

Notes and Commentary

Sovereignty, Legal Regimes, and International Migration

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INTRODUCTION

Economists identify three factors of production: natural resources, human resources, and capital. While natural resources are finite, capital and human resources are transferable to where they may best be utilized. Capital may now be moved across global markets within a matter of seconds. In stark contrast, however, the movement of human resources remains highly regulated, as states jealously guard their sovereign right to control the entry and stay of foreigners. The issue of international migration presently poses vexing questions in virtually every industrialized state. On the one hand, many need migrants to maintain their labour force, given their aging population and low fertility rates. Yet on the other, fear of attacks by the far right, community insecurities, and complaints of job losses, coupled with an increase in asylum seekers and undocumented migrants, has left policy makers floundering.

The new stream of international law theory takes the techniques of critical legal thought onto the international stage. By emphasizing the structure of theoretical and doctrinal arguments within international legal discourse, new stream lawyers seek to unravel the inherent contradictions, antinomies, dichotomies, and the oppositional nature found within international law. For new stream lawyers, the oppositional structure of international law is the result of the contradiction inherent in the concept of state sovereignty – while sovereignty has the positive aspect of state independence, autonomy, and authority, it hinders states from asserting their juridical equality, interdependence, and community responsibilities. Thus,

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state sovereignty both confirms and confines state authority (Beck et al., 1996: 227-228). In the words of new stream's pioneer, David Kennedy (1980: 361), "individual nations find in socialization both the source of their identity and a threat to their existence".

Krasner (1982: 185) defines an international regime as the "principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area". In the international system, such legal regimes help to regulate a number of international policy issues, such as global warming, disarmament, and trade. However, international migration offers an ideal case study of a global concern where legalists fail to recognize the link between law and politics, and where an instance of sovereignty prevails. The emphasis of this paper is to argue that two regimes have influenced the regulation of international migration since the nineteenth century: economic factors and human rights. State sovereignty and domestic politics confine both regimes, and ultimately restricts the formulation of international responses.

STATE SOVEREIGNTY

Universal prescriptions protect the rights of migrants to emigrate from their home country and to allow them to return,¹ although they are not always respected, as demonstrated by the practices of socialist states. However, the right to enter another country is not explicit, historically being the preserve of sovereign states or sometimes called the "last major redoubt of unfettered national sovereignty" (Martin, 1989: 547). This prerogative of states was affirmed in the 1881 *Musgrove v. Chun Teeong Toy* decision by the Privy Council, and in the 1892 *Nishimura Ekiu v. United States* case where the United States Supreme Court found that:

It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.

Governments continue to intone the necessity for state sovereignty when addressing issues of migration (Martin, 1997:155). That this maxim is still at the core of questions related to migration is reflected in the following:

Governments of countries of destination should respect the basic human rights of documented migrants as those Governments assert their right to regulate access to their territory and adopt policies that respond to and shape immigration flows (ICPD, 1994).

While no state appears to accept unlimited migration, state practice has long favoured the admission of qualified migrants, notwithstanding periodic outbreaks

of xenophobia (Nafziger, 1983: 833). Thus, state sovereignty poses the type of barrier that new stream theorists note, for while the process has been global, the legal frameworks in place to deal with migration have been nationally oriented, diverse, and fragmented.

LEGAL REGIMES REGULATING INTERNATIONAL MIGRATION

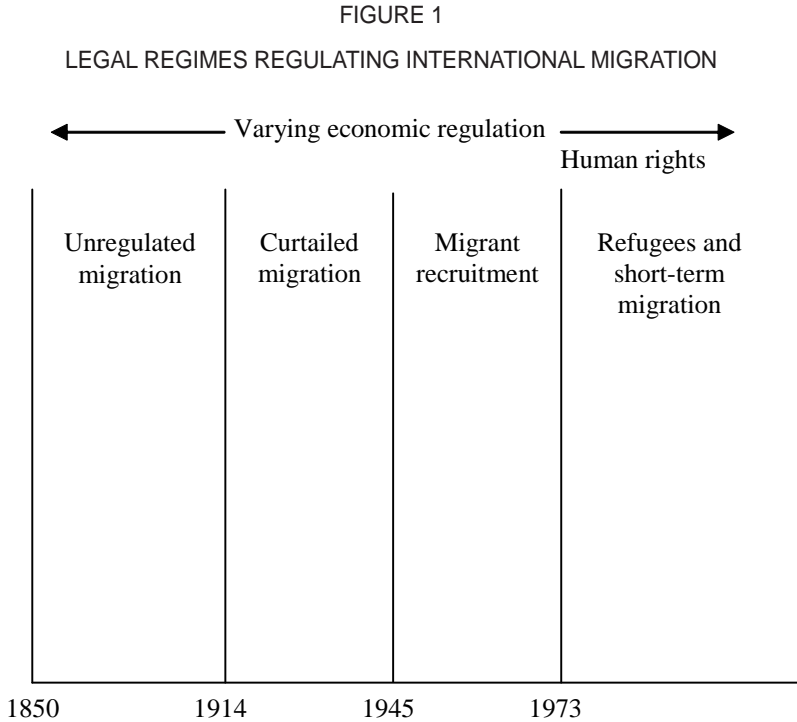
Although humans have migrated since time immemorial, driven by a combination of fear and reward, it was not until the 1800s that mass migration began. Immigrants have made major contributions to receiving states, despite being a source of constant debate and mistrust. There continues to be a steady stream of people wishing to move to developed parts of the world. The issue in migration is, therefore, not whether people want to move; rather, it is whether states are willing to accept them. This increased mobility of people is set against the backdrop of a growing global population. Since the nineteenth century, global population has increased substantially from less than 1 billion in 1800 to more than 6 billion presently, and United Nations projections suggest a global population of approximately 9 billion by the year 2050 (United Nations, 2000: 11). In a world divided between prosperous countries with an ever-aging and shrinking population, and the poor states of Asia, Africa, and Latin America with relatively youthful populations, migration is an international challenge that needs to be addressed.

Changing policy and legislation of host nations has affected migration patterns over the last century. Within the confines set by state sovereignty, two types of legal regimes have evolved to address the issue of the long-term admission of aliens into a country. The economic-based regime was for a long time characterized not by the types of law in place, but rather the lack of it. For a considerable part of the last century or so states took a *laissez-faire* approach to migration. Over time, states altered the use of economic arguments providing the flexibility that allowed them to promote or restrict migration as the economic, social, and political conditions allowed. While this regime is beholden to events occurring at the domestic level, developed countries have followed similar rationales in justifying their migration legislation on economic grounds during certain historical periods.

Despite international law making little progress on migration issues, the subfield of refugees has been prominent in the discussion of the movement of people in recent years. The human rights regime, of which refugees are a cornerstone, has risen in prominence over the last decade or so as the number of refugees, and those seeking asylum, have increased. As will be shown, however, state sovereignty limits the extent that states fulfil their obligations toward refugees.

The rest of this paper sketches the development of the two regimes in relation to international migration. Major legal shifts occurred at significant historical junc-

tures in the international system, such as the two World Wars and the 1973 oil crisis. Figure 1 elucidates the responses during that time into four distinct periods. In doing so, the paper places into context current debates in developed countries on illegal immigrants, refugees, and the need for more migrant workers, and explicates why finding an amicable solution seems currently outside the grasp of policy makers.



Unregulated migration (1850-1914)

The period between 1850 and 1914 is characterized as an era of largely unregulated mass migration from Europe to North and South America, and Oceania. The industrial revolution, improvements in transportation and communication, and a significant increase in the rural population throughout most of Europe facilitated the process. Analysts differ on the scale of migration between the nineteenth and early twentieth century, with estimates ranging from 60 million Europeans leaving between the mid-nineteenth century and 1939 (*The Economist*, 1997: 115), 40 million between 1800 and 1930 (Desclôitres, 1967: 22), and 46 million people between 1840 and 1920 (McNeill, 1984: 17). Through this process, European

migration significantly contributed to the maturation of Western capitalism and the emergence of the Atlantic world-system (Morawska and Spohn, 1997: 25).

During the course of the nineteenth century, the free movement of individuals was an accepted norm. Receiving states took a relatively *laissez-faire* approach to migration, as they required workers for economic development. Migration to the United States, for example, was unregulated until the 1880s,² with American employers organizing campaigns to attract employees. While racial exclusion laws³ kept Chinese and other Asians out from the 1880s onwards, entry for Europeans and Latin Americans to the United States remained free until the 1920s (Castles and Miller, 1998: 56).

Migration to other regions of the world was also largely unregulated. Stimulated by the gold rush, Canada took in a large number of immigrants. The Government of the day encouraged migrants to settle and farm the prairie areas. Between 1871 and 1931, Canada's population rose from 3.6 million to 10.3 million. Immigration was also a crucial factor to Australia's economic development, and was actively promoted by the British through free settlers and the transportation of convicts. When Britain was no longer able to meet labour needs in the mid-nineteenth century, Britain encouraged the Australian colonies to find cheap labour in other regions of the Empire including China, India, and the South Pacific Islands (Castles and Miller, 1998: 56-57). Australia also introduced restrictive policies under the "White Australia Policy",⁴ which aimed to prevent Asian immigration by enforcing upon would-be migrants a dictation test in a European language chosen by the responsible immigration officer.

In 1892, the Institute of International Law adopted the proposed International Regulations on the Admission and Expulsion of Aliens, reflecting progressive thinking about the limitation of state sovereignty in relation to immigration (Nafziger, 1983: 832). The regulations called upon states to extend rights and liberties to foreigners. In particular, the following provisions reflect the understanding of the time of accepting migrants for economic reasons:

Art. 6: Free entrance of aliens to the territory of a civilized State, may not be generally and permanently forbidden except in the public interest and for very serious reasons, for example, because of fundamental differences in customs or civilization, or because of a dangerous organization or gathering of aliens who come in great numbers.

Art. 7: The protection of national labor is not, in itself, a sufficient reason for non-admission.

These articles were reflected in the writing of such contemporary publicists as Bluntschli, Nys, and Suárez, who maintained that only for reasons of public welfare could a state prohibit foreigners from entering its territory (Plender 1972: 53).

Curtailed migration (1914-1945)

The period after World War I until 1945 was one of curtailed migration. This stemmed from a mixture of economic stagnation, security concerns, increased hostility toward migrants, and racism. The Congress of the United States, for example, introduced several laws in the 1920s to restrict the entry of persons from areas outside of northwest Europe, aimed at preserving the racial and religious make-up of the country. In particular, the Immigration Act of 1924 gave rise to the national-origin quota system, which prevented large-scale migration to the United States until it was rescinded in 1965. In 1930, President Hoover tightened further immigration controls on the grounds of economic necessity.⁵

Canada prohibited Asian immigration from 1923⁶ to 1947, and in 1931⁷ introduced designated preferred classes of immigrants. Other countries also curtailed the flow of migrants in the early 1930s to protect their national labour force (Fields, 1932: 698).

Offering asylum to refugees was unknown before World War II. In US law, for example, the concept of refugee did not exist. Economic stagnation, increased hostilities toward migrants in the 1930s, and growing anti-Semitism in American society, resulted in little being done to help Jews escaping from Nazi Germany. For politicians it was difficult to support an argument for admitting Jewish refugees when millions of American citizens were unemployed (Castles and Miller, 1998: 63). The 1939 story of the SS *St. Louis*, where Jewish refugees from Germany were denied entry to both Cuba and the United States, is a case in point. Left with no option, the ship headed back to Europe where the fate of the Jewish refugees was a *fait accompli* (Breitman and Kraut, 1987: 70-73).

Migrant recruitment (1945-1973)

Castles and Miller (1998: 67) divide post-war migration into two phases. The first occurred between 1945 and the early 1970s, when a large number of migrant workers were drawn to the rapidly-expanding economies of Australia, Western Europe, and North America. In the first instance, states took in refugees to help their recovering economies.⁸ However, within a matter of years, developed nations actively recruited migrants to address their labour shortages, with many coming from developing countries such as Turkey, Pakistan, and the Caribbean. Far from repealing their immigration laws, developed countries enforced them more liberally during this period (*The Economist*, 1997: 115).

All West European states used temporary labour recruitment between 1945 and 1973. West Germany, for example, organized official recruitment campaigns of migrant workers in the post-war years.⁹ The West German Government concluded agreements with Italy, Spain, Greece, Portugal, Turkey, and Yugoslavia to take

surplus labour from those countries. The same is true of Switzerland, where employers recruited from abroad and Swiss firms became dependent on foreign labour. France, the Netherlands, and the United Kingdom drew workers from their former colonies. After 1945, Canada followed policies of mass migration, and introduced a non-discriminatory points system for assessing migrants after the 1966 White Paper. Immigration to Australia was largely responsible for the post-war growth from 1947 to 1973, contributing more than 50 per cent of the labour force. In 1947, the Australian Government introduced a large immigration programme, designed to attract the British, and later other Europeans. Finally, large-scale US migration occurred following the introduction of the Immigration Act of 1965, which replaced the national origin quota system with a mechanism designed to attract migrants throughout the world (Castles and Miller, 1998: 67-78).

Several multilateral and bilateral treaties were concluded, allowing migrant workers free movement and unrestricted residency in contracting parties. Examples of these include the 1957 Treaty of Rome¹⁰ establishing the freedom of movement of workers throughout member states of the European Union, the 1959 Benelux Economic Union,¹¹ and the 1973 Trans-Tasman Travel Arrangement between Australia and New Zealand. Arguably, these treaties were little more than a codification of regional customary laws on migration, but they did offer migrant workers forms of protection and, more importantly, allowed them to reside permanently with largely the same rights as nationals.

Short-term migration and human rights (1973-)

The second phase began after the 1973-1974 oil crisis, and is characterized by an evolving dichotomy between the existing economic regulations of sovereign states and the human rights regime protecting refugees. The recession of 1973-1974 facilitated a restructuring of the world's economy, altering patterns of world trade and introducing new technologies that increasingly required highly sophisticated skills. Migrant workers were, thus, no longer needed to the same extent.

In Europe there was a shift from an open labour market to the so-called "fortress Europe" of the 1990s. The United Kingdom was the first country to introduce restrictions by halting the entry of New Commonwealth migrants through the 1962 Commonwealth Immigrants Act, and limitations on family reunions under the 1971 Immigration Act.

In response to economic stagnation and increasing unemployment, immigration rules were tightened in several states in the early 1970s. West Germany introduced the *Anwerbestopp für Gastarbeiter* in November 1973, preventing non-European Community citizens from gaining employment. The Netherlands also halted their official recruitment campaigns in 1973, as did Switzerland in 1974.

The introduction of the 1985 Schengen Agreement, which was fully implemented in July 1995, further restricted migration from non-EU countries to those European states party to the agreement.

A consequence of tightening entry restrictions has been an increase in the number of people seeking other means to enter developed nations. According to *The Economist* (2000), this explains the significant rise in political asylum seekers and illegal immigrants since the 1980s. In the mid-1970s, the fate of refugees came to prominence, with exoduses from Viet Nam, Cambodia, and Laos, and later from Afghanistan and Lebanon. Suppression of democracy in such Latin American states as Argentina and Chile led to mass departures, while others fled from unrest in Namibia, South Africa, Uganda, and Zaire. A further development occurred in the 1980s as asylum seekers began arriving by air and other means to claim asylum on arrival. An increased number of asylum seekers came from Eastern Europe to the West, particularly following the fall of the Berlin Wall and workers from Asia and Africa (Castles and Miller, 1998: 88).

In the United States and other allied powers a movement to the emphatic reiteration of the moral principle “equality of mankind” occurred during World War II (Plender, 1972: 64-65). In response to acts committed during the war, a human rights regime was established in the immediate post-war period in the hope of preventing repeat occurrences. Kennedy (1996: 232) maintains that the post-World War II generation of international lawyers in the United States was dominated by Democrats who were eager to rebuild in the name of democracy and decolonization, thus giving international law its institutional form. One of the cornerstones of the newly created human rights regime was the 1951 Convention Relating to the Status of Refugees. The Convention defined a refugee as a person residing outside his or her nationality, who is unable to return because of a:

...well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹²

Neither the Convention nor the 1967 Protocol guarantees the right of asylum to refugees. On a de facto basis, many states grant the right of asylum to those who establish physical presence and meet the criteria for a refugee (Martin, 1997: 179).

In the period between 1975 and 1995, the number of refugees rose from 2.4 million to 27 million. Bose (1998) maintains that developed countries have devised a “non-entrée” regime, whereby most refugees end up in their neighbouring coun-

tries. Through a combination of “safe third country” rules and the tightening of once liberal asylum rules, developed countries have gone some way to reduce the number of asylum seekers in Europe and North America.

The concept of international migration law, for most people, is consequently widely associated with human rights law, as the following quote from the International Organization for Migration (1995: 44) suggests:

Migration law is largely rooted in human rights law. The instruments relating to human rights, and those which specify rights and standards of treatment for migrant workers, refugees, and immigrants are significant in defining migration law.

Already there are signs of the next big wave of migration, that of high-skilled migrants (*The Economist*, 1997: 115). Expanding trade creates opportunities for skilled migrants, which governments encourage because of their high-income potential and the need to address skill shortages. Examples testify to this, including the debate in Germany over the establishment of a “Greencard” system for IT specialists, the suggested changes to the United Kingdom’s Immigration Act to admit skilled migrants (Ford, 2000), and the proposed Iowa recruitment campaign (Belluck, 2000). The need for workers is demonstrated by the reluctance of governments to deport “useful” undocumented migrants, such as Mexicans working on agricultural farms in California (Greenhouse, 2000), and over-stayers working on Australian plantations and in the hospitality industry. Multinational firms desire the flexibility to move workers from country to country to alleviate skill shortages in their operations.

This new emphasis on temporary, skilled migrants has been introduced into international treaties. Chapter 16 of the 1992 North American Free Trade Agreement (NAFTA), for example, sets out provisions for the movement between the parties of business visitors, traders and investors, intercompany transferees, and professionals. Similarly, the proposed Multilateral Agreement on Investment had provisions for the free flow of professional and skilled workers.¹³

CURRENT DILEMMAS AND THE PROSPECTS FOR INTERNATIONAL LAW

In 1932, at the height of American protectionism and nativism caused by the Great Depression, Fields (1932: 671) noted that “the doors which [were] opened wide are now but slightly ajar”. International migration regimes continue to keep the door somewhere between open and ajar. The preceding discussion shows that politics largely determined the laws put in place to regulate migration. While some

states have consented to bilateral or multilateral treaties for limited obligation to accept migrants, most continue to admit migrants in accordance with provisions set out in domestic law. Here though lies the problem, for as policy makers face the challenges posed by international migration and the need for cooperation to formulate concerted policy responses, they are restricted largely due to their inherent biases and their inability to relinquish their attachment to state sovereignty.

In the era of globalization, new migration patterns are occurring, and other actors have entered the international migration stage. Countries that were once sender states are now finding themselves as hosts to many newly arrived migrants. OECD states are no longer the only desired destinations, with significant migration to East and South-East Asian states and to the petroleum-producing states of the Middle East occurring in the 1990s. Both skilled and unskilled workers are finding the job market rapidly globalizing, which creates a dilemma. On the one hand, most governments encourage the mobility of highly skilled people, usually on a temporary basis. On the other, however, lower skilled workers are often unwelcome, despite employer demand, resulting in increased illegal migration often organized by labour-recruiters and people-traffickers.

As shown in the discussion, the size and origin of immigration is largely determined by economic development, but its regulation is largely political. Economic regulation can be turned on and off like a tap in response to economic conditions and for reasons of political expediency. This poses problems, as politics will frequently interfere in satisfying the demand for labour. In the 1990s, migration became increasingly politicized, as governments began to worry about their ability to control migration and to manage cultural diversity. Threats posed by extremist groups and potential threats to national identity helped push the issue of international migration onto the political agenda.

The result has been the continuation of tight restrictions on migration, except for highly skilled migrants. The need for migrant workers, however, continues to grow as the population in developed countries age, and citizens in those countries refuse certain jobs, or are ill equipped to partake in the new opportunities being created. Similarly, migration poses problems for developing countries experiencing a brain drain as many of their citizens leave, affecting their development.

Human rights, as we now know it, played historically little role in relation to migration issues, as states effectively discriminated against migrants on racial grounds and were indifferent toward the plight of refugees such as those fleeing Nazi Germany. The provisions of the 1951 Convention and the 1967 Protocol should then, theoretically, be welcomed as a means of avoiding past mistakes. The reality, however, is that asylum laws do not fulfil their objectives. The present framework is open to abuse for it fails to protect genuine refugees and disguises migrants who

wish to improve their lifestyles, the so-called “economic migrants”. The system is also highly politicized. The current list of countries identified by the US State Department as a priority for refugee status, for example, continues to resemble the Cold War. Dissidents from Cuba, Iran, Viet Nam, and minorities from the former Soviet Union receive priority, whereas refugees from states of geopolitical insignificance such as Rwanda do not (*The Economist*, 1999: 56).

Overall, three general concerns (Martin, 1997: 173-176) can be made against the human rights regime:

1. Determining an applicant’s refugee status is riddled with difficulties, as there are usually no other witnesses to the events apart from the applicant; cross-cultural communication barriers are openly abused by economic migrants.
2. The definition of refugee poses such problems as establishing what “well-founded fear of prosecution” means, and to prove that persecution occurred for reasons of “race, religion, nationality, membership of a particular social group, or political opinion”.
3. There has been a call that the definition of a refugee be made more “realistic” by offering protection to displaced persons. Some analysts claim that customary international law has widened the definition, requiring a *non-refoulement* for an expansion of categories.

The recent emphasis on human rights and refugees is in part a reflection of realities associated with state sovereignty. Not only are there now more refugees, but in light of right-wing politics, it is politically shrewd of states not to grant permanent residency to refugees, as had previously been the case. The human rights machinery devised in the 1940s is, thus, unsuitable for today, for it was never devised as a means of selecting new arrivals into a country, nor for that matter to cope with the current number of refugees and asylum seekers.

CONCLUSION

Over the last century, international migration has become increasingly more regulated as states developed better techniques of defending their territory against unwanted aliens. The current balance seems to allow the admission of highly skilled migrants into the main receiving states, and at least some on humanitarian grounds as set out in the human rights regime. The economic and human rights regimes, however, are far from complementary, and in their present form fail to achieve their desired goals. To blame the regimes alone would be incorrect, for as new stream lawyers point out, state sovereignty is a fundamental contradiction in international law that prevents the development of an international regulatory system.

Over time, states have increasingly enforced their state sovereignty over the admission of aliens. In this sense, it is little wonder that Kennedy refers to sovereignty as “an archaic nemesis for international law” (Kennedy, 1992: 238).

States will argue that their wish to maintain sovereignty over migration issues is based on realism. This argument seems short-sighted, for it fails to acknowledge the interdependence of states and the need to formulate regimes that will deal with an international issue that will continue to affect both sender and receiving countries. Similarly, international lawyers will have to realize that they cannot realistically maintain a positivist approach to international migration. Therefore, until the time when nations are prepared to relent some of their sovereignty to further international cooperation in dealing with international migration, questions on how to deal with the brain drain, undocumented migrants, and the need for workers will continue to capture political rhetoric, but very little else.

NOTES

1. Article 13 of the Universal Declaration of Human Rights (1948) states that: (1) Everyone has the right to freedom of movement and residence within the borders of each State; (2) Everyone has the right to leave any country, including his own, and to return to his country. This notion is also confirmed in Article 12 of the International Covenant on Civil and Political Rights (1966) and in the following regional conventions: Article 12 African Charter on Human and Peoples’ Rights (1981), Article 22 American Convention on Human Rights (1969), and Article 2 Fourth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1963).
2. An attempt was made by the federal government to regulate aspects of immigration through the Aliens Act 1798 by enabling it to deport any migrant deemed “dangerous” to peace and security. However, the law was not enforced and expired after its two-year term.
3. Chinese Exclusion Act 1882. The Act was subsequently amended in 1884 and 1888.
4. Immigration (Restriction) Act 1901, (the word restriction was dropped in 1912).
5. American consuls were instructed by the State Department to strictly interpret the clause of the 1924 Immigration Act that prohibited admission of aliens “likely to become public charges” and to deny the visa to an applicant who in their opinion might become a public charge at any time.
6. Order in Council PC 183 in 1923.
7. Order in Council PC 695 on March 21, 1931. The designated classes were: British subjects or US citizens with sufficient financial support, dependants of Canadian permanent residents, and agriculturists with sufficient means to farm.
8. Canada, for example, accepted 300,000 immigrants after the war under special refugee schemes. The 1947 Polish Resettlement Act in the United Kingdom provided accommodation to Polish refugees. Indeed, in an attempt to address labour shortage and humanitarian concerns, the United Kingdom settled 200,000 immigrants. While

under the American Displaced Persons Act 1948, the United States admitted 205,000 refugees and 27,000 expelled persons of German origin over a two-year period. In 1950, the Act was amended to take a further 136,000 refugees and 28,000 German expellees.

9. The legal basis for the recruitment of foreign workers was the *Arbeitsförderungsgesetz* (a law to promote employment) which obliged the *Bundesanstalt für Arbeit* (Employment Ministry) to avoid a scarcity of labour.
10. The 1957 Treaty Establishing the European Community enshrines the free movement of workers in Article 48:
 1. Freedom of movement for workers shall be secured within the Community by the end of the transitional period at the latest;
 2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment;
 3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health.
11. Article 2 of the 1958 Treaty Establishing the Benelux Economic Union allows the free movement of nationals from member states, and an entitlement to enjoy the same treatment as nationals of that state.
12. The original 1951 definition referred only to persons outside their home country “as a result of events occurring before 1 January 1951”. This clause was later deleted in the 1967 Protocol Relating to the Status of Refugees.
13. In the MAI negotiating text, dated 24 April 1998, the passage on Temporary Entry, Stay and Work of Investors and Key Personnel stated:
 1. Subject to the application of Contracting Parties’ national laws, regulations and procedures affecting the entry, stay and work of natural persons: (a) Each Contracting Party shall grant temporary entry, stay and authorisation to work and provide any necessary confirming documentation to a natural person of another Contracting Party who is: (i) an investor who seeks to establish, develop, administer or provide advice or essential technical services to the operation of an enterprise in the territory of the former Contracting Party to which the investor has committed, or is in the process of committing, a substantial amount of capital, or; (ii) an employee employed by an enterprise referred to in (i) above, or by an investor, (who may be required to have been employed for a specified minimum period, for example one year), in a capacity of executive, manager or specialist and who is essential to the enterprise.

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