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Ins and Outs of British Migration Policy

By D. A. Coleman

British immigration policy is simple. For twenty years or more it has been: "to reduce and keep new immigration to a small and inescapable minimum." In official language, the policy is intended:

- (1) To allow genuine visitors and students to enter the United Kingdom;
- (2) To give effect to the free movement provisions of European Community law;
- (3) Subject to the above, to restrict severely the numbers coming to live permanently or to work in this country, but to continue to admit spouses and minor children of those already settled here, provided they satisfy the requirements of the Immigration Rules; and
- (4) To maintain an effective and efficient system for dealing with applicants for citizenship.¹

This article briefly describes the development of that policy.

British Immigration Policy in Brief

On paper, the British is probably the most clear and unambiguous immigration policy in Western Europe. It has the reputation, not entirely deserved, of being the most strictly enforced and interpreted. It is important for transatlantic readers to understand that United Kingdom (UK) immigration policy is not to be understood in the U.S. context of policies to manage and prioritize immigration streams which in general are favored by the administration and by important sections of public opinion. In the UK, and more generally in Europe, immigration policy usually means keeping people out unless there is a clear reason for admitting them. Again unlike the U.S., in the UK there are no quotas for immigration (with two trivial exceptions) and the level of immigration cannot be predicted from one year to the next.

Immigration policy is conceived in the context of a belief in a strong "pressure to migrate" to the UK. In practice most of this pressure comes from Third World countries, especially from the New Commonwealth (former British colonies in the Third World, and the few remaining ones which are now more delicately called "dependent territories"). The Immigration Rules, however, apply to all persons who do not enjoy the right of abode in the UK (apart from the provisions relating to British Commonwealth (BC) membership and apart from movement from the Irish Republic,

which has never been subject to control in peacetime).

There is no support in governmental circles, or in public opinion, or even much in academic circles, for the notion that the country "needs" immigrants in general to expand the population and work force or to stimulate the economy (there are exceptions²). The UK, like other countries in Western Europe, is considered to be "full" and to have problems of housing, crowding, race relations and unemployment which uncontrolled large-scale immigration could only exacerbate. It is of course recognized that migration will naturally arise for reasons of work, marriage and so on. Aside from asylum claimants, about 200,000 people enter each year intending to stay for at least 12 months, and about 50,000 are "accepted for settlement," leading to a net population gain (apart from the uncounted flow from the Irish Republic) of about 50,000 per year. Labor needs are managed through the work permit system, which in practice attracts mostly high skilled and professional workers. Apart from passport control, there are no barriers on entry to BC citizens and none at all on any movement from the Irish Republic for work or any other purpose. Such persons do not need work permits or visas.³

In some Western countries, renewed immigration is urged to rectify actual or threatened population decline or the aging of the population (in this author's view, unsound grounds⁴). In the UK, with over 2.4 million unemployed and one of the highest birth rates in Europe, with a population which is not expected to start to decline until after 2030, there is little interest in such propositions. But they are sometimes favored by liberal opinion as further arguments to relax immigration controls. (*The Economist* magazine, for example, hard-headed on economic matters, endorses most proposals for dropping immigration restrictions, whether from supposed demographic needs⁵ or alleged economic stimuli as a result of immigration.⁶)

Meanwhile, there is general support for further reduction in immigration. In the British Attitudes Survey of 1984, 65 percent of the respondents called for less settlement from the New Commonwealth, as did up to 45 percent of ethnic minority respondents themselves.⁷ Most who favor easier entry are moral and intellectual critics from the churches and the left, including some of the black and Asian voters, who

predominantly support the Labor Party. These and other critics consider the immigration policy to be racist, both in its strategy and in its operation. The aim in 1962 in introducing controls on the entry of Commonwealth citizens (mostly non-white), to bring them into line with the controls already applying to all other persons, certainly arose explicitly from fears that such large non-European populations could not be readily absorbed either into society or the economy, and that such large flows, already arousing hostile public opinion, would lead to racial conflict. The rules themselves, however, are strictly impartial with respect to race and ethnic origin and indeed arise simply from the extension to Commonwealth citizens of controls previously imposed only upon non-Commonwealth foreign citizens. Many of those who are thereby excluded are non-white people from the Third World. That is where most of the pressure for immigration comes from.

The Historical Background

Britain has never considered itself to be a "country of immigration." It has exported population, not acquired it. From the 16th century its emigrants moved, mostly to its English-speaking colonial territories and dominions, for a variety of political, commercial, religious and individual motives. Emigration grew in the 19th century mostly as a result of spontaneous individual decisions, and was later encouraged officially as one way of reducing the welfare population.⁸ In the late 19th and early 20th centuries, emigration to the Dominions, which peaked in 1913, was also encouraged as a way of developing the Commonwealth as a multinational English-speaking power. Legislation to promote emigration to the Dominions was the basis of British migration policy for over thirty years, being renewed as late as 1952.⁹

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Immigration control was a relative newcomer. Controls made necessary by the wars against Napoleon were finally dismantled in 1836. For most of the 19th century, there was no "immigration problem" and foreigners (mostly from Europe) and subjects were free to come and go more or less as they wished without passports and for the most part without comment. The re-invention of control followed the novel arrival of large numbers of poor Ashkenazi Jewish migrants from Russian Poland, a migration part economic, part refugee, which began in the mid-

nineteenth century and became substantial in the 1880s. Most of the Jews congregated in the East End of London, provoking fears that housing and wages were being squeezed. Years of rather conscience-stricken political debate led to a partial form of immigration control in the 1905 Aliens Act. This act invented immigration officers with limited powers to question and refuse entry to foreign steerage passengers on various grounds. Absolute immigration control on foreigners was imposed during World War I. The 1919 Act, with its series of Immigration Orders starting from 1920, has provided the framework for immigration control of foreigners ever since. "Orders" are measures (secondary legislation) derived from legislation which, although requiring the approval of Parliament, do not require the full time-consuming process of the passage of a Bill through both Houses of parliament (primary legislation).

In brief, in its modern guise as updated by the 1971 Immigration Act, no one without the right of abode may enter the UK without the permission of an Immigration Officer (except for all arrivals from the Republic of Ireland). Visitors (today about 23 million per year) may be admitted for a variety of the usual short-term reasons. Since 1920 those entering for work, with a few exceptions, need a work permit acquired by their employers from the Department of Employment for a limited period. The terms "immigrant" or "settler" are not recognized by the legislation. Persons are given the right to remain for as long as they like by being "accepted for settlement" either on arrival or more usually "on expiry of time limit" after temporary admission as a worker or spouse or fiancé(e). EC citizens now have privileged access thanks to UK accession to the Treaties of Rome (1973) and Maastricht (1993) and the Single European Act 1985 (effective 1993). There are no controls on emigration from the UK, although departing passengers have been required to show a passport since World War I.

Until 1962 and 1971, none of the above measures applied to British subjects, only to "foreigners." British subject status conferred untrammelled right of entry to the UK, and other privileges (voting), upon all those owing perpetual allegiance to the British monarch by virtue of birth in the UK, or in a Dominion or Colony. This long-standing practice was formalized by the British Nationality and Status of Aliens Act 1914. Its provisions were continued even after the Second World War which had effectively put an end to the dream of a multi-national, decentralized world state with a common citizenship. The British Nationality Act 1948 continued the privileges of free entry (and of subsequent voting in all elections) for the citizens of former colonies which had become independent countries, even if they had chosen to become republics (e.g. India, Pakistan in 1947), unless they left the Commonwealth (e.g. Burma 1948, South Africa 1964). Citizens of the former countries were

deemed to have remained British subjects or "Commonwealth Citizens," even if their governments renounced the British monarch as Head of State. They were thereby exempted from the immigration disabilities of "foreigners" (or "aliens"). This led to a very confused notion of British citizenship.

By 1977 these privileges of Commonwealth citizen status applied to about 950 million people.¹⁰ Before World War II relatively few who were not of British origin came to Britain. After the war these poor but growing populations were mobilized by the wartime service of West Indians, Indians and others in Britain, and by cheap sea and air travel from the 1950s. The U.S. McCarran-Walter Act of 1952, which reduced the West Indian immigration quota to the United States to 100 until its repeal in 1965, diverted migration streams to the UK.¹¹

The 1962 Commonwealth Immigrants Act

As early as 1950 the Attlee (Labor) government had considered proposals to stop immigration from the West Indies, almost as soon as it had begun in 1948, because of its supposed undesirable social consequences. Such proposals were considered from time to time by the Conservative government which succeeded Labor in 1951. Controls were thought necessary to respond to public concern, to avoid friction with immigrant populations perceived as being difficult to assimilate because of differences in race, religion, language and customs. Their concentration in particular urban areas accentuated the fear that the immigrants were putting pressure on housing, jobs and schools.¹² Unlike many continental countries,¹³ there was no official large-scale labor recruitment to the UK. Between 5,000 and 10,000 were recruited by various industries, mostly from Barbados.¹⁴

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Acrimonious debate between the parties and within the Conservative ranks delayed action until 1962 and stimulated further immigration. Popular pressure against continued immigration was countered by claims that controls were racist and betrayed the ideal of free movement in a multi-racial Commonwealth with a world citizenship. Freedom of movement had long ceased to apply to British people seeking to settle in most other Commonwealth countries. Eventually the Commonwealth Immigrants

Act 1962 imposed for the first time a moderate form of control on Commonwealth citizens, limiting the numbers allowed to enter to seek work through a generous voucher scheme (not the work permits required for aliens) and with liberal arrangements for "dependents."

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The Labor Party, though voting against the legislation, did not repeal it when they came to power in 1964. Instead they strengthened its modest provisions in the White Paper of 1965. Their new legislation in 1968 introduced annual quotas on East African Asians who had been given UK passports on the independence of various East African colonies. In 1969 the Labor government additionally required persons seeking to enter as dependents from the Indian sub-continent to seek "entry clearance" from British officials there rather than on arrival, where claims were impossible to check. The 1968 legislation also introduced the notion of a "patrial" — a person with a long-standing strong connection with the British Isles who could be expected to have the right of abode in the UK (e.g. by virtue of having at least one UK-born grandparent) once his or her position was established.

To compensate some of its own factions the Labor Government also introduced a series of race relations acts (1965, 1976) progressively outlawing racial discrimination and paving the way for what has become in effect a minorities-based "multicultural" policy. This in turn has not been repealed by the Conservatives, even though they had originally opposed it. Such balanced developments have been called the "Grand Compromise" by U.S. analysts although the term is little used in the UK and no formal deal was struck. Immigration controls are still opposed by the left. It is not Labor Party policy to repeal them, even though particular aspects of the laws or their implementation is denounced as racially discriminatory.

The 1971 Immigration Act

Immigration policy in Britain is still defined by the 1971 Immigration Act. Then and ever since it has been described by the Government as a "firm but fair" immigration policy, intended to "control immigration from all sources on the same basis, as an essential prerequisite for satisfactory race relations." Its aim was explicitly to limit immigration from Commonwealth and foreign countries on the same defensible footing. It abolished the special quotas and other distinctions

which Commonwealth subjects had enjoyed over foreign citizens and established the same procedure for labor migration based on work permits for all migrants (except, since 1973, from the EC). "The 1971 Act ... sought to bring primary immigration by heads of households down to a level which our crowded island could accommodate ... in the belief that there is a limit to which a society can accept large numbers of people from different cultures without unacceptable social tensions. That remains our view."¹⁵ The wide-ranging and confusing definition of British citizenship was not reformed until 1981 to bring it into line with the realities of immigration control. The Labor Government of 1974-79, which had opposed the Act in opposition, again did not repeal it when in office. It passed no primary immigration legislation but it did alter the Immigration Rules in various ways which increased the number of persons accepted for settlement. But from 1977 newly married husbands were no longer being accepted for settlement on arrival but instead were given "limited leave to enter." That was intended to reduce illegal immigration through bogus marriages of convenience, a problem which has increased up to the present day.

Developments in Immigration Policy Since 1971

The 1971 Act remains in place as the basis of immigration control. Since then, only relatively minor changes have been made: to close loopholes, to restrict undemanding provisions on dependents, and to respond to new legal challenges (notably membership in the EC) and unexpected interpretations of the 1971 Act by the courts (especially the European Court of Human Rights in 1985), and also to respond to new challenges such as very large numbers of asylum seekers and illegal immigrants who began to arrive in the UK from the mid 1980s. For example, the Immigration Act 1980 obliged male Commonwealth citizens settled (or born in UK) by January 1, 1973, as well as subsequently, to provide adequate maintenance for their dependents before those dependents could enter. It also restricted right of entry to just one of the wives of polygamous men settled in the UK and obliged all overseas citizenship claimants to settle their claims abroad. (Once claimants for citizenship or asylum are in the UK they enjoy the support of various appeal procedures and government-subsidized immigrant support agencies.

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European judges have sometimes forced the

government to change its rules to allow further immigration. In August 1985, for example, following a ruling in 1985 by the European Court of Human Rights, the Immigration Rules had to be changed to give the right of settlement to the husbands of wives who were settled in the UK, even when the wives were not citizens. Previously this had only applied to husbands of British citizens. This court now over-rides UK law because the UK is a signatory to the European convention on Human Rights, signed November 1950 which came into force September 1953. The convention operates in ways completely unfamiliar to the UK justice system, there being no appeal and no ultimate determination of the law which it administers by elected representatives. To limit the damage, the Rules were also changed to extend the "primary purpose rule" to wives as well as to husbands. This is an inquiry to establish whether the purpose of the marriage is primarily to gain entry into the UK. Wives as well as husbands now have to serve a "probationary year" after their marriage, and female fiancées as well as male fiancés must obtain entry clearance before arrival.

Accession to the Treaty of Rome in 1973 required immigration controls to be eased on EC citizens. Except for the mid 1980s, numbers of people entering from EC countries have been about the same as numbers leaving. However Section 8a of the Single European Act, effective from January 1, 1993, poses a more serious challenge to UK immigration control. The EC Commission and other member states interpret this Act to mean that all member states must remove border controls for EC citizens and also for other, non-citizen residents of EC countries. The British Government has opposed any such interpretation, claiming this would wreck attempts to control the entry of drugs and terrorists as well as unwanted immigrants to another country, whether legal or illegal. For the same reasons, the UK has not joined the Schengen agreement of 1990, created between several EC countries to harmonize their immigration policies. Intended to facilitate cross-border trade, the agreement binds its signatories to abandon border controls on their common frontiers, although not, of course, on frontiers with other countries. There is no confidence in Britain in the effectiveness of Spanish, Italian or Greek immigration procedures, which under EC proposals would become, along with those of other states, the means of controlling immigration into the whole EC area from non-EC countries.

Old colonial obligations, the ending of which has been so often promised, nonetheless continue to punch holes in immigration policy. The Immigration (Hong Kong) Act passed in 1991 permits the entry for settlement of up to 50,000 heads of household (equivalent to about 250,000 people), who previously did not have the right of abode in the UK, in addition to the existing 15,000 UK passport holders in Hong Kong. An unwilling UK government felt that it had to

stabilize the situation in its last remaining large colony, which is due to be handed back to the communist Chinese government in 1997, even at the expense of domestic immigration policy. By granting the right of abode to the 50,000 (mostly key government employees to whom some moral debt was felt) the government hopes to persuade them to stay in Hong Kong with a guaranteed means of escape, rather than obliging them to find one permanently in Canada or elsewhere by leaving prematurely. Previous, but smaller exceptions were made in 1973 on behalf of East African Asians fleeing Uganda and after 1982 in favor of Vietnamese "boat people." Serious trouble in South Africa may also spell serious trouble for British immigration policy. Approximately 800,000 people entitled to hold UK passports ("patrials") are believed to live there.

Recent Pressures on Immigration Policy

Up to the 1980s, it was believed that immigration was more or less under control. In net terms, it was still negative — inflows of Commonwealth and other citizens being more than balanced by outflows of Britons. It had ceased to be politically very salient. Labor migration was adequately dealt with in modest numbers to meet the modest needs of the UK economy. Most work permits were given to highly skilled or professional workers, as today. EC membership and the removal of most controls on entry from EC member countries had not generated large volumes of additional migration — the mediocre UK economy was not attractive to most European migrants. Immigration from the Republic of Ireland, insofar as it was known, was not a problem. Immigration of dependents from the New Commonwealth was declining, although not as fast as had been forecast, and immigration of new fiancés and spouses from the New Commonwealth was still relatively modest.

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This began to change from the mid-1980s. Conventional sources of net immigration began to grow again, from the New Commonwealth and from work permit holders. In just a few years asylum claims have increased from a few hundred to 44,000 in 1991, not including dependents. The UK government, like the rest of Europe, believes that almost all the new

asylum pressure is conventional betterment migration. Claimants' case histories show that asylum claiming is often illegal immigration pursued by other means. Acceptance rates of "Convention" refugees, 32 percent as recently as 1989, fell to 3 percent in 1992. However, many more are given "limited leave to remain" on humanitarian grounds. Very few are removed. For example, in 1992 18,465 claims were rejected (including multiple claims) and only 1,346 persons were returned (7.3 percent).

A number of steps have been taken to try to limit these flows, similar to legislation in European countries. Visa requirements have been imposed on various Commonwealth nationals for the first time (Ceylon in 1985, India, Bangladesh, Pakistan and Ghana in October 1986, Nigeria in February 1987). The Immigration (Carriers Liability) Act 1987 made airlines responsible for ensuring that passengers to the UK had appropriate documents, subject to a penalty, now £2000, imposed on the carrier per infringement. Most airlines have refused to pay the huge fines outstanding. Enforcement is troublesome for diplomatic reasons. Changes in the Immigration Rules and asylum procedures have aimed to reduce bogus asylum claiming, for example those in November 1991 directed against multiple applications and other fraud. DNA tests were introduced in January 1991 to check the veracity of dependency claims. The Asylum and Immigration Appeals Act 1993 is the latest legislation. It provides for the fingerprinting of claimants (to suppress multiple claims), ensures that claimants are only offered temporary accommodation if they make demands under the homelessness legislation, restricts the rights of appeal in relation to asylum claims, and extends the Carriers Liability Act to transit passengers. Some of the earlier measures appear to have had some effect. The number of asylum claimants fell to 24,600 in 1992 and to 22,400 in 1993 (excluding dependents).¹⁶ The Government's restrictive policy on refugee claimants attracts much criticism from political opponents and from the churches.

Nonetheless, most forms of immigration to the UK have continued to rise since the mid-1980s, not to fall as promised; and in various ways official statistics understate the overall demographic impact of immigration. Whether this policy, condemned by some for its apparent strictness, is actually effective is questioned by these rising trends. For many years there has been an uneasy consensus on immigration — that controls were necessary and that they were effective. For these reasons, immigration has only transiently been front-page news and has not been a major issue in elections. A future article will consider the present-day situation in more detail and consider what options, if any, this or any other UK government might have if it wishes to make its immigration policy more effective. ■

NOTES

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