive that exists in the British system (Buckley 2014). President Obama's decision to use executive action to deal with immigration in 2014 drew criticisms

from Republicans that he was behaving like a 'monarch or emperor'.[3] The comments met with some approval among historians who pointed out that, when the US constitution was written, they drew from the models of monarchical systems, so that, 'from the outset' the US presidency was 'vested with what might be termed monarchical authority, which meant that it really was a form of elective kingship' (Cannadine 2015).

National models are of course stereotypical and contain various internal contradictions (Torpey 2009; Richards and Smith 2015). In the case of US 'exceptionalism', for example, it has been noted that there is a tension between the story 'that Americans themselves like to tell themselves about individualism, self-reliance, voluntarism, associationalism, and the free market' and the actual history of a state that has 'been capable of wielding such broad interventionist, coercive, and regulatory power at home as well as abroad' (Novak 2008: 754). Indeed, there are probably several styles of governance in the USA that have emerged and evolved over time. These styles are normally associated with different types or 'modes' of federalism. John Kincaid (1990) argues that there was an evolution from 'dual' to 'cooperative' and then 'coercive' federalism. The first of these (dual federalism) was initially set up by the US constitution but then became replaced by a post-war era of 'cooperative federalism', largely as a response to massive social challenges. So in this cooperative era, the federal level supposedly acted with the states in their mutual self-interest through the use of fiscal tools. Kincaid argues that as these tools became less available, the federal government shifted into a more 'coercive' mode of federalism (Kincaid 1990), something associated with both Democratic and Republican governments (Kincaid 2015: 64–67). An example of this is during the 2001–2009 Bush presidencies which saw further centralization, despite the association at that time of Republicanism with a greater dispersal of federal powers (Conlan and Dinany 2007).

How might different modes of federalism in the USA relate to the governance of immigration? Authority over immigration remains at the federal level but states can make laws that directly and indirectly affect immigrants, and they have been doing so to a remarkable degree in the twenty-first century (NCSL 2011). One of the ideas behind 'dual federalism' was that states could spread best practice, so from this sense, state innovation can be cooperative (Newton and Adams 2009). However, certain high-profile attempts by states to enhance and expand enforcement in the twenty-first century (e.g. by Arizona, Utah, Indiana, Georgia, South Carolina, and Alabama) put them in direct conflict with the federal gov-

ernment and courts. Most of these laws required state officials to investigate violations of federal immigration law and criminalize those involved, but the federal level has regularly struck these down as violating constitutional safeguards. The topic has therefore become central to questions of power and the tension between state and federal levels (Reich and Barth 2012; Tolson 2013).

At first glance, Britain is a completely different kind of state to the USA. It remains unitary, although the devolution of powers to its constituent nations since the late 1990s has opened the question of whether a quasi-federal state is emerging (Bogdanor 2009). Devolved (as opposed to 'reserved') powers are different for Scotland, Northern Ireland, and Wales, typically they include areas such as education and health, but, in all cases, they exclude immigration. The existence of multiple immigration policies on the British mainland is not completely impossible, however. Just such a prospect was raised by the 2014 independence referendum in Scotland. Considering the Scottish government had previously attempted to attract immigrants through its 'fresh talent' initiative (Scottish-Executive 2004), it was little surprise that proposals (SNP 2013) for an immigration policy put forward by the Scottish National Party (SNP) were seen as more 'positive' and 'welcoming' than those emanating from the London government (Grove-White 2014). Even in the unitary British state where immigration is a reserved matter across all devolved administrations, there is a split, or 'division of labour' on immigration. As with the US system, immigration rules are dictated and enforced from the centre, but the management of immigration's impacts in terms of public services remain at the local level.

The British political tradition (BPT) refers to a different kind of narrative about a predilection for, and priority of, strong government over democratic values such as accountability and transparency, leading to the 'Westminster model' of governance in the UK (Birch 1964: 245). The BPT can be linked to reactionary forces that seek to protect the power of elites and maintain a culture of limited democratic participation (Vines 2014). Such narratives are therefore useful when considering how the state should reform or respond to new demands or old weaknesses in order to function better (Richards and Smith 2015). As with the USA, the unique features of the British state have been key themes in explanations of the British approach to immigration, for example, how the state achieved such low levels of immigration in the 1980s and early 1990s (Freeman 1994).

Ironically, the peculiar characteristics of the British state have also been used to explain how increased levels of labour migration were sanctioned

in an era of increasing public anxiety over the issue. Geddes and Statham imply the continued relevance of the BPT in their analysis of policy which suggests that there is a relative autonomy for elites to do as they please (Geddes and Statham 2006). While for the USA, there is a central concern in the relationship between the federal and state levels over immigration, this has not as yet been a significant issue for the UK. However, devolution and the increasing success of the SNP have led to diverging interests within the Union. The public in Scotland, a relatively unpopulated country with a history of out-migration, seem to exhibit less antipathy towards immigrants than their fellow citizens south of the border (McCollum et al. 2014). Nationalist politicians such as Alex Salmond have sought to draw attention to this issue. This is partly to demonstrate openness and optimism of a country that would like higher levels of immigration, but also as a means of detoxifying the usual associations between nationalism and hostility towards outsiders (Hill 2014).

Conclusions

This chapter has responded to the plea to 'bring the state back in' and set out to defend the importance of politics. Immigration politics often seem to be a big disappointment—for those frustrated that politicians cannot deliver and for those impatient for a different approach—but they will always matter because they have real impacts. The brief history of research into the politics of immigration reveals a considerable number of challenges for the aspiring scholar. The approach of this book has been to select two countries that are emblematic of the contemporary panic about immigration, have some common liberal roots, but also have divergent political histories in the area. Chapters 6 and 7 explore the long history of immigration controls in both the UK and the USA, from eighteenth to twenty-first centuries.

Notes

1. Hein de Haas led a research programme between 2010 and 2014, based at the University of Oxford, which examined the impacts of policy: DEMIG (Determinants of International Migration) http://www.imi.ox.ac.uk/projects/demig.
2. The UN defines a long-term immigrant as 'a person who moves to a country other than that of his or her usual residence for a period of at least a year (12 months), so that the country of destination effectively becomes his or

her new country of usual residence. From the perspective of the country of departure, the person will be a long-term emigrant, and, from that of the country of arrival, the person will be a long-term immigrant'. A short-term immigrant is defined in a similar way but where the time period is at least three months UN (1998). Recommendations on Statistics of International Migration, Revision 1, United Nations Statistical Office..

3. The quote is from Senator Marco Rubio (Republican, Florida) in an interview he gave for Fox News, 3 June 2014.

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Eighteenth to Twentieth Century: Pulling Up the Drawbridge

Introduction

This chapter examines the historical roots of contemporary practices on immigration in Britain and the USA. Among the claims that underpin the usual 'migrant crisis' narrative is that we are in an unprecedented new 'age of migration' (Castles et al. 2013). It is also common to observe that European countries implemented technologies of immigration control much later than the USA which has a longer history of developing such policies (Wong 2015: 70). Yet, as will be shown, Britain and the USA have both had in place some kind of centralized, comprehensive immigration system for a relatively long time period. For example, it is not the case that these states have only recently been forced to use systems of detention and deportation—they have had these in place for well over a century.

This chapter explores how the politics of immigration has developed in Britain and the USA from the eighteenth to twentieth centuries, paying attention to the indicators outlined in Chap. 2. It begins with a summary of the key moments or phases for each country before considering each of these periods in greater detail. Chapter 7 completes the survey with an examination of developments in the twenty-first century.

Key Moments in the History of Immigration Controls

Table 6.1 charts the history of the politics of immigration in the UK and the USA across roughly one-and-a-half centuries, picking out key moments from the late nineteenth to early twenty-first centuries. These are divided into four broad historical phases when there were particular shifts in policy or periods of intense political activity: first the nineteenth century, second the early to mid-twentieth century, third during the late twentieth century, and finally, in the current era—the early twenty-first century. Naturally, this is a relatively brief summary of the history of immigration politics. This is intentional for several reasons. First, because of the analytical and theoretical interests of this book, it makes sense to avoid being overly descriptive. Second, there are already several excellent collections on the history of immigration (Lucassen and Lucassen 2005; Lucassen, Lucassen et al. 2010) and on the history of immigration politics for both the UK (e.g. Layton-Henry 1994; Hansen 2000) and the USA (Tichenor 2002; Motomura 2006). The main aim of the account here is to explore the linkages between the long development of immigration politics over time and the specific aspects of the migrant crisis as outlined in Chap. 2.

Immigration in the Late Eighteenth and Nineteenth Centuries: The End of Open Borders?

Most accounts of the history of British and US immigration politics start with specific and now (in)famous landmark pieces of legislation—the 1905 Aliens Act for the former and the Exclusion Acts of the late 1800s for the latter—both seen as ending a supposedly 'golden era' of open borders. However, while these were very significant laws, in neither case did they represent the very first steps taken by each state over immigration: both can trace the emergence of controls to at least a century before that.

The USA: Federalization and Exclusion

The century before the creation of the US immigration regime, there had been a virtual vacuum at the federal level and immigration was basically regulated by the states (Neuman 1993). Many of these communities had

Table 6.1 History of immigration politics in the UK and the USA

UK	USA
Late eighteenth to the end of the nineteenth century: temporary legislation on immigration largely in response to political/security concerns	Late eighteenth to mid-nineteenth century: creation of naturalization laws, some federalization
	1880s: individual states' control over admissions moves to federal level, Chinese Exclusion Acts passed, and establishment of 'plenary powers' doctrine
1905 Aliens Act: first recognizably modern law on immigration, followed by legislation on nationality (1948 British Nationality Act)	
	1920s: restriction of immigration through quotas and on basis of the 'national origins' system
	1940s to 1950s: increasing exceptions, including family reunion and temporary Mexican labour, and restrictions including for political reasons
1950s and 1960s: 'racialization' of immigration controls following the two World Wars	
	1965: ending of national origins system and replacement with new system with preferences for family reunion and labour migration
1970s to early 1990s: political attempts to reduce net inward migration to zero with focus switching towards asylum-seeking by the end of the period	
	1980s–1990s: raising of caps for employment-related immigration alongside legislation targeting irregular migration
Late 1990s to 2000s: shift to policy of 'selected' or 'managed' migration, with some types of immigration encouraged on the basis of economic needs	
	2000s onwards: gridlock and piecemeal reform at federal level increasing enforcement and security-related measures, growing state-level activity
Late 2000s to 2010s: return to restriction and policies that aimed to reduce net inward flows (while maintaining some aspects of selective labour migration)	

developed from colonies created both by those with commercial intentions but also large numbers of refugees fleeing religious persecution in Europe. The USA had, by the eighteenth and nineteenth centuries, become 'vaunted as a land not only of economic opportunity but also of religious freedom' (Carlson Smith 1939: 4–5). However, racism was never far away: from 1803, there were restrictions on the immigration of 'black' immigrants in some states (mainly to stop movement from other states, but also from Haiti), with federal support for states to enforce laws (Scott Fitzgerald and Cook-Martin 2014: 89).

It was only after the Steerage Act of 1819 that information about immigration was collected at the federal level and the politicization of immigration in the USA really came in the 1870s and 1880s, in the midst of economic depression. By the end of the nineteenth century, the federal administrative apparatus to oversee immigration had been virtually put in place. Key components included a Commissioner of Immigration (under the Secretary of State) (created in 1864 although soon repealed) and a Bureau of Immigration (created by the Immigration Act of 1891 and expanded through the Naturalization Act of 1906). This combined immigration and naturalization functions, regulating and bureaucratizing admissions, and the process of gaining citizenship.

The main driver behind early US immigration legislation was evident in the naming of the Federal Law of 1864, which was called 'An Act to Encourage Immigration'. Shortly following the end of the civil war, this and the Burlingame Treaty with China (1868) demonstrated an initial federal commitment to unrestricted immigration. This was the time of the construction of the transcontinental railroad, and there were ambitious plans to increase trade with Asia. Congress promised that immigrants from China and Japan would 'enjoy the same privileges, immunities, and exemptions' as American citizens' (cited in Tichenor 2002: 93). Yet for all the talk of equal treatment, the connection between immigration and the exploitation of cheap labour was clear, and celebrated by Andrew Carnegie, who in 1886 claimed that 'the value to the country of the annual foreign influx is very great indeed… These adults are surely worth $1500 each—for in former days an efficient slave sold for that sum' (cited in Calavita 1994: 56).

The politics of openness and equal treatment for the (albeit exploitable) immigrants was relatively short-lived, however. Indeed, despite the promises of Burlingame, there were always different classes of immigrant: most would never be able to become citizens due to the rules of naturalization

that were federalized and harmonized in the late eighteenth century. The intentions behind these rules were clear from the start: there should be control over who could gain membership, and this should be decided via racial and moralistic criteria. The result was that US citizenship was only open to 'white persons' of 'good moral character'. In the last few years of the eighteenth century, there were also Alien and Sedition Acts of 1798 that provided a power for the President to deport foreigners considered 'dangerous', but there would not be a fully fledged immigration system as such until nearly a century later.

While the very earliest (re-construction era) legislation encouraged some forms of immigration, there were soon demands to move in the opposite direction. The Republican Party found openness to Chinese immigration as a vote-loser in the West, and an openly racist Democratic Party took advantage. The result was a series of laws to control temporary contract migrant workers and to exclude certain groups. These were primarily through the Page Law and Chinese Exclusion Acts in the 1870s and 1880s. There was also other legislation such as the Public Charge Law of 1882, which barred from entry anyone perceived by officials to be likely to become 'public charge', in other words, dependent upon public benefits. This was a period when the list of those to be excluded from the country seemed to lengthen with each passing piece of legislation (Tichenor 2002: 94–95). The growing numbers of people finding themselves in difficulty with the immigration regulations necessitated the creation of a makeshift detention centre at the end of wharf on the San Francisco waterfront. Commonly referred to as 'the shed', an inspector from the Department of Commerce and Labor described it as a 'death trap' (Daniels 1997).

The battle of ideas in the politics of immigration for the next century could be traced to the arguments over Chinese exclusion at the end of the nineteenth century. Those pushing for more immigration not only emphasized the value of flexible and cheap labour but also defended universal principles of equal treatment and even access to citizenship; those favouring exclusion focused on the problems these immigrants were thought to bring with them, their supposed racial inferiority. There were many stories, for example, about the deviant behaviour of female newcomers who were all presumed to be prostitutes (Lee 2010). This era was not only about prejudice upon racial lines, however, as there was a notable geopolitical dimension and alignment with national security interests, at least initially. While Chinese immigration was banned, newcomers from the more powerful (in international terms) Japan were allowed to arrive

and settle via 'Gentlemen's Agreements'. However, even this special treatment was not to last more than a few decades and was eventually subject to a strengthening of 'anti-Asian' immigration policies in the early twentieth century.

BRITAIN: THE 'ASYLUM OF NATIONS'?

In the late eighteenth and nineteenth centuries, there were only relatively minor incursions in the business of immigration by the British state. There were controls, just not permanent ones. An obvious starting point might be 1793, when an Aliens Act was passed following events relating to the French Revolution. Across Europe, this had far-reaching ramifications due to its creation of a unitary concept of citizenship that 'ushered in a putative legal equality and homogeneity' among inhabitants, eventually leading to 'a protectionist state and the corollary expansion of state capacities… to distinguish "who is in" and "who is out"' (Torpey 2005: 74). This would lead to the creation of passports and passport controls throughout Europe and the USA, a process that would eventually be speeded up by the two World Wars in the first half of the twentieth century (Ibid.).

Insecurity over potential immigration flows to Britain had emanated from declarations made in France following the September Massacres. These had both international implications (threatening Britain's treaty obligations to Holland) and domestic impacts, with the Decree of Fraternity offering assistance to all seeking to 'recover liberty'. The motives of the 1793 Aliens Act were clearly security related and foreign merchants were initially exempted, although later included in an amendment in 1798 (Beerbuhl 2005). The Act was always expected to be temporary and was repealed in 1826, but the policy change on immigration affected naturalization, restricting those who could become citizens. This was only an option for a rich minority of immigrants in any case, and only those who were Protestants, requiring a private act of Parliament. Catholics could become 'denizens' by Royal prerogative. The 1798 legislation generated a requirement for certification and put the whole process under the control of the Home Office for the first time. The anti-foreigner attitude of Viscount Sidmouth (Home Secretary from 1812 to 1822) meant that British naturalization policy became much tighter. This eventually led some wealthy foreign merchants to exploit a loophole that allowed shareholders of the Bank of Scotland to become Scottish, and thereby British, subjects (Beerbuhl 2005: 64–65).

A key theme in the nineteenth century was actually a refusal to impose restrictions by the government. The 1836 Aliens Registration Act allowed official statistics on immigration to be collected by the Board of Trade, but this was not about restricting entry. Later, the 1889 House of Commons Select Committee on Immigration and Emigration also refused to recommend restrictions, although demanding more information about the issue. Underlying the political arguments over legislation were fears about Britain falling behind the rest of the world or otherwise needing to act to 'keep up' with what was happening in the USA and the colonies. There was also a specific idea (or founding 'myth') of British hospitality. This notion was succinctly summed up in an oft-quoted *Times* editorial of 19 January 1858, which famously declared that:

> Every civilised people on the face of the earth must be fully aware that this country is the asylum of nations, and that it would defend the asylum to the last drop of its blood. There is no point on which we are prouder or more resolute… We are a nation of refugees.

Why were some in Britain so apparently proud of the country's lack of restrictions on immigration? First of all, it was a relatively costless position to take in the first half of the nineteenth century. The numbers of immigrants were relatively small. Second, the country's openness could be seen as taking the moral high ground—a way to assert superiority over continental Europe, racked as it was in those times by conflict and revolution (Panayi 1993). Third, it could be traced back to the nature of the British justice system and its negative concept of freedom. As is understood more broadly in connection with Britain's famously 'unwritten' constitution, rather than having rights written down and reflected *in* laws, rights under British law were seen as freedom *from* laws. Thus, at this time, the right to asylum:

> was not enshrined in law. It was stronger than that. Quite simply, British government could not prevent refugees entering the country, or extradite them when they were there, because there were no laws that would empower them to do so. (Porter 2003: 44)

Finally, however, it was due to the fact that the British state did not need to import foreign labour through a formal immigration system. It could rely upon various other sources. Firstly, the problem was rather a

too plentiful supply of poor and excluded—as seen in the workhouse system (Losurdo 2014: 71), but there was also the historical reliance on Irish workers as a flexible source of migrant labour. This had been expressly and politically facilitated through the Act of Union in 1800 and introduction of full free trade since the 1820s, including freedom of movement for persons. This meant there were virtually no obstacles in the way of the migration of relatively poorer Irish workers to the economically more prosperous British mainland (Walsh 2002). An estimated one million Irish people settled in Britain during the nineteenth century, with around 300,000 arriving during the decade of famine in Ireland (1845–1855) (Harper and Constantine 2010: 183).

Informality was also the norm—Irish workers tended to be recruited by middle-men and gangmasters with few records kept, making it difficult to estimate numbers involved (Jackson 1963). Even following Irish independence and well into the twentieth century, Irish labour operated exactly like temporary immigrant labour. It was like a deep well when the British economy needed more hands, and a release valve for when employers felt a need to dispense with their workforce (McGhee 2008).

Immigration in the Early to Mid-Twentieth Century: Racism to the Fore

Britain and the USA continued to take very different paths in the institutional development of their immigration systems for the majority of the twentieth century. While the USA continued its tradition of being a country characterized by high levels of immigration, the UK was to experience significant shifts in migratory patterns. Interestingly, as the USA was to finally divest itself of explicitly racist entry criteria, the UK was putting in place a system of controls that was seen as highly racialized.

The USA: Between Ellis and Angel Islands

Despite the clearly racist character of the immigration laws that emerged at the very end of the eighteenth century, the 'high-point' of racist immigration controls in the USA probably did not arrive until the first half of the twentieth century. This was based on the 'legal architecture' of the Chinese Exclusion Acts (Lee 2003), but was bolstered by the ability of nativists and labour unions (e.g. the Asiatic Exclusion League) to lobby on

the issue, and even link it to Progressive Era Politics and a 'scientific' basis for ethnic selection (Tichenor 2002: 114–115). Immigration from Asia was restricted via the Immigration Act of 1917, which blocked immigration from a number of countries in the Asia-Pacific region. Then the quota system put in place by the Quota Law of 1921 and the National Origins Act of 1924 capped total immigration for each year, but exempted certain countries, betraying a clear preference for immigration from Northern and Western European countries. It also created the distinction between 'immigrant' and 'non-immigrant' (temporary) categories. The process of calculating the quotas for each country ended up being a rather complex affair, subject to further debate and lobbying on the part of nativists and those representing the interests of certain nationalities, for example Germans and Scandinavians (Ngai 1999).

The story of early twentieth-century immigration control in the USA is illustrated by two locations: Ellis Island and Angel Island, on the East and West Coasts. The construction of the former at the end of the nineteenth century was a visible sign of the federal assumption of control over immigration. It is celebrated now as the 'gateway' for millions of immigrants (over 100 million US residents can trace their ancestry to Ellis Island), but Southern and Eastern Europeans arriving through Ellis Island were part of those excluded by the 1924 legislation, with its preference for German and Irish immigrants (Fleegler 2013: 18–19). After this date, it was transformed into a station for detention and deportation. The subsequent romanticization is now associated with the transformation of these European immigrants into 'white Americans' (Roediger 2005). Angel Island, on the other hand, replaced 'the shed' on San Francisco wharf and was used to process and detain Chinese and Japanese immigrants, rejecting large numbers and deporting an estimated 10,000 between 1910 and 1940 (Daniels 1997).

When viewed comparatively, the USA stands out as one of the first independent countries in the Americas to adopt rules on immigration and naturalization based on race and would be one of the last to abandon such policies (Scott Fitzgerald and Cook-Martin 2014: 82). Of course, there is a connection between the development of ethnic selection in immigration policies and domestic attitudes towards slavery—over which differences had been important enough to fuel a civil war in the previous century. As Johnson (1998) argues, 'the treatment of "aliens", particularly noncitizens of color, under the US immigration laws reveals volumes about domestic race relations in the nation' (Johnson 1998: 1112). He goes

on to suggest that 'the differential treatment of citizens and noncitizens serves as a "magic mirror" revealing how dominant society might treat domestic minorities if legal constraints were abrogated' (Johnson 1998: 1114).

While the USA was earlier than many countries in developing a system of immigration controls, the tragic story of the SS St Louis demonstrated the lack of a system for protecting refugees. The ship asked permission to enter the US territory on 6 June 1939. It was carrying more than 900 Jewish Europeans fleeing Nazi persecution, but as the quotas for the countries had been filled, the ship was sent back. Many of the passengers were eventually tortured and killed during the Nazi occupation of Europe (Thomas and Witts 1974).

It would only be around the time of the Second World War that immigration politics in the USA would start shifting. This was first of all towards an incremental dismantling of Chinese exclusion, albeit not removing other racist policies affecting non-citizens. This partial move reflected the fact that immigration had become subject to foreign policy priorities: after Pearl Harbour in 1942, Japanese immigrants were rounded up and incarcerated, while Chinese exclusion was formally ended, thanks to the need to form an alliance with that country. Second, while the front door was being closed, the back door continued to swing wide, with few controls on either the Mexican or Canadian borders. In 1942, a programme to bring in foreign contract labour for the agricultural sector was created, later referred to as the Bracero labour programme. Ironically, this did not result in a formalization of immigration from Mexico (which had increased markedly since the 1920s). Exploitation of Mexican immigrants was widespread. The Bracero programme's agreed level of wages were rarely paid, and neither were requisite living and working conditions met (Calavita 1994). The programme also failed to prevent substantial irregular flows of immigrants from Mexico that were largely tolerated, particularly at harvest time. There were sporadic enforcement efforts—for example, 1954's 'Operation Wetback' involved an unprecedented sweep of entire neighbourhoods leading to the deportation of around one million. Even this draconian measure was only temporary—various deals were done to protect employers who had undocumented workers on their payroll, either by offering them immunity or by providing replacement 'legal' labour (Calavita 1994: 61)

This period therefore saw an exaggeration of the bifurcation of immigrants into 'wanted' and 'unwanted' categories, with restrictions tight-

ened towards immigrants from certain countries while controls relaxed for others. The system has been described as a 'two-tiered immigration bureaucracy' by Daniel Tichenor (2002: 150) with the State Department shutting down certain routes and the Immigration Bureau and Labour Department facilitating others. This dualism reflected the competing political forces and internal contradictions and divisions and conflicts in policy goals on immigration for various parts of the administration (Calavita 1992).

There was some consolidation of existing laws with the arrival of the Immigration and Nationality Act of 1952 (the McCarran–Walter Act). This removed exclusion on racial grounds but not the racist underpinnings of policy because it maintained the national origins quota that essentially did the same thing. The Act tends to be associated with the Cold War and the McCarthy era because of its incorporation of an instrument which allowed for the denial of visas to a certain type of 'undesirable' individuals. The new power allowed for the exclusion of anyone who could be connected with organizations that advocated 'the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship' (Section 212(a) 28). Effectively, it allowed the government to exclude anyone who 'expressed leftist or anti-American views or were simply suspected of holding them' (Cohn 2012: 38). The Cold War logic was also reflected in policy on granting refugee status, where those not from Communist countries or the Middle East had to pass a much higher standard to qualify (a 'clear' rather than 'reasonable' probability of persecution) (Cianciarulo 2007: 1125).

The ideological dimension to exclusion allowed the government to do other things such as bar foreign lecturers and researchers from working at US universities, threatening freedom of speech and the principles of 'academic freedom' in terms of the ability to challenge government forms of knowledge and social control (Scanlan 1988). The law also led directly to the exclusion of political dissidents and writers from Latin America, famous examples being the authors Gabriel Garcia Marquez, Julio Cortazar, and Jorge Luis Borges (Shapiro 1987; Cohn 2012: 37). However, the 1952 Act did increase provision for high-skilled immigration, reversed the prohibition against contract workers, and expanded non-immigrant visas—although these were a very small proportion of immigration in the 1950s and 1960s (Papademetriou and Yale-Loehr 1996).

It was not until the 1965 Immigration Act that race or national origins were abandoned as criteria for exclusion. Passed in an era of civil

rights reform during the 88th and 89th Congresses, the Act is seen as a 'high-water mark' for opponents of immigration restriction by ethnic selection. It is considered an unmitigated disaster, however, for those who saw its attempts to restrict overall numbers as foolish and counterproductive (Massey 2013). And even worse by others who blame it for radically, and unintentionally, altering the profile of immigrants entering the USA in a negative direction (Brimelow 1995). A common brand of nativism sees the increasing levels of immigration from Mexico and other Latin American countries as a direct result of the 1965 law, creating a 'Latino threat' to 'American identity' (Chapman 1976; Huntington 2004). One explanation of this change has been that the shift was primarily a triumph of domestic forces of liberalism (Joppke 2005), another is that it was first and foremost a question of the USA aligning with international norms of anti-racism, with interest groups on the domestic front playing a secondary role (Scott Fitzgerald and Cook-Martin 2014: 83–85).

The system put in place by the 1965 legislation would, in President Johnson's words, welcome immigrants 'because of what they are, and not because of the land from which they sprung'. There were distinct preferences—for family reunification, skilled-based and refugee visas, but the first of these accounted for around three-fourth of immigrant visas. The inclusion of the employment-related preference led to a more intensive involvement of the state with the Secretary of Labour certifying on the basis of US labour market needs. However, employment-related immigration remained a small proportion of the total. The new commitment to family reunification was framed as 'central to American values and reflective of its democratic principles' (Lee 2015: 543). It was partly based on the idea that not much would change, however. The assumption was that, due to the previous national origins system, the focus on family reunification would mean more Europeans, but inflows would end up being dominated by Asian and Latin American immigrants (Reimers 1983).

Britain: Managing Decline: Empire to Commonwealth

In the first few years of the twentieth century, there were also signs in Britain that immigration was, as in the USA, set to become deeply politicized, but again this was in reaction to perceptions about specific migratory pressures. Anti-Semitic media and political debate linking Jewish refugees from Russia and Poland with crime and disease eventually led to a

Royal Commission, asked, rather pointedly, to: 'enquire into the character and extent of the evils which are attributed to the unrestricted immigration of aliens', where 'aliens' was synonymous with 'Jews' (cited in Hayes 2002: 31). The Aliens Act (1905) was 'the first recognisably modern law that sought permanently to restrict immigration into Britain according to systematic bureaucratic criteria that were initially administered and interpreted by a new kind of public functionary: the immigration officer' (Glover 2012: 1). It gave the Home Secretary powers to deport foreign citizens under an 'expulsion order' and also made provision for them to be detained while waiting for their deportation (Bosworth 2014: 29), but it did not apply to anyone arriving on first or second class tickets. There were several criteria for refusal but one of the most important principles, which would have echoes in future immigration legislation, was the rejection of anyone who may have 'recourse to public funds' (Cohen 1996).

Despite the contemporary resonance of this and considering that up until the second half of the nineteenth century the UK still maintained a kind of 'laissez-faire' approach when it came to immigration, in many ways the law did not represent a full paradigm shift. The context was of mass emigration, not immigration. Between 1815 and 1930, about 18.7 million people emigrated from the UK (Harper and Constantine 2010: 3). Immigration laws were, therefore, about the creation of specific powers to deal with specific immigration fears, rather than any comprehensive system. In a similar way to the Aliens Restriction Act of 1914 and the Aliens Restriction (Amendment) Act of 1919, these laws created emergency powers over admissions, detention, and deportation. The powers would be infrequently used, but they remained on the statute books, 'unexpunged' (Bosworth 2014: 25).

It has been argued that the post-1905 era was not qualitatively different in terms of the treatment of immigrants already resident. As Feldman shows, the 1905 Act did not radically change how immigrants were dealt with or what they might have to endure if they had the misfortune to be poor (Feldman 2003). He suggests it would be more accurate to say that it shifted the locus of responsibility; it radically altered the people and agencies that had powers to control immigration: those with the right to define and limit it. It shifted this upwards from local officials and voluntary organizations to central government (Feldman 2003: 175). One of the themes in the debate over the 1905 Act was the notion that Britain had been naïve or slow to respond to the new 'threat' of immigration—where allies had been smarter and more pragmatic in acting to restrict flows

of immigration, addressing threats through legislation (Bashford and Gilchrist 2012). Immigration regulations were indeed developing across Europe by the end of the nineteenth century, as part of nation-building efforts, linked to a growing desire to differentiate between 'national' and 'foreigner' (Caestecker 2003). The 'anti-alienism' during this period that was nurtured among the general public became useful later in clearing the way for the British state's internment of 'enemy aliens' during both World Wars (Cesarini 1992). Paradoxically, while many have pointed to the 1905 Act as the beginning of the legal codification of immigration restriction, it also enshrined and codified a right to asylum (Bashford and McAdam 2014).

Despite the fears around immigration at the very start of the twentieth century, the time before and between the two World Wars (plus a great depression) was characterized by generally low levels of immigration into Britain. Extremist politicians tried but ultimately did not succeed in using the issue to their advantage, as they had elsewhere in Europe (Thorpe 1989: 4–5). That immigration which did occur was mainly refugees, and there were significant numbers of Jewish refugees, others from Belgium before the First World War, and of Polish origin during the Second World War. The declaration of war on Germany also created a category of 'enemy aliens': German immigrants were, until the end of the nineteenth century, the largest national grouping of immigrants in Britain (if Irish are excluded). The war meant detention and repatriation. Although according to some accounts, Germans were treated 'fairly' (Panayi 1991: 70), the classification of refugees as enemy aliens has been criticized as betraying Britain's liberal values, particularly with the internment of Jewish refugees in 1940 (Cesarini and Kushner 1993).

Probably even more than the 1905 Act, the British Nationality Act of 1948 is often presented as a watershed moment in UK immigration policy. This, according to some, was when lawmakers took leave of their senses and decided to open the door to mass immigration and effectively created 'multicultural Britain' (Holmes 1988). This is because the law provided all citizens of the UK, its colonies, and the Commonwealth with the right to enter, live, and work in Britain. In one sense, it was an attempt by the Labour government to reconstitute the empire in the new context 'with gunboat diplomacy and outright leadership replaced by colonial economic development and equality among dominion nation-states' (Paul 1997a: 236). The theory was that all residents of the empire shared a British nationality, and with this, universal rights to enter the UK, vote, and take

up employment. In practice of course, 'this principle was compromised along axes of gender, class and skin colour' (Ibid. 237).

In a similar way to the 1905 Act, reading the 1948 Act as constituting a national strategy on immigration only makes sense retrospectively. As Hansen (2000) shows, the Nationality Act was not understood as immigration legislation at the time. It was rather about national pride and a constitutional reaction to Canada's 'unilateral' creation of citizenship (i.e. without asking Britain), best described as a 'backward-looking document re-affirming the status quo' (Hansen 2000: 35). As Christian Joppke puts it, the Act expressed both 'anachronism and extreme self-confidence' (Joppke 2005: 97). Many of the ideas circulating at the time reflected the continued importance of the tradition of 'Civis Britannicus Sum' (I am a British Citizen). These characteristics can be seen in the parliamentary debates over the legislation, for example, when Sir David Maxwell Fyfe argued that the law should allow Britain to 'maintain our great metropolitan tradition of hospitality to everyone from every part of our Empire'[1] (cited in: Hansen 2000: 50).

The arrival of the Empire Windrush on 22 June 1948, carrying immigrants from Jamaica, has since become memorialized as both the outcome of the Nationality Act and the inauguration of a process of mass migration into Britain (Phillips and Phillips 1998). However, most of the facts normally given about Windrush (including the date of arrival, number of immigrants, where some of them came from, and their gender) have been smothered by layers of myth and 'selective and symbolic' memory (Mead 2009: 147). There was a steady flow of immigrants from the Commonwealth, amounting to between 850,000 and over a million by 1965, according to different estimates (Harper and Constantine 2010: 186). There was a notable increase just before the 1962 legislation to 'beat the ban' (Hansen 2000: 118). Other types of immigration during this period are often forgotten—for example the recruitment of 'European Volunteer Workers' from German camps after the Second World War (McDowell 2004) and refugees from Hungary following the 1956 uprising.

The long road to the next wave of immigration legislation, through the 1945–1951 (Labour) and 1951–1964 (Conservative) governments, was politically complicated due to sentiment about the loss of empire and fears about race (Carter and Joshi 1984; Carter et al. 1987). The rationale for these new immigration laws was social and political rather than economic. There were the Notting Hill Riots of 1958—blamed on 'black people',

but actually organized by fascist groups (Carter and Joshi 1984). Then there was a coalition of right-wing extremism, racism, and demands for stricter immigration controls, making connections with crime and disease, as had been the case in the lead-up to the 1905 Act. The logic was that it was impossible for 'coloured' immigrants to integrate, but there were also economic assumptions about the effects of immigration. In particular, the notion that increased immigration would raise levels of poverty and unemployment. The (Conservative government) Commonwealth Immigrants Bill of 1962 for the first time introduced immigration controls to Commonwealth citizens. The Act applied to everyone who did not hold a passport issued by Britain (i.e. issued by any other Colonial government). One of the most controversial aspects was the exclusion of Irish immigrants from controls. This was seen by some as evidence of the racist intent, and was also unpopular because of Ireland's Declaration of Independence, but was mainly about the practical difficulties of imposing controls (Hansen 2000: 114). For Commonwealth citizens, there was a voucher system determined by skill level to allow entry for a small number, but the aim of the law was obvious: to reduce immigration, but particularly 'coloured' or 'black' immigration (Layton-Henry 1992).

The notion of imperial hospitality, deeply undermined by the racist legislation of the 1960s, was demonstrated as illusory with British government's reaction to two refugee crises in Kenya and Uganda. European and Asian minorities in these two countries had retained a right to enter the UK because of the way independence had been negotiated (Hansen 2000: 176). The introduction of racist 'Africanization' policies in the newly independent states not only prompted many to travel to Britain in the mid-1960s but also led to a campaign led by MPs Enoch Powell and Duncan Sandys to limit their citizenship rights. The result was a victory for this campaign in the passing of (1968) Commonwealth Immigrants Act by the Wilson government (Hansen 2000: 177). This introduced a 'patriality' rule which specified that only those with a parent or grandparent who had British citizenship could enter the country, thus rendering a large number of East African Asians effectively stateless. Although the government claimed the legislation was not motivated by racism, a case brought before Strasbourg led to the verdict of the European Commission of Human Rights, which concluded that:

> the 1968 Act had racial motives and that it covered a racial group. When it was introduced into Parliament as a Bill, it was made clear that it was

directed against the Asian citizens of the United Kingdom and Colonies in East Africa and especially those in Kenya.(cited in Lester 2003: 9)

The 1971 Immigration Act further reduced numbers able to enter and reside distinguishing between 'New' and 'Old' Commonwealth citizens, reflecting a preference for migrants from countries with predominantly 'white' populations, that is Canada, Australia, and New Zealand. The 1960s and 1970s illustrated how far Britain had moved away from notions of inclusive citizenship laid out in 1948. The establishment of patriality caused a deep split in cabinet, with Commonwealth Secretary George Thomson describing the legislation as racist. The accounts of MPs confirm that they were inclined to vote in favour of the legislation because of perceived racism in their constituencies (Crossman 1977: 676). The politicization of immigration in this era was due to politicians' perception of a xenophobic public rejecting immigration from developing countries that were ex-colonies (Layton-Henry 1994; Saggar 2003). Such ideas were backed up by evidence from the 1970 British Election Study which found that 80% of voters were hostile to more immigration (Saggar 2003: 179).

'Race relations' coupled with tighter immigration restrictions became the 'liberal' political solution. As Labour MP Roy Hattersley said in 1964: 'Integration without control is impossible, but control without integration is indefensible' (Rex and Tomlinson 1979). The pattern was then a combination of legislation on race relations with a tightening of immigration controls. With the benefit of hindsight, this equation reproduced and confirmed the xenophobic assumptions attributed to the public by suggesting immigrants, while victims, were also the cause of racism and xenophobia (Crowley 1999: 149; Harris 2002: 5). Enoch Powell's famous 'rivers of blood' speech cemented the ideas that different colours of people could not mix, that the general public were racist, and that they would vote for the party which could restrict immigration. Although Powell was ejected from the Conservative front bench following his intervention, his party still came to be regarded as the one which was 'tougher' on immigration (Saggar 2003). Analysis of the 1970 election identified this perception as a contributing factor in the Conservative victory (Studlar 1974; Miller 1980). Immigration is often cited as the classic example of how issue voting can have a significant effect on electoral outcomes (Butler and Stokes 1974).

A key question in this period is whether policymakers, driven by racism, were attempting to 'whitewash' Britain (Paul 1997b), or whether

their actions could be considered responsible issue management under the constraints of the peculiar implications associated with the post-war dismantling of empire (Hansen 2000). Economic arguments became crucial, but only in the sense that immigrants were seen as competitors for jobs, housing, and welfare benefits (Layton-Henry 1994: 273). There were internal divisions between the Colonial Office, with its expansive notion of British citizenship, and the Ministry of Labour anxious about future unemployment (Hansen 2000: 91). The resolution was in favour of the restrictionist position and the priority of 'internal security' (Hansen 2000: 129). Subsequent analysis suggested that the Ministry of Labour's concerns that immigration would equal higher unemployment were not based on particularly sound understanding of the labour market (Findlay 1994: 160–161)

Immigration in the Late Twentieth Century: Putting the Pieces in Place

For both Britain and the USA, there was acceleration in terms of legislative activity in the late twentieth century but on very different aspects of the immigration system. Britain's restrictive 'zero-immigration' policy continued to hold, but came under increasing pressure as the century drew to a close. In the USA, the continued and growing presence of a large population of irregular immigrants finally moved to centre stage in the policy debate. For both countries, the 1980s and 1990s ushered in a new era of heightened legislative activity over immigration after a hiatus of 20 years or so. For the UK, these were about completing or 'sealing' the system; in the USA, they were all about repairing it—making good that which had been done in the 1950s and 1960s.

The USA: Fixing the System?

It could be argued that the contemporary era of immigration control in the USA was ushered in during the 1980s, where the twin themes of social justice and border security become progressively inter-twined. Most analyses focus understandably on the 1986, 1990, and 1996 Acts which dealt with regular and irregular immigration. However, the period began with a Refugee Act in 1980, introduced to re-balance what was considered a bias towards applicants from Communist states, and incorporating into

US law, finally, the UN definition of refugee. Despite this, the 1980s continued to see politicians paint refugees from Communist Europe as 'heroic victims', while those from Central and Southern America were lawless and 'malevolent… welfare recipients or criminals' (Simon 1998: 582), a view that ended up being reflected in the statistics on recognition from these places in the 1980s (Crittenden 1988).

The public debate had shifted from explicit discussion of race and eugenics. Instead, those seeking to reduce unwanted immigration made linkages with the problems of population growth and its impact on the environment, inspired by neo-Malthusian ideas (Ehrlich 1971). This led to the launch of FAIR (Federation for American Immigration Reform) (in 1979) by John Tanton, president of an organization called 'Zero Population Growth'. FAIR has become the largest organization campaigning against immigration in the USA, and although it maintains it holds liberal, egalitarian values of non-discrimination; in the 1980s and 1990s, it accepted donations from Pioneer Fund—a foundation that supports research in eugenics and 'race science' (Huang 2008). FAIR and its allies were facing a growing number of civil society organizations in the USA demanding more rights for immigrants. These were normally advocates for particular ethnic groups or nationalities: setting up around legislative efforts to campaign for Asian and Latin American immigrants in the 1920s and then again in the 1960s.[2] These groups moved to Washington in the 1970s and would oppose the development of employer sanctions against undocumented immigrants arguing they led to discrimination. There were clashes with some African American groups that saw undocumented immigrants as lowering standards, breaking strikes, and providing competition for jobs, but they eventually joined forces on other issues such as education and voting rights (Tichenor 2002: 230–232). This movement was bolstered when joined by the big union group The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). According to its president, however, the shift away from a restrictive position on immigration was less about hospitality and more geopolitical—part of efforts to 'combat world Communism' (Scott Fitzgerald and Cook-Martin 2014: 117).

The 1986 IRCA (Immigration Reform and Control Act) was chiefly concerned with the problem of irregular immigration and supposed 'pull factors', but the 1990 Act widened to include legal immigration, family reunion, and asylum. The initial focus was therefore remarkably similar to the policy debate that would happen 40 years later. Following growing

concerns expressed in Congress in the 1970s, a Select Commission on Immigration and Refugee Policy was set up, which reported in 1981 and estimated there were between 3 and 6 million irregular immigrants in the USA. The Commission's report argued that the existence of a large population unwilling or unable to reveal its presence meant a risk to justice, public health, and disclosure of violations of labour law.[3] The 1986 IRCA was the eventual outcome, with a 'carrot and stick' approach. It dealt with irregular migration by offering an opportunity for these immigrants to regularize their situation, but it also included enhanced enforcement of borders and sanctions for employers recruiting undocumented workers. Together with 'e-verify', the introduction of penalties for employers by IRCA demonstrated how the interests of immigration enforcement could fundamentally shift the private employer–employee relationship across the whole economy (Stumpf 2012).

In the meantime, the states had established through a series of judicial rulings in the 1970s and 1980s that they enjoyed an inherent local authority to arrest and detain for criminal violations of federal immigration law (Michaud 2010). This was because they were seeking to enforce secondary violations—that is trying to gain employment—not the primary aspects of the 'regulation of immigration'—decisions on entry and conditions of stay (which is pre-empted by federal law and regulation as per the constitution). However, there were already concerns about the use of state law enforcement personnel participating in immigration enforcement: not only over the potential infringement of constitutional rights but also with confusion among the states due to a lack of clear guidance from federal level (Yanez and Soto 1994: 50).

The programmes initiated by the IRCA led to around 2.65 million people regularizing their situation. According to Carl Hampe, who worked for one of the Act's sponsors (Senator Alan Simpson), the regularization programmes[4] were primarily about saving resources rather than rewarding 'law breakers', but that after that:

> Second, we did believe that, assuming the existence of a certain class of people who had been here so long that they would not go home no matter what types of law was passed, we should remove this class from its subclass status and bring it under the full protection of our laws. We felt that it was not healthy for a country that was allegedly committed to 'equality under the law' to have a large group of people living outside the protection of those laws. (Hampe 1988: 501)

The 1990 Immigration Act returned to the issue of legal immigration, which had been raised by the 1981 Commission but which had not been dealt with by the 1986 legislation. It raised the annual cap to 700,000 and then 675,000, restructuring the categories for employment-related immigration and increasing their numbers but also increasing family based immigration alongside making a number of other changes (Leiden and Neal 1990). It was also about resolving some of the perceived flaws of previous legislation. For example the development of the 'diversity' immigration allocation was specifically intended to compensate potential migrants from countries that were adversely affected by the 1965 legislation.[5]

It is at this point that a gap begins to widen in terms of equality under the law between citizens and immigrants, which had arguably first been opened up with the plenary powers doctrine of the late nineteenth century. The 1990 Act broadened 'aggravated felony' provisions that were first introduced in 1988 through the Drug Act and were added to the Bill (Title V) at a late stage. These removed rights to due process in the legal system for certain categories of criminals who were not US citizens and were designed to facilitate an accelerated deportation process (Feldman 1993: 202).

Further Acts would come in the late 1990s aiming to make life more difficult for irregular immigrants already resident by restricting rights. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) responded to perceived failures of the IRCA of the previous decade. The supposed solution of regularization and enhanced enforcement established in 1986 would not be a 'one-off'—it initiated a political process and a new era of immigration enforcement, targeting irregular immigrants (Abriel 1998). The IIRIRA continued this and widened the number of offences that could lead to either deportation or admission being denied. It also formalized the incorporation of local law enforcement into the policing of the immigration rules. This was through ACCESS measures (Agreements of Cooperation in Communities to Enhance Safety and Security) intended as 'force multipliers' allowing local law enforcement agencies to work with Immigration and Customs Enforcement (ICE) to enforce the federal immigration rules; transferring anyone suspected of violating immigration laws to ICE facilities to initiate deportation proceedings. This was an important re-entry of states into the business of immigration controls that had been ousted at the end of the previous century. It opened up the possibility of a new 'steam valve' fed-

eralism on immigration, allowing states to tailor and modify enforcement to their own needs (Spiro 1997).

The approach of the federal government was to devolve enforcement to the local level in order to reduce the number of irregular immigrants resident in the USA through 'across the board' attritional enforcement. This meant making life so difficult for those who did not have legal status that they would 'give up and deport themselves' (Krikorian 2005). Other examples of this strategy included the Personal Responsibility and Work Opportunity Reconciliation Act (1996), which reduced access to public goods for immigrants and the Antiterrorism and Effective Death Penalty Act (1996) which allowed for detention and deportation on the basis of 'secret evidence'.

There was a backlash against some developments during the Clinton administration that were seen as overly harsh—for example legislation removing access to public goods (education, health, welfare) for undocumented immigrants. There was also an attempt to create a national ID card system at this time, which was defeated. Another example was the (1993) 'Immigration Stabilization Act' introduced by Senator Harry Reid (Nevada). This aimed to alter the automatic granting of citizenship by birth (*jus soli*) in the USA, originally created through the Citizenship Clause in the 14th amendment to the Constitution. Reid's Bill was specifically designed to narrow the expansive definition of citizenship contained in the amendment in order to deny citizenship to children of undocumented immigrants. It was an idea which had already been explored at length in a book by two academics who drew on Locke's ideas about government by consent to argue that *jus soli* or 'birthright citizenship' should not be applicable to the children of those who had not been 'legally permitted' to enter the USA (Schuck and Smith 1985). Despite the failure of Reid's Bill, the idea was later taken up by many others in Congress (notably Newt Gingrich), but more than 20 years after its publication, one of the authors of the book conceded that:

> These efforts have all failed. Indeed, none has come anywhere close to winning congressional approval or broader popular support. It therefore makes much more sense than it did in 1985 to say that Americans have, through their representatives and their votes for their representatives, consented to reading the Fourteenth Amendment to provide birthright citizenship to children of all aliens born on American soil, whether legally present or not. (Smith 2009: 1333–1334)

The end of the twentieth century saw growing tension in the USA between demands to deal with irregular immigration and continuing economic demand for these kinds of workers. This led to a considerable swelling of the already large numbers of irregular immigrants in this period, particularly in low-pay sectors. Emblematic of this is the US agricultural system, where:

> In effect, migrant workers so necessary for the success of the labor-intensive US agricultural system subsidize that very system with their own and their family's indigence. The system functions to transfer costs to workers, who are left with income so marginal that, for the most part, only newcomers and those with no other options are willing to work on our nation's farms. (Labor 1994: 40)

As with the end of the nineteenth century, the new direction for immigration policy was signalled at the end of the twentieth century, and, again, it would come from the West Coast. California's (1994) Proposition 187 (Save Our State) was a new sign of ambition on the part of states willing to pass immigration-related legislation, despite it being a federal responsibility. Passed with a convincing majority (59–41%) Proposition 187 denied undocumented immigrants the right to attend schools and receive non-emergency health care and demanded that frontline staff in education and health report contact with undocumented persons to the authorities (Martin 1995). Explaining the reason why Proposition 187 came about is generally a case of blaming a resurgent nativism in California that was linked to cyclical economic effects (Alvarez and Butterfield 2000). Others have gone further to associate it with a more general societal malaise brought on by the 'post-Fordism' crisis in political economy: 'a symbolic statement of fear, anger, and frustration emanating from the economic uncertainty that drives balanced-budget conservatism' (Calavita 1996: 285). Eventually, most parts of the law were found to be unconstitutional in 1997 in a judicial ruling because they were deemed to 'regulate immigration'.

Britain: Maintaining the Illusion of 'Zero-Immigration'

British politics from the late 1970s to early 1990s were dominated by the figure of Conservative leader, and then Prime Minister, Margaret Thatcher. It is interesting then, that as opposition leader, Margaret Thatcher chose

to speak regularly on immigration in the 1970s, constantly seeking to position the Conservative Party as tougher on the issue than Labour but also against the claims of the far-right National Front (NF). Throughout this period, the economics of immigration remained in the background in political debates (Spencer 1994). It was instead ideas related to internal security, community relations, and identity politics that held sway. Thatcher's comments about immigrants 'swamping' in 1978 were about the threat to British identity. She was attempting to connect with voters who, as she put it: 'are really rather afraid that this country might be rather swamped by people with a different culture and, you know, the British character has done so much for democracy, for law and done so much throughout the world that if there is any fear that it might be swamped people are going to react and be rather hostile to those coming in'.[6]

The intervention has been credited with silencing the anti-immigrant lobby, dominated by the radical right (Kitschelt 1995: 248–250) and sealing the fate of its main protagonists: the NF (Copsey and Renton 2005: 189). The first piece of legislation after Thatcher's Conservatives were brought to power in 1979 was the British Nationality Act (1981). This completed the job of dismantling the expansive notions of British citizenship with the main aim of further restricting the entry of certain Commonwealth citizens. Patriality now came into nationality law creating a three-way categorization of citizenship with different rights of entry and residence for each: British citizenship, British Dependent Territories citizenship (i.e. those living in the remaining colonies, since 2002 classified as Overseas Territories), and British Overseas citizenship.

Once the 'loopholes' over the definition of British citizenship had been closed, the logic of restriction led to a change in the focus and scope of policy. In the first instance, this was through the 'remote-controlling' of immigration through the Immigration (Carriers' Liability) Act (1987). This introduced a penalty for the owners of ships or aircraft who allowed a person without a visa or valid documentation to enter the UK. As part of the European Community, control over the movement of certain categories of persons had been removed from the hands of the UK government. The Immigration Act 1988, for example, tightened up rules on marriage but opened the door to European immigration by introducing freedom of movement for EEA (European Economic Area) nationals.

In one sense, the goal of 'zero-immigration' was nearly achieved with the limitation of inward immigration flows in the 1970s and 1980s leading Gary Freeman to describe the country as 'a deviant case' among Western liberal democracies (Freeman 1994). The explanation was that

the exceptionally strong executive government in Britain, combined with a relatively weak judiciary and lack of a bill of rights, allowed politicians to pursue restrictive and illiberal immigration politics (Hansen 2000: 263–264). However, even Britain could not entirely avoid the next wave of international migration and refugees, which began in the late 1980s (Geddes 2003: 40). Inflows into the UK increased from this period and into the early 1990s, creating pressure for a political response. One sign that immigration was again increasing in salience as a political issue was the rising profile of the British National Party (BNP) in the 1990s (although with little in the way of actual electoral success). The Conservative Party responded with a ramping up of restrictions, particularly focusing on asylum-seekers, stretching to breaking point Britain's compliance with its obligations under the 1951 Geneva Convention (Hansen 2000: 222).

Without any serious political opposition, the 1990s saw a stepping up of internal immigration enforcement, and the welfare state emerged as one of the crucial instruments of internal immigration control (Bommes and Geddes 2000). Critics of the system, whether activist or politician, continued to concentrate their energies on the development of anti-discrimination legislation (Hansen 2000: 129), along with calls for a greater appreciation of the economic benefits of immigrants and asylum-seekers to the UK economy (Spencer 1994). The government was intent on restricting asylum-seeking in the context of the post–Cold War era, where a number of states on the periphery of the European Community were collapsing into civil war. The Immigration and Asylum Appeals Act (1993) and Asylum and Immigration Act (1996) both increased the use of detention in the asylum process, leading to an increase in the number of Immigration Removal Centres (IRCs)[7] and the first use of private contractors (Bosworth 2014: 33).

For many the death of Joy Gardner on 1 August 1993, a Jamaican citizen who died of a heart attack after police restrained her in order to attempt to deport, symbolized the state of British immigration politics. Government politicians and sections of the press sought to blame the victim with various slurs including claims that she was violent, HIV positive, and 'bumming off social security' (Erfani-Ghettani 2015: 105–106). There were growing concerns about treatment of immigrants, particularly the lack of training for immigration officers dealing with children and the vulnerable (Harvey 1994). The Joy Gardner case connected with wider concerns about racism in Britain that were already being pushed up the agenda following the death of Stephen Lawrence in April of the same year. This time the issue was the way in which a racist murder had not

been properly investigated by the police—eventually, an inquiry would concede there was a problem of 'institutional racism' (Mclaughlin and Murji 1999).

While seen as a restrictive piece of legislation, the 1993 Act did incorporate the UK's obligations under the 1951 Geneva Convention to give unsuccessful asylum-seekers a right to appeal. The opposition (led by Shadow Home Secretary Tony Blair) criticized the legislation for making asylum-seekers destitute.[8] The 1996 Act—drawn up to coincide with the forthcoming election—followed the same logic as the 1993 Act. One of the key figures for the Conservatives managing the 1992 election campaign, Andrew Lansley, had urged his party to use immigration again to 'hurt' the opposition. Among some of the more controversial clauses of the 1996 Act were Section 9(2), denying the benefit of homelessness provisions to new asylum-seekers, who did not claim asylum upon arrival,[9] the creation of a 'white list' of countries the Home Office would not accept as posing any serious risk of persecution, and Clause 8 that required all employers, even those employing only one individual, to check the immigration status of any job applicants.[10] Labour MPs criticized the rules as making employers de facto immigration officers.[11]

The 1993 and 1996 Acts led to growing resistance to the direction of immigration policy via a human rights frame (Balch 2010). Organizations such as JCWI (Joint Council for the Welfare of Immigrants), set up in the 1960s to help new Commonwealth immigrants, gradually became central for the pro-migrant lobby (Statham and Geddes 2006: 264) joined by other organizations such as the ILPA (Immigration Law Practitioners Association), set up in the 1980s, the National Coalition of Anti-Deportation Campaigns (NCADC) set up in 1995, and refugee support agencies such as the Refugee Council. Overall, due to the restrictive political environment and dominance of the state, these groups had limited influence (Ibid.: 264), but the issue of asylum-seekers in particular drew experienced NGOs and mainstream political campaigners towards immigration policy, such as Oxfam and Amnesty International, the trade union movement, and church organizations.

Despite offering little substantial resistance, the new Labour government had connected with this movement while in opposition and, after securing office in 1997, wanted to put forward the appearance of being progressive, modernizing, and reforming (Hay 1999; Finlayson 2003). The election campaign showed how cautious this was—Shadow Home Secretary Jack Straw famously claiming 'you couldn't get a cigarette paper between

Labour and the Tories over the question of immigration'.[12] Once in power, aside from a headline-grabbing change to the Primary Purpose Rule, there was no serious change in policy (Layton-Henry 2004). A 1998 White Paper focused on process and efficiency rather than an overhaul of the system or any radical departure in terms of policy (Flynn 2003: 4). Overall, the tone suggested the emphasis was on 'faster' and 'firmer' rather than 'fairer' (JCWI 1998). Continuities in the thinking behind immigration policy were visible in the linkage between controls and race relations and an absence of aims for labour migration apart from maintaining fines for employers.

This was seen as a betrayal for those encouraged by the Labour Party's willingness to criticize Conservative policy on the basis of human rights while in opposition. At the 2000 Trades Union Congress (TUC) Conference in Edinburgh, an emergency motion condemned the press and government ministers on immigration for creating 'a climate of fear', supporting the statement of TGWU (Transport and General Workers' Union) chief Bill Morris, and calling for a campaign against the 'degrading, divisive and stigmatizing' asylum voucher system (TUC 2000).

Conclusions

Albeit from very different beginnings, by the end of the twentieth century, there was a significant convergence in the politics of immigration between the two countries presented here. At the start of this period, immigration controls in both countries were seemingly ad hoc and reactive and focused on the physical borders of the state. By the end, the archetypal 'country of immigration' and the country of 'zero-immigration' had both turned to internal enforcement to regulate and control a resident population of unwanted immigrants. Chapter 7 explores the contemporary era of immigration controls with a survey of developments in the UK and the USA in the twenty-first century.

Notes

1. Parliamentary Debates (Commons) col 411, 7 July 1948.
2. E.g. the Japanese American Citizens League and the League of United Latin American Citizens (LULAC) both founded in 1929, the National Council of La Raza (NCLR), the Mexican American Legal Defense and Education Fund (MALDEF), both founded in the 1960s.

3. Select Commission on Immigration and Refugee Policy, US Immigration Policy and the National Interest (1981) p. 72.
4. The 'Legally Authorized Workers', 'Special Agricultural Workers' and Cuban-Haitian Entrants' programmes.
5. In 1995, the 'diversity quota' was 55,000 and allocated to countries that were responsible for less than 50,000 immigrants over the previous 5 years, and this was shared out so that no country could account for more than 7% of the total. It should be noted that there were minimum education and occupational experience requirements for immigrants using this route.
6. Margaret Thatcher, interview for Granada World in Action on 27 January 1978.
7. Haslar was opened in 1989, Campsfield in 1993, and Tinsley House in 1996.
8. Hansard, 2 November 1992 (Second Reading of the Asylum and Immigration Appeals Bill).
9. Office of Public Sector Information (OPSI): 1996 Asylum and Immigration Act.
10. A fine of £5,000 was stipulated for each individual case of an employee having no right to work in the UK.
11. Ibid.
12. *The Guardian*, 3 March 1995.

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Twenty-First Century: Attrition by Enforcement

Introduction

The twenty-first century has seen immigration rise inexorably up the political agenda in both the UK and the USA. For Britain, the legislative production line on immigration, which began in the late twentieth century, has continued, if not quickened, in the early twenty-first century. By contrast, US lawmakers have become increasingly frustrated during this period with no new comprehensive immigration reform. However, in many ways, the twenty-first century saw a continued convergence between the USA and Britain over policy practice on immigration: a physical strengthening of borders, increased use of criminal justice measures, greater resources allocated to enforcement, and new processes that together have facilitated historically high rates of detention and deportation in both countries. One of these developments was the rise of legislation targeting human trafficking and human traffickers in both the UK and the USA. One of the consequences of this has been the prospect of increased protection of human rights for the victims of this crime, who are often (but not always) undocumented immigrants.

The USA: Building Walls, Not Doors

One of the first observations about twenty-first century immigration politics in the USA might be 'political stalemate' with a veritable abundance of failed attempts to strike a deal on a significant piece of legislation at

the federal level (Leal 2009; Freeman et al. 2013; Fennelly et al. 2015). Despite a clear political will to act on immigration on the part of the executive and parts of the legislature, the difficulties in reaching agreement at the federal level appear at times to have been insurmountable. The phrase 'comprehensive immigration reform' (CIR) is not often defined but has become used by all sides of the debate, often, confusingly with different elements included. However, the most common understanding of CIR includes at least three components: some kind of pathway to legal status for undocumented immigrants, changes to border enforcement, and also to the system of visas and permits for foreign workers. In the context of a polarized Congress, there are enduring conflicts on all of these areas between and within the main political parties. In general terms, Democrats have shown themselves more open to developing a pathway to legal status for undocumented immigrants, while Republicans have preferred to focus on improving border security as a first priority. Amending the system of work visas to meet the demands of the US economy might sound slightly less contentious, but even here there has been a lack of agreement. Reform efforts have died alongside deadlock on the other aspects of the immigration system amid a host of competing demands—from political parties and individual economic sectors but also a growing number of advocates on all sides of an increasingly fractious debate.

The 2000s saw a resurgence of nativist campaigning over immigration. This centred on concerns about the rising population, but in particular the higher fertility rates of immigrant women and US citizenship policies. The connection between environmental and immigration concerns had been a strategy of FAIR the Federation for American Immigration Reform (FAIR) since its launch in 1979, accusing immigrants of entering the USA to give birth in order for their children to obtain citizenship (anchor babies) (see Huang 2008). FAIR set up a research arm in the 1980s (CIS [Center for Immigration Studies]) and was joined by a 'grassroots' organization called NumbersUSA, launched in 1997 by Roy Beck, who wrote a book calling for the immigration to be returned to pre-1965 system (Beck 1996). As in the 1960s and 1970s, FAIR and NumbersUSA were still facing civil society organizations campaigning for immigrant rights, but in the new century, they were also against a better-funded and organized pro-immigration business lobby. An example of a new campaign group attempting to push for immigration reform is the 'FWD.us' campaign launched in 2013 by business leaders from the technology sector (including, among others, the founder of Facebook, Mark Zuckerberg).

The group has campaigned for higher immigration levels, arguing that 'It doesn't matter where a person comes from or who his or her parents are: creativity, talent, and the willingness to work hard are what count'.[1]

A strained relationship between the branches of government (and within the legislature) has presented considerable obstacles to reform (Fennelly et al. 2015). This problem—often described as policy 'gridlock'—has not only affected immigration, of course. Divided partisan control of political institutions could be said to be one of the defining characteristics of post-war US politics and has often stalled or stymied legislation on immigration. The standard view is that it is a problem for government because one-party control is preferable if anything serious is to be achieved (Sundquist 1988). However, there is evidence to challenge this conventional wisdom, with some research showing that divided government has not always compromised the federal state's capacity to govern, or even prevented new ideas emerging and innovative legislation from being passed (Mayhew 1991: 198). The example of US deadlock over immigration policy in the twenty-first century probably confirms the standard view. The lack of comprehensive reform has effectively moved decision-making away from Congress into the executive and judicial branches and from the federal to state level. It is not completely straightforward though because this shift has occurred in parallel with an increased capacity for the federal government to legislate if immigration is connected to security and/or international terrorism. The attacks of 9/11 would turn out to be very significant for changing the system of US immigration control (Alden 2008; Ewing 2012).

The scene was set early in the new century with President Clinton's efforts to grant an amnesty to certain groups of undocumented immigrants in 2000, an initiative which was blocked by a Republican-dominated Congress. Despite this, Congress then passed a similar Bill that Clinton threatened to counter-block (although ultimately signing). In his first term, President Bush did have plans for immigration reform, but these were derailed by 9/11, which impacted on immigration controls in a knee-jerk response creating a whole new organizational structure and the Department of Homeland Security (DHS) (Alden 2008). Indeed, there was thought to be a general reluctance to instigate any immigration reform in the first few years of the twenty-first century. Fears over anything that might lead to higher levels of immigration could be directly related to a post-9/11 'prism', through which all legislation was scrutinized (Golub 2005).

The extraordinary reaction to the 9/11 terrorist attacks is best illustrated by the announcement by Attorney General John Ashcroft that up to 5000 men of Middle Eastern origin in the USA on temporary visas would be immediately questioned. These were supposed to be 'harmless' questions about any 'knowledge of foreign-based terrorists', but it soon became clear that the FBI was demanding all the interviewees' address books and opening files and investigations for continuous monitoring (Ratner 2003: 40). Legislation would soon follow with the Enhanced Border Security and Visa Entry Reform Act of 2002, the REAL ID Act of 2005, and the Secure Fence Act of 2006. All of these pieces of legislation served to increase expenditure sharply not only on immigration enforcement but also on the physical border with Mexico.

In addition to this was enhanced monitoring and processing of certain groups seen as a risk to security. This was most notably through the creation in 2002 of a 'special registration' system called NSEERS—specifically targeting Muslims, Arabs, and South Asians. The creation of the 'Controlled Application Review and Resolution Program' (CARRP) in 2008 was to 'ensure that immigration benefits are not granted to individuals and organizations that pose a threat to national security', where a particular religious affiliation (e.g. Muslim) or nationality (e.g. from an Arabic country) might prompt an initial contact with law enforcement authorities, delaying indefinitely any application for citizenship (Pasquarella 2013). The linkage between international terrorist threats and state activity over the immigration system might not always have been logical, but the political connection is clear (see Alden 2008). As with 9/11, a linkage was made with immigration in the response to the 2013 Boston Marathon bombings. Ultimately, the direction that immigration politics have taken in the twenty-first century USA has led to a sharp increase in spending on border enforcement and a growing application of criminal justice measures to immigration governance. In a process described as 'crimmigration', this has seen an accelerated incorporation of practices normally relating to criminal justice to the administration of the immigration system (Legomsky 2007). For example, in the US system, there is very little difference between detention of immigrants on administrative grounds and the detention of criminals—both populations are managed in the same way. This is because Immigration and Customs Enforcement (ICE) has little experience of running detention facilities and uses other providers to perform these duties (Schriro 2010: 1442).

The window for non-enforcement-related immigration reform appeared to be closed. Bush did work up a plan for guest workers in 2004, but this ended up being the victim of the election year. Several other similar Bills were proposed in 2005 that also failed to get the requisite support. A bipartisan bill was then introduced in the Senate in 2005 (the Secure America and Orderly Immigration Act),[2] but agreement could not be reached between this and a competing Bill from the House which was more enforcement-focused. Bush tried again with a more conservative attempt in 2007, including a path to legalization, a temporary worker programme, and stricter border controls and employer sanctions. While there appeared to be hope that it would pass based on previous Bills, and a democrat-dominated Congress, it became the victim of a lurch away from consensus on the right with the growing influence of the Tea Party.

The history of the DREAM (Development, Relief, and Education for Alien Minors) Act, first introduced as a bipartisan bill in the Senate in 2001, is illustrative of the difficulties during the Bush and Obama years. It offered a pathway to legal status for children who had grown up and studied in the USA. By focusing on young people and connecting with education, it was targeting the group of undocumented migrants most likely to elicit sympathy. However, it was defeated by a mixture of politics and 'bad luck' in 2007 (Olivas 2009) and eventually failed to pass despite renewed efforts in 2010 when it was believed to have a 'fighting chance' (Barron 2011). According to the National Immigration Law Center, more than 20 states have passed versions of the DREAM Act, which while not offering a pathway to citizenship include other benefits such as offering undocumented immigrants access to in-state tuition rates and eligibility for certain scholarships or financial aid.[3]

The difficulties of achieving immigration reform under President Bush contrast with the ability to pass federal-level legislation to tackle human trafficking. The Trafficking Victims Protection Act (TVPA) was passed in 2000 by President Clinton, renewed several times under Bush and Obama, and eventually named the 'William Wilberforce Trafficking Victims Protection Reauthorization Act' in 2008. This was never intended as a piece of immigration legislation, and indeed can partly be seen as an expression of US power, and an attempt to create an international anti-prostitution norm (Balch 2015a). However, it did create a new space for immigrants who had been trafficked to regularize their situation through the T-visa. This would become particularly significant in the context of future refugee flows because of additional protections which the anti-

trafficking system incorporated for children. It also sharpened the distinction between those 'worthy' and 'unworthy' of protection, where immigrants smuggled into the USA were subject to the full force of the criminal justice system, while those who could prove they were trafficked could benefit from protections under the TVPA (Chacon 2010: 1635).

Attempts by Obama in his two terms as president to push for comprehensive reform on immigration initially became a victim of the higher than expected political capital expended on healthcare reform. This contributed to a highly charged atmosphere characterized by polarization and partisanship in Washington. Gridlock led to the President's use of other techniques to change policy on immigration. A key theme in this programme of policy change has been changes to the way that immigration enforcement is prioritized and implemented.

The launch of the 'Secure Communities' programme in 2008 (under president Bush) ordered local law enforcement to share information on arrestees (such as fingerprints) with ICE—even those who might end up released without charge. Once a person arrested by law enforcement is found to be on the DHS database as a potentially deportable non-citizen, they are then held for up to 48 hours to allow ICE to bring them into their custody. The Secure Communities programme is supposed to be about enforcement prioritizing 'dangerous threats', but this means different things across the country—research shows that there is very uneven implementation across the USA (Pedroza 2013). The joke that you can be arrested for being guilty of 'being an immigrant' feels like a reality in some areas: hostility to the undocumented immigrant population has led to a situation where relatively minor legal infractions result in removal proceedings where there are few constitutional safeguards (Waslin 2013). Ironically, Secure Communities has become synonymous with feelings of insecurity and the social isolation of immigrant communities, 'exacerbating their mistrust of law enforcement authorities' (Theodore 2013). Others have shown how a shift in enforcement away from the border and towards the workplace has made immigration control less discriminate, increasing the 'deportability' of both regular and irregular migrants (Newstead and Frisso 2013) through a criminalization of the immigration system (Lee 2011).

The Obama administration, instead of abolishing Secure Communities or the 287(g) programme of formal cooperation and training arrangements between local law enforcement and ICE, which had been criticized by civil rights groups (Shahani and Greene 2009), modified and expanded

them. There was an even greater emphasis on the link with law enforcement, albeit with attempts to incorporate safeguards to avoid arbitrary arrests being made in order to initiate deportation proceedings. The new prioritized enforcement model required that only 'dangerous criminal aliens' are targeted (with a series of offences listed in three tiers of seriousness) and where the person should have been already convicted (and have served sentence) for any crimes before being handed over to ICE (Michaud 2010).

The most controversial changes made under Obama have been via executive order in 2012[4] and executive action in November 2014.[5] The first of these launched DACA (Deferred Action for Childhood Arrivals), partly as a response to the failure of the DREAM Act. As with the former legislation, DACA focused on those who had entered the USA as children and had been in education (or the armed forces) and were under 30 years old. Rather than a path to citizenship, however, DACA prioritized and protected certain groups from deportation through 'prosecutorial discretion'; it provides legal 'presence' for a limited time period that can be renewed, rather than access to permanent legal status. It also qualifies those eligible to apply for a social security number and, therefore, somewhat 'normalizing' their everyday lives by enabling the individual to, among other things, open a bank account and get a driving license. There was a strong political counter-reaction to DACA—with opponents claiming that, by not enforcing the removal of undocumented immigrants, President Obama was both encroaching on the legislative powers of Congress and violating his obligation to enforce the law (Fathali 2013: 242). As might be expected, Republicans in Congress acted to withhold federal funding, but as DACA was designed to fund itself through application fees, this was a largely symbolic demonstration.

DACA to include those older than 30 but also offered 'deferred action' protection for the parents of US citizens and permanent residents who are undocumented (DAPA, or Deferred Action for Parents of Americans and Lawful Permanent Residents). According to the Migration Policy Institute (MPI), between 2012 and 2014, the DACA programme had benefitted 580,000, but the expanded provisions in the 2014 order could affect as many as 5.2 million people (MPI 2014). The programme was blocked by a group of 26 states, led by Texas, with the date for a ruling potentially stretching beyond the end of Obama's presidential term. Another 14 states submitted a request to a federal appeals court to initiate the programme.

The Obama administration's strategy is in effect manipulating the fact that there has always been a degree of latitude and prioritization in the way that the immigration rules are policed. Public knowledge that Immigration and Naturalization Service (INS) had a 'secret' non-priority programme was thanks to none other than John Lennon who, facing deportation in 1974, demanded records via the Freedom of Information Act. The exercise of discretion has always been a key theme in US immigration enforcement and control (Wadhia 2014). At stake is nothing less than how, where, in what ways, upon whom, and by whom the immigration rules should be enforced.

The increase in unaccompanied child refugees arriving along the US–Mexico border beginning in October 2013 and peaking in the summer of 2014 seemed to provide evidence for all sides of the immigration debate. It illustrated the difficulties for the immigration system to cope and demonstrated the relevance of anti-trafficking legislation. The Obama administration treated the increase as an 'urgent humanitarian crisis', pointing to the violence and poverty that the children were fleeing in Mexico and Northern Triangle countries. For those that opposed DACA, it was proof of its 'pull-effect' with families hoping to 'take advantage' of protections, leading to Republican efforts to pass legislation to increase deportations, even though the rise in numbers of refugees arriving from the South predated the programme (Krogstad and Gonzalez-Barrera 2014). The situation demonstrated how the emphasis on deportation and restrictions for undocumented immigrants creates bottlenecks and weakens human rights protections. Undocumented immigrants are not allowed government-funded legal representation, so the rise in children refugees led to large numbers of children facing court hearings without counsel. This was in violation of the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA), which required unaccompanied children to be given legal counsel and an advocate in order to be screened as potential victims of human trafficking and for their deportation to be blocked (if they are not from a country bordering the USA) (Canizales 2015).

New Immigration Federalism?

The judicial battles over DACA and DAPA reveal a broad split between different states and their attitudes towards the treatment of undocumented immigrants. Some states allow this group to have drivers' licenses and allow in-state tuition fee levels, while others ask their police forces to question people about their immigration status. This links to a trend that

has gathered pace into the twenty-first century: legislative activity over immigration at the state level. In 2005, 300 state bills were introduced leading to 38 laws being enacted and 6 vetoed. From 2007 to 2010, this rose to an average of nearly 1500 Bills and several hundred laws each year (NCSL 2011). Combined with security-related initiatives, there has been a mass of immigration-relevant legislation being passed in the USA without the elusive 'comprehensive reform' of the system. The generation of state-level legislation and questions around enforcement have raised political issues because the regulation of immigration is a reserved federal matter, so some initiatives will be either gutted or struck down by higher courts, as happened to California's Proposition 187 in 1997 (Tolson 2013). Nevertheless, the states have established their authority to enforce certain aspects of irregular migration, and this was formalized in 1996 through the 287(g) programme of cooperation between ICE and local law enforcement (Michaud 2010).

In the twenty-first century, this federal-state tension has best been illustrated by the fallout after the state of Arizona passed SB 1070 in 2010.[6] The state prides itself on its record as a 'laboratory' for new ideas on policing irregular immigration, including enthusiastic cooperation with ICE, denial of bail to immigrants in the criminal justice system, and the use of anti-trafficking laws to prosecute irregular immigrants crossing the border (Greene 2013). SB 1070 aimed to take this up a gear and to implement 'attrition through enforcement' by requiring law enforcement to check immigration status (Section 2B—often called the 'show me your papers' clause). It also imposed penalties on anyone transporting, sheltering, or employing undocumented immigrants. As with Proposition 187, the law was challenged by a higher court, this time resulting in a dramatic injunction being issued to block it a day before it was due to take effect.

That was not the end of the matter, however. Legal battles continued, and there would eventually be a partial victory for those supporting SB 1070 with the Supreme Court ruling on the law in 2012, striking down some, but not all, provisions. There were also 'copy-cat' laws passed in several other states, with the support of organizations such as FAIR and NumbersUSA. This has not stopped the controversy, however, over the effects of the law—on civil liberties, and on its intended objectives to reduce the population of undocumented immigrants. In 2014, the ACLU (American Civil Liberties Union) filed a lawsuit on behalf of a person they claim was wrongfully detained in order to challenge the law on the basis that it contravenes fourth amendment rights to be free from being

detained without probable cause. Research has since found the law has had 'minimal to null impact on the share of likely unauthorized immigrants in the state' (Amuedo-Dorantes and Lozano 2015: 349).

Other states have enacted 'copy-cat' legislation after Arizona (Utah, Indiana, Alabama, Georgia, and South Carolina)—but only five. At the opposite end of the spectrum are others such as California and Connecticut—states that in 2013 passed so-called Transparency and Responsibility Using State Tools (TRUST) Acts, limiting cooperation with federal immigration authorities, defending this action on the basis of equality principles derived from the Civil Rights Act (Rosenbaum 2015). These build on the 'Sanctuary City Movement' that has sought to counter the criminalization of immigration and protect the rights of immigrant residents. This has seen certain places resist the devolution of law enforcement from the 1980s and 1990s and 'withdraw information and resources from the boundary-making projects that maintain a marginalized labor force and isolate the United States from the implications of its foreign policy' (Ridgley 2008: 73). These developments have prompted some to ask if a new immigration federalism is emerging; a more inclusionary role for the sub-federal level with state versions of the DREAM Act and locally negotiated enforcement regimes through Sanctuary ordinances. This new immigration federalism is defined 'not by state and local efforts to enforce immigration laws and deport immigrants, but rather by state and local experimentation with measures intended to foster immigrant inclusion' (Elias 2013: 749).

The city of San Francisco in California is emblematic of the sanctuary movement, but in 2015 it was to become the centre of controversy over policies of non-cooperation with ICE. On 1 July 2015, Kathryn Steinle was shot and killed while on Pier 14, a local tourist spot, and the suspect was a recently released undocumented migrant from Mexico, Juan Francisco Lopez-Sanchez. Lopez-Sanchez had a criminal record but no outstanding arrest warrant and no record of violent crimes. In accordance with local policy, the authorities therefore had not complied with a request by ICE (who would have then sought deportation) to inform them upon his release. The affair intensified the immigration debate as the campaign for nomination as presidential candidate was ongoing. Candidates from both sides have since condemned the policy of non-cooperation with ICE (Littlefield 2015). Congress reacted by almost immediately passing a Bill to cut federal funding from Sanctuary cities (the Enforce the Law for Sanctuary Cities Act). However, it is not clear if deportation would have

prevented the crime from occurring as Lopez-Sanchez had, on previous occasions, always immediately re-entered the country.

BRITAIN: FINALLY AN 'IMMIGRATION STATE'?

The turn of the century is seen by many as a 'watershed' moment for policy in the UK, eventually leading to a new political consensus over the benefits for the British economy from immigration (Somerville 2007; Balch 2009; Consterdine 2015). This was, in one sense, a radical break from the Conservative governments of the 1980s and 1990s who had persisted with the aim of 'zero immigration'. Yet many aspects of immigration politics under the Labour government remained familiar, for example, policies on the asylum system. The new approach (branded as 'managed migration') did not occur instantly with the change from a Conservative to a Labour government in 1997; it was ushered in a few years later in a speech given in September 2000 by Barbara Roche, a minister at the Home Office. Roche had just moved from the Treasury, and the event was organized by the IPPR (Institute for Public Policy Research) and held at the British Bankers Association in London, thus aligning perfectly with the Labour Party's objective of raising its business-friendly credentials (Balch 2010). The new direction announced by Roche was all about recognizing the 'potentially huge benefits' of migration and changing policies to adapt to the global economy by bringing in new ideas, including from other countries, and carrying out more research on migration in the UK.[7] In the first years of the twenty-first century, the British government seemed comfortable with historically high and rising levels of labour migration. This was reflected in a new objective for the Home Office to manage immigration in the interests of 'boosting the UK economy' and the decision to allow full access to the labour market for citizens of the European Union (EU)'s new Member States that joined in the 2004 enlargement (Balch 2009, 2010).

Up until this point, and in the absence of a coherent policy, Britain had developed a bewildering number of entry schemes for labour migration, each with different conditions attached, resulting in an immigrant population with a stratified hierarchy of rights (Morris 2004). The new system was supposed to be flexible enough to allow the government to modify and calibrate its rules to control the flow of foreign labour based on the country's economic needs. The eventual creation of a Migration Advisory Committee (MAC) was designed to make the system more transparent

and evidence based. Regardless of how symbolic this use of knowledge (Boswell 2009), the managed migration agenda was about a new pro-active rhetoric over admissions, not a qualitative shift in terms of conditions for immigrants in the UK. Yet for all the new positive talk about immigration, right from the start, there was very much a feeling of Dr Jekyll and Mr Hyde about immigration politics in twenty-first century Britain (Flynn 2004). While 'managed migration' was presented as delivering the country the 'good' type of immigration it would benefit from, a tough approach remained in place for the growing number of categories of immigrants considered unwanted. The political calculation was that the positive approach to some kinds of labour migration needed to be balanced with tough action against those who did not 'play by the rules'. This meant an expansion in the number of instruments available to deter and punish wrongdoers, including civil penalties for employers of irregular migrants and a succession of new policies and initiatives to facilitate detention and removal.

Pressure for a return to a more restrictive approach grew fairly quickly after the launch of managed migration. Despite cross-party agreement on general principles, there was a backlash over high levels of immigration after 2005, particularly from other EU countries. This led to a marked politicization of the issue featuring a series of political storms and near-continuous media frenzy (Balch and Balabanova 2014) coupled with moves to tighten up and reduce numbers. Illustrative of this was the decision to apply transitional restrictions on citizens from the next EU enlargement in 2007. Another example is the history of the Highly Skilled Migrant Programme (HSMP), introduced with fanfare in January 2002. This allowed immigrants to enter the UK without a concrete job offer and with the prospect of permanent settlement after 4 years—a points-based[8] entry scheme modelled on a similar system in Australia. It was subject to the changing political mood when in 2006 the HSMP was altered to restrict settlement and raise the earnings threshold for extensions. A parliamentary committee deemed that the changes were 'incompatible with the right to respect for home and family life of migrants who have already made their main home in the UK in reliance on the previous rules' (JCHR 2007: 14). In 2008, the scheme was incorporated into a larger multi-tier system of managed migration (the HSMP became Tier 1), but 2 years later, it was closed down entirely.

The 'Mr Hyde' of British immigration politics at the beginning of the new century was remarkably similar to that at the end of the previous one:

the government's approach towards asylum-seekers stood in stark contrast to the new language on managed migration. The treatment of asylum-seekers by successive governments in the 1990s had been described as comparable to 'apartheid' (Mynott 2000). Under Labour, there was a concerted effort to use criminal law to ensure compliance with immigration rules: an 'instrumental use of criminal law aimed at aiding the enforcement of immigration rules and which has contributed to the expansion of formal criminalization' (Aliverti 2012: 423).

Applications for asylum rose sharply after Labour entered government in 1997, peaking in 2002 before falling back again in the 2010s.[9] Interestingly, deportations of asylum-seekers whose applications were unsuccessful increased rapidly, even as numbers applying were falling (Gibney 2008). This was because removals became the subject of high-profile government targets leading to changes to the system and more resources for enforcement. In the midst of heightened media coverage of the issue of asylum in 2002, the then Prime Minister Tony Blair announced he would take personal control. Two years later, he promised: 'we will remove more each month than apply and so restore faith in a system that we know has been abused'—a target thereafter referred to as 'tipping the balance' (Gibney 2008: 157). During this period, the whole asylum process was truncated, with 'fast-track' systems relying on the use of detention, and new rules making it more difficult for applicants to comply with the process (resulting in refusal). This included families being taken into custody in the middle of the night in surprise raids, and other methods, such as innovative interpretations of what are 'safe' countries, all in order to expedite return (ibid.: 159–166).

Some of these changes needed new legislation and were included in the Nationality, Immigration, and Asylum Act 2002 and the Immigration, Asylum, and Nationality Act 2006—both of which increased the government's ability to deport, partly through use of detention. Some provisions even enabled the stripping of citizenship from those who had a second nationality (Gibney 2012). The developing system required the building of a number of new detention centres from the early 2000s onwards. These included Yarls Wood in 2001, which became the main centre for women and gained great notoriety (particularly after half the premises burned down in 2002). In her history of British immigration detention, Mary Bosworth found similarities with other parts of the system—it has been created in a rather haphazard way at moments of crisis or panic, but these have had lasting legal effects. She finds that, while there is 'some

disquiet with each new development, no government has been prepared to relinquish their power over foreigners… the pool of the unwelcome and dangerous expands; each new category sitting alongside, rather than deposing, the last' (Bosworth 2014: 35–36).

It was not just asylum-seekers who became targeted by the new detain-to-deport system. In 2006, there was a new focus of anxiety in the public debate: it emerged that a number of foreign nationals who had been convicted of crimes had not been subsequently deported having served their sentences. Home Secretary Charles Clark resigned after revealing the figures. The UK Borders Act (2007) expanded powers to detain and deport (Bosworth 2008), making it mandatory to deport non-EU citizens if they had served a year or more in prison for a serious offence (2 years if they were an EU citizen). The Borders, Citizenship, and Immigration Act of 2009 further weakened the legal status of immigrants, with a rhetorical convergence between crime and immigration (Bosworth 2011: 587). It authorized detention for any individual subject to a 'deportation order'—the increase in numbers meant the government had to invest in and enlarge its detention facilities. This, alongside continued innovation around 'fast-tracking' procedures for asylum applications have led to the UK constructing one of the largest immigration detention estates in Europe (Silverman and Hajela 2013).

A change in government in 2010 resulted in a predictable shift in immigration politics back to a focus on restriction, albeit with incremental rather than fundamental change to the system. This saw a new willingness to challenge the authority of international human rights agreements when they restricted the power of the state to remove foreigners (ILPA 2014). The Conservatives had already threatened to take Britain out of the 1951 Geneva Convention in the 2005 election. The 2010 vote resulted in a Coalition between the Conservative Party and the much smaller Liberal Democrat Party. Their programme prioritized implementation of the Conservative election manifesto commitments, including one to dramatically reduce immigration (despite the specific commitment being left out of the Coalition agreement) (Hampshire and Bale 2015).

The Coalition government was extremely active in policy terms throughout the immigration system, but the focus would be on restricting access to welfare for immigrants already in the country. An internal ministerial committee was set up in 2013 to oversee this work. Originally named the 'hostile environment working group', this was charged with finding ways to limit immigrants' access to public goods. One junior

Liberal Democrat minister resigned over the issue, saying that she was 'terrified' by the 'new consensus' over immigration (Aitkenhead 2013). The only significant Liberal Democrat policy on immigration to make it into the Coalition agreement was the ending of detention for children. Despite this, the parliament saw the creation of a new family detention centre called CEDARS (Compassion, Empathy, Dignity, Approachability, Respect, and Support). The difference was that the new centre included a co-option of charities and voluntary organizations (Barnardo's), potentially demonstrating a direction for governments seeking to expand the immigration detention market while ensuring observance of human rights standards (Tyler et al. 2014).

In the early 1990s, the key concern for the Conservative governments was over the issue of asylum, resulting in a series of new pieces of legislation. In the 2010s, this was expanded to include a new group: Eastern European workers moving to Britain under EU free movement rules following the EU enlargements in 2004 and 2007. In 2013, the then Home Secretary Theresa May boasted that the 2014 Immigration Act would welcome the 'brightest and best' from around the world while creating a 'hostile reception' and 'hostile environment' for unwanted immigrants (Trilling 2013). In the 2010–2015 government, there were many signals that the UK was ramping up the strategy of 'enforcement by attrition'. The most obvious of these were in 2013 with the unedifying spectacle of high-profile public campaigns such as Operation Vaken, which included advertising vans encouraging irregular immigrants to 'go home' (MRN 2013b).

There have been long-running campaigns[10] against Britain's policies on detention and deportation, arguing that they contravene human rights (Webber 2012; 2014). Unusually for an EU country, there is no legal limit to detention in the UK, and several hundred people have been detained for over a year, with some for more than 2 years. Concerns about the lack of a time limit were backed up by a report from the UN's Human Rights Committee, which also criticized the detained fast track (DFT) system for failing to identify torture victims and preventing access to justice (HRC 2015). The Chief Inspector of Prisons also submitted a critical report, noting that two-third of those detained ended up being released back to the community, raising questions 'about the validity of their detention in the first place' (Hardwick 2015: 6).

The main 'headline' target for the Conservative Party on immigration during the 2010 election was to reduce aggregate numbers from the 'hun-

dreds' to the 'tens' of thousands. The drawback of such a clear target became clear when, between 2010 and 2015, immigration levels remained consistently high, continuing to rise at the end of the parliament. A series of measures were put in place to encourage a reduction in net migration, most of which raised concerns from the immigrant community and advocates of immigrants' rights. This includes the raising of income thresholds that prevent families from re-uniting (Williams Radojicic 2014); increased restrictions and conditions for international students (UUK 2014); the extension of 'remote-control' immigration checks further into the public (Steele et al. 2014) and private sectors (MRN 2013a); and various other initiatives designed to create a 'hostile environment' for irregular immigrants (Aitkenhead 2013).

As with the USA, anti-trafficking legislation in the UK has been one of the few areas where there has been an increase in protections for some immigrants. This system was set up in the early to mid-2000s by aligning UK legislation with the Palermo regime definitions of trafficking. After some hesitation, the country joined the Council of Europe Convention on Action against Trafficking in Human Beings in 2007. This meant that the UK began providing victims with support (such as a 45-day reflection and recovery period) regardless of immigration status. This was seen as a victory for anti-slavery campaigners, particularly considering the objections of both the police and immigration service—who were concerned that the system would be 'abused' by irregular immigrants (Balch and Geddes 2011). One of the final laws passed during the 2010–2015 Coalition government was the Modern Slavery Act which was mainly designed to increase penalties for those committing the crime, but, during the parliamentary process, eventually incorporated some additional protections for victims (Balch 2015b).

One of the first announcements following the 2015 General Election was an intensification of the 'hostile environment' strategy and a new immigration bill. The government was immediately under pressure on immigration because of the failure to reduce the numbers in 2010–2015. Immigration statistics for March 2015 showed net immigration of 330,000—higher than the previous peak in 2005. The incoming government also had problems at the Port of Calais. Striking French ferry workers in the summer of 2015 led to long queues of lorries, providing an opportunity for people to attempt clandestine entry to the UK. The response was an increase in security measures in Calais, new requirements for landlords to check immigration status of their tenants, and a reduc-

tion in benefits for refused asylum-seekers with children. Again, we see the strategy of attrition through enforcement with policies presented as working to deter potential irregular immigrants and asylum-seekers. This despite the fact that the landlord policy had generated mixed results in a pilot project, and there is little evidence that asylum-seekers are attracted to Britain because of its welfare system. The Economist described the policy as 'feeble as well as miserly' (Economist 2015).

Conclusions

This chapter and the last explored the historical developments that have led to the contemporary politics of immigration in the UK and the USA. It set out to challenge what could be described as a grand narrative of a migrant crisis that is entirely created by a 'new age' of migration. In Britain, the twenty-first century finally saw the introduction of an economically prioritized immigration policy, albeit followed soon after by a backlash and return to restriction from the mid-2000s. By the following (2015) election, politicians from the two main parties were competing over how to make the country less hospitable to immigrants. The period following the 2010 election has seen the two main parties again reach consensus on a number of core principles. First, there is agreement that the government's response to immigration has either been misguided or too 'relaxed' in the past, requiring a new, 'tougher' approach. There should be greater sanctions against those that break the rules or 'abuse' the system. Second, all efforts must be made to restrict potential asylum-seekers from reaching the UK because of the known problem that once on the territory removal is difficult due to human rights claims.

It is interesting that, given the quite different migratory history and development of controls since the eighteenth and nineteenth centuries, in the twenty-first century, one could very easily repeat many of these points about the UK for the case of the USA. The main difference might be that category 'asylum-seekers' be replaced by 'undocumented immigrants'. Another thing that the previous chapter demonstrates is that in the twenty-first century there is much that is not new about immigration politics.

The enforcement focus developed strongly in the twenty-first century, with the rationale being to both protect the public, particularly against foreign nationals who have been convicted of crimes, and to generally improve public confidence in the system. The logic is that this can only be done through more laws, new policies, more investment in enforcement,

and the expansion of that enforcement to different parts of the public and private sectors. The only caveat being the possibility that immigrants are the victims of an even greater evil—human traffickers—in which case they could potentially deserve (limited) protection.

Historians argue that ignorance of past immigration patterns and trends leads to an unfortunate tendency for moral panics to frequently re-occur when it comes to these topics (Lucassen et al. 2010: 4–5). These criticisms lay the blame for the unedifying nature of immigration politics on the uninformed public debate; hamstrung by their own ignorance, public and politicians are doomed to live and re-live a circularity of immigration crises. Leaving aside the underlying rationalist belief in the power of knowledge, this analysis is rather dismissive of the political realm itself. It is too easy: it does not offer a satisfying explanation for the politics of immigration and their unusual characteristics: why always the language of crisis, why illiberal policies that violate the same values they purport to protect? We know that there is a growing abundance of expertise with an army of academics, policy experts, and think tanks now competing to produce policy-relevant 'usable' knowledge. Yet we also know the difficulty in charting a 'rational' course of action on immigration, it has historically been a divisive area characterized by political conflict. Chapters 8, 9 and 10 explore how the politics of fear and greed and hospitality can explain the development of immigration policies in liberal democratic states.

Notes

1. http://www.fwd.us/about_us.
2. By Sens. Edward Kennedy (D-Mass.) and John McCain (R-Ariz).
3. http://www.nilc.org/statebillsedu.html.
4. Executive Order No. 13,597, 77 Fed. Reg. 3373 (Jan. 19, 2012).
5. In the USA, 'executive actions' differ from 'executive orders' in that the former are classed as 'memoranda' and the latter as legally binding. In practice, however, there is ambiguity as there is no formal definition of executive actions.
6. Full title: Support Our Law Enforcement and Safe Neighborhoods Act (SOLESNA), otherwise known as the Arizona Senate Bill 1070 (SB 1070) http://www.neoamericanist.org/paper/gestures-impossible.
7. Barbara Roche, 11 September 2000. Speech at IPPR conference (British Bankers Association).http://www.gnn.gov.uk/Content/Detail.asp?ReleaseID=25402&NewsAreaID=2&print=true

8. Points were allocated on the basis of appropriate experience or qualifications.
9. The UK received 26,200 applications for asylum in 1990, this rose to 84,130 in 2002. By 2014, this had fallen back to 24,914.
10. Organizations include Detention Forum, Association of Visitors to Immigration Detainees (AVID), Right to Remain, and Detention Action.

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PART III

Fear

INTRODUCTION

The politics of immigration: something requiring has been connected with fear ever since laws to regulate international movement were implemented in the eighteenth and nineteenth centuries, and this has continued to be a feature of the development of policies in the twentieth and twenty-first centuries. Throughout the history of state controls on immigration, immigrants have been presented to the public as a threat, a cause of insecurity, emergency, and crisis. It would appear that fear is an essential element of the politics of immigration as something requiring intervention but also constituting and constituted by radical uncertainty, change, the unknown, the different, and the new.

Concerns about 'fearism' within state approaches to immigration have become the object of much research and theorizing, partly because they chime with broader critiques of modern techniques of governance (Foucault 1979). This is a kind of fear that also connects with the idea of contemporary society as increasingly tormented by existential uncertainty (Beck 1992; Bauman 2007). In a similar way, we will see in Chap. 9 how the politics of greed and 'greedism' connects with broader debates over neoliberalism and concerns about the insidious effects certain economic ideas have had on societal inequalities (Duggan 2003).

How can we isolate and understand the role of fear in immigration politics? This chapter explores why, how, and to what extent fear has become central to the story of immigration controls using both theoretical and

empirical material. It begins by outlining two key arguments regarding the politics of fear. It explores the theoretical underpinnings of these before relating them to the development of immigration law and policy in the USA and Britain. This empirical section traces the different ways in which a 'politics of fear' has played a role in these countries' responses to immigration. The chapter demonstrates how scholarship has sought to highlight the linkage between immigration and fear as a powerful force in the political arena; how it proposes that this has been used to further agendas to satisfy interests and to be a trigger for action, a weapon, and an instrument of control. There is a growing variety of work that explores how state treatment of immigration and immigrants is emblematic or symptomatic of the influence and use of fear in the political system (Huysmans 2006; Pijpers 2006; Burnett and Whyte 2010; D'Appollonia 2012). As we will see, the cases of Britain and the USA show the value of this approach: each confirms the significance of fear and insecurity in policy debates, legislative outputs, and outcomes for immigrants across the history of immigration controls.

Two Arguments About the Politics of Fear

The role of fear in the politics of immigration has long been seen as a concern for liberal commentators in the USA and Europe. For every article and book published in the USA about immigration threats (Brimelow 1995; Huntington 2004), there is another, or indeed many others, that see dark, illiberal forces at play behind the choice to raise or air those threats (Johnson 1995; Waldschmidt-Nelson 2004). Likewise, in Europe, it is now commonplace for academics to assert that 'fear of immigration, which rewards fear-mongering politicians, represents the greatest problem for European democracies today' (Bosetti 2011: 374). There is a broad consensus among these commentators that the liberal-ness of liberal democracies is tragically undermined by the way that fear can dominate the public debate and thereby political reactions to immigration as a policy issue.

This is a rather vague assertion, however. How can we be more precise about the risk or danger which is being claimed, to what, and in exactly which way the politics of immigration can be said to have become a function of a politics of fear? While there is general agreement that 'fearism' devalues or even threatens liberal democratic ideals, there needs to be clarity about which ideals, and in what ways they are affected. The causal

argument also needs to be spelt out. One way of approaching this is to consider two alternative versions of a politics of fear in stronger and weaker forms. An example of the weak version might be the following:

> States will over-estimate threats to national security, leading them to take all available measures to enhance protection of citizens, including engaging in public exaggerations of the threat to 'sell' these measures to those they are trying to protect.

This version accepts that a real threat exists relating to immigration but problematizes the government response to that threat. A common case cited to illustrate this version of this weaker politics of fear argument might be the standard account of how the USA used the events of 9/11 instrumentally to gain support for invasion of Iraq in 2003 (Trevor Thrall and Cramer 2009). In retrospect, we know there was no significant connection between the attacks of 9/11 and Saddam Hussein's regime in Iraq, but for the US government, a real sense of existential threat did exist in some quarters. This eventually led to a spurious link being asserted publically by the government in order to serve a 'higher purpose'—national security. Note that this argument does not challenge the existence of the threat; it just questions the assessment and communication of that threat by the government and the wisdom of the response that is made.

In the weaker version of the politics of fear argument, it is a problem of means rather than ends. In the case of the 'war on terror', this analysis would be that there was a serious problem with the use of misinformation, but that this could be defended (by those implicated) as having the interests of citizens at its heart. A stronger version of the 'politics of fear' argument might be the following:

> States will construct threats in order to create a politics of fear to enable and legitimize authoritarian and repressive laws and policies which themselves threaten liberal democratic values.

Here the difference is that the threat itself is no longer 'real'—it is constructed. Another difference is in the intention that lies behind the policy response: it is not to protect the citizenry, it is in the satisfaction of an appetite for untrammelled state power. Proponents of this argument are quite likely to cite the treatment of immigrants by the state as illustrative of the problem. For example, in John Higham's classic history of

immigration in the USA, the representation of foreigners as threat, rather than responsible reaction to the immigration challenge, is about a nationalist thirst for power that is quenched through the tools of nativism and ethnocentrism (Higham 1955). Others see similar dynamics at work in the twenty-first century where governments have implemented punitive, illiberal, and exclusionary laws and policies for immigrants (Franko Aas and Bosworth 2013). As Mary Bosworth points out, in the case of Britain, these risk damaging those very 'democratic freedoms long held dear by British citizens' (Bosworth 2008a: 199).

Of course, there are those who reject both arguments and instead seek an appropriate and rational threat evaluation and response. From this perspective, both arguments are naively dangerous because they too readily dismiss the threats of immigration as exaggerated or 'constructed'. Indeed, in both cases, describing the subject of immigration as dominated by a politics of fear suggests that the threats identified by policymakers are inflated or artificial. What if they are not exaggerated, what if they are close to being reasonable assessments? There are plenty of commentators who believe that a more restrictive line on immigration is justified by the threats it poses. They argue that this is no politics of fear. For them, the real danger is that progressive voices blinded by an ideological attachment to liberal values tend to under-play genuine threats to societal cohesion resulting from levels of immigration that are too high (Brimelow 1995; Huntington 2004; Collier 2013; Goodhart 2013).

Fear of What?

There seems to be an almost endless list of things which we should fear when it comes to immigration. How can we determine which of these fears is correct, accurate, rational, or irrational? Within the liberal canon most scholars limit their list of threats relating to immigration to social issues such as societal security, identity, cohesion, a sense of community, economic issues such as labour market dynamics, productivity, joblessness, or more security-related questions about the integrity of nation states and their borders. In public debates the list is much longer, and generally more lurid and spectacular. Analysis of the treatment of immigration in the media has shown how the subject has been linked—often with little actual evidence—to organized crime, chaos, disease, terrorism among other things (Cottle 2000; Buchanan and Moore 2003; Poole,

Richardson et al. 2006; KhosraviNik 2010; McKay, Thomas et al. 2011; Philo et al. 2013).

Ultimately, the politics of immigration will not rest on any actual or 'real' threat, but perceptions of that threat among voters. Interestingly, and perhaps counter-intuitively, most research finds a weak relationship between anti-immigrant attitudes and economic or labour market issues such as rising levels of unemployment (Dustmann and Preston 2004; Page 2009). A large meta-analysis of around 100 studies highlighted the importance of what the authors call 'norms-based' or 'sociotropic' concerns over labour market factors for explaining attitudes to immigration. They found that 'consistently, recent research shows that immigration-related attitudes are mostly driven by symbolic concerns about the nation as a whole' (Hainmueller and Hopkins 2014: 227).

These 'symbolic' concerns about 'the nation' relate to the notion of national attachment, but political psychology tells us that there are many different types of national attachment: nationalism, patriotism, national identity, national pride, and each of these can be further sub-divided. So, for example, patriotism can be divided into 'blind' and 'constructive', the former characterized by a strong attachment intolerant to criticism, the latter with a critical loyalty that seeks positive change (Staub 1997). Another standard distinction is between civic and essentialist (ethno-centric) versions of national attachments—the latter more associated with negativity towards 'out-groups' such as immigrants (Pehrson and Brown 2009). Not all are associated with inter-group discrimination.

One way of analysing these fears is to divide them into two broad types: first, there are fears related to something intrinsic to the immigrants themselves—fear of 'the other'; some undesirable characteristic they possess, a certain strangeness or simply the unknown. Second, there are fears regarding the effects or consequences that immigration will have on the host society. Sociologists, political psychologists, and security scholars among others have used these kinds of typologies and applied a range of theories to try and explain the underlying reasons for fearful attitudes towards immigration.

The apparent growth in anti-immigrant prejudice has led to sociological studies testing competing hypotheses over what causes these sentiments and what causes them to increase or decrease? Among this research, there are studies that have found prejudice effects differ across socio-economic groups (Mewes and Mau 2013), but that it is higher in countries that are relatively more open to international trade (Kaya and Karakoç 2012). This

research has generally provided two standard answers as to why we fear immigration. The first is that we fear the prospect of increased competition for scarce resources—the 'clash of interests' hypothesis. The second is that fear is related to identity—the impulse towards in-group favouritism and to seek a positive differentiation between 'us' from 'them'. Research has found evidence for both—the former (Sniderman et al. 2004) and the latter (Brader et al. 2008), but fear of 'the other' has now become associated with social identity theory which has emerged as a dominant theoretical perspective in the quest to understand both the causes and the effects of fears around immigration.

Another question is why anxiety over immigration appears to be rising, and how this might correlate with a changing balance between different types of fears. Possible answers emerge from research carried out into how societal values are changing over time. The 'World Values Survey' (WVS)[1]—created and run by a network of political scientists with surveys conducted in nearly 100 countries—has charted the rise of so-called 'post-materialism'. This idea is roughly based on Maslow's 'hierarchy of needs', which suggests that as societies become more wealthy, they are expected to become less concerned with material requirements (as they become easier to meet) and worry instead about other things. These post-materialist issues include quality of life, democracy, the environment, and human rights, and they contrast with materialist concerns around economics and physical security. The usual exposition of the theory of post-materialism states that as societies become more wealthy, they will exhibit greater levels of tolerance and more support for the rights of others (Inglehart 1997). However, when we differentiate between different kinds of fears, we might expect poorer societies to fear immigration due to the 'clash of interests' and richer societies to fear immigration due to identity-based concerns.

Ronald Inglehart, one of the architects of the WVS, has since sought to demonstrate how higher levels of existential insecurity are associated with increasing xenophobia, intolerance of foreigners, and strong in-group solidarity (Inglehart 1997; Inglehart and Welzel 2005). One project, which studied these effects in the population of Iraq, appeared to confirm this hypothesis. The research team made a link between the exceptional levels of physical insecurity that the people in Iraq had experienced and found a correspondingly high level of xenophobia (highest out of 85 societies for which data are available) (Inglehart et al. 2006). This seems to agree with commonplace understandings:

The fact that insecurity is linked with intolerance of out-groups has been demonstrated repeatedly in history, when demagogues have manipulated mass fears to build strong in-group feeling and rejection of out-groups. (Inglehart et al. 2006: 495)

It is not just attitudes of the public which are affected by this linkage between insecurity and intolerance. The perception of immigration as threat also stretches to those political elites which are charged with forming policy. As Lahav and Courtemanche argue:

The extant literature in political behavior and social psychology has provided compelling evidence to suggest that elite attitudes and public opinion toward immigration are largely influenced by perceptions of threat. (Lahav and Courtemanche 2012: 478)

These threats vary widely, as we shall see, but the impulse to reject the out-group does not have to be due to any fear of that group—it can be more a case of an indiscriminate 'hitting out' at any weak or vulnerable parts of society:

Out-group rejection is not necessarily based on fear of the specific out-group: under conditions of insecurity, people tend to cling to the old familiar rules and reject social change—with relatively powerless excluded groups such as women, ethnic minorities, or homosexuals being excluded all the more intensely when a society experiences severe existential insecurity. (Inglehart et al. 2006: 497)

It has long been recognized (by those critical of immigration policy) that politicians and others use immigrants as scapegoats.[2] The suggestion is that immigrants are singled out for blame or punishment during a crisis or in a period of economic depression. In the field of psychology, this is called 'inter-group conflict', and studies have confirmed the common-sense understanding of scapegoating, where for 'in-group' individuals, 'foreign out-group stereotypes, in terms of morality, became more negative as a function of the economic deterioration in the perceivers' country' (Poppe 2001). Historically, scapegoating has sometimes led to extreme violence, as in Girard's opening example of the massacres of Jewish people blamed for the arrival of the plague (Girard 1986: 1–5). However, the physical and psychological consequences for the welfare of immigrants treated as scapegoats can also be severe in the contemporary context, as

medical professionals argued in the case of the UK's 2014 Immigration Act (Steele et al. 2014). The general point is that scapegoats have common features by which 'out-groups' are identified, targeted, and ultimately held responsible for misfortunes that befall society.

Hannah Arendt argued, through her analysis of European anti-Semitism, that it is not the case that the more different a person or group, the greater the levels of xenophobia. She argued that a greater danger was when those designated or perceived as different were transformed into something *less* different:

> Equality of condition, though it is certainly a basic requirement for justice, is nevertheless among the greatest and most uncertain ventures of modern mankind. The more equal conditions are, the less explanation there is for the differences that actually exist between people, and thus all the more unequal do individuals and groups become. (Arendt 1994: 75)

Ultimately, Arendt's argument is a depressing one because it implies that humans are inherently racist and xenophobic. This could mean the state is justified in maintaining some separation or inequality that corresponds to these differences for something like peace can exist. The example in Arendt's case is the condition of Jewish people in Germany before the Prussian defeat of 1806. At this point, segregation of the two communities largely inspired indifference in society. However, there was the constant challenge of the status quo by 'humanists' who chose to celebrate selected individuals from the Jewish community as 'exceptional' examples that demonstrated the unity of mankind. When the emancipation of Jews eventually came (through the imposition of Napoleonic legislation), this comfortable separation was ended and indifference turned into 'outright fear'. The point is that when equality of condition—the abstract, universal idea of personhood—is recognized by the state, certain types of formal, social, and political separation are eliminated. Arendt noted that this meant 'discrimination becomes the only means of distinction'. The more equal the Jewish people became, 'the more surprising were Jewish differences' leading to 'social resentment against the Jews and at the same time a peculiar attraction towards them' (Ibid.: 76).

Arendt's observations help explain both the ambivalence and growing intensity of focus upon immigration systems themselves because they create and extinguish people's fears about difference. In the context of greater recognition of human rights, immigration systems have evolved from sim-

ple passport controls to possessing a key gatekeeping function with respect to the internal borders of the welfare state (Bommes and Geddes 2000). While in this sense, they recognize, maintain—even produce—difference, this is balanced by the prospect that immigration systems hold out for incorporation, integration, and, ultimately, the elimination of that same difference.

Securitization as 'Mechanism of Fear'

How can we establish the processes or mechanism by which the politics of fear operates? It is exceedingly difficult to identify causality, and its direction, within and between immigration policies, institutional arrangements, socio-economic conditions, and societal attitudes towards immigrants. That is because any 'mechanical' conceptualization of causality risks overlooking the constructed and mediated nature of the selection and isolation of 'independent' and 'dependent' variables; the role of intermediaries or intermediate variables; and it misses out the importance of politics and the role of politicians in creating, manipulating, or perhaps even dissipating fears about immigration.

Ever since the publication of Stanley Cohen's classic text 'Folk Devils and Moral Panics' (Cohen 1972), researchers have sought to explore the relationship between scapegoating, social reaction, and the media. The development of this work in the intervening decades means that we can now say that it constitutes its own field of 'moral panic studies' (Garland 2008). Much of this moral panic literature looks at issues such as youth 'deviance' but one branch has explored how moral panics can be seen as a kind of putative system of moral regulation (Hier 2011). Stuart Hall and colleagues in the 1970s argued, in the context of the British political debate on immigration, that artificially constructed crises about immigration can be manipulated by certain kinds of societal actors (or 'moral entrepreneurs') such as politicians and journalists to influence the legislative process (Hall et al. 1978).

There is a growing body of work in immigration studies which focuses on the political and has foregrounded the importance of politics and the public sphere. In the past few decades, this has centred on the way that immigration is becoming 'securitized' (Wæver et al. 1993; Bigo 2002; Huysmans 2006; Messina 2014); how the public debate can become toxic through the media's framing of the issue (Balch and Balabanova 2014) which can contribute to 'moral panics' (Silverstone 2006; Mawby and

Gisby 2009; Hier 2011; Katz and Smith 2012). Following the celebrations for the end of apartheid and for the newly democratic South Africa, it was not long before immigration became a key 'fear' of the new state (Peberdy 2001). One of the explanations for this relates to what is known as the 'securitization thesis'. This contends that immigration policies are driven by arguments that associate immigration with an existential threat—in this case to the state. Within this debate over the securitizing logic of policy, scholars associated with the Copenhagen School have drawn from social theory to show how immigration can become discursively constructed in terms of 'societal security' (Wæver et al. 1993: 17–23). Speaking about security is the main point: 'the utterance itself is the act' (Wæver 1995: 55) but the linkage with an existential threat is also important:

> Threats and vulnerabilities can arise in many different areas, military and non-military, but to count as security issues they have to meet strictly defined criteria that distinguish them from the normal run of the merely political. They have to be staged as existential threats to a referent object by a securitizing actor who thereby generates endorsement of emergency measures beyond rules that would otherwise bind. (Buzan et al. 1998: 5)

However, while there have no doubt been moves towards securitization, for migration to be securitized there needs to be more than a discursive linkage made by governments—the discourse needs to be accepted by others (not least parliament, the judiciary and the general public) (Buzan et al. 1998: 25). A slightly different approach is adopted by those sometimes collectively referred to as the 'Paris School' who draw on French theorists such as Foucault and Bourdieu (C.A.S.E 2006), for example, using the latter's conception of the 'field' to talk about the relevance of the 'specific habitus' of the security professional (Bigo 2002) and its application to immigration. This approach shows how securitization happens when security-related companies, expertise, and technology operate in the field of immigration. Others have connected securitization with the Foucauldian notions of biopolitics and governmentality to show how and with what effects politicians use fears when it comes to immigration:

> In a manner similar to superhero cartoons, the government is on a mission to repel or at least subdue unwanted evil (foreign) advances across territorial borders, and relies on plenary powers in achieving its ends. A Manichaean narrative of good against evil creates the moral authority for such power.

With each storyline, or immigrant flow, a risk is constructed, exacerbated and then overcome…. (Koulish 2012)

So, securitization appears to explain how fear of immigration can be incorporated into policy processes, but can it fully explain state responses to immigration? Christina Boswell argues that the answer is 'no'—there must be some kind of 'natural' limit to the extent to which politicians should, could (or would even want to) securitize the topic. She argues that politicians are restrained by 'cognitive constraints' that limit the extent to which they can be persuasive when attempting to link security responses and techniques to immigration policies. They also avoid completely securitizing immigration because this leads to 'unfeasible expectations' that cannot and will not be met, impacting on politicians' credibility. Finally, out of self-interest, Boswell argues that politicians will avoid securitization if it negatively affects other political goals, such as the securing of adequate levels of migrant labour for business (Boswell 2009: 102–103). There are other criticisms of the securitization literature. To begin with, it relies exclusively on language, without really considering the importance of other means of communication such as visual (Möller 2007). Also, some have argued that the evidence on immigration policy change across Europe suggests that securitization has not really dominated, e.g. in Spain where the Madrid bombings had no noticeable securitizing effect on immigration policies (Balch 2010).

Evidence of the Politics of Fear in the UK and the USA

The history of the UK and the USA is littered with cases where governments and other political actors are accused of manipulating public fears in order to change policy and pass legislation on immigration. Discussions leading up to Britain's 1905 Aliens Act included fears about newcomers and the effects they would have on the country. It has been widely described as an anti-Semitic, as explored in Chap. 6.

Early on in the history of immigration controls, we see how fear travels between countries: certain ideas used in the US political debates on immigration were imported into Britain. A good example is the notion that immigrants carry diseases. These were a common theme in nineteenth century debates where immigrants were seen as responsible for cholera epidemics. Krista Maglen (2005) found that ideas about the dangers of immigrants carrying contagious diseases travelled from US politics and

legislation on immigration to shape similar debates in Britain. This was not just at the ideational level. It was also because of the geographical linkages between the two countries. US immigration laws led to steamships returning 'rejected' Central and Eastern European immigrants to British ports instead of their original points of departure to save money (Maglen 2005).

We know that there was talk of an 'oriental invasion' around the time of the US Chinese Exclusion Acts, but was this legislation just about fear? Certainly, there is evidence of the dynamics identified in theories of securitization. The way that fears were used to push for exclusionary immigration laws in the USA in the 1880s effectively enabled an important extension of the state, through the creation of 'plenary powers'. This logic is also evident in the way that irregular immigrants are detained without constitutional safeguards: the presentation of immigrants as a toxic threat to the state naturally leads to demands for 'super' powers or exceptions to the normal limits of sovereignty (Koulish 2012). But is this ignoring the role of those using fear to drive forward their own interests? Rudi Batzell (2014) argues that political pressure to pass the Chinese Exclusion Acts was economically, rather than racially, motivated. Following Arrighi's (Arrighi 1990) and Roediger's (Roediger 1991) observations about the role of the working class and labour movements in constructing 'race', he demonstrates how Californian workers seized upon 'race' as a rational strategy to obtain and maintain special treatment from employers (Batzell 2014). It is of course impossible to be completely certain about the motivations of all those lobbying for or against legislation, but we know the ultimate result: an immigration system built upon the principle of selection by ethnicity and nationality, where representatives and advocates for different countries would then fight to increase their share on the basis of perceived common interests.

The cases most frequently used for this purpose and cited to support the politics of fear arguments include the massive rise in expenditure by the USA in strengthening its southern US border, the 'militarization' of migration controls at the European Union (EU)'s southern periphery (Lutterbeck 2006), and the expansion of security measures in Calais. The inference is that a politics of fear—either the weaker or stronger version—is at play. The stronger version would argue that such security-inspired responses to immigration can only be informed by fear because any sensible analysis of immigration patterns and its causes and effects would not require such a response. For these commentators, the evidence for this

lies in the observation that the policy responses appeared to be neither particularly rational or effective (Cornelius 2008).

Increasing security at the US–Mexico border was one of the first and most important governmental responses to 9/11. But, this makes little sense when we consider that none of the terrorists involved were immigrants or even passed through that route—the response does not fit the threat (Alden 2008). By comparison, the tightening of controls along the Mediterranean might seem a rational policy for the EU if one adopts the realist perspective (where security trumps humanitarian concerns), but again there is an absence of logic. The results have been counterproductive—the policy has not stopped immigration, rather it has forced prospective migrants to take much more difficult and dangerous routes, almost certainly contributing to increasing numbers of deaths (Lutterbeck 2006; Brian and Laczko 2014).

Potential evidence of a politics of fear does not only reside in high-profile operations at the border, however. There are a host of other policy developments on immigration that have been criticized as based on fear. These include the greatly expanded use of detention centres for immigration-related offences, various enforcement activities around irregular migration,[3] and expanding programmes for the deportation of immigrants (Newstead and Frisso 2013). This expanding use of state power based on fears of immigration (Koulish 2012) has, among other things, acted to increase fear and a lack of trust of immigrant communities with law enforcement agencies (Evans 2008; Theodore 2013).

The process of 'crimmigration' (Stumpf 2007) can also be linked to securitization, where there is a blurring between immigration rules and criminal justice practices. This is a trend which is observable in both the UK and the USA, where there bureaucratic methods of enforcement (which treat the transgression of immigration rules as a mere civil offence) have been joined by law enforcement practices and techniques. Needless to say, those who claim that the politics of immigration are based on fear are particularly damning about the negative effects this will produce. From this perspective, not only are such policies poorly conceived and therefore likely to fail, but they can be devastatingly costly in human terms and risk creating a 'downward spiral' for the liberal state: ever greater restrictions on membership and progressively less protection for the individual (Stumpf 2007).

One method to establish the politics of fear is through analysis of politicall rhetoric. Is there a connection between securitized immigration

politics and a rise in politicians and political parties that base their political programmes on fears about immigration? We certainly see examples where such fears have been employed by centre-right parties to serve their electoral purpose. A good example is Margaret Thatcher and her suggestion that British people were being 'swamped' by immigrants. However, the evidence for Britain (and other European countries such as France and Germany) in the 1970s and 1980s is mixed in terms of the extent to which they then go on to actually implement highly restrictive policies once in power. There tends to be a continuation rather than radical change (Thranhardt 1995). There are also many examples where fears of immigration were used as a rhetorical strategy by leading politicians during elections but without success. British Conservative leader Michael Howard made immigration the centre point of his failed campaign in 2005, linking the topic with terrorism and metaphors of natural disasters (Charteris-Black 2006).

Another area which could signal a politics of fear might be the levels of success for those outside the political centre who base their policy programmes on fears over immigration. There are common threads among the ideologies of 'far-right' or 'radical right' parties that combine nativism[4] and populism, each involving a component of fear (generally, that, as a result of immigration, the nation/the pure public is being diminished/corrupted (Mudde 2007)). In Europe, these parties have been particularly efficient in manipulating fear of immigration as a recruitment and electoral tool since the late 1980s (Kitschelt 2007). Can a rise in the success of far-right parties impact upon levels of populist and authoritarian sentiment among the general public, leading to a politics of fear on immigration?

In the UK and the USA, the party systems are strongly two-party, and far-right parties would not normally expect to gain government office (although there is an outside chance that this could happen via a coalition in the UK case). The main route of influence is for their policy positions to be adopted by mainstream parties through lobbying pressure or as a strategy to take their votes (Thranhardt 1995; Carvalho 2013; Mudde 2013). In the USA, for example, the rise of the Tea Party Movement (TPM) after 2009 and its influence on the Republican Party is thought to have been heavily based on fears over immigration (Williams 2012). A study of TPM membership found a close relationship between those who self-declared as members of the TPM and 'racial resentment', defined as beliefs in various racially-related cultural stereotypes (Tope et al. 2015).

There is less certainty about the actual impact of these parties on governments in power, however. In a study of France, Britain, and Italy, Joao Carvalho found that the 'contagion' of anti-immigration policies from extreme-right parties was actually diminishing over time (Carvalho 2013), echoing Cas Mudde's observation that they are 'a relatively minor nuisance' (Mudde 2013). However, determining the significance of far-right parties for the politics of immigration is challenging. The issue of cause and effect is difficult and raises a number of questions about how (and how much) public anxiety over immigration impacts upon the political sphere. First, there is an issue of circularity: does the rise of far-right parties reflect or actually cause xenophobia or racism in society? Second, far-right parties often mix a range of populist ideas, so it is not always possible to simply equate their success only with xenophobia. Even when it comes to those with a specifically anti-immigrant stance, some have argued that there are a range of fears which inform far-right parties' attitudes towards immigration, not all of which are necessarily racist (Rydgren 2008).

Finally, perhaps an obvious piece of evidence that politics is driven by fear comes from the representation of immigration and immigrants in the public and media debates. The use of inflammatory and racist language by politicians, government officials, and judges has been documented since the first immigration controls and appears to be a theme that repeats and continues into the contemporary era in both the UK and the USA (Kawanabe 1996; Bloom and Tonkiss 2013). The framing of immigration as a threat in the language used by politicians has become central to the public debate (Lahav and Courtemanche 2012), but does this necessarily translate into policies and their implementation? Research from the USA certainly suggests that the stoking of fears by politicians fond of anti-immigration rhetoric might fuel hate crimes (LCCREF 2009; Johnson and Cuevas Ingram 2013). There is also evidence that enforcement operations can become more 'zealous' in the context of a highly charged public debate. These might be measures designed to assuage public fears, but they themselves create a culture of fear within migrant communities (Theodore 2013). These fears are rational considering the potential for policies that discipline and punish non-compliance to increase those groups' vulnerability to abuse and exploitation (Evans 2008).

Turning again to the 'war on terror' example, how reasonable was it for governments to react by tightening immigration restrictions and making it easier to detain and control the movement of non-citizens? Was this

done because of a genuine link between immigration and terrorism, where controls prior to 9/11 were too 'lax' (Kephart 2005)? Or was immigration the preferred instrument for governments because of a relative lack of procedural safeguards in that branch of law (Tumlin 2004)? The answer to that question also speaks to a wider issue of proportionality. The failure of many attempted terrorist attacks shows that many terrorists might actually be 'incompetent amateurs'. If this is indeed the case, the legal and policy changes put in place post-9/11 as a reaction were probably unnecessary and almost certainly too repressive and illiberal. It all hinges upon the assessment of threat—it is this calculation that determines whether the measures are necessary. If a politics of fear is really needed for the protection of citizens, it is the campaign to undermine or dismantle this politics that becomes the greater danger through a 'practice of complacency' (Jones and Smith 2014: 62–63).

It was with some haste that the US government immediately adopted the Immigration and Nationality Act following the September 11 terrorist attacks, which included new powers to charge and detain in emergency or extraordinary circumstances. Of course, everyone now knows that none of the 9/11 hijackers were immigrants (they were foreign nationals on tourist visas), but this did not stop a range of policies being introduced that first of all sealed the borders and led to an increase in spending on immigration enforcement. Despite the 2001 attacks occurring on American soil, the EU was also quick to move against immigrants as part of its response. It urged its Member States to instigate enhanced surveillance checks under the Schengen system and to implement greater levels of scrutiny when it came to the issuing of visas or the entry of third-country nationals to their territories. However, others contend that the whole idea of a new securitized 'paradigm' on immigration following 9/11 is suspect. They argue that there is little evidence to suggest that there was a significant shift in direction post-9/11, rather there seems to have been a continuation and acceleration of previous policies (Messina 2014).

Conclusions

This chapter has explored the different ways in which fear could be said to influence the politics of immigration. While fear itself appears to be a constant, its form and shape is fragile, temporary, even unstable, due to its contingency upon shared, inter-subjective, and politically and socially constructed meanings. Insecurity can only be understood as part of its

dialectical relationship with security, fear with trust. Importantly, and perhaps counter-intuitively, the ostensibly negatively charged emotion of fear is shown to have constructive as well as destructive power. It can perform productive political work in connecting the state with society, building, and expressing identity, affirming belonging. There is an inherent dualism that stems from the role of fear in immigration politics. It generates clear benefits for some, while pushing others towards greater uncertainty—of status, presence, and future. While the relevance for aims and objectives around state-building are clear, the costs are considerable, even deadly. Fear can produce a parallel society within the liberal democratic state that transforms life into a function of exclusion and exploitation.

Fear of 'the other' has long been a noted feature of societies, and so it is not too much of a leap to suggest that this drives the politics of immigration. On the one hand, this idea of immigrants as 'the other' is useful—it locates immigration within the wider politics and dynamics of societal inclusion and exclusion. It also explains why prejudice and injustice might be experienced by immigrants as an 'out-group'. Moreover, it suggests a critical reading of policy—an evaluation based on normative criteria about what an immigration regime should look like. But where do these criteria come from? Do they emanate from something intrinsic to liberal democracies, universal norms relating to human rights or is it through traditions of hospitality, for example, such as the religious impulse demanded by Christianity to 'love thy neighbour' (Herron 2011)? Fear appears to be central to the construction of the immigration system. Once in place, however, regardless of the supposed threat that caused the shift in direction, any change to the system will create winners and losers—it is a question of *cui bono*–as Chap. 9 explores.

NOTES

1. See: http://www.worldvaluessurvey.org/wvs.jsp.
2. E.g. The Independent 4 August 2013 'The Government's shameful scapegoating of immigrants' http://www.independent.co.uk/voices/comment/the-governments-shameful-scapegoating-of-immigrants-8745342.html; The Economist, 6 October 2012 'Immigrants as scapegoats' http://www.economist.com/node/21564261; Washington Post 27 August 2014 (Dana Milbank) 'An anti-immigration group's imaginary scapegoats' http://www.washingtonpost.com/opinions/dana-milbankan-anti-immigration-groups-imaginary-scapegoats/2014/08/27/9187234e-2e2f-11e4-9b98-848790384093_story.html.

3. One typical example is the UK's 'Operation Vaken' carried out in 2013. The operation included use of vans displaying 'go-home' posters encouraging irregular migrants to volunteer for removal from the UK. While the government claimed the operation was cost-effective, it was eventually discontinued following widespread criticism. The campaign appeared to be designed to assuage public fears about irregular migration rather than representing an effective policy response. According to the MRN, its main achievement was to spread fear among populations with diverse ethnic communities.
4. Nativism demands that states are constituted only by members of the native group (the nation) and that any non-native elements threaten this (Mudde 2007: 19).

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Greed

Introduction

As Thomas Hobbes argued in his contractarian theory of the state, human conflict is a function of the interaction of the motive of fear with another: the motive of greed (Hobbes 1962 [1651] Ch. 13). He was drawing from a favourite source for realist thinkers—Thucydides—and borrowing from that author's famous triptych of motives for war: fear, greed, and honour/reputation (Thucydides 1979 [BC 431]). The proposition that the politics of immigration is, alongside fear, shaped by greed, or desire for material gain, seems a rather orthodox or common-sense view. After all, notwithstanding misgivings about immigration, voters demand above all else that politicians deliver economic growth and prosperity. Moreover, economic conditions tend to determine election outcomes (Lewis-Beck and Stegmaier 2000). It is at election time that naïve politicians so often need to be reminded by their campaign managers that it is 'the economy, stupid!'[1]

Historically, those studying the politics of immigration have been given similar advice. Until the mid-1980s, scholars of European comparative politics tended to see immigration, and policies to control it, as a fairly straightforward function of the economic appetite of the state and its labour market: a result of supply and demand, costs and benefits (Hammar 1984). In one sense, this links back to the early 'push-pull' theories of immigration which were based on ideas that would be familiar to students of neoclassical economics (Ravenstein 1885). However, as

discussed previously, standard assumptions about the way states deal with immigration have been challenged since the 1990s. 'Hydraulic' models of immigration policymaking based on a rational response to immigration flows, or due to the exigencies and interplay of supply and demand, have become much more sophisticated—modified, developed, and expanded upon by diverse contributions from the field of political economy. These have sought to 'bring the state back in' to theories that were hitherto dominated by sociological and economic explanations (Hollifield and Wong 2015: 228–229).

In a similar way to Chap. 8 on fear, this chapter explores why, how, and to what extent greed has become central to the story of immigration controls using both theoretical and empirical material. It begins by outlining two different arguments regarding the 'politics of greed'. It then goes on to explore the ideas and theories that lie behind these before relating them to the development of immigration law and policy in the USA and Britain.

TWO ARGUMENTS ABOUT THE 'POLITICS OF GREED'

How can we explain the role of material interests in the relationship between immigration and the state? Existing explanations fall into two broad groups, the first of which could be described as pluralist approaches. These develop theories that focus on immigration policies in the context of broader economic relations and economic change, for example due to globalization (Sassen 1998); through the state's engagement with economic interests (Freeman 1995; Money 1999; Freeman 2006) and societal stakeholders (Watts 2002; Menz 2009) or through the use of knowledge (Boswell 2009; Balch 2010), among other things. A second group sees deeper structural problems in the state–economy–immigration relationship. These range from an undue or undemocratic influence of business and (unscrupulous) employers on policy; an infiltration or 'capture' of the state by the private sector to profit from immigration management (Garapich 2008; Nyberg Sorensen and Gammeltoft-Hansen 2013); and further along the process—exploitation by private and public sectors of the cheap and disposable labour that is delivered by immigration systems (Whyte 2009; Buckley 2013; LeBaron and Ayers 2013; Mezzadra and Neilson 2013).

Each of these two sets of approaches provides a basic framework for explaining policy outcomes on the basis of a certain understanding of the

politics of immigration. Of course, within each researchers favour a range of different dependent variables. In this book, a primary focus is the welfare of immigrants in liberal democratic states, but for liberal pluralists socio-economic outcomes for non-citizens could be seen as a secondary priority. This does not mean the exploitation of immigrants or violations of their human rights would be seen as an acceptable outcome but could be understood as a regrettable aberration or anomaly rather than a direct consequence of immigration policies. The argument is that:

> States will construct immigration systems to suit their perceived economic interests ahead of humanitarian priorities of non-citizens, while attempting to strike a balance or compromise between sectorial and societal interests in the context of other factors, e.g. institutional constraints, regionalization, globalization or increasing people flows.

From this perspective, much like core realist approaches to international relations, immigration policy should secure and maximize states' material interests above any ethical or moral concerns. This is not to say policies are, or should be, amoral, but that such ethics are a secondary priority. Negative outcomes for individual immigrants would be considered unfortunate and may partly reflect the necessary prioritization of state interests, but violation of liberal norms would ultimately be blamed on 'bad actors'. For example those dying at the border would not be seen as victims of restrictive asylum policies but instead the prey of 'human traffickers'; those exploited in the workplace are not rendered vulnerable by a lack of rights or uncertain legal status, they are victims of individuals or networks of criminals who 'do not meet legal hiring practices' (Benton 2014).

The second group places the sub-optimal socio-economic outcomes for immigrants centre stage. They see those outcomes as part of the raison d'etre of wider economic policies that concentrate an imbalance of power to the advantage of the state and employers. The argument drawn from this second set of approaches points to evidence regarding the treatment of immigrants in the labour markets of receiving states and from this draws conclusions about the influence of the 'neoliberal agenda'. This explains how immigration systems have come into being, are developed, and shaped:

> States will construct immigration systems on the basis of (neoliberal) ideas that serve powerful economic interests, enabling them to maximize profit

from all aspects of the system including through the creation of hierarchies of rights and protections to purposefully render categories of workers (immigrants, but expanding to include other groups) radically exposed to exploitation.

The implication of this second argument is no longer that the welfare of immigrants is a secondary concern: the repression of their human rights becomes a reflection of power relations and absolutely central to the system. By now, the reader is probably noticing parallels between the two arguments presented here and the two in Chap. 8 on the politics of fear. There is indeed a common link between fear and greed or between security and economics for both camps. There is a common realist thread to the weaker versions of both fear and greed—immigration control in the service of the state's legitimate interests. There is also a common thread for the stronger or more critical versions—immigration systems as emblematic of the authoritarian creep: the non-legitimate acquisition and use of power by the state. Immigrants are just one group in the middle of a long line of the excluded and the dispossessed. The politics of greed, enabled and mutually reinforced through the politics of fear, is a technique that is now used to control and discipline immigrants, but it has been previously (and continues to be) used in relation to others (on the poor, vagrants, etc.), and if unchecked will intensify and be deployed to further categories of people. To sum up, borrowing from Cas Mudde's medical metaphor of 'pathologies' (Mudde 2010), the economic exploitation of immigrants in liberal democratic states is either 'normal pathology' or 'pathological normalcy'.[2] Or, put another way, the problem is either alien to liberal democracies or intrinsic to them.

Whose Interest, Whose Greed… Cui Bono?

On the face of it, there would seem to be solid evidence that immigration produces significant economic gains for not only immigrants but also receiving states and employers in those states. The money earned and then sent home through remittances indicates how important immigration is to the global development. The number of international migrants is estimated to exceed 250 million by the end of 2015—the savings and remittances they send back are expected to grow to $586 billion (WB 2015). A 2014 report by the Organisation for Economic Co-operation and Development (OECD) gathering a range of evidence placed benefits

for receiving states into three main categories: helping macro-economic growth (gross domestic product [GDP]), expanding the labour market, and improving states' fiscal balance (OECD 2014). The report echoed a consensus that immigration is a phenomenon that acts overwhelmingly to the benefit of liberal democratic states.

The implication is that industrialized countries should welcome more immigration: governments should act to reduce immigration barriers and remove obstacles to movement. Enormous pent-up demand in developing countries to migrate means significant potential global gains from the lowering of migration barriers (Clemens 2011). Nevertheless, this mainstream consensus masks a much more nuanced debate about winners and losers—and 'good' and 'bad' varieties of greed. These do not always challenge the claim that overall impact for industrialized countries is likely to be positive, but they pose questions about the spread of costs and benefits across society, about the motives of immigrants and those who benefit from their movement, and about the sustainability of immigration in society (e.g. Collier 2013).

Should motives matter? Can there be good and bad types of greed if it is all self-interest? Adam Smith's famous quotes about an 'invisible hand' are often used to suggest all self-interest serves the market and is thus ultimately good. This has justified a primacy for the market (contra the state) through the idea of spontaneous order in economic relations (Smith 2006). As we will see, the emergence and spread of these kinds of ideas is central to one set of explanations for the politics of immigration. The 'greed is good' claim is a great illustration of unintended consequences or the influence of economic ideas (or myths). While it has become a convention to use Smith's invisible hand to defend the virtues of market forces, his original intention was to refer to God's will or divine providence (Graeber 2011: 50–51).

It appears easier to argue that there are mutual benefits of immigration in the case of highly skilled immigrants able to exploit their prior learning and expertise. Surely they will benefit their new country, improve productivity and growth, and generally make a positive contribution? The 'greed' here (self-interest of the state and of employers seeking to recruit high-skilled employees) is of a good kind—it benefits everyone by helping the economy grow and become more dynamic. The case of immigrants doing basic jobs is perhaps less obvious. The motives for the immigrant and their self-interest in taking any job they can in a new country seems to be a good kind of self-interest, but what about the employers 'using'

those immigrants to lower wages, avoid social costs—to exploit newcomers; the myriad of sub-contractors, middle-men, and intermediaries who use immigrants to 'sweat' profit (Goldstein 2006)? These seem to involve bad motives—with lots of potential negative externalities. What will this type of immigration do to other low-skilled workers who have to compete with newcomers arriving without families and willing to tolerate low wages and poor conditions? What about those (non-immigrants) who are already in the labour market but struggle because they are marginalized or discriminated against?

In contrast with overall effects on GDP, economists tend to disagree on these questions. For example research by US economist George Borjas found that between 1980 and 2000 immigration led to 5–10% decrease in unskilled wages (Borjas 2003). His findings were challenged by David Card who found no negative impact on American workers (Card 2005). The Borjas–Card debate proves the difficulty in establishing anything more than 'association' when studies will naturally use different time periods, populations, and indicators. How can we prove causation when there are so many potential variables that can be selected? Immigrants and employers are not merely factors of demand and supply but intelligent and reactive agents, and we cannot know how they might have behaved in the absence of immigration laws.[3] Despite these difficulties, government-sponsored research in the UK has tried to establish the relationship between immigration and 'native' employment rate. They found little relationship in a growing economy, but in the context of a recession for every new 100 foreign-born (non-EU) working-age immigrants, they thought there might have been a reduction in native employment of approximately 23 (in the same year) (MAC 2012: 63).

The 'elephant in the room' in these analyses is the immigration system itself. It is something constantly evolving and being tinkered with by governments. It is a complex set of rules, and these also act in creating a dynamic multitude of new market forces through the imposition of incentives and punishments, obstacles, and loopholes. Obvious beneficiaries include the growing service sector that facilitates the immigration process. There has been a general growth in temporary staffing and the recruitment agency sector since the 1970s on both sides of the Atlantic—growing over 300% between the 1990s and 2000s (CIETT 2012).[4] The added difficulties in changing countries to find work mean that immigration creates considerable opportunities for recruitment agents and challenges in regulating them (Coe et al. 2010). There have also been specific markets

growing more rapidly than others, for example agencies specializing in placing international students (Obaje 2014).

Then there are the profits available to those who can help to circumvent the rules (e.g. smugglers) and others (e.g. traffickers) who use them to exploit the vulnerable. The International Labour Organization (ILO) in 2014 estimated that the global profit from forced labour was $150 billion. Although it is difficult to know how much of this related to immigration, the ILO claimed that in many sectors 'a large proportion' of those experiencing conditions of forced labour would be immigrants in industrialized countries (ILO 2014: 19). Added to this, there is the demand for services from those who need to navigate the legal minefield once in the country, where significant opportunities emerge for the unscrupulous due to difficulties in regulating legal services for immigrants (Moore 2004). Governments can make significant economic gains through the structure of fees they impose for permits, visas and their extension, naturalization processes, and tests. The complexity of these processes can mean it is wise to hire an advisor or lawyer. For example an H1B visa in 2015 costs significantly more than $2000, and help to prepare and file the application could be between $1000 and $3000.[5] Britain has become one of the most expensive places in the world to become a citizen in comparative terms, with 'myriad hurdles and fees' adding up to several thousand pounds before the final stage of naturalization (which has risen from £200 in 2005 to £1005 in 2015) (Economist 2015). Needless to say, considering these cost levels, there is also a burgeoning market for those providing alternative and unauthorized services (Quinto 2013).

The rise of the 'migrant crisis' has led to a massive increase in expenditure by governments to police the system through enforcement, detention, and deportation but also for those attempting to navigate the system. This has been a boon for companies looking to run the system on behalf of the government: the 'detention industrial complex' (Trujillo-Pagán 2014) and for other businesses and criminals looking to exploit the vulnerability that the system creates when it produces large numbers of immigrants who have uncertain status (Dwyer et al. 2011). The deportation arms race (or 'merry-go-round') is a costly business for all sides. One estimate in 2012 was that movement into Europe and North America generates $6.75 billion per year for human smugglers (UNODC 2012). Another report by the 'Migrants' Files' network of journalists claimed that European countries had spent Euro 11.3 billion on deportation from 2000 to 2015, but

that refugees had spent Euro 16 billion for passage to Europe in the same period (MF 2015).

Finally, it should be no surprise that irregular immigrants are disproportionately victims of theft and associated crimes, an not only during their often perilous inward journey. Once settled and working, they are likely to be holding lots of cash because of how they are paid and their inability to open a bank account, and they are even more vulnerable because of a reluctance to report crimes to the authorities for fear of detention or deportation. They have become referred to as 'walking ATMs' (Barrancoa and Shihadehb 2015). To summarize, the profit in immigration is not just for the economy, governments, employers, or immigrants themselves, there is a much longer list including an assortment of recruitment agents, middle-men, immigration advisors, and criminals.

Processes and Mechanisms

So, if material interests appear to exist everywhere around immigration, including significant epiphenomena relating to the system itself and its governance, how can we work out the way these interests drive politics and policies? Beginning with the first argument, its best-known proponent—Gary Freeman—developed a theory regarding 'modes of politics' in liberal democratic states (Freeman 1995, 2006). Freeman is the scholar who, perhaps more than any other, made the link between economic interests, liberal democratic states, and the regulation of immigration. He pioneered the application of neoclassical methods from the public policy sciences to analysis of immigration and has become something of a measure or benchmark against which other scholars position their own work. In a similar manner to Kenneth Waltz in the field of International Relations (Waltz 1979), Freeman's innovation was to apply a kind of micro-economic framework to understand the politics of immigration and how this led to certain public policy choices. He envisaged the policy arena as a marketplace where different interests from within society compete to influence policy. Drawing on others' work regarding the politics of regulation (Lowi 1964; Wilson 1980), Freeman created a typology of different policy components (temporary/high-skilled migration, tourism/visas, asylum) that lead to different 'modes' of politics—client, interest group, majoritarian, and entrepreneurial (Freeman 2006).

The connection between policy type and policy mode essentializes and reifies those categories created by governments to make sense of

immigration, which after all are somewhat arbitrary and may be open to modification over time. It also rests on an assumption that interests themselves act in a rational fashion on the basis of the expected costs and benefits to them of different immigration policy options. This means that by determining the costs and benefits of immigration policies, we can see who wins or loses and work out what powerful interests will lobby for. Freeman uses this to explain the puzzle of why there is a general tendency in liberal democratic states towards an expansion in the use of labour migration—even in the context of negative public opinion. It all comes down to assumptions of pluralism and politics as open and competitive. Many economic sectors have come to rely on migrant labour, and so they enter the political arena to fight for what they need. Freeman predicted that client politics will emerge when there are concentrated benefits from the recruitment of migrant labour and while the costs of such policies are diffuse. These costs might, for example, fall on the general population who are less able to directly influence policies outside election time (Freeman 2006).

A clue to the impact and influence of Freeman's work has been the level of criticism it has generated. The framework he develops is rationalist and anti-constructivist. The typology rests on the ability for interests to 'objectively' identify how immigration represents a cost or a benefit. The political space or arena is assumed to be open, with equal access. There is little or no space for ideology or the role of ideas in influencing how different actors in society come to their conclusions about the costs and benefits of immigration in the first place (Balch 2010). It is not a value-free account, however, because there is assumed to be a 'liberal bias' in the autonomy of elites to ignore public opinion, and for economists to favour more expansive immigration programmes (Freeman 1995). But these values, the extent to which they are abrogated or ignored with respect to immigrants, the relative openness of states to international norms, are all assumed to be fairly static. Any principles of justice which might limit and shape the way that liberal states treat immigrants are secondary to the interplay of interests; they are either ignored altogether, or assumed to be an essential, and therefore unremarkable, aspect of liberal democracy.

It is perhaps for this reason Freeman's 'modes of politics' approach is best at explaining politics over that which the state categorizes as labour immigration. This is because it is in this category that costs/benefits are closest to being measurable. Even here, however, there is a problem in terms of explaining how and why ideas about the economic impacts of

immigrants might change. The consensus now is that immigration has a positive fiscal impact on receiving states, but this was not always the case (Balch 2010). The neat division of policy type and political mode falls down where the distribution of costs and benefits are less clear—where the ideas that justify decisions about these are more dynamic and open to change. In the case of policies towards asylum-seekers, for example, Freeman predicts a mixture of 'client' and 'entrepreneurial' modes of politics. The former are the NGOs and humanitarian organizations fighting on behalf of their clients. There is a clear difference in that they are less privileged in terms of access to policymakers when compared with the sectoral interests who favour increased labour migration—they cannot claim to offer the same material advantage to the state. However, it is not so easy to use Freeman's framework to account for the illiberal way in which states act towards asylum-seekers. The main explanation is that advocates for this group are in such a disadvantaged position that they might only be left with entrepreneurial politics or the 'weapons of the weak'.

There appears to be a vague assumption about international constraints. In his discussion of asylum policy, Freeman suggests that some liberal features remain because policy is 'thrashed out in a complex, rapidly changing, multi-level arena that includes international institutions such as the United Nations, regional arrangements in the EU, and national actors and institutions in the public and private arenas'(Freeman 2006: 238). This under-conceptualization of the role of ideas, international norms, and the importance of institutional influences on policy have been significant criticisms of Freeman's theory. However, others have engaged in some 'bridge-building' by providing more nuance, for example incorporating the role of constituency-level demands on individual politicians as another factor in the parliamentary arena (Money 1997).

Liberal-pluralist accounts of immigration policymaking tend to eschew a focus on the lived experiences that policy itself engenders or influences. They can be critical of policy, but mainly to the extent that it willfully ignores knowledge about economic benefits (Spencer 1994) or too often bends to populism and the politics of fear. It is therefore the failings and weaknesses of politicians and the political system that lead to unfortunate or unintended outcomes, such as the exploitation of immigrants. Ultimately, however, they reach fairly optimistic conclusions for immigrants: the expansionary dynamics of the liberal pluralist system will normally lead to greater levels of immigration and, eventually, a liberal accommodation of newcomers in society.

Neoliberalism and Structural Inequality

Returning to the second of our arguments about the politics of greed, what are the processes identified by those who see what happens with immigration as illustrative of wider shifts in power within state-market or state-society structures and relations? Among many of the accusations levelled at industrialized countries' manipulation of immigration is that it 'serves to control—in the double meaning of management and subordination—the global labour force' (León and Overbeek 2015: 38). The politics of immigration thus becomes the latest kind of politics of greed that has enabled exploitation: a natural progression from the centuries where international slavery sustained global empires and which then gave way to other similar patterns of exploitation after 'abolition' (Blackmon 2008; Ferguson and McNally 2015). From this perspective, an emasculation and subjugation of immigrants has demonstrated an intrinsic problem within capitalism: an addiction to exploitable labour with a complete disregard for externalities.

Neo-Marxist or class-based accounts (Hardy 2009) see the growing hostility towards immigrants as a sign that greed will drive immigration policies into a progressively more exploitative direction. They see immigrants functioning for the state as a 'reserve army of labour', where irregular immigrants are especially valued due to their vulnerability and lack of access to justice in order to seek redress (Castles and Kosack 1973; Hanson 2013). These critical accounts focus on the ways in which immigration systems are manipulated politically as a means to accumulate greater power for the state, for the purposes of those interests that control it. Securitization and moral panics result in actions 'potentially turning into a dictatorship over a new proletariat who are legal immigrant workers' (Moore and Forkert 2014). The instrumental usage of immigration therefore provides opportunities for the forces of greed to dominate (Buckley 2013; LeBaron and Ayers 2013).

By what mechanism has this occurred? Perhaps, the most often used argument is that a particular set of influential economic ideas— 'neoliberalism'—is chiefly to blame, and these ideas have come to monopolize politics on both sides of the Atlantic since the 1970s. Political debates about neoliberalism often revolve around a reduced possibility for political agency in an era of globalization (Hay 2002). Neoliberal values dictate that states enact economic liberalization policies including the de-regulation of labour markets and creation of free trade arrangements.

These actions by state are associated with, among other things, growing problems of socio-economic injustice and a massive increase in inequality (Irvin 2008). How can changing immigration governance be linked to the rise of neoliberal ideas? In the context of the neoliberal 'recipe' for states, immigration emerges as a key tool (for both government and employer) to reduce labour costs and increase flexibility due to the willingness of immigrants to undertake low-paid, arduous, or unpleasant tasks. Immigration policies thus operate by increasing the capacity for state and non-state (i.e. private sector) actors to use migrants as a valuable resource and to gain a competitive advantage. Other flanking measures exaggerate these attractive qualities of immigrant labour and include a general weakening of protections around employment rights and policies to discipline workers, for example by exacerbating conditions of uncertainty over legal status. From the perspective of the migrant, this uncertainty can range from simply knowing that the continued legality of your residence relies upon a routine (but nevertheless non-guaranteed) decision of a bureaucrat, to the risk of arrest, detention, and deportation due to irregularities in your papers.

From this second explanatory prism, immigration policies produce the excessive flexibility or 'disposability' of immigrant workers as a part of a neoliberal labour market strategy (Kundani 2007) that produces 'precarity' and, from that, exploitable labour. Precarity has been defined as:

> all possible shapes of unsure, not guaranteed, flexible exploitation: from illegalised, seasonal and temporary employment to homework, flex- and temp-work to subcontractors, freelancers or so-called self-employed persons. (Neilson and Rossiter 2005)

At the heart of this is the power imbalance between employer and worker. This can be so extreme that individuals can be exploited—even perhaps killed—with relative impunity (Whyte 2009). The politics of immigration thus becomes a way for the state to generate exclusion through an all-encompassing and coherent technique of governmentality: discipline of the individual through what Foucault referred to as 'bio-power' and the creation of borders both external and internal to the state. This mechanism does not sort between citizen and non-citizen in a simple, binary way—one of its chief innovations has been the use of complexity: borders act in different ways to 'multiply' forms and types of labour thus enabling different ways to exploit. The politics of immigration then

becomes more than the expression of a bifurcating process of inclusion/ exclusion from the state. Instead, it generates policies that filter, channel, and enable myriad forms of partial inclusion leading to different forms of exploitation (Mezzara and Neilson 2013).

Neoliberal ideas can therefore be traced to the use of precarity by employers, and in this way also be implicated in the lowering of working conditions and reduction of the price of labour—even beyond and below legal requirements. In liberal democratic states, undocumented workers are at risk due to their vulnerability to the disciplinary power of both legal status (the risk to the immigrant of removal or other government sanction) and the threat of destitution (because without work there is no safety net for the undocumented) (Burnett and Whyte 2010; Dwyer et al. 2011). However, as has been shown in the case of the USA, the progressive reduction of constitutional rights for irregular immigrants also affects other groups because the complexity of immigration rules means that the distinction between 'documented' and 'undocumented' can be very blurred (Newstead and Frisso 2013).

Of course, neoliberalism is not just associated with immigrant labour; there is the transformation of all aspects of the immigration system and immigration governance towards the interests of business. Intermediaries, temporary agency, and recruitment agencies are naturally among the beneficiaries of a neoliberal approach to labour markets and immigration (Sporton 2013). The commercialization of the immigration process has existed as long as there has been an international movement of persons, and there are many historical examples of individuals and enterprises extracting profits (Nyberg Sorensen and Gammeltoft-Hansen 2013). However, the growth of this industry has also accelerated, thanks to practices associated with the contracting out of state functions. This includes the shift from the public to the private with the privatization of public services and the advent of 'new public management'. It also includes the co-option of non-state actors in the policing of the border, through checks by employers, educators, and social services. The 'migration industry' spans nebulous multinational corporations that operate detention centres and removals and a growing transnational service economy which thrives on mobility by facilitating the migration process for profit (Garapich 2008). This neo-liberal evolution of 'statecraft' means functions relating to the governance of immigrants get progressively contracted out to non-state actors: the power to discipline and exploit the individual becomes extended beyond the usual organs of government and into the private sector (Koulish 2012).

Perhaps, the clearest example of neoliberal ideas impacting upon immigration politics has been in the context of Special Economic Zones (SEZs), otherwise known as Export Processing Zones (EPZs), Industrial Development Zones (IDZs), or Maquiladoras. In line with neoliberal principles, a central plank in the strategic thinking behind SEZs is the removal of 'burdensome' regulation and a relative absence of inspection and enforcement, particularly over labour standards. Aside from the aims of increasing exports and foreign investment, the expectation is these zones to provide jobs for the domestic workforce. However, the importation of labour—through either internal mobility or immigration is common (McCallum 2011). These workers are generally 'not offered formal contracts, not covered by any existing labour law, face harsher penalties for unionization drives, and earn less money than native workers (McCallum 2011: 5). As many have warned, this kind of logic risks a 'race to the bottom' in the global economy (Brecher and Costello 1994). One way to think about SEZs is to argue that the application of neoliberal principles effectively means that all workers become 'immigrants'—they are separated in normative terms from the labour laws and standards that pertain in the rest of whichever country they are located. A typical case is provided by Kenya's EPZ, which saw textile workers strike in 2003 because of a long list of grievances, including 'pay below the minimum wage, no medical schemes, no right to sick leave, trade union repression, excessive working hours, sexual harassment, and unpaid overtime' (Perman et al. 2004).

The main thesis of those who blame neoliberalism is therefore that ideas about economic governance have become widely accepted and implemented, leading to a politics of greed and the exploitation of immigrants. However, there are a number of conceptual and empirical difficulties with this narrative.

The most serious problem with the concept of neoliberalism is its definitional ambiguity: it has become popular as a means of referring to a bewildering number of things. It goes without saying that those who choose to speak of neoliberalism tend to be from the left and somewhat critical of the outcomes of economic globalization (Larner 2006). While this, in and of itself, is no problem, it could be argued that the concept of neoliberalism has become used as a 'rhetorical trope'. There is no need to define because the meaning 'is already known to those who would be interested in the topic in question' (Flew 2014: 52). It could just as easily be used in reference to the entire history of capitalism, where ideas are central to the

creation and maintenance of markets, but where these systems will always provide opportunities for those with malevolent motives (Appleby 2010: 23–24). For example those who point to the advance of neoliberalism as explaining immigration politics often highlight the importance of ideas and language in political change. In a similar way to the word 'greed' itself, those who study 'neoliberalism' are seeking to isolate an ideology that is accused of enlarging inequalities of power within society. The difficulty is that if everything points to the influence of neoliberalism, how can we identify any specific claims that could be subject to any criteria of falsifiability (Flew 2014: 52)?

EVIDENCE OF THE POLITICS OF GREED IN THE UK AND THE USA

How does the liberal pluralist model and how do the claims about neoliberalism hold up with the cases of immigration politics in the USA and the UK? In the first case, do we see evidence of Freeman's 'client' mode of immigration politics with respect to labour migration in each country? If so, we would expect to see business interests successfully lobbying for more expansive policy outcomes than would otherwise be sanctioned by governments responding to a restrictive-minded general public (Freeman 1995). The history of immigration policy in the UK, at least until the end of the twentieth century, is hardly the one which demonstrates the influence of powerful economic interests. Indeed, Freeman famously referred to it as a 'deviant case' (Freeman 1994). The only way to accommodate this is to include other variables such as migratory history and political system to account for different patterns of costs and benefits or access to the policy process for business interests. However, interest-based accounts would still expect, in the long-run, that liberal democracies with pluralist political systems would follow a similar path in terms of modes of politics over different types of immigration. Does the shift to managed migration in the UK after 2000 confirm this to be the case? It does offer some evidence, but the timing of the move required more than the simple influence of business interests. It was more to do with the Labour Party's 'business-friendly' strategy and the opening of a window of opportunity for the epistemic community (Balch 2009). It was also a case of international policy convergence considering there was a move towards new 'selective' recruitment of foreign labour across many industrialized states in this period (OECD 2009).

One of the problems with pluralist approaches is that they treat the state as 'neutral broker', and the case of the UK would seem to directly contradict this conceptualization. The ideological persuasion of the political party that gains power in the UK would seem to have an identifiable impact on immigration policy. This was most obvious following the arrival of the Conservative-led coalition in 2010, which acted against business interests in its efforts to reduce net migration (Hampshire and Bale 2015). Turning to the USA, powerful interests have certainly not always got their way on immigration (Tichenor 2002: 23–26). There are many barriers that can prevent interests from gaining access to power, and in influencing political decisions, and this is especially the case for those already disadvantaged (such as immigrants). The exclusion of Chinese immigrants in the late nineteenth century disadvantaged big business; in the twentieth century, the Bracero Programme of temporary labour from Mexico was stopped despite the clear and continued need for that labour in the US agricultural sector; in the twenty-first century, the pleas for a more open flow of immigrants from sectors such as technology have failed to result in legislation from Washington.

Ultimately, interest-based explanations do not incorporate the complexity of ideational, cultural, and institutional factors, or how laws and policies themselves create new interests, and change the rules of the game (Hollifield 2015: 239). How, for example, can we explain how groups alter their interests over time? By abstracting and generalizing the interests of labour or employers, we struggle to explain why they might sometimes appear to act 'unconventionally' (Watts et al. 1999). The same goes for the different departments of state. In the UK, for long periods, it was the Department of Labour which was pressing for restrictions to immigration, against the Foreign Office case for immigration to bolster the empire. In the twenty-first century, it is the Treasury and BIS (Business, Innovation, and Skills) that is more likely to prefer a more open labour market, against the restrictive impulses of certain parts of the Home Office (Balch 2010). In the case of the USA, unions have oscillated throughout the history of immigration controls. Until the 1960s, they were generally pro-restriction and then switched to embrace legal immigration, and, since the late 1990s, even changed positions to become more open to defending the rights of undocumented immigrants (Tichenor 2002: 25).

Turning to the second version of the politics of greed, how does this fit with the history of immigration controls in the UK and the USA and the developing governance of immigration? Can we demonstrate the

actualization of neoliberal ideas and the outcome of this: a 'capture' of the state's governance of immigration by economic interests? These are questions that are difficult to address because neoliberalism is associated with so many things. For example it can be held responsible for both international economic liberalization, which encourages immigrants to cross borders, and an aggressive disciplining of the immigrant through 'nationalistic political-geographic closure', making immigrants the 'embodied evidence of the Janus-faced nature of the neoliberal state' (Varsanyi and Nevins 2007: 225). Notwithstanding the problems in examining the multiple and contradictory arguments put forward about neoliberalism, two logical methods could be either to establish how these ideas might have been influential by looking at the timing and direction of policy change or to look at evidence regarding specific claims.

In the first case, there is a well-known historical narrative about the rise of neoliberal ideas: as an Anglo-American phenomenon, traced to both a certain point in time (the 1980s and 1990s), specific political thinkers (Hayek and Friedman) and political personalities—President Reagan in the USA and Prime Minister Margaret Thatcher in the UK (Stedman Jones 2014). These two leaders were responding to economic crisis and stagnation and turned to ideas from the political 'new-right' which (now more commonly labelled as neoliberalism) include deregulation of labour markets, limited government, curbing the power of the unions, and liberating the power of finance. These ideas, it has been argued, have now become an embedded consensus, disembedding previous ones (Harvey 2005). The policy programme inspired by neoliberalism was sold as a means to restore economic growth, but it has since been accused of causing many other things. These include the channelling of wealth towards the 'dominant classes' and richer countries in the world (Harvey 2007), a rise in income inequality within the state, the reduction in social cohesion and, ultimately, poor health outcomes for parts of society (Coburn 2000). We should therefore be able to see a before/after in terms of changing policies on immigration in the UK and the USA.

The picture is mixed. There is certainly evidence of a considerable expansion of private actors in the governance of immigration. The use of private contractors to manage the growing number of immigrants detained by the state is a good example. However, the neoliberal demands for 'limited government' do not hold—one could not accuse the UK and US governments of 'rolling back the state' on immigration. There has been a massive increase in enforcement activity, numbers of officials

involved in regulating and managing immigration, and a general increase in the intervention of the government in this area of life. The idea that immigration is used by governments as a 'weapon' to undermine welfare states and social citizenship is also questionable as these institutions have been bowed but remain unbroken and somewhat resilient across liberal democracies (Taylor-Gooby 2001). The idea that the neoliberal consensus means states are allowing higher levels of immigration in the interests of big business and against the wishes and interests of the general public (that wish to restrict) certainly fits populist ideas (Rydgren 2005). However, it is far from an accurate portrayal of immigration policymaking according to Catherine Dauvergne. She argues that the USA and others have been able to ignore any 'facts' regarding a loss of control over immigration in a globalizing world and have instead maintained their capacity to assert ever-greater restrictions on movement—in an attempt to cling to sovereignty (Dauvergne 2008).

There is also mixed evidence that neoliberal ideas come more to the fore in the context of a reaction to the challenges of economic governance specific to the era. The obvious example is the intensification of immigration restriction in the UK in the 1970s when an increase in immigration would have served the neoliberal agenda perfectly at this point: as a means of breaking the power of labour unions and lowering wage costs. Where the link with economics is more consistent is in the shift towards restriction during times of recession. There is a way that ideas about 'austerity' and other forms of retrenchment around inclusion and social citizenship can be connected with neoliberal ideas—as was seen in the 1980s in Britain, the 1990s in the USA, and then again in the second decade of the twenty-first century following the global economic crisis which began a few years earlier in 2007–2008 (Humpage 2015).

Conclusions

For political scientists and political economists alike the motives behind state responses to migration are clearly linked to economic interests, but can/do economic interests 'capture' the whole policy process over immigration? Can the operation of economic interests fully explain state behaviour, why policies operate in the way that they do? The field of immigration politics provides a useful illustration of how economic ideas can impact and successfully penetrate structures and methods of governance. At the international level, this can be in the sense of creating a new global

order based upon the utilization of the growing reservoir of immigrant labour (Castles 2011). At the state level, it can mean shifting towards a more expansive policy of foreign recruitment in hitherto reluctant countries of immigration on the basis of ideas about economic benefits (Balch 2009; Balch 2010). However, this falls short explaining the historical development of immigration policies—these are often at odds with powerful interests in the economy. It also fails to fully incorporate immigration policy outcomes—that do not seem to very effectively maximize the benefits of immigration for developed states.

The alternative—asserting a link between immigration politics and neoliberalism—has the potential to provide an explanation for immigration politics that comes closer to the observed outputs and outcomes. But, this is only if one overlooks the fundamental ambiguity of the concept of neoliberalism as a unified or coherent ideology or force. This approach does, however, serve to highlight systematic or structural aspects of the immigration system that are connected with problems such as labour exploitation. It is a critical position because it disrupts established policy narratives and questions the political implications of that which has been supposedly 'depoliticized'—such as the now widely accepted notion that states can 'manage' the immigration system to filter the 'good' from the 'bad'. Questioning this narrative highlights the role of the state and reminds us that standard (neoclassical/push-pull) economic models are insufficient for either explaining immigration or how governments deal with it. This does not mean completely dismissing the possibility of immigration governance; it means balancing assertions about what drives policy and interrogating the outcomes of those policies in structural terms.

NOTES

1. This slogan was used as one of several key ideas to keep presidential candidate Bill Clinton 'on message' during his 1992 campaign. Originally intended to be for internal consumption within the campaign team, it became public and ultimately associated with his successful election.
2. Mudde was using this metaphor to differentiate between explanations for the success of populist radical right political parties in Europe.
3. Economists have terms for these, such as the problem of 'endogenity' or the 'lump of labour fallacy'.
4. Global annual revenue of temporary staffing sector was estimated at Euro 83 billion in 1996, Euro 257 billion in 2007.
5. See: http://www.h1base.com/visa/work/h1b%20visa%20fees/ref/1186/.

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Hospitality

Introduction

The beginning of this book highlighted the suffering experienced by immigrants, up to and including death, but there seem to be some limits or checks on how far the state is willing and able to go. Indeed, there appear to be times when a non-instrumental welcome for the stranger is possible. How can we explain or account for state-based principles of hospitality? Despite the rhetoric of politicians, liberal democratic states such as the UK and the USA continue to accept and absorb historically high numbers of newcomers. Indeed, ever greater numbers of people become citizens of their new host countries via naturalization processes.

It is widely considered both an honour and a duty to be a good host and to be a gracious guest. A principle or framework of hospitality is presumed to exist within and between families, communities, and states, but this tells us little about the actual form hospitality takes: there is more than one way to receive a guest. While the metaphor is problematic for some (Rosello 2001), the system of immigration which has developed over time can be seen as a formalized framework of hospitality—rules of conduct, rights, and duties applying to citizens and non-citizens that are codified and written into law and policy. If one accepts that it is wrong for immigration politics to be dominated by fear or greed, then this is suggestive of an implicit moral law—a principle of hospitality—that is being broken or betrayed.

Hospitality is a social construct, but one which has been remarkably important in the context of the development of the ancient polis, the nation state, and liberal democracy. When developing and implementing immigration policies, states are consciously or unconsciously drawing on ideas about hospitality. These form an important part of regulating and making sense of the 'imagined community' which Benedict Anderson defined in his study of nationalism as a 'socially constructed community, imagined by the people who perceive themselves as part of that group' (Anderson 1983: 224). In order to understand a phenomenon like hospitality, we need to recognize not only the role of tradition and memory in sustaining such an idea in the first place but also the role of politics and the political process in making it dynamic and changeable. Tracing this process will likely tell us more than trying to establish any factual basis for exactly what hospitality is or should be.

This chapter shows how different ideas about hospitality have evolved and themselves been affected by the way that states treat immigrants. As with Chaps. 8 and 9 that examined fear and greed, respectively, this chapter begins with a conceptualization of hospitality, outlining two different traditions. It then explores these in the context of the development of immigration policies in the UK and the USA. While the history of immigration controls demonstrates the ways in which hospitality has become skewed and distorted, manipulated, and politicized, this history also demonstrates the resilience and importance of certain core aspects of hospitality as providing the framework within which the political debate over immigration exists.

Two Traditions of Hospitality

Hospitality proves to be an ambiguous concept, but it is recognized as essential by all parts of the political spectrum that participate in the debate over immigration. We could propose a definition of hospitality as a commonly agreed system or framework of rules or norms regarding arrangements for newcomers, but this is almost empty of meaning. The problem is how to establish the appropriate norms of hospitality. The first chapter introduced the question of hospitality and the idea that there have been many different 'solutions' to the problem of hospitality. These include the Kantian proposal of a cosmopolitan 'right' of hospitality, but also a number of famous examples and illustrations of hospitality that appear in literature, philosophy, and the major religions. These are divided into classical and universalist traditions of hospitality.

Classical Hospitality

Perhaps, the most formal and visible manifestation of hospitality can be witnessed in the rituals and ceremonies rolled out when foreign state dignitaries make visits. This can be linked back to the first, classical tradition of hospitality. It is no accident that these rituals are so elaborate, so methodically studied, followed, and observed by all sides. That is because classical hospitality requires that we pay close attention to the way that we treat our guests. This is nothing less than a measure of how civilized 'we' are—it is one of the reasons why families, communities, and nations pride themselves on their hospitality. There is also the uncertainty over the motives of the guest and their power to diminish or amplify that of their host. This tradition of hospitality is normally understood to mean the host providing for all the guest's needs, ensuring they feel comfortable and at home. It also requires the guest to fully participate in the ritual, playing their part in being received—in doing so reifying and emphasizing social structure, reassuring the host of his position in the hierarchy.

The classical tradition of hospitality can be traced to a favourite and recurring theme in storytelling, intended to remind the audience of that which distinguished civilized Greek societies from primitive ones. We still find evidence of the Greek word 'xenia/xenios' (guests or strangers) in the modern word for fear of foreigners—xenophobia. Likewise, the words of hospitality and hostility have Latin roots. In Roman times, the similarity between the words 'hospes' (Latin for guest/visitor) and 'hostis' (Latin for stranger and enemy) enabled authors to indulge in creative wordplay (Bolchazy 1995). There are numerous references to 'theoxeny' (divine visitation in the form of the stranger) in Greek literature as explaining norms of hospitality. This belief meant that one should behave on the basis that visiting strangers could be gods in disguise, and therefore engage enthusiastically in the entertaining of any guests as a practice to honour them. Since then norms of hospitality have evolved and changed and become the subject of scholarly work exploring the 'genealogy' of the concept (Bolchazy 1995; O'Gorman 2007, 2008; Baker 2011).

Prominent examples from literature, such as The Odyssey and The Aeneid, demonstrate the fondness of classical authors for meditations on the proper treatment of guests or strangers (xenia/xenios) and the rules of hospitality (ius hospitium in Latin). In Homer's Odyssey, for example, there are warnings and dire consequences for those who break the rules of hospitality by for example killing one's guests (xenokonos) or, in the case of the Cyclops, eating them (xenodaites). The tale of Odysseus' travels

also includes discussion of the quality of hospitality given to him by the Phaeacians and the violent killing of Penelope's suitors because they had foolishly abused their host's hospitality. These tales of hospitality in primordial Greece such as those found in Homer's Odyssey had a purpose: they were designed to present role models to influence the behaviour of the readership (O'Gorman 2008: 124). The actual practice of hospitality would obviously have had different implications for different parts of society. Baker (2011), drawing on the work of Levy (1963), notes a class-based distinction between the 'noble' aristocratic honouring of hospitality and the necessarily more prudent approach of 'country folk' who would probably have been burdened by the cost of hosting. Theoxeny was hardly altruistic; it was first about reciprocity (the giving and receiving of gifts) but also about survival—considering the danger that a guest was a (potentially vengeful) god in disguise.

It was rational, but it was also elitist—about mutual self-interest and the strategic use of friendship ties in a world without many safeguards once outside your family or polis. The classical version of hospitality as 'guest–friend' is reminiscent of contemporary international diplomacy but also the idea of immigration as mutually beneficial: the relationship naturally profits both sides. The guest–friend relationship allowed participating individuals (the xenoi and their proxenoi) to operate above and beyond the realm of the state and across time. It was the first version of the transatlantic capitalist class, with the difference being that class was permanent. Once they had formed a bond of hospitality, the two friends would divide an object or token (tessera hospitalis) through which they, or their descendants, could recognize each other (O'Gorman 2008: 130). It is this version of hospitality which has tended to dominate historical accounts of the classical era—'(over)written by elites welcoming fellow elites as friends and not by the little people for whom hospitality meant the welcome of the stranger in all his (quite possibly malevolent) strangeness' (Baker 2011: 22).

This classical version of hospitality with its web of friendship ties and duties suited the aristocratic and elite classes of Greek society. However, it should be remembered that even by the time this was being written it was already historical, even mythological. The Homeric accounts amounted to a sentimental yearning for the times before the emergence of the polis, the city-state and its institution of citizenship—all of which spelt the end of this kind of hospitality. The rise of the city-state meant that these old kinds of loyalties had become a threat, not least because of the implication that elites could call upon their foreign proxenoi to usurp power. The elitist

guest–friend formulation would be replaced by a reconstructed hospitality where the city-state would move centre stage. Now the city was transformed into xenos and could use its hospitality to extend power beyond its borders. Again there was the sense of hospitality as an extension of power. This time at the level of the city-state with the selection and designation of proxenoi that acted as representatives or intermediaries; these individuals remained outsiders or foreigners but were allowed to stay inside the polis. Hospitality was thus: 'democratized and communalised; no longer the private concern of elites, the public gift of hospitality became a gift made by the city. It was also, of course, a gift made for the city's interests' (Baker 2011: 25). The classical formulations of hospitality do not therefore fit within a single coherent tradition. There are certain common principles such as natural inequality, reciprocity, and self-interest, but the question of whose interest remains one where potential conflict arises between the individual and the state.

Universal Hospitality

The second type of hospitality differs to the classical tradition in that it rests on universalist ideas about humanity and equality. The fall of Rome and the end of the society associated with it is often considered to have brought about a 'dark age' in European history, dominated by clericalism and superstition; the darkness only lifted by the re-discovery of antiquity during the enlightenment. Indeed, for many, it was the corrupting influence of Christian ideas that explained the end of the Roman Empire (Gibbon 1976). However, this view betrays a rather idealistic understanding of the classical world. It also overlooks the importance of ideas about the individual, equality, and humanity for the development of contemporary societies. As Larry Siedentop demonstrates in his archaeology of the ideational foundations of western liberalism, these ideas were revolutionary because they challenged the assumptions about natural inequality and the uneven distribution of 'reason' that sustained the classical world. This type of hospitality is therefore in conflict with classical conventions of keeping the public and the domestic absolutely separate, where the illusion of equality and secularism in the public sphere was based upon the religious cult of the family in the domestic; where women, slaves, and the foreign-born could be understood as naturally unequal and, thereby, categorically excluded (Siedentop 2015: 18).

The Christian tradition contributes an important element to this form of hospitality because of the way that it propagated and disseminated the

notion of a universal moral law that applied to everyone on account of their humanity. This proved to be subversive because of the political structures it undermined and the claims it gave rise to: for individual development, dignity, equality, and freedom. It overturned and democratized concepts of reason and natural law—which no longer could be argued to be the preserve of the elite, the king, and the family (Siedentop 2015: 244). Hospitality as taught through interpretation of Biblical accounts incorporates a special value in showing generosity towards the poor and excluded. The universal idea of humanity and equality is linked in concrete terms to the idea of a 'golden rule' and other recurring themes within Christianity such as 'loving thy neighbour'. These possibly stem from the early Christians' experience of oppression and forced exile, and Roman society did ultimately incorporate them by dovetailing with Stoical ideas about the 'brotherhood of man' (Bolchazy 1995). Hospitality thus formed an essential part of early Christian identity. The figure of Jesus Christ is framed as the archetypal 'outsider'—wondering the earth and testing the hospitality of those that he meets and this formed a core part of Christian teachings.

It should be added that the Islamic world has also developed ideas about hospitality, and in a similar way to Christianity these have a universal quality and connect with the life of the prophet and the teachings of the Quran. Hospitality towards pilgrims is a feature of Christianity, but it arguably has a more powerful resonance for Muslims because of the obligation to make the 'Hajj' or pilgrimage to Mecca. Here, hospitality and welcome for the travellers is demanded by the Hadith, but strict time limits are also placed—beyond which any further stay is dependent upon charity (Stephenson 2014). As with Christianity, there is a trace of the 'earthly' context in the tradition of hospitality from where the religion first sprang. Closely linked to Islamic codes of hospitality is the notion of Pan-Arabism. Policies towards immigration in Arab states to an extent reflect this idea that Arab people from different nations belong to a wider transnational Arab 'nation' (Mason 2011).

The power of ideas about the universal nature of humanity, while connected to the spread of religion, would not remain its preserve nor would organized religion have a monopoly on interpretation. As Siedentop shows, the birth of nation states was partly based upon the ability of authorities to capture the spirit of the individual and egalitarian ideals of justice by copying the model first developed by the papacy. This offered the power to arbitrate and administrate the individual as the 'basic unit of legal subjection' by codifying a system of law (Siedentop

2015: 258–260). This fusion or accommodation of the national with universal ideas about humanity and the individual give rise to the building blocks of liberalism. It, however, left unresolved the problem of who should be inside, and who outside its boundaries, leading to a clamour for traditions of hospitality more akin to classical times, despite the conflict with universal ideas. The renaissance and the associated revival of interest in classical antiquity can be linked to a desire to imitate and restore its ideas and practices. Of course, one of the theories about the fall of Rome is that the turn to Christianity and the influence of its ideas shifted its position towards outsiders, leading to uncontrolled immigration that destroyed the empire (Heather 2006). Thus, it is easy to see the link between the development of the nation state and the perceived need to erect barriers or safeguards regarding those universal principles which may have helped form its foundations but, some fear, also spell its end.

The very idea of unlimited, universal hospitality destabilizes decisions by both undermining and haunting the state. It undermines attempts at limiting the welcome, because the very identity of 'host' is dependent upon the arrival of the stranger. It haunts the state because 'all attempts at delimiting hospitality are left with a discomforting remainder—the abject figure of the foreigner who was turned away or mistreated' (Baker 2011: 116). As Derrida (2000) observed, universal hospitality is subversive and radical because of this duality implied by the underlying regime of conditionality/unconditionality, producing a politics that is unstable.

The Evolution of Traditions of Hospitality in the UK and the USA

There are constant calls from critics and civil society for immigration policies in the UK and the USA to be re-configured or re-framed by an ethics of hospitality. This term itself is not always used, although it has been occasionally, such as in the context of the USA and its enforcement practices around irregular immigrants (Ahn et al. 2013) and with respect to Britain and Europe's reaction to refugees crossing the Mediterranean and attempting to break through the barriers at Calais (Jacobs 2015). The evidence from the history of immigration politics in the UK and the USA is not of an absence of norms of hospitality but rather a continuous battle between different traditions of hospitality where compromise and a fusion of conflicting ideas has sometimes proven necessary—and often rather convenient for the expansion of state power.

The first wave of exclusionary legislation in the USA not only incorporated and codified what we would now consider toxic ideas about racial hierarchy but also joined with other assumptions about gender and class. This still preserved a principle of hospitality because the USA was careful to remain open and hospitable to those 'racially equal': European immigrants. This clearly chimes with the classical version of hospitality, underpinned by beliefs about natural inequalities. The subsequent national origins quotas maintained this and upheld the obligations of welcome from the host to those deemed equal through 'rational' means (Tichenor 2002: 147). This version of hospitality proved important for the developing federal state—the codification of these norms of hospitality became a tool with which to express and confirm power and status both domestically and on the world stage. But, the rigid adherence to this particular type of hospitality would cause serious practical problems for immigration officials dealing with Chinese refugees from the Mexican Revolution and for the Jewish and non-Jewish refugees whose designated national 'slots' happened to have already been taken up (Urban 2011).

Likewise, in the UK, the passing of the 1905 Aliens Act, while creating provisions to exclude supposedly racially inferior Jewish refugees, maintained a classical understanding of hospitality as a welcome for (wealthy) equals: restrictions only applied to those in steerage (i.e. not first or second class passengers). The text of the legislation consciously avoided racial distinctions partly because the Colonial office advised sensitivity to the multi-racial and multi-cultural nature of the empire—as it did to any self-governing colonies wanting to pass immigration laws. The Act also had a clause honouring the British tradition of asylum, which Prime Minister Arthur Balfour described as: 'that hospitality which has for generations been extended by us to all and sundry who desire to come to our shores, whatever be their race, whatever be their religion, whatever be their politics, and whatever be their social status', although adding ominously that 'it is really in the highest degree desirable that it should not be abused' (cited in Bashford and McAdam 2014: 326). The implication was that hospitality was truly of the universal tradition, undermined by the caveat about 'abuse' of the system. This concept of an abuse of hospitality would become central to all subsequent attempts to reduce the universal nature of the offer of asylum and restrict access to Britain for certain immigrants.

One of the noticeable points about the development of immigration systems in the UK and the USA has been the relative lack of influence

from civil society—actors that might have been expected to protect or defend principles of hospitality. In the UK, this is due to the relative insulation of the political system from outside influence (Statham and Geddes 2006). In the USA, Zolberg (2006) has identified the phenomenon of 'strange bedfellows' where the structural difficulties for pro-immigrant organizations to gain influence over the immigration policy process can mean cooperation or compromise between groups normally on the left and right of the political spectrum. Advocates for certain national or ethnic groupings (e.g. Asian Americans, Latin Americans) can sometimes join with business interests looking to increase labour migration, but they do not always find common ground—their interests clashing on temporary worker programmes, for example (Wong 2006: 3).

One example often cited as an exception to the general trend towards more restrictive and less hospitable policies on immigration is the passing of the Hart-Celler Act in 1965. This is often linked with a resurgence of liberal, universalist ideas following the passing of the Civil Rights Act a year earlier in 1964. Much of those supporting a change employed the rhetoric of hospitality during debates in Congress. As Phillip Burton (Rep—D-CA) argued: 'Just as we sought to eliminate discrimination in our land through the Civil Rights Act, today we seek by phasing out the national origins quota system to eliminate discrimination in immigration to this Nation composed of the descendants of immigrants' (cited in Scott Fitzgerald and Cook-Martin 2014: 119). In the end, the legislation did not quite reflect an absence of discrimination: the principle of hospitality at play was not universalist or even non-discriminatory. Instead, it specifically established a series of preferences—primarily family-based reunion followed by skilled immigration (Lee 2015), fitting within the classical tradition of hospitality. The 1965 Act did include a nod towards humanitarianism with a modest quota for refugees, but again selectivity and the interests of the state were at the fore. The approach to refugees would remain squarely within the Cold War frame: applicants from non-Communist countries had to meet higher criteria of evidence to obtain protection.

The moment most closely associated with the universal tradition of hospitality in the UK is probably the 1948 British Nationality Act. Of course, this was never truly universal because it prioritized British subjects over citizens from the rest of the world. But, it did (temporarily) establish a kind of legal equality and principle of hospitality among all the inhabitants of the UK and its colonies. Much of the next few decades were dedicated to dismantling these principles and introducing hierarchies of class and

race, but it remains seen as a high watermark in terms of the British state's expression of hospitality. There is evidence that this was somewhat accidental. The Act was not considered part of immigration policy, and it was also passed at a time of high levels of sentimentality over the dwindling empire. There was pressure for Britain to exert an overarching legal code in the context of national models of citizenship emerging in its constituent parts (Hansen 2000).

The vulnerability of this particular principle of hospitality would become clear when a different kind of balance was struck beginning in the 1960s, and its hypocrisy would be revealed in the government's response to the Kenyan Asians crisis. Nevertheless, even in this context, the politics of immigration still needed to have some narrative around hospitality, however much this might be distorted. The 'Hattersley equation' (Rex and Tomlinson 1979) conceded that if racist immigration legislation must be passed, the survival of an imperial (and therefore multi-racial, multi-cultural) notion of British citizenship required a new statement of egalitarian values in the domestic sphere. In this case, it would be greater guarantees of equal treatment for immigrants already in the UK through race-relations legislation. Thus, on the one hand, the remnants of a quasi-universal tradition of hospitality were (further) compromised through a selective and hierarchical fracturing of the welcome to the other. On the other, it was partially counterbalanced by the incorporation of more explicitly egalitarian ideas at the national level—to address racial discrimination through the statute books. In retrospect, the compromise reflected the difficulties facing politicians at the time. They were under pressure to react to popular demands about reducing immigration, but sought to do this without openly conceding it was a racist objective. The reason for the 1948 Act, the subsequent attempts to limit its implications, and the passing of anti-discrimination legislation, were framed by hospitality: an attempt to save or salvage the illusion of British hospitality from the collapsing empire. The incremental incorporation of international human rights law, the establishment of civil rights all threatened to impose a universal principle of hospitality, but they had a paradoxical effect. While there was a codification of universal principles, there was also a countervailing acceleration of processes whereby states separated and managed these obligations, ensuring that certain groups could not gain access, and those that did would pay the maximum price.

The last part of the twentieth century appears to be a time when immigration policies in the USA and the UK continued their pattern of diver-

gence: an amnesty and apparent commitment to mass immigration for the former, contrasting with an enthusiastic commitment to the objective of zero-immigration for the latter. Yet, when considered in terms of the underlying norms of hospitality, this was actually an important time of convergence. The incorporation of liberal norms, through either admissions or anti-discrimination laws, had apparently reduced the possibility for both states to explicitly select 'equals' and reject all others via racist systems of admission. This presented a need for counterbalances, which would soon emerge in the context of the rise of neoliberal ideas in the 1980s and 1990s. The solution for the USA was a proxy for equality in the form of a higher proportion of 'skilled' immigration and policing of those not meeting this standard via the ramping up of internal enforcement. Britain would soon follow suit with the principle that immigration could be defended on the basis it was mutually beneficial—the welcome was dependent on the productive capacity of the newcomer to raise the country's wealth.

The same categories of immigrants were deemed 'unworthy' of inclusion by the state but not through a barrier at the point of entry as per the initial immigration controls. The modern immigration system filters and categorizes those already inside the state, set up to designate who, by their very presence, has violated the norms of classical hospitality. Those newcomers that do not satisfy the perceived interests of the state are punished by both government (detention and deportation) and market forces (labour exploitation). Either way, they did not merit the reciprocal benefits of hospitality enjoyed by the global elite, the 'transnational capitalist class' (Sklair 2001) or Europe's 'Eurostars' (Favell 2008). In the UK, the implementation of this principle of hospitality required an expansion of the detention and deportation regime for asylum-seekers (that were 'abusing' the system). In the USA, it was in the labour market that controls needed to be extended in order to catch and eject those abusing their host's hospitality. This new arrangement was put in place during the 1990s with a wave of legislation in both countries introducing new enforcement capacity and powers for immigration officers while expanding measures such as sanctions for employers. Access to the workplace became the new location for the enforcement of immigration laws (Stumpf 2012). Both states thus began to impose ever-stricter requirements for good behaviour and a series of other obligations on unwanted immigrants via the bureaucratization of immigration and the tightening of asylum processes. This is the pattern that has persisted ever since. British immigration legis-

lation in the 1990s was dominated by measures to reduce access to justice for asylum-seekers and exclude that group of immigrants from the rest of society (Mynott 2000).

In the twenty-first century, there was an intensification and expansion of the principle of hospitality established in the 1980s and 1990s. New immigration laws in the UK expanded the targets of enforcement, and also the supposed abuses of hospitality, despite the lack of any evidence that such abuses occur. In the 2000s, this became especially important in the context of free movement where the UK's membership of the EU further limits the power of the state to dictate norms of hospitality. This is why access to certain forms of benefits has become so symbolically important. The problem of 'welfare tourism' of European citizens is likely to be central to a future referendum, despite the fact that it involves either no or very insignificant economic impact (ICF-GHK 2013). Draft immigration bills in the USA included, as a matter of course, the raising of barriers to citizenship and access to public benefits for anyone regularizing their situation. One proposal included eligibility requirements that would make regularized immigrants wait up to 18 years before being able to access public benefits. Others included redundant measures to exclude undocumented migrants from 'abusing' healthcare entitlements in the absence of any evidence suggesting this is a problem (Huang 2008: 398–399). In one sense, this was nothing new. The amnesty programme of the 1986 IRCA required that applicants prove that they had not availed themselves of any federal assistance programs, but this notion that immigrants could and should not be a 'public charge' survived from the days of Chinese Exclusion. It was also one of the criteria for turning back immigrants after Britain's 1905 Aliens Act. It has remained central because of its importance to the principle of hospitality that operates in the interests of the state. One of these advantages is the 'chilling effect' this rhetoric has in terms of deterring many eligible immigrants from seeking services (Huang 2008).

The contemporary politics of immigration can be seen as a product of the principle of hospitality established in the late twentieth century: a predominantly class-oriented system of state interests with a strengthened and punitive compliance mechanism. Universal hospitality exists for non-citizens that operate within the rules and are considered 'equals', whether they are family members, businessmen and women, tourists, or others from the network of selected allied states. The unwanted are squeezed out and disciplined by the immigration rules. This makes it difficult to remain

on the right side of the law and inevitably increases the risk of punishment on the basis that norms of hospitality have been violated or abused. As the story of Odysseus taught us, the abuse of hospitality is one of the worst sins, and the host has the right to wreak terrible vengeance. This is one of the reasons why talk of 'abuse' is so pervasive in immigration debates. It is a necessary device to maintain a principle of hospitality closely resembling that which existed in the ancient polis. There is an interesting balance between two competing norms within the classical tradition: the mutual benefits for guest-host and the interests of the state. The assumption that immigrants must not be a 'public charge' reflects the dominance of the latter, and that the perceived contribution of the newcomer is essential to their continued enjoyment of the state's hospitality. This dominance of state interests is illustrated in the ways that the laws of immigration constantly re-affirm the power of the state through extension (or withdrawal) of the rights of residence to the non-citizen.

Even in this context of convergence between the UK and the USA, there remain important differences. For neither case does the universal tradition of hospitality entirely disappear, even if it is frequently absent in the mainstream immigration debate. It re-emerges and re-asserts itself in expected and unexpected places and sometimes through the unintended consequences of other policies. Indeed, there is a constant battle over what should be the appropriate principle of hospitality. In the UK, this can be seen in the interventions by the European Court of Human Rights (ECHR) to block attempts to extradite and deport unwanted non-citizens due to human rights norms (Michaelsen 2012). In the USA, the new immigration federalism can pit the states against each other, the executive and even the Supreme Court, on principles of hospitality, with the latter holding the power to strike down laws. One of the key battles here is between territorial and status-based rights claims (Bosniak 2007), the former based on universal tradition of hospitality, the latter on the classical tradition. The sanctuary city movement briefly moved to the centre of this debate in the USA in 2015, and the tension runs through the DREAM and DACA initiatives. Each attempted, with mixed results, to resolve the issue through a calculated compromise of universal principles in favour of a series of conditions to accord with norms of hospitality. Another suggestion is to renew the universal principle of hospitality not simply on the basis of common humanity but because of the Christian value of forgiveness. The argument is that while undocumented immigrants have 'transgressed' and are guilty of the sin of breaking the rules, they are themselves

'victims of the transnational economic system, in which US farmers bene-fitted from government subsidies' which makes it 'a political responsibility for the United States to forgive the violations of undocumented migrants who cross the border for their survival' (Ahn 2013: 4). In the UK, the politics of rightful presence has been much slower to emerge. There is a sanctuary movement (Squire and Darling 2013), albeit with a shorter history and (thus far) less dramatic achievements than its US counterpart. However, despite isolated calls by some politicians, amnesty for irregular immigrants or failed asylum-seekers remains outside the 'Overton win-dow', even though it is a technique regularly employed by the British state (e.g. through discretionary leave to remain).

Interestingly, one of the most important figures to emerge in the ongo-ing evolution of principles of hospitality in the UK and the USA is that of the transgressor of immigration rules who is also innocent victim. The successful creation of a norm against human trafficking as 'modern-day slavery' has been a feature of twenty-first century international relations (Balch 2015). It opens up the possibility that undocumented immigrants who have been trafficked, even if also caught committing other crimes, can enjoy a range of protections provided by the state and based on human rights standards. The 'war' against trafficking was a campaign initially driven by an enthusiastic USA in 2000, with the UK recently attempt-ing to assert global leadership with its Modern Slavery Act in 2015. It is important for understanding how the principle of hospitality is constantly evolving. It provides an unusual example where universal ideas can poten-tially re-emerge and trump the predominant principle of hospitality that currently permeates the immigration debate.

That being said, there are many problems with a principle of hospitality that requires slavery-like conditions to exist before individuals are forgiven transgressions of immigration law. The main motivation for states in join-ing the anti-trafficking regime has always been fairly clear: to extend their power and security in the context of increasing global mobility (Gallagher 2001: 976). It has since provided an opportunity for a host of others (e.g. labour-rights advocates) to jump on the bandwagon and campaign for an expansion of the norm into their chosen field (Chuang 2014). For liberal institutionalists, it is an opportunity to incorporate human rights into the international governance of immigration (Obokata 2010). Considering the modest impact of the regime for immigrants in its first 15 years (McDonald 2014), however, the evidence supports the pessimistic

conclusion that the regime legitimates efforts 'to divide a small number of "deserving victims" from the masses that remain "undeserving" of rights and freedoms' (O'Connell Davidson 2010: 245).

Conclusions

This chapter has explored how in the context of the forces of fear and greed and the ever-louder demands for stricter controls and greater scrutiny of costs and benefits, the immigration debate is still fundamentally about the central question of fairness. In addition to the issue of how many will arrive (and how many will leave) and what they will cost us (and how much will they make us), there is the constant decision to be made on what kind of respect there should be for non-citizens and how those excluded should be dealt with. These demands can be viewed through the prism of a principle of hospitality that can be drawn from multiple traditions and that evolves over time. This allows us to identify standards that are met (or not met) throughout all the myriad aspects of the system, whether these are expectations of the behaviour of participants or understandings of justice in all parts of the process of immigration. It can also apply to outcomes of that system, whether for the individual, the citizen, the non-citizen, the community, or the state.

Historical accounts of classical hospitality demonstrate how the concept was a kind of glue helping to form and maintain political and religious ties between individuals and communities. Yet, it also sustained what was a deeply hierarchical and unequal sort of society with a very clear division between the public and the private. The long development of the liberal democratic state began with the implementation of universal ideas of personhood and equality, but also territorial closure, leaving the question of hospitality unresolved. The evidence from the UK and the USA is that the classical formulation of hospitality has dominated, even intensified, as the systems of immigration controls have developed. The challenges provided by new migratory crises are difficult precisely because of the problem of lining up a political process (including all its complications and compromises) with a principle of hospitality (which has evolved from multiple traditions). Nevertheless, this has proven to be central, even synonymous with, the immigration debate. Without reference to a principle of hospitality, there can be no basis or standard upon which to justify, or to judge, the fairness of immigration laws and policies.

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Conclusions

How are the international society of liberal democracies responsible for what UN Secretary-General described as a 'crisis of solidarity' (Ban 2015) over immigration? Millions of undocumented immigrants and refugees face a life of exclusion, exploitation, and worse while the world's richest liberal democracies, with some exceptions, appear unwilling or unable to extend a hand of welcome. They have instead developed increasingly elaborate immigration systems that seem to make matters worse. While these are no longer explicitly racist, and the days of ethnic selection are officially over, there remains a division of the world into 'worthy' and 'unworthy' immigrants, and it has never been so stark. For many, free movement has increased; immigration of those with the right profile of nationality and skills is facilitated, even encouraged. For many others, the obstacles grow higher and the risks of overcoming them greater.

This book found that in the twenty-first century, there has been a significant convergence of techniques of exclusion and control over immigration. Liberal democracies have purposefully turned themselves into hostile environments, in order to deter unwanted newcomers while also making life so difficult that others are forced to self-deport. The international system of human rights has not been sufficiently able to ensure protections for immigrants, and the liberal-ness of liberal democratic states has been cast into serious doubt over the response to the challenges and opportunities that immigration presents.

To what extent is this really a problem? Should it instead be understood as a responsible reaction by states who are simply putting in place

measures against those who attempt to break the rules? This book began by highlighting the contemporary situation as a problem of hospitality. This has led to significant issues around the respect for, and protection of, the human rights of immigrants. While there is much talk of a migrant crisis facing liberal democracies, Chap. 2 highlighted the ways in which the migrant crisis is in fact a crisis of hospitality. This has contributed to a situation where immigrants are regularly deprived of their freedom, excluded and exploited, and are dying in significant numbers at the border. Should we just make states honour their commitments to human rights? Chapter 3 addressed one potential solution: the international human rights regime. It found that the problems regarding the ways that states treat immigration can be traced to fault lines within the set of international agreements and regional regimes that currently exist in the ambit of human rights. The form that this system has taken reflects a strong desire by states to maintain as much control as possible over admissions and membership, leading to only a limited ceding of power in important areas. While there is limited protection of some human rights for non-citizens, for example, through bilateral and regional agreements, overall, states still enjoy relative autonomy to treat immigrants the way that they please.

If international human rights do not have sufficient purchase, should we be surprised if liberal democracies act in such an illiberal way? Chapter 4, on liberal democracy, confirmed that the communitarian understanding of state sovereignty is dominant with regards to immigration, but that there are a number of ways in a state's liberal characteristics that can shape and influence its responses to the issue. The first part of Chap. 4 explored the limits and constraints on what the liberal state can—and cannot—do on immigration. These were related to practices, values, and principles embedded in institutions and processes that together constitute—and surround—what we think of as liberal democracies. Liberal scholars identify a number of difficulties and challenges for the state on immigration and are critical of areas where this might mean basic human rights are compromised or violated. In the end, however, they support and justify the rights of states to prioritize citizens over non-citizens and to determine policy on the basis of national self-interest. The second part of Chap. 4 discussed why, for some, this is not good enough. Critical perspectives were explored that are more prepared to lay the blame for the migrant crisis at the feet critical of liberal democracy itself. These tended to see the way that governments treat immigrants as illustrative of deeper systemic problems to do with the state. They connected the experience of immi-

grants to the brutal exercise of state power and to the way that the state perpetuates and exacerbates the unequal nature of structures in society. For them, the management of immigration is just one of many examples of the ways in which states rely upon insidious and nefarious techniques of governance to control both society and the individual.

This relative freedom from the constraints of human rights norms over immigration, and the apparent justification for liberal democracies to act with relative impunity, has led to accusations that immigration policy is simply a function of the forces of fear and greed in society: that it exists in a kind of anarchical political space, where justice or talk about fairness over immigration is nothing more than empty rhetoric. The second and third parts of the book addressed these assertions through an analysis of two examples of liberal democracies—the USA and the UK—to demonstrate how the history of immigration controls have been a function of three different, but inter-connected forces—fear, greed, and hospitality. Part II (Chap. 5) began by discussing the challenges for political research on immigration policymaking, issues around definitions, and included a comparative discussion of the political and migratory systems of the UK and the USA. Chapters 6 and 7 ran through the main developments in the politics of immigration in the UK and the USA from the end of the eighteenth century to the beginning of the twenty-first century.

Chapters 8, 9, and 10 analysed these developments systematically by asking how they have been influenced by fear, greed, and hospitality. Chapter 8 began with the role of fear, examining weaker and stronger forms of the argument that immigration politics is a function of the politics of fear, including theories about moral panics and the securitization of immigration, and relating these to the case studies. Chapter 9 performed a similar exercise with respect to greed, exploring stronger and weaker forms of the argument that immigration is a politics of greed, looking at interest-based accounts and others that point to the role of neoliberalism in transforming state power and relating this to the case studies. Finally, Chap. 10 considered the role of hospitality in the politics of immigration; it explored how the forces of fear and greed are regulated by an underlying conflict and tension between two different traditions of hospitality.

This book challenges some of the existing work on the politics of immigration. The findings suggest that we should not be too quick in reading policies from immigration patterns: the 'facts' of increased international flows have not necessarily created a new 'politics'. These partially confirm those who point to the power of business interests in policymaking, the

manipulation of the political process – overwhelming the anti-immigrant sentiments of the public in facilitating a steady supply of cheap and pliable labour. They also demonstrate how the recognition and protection of the rights of immigrants (greater equality) tends to be counterbalanced in immigration politics by increasing difference. The book has shown how classical understandings of hospitality—serving the interests of the state, recognizing natural equality and inequality—have dominated universal understandings. The latter offers something tantalizing in the context of the migrant crisis: the possibility of a welcome to all. Despite the power of fear and greed, this principle can emerge within the politics of immigration because those politics will always need to draw on a tradition of hospitality, to express 'fairness'.

What do the findings suggest for the future? They cast doubt on the proposition of some long-termists that a possible future with a more cosmopolitan understanding of rights would render borders irrelevant (Casey 2009). The strong likelihood is that the crisis described in Chap. 2 is neither transitory nor temporary—it is something intrinsic to liberal democracies or liberalism itself. Historians and critical theorists have shown how the exclusion and exploitation of immigrants is remarkably similar to that witnessed in previous eras when the target was the poor or the homeless (Lucassen and Lucassen 2005). The explanation is provided by the politics of fear and greed, where the construction and punishment of 'unwanted' immigrant groups ('illegals' and 'asylum-seekers') works as a kind of fuel maintaining and sustaining the power of the state (Doty 2003).

Nevertheless, the possibility of universal hospitality (and thus its renewal) continues to 'haunt' the liberal democratic state, which after all is partially based on universal ideas about humanity and the individual. Returning to Chae Chan Ping, the person introduced at the start of this book, his case provides more than just an early example of immigration policy as inhospitality. The case holds another important lesson: how traditions of hospitality that guide decisions over the welfare of non-citizens can shift and be renewed. There is a sense of injustice over the form and content of the Chinese Exclusion Act (and the subsequent treatment of Chae Chan Ping), which is now widely accepted. In the language of contemporary ideas of justice and fairness, the treatment of Chinese immigrants was a contravention of important norms: those against discrimination or racism by the state. The policy excluded access on the basis of ethnicity and discriminated against Chinese Americans who were already resident in the USA. In today's political context, these laws would not be passed, or

would be struck down, for example, because of their non-compliance with human rights. But, this was not exactly why the law was changed in 1943 (by the Magnuson Act). This was because of the importance to interests of the state to have an alliance with China during the Second World War—not in recognition of the human rights of Chinese living in the USA. It would not be until the 1960s that Chinese (and other Asian Americans) would gain full property rights (JACL 2008).

How should we then judge the resolution passed in 2012 by the US House of Congress recognizing the historical injustice of Chinese exclusion? The resolution noted that the restrictions on the free movement of Chinese citizens were in contradiction with previous international treaties and stated that Congress 'regrets the passage of legislation that adversely affected people of Chinese origin in the United States because of their ethnicity'.[1] In practical terms, the declaration meant next to nothing—it would not compensate those suffering adverse consequences. In the juridical sense, it did even less—it did not unravel the sovereign powers doctrine that now permeates the politics of immigration in the USA.

The declaration made by Congress is not the only occasion where governments have apologized over their previous poor treatment of immigrants. The Canadian government has been far more contrite than its US counterparts with a comprehensive apology about a number of racist laws. Several countries have also expressed regret over their refusal to admit Jewish refugees fleeing Nazi Germany. Will we eventually see apologies from the UK about the suffering of asylum-seekers at Calais? By the European Union or its Member States over the immigration system that contributes to so many deaths in the Mediterranean? Will the USA apologize to the families of those it divides through deportation or of those who are dying trying to cross the desert from Mexico? Will there be official recognition of the state's complicity in labour relations that mean immigrants and their families are discriminated against, abused, and exploited—and all of this in supposedly liberal democratic states? Will such apologies even matter if the machinery to control immigration and the lives of immigrants remains essentially intact?

The prospect of official contrition over the negative impacts of immigration policies on immigrants and their families seems unlikely, but surely not impossible. It is unlikely because governments are by convention rather wary of issuing apologies that might make them liable to claims from victims or their descendants (one need to only think of the difficulties in getting European states to apologize for their role in the trans-

Atlantic slave-trade). Government officials are naturally drawn towards a form of moral relativism where historical and social contexts can forgive and explain or at least mitigate against exposure to any potential moves towards restorative justice for historical wrongs. Admission of guilt also implies a re-thinking of policy—and when it comes to border controls, this is something no country would be willing to do unilaterally. If and when apologies do come, it would be after such changes had occurred and sufficient time had elapsed, as with the 2012 declaration by Congress. Yet, it is not impossible because, as the above examples imply, moral relativism does not prevent the use of norms to judge the historical and contemporary behaviour of states towards immigration and immigrants. In fact, these kinds of critical judgements are being made all the time—by opposition politicians, migrant advocacy groups, academics, and others who comment on the justice or otherwise of government policies. Critical judgement is hardly in short supply. In fact, it would be fair to say that there is widespread discontent with immigration politics in liberal democratic states.

Within these critiques, there are of course huge variations in priorities—for example between those whose main desire is for less immigration (or less 'bad' immigration) and those whose main hope is for greater justice and fairness on immigration—but can there be a shared basis for criticism or a common language with which to express it? The findings here are that there are problems with the obvious candidate of human rights. As Charles Beitz pointed out, human rights have grown to become a language of criticism in international relations (Beitz 2009). Immigration, however, remains an issue that is chiefly a domestic concern and one where states jealously guard their sovereignty. The notion of universal human rights will always face challenges on immigration because of its compromise in allowing priority for citizens over non-citizens.

If apologies over today's immigration policies are forthcoming tomorrow, they might touch upon human rights, but more likely they would include or be based on a principle of hospitality. This offers a shared basis and provides a common language with which to discuss immigration. The tradition of hospitality will always be disappointing for those who desire complete equality due to its maintenance of the host–guest relation. However, the findings here are that hospitality has proven a more enduring language for explaining what shapes and limits the politics of immigration. For liberal democratic states that receive newcomers, the questions of immigration are effectively questions of hospitality: about what welcome we owe to the stranger; what trust we should place in others; what

should be given and what should be received; and what kindness should be shown to those in need. The approach adopted by this book has been to try and connect more clearly the consequences of immigration policies with the politics that generate them. The question scholars, students, and citizens should ask is why states like the UK and the USA are seeking to transform themselves into a hostile environment, whose interests this serves, and how it can be challenged.

NOTES

1. 112th Congress (8 June 2012) ref: H.Res. 683 (112th).

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