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Deportation and the liberal state: the forcible return of asylum seekers and unlawful migrants in Canada, Germany and the United Kingdom

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Introduction

This article is based on interviews with government officials, UNHCR staff and members of the NGO community in Bonn (2 February 1999), Ottawa (5–8 December 2000), Berlin (2 February and 24 May 2001) and [with British officials] Oxford (3 May 2001). Earlier versions were presented at the International Studies Association's Annual meeting, Chicago, 23 February 2001, at the Council of European Studies Biannual meeting, Chicago, 14 February 2002 and at the Catholic University of Brussels, Institute of Political Sociology and Methodology's seminar series, Brussels, 11 April 2002. We are grateful to participants for comments. The research was assisted by a grant from the Canadian Department of International Affairs and International Trade in association with the Foundation for Canadian Studies in the UK.

During the 1990s, scholars of immigration differed on the effect exercised by globalization on the state's capacity to control immigration.¹ For some, the integration of capital, goods and service markets, combined with the emergence of a transnational human rights regime, has constrained the liberal democratic state.² For others, the origins of state limits lie not in globalization or international human rights regimes, but rather in domestic institutions and the national policy process. Drawing inspiration from national constitutions, courts have articulated a broad range of state obligations towards refugees and legal residents.³ Both sides of the debate agree that liberal values have been institutionalized, and that these values hamper the liberal state; they disagree only on the source of this institutionalization. One of the striking aspects of the discussion, however, is that none of the contributors pays attention to the state's ultimate and most naked form of immigration control: deportation. The omission is curious, as deportation goes directly to the heart of concerns raised by liberalism, democracy and human rights.

Deportation, as a concept and as a policy, embodies what one might call the liberal democratic paradox. On the one hand, deportation – or, more generally, the capacity to exercise border control – is fundamental to liberal democracy in two senses. First, liberal democracy is linked, as a matter of history and current fact, with the (first European, later American) state.⁴ And fundamental to the sovereignty of the state is the capacity to control borders.⁵ Second, policy in a liberal democracy must in some measure reflect the aggregated preferences of its citizens. And nowhere does a majority of the citizenry support open borders; indeed, even in the US, only once in the post-war period, in 1953, have more than 10% of Americans wanted increased immigration (itself a far cry from unfettered immigration).⁶ Despite a growing normative literature hoping to problematize the ethical status of borders,⁷ immigration control remains a central and, arguably, a necessary feature in the maintenance of the liberal democratic state.⁸ Immigration control implies two capacities: to block the entry of individuals to a state, and to secure the return of those who have entered.

Both of these capacities sit uneasily with liberal principles. But it is the latter – deportation – that is perhaps the most problematical. Forcible expulsion from the national territory requires bringing the full powers of the state to bear against an individual. Deportation severs permanently and completely the relationship of responsibility between the state and the individual under its authority in a way that only capital punishment surpasses. Furthermore, physically removing individuals

against their will, from communities in which they wish to remain, effectively cuts the social, personal and professional bonds created over the course of residence. Even if one concedes the necessity of deportation, there is no denying the hardships it exacts.

Taking this paradox as a starting point, this article considers trends in deportation policy, and the relationship between deportation policy and the evolution of broader immigration control measures, especially in asylum policy. The removal of rejected asylum seekers provides perhaps the main reason why states have recently sought to expand their deportation capacity. However, terrorist attacks are set to become another. In the aftermath of the 11 September 2001 attack on New York, political elites across Western states have searched for new ways to ensure the removal or non-entry of foreigners deemed a security threat. While the evidence for this paper was gathered before the events of 11 September, this article illustrates the difficulties states will face in attempting to beef up the removal of those suspected of being security risks.⁹ For in this paper we show that, despite recent promises by states to expand deportation, there has been only a marginal increase in its use; indeed, as a percentage of overall arrivals, deportation has in some cases been in decline.¹⁰ We attribute states' reluctance, or inability, to invoke deportation to two sets of factors: a series of rights-based constraints bounding deportation and the fickle and unstable nature of public opinion. We then relate the state's limited recourse to removal to broader debates about increasing restrictiveness (above all in Europe) in asylum policy. We argue that the growing popularity of exclusionary or non-arrival measures amongst liberal states (such as visas, carrier sanctions and airport liaison officers) is the perverse fruit of increasingly inclusive practices towards foreigners resident in these states. Finally, we conclude by asking why, given the numerous constraints upon it, states continue to maintain deportation policies. Drawing on the Platonic concept of the noble lie, we suggest that deportation is, from the state's point of view, both ineffective and essential.

Case selection

The article examines three cases: the German, British and Canadian. Germany and Britain are included for two reasons. First, both nations are major receiving countries, and the two have among the largest migrant, resident and naturalized populations in Europe.¹¹ Since the mid-1990s, Europe has been the main Western target of asylum flows, and Germany and Britain have become the main receiving countries. Second, both countries have sought, in response to sharply increased migration pressures, to expand deportation. Their relative success or failure will illuminate the factors determining the scope of limits on deportation. Canada is included as a sort of control: as a non-European country, it allows us to see whether the dilemmas faced by Germany and Britain are particular to the European experience of migration, or whether – as we hypothesize – they inhere in the liberal democratic state itself.

Terminology

Before we proceed, however, it is important to clarify terms. Deportation is understood in this article to refer to the return of foreign nationals to their country of origin against their will. It is distinct from voluntary return, in which individuals are

encouraged – often through a combination of carrot and stick measures – to return to their countries of origin.¹² It is also distinct from the broader category of removals: some “deportation” figures include individuals that arrived at the border but were never admitted to the country, a practice commonly referred to as “airport turnarounds”.¹³ We are concerned with those who are forcibly removed from a country in which they are residing.

The puzzle: more arrivals, few departures

Across Europe, asylum applications have increased dramatically since the mid-1980s. While the increase in Canada peaked earlier than in European countries, it too has seen a sharp rise in asylum applications. The following chart provides an overview:

Table 1: Asylum seekers in select Western countries, 1985–1998 (in thousands)¹⁴

Country	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00
Austria	6.7	8.7	11.4	15.8	21.9	22.8	27.3	16.2	4.7	5.1	5.9	7.0	6.7	13.8	20.1	18.3
Belgium	5.3	7.7	6.0	5.1	8.1	13.0	15.2	17.8	26.9	14.3	11.4	12.4	11.8	22	35.8	42.7
Canada	8.4	23.0	35.0	45.0	19.9	36.7	32.4	37.8	20.3	22	26	26	22.6	23.8	29.3	37.9
Denmark	8.7	9.3	2.8	4.7	4.6	5.3	4.6	13.9	14.4	6.7	5.1	5.9	5.1	5.7	7	12.2
Finland	-	-	-	-	0.2	2.5	2.1	3.6	2.0	0.8	0.8	0.7	1.0	0.4	3.1	3.2
France	25.8	23.4	24.8	31.6	60	56	46.5	28.9	27.6	26	20.2	17.2	21	22.4	31	38.6
Germany	73.9	99.7	57.4	103	121	193	256	438	323	127	128	116	152	98.6	95.1	78.8
Greece	1.4	4.3	6.3	9.3	6.5	4.1	2.7	2.0	0.8	1.3	1.4	1.6	4.4	3.0	1.5	3.0
Ireland	-	-	-	-	-	0.1	0.0	0.0	0.1	0.4	0.4	1.2	3.9	4.6	7.7	10.1
Italy	5.4	6.5	11	1.3	2.2	4.7	31.7	2.6	1.6	1.8	1.7	0.6	1.9	11.1	33.4	15.6
Luxem- burg	-	-	-	-	-	0.1	0.2	0.1	0.2	0.1	0.2	0.3	0.4	1.7	2.9	0.6
Nether- lands	5.7	5.9	13.5	7.5	14	21.2	21.6	20.3	35.4	52.5	29.3	22.9	34.4	45.2	39.3	44
Norway	0.9	2.7	8.6	6.6	4.4	4.0	4.6	5.2	12.9	3.4	1.5	1.8	2.3	8.4	10.2	10.1
Portugal	0.1	0.3	0.5	0.4	0.2	0.1	0.3	0.7	2.1	0.6	0.5	0.3	0.3	0.4	0.3	0.2
Spain	2.3	2.3	2.5	3.3	4.0	8.6	8.1	11.7	12.6	12	5.7	4.7	5.0	6.6	8.4	7.0
Sweden	14.5	14.6	18.1	19.6	32	29	27.3	84	37.6	18.6	9.0	5.8	9.7	12.8	11.2	16.3
Switzer- land	9.7	8.6	10.9	16.7	24.4	36	41.6	18	24.7	16.1	17	18	24	41.3	46	17.6
United Kingdom	6.2	5.7	5.9	5.7	16.8	38.2	73.4	32.3	28	42.2	55	27.9	32.5	46	71.2	99
Totals	-	-	-	-	320	439	563	695	555	329	293	244	-	-	-	-

Thus, asylum applications across Europe rose sharply in the late 1980s, and skyrocketed after the fall of the Berlin Wall and the outbreak of civil war in Yugoslavia. Between 1985 and 1995, more than five million claims for asylum were lodged in Western states. By 2000 the number of claims had dropped off somewhat to 412,700 for the states of Western Europe.¹⁵ Arrivals nonetheless remain extremely high by historical standards, and took off in late-1990s Britain. In Canada, the increase has been less marked, but the total number of arrivals is high relative to the rest of its post-war experience.

The increase in asylum seeking, however, has not been matched by a rise in refugee recognition. In Canada, only a minority of asylum seekers arriving secure refugee status; in Europe, the figure is a fraction.¹⁶ Whereas Germany received 95,100 applications for asylum in 1999, only 10,940, or 8.6%, were recognized as refugees in that year; in France, the figures were 30,910 applications, 4,460 or a 14% recognition rate; in the UK a total of 71,100 applicants for refugee status were received in 1999, with some 6,200 or 8.7% receiving refugee status. Even Canada, praised by UNHCR as an ‘exemplar,’ in refugee recognitions, has a recognition rate of less than 50%, with 13,000 grants of refugee status and 30,100 applications in 1999.¹⁷

Asylum and deportation

This takes us to our puzzle. While large numbers of asylum seekers arrive, and few are given refugee status, fewer still are forced to leave the country. Deportation remains a singularly rare occurrence. Indeed, the striking feature of the data is that it shows that deportations have in no way increased in a manner commensurate with overall asylum applications. The following charts present data from Germany, the UK and Canada. In short, deportation only touches a small minority of those whom the state has formally forbidden from remaining on its national territory.

Several qualifications need to be added to this point. First, recognition rates underestimate the number of asylum seekers allowed legally to remain by the state. All states grant informal refugee statuses – known as non-Convention statuses – to individuals whose asylum applications have been rejected but who are allowed to remain on humanitarian grounds.¹⁸

Looking at 1999 figures, the UK, in addition to recognizing 7100 asylum seekers as refugees in 1999, granted Exceptional Leave to Remain, essentially a pathway to permanent residence, to another 13,300, giving a total figure of 29% of entrants ineligible for removal.¹⁹ In Germany, some 2100 people received forms of humanitarian status, bringing the total of those receiving protection to 13.71%. In Canada, 1022 individuals (and their dependants) were granted forms of humanitarian status, in addition to the 13,000 granted refugee status.²⁰ In all, a total of 46.6% were thus given forms of status protecting them from removal.²¹ Second, it cannot be excluded – though it is unlikely – that asylum seekers who receive no form of legal residence leave the country by other means; once individuals abscond, it is by definition impossible to know where they go.²²

Table 2: Involuntary return from Germany, 1993–2000 (top ten destinations)

Destination	2000	1999	1998	1997	1996	1995	1994	1993
Yugoslavia	7162	1452	4262	4132				2549
Turkey	5003	6083	6694	4300	4639	2603	3418	2836
Poland	3097	3267	3151	2106	4029	5626	7000	3800
Romania	1995	2200	2740	3877	5695	8959	14693	21145
Ukraine	1973	1946	1752	1026	764	782	1242	
Bulgaria	1287	1062	1523	1521	1697	2009	3350	4111
Bosnia-Herzegovina	1128	1496	1809	968				
Vietnam	961	1208	1537	1843	1252			
Rep. Moldova	898	955						
Macedonia	884	800	1608	1080	1792	3332	4142	993
Georgia			774					
Armenia				757	578			
Algeria					778	820	1487	808
India					677	839		
Russian Fed.						936	1519	
Albania						663		649
Lebanon							914	
Ghana							881	715
Nigeria								915
Total	24388	20469	25850	21610	21901	26569	38646	38521

Source: Bundesministerium des Innern, Berlin

Table 3: Involuntary return from Canada, 1995–1999

Year	Criminals	Failed refugee applications	Total
1995	1549	2215	3764
1996	1555	3192	4747
1997	1247	4940	6187
1998	1161	5104	6265
1999	1097	5415	6512

Source: Citizenship and Immigration Canada, 2000

Table 4: Individuals leaving the UK as a result of enforcement action, including asylum seekers

Year	Removals excluding asylum seekers	Removals of asylum seekers	Total
1996	3290	2120	5410
1997	3530	3050	6580
1998	6989	3865	10854
1999	7663	3680	11343
2000	8980	4830	13810

Sources: Figures adapted from “Control of Immigration Statistics: United Kingdom, 2000”, Jill Dudley and Paul Harvey, 24 August 2001, Home Office, UK, & “Control of Immigration Statistics: United Kingdom, Second Half and Year 1998”, 27 May 1999, Keith Jackson and Tony Chilton, Home Office.

Finally, although we have mapped yearly rejection rates onto yearly arrival rates, there can only be a rough approximation between the two. Asylum decisions taken in any particular year often relate to applicants who have entered in previous years, as the asylum determination process is a long one. The advantage of providing statistics across several years should, however, compensate for this disadvantage by highlighting the degree to which the gap is constant across time.

These considerations need to be set against three countervailing qualifications. First, we are only talking about asylum here. There is also an unquantifiable (but all governments believe large) category of migrants subject in principle to deportation: illegal migrants that do not claim asylum. There are tens of thousands, in some cases hundreds of thousands, of individuals who enter these countries illegally, who lie or change their minds about their intention to remain temporarily, who come as tourists or students and overstay, and so on.

Second, the figures from Canada and Germany overstate the number of forced removals that actually occur. The German figures include airport turnarounds; individuals that arrive in the country, are immediately denied entry and return. Although technically in the country, they have not stepped outside the airport, much less entered into any social network within Germany.²³ The Canadian figures include some individuals who leave the country (or are assumed to leave the country) voluntarily after receiving a deportation order.

Finally, unless labelled otherwise, the figures on deportation include *all* those deported; many will be failed asylum seekers, but others will be visa-overstayers, those convicted of a crime and non-asylum seeking clandestine migrants. In short, the numbers give us only a rough and incomplete picture. But it is nonetheless a clear enough one: only a fraction of the resident population that has evaded the border controls of these states is deported. The case of asylum is, however, very striking, not least because it involves individuals who have identified themselves to the state, in contrast with, for instance, undocumented migrants. In Germany alone, Interior Minister Otto Schilly told the then-British Home Secretary Jack Straw, there are some 400,000 rejected asylum seekers which Germany cannot remove and are eligible for state support.²⁴ A recent report by the greater London Authority estimated that more than 75,000 people rejected for asylum or exceptional leave to remain are residing illegally in London. The figure, moreover, rises to 100,000 if dependents are included.²⁵

This, from the standpoint of the policies' avowed aims, is an unimpressive result, obtained despite both countries' efforts to increase deportation. Tony Blair's Labour government has begun setting deportation targets – 8000 in 2000, raised to 12000 in 2001. In 2001, the UK Home Office announced an increase in expenditure on enforcement and a new target of removing 30,000 people per year.²⁶ Although the figures are not yet out, the government admits that it will not reach its target.²⁷ In Canada, financial support for the Enforcement Branch has been increased considerably in recent years to boost deportations and a new automated system to track those eligible for removal has been introduced.²⁸ In Germany, the government's new liberal immigration law – which in April 2002 was awaiting the Federal President's signature – formalizes deportation procedures.²⁹

Asylum is doubly intriguing in that all Western states have developed complex, quasi-judicial refugee status determination systems³⁰ for separating genuine from illegitimate asylum claims. Endless hours and millions of dollars are devoted to the task of operating asylum systems. If rejections have little impact on whether or not asylum seekers remain in the country, then there is a serious question about the point of it all. According to the British Home Secretary, the removal gap risks “undermining public support” in “the essence of the institution of asylum”.³¹

In summary, in all three liberal democracies examined there is a large gap between rejected asylum applicants and removals. Measured in raw numbers and against governments’ stated aims, deportation is wholly ineffective. Yet, all three countries continue to make deportation a centrepiece of their responses to the issue of asylum. The remainder of the article examines two questions: why is deportation so ineffective in removing rejected asylum seekers and why, despite its ineffectiveness, do governments continue to pursue such policies? We begin by providing some background information on the practice of deportation and the sources of the current asylum crisis.

The practice of deportation: Germany, Canada, the UK

Whatever the differences in the practice of deportation across Europe and North America, there are in all countries three major ways that an individual can become eligible for deportation. First, by entering the state illegally, for example by evading port or entrance officials, or by using fraudulent documentation. Second, by breaching the specified terms associated with legal entry and residence, e.g. overstaying or working on a tourist visa or by committing a crime. Third, by gaining entrance or continued residence in the state on a basis of a claim to asylum under the 1951 Convention Relating to the Status of Refugees that has come, after a process of determination, to be rejected. Germany, Canada and the UK have responded in different ways to these outcomes.

In the German context, the term “deportation” is something of a misnomer. Its historical associations with the deportation of Jews in the 1930s means that no policymaker will use the term; involuntary return is rather described as *Rückführung* (return) or *Abschiebung* (pushing off, away).³² In practice, it amounts to the same thing, and we continue translate both terms as deportation. Following the particular nature of Germany’s federal state, decisions on deportation are made by the *Länder* (provinces, states) but are implemented by the federation.³³ Thus when a decision on deportation is made, and any appeals rejected, the *Land* in question will inform the Ministry of Interior in Berlin, which will then apprehend and deport the individual.³⁴ Consistent with Germany’s concern for legal consistency and the rule of the law (*Rechtsstaat*), deportation has been viewed as a matter of law and order.³⁵ There are strong objections in certain *Länder* to leaving unpunished individuals who have violated immigration laws.³⁶

In Canada deportation forms a central part of what is, somewhat euphemistically, referred to as the “removals process”. Removals are the responsibility of the federal

government, falling specifically under the purview of the Enforcement Branch of Citizenship and Immigration, Canada. The scope of and limits of removals are currently set by the Immigration Act of 1985. Under the Act a person may be removed from Canada under a “departure order” (a self-executing order that obliges an individual confirm his or her departure from the country within 30 days); a “deemed deportation order” (issued when an individual does not confirm departure under a departure order); an “exclusion order” (issued at ports of entry and excluding an individual from entering Canada for one year unless overridden by a written order from the Minister); and, finally, a “deportation order”, which is given in cases of “serious violations of the country’s immigration laws” and involves a permanent bar to an individual returning to Canada.³⁷ The important distinction is between the first three forms of deportation, which allow for the possibility of return, and the last, which does not.

In the United Kingdom, as in Canada, the term “deportation” is avoided in favour of removal, of which there are two sorts: judicial and administrative.³⁸ Judicial removal occurs following a criminal court’s decision that an applicant could be served a removal notice. Under section 24 of the Immigration Act, 1971, criminal offences subject to these removal provisions include failing to observe a condition attached to the “leave to remain” that is granted to all non-EU citizens entering the UK (for example, working without permission).³⁹ More broadly, anyone over the age of 17 and “subject to immigration control”, may be recommended by the courts for deportation if convicted of an offence punishable through imprisonment. In other words, all non-citizens, if convicted of a crime, are potential subjects for deportation. Administrative deportation is, however, far more common and targets individuals who are residing in the UK without permission. Such individuals are directly targeted by the removals branch of the Home Office. Under the normal deportation process, individuals receive a standard letter advising the individual that she/he has no right to remain; this letter might be followed by further correspondence and a formal deportation order. Once the latter has been served, the deportee has 14 days to appeal. If the individual does not leave voluntarily, the police and security services may be involved in the deportation. The distinction, a not perfectly fine one, is thus between those who commit a crime and those who have no right to remain in the UK.

The bulk of all people deported from the UK are those who have already been detained by the state.⁴⁰ Asylum seekers whose claim for refugee status has been rejected and undocumented migrants are eligible for detention. Undocumented migrants are often apprehended because Immigration Service officials are tipped off about illegal entrants/overstayers residing or working at particular addresses. A particular feature of British deportation policy, unknown in Canada or Germany, is an obsession with numbers: the government sets (often unrealizable) deportation targets and the Home Office seeks to reach them.

The institution of asylum

Before returning to the removal gap, a few words should be devoted to asylum itself. Asylum can be defined as the protection granted by states to those determined to be refugees under the 1951 UN Convention: those with a well founded fear of persecution for reasons of political opinion, race, religion, nationality or membership

of a particular social group. Refugees gain access to liberal states in two ways: first, through organized resettlement programmes,⁴¹ in which case their status as refugees will have been determined in advance; or, second, by arriving on the territory of a state as tourists, students, visitors or undocumented migrants and then claiming asylum (“asylum seekers”). In the latter case, states have no duty under international law to provide asylum to refugees. They are only bound by *non-refoulement*, the requirement not to turn back refugees to a state where they would be persecuted. Traditionally, however, states have tended to grant refugee status to individuals who satisfy the UN definition.⁴²

Deportation and the globalization of asylum pressures

Deportation has long been a power claimed and exercised by states. Indeed, it is at least as old as border control itself, and its antecedents in the practice of exile stretch back even further.⁴³ In contemporary Europe and North America, it has gained new relevance through post-war asylum policy.⁴⁴ From 1945 until the 1960s, asylum was numerically limited and regionally confined. Refugees were those fleeing communist regimes; all western states had a foreign policy interest in accepting them. Indeed, the term ‘refugee’ was at the time used synonymously with ‘defector,’ a word that delighted the West as much as it horrified the Soviet bloc. In rare instances of large movements, the usual pattern was the organized resettlement of communist refugees after particular dramatic events (such as Hungary in 1956 and Czechoslovakia in 1968).

From the late 1960s, asylum, and the consensus supporting it, changed. Asylum became a globalized phenomenon, a vehicle by which refugees and economic migrants from Southern states could gain access to the West. Four developments were responsible for this development:

- The escalation in refugee-producing events in the South, mostly related to decolonization (The Algerian war of independence in the 1950s, unrest in Zaire and Rwanda in the 1960s, the Bangladeshi war of independence and the Vietnam war in the 1970s). These events destroyed the widespread assumption that refugees were an intra-European phenomenon.
- In 1967, a Protocol was added to the UN Convention on Refugees expanding the application of the Convention to refugees who emerged as a result of events occurring after 1951 and came from countries outside Europe.⁴⁵
- The spread of film, television and telecommunications made differences in income, employment and lifestyles across countries better advertised than ever before, while cheaper transcontinental transport made mass movement possible.
- By the early 1970s, France, Germany, Switzerland, Scandinavia and the UK had all ended policies that encouraged or tolerated labour migration from Southern Europe and former colonies/the third world.⁴⁶ Around the same time, even countries of permanent settlement, such as Canada and Australia, found themselves cutting back on immigration, in part due to rising unemployment.⁴⁷ The result was

that the asylum system became one of the few remaining access points to the West.

The state's response to these developments has been decisive. All states, but especially those in Western Europe, have developed a battery of measures designed to reduce asylum claims. As early as 1980, Western states began responding to the increasing demand on their asylum systems by implementing measures designed to prevent applicants from reaching their borders where they could make a claim under the 1951 Convention.⁴⁸ Visa requirements on countries intended to slow the arrival of asylum seekers at their borders were a common resort. Governments justified these measures by pointing to the need to separate "genuine" from "bogus" asylum applicants, a justification given at least some credence by the intermingling of refugee and migration flows brought about by the West European migration stop a decade before. In the late 1980s visas were complemented by fines on airlines and shipping companies carrying foreigners to Western states without proper documentation.⁴⁹ These fines, known as "carrier sanctions", have become an indispensable part of the armoury of most liberal states. European governments have expanded visa requirements for source countries of asylum seekers, and they have – with the exception of the UK – harmonized these through the 1985 Schengen Agreement.⁵⁰

In the face the increasing expertise of migrant smugglers and traffickers during the last decade, the restrictive armoury of liberal states has been further supplemented. Canada, the UK and Germany have stationed "airport liaison officers" at foreign airports to detect inadmissible aliens before they reach their territory or conducted facilities to enable pre-screening.⁵¹ Germany's restriction of persecution to exclude non-state actors, its participation in the Schengen Agreement and, along with the UK, the Dublin Convention, and its 1993 revision of a constitutional right to asylum, were all geared to narrow opportunities for asylum. Despite their different immigration histories, Canada, Germany and the UK all had in place, by the end the 1990s, a very similar array of measures to prevent asylum seekers reaching their territory where responsibilities under the 1951 Convention would apply.⁵² These non-arrival practices are completely indiscriminate in terms of whom they prevent from gaining access to asylum: those with the most well-founded claims to protection are excluded along with those with the weakest.

Yet – as seen in the above figures – the one policy instrument that states have *not* extensively invoked has been deportation. Despite a vast expansion in the other control devices and despite a dramatic increase in asylum numbers, deportation remains – for all the press interest it incites when it occurs – at best a residual immigration control device.

Impediments to expulsion in the liberal state

We are thus left with the question posed at the outset: why is it that states that are so restrictive in keeping asylum seekers from their borders are seemingly so lax in sending back unsuccessful applicants who make it to their territory? One factor, mentioned above, relates to what Christian Joppke calls "self-imposed" limits of sovereignty:⁵³ domestic courts have developed and applied international human rights

law, which is increasingly influential in limiting the expulsion powers of states. As signatories to the European Convention on Human Rights, Germany and the UK face an absolute prohibition on the return of individuals who would face torture or inhumane treatment; by signing the Convention against Torture, Canada has committed itself to similar legal obligations.⁵⁴ The obligation is self-imposed because states agree to sign up to the conventions themselves, while the precise obligations associated with signatory status are articulated by domestic courts.⁵⁵ Most individuals in this category, however, will receive some form of non-refugee humanitarian status. Other factors, principled and practical, further inhibit deportation.

Practically, deportation is above all expensive. Tracking down individuals who may have gone underground is time consuming and resource-intensive, involving the use of scarce public resources. Removal is particularly difficult in countries, like the UK and Canada, without national systems of identification that enable the tracking of members of the public. Even if an individual is located by the state at some point, without some means of apprehension, deportation orders may have little effect. Officials in Paris and London estimate that 70% of asylum non-detained seekers whose claims are rejected abscond.⁵⁶ The state's answer is detention, arguably the most certain way of ensuring the whereabouts and departure of individuals. But detention is expensive and, in many countries, increasingly subject to domestic and international legal constraint.⁵⁷ Until 2001, the UK only had 879 places to house detainees; the government is currently raising this figure to 2700, but such a number is clearly inadequate to the state's task.

Even if an individual is detained, normal carriers will often not take deportees, so additional chartered flights have to be arranged.⁵⁸ Special teams of security guards have to be drafted in to pick up and accompany the deportee to the country of origin. When deportees are met at the other end by a country-of-origin team (as Romanian deportees from Germany are), these costs are borne by the deporting state. All these costs come on top of legal expenses paid in exhausted appeals. In deporting some 25,000 individuals in 2000, Germany paid \$US6,000,000).⁵⁹

The resource intensity of deportation is only one constraint. Another is the need for the agreement and cooperation of the country of origin; certain source countries with large emigration pressure – such as China and Iran – refuse to provide this.⁶⁰ When a source country refuses to cooperate, European and North American states are helpless. Germany attempted to end non-cooperation on the part of Vietnam by threatening to cut off foreign aid, and it met a wall of resistance; the UK, Australia, Canada and the US have all had to enter into complex and drawn out negotiations with China to facilitate returns.⁶¹ In the case of the former Soviet Union, and Yugoslavia, the state that issued the deportee's travel documents sometimes no longer exists. In other cases (gypsies stand out as an example), certain states such as Romania dispute their claim to national membership.⁶² The latter development is exacerbated by the loss or destruction of travel documents by migrants themselves. In the absence of a legal document connecting an individual to a state, deportation is impossible. What's more, in Germany, not only is the state required to release the individual it wishes to deport; it is also obligated to provide him or her with social support. Whereas in the US asylum seekers and illegal migrants enjoy few if any

social rights, even migrants without legal status are often able gain access to Europe's welfare programmes.⁶³

As a result of these constraints, especially on documentation, the state perversely finds it easiest to deport citizens who entered the country *legally*. When individuals present visas to border guards and, as is required by law in Germany, register their address, the state knows, or at least has a better chance of knowing,⁶⁴ where they are. If they then overstay or if they commit a crime, the state is able to trace and remove them. If a student takes a job after finishing a degree when she was to return home, or if someone on a temporary work permit continues in employment after it expires, the state can relatively easily (from a technical point of view) initiate a deportation procedure. The state, however, often has the least interest in deporting these individuals. By contrast, the majority of illegal migrants who disappear into the anonymity of London, Berlin or Toronto are never found.⁶⁵

Even when country-of-origin agreement is reached and the requisite documentation exists, deportation is a politically costly exercise. Although publics across Europe and North America express support for tight immigration controls and less immigration, that support vanishes when the press shows pictures of individuals escorted, perhaps dragged, from their homes to an awaiting airplane. The deaths that occasionally result during these activities serve only to heighten the political sensitivity of governments.⁶⁶ When the deportation is not widely covered in the press, churches and members of the NGO community lobby hard against it. Large numbers of airlines, including Germany's Lufthansa have at times refused to accept returned asylum seekers. If the deportee has children in school, then the latter too is added to the oppositionist chorus. There is a small (but possibly growing) number of vocal NGOs who believe that the very practice of deportation constitutes a violation of human rights. Their attacks on Western states can be loud and strategically significant, and their skill at exploiting popular unease about deportation effective.

This schizophrenic attitude towards control/expulsion reflects in part the liberal paradox mentioned at the outset. Many people are uncomfortable with the idea of removing people from national soil, even when they gained access to that soil in violation of state laws. But why is this the case? In part, it no doubt reflects a very human predisposition towards holding contradictory opinions and values: we support immigration control, but we don't like deporting migrants. More broadly, people have nothing good to say about immigration, but much good to say about actual immigrants. But the point runs deeper than this. In the wake of waves of migrants, conceptions of membership, especially in Europe but also in North America, have fundamentally altered. From 1945 until 1975, Europe joined the US and Canada in encouraging massive immigration, first from Southern Europe and later from the South. These migrations have transformed the ethnic and national composition of Western European states, resulting in the creation of diverse, multicultural polities. Europe is now home to some 15 million foreigners who do not enjoy formal citizenship status. One in every six residents in Switzerland is not a citizen; one in every twelve in Germany.

These foreign residents have often been faced with social exclusion and injurious forms of discrimination. But they are also faced with a highly inclusive array of social and economic rights, on a par with those enjoyed by citizens.⁶⁷ There are varying

accounts for this development. Postnationalists argue that conceptions of membership (and rights attached to them) altered under the inspiration of international treaties and under the force of accepting and incorporating migrants;⁶⁸ their critics argue that the migrants rather benefited from the inclusive logic of domestic constitutions and jurisprudence.⁶⁹ For the moment, the source of inclusion is somewhat irrelevant. The important point is that the boundaries between citizens and foreigners resident in these polities have eroded. Once migrants reach national territory, the state has two sorts of obligations. First, if they seek asylum, the state must process their application. Second, if they remain within the territory long enough, the state must accord them a broad complex of social and economic rights.

The last two points are not independent of one another. As noted, the social/economic rights of residents are time-dependent: the longer individuals are in a state, *legally or illegally*, the more difficult they are to remove. Managing asylum applications is anything but fast. In response to the need to distinguish successful from unsuccessful asylum claims, an elaborate bureaucratic machinery with the purpose of assessing claims has arisen in Western states in recent years. While the nature of this machinery varies from state to state, the processing of asylum claims generally involves a three-stage process of interview, assessment, and if the decision is unsuccessful, appeal. The time taken to determine asylum claims also varies across states depending on the thoroughness of the review procedures, the efficiency of the bureaucracies involved, and the availability and nature of avenues for appeal. In general, however, asylum determination procedures are very lengthy. In Germany, the appeal process can take up to two years. In Canada and the UK it is not uncommon for the period between application for asylum and the issuance of some form of final removals order to take three years. Again, the longer individuals remain within a country, the less likely they are to leave.

In the UK, for instance, the government recently announced in Parliament that asylum seekers with children who had been in the country for more than seven years would not be removed.⁷⁰ Many other states, including Canada, adhere to less formal standards, allowing those who have been present in the polity for several years to stay, but have no official policy on the matter. Given that asylum claims often take many years to process, the developing connection between membership and residency might well be considered a significant constraint on the operation of asylum.⁷¹

Asylum, deportation and the liberal state

Thus far, we have identified three trends: (i) a limited and highly constrained (but nonetheless continuing) deportation policy; (ii) relative security for those who enter national borders; and (iii) strict (increasingly so) limits on the entry of migrants. Much scholarly literature, most of it critical, has focused on the relationship between two kinds of restrictions: on immigration, and on asylum. The argument made often goes like this: as channels of legal entry, above all to Europe, have closed, individuals wishing to migrate have faced no option but to seek entry through the asylum process.

As governments have responded with visa regimes and carrier sanctions, these individuals have no choice but to arrive illegally, often with the assistance of

traffickers. Responsibility for both increased illegality in arrivals and the misery associated with trafficking thus rests squarely within the states themselves. There is certainly something to this argument. But exclusive focus on it obscures a broader relationship between the three trends we have identified. The relative security enjoyed by legal migrants (equal, in social and economic policy, to those of citizens) [trend I], combined with the difficulty the state faces in removing individuals (due to the length of the appeals process and, especially, limits on deportation) [trend II] has led nation-states to erect a whole range of barriers designed to ensure that migrants do not reach the national territory [trend III].

This suggests is that an entire literature on the relationship between migration and sovereignty – holding globalization and increased immigration undermine the state’s capacity to control immigration – has got it backwards.⁷² The nation-state has not lost control over entry to its borders; it has rather lost control over movement *within* and *from* its borders. And it has sought to reassert this sovereignty against precisely those who would benefit from this constrained domestic sovereignty: asylum seekers and other migrants. Putting it another way, the restrictiveness of the liberal state’s policy towards asylum seekers can be seen as flowing from the liberalism (intentional or otherwise) of its policy towards foreigners inside the state. Inclusion and exclusion are two sides of the same liberal coin.

Implications for asylum

If the last point can be sustained, then we can gain some important insights into the rationale behind recent measures to exclude asylum seekers by use of non-arrival measures. For the use of these exclusionary practices might be seen as evidence of a struggle by Western states to delimit their responsibilities to outsiders in the aftermath of a period during which these responsibilities expanded. External exclusionary practices, such as carrier sanctions and airport liaison officers, have grown in popularity as it has become more difficult for states to distinguish *internally* between the obligations it has to those, like asylum seekers, who are in the state but not yet residents, from those, like permanent residents (such as guestworkers), who are in the state but not yet citizens. This does not mean that liberal states have given up on the attempt to draw a clear line between asylum seekers and permanent residents. Domestic practices such as streamlining asylum processing, through the use of fast track (or expedited) procedures, aim *inter alia* to prevent asylum claimants from sliding into membership by limiting the amount of *time* they spend in the polity. The detention of asylum seekers marks out a dividing line that is even more stark: *physical isolation* is used to symbolize a distinction between the two groups. Yet the legal, financial and political constraints that states face in implementing such internal exclusionary measures make it preferable to prevent the arrival of asylum seekers in the first place.

There are many reasons to be concerned about these exclusionary practices: they are often illiberal. But if expanding the responsibilities of states to those seeking asylum is a legitimate goal, then it follows that states must at some point distinguish between their responsibilities to asylum seekers and their responsibilities to members. For if states refuse to deport unsuccessful applicants, then asylum determination procedures

are wastes of time. And if determination procedures are wastes of time, there is no difference between an asylum policy and an open admissions policy.

Here we come full circle. For if it is impossible for asylum policies to work, then Western states cannot use asylum as the basis for winnowing out refugees from other claimants for entry. And if states cannot winnow out refugees, how can they be expected to respond to the increasing pressures that characterize more globalized asylum flows? Rather than leading to a liberal response to asylum seekers, the increasing inclusiveness of Western states actually undermines the possibility of an asylum-based response to refugees.

Conclusion: the noble lie?

These comments take us back to the question of deportation. Given the constraints facing it, and given its unpopularity, it is something of a mystery that states bother at all. Indeed, it would seem that either states should take it much more seriously – through mass, efficient deportations – which will be extremely difficult legally, politically and morally – or get out of the game altogether. In the light of trend II (relative security), however, the state needs deportation. By maintaining policies on deportation, the state furthers the myth – and it is nothing more than a myth – that it can actually remove from its territory all criminal non-citizens and/or illegal migrants. No state is willing to collapse the distinction between legal and illegal migrants. This myth, or perhaps this noble lie, serves a three-fold purpose.

First, it assuages domestic public opinion, which would not view the state's incapacity in this area with equanimity. Second, it serves as an (unquantifiable) disincentive for those seeking to migrate into Europe or North America. Third, in cases where a policy of voluntary return is operated – as it was on a massive scale in Germany in the late 1990s (for Bosnian and Kosovan asylum seekers granted temporary protection) – it allows the state to apply pressure in favour of return.⁷³ Holding out the prospect of possible, however remote, deportation allowed Germany to increase the incentives for migrants to return under favourable and (at least nominally) voluntary conditions.

The utilitarian value of deportation naturally does not address the liberal paradox – the conflict between the liberal state's support for the demos, and its support for rights; indeed, it rests at its core. It could be addressed through either expanded inclusion – through spreading the inclusionary impulse beyond the territorial boundaries of state by the dismantling the external measures (such as visas and carrier sanctions) that prevent the arrival of asylum seekers – or expanded exclusion – more frequent recourse to deportation, matching external restrictions with internal ones. The former would be likely to run up against the demands of the demos – popular sovereignty wishes itself to be exercised in the form of closed borders – while the latter would violate rights institutionalized in domestic courts and national jurisprudence. In the context of increased migration flows and growing post 11 September security concerns, the liberal paradox will – far from vanishing – bear down further on governments, politicians and citizens.

ENDNOTES

¹ For a summary of this debate, see C. Joppke, “Why liberal states accept unwanted immigration,” *World Politics* 50 (1998).

² S. Sassen, ‘The de facto Transnationalizing of Immigration Policy, in C. Joppke ed., *Challenge to the Nation-State* (Oxford: Oxford University Press, 1998), S. Sassen, *Losing Control* (New York: Columbia University Press, 1996). S. Soysal, *The Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago Press, 1994).

³ J. Hollifield, *Immigrants, Markets and States: The Political Economy of Postwar Europe* (Cambridge: Harvard University Press, 1992), introduction, C. Joppke, *Immigration and the Nation-State: The United States, Germany and Great Britain* (Oxford: Oxford University Press, 1999), chapter 1, Joppke, ‘Why liberal states accept unwanted immigration,’ G. P. Freeman, ‘Modes of Immigration Politics in Liberal Democracies,’ *International Migration Review*, 29 (1995), pp. 881–902, Freeman, ‘The Decline of Sovereignty? Politics and Immigration Restriction in Liberal States,’ in C. Joppke, ed., *Challenge to the Nation-State: Immigration in Western Europe and the United States* (Oxford: Oxford University Press, 1998).

⁴ C. Tilly and G. Ardant eds., *The Formation of national states in Western Europe* (Princeton: Princeton University Press, 1975)

⁵ Freeman, ‘The Decline of Sovereignty?’, Michael Walzer, *Spheres of justice: a defence of pluralism and equality* (New York: Basic Books, 1983), chapter 2.

⁶ Philip Martin, “The impacts of immigration on receiving countries,” in E. M. Uçarer and D. J. Puchala, eds., *Immigration into Western societies : problems and policies* (London: Pinter, 1997).

⁷ See, for example, Joseph H. Carens, “Migration and Morality: A Liberal Egalitarian Perspective” in B. Barry and R. Goodin, editors, *Free Movement: Ethical Issues in the Transnational Migration of People and Money*, (Hemel Hempstead: Harvester Wheatsheaf, 1992).

⁸ Matthew J. Gibney ‘Liberal Democratic States and Responsibilities to Refugees’, *American Political Science Review*, March (1999) pp. 169–181. Admittedly, we have not developed this argument in much detail. Readers who are unconvinced by this paragraph might treat it as the article’s premise; those who see no basis for border control whatsoever will have little sympathy with what follows.

⁹ On recent efforts to expand deportation in the US, see *New York Times*, ‘US begins crackdown on Muslims who defy orders to leave country’, (2 April 2002) A13. On events in Europe, see *The Washington Post Online* ‘Europe tossing terror suspects out the door’ (29 January 2002) at <www.washingtonpost.com> (consulted 12 April 2002).

¹⁰ This is notably true of the UK; see the figures below.

¹¹ Within the European Union, along with the EFTA states of Norway, Liechtenstein and Iceland, member states have only limited powers to expel nationals of other member states and their families. K. Groenendijk, D. Guild and H. Dogan, *Security of residence of long-term migrants: A comparative study of law and practice in European countries* (Strasbourg: Council of Europe, 1998), 19. The article considers the case of non-European aliens resident in Europe.

¹² In practice, as is widely admitted, the distinction blurs, as it did when Germany gave Bosnian/Kosovan asylum seekers the choice between voluntary return and possible forced return. Interview with the Ausländer Beauftragte des Senats von Berlin, Berlin, 2 February 2001

¹³ Thus, in the UK, around 48,000 people will be removed from the UK in 2001, but the majority was not admitted; only 8000–9000 are ‘in-country’ removals. Interview with a Home Office official, Oxford, 3 May 2001. The German figures presented below include both in-country and airport removals.

¹⁴ Rounded figures. Sources: John Salt, *Current Trends in International Migration in Europe*, Strasbourg: The Council of Europe (CDMG (99) 10), 1999; *World Refugee Survey* 1999, US Committee for Refugees, Washington, 1999; ECRE Country Reports, 1998, websites: <http://www.unhcr.org/statistics>, ‘2000

Global Refugee Trends. Analysis of the 2000 Provisional UNHCR Population Statistics, May 2000:’ <http://www.unhcr.org/statistics> (consulted 19 September 2001); UNHCR, *The State of the World’s Refugees 1995: A Humanitarian Agenda* (Oxford: Oxford University Press, 1995).

¹⁵ UNHCR, *State of the World’s Refugees 1997–1998* (Oxford: Oxford University Press, 1997), pp. 145–185; UNHCR, *State of the World’s Refugees 2000* (Oxford: Oxford University Press, 2000) p. 325. The peak year of 1992 includes large numbers of refugees from the former Yugoslavia, who were granted temporary protection by Germany; such a massive movement was not repeated in the rest of

the decade. Even leaving it aside, Europe received hundreds of thousands of asylum seekers yearly throughout the 1990s.

¹⁶ Two arguments are offered to explain low recognition rates. Critics of asylum, including most governments, claim that much asylum seekers are economic migrants rather than genuine refugees seeking protection. Critics of states argue that the low recognition rate reflects a restrictive definition in the Refugee Convention: a refugee is one to be an individual with a “well founded fear of persecution” on one of the five grounds enumerated in Article 1 of the Convention. This narrow definition often rules out those fleeing more generalized forms of violence, such as war, natural disaster or economic collapse. Moreover, some states, including France and Germany, interpret the Convention so narrowly as to exclude persecution by agents other than the state, interpretations that can leave Roma fleeing regular attacks by local gangs, or left women escaping Taliban oppression, ineligible for refugee status.

¹⁷ The figures are from UNHCR, *The State of the World's Refugees 2000* (Oxford: Oxford University Press, 2000), pp. 321–324.

¹⁸ In Canada, for example, those who do not receive Convention status will not be removed if they receive a positive Post Determination Refugee Claimant in Canada decision, which assesses whether the individual would be “at risk” if returned. Germany and the UK use the statuses of Duldung (a stay of deportation) and Exceptional Leave to Remain respectively to provide forms of protection for those who might otherwise be removed.

¹⁹ Figures from UNHCR, *The State of the World's Refugees 2000*, (Oxford: Oxford University Press, 2000), pp. 321–324.

²⁰ These individuals came under the Deferred Removal Orders Class or the Post-Determination Refugee Claimants in Canada Class.

²¹ As above, these figures should be taken as rough indications only as the people granted humanitarian status in a particular year are often part of the intake of asylum seekers from previous years.

²² This point was made repeatedly by one participant during a Brussels seminar, 11 April 2002. Though it cannot be proven, it is doubtful that individuals who have gone to great effort to circumvent the modern state’s sophisticated (and at times severe) battery of immigration controls; who have often risked their lives in unsafe travel; and/or who have paid traffickers thousands (if not tens of thousands) of dollars will simply leave their destination countries once all forms of legal appeal have been exhausted. They most likely disappear into the anonymity of Europe’s and North American’s large cities.

²³ The figures also include those several thousand Bosnians and Kosovans deported following their refusal to leave Germany voluntary. Following both the Yugoslavian conflict and the Nato bombing of Serbia, Germany agreed to accept tens of thousands of Kosovans and hundreds of thousands of Bosnians on the understanding that they would be asked to leave once conditions had improved. Once Germany (but not UNHCR) decided they had, Bosnians/Kosovans were given the choice between returning voluntarily with aid (DM1,023/770 per person to a maximum of 3,070/2,300 per family) or face possible (though not definite deportation). Most agreed to go voluntarily Germany also invested 4,090/3,070 per family for municipal reconstruction. Interview with the Ausländerbeauftragte des Senats von Berlin, Berlin, 3 February 2001. Figures provided by Sabrije Neziraj of the Berlin Ausländerbeauftragte.

²⁴ Confidential source.

²⁵ P. Wintour, “Deportation raids ‘will harm race relations’”, *The Guardian*, 11 July 2001 at www.guardianunlimited.co.uk (consulted April 12, 2002)

²⁶ P. Wintour, “Deportation raids ‘will harm race relations’”, *The Guardian*, 11 July 2001 at www.guardianunlimited.co.uk (consulted 12 April 2002)

²⁷ *The Financial Times*, ‘Asylum seeker targets will not be met, says union,’ 14 August 2001.

²⁸ Interview with officials from the Enforcement Branch, Citizenship and Immigration Canada, 8 December 2000.

²⁹ Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz), 1 March 2002. <http://www.bmi.bund.de/Downloads/Zuwanderungsgesetz.pdf> (consulted 15 April 2002).

³⁰ The cost of operating the German asylum processing system, for example, was estimated at \$US8 billion in 1994. See, “Asylum in Europe: Numbers and Costs”, *Migration News*, December 1995 at <http://migration.ucdavis.edu/> (consulted 12 April 2002)

³¹ Quoted in G. Van Kessel, ‘Global migration and asylum’, *Forced Migration Review*, 10 April, 2001.

³² Interview with the Ministry of Interior, Berlin, 2 February 2001.

- ³³ As in naturalization policy, this division means that illegal residents will have a greater or lesser chance of facing deportation depending on the *Länder* concerned.
- ³⁴ For the Interior Ministry's presentation of its deportation policy, see *Ausländerpolitik und Ausländerrecht in Deutschland* (Berlin: Bundesministerium des Innern, August 2000).
- ³⁵ Interview with UNHCR, Berlin, 24 May 2001.
- ³⁶ Somewhat against expectations, this objection is often voiced most strongly by traditionally Social Democratic *Länder*, such as Hamburg or Schleswig Holstein. Conservative states, such as Bavaria or Baden Württemberg, that take a hard line against illegal immigration are in practice more willing to compromise with UNHCR on deportations. Confidential interview.
- ³⁷ Citizenship and Immigration Canada, *Removals Program Briefing*, Ottawa, 2000.
- ³⁸ The following two paragraphs draw on Mick Chatwin (ed.), *Immigration, nationality & refugee law handbook* (London: Joint Council for the Welfare of Immigrants, 1999).
- ³⁹ Since the Immigration and Asylum Act, 1996, seeking or obtaining leave to remain with deception has also become an offence.
- ⁴⁰ Interview with a British Home office official, 3 May 2001.
- ⁴¹ Such as those operated during the 1999 Kosovo crisis to resettle Kosovan refugees located in Macedonia in Europe and North America and Australasia.
- ⁴² Visa regulations, however, make it difficult for those seeking protection to reach Europe, while safe third country and safe country of origin rules allow European states to return many of those who do. On these, see Elspeth Guild, 'The Dublin Convention,' in Matthew J. Gibney and Randall Hansen, *Global Migration: An Encyclopedia* (Oxford: ABC-Clio, forthcoming).
- ⁴³ See, for example, Philip Brook Manville, *The Origins of Citizenship in Ancient Athens*. (Princeton: Princeton University Press, 1990). At one point, deportation was a central part of social policy. When individuals became an unwanted charge on the city, county, country, they were lobbed across the border to the next city, county, country. See Abram de Swaan, *In care of the state: health care, education and welfare in Europe and the USA in the modern era* (Cambridge: Polity Press, 1988).
- ⁴⁴ Space limitations allow only a limited treatment of these issues. For a longer one, see Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (New York: Oxford University Press, 1993), Gil Loescher, *The UNHCR and World Politics: A Perilous Path* (Oxford: Oxford University Press, 2001), Ari Zolberg, Astri Suhrke and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (NY: Oxford University Press, 1989).
- ⁴⁵ Astri Suhrke, "Uncertain Globalization: Refugee Movements in the Second Half of the Twentieth Century" in Gungwu, W., ed., *Global History and Migrations* (1997) pp. 218–219.
- ⁴⁶ See S. Castles and G. Kosack, *Immigrant Workers and Class Structure in Western Europe* (London: Oxford University Press, 1973) and James F. Hollifield, *Immigrants, Markets and States: The Political Economy of Immigration in Postwar Europe* (Cambridge: Harvard University Press).
- ⁴⁷ Freda Hawkins, *Canada and Immigration: Public Policy and Public Concern* (Kingston: McGill-Queens UP, 1988) pp. 355–56.
- ⁴⁸ Andrew Geddes, *Immigration and European integration : towards fortress Europe?* (Manchester: Manchester University Press, 2000). Randall Hansen, "Asylum Policy in the European Union," *Georgetown Journal of Immigration Law* 14, no. 3 (2000).
- ⁴⁹ Antonio Cruz (1991), "Carrier Sanctions in Four European Community States: Incompatibilities Between International Civil Aviation and Human Rights Obligations", *Journal of Refugee Studies*, Vol 4, No 1, pp. 63–81
- ⁵⁰ Elspeth Guild, "Competence, discretion and third country nationals: the European Union's legal struggle with migration," *Journal of Ethnic and Migration Studies* 24, no. 4 (1998).
- ⁵¹ Gallya Lahav, "Immigration and the state: the devolution and privatization of immigration control in the EU," *Journal of Ethnic and Migration Studies* 24, no. 4 (1998).
- ⁵² As Aristide Zolberg has recently pointed out, these measures of "remote control" were far from new, having been pioneered by the US in the 1920s, see "Introduction: Beyond the Crisis", in A. Zolberg and P. Benda, *Global Migrants, Global Refugees: Problems and Solutions* (New York: Berghahn, 2001). What is new is the elaborateness and diversity of the current measures in use and the specific targeting of asylum seekers.
- ⁵³ Christian Joppke, *Immigration and the Nation-State: The United States, Germany and Great Britain* (Oxford: Oxford University Press, 1999), introduction.
- ⁵⁴ Though the courts have yet to find this obligation non-derogable.
- ⁵⁵ V. Guiraudon, 'Citizenship Rights for Non-Citizens: France, Germany and the Netherlands,' in C. Joppke ed., *Challenge to the Nation-State* (Oxford: Oxford University Press, 1998).

⁵⁶ Interview with a Home Office official, 3 May 2001; public intervention by Jean François Terral at conference on refugee policy and practice in Europe and the US, Christ Church, Oxford, 1-3 July 2001.

⁵⁷ Recent court decisions in the UK and the US pose particularly notable constraints on the use of detention. In the UK, a 2001 high court decision (later partly overturned) ruled unlawful the government's discretionary detention policy see, BBC News, 'Blunkett 'disturbed' by asylum ruling' (September 7, 2001) at <<http://news.bbc.co.uk/>> (consulted 12 April 2002). In the US, the Supreme Court in *Zadvydas v. Davis et al.* of 28 June 2001 limited the state's ability to detain deportable aliens if no country was willing to receive them.

⁵⁸ For example, the German airline Lufthansa refuses to accept deported individuals who need to be restrained. This condition has not, however, prevented the organization from being the target of anti-deportation protestors. See, BBC News, 'Cyber-attackers hit Lufthansa', 21 June 2001 at <http://news.bbc.co.uk/> (consulted 12 April 2002).

⁵⁹ Confidential interview.

⁶⁰ Interview with the Ministry of Interior, Berlin, 2 February 2001.

⁶¹ Interview with UNHCR, Berlin, 24 May 2001.

⁶² Confidential interview.

⁶³ Ryszard Cholewinski, "Economic and Social Rights of Refugees and Asylum Seekers in Europe," *Georgetown Immigration Law Journal*, 14, no. 3 (2000).

⁶⁴ Martin Slade, General Secretary of the UK Immigration Service Union, (naively) complained to the *Financial Times* that potential deportees 'are not residing where they are supposed to reside.' 'Asylum seeker targets will not be met, says union,' 14 August 2001.

⁶⁵ Interview with a Home Office official, 3 May 2001; public intervention by Jean François Terral at conference on refugee policy and practice in Europe and the US, Christ Church, Oxford, 1-3 July 2001.

⁶⁶ According to one Home Office Official, the rate of removals in the UK was slowed considerably in the wake of the death of Joy Gardner, a Jamaican immigrant, who suffocated while being deported from the UK on 28 July 1993.

⁶⁷ See K. Groenendijk, Elspeth Guild and Halil Dogan, *Security of residence of long-term migrants* and Yasemin Soysal, *The Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago Press, 1994), chapter 7.

⁶⁸ David Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship* (Baltimore: John Hopkins University Press, 1997), Soysal, *The Limits of Citizenship*.

⁶⁹ Gary P. Freeman, "Modes of immigration politics in liberal democratic states," *International Migration Review* 29, no. 4 (1995), Gary P. Freeman, "The decline of sovereignty?" in C. Joppke, ed., *Challenge to the Nation-State*, Randall Hansen, "Migration, citizenship and race in Europe: Between incorporation and exclusion," *European Journal of Political Research* 35 (1999), Christian Joppke, *Challenge to the Nation-State*, C. Joppke, *Immigration and the Nation-State*.

⁷⁰ Interview with official from the UK Immigration Service.

⁷¹ The Netherlands has arguably gone furthest in this direction. Applicants in the queue for asylum for more than three years are entitled to apply for permanent residence.

⁷² For such arguments see Yasemin Soysal, *Limits of Citizenship*, Jacobson, *Rights Across Borders*.

⁷³ Interview with the *Ausländer Beauftragte des Senats von Berlin, Berlin*, 2 February 2001