

From Expendable to Key Workers and Back Again

Immigration and the Lottery of
Belonging in Britain

Runnymede: Intelligence for a Multi- ethnic Britain

Runnymede is the UK's leading independent thinktank on race equality and race relations. Through high-quality research and thought leadership, we:

- Identify barriers to race equality and good race relations;
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ISBN: 978-1-909546-32-5

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Foreword

The world is facing the greatest refugee crisis since the Second World War. With no prospect of global conflicts or persecution ceasing any time soon, the crisis is set to continue. Global migration, driven often by poverty, is a reality that our societies cannot ignore. And with the growing threat to the world's poorest communities of climate change, the refugee crisis and global migration will only increase, as drought, crop failure and flooding drive even more people from their homes.

There are 30 million refugees worldwide and 35 million internally displaced people. Many of these refugees are surviving in camps broadly forgotten by the world's media – like in Bangladesh, now home to as many as 1 million Rohingya refugees. Their dire circumstances have driven some to try to escape by boat to neighbouring countries, but their painful and desperate situation is not unique. It is shared by millions of other refugees across the world, from the Mexico/US border, to the Horn of Africa and the Middle East. Millions of these refugees are children. It is a global phenomenon that we in the UK only glimpse.

We need a Europe-wide response to Europe's refugee population. It can no longer be left to a geographical accident that means Mediterranean countries are taking a hugely disproportionate number of the refugees who make it safely to Europe. There are some positive signs that perhaps the consensus is shifting in Europe towards a more collective approach. The coronavirus crisis has galvanised the EU into arranging for 11 EU member states to take refugees, mainly children, who urgently need relocating from the camps in Greece – a hopeful sign within an otherwise bleak situation. Whether in the EU or not, the UK must also play its part in easing Europe's refugee crisis.

We must also talk honestly about migration and the enormous benefits it brings to recipient countries. The coronavirus crisis has underlined the extent to which our National Health Service depends on migrants. And our departure from the EU has revealed how dependent our agricultural sector is on a migrant workforce. The evidence is in our favour.

All that remains is for our political leaders to make the case.

Lord Alf Dubs

Introduction: Migration in crisis

Kimberly McIntosh

Crisis begets opportunity. A crisis can precipitate change and prove that what was once considered undesirable and logistically impossible is in fact necessary and deliverable.

When we started putting together this volume it was in response to an immigration and asylum system that was failing on all counts. It was failing to treat migrants with dignity, whether they were moving for sanctuary, for economic opportunity or for both. It was failing to treat people fairly following a long history of discriminatory migration policy in Britain. It was also failing to achieve the objectives of governments – both Labour and Conservative. Unrealistic targets of ‘tens of thousands’ of migrants per year were, and are, unworkable and not in line with our labour market needs. With no time limit on detention at present, people have been held for up to four and a half years only to then be released. As our contributor Matthew Leidecker from Detention Action highlights in this volume, the Home Office gets it wrong so frequently that last year 61 per cent of those detained had to be released. The Windrush scandal of 2018 shocked the nation and brought to the fore the sharp end of the ‘hostile environment’ and its embedment into our public services.

Then an unprecedented pandemic brought the dysfunction of the immigration system and the possibility of change into even sharper focus.

According to the Immigration Bill currently going through parliament, our ‘low-skilled’ workers, who are unlikely to meet the salary thresholds that both EU and non-EU citizens will have to meet after Brexit, are the very people who have kept the country moving, fed, cared for and in many cases alive during the Covid-19 pandemic. At the time of writing, 350 people have been released from detention – taking the number of detainees down to its lowest level in 10 years. The Home Office announced that the case of every single person in detention would be immediately reviewed, starting with the most vulnerable. The government has U-turned on the NHS surcharge for migrant health and care workers, who were risking their lives on the frontline but were subject to an extra charge to use the health service if they themselves got sick. A viral video by Syrian refugee and hospital cleaner Hassan Akkad triggered another government U-turn. This time, the

bereavement scheme that grants indefinite leave to remain in the UK to relatives of foreign-national NHS staff who die from Covid-19 was extended to include low-paid workers such as cleaners and porters.

Change is necessary and it is possible

The broad headline argument of this report is that our immigration policy needs to reflect reality – the realities of our labour market and the realities of the refugee crisis. It argues that it is inevitable that people move, and once they are here they need a pathway to citizenship so that they can participate socially, economically and politically in British society. People seeking asylum should be given adequate support on arrival, should be allowed to work while their claim is being processed and should have access to welfare support to protect them from exploitation and destitution. It also recognises the racism that is built into past and present immigration policy. As it stands, the system is not fit for purpose. It is not achieving its stated aims, and people suffer gravely as a result. The contributions in this report call for humanity and justice to underpin the immigration policies that we make; they outline what new solutions could look like and how we can campaign to make them happen.

Covid-19: Exposing injustice at the heart of immigration and asylum policy

The Covid-19 pandemic has made the mutuality of our health clear: we are only as strong as the health and wellbeing of the most vulnerable. As Priscilla Dudhia from Women for Refugee Women tells us in her moving and insightful contribution (Chapter 5), destitute women seeking asylum have faced severe difficulties in accessing food for themselves and their children since the start of the pandemic. Women in the network have been forced to stay in overcrowded housing with strangers, with some trapped in abusive or exploitative situations, in order to avoid becoming street homeless and hungry. These women have no recourse to public funds (NRPF). As a result, they cannot access any welfare support nor asylum support. Before the pandemic, more than a third of women who shared their stories with Women for Refugee Women said they were forced into unwanted, and often abusive, relationships just

so that they could get food or shelter. Overall, around a third had been raped or sexually abused in their country of origin – subjected to sexual violence again after being made destitute in the UK.

While responding to the Liaison Committee in parliament last month, Prime Minister Boris Johnson appeared to be unaware that it was government policy for migrants to have their access to the welfare system restricted. He said that the government would ‘find out how many there are in that position and [would] see what we can do to help them’. Hopefully, this is an opportunity for change.

The time for change is now

Changes once branded impossible or undesirable have been proven possible and necessary during the Covid-19 crisis. Detainees have been released into the community. The role migrants play in staffing public services and working in integral industries is publicly acknowledged. Polling for British Future found that two-thirds of the public (64 per cent) agree that ‘the coronavirus crisis has made me value the role of “low-skilled” workers, in essential services such as care homes, transport and shops, more than before’. Just 9 per cent disagree. We know that the public has the capacity for compassion. The government U-turns of recent weeks are a testament to that, as is the public outcry when the stories emerged of people affected by the Windrush scandal. When injustice is platformed and people respond, politicians often follow.

On 19 May the Conservative MP David Davis tabled an amendment to the 2020 Immigration and Social Security Co-ordination (EU Withdrawal) Bill that would put in place statutory criteria for detention, provisions for automatic judicial oversight of decisions to detain and a maximum time limit for detention of 28 days. He told parliament: ‘We should use this opportunity to put right some longstanding injustices at the heart of our immigration system’.

It’s time for a comprehensive overhaul of our immigration system. As Gracie Mae Bradley from Liberty notes in Chapter 7, this needs to start with ending the ‘hostile environment’ and the data-sharing practices that pervade our public services. The ongoing Windrush scandal has made clear how

the hostile environment policy devastates the lives of people subject to immigration control, destroying livelihoods, separating families, and making people homeless and destitute. But the devastation caused by the scandal goes far beyond those directly affected, having a negative impact on black and minority ethnic (BME) communities more broadly. The opening chapter, by Maya Goodfellow, author of *The Hostile Environment: How immigrants became scapegoats*, explains why this is the case by looking to our past. The final chapter, by Omar Khan, former director of the Runnymede Trust, looks to a future where the current system could be replaced with one that not only is underpinned by the values of justice and dignity but is a tool to facilitate putting these values into practice.

People move, and once they are here they need a citizenship process that is accessible and enabling. It should encourage and facilitate the economic, social and political participation of new arrivals. Yet our citizenship policy is complex and expensive. It has left an estimated 215,000 children and 117,000 young people who were born in the UK or brought here as children classified as ‘unauthorised migrants’. Contributors Colin Yeo of Garden Court Chambers (Chapter 3) and Zubaida Haque, the interim director at the Runnymede Trust, (Chapter 2) outline the issues and posit how they could be addressed.

Nothing about us without us

Campaigning for change is most effective when it’s a collaborative effort. Various contributors to this report outline examples either of when their organisations have worked either in coalition with migrant-led groups or how they are structured so that experts-by-experience are at the front and centre of their work. Akram Salhab and Neha Shah from Migrants Organise explore this in depth and detail (Chapter 6), imploring all of us in the NGO, charity and research sector to think critically about how we work. With privileged access to policymakers and the media, we should question when we are best placed to use our platforms and when it is time to pass opportunities on. We should always work as collaboratively as possible.

Now is the time to push for change. It’s vital that we work together to call for it.

SECTION I. A BROKEN SYSTEM: HOW DID WE GET HERE?

1. A hostile environment for migrants: How did we get here?

Maya Goodfellow, author of *The Hostile Environment: How migrants became scapegoats*

We might think of the hostile environment as having begun with Theresa May and the Coalition government – and perhaps with some good reason. Distinct forms of dehumanisation and discrimination have occurred under the package of policies the government introduced primarily through the 2014 and 2016 Immigration Acts and which they proudly called the ‘hostile environment’. Though the word ‘hostile’ has been subbed out for ‘compliant’ and grassroots groups have successfully campaigned against some of the most pernicious policies implemented under this banner,¹ much of the architecture of these acts remains in place.

Even the ‘Windrush scandal’ – where British subjects who moved to the UK from the so-called New Commonwealth as children were wrongly detained, deported and denied their legal rights – did not bring the hostile environment to an end. And so despite this grave injustice, under hostile environment policies, people are still being denied access to basic services – from housing to healthcare – as nurses, doctors and landlords, along with employers and banks, are still expected to act as border guards.

But to believe hostility was only injected into the system from 2010 onwards is to ignore the UK’s history of immigration legislation.

The trouble is what is remembered and what is not. Many of the people now perceived as immigrants came to the UK as citizens from colonies and former colonies, from countries all over the world – such as Jamaica, Pakistan, Nigeria, India, Australia and New Zealand. Their arrival is well known; the terms under which they came are not.

Though it had long been the case that people from all over the British Empire could in theory come to live in the UK, this right was written into law through the 1948 British Nationality Act. It conferred the

rights of people living in countries that had been, or were still, under British rule to be British subjects or Commonwealth citizens.

Before and after the Act, there was an ongoing debate about how to limit the number of people coming to the UK. But this wasn’t about everyone who made the journey here; it was specifically people of colour who were considered a problem. These British subjects and Commonwealth citizens – many of whom had grown up being taught about the ‘mother country’ – were seen as a potential economic and ‘cultural’ threat: ready to ‘take’ jobs and alter the British ‘character’.² ‘If it had been the case that it was 5,000 white settlers who were coming in’, the Conservative Lord Gilmour said in 1999 about one of these racist pieces of legislation years after it was introduced, ‘the newspapers and politicians who were making all the fuss would have been quite pleased’.³

To varying degrees, in different ways and at different times since the 1960s, Labour and Conservative governments accepted and reproduced this racist logic. As the final vestiges of empire crumbled and many politicians were desperately trying to maintain Britain’s power on the world stage through the Commonwealth, governments implemented successive pieces of legislation that aimed to keep people of colour out of the UK. These laws, many of which had ‘immigrants’ in the title, are described by Professor Gurminder Bhambra as being not immigration policies but ‘policies of racialisation’.⁴

People of colour were able to settle in the UK because of the Empire, but they were then treated as a problem because of the racial hierarchy developed to justify that same imperial project. They were citizens because of colonialism and turned into the ‘other’ because of colonial racism. So while some people who moved to this country were welcomed

and made a life here, many experienced severe racism. And then there were others who never made it to the UK to begin with.

None of this went unchallenged. In parliament and across the country, there was resistance. Groups like the Indian Workers' Association, AWAAZ, the Organisation of Women of African and Asian Descent (OWAAD) and Southall Black Sisters, for instance, fought against forced virginity testing in the late 1970s. This practice – one of the most explicitly violent but also forgotten forms of immigration 'control' – was a supposed way to find out if women coming into the country from South Asia to get married were genuinely arriving for this reason. Wrongly assumed to help identify if these women were virgins or not, these tests have been described by journalist Amrit Wilson as tantamount to 'sexual harassment'.⁵

Part of understanding 'how we got here' is about this history in which 'immigration' is so intimately connected to colonialism. But simply knowing this history on its own is not enough if we want to make sense of how we got to where we are on immigration. This is also about how histories are told: if the justifications made for introducing racist immigration legislation are accepted and rationalised, or if they're interrogated and questioned.

The view that immigration is a problem to be managed has not shifted. Many of the same arguments about immigration still shape the 'debate'. The figure of who is a 'problem' migrant has changed, but the belief that immigration is a problem has not. And the way that it is perpetuated comes down to two overlapping themes: economics and culture.

Economics

'Large numbers of aliens from Eastern Europe who had settled in east London and in other populous centres had lowered the wages in some of the unorganised trades to starvation point', Edward Troup, Home Office permanent secretary, wrote about the 1905 Aliens Act two decades after it passed through parliament, 'and their habits had a demoralising effect in the crowded areas in which they settled.'⁶ The Act was aimed at limiting the number of Jewish people and poor people who could come to the UK. But the explanation Troup gave as to why it had been introduced can be almost directly mapped onto immigration discourses from the 1960s through to the 2010s, from Enoch Powell's 'Rivers of Blood' speech through to New Labour's arguments against what they called 'bogus asylum seekers'.

It would be wrong to say that everything has stayed the same over this time. Resistance in the form of anti-racist movements has demanded and won change. Public opinion has shifted, as has the salience of immigration as a political issue. But it remains commonplace to think that 'too many' immigrants are bad for the economy, drive down wages and put pressure on public services.

Ten years before the 1905 Aliens Act was introduced, a group of Jewish trade unions exposed the problem with this thinking. Realising where things were going, and as the Trades Union Congress passed a number of resolutions in favour of immigration controls, they argued that Jewish people, many of whom were fleeing pogroms in Russia, were not the enemy. In a pamphlet, they responded to this rising hostility and appealed 'to all right-thinking working men of England not to be misled by some leaders who have made it their cause to engender a bitter feeling amongst the British workers against the workers of other countries'.⁷ They urged British workers to join them, to 'combine against the common enemy' – capitalism – rather 'than fight against us whose interests are identical with theirs'.

These arguments are still relevant. Whether we're talking about public services, low pay or space, immigration is singled out as the problem – even when the evidence shows this isn't true. People who move to this country don't create its long-term economic problems. Instead, many have played an essential role in keeping public services going.⁸ This has been painfully obvious during the coronavirus pandemic. And yet, there hasn't been a sufficient loosening of immigration enforcement: the hostile environment has remained largely in place, and government bureaucracy is still expensive and difficult to navigate. Campaigners say that some migrants presenting with symptoms have died after being too scared to seek medical advice.⁹

But it is still widely accepted that immigration is the primary issue. As the debates in the early 1900s show, this has been believed and repeated for decades – and the discussion ignores people's humanity to focus on abstract numbers. 'As soon as you say numbers, it doesn't matter how you wrap it up', Stuart Hall said of the immigration 'debate' in 1979, 'there's only one lesson to be drawn, the numbers are growing, there's too many of them'.¹⁰

But talk of numbers is impossible to escape. It's central to the other argument made against immigration: that 'too many' immigrants of a *certain kind* unsettle British 'culture' and people's sense of

national identity. That is, people are racialised as a threat to this country.

In the 1970s, this was the focus of a loose group of academics, journalists and thinkers called the 'new right'. Ostensibly rejecting scientific racism and the notions of superiority embedded within it, they claimed they did not think themselves better than people of colour, merely culturally distinct from 'them'. On these grounds, they advocated for further limiting immigration. They argued that if this didn't happen national identity would be eroded, and that 'too many' people of colour in the UK would cause social unrest and racist violence

Margaret Thatcher neatly summed up part of their rationale: 'If you want good race relations, you have got to allay peoples' fears on numbers.'¹¹ Immigration 'controls' were constructed as necessary to stopping racism. This thinking has never really died since then; it has been echoed by others in contemporary Britain. 'Nobody is born racist', wrote Labour MP Stephen Kinnock a few months after the EU referendum, 'but immigration that reaches levels beyond a society's capacity to cope can lead, in extremes, to racism.'¹² Intentionally or not, this relies on a logic whereby racism is produced by 'too many' immigrants, not by the concept of race itself or the racialisation of different groups of people.

Culture

These arguments are often wrapped up in the language of 'culture'. Politicians say that the 'pace of change' is too fast in certain places and that some people don't recognise the area around them because of immigration. Public figures proclaim that there is an inordinate amount of cultural change, that people feel anxious about it and that the 'bonds of solidarity' in the UK will be weakened, undermining support for public institutions like the NHS. It's partly on these grounds, they claim, that immigration should be reduced.

But how exactly should we understand this conceptualisation of 'culture', and which particular groups of immigrants are the supposed problem? This isn't always well defined, partly because 'culture' is treated as static in the debate when in reality it's slippery, changeable and complex. What is British 'culture'? Is it contained by borders and only produced endogenously, with no influence from 'outside'? Does it change over time, depending on where you are and who you are? And if there is such a thing as British culture, can it really be understood as separate from colonial histories and the imperial

present? 'Cultures' are not static or clearly defined; they are constructed and shifting. 'If Western culture were real', says philosopher Kwame Anthony Appiah, 'we wouldn't spend so much time talking it up.'¹³

'Culture' can also function as a proxy for race; racialised notions of cultural difference decide which groups are marked out as a threat and which are not. Not everyone is deemed a problem or needs to prove themselves able to pass Norman Tebbit's infamous 'cricket test'. The constant insistence that 'it's not racist to be concerned about immigration' obscures an analysis that pinpoints where and how race can be operating in the debate: that it is not only about individual-level racism, which is often dismissed as a case of 'bad apples'. Racism is systemic, and people are part of and contribute to that system. All of this impacts on people moving through the immigration regime and is intimately connected to how individuals in society reproduce racism.

People's views on immigration are not inevitable; they are produced not in a vacuum but in a society where an anti-immigration politics is the norm. But we got here because these anxieties around immigration are *treated* as if they're natural and so unavoidable unless immigration is 'controlled'. This infects what people believe is politically possible; it's imagined that other than by reducing the number of people coming into the country, it is impossible to change people's feelings about and understanding of immigration – particularly when it comes to the issue of 'culture'. But change is not inevitable, because, just like the very concept of 'culture', how people think of immigration is not static or 'naturally' in-built into how they conceive of themselves and the world around them.

Pundits and politicians see polling on immigration not as a warning sign but as a roadmap, guiding them to a position that is supposedly in line with the public. But the purpose of collecting that data can be to figure out how to change people's minds. You get a snapshot of what people think so that you can persuade them of an alternative – unless, that is, you believe that their views are inevitable and that you have respond to them directly, regardless of what that might mean in practice and who might suffer.

People should have the right to stay where they want, as well as having the freedom to move. But we are at a point where movement – at least the movement of some – is considered dangerous. We got here via empire, colonialism and the racial hierarchy that underpins myths about immigration. These myths, which have altered slightly in shape and form over time, are still widely circulated

and believed. And they must be questioned and challenged so that immigration can be seen for what it is – not a problem to be solved but a fact of life.

Notes

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5. Amrit Wilson cited in Goodfellow, *Hostile Environment*.
6. E. Troup (1926) *The Home Office*, 2nd rev. ed. (London and New York: G.P. Putnam's Sons), p. 143.
7. Jewish Workers Defence Committee (1895) *A Voice from the Aliens: About the Anti-Alien Resolution of the Cardiff Trade Union Congress* (Clerkenwell Green: Twentieth Century Press), pp. 7–8.
8. J. Wadsworth, S. Dhingra, G. Ottaviano and J. Van Reenen (2016) *Brexit and the Impact of Immigration on the UK* (London: Centre for Economic Performance); OECD (May 2014) *The Fiscal and Economic Impact of Migration* (Paris: Organisation for Economic Co-operation and Development); J. Portes (January 2016) *How Small Is Small? The Impact of Immigration on UK Wages* (London: National Institute of Economic and Social Research).
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11. Cited in J. Aitken (1993) *Margaret Thatcher: Power and Personality* (London: Bloomsbury), p. 200.
12. S. Kinnock (2016) 'My cure for a divided Britain? A programme of managed immigration', *Guardian*, 19 September.
13. K.A. Appiah (2016) 'Mistaken identities: Culture', Reith Lecture, BBC Radio 4.

SECTION II: CITIZENSHIP AND REAFFIRMING RIGHTS

2. Prioritising children's rights to British citizenship

Dr Zubaida Haque, interim director at the Runnymede Trust

Last year when President Trump revived the controversial discussion about abolishing birthright citizenship in the US, there was widespread dismay. He said that the rule – enshrined in the US Constitution for 152 years – was ‘a magnet for illegal immigration’, ‘frankly ridiculous’, and that the White House was ‘very, very seriously’ considering abolishing the policy.

It is not a well-known fact, but birthright citizenship (otherwise known as *jus soli*) no longer exists in the UK. It was removed in 1983, by Margaret Thatcher, then Conservative prime minister, through the 1981 British Nationality Act (BNA). From 1 January 1983, under Section 1(1) of the BNA, persons born in the UK, or brought up here from a young age (under 10 years), would now only be entitled to automatic British citizenship if one or both of their parents

were British, or settled in the UK. In addition, any entitlement to British citizenship (through Section 1(3) and Section 1(4)), if not registered, would be lost at the age of 18 for those children who were brought here at a young age.

In abolishing *jus soli* birthright citizenship, which was acquired by being born in the territory, Thatcher fundamentally altered what it meant to be British. Against decades of citizenship policy, the Conservative prime minister removed historical rights and the entitlement to British citizenship of British nationals in the Commonwealth and former colonies,¹ and the right of any child born in the UK or the ‘British Empire’ to have automatic British nationality. While race and ethnicity were never directly referred to in the BNA, it was nevertheless an explicit concern for Margaret Thatcher:

Case Study: Jade's story

Jade is in her 20s and a woman of colour. Until recently she had assumed she was always British, but when she went to apply for a British passport (so she could take a work trip abroad) she was told she was not eligible for British citizenship because she had failed to meet the ‘good character test’. When Runnymede Trust first spoke to Jade in 2018 she told us she ‘still felt British’, but that being rejected for British citizenship made her feel ‘like I don't belong’.

Jade was born in the UK but was not ‘automatically’ a British citizen because neither of her parents had settled status. Jade had never been abroad, so she was unaware that she did not have citizenship. Under the 1981 British Nationality Act Jade could have been registered for British citizenship before the age of 10, but no one had thought to do this. As a teenager Jade had a difficult relationship with her mother, who had mental health problems, and she was in and out of care. During this time Jade was arrested several times for shoplifting while in care. Unknowingly Jade had now lost her eligibility for British citizenship because she had committed offences over the age of 10 – the age of criminal responsibility. Jade was devastated when she found out that petty offences she had committed as a troubled teenager meant that she could not apply for British citizenship for an indefinite period.

For several years Jade's biggest concern was that even though she had no experience of any other country, she could be deported at any moment. Jade felt ‘isolated and trapped’ and anxious about her future. Recently Jade was able to reapply for British citizenship, but only because she was entitled to do so as a citizen born in the UK; others who were not born in the UK are less fortunate.

Well, now, look...there was a committee which looked at it and said that if we went on as we are then by the end of the century there would be 4 million people of the new Commonwealth or Pakistan here. Now, that is an awful lot and I think it means that people 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.²

The motivations of Thatcher for abolishing birthright citizenship four decades ago were no less controversial than Donald Trump's motivations last year; they were less to do with purported 'illegal immigration', but still placed the emphasis on 'unwanted' immigrants and 'being swamped by people with a different culture'. While over a decade might have elapsed since Enoch Powell's infamous Rivers of Blood³ speech, Margaret Thatcher's reasons for abolishing birthright citizenship had the same xenophobic undertones echoing through them.

Despite this monumental shift in citizenship policy, parliament at the time sought to protect children born in the UK or raised in the country from before the age of 10, but not registered for British citizenship (because neither of their parents were British or settled in the UK when they were born or brought here) from being denied British citizenship through provisions emphasising 'close connection to the UK':⁴ 'it is extremely important that those who grow up in this country should have as strong a sense of security as possible'.⁵ Parliament also raised concerns about whether the proposal under the 1981 BNA was racially discriminatory, 'in that the proportion of black people who will be able to comply with it is lower than the proportion of white people'.⁶ Several provisions were therefore put in place, including emphasis on 'close connection', in order to ensure that ending *jus soli* did not result in children whose parents were not British or did not have settled status at the time of their child's birth being regarded or treated differently to their British peers.

Arguably, these provisions might have been sufficient to protect children of immigrants who had either been born in the UK or arrived in the UK during their childhood from being unable to acquire British citizenship, had it not been for the introduction of Section 58 of the Immigration, Asylum and Nationality Act in 2006,⁷ under Tony Blair's Labour government.

Thatcher may have been the prime minister to remove birthright citizenship (thus weakening the right to British citizenship of children of immigrants born or raised in the UK), but it was Blair who extended the provisions of the 1981 BNA, ensuring that hundreds – possibly thousands – of children, predominantly from black and minority ethnic backgrounds, would be denied citizenship based on 'good character'⁸ requirements.

The introduction of the Immigration, Asylum and Nationality Act in 2006 opened the route to a two-tier citizenship policy for children of immigrants. Firstly, when the BNA was initially introduced there was no provision for children entitled to British citizenship to be subject to good character requirements. However, the 2006 Immigration, Asylum and Nationality Act inappropriately extended the good character requirement to children as well as adults, and blurred the distinction between registration for people entitled to British citizenship and naturalisation (for people migrating to the UK).

Secondly, good character requirements – which were never defined in the BNA – over the years came to be defined by a 'non-exhaustive', vague list of 'types of conduct'⁹ – ranging from acts of terrorism to instances of 'notoriety' and 'other non-conducive activities'. The emphasis was more on 'negative factors' in relation to character (e.g. criminality, deception in immigration matters) than 'positive factors' such as the contribution a person had made to society.

The effects of this ill-conceived Labour policy (whether by design or by oversight) has been far-reaching. Since 2006, hundreds if not thousands of children over the age of 10, predominantly from BME backgrounds, as well as those growing up in care or with learning difficulties, have been discouraged from applying for British citizenship, or deprived of citizenship, because of some form of (often minor) contact with the criminal justice system.¹⁰ The application of the good character requirement in relation to children has not only been problematic because it has repeatedly failed to prioritise 'the best interests of the child'¹¹ according to Article 3 of the UN Convention of the Rights of the Child,¹² but has also been discriminatory because of the well-documented racial biases which reside within the British criminal justice system.¹³

It has also exposed children of immigrants who have not acquired British citizenship through blood connections (i.e. not born to parents who are either British or settled in the UK) to risks of detention and deportation in the last decade.

The consequences are deeply troubling. Between Theresa May's hostile environment¹⁴ (now renamed 'compliant environment') policies, the Windrush scandal¹⁵ in 2018 and controversial deportation charter flights¹⁶ of people from mostly BME backgrounds, a child born in the UK or raised in the country from before the age of 10, but not registered for British citizenship, has every reason to fear that they could be deported at any time. This is because this group of children or young people in limbo, whether born or raised here, have been treated as migrants rather than children with statutory entitlements to British citizenship. Parliament's emphasis on 'close connection' in the BNA has seen consecutive governments (and the Home Office) repeatedly fail to prioritise children's 'best interests' in nationality law and citizenship rights.

Arguably this failure to identify (or ignoring of?) children's best interests and right to British citizenship is now being repeated in relation to the EU Settlement Status (EUSS) scheme set up to allow EU, EEA (European Economic Area) or Swiss citizens to apply for settled status, or pre-settled status. While in principle children of EU, EEA or Swiss citizens are eligible for the EUSS, there are serious concerns as to whether their rights and best interests have been served through this scheme¹⁷ – particularly as many children of EU parents are likely to be eligible for British citizenship under BNA but unaware of the fact. This is critical because children of EU citizens who may be eligible for British nationality but who are currently not registered for it (or are unaware of their entitlement) are likely to be treated as migrants – subject to discretionary good character requirements,¹⁸ and vulnerable to detention and deportation to countries they do not know. It is also concerning for thousands of children in care who may be unaware of their entitlement to British citizenship, including approximately 5000 children of EU nationals separated from their parents and in local authority care, as well as young people under 18 in custody who are in citizenship limbo.

What these cases illustrate is not only the failure of governments (both Labour and Conservative) to raise awareness of children's entitlement to British citizenship, but also the inappropriate application of good character requirements to children over the age of 10 who are to all intents and purposes (under the BNA) British. Instead, these children have been treated as migrants, subject to immigration powers – as we have seen in recent deportation cases.¹⁹

Suffice to say, there is an overwhelming argument to be made for a wholesale review of British nationality

and citizenship laws in relation to children born or raised in Britain. Questions about identity and belonging for BME and European citizens, and indeed any citizens with 'foreign' heritage in Britain, are not only important because of the government's compliant/hostile environment and deportation policies; they're also important in the context of growing right-wing anti-migrant populism across Britain and Europe.

An important place to start would be to reintroduce birthright citizenship, because acquiring or registering British citizenship for children and young people whose parents are not British or do not have indefinite leave to remain or settled status at the time of their birth is hugely problematic. As this discussion has shown, the removal of *jus soli* has resulted in children born or raised in Britain being treated as migrants rather than as children whose best interests lie in British nationality and citizenship.

In the process of reintroducing birthright citizenship, the application of good character requirements in relation to children (and adults) who are entitled to British citizenship needs to be removed. It has disproportionately affected BME children and young people, as well as those in care, as a result of well-evidenced racial biases within the British criminal justice system. In addition, substantial barriers to British citizenship, including the punitive costs of citizenship registration for children,²⁰ need to be addressed, with exemptions made for children in care as well as those who are not able to afford the costs of registration.

Furthermore, there needs to be new guidance for all public authorities to identify children who may be entitled to British citizenship but are currently not registered – either because they are unaware of their entitlement or because they have been discouraged from applying for it because of concerns around meeting good character requirements. Children and young people in the local authority care system are particularly at risk of being denied British citizenship, partly because they may not have documents (in relation to their parents' citizenship status) to establish their rights, but also because local authorities may not be aware that children in their care, entitled to British citizenship, are supposed to be registered as soon as they reach the age of 10.²¹ Too many public authorities, including the institutions of the criminal justice system and the Home Office, are treating these children as migrants instead of as children who have a statutory entitlement to British citizenship.

In the meantime, the government should pay attention to the recommendations of Stephen Shaw, former Prisons and Probation Ombudsman, in the review it commissioned on immigration detention and deportations, and to his damning comments:²² 'I find the policy of removing individuals brought up here from infancy to be deeply troubling. For low-risk offenders, it seems entirely disproportionate to tear them away from their lives, families and friends in the UK, and send them to countries where they may not speak the language or have any ties. For those who have committed serious crimes, there is also a further question of whether it is right to send high-risk offenders to another country when their offending follows an upbringing in the UK.'

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3. Citizens in waiting: The case for reforming citizenship

Colin Yeo, barrister, Garden Court Chambers

Since the Commonwealth Immigrants Act 1962, successive British governments have pursued an exclusionary citizenship policy. The intention was to make it difficult, although by no means impossible, for migrants to acquire citizenship, and thereby to minimise change to the pre-existing ethnic composition of the citizenry. In Chapters 1 and 2, Maya Goodfellow and Zubaida Haque look at the history and evidence on the motivations of policymakers that brought our current immigration and citizenship policy into being. Here, we shall consider one particular outcome, which was predictable if not necessarily inevitable: the creation of a significant population of long-term resident non-citizens. They include members of the Windrush generation – settled migrants who have either been unable to apply or for other reasons have not applied for citizenship – and unauthorised migrants. Today, there are an estimated 600,000 to 1.2 million unauthorised migrants living in the UK.¹ Worse still, this includes an estimated 215,000 children and a further 117,000 young people between the ages of 18 and 24 who were born in the country or brought here as children.

The size of this unauthorised population is likely to increase significantly after Brexit for two reasons. Firstly, the British government is requiring EU citizens currently resident in the United Kingdom to apply for a new immigration status. No registration scheme ever has a 100 per cent success rate. It is likely that tens or even hundreds of thousands of EU citizens will not register successfully for any number of reasons, adding more people to the unauthorised population.² Secondly, EU citizens not resident in the UK will still be able to enter the country without a visa after Brexit. But it is inevitable that some will remain in the UK to work and live without applying for the permission they will need to do so lawfully. They will be unauthorised migrants, as will their children.

To right this wrong, reforms are urgently needed not just to immigration policy but to citizenship policy too. A healthy democracy requires maximum, non-discriminatory participation. Yet a significant segment of the UK population continues to be excluded from national life. The hostile environment policy has exacerbated the issue and made it impossible for a responsible politician to ignore any longer.

The obsession with numbers

In some countries, new citizens are welcomed. Not so in Britain. There is popular pressure to keep the numbers of new citizens down, and the press commonly conflates immigration policy with nationality policy – perhaps unsurprisingly given that so too does the British government. When the numbers of residents naturalising as British citizens rose by around 15 per cent in 2006, the *Telegraph* complained with a headline reading ‘1 million new British citizens under Blair’. ‘This is a direct result of their “no limits” immigration policy’, the chairman of

anti-immigration pressure group Migration Watch was quoted as saying. ‘Immigration on this scale is changing the nature of our society without public consent’, he went on. ‘It is no longer acceptable.’³ When the Labour government unveiled ‘earned citizenship’ proposals in 2008, the *Daily Mail* greeted the plan with the headline ‘The great passport giveaway: Up to 250,000 foreigners

to get UK citizenship every year’.⁴ This was not a cause for celebration, it seemed. The fact that the reforms would have made it *harder* to acquire British citizenship by lengthening the residence period and making voluntary work a new prerequisite was irrelevant to the headlines.

After the Brexit referendum vote, as literally millions of EU citizens living in the UK wondered what their future held, the *Sun* splashed with ‘WE WANT TO

Unauthorised migrant: a migrant who does not possess legal authorisation to be physically present in the country. The term is used here in preference to ‘undocumented’ because many authorised, lawful residents in the United Kingdom lack documents, as the Windrush scandal demonstrated.

Non-citizen: a resident, whether authorised or unauthorised, who does not possess citizenship.

BE LIKE EU: Thousands of EU citizens rush to get their hands on a British passport before Brexit, new figures reveal'. Lest readers miss the point, the subheading continued 'Record numbers try and win right to stay and work in the UK once we leave the bloc in 2019'.⁵ The article failed to mention that these EU citizens needed to have lived in the UK for at least five years to be eligible to apply for naturalisation.

Obsession as government policy

The obsession with numbers is also official government policy, as was confirmed in a revealing internal Home Office memorandum written in 2002.⁶ David Blunkett, who was then home secretary, had signalled during passage of the Bill that was to become the Nationality, Immigration and Asylum Act 2002 that he was sympathetic to the plight of the East African Asians who had been excluded from their only country of nationality by Labour's Commonwealth Immigrants Act 1968. 'We have a moral obligation to them going back a long way', he said, 'and it is unfinished business.'⁷ Senior civil servants at the Home Office were aghast. The director of the Immigration and Nationality Policy Directorate sent Blunkett a strongly worded memorandum urging him to 'reconsider whether any action ... is really necessary'. The document

Nationality policy has been driven mainly by the immigration implications for the UK' and that it 'has, of course, been determined largely by numbers'.

stated in bold terms that 'Nationality policy has been driven mainly by the immigration implications for the UK' and that it 'has, of course, been determined largely by numbers'. The idea in 1981 had been that different forms of British nationality would 'die out within a generation or two', leaving British citizenship as the sole remaining status. However, this policy had been 'eroded over time' by the Falklands crisis, the return of Hong Kong to China and the changing relationship with remaining British Overseas Territories. The memorandum was full of inflated estimated numbers of potentially eligible British nationals who would acquire a right to enter the United Kingdom if Blunkett got his way. The figures were clearly intended to frighten Blunkett into line.

To his credit, he did not give way and that particular wrong was – very belatedly – righted.

Open and closed

British citizenship and immigration policy had been very open in the years before and following the Second World War. British subjects had the right to move to, and reside in, the United Kingdom. And although efforts were certainly made to discourage migration of racialised British subjects from the colonies and New Commonwealth – often referred to as 'informal controls', such as persuading governments not to issue passports or applying an excessively high standard of proof – the right of entry was preserved.⁸ That fundamentally changed with the Commonwealth Immigrants Act 1962. The new closed policy was initially pursued through a contorted legal device that denied some citizens the right to live in their country of citizenship. A Citizen of the United Kingdom and Colonies (CUKC) whose passport was issued by the United Kingdom government itself was permitted entry. A CUKC whose passport was issued by a colonial government was denied entry, even though their passport and legal status was otherwise identical. It was a formalised system of second-class citizenship. The means of restriction were adjusted by the Commonwealth Immigrants Act 1968 and the Immigration Act 1971, but it was only with the British Nationality Act 1981 that the fiction of universal citizenship was eventually ended. Instead, different types of British nationality were created: British citizens would have the 'right of abode' to live in the United Kingdom, but British Dependent Territory Citizens and British Overseas Citizens would not. The 1981 Act also ended birthright citizenship, whereby any child born in the United Kingdom would be British at birth.

Becoming British

Since the commencement of the 1981 Act on 1 January 1983, a child born in the United Kingdom is only born a British citizen if at least one of her parents is settled – meaning possessing indefinite leave to remain, permanent residence, the right of abode or British citizenship – at the time of the child's birth. No application needs to be made and no fee is payable. If or when such a child wants or needs a British passport as proof of their citizenship, they apply for the passport and send in proof that they qualify. There are two other routes by which a child born in the United Kingdom can become British after birth. One is where the child lives continuously in the country for the first 10 years of their life and then makes an application for registration as a British

citizen. The other is where at least one of the child's parents become settled in the UK after the child's birth and an application for registration is made. Neither of these routes is automatic, though. If the application is not made, the child does not become British. A fee must also be paid. At the time of writing, the fee was £1,012. This is equivalent to 116 hours' work on the National Living (minimum) Wage.⁹

A child born outside the United Kingdom is automatically born British if at least one of their parents was a first-generation British citizen at the time of the child's birth. However, if that child born outside the United Kingdom has a child also born outside the country, citizenship is not automatically passed on any further. If a child is born outside the UK and then brought to the UK by their parents, there is normally no route by which that child can become British as a child. The child will need to wait until they turn 18 and then apply as an adult.

The application route for adults to become British is called naturalisation. To be eligible, a period of lawful residence then settled status is needed. The rules differ slightly for those married to a British citizen and those who are not. Tougher interpretation of the character test, a written examination introduced in 2002, has dramatically increased costs in recent years – at the time of writing the fee was £1,330 – and new bureaucracy for EU citizens seeking citizenship has all made naturalisation harder, or even impossible, for an ever wider range of potentially eligible migrants.

Citizenship limbo

All of these routes include exceptions, gaps or deliberate obstacles which mean that not all children living long term in the United Kingdom become British. The requirement that one of the parents hold a certain form of immigration status means that there are a number of children born in the UK, or who moved in early childhood, who are not born British

The requirement that one of the parents hold a certain form of immigration status means that there are a number of children born in the UK, or who moved in early childhood, who are not born British – even if they have never lived anywhere else.

– even if they have never lived anywhere else. This was clearly the intention at the time that the British Nationality Act 1981 was passed. However, the two additional routes – living 10 years continuously or a parent becoming settled – were intended to confer British citizenship on children who would remain in the United Kingdom in the long term. Neither route has been effective: at the time of writing there were estimated to be over 100,000 children born and living in the UK with insecure status.¹⁰ This is partly because parents do not know or understand that an application can be or has to be made, partly a result of the complexity of the application process and partly related to the affordability of the fee. Families on low incomes literally cannot afford for their children to become British. Many of these families are from ethnic minorities.

If a child does not become British or at least acquire settled status before going on to have their own children, those children will inherit their parent's insecure status. Insecure status, and the severe social and economic disadvantages that go with that, has become generational.

Citizens in waiting

In the current political climate, positive and progressive reforms to the immigration system seem far-fetched. The same is not necessarily true of citizenship policy. The issues can cut across political divides and are potentially less loaded. The debate is not overtly about allowing immigrants into the country in the first place so much as it is about what happens to those who are already here, however many that may be.

The last decade has seen politicians explicitly stating they wish to break the link between migration and settlement. I advocate the reverse: migrants should be regarded as citizens in waiting. A less exclusionary and more inclusive approach to British citizenship is needed in which it is seen as desirable for migrants to become citizens. Acquisition of citizenship should never be mandatory, and the incentives should be positive not negative, as was arguably the case with Labour's abortive planned 'earned citizenship' reforms of 2008, which would have denied migrants access to the social safety net unless they undertook voluntary work.

Once migrants are perceived as citizens in waiting, many existing deterrent immigration policies seem unwise. The sky-high immigration fees and other aspects of the hostile environment policy do not work in dissuading migrants from coming to the UK, but they do socially handicap and financially penalise the migrants who do come, doing potentially permanent

damage to their ability to integrate into and thrive within society.

Citizenship of value

Clarifying the rights attached to British citizenship and attaching concrete benefits to it would reassure existing citizens that their status has value, while simultaneously outlining to potential citizens the benefits of joining the political community as full members. Some on the right of the political spectrum have proposed a British Bill of Rights, but they have struggled to define it and give it any real purpose.

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Voting rights, which are not currently linked to citizenship, could be re-examined and the faster route to citizenship for those married to a British citizen could be revived, having been rendered redundant by changes to settlement criteria wrought in 2012. Perhaps controversially but in a similar vein, citizens could be given preferential rights of family reunion over settled migrants, provided that the path to citizenship was fair and did not price out those on an average salary. The criteria for, and use of, citizenship-stripping powers should be reviewed, and the social effects of implicitly designating citizens of migrant parents as second-class, conditional citizens need to be carefully considered and publicly discussed.

Treason laws are undoubtedly problematic and there is a clear risk of their being deployed disproportionately against certain racialised or religious groups, but it is worth discussing whether the revival of such laws might be preferable to and more principled than citizenship deprivation. At least a treason trial implicitly accepts that the citizen concerned is part of the body politic, rather than simply casting that citizen out and forcing some

other country to deal with consequences not of that country's making. While it is hard to see lawmakers relaxing the statutory criteria for acquiring citizenship, there is much that could easily be done to make citizenship more accessible without any need for new legislation. Reducing the sky-high fees is an essential start. A more nuanced approach to the good character test could also be adopted which is less punitive of minor past immigration law breaches and more forgiving of criminal offences committed by children and young people.

Finally, politicians need to face up to the consequences of years of failed immigration and citizenship policies: the creation of a large population of non-citizens and unauthorised migrants. At present, settled status and citizenship are beyond the reach of many in this group. They are not going to be detained and forcibly removed, nor are they going to be persuaded to 'self-deport' through the disastrous hostile environment policy. A large-scale regularisation programme is needed to set these individuals on the road to citizenship.

There are several precedents for such a programme in the United Kingdom, including a 2003 regularisation programme for families and a 'legacy backlog clearance exercise' that was carried out between 2006 and 2010. Some would be concerned that an amnesty rewards past illegal behaviour, and might even act as a 'pull factor' for future unauthorised migrants, who might rationally expect a further similar exercise at some point in the future. Neither of these reasons seems sufficient to justify inaction now, given that the current situation is unfair on citizen and non-citizen alike. No credible politician or public figure could propose the mass-scale detention and deportation of up to 1.2 million migrants.

The fact is that migrants who arrive in the UK for work, family or asylum are here to stay; it is better that they stay lawfully as full members of society rather than as an excluded and illegalised underclass

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SECTION III: COVID-19 AND THE CASE FOR AN IMMIGRATION AND ASYLUM SYSTEM OVERHAUL

4. Lockdown: Immigration detention in the Covid-19 crisis and beyond

Matthew Leidecker, campaigns manager, Detention Action

In early March, as the Coronavirus crisis began to take hold across the country and the world, a man named Sangar was taken to a cell in the 'care suite' of Colnbrook Immigration Removal Centre (IRC) near Heathrow Airport after complaining of a cough and fever. He was tested for Covid-19, but by the time I got through to him five days later, no one had told him whether he was infected or not. Locked up in the care suite, a bleak set of sparse cells with see-through doors usually used for suicide watch but at this point being employed as a makeshift quarantine, Sangar was suffering. But not from necessarily Covid-19. He was terrified, and he had been denied the medication he takes daily to manage his mental health condition. Guards walked freely between the quarantine area and the rest of the centre. No one told him what was happening. No one told him anything. Originally from Iraq, Sangar has lived in the UK for so many years that he speaks with a thick Scottish accent, but after months in detention he faced removal to a dangerous place he does not know. He told me he thought there were 10 others held in the cells around him, but he couldn't be sure. 'This is how the government treats people in immigration detention', he told me. 'Like we don't matter.'

Soon after my conversation with Sangar, the world went into lockdown, a concept he knows all too well. But while the county took unprecedented steps to protect the public from the virus, in our immigration detention centres, at that point holding more than a thousand people, something very different was happening. In the midst of this global pandemic, no one we spoke to in detention centres across the country had been given any information about Covid-19 or advice on how to protect themselves. No one.

In the outside world, much of the coronavirus response was focused was on people who were

particularly vulnerable. At Detention Action, we estimated that possibly half of those in detention were vulnerable adults, many suffering from health conditions that put them at greater risk, but no one came to help them.

Grace, one of our clients, suffers from asthma but, she told us, she had no inhaler and wasn't given one. She was terrified that she would catch the virus and stop breathing in her sleep. Our clients told us consistently of the unsanitary conditions, and the lack of soap for washing hands or even running water in some cases. One told us of the 'catastrophic' condition of toilets and communal showers shared by hundreds. Max, a long-term British resident originally from Italy who had been held for several months in Brook House IRC near Gatwick Airport, told me that a detainee had collapsed with a fever and was carried away, never to be seen again. The day before, that person had been working as a food server. 'The government is leaving us to rot in here', he told me. 'We're pleading for some humanity.'

The stark contrast between what is happening in the outside world and what is happening in our detention centres is entirely in keeping with longstanding criticisms of detention, and it points to a deeper truth – that immigration detention is somehow different, that those held within the system are treated in ways that would be unacceptable in any other context. Last year in parliament, the Labour MP Harriet Harman called out this exceptionalism and how it pervades the treatment of those detained when she described our system as a 'cruel anomaly'.¹

Immigration detention is an anomaly. It involves depriving people of liberty, but not as we know it in the UK in any other setting. In immigration detention, people are detained *en masse* by the government rather than by an independent authority. Their

detention is indefinite, often lasting for many years. Home Office officials wield astonishing unchecked power, not only to detain indefinitely but also to oversee their own decisions to detain.

Caseworkers at the Home Office decide on maintaining detention in complex cases of vulnerable individuals, such as survivors of human trafficking and torture or those with serious mental health problems. In March of this year, an inquest revealed that a man named Prince Fosu had died of hypothermia, dehydration and malnutrition in a cell much like the one in which Sangar was being held for quarantine, despite suffering from a psychotic illness and apparently being closely monitored.² A recent report on the failings in the government's protection of vulnerable people in detention revealed that untrained Home Office staff are even resorting to internet searches in order to try to understand medication taken by vulnerable people.³

While comparisons with the criminal justice system are often unhelpful, it is certainly telling that even in terrorism cases the police must seek approval from a judge in order to question a suspect for more than 14 days. It is often months before someone in immigration detention gets in front of a judge, and at the end of last year the longest detention stood at 1002 days. According to official figures, the Home Office gets it wrong so frequently that last year 61 per cent of those detained had to be released.⁴

How did we get here?

Immigration detention as we know it originated in 1970, when Harmondsworth Detention Centre opened next to Heathrow Airport with a capacity of just 44. The following year, the 1971 Immigration Act established that the lawful purpose of immigration detention was to facilitate imminent removals from the UK, but it crucially failed to impose any limit on how long detention could last or to establish meaningful independent oversight by judges. This would prove to be a pivotal moment. The chance to set down in law the basics of due process from the outset was missed. The Home Office was left to enjoy enormous room for manoeuvre when interpreting and applying its own policy rather than being constrained by statutory safeguards.

Without clear limitations on who could be detained and for how long, detention expanded without much restraint throughout the following decades. During this time, exception became routine and detention became mass detention. In 1999, the Immigration and Asylum Act quadrupled capacity to 4000. Under New Labour, in 2001, detention centres were

rebranded as 'Immigration Removal Centres' (IRCs) and expansion gained pace, with no accompanying development of meaningful safeguards. In May 2008, the government announced its intention to increase capacity by 60 per cent. In pursuit of this goal, Brook House IRC opened in 2009, completing an 11-centre-strong detention estate.

In 2015, immigration detention hit its peak, with 32,744 people detained. In that same year, after mounting criticism over conditions, deaths and overuse, the system met with real independent scrutiny for the first time. Stephen Shaw, the former prison ombudsman, conducted the first government-commissioned review of immigration detention and published a scathing report in which he concluded that '[t]here is too much detention; detention is not a particularly effective means of ensuring that those with no right to remain do in fact leave the UK; and many practices and processes associated with detention are in urgent need of reform'.⁵ Shaw found that thousands of vulnerable people were being locked up in 'unacceptable' conditions. He documented a lack of access to soap and paper towels. He called for the government to drastically reduce its use of detention 'boldly and without delay'.

In 2017, six people died in UK immigration detention centres, four from suicide; 27,348 people were held in total, a modest reduction from the 2015 peak. In April of 2017, a man named Callum Tully got a job in Brook House IRC and began filming undercover for the BBC's *Panorama* programme.⁶ Amid the total chaos of the centre, officers were filmed mocking, abusing, neglecting and even assaulting those held there. It is only now, in May 2020, that a full public inquiry has finally been launched into that abuse.

Writing in the *Guardian* on the day the inquiry was ordered by a High Court judge, one of the victims, known only as BB to protect his identity, made the connection between the fundamental injustice of the immigration detention system and the abuse that he and many others suffered. 'It feels like there are no rules', he said, referring both to the way in which the system detains without restraint or regard for due process and the treatment meted out with apparent impunity by guards. 'The officers who did these horrible things to us in Brook House were simply part of that system', he said. 'No wonder they thought they could do whatever they wanted.'⁷

Time for a time limit

The Windrush scandal broke in 2018, a year in which 24,773 people were held in immigration detention. Revelations of wrongful detention and deportation

shocked the country and exposed the true level of cruelty and ruthlessness in the system. In the same year, Shaw conducted a follow-up to his 2015 review of detention and published similarly scathing findings. He noted that ‘the number of people held for over six months has actually increased. The time that many people spend in detention remains deeply troubling.’ He was damning of the state of hygiene despite his previous critique and recommendations, stating that ‘Delivery of care in sometimes insanitary and unsuitable conditions raises serious concerns’.⁸

In 2019, two parliamentary committees investigated the immigration detention system, published highly critical findings and recommended, among other things, a maximum 28-day limit on detention. Their calls for an end to indefinite detention echoed and bolstered those coming from Detention Action, as well as from MPs of all political parties. In a year of unprecedented political fracture, the time limit for immigration detention was a rare moment of agreement. The Home Affairs Select Committee ‘found serious problems with almost every element of the immigration detention system’. It highlighted delays in decision-making at the Home Office and concluded that without any limits on detention, there was no pressure within the system for swift detentions.⁹

Today, Harmondsworth IRC is part of what is known as the Heathrow detention centre, the biggest in Europe. Its capacity has grown from 44 to thousands. On 1 January 2020, a total of 1225 people were being held across the country’s seven detention centres. Until the Covid-19 crisis hit, it was entirely likely that around 24,000 people would be detained over this year for the third year running.

The lawful purpose of detention is still the facilitation of removals from the UK, but in reality the net continues to be cast wide and the concept of ‘imminent removal’ is routinely stretched beyond any credible point. Members of Freed Voices, the experts-by-experience campaign group and sister organisation of Detention Action, have been held for ‘imminent removal’ for anything from a few months to more than four and a half years, all only to be released.

Covid-19: the case for reform made clear

The Covid crisis has put an end to that in dramatic fashion. Since those early days in the 1970s, the detention system has been used to play fast and loose with terms like ‘imminent removal’, but now, in

2020, with borders closed and travel restrictions in place, it has become plainly obvious that removals will not be possible any time soon in the majority of cases.

The expert medical evidence was clear about the risk to people in detention. Professor Coker, emeritus professor of public health at the London School of Hygiene and Tropical Medicine, warned that detention centres provide ideal conditions for the rapid spread of the virus.¹⁰ He advised that Covid-19 presented a grave threat to life in detention centres and recommended that everyone be released.

Against this backdrop, the justification for holding people in immigration detention was falling away. At Detention Action, we had two principal concerns that went hand in hand: ensuring the safety of those in detention during this deadly pandemic, and pressuring the government release everyone held in immigration detention.

On 16 March, we launched legal action against the government requiring the Home Office to review all cases of detention in light of the Covid-19 pandemic with a view to making releases.¹¹ The principle behind this landmark action was that no one should be held in detention while global travel restrictions prevent the sole purpose of that detention from being carried out and while conditions in detention centres pose such a grave threat to life.

In the virtual High Court on 25th of March,¹² we got a glimpse into what had been going on behind the scenes at the Home Office. Beginning only once our legal challenge had been filed, emails flew frantically back and forth between Home Office officials, putting into place measures for information, sanitation and social distancing. The detention system was definitely behind the curve when it came these most basic protections, but lives were at stake and progress was certainly welcome. An unprecedented 350 people had also been released by that point, and the Home Office announced that the cases of every single person in detention would be immediately reviewed, starting with the most vulnerable.

The government also made significant commitments on measures within the centres, including social distancing and sanitation. ‘That lasted for one day’, Max, the man I’d been talking to in Brook House, told me when I asked him how the measures were working a few days later. He told me that the centre had started staggering people being brought out for meals and had implemented two-metre social distancing, but ‘then everything went back to how

it was before'. A notice to detainees had also been circulated, asking them to stay in their cells for 12 weeks. Still, our clients repeatedly reported a lack of access to soap, and that no masks at all were available to staff or those detained.

In the weeks since the Home Office settled our case, hundreds more detainees have been freed, most returning either to their families in the UK or to approved accommodation. According to the latest available figures, just 368 people remain held in IRCs. Yarl's Wood holds just 13 people, and likely more guards than people to guard. Three cases of Covid-19 in IRCs have so far been confirmed, in Yarl's Wood, Brook House and the Heathrow centres. Given how contagious Covid-19 has proven to be, and the conditions in detention, it seems highly unlikely that no one else has become infected. But the extent of any outbreak remains unknown, as almost no testing appears to have taken place.

Recently, I spoke to Hazir, a survivor of human trafficking with two small British children who has been held in Harmondsworth IRC for three months now. He told me that nine people had been isolated in the centre after showing Covid-19 symptoms, but he didn't know what had happened to them. He told me that still no soap was being provided – some was available in the shop, but if you didn't have any money, you couldn't get any. 'The condition of this place is out of control', he told me. 'It's not like they say it is. They're treating us like animals in here.'

Hazir was frustrated, angry and terrified. He didn't understand why he was still in detention. He wanted to go home to his family, who live in the north of England. He was not the only one. Despite the many people the government had been forced to release, the home secretary Priti Patel has decided to continue with detention against expert medical advice and despite the fact that removals are mostly impossible.

On 18 May, Detention Action launched a second legal challenge against the government over its immigration detention practices during the pandemic.¹⁴ It is surely unquestionable that anyone held in an immigration detention centre in this country has the right to know the basis on which they are being detained. But in the middle of a dangerous pandemic, the Home Secretary was yet to produce the Covid-19 detention policies she says that she has implemented, or the long list of countries she can no longer remove people to. This has left many unable to challenge their detention. Our legal action is focused on forcing the publication of those policies.

As we await the government's response, Covid-19 continues to infect and kill in huge numbers. Our support service, now restricted to a phone line while we are unable to access the detention centres, continues to be inundated with calls from our terrified clients. Those who continue to be detained include large numbers of people with health conditions that put them at a higher risk from Covid-19, and those originally from countries which have imposed travel restrictions. In every case of a desperate trafficking survivor still detained after months, we see the entire shameful history of our detention system. In every story of someone unable to access soap during this deadly pandemic, we hear echoes of Shaw and the many others who have exposed the state of our detention centres, and we remember that we are witnessing not a temporary lapse but the inevitable consequences of a system that is fundamentally unjust. The rotten core of this system has never been so obvious or open to challenge as it is right now.

The 'impossible' made possible

At the time of writing, immigration detention in the UK is down to its lowest level in 10 years and the stage is set for fundamental reform. On 19 May, the Conservative MP David Davis tabled an amendment to the 2020 Immigration and Social Security Co-ordination (EU Withdrawal) Bill that would put in place statutory criteria for detention, provisions for automatic judicial oversight of decisions to detain and a maximum time limit for detention of 28 days.¹⁵ The amendment is now supported by all opposition parties, and the case for reform is gaining momentum once more, but this time against a backdrop of close to 1000 releases in a matter of weeks that has demonstrated just how unnecessary prolonged detention is. Describing the conditions of immigration detention as 'psychologically inhumane', Davis told parliament that 'We should use this opportunity to put right some longstanding injustices at the heart of our immigration system'¹⁶ – namely indefinite immigration detention.

Notes

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5. Sisters not strangers: Refugee women, Covid-19 and destitution

Priscilla Dudhia, policy and research coordinator, Women for Refugee Women

British governments, past and present, have heralded the UK as a country where survivors of persecution are protected and treated with dignity. But these assertions are a far cry from reality. Vulnerable people who have fled war or persecution are made hungry and homeless because of a deliberate government policy designed to push them out of the UK. Women who have already suffered horrific acts of sexual violence in their countries of origin are often sexually abused again in the country they thought would provide them with safety.

During 2019, Women for Refugee Women and our grassroots partners spoke with 106 women from across England and Wales who had been made destitute after filing an asylum application. For our research,¹ we defined destitution as having no statutory financial support or housing, and no right to work. Women from 29 different countries shared their stories with us, in what constitutes the most comprehensive study so far on the effects of enforced destitution in the UK.

All of the women we spoke with had come to the UK for protection. Seventy-one per cent said that they had been tortured and around 60 per cent said that they had been raped in their countries of origin. A quarter of the women came from the Democratic Republic of the Congo (DRC), once described as ‘the rape capital of the world’ by a senior UN official.² One woman we spoke with, Lilly, had been a successful businesswoman in DRC but was imprisoned, tortured and raped by state officials for encouraging other women to vote.

Over a quarter of the women in our sample had been trafficked, including Kiki, who was trafficked from Nigeria:

I was treated like a slave. My main duties were domestic chores and looking after [the] three children. The days were long and strenuous, and I wasn't paid any money. I was forced to survive on one slice of bread or a piece of potato ... Often, I ate my meals in the toilet.

Some women were targeted because of their sexual orientation. Grace, a lesbian from Uganda, was

beaten up at a gay rights protest, but the police arrested her instead of the perpetrators. She was imprisoned for months, during which she was sexually abused by the prison guards. Meanwhile, other women had fled female genital mutilation, forced prostitution or forced marriages. Women like Lilly, Kiki and Grace should have been protected in the UK – but instead they were denied asylum and pushed into a state of absolute poverty

People within the asylum system are effectively banned from working. The measure has been justified by successive governments on the basis that more favourable labour rights might act as a ‘pull factor’ to the UK, even though studies – including research commissioned by the Home Office itself – have failed to produce reliable evidence to support this assertion.³

At the same time, asylum-seeking people are banned from claiming welfare benefits. Our welfare system is often assumed to be based on a principle of security for all, ensuring a basic safety net should anyone in the UK become ill or disabled or fall on hard times. Vulnerable people seeking asylum are not entitled to these benefits and must instead turn to the Home Office for housing, and financial support that equates to £5.39 a day. This meagre amount must cover all daily needs – food, soap, phone credit, period products, and bus travel to charities and to medical and legal appointments.

In general, once an asylum claim is rejected on appeal all support and housing is terminated within 28 days, even if the woman cannot return to her home country due to fears of further persecution. Women who are refused asylum may apply to the Home Office for subsistence and accommodation, but only if they can satisfy the very narrow criteria, such as by demonstrating a physical impediment to travel. The woman usually needs high-quality advice to prove eligibility – an extremely challenging task given the absence of legal aid providers in large parts of the country.⁴

Thus, many people become completely destitute at this stage. Our 2019 research documents the suffering that results when traumatised women are abandoned and deprived of the most basic needs. Almost all of the 106 women we spoke with went hungry while destitute, relying on food banks, charities and churches for meals. Over a quarter of the women said they were hungry 'all the time', and of those who had children, over half said that their children went hungry too.

Almost half of the women had slept on the streets, in night buses or in telephone booths. Rosie, who was trafficked from Nigeria, spent a continuous period of six months sleeping outside while pregnant. Meanwhile, others were forced to 'sofa-surf' with strangers. Over a third of women who shared their stories said they were forced into unwanted, and often abusive, relationships just so that they could get food or shelter. Overall, around a third of those we spoke with had been raped or sexually abused in their country of origin, and then subjected to sexual violence again after being made destitute in the UK. Most of these women felt unable to turn to the authorities for fear of being detained or deported. Given the daily struggle for basic needs and safety, it is unsurprising that a third of the women we spoke with had tried to kill themselves.

Some readers may question why women who have been refused asylum, many of whom endure years of destitution, remain in the UK. Why don't they go home? All of the women we spoke with feared persecution if they were to return to their countries of origin. That was, after all, why they sought refuge in the first place. There was an overwhelming sense of disappointment, frustration and humiliation among the women we spoke with, who felt that their stories of violence had not been believed by the Home Office.

Over the years, numerous reports have indicated a culture of disbelief in the department towards asylum applicants. A report released last year, charting a 15-year history of asylum decisions, showed that the Home Office has routinely placed an impossible burden on people seeking to prove their right to protection in the UK.⁵ In practice, this means that people who are entitled to refugee status are likely to be wrongly refused, and made destitute, because they are unable to meet the very high demands for evidence that decision-makers are placing on them.

Evelyn, who was trafficked to the UK from West Africa, told us:

I was trafficked ... by a man who kept me locked up and raped me. When I managed to get away I claimed asylum, but the Home Office didn't believe what had happened to me. I had no accommodation or support for six years. It was so hard for me. I met a man who said that I could stay with him, but he forced me to have sex with him and abused me in other ways. I didn't want to be with him but I had no choice.

Women are disadvantaged further during the decision-making process because of an insufficient awareness among some decision-makers of the scope and impact of gender-based violence, and specifically how this falls within the purview of the UN Refugee Convention and the UK's obligation to grant asylum. Awareness of the use of rape in armed conflict has developed considerably since the Bosnian war and the Rwandan genocide, with the recognition of rape as a crime against humanity and a crime of genocide by international criminal courts and tribunals. But despite these developments, studies in the UK have shown that asylum-seeking women who have suffered sexual violence often struggle for legal protection, particularly when the abuse is inflicted by family or community members.⁶ One woman in our network, Glory, received a rejection letter from the Home Office stating:

You claim that [he] started raping you as soon as you returned ... and would come every day with bodyguards to rape you. It is considered that these actions you describe are inconsistent with someone who you claim was a family friend.

Complex gender-based claims and an adversarial system make the case for quality legal support even more compelling. But, since 2005, severe cuts have been made to legal aid, such that now it is virtually impossible for a first-time applicant to secure adequate representation.

I was ... locked up by soldiers in Uganda who raped and tortured me because they thought that I was supporting the opposition. [After the Home Office refused me] it made my life in the UK dangerous. I had nowhere to go so I had to sleep outside ... Men abused me and I couldn't tell the police because I was afraid of the authorities after what happened to me back in Uganda. I thought that [I might] be sent back to Uganda where I would be killed. Being homeless made me feel so depressed that I tried to kill myself. I got refugee status in the end, but after so much pain and suffering. (Mary)

The women we spoke with have remained in the UK in the hope that one day their stories will be

believed. Yet fighting for survival on a daily basis, with sparse legal aid, makes it seriously challenging for them to regularise their status and rebuild their lives with dignity.

The enforced destitution of asylum-seeking women must end. In a humane society, no one should be deliberately pushed into extreme poverty. But in order to dismantle policies like the hostile environment and enforced destitution, we must confront the racism that sits at their root.

Some argue that racism requires a conscious or malicious intent, but surely policies should be defined by their effect. Indeed, the Commission for Racial Equality stated in light of the Macpherson Report that ‘if racist consequences accrue to institutional laws ... or practices, that institution is racist, whether or not the individuals maintaining those practices have racist intentions’. The independent inquiry into the Windrush scandal concluded that the failings of the Home Office demonstrated ‘an institutional ignorance and thoughtlessness towards the issue of race and the history of the Windrush generation ... which are consistent with some elements of the definition of institutional racism’.⁸ The report went on to state that the roots of the scandal could be traced back to racially motivated legislation from the 1960s, 1970s and 1980s.

In introducing a system of citizen-on-citizen checks, the so-called ‘hostile environment’ of 2012 marked a radical departure in the way immigration control operated. However, it didn’t mark a radical departure in values. For years, governments on both the left and the right have eroded the rights of traumatised men and women seeking refuge in our country. In 1993, parliament removed the right of people seeking asylum to permanent local authority housing, and capped benefit entitlement to 90 per cent of the standard rate. In 2000, the government created the National Asylum Support Service, such that asylum-seeking people were no longer entitled to access the social security system. In 2002, asylum support was reduced to around 70 per cent of mainstream benefits. The right to work for asylum seekers was removed in the same year. Financial support was then reduced even further, such that now it is slightly over 50 per cent of income support (for those aged 25 and over).

This is not to downplay the devastating effects of the modern hostile environment, but rather to

emphasise that the hostility of our asylum and immigration system far predates 2012. And in times of emergencies, we are seeing the full damaging potential of this hostility, particularly for those with insecure immigration status.

The fact that both the prime minister and the health secretary have contracted the virus is a reminder that the virus does not discriminate. (Michael Gove, 27 March 2020)

Destitute women in our network, who rely on donations from local groups, have faced severe difficulties in accessing food for themselves and their children since the start of the pandemic. Small hardship payments provided by charities, a lifeline for those with no access to cash, are now extremely challenging, if not impossible, to obtain, since most of these women do not have bank accounts. We are hearing from women who are forced to stay in overcrowded housing with strangers and women who are trapped in abusive or exploitative situations in order avoid becoming street homeless and hungry. And we have heard similar concerns from our partners in Birmingham, Coventry and Manchester.

One destitute woman in our network, Sarah, has stayed in various places in London since her asylum claim was refused some months ago. When we spoke with her in April, she had no money, no food and nowhere to stay. The mosque where she had been sleeping had asked her to leave due to concerns about the virus. Women for Refugee Women exhausted all options to secure safe accommodation for Sarah, including by contacting homelessness services. We also contacted multiple hotels, but were informed that they were either full or not accepting anyone other than key workers or referrals from designated organisations. Though a local authority eventually secured a hotel room, Sarah had already spent three nights sleeping outside, on night buses and in a park.

Another woman we spoke with, Maxine, a survivor of sexual violence, has also moved several times since being forced into destitution due to the rejection of her asylum claim over a year ago. Afraid she would become street homeless when the Home Office withdrew her asylum support, she was pushed into an abusive relationship, during which she was raped by her partner. Maxine managed to escape from that relationship, but the severe practical challenges and mental strain of the current pandemic, along with her insecure immigration status, make her vulnerable to experiencing further abuse of this kind. When we spoke with her in April,

she was sleeping on the floor in an overcrowded house. To avoid street homelessness, she was forced to cook and clean for everyone and was sharing her room with a man she did not know. Maxine has serious mental health issues and has tried to kill herself since she was made destitute.

People seeking asylum are *people*, and their humanity, not their immigration status, must be at the core of our response. How did we get to a place where our government purposefully makes women who have been sexually abused hungry, allows them to sleep on the streets and forces them into violent relationships? How did we get to a place where women live lives of hidden suffering like this during a pandemic?

There is no question that the laws which make up the hostile environment, and which enforce destitution, must be challenged. But for more durable change we need a fundamental shift in the way our politicians and the public think about migration. In response to the findings of the Windrush inquiry, a consortium of 16 anti-racist groups called for the Home Office's policies to be investigated to assess whether they are discriminatory.⁹ This would be an important first step towards much-needed reform.

Ultimately, there needs to be a shift in the narrative surrounding migration, so that it is perceived no longer as a new threat but instead as something that has long been a part of the UK's rich and complex history. Around 42 per cent of the women we spoke with for our research originated from countries colonised by the British Empire. Changing the narrative involves confronting our colonial past. In fact, the report on the Windrush inquiry recommends that Home Office 'staff learn about the history of the UK and its relationship with the rest of the world, including Britain's colonial history, the history of inward and outward migration and the history of black Britons'.¹⁰ Knowing this history would help politicians and the public question how racial stereotypes that were created to justify subjugation during the Empire may have influenced the way we perceive migration today, and how we cruelly distinguish between 'wanted' and 'unwanted' migrants.

No one can imagine our experience

How do you know the pain of wearing my shoes unless I tell you?¹¹

At the same time, changing the narrative requires that those who are marginalised be heard. We must support asylum-seeking people, particularly women who are often deprived of a platform, to speak up about their experiences and advocate. There is a need for those who are more privileged, who have access to greater opportunities and resources, to become allies with these women and to be bold – not speaking on their behalf but creating spaces for their stories to be represented in the media, challenging law and policymaking where women are not meaningfully consulted and ensuring that women are supported to lead campaigns that have the potential to impact so greatly upon their lives. It is only when a society listens to all of its people that we can start shifting attitudes from those that view asylum seekers as burdensome strangers to those that simply value human life.

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SECTION IV: ORGANISING FOR CHANGE

6. Building the migrant justice movement

Akram Salhab and Neha Shah, Migrants Organise

The global lurch to the far right has created a series of new strategic questions for the ‘migrant rights’ movement in Britain. Traditional methods of lobbying and awareness-raising appear wholly insufficient in light of an intransigent government intent on escalating anti-migrant policy and sentiments. But what is the alternative to such approaches?

One answer has been to give greater attention to ideas of ‘community organising’ and ‘movement building’. However, precisely what these two terms mean at the current historical juncture remains under-explored and poorly understood, producing political responses of varying effectiveness.

To work out the immediate and long-term strategies for the ‘migrant rights’ movement, we need to understand the approaches currently being adopted, along with their ideological and organisational assumptions. As migration has now become a euphemism for race, this is a critical task for the anti-racist movement too. This chapter sets out some preliminary ideas, in order to advance and develop debate among those to whose work, lives and future it is relevant.

Our chapter will primarily discuss the role of migrant and BME communities from among whom a migrant justice movement must be renewed and led. This inevitably must include the largest, most active migrant communities working in coalition for common cause and via institutions that are politically active and representative. The ‘migrant rights sector’ – NGOs, solidarity organisations and activist groups – has an important yet secondary role in providing infrastructure for the movement.

Community organising

In the contemporary political lexicon, ‘community organising’ is hailed as the solution to a variety of problems currently vexing progressive forces. It refers to the idea that for change to be possible, politics must be remade as an activity in which everybody can be included. The approach is often contrasted with ‘elite lobbying’ – attempts to achieve small campaign wins via media work and policy proposals made

directly to politicians. Community organising is instead a slower process of building grassroots power so communities can define their own problems, design their own campaigns and create organisations that can bring about longer-term, structural change.

The latest usage of community organising has taken place alongside an importation of models of organising from the United States, particularly Saul Alinsky’s method developed in 1930s Chicago. Alinsky’s model outlines a vision of politics which is relational, focused on achievable wins, and which places considerable importance on the role of ‘The Organiser’ to bring about social change. It claims to eschew ideology in favour of a narrower agreement on points of common interest. Alinsky’s main purveyors in Britain are Citizens UK, although other organisations, less explicitly, have also draw heavily from his work, methodology and jargon.

Many aspects of the model – its terminology and strategic approach – have been widely adopted within activism circles in Britain. In the migrant rights sector, community organising has been seen as an antidote to models of service provision that regard migrants as passive recipients of support, instead ‘empowering’ them to take action within their community. There are a variety of community organising training and leadership schemes which have effectively supported individuals to acquire the skills and confidence to take public action.

However, there are a number of disconcerting elements to how community organising is currently conceived. Community organising is often spoken about as a ‘pioneering’ approach, hitherto unheard of and without precedent. Knowledge of its rarefied method is the domain of organisers, who impart information to those they are teaching via formulaic training that looks at power analysis, active listening, strategy and action planning. Although this approach relies heavily on Alinsky-based models (or variants of it), it is presented as universal practice and its particular methods as being intrinsic to community organising per se. This is often accompanied by lazy references to Gandhi and Martin Luther King, who are inaccurately subsumed into this same tradition

defined not by any conceptual or methodological continuity, but instead, by vague references to 'hope' and 'change'.¹

Also introduced into Britain from the United States is a model of intersectionality which seeks to identify and address interconnected social oppressions. This model rejects a singular focus on economic or political issues, insisting instead on the need to confront, equally, other forms of oppression and exclusion such as sexism, racism, homophobia and transphobia (although class oppression is often conspicuously absent). Its advocates borrow heavily from radical women in the African-American tradition, often quoting thinkers such as Audre Lorde. In the charity sector, this model is characterised by a quasi-therapeutic attentiveness to 'self-care' and healing as an antidote to the demanding nature of political work.

As with Alinsky's approach, the main concern is the totalising nature of how this model of political work is presented. Intersectionality's impulse towards inclusivity is much needed, however it is a model of broad-based organising developed in the US context, and yet it is taken, wholesale, as a model for political work in Britain today. Out of context quotations are used to equate systemic analyses of oppression with interpersonal manifestations of discrimination, exclusion and insult. State racism and colonialism become reduced to individual 'white privilege', capitalist exploitation transformed into just another social oppression.² A serious analysis of discrimination and exploitation, both internationally and within Britain, is neglected in favour of an uncritical transposition of US specific conceptions of race and anti-blackness. Altogether this has heralded a move away from traditional notions of active solidarity on a universal basis, towards the less substantive idea of 'allyship' with those who have 'lived experience'.

Both of these approaches, alongside others, almost entirely overlook, and therefore disparage, the rich traditions of community organising in which many groups in Britain are already embedded. As Satnam Virdee has argued, British working-class history is the history of migrant struggles, whose contributions have reinvented class politics by bringing to it new tools and methods of organising.³ While the cultural and economic contributions that migrants make to British life are much vaunted, their political contributions are egregiously passed over. The negation of this history reinforces cultural imperialism and obscures the many lessons that past struggles have for today's activists.⁴

This erasure of historical struggles is accompanied by an invisibilisation of migrant struggles in the present

day: a combination that leads to a denial of the agency of the communities supposedly being 'organised'. Migrant community groups, often without websites or social media accounts, work informally in supporting individuals, building consciousness, arranging commemorative events and organising in support of justice back home. Much of their campaigning output does not receive media coverage, is published only in their language(s) of origin and is circulated to the community, both in the diaspora and back home, via WhatsApp. This hive of activity exists often without knowledge or recognition of anybody beyond these communities.

Within communities there are different strands of emancipatory thought, including socialist, liberal and religious tendencies. These are reformulated by migrants in accordance with the dynamics in the new community. For example, Latin American grassroots unions have revolutionised the British trade union movement by bringing a vibrancy and tactics uniquely suited to the challenge of organising precarious workers in the gig economy. Meanwhile, the Kurdish movement's principles of women's liberation, ecology and direct democracy have reinvigorated the anti-racist movement in Britain and introduced novel critiques of the state into the political mainstream. Both examples (and many more could be given) have innovative conceptions of power, theories of change, organisational structures, and approaches to recruitment and education, as well as internationalist interpretations of justice.

Acknowledging such struggles, both past and present, shifts the terms of the debate on migrant community organising considerably. If the task is no longer to teach or empower communities but to learn from them and take their lead, then the practices required are of a wholly different order. This doesn't suggest an uncritical adoption of every way of doing things, but rather, an acknowledgement of, and positive engagement with, existing forms as a starting point. Reorienting migrant communities as the agent of change would not only bring fresh answers to old questions but throw up new questions and organisational priorities altogether. Why is it that migrant communities and their histories of struggle have been made invisible? What structural impediments – financial, organisational and legal – restrict or misdirect their activities? And perhaps most importantly, what can be done to overcome them?

Very practical organisational principles follow from this. For example, has there been a thorough assessment of existing initiatives prior to creating and launching a campaign? Is the campaign inclusive of those it is

intended to help and oriented towards building on and supporting their work? Does the design of the campaign reflect their values, worldview, language and organising traditions? Is there practical work to retrieve and amplify a community's organising history, rather than offering top-down, off-the-shelf training? Can media coverage be directed to include stories of community resistance rather than just case studies or spokespersons with 'lived experience'? For those committed to building a migrant rights movement, these questions are an essential starting point.

Movement building

Movement building refers to the political work of knitting together local, regional and sectional interests and campaigns into a broader alliance with greater ability to bring about change. Its necessity emerges from the analysis that alone, groups and campaigns are weak, but together, they can acquire sufficient strength to seriously challenge the structures confronting them.

How 'BME' and migrant communities are organised, and how they have been organised in the past, is an important starting point. A brief retrieval of the histories of struggle, of black struggle, in Britain gives us a greater understanding of the organisational questions that groups have faced, and in which direction our energies can be best focused.

The black community – Asian and African-Caribbean – was created in the 1950s and 1960s by a culture of resistance to a racist system that imported their labour while denying them their basic needs in housing, schooling, and social and welfare services. The black community responded to this state neglect and racist policing with a range of radical self-help initiatives, coordinated through organisations such as the United Coloured People's Alliance and the Black Unity and Freedom Party. Their common struggle was amplified through shared projects, news outlets and schools, and drew sustenance from the global anti-colonial revolution, creating 'a beautiful massive texture that in turn strengthened the struggles here and fed back to the struggle there'.⁵

The demise of this unified movement began during the economic downturn of the early 1970s. Sivanandan (among others) attributes this decline to divisions created by state-sponsored urban initiatives that funded and de-radicalised migrant organisations and institutionalised the black community's self-help initiatives. Such strategies sought to disband the unified black culture into its constituent parts, and then offer each group up for integration. The unified political

colour 'Black', a term for all those who wove together their different anti-colonial traditions in a common struggle against racism, was diminished, and the fight against racism became a fight for culture and ethnicity.

These policies of state capture were further accelerated under New Labour and successive governments, all of whom have pursued a policy of selectively funding migrant charities and turning them into marketised companies. These new third sector organisations filled gaps in welfare and service provision that was once provided by the state. Liz Fekete notes the concurrent rise of 'professionalised and well-funded multi-agency counter-extremism and hate-crime "industries" [which] have turned the focus away from collective struggles against racism in all its forms, to concentrate on a narrow struggle against prejudice, hate and bigotry, or a vacuous struggle against extremism'.⁶ This has further quashed what was left of the old social movements and grassroots black community groups fighting for racial justice, especially those that consciously took more radical or unorthodox approaches.

This forced reconfiguration of organising in migrant and BME communities has given rise to a number of struggles within the movement itself. Perhaps the most concerning of these are the differences in the definition of the problem – what racism is, and what it is not – and the object of the struggle – what anti-racism is, and what it is not.

The black community previously organised on the understanding that anti-racism was a collective response to attacks against those most oppressed and marginalised by the state. Increasingly, however, racism is no longer understood as a global structure underpinning systems of exploitation at home and abroad. Campaigns instead set their sights much lower, orienting themselves only against personal racism or bigotry, leaving structural and institutional racism intact. In turn, this leaves so-called 'anti-discrimination' campaigns vulnerable to co-optation by the very institutions that create and enact racist policies.⁷ The movement's previous focus on black 'issues' – matters of national (and often international) importance that connected communities in common struggle – has been flattened into a focus on individual, exceptionalised 'cases': phenomena that only merit attention or resistance from a handful of 'stakeholders' or that advance only the most minimal policy demands.

These divisive strategies have gone hand in hand with the intensification of the hostile environment policies of successive governments and the Prevent legislation,

which together serve a repressive and depoliticising function. Both policies subject racialised people and internationalists to a raft of new threats, some legislative, some implicit, which deliberately intimidate and therefore discourage them from taking part in political activism.⁹ Undocumented workers, student organisers and minorities alike are fearful of making their voice heard lest they be reported to the Home Office or have their institutions targeted by the state.

These policies serve the twin purpose of depoliticising black and migrant struggle in Britain, and fostering divisions between groups. To confront these machinations there is a clear need for unity and the reintroduction of collective strategies in confronting oppression. Without such unity, each group is vulnerable, and their collective demands are weakened and thereby contained. For example, the Windrush scandal was used by some as a means of reasserting distinctions between Caribbean people who arrived as citizens and so-called 'illegal' migrants. The result has been a reinforcing of damaging language around legality and citizenship and, for those affected, an inadequate, poorly resourced compensation scheme.

This task of creating unity requires a reforging of some of the central concepts of the anti-colonial era, and their reinvention to serve the needs of the current struggle. The rise of powerful far-right elements within minority and migrant communities means that shared oppression alone – or common 'lived experience' – will not suffice as a basis for unified action.

Instead, there is a need for slower, careful efforts at re-establishing shared values and approaches to collective resistance. The movement needs to collapse the artificial distinctions between internationalism and domestic concerns and the new tendency towards separate, individualising definitions of racism. Both of these phenomena obscure the reality of the global challenges we face, thereby mischaracterising what is being fought for and which aspects of the struggle ought to be prioritised.⁹ The current approach is leading down a political cul-de-sac focused on ever-narrowing interest-based models that weaken all communities working for justice.

The task ahead is to forge a new internationalist anti-racism built around shared principles – a shared ideology – that draws on and combines progressive traditions from within migrant communities and among British internationalists. There is an enormous history of this in Britain throughout the 1960s, 1970s and 1980s, when many alliances or ad hoc coalitions, including the Black People's Alliance, the Committee

Against Racial Discrimination and many others, were formed to coordinate resistance against colonialism and racism. This tradition re-emerged in the early 2000s in organising initiatives against the illegal invasion of Iraq and racist 'counter-terror' legislation, establishing bodies whose work continues today.¹⁰

Such platforms can establish dynamic debates about shared experiences and histories, as well as about strategy and approach. This facilitation provides the basis for collective action, creating the common ground on which political struggles for justice will be conducted in the months and years ahead.

Notes

1. For more on tracing and uncovering political traditions, see S. Hazareesingh and K. Nabulsi (2008) 'Using archival sources to theorise about politics', in D. Leopold and M. Stears (eds) *Political Theory: Methods and Approaches* (Oxford: Oxford University Press).
2. M. Aouragh (2019) 'White privilege' and shortcuts to anti-racism', *Race & Class*, 61(2), 3–26.
3. S. Virdee (2014) *Racism, Class and the Racialized Outsider* (London: Red Globe Press).
4. There are many excellent initiatives working to reverse this trend by rediscovering black radical history in Britain. The Institute of Race Relations and the Black Cultural Archives are two of the most established, alongside a growing number of other grassroots and academic projects.
5. A. Sivanandan (2019 [1990]) 'Challenging Racism: Strategies for the 1980s' in *Communities of Resistance: Writings on Black Struggles for Socialism* (London: Verso), p. 66.
6. L. Fekete (2020) 'Fault lines in the fight against racism and antisemitism' Institute of Race Relations, 30 January, www.irr.org.uk/news/fault-lines-in-the-fight-against-racism-and-antisemitism
7. See, for example, the British Army's Muslim recruitment drive: M. Hookham (2018) 'Army targets Muslims and women in new recruitment ads', *The Sunday Times*, 14 January, www.thetimes.co.uk/article/army-targets-muslims-and-women-in-new-recruitment-ads-q0qh995dv
8. K. Nabulsi (2017) 'Don't go to the doctor', *London Review of Books* 39(10), May.
9. For example, one cannot make sense of racism against British Muslims without understanding the imperialist objectives of the 'War on Terror', or speak about the racism of Europe's migration policy without referencing the EU's outsourcing of repressive policies to despotic regimes in Turkey and Eritrea.
10. Some examples include the Stop the War Coalition in 2003 (www.stopwar.org.uk) and the Campaign Against Criminalising Communities (CAMPAAC) (www.campacc.org.uk).

7. Organising against data sharing

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What's happening

The ongoing Windrush scandal has made clear how the hostile environment devastates the lives of people subject to immigration control. But the devastation that hit those affected by the scandal goes far beyond this specific group. To understand the full scale of its societal impact, we should also understand the hostile environment as a set of state practices of social sorting and exclusion that could be applied to groups well beyond those believed to be undocumented migrants. And we must also understand the technological capabilities that make this possible.

At the heart of the hostile environment is a web of data-sharing practices through which personal data collected by essential public services is being shared with the Home Office for two purposes: first, to check a person's immigration status and their entitlement to a particular good or service; and second, to allow the Home Office to better target people for immigration enforcement.

These data-sharing schemes essentially span every public service necessary for a dignified life. The Home Office routinely sends information requests to the Department for Education so that it can obtain contact details, including addresses, for children whose parents it suspects have insecure immigration status. When a person owes a debt of more than £500 to the NHS, their personal information is shared with the Home Office for immigration enforcement purposes.

In 2018, it was revealed that over half of police forces in England and Wales have shared information on undocumented migrants with the Home Office. Local authorities are increasingly employing embedded Home Office officials within their children's services teams, and MPs are tipping off the Home Office about undocumented constituents. Banks routinely check current and prospective account holders against a list of people banned from holding an account because of their immigration status, and homelessness charities and local authorities have shared information on homeless people with the Home Office.¹ All of this means that some people have nowhere to turn when faced with illness, destitution or abuse – and the hostile environment itself creates vulnerability to those harms.

The impact on people and public services

Much of this hostile-environment data sharing was initially kept behind closed doors. Over the last few years, investigations by journalists and campaigners have unearthed several formal agreements, in addition to ad hoc practices. Their cumulative impact is significant.

Migrants with insecure immigration status are prevented from accessing essential services, either because they are refused access after a public service is informed of their immigration status or because they fear immigration enforcement as a result of sharing personal information such as their address. This means that parents are afraid to send their children to school, sick people avoid seeing a doctor, and victims and witnesses of serious crime are not reporting to the police.

Children and families are facing destitution because of barriers to support from their local authority, and homeless people are avoiding outreach workers because they can no longer trust them. Migrants' fundamental rights to dignity, physical and mental wellbeing, health, and education are being undermined by this web of data sharing.

At the same time, the professional duties of public servants and the ethos of our public services are changing due to the extension of immigration enforcement to all parts of society. This means that public servants, who have clear duties to people under the Human Rights Act alongside their professional obligations, are being encouraged to view certain groups as objects of suspicion rather than people entitled to confidential support.

Debates about who deserves access to public services are long-running and have never been confined to migrants, with people convicted of crimes or accessing welfare benefits also targeted by media and politicians. One of the many functions of this deserving/undeserving discourse is to narrow the scope of people's entitlement to essential services and establish eligibility testing based on bureaucratic status, rather than on a person's need, as the norm. These debates ignore and risk eroding the crucial standard set down by human rights laws: that there

is a minimum standard of treatment below which nobody should fall, whatever status they may hold.

The so-called ‘universal’ origins of public services, and specifically the NHS, are often referred to in campaigns against the hostile environment. On one hand, to the extent that its founder Nye Bevan set out cogent reasons against charging migrants for NHS care, this is true.² At the same time, this rose-tinted view of universality also glosses over the NHS’s historical and continuing dependence on workers from outside the UK.

The Windrush generation who came to the UK, many of whom were employed in the NHS, came here as Commonwealth citizens. But Bevan’s vision for universal healthcare was confined to the mainland and did not extend to the colonies, the underdevelopment of which was produced by colonisation itself. We should be careful about romanticising the universality of the NHS when for certain British citizens it has never been universal. We should also recognise that the hostile environment has seen the intensification of processes of charging and exclusion which further threaten the relatively wide entitlements that existed pre-2010.

The impact on wider society

These data-sharing schemes and entitlement checks are undermining the aims that are important for all of us, whatever our immigration status. Immigration enforcement may be one of the Home Office’s primary concerns, but this is not shared by many of the essential services that have been co-opted into it, or indeed the wider public.

The protection of patient data and maintenance of trust in the health service; the protection of public health; child safeguarding and education; guaranteeing public safety; reducing homelessness: all of these are policy objectives clearly in the public interest but currently subordinated to immigration control, whatever the cost. Government assumes that ‘concerns about immigration’ are sufficient to justify the hostile environment, but a meaningful and nuanced public conversation about the trade-offs involved – between immigration control and police investigation of serious crimes, for example – has never occurred. Significant public outcry has followed specific cases like the Windrush scandal and that of the pregnant woman who had been raped but was arrested on immigration charges when she reported to the police.³ This shows us that draconian immigration controls do not enjoy uncontested public support when their impact and inherent trade-offs are made visible.

Lastly, the construction of this massive clandestine architecture of data sharing has implications for everyone’s privacy and data protection. First, in order to identify ‘undeserving’ migrants among everyone else, the state has to subject everyone to surveillance. We are all being conditioned to show biometric ID and have our interactions with the state logged in order to access an increasing range of social goods. Second, data sharing bolsters the government’s argument that once we give confidential information to one public service, it may be shared between government departments and public services as they see fit – including without our knowledge or consent, and even when using the data in this way would harm us. This is all happening despite fairness and transparency being two of the cardinal principles set down in data protection law, along with the right to know when our personal information is shared and to object to it being used in a particular way.

Wins

In the face of the many harms caused by these secretive data-sharing schemes, a range of creative campaigns and legal actions have disrupted or stopped such practices entirely.

Health

From 2017, the Department for Health and Social Care had a formal agreement with the Home Office allowing immigration enforcement teams to request confidential patient data from the NHS. Widespread condemnation by NGOs and grassroots campaign groups led to an inquiry by the Health and Social Care Committee and mounting parliamentary pressure from all parties. During scrutiny of the draft Data Protection Act 2018, the government, faced with an amendment that would have prevented further sharing, announced that the agreement would be amended to stop sharing in the vast majority of cases. In November 2018, following legal action brought by the Migrants’ Rights Network, represented by Liberty, the government withdrew the agreement entirely.⁴ Campaigners are still pressing to stop data on people who owe a debt to the NHS being shared with immigration enforcement, to end private sector data brokers’ involvement in NHS immigration checks⁵ and to end the practice of charging migrants for healthcare more broadly.

Education

In 2016 the Department for Education (DfE) announced that schools would be required to ask for children’s nationalities and countries of birth in the termly school census. In the context of a

hostile environment, campaigners feared that the data would be shared with the Home Office and used for immigration enforcement – fears that turned out to be justified. The DfE had initially planned to share this data with the Home Office but amended its agreement to exclude nationality data following public outcry. A collective of parents, teachers, and anti-racism and data protection campaigners formed Against Borders for Children (ABC), supported by a wider coalition of human rights NGOs. They and their allies undertook creative public actions before every census date, including ad-hacks and asking children to draw pictures on the theme ‘Place of Birth, Planet Earth’, encouraging parents and children to refuse to give nationality data to the DfE. They also wrote to parliamentarians, supported children and parents to write to their schools, secured parliamentary debates, joined forces with the National Education Union, and took legal action, represented by Liberty.

The campaign was hugely successful – 200,000 children and parents actively refused to give their nationality data, and schools failed to obtain this data on almost a quarter of pupils. In April 2018, the DfE announced that nationality and country-of-birth data would no longer be collected. ABC is still campaigning for the nationality and country-of-birth data that was collected to be deleted, and for an end to the sharing of children’s addresses with the Home Office.⁶

Homelessness

In May 2016, the Home Office introduced a policy that declared rough sleeping an ‘abuse’ of EU treaty rights. This meant that immigration enforcement teams were able to arrest, detain and deport homeless EU migrants just for sleeping rough. In 2017, it emerged that the Greater London Authority hoped to support this targeting of EU nationals by aggregating data on their locations and sharing this on a monthly basis with the Home Office in the form of a map. It stopped using data in this way in response to public pressure.

Homelessness outreach workers from charities such as Thames Reach and St Mungo’s accompanied immigration enforcement teams on ‘joint shifts’. A complaint to the Information Commissioner’s Office found that St Mungo’s had likely passed on personal client information to the Home Office. North East London Migrant Action (NELMA) led a creative campaign against the charities complicit in implementing the policy, and the Public Interest Law Centre took legal action against it. In 2017, the policy was declared discriminatory and unlawful.

In 2019, it emerged that the Home Office and others had once again tried to turn homelessness workers into border guards through a mechanism known as the Rough Sleeping Support Service (RSSS). Freedom of Information requests by Liberty found that the Home Office was attempting to find a way to allow outreach workers to pass on rough sleepers’ personal information without their consent. The result would have been that migrant rough sleepers’ cases were prioritised for resolution within the Home Office – leading to potential enforcement action after accessing homelessness support, in some cases.⁷ The status of the RSSS is currently unclear.

Where next?

Firewall

Data collected by essential public services must be completely separated from Home Office immigration enforcement functions. This separation is commonly referred to as a firewall. In addition to the ongoing campaigns in health and education, policing is an important front in this regard. In 2018, it was revealed that more than half of police forces have shared victims’ or witnesses’ data with immigration enforcement.

In response to campaigning by the Step Up Migrant Women coalition, led by the Latin American Womens’ Rights Service, the National Police Chiefs’ Council (NPCC) introduced a Council Paper on what officers should do when they encounter an undocumented victim or witness of crime. Unfortunately, that paper stated that it was ‘entirely appropriate’ that an officer should refer someone to immigration enforcement if they are undocumented. In response to two legal challenges, brought by Liberty and a private practice law firm, the NPCC withdrew that paper and an amended version is due to be prepared.

The Metropolitan Police has its own policy. Liberty is acting on behalf of an individual affected by the policy in a judicial review challenge, arguing several grounds, including that it breaches her human rights. Southall Black Sisters and Liberty have also submitted a joint super-complaint arguing, in part, that police policy and practice in this regard is incompatible with human rights. An investigation into that super-complaint is ongoing. Liberty’s Care Don’t Share campaign⁸ is calling for a firewall across health, policing and education, so that everyone can access support without fear.

Immigration exemption

The Data Protection Act 2018 contains a sinister new exemption allowing data processors to set

aside a person's data protection rights when their data is processed for immigration control purposes. This means that a whole host of entities – NHS Trusts, homelessness charities, police forces, private sector data brokers or the Home Office – do not necessarily have to fulfil a person's data protection rights in that instance. This exemption makes it much easier for a person's data to be shared between different processors without their knowledge or consent, and harder for a person to access data that is held on them.

While Liberty and other organisations fought hard for the clause to be removed from draft legislation, MPs unfortunately waved it through.⁹ A legal challenge against the exemption failed but is currently being appealed. Repealing the exemption is especially important as the government is attempting to build a massive database that will make it easier for essential public services to check a person's immigration status in real time, in order to lock them out of access and potentially flag them for immigration enforcement action at more or less the click of a button.¹⁰

Conclusion

It has taken a long time for the technological underpinnings of the hostile environment to be fully unearthed, and their impact on human rights, as well as the impact on public services and society, is still not as widely known or understood as it should be. However, we have learned several things from the last few years of campaigning. First, migrant rights activists, and indeed all social justice activists, should work towards digital literacy. New technologies are the means by which old state logics and practices are implemented. Second, a multi-faceted, coalition-based approach has – through teaming up with grassroots groups, strategic legal challenges, creative protest, political lobbying and uncompromising messaging – achieved impressive wins in the face of an unpromising public mood and difficult parliamentary arithmetic. Third, working at the intersections of what are often traditionally understood as totally siloed areas (data protection, immigration, policing) is absolutely vital in order to get out ahead of harmful policies. Lastly, policies and practices that have an especially negative impact

on racialised groups are all too often trials in state practice with a hugely negative impact on the civil liberties of all of us and must be resisted on these grounds too.

Notes

1. G.M. Bradley (2018) *Care Don't Share. Hostile Environment Data-Sharing: Why We Need a Firewall between Essential Public Services and Immigration Enforcement* (London: Liberty), www.libertyhumanrights.org.uk/wp-content/uploads/2020/02/Liberty-Care-Dont-Share-Report-280119-RGB.pdf
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10. S. Marsh (2019) 'Government immigration database "deeply sinister", say campaigners', *Guardian*, 10 April, www.theguardian.com/uk-news/2019/apr/10/government-immigration-database-deeply-sinister-say-campaigners

SECTION V: LOOKING TO THE FUTURE

8. Movement minus discrimination: A global migration lottery?

Omar Khan

Introduction

This series of essays has shown us that immigration and citizenship policy is shaped by public sentiment and political expediency.

The way that immigration intersects with ideas of nationhood – who is included and who is not – lends itself to polarisation. For restrictionists, immigration policy is a tool that should be used to define the nation, and to protect its character and culture. For more liberal, libertarian or radical thinkers, immigration policy connects – or should connect – a theory of domestic justice and a theory of global justice. That is, what do we owe our current and future citizens? And how do we build border policies in an unjust world with unjust institutions?

Even if they do not explicitly advocate ‘open borders’, more liberal or radical immigration policy proposals are concerned with how current global injustices (should) allow states, especially better-off states and states with a history of colonialism, to apply immigration controls in a way that accords with justice.

This series of contributions makes it clear that our immigration policy is *not* pragmatic, evidence-based, consistent or fair to those who experience it. This chapter outlines the foundations of an alternative. It seeks to make a positive case for a more liberal approach to immigration and links that case to the need to avoid, as far as possible, racial discrimination in immigration policy. It seeks to answer the question: what could a just migration system look like?

Dystopian and un-implementable: Current immigration policy

In Britain and elsewhere, immigration restrictionists have sought to depict their opponents as hopelessly utopian or even anti-national by associating all of them with an ‘open borders’ position. This is a clever tactic, as few outwardly support open borders and everyone is aware that such a position is out of sync with public opinion.

Yet this tactic obscures a deeper truth: even *current* restrictionist policies are ineffective and do not work *on their own terms*. Restrictionists advocate un-implementable policies that are hopelessly utopian, or perhaps dystopian, which end up undermining public support for immigration policy more generally. Restrictionism isn’t just inhumane: it’s also almost impossible to implement as a policy programme, with widespread negative consequences. This volume has provided numerous examples of the dysfunction at the heart of our immigration system and the ruin these policies cause for the people and families at the sharp end of them.

Take the ‘immigration target’, ostensibly UK government policy for nearly a decade. This ‘tens of thousands’ target – that immigration should remain at net 99,000 or below – never came close to being met, with net migration exceeding 200,000 for most of this period and peaking at 336,000.¹ If the government had been serious about this ‘tens of thousands’ figure, they would have had to implement much more severe restrictionist policies. They knew this would cause economic damage and human suffering and so didn’t implement the policies that would have achieved their magic number.

A similar story holds for the harsh rhetoric we hear about ‘illegal immigration’ and the efforts to detain or deport or expel ‘illegals’. Here too, rhetoric and bluster cannot hide the fact that existing policy on irregular migration is failing, and that push factors drive and will continue to drive the movement of people around the world, however tough ministers or newspaper editors talk.

Although existing immigration policy is impossible to implement, ineffective and unfair, that doesn’t make the positive case for a different, more liberal immigration policy. The final sections of this report make that case, but first it’s worth considering if and how EU free movement offers a template for wider reform.

From EU free movement to open borders? What the EU can and can't teach us

Leaving the European Union appears a major setback to achieving a more liberal immigration policy. However, we should not overstate the progressive nature of the EU. Free movement does not address the question of how free movement for Europeans connects to the global movement of people beyond Europe in the medium- to longer-term. Some reasonably suggest that European free movement is connected with, if not predicated on, the 'Fortress Europe' approach that excludes people of colour from the continent. Two further interrelated issues haven't received sufficient attention from either advocates or critics of the European Union.

Pro-Europeans were and are more focused on the establishment of the European Union and of free movement within it; the aim, perhaps understandably, was to expand and deepen European Union policies and institutions. At an intellectual or values-based level, many affirmed liberal, democratic and internationalist institutions and values as *universal* – a claim that was especially clear among those who saw the institutions, policies and values of the European project as a rebuttal to the evils of the Second World War. There was relatively little consideration of how these values would expand beyond Europe and how the EU would facilitate that (if at all).

Although some advocates of European free movement may have thought it was a stepping-stone to global free movement, there was little outright support for such a view and still less explanation for how that shift to global free movement might occur. Would the European Union be followed by regional free movement within the African Union or an Asian union, and would that then ultimately lead to global free movement? How would all those unions and migration policies come about, and would those regional or continental forms of free movement necessarily end up justifying global free movement? And if this was the aim, where was the movement or argument to pursue it?

As Colin Yeo outlines in Section III, citizenship can clarify rights and give concrete benefits, such as joining the political community of a country as a full member. For EU nationals living in another Member State, their specific citizenship in their

'home' country meant that they were unable to exercise full or equal rights in the country they moved to. This falls short of the post-national citizenship some believed the establishment of the EU would eventually create. The post-national ideal is that people could hold and exercise rights to participation without needing to share or belong to a nation; that a multi-ethnic and multi-national state could and should in theory and practice better realise the aims of citizenship.² However, participation in the labour market does not equate to citizenship, 'post-national' or otherwise.

In Britain, theorists such as Stuart Hall have long been critical of the exclusionary nature of national identity and argued for more pluralist (including diasporic) conceptions of membership and belonging.³ Such models do not necessarily correspond to or dovetail with European Union membership, but it is hard to see this wider tradition being strengthened as Britain leaves the EU. In the present, the European Union is perhaps the closest real-world example of post-national citizenship, however embryonic and exclusionary, and however much it could and should be strengthened by building on Hall's internationalist arguments.

Racial discrimination in immigration

As it stands, our immigration policy results in direct or indirect discrimination. Many would go further and say that the *intent* of immigration policy is racially discriminatory – an argument that has been taken up not just by anti-racists but by critics of the European Union.⁴ As Maya Goodfellow outlined in Section I, evidence for such a claim is not hard to find in the historical record. It can be found in the 1905 Aliens Act and its focus on European Jews, or Labour MPs writing to their prime minister Clement Attlee when the *Empire Windrush* docked at Tilbury in 1948, during the debates over the Immigration Acts of 1962, 1968 and 1971, or when the Conservative government passed the 1981 British Nationality Act.

As discussed above, it is true that EU free movement is in part driven by what has been called 'Fortress Europe', an effort to keep out migrants from Asia and Africa, leading to thousands of deaths in the Mediterranean Sea, North Africa and West Asia. But there are three reasons why a focus on the EU as the source of racial discrimination is misleading.

First, as explained throughout this volume, Britain's discriminatory immigration policies predate our

membership of the European Union and have roots in the racial hierarchies of the British Empire. Second, not all Europeans, and not all Europeans in the UK, are white. In fact, the proportion of people of colour among people born in Europe and living in the UK (9.5 per cent) is higher than the proportion of people of colour among all people born in the UK (7.8 per cent).⁵ That is, Europeans living in the UK are more likely to be people of colour than are people born in the UK; if you want to say 'European = white' you must then also conclude that 'British = white'. Ignoring the larger proportion of non-white Europeans may be a good debating tactic, but it's not very serious analysis.

Lastly, 'non-EU' is not a useful category for analysis and masks marked inequalities between countries. There is no such thing as 'non-EU' migration; all that unites migrants to the UK from outside the EU is that free movement doesn't apply to them. Migrants from Australia and Angola are not treated the same, whether in terms of visas or their ability to demonstrate income requirements (people from a less well-off country are obviously going to find it more difficult to amass the financial requirements of current policy). Furthermore, on arrival in Britain, the hostile environment policies don't affect all migrants, or even all 'Commonwealth' migrants, equally. As the government concedes in its 'right to rent' policy, landlord checks result in racial discrimination, but the government defends that discrimination as a proportional consequence of a legitimate immigration policy.⁶

If a British government were serious about ending racial discrimination in our immigration policy, it would first have to repeal the exemption in equality legislation that allows for the above justification of the hostile environment, including in the right to rent. It would then appeal the racially discriminatory 'patriality' clauses of the 1971 act and reintroduce the policy of birthright citizenship that was overturned in the 1981 act. Furthermore, the immigration system would need a systematic review and overhaul of how its decisions, culture and outcomes result in racial inequalities, and how far the spirit – as well as the letter – of equality law was being followed.

Finally, there is a need to consider how far any migration controls can be non-discriminatory, particularly in light of Britain's colonial history and the wider consequences of European colonialism – namely, that global economic inequalities are extensive and are not randomly distributed. When the UK or any other country adopts economic

criteria for migrant entry, the effect is to prefer migrants from wealthier countries. And given that global inequalities of wealth are (in part) a consequence of colonialism, which itself was a political and economic system underpinned by racial inequalities and racism, such migration policies are tainted by racial discrimination and its ongoing consequences.

A global lottery, based on need

We need a new plank of migration policy. In current policy framing, there are two kinds of migrants: economic migrants and refugees. In the crudest distinction, economic migrants are moving 'merely' for a better life but could happily remain in their country of birth, while refugees are 'genuinely' facing threats to their lives. This distinction has never been fully accepted by philosophers or migrant rights groups, especially the notion that 'economic' constraints are never life-threatening enough to justify refugee status, but it is increasingly under strain, especially with the contentious concept of 'climate refugees'.

Nevertheless, the distinction continues to drive immigration policy. Asylum seekers and refugees are treated very differently (though not always fairly or humanely) by the British and other states compared with 'economic migrants', and it is unlikely that this framework will change very soon. Furthermore, while the distinction itself is often overstated, there is a difference between people who have to flee to survive and those who choose to move voluntarily.⁷

At the same time there is also a normative argument committed to tackling the unequal and unfair distribution of resources, benefits and burdens globally. This is more usually framed in terms of issues such as reparations, apologies or economic development, and less frequently in terms of migration policy.

Yet migration is the site where domestic social justice and international social justice could, and should, meet. What we owe our fellow citizens in a democratic country may be different from what we owe those living in other countries; however, we do owe them *something*, especially where we benefit from a system of global inequalities. When we think of migration policy, we should see it as a way to redistribute global benefits and burdens.

Two policy proposals are possible: first, to seek to expand the notion of 'refugee' to encompass a

much wider group of people, namely all of those living below a certain income threshold (a global poverty line? The global median?) around the world; second, to acknowledge the injustice of current global inequalities and to seek an alternative migration route or policy in response to it.

How would this policy work in practice? Ideally, every wealthy country would agree a 'quota' of people who could move from less well-off countries to better-off countries, determined by a weighted lottery (those with higher incomes having less of a chance of entry). OECD countries contain roughly one in five of the world's population (1.3 billion people), and if each accepted, say, even 0.1 per cent of their population from the least wealthy 20 per cent of the global population that would result in 13 million more people moving every year.

This policy would not replace but would instead be in *addition* to existing migration routes and policies, and separate from refugee and asylum policy as well as any 'points-based' or other system for addressing labour market migration, or indeed students or family reunification.

If, as is likely, such a policy is not advanced globally, it is still possible for any country, including Britain, to adopt it nationally. One important consideration is that the policy would need to be based on ensuring that such migrants ultimately have a better life and are afforded opportunities to benefit themselves and wider society. This would impact both on the way the policy is administered in terms of selection (people wouldn't be *forced* to move if they didn't want to) and in terms of ensuring migrants' equal life chances and integration on arrival, including but not limited to English language provision where appropriate, and explicit affirmation that robust anti-discrimination laws and principles should be the basis of our society (a lesson that should be extended to everyone in the UK). Initially, the numbers might be in the thousands or the tens of thousands, but the aim would be to scale it up in such a way that all better-off countries agree with the argument for adopting it and so begin to better tackle global injustices.

Conclusion

This is admittedly a blue-skies policy proposition. It is unlikely to be implemented any time soon and will be objected to by both restrictionists and advocates of open borders. But as I outlined earlier, we should be clearer and bolder about the fact that restrictionists are utopian in the bad sense of the word: their policies are fantasy, and they know they it.

We should also recognise that open borders are utopian, albeit in a less bad sense: they are very unlikely to happen any time soon, and policy is in fact going in the opposite direction. If we are to build public awareness of the extent of violence and racial discrimination involved in current immigration policy, and if we seek to move not just public debate but actual policy in a less harmful, less discriminatory direction, we need to think practically about how we might start to do that.

This may seem a hopeless task as Britain leaves the European Union, a project underpinned by a commitment to free movement. Yet at the same time the European project did not develop a fully non-exclusionary account of belonging or citizenship and instead has ratcheted up border restrictions despite the human suffering on its doorstep.

We need to redouble our efforts to defend refugee and asylum policy, to support the principle of humanitarianism and duties of aid. But we also need to be bolder in affirming the basic fact that 'people move, they always have and they always will'. We can and should view migration policy as a way of achieving global justice, including tackling racial discrimination, without which we cannot achieve justice at home.

Notes

1. BBC News (2017) 'Immigration: Tories to keep "tens of thousands" target', BBC, 8 May, www.bbc.co.uk/news/uk-politics-39840503
2. O. Khan (2019) 'Reply: Can a post-national vision better tackle racial discrimination than a national one? Response to Adrian Favell: "Brexit: a requiem for a post-national society?"', *Global Discourse* 9(1): 169–173, www.ingentaconnect.com/content/bup/gd/2019/00000009/00000001/art00018/suppdata;jsessionid=ierqi44axi7j.x-ic-live-03
3. S. Hall (1989) 'Cultural identity and diaspora', *Framework* 36: 222–237, www.lwbooks.co.uk/sites/default/files/free-chapter/Stuart%20Hall_Cultural_Identity-and_Diaspora.pdf
4. M. Andrews (2019) 'EU freedom of movement rules branded "racist" by Shrewsbury MP', *Shropshire Star*, 14 October, www.shropshirestar.com/news/politics/2019/10/15/eu-freedom-of-movement-is-racist-mp
5. Office for National Statistics (ONS) (2011) 'Country of birth by ethnic group', UK Census 2011 data, www.nomisweb.co.uk/census/2011/lc2205ew
6. *Secretary of State for the Home Department v. R (Joint Council for The Welfare of Immigrants)*, [2020] EWCA Civ 542, www.bailii.org/ew/cases/EWCA/Civ/2020/542.html, as discussed in C.J. McKinney

(2020) 'Government wins right to rent appeal', Free Movement, 21 April, www.freemovement.org.uk/government-wins-right-to-rent-appeal

7. D. Owen (2020) *What Do We Owe To Refugees?* (Cambridge: Polity Press).

Recommendations for change

This volume is wide-ranging in what it has explained, interrogated and suggested. Eight contributions cannot cover every facet of immigration policy, but what they have highlighted is that our immigration, asylum and citizenship policies are not working. People move and will continue to do so, and government policy should reflect this reality. Currently it does not. Major reform is urgently needed.

The recommendations made in the *Windrush Lessons Learned Review*¹ address many of the issues raised in this volume.

This includes:

- A full review and evaluation of hostile environment policies, individually and cumulatively, with reference to equality law and particularly the Public Sector Equality Duty (PSED) to assess any discriminatory effects.
- For Home Office officials to better understand and provide internal training on the Equality Act 2010, the department's PSED obligations and the Human Rights Act 1998 and its intersection with immigration and nationality law. This should be achieved via a structured programme of training and development for all immigration and policy officials and senior civil servants.
- The Home Office should devise a programme of major cultural change for the whole department and all staff, aimed at encouraging the workforce and networks to contribute to the values and purpose of the organisation and how it will turn them into reality.
- For Home Office officials and the government 'to tell the stories of empire, Windrush and their legacy' and Home Office staff to undergo comprehensive training drawn up by academic experts about the history of the UK and its relationship with the rest of the world, including Britain's colonial history and migration.
- Reduce the complexity of immigration and nationality law, immigration rules and guidance.

The government should implement the recommendations of this Review as a matter of urgency.

Citizenship

- A healthy democracy requires maximum, non-discriminatory participation. Yet a significant segment of the UK population continues to be excluded from national life. A wholesale review of British nationality and citizenship laws is needed to ensure they are fit for purpose and enable participation.
- Birthright citizenship should be reintroduced and the good character requirement removed for children and adults.
- The punitive costs associated with naturalisation should be reduced, with fee exemptions put in place for children in local authority care.
- New guidance for all public authorities should be drawn up to identify children who may be entitled to British citizenship but are currently not registered, particularly those in local authority care.

Asylum and detention

- People seeking safety need access to adequate support. Yet they are banned from working while they wait months, and often years, for a decision on their asylum claim and pushed into destitution on just £5.39 per day or with no recourse to public funds (NRPF). NRPF should be scrapped and the ban on working while an asylum claim is being processed should be lifted.
- Detention has expanded too quickly and with too little oversight. There should be statutory criteria for detention, provisions for automatic judicial oversight of decisions to detain and a maximum time limit for detention of 28 days.
- Covid-19 has made it clear that alternatives to detention are possible and desirable. The government should continue to invest in alternative, community-based pilot schemes and expand this work.

The hostile environment

- Public services should be a public good not an enforcement tool. Enforcement stops people from accessing the support they need, leaving them with nowhere to turn when faced with

illness, destitution or abuse. It discourages the reporting of crimes by victims and witnesses. A firewall should be put in place – data collected by essential public services must be completely separated from Home Office immigration enforcement functions. The exemption in the Data Protection Act 2018 for immigration control should be scrapped.

- The hostile environment has caused extensive harm. It should be scrapped.

NGO, charity and research sectors

- Campaigning for change is most effective when it's a collaborative effort. The NGO, charity and research sectors should think critically about how it works.
- These sectors should question when they are best placed to use their platforms, when to support others to access them and when to pass opportunities on.

Note

1. W. Williams (2020) *Windrush Lessons Learned Review* (London: Home Office), www.gov.uk/government/publications/windrush-lessons-learned-review

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