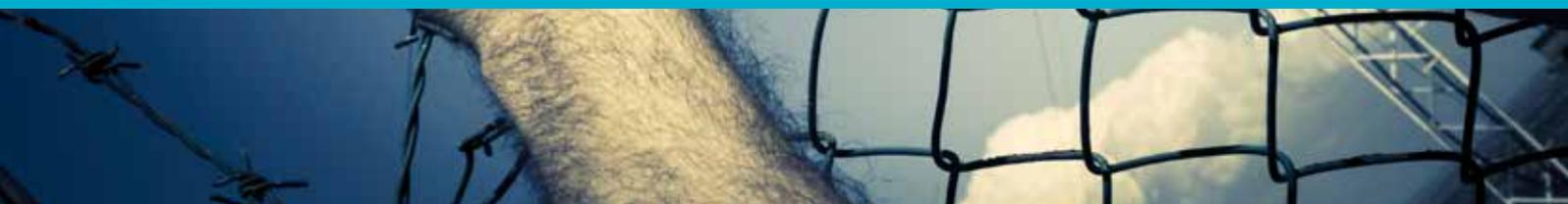




Behind the headlines: A critique of UK immigration and asylum policy



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Immigration will be a key battleground in the build up to the May 2015 general election. Despite the coalition government's attempts to clamp down on the number of people coming to this country, recent figures show there was a substantial net increase in the amount of immigrants to the UK in the year ending September 2014.¹ This begs the question, is it possible to guarantee a certain level of immigration? However, there is another equally important question that we must ask: are the policies the UK state employs to control immigration fair, just and humane?

Immigrants from EU countries

Most immigrants to the UK are from other member states of the European Union. The right to travel freely and to live in any country in the EU is a cornerstone of EU integration. It is enshrined in law: in the light of provisions for a common market in goods, workers, services and capital, the citizens of one member state may travel to another, and if they so wish, may live and work there on a permanent or temporary basis. This right belongs to all EU citizens. So when, in January 1973, Britain belatedly acceded to the Treaty of Rome, it accepted the right of citizens of other member states to live and work in the UK.

There have been many testimonies to the social benefits of free movement. However, the fact that citizens of other EU countries can enter the UK as of right is also seen as a threat to socio-cultural identity. UK identity as European is still evolving and the unpredictability of immigrant numbers can give rise to feelings of insecurity. In historical terms the situation is not new – we may cite the uncertainties of the 1960's and 1970's when

the state's role as leader of the British commonwealth appeared to contradict its role as representative of the British political community. Where commonwealth immigrants entered as a matter of right, not at the discretion of the state, there were public fears of escalation.² The government of the time reacted by introducing increasingly restrictive legislation.³ Thirty-four years on, in the context not of the Commonwealth but of Europe, a similar reflex is coming into play.

There are fears in particular that the rights and privileges of UK citizens are being eroded. What is 'good for sport', they say, is 'bad for welfare'. But does the principle of free movement imply automatic access to the welfare benefits of the host state on the same basis as its citizens? In November 2014 the European Court of Justice attempted to bring 'more clarity' to the rules. In safeguarding the rights to free movement between member states, it confirmed, in the light of the vast differences in provisions for welfare and social security in the 28 countries of the EU, that EU states have 'the possibility of refusing' social benefits to 'economically inactive' EU citizens.

Is there any solid basis for the widely held perception that immigrants from the EU come to the UK to exploit its welfare system? A recently published report raises concerns about the quality and balance of UK public debate on the subject.⁴ It compares articles from six newspapers, tabloid and broadsheet, representing the political spectrum, from the years 2006 and 2013 when immigration was high on the political agenda. Concluding that coverage of immigration has narrowed and become more negative across the board, the report points to a significant gap between perception and

reality, and suggests that this shift in the quality of the debate is linked to the political strategies on immigration of successive governments. In 2006, the majority of articles celebrated international mobility and the positive outcomes of greater social diversity but by 2013 the tone of debate had become increasingly 'dehumanised'; 92 per cent of articles favoured a tightening of controls in order to cut down on 'welfare tourism'.

Although there is a widely held view that there is a problem with immigrants who choose to come to Britain in order to access public services and profit from welfare benefits, the evidence suggests otherwise.⁵ The figures just released show that the majority of people choose to come to the UK for work.⁶ Many of those who come for work already have a job. If not, they are generally successful in finding employment and are net contributors to the UK economy: they foster Britain's economic growth. Few migrants claim social benefits. The small proportion who are unable to find work have to wait three months before they qualify for Jobseeker's Allowance and cannot then automatically claim benefits; further significant hurdles are in place. There is simply no evidence that access to UK welfare is a significant driver for EU migrants.

This raises the question, are states always justified in privileging the claims of their own citizens? Democratic rule and the claims of justice may conflict with one another.⁷ This may be one such instance.

Immigrants from non-EU countries

The figures just released reflect a significant increase in immigration, mainly from South and East Asia, including China. Most of these people had jobs to go to. Some, who wish to invest a minimum of £1,000,000 in the UK, are able to stay for a minimum of three years. So too are entrepreneurs, so long as they bring significant funding. Under the points-based system, which gives preference to certain designated professional skills, there has been an influx of skilled workers in IT, communications, science and finance. They are also permitted to stay in the UK for upwards of three years. The very wealthy and those with marketable skills are welcomed. Others have substantial if not insuperable obstacles to overcome.

Take the immigrants who want to join their families; this is becoming increasingly difficult. Under the Immigration Act 2014, elderly relatives living outside the EU must show, if they wish to obtain a UK visa, that because of age, illness or disability, they require long-term personal care not available where they are living. The family member whom they are joining in the UK must also demonstrate that they can provide the requisite support and care for at least five years without recourse to public funds. Effectively, under the provisions of the Act, fit and healthy parents or grandparents are excluded, ignoring the vital role that they play in the life of children and families.

There is now no right of appeal for those refused visas for family visits – a fresh application is the only recourse available. In that these applications are typically made to enable a person to attend a family funeral, a graduation,

a wedding, a baptism, or visit a dying relative, the length of time involved makes this impossible. There are obvious humanitarian implications.

In order to sponsor their partner or spouse from a non-EU territory, a British citizen has to earn at least £18,600 per annum, with incremental increases for each child of the family. This is said to be the 'level at which a sponsor can generally support themselves and a spouse or partner without accessing income-related benefits'. Yet this is well above the level of the minimum wage, and according to data published by the National Earnings Survey, 47 per cent of working people in the UK would be prevented from sponsoring a spouse or partner under such a rule. Britain has a long record of assisting other countries through sending teachers, doctors, engineers and VSO workers. Not infrequently British citizens working in non-EU countries form loving relationships and marry nationals of those countries. Typically these are volunteers or sent under the auspices of charitable organisations. Their earnings are small. They do not necessarily, on return to the UK, earn £18,600 or more a year. They are, under the provisions of the Act, prevented from bringing their spouse with them to the UK. These measures are harsh and cause unnecessary suffering and anxiety. They are calculated to cause family breakdown.

These policies differentiate sharply between rich and poor applicants. By implication, poorer people have nothing to contribute to our society, their value in human terms is discounted. Over recent years there has been a rapidly widening gap between the very rich and the very poor in the UK. The family provisions in the Immigration Act fail to factor in the social and economic cost of the increasing dividedness of society.

Asylum seekers

A third tranche of immigrants to the UK, after those who come to work or who come to join family members, are refugees. Their prime needs are for protection and political security. In 2013, for the first time since the Second World War, over 50 million men, women and children worldwide were forced for fear of their lives to flee their homes. The upward trend continues, with increasing conflict situations in Syria, Afghanistan, Sub-Saharan Africa, and deteriorating situations in the Indian sub-continent, Libya and Eritrea. The majority of these refugees take refuge across the borders, in 'countries of overspill'.⁸

The resources of these poorer nations, who carry the burden of the bulk of the world's refugees, are already stretched to the limit – what can be done to address the situation? Equitable burden-sharing criteria would ensure that proposals be developed with each country's capacities in mind. But a major problem with such proposals is the continued insistence that the largest share of the world's refugees be confined to the poorer countries of the south, despite the increasing inability of such countries to cope, even with UN help. The UNHCR's default position for decades has been to set up camps. They were never intended to be permanent but where the crises that gave rise to them are long-standing, people may be born, live out their lives and die in the camps.

NOTES

1. Office of National Statistics, *Migration Statistics Quarterly Report*, 26 February 2015.

2. MJ Gibney, *The Ethics and Politics of Asylum: Liberal democracy and the response to refugees* (Cambridge: Cambridge University Press, 2004), p. 116.

3. The 1971 Immigration Act removed the automatic right of Commonwealth citizens to remain in the UK and restricted the right to settle to those who could prove that their parents or grand-parents were born in Britain. The British Nationality Act of 1981 made British citizenship exclusive to the UK. And British overseas citizens, largely non-white, lost the entitlement to enter.

4. A Balch and E Balabanova, *Ethics, Politics and Migration: Public Debates on the Free Movement of Romanians and Bulgarians to the UK, 2006–2013* (Politics. doi: 10.1111/1467-9256.12082; 2014).

5. "Fact finding analysis on the impact of Member States' social security systems of the entitlement of non-active intra-EU migrants to special non-contributory

Recent research shows that the camp regime encourages dependency.⁹ Campdwellers are more vulnerable long-term than those who are able to take control of their lives and engage with the local economy. Some, however, are unable either to integrate locally or to return to their country of origin. A small number of these (around 80,000) are resettled through the UN in other countries each year. Candidates for resettlement in the UK are classified by UNHCR field officers as refugees in pressing need, a process which nonetheless can take many years. The Home Office then decides which of these to accept.¹⁰

It is otherwise impossible for people who are fleeing life-threatening situations to access the UK by authorised routes. There are strict barrier measures to prevent a refugee from arriving in the UK. Visa restrictions close down asylum options. For someone who is seeking asylum, often fleeing situations of conflict, obtaining a visa is normally out of the question. Article 31(1) of the 1951 Refugee Convention stipulates that receiving states should not 'impose penalties' on those who arrive in 'their territory without authorisation', but widespread ignorance of this still causes many refugees to be wrongly convicted for failure to produce a valid travel document on arrival in the UK. Airlines and shipping companies face substantial fines if they transport people who have no legal right to enter the UK; their overseas personnel are instructed to verify the credentials of all passengers. As a result, refugees are forced to travel irregularly, and dangerously, usually under the auspices of people smugglers. Thousands die on the way, drowned in the Mediterranean, frozen to death in the wheel arches of planes, suffocated in container lorries, electrocuted trying to get into the Channel Tunnel, fallen from or crushed by trains.

Where a refugee survives and makes a claim for asylum in the UK, he may not automatically be sent back to the country from which he had fled, where, in the words of the 1951 Refugee Convention (Art.33), 'his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'. This does not convey a right to asylum, but it does place strict limits on what a state may lawfully do. An asylum-seeker's refugee status has to be determined. After a summary interview, the majority are consigned to a detention centre pending removal. They are not criminals, they are confined for administrative purposes alone. Despite common law requirements (the 'Hardial Singh' principles) that such detention must only be 'for a reasonable period under the circumstances', the construction of what that might mean is debated, and the UK is unique in holding asylum seekers, some of whom may be torture victims, for indefinite periods of time, sometimes years.¹¹ This impacts adversely on the mental health of adults and children and has a negative impact on their capacity to integrate if, as is often the case, they are ultimately given leave to remain.

A particularly disturbing feature of the UK asylum system is the effect of driving large numbers of asylum-seekers into destitution. For those who have not been

fast-tracked, but whose initial asylum claim was rejected, the Immigration and Asylum Act 1999 provides a system of asylum support. This takes two forms: until a person's appeal rights are exhausted, she may qualify under section 95 of the Act for a living allowance at 51 per cent of the rate of income support. She also is allocated

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no-choice living accommodation outside London. If she has exhausted all opportunities for appeal, she loses rights to accommodation and support, but if she can show that she intends to leave the UK, she qualifies for interim support under section 4 of the Act. This is less than the section 95 allowance and takes the form of a plastic card which can only be used in specified shops: she has to live in a cash-less economy.

For those with realistic fears of persecution, however, return is not an option and those without papers cannot be repatriated. They are refused permission to work and have no access to government support. The significant changes to asylum procedures since 2007 have led to an increase in destitution. In order to survive, destitute men and women may have to engage in illegal, often exploitative, work or prostitution, or be forced to live on the streets. Such people are easy targets for xenophobic outbursts and the depth of suffering is immeasurable.¹²

In a report published in 2007, the Parliamentary Joint Committee on Human Rights states: 'we believe that all deliberate use of inhumane treatment is unacceptable. We have seen instances in all cases where the government's treatment of asylum seekers and refused asylum seekers falls below the requirements of the common law of humanity and international human rights law.' However, changes in legal aid provisions in 2014 have only made the situation worse – specialist asylum practices have been forced to close and there is a scarcity of suitably qualified immigration lawyers. It has become increasingly hard for people whose claims have been refused to submit a fresh one. Although legal aid should enable those who are poor to hold the state to account, bad decisions still go unchallenged. Without access to a good lawyer, people with the right to remain in the UK may be turned away.

There are no simple answers to the political challenges associated with immigration. But as we confront the political forces that constrain and shape how states behave to immigrants in general and asylum seekers in particular, we will question policies that drive a wedge between rich and poor, that dehumanise people, that treat human beings as economic ciphers, and we will call cruelty and injustice into question. For those of us whose worldview derives from the Bible have imbibed an ethic which summons us to deal justly with the stranger, to treat them like a brother or sister, and to give them succour when they is most in need.

cash benefits and healthcare granted on the basis of residence', ICF GHK, milieu, 19 September 2013.

6. This is in accord with the findings of the Centre for Research and Analysis of Migration, University College, London: in 'Assessing the Fiscal Costs and Benefits of A8 Migration to the UK', CDP No 18/09.

7. S Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge: Cambridge University Press, 2004), p. 44.

8. Jordan, for example, has accepted an estimated 600,000 refugees from Syria.

9. International Refugee Rights Initiative. 'Conflict in South Sudan: Refugees seek protection in Uganda and a way home', April 2014.

10. Currently, through the government's Gateway scheme, 750 refugees are accepted each year and helped to integrate by the Refugee Council and other agencies.

11. N Tsangarides, 'The Second Torture': The Immigration Detention of Torture Survivors', Medical Justice 2012.

12. 'Not Gone but Forgotten', British Red Cross 2010.