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Sécuritisation, dissuasion et contrôles : analyse comparative
de la détention des migrants aux États-Unis et au Royaume-
Uni (1980-2001)

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**Securitisaton, Deterrence, and Control: A
Comparative Analysis of Immigration Detention
in the United States and the United Kingdom
(1980–2001)**

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For Frodo and Sam

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General Introduction

On Tuesday, 4 December 1979, David Steel, a British member of Parliament from the Liberal Party, declared in a debate in the House of Commons: “We have always prided ourselves on not having detention without trial. Unhappily, that is a serious and growing side consequence of the present Immigration Rules. I can see that consequence growing under the rules before us today”¹. His prescient remarks foreshadowed the expansion of the immigration detention system in the following decades. An expansion in the United Kingdom that echoed the growth of the American system over a similar period.

While the detention of immigrants in the 1970s was minimal, by 2001 the US detained over 200,000, and in 2010 detention numbers surpassed 350,000 migrants.² At the same time the average daily population of detained immigrants increased more than sevenfold between 1994 and 2019, rising from approximately 7,000 in 1994, to 19,000 in 2001, and surpassing 50,000 by 2019.³ In the UK, in 1975 the country detained a mere 188 migrants over the entire year. By 2010, detention figures stood at over 25,000.⁴ The UK’s reporting system significantly hinders the ability to monitor year-to-year trends in detention. The government does not publish comprehensive statistics on the annual number of people detained, their age, the stage of their immigration or asylum proceedings, or the outcomes of their detention. Instead, the Immigration and Nationality Directorate (IND) provides only quarterly statistics, which capture a limited “snapshot” of the detention estate on a single day.⁵ This approach obscures the scale, dynamics, and consequences of immigration detention, limiting transparency and accountability.

However, the data in both countries shows that what had once been an exceptional practice became an entrenched institution, supported by law, bureaucracy, and infrastructure. This dissertation asks a simple question: why did immigration detention expand so dramatically in the US and UK between 1980 and 2001? It also wonders how the two systems were shaped by national politics and does a comparative analysis reveal changes that a unilateral study would not. Answering this requires more than recounting statistics or cataloguing legal reforms. Immigration detention must be

¹ *House of Commons Debates (Hansard)*, vol. 975, 4 December 1979, col. 286, “Immigration,” spoken by Mr Steel, *UK Parliament Hansard Online*, <https://hansard.parliament.uk/Commons/1979-12-04/debates/527f2ed6-5ff3-4f51-af9b-29b61e14482c/Immigration>

² U.S. Immigration and Customs Enforcement, *Weekly Departures and Detention Report (WRD): As of June 20, 2016, as Provided by the Statistical Tracking Unit* (Washington, DC: Office of Enforcement and Removal Operations, Information Resource Management, U.S. Department of Homeland Security), <https://perma.cc/5K8K-MVJ6>

³ ‘Immigration Detention 101’, *Detention Watch Network*, 2024, <https://www.detentionwatchnetwork.org/issues/detention-101>

⁴ UK Home Office, “How many people are detained under immigration powers in the UK,” *Immigration System Statistics, Year Ending December 2024*, published February 27, 2025, <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2024/how-many-people-are-detained-under-immigration-powers-in-the-uk>

⁵ Christine Bacon, *The Evolution of Immigration Detention in the UK: The Involvement of Private Prison Companies*, RSC Working Paper Series, no. RSC Working Paper No. 27 (September 2005): 5.

understood as the product of political decisions, institutional struggles, and shifting public discourses. Some expansions were carefully planned, others were *ad hoc* responses to crises, and many emerged from broader contests over sovereignty, race, security, and belonging. My central argument is that the rise of detention in these two liberal democracies cannot be explained by security imperatives or migration “pressures” alone. Rather, it reflected a convergence of political logics that redefined immigration enforcement as both a tool of social control and a symbol of state authority.

The reasons behind the increase in detention are numerous, at times intentional, at others the by-product of spur-of-the-moment decisions, and often the consequence of political and economic struggles within the government and its partners. This dissertation asks why immigration detention expanded so dramatically in the US and UK between 1980 and 2001, and what this reveals about the political logics of liberal democracies. Providing explanations for these developments will be one of the goals of this thesis.

Politically, detention stands at the heart of debates about democracy, rights, and state power. Governments present it as necessary for deterrence and national security. Critics condemn it as inhumane, costly, and corrosive of the rule of law. Understanding how detention became normalised is crucial for interpreting contemporary disputes over borders and belonging.

The stakes of this inquiry are both scholarly and societal. Historically, detention has been understudied compared to immigration policy more broadly. While there is a vast literature on migration, citizenship, and incarceration, few works discuss detention itself as an institution worthy of sustained comparative analysis. Even fewer examine the US and UK together, despite their deep political, legal, and cultural ties. To date, no monograph has provided a systematic comparative history of detention across these two countries.

This dissertation advances three main contributions to the study of immigration detention and comparative politics. It offers the first sustained analysis that traces detention across six interconnected dimensions: historical legacies, legislative foundations, securitisation, institutional infrastructure, deterrence doctrines, and judicial responses. By weaving these dimensions together, the dissertation demonstrates how the US and UK moved along parallel yet distinctive paths toward the normalisation of detention. Rather than centring on the conditions inside detention facilities, the dissertation analyses the political, legal, and institutional processes that made detention possible and durable. This shift highlights how detention became embedded in wider governance strategies, through lawmaking, privatisation, securitisation, and the deterrence doctrine, thus reframing detention as a political technology of control. Finally, it shows that while both countries converged in expanding executive discretion and normalising detention, their routes diverged: the US through criminal justice logics and privatised infrastructure, the UK through

parliamentary layering, administrative discretion, and a hostile environment strategy. This duality complicates simple narratives of convergence, suggesting instead that shared traditions enabled functional similarity without full institutional uniformity.

Methodologically, the project combines archival research in both countries with secondary sources from law, political science, sociology, and criminology. It adopts a comparative historical approach: placing developments in each national context side by side, tracing points of convergence and divergence.

The introduction proceeds in four steps. First, it reviews the literature on detention and situates this dissertation within ongoing debates. Second, it clarifies key terminology (migrant, refugee, detention, deportation) as used throughout the study. Third, it sets out the methodological framework and sources. Finally, it outlines the structure of the dissertation.

1. Literature

Although academic research on the detention of migrants dates mainly from the early 21st century, the practice of detaining what Daniel Wilsher calls “presumably dangerous others” has older roots.⁶ Immigrants have been detained in both countries for centuries, at times on a small scale, at others on a much larger scale. Likewise, the causes for that detention and the implementation of restrictive immigration policies have differed over time, based on economic factors, national security, immigration crises, and much more.

The detention of migrants can be situated within historical processes of colonialism, nation building and immigration control and is related to questions of “citizenship, security, alien-ness, unfreedom and national security.”⁷ Since the late 1970s, and the early 1980s, migrant detention has gradually expanded into a system that has detained large numbers of non-citizens, as the growing importance of migratory movements since the post-war period has led to increasingly restrictive policies. But it is only since the 1980s that researchers have truly started to study them.

While much has been written on the histories of immigration, immigration policies and incarceration, there have only been a small number of monographs on the subject of immigration detention, most of which have been written about the American system. To date, there is no book that explicitly compares UK and US immigration detention policies. One of the few general studies that compares the US and UK migrant detention systems is *Immigration Detention: Law, History, Politics* by Daniel Wilsher (2011), which makes an important and compelling comparison in the first chapter of the book. The literature tends to fall into three categories: general books on

⁶ Daniel Wilsher, *Immigration Detention: Law, History, Politics* (Cambridge University Press, 2012), 53.

⁷ Alison Bashford and Carolyn Strange, ‘Asylum-Seekers and National Histories of Detention’, *Australian Journal of Politics & History* 48, no. 4 (2002): 50, <https://doi.org/10.1111/1467-8497.00273>

immigration and immigration policy with examples from many countries; books that focus on geographical areas (Europe, North and Central America, Asia, etc.); monographs that describe and analyse the immigration system (or a key feature of that system) of a single country (the US, the UK, France, Germany, etc.). Furthermore, much of the literature on detention focuses on the detention centres themselves, the people in them and the conditions in which they live, with little examination of the policies that led to the construction of the detention system. There are, of course, exceptions, which I detail below, but most of those have been published in the last five years, including multiple publications since this research project began. Research on the detention of migrants has become more widespread and significant in the 21st century, as the number of individuals detained for immigration-related reasons has increased and public attention on the issue has grown. Secondary sources related to these policies are often found within more general works on the immigration system in both countries. This research, therefore, seeks to bring together two countries, geographically distant but sharing many political, historical, and cultural similarities, and compare them explicitly. The goal is to provide a better understanding of the expansion of immigration detention in both countries.

The earliest discussions of modern immigration detention appeared in legal analyses of its use in the US and around the world. Two articles, both from 1986, by Guy S. Goodwin-Gill and Arthur C. Helton, discuss it on a global scale, with Helton focusing on the American case and the “revival in the 1980s” of “alien detention.”⁸ Monographs that dealt specifically with immigration detention were published beginning in the 1990s.⁹ The first, *Other People’s Blood: U.S. Immigration Prisons In The Reagan Decade*, by Robert S. Khan, used declassified government documents and interviews with prison officials, representatives of the Immigration and Naturalization Service, and thousands of refugees from Central America to highlight the dismal experiences of those detained in immigration prisons throughout Texas, Arizona, and Louisiana, and present a decade-long legal struggle against immigrant detention during the Reagan era.¹⁰ This book depicts the early days of the immigration detention system that exists today, and the causes behind it during the Reagan era.

Historical Approaches

Since then, a number of books have been published, looking at the history of detention in the United States and the United Kingdom, though the large majority have

⁸ Guy S. Goodwin-Gill, *International Law and the Detention of Refugees and Asylum Seekers*, 1986, 28; Arthur C. Helton, ‘The Legality of Detaining Refugees in the United States’, *New York University Review of Law & Social Change* 14 (1986): 353–62.

⁹ I am excluding here books about war time internment in both the United Kingdom and the United States, except when they explicitly link internment with immigration detention.

¹⁰ Robert S. Kahn, *Other People’s Blood: U. S. Immigration Prisons in the Reagan Decade* (Routledge, 1996).

come in the last decade. These include Daniel Wilsher's 2012 book *Immigration Detention: Law, History, Politics* and Mary Bosworth's *Inside Immigration Detention* (2014).¹¹ Both attempt to explain the rise of immigration detention from a historical point of view, going from the 18th and 19th centuries to the early 21st. Bosworth's work was also the most recent monograph written specifically about detention in the UK. Since 2018 there have been a significant number of books published in the US on detention and history. Geographers Jenna M. Loyd and Alison Mountz's *Boats, Borders, and Bases: Race, the Cold War, and the Rise of Migration Detention in the United States* (2018) looks at immigration detention through the lens of race, geography and the arrival of Haitians and Cubans in the 1970s and 1980s.¹² The 1980s were a period of great focus for researchers, who see it as one of the pivotal points for immigration detention. Carl Lindskoog's book, *Detain and Punish: Haitian Refugees and the Rise of the World's Largest Immigration Detention System* (2018) shows why detention was reinstituted in 1981 after decades without it.¹³ Books by César Cuauhtémoc García Hernández (2019),¹⁴ Jessica Ordaz (2021),¹⁵ Kristina Shull (2022),¹⁶ and Ana Raquel Minian (2024),¹⁷ all look at the origins of the immigration prison system. Ordaz does so through a microhistorical approach, focusing on the example of one detention centre in California, El Centro, from its origins in the 1940s to the early 21st century. However, in his 2021 book *Forever Prisoners: How the United States Made the World's Largest Immigrant Detention System*, Elliott Young argues that the expansion from the 1980s onwards was not as groundbreaking as it first seems. He contends that immigrant incarceration rates in the early 20th century resemble modern-day detention and that today's practices are, in fact, a return to the carceral practices of the past.¹⁸

Beyond monographs, a number of academic articles discuss the history of immigration detention in the USA and the UK. A 2006 article by Robert Barde and Gustavo J. Bobonis focuses on the history of Angel Island in San Francisco (the West Coast equivalent of New York's Ellis Island), one of the early forms of immigration

¹¹ Mary Bosworth, *Inside Immigration Detention*, First edition (Oxford University Press, 2014).

¹² Jenna M. Loyd and Alison Mountz, *Boats, Borders, and Bases: Race, the Cold War, and the Rise of Migration Detention in the United States* (University of California Press, 2018).

¹³ Carl Lindskoog, *Detain and Punish: Haitian Refugees and the Rise of the World's Largest Immigration Detention System* (2018).

¹⁴ César Cuauhtémoc García Hernández, *Migrating to Prison: America's Obsession with Locking up Immigrants* (The New Press, 2019).

¹⁵ Jessica Ordaz, *The Shadow of El Centro: A History of Migrant Incarceration and Solidarity* (The University of North Carolina Press, 2021).

¹⁶ Kristina Shull, *Detention Empire: Reagan's War on Immigrants and the Seeds of Resistance* (The University of North Carolina Press, 2022).

¹⁷ Ana Raquel Minian, *In the Shadow of Liberty: The Invisible History of Immigrant Detention in the United States* (Viking, 2024).

¹⁸ Elliott Young, *Forever Prisoners: How the United States Made the World's Largest Immigrant Detention System* (Oxford University Press, 2021).

detention in the United States.¹⁹ Stephanie J. Silverman's 2010 working paper "Immigration Detention in America: A History of Its Expansion and a Study of Its Significance" looks at the origins and evolution of the practice in the United States, arguing that the US government has developed its immigration detention system inconsistently and often hastily in response to political events.²⁰ A 2014 article by the same author looks at immigration detention in the United Kingdom and its link to wartime internment.²¹ Silverman shows that powers granted during times of national crisis have been repurposed as routine instruments for regulating immigration and asylum. This is something that is true elsewhere also, as shown by Alison Bashford and Carolyn Strange in "Asylum-Seekers and National Histories of Detention" (2002), focusing on Australia, and by Richard J. F. Day and Anna Pratt in "Securing Borders: Detention and Deportation in Canada" (2007).²² In a 2019 book chapter, Silverman and her colleague Petra Molnar presented a brief history comparing the early formation of modern detention systems in the United States and the United Kingdom (as well as other liberal states) in "Caged at the Border: Immigration Detention and the Denial of Human Rights to Asylum Seekers and Other Migrants" (2019).²³ They argued that "[a]ccess to citizenship is the great differentiator (...): Without citizenship status, a person remains detainable and deportable at the mercy of the nation-state, no matter what rhetoric is employed to justify incarceration."²⁴

While these studies trace important genealogies of detention, they tend to emphasise single-country trajectories. This dissertation builds on their insights by examining the simultaneous but distinct historical developments in the US and UK. The emphasis on the 1980s as a turning point is central to my own framework, but I argue that situating this shift within a broader transatlantic comparison reveals dynamics that national studies miss.

Legal Analysis

Beyond the 1986 articles mentioned earlier, there is an extensive array of legal analyses of immigration detention, which focuses on various aspects of the issue.

¹⁹ Robert Barde and Gustavo J. Bobonis, 'Detention at Angel Island: First Empirical Evidence', *Social Science History* 30, no. 1 (2006): 103–36.

²⁰ Stephanie J. Silverman, 'Immigration Detention in America: A History of Its Expansion and a Study of Its Significance', Working Paper WP-10-80 (Centre on Migration, Policy and Society, 1 October 2010), <https://doi.org/10.2139/ssrn.1867366>

²¹ Stephanie J. Silverman, 'Internment in the United Kingdom During the Twentieth Century and Its Links to the Evolution of Immigration Detention', *International Journal of Criminology and Sociology* 3 (May 2014): 168–74, <https://doi.org/10.6000/1929-4409.2014.03.15>

²² Bashford and Strange, 'Asylum-Seekers and National Histories of Detention'; Richard J. F. Day and Anna Pratt, 'Securing Borders: Detention and Deportation in Canada', *The Canadian Journal of Sociology / Cahiers Canadiens de Sociologie* 32, no. 1 (2007): 133, <https://doi.org/10.2307/20460622>

²³ Stephanie J. Silverman and Petra Molnar, 'Caged at the Border', in *The Routledge History of Human Rights*, 1st edn, ed. Jean Quataert and Lora Wildenthal (Routledge, 2019), <https://doi.org/10.4324/9780429324376-31>

²⁴ Silverman and Molnar, 'Caged at the Border', 594.

These studies aim to understand and present the legal justifications for immigration detention. Interestingly, most legal analyses go beyond simple research and analysis and also provide recommendations for reform. Daniel Wilsher's book from 2012 (see above) provides an important basis for understanding the legal foundations and implications of immigration detention and the administration of border controls.

Law Professor Rayner Thwaites' 2014 book, *The Liberty of Non-citizens: Indefinite Detention in Commonwealth Countries*, examines the legal framework, rationale, and consequences of the case law regarding indefinite detention across a number of countries, including the United Kingdom, Australia and Canada.²⁵ The question of indefinite detention is at the heart of numerous law articles (Heeren, 2010; Cunneen, 2018; Gavin 2018; Medrano 2018) but also at the heart of many studies on immigration detention that explore the issue from other theoretical standpoints.²⁶

Cross-country comparison, which this dissertation aims to accomplish also, is used in other books and articles. In the legal field, these include Justine N. Stefanelli's 2020 book, *Judicial Review of Immigration Detention in the UK, US, and EU: From Principles to Practice*, as well as *Immigration Detention in the European Union: In the Shadow of the 'Crisis'* by Majcher, Flynn, and Grange (2020) and Daniel Wilsher's article "The Administrative Detention of Non-Nationals Pursuant to Immigration Control: International and Constitutional Law Perspectives" (2004).²⁷ These comparative studies aim to provide a better understanding of the individual cases by contrasting them with similar systems that maintain a number of important distinctions. Some legal analysts have discussed the issue of *habeas corpus* and *due process* aiming to show why immigration detention is "unconstitutional" (Golash-Boza, 2010; Chelgren, 2011; Moya 2017) and needs significant reform (Cole 2002; Cunneen, 2018),²⁸ while others compare due process for immigrants to due process in

²⁵ Rayner Thwaites, *The Liberty of Non-Citizens: Indefinite Detention in Commonwealth Countries* (Hart Publishing, 2014).

²⁶ Geoffrey Heeren, 'Pulling Teeth: The State of Mandatory Immigration Detention', *Harvard Civil Rights* 45, no. 2 (2010): 601–34; Allison M. Cunneen, 'Demanding Due Process: Time to Amend 8 U.S.C. § 1226(c) and Limit Indefinite Detention of Criminal Immigrants', *Brooklyn Law Review* 83, no. 4 (2018): 1497–518; John Gavin, 'Finally Freed or Infinitely Detained? The Need for a Clear Standard of Finality for Reinstated Orders of Removal', *Boston College Law Review* 59, no. 7 (2018); Miriam Peguero Medrano, 'Not Yet Gone, and Not Yet Forgotten: The Reasonableness of Continued Mandatory Detention of Noncitizens Without a Bond Hearing', *The Journal of Criminal Law & Criminology* 108, no. 3 (2018): 597–637.

²⁷ Justine N. Stefanelli, *Judicial Review of Immigration Detention in the UK, US, and EU: From Principles to Practice* (Hart, 2020); Izabella Majcher et al., *Immigration Detention in the European Union: In the Shadow of the 'Crisis'*, *European Studies of Population*, volume 22 (Springer, 2020), <https://doi.org/10.1007/978-3-030-33869-5>; Daniel Wilsher, 'The Administrative Detention of Non-Nationals Pursuant to Immigration Control: International and Constitutional Law Perspectives', *International and Comparative Law Quarterly* 53, no. 4 (2004): 897–934, <https://doi.org/10.1093/iclq/53.4.897>

²⁸ Tanya Golash-Boza, 'Notes From the Field: The Criminalization of Undocumented Migrants: Legalities and Realities', *Societies Without Borders* 5, no. 1 (2010): 81–90; Whitney Chelgren, 'Preventive Detention Distorted: Why It Is Unconstitutional to Detain Immigrants Without Procedural Protections', *Loyola of Los Angeles Law Review* 44 (Summer 2011): 1477–527; David Moya,

the criminal system and for enemy combatants (Sayed, 2011).²⁹ J. M. Chacon (2015) has written about the legal principles that still protect immigration detention from being subject to legal examination.³⁰ In 2015, Lisa Graybill and Charanya Krishnaswami published “Immigration Detention in the Rocky Mountain West: Can Emerging Models of Reform Solve Our Regional Problem”, which looked at the difficulties for migrants of obtaining legal representation, in turn aggravating the lack of due process protections.³¹ Emily Ryo (2017) has looked at the impact that the treatment of migrant detainees has on noncitizen trust in the legal system in general, even beyond the detention system.³²

Other aspects that have been studied include the legal situation of unaccompanied minors (Georgopoulos, 2005), the legal attitudes of detainees (Ryo, 2017), human rights (Smith & Hattery, 2007; Cornelisse 2010; Guia, Koulis, and Mitsilegas, 2016), and the unlawful detention of U.S. citizens (Stevens, 2011).³³ In 2019, Emily Ryo provided a meta-analysis discussing a number of aspects of the research that she considered requiring further exploration.³⁴ These include the role of local governments, the private prison industry, less visible detainee populations, prison staff, and the indirect consequences of detention. This dissertation builds on these legal analyses but shifts the focus to the political decisions and historical contingencies that produced detention expansion.

‘Immigrants and Refugees’ Administrative Detention and Habeas Corpus’, *European Review of Public Law* 29, no. 1 (2017): 255–71; David D. Cole, ‘In Aid of Removal: Due Process Limits on Immigration Detention’, *SSRN Electronic Journal*, ahead of print, 2002, <https://doi.org/10.2139/ssrn.356980>; Cunneen, ‘Demanding Due Process: Time to Amend 8 USC. § 1226(c) and Limit Indefinite Detention of Criminal Immigrants’.

²⁹ Faiza W. Sayed, ‘Challenging Detention: Why Immigrant Detainees Receive Less Process Than “Enemy Combatants” and Why They Deserve More’, *Columbia Law Review* 111 (2011): 1833–77.

³⁰ Jennifer M. Chacón, ‘Immigration Detention: No Turning Back?’, *South Atlantic Quarterly* 113, no. 3 (2014): 621–28, <https://doi.org/10.1215/00382876-2692209>

³¹ Lisa Graybill and Charanya Krishnaswami, ‘Immigration Detention in the Rocky Mountain West: Can Emerging Models of Reform Solve Our Regional Problem’, *Denver University Law Review* 92, no. 4 (2015): 791–834.

³² Emily Ryo, ‘Fostering Legal Cynicism Through Immigration Detention’, *Southern California Law Review* 90, nos 999–1054 (2017): 57.

³³ Areti Georgopoulos, *Beyond the Reach of Juvenile Justice: The Crisis of Unaccompanied Immigrant Children Detained by the United States*, 23 (2005): 41; Emily Ryo, ‘Legal Attitudes of Immigrant Detainees: Legal Attitudes of Immigrant Detainees’, *Law & Society Review* 51, no. 1 (2017): 99–131, <https://doi.org/10.1111/lasr.12252>; Earl Smith and Angela Hattery, ‘If We Build It They Will Come: Human Rights Violations and the Prison Industrial Complex’, *Societies Without Borders* 2, no. 2 (2007): 273–88, <https://doi.org/10.1163/187219107X203603>; Galina Cornelisse, *Immigration Detention and Human Rights: Rethinking Territorial Sovereignty*, ed. Elspeth Guild and Jan Niessen, vol. 19, Immigration and Asylum Law and Policy in Europe, v. 19 (Martinus Nijhoff Publishers, 2010); Maria João Guia et al., eds, *Immigration Detention, Risk and Human Rights* (Springer International Publishing, 2016), <https://doi.org/10.1007/978-3-319-24690-1>; Jacqueline Stevens, ‘U.S. Government Unlawfully Detaining and Deporting U.S. Citizens as Aliens’, *University of Virginia Journal of Social Policy and the Law* 18 (2011): 606.

³⁴ Emily Ryo, ‘Understanding Immigration Detention: Causes, Conditions, and Consequences’, *Annual Review of Law and Social Science* 15, no. 1 (2019): 97–115, <https://doi.org/10.1146/annurev-lawsocsci-101518-042743>

This body of work frames detention primarily as a legal problem. I aim to build on this while asking how political decisions, institutional interests, and external pressures shaped the law's application in practice.

Policy Analysis

While there are numerous papers analysing policies related to immigration detention, those have mostly come since the turn of the century, and a large number focusing on the US context during the Obama era as detention and deportation numbers increased rapidly. These include articles by Jack Esposito and Preston Davis (2010),³⁵ Anil Kalhan (2010),³⁶ Dora Schriro (2017),³⁷ and José D. Villalobos (2021).³⁸

In the UK context, the Migration Observatory at the University of Oxford releases briefings that present the UK government's policy when it comes to the detention of migrants (once or twice a year) and publishes research on the issue.³⁹ When it comes to academic research on policy specifically, there is somewhat of a lack of sources. MJ Gibney's 2008 article "Asylum and the Expansion of Deportation in the United Kingdom" discusses detention briefly in the case of asylum and deportation during the New Labour governments.⁴⁰ But research in the UK is rarely about detention policy specifically, a gap that this dissertation looks to begin to fill.

Most policy analyses examine the Obama era in the US or asylum policy in the UK, leaving the 1980–2001 period comparatively underexplored. This dissertation looks to provide a long-term, cross-national policy history of detention's expansion.

Country-Specific Analyses and International Comparisons

Researchers have carried out a number of multi-country comparisons while others have written monographs that focus on one specific country or specific

³⁵ Jacki Esposito and Preston Davis, 'Immigration Detention: Evidence of a Government-Run System in Crisis', *Journal of the Fellowship of Reconciliation* 75, nos 10–12 (2010): 24–27.

³⁶ Anil Kalhan, 'Rethinking Immigration Detention', *Columbia Law Review* 110 (July 2010): 42–58.

³⁷ Dora Schriro, 'Weeping in the Playtime of Others: The Obama Administration's Failed Reform of ICE Family Detention Practices', *Journal on Migration and Human Security* 5, no. 2 (2017): 452–80.

³⁸ José D. Villalobos, 'Promises and Human Rights: The Obama Administration on Immigrant Detention Policy Reform', *Race, Gender & Class* 18, no. 1/2 (2011): 151–70.

³⁹ Scott Blinder and Lindsay Richards, *UK Public Opinion toward Immigration: Overall Attitudes and Level of Concern* (The Migration Observatory, 2020), <https://migrationobservatory.ox.ac.uk/wp-content/uploads/2020/01/Briefing-UK-Public-Opinion-toward-Immigration-Overall-Attitudes-and-Level-of-Concern.pdf>; Scott Blinder, *Deportations, Removals and Voluntary Departures from the UK*, Briefing Paper (The Migration Observatory, 2016), 10; Stephanie J. Siverman and Ruchi Hajela, *Immigration Detention in the UK*, Briefing (The Migration Observatory, 2015); *Thinking Behind the Numbers: Understanding Public Opinion on Immigration in Britain* (The Migration Observatory, 2011), <https://migrationobservatory.ox.ac.uk/resources/reports/thinking-behind-the-numbers-understanding-public-opinion-on-immigration-in-britain/>

⁴⁰ Matthew J. Gibney, 'Asylum and the Expansion of Deportation in the United Kingdom', *Government and Opposition* 43, no. 2 (2008): 146–67.

immigrant populations (Hamm, 1995; Loyd & Mountz, 2018; Lindskoog, 2018).⁴¹ Discussing the Australian case, Alison Bashford and Carolyn Strange have claimed that “detention has intermittently been part of the process in the definition and assessment of who belongs and who doesn’t, and in enforcing and creating degrees of belonging and alien-ness in the project of nation-building.”⁴² While their research focuses on the Australian example, all of these elements are relevant to the British and American contexts as well.

It is important to stress that detention is not only a British-American phenomenon. As the work of other researchers, such as Cheliotis (Greece),⁴³ Khorsavi (Sweden),⁴⁴ Mainwaring (Malta),⁴⁵ Fischer (France),⁴⁶ Silverman (Canada),⁴⁷ Leerkes and Broeders (Germany and the Netherlands),⁴⁸ Kaytaz (Turkey),⁴⁹ Calleros-Alarcón (Mexico),⁵⁰ Nah (Malaysia),⁵¹ Taylor (Papa New Guinea),⁵² Berman and Ziegler

⁴¹ Mark S. Hamm, *The Abandoned Ones: The Imprisonment and Uprising of the Mariel Boat People*, 1st edition (Northeastern University Press, 1995); Loyd and Mountz, *Boats, Borders, and Bases*; Lindskoog, *Detain and Punish*.

⁴² Bashford and Strange, ‘Asylum-Seekers and National Histories of Detention’. *op.cit.*

⁴³ Leonidas K. Cheliotis, ‘Behind the Veil of Philoxenia: The Politics of Immigration Detention in Greece’, *European Journal of Criminology* 10, no. 6 (2013): 725–45, <https://doi.org/10.1177/1477370813495129>

⁴⁴ Shahram Khosravi, ‘Sweden: Detention and Deportation of Asylum Seekers’, *Race & Class* 50, no. 4 (2009): 38–56, <https://doi.org/10.1177/0306396809102996>

⁴⁵ Cetta Mainwaring, ‘Constructing a Crisis: The Role of Immigration Detention in Malta’, *Population, Space and Place* 18, no. 6 (2012): 687–700, <https://doi.org/10.1002/psp.1721>

⁴⁶ Nicolas Fischer, ‘Bodies at the Border: The Medical Protection of Immigrants in a French Immigration Detention Centre’, *Ethnic and Racial Studies* 36, no. 7 (2013): 1162–79, <https://doi.org/10.1080/01419870.2013.783708>

⁴⁷ Stephanie J. Silverman, ‘What Habeas Corpus Can (and Cannot) Do for Immigration Detainees: Scotland v Canada and the Injustices of Imprisoning Migrants’, *Canadian Journal of Law and Society / Revue Canadienne Droit et Société* 34, no. 01 (2019): 145–61, <https://doi.org/10.1017/cls.2019.7>

⁴⁸ A. Leerkes and D. Broeders, ‘A Case of Mixed Motives?: Formal and Informal Functions of Administrative Immigration Detention’, *British Journal of Criminology* 50, no. 5 (2010): 830–50, <https://doi.org/10.1093/bjc/azq035>

⁴⁹ Esra S. Kaytaz, ‘Held at the Gates of Europe: Barriers to Abolishing Immigration Detention in Turkey’, *Citizenship Studies* 25, no. 2 (2021): 203–23, <https://doi.org/10.1080/13621025.2020.1859192>

⁵⁰ Juan Carlos Calleros-Alarcón, ‘Evolution Towards Higher Standards of Human Rights: Immigration Detention in Mexico’, in *Immigration Detention: The Migration of a Policy and Its Human Impact*, ed. Amy Nethery and Stephanie J. Silverman (Routledge, Taylor & Francis Group, 2015).

⁵¹ Alice M. Nah, ‘Illegality and Its Uncertainties: Immigration Detention in Malaysia’, in *Immigration Detention: The Migration of a Policy and Its Human Impact*, ed. Amy Nethery and Stephanie J. Silverman (Routledge, Taylor & Francis Group, 2015).

⁵² Savitri Taylor, ‘Australian Neo-Colonialism in the Pacific: Immigration Detention in Papua New Guinea’, in *Immigration Detention: The Migration of a Policy and Its Human Impact*, ed. Amy Nethery and Stephanie J. Silverman (Routledge, Taylor & Francis Group, 2015).

(Israel),⁵³ Amit (South Africa),⁵⁴ and Ulgevik (Norway)⁵⁵ shows, immigration detention is present in countries across the globe. However, interestingly, Cetta Mainwaring and Maria Lorena Cook (2018) have argued that there is an “Anglo Model” of detention, which is specific to the UK and the US, and includes Australia and Canada.⁵⁶ This model, according to them, is built around three key components: “(1) the existence of indefinite and/or mandatory immigration detention policies; (2) the use of private security actors and infrastructure; and (3) the use of creative legal geographies in order to interdict and detain people offshore.”⁵⁷ This concept of an “Anglo model” leads to interesting questions about the diffusion of policies between countries and enables a better transnational understanding of immigration detention in the UK and the U.S. This research will aim to compare this claim to the historical record and analyse whether or not we can truly talk about an “Anglo model” of detention.

A 2015 edited volume by Amy Nethery and Stephanie J. Silverman, investigated the proliferation of immigration detention practices and the consequences of this growth for asylum seekers and other migrants.⁵⁸ It is one of the first books to provide a comprehensive analysis of immigration detention policies across the world and explores how detention has become a feature of border and immigration control strategies on a global scale. The book includes discussions of the United Kingdom and the United States cases. In another edited volume, David C. Brotherton and Philip Kretsedemas focused on immigration policy across the world in “the age of punishment.”⁵⁹ It provides a transdisciplinary approach to immigration detention, deportation and border control.

Deirdre Conlon and Nancy Hiemstra (2017) also published an edited volume that examines the ideologies, policies, and practices behind the unprecedented growth of immigration detention worldwide, analysing its personal, political-economic, social, and cultural impacts through research in a number of regions, and offers a toolbox of theoretical and empirical perspectives to better understand the

⁵³ Yonatan Berman and Reuven (Ruv) Ziegler, ‘The Union of Securitisation and Demography: Immigration Detention in Israel’, in *Immigration Detention: The Migration of a Policy and Its Human Impact*, ed. Amy Nethery and Stephanie J. Silverman (Routledge, Taylor & Francis Group, 2015).

⁵⁴ Roni Amit, ‘The Expansion of Illegality Immigration Detention in South Africa’, in *Immigration Detention: The Migration of a Policy and Its Human Impact*, ed. Amy Nethery and Stephanie J. Silverman (Routledge, Taylor & Francis Group, 2015).

⁵⁵ Thomas Ugelvik, ‘Low-Trust Policing in a High-Trust Society: The Norwegian Police Immigration Detention Centre and the Search for Public Sphere Legitimacy’, *Nordisk Politiforskning* 3, no. 2 (2016): 181–98, <https://doi.org/10.18261/issn.1894-8693-2016-02-08>

⁵⁶ Cetta Mainwaring and Maria Lorena Cook, ‘Immigration Detention: An Anglo Model’, *Migration Studies*, ahead of print, 28 June 2018, <https://doi.org/10.1093/migration/mny015.a>

⁵⁷ Mainwaring and Cook, ‘Immigration Detention’, 455.

⁵⁸ Amy Nethery and Stephanie Jessica Silverman, eds, *Immigration Detention: The Migration of a Policy and Its Human Impact* (Routledge, Taylor & Francis Group, 2015).

⁵⁹ David C. Brotherton and Philip Kretsedemas, eds, *Immigration Policy in the Age of Punishment: Detention, Deportation, and Border Control* (Columbia University Press, 2017).

phenomenon.⁶⁰

In a very different approach, some academics have used a micro-analysis of immigration detention in order to better understand the way it functions. For example, Donald Kerwin, Daniela Alulema, and Siqu Tu focused on all the people in DHS-ICE custody on one specific date: September 22, 2012.⁶¹

Global studies underscore that detention is not unique to the US or UK, yet very few works compare these two states directly. By placing them side by side, this project interrogates whether the so-called ‘Anglo model’ can be substantiated historically.

Criminology

One of the important evolutions of immigration as well as immigration policies and border control in the last 20-30 years is the criminalisation of migrants and their migration. Academics have approached this from two main angles: criminology and penology.⁶²

In 2006, Juliet Stumpf discussed the convergence of immigration law with criminal law using the concept of membership theory.⁶³ The same year, Richard Black, Michael Collyer, Ronald Skeldon, and Clare Waddington showed how many paths to illegality existed for migrants including people who went to the United Kingdom to live and work illegally, and others who had transitioned into illegality during their stay.⁶⁴

As mentioned before, Mary Bosworth’s *Inside Immigration Detention* investigates the growing criminalisation of migration, while Elliott Young’s *Forever Prisoners*, details the historical evolution of immigrant incarceration in the US. This is also the case in two other monographs, Robert Hartmann McNamara’s *The Criminalization of Immigration: Truth, Lies, Tragedy, and Consequences* (2020)⁶⁵ and

⁶⁰ Deirdre Conlon and Nancy Hiemstra, eds, *Intimate Economies of Immigration Detention: Critical Perspectives* (Routledge, Taylor & Francis Group, 2017).

⁶¹ Donald Kerwin et al., ‘Piecing Together the US Immigrant Detention Puzzle One Night at a Time: An Analysis of All Persons in DHS-ICE Custody on September 22, 2012’, *Journal on Migration and Human Security*, 2015, 330–276.

⁶² Criminology is a broader field that investigates the causes and nature of crime. Penology is a specialized area within criminology that concentrates on the study of punishment and the criminal justice system’s responses to criminal behaviour. Criminologists may explore a wide range of topics related to crime, while penologists specifically focus on issues related to correctional systems and strategies for dealing with offenders.

⁶³ Juliet Stumpf, ‘The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power’, *American University Law Review* 56, no. 2 (2006): 367–419, <https://doi.org/10.1515/9780804785419-004>

⁶⁴ Richard Black et al., ‘Routes to Illegal Residence: A Case Study of Immigration Detainees in the United Kingdom’, *Geoforum* 37, no. 4 (2006): 552–64, <https://doi.org/10.1016/j.geoforum.2005.09.009>

⁶⁵ Robert Hartmann McNamara, *The Criminalization of Immigration: Truth, Lies, Tragedy, and Consequences*, First edition (Praeger, 2020).

Mae Ngai's *Impossible Subjects: Illegal Aliens and the Making of Modern America* (2004)⁶⁶ which both focus on the coalescence of immigration and criminality.

Mary Bosworth has written a number of papers on the gradual merger of immigration and criminalisation, as well as its link with punishment (Bosworth and Kaufman, 2011; Bosworth and Turnbull, 2015; Bosworth and Vannier, 2017; Bosworth, 2017; Bosworth, 2022),⁶⁷ while a 2005 article by Michael Welch and Liza Schuster positioned migrant detention in an expanding culture of control caused by the criminology of the other.⁶⁸ Other researchers have looked at media and political representations of asylum seekers (Malloch and Stanley, 2005),⁶⁹ the immigration-industrial complex (Diaz-Strong, Gómez, Luna-Duarte, Meiners and Valentin, 2009; Douglas and Sáenz, 2013),⁷⁰ privatisation and its implications on justice (Ackerman and Furman, 2013),⁷¹ as well as the question of race in immigration detention (Armenta, 2017; Turnbull, 2017).⁷² Others have looked at the role of certain national/racial/ethnic groups, for example Latina women (Cervantes, Menjívar, and Staples, 2017; Hernández, 2012),⁷³ and issues of global mobility and global

⁶⁶ Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton University Press, 2004).

⁶⁷ Mary Bosworth and Emma Kaufman, 'Foreigners in a Carceral Age: Immigration and Imprisonment in the United States', *Stanford Law & Policy Review* 22, no. 2 (2011), <https://law.stanford.edu/publications/foreigners-carceral-age-immigration-imprisonment-united-states/>; Mary Bosworth and Sarah Turnbull, 'Immigration, Detention, and the Expansion of Penal Power in the United Kingdom', in *Extreme Punishment*, ed. Keramet Reiter and Alexa Koenig (Palgrave Macmillan UK, 2015), https://doi.org/10.1057/9781137441157_4; Mary Bosworth and Marion Vannier, 'Comparing Immigration Detention in Britain and France: A Matter of Time?', *European Journal of Migration and Law* 18, no. 2 (2016): 157–76, <https://doi.org/10.1163/15718166-12342097>; Mary Bosworth, 'Immigration Detention, Punishment and the Transformation of Justice', *Social & Legal Studies* 28, no. 1 (2017): 1–19, <https://doi.org/10.1177/0964663917747341>; Mary Bosworth, 'Criminalisation, Race, and Citizenship in UK Border Control', *Citizenship Studies* 26, nos 4–5 (2022): 387–92, <https://doi.org/10.1080/13621025.2022.2091218>

⁶⁸ Michael Welch and Liza Schuster, 'Detention of Asylum Seekers in the US, UK, France, Germany, and Italy: A Critical View of the Globalizing Culture of Control', *Criminal Justice* 5, no. 4 (2005): 331–55, <https://doi.org/10.1177/1466802505057715>

⁶⁹ Margaret S. Malloch and Elizabeth Stanley, 'The Detention of Asylum Seekers in the UK: Representing Risk, Managing the Dangerous', *Punishment & Society* 7, no. 1 (2005): 53–71, <https://doi.org/10.1177/1462474505048133>

⁷⁰ Daysi Diaz-Strong et al., 'Commentary: Organizing Tensions — From the Prison to the Military-Industrial Complex', *Social Justice* 36, no. 2 (116) (2009): 73–84; Karen Manges Douglas and Rogelio Sáenz, 'The Criminalization of Immigrants & the Immigration-Industrial Complex', *Daedalus* 142, no. 3 (2013): 199–227.

⁷¹ Alissa Ackerman and Rich Furman, 'The Criminalization of Immigration and the Privatization of the Immigration Detention: Implications for Justice', *Contemporary Justice Review* 16 (June 2013), <https://doi.org/10.1080/10282580.2013.798506>

⁷² Amada Armenta, 'Racializing Crimmigration: Structural Racism, Colorblindness, and the Institutional Production of Immigrant Criminality', *Sociology of Race and Ethnicity* 3, no. 1 (2017): 82–95, <https://doi.org/10.1177/2332649216648714>; Sarah Turnbull, 'Immigration Detention and the Racialized Governance of Illegality in the United Kingdom', *Social Justice*, Special Issue: Ethnographic Explorations of Punishment and the Governance of Security, vol. 44, no. 1 (147) (2017): 142–64.

⁷³ Andrea Gómez Cervantes et al., '"Humane" Immigration Enforcement and Latina Immigrants in the Detention Complex', *Feminist Criminology* 12, no. 3 (2017), <https://doi.org/10.1177/1557085117699069>; César Cuauhtémoc García Hernández, *The Perverse Logic*

governance (Aas, 2011; Bosworth and Turnbull, 2014).⁷⁴

The criminological literature reveals how immigration enforcement has been recast as a form of criminalisation, but it often underplays the policymaking contexts that enabled this convergence. This dissertation builds on these insights by tracing how criminal logics entered the detention systems of both the US and the UK.

Penology

In the case of punishment and its study in connection with immigration detention, a number of books and articles have been written in the last few decades. The aforementioned books by Brotherton and Kretsedemas (2017) as well as Lindskoog (2018), both place immigration detention at the heart of an “age of punishment.” Emma Kaufman’s 2015 book *Punish and Expel: Border Control, Nationalism and the New Purpose of the Prison*, presents an exposé of imprisonment of foreign nationals in the United Kingdom.⁷⁵ Her book also aims to show the link between border control, race and punishment. Tanya Golash-Boza’s 2011 book looks at the issue of due process, as mentioned before, but it also discusses the punitive aspects of border control (detention and deportation, “the worst imaginable punishment”).⁷⁶

In 2007, Mark Dow aimed to show how immigration detention was “designed to punish,”⁷⁷ while others have linked the detention of migrants with social control (Welch, 1996),⁷⁸ mass incarceration and the punitive turn (Miller, 2002;⁷⁹ Batista, 2014;⁸⁰ Macías-Rojas; 2016 and 2018⁸¹), punishment as a deterrent (Malloch and Stanley, 2005)⁸² and the link between punishment and privatisation (Enns and

of Immigration Detention: Unraveling the Rationality of Imprisoning Immigrants Based on Markers of Race and Class Otherness, 1 (2012): 12.

⁷⁴ Katja Franko Aas, “‘Crimmigrant’ Bodies and Bona Fide Travelers: Surveillance, Citizenship and Global Governance’, *Theoretical Criminology* 15, no. 3 (2011): 331–46, <https://doi.org/10.1177/1362480610396643>

⁷⁵ Emma Kaufman, *Punish and Expel: Border Control, Nationalism, and the New Purpose of the Prison*, First edition, Clarendon Studies in Criminology (Oxford University Press, 2015).

⁷⁶ Tanya Maria Golash-Boza, *Immigration Nation: Raids, Detentions, and Deportations in Post-9/11 America* (Paradigm Publishers, 2011).

⁷⁷ Mark Dow, ‘Designed to Punish: Immigrant Detention and Deportation’, *Social Research* 74, no. 2 (2007): 533–46.

⁷⁸ Michael Welch, ‘The Immigration Crisis: Detention as an Emerging Mechanism of Social Control’, *Social Justice* 23, no. 3 (1996): 169–84.

⁷⁹ Todd Miller, ‘Border Patrol Capitalism: On the U.S.-Mexico Border, the Border Security Industry Grows alongside the Expanding Militarization of the Drug Wars.’, *NACLA Report on the Americas* 48, no. 2 (2016): 150–56, <https://doi.org/10.1080/10714839.2016.1201273>

⁸⁰ Eduardo Batista, ‘Immigration Control and the Punitive Turn’, *Themis: Research Journal of Justice Studies and Forensic Science* 2, no. 1 (2014), <https://doi.org/10.31979/THEMIS.2014.0201>

⁸¹ Patrisia Macías-Rojas, *From Deportation to Prison: The Politics of Immigration Enforcement in Post-Civil Rights America*, Latina/o Sociology Series (New York University, 2016).

⁸² Malloch and Stanley, ‘The Detention of Asylum Seekers in the UK’.

Ramirez, 2018).⁸³ Martha Escobar's 2009 article looks at the incarceration of Latina immigrants, studying both their criminalisation and punishment in response to what she calls the "inequalities produced by the neoliberal shift of the early 1970s."⁸⁴

This literature highlights how detention is entangled with broader carceral and punitive logics but has rarely traced how these logics intersected with immigration policy-making. This study brings the criminological lens into dialogue with political and historical analysis.

Privatisation

Another important aspect of immigration detention that is inherently linked with incarceration, is the privatisation of detention centres and what some researchers have called the immigration-industrial complex. The use of private companies to manage immigration detention facilities has become increasingly common in many countries around the world, including the United States and the United Kingdom. These include the aforementioned book by César Cuauhtémoc García Hernández, *Migrating to Prison* (2019), as well as *Immigration Detention Inc: The Big Business of Locking up Migrants* (2025) by Nancy Hiemstra and Deirdre Conlon, and a significant number of academic articles written about the topic.⁸⁵ Critics of privatisation in immigration detention have raised concerns about the profit motive driving private companies to cut corners on staffing, food, and medical care, which can lead to substandard conditions for detainees. They have also pointed out that private companies are not subject to the same levels of oversight and accountability as government agencies, making it harder to ensure that detainees are being treated humanely and fairly.

Renee Feltz and Stokely Baksh's "Business of Detention" (2012),⁸⁶ and Denise Gilman and Luis A. Romero's "Immigration Detention, Inc." (2018),⁸⁷ both study the business of immigration detention and the privatisation of the state security apparatus.

An early article by Christine Bacon (2005) discussed the involvement of private prison companies in immigration detention in the UK.⁸⁸ Articles by Karen

⁸³ Peter K. Enns and Mark D. Ramirez, 'Privatizing Punishment: Testing Theories of Public Support for Private Prison and Immigration Detention Facilities', *Criminology* 56, no. 3 (2018): 546–73, <https://doi.org/10.1111/1745-9125.12178>

⁸⁴ Martha Escobar, 'Understanding the Roots of Latina Migrants' Captivity', *Social Justice* 36, no. 2 (116) (2009): 7–20.

⁸⁵ Nancy Hiemstra, *Immigration Detention Inc: The Big Business of Locking up Migrants*, 1st ed, with Deirdre Conlon (Pluto Press, 2025).

⁸⁶ R. Feltz and S. Baksh, 'Business of Detention', in *Beyond Walls and Cages: Prisons, Borders and Global Crisis*, ed. J. M. Loyd et al. (Univ. of Georgia Press, 2012).

⁸⁷ Denise Gilman and Luis A. Romero, 'Immigration Detention, Inc.', *Journal on Migration and Human Security* 6, no. 2 (2018): 145–60, <https://doi.org/10.1177/2331502418765414>

⁸⁸ Christine Bacon, *The Evolution of Immigration Detention in the UK: The Involvement of Private Prison Companies*, RSC Working Paper Series, no. RSC Working Paper No. 27 (September 2005): 39.

Manges Douglas and Rogelio Sáenz (2013),⁸⁹ and by Roxanne Lynne Doty and Elizabeth Shannon Wheatley (2013),⁹⁰ as well as a book chapter by David B. Feldman (2022)⁹¹ have looked at the formation of an Immigration-Industrial Complex (IIC). Among other things, they argue that the IIC functions as “an economy of power that works to manage the existing system and discourages fundamental reform,”⁹² during an era of “neoliberal capitalist globalization.”⁹³ Some researchers have linked the IIC with the Prison-Industrial Complex (Smith and Hattery, 2007)⁹⁴ and the Military-Industrial Complex (Diaz-Strong et al., 2009).⁹⁵ Others have examined the impact of privatisation on human rights (Ikegwuruka, 2018),⁹⁶ on criminalisation (Ackerman and Furman, 2013),⁹⁷ and public opinion about privatising carceral spaces (Enns and Ramirez, 2018).⁹⁸ At the same time, privatisation has generated significant backlash and criticism by NGOs (ACLU, Justice Policy Institute), Think Tanks (Center for American Progress), news organisations/magazines (Colorlines), and activist groups.⁹⁹

Critical accounts of privatisation expose the profit motives shaping detention, yet few connect these dynamics to the broader political decisions that enabled outsourcing. My research situates privatisation within the history of state capacity and policy design in the US and UK.

National Security

Many of the articles and books already mentioned discuss immigration, notably undocumented immigration, as an issue of national security. Immigration detention and national security are often linked because governments argue that controlling the entry of foreigners into a country is necessary to prevent security threats such as terrorism, espionage, and other criminal activities. Articles that put national security

⁸⁹ Douglas and Sáenz, ‘The Criminalization of Immigrants & the Immigration-Industrial Complex’.

⁹⁰ Roxanne Lynne Doty and Elizabeth Shannon Wheatley, ‘Private Detention and the Immigration Industrial Complex’, *International Political Sociology* 7, no. 4 (2013): 426–43, <https://doi.org/10.1111/ips.12032>

⁹¹ David B. Feldman, ‘Between Exploitation and Repression: The Immigration Industrial Complex and Militarized Migration Management’, in *Marxism and Migration*, ed. Genevieve Ritchie et al., Marx, Engels, and Marxisms (Springer International Publishing, 2022), https://doi.org/10.1007/978-3-030-98839-5_10

⁹² Doty and Wheatley, ‘Private Detention and the Immigration Industrial Complex’. *op. cit.*

⁹³ Feldman, ‘Between Exploitation and Repression’. *op. cit.*

⁹⁴ Smith and Hattery, ‘If We Build It They Will Come’. *op. cit.*

⁹⁵ Diaz-Strong et al., ‘Commentary’. *op. cit.*

⁹⁶ Cosmas Ikegwuruka, ‘Immigration Detention and Liberal Democracies: Is It All about Power or Money; If Money, Why, If Power, Why Not?’, *International Journal of Law and Management* 60, no. 5 (2018): 1126–47, <https://doi.org/10.1108/IJLMA-06-2017-0139>

⁹⁷ Ackerman and Furman, ‘The Criminalization of Immigration and the Privatization of the Immigration Detention’. *op. cit.*

⁹⁸ Enns and Ramirez, ‘Privatizing Punishment’. *op. cit.*

⁹⁹ Justice Policy Institute, *Gaming the System: How the Political Strategies of Private Prison Companies Promote Ineffective Incarceration Policies* (Washington, DC, 2011), http://www.justicepolicy.org/uploads/justicepolicy/documents/gaming_the_system.pdf

at the heart of the discussion include Stephanie J. Silverman's "Internment in the United Kingdom During the Twentieth Century and Its Links to the Evolution of Immigration Detention" (2014), Giuseppe Campesi and Giulia Fabini's "Immigration Detention as Social Defence: Policing "Dangerous Mobility" in Italy" (2020),¹⁰⁰ Lauren Martin's "Catch and Remove": Detention, Deterrence, and Discipline in US Noncitizen Family Detention Practice" (2012)¹⁰¹ and César Cuauhtémoc Garcia Hernandez's book *Migrating to Prison* (2019). Martin's article looks at, among other things, the impact of 9/11 on security practices in the USA. The 2001 terrorist attacks had a major impact and led to wholesale changes in the nation's national security apparatus, as well as similar changes in countries across the world. This is discussed in Mark Dow's 2004 book *American Gulag: Inside U.S. Immigration Prisons*,¹⁰² though he does insist on the larger context of an overzealous and often secretive Immigration and Naturalization Service (the predecessor to the Department of Homeland Security).¹⁰³ Tanya Golash-Boza's 2012 book *Immigration Nation: Raids, Detentions and Deportations in Post-9/11 America*, also uses the 9/11 attacks and the creation of DHS as a starting point to understand the evolution of immigration policy since the turn of the century.¹⁰⁴ Others who have focused specifically on 9/11 and its aftermath include Rachel Meeropol and Reed Brody (2005),¹⁰⁵ Irum Shiekh (2011),¹⁰⁶ and Stefany N. Laun (2014).¹⁰⁷

Studies of detention as a security practice stress crisis moments such as 9/11, but often underplay earlier developments. By beginning in the 1980s, I show how security framings predate and help explain the post-2001 expansion.

Governance, Sovereignty and Border Control

The question of national security leads inevitably to questions about

¹⁰⁰ Giuseppe Campesi and Giulia Fabini, 'Immigration Detention as Social Defence: Policing "Dangerous Mobility" in Italy', *Theoretical Criminology* 24, no. 1 (2020): 50–70, <https://doi.org/10.1177/1362480619859350>

¹⁰¹ Lauren L. Martin, "'Catch and Remove': Detention, Deterrence, and Discipline in US Noncitizen Family Detention Practice", *Geopolitics* 17, no. 2 (2012): 312–34, <https://doi.org/10.1080/14650045.2011.554463>

¹⁰² Mark Dow, *American Gulag: Inside U.S. Immigration Prisons* (University of California Press, 2004).

¹⁰³ The INS was officially dissolved on March 1, 2003. Its responsibilities were divided among three newly established agencies within the Department of Homeland Security (DHS): United States Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP). This restructuring was part of a comprehensive government reorganisation that followed the September 11, 2001 attacks.

¹⁰⁴ Golash-Boza, *Immigration Nation*.

¹⁰⁵ Rachel Meeropol and Reed Brody, eds, *America's Disappeared: Detainees, Secret Imprisonment, and the 'War on Terror'* (Seven Stories Press, 2005).

¹⁰⁶ Irum Shiekh, *Detained without Cause: Muslims' Stories of Detention and Deportation in America after 9/11* (Palgrave Macmillan, 2011).

¹⁰⁷ Stefany N. Laun, 'Post-9/11 Illegal Immigrant Detention and Deportation: Terrorism and the Criminalization of Immigration', *Student Publications*, 2014, 288.

governance, the power of the State, and the State's ability to control its borders. These are at the heart of books such as Daniel Wilsher's *Immigration Detention: Law, History, Politics* (2012), K.F Aas and Mary Bosworth's *The Borders of Punishment: Migration, Citizenship, and Social Exclusion* (2013), Emma Kaufman's *Punish and Expel: Border Control, Nationalism and the New Purpose of the Prison* (2015). Though most books that discuss immigration and immigration policy dive into the issue of State power and the role of the State.

Some have tried to offer definitions and a historicisation of the idea of border control using the ideas of Foucault and Deleuze (Walters, 2006),¹⁰⁸ while others have studied border control and immigration detention (in the US at least) as a series of spatial strategies used to manage transboundary migration (Martin, 2015).¹⁰⁹

Robert T. Chase's edited volume (2019) contains numerous contributors who discuss the implication of immigration detention on state building and national sovereignty.¹¹⁰ This notion of sovereignty is at the heart of Galina Cornelisse's 2010 book *Immigration Detention and Human Rights: Rethinking Territorial Sovereignty*.¹¹¹

Some researchers, in an era of global mobility, have looked at territorial control on a global scale, including Bosworth and Turnbull (2014), and William Walters (2002) in 'Deportation, Expulsion, and the International Police of Aliens'. Michela Ceccorulli and Nicola Labanca's edited volume *The EU, Migration and the Politics of Administrative Detention*, sees scholars discuss, among other things, the idea of detention as "a tool of governance."¹¹² Stephanie J. Silverman and Petra Molnar (2019) use the works of Benedict Anderson to discuss the normalisation of detention. They argue that it is in part "rooted in the double-body idea: a territorial community of nationals linked to a particular set of borders and embodied in a particular kind of person."¹¹³

At the same time, some states have turned to the externalisation of their borders. Externalisation refers to the practice of states seeking to control migration flows by shifting their border controls beyond their physical borders, often by partnering with neighbouring or transit countries to enforce immigration policies. This is discussed by Amy Nethery, Brynna Rafferty-Brown, Savitri Taylor in "Exporting

¹⁰⁸ William Walters, 'Border/Control', *European Journal of Social Theory* 9, no. 2 (2006): 187–203, <https://doi.org/10.1177/1368431006063332>

¹⁰⁹ Lauren Martin, 'Noncitizen Detention: Spatial Strategies of Migrant Precarity in US Immigration and Border Control', *Annales De Géographie* n° 702-703, no. 2 (2015), <https://doi.org/10.3917/ag.702.0231>

¹¹⁰ Robert T. Chase, ed., *Caging Borders and Carceral States: Incarcerations, Immigration Detentions, and Resistance*, Justice, Power, and Politics (University of North Carolina Press, 2019).

¹¹¹ Cornelisse, *Immigration Detention and Human Rights*. *op. cit.*

¹¹² Michela Ceccorulli and Nicola Labanca, eds, *The EU, Migration and the Politics of Administrative Detention* (Routledge, 2014), <https://doi.org/10.4324/9781315796284>

¹¹³ Silverman and Molnar, 'Caged at the Border'. *op. cit.*

Detention: Australia-Funded Immigration Detention in Indonesia” (2013),¹¹⁴ Michael Flynn in “There and Back Again: On the Diffusion of Immigration Detention” (2014)¹¹⁵ and Inka Stock, Ayşen Üstübcü and Susanne U. Schultz in “Externalization at work: responses to migration policies from the Global South” (2019).¹¹⁶

The literature highlights how detention relates to sovereignty and border governance, but cross-national comparative histories remain rare. This dissertation situates the US and UK within these debates, tracing how questions of state power shaped the institutionalisation of detention.

Social Control

One of the goals of immigration detention is social control. As already mentioned, Michael Welch wrote a 1996 article entitled “The Immigration Crisis: Detention as an Emerging Mechanism of Social Control” which begins to see the detention of migrants, just as the incarceration of citizens, as a new way for governments to control their populations (both documented and undocumented).¹¹⁷ In a 2005 article, Welch, with the help of Liza Schuster, wrote an article on detention in “an expanding culture of control.”¹¹⁸

The idea of a “culture of control” comes from David Garland. In his book *The Culture of Control: Crime and Social Order in Contemporary Society* (2001), he argues that there has been a shift in the way societies control crime and maintain social order.¹¹⁹ Garland argues that in the past, societies relied on “penal welfarism,” which emphasised the rehabilitation and reintegration of offenders back into society. However, in the late 20th century, there was a shift towards a “culture of control,” which emphasises punishment and exclusion as the primary means of maintaining social order. He argues that this culture of control has led to an increase in the use of imprisonment and other forms of punishment, as well as a growing emphasis on surveillance and the regulation of everyday life. This evolution is also clear in the case of immigration detention.

Social control also occurs through exclusion from citizenship and social exclusion through the criminalisation of non-citizens. Mark Gibney’s 2013 chapter, ‘Deportation, Crime, and the Changing Character of Membership in the United

¹¹⁴ A. Nethery et al., ‘Exporting Detention: Australia-Funded Immigration Detention in Indonesia’, *Journal of Refugee Studies* 26, no. 1 (2013): 88–109, <https://doi.org/10.1093/jrs/fes027>

¹¹⁵ Michael Flynn, ‘There and Back Again: On the Diffusion of Immigration Detention’, *Journal on Migration and Human Security* 2, no. 3 (2014): 165–97.

¹¹⁶ Inka Stock et al., ‘Externalization at Work: Responses to Migration Policies from the Global South’, *Comparative Migration Studies* 7, no. 1 (2019): 48, <https://doi.org/10.1186/s40878-019-0157-z>

¹¹⁷ Welch, ‘The Immigration Crisis: Detention as an Emerging Mechanism of Social Control’. *op. cit.*

¹¹⁸ Alice Bloch and Liza Schuster, ‘At the Extremes of Exclusion: Deportation, Detention and Dispersal’, *Ethnic and Racial Studies* 28, no. 3 (2005): 491–512, <https://doi.org/10.1080/0141987042000337858>

¹¹⁹ David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford University Press, 2002).

Kingdom’ explores how the deportation of criminals in the United Kingdom serves to challenge the concept of citizenship and its contested nature.¹²⁰ Governments have redrawn the boundaries of membership, bringing some previously accepted members into the reach of deportation power. Meanwhile, William Walters’ 2002 paper, “Deportation, Expulsion, and the International Police of Aliens” highlights the lack of critical analysis of deportation compared to refugee or immigration policy.¹²¹ Walters suggests that by historicising and denaturalising deportation and interrogating its forms of governmentality, we can gain insights into modern citizenship and understand deportation as a key element in the international policing of “aliens.” Together, these works illustrate how deportation can be used as a tool to exclude and challenge the boundaries of citizenship.

Mary Bosworth continued this analysis in “The Politics of Pain in Immigration Detention” (2021) in which she, among other things, shows how individuals who are held in detention are not regarded as equal participants in a “shared community of value.”¹²² Instead, their imprisonment serves as a symbolic representation of their social exclusion, effectively distinguishing them as outsiders to these principles both in theory and in practice.

Studies emphasise detention as a mechanism of social control, yet they often stop short of explaining how and why states institutionalised this practice. My project addresses this by connecting theories of social control with the concrete policy decisions taken in Washington and London.

The Symbolic Value of Detention

The symbolic role and value of detention, as well as deportation, is key to understanding its use in the elaboration of immigration policy in countries across the world.

A number of researchers have studied the use of immigration detention as a tool for deterrence and control, as well as its symbolic value in shaping public perceptions of immigration. Malloch and Stanley (2005) argue that detention is a fundamentally punitive measure used to assuage public fears about immigration and to create the illusion of security. Similarly, Mainwaring (2012) examines how detention has been used in Malta as a symbol of crisis to garner support from the European Union. Martin’s article (2012) builds on these arguments, examining how noncitizen family detention in the United States works to contain and deter migrants

¹²⁰ Matthew J. Gibney, ‘Deportation, Crime, and the Changing Character of Membership in the United Kingdom’, in *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*, ed. Katja Franko Aas and Mary Bosworth (Oxford University Press, 2013), <https://doi.org/10.1093/acprof:oso/9780199669394.003.0013>

¹²¹ William Walters, ‘Deportation, Expulsion, and the International Police of Aliens’, *Citizenship Studies* 6, no. 3 (2002): 265–92, <https://doi.org/10.1080/1362102022000011612>

¹²² Mary Bosworth, ‘The Politics of Pain in Immigration Detention’, *Punishment and Society* 25, no. 6 (2021), <https://doi.org/10.1177/14624745211048811>

through spatial strategies such as remoteness, isolation, spatial ordering, inter-centre transfers, and criminalisation.¹²³

In “Detention-as-Spectacle” (Mainwaring and Silverman, 2017), the authors develop the concept of detention as a spectacle to explain how detention is used to display sovereign enforcement and control rather than to address security concerns.¹²⁴ They argue that the spectacle of detention creates and reinforces the notion of an immigration crisis, while simultaneously claiming to be able to address and halt it.

Taken together, these articles provide a critical perspective on the use of immigration detention as a tool for deterrence and control. They highlight the symbolic value of detention in shaping public perceptions of immigration, as well as its punitive nature and its use as a display of sovereign power. They also illustrate the spatial strategies used in detention practices and their effects on migrants and their support networks.

Moral Panic

Stanley Cohen, a British sociologist, first introduced the idea of a moral panic in his book *Folk Devils and Moral Panics: The Creation of the Mods and Rockers* in 1972. He defined it as the moment when “a condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests.”¹²⁵ His original book was about the rivalry between the “mod” and “rocker” youth subcultures in the 1960s and 1970s, and how the British public reacted to it. But many other phenomena have been characterised as the sources of moral panics (school violence, youth culture, drug use, welfare, single mothers, etc.). In the third edition of his book, he discusses the question of refugees and asylum seekers and the moral panic that has developed in that last few decades in the UK, though his remarks are just as true for the U.S. The moral panic on migrants leads to a demonisation and exclusion of those outside the boundaries of national-belonging and serves to further marginalise those on the fringe of society. Michael Welch (2002) has shown how a “moral panic” led to legislation in the 1990s under President Clinton that significantly expanded detention in the U.S., while Douglas S. Massey, Jorge Durand and Karen A. Pren (2016) have argued that border enforcement arose as “a policy response to a moral panic” over the perceived threat of Latino immigration to the US.¹²⁶

¹²³ Martin, “Catch and Remove”. *op. cit.*

¹²⁴ Cetta Mainwaring and Stephanie J. Silverman, ‘Detention-as-Spectacle’, *International Political Sociology* 11, no. 1 (2017), <https://doi.org/10.1093/ips/olw016>

¹²⁵ Stanley Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, 3rd edn, Routledge Classics (Routledge, 2011), 1.

¹²⁶ Douglas S Massey et al., ‘Why Border Enforcement Backfired’, *American Journal of Sociology* 121, no. 5 (2016): 1577–600.

Race

Questions of race and ethnicity are at the heart of immigration policy and immigration detention. The vast majority of migrants moving to the United Kingdom and the United States who ultimately find themselves in detention are individuals from specific racial and ethnic backgrounds, particularly those who are Black, Asian, Hispanic and Middle-Eastern. Studies have shown that non-white immigrants are more likely to be detained than white immigrants, even when controlling for factors such as immigration status and criminal history. This disproportionate use of immigration detention can be attributed to systemic racism and biases that are embedded within immigration enforcement policies and practices. Non-white immigrants are often subject to racial profiling and discrimination by immigration enforcement agencies, leading to their increased likelihood of being detained.

Researchers have looked at the complex and multifaceted nature of the link between immigration detention and race. Addressing these issues requires a comprehensive approach that tackles the systemic racism and biases that are embedded in the immigration system, as well as the larger social structures that perpetuate discrimination and inequity. The study of race and immigration detention in the UK is far below that of the USA. Sarah Turnbull's article, "Immigration Detention and the Racialized Governance of Illegality in the United Kingdom" (2017) is the best example of a focus on race in the UK context.¹²⁷

In the United States, however, a number of the books mentioned earlier include sections on race, or even place the question of race at the heart of their study. Emma Kaufman (2015)¹²⁸ has looked at the relationship between punishment, border control, and race, while Lindskoog has studied the treatment of Haitian refugees, of which almost all are black, by the United States.¹²⁹ Loyd and Mountz's book *Boats, Borders, and Bases: Race, the Cold War, and the Rise of Migration Detention* (2018) looks specifically at the question of race and the "racialized history of the U.S. migration detention system that was developed and expanded to deter Haitian and Cuban migrants."¹³⁰ Both *Migrating To Prison: America's Obsession With Locking Up Immigrants* by César Cuauhtémoc García Hernández (2019) and Kristina Shull's *Detention Empire: Reagan's War on Immigrants and the Seeds of Resistance* (2022) looked at the issue of race, and the treatment of different racial, national and ethnic groups in the USA.¹³¹ Other researchers have looked at immigration detention, deportation and immigration policies and their links with race. For example, Golash-Boza (2016), who sees mass deportation as a "racialized and gendered tool of state

¹²⁷ Turnbull, 'Immigration Detention and the Racialized Governance of Illegality in the United Kingdom'. *op. cit.*

¹²⁸ Kaufman, *Punish and Expel*. *op. cit.*

¹²⁹ Lindskoog, *Detain and Punish*. *op. cit.*

¹³⁰ Loyd and Mountz, *Boats, Borders, and Bases*. *op. cit.*

¹³¹ Shull, *Detention Empire*. *op. cit.*

repression implemented in a time of crisis”¹³² or Hernández’s article “The Perverse Logic of Immigration Detention: Unraveling the Rationality of Imprisoning Immigrants Based on Markers of Race and Class Otherness” (2012) which presents migrant detention as a natural outgrowth of the nation’s criminal justice approach that created mass incarceration, now extended to immigration policy where immigrants are sorted into “desirable” and “undesirable” categories based on criminality.¹³³ Robert T. Chase’s edited book (2019)¹³⁴, and Martha Escobar’s 2009 article also see immigration detention as a form of racial oppression in the USA.¹³⁵

The concept of moral panic illuminates how fears about migration drove punitive policies, but most studies focus on individual episodes. While these panics often coincided with genuine rises in immigration numbers (see graph below), I extend this perspective by tracing how successive waves of anxiety and political reaction cumulatively normalised detention in both national contexts.

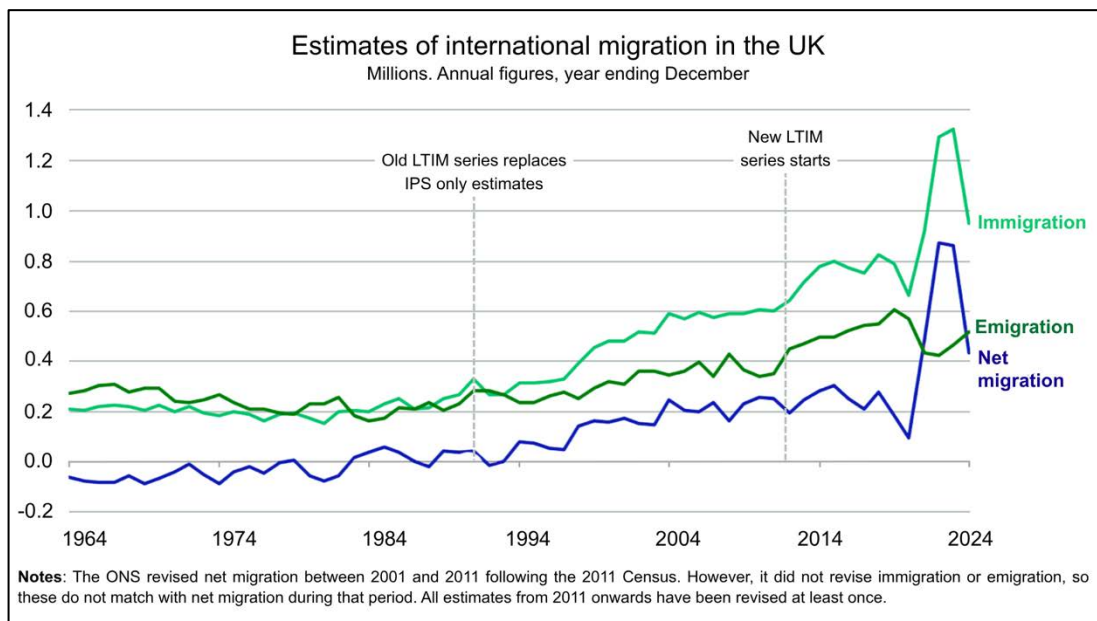


Figure 1. The UK Historical Migration Trends from 1964 to 2022

Source: Georgina Sturge, *Migration Statistics: Research Briefing May 2025*. Number CBP06077. Commons Library Research Briefing.
<https://commonslibrary.parliament.uk/research-briefings/sn06077/>

¹³² Tanya Golash-Boza, ‘The Parallels between Mass Incarceration and Mass Deportation: An Intersectional Analysis of State Repression’, *Journal of World-Systems Research* 22, no. 2 (2016): 2, <https://doi.org/10.5195/jwsr.2016.616>

¹³³ Hernández, *The Perverse Logic of Immigration Detention*. *op. cit.*

¹³⁴ Chase, *Caging Borders and Carceral States*. *op. cit.*

¹³⁵ Escobar, ‘Understanding the Roots of Latina Migrants’ Captivity’. *op. cit.*

Gender

The link between immigration detention and gender is complex, as women, girls, and LGBTQ+ individuals who are detained face unique and often heightened risks of violence, abuse, and mistreatment. Women who are detained may be more vulnerable to abuse due to their gender, while LGBTQ+ individuals may face discrimination and violence because of their sexual orientation or gender identity. Detention can also result in limited access to healthcare, including reproductive healthcare, for women. Furthermore, women and LGBTQ+ individuals may face additional barriers to accessing legal support, which can make it more difficult to challenge their detention or seek asylum. Overall, recognising and addressing the gendered impacts of immigration detention is essential to ensure the safety and well-being of all individuals in detention.

Alice Gerlach (2022) examines the role of dignity in immigration detention, arguing that the experience of indignity has lasting impacts on women, causing them distress both in detention and after they leave.¹³⁶ Cervantes et al. (2017) explore the criminalisation of Latina immigrants through the interwoven network of social control created by law, the justice system, and private corporations, the immigration-industrial complex.¹³⁷ Golash-Boza (2016), as already stated, argues that mass deportation is best understood as a racialised and gendered tool of state repression implemented in a time of crisis. Shana Tabak and Rachel Levitan (2014) discuss the special concerns of LGBTI detained migrants, a subgroup of vulnerable detainees that has largely remained invisible in detention systems across the globe.¹³⁸ Finally, Victoria Kurdyla (2022) underscores the role of cisnormativity as a “tool for racialized social control”, highlighting the importance of a critical, intersectional approach to immigration scholarship that tackles the cisnormative assumptions that guide the immigration systems in the US.¹³⁹ The literature shows that immigration detention is deeply gendered, racialised, and intersectional, with specific challenges and violations of rights faced by different groups of detainees.

Experiencing Detention

Immigration detention can be a traumatic and isolating experience for migrants. It can exacerbate existing vulnerabilities, such as language barriers and

¹³⁶ Alice Gerlach, ‘Women’s Experiences of Indignity in Immigration Detention and beyond’, *Incarceration* 3, no. 2 (2022), <https://doi.org/10.1177/26326663221103437>

¹³⁷ Cervantes et al., “‘Humane’ Immigration Enforcement and Latina Immigrants in the Detention Complex’. *op. cit.*

¹³⁸ Shana Tabak and Rachel Levitan, ‘LGBTI Migrants in Immigration Detention: A Global Perspective’, *Harvard Journal of Law & Gender* 37 (2014): 1–45.

¹³⁹ Victoria Kurdyla, ‘Advocating for Transgender Immigrants in Detention Centers: Cisnormativity as a Tool for Racialized Social Control’, *American Behavioral Scientist* 66, no. 13 (2022), <https://doi.org/10.1177/00027642221083531>

limited access to medical care and contribute to feelings of anxiety and uncertainty. Detention can re-trigger past traumas and further marginalise individuals from low-income backgrounds, exacerbating existing inequalities and discrimination. Overall, immigration detention can significantly impact the migrant experience, causing psychological distress and social isolation. While not at the heart of this dissertation, many researchers have looked at the experience of migrants in detention centres and the impact it has on them, physically, mentally, and socially. Mark Dow's book *American Gulag: Inside U.S. Immigration Prisons* (2004)¹⁴⁰ provides in-depth profiles of migrants in detention in the U.S., and Mary Bosworth's *Inside Immigration Detention* (2014) provides a similar look at British detention centres from the inside.¹⁴¹ Bosworth discusses everyday life in detention, the communities that develop and issues of uncertainty, identity, power, ambivalence and estrangement. Criminologist Alice Gerlach (2022) has taken a particular look at the experience of women in immigration detention in the UK.¹⁴²

One of the major issues of life within immigration detention is the uncertainty about its duration. Each nation imposes its own distinct time limitations on detention, however, in practice, detention can last, in some cases, far longer than legally allowed. Importantly, in the United Kingdom, there are no statutory constraints to the duration of detention for an individual in immigration detention. Melanie Griffiths (2013) and Sarah Turnbull (2016) discussed this issue in their articles "Living with Uncertainty: Indefinite Immigration Detention" and "Stuck in the Middle": Waiting and Uncertainty in Immigration Detention" respectively.¹⁴³

Axel Klein and Lucy Williams (2012) have looked at migrants' experience in a post-detention setting, and the impact that detention has on them after they have left imprisonment.¹⁴⁴ While a 2015 article by Williams shows how immigration detention often leads to poverty and destitution, when liberation does not go hand in hand with the proper support needed to survive in the country.¹⁴⁵

¹⁴⁰ Dow, *American Gulag*. *op. cit.*

¹⁴¹ Bosworth, *Inside Immigration Detention*. *op. cit.*

¹⁴² Gerlach, 'Women's Experiences of Indignity in Immigration Detention and beyond'. *op. cit.*

¹⁴³ Melanie Griffiths, 'Living with Uncertainty: Indefinite Immigration Detention', *Journal of Legal Anthropology*, *Journal of Legal Anthropology* 1, no. 3 (2013): 263–86, <https://doi.org/10.3167/jla.2013.010301>; Sarah Turnbull, "'Stuck in the Middle": Waiting and Uncertainty in Immigration Detention', *Time & Society* 25, no. 1 (2016): 61–79, <https://doi.org/10.1177/0961463X15604518>

¹⁴⁴ Axel Klein and Lucy Williams, 'Immigration Detention in the Community: Research on the Experiences of Migrants Released from Detention Centres in the UK', *Population, Space and Place* 18, no. 6 (2012): 741–53, <https://doi.org/10.1002/psp.1725>

¹⁴⁵ Lucy Williams, 'From Immigration Detention to Destitution', *Criminal Justice Matters* 99, no. 1 (2015): 1.

Both Mary Bosworth (2018)¹⁴⁶ and Thomas Ugelvik (2016)¹⁴⁷ have looked at the other side of the coin in detention, the role of immigration officers and staff who run the centres and the impact their jobs have on them, while Dominic Aitken (2018) has written about the difficulties and methodological challenges of carrying out research within detention centres.¹⁴⁸

Finally, a large amount of research has focused on the many negative mental and physical impacts of detention in the USA (Brabeck et al., 2015; Diaz et al., 2022),¹⁴⁹ in the UK (Hollis, 2019),¹⁵⁰ and worldwide (Coffey, 2006; Robjant et al., 2009; Werthern et al., 2018).¹⁵¹

Resisting Detention

The contentious issue of detaining migrants has sparked debates and divisions in nations across the globe. Governments argue that such detention is crucial in regulating migration, while a growing number of people and organisations are pushing for its abolishment. The burgeoning movement against migrant detention has been gaining momentum, as more people are becoming conscious of the harmful effects it can have on the individuals who are detained, their families, and their communities.

Academics have studied the various forms of resistance by detained migrants as well as political resistance on the outside. Lucy Fiske's 2016 book *Human Rights, Refugee Protest and Immigration Detention* offers a comprehensive understanding of the injustices that occur within detention centres through interviews with refugees who participated in various protests including sit-ins and non-compliance, hunger strikes, lip sewing, escapes and riots.¹⁵² Jessica Ordaz's 2021 monograph on the El Centro prison, *The Shadow of El Centro: A History of Migrant Incarceration and Solidarity*,

¹⁴⁶ Mary Bosworth, 'Affect and Authority in Immigration Detention', *Punishment and Society* 21, no. 5 (2018), <https://doi.org/10.1177/1462474518803321>

¹⁴⁷ Thomas Ugelvik, 'Techniques of Legitimation: The Narrative Construction of Legitimacy among Immigration Detention Officers', *Crime, Media, Culture: An International Journal* 12, no. 2 (2016), <https://doi.org/10.1177/1741659016648180>

¹⁴⁸ Dominic Aitken, 'Life and Death in Immigration Detention', in *Criminal Justice Research in an Era of Mass Mobility*, ed. Andriani Fili et al., Routledge Studies in Criminal Justice, Borders and Citizenship (London, 2018), <https://doi.org/10.4324/9781315269771>

¹⁴⁹ Kalina M. Brabeck et al., 'Immigrants Facing Detention and Deportation: Psychosocial and Mental Health Issues, Assessment, and Intervention for Individuals and Families', in *The New Deportations Delirium: Interdisciplinary Responses*, ed. Dan Kanstroom and M. Brinton Lykes, Citizenship and Migration in the Americas (New York University Press, 2015); Channele Diaz et al., 'Harmful by Design—a Qualitative Study of the Health Impacts of Immigration Detention', *Journal of General Internal Medicine*, ahead of print, 2022, <https://doi.org/10.1007/s11606-022-07914-6>

¹⁵⁰ Jake Hollis, 'The Psychosocial Experience of UK Immigration Detention', *International Journal of Migration, Health and Social Care* 15, no. 1 (2019), <https://doi.org/10.1108/ijmhsc-04-2018-0024>

¹⁵¹ Guy Coffey, "'Locked Up Without Guilt or Sin": The Ethics of Mental Health Service Delivery in Immigration Detention', *Psychiatry, Psychology and Law* 13, no. 1 (2006): 67–90; Katy Robjant et al., 'Mental Health Implications of Detaining Asylum Seekers: Systematic Review', *British Journal of Psychiatry* 194, no. 4 (2009): 306–12, <https://doi.org/10.1192/bjp.bp.108.053223>

¹⁵² Lucy Fiske, *Human Rights, Refugee Protest and Immigration Detention* (Palgrave Macmillan UK, 2016), <https://doi.org/10.1057/978-1-137-58096-2>

explains how the detention system was formed and maintained. However, she also shows how migrants have created “transnational solidarities and innovative forms of resistance.”¹⁵³ Kristina Shull’s (2022) *Detention Empire: Reagan’s War on Immigrants and the Seeds of Resistance* demonstrates how migrant detention functions at the “intersections of US war-making and domestic carceral trends.”¹⁵⁴ The book also argues that Reagan’s war on immigrants paved the way for mass resistance.

In *The Abandoned Ones: The Imprisonment and Uprising of the Mariel Boat People* (1995), Mark S. Hamm explores the experiences of Cubans and Haitians in detention and their resistance to oppressive systems.¹⁵⁵ Robert T. Chase’s (2019) *Caging Borders and Carceral States: Incarcerations, Immigration Detentions, and Resistance* demonstrates how prisoners and immigrants utilised the principles of transnational human rights and liberation to push back against the oppression and violence they faced.¹⁵⁶ This allowed them to overcome the isolation brought about by their confinement, detention, and deportation.

Finally, through extensive archival research, including government documents, advocacy group archives, and periodicals, *Detain and Punish: Haitian Refugees and the Rise of the World’s Largest Immigration Detention System*, by Carl Lindskoog explores the discrimination encountered by Haitian refugees and the ways in which their resistance led to the reinforcement of the US government’s detention programme.¹⁵⁷ It offers a detailed historical account of the Haitians’ experiences with immigration detention in the US and argues that the systems created for Haitian refugees have set the foundation for the current treatment of immigrants in America.

Overall, these works highlight the experiences of migrants in detention and their resistance to oppressive systems. The literature demonstrates the flaws in the immigration detention system and reveals how power is institutionalised. It also uncovers how migrants have created transnational solidarities and innovative forms of resistance, paving the way for mass resistance against oppressive systems.

Conclusion to the Literature

Finally, a number of other topics have been examined by researchers, some of which have already been mentioned indirectly. For example, researchers have studied human rights issues when it comes to detention of non-citizens (Fiske, 2016; Majcher, Flynn and Grange, 2020; Dembour and Kelly, 2011).¹⁵⁸ Academics have also looked

¹⁵³ Ordaz, *The Shadow of El Centro*. *op. cit.*

¹⁵⁴ Shull, *Detention Empire*. *op. cit.*

¹⁵⁵ Hamm, *The Abandoned Ones*. *op. cit.*

¹⁵⁶ Chase, *Caging Borders and Carceral States*. *op. cit.*

¹⁵⁷ Lindskoog, *Detain and Punish*. *op. cit.*

¹⁵⁸ Fiske, *Human Rights, Refugee Protest and Immigration Detention*; Majcher et al., *Immigration Detention in the European Union*; Marie-Bénédicte Dembour and Tobias Kelly, eds, *Are Human Rights for Migrants? Critical Reflections on the Status of Irregular Migrants in Europe and the United States* (Routledge, 2012).

at education (Gonzalez and Patler, 2020),¹⁵⁹ children (Linton, Griffin and Shapiro, 2017),¹⁶⁰ geography (Moinester, 2018),¹⁶¹ architecture (Ramos, 2018),¹⁶² social workers and faith-based organisations (Snyder, Bell and Busch-Armendariz, 2015),¹⁶³ alternatives to detention (Marouf, 2017)¹⁶⁴ and detention at the local level (Ryo and Peacock, 2020).¹⁶⁵ While inevitably non-exhaustive, this review of the literature has aimed to present the different facets of research on immigration detention and the most important works in the field.

This thesis will examine the work of these and many other scholars, and will attempt to demonstrate, through its own theoretical approach, why migrant detention is such a crucial dimension of the contemporary immigration process. It will seek to explain how detention systems and policies evolved from 1980 to 2010. This inevitably raises a number of questions. How did the histories of immigration and exclusion in the United States and the United Kingdom up to the late 1970s lay the groundwork for detention as a policy tool? How did the legislative reforms of the 1980s and 1990s expand state discretion to detain migrants, and in what ways did U.S. and UK approaches converge or diverge? How did the framing of migrants as criminal or security threats reshape detention policy, and what were the similarities and differences between U.S. “criminal alien” laws and the UK’s terrorism–asylum nexus? Through what institutional and material processes did detention systems expand, and how did the U.S. reliance on privatisation compare to the UK’s State-led but under-resourced estate? In what ways was detention deployed as part of broader deterrence strategies, from U.S. border militarisation and maritime interdiction to the UK’s hostile environment and administrative barriers? How did courts in both countries respond to the expansion of detention powers, and to what extent did constitutional and human rights frameworks constrain or defer to executive authority?

2. Terminology

It is essential to note that there are often definitional variations between

¹⁵⁹ Gabriela Gonzalez and Caitlin Patler, ‘The Educational Consequences of Parental Immigration Detention’, *Sociological Perspectives* 64, no. 2 (2020), <https://doi.org/10.1177/0731121420937743>

¹⁶⁰ Julie M. Linton et al., ‘Detention of Immigrant Children’, *Pediatrics* 139, no. 5 (2017): e20170483, <https://doi.org/10.1542/peds.2017-0483>

¹⁶¹ Margot Moinester, ‘Beyond the Border and Into the Heartland: Spatial Patterning of U.S. Immigration Detention’, *Demography* 55, no. 3 (2018): 1147–93, <https://doi.org/10.1007/s13524-018-0679-2>

¹⁶² Stephen Ramos, ‘ICEBOX: The Logistics of Detention’, *DELFT Architecture Theory Journal*, The Architecture of Logistics, vol. 12, no. 2 (2018): 53–68.

¹⁶³ Susanna Snyder et al., ‘Immigration Detention and Faith-Based Organizations’, *Social Work* 60, no. 2 (2015): 165–73, <https://doi.org/10.1093/sw/swv004>

¹⁶⁴ Fatma E. Marouf, ‘Alternatives to Immigration Detention’, *Cardozo Law Review* 38 (2192 2141), <https://doi.org/10.2139/ssrn.3048480>

¹⁶⁵ Emily Ryo and Ian Peacock, ‘Jailing Immigrant Detainees: A National Study of County Participation in Immigration Detention, 1983–2013’, *Law & Society Review* 54, no. 1 (2020), <https://doi.org/10.1111/lasr.12459>

countries. Any relevant differences in terminology should be noted because of the implications they may have for research. Here, therefore, I will clarify these variations between the US and the UK, and in each case give the definition I will use in this research for maximum clarity. I will define the following terms: migrant, immigrant, refugee, asylum seeker, detention, detainee, and deportation.

2.1. Migrant, Immigrant and Alien

The terms migrant and immigrant are often used interchangeably, although they can be used to refer to different realities. The generic term ‘migrant’ can be used to refer to both immigrants and emigrants. This is the main distinction between the term migrant and immigrant. Both terms can be used to refer to asylum seekers, refugees, people who are legally or illegally present, people who migrate for work, security reasons, political reasons, and others. Although there is no agreed international definition of the term migrant, the United Nations provides a description that allows for an initial definition of the term:

While there is no formal legal definition of an international migrant, most experts agree that an international migrant is someone who changes his or her country of usual residence, irrespective of the reason for migration or legal status. Generally, a distinction is made between short-term or temporary migration, covering movements with a duration between three and 12 months, and long-term or permanent migration, referring to a change of country of residence for a duration of one year or more.¹⁶⁶

The International Organization for Migration (IOM), which is part of the United Nations network, provides an alternative proposal for the term migrant:

An umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons. The term includes a number of well-defined legal categories of people, such as migrant workers; persons whose particular types of movements are legally-defined, such as smuggled migrants; as well as those whose status or means of movement are not specifically defined under international law, such as international students.¹⁶⁷

Some researchers have argued that the nation-state point of view must be abandoned, as the very concept of “migrant” has become a stigmatising label that problematises migration. Stephan Scheel and Martina Tazzioli propose to “understand a migrant as a person who, in order to move to or stay in a desired place, has to struggle against bordering practices and processes of boundary-making that are implicated by

¹⁶⁶ ‘Definitions’, *Refugees and Migrants*, 12 April 2016, <https://refugeesmigrants.un.org/definitions>.

¹⁶⁷ ‘About Migration’, *International Organization for Migration*, accessed 31 January 2023, <https://www.iom.int/about-migration>

the national order of things.”¹⁶⁸

A migrant can also be defined in the following ways:¹⁶⁹

- A person whose country of birth is different from their country of residence.
- A person whose nationality is different from that of their country of residence.
- A person who changes his or her country of main residence for a period of at least one year, so that the country of destination effectively becomes the country of main residence.¹⁷⁰

These definitions can, of course, have an impact on the figures used by different countries.

In addition to the terms migrant and immigrant, the term “alien” is also frequently used in legal and administrative contexts. Unlike “migrant” or “immigrant,” which describe people based on movement or residence, “alien” is a legal category used to designate a person who is not a citizen or national of a given country. For example, the United States Immigration and Nationality Act of 1952 defines an alien as “any person not a citizen or national of the United States.”¹⁷¹ Similarly, in the United Kingdom, the term is used in immigration law to refer to foreign nationals, whether lawfully present (such as those holding visas or indefinite leave to remain) or unlawfully present (such as undocumented migrants). The UK’s Immigration Act 1971 defines an alien as a person who is not a British citizen, a citizen of a country in the European Economic Area, or a Commonwealth citizen with the right of abode in the UK.¹⁷² The use of the term “alien” carries specific legal implications, including eligibility for visas, work permits, access to public services, and obligations under immigration law. Scholars have noted, however, that the term can be politically and socially charged, as it may dehumanise individuals by reducing them to their legal status rather than acknowledging their human rights or personal circumstances.¹⁷³

In this dissertation I will use both the term migrant and immigrant to refer to migrants when not distinguishing between specific categories of migrants. The term “alien” will be used only in reference to its legal meaning within national immigration

¹⁶⁸ Stephan Scheel and Martina Tazzioli, ‘Who Is a Migrant? Abandoning the Nation-State Point of View in the Study of Migration’, *Migration Politics* 1, no. 1 (2022): 10, <https://doi.org/10.21468/MigPol.1.1.002>

¹⁶⁹ In the UK, people who stay less than a year in the country are not counted as migrants.

¹⁷⁰ Scott Blinder and Bridget Anderson, *Who Counts as a Migrant? Definitions and Their Consequences* (The Migration Observatory, 2017), www.migrationobservatory.ox.ac.uk/resources/briefings/who-counts-as-a-migrant-definitions-and-theirconsequences

¹⁷¹ *Immigration and Nationality Act*, Pub. L. No. 82-414, 66 Stat. 163 (1952, USA).

¹⁷² *Immigration Act 1971*, c. 77 (UK).

¹⁷³ D Carolina Nunez, ‘War of the Words: Aliens, Immigrants, Citizens, and the Language of Exclusion’, *Brigham Young University Law Review* 2013, no. 6 (2014): 1517–62.

frameworks, distinguishing it from broader, descriptive terms such as migrant or immigrant. Where necessary, I will use more specific terms such as refugee and asylum seeker to distinguish between different types of migrants. But I will also use a somewhat different definition from the three proposed above. For the purposes of this thesis, I consider a migrant to be someone who has a different nationality from the country in which they are, as well as people whose country of birth is different from the country in which they are. Tourists are excluded, but I do not include any lower limit of duration for having been present within the country in which they are being detained. Indeed, when it comes to undocumented migrants held in detention centres, these people cannot be considered as being truly resident in the country. Moreover, some of them have been in the country for a very short time (a few hours, a few days, a few weeks, etc.), whereas others have lived in the country for years, or even decades.

2.2. Refugee and Asylum Seeker

It is also important to define the term refugee. According to the 1951 Geneva Convention a refugee is a person who,

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹⁷⁴

It is therefore important to distinguish between refugee and non-refugee migrants. Some migrants do not have any fear of violence, war, persecution, etc. and migrate simply for economic reasons, family reasons or simply because they wish to do so. But many others see emigration as a solution to various dangers or problems (economic crisis, violence, political instability, conflict, persecution, discrimination, etc.). When migrants are recognised as refugees, they have a status that allows them to live in the country legally. When they enter the country without authorisation, they have a non-documented or irregular status (this is often referred to as illegal immigration). Undocumented migrants, by definition, generally arrive in countries without the necessary papers and are far more likely to end up in detention centres.

It is also essential to distinguish between refugees and asylum seekers. Asylum seekers apply for asylum upon arrival in the country in which they are applying. This application may be accepted, or it may be refused. In many cases, migrants are detained until a decision is made on their case. In contrast, refugees obtain their status before arriving in the country and are allowed to reside in the country. In the United States, refugees have lifetime permission to live in the country. In the UK, this is temporary

¹⁷⁴ United Nations High Commissioner for Refugees, 'Convention and Protocol Relating to the Status of Refugees', *UNHCR*, 1951, <https://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>

and is more in line with the American concept of Temporary Protected Status (TPS). TPS is a temporary status granted to nationals of certain countries affected by armed conflict or natural disaster (or in a few other exceptional cases) that allows individuals to live and work in the US for a limited period of time. To be eligible for TPS, individuals must already be present in the United States at the time the event (war, natural disaster, etc.) takes place.

2.3. Citizens, Nationals, and Subjects

The United Kingdom draws distinctions among related terms such as citizen, national, and subject:

- **Citizen:** This refers to an individual who possesses British citizenship as defined under the British Nationality Act 1981. Such individuals enjoy the full range of rights and obligations associated with citizenship, including the right of abode in the United Kingdom and participation in the democratic process through voting.
- **National:** This refers to a broader classification encompassing all persons who owe allegiance to the United Kingdom. This category includes British citizens as well as other classes of British nationality (such as British Overseas Territories citizens or British Overseas citizens) who may not necessarily possess the right of abode in the UK.
- **Subject:** A historical designation referring to individuals under the sovereignty of the British Crown. The term “British subject” was once used to describe all those within the British Empire but has since been largely replaced by the modern concept of citizenship. It now applies only to a limited number of individuals who retained that status following the reforms of the British Nationality Act 1948 and subsequent legislation.

The United States also draws some distinctions among related terms such as citizen, national, and subject, though they function differently from the British system:

- **Citizen:** A U.S. citizen owes allegiance to the United States and enjoys the full range of constitutional rights, including the right to vote, run for office (in most cases), and obtain a U.S. passport. Citizenship is acquired by birth within the U.S. (*jus soli*), by descent (*jus sanguinis*), or through naturalisation.
- **National:** A U.S. national owes permanent allegiance to the United States but is not necessarily a citizen. This category is very limited as it mainly applies to people from American Samoa and Swains Island, who are U.S. nationals but not citizens. They can live and work in the U.S. but cannot vote in federal elections or hold certain offices.

- **Subject:** This term has no legal standing in U.S. law. The concept of being a subject (owing allegiance to a monarch) was rejected at independence and replaced by the republican idea of citizenship.

2.4. Detention

Sociologists Mary Bosworth and Sarah Turnbull defined immigration detention as “the practice of confining individuals identified as non-citizens in order to achieve immigration-related aims (e.g. identification, removal, etc.)”¹⁷⁵. In 2012, Stephanie J. Silverman and Evelyne Massa attempted to provide greater conceptual clarity to the idea of immigration detention in their article “Why Immigration Detention Is Unique.” They defined immigration detention as “the holding of foreign nationals, or non-citizens, for the purposes of realising an immigration-related goal.”¹⁷⁶ The definition they offered is composed of three central elements: “first, detention represents a deprivation of liberty; second, it takes place in a designated facility in the custody of an immigration official; and third, it is being carried out in the service of an immigration-related goal.”¹⁷⁷ This conceptualisation aims to show

how detention embodies the conflict in contemporary immigration control regimes between a sovereign state’s capacity to regulate the entry and residence of non-members on the one hand, and its legal and ethical obligations towards those residing within its cartographic borders, on the other (...). This definition is also suggestive of the new spaces generated through the use of detention: not only the physical spaces of the centres and prisons where detainees are kept but also the symbolic spaces of suspension and liminality, where detainees are asked to ‘wait out’ their status regularisations.¹⁷⁸

Defining the concept of detention is crucial, as hundreds of thousands of migrants (men, women and children) around the world are held in detention centres each year, sometimes for long periods, because of their immigration and citizenship status. By far the most common country to detain migrants is the United States. According to Stephanie J. Silverman, the expansion of detention in the United States “parallels the practice’s remarkable global rise.”¹⁷⁹ She shows how detention is a solution used by governments around the world: “The long arm of state power is expanding immigration detention across the world. Governments are opting to detain

¹⁷⁵ Mary Bosworth and Sarah Turnbull, ‘Immigration Detention, Punishment and the Criminalization of Migration’, in *The Routledge Handbook on Crime and International Migration*, 1st ed. Sharon Pickering and Julie Ham (Routledge, 2014), 4, <https://doi.org/10.4324/9780203385562-7>

¹⁷⁶ Stephanie J. Silverman and Evelyne Massa, ‘Why Immigration Detention Is Unique’, *Population, Space and Place* 18, no. 6 (2012): 679, <https://doi.org/10.1002/psp.1720>

¹⁷⁷ Silverman and Massa, ‘Why Immigration Detention Is Unique’, 2012, *op. cit.*, 679.

¹⁷⁸ Stephanie J. Silverman and Evelyne Massa, ‘Why Immigration Detention Is Unique’, *Population, Space and Place* 18, no. 6 (2012): 3, <https://doi.org/10.1002/psp.1720>

¹⁷⁹ Stephanie J. Silverman “The Difference That Detention Makes: Reconceptualizing the Boundaries of the Normative Debate on Immigration Control” in Alex Sager, *The Ethics and Politics of Immigration: Core Issues and Emerging Trends* (Rowman & Littlefield International, 2016), 105.

migrants for longer periods of time, ostensibly to deter future arrivals and facilitate deportation.”¹⁸⁰ This expansion of detention is an undeniable reality in the United States, as well as in the United Kingdom, the two countries at the heart of this study, and has been growing since the 1980s.

Between 1980 and 2001 alone, 27 million foreign nationals were either returned¹⁸¹ or removed¹⁸² from the US.¹⁸³ Between 2002 and 2019 that number reached 15,5 million though the period saw a significant increase in the proportion of removals (39%) rather than returns.¹⁸⁴ In order to deport such large numbers of migrants, the United States had to build a detention system that could hold large numbers of non-citizens. American historian Elliott Young, believes that the United States has become a nation of immigrant incarceration:

The immigrant detention system has been growing in fits and starts from the late nineteenth century to the present, but the rapid growth of incarceration and the raw numbers of immigrants being locked up today is unprecedented. We once imagined ourselves as a nation of immigrants, but we have become a nation of immigrant prisons.¹⁸⁵

¹⁸⁰ Stephanie J. Silverman, ““Regrettable but Necessary?” A Historical and Theoretical Study of the Rise of the U.K. Immigration Detention Estate and Its Opposition”, *Politics & Policy* 40, no. 6 (2012): 1132, <https://doi.org/10.1111/j.1747-1346.2012.00393.x>

¹⁸¹ Returns denote the confirmed departure of an inadmissible or deportable noncitizen from the United States that does not result from an order of removal.

¹⁸² Removals refer to the compulsory and legally confirmed expulsion of an inadmissible or deportable noncitizen from the United States pursuant to an official order of removal. Such removals carry administrative or criminal penalties for any subsequent reentry.

¹⁸³ U.S. Department of Homeland Security. *Yearbook of Immigration Statistics, 2019*. Table 39. Accessed 19 June 2025. <https://ohss.dhs.gov/topics/immigration/yearbook/2019/table39>

¹⁸⁴ *Ibid.*

¹⁸⁵ Young, *Forever Prisoners*, *op. cit.*, 195.

The data confirms this. Since the 1990s, there has been a five- to six-fold increase in the average daily detained population (ADP) (see graph below).

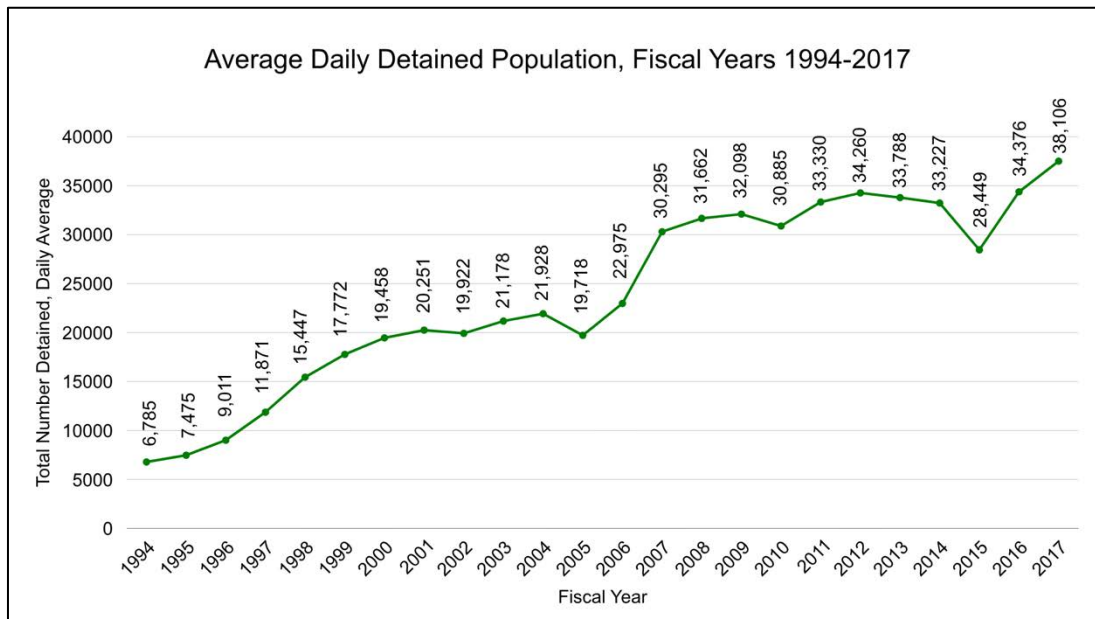


Figure 2. The average number of immigrants detained each day in the United States (1994-2017)

Source: David Bier, "Deportation Rates: A Historical Perspective," *Cato at Liberty*, Cato Institute, July 26, 2018, <https://www.cato.org/blog/deportation-rates-historical-perspective>

This system of detention and deportation of migrants is paralleled across the Atlantic in the United Kingdom. Far from being a nation of immigrants, the UK has historically been a nation of emigrants, with many Britons leaving the country to live in one of the many colonies that formed the British Empire. But the Second World War, and the subsequent process of decolonisation, marked the beginning of the shift from emigration to immigration. Indeed, the arrival of Commonwealth immigrants during and after the Second World War, as well as integration into the European Economic Community (EEC, later the European Union, EU) in the 1970s, and large inflows of asylum seekers in the 1990s, led to a significant increase in immigration

(see graph below).¹⁸⁶

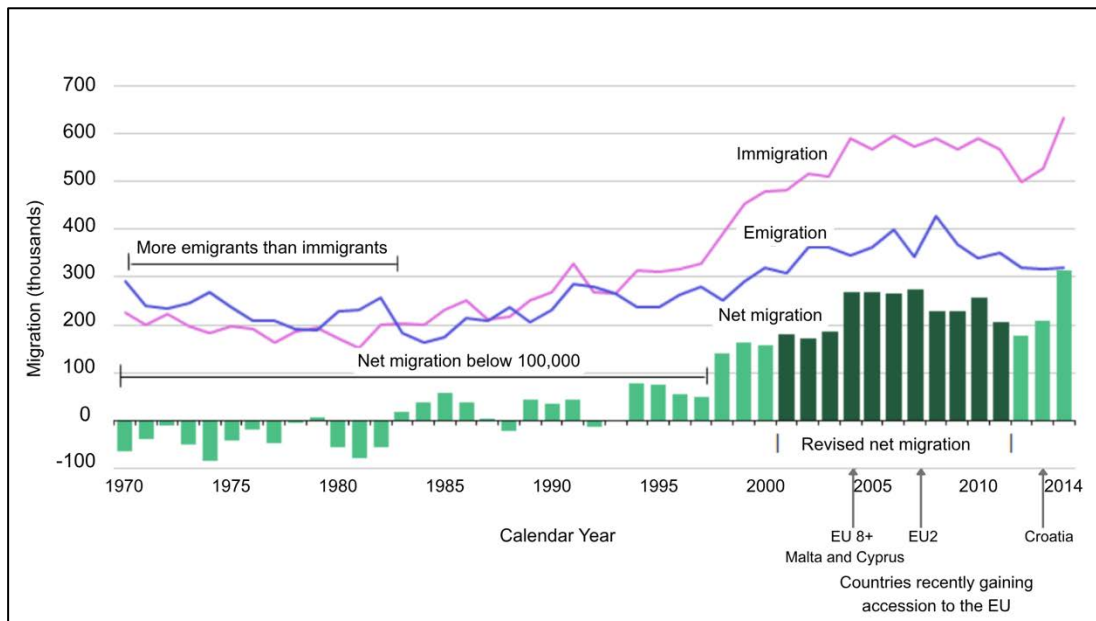


Figure 3. Immigration and Emigration in the United Kingdom (1970-2014)

Source: Office for National Statistics, “Migration Statistics Quarterly Report: May 2015,” 21 May 2015,

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/migrationstatisticsquarterlyreport/2015-05-21>.

In response to rising immigration levels, public disapproval, as well as anti-immigration rhetoric from some British politicians, the UK began to implement more restrictive immigration policies leading to more deportations and detentions. According to Stephanie J. Silverman and Evelyn Massa, the causes of the expansion of detention are numerous, including xenophobia, financial motivations and laws that associate migration with criminality.¹⁸⁷ Mary Bosworth argues that the modern immigration detention system in the United Kingdom began in 1970 with the opening of the Harmondsworth Detention Unit and its sister institution in Dover Castle.¹⁸⁸

The comparative framework is based not only on the similarities between the two objects of study, but also on the differences, as a comparative study should aim to identify both. In the context of this dissertation, the identification of differences between the United Kingdom and the United States in terms of detention serves to

¹⁸⁶ *Migration Statistics Quarterly Report: November 2015* (Office for National Statistics, 2015), 5, <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/migrationstatisticsquarterlyreport/november2015>

¹⁸⁷ Silverman and Massa, ‘Why Immigration Detention Is Unique’, 2012, *op. cit.*, 3.

¹⁸⁸ Bosworth, *Inside Immigration Detention*, *op. cit.*, 22.

explain the immigration policies of each country. In essence, the landscape of immigration detention in the UK and the US can be likened to two distinct societal and political experiments. Examining detention practices in these two countries provides a valuable opportunity to juxtapose and analyse the differing approaches to handling immigration.

2.5. Detainees

The term detainee is used to refer to any migrant who is detained because of their immigration status. I therefore make a distinction between migrants who have committed a crime (theft, fraud, murder, assault, etc.) in the country and are incarcerated in the US or UK prison systems, and migrants who are simply detained because of their migrant status. I will therefore use the term ‘detainee’ to refer to the latter. They may be in migrant detention centres, but also in municipal prisons, juvenile detention centres and shelters, as well as in State-run prisons. These prisons and detention centres are sometimes run by private companies, other times the State.

2.6. Deportation

Although we often refer to deportation, the term hides a wide variation in the reality of the situation in the field. In the United States, deportations are separated into two distinct categories: removals and returns (often called voluntary returns). While it is not necessary to detail all of the different methods of deportation by the two countries, some distinctions must be made.

In the United States, removals refer to people who receive a deportation order requiring them to leave the country and who are deported by federal agents.

On the other hand, a voluntary return is the situation where a foreigner who has been arrested at the border is offered the possibility to return to his or her country of origin “without being placed in immigration proceedings.”¹⁸⁹ This procedure is often applied to “non-criminal aliens who are apprehended by the Border Patrol”¹⁹⁰

¹⁸⁹ Dr Emanuela Paoletti, ‘Deportation, Non-Deportability and Ideas of Membership’, *RSC Working Paper Series*, no. 65 (2010): 11, <https://www.rsc.ox.ac.uk/publications/deportation-non-deportability-and-ideas-of-membership>

¹⁹⁰ *Ibid.*

Detention and deportation of migrants, the two often going hand in hand, have existed in various forms in the United States since the American Revolution. Historically, the United States has seen itself and projected itself as a nation of immigrants. The country has experienced a continuous increase in the immigrant population ever since the first decades of its colonial and then independent existence. Data from the early colonial period is sparse and inconsistent, but the number of immigrants in the country has risen from approximately 2 million in the 1850s, when the federal government began systematically collecting and recording immigration data, to over 30 million in 2001 (see graph below).¹⁹¹

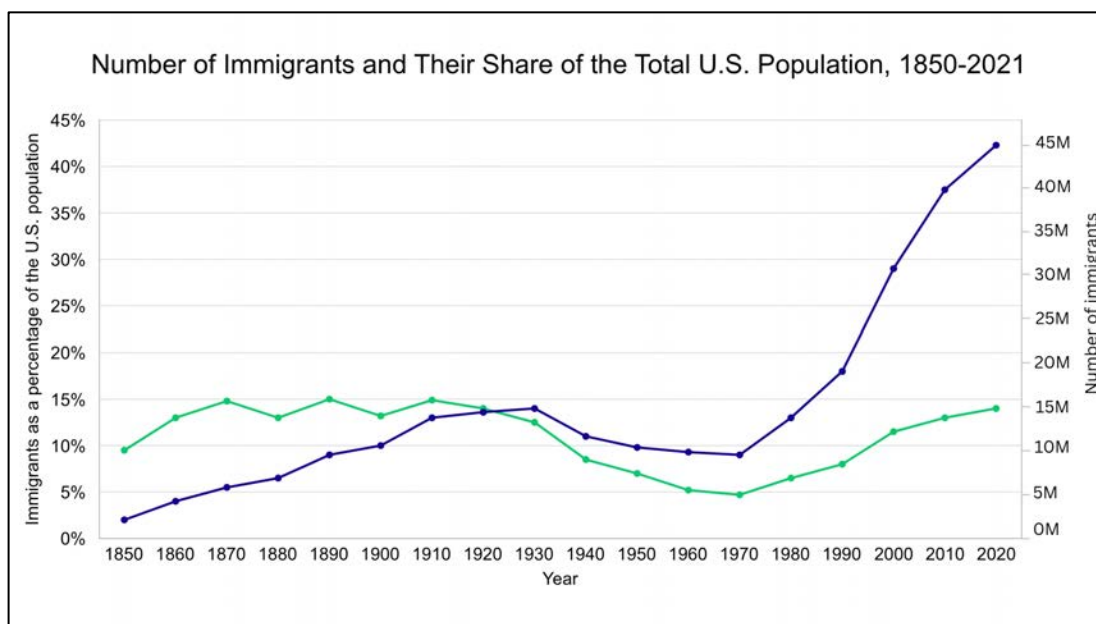


Figure 4. The migrant population in the United States (1850-2021)

Source: Migration Policy Institute, “U.S. Immigrant Population and Share over Time, 1850-Present,” *Data Hub*, 2021, <https://www.migrationpolicy.org/programs/data-hub/charts/immigrant-population-over-time>

¹⁹¹ Jeanne Batalova et al., ‘Frequently Requested Statistics on Immigrants and Immigration in the United States’, *Migrationpolicy.Org*, 14 February 2020, <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2019>

However, historian Daniel Kanstroom argues that the United States has used deportation of migrants so much that it has become a deportation nation in which “many millions live in a tenuous state of fear.”¹⁹² The numbers support Kanstroom’s argument (see graph below).

Removals Per President				
President	Removals	Removals Per Year	Political Party	Years in Office
Benjamin Harrison	2,801	2,801	Republican	1
Grover Cleveland	9,069	2,267	Democrat	4
William McKinley	17,642	3,528	Republican	5
Theodore Roosevelt	76,390	10,913	Republican	7
William H. Taft	83,150	20,788	Republican	4
Woodrow Wilson	162,371	20,296	Democrat	8
Warren G. Harding	60,652	20,217	Republican	3
Calvin Coolidge	164,913	32,983	Republican	5
Herbert Hoover	110,275	27,569	Republican	4
Franklin D. Roosevelt	171,939	13,226	Democrat	13
Harry S. Truman	140,553	20,079	Democrat	7
Dwight D. Eisenhower	110,019	13,752	Republican	8
John F. Kennedy	23,969	7,990	Democrat	3
Lyndon B. Johnson	48,737	9,747	Democrat	5
Richard M. Nixon	81,022	16,204	Republican	5
Gerald R. Ford	82,316	27,439	Republican	3
Jimmy Carter	105,378	26,345	Democrat	4
Ronald Reagan	168,364	21,046	Republican	8
George Bush	141,326	35,332	Republican	4
Bill Clinton	869,646	108,706	Democrat	8
George W. Bush	2,012,539	251,567	Republican	8
Barack Obama	3,066,457	383,307	Democrat	8
Donald J. Trump	551,449	275,725	Republican	2

Source: Department of Homeland Security and author’s calculations.

Figure 5. U.S. Deportation Rates in Historical Perspective (1889-2018)

Source: Alex Nowrasteh, “Deportation Rates in Historical Perspective,” *Cato at Liberty*, 16 September 2019, <https://www.cato.org/blog/deportation-rates-historical-perspective>

¹⁹² Dan Kanstroom and M. Brinton Lykes, ‘Introduction: Migration, Detention, and Deportation: Dilemmas and Responses’, in *The New Deportations Delirium: Interdisciplinary Responses*, ed. Dan Kanstroom and M. Brinton Lykes (New York University Press, 2015).

In the United Kingdom, there are three main categories of deportation: deportation, administrative removal, and voluntary departure. The first category, *deportations*, applies to persons whose “removal from the country is deemed ‘conducive to the public good’ by the Secretary of State.”¹⁹³ Deportation may also be recommended by a court in the case of a conviction for a criminal offence, particularly where the conviction carries a prison sentence.¹⁹⁴

The second category, *administrative removals*, refers to people who have entered the country illegally or fraudulently, overstayed their visas or otherwise breached the terms of their leave to remain in the UK. Some people who fall into this category were denied legal permission to enter the country on arrival and were subsequently removed. They therefore never formally entered the country but are counted in the administrative removals statistics.¹⁹⁵

The third main category, *voluntary departures*, concerns people who are informed of an obligation to leave the territory and who do so voluntarily without being forcibly expelled. The term *voluntary* describes the method of departure rather than the choice of whether or not to leave. Within voluntary departures there are also assisted returns, i.e. returnees who benefit from financial support. The system is designed to:

assist those who require more help to return home (for example, those returning to a developing country or those with complex needs or vulnerabilities). This includes supporting resettlement in the country of return by providing financial or ‘in kind’ support from an overseas provider to sustain their return.¹⁹⁶

First introduced in the 1971 Immigration Act, under Conservative Prime Minister Edward Heath, voluntary repatriation, which included funds for immigrants to return to their country of origin, were seen as a “a concession to Tory right-wingers, as repatriation had been advocated three years before by Enoch Powell”¹⁹⁷

This set of definitions therefore sets out key terms that will be used throughout this research.

3. Methodological Framework

This section will serve to outline the methodology of this research, including research design, data collection methods, data analysis methods, ethical

¹⁹³ Blinder, *Deportations, Removals and Voluntary Departures from the UK*, *op. cit.*, 3.

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

¹⁹⁶ Home Office, *Voluntary and Assisted Returns* (2021), 5, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/990282/voluntary-and-assisted-returns_v4.0-gov-uk.pdf

¹⁹⁷ Vincent Latour, ‘Between Consensus, Consolidation and Crisis: Immigration and Integration in 1970s Britain’, *Revue Française de Civilisation Britannique* 22, no. hors-série (2017), <https://doi.org/10.4000/rfcb.1719>

considerations, and validity and reliability. In order to better understand the complexity of immigration in both countries, my research will borrow tools from a number of academic fields, including history, political science, sociology, international relations, and law. This multidisciplinary is the essence of the *civilisationist's* work. This research will use the toolkit of the historian in order to understand the evolution of immigration detention policies in the United Kingdom and the United States, and therefore a discussion of the work of historian is useful.¹⁹⁸

According to Kathleen Troup and Anna Green, modern-day historical study finds its origin in the “scientific revolution” and the Enlightenment of the sixteenth, seventeenth and eighteenth centuries. History became a field which focused on the ability to prove one’s assertions: “an emphasis upon evidence rather than abstract reasoning, and systematic archival research into material documents became the foundation of historical methodology.”¹⁹⁹

The historian’s role is to use sources as evidence that is used to offer interpretations of historical events. Historians, at least good ones, rarely deal in absolutes. At best, they can present an understanding of history, written at a specific point in time based on a limited set of clues. Revising, changing and corroborating the work of other historians is at the heart of the historian’s task. As new information comes to light, so to do new and better interpretations of historical events. Valuable historical thinking cannot provide easy answers to difficult questions. It can, however, provide a better understanding of historical events.

Historical thinking and writing require a strong theoretical framework to decide what to study and how to study it. This is required because different frameworks will provide different ways of questioning the evidence, of understanding events and open new perspectives to historians and their readers. It is also necessary to avoid problems of bias and flawed historical understanding. For example, correlation does not mean causation, just because events happen in a chronological order does not always implicate a relation of cause and effect. Changes are often the consequences of “both slow-moving long-term processes and short-term event-based factors.”²⁰⁰

The research methods used are important, as they will determine the knowledge that is produced. According to Simon Gunn and Lucy Faire, method “should be understood broadly here to encompass everything from the original framing of the research hypothesis to the design of the study, the selection of the sources and the

¹⁹⁸ For great studies of the notion of History, see E. H. Carrs’ *What is History* (1961) and *Houses of History: A Critical Reader in History and Theory*, 2nd Edition by Anna Green and Kathleen Troup (2016)

¹⁹⁹ Anna Green and Kathleen Troup, *The Houses of History: A Critical Reader in History and Theory*, Second edition (Manchester University Press, 2016), 13.

²⁰⁰ Green and Troup, *The Houses of History*, *op. cit.*, 9.

manner in which they are analysed.”²⁰¹ The methods used, therefore serve to connect theory and practice, hypothesis and evidence.

3.1. Comparative Framework and Problematisation

The choice to compare the United Kingdom and the United Kingdom is not coincidental. The UK and the USA are frequently compared in the context of immigration due to shared historical ties, linguistic connections, and colonial legacies that have influenced immigration patterns. The two states have been influenced by successive waves of immigration, that have shaped their cultural diversity and economic landscapes. Both nations have implemented restrictive immigration policies since the 1980s. These have often been in response to negative public discourse and political debates surrounding the immigration issue. This dissertation will aim to show how each country addresses the complexities of immigration. Despite similarities, it is crucial to recognise the unique contexts and policies that shape immigration experiences in both states.

This dissertation investigates the question of the detention of migrants in the United States and the United Kingdom, from the 1980s to the late 2000s. It attempts to answer the question of why migrant detention expanded considerably in the last quarter of the twentieth century and the first decade of the 21st. The main objective is to replace the detention of migrants in their respective countries and to identify common principles governing the use of detention and immigration controls in both nations.

Comparative analysis is a well-established practice. To cite just a few famous examples from the nineteenth century, the works of Alexis de Toqueville, Max Weber, and Emile Durkheim all have comparative aspects. However, their approaches and objectives are quite different. For example, Durkheim focuses on a nomothetic approach, aiming to derive general laws from observed facts, whereas Weber uses an idiographic approach, seeking to “to identify, by means of a large-scale comparison, the unique characteristics of modern Western societies and the factors that have brought them into existence.”²⁰² The Annales School continued this comparative work in the 20th century. One of its founders, Marc Bloch, advocated for a “Comparative History of Europe.”²⁰³ Many other researchers have used the comparative method or studied its application in the social sciences. Although not without its own difficulties, the comparative and idiographic approach of this thesis is in keeping with Weberian thinking, seeking to use the comparative method to better understand the American

²⁰¹ Simon Gunn and Lucy Faire, eds, *Research Methods for History*, Research Methods for the Arts and Humanities (Edinburgh University Press, 2012), 4.

²⁰² Élise Julien, ‘Le Comparatisme En Histoire: Rappels Historiographiques et Approches Méthodologiques’, *Hypothèses* 8, no. 1 (2004): 192–93, <https://doi.org/10.3917/hyp.041.0191>

²⁰³ Marc Bloch, ‘Pour Une Histoire Comparée Des Sociétés Européennes’, *Mélanges Historiques* (1963) 1 (1928).

and British cases by analysing their differences and similarities.

All research must be based on sound theoretical and methodological foundations. Leonardo Molino is quite right when he states that “[a]ny research that claims to be ‘scientific’, even in the broadest sense of the term, must include a prior assessment of its methodological components.”²⁰⁴ It is therefore important to explain the comparative process used.

First, I want to define the concept of comparison. A simple definition of the term comparison would be: an evaluation of the similarities and differences between two things. But this definition hides a much more complex reality. According to Peter Johan Lor, a researcher in comparative studies and library science, comparison is a fundamental element of all science, especially social science:

comparison is inherent in all science, including the social sciences, where comparative research has historically played a significant role in their development as scientific disciplines. However, there is little agreement in the social sciences on the question whether the comparative method should be considered a distinct subfield (as suggested by terms such as comparative education or comparative politics) or as a methodology.²⁰⁵

According to political scientist and sociologist Cécile Vigour, comparative methodology is a “toolbox.”²⁰⁶ Discussing the use of the method in political science, Vigour explains that:

By placing the object of their research in a longer time perspective, or by comparing it with other geographical and cultural contexts, comparatists extend their field of observation. [...] Comparison must therefore be seen as an approach, a state of mind designed to shift the researcher’s perspective. To compare is not only to accept decentring, but also to make the formulation of hypotheses and the work of theorising more demanding.²⁰⁷

No matter the academic field, comparison is a reflective process. To compare is to analyse and decipher the significance of data and events with the goal of ascertaining causality and meaning. Comparison is used to build detailed and insightful analysis which provide relevant and useful information on the compared elements. This view, first detailed in a similar form in my master’s thesis, still stands, as it allows me to express in simple terms my understanding of the comparative process.

However, the comparative method is inevitably stymied by the heterogeneity of sources and archival systems. In studying two countries with significantly different political systems and forms of government, the researcher is faced with a challenge in ascertaining the value and importance of the documents that can be found. As Elise Julien warns in her book on Comparison in the field of History “we must always

²⁰⁴ Leonardo Morlino, *Introduction à la politique comparée* (A. Colin, 2013), 9.

²⁰⁵ Peter Lor, ‘Methodology in Comparative Studies’, *International and Comparative Librarianship*, 2011, 4.

²⁰⁶ Cécile Vigour, *La Comparaison Dans Les Sciences Sociales: Pratiques et Méthodes*, Guides Repères (Découverte, 2005).

²⁰⁷ *Ibid*, 17-18.

consider whether the differences identified in a comparative study are not simply the result of this disparity in sources.”²⁰⁸

In the context of this research, it should be noted that immigration detention in the United States is far better documented than in the United Kingdom, both in terms of publicly available data and academic literature. This discrepancy in archival access may skew analysis, at times privileging the US context in terms of empirical detail and visibility. Additionally, while comparative studies offer valuable insights, there is a risk of flattening significant differences in political culture, institutional practice, and public discourse between the two countries. To mitigate this, the study contextualises findings within each national setting, drawing on qualitative primary sources, numerous policy documents, and a plethora of academic sources to ensure that comparisons highlight both structural similarities and culturally specific divergences.

3.2. Sources

To achieve such a goal, it is useful to discuss the sources on which this research will be based. Research in the field of history can include a wide range of sources, including primary and secondary sources, as well as oral histories, archival materials, and much more. There are, of course, limits to the use of primary sources. As Cameron G. Thies notes in *A Pragmatic Guide to Qualitative Historical Analysis in the Study of International Relations*, “the first thing to realize as you begin to select your primary sources is that in many ways they have selected you.”²⁰⁹ In the social sciences, and in the field of history, the conclusions we provide are “the uncertain product of an incomplete evidentiary record”²¹⁰ This is due to a number of factors, notably the inability to access, nor examine, all of the documents available on any one topic. Therefore, any “judgments or inferences made based on the evidence contained in [a] selection of primary sources should be presented in such a way as to acknowledge the potential impact of this selectivity.”²¹¹ Documents must be understood and analysed within their contexts (historical, political, power dynamics) of production. It is also important to remember that all documents contain bias and points of view. Most of the time, documents were written without the consideration that they would be read and studied by researchers 30, 50 or 100 years later. As Thies says, context is key:

If some sort of bias is detected in the document, then even that is useful information. It may explain misperceptions held by government officials that led to ill-conceived foreign policy, or concerted efforts to sway public opinion, or it may project a certain kind of image to allies or enemies. Interesting information may be gleaned from public documents about bureaucratic politics, especially when private autobiographical accounts

²⁰⁸ Julien, ‘Le Comparatisme En Histoire’, *op. cit.*, 197.

²⁰⁹ Cameron G. Thies, ‘A Pragmatic Guide to Qualitative Historical Analysis in the Study of International Relations’, *International Studies Perspectives* 3, no. 4 (2002), 356.

²¹⁰ *Ibid*, 356.

²¹¹ *Ibid*, 357.

differ from the official party line. Often silences or inconsistencies concerning known events or actors in autobiographies or official chronicles may speak volumes.²¹²

Using a combination of secondary and primary sources helps to elaborate a more accurate representation of historical events.

The main sources of primary documents for this dissertation are archives in both countries: the National Archives in the UK (for the Thatcher, Major and Blair eras) and the Presidential Archives of Ronald Reagan, George H. W. Bush, and Bill Clinton in the USA. The archival sources used in this dissertation have several inherent limitations. Archival collections are selective: decisions about what is preserved, declassified, or catalogued reflect institutional priorities and political considerations, meaning certain voices and events are underrepresented or absent. In the UK, records on immigration detention for the Thatcher and Major eras are often fragmented, and sensitive material remains classified. In the US, Presidential archives focus primarily on executive decision-making, privileging top-down perspectives while largely excluding the experiences of detainees, frontline officials, and non-governmental actors.

Furthermore, access restrictions, including classification, data protection, and archive-specific policies, further limit available material. Documents reflect the norms, language, and priorities of their time, which shapes how social and political dynamics are recorded. Finally, differences in bureaucratic practice, record-keeping, and transparency between the two countries systematically affect the scope and comparability of archival evidence. Archival research has been at the core of historical research for centuries, and its use in the case of this research is worth evaluating. Historian Michelle T. King has written about the limits and critiques of archival research:

Feminist historians have argued for the need to broaden the concept of the archive to include alternative sites of historical memory, such as the domestic space of the home or the pages of female-authored historical novels. Oral historians have rejected written archives as the sole source of historical legitimacy, gathering interview material from subjects outside of or excluded from state archives and histories by dint of their race, sexuality or oral traditions. These scholars have attempted to breach the confines of the Archive writ large by storming it from without, using alternative historical sources to point out its erasures, gaps and silences.²¹³

Work in the archives is unpredictable, and researchers can easily find themselves at the mercy of external constraints (brief hours, limited access) and events (e.g. a worldwide pandemic), as well as financial and legal (visas, passports, etc.) difficulties. But even access to archives can be limited at times by national

²¹² *Ibid.*

²¹³ Michelle T. King, 'Working With/In the Archives', in *Research Methods for History*, ed. Simon Gunn and Lucy Faire, Research Methods for the Arts and Humanities (Edinburgh University Press, 2012), 18.

governments, the archives themselves²¹⁴ and as King writes, “success in accessing archival holdings may be influenced by one’s scholarly or social status, age, nationality, gender, race, or socio-economic level, or may depend on the scope of one’s intended research topic.”²¹⁵ Once the archives are accessed, the researcher’s trials are not over, but merely beginning. According to King, “we go to the archives not to find answers, but articulate a better set of questions. Answers in the archives - in the form of documents - always abound; the real difficulty lies in figuring out what questions to ask of them.”²¹⁶ In most archives, there will be thousands, hundreds of thousands, perhaps even millions of pages of documents. Any individual researcher, or even a team of researchers, can only look at a small part of the whole, but usually the number of relevant documents is greatly reduced based on the research question or topic under investigation. However, that can still leave thousands of pages of relevant material that needs to be copied or photographed and then sorted and examined. Ultimately, forays into the archives, “no matter how meticulous and exhaustive, only ever yield partial understandings.”²¹⁷ The archives are in essence limitless, but time is not.

In order to make sense of the chaos, I first read as many secondary sources as possible, in order to better understand the context within which immigration policies and immigration detention evolved. These readings also helped me establish a certain number of hypotheses that might explain the role of immigration detention in the American and British political systems and its expansion. I then used the sources found within the archives to either corroborate or refute said hypotheses when there is enough evidence to do so. At times, archival sources brought new information to light and, therefore, led to the formation of new hypotheses. At others, the archives forced an end to certain lines of questions due to a total or relevant lack of sources.

This dissertation draws primarily on governmental publications. However, I will also use a number of other sources, including laws passed during the period, the parliamentary and congressional records, the publications of external actors, including think tanks and private prison management companies, when and where they are available.

In the British case, government publications include what are known as Command Papers, i.e. white papers, government communications, bills, bill committee reports and reports of independent enquiries, as well as speeches by Prime Ministers or heads of administrations concerned with immigration. In the US case, these are presidential documents (executive orders, presidential speeches, White House communications to Congress and federal agencies, statements regarding bill signings and vetoes, press releases and confidential memos that have circulated within the White House). Primary sources also include Congressional Committee reports, the

²¹⁴ Heather Ann Thompson, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy* (Pantheon, 2016), Introduction.

²¹⁵ King, ‘Working With/In the Archives’, *op. cit.*, 19.

²¹⁶ *Ibid*, 20.

²¹⁷ *Ibid*, 20–21.

Congressional Record and government agency reports. Where available publications from think tanks, reports from private sector groups that run prisons and detention centres as well as reports from a number of NGOs will be used and examined.

In order to obtain these sources, several steps were necessary. First, the identification of all online sources already digitised and made available to the public. Second, fieldwork was necessary, including visits to government archives in both countries (the National Archives in the UK and the Presidential Archives in the US). Although the events and policies that followed the terrorist attacks of 9/11 would have significant implications for future developments, the turn of the millennium provides an apt point of closure for this study, bringing this research to a conclusion at the end of 2001.

This research attempts to provide a better understanding of the rationale for the use of and expansion of detention and immigration control in both countries and the place it holds in both the immigration and political systems. It may be the case that both countries have similar causes for expansion, or that detention in both countries evolved in similar fashions, but for distinct reasons. The goal of my research is to replace the detention of migrants within the national contexts of control, but also to ascertain what overarching principles define the use of detention in both nation-states.

Below is a summary of my methodological approach:

1. Theoretical research
2. Elaboration of a theoretical and historical framework
3. Establish hypotheses in order to focus my research based on secondary source reading
4. Find primary sources in the archives
5. Compare primary sources to secondary sources and evaluate my hypotheses based on my readings
6. Critically evaluate primary sources and contrast with other documents (media, NGOs, etc.) to paint as accurate a picture as possible
7. Add/subtract hypotheses as they become apparent/useless/unworkable
8. Compare and contrast national histories to better understand the national contexts

3.3. Selected Periods

This study is temporally circumscribed, beginning at the turn of the 1980s. While immigrant detention and deportation have existed since the early years of the American nation and throughout British history, the late 1970s and early 1980s mark a pivotal turning point in immigration detention practices. This era also corresponds to the arrival in power of two key political leaders, with revolutionary political ideas. Margaret Thatcher became Prime Minister of the UK in May 1979, while Ronald

Reagan was elected President of the United States the following year and took office in January 1981. During their terms of office, reforms that led to the expansion of the detention estates in both countries began in earnest. The period also corresponds to the implementation of neoliberal policies in both countries,²¹⁸ which have had a strong influence on the expansion of migrant detention, notably through privatisation. In the following decade, John Major (1990-1997) and Tony Blair (1997-2007) became Prime Minister of Britain successively. In the USA, Reagan was succeeded by his Vice President George H. W. Bush (1989-1993) and Democrat Bill Clinton (1993-2001) in the White House. The end period corresponds to 2001, marking the end of the millennium and providing a natural stopping point before the significant policy shifts that would follow in both countries in the post-9/11 era. Although the two countries have very different political systems, there are also clear similarities. It is important to note, for example, that both countries experienced political turnover during this period, with both centre-left and right-wing governments being in office. This raises questions of continuity and disruption, as well as the fact that the most restrictive immigration laws have often been enacted by governments on the Left of the political spectrum.

4. Structural overview

The dissertation is divided into two main parts, building a comparative analysis of immigration detention and control in the United States and the United Kingdom from the 1980s to 2001.

Section I, Historical and Conceptual Foundations situates detention within broader histories of immigration control and establishes the legislative and political foundations for later developments. Chapter 1 provides a *longue durée* history of immigration law and policy, showing how both countries gradually moved from openness to exclusion and the early use of detention as a tool of immigration control. Chapter 2 examines the 1980s–1990s as formative years when immigration law was reshaped through major legislative reforms. It compares how the USA and the UK both expanded executive discretion and reframed immigration through “crisis” narratives. Chapter 3 analyses how immigration became increasingly entangled with

²¹⁸ Neoliberal policies emphasise reducing the role of government in the economy through privatisation of state-owned enterprises, deregulation of markets, and limiting state intervention to basic functions like defence and law enforcement. Rooted in free-market ideology, neoliberalism advocates that private markets are more efficient than government at allocating resources, responding to consumer demands, and eliminating inefficiencies. This approach, championed by leaders like Margaret Thatcher in the UK and Ronald Reagan in the US during the 1980s, promotes the “unshackling” of market forces through reduced government spending, weakened trade union power, and the transfer of public services and assets to private ownership. Similar policies that have since been adopted across many developed nations. Critics argue that neoliberalism has contributed to rising inequality, weakened worker protections, and prioritised short-term profit over long-term social welfare, whilst the promised efficiency gains have not always materialised.

See Kevin Vallier, “Neoliberalism,” *Stanford Encyclopedia of Philosophy*, first published June 9, 2021, <https://plato.stanford.edu/entries/neoliberalism/>

criminal justice and national security logics, focusing on the “criminal alien” category in the USA and the UK’s terrorism–asylum nexus.

Section II (Building Systems of Control) examines the concrete expansion of detention infrastructure and the use of deterrence as a guiding doctrine. Chapter 4 traces the development of detention estates, from US’s privatised facilities to the UK’s State-led but under-resourced system, and explores how space, design, and institutional practice reinforced migrant exclusion. Chapter 5 compares how deterrence shaped both countries’ policies, whether through the militarisation of the US border and maritime interdiction or the UK’s administrative restrictions and “hostile environment” strategies. Chapter 6 investigates how courts in both systems approached detention, highlighting judicial deference to executive power, procedural barriers to migrant rights, and the limited but significant interventions of higher courts.

Part I:

Historical and Conceptual Foundations

Chapter 1:

From Openness to Detention: Historical Trajectories of Immigration Control in the USA and the UK

1. Introduction

The United Kingdom and the United States both have long and complex histories with immigration. For a few hundred years, this history overlapped, with people leaving the UK to head to the New World and start new lives in the British colonies of North America. But as the United States obtained its independence from Britain, those stories diverged, as did the policies that governed both. In recent decades, the two have converged once again with both implementing immigration restriction policies that among other tools turned to detention.

Immigration and emigration are two sides of the same coin, telling the stories of millions who cross borders in search of better lives. At times, those are stories of freedom, from poverty, war, violence, persecution (religious, political, national, sexual, etc.) and more. At other times, migration is aimed at achieving economic prosperity or at least leaving dire economic straits in the immigrants' country of origin. Many also emigrate and head to other countries in order to join their families: fathers, mothers, siblings, and children. But for many, those dreams have ended brutally, as immigrants hoping for a better life find themselves behind bars in detention centres in both the UK and the US.

In order to understand how the two countries reached the detention regimes of the 1980s, 1990s and early 2000s, it is important to look at the history of immigration policy and detention. The United States has gone through phases of openness and restriction. Over the years, immigration has been both encouraged and resisted, and while the US may be a nation of immigrants, it was never a nation for all immigrants. As will be shown over the course of this chapter, immigration policy is complex and generally defined in response to changing conditions which

shape immigration policy into complex and often inconsistent configurations, such as the segmentation of U.S. policy into a “main gate” dealing with general immigration, a side door for refugees, and a “back door” dealing with the procurement of temporary agricultural workers.¹

One of the main goals of this research will be to demonstrate how immigration and detention policies have gradually mirrored each other in order to create detention systems that today detain hundreds of thousands in the US and tens of thousands in the UK.

While this chapter cannot provide an exhaustive overview of a period spanning two centuries and two countries, the hope is that it shows the important waves and periods of immigration and immigration policy in both countries. It will also demonstrate that, although there is no straight line between past and present, context is key to understanding the nuances of history. As Mary Bosworth shows in the British

¹ Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Harvard University Press, 2006), 19.

case, context, especially in the long-term, reveals information that is not necessarily clear at first sight:

The past does not simply reveal periods of greater (and lesser) compassion, but also a changing tempo of state intervention in which the British government gradually and then more rapidly began to deny entrance, remove, deport, and eventually, detain. These developments occur alongside and are sometimes caused by changes in the nature of the populations who become subject to immigration control. As such, they signal the importance of context. The state tends to be reactive rather than proactive in immigration law, responding to events occurring beyond its shores as well as to those happening within.²

Bosworth, for example, argues that immigration restrictions and strict mechanisms of border control in Britain are to a large extent “twentieth-century inventions.”³ This, of course, includes immigration detention centres.

Historically, the UK and the US have histories of immigration that are linked to their expansion and diminishment in the world order. The UK saw much of its immigration come after the Second World War, as the British Empire fell apart and transformed into the Commonwealth. The US, however, has experienced immigration since its beginnings and that immigration has fuelled much of the nation’s territorial expansion over the centuries. The role that both have played and currently play on the world stage also explains their roles as centres of attraction for many immigrants. As the relationship between Britain and its former colonies evolved, so did the rights of Commonwealth citizens. Likewise, the relationship that the US had with immigrant populations evolved over time, as the country became more restrictive and selective about who it admitted.⁴

As nations take control and increase the powers they have to deal with issues, including immigration, they rarely relinquish the new powers they obtain. In the case of immigration, this is clear, as this chapter will show:

A longer view demonstrates the enduring nature of increased powers of intervention. Once developed, the state rarely hands back its control. Even when powers were infrequently used (...) Undermining any easy assumptions about the deliberate or systematic use of exceptional powers, however, parliamentary and archival documents also expose an enduring lack of planning where border control is concerned. It is often simply reactive. It is almost never principled, and, as a result, many acknowledge, hard to justify.⁵

Across this chapter, we shall explore immigration policies and the lead up to the development of modern systems of immigration control and immigration detention, starting with a brief presentation of the early waves of immigration to the US and to the UK, how both countries reacted to that immigration ending at the turn

² Mary Bosworth, *Inside Immigration Detention* (Oxford University Press, 2014), 25.

³ *Ibid*, 29.

⁴ The USA has always had selective immigration policies as we shall see, but at times that selectivity was more explicit than at others.

⁵ Bosworth, *Inside Immigration Detention*, *op. cit.*, 25

of the 1980s, as Margaret Thatcher entered 10 Downing Street, and Ronald Regan the White House. The chapter begins with US immigration history before turning to the UK. Parallels between the two countries will be drawn, and similarities and divergences will be highlighted whenever relevant.

2. Forging A Nation: Immigration and Exclusion in the United States

Immigration is one of the most divisive and controversial issues that the United Kingdom and the United States face. Multiple factors underpin the debate, including political ideology, race, ethnicity, culture and religion, nation-building, public opinion, and socio-economic factors. The United States was born from successive waves of immigration. As a result, throughout American history, immigration and the policies surrounding it have been a constant source of debate, dating back to the nation's independence. In the British case, where immigration played a much smaller role, immigration policy and restriction (with a few small exceptions) were not implemented until the beginning of the 20th century. This was, in part, the consequence of the country's colonial status which encouraged emigration more than immigration until 1945. As in all countries, it is a polarising debate, but one in which opinions diverge greatly as Facchini and Steinhardt show in the American context:

Even within political parties, heterogeneous opinions co-exist. For example, Watanabe and Becerra (2006) report that, "The Republican Party is split among those who want tougher restrictions, those who fear alienating the Latino vote and business owners who are pressing for more laborers to fill blue collar jobs in construction, cleaning, gardening and other industries." In the usually pro-immigration Democratic Party, labor union constituents are concerned about foreign worker inflows.⁶

Examining immigration patterns throughout history reveals a fascinating shift in demographics. Though motivations, notably escaping persecution, reuniting with family, and seeking economic opportunity, have often remained constant, the profile and origins of immigrants has undergone a significant transformation between the 18th and 21st centuries (see graph below).⁷

⁶ Giovanni Facchini and Max Friedrich Steinhardt, 'What Drives U.S. Immigration Policy? Evidence from Congressional Roll Call Votes', *Journal of Public Economics* 95, nos 7–8 (2011): 734, <https://doi.org/10.1016/j.jpubeco.2011.02.008>

⁷ International Association of Chiefs of Police, *Police Chiefs Guide to Immigration Issues* (2007), Homeland Security Digital Library, www.hsdl.org/c/police-chiefs-guide-to-immigration-issues

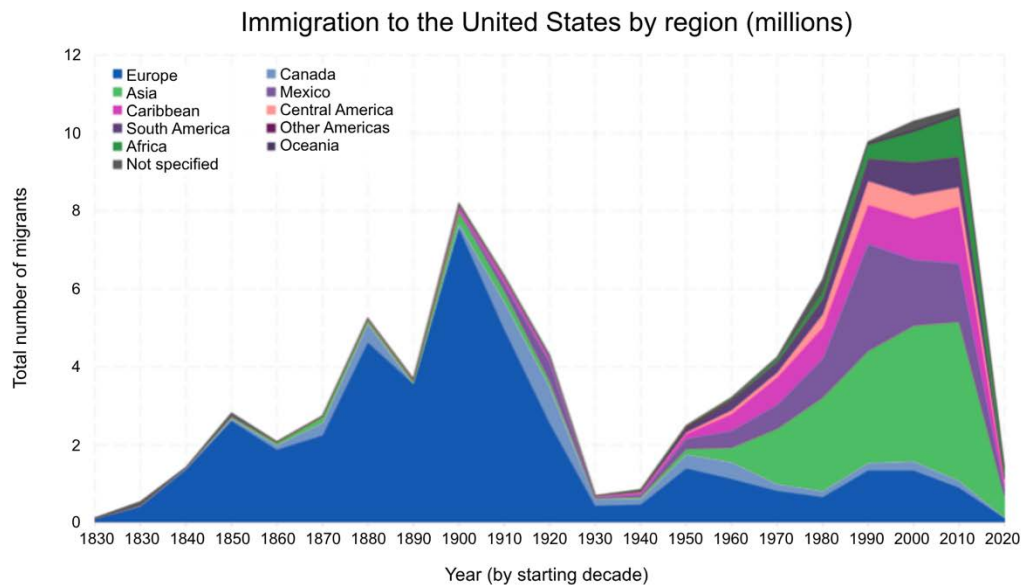


Figure 6. Immigration to the United States by Region (in millions)

Source: “Immigration to the United States over Time by Region,” Wikimedia Commons, revision 792986172, last modified 12 May 2023, https://commons.wikimedia.org/w/index.php?title=File:Immigration_to_the_United_States_over_time_by_region.svg&oldid=792986172

After the establishment of the first colony in Jamestown, Virginia in 1607, the population of the future United States boomed. From a mere 350 people in 1610⁸, it skyrocketed to 250,000 by 1700 and a staggering 3.9 million by 1790.⁹ This dramatic growth was fuelled by numerous waves of European migrants, many of whom were indentured servants, seeking a new life in the New World.

The United States has always considered itself to be a nation of immigrants, but history shows that this immigration has long been predominantly white and of European origin. Multiple waves of immigration have taken place since the arrival of European settlers in the ‘New World’ (see graph below). The first wave corresponds to a long era of attempted settlements and successful colonies, mostly from the British Isles, as part of the ever-expanding British Empire. This wave continued after American Independence. According to Hans-Jürgen Grabbe, over the period 1600–1780, net immigration from Europe to the British North American colonies (excluding Canada) is estimated at 501,000:¹⁰ Approximately 150,000 arrived between 1630 and

⁸ This number does not take into consideration the millions of native Americans who lived across North America but does include the enslaved population.

⁹ US Census Bureau, ‘The 1790 Census’, *Census.Gov*, accessed 3 July 2024, https://www.census.gov/history/www/through_the_decades/fast_facts/1790_fast_facts.html.

¹⁰ Hans-Jürgen Grabbe, ‘European Immigration to the United States in the Early National Period, 1783–1820’, *Proceedings of the American Philosophical Society* 133, no. 2 (1989), 191.

1700, with the other 350,000 arriving between 1700 and 1780. These were mainly English, Irish, Scottish and Welsh settlers, but also Germans, Dutch and other white European populations. From 1619 onwards, the Atlantic slave trade saw hundreds of thousands of black African men and women imported into the colonies and reduced to slavery.

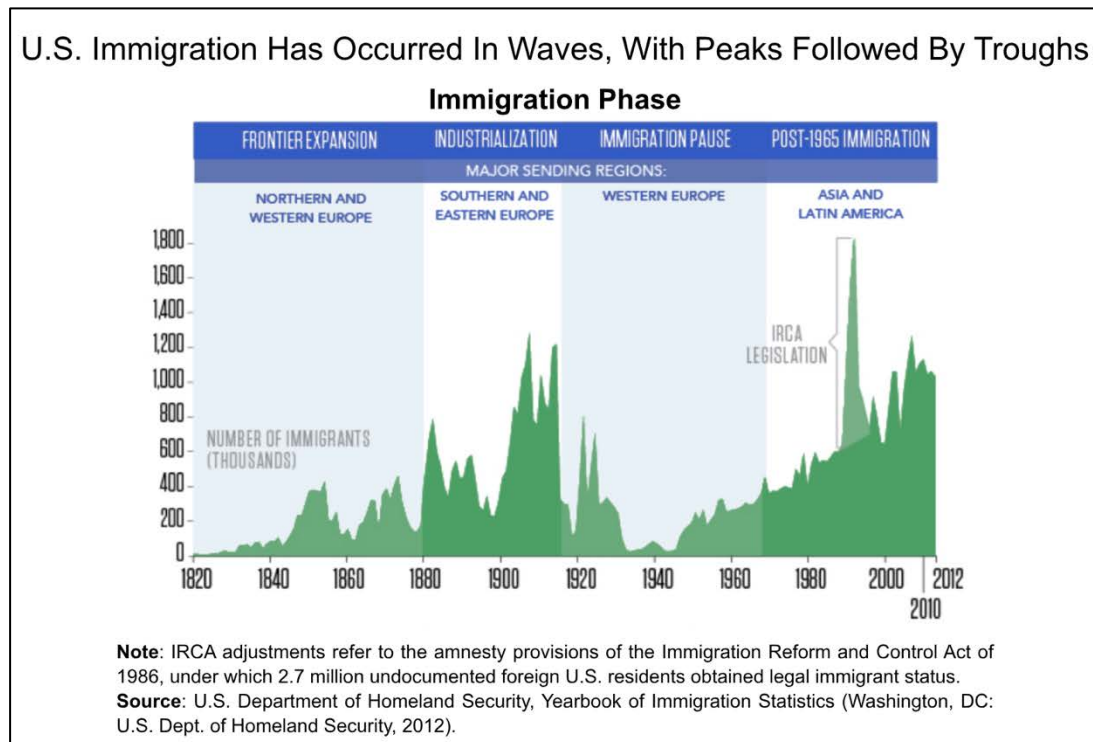


Figure 7. U.S. Immigration Waves (1820-2012)

Source: These 3 Charts Explain the Complex History of US Immigration, World Economic Forum, 8 February 2017, <https://www.weforum.org/stories/2017/02/from-the-1900s-to-today-a-snapshot-of-immigration-to-the-us>

In the Declaration of Independence, signed in 1776, Jefferson accused King George III of excessively limiting immigration to the thirteen colonies:

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.¹¹

This sentence expressed frustration at the Proclamation Line of 1763 which forbade new settlements west of the Appalachian Mountains. It was also linked to the repeal of several immigration laws implemented by the colonies prior to independence, showing that, from the birth of the new nation, issues linked to immigration policies

¹¹ 'The Declaration of Independence: A Transcription', National Archives, 1 November 2015, <https://www.archives.gov/founding-docs/declaration-transcript>

were at the heart of the American experiment.

2.1. Colonial Foundations (1607–1776): Selective Immigration and Exclusion

These issues were raised long before independence and from the arrival of the first settlers in the New World. But from the start, there were restrictions on who could immigrate. In his book *A Nation by Design: Immigration policy in the fashioning of America*, Aristide Zolberg explains that many restrictions were put in place by the colonists:

A nation of immigrants, to be sure, but not just any immigrants. From the moment they managed their own affairs, well before political independence, Americans were determined to select who might join them, and they have remained so ever since. Immigration policy (...) thus emerged from the outset as a major instrument of nation building, equivalent in the fashioning of the United States to the amalgamation of diverse regions in the making of the United Kingdom, France, or Spain. Although as historical constructs all nations in some sense make themselves, the very nature of the immigration process provided the Americans with unusual latitude in doing so, and hence theirs may properly be termed “a nation by design.”¹²

From the very beginnings of the European presence in North America, measures were put in place to control the populations that might settle there. This experience differed greatly from the creation of nation-states in Europe, particularly in the United Kingdom:

In the Old World, the people came with the territory: the construction of “France” is the history of the royal state’s territorial expansion from the Paris region and of the concurrent transformation of the successively incorporated populations into français; in the same vein, in their aspiration to forge Britons out of the pieces being assembled by way of dynastic manipulations, the rulers of the United Kingdom had little choice but to work with the English, Welsh, Scots, and Irish.¹³

Population building and expansion took a distinctly different form in the 13 British colonies that would become the United States. Even before gaining their independence with the Treaty of Paris in 1783, the American colonists established a population modelled on the white population of Northern Europe. Indeed, the beginnings of the American nation were marked by violence and exclusion, as Zolberg explains:

the Americans undertook to violently eliminate most of the original dwellers, imported a mass of African workers whom they excluded from their nation altogether, actively recruited Europeans they considered suitable for settlement, intervened in the international arena to secure freedom of exit on their behalf, elaborated devices to deter those judged

¹² Zolberg, *A Nation by Design*, op. cit., 12.

¹³ Zolberg, *A Nation by Design*, op. cit., 1.

undesirable, and even attempted to engineer the self-removal of liberated slaves, deemed inherently unqualified for membership.¹⁴

Unlike the United States, where immigration was central to territorial expansion and population growth, Britain during this period remained primarily a country of emigration, sending settlers to colonies abroad rather than receiving large numbers of immigrants. The US framed itself as a “nation of immigrants,” albeit a selective one, while Britain relied on the imperial system to distribute populations outward, postponing the development of an immigration control framework at home.

2.2. The Young Republic (1776–1830): Building through Immigration Law

After the American Revolution, immigration numbers grew, and the newly free nation often encouraged it. It was at that time that the United States Congress enacted its first immigration policies. In 1790 and 1795, two Naturalization Acts set down in law naturalisation rules that applied to all for the granting of United States citizenship by naturalisation. In both cases, naturalisation was limited to white people, as citizenship was limited to “any alien, being a free white person.”¹⁵ It also required that applicants be of “good character” (1790) or “good moral character” (1795). The vagueness of the terminology allowed it to be used to discriminate and easily limit who could enter the country. Both laws required that applicants had lived in the country for a set period. The 1790 law set it at 2 years, the 1795 law extended that requirement to 5 years. Between 1776 and 1830, most immigrants to the US came from the British Isles, Germany, and France, with smaller numbers from the Caribbean and Canada, while enslaved Africans continued to be imported legally until 1808.¹⁶

In 1803, the Louisiana Purchase, saw the United States buy the Louisiana Territory from France for \$15 million¹⁷ (see map below). The purchase doubled the territory of the United States overnight, from an estimated 2,140,000 square kilometres to an estimated 4,290,000 square kilometres.¹⁸ While much of this land was lived on by a plethora of Native American tribes, the US government considered this territory as available for settlement. This territory, and the opportunities it provided, encouraged further immigration and westward expansion, as second-generation immigrants left the East Coast and began to seek their fortunes out west.

¹⁴ *Ibid*, 2.

See also Barbara Franchi’s PhD dissertation *The construction of the United States-Liberia relationship through the activities of the American Colonization Society: influences and reconfigurations, 1862-1935* (2021).

¹⁵ *An Act to Establish an Uniform Rule of Naturalization*, ch. 3, 1 Stat. 103 (26 March 1790); *An Act to Establish an Uniform Rule of Naturalization, and to Repeal the Act Heretofore Passed on That Subject*, ch. 20, 1 Stat. 414 (29 January 1795).

¹⁶ Roger Daniels, *Coming to America: A History of Immigration and Ethnicity in American Life*, 2nd edn (Perennial, 2008), 53.

¹⁷ This corresponds to about \$342 million in 2020 (adjusted for inflation).

¹⁸ Thomas J. Fleming, *The Louisiana Purchase* (J. Wiley, 2003).



Figure 8. Louisiana Purchase, 1803. Florida Purchase, 1819.

Source: The Louisiana Purchase: Map, Definition, and Significance, Students of History, <https://www.studentsofhistory.com/the-louisiana-purchase>

In 1808, the United States put an end to the importation of slaves following the passage of The Act Prohibiting Importation of Slaves of 1807. Though it did not stop the domestic slave trade, it did put an end to the legal importation of slaves from Africa.¹⁹ While slavery was key to the economy of the Southern states, the Northern states that had banned slavery relied on immigration to grow their economy and labour pool. In 1819, Congress passed the Steerage Act (also named the Manifest of Immigrants Act) in a context of large numbers of immigrants travelling by boat from Europe to the US. The law regulated the conditions aboard ships, but also required ship captains to provide a list of aliens seeking to immigrate to the US:

the captain or master of any ship or vessel (...) shall also deliver and report, to the collector of the district in which such ship or vessel shall arrive, a list or manifest of all the passengers taken on board of the said ship or vessel at any foreign port or place ; in which list or manifest it shall be the duty of the said master to designate, particularly, the age, sex, and occupation, of the said passengers, respectively, the country to which they severally belong, and-that of which it is their intention to become inhabitants.²⁰

¹⁹ Of course, illegal importations did occur throughout the 19th century up until the American Civil War (1861-1865).

²⁰ *An Act Regulating Passenger Ships and Vessels* (Steerage Act of 1819), ch. 46, 3 Stat. 488 (2 March 1819).

While the government seemed concerned about the conditions in which people were travelling, it was also focused on being able to count how many immigrants were arriving on US shores, where they were coming from and what their long-term intentions were.

2.3. The Second Wave (1830–1880): Expansion, Diversity, and Backlash

The 19th century saw Europeans continue to spread across the globe, notably in colonies controlled by the British, Spanish and French:

In the words of historian Alfred Crosby, Europeans “swarmed and swarmed again” during the nineteenth century, driven by population pressures, starvation, and civil and religious unrest. A “Caucasian tsunami” of some 50–60 million immigrants came to colonize the rich soils and temperate zones of what Crosby calls the “Neo-Europes” of North America, Argentina, Australia, and New Zealand.²¹

The second wave of immigration corresponded to a significant influx of German and Irish immigrants²² from the 1840s to the beginning of the American Civil War. Many of those arriving were Catholics and faced stiff opposition from the largely Protestant American population.²³ A number of Asian immigrants arriving on the West Coast also contributed to the population, though that slowed down significantly during from the 1880s onwards due to anti-Asian immigration policies, notably the Chinese Exclusion Act of 1882.²⁴

In 1848, following the Mexican-American War, the Mexican government ceded approximately 1,360,000 square km of territory to the United States in exchange for \$15 million. This expansion again provided opportunities for Americans and immigrants to travel west with the hope of economic prosperity. By 1853, with the Gasden Purchase, the Contiguous United States was complete and corresponded to a total of 8,080,464.3 square kilometres (see map below).

²¹ Roger Daniels and Otis L. Graham, *Debating American Immigration: 1882-Present* (Rowman & Littlefield Publishers, 2001), 92.

²² The Irish Potato Famine (1845-1849) compelled countless Irish families to abandon their homeland in pursuit of survival and opportunity. Germans sought to flee political persecution and economic instability that plagued their regions. Additionally, substantial numbers of Jewish immigrants were escaping the violent pogroms that swept through Poland and Russia during this period.

²³ Zolberg, *A Nation by Design*, *op. cit.*, 133.

²⁴ *Ibid*, 153.



Figure 9. Growth of the United States (1783-1853)

Source: *Westward Expansion Map Challenge*, Wayground
<https://wayground.com/admin/flashcard/673f47f0f3dcbf81da07229f/westward-expansion-map-challenge>

In 1849, the California Gold Rush led to extensive population movement within the country but also to spikes in immigration as outsiders flocked to the United States in the hope of striking gold. A few years later, in 1855, Castle Garden, a former military fort off the coast of New York, was transformed into an immigrant processing station.²⁵ Aimed at regulating and checking who was coming into the country, Castle Garden processed more than eight million immigrants between 1855 and its closure in 1890.²⁶ It was replaced two years later by the better-known Ellis Island. While widespread detention was not the norm, immigrants deemed inadmissible for entry could be held briefly at Castle Garden, then Ellis Island, on the East Coast or Angel Island (in San Francisco, California) on the West Coast.²⁷

²⁵ Ann Novotny, *Strangers at the Door: Ellis Island, Castle Garden, and the Great Migration to America* (Chatham Press, 1971), 79.

²⁶ Elliott Young, *Forever Prisoners: How the United States Made the World's Largest Immigrant Detention System* (Oxford University Press, 2021), 8.

²⁷ Robert Barde and Gustavo J. Bobonis, 'Detention at Angel Island: First Empirical Evidence', *Social Science History* 30, no. 1 (2006): 103–36.

Before the Civil War, much of the practical enforcement of immigration fell to the states, rather than the federal government:

Local and state governments developed their own policies for regulating the mobility of foreign paupers, free black people, and visiting seamen, exercising their police power to regulate public safety, health, and morality. (...) In *Gibbons v. Ogden* (1824), the Supreme Court determined that navigation was a form of commerce, opening the possibility for federal control over immigration as well as interstate travel. If the federal government could regulate shipboard conditions, however, this power ended and local police power began when the immigrants arrived in port.²⁸

By 1860, the population had risen to 31 million²⁹ and after years of political tensions over the issue of slavery between the Northern States and the Southern Slave States, war erupted. The American Civil War (1861-1865) stopped immigration in its tracks, with far fewer people immigrating over the course of the conflict.³⁰ The war was won by the Northern States and slavery ended in the US.

After the Civil War, three Amendments³¹ to the Constitution were passed, including the 14th Amendment (ratified in 1868) which fundamentally transformed American citizenship and civil rights by establishing that all persons born or naturalised in the United States are citizens and guaranteeing equal protection under the law. Designed to secure rights for newly freed slaves, it overturned the 1857 *Dred Scott* decision³² and prohibited states from denying citizens due process or equal treatment.³³

The subsequent Naturalization Act of 1870 extended citizenship to African Americans (as well as whites).³⁴ Asians and American Indians, however, were still excluded from citizenship, despite efforts by Radical Republicans to include Asians in the law.

In the years following the war, individual states began to pass immigration laws of their own. This questioned the constitutional authority of the federal government,

²⁸ Katherine Carper and Kevin Kenny, 'Introduction: Immigration in the Civil War Era', *Journal of the Civil War Era* 11, no. 3 (2021): 3.

²⁹ US Census Bureau, '1860 Census', *Census.Gov*, accessed 3 July 2024, <https://www.census.gov/library/publications/1864/dec/1860a.html>

³⁰ Carper and Kenny, 'Introduction', *op. cit.*, 3.

³¹ The 13th Amendment (1865) abolished slavery and involuntary servitude throughout the United States, except as punishment for crime. The 14th Amendment (1868) established birthright citizenship, guaranteed equal protection under the law, and prohibited states from denying due process. The 15th Amendment (1870) prohibited federal and state governments from denying voting rights based on "race, color, or previous condition of servitude." Together, these amendments aimed to secure freedom, citizenship, and political participation for formerly enslaved people.

³² The *Dred Scott v. Sandford* decision (1857) was a landmark Supreme Court ruling in which Chief Justice Roger Taney declared that African Americans, whether enslaved or free, could never be US citizens and therefore had no standing to sue in federal court.

³³ The amendment also reduced congressional representation for states that denied voting rights and barred former Confederate officials from office.

³⁴ *Naturalization Act of 1870*, ch. 254, 16 Stat. 254 (1870).

and in 1875 the US Supreme Court ruled in *Chy Lung v. Freeman*³⁵ that immigration was an issue under the responsibility of the federal government and not individual states.³⁶

2.4. 1875–1920: From Openness to Restrictionism

The period from 1875 to 1920 corresponds to an era of restrictionism, notably targeting immigrants from Asia, while at the same time letting in millions of Europeans:

in the 1880s the Europeans “swarmed again” in a second and last phase, as industrialization and farm mechanization moved south and eastward on a disruptive journey through European regions with rapidly growing populations and chronic unemployment. In the next fifty years nearly 30 million Europeans migrated to the United States.³⁷

In 1875, Congress passed the first federal law that restricted immigration: the Page Act. The law focused on Asian immigration as it was concerned with “any subject of China, Japan, or any Oriental country.”³⁸ In practice it was heavily enforced against immigrants from China, and even more specifically against Chinese women. It was aimed at preventing forced labour, or ‘coolie labor’ as well as sex work (Section 3 of the law focused on stopping “the importation into the United States of women for the purposes of prostitution”). The law was also a way of preventing the wives of Chinese men from entering the country in order to stop the settlement of Chinese families in the US, thus perpetuating racial selectivism.

A few years later, in the context of an economic depression which hit California particularly hard, anti-Chinese sentiment grew. According to Alicia J. Campi from the American Immigration Council:

The Chinese were willing to work for lower wages than “whites” and were more reluctant to unionize, which led U.S. labor leaders to label them “cheap working slaves.” The result was virulent resentment. White Americans claimed the Chinese were stealing their jobs and draining the United States of gold by sending much of their earnings back to relatives in China. Congress was pressured to investigate these claims and by 1880 the U.S. government bowed to anti-Chinese sentiments and signed a treaty with China permitting the United States to limit, but not completely prohibit, Chinese immigration. In 1882 there were 110,000 Chinese in the country. Congress claimed that “the coming of Chinese laborers to this country endangers the good order of certain localities” and on December 17, 1882, passed the first Chinese Exclusion Act.³⁹

³⁵ *Chy Lung v. Freeman*, 92 U.S. 275 (1875), *Justia*, <https://supreme.justia.com/cases/federal/us/92/275/>

³⁶ Carper and Kenny, ‘Introduction’, *op. cit.*, 4.

³⁷ Daniels and Graham, *Debating American Immigration: 1882-Present*, *op. cit.*, 92.

³⁸ *An Act Supplementary to the Acts in Relation to Immigration (Page Act of 1875)*, ch. 141, 18 Stat. 477 (3 March 1875), SDSU, <https://loveman.sdsu.edu/docs/1875Immigration%20Act.pdf>

³⁹ Alicia J. Campi, *Remembering December 17: Repeal of the 1882 Chinese Exclusion Act*, Policy Brief (Immigration Policy Center, 2004), 2.

Scholars argue that that “restrictionist immigration policies were birthed (...) with the Chinese Exclusion Act.”⁴⁰ With this law a distinction was also made between *legal* and *illegal* immigrants for the first time. The Chinese Exclusion Act⁴¹ aimed to end legal immigration from China and prohibited granting citizenship to Chinese citizens. The law banned the vast majority of Chinese labourers from immigrating to the US for 10 years. This was later extended and then made permanent. It was only repealed in 1943, during the Second World War, due to the geopolitical context at the time. US immigration policy had never before singled out a specific country in such a discriminatory way, marking a significant shift.

A few months later, the Immigration Act of 1882⁴² required each non-citizen arriving at a US port to pay a 50-cent tax. The goal of the tax was to fund the first federal immigration bureaucracy:

The money thus collected shall be paid into the United States Treasury, and shall constitute a fund to be called the immigrant fund, and shall be used, under the direction of the Secretary of the Treasury, to defray the expense of regulating immigration under this act, and for the care of immigrants arriving in the United States, for the relief of such as are in distress, and for the general purposes and expenses of carrying this act into effect.⁴³

The law also restricted the immigration of certain categories of people, notably “any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge.”⁴⁴ People falling into any of those categories were to be refused permission to land. In 1885, the Alien Contract Labor Law (also known as the Foran Act) limited the ability to bring in foreign workers under contract. The law was difficult to enforce and was amended to strengthen its enforcement provisions in 1887.

Four years later, Congress passed the Immigration Act of 1891.⁴⁵ To oversee immigration to the United States, this law established the Office of the Superintendent of Immigration, tasked with admissions, rejections, processing, and enforcement of national immigration policy. The law also gave immigration officials the authority to deny entry to “persons suffering from a loathsome or a dangerous contagious disease” as well as people convicted of a “misdemeanor involving moral turpitude” and polygamists.⁴⁶

⁴⁰ Carol M. Swain and Virginia M. Yetter, ‘Federalism and the Politics of Immigration Reform’, in *The Politics of Major Policy Reform in Postwar America*, ed. Jeffery A Jenkins and Sidney M. Milkis (Cambridge Univ. Press, 2014), 182.

⁴¹ *Chinese Exclusion Act (1882)*, ch. 126, 22 Stat. 58, *US Law Link*, <https://uslaw.link/citation/us-law/public/47/126>

⁴² *Immigration Act (1882)*, ch. 376, 22 Stat. 214, *US Law Link*, <https://uslaw.link/citation/us-law/public/47/376>

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Immigration Act of 1891*, ch. 551, 26 Stat. 1084, *GovTrack*, <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/26/STATUTE-26-Pg1084a.pdf>

⁴⁶ *Ibid.*

Immigration and the Supreme Court

A number of cases reached the Supreme Court in the decades following the Chinese Exclusion Act of 1882 and the Immigration Act of 1891.⁴⁷ Asian exclusion and restriction was challenged, notably in *Nishimura Ekiu v. United States* (1892) and in *Fong Yue Ting v. United States* (1893). In the 1892 case, the Supreme Court sided with the federal government's authority over immigration, upholding the Immigration Act of 1891. They notably pointed to the importance of national sovereignty:

It is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty and essential to self-preservation, to forbid the entrance of foreigners within its dominions or to admit them only in such cases and upon such conditions as it may see fit to prescribe.⁴⁸

Chinese residents in the US found themselves facing renewed Chinese Exclusion laws and new restrictions in 1892 following the passage of the Geary Act,⁴⁹ which extended the Chinese Exclusion Act of 1882 and demanded that Chinese residents carry proof of legal entry, leading to disputes about the constitutionality of the law and whether it violated their equal protection rights. In *Fong Yue Ting v. United States* (1893), the Supreme Court upheld the federal government's complete authority (sovereign and plenary powers) over immigration by declaring the Geary Act constitutional.⁵⁰

Ellis Island and Angel Island

In 1892, Ellis Island Immigration Station opened in New York harbour. Though it burnt down in 1897, it reopened in 1900, and over the course of almost 60 years, it processed over 12 million immigrants. It finally closed in 1954. In 1910, Angel Island opened on the West Coast, off the shore of San Francisco. Serving to process immigrants arriving by sea, both islands were also used to detain immigrants with health issues, with legal concerns, as well as those considered potential security risks. The 1903 Immigration Act gave the authorities further power to detain immigrants. Between 1880 and the outbreak of World War I in 1914, approximately 20 million immigrants, largely from Southern and Eastern Europe, arrived in the USA in the third wave of immigration. Many arrived in New York and passed through immigration control on Ellis Island, where the immigrant inspection and processing station was tasked with ascertaining whether new arrivals had the right to enter the

⁴⁷ Notably *Chae Chan Ping v. United States* (1889), *Nishimura Ekiu v. United States* (1892), *Church of the Holy Trinity v. United States* (1892), *Fong Yue Ting v. United States* (1893), and *Yamataya v. Fisher* (1903)

⁴⁸ *Nishimura Ekiu v. United States*, 142 U.S. 651 (1892), *Justia*, <https://supreme.justia.com/cases/federal/us/142/651/>

⁴⁹ Also known as the Chinese Exclusion Act of 1892.

⁵⁰ *Fong Yue Ting v. United States*, 149 U.S. 698 (1893), *Justia*, <https://supreme.justia.com/cases/federal/us/149/698/>

country. Immigration slowed significantly during and after the First World War and two laws in 1921 and 1924 established quotas that also limited the number of people who could migrate to the USA.

2.5. The Early 20th Century: Assimilation, Racial Hierarchies, and the Dillingham Report

The first decade of the 20th century saw the creation of the Bureau of Immigration and Naturalization as part of the Basic Naturalization Act of 1906. The law provided uniform rules for the naturalisation of aliens throughout the United States. While Section 8 required that all applicants for naturalisation be able to speak English: “no alien shall hereafter be naturalized or admitted as speaking English a citizen of the United States who can not speak the English language.”⁵¹ By the turn of the century over 76 million people lived in the United States and that number only grew. In 1907 alone, 1,3 million migrants entered the country.

The 1911 Dillingham Commission

In 1911, the Dillingham Commission (officially named the United States Immigration Commission) published a huge 41-volume report on immigration, known as the Dillingham Report.⁵² Written in response to the surge of alien arrivals since the 1880s, particularly from Eastern and Southern Europe (mostly Italians, Armenians, and Poles who settled in cities), the report investigated the causes and consequences of immigration. Concerns rose, fuelled by prevailing ideas of racial hierarchies, that these immigrants were not assimilating, were weakening American society and would continue to do so. The commission advocated for literacy tests as a way to limit immigration and supposedly maintain a “high-quality” population. The report also recommended reducing the number of immigrants entering the country and called for stricter enforcement of existing immigration laws to prevent people from entering illegally. The Commission’s recommendations provided the foundations for the Quota Acts of 1921 and 1924.

Immigration Controls 1917-1924

In 1917, another law focusing on immigration was passed by Congress. Following on from the Chinese Exclusion Act of 1882, the Immigration Act of 1917, also known as the Asiatic Barred Zone Act or Literacy Act, implemented new restrictions on immigration. This law had two main aspects. First, it led to the creation

⁵¹ *An Act to Establish a Bureau of Immigration and Naturalization*, ch. 3592, 34 Stat. 596 (29 June 1906), *GovTrack*,

<https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/34/STATUTE-34-Pg596.pdf>

⁵² United States Immigration Commission (1907-1910) and William P. Dillingham, *Reports of the Immigration Commission*, (Washington, Govt. Print. Off., 1911).

of an “Asiatic Barred Zone,” which barred immigration of people from Southeast Asia, the Middle East and the Pacific Islands. In the same vein as previous anti-Asian policies, it aimed to fight the “Yellow Peril” (the idea that Asian immigrants, particularly Chinese and Japanese ones, were a threat to American dominance and culture).⁵³ The law created a literacy test, immigrants over the age of 16 were required to demonstrate the ability to read (in any language). The goal was to limit immigration from Southern and Eastern Europe, as it was believed that the literacy rates of nationals from those countries were lower. The law also created further excludable categories, including immigrants with disabilities, criminal records, or those suspected of certain “social ills,” and it increased the head tax to \$8 per immigrant (up from the original 50 cents).

2.6. Internment and the Wars: National Security and the Alien as Enemy

WWI Internment

During both World War One and World War Two, the United States interned enemy aliens at the same time as the United Kingdom did on the other side of the Atlantic. During WWI, internment mostly targeted German immigrants. The US Congress declared war against Germany on April 6, 1917. The following day, President Wilson issued a proclamation that contained twelve regulations limiting the rights of “alien enemies” in the US. Regulation 12 authorised the detention of enemy aliens:

An alien enemy whom there may be reasonable cause to believe to be aiding or about to aid the enemy, or who may be at large to the danger of the public peace or safety, or who violates or attempts to violate, or of whom there is reasonable ground to believe that he is about to violate, any regulation duly promulgated by the President, or any criminal law of the United States, or of the States or Territories thereof, will be subject to summary arrest by the United States Marshal, or his deputy, or such other officer as the President shall designate, and to confinement in such penitentiary, prison, jail, military camp, or other place of detention as may be directed by the President.⁵⁴

It is estimated that around 11,000 people were categorised as enemy aliens and detained in internment camps.⁵⁵ But this first experience of wartime internment was dwarfed by the mass internment of World War II.

⁵³ Madeline Y Hsu, *Good Immigrants: How the Yellow Peril Became the Model Minority* (Princeton University Press, 2015).

⁵⁴ Woodrow Wilson, ‘Proclamation 1364’, *The UVA Miller Center*, 6 April 1917, <https://millercenter.org/the-presidency/presidential-speeches/april-6-1917-proclamation-1364>

⁵⁵ Jörg Nagler, ‘Control and Internment of Enemy Aliens in the United States During the First’, in *Internment during the First World War: A Mass Global Phenomenon*, ed. Stefan Manz et al. (Routledge, Taylor & Francis Group, 2020), 181.

WWII Internment

During the Second World War, a far more extensive internment programme was set up by the US government. Mass detentions of enemy aliens saw an estimated 120,000 people forcibly relocated to internment camps.⁵⁶ Following the attack on Pearl Harbor on December 7, 1941, President Roosevelt signed Executive Order 9066. FDR authorised and directed

the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion.⁵⁷

While the Executive Order did not specify any particular ethnic, racial or national groups, it was applied almost exclusively to Japanese Americans, many of whom were US citizens. The order authorised military commanders to designate areas as “military zones” and exclude people from those areas if they were considered a threat (see map below). This ultimately led to the forced mass relocation of approximately 120,000 people of Japanese descent.⁵⁸ Despite legal challenges (notably *Korematsu v. United States* in 1944), internment lasted throughout the war and generally had public support.⁵⁹

⁵⁶ The World War II internment camps for Japanese Americans were located primarily in western states: California: Manzanar, Tule Lake; Arizona: Gila River, Poston (Colorado River); Wyoming: Heart Mountain; Colorado: Granada (Amache); Utah: Topaz (Central Utah); Arkansas: Jerome, Rohwer; Idaho: Minidoka (Hunt)

⁵⁷ Franklin D. Roosevelt, “Executive Order 9066 – Authorising the Secretary of War to Prescribe Military Areas”, 19 February 1942, U.S. National Archives, <https://www.archives.gov/milestone-documents/executive-order-9066>

⁵⁸ Roger Daniels, *Prisoners without Trial: Japanese Americans in World War II* (Hill and Wang, 2004).

⁵⁹ John Howard, *Concentration Camps on the Home Front: Japanese Americans in the House of Jim Crow* (University of Chicago Press, 2008).



Figure 10. Japanese Internment in the US (1942-46)

Source: “Japanese American Internment,” *Encyclopædia Britannica*, last modified September 22, 2025, <https://www.britannica.com/event/Japanese-American-internment>

On the other hand, the Chinese who had been explicitly targeted by anti-immigration legislation at the end of the 19th century were suddenly seen as allies against the forces of Japan and given favourable treatment:

the Chinese, who were major allies against the Japanese, were rewarded by the 1943 Magnuson Act, which repealed the Exclusion Act of 1882 and lifted the racial bar against non-whites established in the Naturalization Act of 1790 by permitting a small annual quota of 105 Chinese immigrants and by making Chinese already in the country eligible for citizenship.⁶⁰

While the change may have been largely symbolic in the case of the Chinese, it is a good illustration of the importance of the geopolitical context.

⁶⁰ Alicia J Campi, *The McCarran-Walter Act: A Contradictory Legacy on Race, Quotas, and Ideology*, Policy Brief (American Immigration Council, 2004), 2, <https://www.americanimmigrationcouncil.org/sites/default/files/research/Brief21%20-%20McCarran-Walter.pdf>

2.7. 1920–1965: Quotas, Deportations, and the Architecture of Control

Between the two world wars and the periods of wartime internment, the US Congress enacted several laws restricting immigration as population levels reached 106 million by 1920. In 1921, Congress passed the Emergency Quota Act. Three years later, Congress passed the Immigration Act of 1924, or Johnson-Reed Act. Both laws aimed to consolidate and reinforce restrictions on Asian immigration, as well as limit immigration from Southern and Eastern Europe by creating quotas for the number of immigrants allowed to enter the United States from any given country, with a combined limit of only 150,000 immigrants allowed annually. The quotas favoured Northern and Western Europeans while limiting immigration of nationals from Southern and Eastern Europe as well stopping immigrants from Asia entirely.⁶¹

The exclusion of Asian immigrants was reinforced by the Supreme Court's 1923 decision in the case of *United States v. Bhagat Singh Thind*, that Indian nationals could not become US citizens.⁶² In 1924 two important immigration-related institutions were founded. The Immigration Board of Review was created in order to examine deportation appeals, while the U.S. Immigration Service Border Patrol was formed to guard the Mexico–United States border. In 1930, the U.S. Immigration and Naturalization Service (INS) was created when the Bureau of Immigration and the Bureau of Naturalization were merged.

While it had picked up again after the Great War, immigration slowed considerably and at times almost stopped in the 1920s and 1930s. Two Quota laws passed in the 1920s and the Great Depression in the 1930s partially explain this reduction, which even saw cases of return migration. The low numbers continued during the Second World War, due to both limited quotas and the difficulty of obtaining visas.⁶³ Immigration began to pick up after fighting in Europe and the Pacific concluded in 1945.

Mexican Detention and Deportation during the Great Depression:

During the Great Depression, the US implemented mass deportations of Mexicans and Mexican Americans, including some who had lived in the US for years. Known as Mexican Repatriation, it involved the detention of thousands being held

⁶¹ Germany, the United Kingdom and Ireland received more than half of the total number of places in the 1924 law, approximately 115,000 out of 150,000.

⁶² *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923), *Justia*, <https://supreme.justia.com/cases/federal/us/261/204/>

⁶³ During World War II, the United States took in more European refugees escaping Nazi persecution than any other nation. Estimates suggest that between 180,000 and 220,000 refugees arrived in the United States from 1933 to 1945, most of them Jewish and originating from central or western Europe. Many more were forced to remain in Europe, with few surviving through the war and the Holocaust.

before their deportation:

The advent of the Great Depression in late 1929 ushered in an era of limited migration and massive deportations that persisted through the ensuing decade. From 1929 through 1937, some 453,000 Mexican citizens were deported from the United States, and between 1930 and 1940, the number of Mexican nationals enumerated in the U.S. Census actually fell.⁶⁴

The campaign was not always a formal federal programme, it involved cooperation between local, state, and some federal officials. Raids were carried out in workplaces, public spaces, and Mexican American neighbourhoods. Many US citizens were removed without due process, violating their constitutional rights.⁶⁵ The policy was driven by economic hardship and anti-Mexican sentiment, with the false belief that deporting Mexicans would free up jobs for “real Americans.”⁶⁶

The Bracero Program (1942-1964)

However, things began to change at the end of the 1930s and early 1940s, as the Second World War led to a labour shortage after many young American men were sent to Europe and the Pacific. Deportations were largely stopped, and immigration was, in fact, encouraged, leading to an agreement in 1942 between the USA and Mexico: the Bracero Program. It allowed Mexican citizens to legally travel to the United States to take temporary jobs, as they “were granted renewable six-month visas to work for approved agricultural growers, located mostly in the southwestern United States,” mainly Texas and California.⁶⁷ The programme was managed by the United States and Mexican governments, and work contracts were issued to Mexican labourers. The Bracero Program had both positive and negative effects for both countries. It allowed the US to fill labour gaps, helped boost the Mexican economy, especially via remittances from Braceros, and the programme established a legal framework proving protection and wage guarantees for workers. However, it also left Braceros open to exploitation, often working in harsh conditions and low wages. Besides, American farmers became overly reliant on cheap labour and failed to mechanise or use domestic sources of labour (even after the war). The arrival of large numbers of Mexicans also caused tensions in some communities where they worked. The programme lasted until 1964, and over the course of those 22 years, over 4,6 million Mexicans worked in the US as part of it.⁶⁸

⁶⁴ Jorge Durand et al., ‘Mexican Immigration to the United States: Continuities and Changes’, *Latin American Research Review* 36, no. 1 (2001): 110.

⁶⁵ In 2005 the State of California passed an official Apology Act for the Mexican Repatriation, recognising that many US citizens had been unlawfully expelled.

⁶⁶ Francisco E. Balderrama and Raymond Rodríguez, *Decade of Betrayal: Mexican Repatriation in the 1930s* (Univ. of New Mexico Press, 2006), 2.

⁶⁷ Durand et al., ‘Mexican Immigration to the United States’, *op. cit.*, 110.

⁶⁸ Many also travelled to the United States illegally.

The 1952 McCarran-Walter Act

After the Second World War, immigration was encouraged in a context of economic recovery and prosperity.⁶⁹ Congress passed the Displaced Persons Act of 1948 and the Refugee Act of 1953 that allowed entry to an estimated 400,000 people who had been displaced by WWII but fell outside the existent immigration regulations. It also passed the 1952 McCarran-Walter Act (officially the 1952 Immigration and Nationality Act) in the context of a communist panic and subsequent backlash. This came as Eastern Europe fell under Soviet control, Communists took hold of China, and the Korean war began.⁷⁰

The Immigration and Nationality Act of 1952 continued with nationality-based quotas. The law maintained the system that limited immigration based on an applicant's national origin. It revised the 1924 quotas, allocating visas based on one sixth of one percent of each nationality's 1920 US population. This continued to advantage immigrants from northern and western Europe, who received 85% of the 154,277 available visas annually. Notably, the Act excluded countries in the Western Hemisphere from the quota system. It also established a system of preferences for skilled workers and family members of citizens and permanent residents. The previous system restricting immigration from Asia was dismantled, while numerical quotas were imposed for the first time on immigration from Latin America and the Caribbean. However, the policy displayed a clear ethnic bias. With 70% of slots designated for natives of the UK, Ireland, and Germany (most of which remained unfilled), the system heavily favoured these groups. According to Alicia Campi, the law ended Asian exclusion in theory, though in practice it was still extremely difficult for people from Asia to enter:

The Act is justly vilified for creating a rigid immigration quota system based on national origins and racial categories. Yet, the Act also repealed the blanket exclusion laws against the immigration and naturalization of Asians, although it established only token quotas for Asian immigration and was clearly biased towards Europeans.⁷¹

The law also included provisions relating to detention. It increased the government's authority to detain and exclude immigrants on national security grounds (as well as many others). The law provided some restrictions on detention, notably limits on its duration:

The Act also introduced important time limits on the duration of detention giving the government six months to effect expulsion after a final order. This 'removal period' was an express statutory recognition that a balance needed to be struck between enforcement efforts and liberty. After this period, the Act required immigrants to be 'subject to such further

⁶⁹ Daniel Wilsher, *Immigration Detention: Law, History, Politics* (Cambridge University Press, 2012), 57.

⁷⁰ Campi, *The McCarran-Walter Act*, op. cit., 2.

⁷¹ *Ibid.*

supervision and detention as is authorized'. The courts, however, construed the six-month time limit as absolute so that detention must cease, if not supervision. In practice, until reforms in the 1990s, detainees were not held longer than six months after a final deportation order.⁷²

People detained and released after six months did, however, find themselves in a “legal limbo,” as they were neither free to re-enter society with all the rights of a resident, nor removed from the country:

The regulations created for the ‘supervision’ of deportees required them to appear before immigration officers, submit to examinations, give information about their activities, associations and habits and conform to reasonable written restrictions on their conduct or activities. Failure to comply was a criminal offence. These deportees were thus not in any sense allowed to re-enter society free from constraints. They were in another legal limbo, subject to state control and without formal residence rights. Nevertheless, the release provisions showed a sensible pragmatism. Although the courts had allowed it, political controversy around the indefinite detention of many innocent people during the Cold War cases had been intense. The 1952 Act was an important first expression by Congress of the need for alternative arrangements to separate out detention from deportation issues.⁷³

In practice, however, detention (excluding immigration from Mexico) was to a significant extent ended, or at least became the exception rather than the rule. According to migration scholar, César García Hernández, in the USA:

under Eisenhower’s watch, the [Immigration and Naturalization Service, the INS] had all but abandoned its detention policy in 1954. (...) Announcing the policy shift, the attorney general said this was a step toward a “humane administration of the immigration laws. (...) For the next quarter century, few migrants were confined at any point. When confinement did occur, it was short-lived; most people were released while immigration courts heard their cases. In fact if not in law, the United States came remarkably close to abolishing immigration imprisonment.⁷⁴

Daniel Wilsher concurred with this idea, stating that “detention became exceptional, with bail being the norm.”⁷⁵ The government had decided that detention was unnecessary and inhumane, and most immigrants were released into the country while their cases were being decided.

According to Elliott Young, this was a strategic decision by policymakers:

Immigration was at a historic low in the early 1950s, and the proportion of the foreign-born American population had been in decline from the early twentieth century, so there was little public pressure to keep immigrants locked up. Another reason for the policy of generally paroling refugees and immigrants rather than detaining them was that the United States was

⁷² Wilsher, *Immigration Detention*, *op. cit.*, 65.

⁷³ *Ibid.*

⁷⁴ César Cuauhtémoc García Hernández, *Migrating to Prison: America’s Obsession with Locking up Immigrants* (The New Press, 2019), 46.

⁷⁵ Wilsher, *Immigration Detention*, *op. cit.*, 58.

projecting itself as a beacon of freedom and hope in the midst of the Cold War with the Soviet Union.⁷⁶

This led to Herbert Brownell Jr., Attorney General of the United States to claim on November 11, 1954 that the new detention policy was “so far-reaching in scope and effect that the Department of Justice [was] discontinuing its six seaport detention facilities at New York, Boston, Seattle, San Francisco, San Pedro and Honolulu.”⁷⁷ Ellis Island in New York was closed the following day. However, this created a new challenge. Detained immigrants were now held in New York City jails, placing them alongside common criminals.

The INA granted the Attorney General broad authority to detain non-citizens pending a final determination of their admissibility or pending their removal from the country.⁷⁸ However, this power was powerfully counterbalanced by Section 212(d)(5) of the INA, which provided the Attorney General with equally broad discretionary authority to parole, that is, to physically release, a non-citizen into the United States temporarily for “emergent reasons or for reasons deemed strictly in the public interest.”⁷⁹

After WWII, both the United States and Britain developed immigration regimes that favoured migrants of European origin, though they employed different mechanisms to achieve this outcome. The Immigration and Nationality Act of 1952 entrenched the national-origins quota system and institutionalised a racial hierarchy in admissions. Britain pursued a formally race-neutral approach under the British Nationality Act of 1948, which conferred the right of settlement upon all Commonwealth citizens without recourse to numerical quotas. Yet despite this apparent openness, British policy favoured white Commonwealth migrants from countries such as Canada and Australia, while Caribbean, South Asian, and African migrants encountered systemic discrimination in housing, employment, and public life. The principal distinction, therefore, lay in the mode of exclusion: whereas the United States relied on explicit legal restrictions to regulate the racial composition of arrivals, Britain’s supposedly liberal framework facilitated significant non-European migration until mounting political and social resistance prompted legislative curtailment in the early 1960s.

Operation Wetback (1954)

While the Bracero Program was still ongoing the US government launched a

⁷⁶ Young, *Forever Prisoners*, *op. cit.*, 8.

⁷⁷ Herbert Brownell Jr., Attorney General of the United States, ‘Speech at a Naturalization Ceremony’, Ebbets Field and the Polo Grounds, 12 November 1954.

⁷⁸ Immigration and Nationality Act of 1952, Pub. L. Nos 82–414 (1952), <https://www.govtrack.us/congress/bills/82/hr5678>

⁷⁹ *Ibid.*

mass-deportation effort in the summer of 1954: Operation Wetback.⁸⁰ It was aimed at deporting undocumented immigrants, the vast majority of whom were Mexican workers who had entered the country without authorisation or had overstayed after their contracts had run out. Despite the Bracero Program, American growers often preferred to hire undocumented Mexican workers for a number of reasons. They did not require paperwork, they could be paid less, and they were easier to exploit because they lacked legal protections. Some Americans, in states where high numbers of Mexicans were immigrating, felt threatened by the competition these newcomers represented. The Border Patrol conducted raids in workplaces and communities. Over 1 million people, mostly men, were detained and deported over the course of a few months.⁸¹

The Bracero Program continued until 1964, when pressure from political and religious groups led Congress to finally end it. However, the consequences were not the reduction in Mexican immigration initially intended:

Under pressure from religious and labor organizations, the U.S. Congress phased out the Bracero Program between 1960 and 1964. Rather than bringing Mexican immigration to a halt, however, the demise of the program simply channeled the flow in new directions. After 1960 documented and undocumented migration began a sustained increase over two decades. From 1960 to 1980, border apprehensions increased by 14 percent per year to reach an annual figure of more than a million. At the same time, annual gross legal immigration grew from just 32,000 in 1960 to more than 100,000 in 1981 and fluctuated between 55,000 and 70,000 through 1986. In total, from the end of the Bracero Program through 1985, some 1.4 million Mexicans were admitted into the United States as legal immigrants, and at least 1.5 million more entered without documents.⁸²

This, of course, can be explained by important geographical differences. Limiting, or controlling immigration from Europe, Asia, Africa and most places in the world was relatively easy. However, the transition to immigration from countries located on the same continent changed the way that immigration policy had to be envisaged:

In the early decades of the twentieth century, from the perspective of the relevant population movements, the United States was in effect an island, whose makeup could be determined by way of remote control. Once decided upon, both Asian exclusion and European restriction were easily implemented by ordinary administrative procedures, even in the face of desperate conditions in the countries of origin. As the century closed, however, while remote control was still functional with regard to most of the world, it simply was not practicable with respect to the neighboring south, in relation to which the erection of exclusionary boundaries posed an unprecedented challenge. To overcome it, the United States would have

⁸⁰ Adam Goodman, *Deportation Machine: America's Long History of Expelling Immigrants* (Princeton University Press, 2020), 37.

⁸¹ Operation Wetback was followed by a number of other similar operations throughout the 20th century, including Operation Hold-the-Line and Operation Gatekeeper in the 1990s.

⁸² Durand et al., 'Mexican Immigration to the United States', *op. cit.*, 111.

to venture well beyond immigration policy and undertake a fundamental régime transformation.⁸³

For decades leading up to the 1980s, parole was the established norm and detention was the exception.⁸⁴ This policy was institutionalised in 1954, when the federal government closed its large-scale detention facilities, including the iconic processing centre at Ellis Island, and the Immigration and Naturalization Service (INS) adopted a formal policy of paroling, rather than detaining, most non-citizens who arrived without authorisation.⁸⁵ The parole power was used extensively and flexibly, not only for individual humanitarian cases but also to manage large-scale refugee flows that were a defining feature of Cold War geopolitics. Successive administrations used parole to admit hundreds of thousands of refugees, including Hungarians fleeing the 1956 Soviet invasion, Cubans escaping the Castro regime after 1959, and Chinese nationals arriving in Hong Kong in the early 1960s.⁸⁶ This consistent practice solidified parole as the primary tool for managing arrivals, relegating detention to a measure of last resort used for brief periods for identity and health checks at the border. The legal fiction that a paroled individual had not technically made a formal “entry” into the country was a key aspect of this system, creating a liminal legal status that gave the government flexibility while also limiting the constitutional rights of the parolee.⁸⁷

So, what happened? How did the United States go from aiming to eliminate the detention of migrants with the exception of “those who were likely to flee or who were deemed to be a danger to national security or public safety”⁸⁸ to the development of a detention system that imprisoned over 400,000 migrants in 2011? A number of events in the second half of the twentieth century that explain the expansion of the migrant detention system in the United States, or at least that were used to justify this expansion from the turn of the 1980s onwards: these include immigration crises, national security fears, the criminalisation of immigration, financial and economic incentives, and a militarisation of enforcement. These will all be covered over the course of the following chapters.

It is important to note, however, that despite what the government claimed in the 1950s, not all immigrant detention ended. The closure of detention centres in cities on the East and West Coasts helped to distract from the large-scale detentions of

⁸³ Zolberg, *A Nation by Design*, *op. cit.*, 439.

⁸⁴ Testimony of the Director of Immigration Studies at the Cato Institute, *Hearing before the Committee on Homeland Security Subcommittees on Oversight, Investigations, and Accountability and Border Security and Enforcement United States House of Representatives*, 2024.

⁸⁵ *Ibid.*

⁸⁶ *A Timeline of Parole Under Immigration Law* (UCLA School of Law, 2024).

⁸⁷ Eunice Lee, ‘The End of Entry Fiction’, *North Carolina Law Review* 99 (2021): 572.

⁸⁸ David B. Thronson, ‘Unhappy Families: The Failings of Immigration Law for Families That Are Not All Alike’, in *The New Deportations Delirium: Interdisciplinary Responses*, ed. Dan Kanstroom and M. Brinton Lykes (New York University Press, 2015), 46.

Mexicans along the Southern border as part of Operation Wetback:

At the very moment Brownell was announcing the end of immigrant detention, “Operation Wetback” had reached a record number of over one million Mexicans returned to Mexico. These operations involved short-term detentions and were not formal removals involving a legal process, but they required a massive detention structure nonetheless. The intense focus on apprehending and deporting Mexicans began well before 1954, with Mexicans accounting for over 90 percent of the hundreds of thousands of national apprehensions (1943–54) each year. Migrants were processed quickly in temporary detention centers, some in converted tomato warehouses, and then either transported to the border by bus or train, or flown to the interior on airplanes.⁸⁹

Despite claims that immigrant detention during this era was an exceptional practice rather than standard procedure, the reality was that hundreds of thousands of immigrants continued to face arrest, detention, and removal. Rather than representing an end to detention, the evidence reveals a dramatic expansion from under 35,000 detentions in the early 1960s to over 340,000 by 1978, with the INS operating both its own facilities and outsourcing to other jails and prisons.⁹⁰ The scale becomes even clearer when considering that the INS made over one million apprehensions in 1979 alone, demonstrating that mass detention was already a well-established practice long before the era commonly associated with mass deportations supposedly began.⁹¹ While detention periods became shorter, the geographic focus moved from coastal ports to the Mexican border, and the detained population shifted from Europeans to Mexicans, the system of detention itself persisted without interruption.⁹²

1965 and Beyond: Liberalisation and Backlash

The United States underwent a dramatic transformation in the middle of the 20th century. The Civil Rights movement gained momentum and its success resulted in three significant pieces of civil rights legislation:

- The Civil Rights Act of 1964, which made discrimination based on race, colour, religion, sex, and national origin illegal
- The Voting Rights Act of 1965, which outlawed racial discrimination in voting
- The Open Housing Act of 1968, which banned discrimination in the rental and sale of houses.

Alongside domestic civil rights advancements, bipartisan efforts led to the passing of the Hart-Celler Act (Immigration and Nationality Act of 1965). It abolished what Milkis and Jenkins called the “racist national-origin quotas” system in place since

⁸⁹ Young, *Forever Prisoners*, *op. cit.*, 9.

⁹⁰ *Ibid*, 10.

⁹¹ *Ibid*, 10.

⁹² *Ibid*, 9.

the 1920s, and implemented a system that focused on family ties.⁹³ This law prioritised family reunification and favoured “highly skilled professionals, scientists, and artists along with unskilled labourers for jobs in fields experiencing a labor shortage.”⁹⁴

Scholars disagree on the exact reason the law was passed. Some argued that it was due to the climate of the civil rights era, others on the strong economy at the time, or the geopolitical symbolism of being open to immigration in a time of Cold War politics.⁹⁵ The Act was built on the assumption that the repeal of nation-based quotas would have little effect on the extent and the nature of immigration, yet it profoundly reshaped America’s demographics. It sparked a surge in legal immigration from Asia, particularly skilled professionals with families. Additionally, it increased the movement of undocumented workers across the US/Mexico border.⁹⁶ Notably, the Act introduced quotas for the Western Hemisphere, previously unrestricted for Canada and Mexico. These factors, along with a later economic crisis in Latin America, significantly boosted immigration to the United States. Despite the surge, the law enjoyed bipartisan support and faced minimal opposition.⁹⁷ The passage of the 1965 law coincided with the beginning of the fourth big wave of immigration to the US. The law opened up immigration opportunities to people from around the world, beginning an era of significant immigration from Latin America and Asia.⁹⁸

The 20th century saw a dynamic relationship between Mexican migrant workers and the US. Initially, these workers travelled back and forth, filling temporary labour gaps in agriculture and industry, often crossing the border freely. However, US policy towards this movement has evolved over time. At times, the US government encouraged it, at others opposed it, often turning a blind eye to its existence. But over time, stricter border regulations emerged, making temporary crossings more difficult, which had unintended consequences. Tougher border enforcement contributed to the rise of permanent migration. As is often the case, making temporary migration harder and more dangerous led permanent migration to become the norm rather than the exception.

2.8. The 1970s: Immigration as Security Threat

By the 1970s, both the United Kingdom and the United States were grappling with race issues. While the UK government was aiming to minimise or at least limit

⁹³ Swain and Yetter, ‘Federalism and the Politics of Immigration Reform’, *op. cit.* 182

⁹⁴ *Ibid.*

⁹⁵ Mark Hugo Lopez et al., *Modern Immigration Wave Brings 59 Million to U.S., Driving Population Growth and Change Through 2065: Views of Immigration’s Impact on U.S. Society Mixed* (Pew Research Center, 2015), 21.

⁹⁶ David FitzGerald and David Cook-Martin, *Culling the Masses: The Democratic Origins of Racist Immigration Policy in the Americas* (Harvard University Press, 2014), 121.

⁹⁷ Jenkins and Milkis, *The Politics of Major Policy Reform in Postwar America*, *op. cit.* 183.

⁹⁸ The United States admitted an average 250,000 immigrants a year in the 1950s, 330,000 in the 1960s, 450,000 in the 1970s, 735,000 in the 1980s, and over 1 million a year since the 1990s.

the number of black migrants coming into the country, the United States was implementing policies aimed at ending segregation and racial discrimination. In the US, the impact of the Immigration and Nationality Act of 1965 was beginning to be seen, as the proportion of arrivals from Latin American was slowly increasing (see table below).

Region of Birth of Recent Immigrant Arrivals					
%					
	1970	1980	1990	2000	2013
Central and South America	20	31	41	48	28
Mexico	11	22	26	34	15
Other Central/South America	9	9	15	13	13
Asia	19	36	31	25	41
Europe	30	14	11	13	10
Caribbean	18	7	7	7	10
Africa	2	3	2	4	8
Other	11	9	7	3	3
Total	100	100	100	100	100

Note: Recent arrivals refer to the foreign born who arrived within five years of the census or survey date. "Other" includes Canada, Atlantic Islands, Australia and New Zealand, and Pacific Islands.

Source: Pew Research Center tabulations of 1970-2000 U.S. decennial census data and 2013 American Community Survey (IPUMS)

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Figure 11. Region of Birth of Recent Immigrant Arrivals

Source: Pew Research Center, "Modern Immigration Wave Brings 59 Million to U.S., Driving Population Growth and Change Through 2065," *Pew Research Center – Race & Ethnicity*, 28 September 2015, <https://www.pewresearch.org/race-and-ethnicity/2015/09/28/modern-immigration-wave-brings-59-million-to-u-s-driving-population-growth-and-change-through-2065/>.

However, the Vietnam War, which had intensified in the 1960s and the deployment of American troops in 1965, led to significant numbers of Vietnamese refugees and asylum seekers heading to both the USA and the UK. The Ford administration had evacuated over 138,000 Vietnamese refugees by 1975 as the country fell to the Communist forces of North Vietnam.⁹⁹ This later led to the 1975

⁹⁹ Larry Clinton Thompson, *Refugee Workers in the Indochina Exodus, 1975 - 1982* (McFarland & Co, 2010), 92.

Indochina Migration and Refugee Assistance Act. It allowed refugees from Cambodia and Vietnam to enter the USA as refugees, and provided funds for their resettlement.¹⁰⁰

On top of this, undocumented immigration became a prominent political and media issue, prompting legislative reforms designed to restrict illegal immigration. In the United States, the 1972 election came on the heels of the 1964 Civil Rights Act and the 1965 Hart-Celler Act. This was apparent in the Republican and Democratic Party platforms. Immigration was not a major issue, but the Republicans emphasised the need to tackle illegal immigration: “The immigration process must be just and orderly, and we will increase our efforts to halt the illegal entry of aliens into the United States.”¹⁰¹ The Democratic Party focused on the importance of improving the economic situation in Mexico, in order to eliminate the push factors¹⁰² that led Mexicans to travel across the border into the USA:

[we will] conduct substantial programs to raise the economic level on both sides of the border. This should remove the economic reasons which contribute to illegal immigration and discourage run-away industries, in addition, language requirements for citizenship should be removed.¹⁰³

According to Daniel Wilsher, the 1960s and 1970s were a time of “a new and diffuse climate of fear over migration” in the context of the Cold War.¹⁰⁴ Immigrants, especially undocumented, asylum seekers and even refugees were seen as potential threats to the nation:

Those simply entering or arriving without permission, whether seeking asylum or economic opportunity, became seen as a ‘security’ threat. The period since has witnessed the full flowering of the illiberal potential of the aliens power, with a massive expansion of detention facilities in peacetime. Justification was sought in a range of bureaucratic instrumental goals; as a deterrent to irregular migration outside of permitted channels, to secure removal or maintain the ‘integrity’ of immigration laws and as a form of public or national security precaution. However, the increased hostility toward migration in public debate also meant that expanded detention had politically symbolic dimensions.¹⁰⁵

The “diffuse climate of fear” Wilsher describes refers to a background mentality of suspicion and securitisation of migrants. But this did not always translate into headline political debates until later (neither the Republican nor the Democratic

¹⁰⁰ A 1976 amendment included refugees from Laos.

¹⁰¹ *Republican Party Platform of 1972*, American Presidency Project, 21 August 1972, <https://www.presidency.ucsb.edu/documents/republican-party-platform-1972>

¹⁰² In immigration studies, Push factors are the conditions in a person’s home country that drive them to leave. These can include negative circumstances such as poverty, unemployment, political instability, war, discrimination, natural disasters, or lack of opportunities. While Pull factors are the conditions in a destination country that attract migrants. These often include positive opportunities such as better job prospects, higher wages, political stability, safety, access to education, better healthcare, or family reunification.

¹⁰³ *1972 Democratic Party Platform*, American Presidency Project, 11 July 1972, <https://www.presidency.ucsb.edu/documents/1972-democratic-party-platform>

¹⁰⁴ Wilsher, *Immigration Detention*, *op. cit.*, 57.

¹⁰⁵ *Ibid.*

party platforms for the 1976 presidential election dealt with the issue of immigration). Immigration in the 1960s–70s was becoming a security issue in practice (detention, surveillance, suspicion of migrants) without yet becoming a top-tier electoral issue. By the end of Carter’s term, it did move into the electoral spotlight, foreshadowing how central it would become in later decades, notably with the Mariel Boatlift.

Indeed, in April 1980, Fidel Castro announced that all Cubans wishing to leave the island could do so. Cuban-Americans were allowed to pick up friends and relatives at the Cuban port of Mariel, leading to the creation of a Freedom Flotilla that transported some 125,000 Cubans to the United States in the early months of what later became known as the Mariel Boatlift.¹⁰⁶ Concern grew as rumours that these Cubans were “cast-offs from Castro’s prisons,” a large number of criminals, people with psychiatric disorders and people considered agents provocateurs by the Cuban regime were amongst these arrivals.¹⁰⁷ In addition, these arrivals differed greatly from most of the Cubans who fled to the United States after the Cuban revolution in the 1950s who had been “white, educated elites, whose emigration was encouraged by the United States.”¹⁰⁸ The Mariels, on the other hand, were poorer and were considered criminals by both the Cuban government, and some American officials. César Cuauhtémoc García Hernández compares the response to immigration with the ‘*War on Drugs*’: “the same anti-drug hysteria that swept criminal policing took hold in immigration law. Much like inner-city black men, migrants were depicted as depraved purveyors of death and moral decay”¹⁰⁹ Later documents pointed back to the Mariel crisis as a turning point. For example, in 1984, the U.S. News & World Report ran a news story with the headline “Castro’s ‘Crime Bomb’ Inside U.S.”¹¹⁰ The National Detention, Transportation, and Removal Plan, published on June 20, 1995, stated that the “1980 Mariel boatlift brought a major influx of criminal and other Mariel Cubans to the United States with a resulting lengthy detention of Mariel Cuban criminals.”¹¹¹ The government also argued that fighting the arrival of criminal aliens had become a significant part of the INS’s role:

The disturbing increase in the criminal alien population in the United States has led to dramatic changes for the INS. Beginning in 1980, events beyond INS control relating to criminal aliens have profoundly affected the agency.¹¹²

This crisis was used to justify increased use of detention for immigrants in the USA.

¹⁰⁶ George J. Borjas, ‘The Economics of Immigration’, *Journal of Economic Literature* 32, no. 4 (1994): 1698.

¹⁰⁷ García Hernández, *Migrating to Prison*, *op. cit.*, 61.

¹⁰⁸ Jorge Duany, ‘Cuban Migration: A Postrevolution Exodus Ebbs and Flows’, *The Online Journal of the Migration Policy Institute*, 6 July 2017, <https://www.migrationpolicy.org/article/cuban-migration-postrevolution-exodus-ebbs-and-flows>

¹⁰⁹ García Hernández, *Migrating to Prison*, 61.

¹¹⁰ *Ibid.*

¹¹¹ *National Detention, Transportation, and Removal Plan*, 20 June 1995, Box 1/10, Collection 2011-1044-F, William J. Clinton Presidential Library.

¹¹² *Ibid.*

2.9. Conclusion: Diverging Paths, Shared Logics

While the United States developed immigration restrictions earlier, especially through explicit racialised laws such as the Chinese Exclusion Act of 1882 (and later the National Origins Quota system of the 1920s), Britain did not adopt a comparable framework until the early twentieth century. This divergence reflects their different national trajectories: the US was a nation built through immigration and territorial expansion, while Britain was primarily a nation of emigration and Empire until the mid-twentieth century. Yet both faced similar pressures, including urban overcrowding, labour competition, and rising nationalist sentiment, that gradually turned immigration into a perceived social and security problem. As the following pages will show, the Aliens Act of 1905 in the United Kingdom thus mirrored American exclusionary laws in function, if not in timing, introducing the idea that immigration could be actively managed and unwanted groups legally excluded. The U.S. trajectory from restriction to quota-based racial hierarchy in the early 20th century finds echoes in Britain's adoption of controls a generation later. The next section explores the emergence of the 'alien' in UK law.

3. Anxiety and Control: The UK's Historical Relationship with Immigration

Immigration in the United Kingdom is a complex and multi-faceted issue that includes the Roman occupation of Britain, the Anglo-Saxon and Viking invasions, as well as the Norman Conquest of the Island. It also includes the arrival of Irish immigrants, notably after the Great Famine during the 19th century, as well as the arrival of German communities and Russian Jews. As the British Empire grew, the arrival of immigrants from all around the world (sometimes temporary, other times long-lasting) slowly increased the immigrant populations in the United Kingdom.

The modern British immigration and detention regime, characterised by a complex bureaucracy of control and a network of removal centres, is often perceived as a post-1945 phenomenon, a response to the end of Empire and new patterns of global migration. This chapter challenges that narrative, arguing that the foundations of this system have much deeper historical roots. The evolution of immigration control in Britain represents a centuries-long transition from a pre-modern legal framework based on allegiance to the crown into a sophisticated state apparatus for population management. The pivotal transformation occurred between 1881 and 1940, a period in which socio-economic anxieties, a rising tide of nationalism, and, most critically, the securitisation of the 'alien' during two world wars reshaped the relationship

between the state and the non-citizen. This analysis will demonstrate that the Aliens Act 1905 was the legislative watershed that first codified administrative detention for immigration purposes in peacetime. Subsequently, the mass internment of ‘enemy aliens’ during the First¹¹³ and Second¹¹⁴ World Wars normalised this practice on an industrial scale, establishing a powerful legal and administrative precedent that continues to underpin contemporary detention policies.¹¹⁵

It is important to note that for a long time, and especially as the British Empire expanded, the United Kingdom was a land of emigration, far more than one of immigration. Between 1841 and 1901, the foreign-born population in England and Wales increased dramatically from approximately 100,000 people (0.25% of the total population) to an estimated 475,000 people (1.5% of the population).¹¹⁶ This increase was primarily driven by two major groups: the Irish, and Jewish refugees from Eastern Europe. Smaller, yet significant, groups also arrived from continental Europe, including Germans and Italians.¹¹⁷ As the immigration population grew (see figure below) in the United Kingdom, so too did immigration restrictions, which, at times, have included detention.

¹¹³ Panikos Panayi, *Enemy in Our Midst: Germans in Britain during the First World War* (Bloomsbury Publishing, 2014), 154–58.

¹¹⁴ Rachel Pistol, ‘Enemy Aliens: Internment and Deportation Policy in Great Britain, September 1939–June 1940’, *Modern Italy* 29, no. 3 (2024): 261–76, <https://doi.org/10.1017/mit.2024.23>

¹¹⁵ During the First World War, approximately 32,000 “enemy aliens” were interned in Britain. While during the Second World War, the fall of France in mid-1940 prompted a wave of public anxiety that led to a sharp increase in internments, reaching a peak of around 27,000 individuals. Most internees were released soon thereafter, once it became evident that the majority posed no security threat. By 1941, only about 5,000 remained in detention.

¹¹⁶ Migration Watch UK, *A Summary History of Immigration to Britain*, Briefing Paper 6.1 (Migration Watch UK, 2014).

¹¹⁷ For more detail see Holmes, C. (1988), *John Bull’s Island: Immigration and British Society, 1871–1971*. Macmillan. and Panayi, P. (2014), *An Immigration History of Britain: Multicultural Racism since 1800*. Routledge.

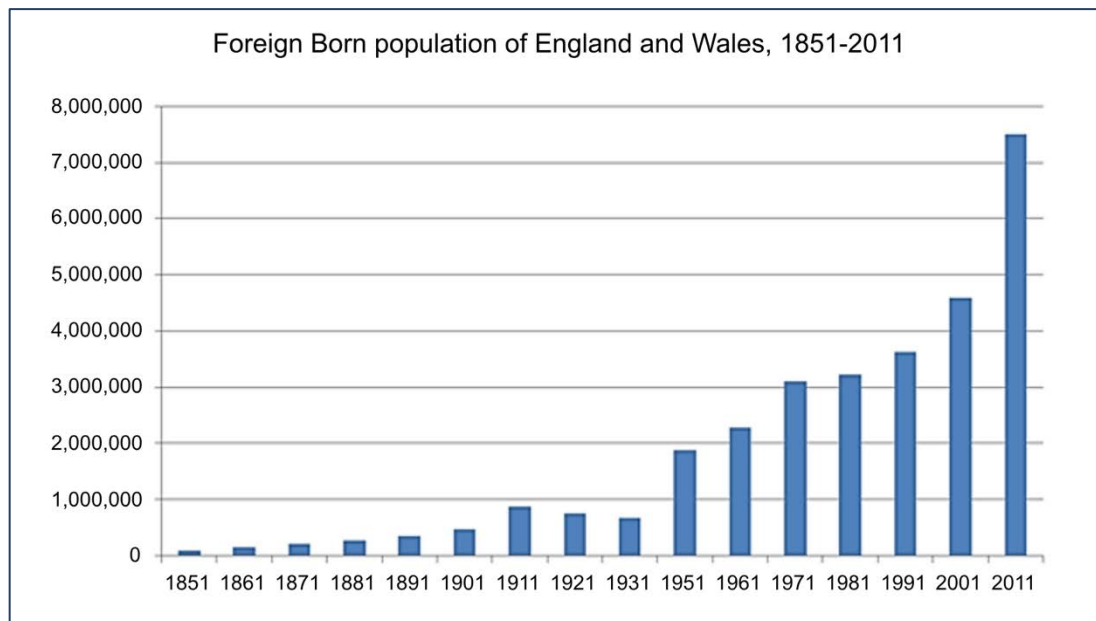


Figure 12. Foreign Born Population of England and Wales (1851-2011)

Source: *A Summary History of Immigration to Britain*, Briefing Paper 48, MigrationWatch UK, <https://www.migrationwatchuk.org/briefing-paper/48>

3.1. Constructing the ‘Alien’: Legal and Political Foundations

The primary legal division in medieval and early modern England was not between citizens of different nations, but between the ‘subject’ and the ‘alien’.¹¹⁸ This distinction was predicated on the feudal concept of allegiance. A subject, typically by virtue of birth within the king’s dominions (*jus soli*), owed personal allegiance to the English monarch.¹¹⁹ An alien, derived from the Latin *alienus*, was someone “borne in a strange country, under the obedience of a strange prince”, and bears a ‘sense of foreignness...of belonging to another.’¹²⁰ This status was not a matter of culture or ethnicity but of political loyalty. As English jurist and justice Sir William Blackstone’s *Commentaries* would later affirm, this division between alien and subject was the “first and most obvious division of the people”.¹²¹

This legal status carried profound practical consequences. Alienage imposed

¹¹⁸ Devyani Prabhat, ‘Not Just in Outer Space: “Aliens” in Immigration and Nationality Law’, *Current Legal Problems*, 9 July 2025, cuaf008, <https://doi.org/10.1093/clp/cuaf008>

¹¹⁹ *Ibid.*

¹²⁰ Ann Dummett and Andrew G. Nicol, *Subjects, Citizens, Aliens and Others: Nationality and Immigration Law* (Weidenfeld and Nicolson, 1990), 24.

¹²¹ William Blackstone, *Commentaries on the Laws of England: In Four Books* (The Lawbook Exchange, 1765).

significant disabilities, most critically concerning property law. In a society where wealth and status were tied to land, an alien could not hold freehold land or leave it to their heirs, a major impediment to permanent settlement and integration.¹²² The boundary between alien and subject was not, however, entirely impermeable. The Crown retained the discretionary power to grant letters of denization, a legal process that conferred upon an alien some of the rights of a subject, including the crucial ability to hold land.¹²³ Denization was a royal gift, often expensive, and required an oath of allegiance to the English king. It created an intermediate legal status, demonstrating that foreignness was not necessarily immutable and could be modified for individuals deemed economically or politically valuable, such as wealthy foreign merchants.¹²⁴ This royal prerogative represented an early, *ad hoc* form of immigration control, a mechanism for selectively integrating foreigners beneficial to the realm. The very existence of this power, however, highlights the foundational principle of state sovereignty over the status of non-subjects. This principle would later be expanded from a discretionary royal power into a systematic, legislative function of the modern state.

3.2. Early Waves: Merchants, Artisans, and Refugees

Throughout the medieval and early modern periods, England attracted various groups of foreigners. Economic migrants, including Flemish weavers and German merchants, were encouraged to settle, bringing valuable skills and capital.¹²⁵ Their presence is documented in official records, such as those of the Chancery and Exchequer, which regulated the activities of alien clergy and foreign merchants. While economically beneficial, their success could also breed resentment and social friction among the native population, a recurring theme in the history of British immigration.¹²⁶

A pivotal moment in this history was the arrival of French Protestant (Huguenot) refugees in the sixteenth and seventeenth centuries, fleeing intense religious persecution, particularly after the St. Bartholomew's Day Massacre of 1572 and the Revocation of the Edict of Nantes in 1685.¹²⁷ This wave of migration was significant not only for its scale, as an estimated 50,000 arrived after 1685 but also for its conceptual impact. The Huguenots introduced the word 'refugee', from the French *réfugié*, into the English language, creating a distinct archetype of a migrant deserving

¹²² Laura Hunt Hume, *Strangers Settled Here Amongst Us: Policies, Perceptions and the Presence of Aliens in Elizabethan England* (Routledge, 1996).

¹²³ Blackstone, *Commentaries on the Laws of England*, *op. cit.*, 374.

¹²⁴ Prabhat, 'Not Just in Outer Space'.

¹²⁵ J. L. Bolton, ed., *The Alien Communities of London in the Fifteenth Century: The Subsidy Rolls of 1440 & 1483-84* (Richard III & Yorkist History Trust, 1998).

¹²⁶ Nigel Goose and Liên Luu, eds, *Immigrants in Tudor and Early Stuart England* (Sussex Academic Press, 2005).

¹²⁷ Robin D. Gwynn, *Huguenot Heritage: The History and Contribution of the Huguenots in Britain*, 2nd edn (Sussex Academic Press, 2001), 18.

of sanctuary.¹²⁸ Their reception was framed largely in terms of Protestant solidarity against Catholic tyranny, a narrative that resonated powerfully in post-Reformation England.¹²⁹

The Huguenots were generally welcomed, not only for humanitarian reasons but also for their renowned skills as artisans, tradesmen and merchants, which significantly benefited the English economy.¹³⁰ Yet, their integration was not seamless. Records from the late 16th and early 17th centuries reveal English merchants and tradesmen complaining of economic competition from French craftsmen, demonstrating that even the reception of a ‘deserving’ refugee group was complicated by economic anxieties.¹³¹ This experience established a dual archetype that endured in British discourse: the immigrant as both a persecuted victim worthy of asylum and an economic actor who could be either a valuable asset or a resented competitor. The tension between these two perceptions would become a central feature of the political debates that culminated in the 1905 Aliens Act, which sought to exclude the economically ‘undesirable’ while carving out an explicit, though contested, exception for the politically and religiously persecuted.¹³²

3.3. Racialising the ‘Other’: Irish and Jewish Immigration

The final decades of the nineteenth century witnessed a profound shift in both the scale and nature of immigration to Britain, alongside a hardening of public and political attitudes. The country’s long-standing, informal policy of *laissez-faire* entry was challenged by the arrival of large, culturally distinct groups of migrants who settled in concentrated urban areas already beset by socio-economic problems. This period saw immigration become a central and contentious political issue. This was not an inevitable result of the migration itself, but the product of a successful political campaign, which reframed complex social ills as a singular “alien question.”

While not legally classified as ‘aliens’ following the 1801 Act of Union, Irish immigrants occupied a similar space in the popular imagination as distinct and problematic ‘others’.¹³³ The flow of immigrants from Ireland swelled to a torrent in the mid-nineteenth century, driven by the Great Famine (1845 to 1852) and the

¹²⁸ Susanne Lachenicht, ‘Protecting Refugees in Early Modern Europe and the Atlantic World?: Asylum and Privileges for France’s Huguenots’, *Diasporas* 41 (2023), <https://doi.org/10.4000/diasporas.12301>

¹²⁹ Gwynn, *Huguenot Heritage*, *op. cit.*, 6.

¹³⁰ *Ibid*, 60.

¹³¹ *Ibid*, 120-121.

¹³² Bernard Gainer, *The Alien Invasion: The Origins of the Aliens Act of 1905* (Crane, Russak & Co, 1972).

¹³³ Donald M. MacRaild, *The Irish in Britain, 1800-1914*, Studies in Irish Economic and Social History 9 (Economic and Social History Society of Ireland, 2006).

opportunities of industrial work in British cities.¹³⁴ Just as they were in the United States, the Irish were often concentrated in the unskilled labour force, and Irish communities in cities like Liverpool and London faced deep-seated prejudice, often fuelled by anti-Catholic sentiment and social tensions.¹³⁵ Scholarly analysis reveals that throughout the nineteenth century, the Irish in England endured as an underclass with limited social mobility, disproportionately located in the poorer industrial cities of the North.¹³⁶ Their experience demonstrates that “racialised,” ethnic, national and religious prejudice could function as a powerful force for social exclusion, independent of an individual’s formal legal status as a subject or alien.

The Irish experience illustrates both convergence and divergence between the two nations. In the US, Irish migrants became one of the largest immigrant groups in the 19th century, facing discrimination but eventually integrating into political life, particularly through urban political machines. In Britain, by contrast, Irish migrants were legally “subjects” rather than “aliens,” yet they were still treated as outsiders, often racialised as an underclass and scapegoated for poverty and crime. In both contexts, anti-Irish sentiment reveals how cultural and religious differences (Catholic vs. Protestant), even without formal legal exclusion, could translate into social hostility and marginalisation.

Beginning in 1881, a new wave of immigration brought a group that was legally defined as ‘alien’. A series of violent pogroms and crippling economic restrictions in the Russian Empire propelled a mass exodus of Jews, of whom between 120,000 and 150,000 sought refuge in Britain.¹³⁷ These newcomers were largely impoverished, Yiddish-speaking, and culturally distinct from both the native population and the more assimilated, established Anglo-Jewish community (of Sephardic heritage for the most part).¹³⁸ They settled in densely packed urban enclaves, most notably London’s East End, creating a visible and concentrated immigrant community.¹³⁹ Their arrival coincided with a period of economic uncertainty and growing concern over urban poverty, overcrowding, and ‘sweated’ labour, creating fertile ground for anxieties about economic competition and the erosion of a homogenous ‘English’ culture.¹⁴⁰

¹³⁴ M. A. G. Ó. Tuathaigh, ‘The Irish in Nineteenth-Century Britain: Problems of Integration’, in *The Irish in the Victorian City*, ed. Roger Swift and Sheridan Gilley (Routledge, 1984).

¹³⁵ *Ibid.*

¹³⁶ Cormac Ó Gráda and Neil Cummins, *The Irish in England* (Centre for Economic Policy Research, 2022), <http://cepr.org/voxeu/columns/irish-england>

¹³⁷ Todd M. Endelman, *The Jews of Britain, 1656 to 2000*, Jewish Communities in the Modern World 3 (Univ. of California Press, 2002), 127.

¹³⁸ Greg Smart, ‘From Persecution to Mass Migration: The “Alien” in Popular Print and Society, 1881-1906’ (University of Southampton, 2008), 116–17.

¹³⁹ Samuel Hawkins, ‘From “Undesirable Alien” to Proud British Jewry: The Jewish Immigrant Experience in Memory and History, 1881 to Present’ (University of Southampton, 2017).

¹⁴⁰ Gainer, *The Alien Invasion: The Origins of the Aliens Act of 1905*, *op.cit.*, 23-30.

3.4. The Rise of Organised Anti-Alienism

The concentration of Jewish immigrants in the East End sparked what has been described as a ‘media frenzy’.¹⁴¹ A burgeoning popular press, alongside established conservative newspapers, began to construct a narrative of an ‘alien invasion’.¹⁴² Anti-alien agitators like Arnold White and publications such as the *Manchester Evening Chronicle* deployed xenophobic and often antisemitic rhetoric, portraying the immigrants as “the scum of Europe” and a biological threat to the “Anglo-Saxon race”, declaring that “London shall be for Londoners, not for alien hordes debilitated by social and legislative persecution.”¹⁴³ Immigrants were accused of being dirty, diseased, criminal, and anarchist, and of undercutting British labour.¹⁴⁴

This public backlash was channelled into a potent political force by the British Brothers’ League (BBL). Formed in 1902, the BBL was a highly effective anti-immigration pressure group that mobilised the economic grievances of the working class in the East End, blaming the ‘alien’ for low wages, unemployment, and housing shortages.¹⁴⁵ Led by figures like Conservative MP Major William Evans-Gordon, the BBL organised mass rallies, marches, and petitions demanding restrictive legislation.¹⁴⁶ Their campaign successfully gained 45,000 signatures on a petition to Parliament, demonstrating a significant level of grassroots support.¹⁴⁷ The labour movement’s response was divided; while some socialist internationalists defended immigrant workers, the Trades Union Congress (TUC) passed resolutions in the 1890s calling for immigration controls, fearing the impact of low-skilled migrant labour on wages and working conditions.¹⁴⁸ The ‘alien question’ was thus framed primarily as an economic issue, but it was underpinned by a potent blend of nationalism, xenophobia, and antisemitism.

3.5. Forging Control: The Parliamentary Road to the Aliens Act 1905

Sustained political pressure led the Conservative government to establish the

¹⁴¹ Hawkins, ‘From “Undesirable Alien” to Proud British Jewry: The Jewish Immigrant Experience in Memory and History, 1881 to Present’, *op.cit.*, 149.

¹⁴² Gainer, *The Alien Invasion: The Origins of the Aliens Act of 1905*.

¹⁴³ Hawkins, ‘From “Undesirable Alien” to Proud British Jewry: The Jewish Immigrant Experience in Memory and History, 1881 to Present’, *op.cit.*, 1.

¹⁴⁴ Colin Holmes, *Anti-Semitism in British Society, 1876-1939* (Routledge, 2016).

¹⁴⁵ Paul Stocker, ‘Importing Fascism: Reappraising the British Fascists, 1923–1926’, *Contemporary British History* 30, no. 3 (2016): 326–48, <https://doi.org/10.1080/13619462.2016.1144509>

¹⁴⁶ Robert Winder, *Bloody Foreigners: The Story of Immigration to Britain*, Revised and updated (Abacus, 2013), 258.

¹⁴⁷ David Rosenberg, ‘UKIP Is Nothing New: The British Brothers’ League Was Exploiting Immigration Fears in 1901’, UK News, *The Guardian*, 4 March 2015, <https://www.theguardian.com/uk-news/2015/mar/04/ukip-nigel-farage-immigrants-british-brothers-league>

¹⁴⁸ *Ibid.*

Royal Commission on Alien Immigration in 1902.¹⁴⁹ It was tasked with investigating the social and economic effects of immigration. While the Commission's 1903 report struggled to find conclusive evidence to support the most extreme claims about immigrant criminality and destitution, its majority report was heavily influenced by the anti-alien narrative.¹⁵⁰ It recommended the creation of a government department for immigration and the granting of powers to exclude 'undesirables', including criminals and those likely to become a public charge.¹⁵¹

The campaign for restriction in Britain did not occur in a vacuum. It was part of a global trend towards border control. Proponents of the legislation consistently pointed to the precedent set by other nations, particularly the United States, which had begun implementing restrictions in the 1880s, and the self-governing settler colonies of the British Empire, such as Australia and Canada, which had enacted their own restrictive laws.¹⁵² The argument was frequently made that without its own controls, Britain would become "the dumping ground for the scum of Europe" rejected by other nations.¹⁵³

The ensuing parliamentary debates, recorded in Hansard, crystallised the conflict between Britain's liberal traditions and the new demands for state control.¹⁵⁴ Supporters of the Aliens Bill argued for its necessity on economic grounds, to protect British workers from unfair competition, and on social grounds, to combat overcrowding and the perceived threat to public health and order.¹⁵⁵ The opposition defended Britain's long-standing tradition of free entry and asylum. Churchill famously condemned the bill, stating that it would "appeal to insular prejudice against foreigners, to racial prejudice against Jews, and to labour prejudice against competition".¹⁵⁶ His words highlighted the reality that, while the proposed legislation was framed in neutral terms of controlling 'aliens', its primary target and the overwhelming focus of the public debate was the recent influx of Eastern European

¹⁴⁹ Alison Bashford and Catie Gilchrist, 'The Colonial History of the 1905 Aliens Act', *The Journal of Imperial and Commonwealth History* 40, no. 3 (2012): 409–37, <https://doi.org/10.1080/03086534.2012.712380>

¹⁵⁰ Royal Commission on Alien Immigration, *Report of the Royal Commission on Alien Immigration* (H.M. Stationery Office, 1903), 52.

¹⁵¹ Jill Pellew, 'The Home Office and the Aliens Act, 1905', *The Historical Journal* 32, no. 2 (1989): 373, <https://doi.org/10.1017/S0018246X00012206>

¹⁵² Bashford and Gilchrist, 'The Colonial History of the 1905 Aliens Act', 411.

¹⁵³ Rosenberg, 'UKIP Is Nothing New'. *op.cit.*

¹⁵⁴ *Aliens Bill*, *Hansard*, vol. 151, debated 3 August 1905, House of Lords, <https://hansard.parliament.uk/lords/1905-08-03/debates/56b2b651-6338-4927-a228-45ed626e7740/AliensBill>

¹⁵⁵ *Aliens Bill*, *Hansard*, vol. 24, debated 28 April 1911, House of Commons, <https://hansard.parliament.uk/commons/1911-04-28/debates/0392ad39-0fd8-490a-94e5-40b472dfe13b/AliensBill>

¹⁵⁶ Nicholas Mark Burkitt, 'British Society and the Jews: A Study into the Impact of the Second World War Era and the Establishment of Israel, 1938-1948' (University of Exeter, 2011), 13.

Jews.¹⁵⁷ According to Stephanie Silverman, these concerns led to the UK's first immigration law:

in addition to the nonwhite subjects moving throughout the realm, a prominent issue was the influx of Russian and Eastern European Jews escaping famine, persecution, and the discriminatory May Laws. In response, Parliament eventually passed the Aliens Act 1905.¹⁵⁸

3.6. The Aliens Act 1905: From Tolerance to Exclusion

As the foreign population increased, calls for restrictions grew, but no real legislative framework existed before 1905. The passage of the Aliens Act in 1905 was a watershed moment, marking the definitive end of Britain's era of unrestricted immigration. Around the same time as anti-Asian sentiment led to the Chinese Exclusion Act in the US, there was a growing sense of unease about immigration in Britain.¹⁵⁹

According to Stephanie Silverman, the Act marked the beginning of the "modern era of migration control" in the UK.¹⁶⁰ Mary Bosworth does argue, however, that "earlier restrictions can be found in the 1793, 1815, and 1848 Alien Expulsion Acts and in local parish practices."¹⁶¹ The reason the 1905 law is so important is because it "gave responsibility to the Home Secretary for all matters concerning immigration and nationality, thus centralizing control and establishing immigration officers at ports."¹⁶² It stipulated that 'immigrant ships' which concerned those carrying more than twenty alien steerage passengers could only land at thirteen designated ports where a newly appointed immigration officer was present.¹⁶³ This created a controlled border where previously there had been none.

The law changed the rules for boat captains and said that would-be immigrants had to prove they had sufficient funds and they would not become financially dependent on the State. The Aliens Act 1905 also introduced immigration detention into British law.¹⁶⁴ Section 1(2) of the Act gives the Home Office the authority to reject "undesirable" aliens: "the immigration officer shall withhold leave in the case of any

¹⁵⁷ Hawkins, 'From "Undesirable Alien" to Proud British Jewry: The Jewish Immigrant Experience in Memory and History, 1881 to Present'. *op.cit.*

¹⁵⁸ Stephanie J. Silverman, "'Regrettable but Necessary?'" A Historical and Theoretical Study of the Rise of the U.K. Immigration Detention Estate and Its Opposition', *Politics & Policy* 40, no. 6 (2012): 1136, <https://doi.org/10.1111/j.1747-1346.2012.00393.x>

¹⁵⁹ *Ibid.*

¹⁶⁰ Stephanie J. Silverman, 'Internment in the United Kingdom During the Twentieth Century and Its Links to the Evolution of Immigration Detention', *International Journal of Criminology and Sociology* 3 (May 2014): 169, <https://doi.org/10.6000/1929-4409.2014.03.15>

¹⁶¹ Bosworth, *Inside Immigration Detention*, *op.cit.*, 29.

¹⁶² *Ibid.*

¹⁶³ *Aliens Act 1905*, 5 Edw. 7 c. 13 (United Kingdom), <https://www.legislation.gov.uk/ukpga/Edw7/5/13/enacted>

¹⁶⁴ According to Section 1 (1) of the Directions of 4 December 1905, foreign nationals subject to deportation following a denied Home Office application may be detained for an indefinite period.

immigrant who appears to him to be an undesirable immigrant.”¹⁶⁵ Under Section 7(3), the Home Secretary had the legal power to detain aliens, and could do so for an unlimited period:

Any immigrant who is conditionally disembarked, and any alien in whose case an expulsion order is made, while awaiting the departure of his ship, and whilst being conveyed to the ship, and whilst on board the ship until the ship finally leaves the United Kingdom, and any alien in whose case a certificate has been given by a court, with a view to the making of an expulsion order under this Act, until the Secretary of State has decided upon his case, shall be liable to be kept in custody in such manner as the Secretary of State directs, and whilst in that custody shall be deemed to be in legal custody.¹⁶⁶

This empowered the state to reject individuals based on economic and medical assessments at the point of entry and gave the Home Secretary the authority to deport foreign citizens and hold them in custody until they could be deported. Non-citizens who could be detained under this Act included the poor, the mentally ill, the infirm, criminals and those subject to deportation orders.¹⁶⁷ This law did not completely shut the door to people with little, or no money, as the principle of asylum was considered important, and “impoverished aliens would be permitted entry if they could prove they were fleeing religious or political persecution.”¹⁶⁸ David Feldman called the 1905 Act a “landmark of the decline of Liberal England.”¹⁶⁹

3.7. Wartime Internment: National Security and the Normalisation of Detention

In both countries, the world wars marked moments when immigration control was reframed as a matter of national security. The scale and targets differed, but the outcome was the same: detention shifted from being a rare, *ad hoc* tool to a normalised state power, establishing a precedent that could be adapted to peacetime immigration enforcement.

¹⁶⁵ *Aliens Act 1905*, s. 3.

¹⁶⁶ *Aliens Act 1905*, s. 7.

¹⁶⁷ Silverman, ‘Regrettable but Necessary?’, *op.cit.*, 1136.

¹⁶⁸ David Cesarani, ‘An Alien Concept? The Continuity of Anti-Alienism in British Society before 1940’, in *The Internment of Aliens in Twentieth Century Britain*, ed. David Cesarani and Tony Kushner (Cass, 1993), 30.

¹⁶⁹ David Feldman, ‘The Importance of Being English: Jewish Immigration and the Decay of Liberal England’, in *Metropolis, London: Histories and Representations since 1800*, ed. David Feldman and Gareth Stedman Jones, History Workshop Series (Routledge, 1989), 79.



Figure 13. Internment Camps in the UK during the 20th Century

Source: *Great Escapes*, National Archives (ArcGIS hub), <https://great-escapes-nationalarchives.hub.arcgis.com/>



Figure 14. Prisoner of War Camps in the UK during the 20th Century

Source: *Great Escapes*, National Archives (ArcGIS hub), <https://great-escapes-nationalarchives.hub.arcgis.com/>

World War I

An important factor in the development of the UK's detention system, perhaps more so than in the USA, was the internment of certain foreign nationals during the two world wars:

The laws and policies that were historically passed to legitimise internments in the United Kingdom (UK) during the World Wars and the Gulf War are the same ones that undergird many of that country's contemporary detention practices. (...) Internment arose in the milieu of a general panic concerning fifth columns, saboteurs, and espionage during wartime. It was meant to last only so long as the foreign threat persisted. (...) [T]he laws and policies governing the expanding UK detention estate are the same ones that historically shepherded so-called "enemy aliens" to remote camps.¹⁷⁰

Following the 1905 law, the Aliens Restriction Act 1914 (and later the Aliens Restriction (Amendment) Act 1919) gave further power to the Secretary of State, notably emergency powers to "deny entrance, detain, and deport."¹⁷¹ The 1914 law, passed in the context of the First World War, was also aimed at controlling foreign nationals who lived in the UK, creating areas where aliens were prohibited from residing, in a similar fashion to Japanese exclusion zones in the US during WW2.¹⁷² The law removed an exception to detention for foreign nationals fleeing religious or political persecution and also created a faster removal process. The Act reinforced the discretionary power of the Secretary of State "to admit or refuse not only 'undesirable' aliens but all aliens".¹⁷³ Beginning in August 1914, Britain began a process of internment that lasted throughout the War:

From August 1914 to May 1915, the government implemented a policy of selective arrest and internment of Germans and Austrians of military age. The number in captivity reached 10,000 by late 1914. In addition, women and children and men above or below military age were encouraged to return to their countries of origin. After news of the sinking of the *Lusitania* on 7 May 1915, a wave of popular anti-alienism prompted the government to order the internment of all enemy alien males and the systematic repatriation of women and children unless a tribunal exempted them. The number of those interned rose to 32,000 and over the next two years, 10,000 were forcibly deported. Enemy aliens still at liberty were subject to elaborate practices of registration and regulation.¹⁷⁴

While internment was aimed at enemy aliens, many innocent people were caught up in the nets of anti-alien sentiment. After the sinking of the *Lusitania*¹⁷⁵, there were "attacks on Germans and other foreigners, including Russian Jews and Chinese, in several British Cities."¹⁷⁶

The emergency measures implemented during the War were initially intended as temporary, but they were "continually renewed until they were incorporated into

¹⁷⁰ Silverman, 'Internment in the United Kingdom', *op.cit.*, 168.

¹⁷¹ Bosworth, *Inside Immigration Detention*, *op.cit.*, 29.

¹⁷² Cesarani, 'An Alien Concept? The Continuity of Anti-Alienism in British Society before 1940', *op.cit.*, 35.

¹⁷³ Silverman, 'Internment in the United Kingdom', 169.

¹⁷⁴ Cesarani, 'An Alien Concept?', 35.

¹⁷⁵ Patrick O'Sullivan, *The Sinking of the Lusitania: Unravelling the Mysteries* (The Collins Press, 2014).

¹⁷⁶ Cesarani, 'An Alien Concept?' *op.cit.*, 36.

the Immigration Act 1971.”¹⁷⁷ This is a pattern that has repeated itself, with governments often using moments of crisis to increase their power, and rarely relinquishing it once the crisis comes to an end. Over time the targets of these powers have evolved, but their origins are clear:

The composition of the population over whom this power has been wielded has shifted over time from Irish immigrants looking for work, Central and Eastern European Jews escaping the pogroms of the late nineteenth and early twentieth centuries, Commonwealth citizens in the post-war era, to, more recently, those whose claims of persecution are not believed, terror suspects, economic migrants, ex-prisoners, and students.¹⁷⁸

After the War, Westminster passed the Aliens Restriction (Amendment) Act 1919, which authorised the continued detention of immigrants throughout the 1920s and 1930s. Exceptional wartime detention thus became a normalised phenomenon between the wars.

Immigration between the Wars

Between the First and Second World Wars, immigration to the UK was shaped by both the aftermath of WWI and growing economic and political challenges. After 1918, Britain faced labour shortages in certain industries, but also widespread unemployment, which fuelled restrictive attitudes toward immigration.¹⁷⁹ The Aliens Restriction Acts (1914, expanded in 1919) imposed tighter controls on entry, registration, and employment of foreign nationals reflecting both security concerns after the war and anxiety about job competition.

Despite restrictions, some groups continued to arrive. Jewish refugees fleeing persecution in Eastern Europe settled in cities such as London and Manchester, though often facing antisemitism.¹⁸⁰ Small numbers of colonial migrants, particularly seamen from the Caribbean, Africa, and South Asia, also lived and worked in Britain, though they encountered racial prejudice and limited opportunities. Additionally, political upheavals in Europe, such as the rise of fascism in Italy and Nazism in Germany, led to an increase in asylum seekers during the 1930s, though the British government maintained a cautious and selective refugee policy.¹⁸¹

Overall, immigration in interwar Britain was relatively limited compared to later decades. The period was characterised by tight state control, economic protectionism, and public suspicion of foreigners.¹⁸²

¹⁷⁷ Bosworth, *Inside Immigration Detention*, *op.cit.*, 29.

¹⁷⁸ Bosworth, *Inside Immigration Detention*, 21.

¹⁷⁹ Colin Holmes, *John Bull's Island: Immigration and British Society, 1871 - 1971*, Reprinted (Macmillan, 2016), 115.

¹⁸⁰ *Ibid*, 124.

¹⁸¹ *Ibid*, 117.

¹⁸² *Ibid*, 124.

World War II

While the UK had originally wanted to avoid repeating the mass internment of WWI, the plan, formulated in the 1920s by the Committee of Imperial Defence, was to expel enemy aliens when possible and only imprison those who were not expellable.¹⁸³ However the arrival of tens of thousands of refugees in the inter-war period forced the government to rethink its strategy.

Thus in 1939, against a backdrop of growing tensions with Germany, the Emergency Powers (Defence) Act was passed. The Act authorised the Secretary of State to order the detention of anyone perceived to be a threat to the nation. As a result, around 70,000 Germans and Austrians living in the UK at the time were immediately reclassified as enemy aliens and interned. This included Nazis or Nazi sympathisers, but also Jewish refugees. From 1941 to 1945, Britain also “screened arrivals from occupied Europe for possible adversaries, housing them in two reception centres in Wandsworth, London.”¹⁸⁴ According to Mary Bosworth, those centres were later used to hold “failed and current asylum seekers, undocumented migrants, visa overstayers, and former foreign offenders in prisons and in detention centres.”¹⁸⁵

The wartime internments on both sides of the Atlantic reveal striking parallels. In the United States, over 120,000 Japanese Americans, many of them citizens, were forcibly relocated and confined, while in Britain, tens of thousands of Germans, Austrians, and Italians were interned under emergency powers.¹⁸⁶ Both governments justified these measures on national security grounds, but they also normalised administrative detention as a legitimate tool of statecraft. Importantly, both cases blurred the line between citizens and non-citizens, treating ethnicity and nationality as security risks. These examples of wartime internment show that it seemed to be “difficult to distinguish between enemy aliens and legitimate migrants”.¹⁸⁷ The government tended to make “general assumptions about the dangerous nature of migrants that incorporated notions of nationality, gender, political beliefs and foreignness into a single, caricatured vision of the foreigner.”¹⁸⁸ Furthermore, wartime internments paved the way for peacetime detentions, highlighting how periods of conflict can empower the executive branch to restrict people’s movement.¹⁸⁹ These conflicts (or to use another term, crises) can be real or imagined, so long as the

¹⁸³ Tony Kushner and David Cesarani, ‘Alien Internment in Britain During the Twentieth Century: An Introduction’, in *The Internment of Aliens in Twentieth Century Britain*, ed. David Cesarani and Tony Kushner (Cass, 1993), 3.

¹⁸⁴ Bosworth, *Inside Immigration Detention*, *op.cit.*, 22.

¹⁸⁵ *Ibid.*

¹⁸⁶ War Relocation Authority, *The Evacuated People: A Quantitative Study* (United States Department of the Interior, 1946), 8.

¹⁸⁷ Silverman, ‘Internment in the United Kingdom’, *op.cit.*, 172.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

government succeeds in convincing the population that a crisis is taking place, it can convince them that extraordinary measures are needed to deal with it. This mass internment established a critical precedent, demonstrating the state's logistical capacity and legal willingness to implement widespread administrative detention as a tool of national security.

3.8. Decolonisation: Commonwealth, Race, and the Politics of Belonging

After the War, as the British Empire gradually fell apart and the process of decolonisation began, the United Kingdom had to decide what relationship it wanted to maintain with the former colonies that obtained independence in the decades after WW2 as well as with the estimated 400 to 700 million people who lived there (see map below).¹⁹⁰

According to Mary Bosworth, this was reflected in the immigration policies passed in the decades after the war:

Until the 1940s, broadly speaking, immigration legislation in Britain responded to external events not all of which directly involved the UK. After the Second World War, however, immigration control became more narrowly focused on the dissolution of the British Empire. While other global anxieties—notably the spread of Communism and the Cold War were invoked in the constant renewal of the emergency powers, increasingly, legislation responded to Britain's changing relationship to places it had previously governed. Such laws also articulated a new, post-colonial, British national identity.

After the Second World War, immigration was initially incentivised. The aim was to address labour shortages, as Britain slowly recovered from the economic impact of the War and the transformation of its economy once the war had ended. At first immigrants came from Eastern and Southern European countries as part of an overseas worker programme, but immigrants from the Commonwealth also began to arrive in the years after the War.

¹⁹⁰ India alone had a population of approximately 340 million people upon independence in 1947.

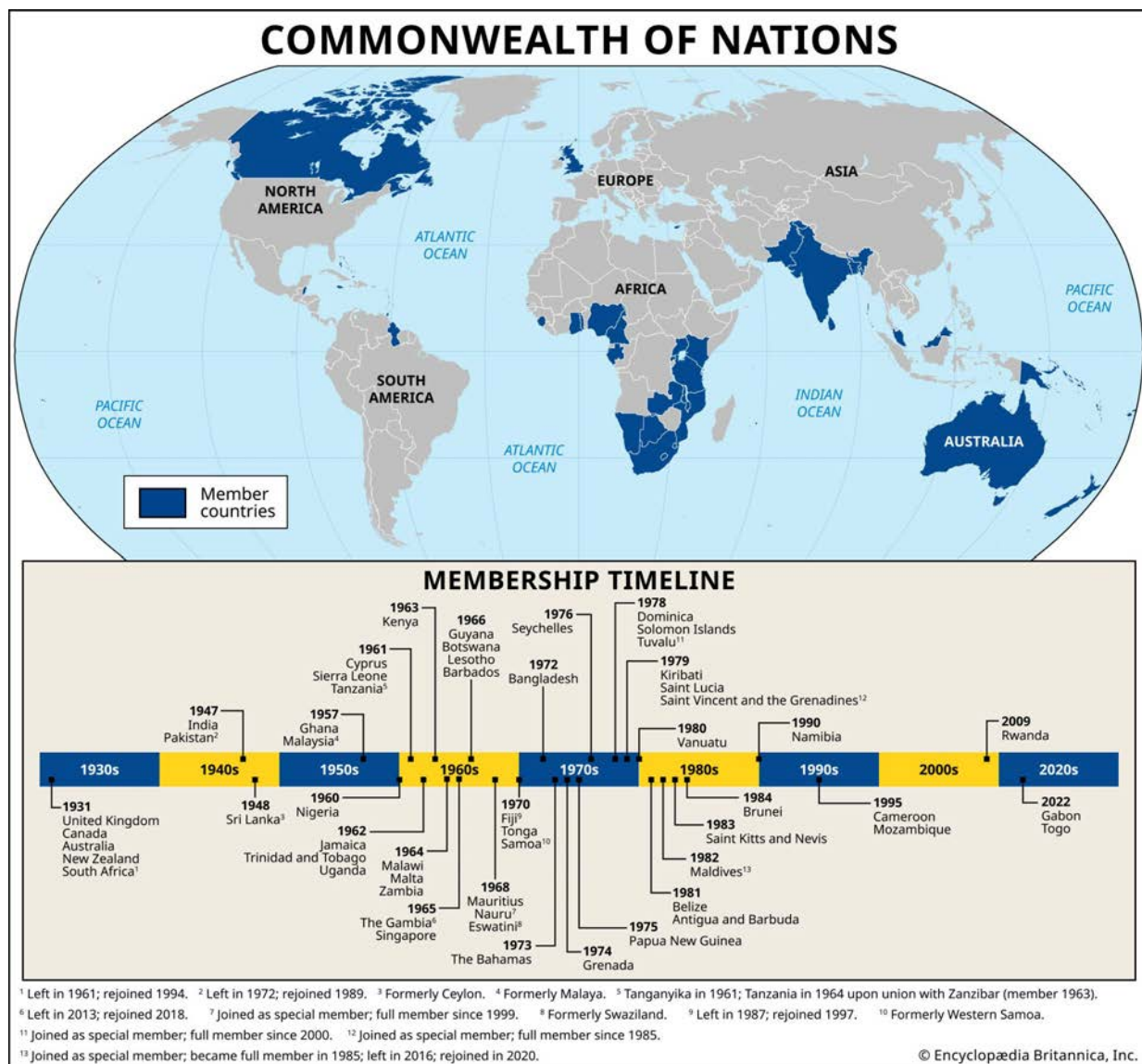


Figure 15. Map of the Commonwealth of Nations and Membership Timeline

Source: “Commonwealth (association of sovereign states),” *Encyclopædia Britannica*, last modified 23 September 2025, <https://www.britannica.com/topic/Commonwealth-association-of-states>

The British Nationality Act 1948

In 1948, Clement Attlee’s Labour government passed the British Nationality Act in the context of post-war decolonisation. The legislation created a new legal status: Citizenship of the UK and Colonies. This included the British population as well as ‘colonial’ British subjects in a universalist definition of British citizenship. Nationals of the British colonies henceforth had the right to enter the United Kingdom without restriction. Historians disagree over the impact of this 1948 law, which

reaffirmed the rights that most British subjects already had. Ian R. G. Spencer claimed that

In no active sense did the Act contribute to the flow of British subjects into the United Kingdom, nor was it seen at the time as likely to do so. As far as immigration and emigration throughout the Empire/Commonwealth were concerned, the Act confirmed the situation that existed prior to 1948.¹⁹¹

However, according to Randall A. Hansen, between 1948 and 1962, around 500,000 Commonwealth migrants (a very large proportion of whom were non-white) entered the country. He claimed that the Act was responsible for transforming British society: “the British Nationality Act (BNA) (...) was the legal foundation for the transformation of Britain into a multiethnic society, an almost exclusively postwar phenomenon.”¹⁹² The immigration increase was slow, and in spurts. According to Philip Begley:

In 1953, just 2,000 immigrants had arrived in Britain from those countries but this rose quickly to more than 40,000 annually by the middle of the decade, before falling back, but peaking again at 136,400 in 1961.¹⁹³

In the 1940s, the Conservative Party opposed¹⁹⁴ attempts to “limit freedom of migration between Britain and the Empire, such as Labour’s 1948 British Nationality Act.”¹⁹⁵ But as the reality of post-War immigration set in, opposition within the Conservative Party and the general public grew.

In 1958, antiblack riots in two cities in the United Kingdom (Nottingham, and Notting Hill in London) put the issue of immigration control back on the political agenda.¹⁹⁶ In the aftermath of the riots, *The Times* reported that Michael Webster, an independent candidate in the 1959 general election, had declared that a multi-racial society was a “biological sacrilege” and that “‘Negroes’ were (...) lowering the standard of the English people.”¹⁹⁷ Yet the riots also directed the attention of national party leaders to opinion polls which showed that 80 percent of the public supported immigration controls.¹⁹⁸ As the demand for jobs dried up, there was a corresponding increase in calls for immigration control at a time where the number of immigrants

¹⁹¹ Ian R. G. Spencer, *British Immigration Policy since 1939: The Making of Multi-Racial Britain* (Routledge, 1997), 53.

¹⁹² R. Hansen, ‘The Politics of Citizenship in 1940s Britain: The British Nationality Act’, *Twentieth Century British History* 10, no. 1 (1999): 68, <https://doi.org/10.1093/tcbh/10.1.67>

¹⁹³ Philip Begley, *The Making of Thatcherism: The Conservative Party in Opposition, 1974-79* (Manchester University Press, 2020), 122.

¹⁹⁴ Zig Layton Henry (1992): “It was a considerable source of pride among many Conservatives that a British, subject from any part of the Empire and (Commonwealth) no matter what his colour or creed, could come to the mother country, serve in the armed forces or public service, stand for parliament, and enjoy the same rights and obligations as any other British citizen.”

¹⁹⁵ Begley, *The Making of Thatcherism*, 122.

¹⁹⁶ Liverpool also experienced anti-Jewish riots in 1947 and riots targeting Black residents in 1948.

¹⁹⁷ ‘Colour Bar As Election Issue’, *The Times* (London), 18 September 1958, Times Newspaper Archive.

¹⁹⁸ Roger Karapin, ‘The Politics of Immigration Control in Britain and Germany: Subnational Politicians and Social Movements’, *Comparative Politics* 31, no. 4 (1999): 428–29, <https://doi.org/10.2307/422238>

continued to grow, notably arrivals from India, Pakistan, and the West Indies.

During the 1960s and 1970s, both countries underwent dramatic immigration policy shifts, but in opposite directions. The USA abolished national-origin quotas in 1965, opening the door to Asian and Latin American immigration. Britain, meanwhile, introduced successive restrictions on Commonwealth migration (1962, 1968, 1971), narrowing the rights of Black and Asian migrants. Yet both moves were shaped by domestic racial politics: civil rights activism in the United States created pressure to liberalise, while post-imperial anxieties in Britain produced the opposite effect.

The 1962 Commonwealth Immigrants Act

The ethnic, racial, and cultural transformation of British society did not sit well with many British nationals, and concerns about a massive influx of migrants of colour from the Commonwealth led to new legislation. In the House of Commons, the Conservative Home Secretary Rab Butler announced a new bill of immigration with the following statement:

We all know that throughout the continuous evolution of the Commonwealth, citizens of member-States have always been free to come here and stay here as long as they like. This has been a cherished tradition of the Mother Country and there is little doubt that it has been an important link binding the Commonwealth together. But I sometimes wonder whether the House or the country realise what, in fact, this doctrine of the open door has involved.¹⁹⁹

In defending the proposed immigration restrictions, the Home Secretary argued that the sheer scale of potential immigration posed an unprecedented challenge to the nation's capacity:

The justification for the control which is included in this Bill, which I shall describe in more detail in a few moments, is that a sizeable part of the entire population of the Earth is at present legally entitled to come and stay in this already densely populated country. It amounts altogether to one-quarter of the population of the globe and at present there are no factors visible which might lead us to expect a reversal or even a modification of the immigration trend.²⁰⁰

In 1962, Harold Macmillan's Conservative government passed the Commonwealth Immigrants Act. This Act imposed a first wave of restrictions on the movement of Commonwealth migrants to the UK. This was the first significant restriction on immigration since the end of the Second World War and one that restricted access to British Citizenship. The law limited the movement of Commonwealth migrants into the United Kingdom by introducing a job voucher

¹⁹⁹ R. A. Butler, "Commonwealth Immigrants Bill," *Hansard*, House of Commons, 16 November 1961, vol. 649, col. 688, <https://hansard.parliament.uk/Commons/1961-11-16/debates/be2be54a-6786-4426-86df-72a6f183a482/CommonwealthImmigrantsBill>

²⁰⁰ *Ibid.*

system for colonial citizens applying for permanent residency in the UK after July 1, 1962. The voucher had to fall under one of three categories:

- having a confirmed job offer
- possessing valuable skills in short supply
- belonging to a restricted group based on the UK's labour market demands.

During a contentious House of Lords debate over the bill in March 1962, Viscount Hailsham provided his own summary of the objectives of the bill and the reason for its creation. He argued that immigration controls were necessary because Britain's desirability as a destination had led to such large numbers of arrivals that some regulation was inevitable. He contended that their own citizens had a sovereign right to control immigration, and that without such controls, race relations would inevitably deteriorate. The bill was presented as preserving liberal immigration policy by making it sustainable, noting that it maintained Commonwealth preference and would be applied humanely and selectively, with powers that might not even need to be used if circumstances improved.²⁰¹

Hugh Gaitskell, the Labour Party's leader in Parliament at the time (and leader of the opposition), called it "cruel and brutal anti-colour legislation".²⁰² Trinidad and Tobago-born journalist and activist Claudia Jones described it at the time as "a deliberate attempt to restrict the flow of people of colour to the UK from British colonies."²⁰³

Ian Spencer sees the 1962 law as a catalyst for Britain's multiracial society. While unintentional, it "ensured that foundation stones were laid and the Asian and black communities transformed into populations of substantial proportions."²⁰⁴ Rather than stopping or significantly reducing immigration, the legislation ultimately contributed to the development of Britain's multiracial society, a transformation that Enoch Powell would later condemn in his controversial 1968 "Rivers of Blood" speech..²⁰⁵ The law increased immigration in multiple ways:²⁰⁶

1. It led to a doubling of the Asian and black populations between 1960 and 1962. Half of those who arrived between 1945 and June 1962 (approximately 250,000) arrived during the two years just before the

²⁰¹ Viscount Hailsham, "Commonwealth Immigrants Bill," *Hansard*, House of Lords, 12 March 1962, vol. 238, c. 102, <https://hansard.parliament.uk/Lords/1962-03-12/debates/2820f0ed-6757-4fcf-817e-8917d4900d2e/CommonwealthImmigrantsBill>

²⁰² Gloucestershire County Council, "Key Moments in Race Relations Equality Legislation in the UK," last modified August 18, 2023, <https://www.gloucestershire.gov.uk/your-community/black-history-month/black-history-month-2020/race-equality-in-the-uk/key-moments-in-race-relations-equality-legislation-in-the-uk/>

²⁰³ *Ibid.*

²⁰⁴ Spencer, *British Immigration Policy since 1939*, *op.cit.*, 129.

²⁰⁵ Enoch Powell, "Rivers of Blood," speech delivered to the Conservative Political Centre, Birmingham, 20 April 1968.

²⁰⁶ Spencer, *British Immigration Policy since 1939*, 130–34.

passage of the 1962 Commonwealth Immigrants Act.

2. Secondly, it led many “temporary” settlers to stay permanently in the country. The fear of leaving and not being able to return caused many to change their strategy and make their residence in the UK permanent. This is paralleled by the United States, as well as other countries, which make immigration more difficult, unintentionally leading to a more permanent settlement. Furthermore, this led to family reunification, as those who decided to settle permanently began to bring in their families to join them.
3. The Act itself permitted family reunification, which, in turn, led to the growth of the immigrant population in the following years and decades.

Ultimately, the law created the system that generated significant black and Asian immigration into the United Kingdom. The goal of the law, which was to restrict immigration, certainly failed to live up to its objectives, as Spencer explains:

It is one of the great myths of recent British immigration history that the Act of 1962 brought a swift reduction in the number of Asian and black people settling in Britain; its influence as a stimulant to the growth of multi-racial Britain has been generally underplayed. It caused a reduction only in relation to the ‘bulge’ figures of 1960–2 which it did so much to create.²⁰⁷

Indeed between 1963 and 1989, the number of Asian and black immigrants entering the country stood somewhere between 30,000 and 50,000 every year. This steady influx of immigrants began to generate political tensions, particularly in areas with significant immigrant populations. For example, the West Midlands seat of Smethwick received national media attention in 1964. During that year’s general election, Conservative candidate Peter Griffiths, who had run a vehement anti-immigrant campaign, defeated Labour’s Patrick Gordon Walker, who had been a prominent pro-immigrant spokesperson. The Smethwick outcome was viewed as an indication of widespread support for immigration restrictions.²⁰⁸

The policies developed at this time were heavily dependent on what became known as the “numbers game.” Essentially, the numbers game works on the premise that the fewer black people live in Britain, the better race relations will be.²⁰⁹ The assumption that the presence of black people, rather than white people’s reactions to black people, is the basis of racial conflict is implicit in this view. Historian Robert Moore has argued that:

Once the debate is about numbers there are no issues of principle to be discussed, only how many? . . . The argument about numbers is unwinnable because however many you decide upon there will always be someone to

²⁰⁷ *Ibid.*

²⁰⁸ Karapin, ‘The Politics of Immigration Control in Britain and Germany’, *op.cit.*, 431.

²⁰⁹ In this context, “race relations” refers to the state-managed idea of social harmony between racial groups, defined primarily as the absence of visible conflict. Policymakers treated it as a numerical problem, assuming that fewer Black residents would automatically lead to smoother interactions, rather than addressing structural inequalities or the experiences of minority communities.

campaign for less and others for whom one is too many. Since you have admitted that black people are a problem in themselves, it is impossible to resist the argument for less of them.²¹⁰

Despite earlier opposition to the law, the Labour Party under Harold Wilson, in power since October 1964, slowly began to accept the law. In 1965, they even changed the rules to tighten restrictions for immigrants. In February that year, changes to the rules aimed to reduce “the evasion of immigration rules by taking powers to deport illegal immigrants, to tighten up the rules governing dependent relatives and to time-limit student visits.”²¹¹

In March 1965, the then spokeswoman on housing and land for the Conservative Party, Margaret Thatcher, declared that “[w]hatever their ideals no Government could have continued to ignore the tremendous pressures on housing and the social services caused by unlimited immigration.”²¹²

That same year, a government White Paper entitled *Immigration from the Commonwealth* announced the intention to abolish non-priority vouchers and to reduce “the total number of vouchers issued to those with a job offer or special skills to a maximum of 8,500 per year, 1,000 of which would be reserved for Malta.”²¹³ Despite the changes in rules and attempts to limit the number of arrivals, the arrival of immigrants increased after the 1965 rule changes, notably due to large numbers of dependants joining those who were already settled in the country.²¹⁴

As they no longer had the right of abode, Commonwealth citizens were detained in growing numbers, mostly prior to deportation.²¹⁵ However, detention also led to pushback, especially in the courts. The justice system aimed to limit unjust or abusive detention and guaranteed the right to *habeas corpus* for non-citizens:

In the face of rising numbers of administrative detainees, the common law’s traditional presumption against detention has been firmly restated as extending to foreigners. (...) Perhaps surprisingly, the legislature has not entered the detention arena, despite the political controversy around immigration being intense during this period. This may be explained by the fact that the courts have continued to allow the executive flexibility over the duration of detention and act mainly as a residual check in extreme or clearly arbitrary cases.²¹⁶

Race Relations Act 1965

As thousands of immigrants from Commonwealth countries settled in Britain,

²¹⁰Pam Nanda, ‘White Attitudes: The Rhetoric and the Reality’, in *Britain’s Black Population: A New Perspective*, ed. Ashok Bhat et al. (Ashgate Publishing Limited, 1993), 272.

²¹¹Spencer, *British Immigration Policy since 1939*, *op.cit.*, 135.

²¹²Margaret Thatcher, ‘Speech to Birmingham Conservative Women’, Birmingham, 23 March 1965, *Margaret Thatcher Foundation*, <https://www.margaretthatcher.org/document/101291>

²¹³Spencer, *British Immigration Policy since 1939*, *op.cit.*, 135.

²¹⁴Begley, *The Making of Thatcherism*, *op.cit.*, 123.

²¹⁵Wilsher, *Immigration Detention*, *op.cit.*, 79.

²¹⁶*Ibid.*, 80.

they encountered significant backlash from the existing population. By 1965, approximately one million immigrants lived in the UK,²¹⁷ and fear of the foreign other, especially those who were racially and culturally different to the white British population, led to numerous cases of discrimination throughout the country. In response, the British government passed two anti-discrimination laws. The first, the 1965 Race Relations Act, banned “racial discrimination in public places and made the promotion of hatred on the grounds of ‘colour, race, or ethnic or national origins’ an offence.”²¹⁸ To ensure fair practices, the law established a Race Relations Board with monitoring authority. But it drew criticism from both sides. For some it was not addressing the most significant problems, namely employment and housing. For others, it was curtailing the freedom of the native population and would ultimately lead to discrimination against the British people. In response to the former, the government passed the 1968 Race Relations Act, which outlawed discrimination in housing, employment and advertising.

At the same time, the language used to describe immigration began to shift over the course of the 1960s with a transition from *colour* to *culture*. According to Chiara Ricci, immigration was seen as a threat to British culture: “Caribbean, African and South Asian minorities were now constructed as an “alien wedge” endangering the cultural, moral, linguistic integrity of Britain – thus adding a further dimension to the “racial” superiority discourse.”²¹⁹

Commonwealth Immigrants Act 1968

The same year as the second Race Relations Act, the Labour government also passed a second Commonwealth Immigrants Act, six years after the first one. The law was quickly passed by Parliament in anticipation of a possible large number of asylum seekers from East African nations arriving in the UK.²²⁰ In a letter to *The Telegraph*, the former Under-Secretary of State at the Home Office, the Right Hon Dame Patricia Hornsby-Smith declared that:

For every Briton who wants to work abroad there are a hundred Europeans and a thousand coloured people who, given the chance, would stream into Britain. We, therefore, must have immigration control.²²¹

The 1968 law consolidated earlier restrictions and implemented a rule that British subjects would be free from immigration control only if they, or one of their parents or grandparents, had been born, adopted, registered or naturalised in the UK.

²¹⁷ R. B. Davison, ‘A Note on Commonwealth Migration to Britain in 1965’, *Social and Economic Studies* 15, no. 3 (1966): 275–77.

²¹⁸ Race Relations Act 1965, 8 & 9 Eliz. 2 c. 73, <https://www.legislation.gov.uk/ukpga/1965/73/enacted>

²¹⁹ Chiara Ricci, ““They Might Feel Rather Swamped”: Understanding the Roots of Cultural Arguments in Anti-Immigration Rhetoric in 1950s – 1980s Britain’, *Global Histories: A Student Journal* 2, no. 1 (2016): 40, 1, <https://doi.org/10.17169/GHSJ.2016.53>

²²⁰ Silverman, ‘Regrettable but Necessary?’, *op.cit.*, 1136.

²²¹ Dame Patricia Hornsby-Smith, ‘Letter to the Telegraph’, *The Telegraph*, 27 April 1968.

For the rest, a voucher-based system based on tight quotas was introduced. The law also gave further powers to the UK government and Home Office to limit the entrance of immigrants and established a new system of entry even for those who were British subjects (but not citizens of the UK). This exclusionary step removed citizenship rights from hundreds of thousands of citizens from the Commonwealth. The law inevitably (and intentionally) favoured white immigrants from the Commonwealth, as, according to Paul Gilroy, it “codified this cultural biology of ‘race’ into statute law as part of a strategy for the exclusion of black settlers.”²²²

While the government claimed that the bill was based on geography and not race, primary sources bring this into question. At the time of the bill, James Callaghan, the Home Secretary, told parliament: “I regret the need for this Bill. I repudiate emphatically the suggestion that it is racist in origin or conception or in the manner in which it is being carried out.”²²³ However, according to journalist Mark Lattimer, a confidential memorandum from the cabinet secretary, Sir Burke Trend to the prime minister, dated February 14, 1965, calls this into question. Trend wrote:

a reasonable case could be put up in reply to international criticism on the ground that the Asian community in East Africa are not nationals of this country in any racial sense and that the obligations imposed, for example, by the European Convention on Human Rights do not therefore apply.²²⁴

Importantly, Callaghan was also aware of the racial and cultural impact of immigration. A few weeks after the bill was passed, a memorandum that he penned stated that:

It is sometimes argued [...] that we can take a less serious view of the scale of immigration and settlement in this country because it could be, and currently is being, more than offset by total emigration. This view overlooks the important point that emigration is largely by white persons from nearly every corner of the United Kingdom, while immigration and settlement are largely by coloured persons into a relatively small number of concentrated areas. The exchange thus aggravates rather than alleviates the problem.²²⁵

In 1968, Enoch Powell, a Conservative MP and Shadow Defence Secretary at the time, drew widespread attention and criticism for his Rivers of Blood speech. Powell condemned the amount of immigration into the UK, particularly from the New Commonwealth, and opposed anti-discrimination legislation. He famously declared that:

²²² Paul Gilroy, *There Ain't No Black in the Union Jack: The Cultural Politics of Race and Nation*, (Univ. of Chicago Pr, 1991), 45.

²²³ Mr. James Callaghan, “Commonwealth Immigrants Bill,” *Hansard*, House of Commons, 27 February 1968, vol. 759, <https://hansard.parliament.uk/Commons/1968-02-27/debates/357f59e5-0cfa-4b26-8d66-24d179630fac/CommonwealthImmigrantsBill>

²²⁴ Mark Lattimer, ‘When Labour Played the Racist Card’, *New Statesman*, 22 January 1999, <https://www.newstatesman.com/long-reads/1999/01/when-labour-played-racist-card>

²²⁵ *Ibid.*

We must be mad, literally mad, as a nation to be permitting the annual inflow of some 50,000 dependants, who are for the most part the material of the future growth of the immigrant-descended population. It is like watching a nation busily engaged in heaping up its own funeral pyre.²²⁶

Powell's speech, while officially denounced by the leadership of the party, helped to highlight the Conservative Party's and the broader public's anti-immigrant sentiment.²²⁷ A few months later, in December 1968, Conservative Political Centre analysts were astonished by the results of a private study aimed to ascertain the views of 412 constituency groups:

327 wanted all immigration stopped indefinitely. A further 55 wanted 'strictly limited' input of dependants of people already in Britain, combined with a five year halt on immigration.²²⁸

The Immigration Appeals Act of 1969

In 1969, a new law was passed that provided the opportunities for relief from the restrictive policies of the British government. For the first time, the Act established a formal system for appealing immigration decisions. Up until this point in time, Commonwealth citizens had found they had few ways of fighting immigration proceedings. The 1969 Immigration Appeals Act gave Commonwealth citizens the right to appeal against a number of immigration proceedings:²²⁹

- Exclusion from the UK
- Conditions placed on their admission (e.g., limited stay)
- Deportation orders
- Refusal to revoke deportation orders
- Removal from the UK

The aim of the law was to provide a system of checks and balances and increase the fairness of the immigration system as a whole.²³⁰

The Harmondsworth Detention Unit

The 1969 Immigration Appeals Act led to the creation of the first two immigration detention centres, one at Harmondsworth, next to Heathrow Airport in

²²⁶ Enoch Powell, "Rivers of Blood," *op. cit.*

²²⁷ Vincent Latour and Romain Garbaye, 'Introduction: Du discours des « fleuves de sang » au Brexit: la tentation du repli britannique', in *What Shadows / Ce que les ombres...* (Presses universitaires du Midi, 2021), 10.

²²⁸ Ashok Bhat et al., eds, *Britain's Black Population: A New Perspective*, 2nd edn (Ashgate Publishing Limited, 1993), 273.

²²⁹ Immigration Appeals Act 1969, 1969 c. 21, 17 & 18 Eliz. 2, <https://www.legislation.gov.uk/ukpga/1969/21/contents/enacted>

²³⁰ "Immigration Appeals Bill," *Hansard*, House of Commons, 22 January 1969, vol. 776, cols. 489–567.

London and one at Dover Castle in Dover.²³¹ In 1974, a third short-term unit called the ‘Beehive’ was opened at Gatwick Airport.²³² The 1969 law expanded the Immigration Service and lengthened the amount of time immigrants were likely to be held in detention. In response, the government ordered the construction of the first Immigration Detention Centre that was situated outside of an airport or prison: Harmondsworth.²³³

Documents from the National Archives show that Harmondsworth was chosen as it was suitable for long-term detainment of migrants:

The detention quarters at the Government Buildings at Harmondsworth, however, are more spacious than other detention quarters provided at or near ports; the site is at some distance from London Airport and the detention quarters form a separate block with space outside for exercise. This accommodation is considered in all respect more satisfactory as a place of detention for persons who have to be kept in custody under the Aliens Order or the Commonwealth Immigrants Acts, for however long a period, than a prison, remand home or remand centre. The provision of this accommodation will make it unnecessary, save in exceptional circumstances, for passengers who have to be detained on arrival at London Airport to be removed to a prison. (21 May 1970, Legal Advisers Branch Whitehall)²³⁴

The creation of purpose-built detention centres provided the government with a new ‘solution’ to immigration, with the potential for administrative detention of foreign citizens.

The Harmondsworth Detention Unit still exists and is currently the largest Immigration Removal Centre in Britain.²³⁵ As the number of immigrants being detained increased in the following years and decades, the detention system expanded with institutions across the country to enable their incarceration.

3.9. The 1970s: Immigration, Race, and the Politics of Restriction

By the 1970s, both the United Kingdom and the United States were grappling with race issues. While the UK government was aiming to minimise or at least limit the number of black and Asian migrants in the country, the United States was establishing policies aimed at ending segregation and racial discrimination.

²³¹ Mary Bosworth and Sarah Turnbull, ‘Immigration, Detention, and the Expansion of Penal Power in the United Kingdom’, in *Extreme Punishment*, ed. Keramet Reiter and Alexa Koenig (Palgrave Macmillan UK, 2015), 3, https://doi.org/10.1057/9781137441157_4

²³² Bosworth, *Inside Immigration Detention*, *op.cit.*, 36.

²³³ Prior to the Immigration Appeals Act 1969, foreigners held under Immigration Act powers were housed in prisons or in a handful of rooms in major ports. (Bosworth, 2014, p.86.)

²³⁴ Home Office, *Memorandum: The Aliens (Places of Detention) Order (S.I. 1970/623)*, 21 May 1970, HO 344/186, The National Archives, Kew, Richmond, UK.

²³⁵ Number of people detained at Harmondsworth: in 2010 (1996), in 2011 (3493), in 2012 (2742)

The Latent Power of the 1971 Immigration Act

During the 1970 election, the Labour Party claimed to have brought immigration under control:

The rate of immigration [was] under firm control and much lower than in past years, we shall be able still more to concentrate our resources in the major task of securing good race relations.²³⁶

The Conservatives, however, had a harsher stance on migration and proposed more restrictive policies:

Our policies will reduce the causes of racial tension, and we will ensure that there will be no further large scale permanent immigration.²³⁷

The Conservatives won the election that year and the Edward Heath government decided to overhaul the immigration system. This led to the passage of the Immigration Act 1971 by Parliament against the combined opposition of the Labour and Liberal Parties. It replaced the 1962 and 1968 Commonwealth Immigrants Acts and created a new system for controlling immigration.

The Immigration Act of 1971 is the legal bedrock of modern British immigration control, and it provides the authority for detention.²³⁸ This landmark Act consolidated previous immigration and aliens legislation into a single, comprehensive framework.²³⁹ The core statutory power to detain is located in Schedule 2 of the Act, which grants immigration officers broad authority to control the entry of non-citizens.²⁴⁰ Specifically, Paragraph 16 of Schedule 2 empowers an immigration officer to detain a person who may be required to submit to an examination, pending that examination and a decision on whether to grant or refuse them leave to enter.²⁴¹ It also authorises the detention of an individual pending a decision on whether to give directions for their removal from the UK, and pending that removal.²⁴²

Crucially, this statutory power was not time-limited, creating the legal potential for prolonged confinement. However, prior to 1979, this power was exercised with considerable restraint. Detention was primarily a short-term measure used at ports of entry, such as Heathrow or Dover, for individuals who were refused leave to enter and were awaiting an imminent return flight, or for those pending deportation following a

²³⁶ Labour Party, 1970 Labour Party Manifesto, <https://web.archive.org/web/20110808143501/http://www.labour-party.org.uk/manifestos/1970/1970-labour-manifesto.shtml>

²³⁷ Conservative Party, 1970 Conservative Party Manifesto, accessed October 13, 2025, <https://www.conservativemanifesto.com/1970/1970-conservative-manifesto.shtml>

²³⁸ Samuel Malby, 'From Borders to Cells: The Evolution of British Immigration Detention, 1905-1970', *Mémoire(s), Identité(s), Marginalité(s) Dans Le Monde Occidental Contemporain. Cahiers Du MIMMOC*, no. 31 (May 2025): 31, <https://doi.org/10.4000/1406t>

²³⁹ J. M. Evans, 'Immigration Act 1971', *The Modern Law Review* 35, no. 5 (1972): 508–24.

²⁴⁰ Immigration Act 1971 (1971), <https://www.legislation.gov.uk/ukpga/1971/77/contents>

²⁴¹ *Ibid.*

²⁴² *Ibid.*

criminal conviction.²⁴³ The number of individuals detained was small, and a purpose-built “detention estate” did not exist.²⁴⁴ Those detained were typically held in police cells or in small-scale facilities, such as the Harmondsworth detention unit near Heathrow Airport, which opened in 1970 with limited capacity.²⁴⁵ The prevailing administrative ethos, at the time, was that detention was a regrettable but necessary temporary measure to facilitate removal, not a tool of deterrence or a routine instrument of migration management.²⁴⁶

The law also provided assistance for immigrants who wished to return home and aimed at ending black ‘primary’ immigration. The Act had a huge impact on immigration from the Commonwealth. Many who had previously had access to the UK found themselves facing far tougher entry requirements. The law defined the ‘right of abode’ as the unrestricted entitlement to live in the UK. This right was limited to only certain groups, notably:

- British citizens by birth or naturalisation
- Commonwealth citizens with a parent or grandparent born in the UK
- People who had been settled in the UK for a specific period (usually five years)

In theory the second element favoured white immigration from places like Australia, New Zealand and Canada over places like India, Pakistan and the West Indies (however very few Australians, New Zealanders or Canadians settled in the UK). Importantly, the Act included a formal and legal basis for the detention of migrants. It legalised detention in a number of cases, including pending:²⁴⁷

- the end of the legal review procedure
- an expulsion order
- enforcement of an expulsion order
- expulsion

The law also provided the government with “additional powers of deportation and made deportable offences retrospective.”²⁴⁸

Joining the EEC (1973)

The law was also passed in the context of the UK joining the European Communities (EC) on January 1, 1973. The possibility of free movement of people within the EC meant that the UK government had to focus on non-EC nationals, but

²⁴³ Bosworth, *Inside Immigration Detention*, *op.cit.*, 22.

²⁴⁴ Malby, ‘From Borders to Cells’. *op.cit.*

²⁴⁵ Bosworth, *Inside Immigration Detention*, *op.cit.*, 22.

²⁴⁶ Silverman, ‘Regrettable but Necessary?’ *op.cit.*

²⁴⁷ Silverman, ‘Regrettable but Necessary?’, 1138.

²⁴⁸ M. D. A. Freeman and Sarah Spencer, ‘Immigration Control, Black Workers and the Economy’, *British Journal of Law and Society* 6, no. 1 (1979): 69–70, <https://doi.org/10.2307/1409706>

also clarify what rights Commonwealth citizens might have in the EC. There were no exceptions to immigration control for Commonwealth citizens or Citizen of the UK & Colonies Passport (CUKC) holders unless they were considered “patrials.” They were treated as if they were aliens from any other country in the world:

The Immigration Act of 1971 (...) destroyed finally the “anomaly” that Commonwealth citizens were able to settle in this country whereas aliens could only come as temporary workers. The 1971 Act abolished the distinction, for immigration control purposes, between Commonwealth citizens and other aliens.²⁴⁹

The combined effect of the 1971 Immigration Act and the 1972 European Communities Act was actually to increase immigration to Britain, but because it primarily involved Europeans, it met far less political opposition.

According to Historian Daniel Wilsher, the legal framework for the immigration system and detention system still corresponds in large part to the one created in 1971. But as he shows, the law itself was not necessarily the immediate catalyst for significant increases in the detention of immigrants:

Despite the long-standing existence of powers to detain aliens and (since 1962) Commonwealth citizens, detention was the exception until the 1980s. The statistics from after the 1971 Act came into force, for example, record that only ninety-five persons were detained in 1973, 138 in 1974, 188 in 1975, rising to 1,304 in 1980. The figures were stable thereafter until the mid-1980s when detentions began to rise again as new asylum-seeking groups were held on arrival. In 1987 there were 2,166 detentions and by 1995 the total reached 10,240.²⁵⁰

Philip Begley claimed that the 1971 law had little effect in reducing immigration, and when Labour won the first 1974 election, “many questions about the impact and best means of controlling immigration still remained.”²⁵¹

The decision to join had been years in the making and the culmination of a long and complicated process. The European Coal and Steel Community was founded in 1951, and later expanded to become the European Economic Community (EEC) in 1957 with the Treaty of Rome.²⁵² But Britain did not take part in either. It was far more focused on its relationship with other members of the Commonwealth and its “special relationship” with the United States. However, as the removal of trade barriers between member states helped the bloc’s economic growth, the British began considering the economic and political potential of joining the group.²⁵³ The UK formally applied to join the EEC in 1961, but their application was vetoed by French President Charles de Gaulle twice. De Gaulle’s resignation in 1969 gave new hope to the project and

²⁴⁹ Freeman and Spencer, ‘Immigration Control, Black Workers and the Economy’, *op.cit.*, 69-70.

²⁵⁰ Wilsher, *Immigration Detention*, *op.cit.*, 88.

²⁵¹ Begley, *The Making of Thatcherism*, *op.cit.*, 124.

²⁵² European Union, ‘History of the European Union: 1945-59’, accessed 27 May 2024, https://european-union.europa.eu/principles-countries-history/history-eu/1945-59_en

²⁵³ The original 6 members were France, West Germany, Italy, Belgium, the Netherlands and Luxembourg.

Conservative Prime Minister Edward Heath fought for the UK to be accepted. The terms were agreed upon in 1971, the UK would join the EEC, adopt the Common Agricultural Policy and contribute to the bloc's budget. On January 1, 1973, the UK joined the EEC along with Ireland and Denmark.

However, the UK population was divided over the question. Some argued that joining the EEC would threaten British sovereignty and increase costs. The Labour manifestos in both 1974 elections promised to renegotiate the UK's terms of membership of the European Economic Community and then ask the people's opinion: "the people should have the right to decide the issue through a General Election or a Consultative Referendum."²⁵⁴ Winning both 1974 elections (the first without a majority, the second with a small majority), the Labour government began renegotiating the terms of the UK's involvement in the EEC.

A referendum held in 1975 (two years after the UK had joined) asked the British public whether they wanted to stay in the EEC:

The Government has announced the results of the renegotiation of the United Kingdom's terms of membership of the European Community. Do you think the United Kingdom should stay in the European Community (the Common Market)?

YES / NO

The results were clear, 2/3 of the population voted to remain in the EEC²⁵⁵:

Choice	Votes	%
YES	17,378,581	67.23%
NO	8,470,073	32.77%

But this result also showed that over 30% of the population was sceptical about the European experiment, a scepticism that ebbed and flowed throughout the end of the 20th century and the beginning of the 21st. This Euroscepticism intensified as the EEC became the European Union, and the political and legal ties grew. Many feared that the UK was losing its sovereignty and control over its own laws and borders.

When it comes to immigration, joining the EEC had limited immediate consequences, but quickly set the stage for long-term increases in immigration from Europe. An initial 5-year transitional period limited free movement of labour. But once that period had ended, free movement of labour was one of the key principles of the EEC. This led to a gradual increase in immigration to the UK from countries in the

²⁵⁴ Labour Party, 1974 (February) *Labour Party Manifesto*, <https://web.archive.org/web/20150323062844/http://www.labour-party.org.uk/manifestos/1974/Feb/1974-feb-labour-manifesto.shtml>

²⁵⁵ Vaughne Miller, *The 1974-75 UK Renegotiation of EEC Membership and Referendum*, Briefing Paper no. 7253 (House of Commons Library, 2015), 25, <https://commonslibrary.parliament.uk/research-briefings/cbp-7253/#fullreport>

EEC/EU, notably citizens of Eastern European nations, after 2004.²⁵⁶ While immigration did help boost the UK's economy, it also led to a rise in tensions between the British population and newcomers. Many felt that that immigrants were competing for jobs and draining resources from public services, especially healthcare and housing. The establishment of free movement within the EU and the creation of the Schengen Area in 1985 (which the UK refused to join) have themselves created issues within the EU when dealing with immigration. And so, despite a number of legislative changes and restrictive policies since the end of the Second World War, the UK has gradually gone "from being a country of net emigration to one of net immigration."²⁵⁷

The 1974 General Election

In their February 1974 manifesto, the Conservatives claimed they had

provided [through the 1971 Immigration Act] the country with the necessary means for preventing any further large scale permanent immigration and also with important new powers for preventing illegal immigration.²⁵⁸

Their political platform showed them using the 'numbers game' to explain why, in their opinion, balance was required for good race relations:

When we came to power in 1970, there were about 1.5 million coloured people lawfully and permanently settled in this country. The great majority are here to stay. Their children are being born and brought up here and Britain is the only country they know as their own. The harmony of our society in the future depends to an important extent on the white majority and the coloured minority living and working together on equal terms and with equal opportunities. We shall therefore pursue positive policies to promote good race relations. (...) The first need for this purpose was to reassure everyone that new immigration was being brought down to a small and inescapable minimum.²⁵⁹

Labour had little to say on immigration, promising simply to review the Nationality law in order to ensure "immigration policies are based on citizenship, and in particular to eliminate discrimination on grounds of colour," as well as stating that they opposed "all forms of racial discrimination and colonialism."²⁶⁰ As previously mentioned, Harold Wilson led Labour to victory in both elections in 1974. That same year, an amnesty was offered to illegal entrants who were Commonwealth citizens or citizens of Pakistan and who had arrived in the country before January 1, 1973.²⁶¹ This

²⁵⁶ On 1 May 2004, Cyprus, Czechia, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia joined the EU.

²⁵⁷ Timothy J. Hatton, 'Explaining Trends in UK Immigration', *Journal of Population Economics* 18, no. 4 (2005): 719, <https://doi.org/10.1007/s00148-005-0015-1>

²⁵⁸ Conservative Party, 1974 (February) Conservative Party Manifesto, <http://www.conservativemanifesto.com/1974/Feb/february-1974-conservative-manifesto.shtml>.

²⁵⁹ *Ibid.*

²⁶⁰ Labour Party, 1974 (February) Labour Party Manifesto, *op. cit.*

²⁶¹ The Home Secretary made an announcement in reply to a written question in the House of Commons on 11 April 1974.

was followed by a second amnesty four years later.

The Right Approach

In the Conservative Party's Policy Statement: *The Right Approach*, published in 1976, the Tories focused on the need to reduce immigration numbers:

our capacity to provide a home and future for immigrants and their families is not limitless. (...) the maintenance of racial harmony requires an immigration policy which can fulfil the two following criteria. First, there must be an immediate reduction in immigration. Second, there must be a clearly defined limit to the numbers of those to be allowed into this country.²⁶²

In an ITN interview, Margaret Thatcher was asked whether her new policy would mean dependents of already settled immigrants would be refused entry into the country. She asserted that it was first key to understand how many potential dependents were actually out there. To do so she wanted to create a dependents register: "if that indicated a very large number under present law were entitled to settle, then we should have to change the law or have them in on a very small quota each year."²⁶³ She insisted that this decision was for economic reasons and pointed to the unemployment rate at the time: "we've six per cent unemployment. We cannot go on taking people at the rate we have been."²⁶⁴

Amnesties and Opposition

In May 1976, the *Daily Mail* ran a front-page story about Enoch Powell's disclosure, in the House of Commons, of a confidential report on Asian immigration, named the Hawley Report.²⁶⁵ The report showed that an increasing number of immigrants were entering the country illegally, both by abusing the system and by fabricating the necessary documents. This led to calls for further restrictions on immigration. However, the following year, in November 1977, an amnesty was offered to certain immigrants who had "entered the United Kingdom illegally by deception before 1976."²⁶⁶ According to the Secretary of State for the Home Department, Merlyn Rees, "between 29th November 1977 and 17th January 1978 25 people applied," of

²⁶² Conservative Central Office, *The Right Approach: A Statement of Conservative Aims* (London: Conservative Central Office, October 1976).

²⁶³ Margaret Thatcher and Julian Haviland, ITN, 'TV Interview for ITN News at Ten (Launching The Right Approach)', 4 October 1976, *Margaret Thatcher Foundation*, <https://www.margaretthatcher.org/document/103104>

²⁶⁴ *Ibid.*

²⁶⁵ Stuart Hall et al., *Policing the Crisis: Mugging, the State, and Law and Order*, 2nd edn (Palgrave Macmillan, 2013), 329-330.

²⁶⁶ Merlyn Rees, "Illegal Immigrants," *Hansard*, Written Answers, House of Commons, vol. 942, 19 January 1978, <https://hansard.parliament.uk/commons/1978-01-19/debates/1c05bb42-592a-4ca0-ae77-08395e5ff346/IllegalImmigrants>

which less than half had been given amnesty by the latter date.²⁶⁷ The final deadline for both amnesties was the end of 1978. The scale of these amnesties differed greatly from the one offered in the US in 1986 as part of the Immigration Reform and Control Act (see subsequent chapters).

In February 1978, Margaret Thatcher, the leader of the Conservative Party, criticised the amnesties, stating that “they did not help to uphold the law and they were not fair to those waiting in the queue.”²⁶⁸ She also declared the need for an end to immigration in the UK:

I do not believe we have any hope of promoting the sort of society which we want unless we are to follow a policy which is clearly designed to work towards an end of immigration as we have seen it in this country in the postwar years. I believe there can be honestly no question other than facing this harsh and realistic fact. That is why we have to speak out loudly and clearly. We have to work towards the ending of immigration in this country and we have to have the policies designed to do so.²⁶⁹

This speech followed the notorious Margaret Thatcher interview a few days earlier, in which she had claimed that the “British people were afraid that they might be ‘rather swamped by people with a different culture.’”²⁷⁰ In that same interview, she said that:

Every country can take some small minorities and in many ways they add to the richness and variety of this country. The moment the minority threatens to become a big one, people get frightened.

Thatcher’s comments received significant media coverage and immediate backlash. According to Philip Begley, “condemnation was swift and came from a wide range of voices including Labour MPs, race relations experts and Bishops.”²⁷¹ But Thatcher’s remarks were intentional, and even though they failed to convey any specific policy changes, they announced quite clearly her position on immigration. Begley called her remarks “symbolic, dog whistle politics in its purest form.”²⁷²

During a debate in the House of Lords in 1978, the pro-immigration Labour member Lord Fenner Brockway asked the government to reconsider its position on the treatment of immigrants, notably in cases of “illegal immigration.” He argued that the government system failed to live up the “fundamental principles of human rights and of accepted judicial practice”:

First, if an immigration officer concludes that an immigrant has committed an offence, the person can be arrested without a warrant and imprisoned, with no opportunity to apply for bail, and with no limit of the time in detention. He can be imprisoned not by a decision of a court but by the

²⁶⁷ *Ibid.*

²⁶⁸ Margaret Thatcher, ‘Speech to Young Conservative Conference’, Harrogate, 12 February 1978, <https://www.margaretthatcher.org/document/103487>

²⁶⁹ *Ibid.*

²⁷⁰ Margaret Thatcher, ‘TV Interview for Granada World in Action’, *op. cit.*

²⁷¹ Begley, *The Making of Thatcherism*, *op.cit.*, 131.

²⁷² *Ibid.*

decision of a civil servant. Secondly, if the intervention of the courts is sought, they refuse to act unless the accused can prove his innocence. The cherished principle of “innocent until proved guilty” is reversed.²⁷³

One of his main concerns was the length of detention for some immigrants. While some were detained for only a few hours or days, many were being held for extended periods:

In the last three months 102 persons were detained in prison as illegal immigrants under the authority of an immigration officer, awaiting the Home Secretary’s decision on removal. Of these, 54 have been detained for one month or less, 22 for two months or less, 14 for three months or less, six for four months or less, and six for more than four months. Indeed, the longest period was almost 11 months in prison without trial, without the opportunity of bail, without knowing how long they were to be kept there, on the decision, not of a court, but of a civil servant.²⁷⁴

This concern about detention length and the rules that curtailed detention was echoed by Lord Avebury, a Liberal member of the House of Lords:

people detained under the Immigration Act powers are unique among the prison population in that their future is entirely uncertain. Everybody else knows when he is next to appear in court or when his is to be released on completion of his sentence. The person detained under the Immigration Act powers has not the faintest idea when the Secretary of State will get around to considering his representations, if indeed he has been lucky enough to find anybody to make them on his behalf. The degree of uncertainty which is facing detainees in this position is undoubtedly a source of great distress and anxiety, and it is not surprising that some of them emerge from their ordeal suffering from severe mental ill health.²⁷⁵

Pushback from Viscount Colville of Culross and Lord Wells-Pestell saw them focusing on the fact that those detained for an extended period were usually in complex situations. Lord Wells-Pestell focused on the fact that immigration officers were simply applying the law as it was written in the 1971 Act. He suggested that those unhappy with the law could also propose amendments:

There is a good deal of criticism—and it is made repeatedly—about the actions taken by immigration officers. But I think we ought to be clear about one thing: they are acting in accordance with what is laid down in the Immigration Act 1971. If we do not like it, we ought to be doing something about it. I say this very kindly to my noble friend Lord Brockway and to the noble Lord, Lord Avebury. If this Act is really open to question—and I am not saying that it is not—it would be a good thing if people who feel deeply concerned about it got together and sought to amend it.²⁷⁶

A few months later, at the 1978 Conservative Party Conference, Margaret Thatcher declared that her party was going to reduce immigration into the UK:

²⁷³ *HL Deb*, 9 June 1978, vol. 392, col. 1673.

²⁷⁴ *Ibid.* col. 1674.

²⁷⁵ *Ibid.* col. 1677.

²⁷⁶ *Ibid.* col. 1687.

It is true that Conservatives are going to cut the number of new immigrants coming into this country, and cut it substantially, because racial harmony is inseparable from control of the numbers coming in.²⁷⁷

Immigration was an issue at the forefront of British politics, and Thatcher was at the head of the anti-immigration fight.

4. Conclusion: Historical Legacies of Immigration Control

Looking across these two national trajectories, the United States and the United Kingdom followed different chronological paths but ultimately converged on similar logics of immigration control and detention. In the US, immigration was central from the start, shaping the very nation-building project, but policies oscillated between openness and restriction. In the UK, immigration policy developed later, initially shaped by the legal distinction between “subjects” and “aliens,” and later by the legacies of empire and decolonisation. Despite these differences, both countries reveal three common patterns:

- immigration control emerged as a reactive response to perceived crises
- detention and exclusion were normalised through wartime experiences
- once granted, powers of control were rarely rolled back.

By the late twentieth century, both Britain and America had established detention regimes that reflected not only domestic anxieties about race, labour, and security but also their shared status as global powers and magnets for migration.

The United States, from the late nineteenth century, embedded restrictionism into its national framework, experimenting early with quotas, exclusions, and administrative detention.²⁷⁸ By contrast, Britain entered the twentieth century with a longstanding presumption of free movement, only gradually building a system of immigration control through the Aliens Act of 1905 and wartime internments.²⁷⁹

Despite these different starting points, both systems share recurring themes. Each state expanded its authority gradually, often presenting new measures as temporary or exceptional but rarely relinquishing powers once acquired.²⁸⁰ In the US, the tension between parole and detention reflected a legal culture that prioritised administrative discretion but paved the way for mass detention when political conditions shifted in the 1980s. In the UK, the “latent power” of the 1971 Immigration Act demonstrates how authority to detain existed long before it became a routine

²⁷⁷ Margaret Thatcher, ‘Speech to Conservative Party Conference’, Speech, Brighton, 13 October 1978, <https://www.margaretthatcher.org/document/103764>

²⁷⁸ Young, *Forever Prisoners*, *op.cit.*, 3.

²⁷⁹ Silverman, ‘Regrettable but Necessary?’, *op.cit.*, 1135.

²⁸⁰ Michael Flynn, ‘There and Back Again: On the Diffusion of Immigration Detention’, *Journal on Migration and Human Security* 2, no. 3 (2014): 170.

practice.²⁸¹ Both countries were shaped by broader contexts, Cold War geopolitics and labour disputes in the US, imperial decline and post-colonial migration in the UK, yet these pressures pushed them in a similar direction: the normalisation of detention.

The comparative picture, therefore, is one of divergence in timing but convergence in outcome. Where the US moved swiftly from restrictionism to detention, Britain advanced more cautiously and incrementally. Nevertheless, both histories illustrate a common dynamic: once states acquire coercive powers over migrants, these powers tend to expand and endure, even when initially justified as exceptional. This trajectory helps explain why, by the late twentieth century, both countries had embraced detention not as an anomaly but as a cornerstone of immigration control.

The historical roots of immigration detention in both the US and the UK intertwine with anxieties about border control. These policies are often shaped by underlying concerns about race, ethnicity, culture, and national identity. Over time immigration policy has also merged with policies to deal with crime, terrorism and national security, as policy-makers have responded to moments of crisis and panic by passing laws and creating what Zolberg calls an “immigration regime.”²⁸² As he argues, these regimes, once created, fight to remain and aim to stifle reform:

Once they have come into being, a protracted process spread over a half-century or so, these regimes acquire inertial power by way of the sheer weight of established institutions and of the interests of certain actors in preserving the status quo, turning attempts to change policy into an uphill struggle and thereby shaping the subsequent course of history, in keeping with the notion of “path dependency.”²⁸³

Before 1979, both the UK and US possessed broad statutory powers to detain migrants, but the prevailing practice in each country was one of restraint. In the US, a deeply institutionalised culture of release via parole made detention exceptional. In the UK, detention was legally possible but administratively discouraged, used mainly at ports of entry or pending deportation. Both cases illustrate what might be called dormant carceral potential, as the law permitted expansive use of detention, but political, cultural, and bureaucratic practices constrained it. This latent capacity was crucial, as later legislative shifts could activate powers that already existed.

As the following chapters will show, by the late twentieth century, the trajectories of Britain and the United States had begun to converge again. Despite their different starting points with the US as a long-standing country of immigration and Britain as a latecomer shaped by decolonisation, both increasingly relied on detention, deportation, and restrictive laws to manage immigration. The globalisation of migration pressures, racialised fears, and the securitisation of borders drew the two systems into parallel, even as their histories reveal distinct legacies. In aiming to deal

²⁸¹ Hatton, ‘Explaining Trends in UK Immigration’, *op.cit.*, 719.

²⁸² Zolberg, *A Nation by Design*, *op. cit.*, 19.

²⁸³ *Ibid.*

with immigration, governments have significantly expanded the detention capacities of both countries since the 1980s. These systems have not grown in a linear fashion, nor was this growth always intentional or controlled. But as the ability to detain immigrants has grown, both nations have used it.

Chapter 2:

Legislative Foundations of Immigration and Detention

1. Introduction

The period between 1979 and 2001 marks the foundational era for the modern systems of mass immigration detention in the United Kingdom and the United States. In 1979, the practice was a marginal feature of immigration control in both nations. By 2001, however, what was once an exceptional measure had transformed into a sprawling carceral enterprise. This transformation was not an accidental or passive response to shifting migration patterns. It was the product of deliberate and calculated legislative choices that reflected a profound ideological shift in Anglo-American politics.

Legislation in both the United Kingdom and the United States in the 1980s and 1990s fundamentally reshaped their respective legal landscapes of immigration control. In stark contrast to the UK's incremental and administrative path, the United States underwent a rapid and revolutionary transformation of its immigration detention system. The laws appeared different in their immediate aims with those in the 1980s focusing on a comprehensive redefinition of nationality (British Nationality Act) in the UK, and the laws in the USA combining a grand bargain of amnesty with enforcement (Immigration Reform and Control Act) and criminalising immigrants (Anti-Drug Abuse Acts). While the 1986 Immigration Reform and Control Act initially sought to address immigration through legalisation and employer sanctions, the subsequent political backlash and perceived enforcement failures created the conditions for a powerful "moral panic"¹ around the figure of the "criminal alien"² (a legal and political construct referring to non-citizens who are portrayed or classified as criminals on the basis of real or minor offences and thus deemed deportable) to be translated into a durable and rigid legal architecture through watershed legislation in 1996.³ However, they served a common purpose: to legally construct, differentiate, and regulate the "alien" subject. This process of legal redefinition was required for the expansion of detention powers. In the 1980s, the UK aimed to accomplish this through a rewriting of national identity that excluded certain categories of people and creating a system of internal differentiation, while the US pursued a politically expedient and somewhat contradictory strategy of simultaneous legalisation and enhanced enforcement and punitivity, which divided the immigrant population into undocumented and documented or legal and illegal and led to the slow fusing of immigration law with the criminal justice system. This new legal framework, a hallmark of the 'crimmigration' phenomenon, explicitly merged the logics of criminal

¹ A widespread social anxiety or exaggerated public reaction to a perceived threat to societal values or security.

² Judith Ann Warner, 'The Social Construction of the Criminal Alien in Immigration Law, Enforcement Practice and Statistical Enumeration: Consequences for Immigrant Stereotyping', *Journal of Social and Ecological Boundaries*, 2005, 68.

³ Joshua Linder, 'The Amnesty Effect: Evidence from the 1986 Immigration Reform and Control Act', *The Public Purpose* 9 (Spring 2011).

punishment and immigration control, introducing mandatory detention, expanding the definition of deportable crimes to an unprecedented degree, and stripping the judiciary of its traditional oversight role.⁴ The result was the creation of the world's largest and most punitive immigration detention system.

This chapter argues that between 1979 and 2001, the United Kingdom and the United States constructed distinct but converging legislative frameworks that transformed immigration detention from an exceptional measure into a normalised and central tool of migration management. The UK's approach was characterised by a gradual, administratively-driven expansion of discretionary executive power, creating a carceral-assistive model aimed primarily at managing and processing asylum flows. In contrast, the USA's path was a radical 'cimmigration' turn, culminating in legislation in 1996 that explicitly and rigidly linked migration to criminality and mandated detention, thereby stripping the executive and judiciary of discretion.

2. The 1980s: Redefining the 'Alien'

The legislative architecture of belonging in both the United States and United Kingdom during the 1980s reveals divergent strategies for managing migration and citizenship in response to distinct geopolitical pressures. The US Refugee Act of 1980 and Immigration Reform and Control Act of 1986 exemplified America's approach to contemporary migration management through temporal demarcation, establishing cut-off dates that distinguished between legitimate refugees and economic migrants while simultaneously regularising undocumented populations already present. Conversely, the British Nationality Act of 1981 pursued post-colonial consolidation by redefining citizenship through ancestral criteria, effectively restricting Commonwealth migration while preserving preferential access for those with British genealogical ties. This enhanced a trend introduced in the 1968 and 1971 Immigration Acts. These contrasting legislative frameworks illuminate fundamentally different anxieties: Britain's post-imperial concerns centred on managing the demographic consequences of decolonisation and maintaining cultural continuity, while America's regional geopolitical considerations focused on Cold War refugee flows and managing labour migration from neighbouring countries. The temporal versus ancestral basis of these reforms demonstrates how national belonging is legislatively constructed in response to perceived threats to social cohesion and political stability.

2.1. The Dualism of Amnesty and Enforcement in the USA

The 1980 Refugee Act

⁴ *Antiterrorism and Effective Death Penalty Act of 1996*, Pub. L. No. 104–132, 110 Stat. 1214 (1996).

The 1980s began with a new law that reformed the US' system for dealing with refugees: the Refugee Act of 1980. While not related directly to detention or deportation, it adopted the United Nations' refugee definition and gave more power to the President:

any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (...) in such special circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.⁵

However, in practice, geopolitical considerations also held prime importance in deciding immigration policy, notably who were "genuine" refugees, and who were not. In the context of the Cold War, the United States was far more generous than after the collapse of the Soviet Union. From the end of World War II through the late 1970s, U.S. refugee policy was fundamentally shaped by Cold War strategic interests rather than humanitarian concerns. This "realist" approach was clearly demonstrated in the contrasting treatment of refugees from communist versus non-communist countries.⁶ For example, after the 1956 Hungarian Revolution, the U.S. quickly admitted over 38,000 Hungarian refugees fleeing Soviet repression, while showing little interest in refugees from right-wing dictatorships in Latin America.⁷ For example, Civil Wars ravaged both Salvador (1979-1992) and Guatemala (1960-1996) during the 1980s, but as their governments were supported by the US, asylum seekers from those countries were systematically denied.⁸ On the contrary, asylum seekers from Nicaragua were generally accepted as the country's US-supported right-wing rebels were aiming to overthrow the left-wing government.⁹ The political context heavily influenced immigration decisions. When those asylum claims were rejected, and sometimes while they were being decided, detention was used to hold immigrants. Detention was no longer a temporary solution but part of the government's strategy.

⁵ *Refugee Act of 1980*, Pub. L. No. 96-212, 94 Stat. 102 (1980).

⁶ Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Harvard University Press, 2006), 18.

⁷ Dwight D. Eisenhower, "White House Statement on the Termination of the Emergency Program for Hungarian Refugees," December 28, 1957, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/white-house-statement-the-termination-the-emergency-program-for-hungarian-refugees>

⁸ Michael J McBride, 'The Evolution of US Immigration and Refugee Policy: Public Opinion, Domestic Politics and UNHCR', *New Issues in Refugee Research* Working Paper No. 3 (May 1999).

⁹ *Ibid.*

Similarly, following the Cuban Revolution, the U.S. eagerly welcomed Cuban refugees as part of its anti-communist strategy, establishing the Cuban Refugee Program in 1961 and admitting hundreds of thousands of Cubans over the following decades.¹⁰ The Refugee Act of 1980 marked a theoretical shift toward alignment with international humanitarian standards, adopting the UN's definition of refugee and establishing a more standardized admission process. The Act increased the annual ceiling for refugees from 17,400 to 50,000 and set up a system that would allow Congress and the President to adjust the refugee ceiling regularly to be able to react to unexpected events and crises (something they have done regularly ever since). This law, however, also created further obstacles for certain national groups who had received more favourable treatment by the American government, notably Cubans.

Political considerations continued to dominate actual policy implementation. Vietnamese refugees received preferential treatment due to American involvement in Vietnam, while those fleeing U.S.-allied dictatorships in Guatemala and El Salvador faced much higher barriers to asylum in the 1980s. Jewish refugees from the Soviet Union also received special consideration due to strong domestic constituency pressure from Jewish-American organisations and lawmakers.

In a Statement on United States Immigration and Refugee Policy from July 1981, the Reagan administration promised to continue to welcome “peoples from other countries” while ensuring “adequate legal authority to establish control over immigration”. They promised to “work towards a new and realistic immigration policy” that would be fair to Americans while also providing opportunities for those who seek new lives in America.¹¹ This ultimately led to bipartisan immigration reform, notably in 1986.

During the early Reagan years, an economic crisis in Latin America, and notably Mexico, led Mexican workers to travel across the border into the United States, in search of employment. This increased immigration of Mexican labourers led to new legislation. Dealing with both legal and illegal immigration, it aimed at giving the country better control of its borders. In the early 1980s, there was widespread consensus among lawmakers and the executive that the 1965 immigration law was obsolete. They sought a replacement with a more comprehensive immigration framework backed by increased federal resources.¹² This led to a slow process that aimed to renew the immigration system.

The complex search for immigration reform manifested through numerous government initiatives, including the influential Select Commission on Immigration

¹⁰ Jorge Duany, ‘Cuban Communities in the United States: Migration Waves, Settlement Patterns and Socioeconomic Diversity’, *Pouvoirs Dans La Caraïbe*, no. 11 (January 1999): 78, 11, <https://doi.org/10.4000/plc.464>

¹¹ Ronald Reagan, “Statement on United States Immigration and Refugee Policy,” July 30, 1981, *Ronald Reagan Presidential Library*, <https://www.reaganlibrary.gov/archives/speech/statement-united-states-immigration-and-refugee-policy>

¹² Zolberg, *A Nation by Design*, *op.cit.*, 340

and Refugee Policy (1978-1981) and various Congressional task forces, which created opportunities for new political voices to emerge.¹³ Organisations like the Federation for American Immigration Reform (FAIR), founded in 1979, gained prominence advocating for immigration restrictions.¹⁴ Whereas ethnic advocacy groups, such as the National Council of La Raza and Asian American legal defence organisations, became increasingly vocal in representing immigrant interests. State and local governments, particularly in high-immigration states like California, Texas, and Florida, found themselves thrust into immigration debates as they grappled with providing education, healthcare, and social services to growing immigrant populations. Conservative business interests often aligned with liberal civil rights groups in supporting more open immigration policies, while some labour unions joined forces with environmental groups in calling for restrictions. This unusual political landscape ultimately contributed to the passage of a landmark immigration legislation in the United States during the 1980s.¹⁵

The Immigration Reform and Control Act (IRCA) of 1986

Unlike the UK's focus on nationality, the IRCA was a broad, bipartisan compromise designed to address the growing population of undocumented immigrants, primarily from Mexico and Central America, who were living in the United States.¹⁶ Advocates of immigration reform from both the Republican and Democratic parties joined forces to produce the legislation, something remarked by President Reagan at the signing ceremony for the law. Reagan presented IRCA as a bipartisan effort to “regain control of our borders,” a framing that reinforced the law's enforcement dimension.¹⁷

The IRCA's contentious passage reflected the growing tension between economic reliance on immigrant labour and political demands for border control.¹⁸ For detention policy, its most significant innovation was the introduction of employer

¹³ Vernon M. Briggs, ‘Report of the Select Commission Immigration and Refugee Policy: A Critique’, *Texas Business Review*, February 1982, 11.

¹⁴ Aristide R. Zolberg, ‘The Politics of Immigration “Reform”’, *Revue Française d'Études Américaines*, no. 41 (1989): 263–76.

¹⁵ Zolberg, *A Nation by Design*, *op.cit.*, 340.

¹⁶ Walter Ewing et al., ‘The Past and Present of U.S. Immigration Policy’, in *Immigration as a Social Determinant of Health: Proceedings of a Workshop* (National Academies Press, 2018), <https://www.ncbi.nlm.nih.gov/books/NBK535939/>

¹⁷ Ronald Reagan, “Statement on Signing the Immigration Reform and Control Act of 1986,” November 6, 1986, *Ronald Reagan Presidential Library*, <https://www.reaganlibrary.gov/archives/speech/statement-signing-immigration-reform-and-control-act-1986>

Full quote: “It has truly been a bipartisan effort, with this administration and the allies of immigration reform in the Congress, of both parties, working together to accomplish these critically important reforms. Future generations of Americans will be thankful for our efforts to humanely regain control of our borders and thereby preserve the value of one of the most sacred possessions of our people: American citizenship.”

¹⁸ Ewing et al., ‘The Past and Present of U.S. Immigration Policy’, *op.cit.*

sanctions and new funding for enforcement, which expanded the role of detention as a deterrent. The legislation, also known as the Simpson-Mazzoli bill, faced a difficult path through a Republican-controlled Senate and a Democratic-controlled House. President Ronald Reagan publicly framed the amnesty component in humanitarian rhetoric, speaking about the need to “improve the lives of a class of individuals who now must hide in the shadows” and give them access to a “free and open society”.¹⁹

The impetus for what became IRCA grew from a widespread belief in the late 1970s and early 1980s that the United States had lost control of its borders. This perception was fuelled by a dramatic increase in the number of undocumented immigrants, which the Reagan Administration estimated to be between three and six million by 1981, with an additional quarter to half a million entering each year: “It is estimated that 500,000 illegal aliens enter the country annually and that a stock of three to six million aliens now reside here illegally, about half of whom are thought to be Mexican Nationals.”²⁰ Looking to the future, data estimated a huge immigrant population in the 21st century: “Assuming current trends (based on the past 5 years) continue with an average annual net inflow of a million immigrants (500,000 illegal and 500,000 legal), by 2030 one out of four Americans will either be immigrants or descended from immigrants arriving in this country after 1980.”²¹ Concern with the sheer numbers they were contending with partially explains the urgency of the government’s enforcement policies.

This law marked the true birth of the modern deportation and detention system. At the time he signed IRCA into law, Reagan presented it as part of the fight against illegal immigration, declaring that “in the past 35 years our nation has been increasingly affected by illegal immigration. This legislation takes a major step toward meeting this challenge to our sovereignty.”²² At the same time, the president also reaffirmed his support for legal immigration, as IRCA “preserves and enhances the Nation’s heritage of legal immigration.”²³ Congress knew it needed to deal with the issue of immigration, and after some initial efforts to deal with both legal and illegal immigration at the same time, common sense led them to split their legislative efforts in two. The Immigration Reform and Control Act was the first step (with the Immigration Act 1990 coming a few years later). The goal was to address “the rising tide of illegal immigrants” in an attempt to close the “back door” to illegal immigration

¹⁹ Ronald Reagan, “Statement on Signing the Immigration Reform and Control Act of 1986,” *op.cit.*

²⁰ William French Smith, *Memorandum*, 4 May 1981, Folder “[Immigrant Labor] [1],” Hodsoll, Francis (Frank) S.M.: Files, 1981, SERIES II; President’s TF on Immigration and Refugee Policy, Box 9, Ronald Reagan Presidential Library (Simi Valley, California).

²¹ *Ibid.*

This echoes Enoch Powell’s 1968 Rivers of Blood speech in which he warned about the immigrant-descended population to come.

²² Ronald Reagan, “Statement on Signing the Immigration Reform and Control Act of 1986,” *op.cit.*

²³ *Ibid.*

in order to “keep the front door open.”²⁴

IRCA was famously by described by its sponsors as a “three-legged stool”:

1. it offered a path to legal status (amnesty) for undocumented immigrants who could prove continuous residency since before January 1, 1982
2. it introduced sanctions, including civil and criminal penalties, for employers who knowingly hired unauthorised workers
3. it allocated increased funding for border enforcement.²⁵

The central justification for the bill was economic deterrence. The administration argued that the primary motivation for illegal immigration was the availability of jobs in the United States. Therefore, the most credible enforcement tool was to penalize employers who knowingly hired undocumented workers. In a 1983 letter, Attorney General Smith stated, “As long as the American job market remains open to them, illegal aliens will risk the dangers of illegal entry...and the likelihood of apprehension and deportation.”²⁶ This “jobs magnet” theory was the cornerstone of the reform effort.

However, this proposal was deeply controversial. Business groups, like the U.S. Chamber of Commerce, argued that private employers should not be responsible for enforcing immigration laws.²⁷ Hispanic organisations, such as the Mexican American Legal Defense and Educational Fund (MALDEF), feared that sanctions would lead to widespread discrimination against anyone who looked or sounded “foreign.”²⁸ This concern was so significant that the final bill included the creation of

²⁴ Carol M. Swain and Virginia M. Yetter, ‘Federalism and the Politics of Immigration Reform’, in *The Politics of Major Policy Reform in Postwar America*, ed. Jeffery A Jenkins and Sidney M. Milkis (Cambridge Univ. Press, 2014), 184–85.

²⁵ Muneer I Ahmad, ‘Beyond Earned Citizenship’, *Harvard Civil Rights-Civil Liberties Law Review* 52 (2017): 267.

²⁶ William French Smith, *Letter to Rep. Peter W. Rodino, Jr.*, 27 July 1983, Edwin Meese III (OCP) 10246, 11209–10, Box 51, Ronald Reagan Presidential Library (Simi Valley, California).

Full quote: “As I stated in my testimony before your Subcommittee, ‘employer sanctions is the only remaining, credible enforcement tool to stop the flood of illegal immigration. As long as the American job market remains open to them, illegal aliens will risk the dangers of illegal entry, the cost of smuggling or fraudulent visas, and the likelihood of apprehension and deportation.’”

²⁷ “*Reagan’s Plan for Illegal Aliens – The Impact*,” *U.S. News & World Report*, 3 August 1981, Folder “Immigration [5 of 7],” Box 30, Dole, Elizabeth: Files, Series I Subject File, Ronald Reagan Presidential Library (Simi Valley, California).

Full quote: “The U.S. Chamber of Commerce is firmly opposing the hiring prohibition on the ground that private employers should not be put in the position of enforcing immigration laws.”

²⁸ *MALDEF Guest Worker Program Position Paper*, c. May 1981, Folder “Immigration [2 of 7],” Box 30, Dole, Elizabeth: Files, Series I Subject File, Ronald Reagan Presidential Library (Simi Valley, California).

The Mexican American Legal Defense and Educational Fund (MALDEF) argued that a guest worker programme would harm the Mexican American community: “Since these persons would be indistinguishable, in terms of physical and speech characteristics from Mexican Americans already in this country, it is conceivable that any anti-alien sentiment generated toward temporary workers... would be directed toward Mexican Americans as well.”

a Special Counsel for Immigration-Related Unfair Employment Practices to address potential discrimination. External pressures were also immense as the law involved revising and expanding temporary worker programmes, primarily to satisfy the demands of Western agricultural growers who feared labour shortages if their undocumented workforce was eliminated. The administration supported an experimental guest worker programme for Mexican nationals as a way to regularise labour flows.

However, this was fiercely opposed by labour unions and Hispanic groups who feared it would depress wages and create an exploitable “slave program”.²⁹ This conflict led to extensive negotiations and the eventual creation of a special agricultural worker (SAW) programme as a compromise.³⁰ Internal administration debates were fierce, particularly between the Department of Justice, which prioritized passing a bill, and the Office of Management and Budget (OMB), which focused on controlling its massive costs. A key point of contention was the creation of a secure ‘worker identification system’. While seen by some as necessary to make employer sanctions work, the idea of a national ID card was deemed “philosophically repugnant” and a political “slippery slope.”³¹ Ultimately it was dropped from the final version of the 1986 law.

The proposal to grant legal status to millions of undocumented residents was justified as a rational, one-time necessity. Policymakers argued that a mass roundup and deportation of millions of people was both “inhumane” and “impractical.”³² A Department of Justice briefing paper stated: “We have neither the resources nor the inclination to find, uproot and deport millions of persons, many of whom have become productive members of the community.”³³ However, it was argued that the

²⁹ Ernie Garcia, *Memorandum to Elizabeth Dole*, 26 May 1981, Folder “Immigration [1 of 7],” Box 30, Dole, Elizabeth: Files, Series I Subject File, Ronald Reagan Presidential Library (Simi Valley, California).

In a memo to Elizabeth Dole regarding the Hispanic community’s view on a potential Guest Worker Programme, Ernie Garcia noted that Ruben Bonilla, LULAC National Director, was quoted as saying the President’s Guest Worker Programme was nothing more than a “slave program.”

³⁰ Philip L Martin et al., ‘California Farm Workers and the SAW Legalization Program’, *California Agriculture*, December 1988, 4–6.

³¹ Cabinet Council on Legal Policy, *Memorandum for the President from the Cabinet Council on Legal Policy: Worker Identification Provisions in Pending Immigration Reform Bill*, 25 June 1982, Folder “Immigration Legislation [1],” Guhin, Michael A. Files, RAC Box 2, 3–6, Reagan Presidential Library.

³² Joe Ghougassian, *Memorandum to Ed Gray*, 9 April 1981, Folder “Immigration and Refugee Matters [1],” OA 6518, Edwin Meese III (OCP), Box 29, Ronald Reagan Presidential Library (Simi Valley, California).

Full quote: “A mass search for, roundup, and deportation of resident illegal aliens (...) it would be both inhumane and impractical to attempt a mass deportation of illegal residents. The cost both in dollars and in lost human liberties would be extreme, and probably would not be tolerated by the American public.”

³³ Department of Justice, *The Immigration Reform and Control Act of 1982*, c. 1982, Folder “DOJ Paper on Immigration Reform and Control Act of 1982,” OA 9442, Uhlmann, Michael Files, Box 5, p.8, Ronald Reagan Presidential Library (Simi Valley, California).

“perpetuation of a large, underground class” was deemed “unhealthy for the nation.”³⁴ Therefore amnesty was proposed as a solution. The belief was that rather than deporting those who had been in the country for a long time, it made far more sense to focus limited law enforcement resources on stopping future illegal migration.³⁵

Republican Senator Alan Simpson articulated the difficult choice between offering amnesty, which was unpopular, and engaging in mass deportations:

Simpson agreed that the amnesty provisions are unpopular, saying: ‘It’s legislation that seems to stick in the craw of America... but the alternative is to go hunt for them [illegal aliens].... I ask, are you going to be part of the group that goes to the Mexican American in Brownsville, Texas, and says, ‘Are you deportable?’ Without an amnesty program, he said, ‘the hunt would be on.’³⁶

This justification was tempered by significant political and fiscal concerns. The OMB under David Stockman repeatedly warned of the massive, unbudgeted costs of providing social services to newly legalised aliens, with estimates running into the billions of dollars.³⁷ This led to a major debate over the eligibility date for amnesty and the imposition of a multi-year bar on receiving federal benefits for those who were legalised. Ultimately, an estimated 3 million people, mostly of Hispanic descent, gained legal status through the Act, securing protection from deportation and gaining access to new economic opportunities.¹⁹ As some critics argue, this created a permanent divide between those legalized before 1982 and a growing population of undocumented migrants who faced an increasingly punitive regime.

The hope and belief were that the new law would increase “internal enforcement and control measures.”³⁸ It had a significant impact on detention as it

Full quote: “We have neither the resources nor the inclination to find, uproot and deport millions of persons, many of whom have become productive members of the community.”

Background Paper on Current Status of the Immigration Reform Legislation, c. April 1983, Folder “Immigration Paper on the History of Legislation in 98th Congress,” OA 9442, Uhlmann, Michael Files, Box 5, p. 3, Ronald Reagan Presidential Library (Simi Valley, California).

On the limits of legalisation: “Our argument has been that legalization is not intended to give legal status to all illegal aliens but only to those who have demonstrated a commitment to this country by long term continuous residence as contributing, self-sufficient members of their community.”

³⁴ Department of Justice, *The Immigration Reform and Control Act of 1982*, *op. cit.*

³⁵ *Ibid.*

³⁶ “*President Endorses Immigration Proposal*,” *The Washington Post*, Oct. 17, 1986, folder “Immigration Bill (2 of 4),” Box OA 19146, Alan Charles Raul: Files, Series II, Ronald Reagan Presidential Library (Simi Valley, California).

³⁷ Memorandum, David Stockman to Edwin Meese, Apr. 19, 1983, Box 51, folders “10246” and “11209-10,” Edwin Meese III Files (OCP), Ronald Reagan Presidential Library (Simi Valley, California).

Full quote: “To date the Administration has no clear legislative strategy to control costs and shape the bill. The Department of Justice continues to urge broad support for the legislation. Justice has been reluctant to push other than technical amendments. As a result the Administration’s problems have not been addressed and the costs have risen significantly.”

³⁸ Michael Flynn, ‘There and Back Again: On the Diffusion of Immigration Detention’, *Journal on Migration and Human Security* 2, no. 3 (2014): 171.

mandated the detention of certain undocumented immigrants awaiting deportation hearings.³⁹ According to Mike Flynn, director of the Global Detention Project, the law “marked a significant moment in the US approach to immigration by cementing enforcement of immigration restrictions as a cornerstone of US policy.”⁴⁰ The law authorised increased funding for the Border Patrol and created penalties for harbouring or transporting undocumented aliens.

The law also formally addressed the federal responsibility for the costs of incarcerating “illegal alien felons,” though the Reagan White House was opposed to the provisions that required Federal reimbursement of the states: “The Administration believes that the cost for imprisoning felons who are illegal aliens should be borne by State and local governments which have jurisdiction over and enforce State and local laws. The Administration opposes requiring Federal reimbursement for such costs.”⁴¹

This involved stepping up border security and increasing spending on detaining migrants and on refoulement, deportation, surveillance and intelligence activities.⁴² A 2005 report by the Migration Policy Institute on immigration-related expenditure showed the extent of the increase:

Overall spending on enforcement activities has ballooned from pre-IRCA levels, with appropriations growing from \$1 billion to \$4.9 billion between fiscal years 1985 and 2002 and staffing levels increasing greatly. Resources have been concentrated heavily on border enforcement, particularly the Border Patrol. Spending for detention and removal/intelligence activities multiplied most rapidly over this period, with an increase in appropriations of over 750 percent. In contrast, interior investigations and consular affairs have experienced notably smaller increases in appropriated funds in the post-IRCA period. Interior investigations made up only 11 percent of enforcement spending between 1985 and 2002.⁴³

A narrative developed linking immigration to crime and was fuelled by the arrival of Cubans in the Mariel boatlift. This crisis influenced policy, with an increased focus on identifying, detaining and deporting “criminal aliens.” The administration’s desire for expanded emergency powers to detain mass arrivals, though dropped from the final bill, foreshadowed the enhanced role that detention would play in future immigration enforcement.⁴⁴

³⁹ Interestingly, Senate Amendment 624 to the bill, proposed by Senator Al D’Amato (R-NY), required “the Federal Government to reimburse State governments for the cost of incarcerating in State prisons illegal aliens and Marielito Cubans who commit felonies.” This was agreed to in the Senate and was part of the IRCA that Reagan signed. This became a bone of contention between the federal government and the states in the following years.

⁴⁰ Flynn, ‘There and Back Again: On the Diffusion of Immigration Detention’, 171.

⁴¹ *Statement of Administration Policy*, Oct. 14, 1986, Folder “Immigration Bill [1 of 4],” Box OA19146, Alan Charles Raul: Files, Ronald Reagan Presidential Library (Simi Valley, California).

⁴² David Dixon and Julia Gelatt, *Immigration Enforcement Spending Since IRCA*, Fact Sheet N°10, Independent Task Force on Immigration and America’s Future (Migration Policy Institute, 2005), 1, https://www.migrationpolicy.org/sites/default/files/publications/FactSheet_Spending.pdf

⁴³ *Ibid.*

⁴⁴ Rudolph W. Giuliani, *Statement of Rudolph W. Giuliani, Associate Attorney General, Before the Committee on the Judiciary: Subcommittee on Immigration and Refugee Policy, United States Senate*,

The ultimate passage of the Immigration Reform and Control Act (IRCA) in 1986 represented a bipartisan compromise that satisfied neither restrictionists nor immigrant advocates completely. However, the law's emphasis on employer sanctions and border control reflected the electoral imperative to demonstrate "control" over immigration, a theme that would directly influence the expansion of detention facilities and practices.

The historical contexts driving these legislative changes illuminate how past imperial relationships shaped contemporary control strategies. As shall be shown, Britain's reforms represented a delayed decolonisation of citizenship law, finally severing legal ties with former colonial subjects who had maintained claims to British nationality. This was fundamentally about managing the aftermath of empire and deciding which colonial subjects would retain access to the metropole and which would be legally abandoned. America's approach, while also shaped by global power relations, responded to Cold War geopolitics and regional economic instability rather than historical citizenship claims. Cuban refugees were welcomed as anti-communist allies while Salvadoran asylum seekers were rejected because their government was US-supported. Where Britain sought to undo imperial legacies, America sought to manage the human consequences of its contemporary foreign policy.

In hindsight, IRCA was a failure. The bill made immigrants who had entered the country before January 1, 1982, eligible for legalisation. Approximately 3 million individuals took advantage of the amnesty, including 2.3 million Mexicans.⁴⁵ The main failure, however, was caused by the weakening of the sanctions on employers before the bill became law. The employer sanctions regime, intended to be the primary deterrent to future unauthorised migration, was poorly designed and weakly implemented. Proving that an employer "knowingly" hired an unauthorised worker was difficult, and the law accepted numerous forms of documentation that were easily forged.⁴⁶ As a result, criminal penalties against employers were rarely enforced, and the demand for low-wage immigrant labour continued unabated.⁴⁷ One of Reagan's former speechwriters, Peter Robinson, admitted years later that the fact that the U.S. had "failed to regain control of the border -- making the 1986 law's amnesty provision an incentive for others to come to America illegally -- would have infuriated Reagan."⁴⁸ Sociologist John Skrentny described IRCA as "one of the great policy

Concerning Emergency Powers, Sept. 30, 1982, Box 5, Folders "OA 11413-14-16," Peter J. Rusthoven: Files, Ronald Reagan Presidential Library (Simi Valley, California).

⁴⁵ Linder, 'The Amnesty Effect: Evidence from the 1986 Immigration Reform and Control Act', *op. cit.*, 15.

⁴⁶ Ewing et al., 'The Past and Present of U.S. Immigration Policy'. *op. cit.*

⁴⁷ *Ibid.*

⁴⁸ NPR Staff. "A Reagan Legacy: Amnesty for Illegal Immigrants" *National Public Radio* July 24, 2010 <https://www.npr.org/templates/story/story.php?storyId=128303672>

failures of American history.”⁴⁹ Attempts to secure the border failed, immigrants continued to enter the country illegally and restrictionist lawmakers learnt to “not to make any more grand bargains.”⁵⁰ The failure helped foster distrust and hindered any future bipartisan efforts at reform. The long-term effect of IRCA was therefore not to control migration, but to create a stark legal divide between the millions who qualified for amnesty and the millions who arrived after the 1982 cutoff date, who now faced a more heavily fortified border and a more punitive legal regime.⁵¹

Anti-Drug Abuse Acts of 1986 and 1988

In 1986, Congress passed a first Anti-Drug Abuse Act,⁵² followed by a second law in 1988, again entitled the Anti-Drug Abuse Act⁵³ (essentially a wholesale amendment to the 1986 law). The 1986 law laid the groundwork for immigration detainers. The 1988 law, among other provisions, allowed local police to inform the INS if they had arrested a person they believed might be deportable. The intermingling of immigration authorities and local police enforcement was slowly expanding.

The 1988 law also included the concept of ‘*Aggravated Felony*’ into the immigration sphere. The law stated that anyone guilty of an aggravated felony must be deported. This included legal immigrants who had not yet obtained American Citizenship. As shall be discussed in the next chapter, the definition of Aggravated Felonies evolved over time and came to include minor and non-violent crimes.⁵⁴

Taken together, the U.S. measures of the 1980s reflected a broader Western trend towards the criminalisation of migration and the entanglement of immigration control with policing and punishment. As the American state increasingly framed migration through the lens of law enforcement by linking it to drug control, criminality, and border security, it laid the groundwork for a more punitive and exclusionary regime. Across the Atlantic, similar logics were emerging. In the United Kingdom, the Thatcher government likewise sought to redefine the boundaries of national belonging, embedding restriction and exclusion into the very fabric of citizenship law.

⁴⁹ ‘Federalism and the Politics of Immigration Reform’, in *The Politics of Major Policy Reform in Postwar America*, ed. Jeffery A Jenkins and Sidney M. Milkis (Cambridge Univ. Press, 2014), 184.

⁵⁰ *Ibid.*

⁵¹ Library of Congress, *A Latinx Resource Guide: Civil Rights Cases and Events in the United States*, s.v. “Immigration Reform and Control Act of 1986,” accessed 13 October 2025, <https://guides.loc.gov/latinx-civil-rights/irca>

⁵² Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986).

⁵³ Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (1988)

⁵⁴ Elliott Young, *Forever Prisoners: How the United States Made the World’s Largest Immigrant Detention System* (Oxford University Press, 2021), 162.

2.2. Restriction and Redefining Belonging in the UK

The political context of the Thatcher era was defined by a commitment to reducing primary immigration from the Commonwealth, a policy driven by and reinforcing a nativist public discourse. Prime Minister Thatcher's 1978 "swamped" comment was a pivotal moment, deliberately adopting the language of the far-right National Front to bring concerns about cultural difference and immigration numbers into the political mainstream, thereby legitimising a more restrictive legislative agenda.⁵⁵ The government's legislative programme in this period focused less on detention directly and more on redefining who "belonged" to the UK, which had the crucial effect of expanding the pool of people who could be subject to immigration control, including detention and removal.

British Nationality Act 1981

Two pieces of legislation were central to this project. First, the British Nationality Act 1981 represented a fundamental break with the past by redefining the basis of British citizenship.⁵⁶ The Act abolished the long-standing principle of *jus soli*, whereby citizenship was automatically granted to anyone born on UK soil.⁵⁷ In its place, it established a system based primarily on descent (*jus sanguinis*), requiring that for a child born in the UK to be a British citizen, at least one parent had to be a British citizen or be "settled" in the country.⁵⁸ This change was not a neutral legal tidying-up exercise, instead it was a deliberate policy choice designed to limit the acquisition of citizenship by the children of immigrants, particularly those from the Commonwealth.⁵⁹ By creating, for the first time, a significant population of UK-born individuals who were not British citizens from birth, the Act dramatically expanded the reach of immigration control, making entire families, including those with deep roots in the UK, potentially subject to detention and removal.

The legislative centrepiece of the Thatcher government's immigration policy was the British Nationality Act of 1981.⁶⁰ This was a radical overhaul that reconfigured the foundational principles of British citizenship that had persisted for centuries.⁶¹ Its

⁵⁵ Margaret Thatcher, 'TV Interview for Granada World in Action', 27 January 1978, *Margaret Thatcher Foundation*, <https://www.margaretthatcher.org/document/103485>

⁵⁶ Charles Blake, 'Citizenship, Law and the State: The British Nationality Act 1981', *The Modern Law Review* 45, no. 2 (1982): 179–97.

⁵⁷ Ann Dummett, 'The New British Nationality Act', *British Journal of Law and Society* 8, no. 2 (1981): 233, <https://doi.org/10.2307/1409722>

⁵⁸ Imogen Tyler, 'Designed to Fail: A Biopolitics of British Citizenship', *Citizenship Studies* 14, no. 1 (2010): 61–74, <https://doi.org/10.1080/13621020903466357>

⁵⁹ *Ibid.*

⁶⁰ British Nationality Act 1981, c. 61, <https://www.legislation.gov.uk/ukpga/1981/61>

⁶¹ Chi-kwan Mark, 'Decolonising Britishness? The 1981 British Nationality Act and the Identity Crisis of Hong Kong Elites', *The Journal of Imperial and Commonwealth History* 48, no. 3 (2020): 565–90, <https://doi.org/10.1080/03086534.2019.1638619>

primary effect was to abolish the unqualified right to citizenship by birth on UK soil (*jus soli*) and to replace the single, albeit complex, status of “Citizen of the United Kingdom and Colonies” (CUKC) with a new, hierarchical, three-tiered system: British Citizenship, British Dependent Territories Citizenship, and British Overseas Citizenship.⁶² This reclassification was a deliberate political act and came as the culmination of decades of post-war fears and anxieties about immigration from the former British Empire. As then-Home Secretary William Whitelaw candidly expressed, the explicit purpose of the Act was to create a clear demarcation between “insiders and outsiders.”⁶³

The 1981 Act did not emerge from a vacuum but was the logical conclusion of a legislative trajectory aimed at restricting non-white immigration and redefining the nation in the post-colonial era. As seen in earlier chapters, the Commonwealth Immigrants Acts of 1962 and 1968 had already begun this process by limiting entry from former colonies while the Immigration Act of 1971 introduced the pivotal and racially coded concept of “patriality,” which tied the right of abode in the UK to having a parent or grandparent born there. The 1971 law represented a shift away from a civic or territorial model of belonging towards one based on ancestry and descent. The 1981 Act solidified this transition, stripping thousands of Commonwealth citizens of their automatic right to British citizenship and effectively creating a new class of “aliens” within Britain’s borders, who were now fully subject to the state’s powers of control, deportation, and detention.⁶⁴

An internal Home Office paper from shortly after the 1979 election argued for abolishing the rule that allowed Commonwealth citizens with a UK-born grandparent to settle. The rationale was to act before a significant number of non-white nationals could become eligible, noting that “coloured immigration to the United Kingdom only began on a significant scale in the late 1940s.”⁶⁵ The paper suggests that abolishing the rule “might provide a useful defence to charges that the changes as a whole bore unfairly on the ethnic minority communities” and that it would be preferable to act “now, rather than in 10 or 15 years, when such a step could be interpreted as a reaction to the imminent eligibility of significant numbers of Asians and West Indians.”⁶⁶

The 1981 Act’s logic demanded that the state be able to differentiate between the various tiers of nationality and non-nationality not just at the border, but within society itself. The creation of these new legal categories necessitated new forms of

⁶² British Nationality Act 1981.

⁶³ Carol Pierre, “‘Keep Britain White’: Britain’s Inherently Racist Immigration Laws”, *National Center of Competence in Research – The Migration-Mobility Nexus*, 1 February 2023, <https://nccr-onthemove.ch/blog/keep-britain-white-britains-inherently-racist-immigration-laws/>

⁶⁴ Kathryn Medien, ‘No Pass Laws Here! Internal Border Controls and the Global “Hostile Environment”’, *Sociology* 57, no. 4 (2023): 940–56, <https://doi.org/10.1177/00380385221122518>

⁶⁵ *Immigration Rules: The UK-Born Grandparent Provision*, 28 June 1979, Folder HO 394/317: *Consideration of Amendments to Immigration Rules, Following Conservative Party Manifesto*, The National Archives (Kew, United Kingdom).

⁶⁶ *Ibid.*

internal state surveillance to police them. This gave rise to what scholars now term “everyday bordering” or a proto-“hostile environment.”⁶⁷ Throughout the 1980s, immigration controls began to seep from the ports of entry into everyday life. For example, in 1982, passport checks were introduced for immigrants seeking care from the National Health Service (NHS) and they were required to pay for their treatment.⁶⁸ The 1971 Immigration Act had made public housing unavailable to immigrants as they were required to maintain themselves, and any dependants, without recourse to public funds. These policies deputised public sector workers including doctors, nurses, and housing officers as border guards, requiring them to verify the status of the people they served.⁶⁹ A very similar system was proposed in the US in 1994 in the State of California through the Save Our State ballot measure, also known as Proposition 187 (see Appendix 1). This legislative framework had a profoundly racialising effect as these internal checks disproportionately targeted those who appeared racially-other, targeting Black and Asian residents, and casting them under a permanent cloud of suspicion and forcing them to continually prove their right to belong in the United Kingdom.⁷⁰

The 1980s marked a significant intensification of UK immigration control measures, characterised by enhanced deportation powers and sustained reliance on prison facilities for detention purposes. Changes in 1986 and the Immigration Act of 1988 empowered the authorities to deport those in breach of their stay conditions more effectively, underscoring the emphasis on enforcement and compliance with visa regulations. Prior to 1988, non-citizens were rarely detained or indeed deported, with on average between 200 and 300 people in detention at any given time.⁷¹ However, the Act represented a substantial expansion of state power in immigration enforcement.

The escalating pressure on border controls, driven by increasing passenger volumes and rising refusal rates for certain nationalities, culminated in the Government’s decision to impose new visa requirements.⁷² On 1st September 1986, the Government announced its decision in principle to impose visas on citizens of Bangladesh, Ghana, India, Nigeria and Pakistan.⁷³ These restrictions were implemented on a staggered basis: the change in respect of the Indian sub-continent would take effect from 15th October, while for Ghana the date of implementation was

⁶⁷ Nira Yuval-Davis et al., ‘Everyday Bordering, Belonging and the Reorientation of British Immigration Legislation’, *Sociology* 52, no. 2 (2018): 228–44, <https://doi.org/10.1177/0038038517702599>

⁶⁸ Medien, ‘No Pass Laws Here!’

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Tyler, ‘Designed to Fail’. *op. cit.*

⁷² UK Parliament, *Hansard*, Written Answers, 24 October 1986, column 125, https://api.parliament.uk/historic-hansard/written-answers/1986/oct/24/visitors#S6CV0102P0_19861024_CWA_125

⁷³ UK Parliament, *Hansard*, House of Lords Debate, “Visas,” 21 October 1986, vol. 481, cols. 181–90, <https://api.parliament.uk/historic-hansard/lords/1986/oct/21/visas>

23rd October.

The delay between announcement and implementation created significant operational challenges at UK ports of entry. During the weeks before the introduction of visas there was a sharp increase in the number of passengers from the sub-continent arriving at London Heathrow Airport, including a substantial number of young men, particularly from Bangladesh, who were trying to use the last days of the old system to take advantage of its weaknesses. The situation placed enormous strain on immigration services, with the Home Secretary acknowledging the “acute physical difficulties” encountered in processing the surge of arrivals while maintaining immigration control procedures.⁷⁴

The Immigration (Carriers’ Liability) Act 1987

The pivotal legislative instrument in this externalization project was the Immigration (Carriers’ Liability) Act 1987.⁷⁵ This law imposed a financial penalty, initially £1,000 per passenger, doubled to £2,000 in 1991, on any airline or shipping company that transported an individual to the UK who was found to be improperly documented upon arrival.

A 1989 conference minute stated that “The UK said that carrier sanctions had proved the single most effective tool in preventing the arrival of undocumented passengers,”⁷⁶ and a 1998 Draft White Paper, provides the government’s own assessment of the policy’s effectiveness, stating that carrier sanctions were essential:

The Government is committed to firm and fair immigration control. An essential part of that is to prevent people travelling to the United Kingdom who have no claim to be here (...) Carrier sanctions are a key part of our pre-entry control strategy.⁷⁷

The immediate trigger for the legislation was a surge in asylum applications notably from Tamil refugees fleeing the civil war in Sri Lanka, making clear its deterrent intent.⁷⁸ The effect of the Act was to privatise a core function of immigration

⁷⁴ *Ibid.*

⁷⁵ Frances Nicholson, ‘Implementation of the Immigration (Carriers’ Liability) Act 1987: Privatising Immigration Functions at the Expense of International Obligations?’, *International & Comparative Law Quarterly* 46, no. 3 (1997): 586–634, <https://doi.org/10.1017/S0020589300060814>

⁷⁶ *Four Countries Immigration Conference Minutes*, 16–19 October 1989, *Minutes*, HO 394/931: *Four Countries Immigration Conference*, The National Archives (Kew, United Kingdom).

⁷⁷ Draft White Paper (Version 5), Working Title: Fairer, Faster and Firmer – Modernising Our Immigration Control, c. June 1998, PREM 49/379/1: Immigration, The National Archives (Kew, United Kingdom).

⁷⁸ UK Parliament, *Hansard*, House of Commons Debate, “Immigration (Carriers’ Liability) Bill,” 16 March 1987, vol. 112, cols. 706–89.

Full quote from The Secretary of State for the Home Department (Mr. Douglas Hurd): “The immediate spur to this proposal has been the arrival of over 800 people claiming asylum in the three months up to the end of February. So this is not a Bill about Tamils alone, or about Sri Lanka alone. It goes wider than that. Its aim is to make sure that our immigration control remains effective in the face of rapidly changing international pressures. We have to reconcile that aim with our international obligation to help the genuine victims of persecution.”

enforcement.⁷⁹ Airlines, facing the threat of substantial fines, were deputised as frontline immigration officers. Their staff at check-in counters and boarding gates around the world were suddenly responsible for scrutinising passports and visas. Crucially, their decisions were based not on an assessment of a potential asylum claim or humanitarian need, but on a simple financial risk calculation. A passenger with questionable documents, who might well be a genuine refugee fleeing persecution without the ability to obtain a valid passport, was now a £2,000 liability to be refused boarding.⁸⁰

Immigration Act 1988

The decade concluded with the Immigration Act 1988, which continued this restrictive trend by limiting the right of appeal against deportation for those who had been in the country for less than seven years and reinforcing the Home Secretary's already extensive powers.⁸¹ An internal Home Office Memo, from late 1986, showed that the goal of the proposed Bill was to reinforce the system: "Ministers will want a package of measures the overall effect of which will be to strengthen the immigration control, and enable it to operate more effectively, by amending (but not replacing) the 1971 Act."⁸² A major focus was closing what was seen as a "loophole" for those who entered by deception. Officials debated creating a new legal concept of "unlawful presence" to simplify removal procedures. There was significant internal disagreement on this point, with one official describing the power to remove someone for 'deception' as "draconian" and arguing the case for an in-country right of appeal was "overwhelming" to prevent "arbitrary and unjust decisions".⁸³ The Immigration Service, however, strongly opposed granting such an appeal right before removal.

The legislative framework that emerged during the Thatcher years, therefore, represented a fundamental restructuring of how Britain defined citizenship, territory, and national belonging. These laws worked together to create what can be understood as a new system of exclusion, one that simultaneously redrew the boundaries of who belonged to the nation, embedded immigration controls within domestic institutions, and established racialised categories of legal status that would prove central to later

⁷⁹ Nicholson, 'Implementation of the Immigration (Carriers' Liability) Act 1987'. *op. cit.*

⁸⁰ Anne Ruff, 'The Immigration (Carriers' Liability) Act 1987: Its Implications for Refugees and Airlines', *International Journal of Refugee Law* 1, no. 4 (1989): 481–500, <https://doi.org/10.1093/ijrl/1.4.481>

⁸¹ Rina Banti, 'Thatcher's Government Immigration Policy as an Example of National Priorities Maintenance in View of European Union', *European Historic Studies* 2 (2015), <http://eustudies.history.knu.ua/thatcher-s-government-immigration-policy-as-an-example-of-national-priorities-maintenance-in-view-of-european-union/>

⁸² W. N. Hyde, *Internal Home Office Memo re: Immigration Legislation*, 15 December 1986, HO 394/800: *Immigration Act 1971, Immigration Rules, Proposals for New Legislation, Amendments to the Immigration Act 1971*, The National Archives (Kew, United Kingdom).

⁸³ W. N. Hyde, *Memo to Mr Platt et al. re: Legislation to Amend the Immigration Act 1971 – Illegal Entry*, 20 October 1986, HO 394/800, The National Archives (Kew, United Kingdom).

enforcement practices. The combined effect of this legislative project was the creation of both the legal framework and ideological foundation necessary to justify detention as a routine administrative practice rather than an exceptional measure. Through this process of legal consolidation, the Conservative government effectively transformed immigration control from a matter of border management into a comprehensive system of social control, establishing the precedents that would support the expansion of detention facilities in subsequent decades.

Both countries employed racially-coded mechanisms to restrict non-white immigration, but through fundamentally different legal architectures. The UK's approach was genealogical, using the 1971 concept of "patriality" and the 1981 Act's citizenship hierarchy to privilege those with British ancestry while systematically excluding Commonwealth citizens of colour. As the internal Home Office memo revealed, officials explicitly worried about "significant numbers of Asians and West Indians" becoming eligible for citizenship. The US approach, while equally racialised in effect, operated through temporal and geographic categories rather than ancestral ones. IRCA's January 1982 cutoff date and its focus on Mexican and Central American migrants created a system where race operated through the proxy of national origin and timing of arrival. Where Britain asked, "who are your grandparents?", America asked "when did you arrive?"

Perhaps most revealing is how each country constructed temporal boundaries to manage unwanted populations. Britain's 1981 Act created a temporal frontier at the moment of legislative passage, instantly transforming formerly legal residents into "aliens" subject to deportation. The Act's retrospective power meant that legal status could be revoked for people who had lived in Britain for decades under different rules. America's approach was prospective, creating a temporal frontier on January 1, 1982, that divided the deserving (pre-cutoff) from the undeserving (post-cutoff). Both strategies used time as a sorting mechanism, but Britain looked backward to eliminate historical claims while America looked forward to prevent future ones. These different temporal logics would prove crucial for justifying detention: Britain could detain those whose legal status had been retroactively revoked, while America could detain those who had missed their historical opportunity for legalisation.

The failed implementation of both legislative projects highlights the different ways each sought to exert control. Britain's system required extensive internal surveillance infrastructure via NHS passport checks, housing verification, employment monitoring, because its legal categories demanded constant policing within society itself. The state needed to continuously sort citizens from non-citizens in everyday interactions. America's system, by contrast, concentrated enforcement efforts at the border and in employer sanctions, reflecting its external control logic. When IRCA's employer sanctions failed due to weak implementation and document fraud, the response was predictable: more border fortification and detention facilities rather than expanded internal checks. Britain created a society where legal status

became a permanent question while America created a geography where crossing became permanently dangerous.

Second, the Immigration Act 1988 further tightened controls, primarily by targeting family reunion rights and weakening procedural safeguards for those facing deportation.⁸⁴ Section 1 of the Act, for instance, removed the automatic right of residence for non-British spouses of British citizens, making their status conditional and subject to greater scrutiny.⁸⁵ Section 5 imposed new restrictions on the right of appeal against a deportation order for individuals who had breached the conditions of their leave to remain.⁸⁶ By making it procedurally easier to deport individuals, the Act simultaneously made it easier to justify their detention pending that removal, thereby strengthening the state's coercive powers.

2.3. Comparative Reflection: Genealogical vs. Temporal Exclusions

While the United States opened the decade with the paradox of legalising millions through the 1986 Immigration Reform and Control Act while simultaneously expanding grounds for deportation, the United Kingdom pursued a far narrower path, incrementally tightening administrative control under the Thatcher government. This divergence reveals a key contrast: U.S. legislation balanced enforcement with a one-time inclusionary gesture (amnesty), whereas the UK avoided any large-scale amnesty and instead reinforced the executive's discretion to detain and exclude. Both, however, signalled that the era of laissez-faire immigration was over, laying the groundwork for detention to become a normalised policy tool.

The UK's imposition of fines on airlines that transported undocumented migrants mirrors the United States' introduction of employer sanctions in IRCA (1986). In both cases, the state deputised private actors to police the border on its behalf: airlines became frontline immigration officers in Britain, while American businesses became immigration enforcers through workplace checks. These parallel moves highlight how both countries sought to extend the border inward, embedding immigration control into the fabric of civil society.

While the UK's legislative project in the 1980s centred on redefining citizenship through ancestry and descent (the British Nationality Act 1981), the United States pursued a strategy of temporal boundary-setting through IRCA, which legalised some while criminalising others. These different legal techniques, ancestral exclusion versus temporal demarcation, served a similar purpose. They aimed to harden the boundaries of belonging, create new categories of "outsiders," and prepare the ground

⁸⁴ Chris Platt, 'The Immigration Act 1988: A Discussion of Its Effects and Implications', *Ethnic Relations* 16 (May 1991): 39.

⁸⁵ *Immigration Act 1988*, c. 14 (U.K.), *Legislation.gov.uk*, <https://www.legislation.gov.uk/ukpga/1988/14/contents>

⁸⁶ *Ibid.*

for detention as a routine measure of immigration control.

3. The ‘Crisis’ Framework: Constructing the Threat.

The construction of immigration crises in the United States and United Kingdom during the late twentieth century reveals how narrative framing fundamentally shapes legislative responses. In the US, the “criminal alien” discourse that emerged from the 1980 Mariel boatlift and intensified through the ‘War on Drugs’ portrayed immigration as a direct threat to public safety, emphasising the criminal character of migrants themselves (see chapter three).⁸⁷ Conversely, the UK’s “asylum crisis” narrative of the early 1990s focused primarily on systemic abuse by “bogus” applicants exploiting bureaucratic weaknesses, framing the problem as one of procedural inadequacy rather than inherent migrant criminality. This fundamental difference in crisis construction, criminal invasion versus bureaucratic overload, predetermined markedly different legislative trajectories: the US enacted legislation such as the punitive Illegal Immigration Reform and Immigrant Responsibility Act (1996), which expanded detention powers, increased deportation mechanisms, and criminalised immigration violations.⁸⁸ Meanwhile, UK reforms centred on administrative efficiency through the Asylum and Immigration Appeals Act (1993) and subsequent amendments, streamlined decision-making processes, restricted appeal rights, and introduced fast-track procedures for “manifestly unfounded” claims.⁸⁹ The contrasting nature of these perceived crises thus demonstrates how initial narrative framing creates legislative pathways that favour either punitive enforcement or procedural reform, revealing the power of crisis construction in determining the substantive content of immigration law.

While both nations engaged in securitisation to justify expanding detention, the nature of the threat was framed differently. American politicians, particularly after the Mariel boatlift and during the ‘War on Drugs,’ a federal campaign launched in the 1970s to combat illegal drug use and trafficking through law enforcement, mandatory sentencing, and increased policing, constructed the ‘criminal alien’ as a direct, physical threat to public safety and national sovereignty.⁹⁰ In the 1980s, under President Reagan, the campaign intensified, introducing harsher penalties, mandatory minimum sentences, and policies that disproportionately targeted urban minority communities,

⁸⁷ Sarah Tosh, ‘Drug Prohibition and the Criminalization of Immigrants: The Compounding of Drug War Disparities in the United States Deportation Regime’, *International Journal of Drug Policy* 87 (January 2021): 102846, <https://doi.org/10.1016/j.drugpo.2020.102846>.

⁸⁸ *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. L. No. 104–208, div. C, 110 Stat. 3009–546 (1996), *GovInfo*, <https://www.govinfo.gov/content/pkg/PLAW-104publ208/html/PLAW-104publ208.htm>

⁸⁹ *Asylum and Immigration Appeals Act 1993*, c. 23, *Legislation.gov.uk*, <https://www.legislation.gov.uk/ukpga/1993/23/contents>

⁹⁰ Steven Wisotsky, *Beyond the War on Drugs: Overcoming a Failed Public Policy* (Prometheus Books, 1990).

reinforcing the association between immigration, crime, and drug-related offences.⁹¹ President Bush continued this approach into the early 1990s, maintaining a focus on punitive law enforcement.⁹² During the Clinton administration, the War on Drugs persisted through expanded federal prison populations and welfare reform measures that further marginalised vulnerable communities, solidifying the perception of immigrants as potential criminal threats.⁹³ President Reagan's framing of the 1986 IRCA as a measure to "regain control of our borders" exemplifies this securitisation of the physical frontier, linking immigration policy to the broader punitive logic of the War on Drugs.⁹⁴

In contrast, the British elite's narrative of an 'asylum crisis' securitised the system itself. Political discourse focused on 'bogus' applicants exploiting bureaucratic weaknesses, framing the threat not as one of inherent migrant criminality but as an administrative and moral one that had the potential to overload the system and jeopardise the integrity of the welfare state, bureaucratic capacity, and national generosity.⁹⁵ From the late 1980s onwards, British politicians and media outlets increasingly portrayed asylum seekers as opportunists abusing a system designed for genuine refugees. The *Daily Mail* and *The Sun*, for instance, regularly ran stories about 'floods' or 'waves' of asylum seekers, invoking imagery of invasion yet directing anxiety toward administrative incapacity and procedural failure rather than the supposed criminality of migrants themselves.⁹⁶ From the 1993 Asylum and Immigration Appeals Act to New Labour's 1999 reforms, successive governments reframed asylum as a problem of administrative control, institutionalising detention and managerial efficiency as core tools of deterrence.

This British variant of securitisation thus operated within what Buzan, Wæver and de Wilde describe as the political and societal sectors rather than the military: the threat was not the migrant's capacity for violence but their perceived capacity to undermine state legitimacy and bureaucratic competence.⁹⁷ Huysmans characterises this as a process of bureaucratic or administrative securitisation, wherein security

⁹¹ Bruce Michael Bagley, 'US Foreign Policy and the War on Drugs: Analysis of a Policy Failure', *Journal of Interamerican Studies and World Affairs* 30, nos 2–3 (1988): 189–212, <https://doi.org/10.2307/165986>

⁹² Christina Johns, 'The War on Drugs: Why the Administration Continues to Pursue a Policy of Criminalization and Enforcement', *Social Justice* 18, no. 4 (1991): 147–65.

⁹³ Kalynn Amundson et al., 'Pathologies of the Poor: What Do the War on Drugs and Welfare Reform Have in Common?', *The Journal of Sociology & Social Welfare* 41, no. 1 (2014), <https://doi.org/10.15453/0191-5096.3831>

⁹⁴ Ronald Reagan, "Statement on Signing the Immigration Reform and Control Act of 1986," 6 November 1986, *Ronald Reagan Presidential Library & Museum*, <https://www.reaganlibrary.gov/archives/speech/statement-signing-immigration-reform-and-control-act-1986>

⁹⁵ Liza Schuster and John Solomos, 'Race, Immigration and Asylum: New Labour's Agenda and Its Consequences', *Ethnicities* 4, no. 2 (2004): 267–300, <https://doi.org/10.1177/1468796804042606>

⁹⁶ Greg Philo et al., *Bad News for Refugees* (Pluto Press, 2013), 50.

⁹⁷ Barry Buzan et al., *Security: A New Framework for Analysis* (Lynne Rienner, 2013), 7.

emerges through routine administrative practices rather than exceptional measures.⁹⁸ The construction of the ‘bogus asylum seeker’ as a risk to administrative order and public trust allowed governments to legitimise extraordinary levels of control including mandatory detention, fast-track processing, and the erosion of appeal rights, while presenting these as neutral acts of governance rather than as coercive exercises of state power.⁹⁹ Whereas American securitisation hinged on the physical frontier and the figure of the violent ‘criminal alien,’ British securitisation targeted the procedural frontier through the integrity of the asylum system itself.

3.1. Crisis in America

The Immigration Act of 1990

The Immigration Act of 1990 represents a pivotal moment in the evolution of American immigration policy, embodying both the promise and contradictions that would define immigration reform through the end of the twentieth century.¹⁰⁰ Passed during the George H.W. Bush administration with remarkable bipartisan support, this comprehensive legislation attempted to complete the unfinished business of Reagan’s Immigration Reform and Control Act of 1986, while simultaneously laying the groundwork for the more punitive enforcement measures that would follow in the 1990s.

The 1990 Act’s dual character, expanding legal immigration opportunities while strengthening enforcement mechanisms, reflected broader tensions in American attitudes toward immigration. The transformative, and far more restrictive, legislation of the mid-1990s, particularly the Antiterrorism and Effective Death Penalty Act (AEDPA)¹⁰¹ and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)¹⁰² of 1996 led immigration policy to become increasingly intertwined with national security concerns, criminal justice, and welfare reform debates, ultimately creating what scholars have termed the ‘crimmigration’ system that has shaped the American system ever since.¹⁰³

Immigration under the George H. W. Bush administration was largely defined by the Immigration Act of 1990 (IMMACT) which overhauled and revolutionized

⁹⁸ Jef Huysmans, ‘The European Union and the Securitization of Migration’, *JCMS: Journal of Common Market Studies* 38, no. 5 (2000): 759, <https://doi.org/10.1111/1468-5965.00263>

⁹⁹ Magdalena Kmak, ‘Between Citizen and Bogus Asylum Seeker: Management of Migration in the EU through the Technology of Morality’, *Social Identities* 21, no. 4 (2015): 395–409, <https://doi.org/10.1080/13504630.2015.1071703>

¹⁰⁰ *Immigration Act of 1990*, Pub. L. No. 101–649, 104 Stat. 4978 (1990), *GovInfo*, <https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg4978.pdf>

¹⁰¹ *Antiterrorism and Effective Death Penalty Act of 1996*, Pub. L. No. 104–132, 110 Stat. 1214 (1996), *GovInfo*, <https://www.govinfo.gov/content/pkg/PLAW-104publ132/html/PLAW-104publ132.htm>

¹⁰² *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*.

¹⁰³ Juliet Stumpf, ‘The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power’, *American University Law Review* 56, no. 2 (2006): 367–419, <https://doi.org/10.1515/9780804785419-004>

significant sections of the legal immigration system in an attempt to complete the job started by Reagan and the IRCA.¹⁰⁴ The legislative process for this Act began in 1989 when the bill was introduced in the Senate by Democratic Senator Ted Kennedy, though it rapidly garnered bipartisan support, demonstrating a broad consensus on the need for immigration reform. It passed the Senate with an 81-17 vote.¹⁰⁵ It then passed the House without objection before final approval and was signed into law by President Bush on November 29, 1990.¹⁰⁶ The legislation's goal was to address the flaws and concerns in the existing immigration system and in doing so it introduced several significant changes to family immigration, business immigration, naturalization, and grounds and procedures for exclusion and deportation.¹⁰⁷

IMMACT brought about several key changes to the legal immigration framework. Firstly, it increased limitations on legal immigration by raising the annual cap on immigration from 500,000 to 700,000 for fiscal years 1992 through 1994, and 675,000 per year thereafter.¹⁰⁸ The Act established a three-tiered immigration system, categorizing immigrants as either family-related, employment-related or diversity-related.¹⁰⁹ It created five distinct employment-based visa categories¹¹⁰ which expanded opportunities for skilled workers.¹¹¹ IMMACT also introduced the Diversity Visa (commonly known as the “Green Card lottery”) for individuals from countries with low rates of immigration to the US.¹¹² The goal was to address historical imbalances in immigration flows. The Act also formalised the Temporary Protected Status (TPS) (it had been used earlier through administrative action).¹¹³ TPS allowed the Attorney General to grant temporary safe haven to immigrants unable to return to their home countries due to armed conflict, environmental disasters, or other “extraordinary and temporary” conditions.¹¹⁴ Some of the first to benefit were Salvadorans fleeing violence.¹¹⁵ TPS recognised humanitarian concerns in immigration policy and offered temporary safe haven for those in dire need.

¹⁰⁴ Arnold H. Leibowitz, ‘United States: Immigration Act of 1990’, *International Legal Materials* 30, no. 2 (1991): 298, <https://doi.org/10.1017/S0020782900017587>

¹⁰⁵ *Immigration Act of 1990*.

¹⁰⁶ *Ibid.*

¹⁰⁷ Warren R Leiden and David L Neal, ‘Highlights of the U.S. Immigration Act of 1990’, *Fordham International Law Journal* 14, no. 1 (1990): 328.

¹⁰⁸ *Ibid.*, 329.

¹⁰⁹ *Ibid.*

¹¹⁰ These categories included the EB-1 visa for aliens of extraordinary ability, the EB-4 visa for special immigrants such as religious workers, and the EB-5 visa for individuals creating employment through capital investment.

¹¹¹ Leiden and Neal, ‘Highlights of the U.S. Immigration Act of 1990’, 329.

¹¹² *Ibid.*, 331.

¹¹³ Eva Segerblom, ‘Temporary Protected Status: An Immigration Statute That Redefines Traditional Notions of Status and Temporariness’, *Nevada Law Journal* 7 (Spring 2007): 664.

¹¹⁴ ‘Temporary Protected Status’, U.S. Citizenship and Immigration Services, 17 October 2024, <https://www.uscis.gov/humanitarian/temporary-protected-status>.

¹¹⁵ Jill H. Wilson, *Temporary Protected Status and Deferred Enforced Departure*, no. RS20844 (Congressional Research Service, 2024), <https://www.congress.gov/crs-product/RS20844>

The law also increased the per-country immigrant visa cap, revised the family-based immigration preference system to prioritise immediate family members, and set an annual cap on H-1B visas for highly skilled workers.¹¹⁶ It increased the annual cap for immigrant visas from 530,000 per year to 700,000 per year, tripled employment-based immigration from 54,000 to 140,000 and overall led to a 500,000 annual increase of immigrants. The law also included a provision which aimed to diversify “the national origins of immigrants coming to the United States” by creating 55,000 “diversity immigrant” visas per year. The law created the H-1B visas for highly skilled temporary workers and H-2B for temporary non-agricultural workers. This represented a shift towards a skill-based immigration system, though it maintained family reunification as one of its core principles. In 1990, the Bush administration authorised residency and work permits for spouses and minor children of people who had been legalized under IRCA.¹¹⁷ This was formalized within IMMACT. The change addressed one of the unintended consequences of IRCA, the separation of families and acknowledged the importance of family unity.

Furthermore, the Act provided the U.S. Border Patrol with increased funding, personnel and powers, enhancing its ability to monitor and control the nation’s borders. The law made several key changes to deportation and detention procedures, expanding the number of deportable offenses by broadening the definition of “aggravated felonies” which triggered mandatory detention and deportation. It increased penalties for drug-related offenses, introduced stricter rules regarding public charge, increased penalties for fraud and misrepresentation in immigration applications, and added provisions related to national security and terrorism. Together these changes made it easier for the government to deport immigrants. As always, more exclusion and deportation required more detention. But, while the 1990 Act did affect detention policy through these changes, the biggest impact was still to come in 1996 under President Clinton.

Aristide Zolberg shows that the changes that increased legal immigration were contrary to the wishes of a majority of Americans.¹¹⁸ A Roper poll at the time showed that “a majority believed that legal as well as illegal immigrants displaced American workers, burdened the social welfare system, and threatened American culture” (see table and graph below).¹¹⁹ IMMACT was legislated against a backdrop of nativist discourse.¹²⁰ Immigrants were accused of exacerbating social and economic problems, such as unemployment and crime, depleting social welfare coffers, causing political

¹¹⁶ Leiden and Neal, ‘Highlights of the U.S. Immigration Act of 1990’, 332.

¹¹⁷ Frank S. Martucci, ‘Impact of the Immigration Act of 1990, Family Unity Provisions, on Medical Eligibility (Department of Health Services, State of California)’, personal communication, 1 March 1993.

¹¹⁸ Zolberg, *A Nation by Design*, *op. cit.*, 381.

¹¹⁹ *Ibid.*

¹²⁰ James G. Gimpel and James R. Edwards, *The Congressional Politics of Immigration Reform*, New Topics in Politics (Allyn and Bacon, 1999), 186.

turmoil and engendering state fiscal shortfalls.¹²¹

PERCENT FAVORING DECREASES IN IMMIGRATION BY YEAR AND NATION				
Year	United States	Canada	Australia	United Kingdom
1946	37.0			
1953	39.0			
1965	33.0			
1975		39.0		
1977	42.0			
1980		42.0		
1981	65.0			
1982	66.0	55.0		
1983				54.4
1984				59.2
1985		42.0		
1986	49.0			54.4
1987		41.0		
1988	53.0	41.0	67.3	
1989		34.0	65.0	52.8
1990	48.0	32.0	64.4	
1991		45.0	67.9	
1992	54.0	46.0		
1993	61.0	45.0		
Summary Statistics by Nation				
Year	United States	Canada	Australia	United Kingdom
Average	49.7	42.0	65.9	55.2
Variance	11.5	3.1	2.9	5.7
Adjusted ^a Variance	21.5	33.5	2.9	5.7

^a Variance computed using most current four surveys.

Figure 16. Percent Favoring Decreases in Immigration by Year and Nation (United States, Canada, Australia, United Kingdom)

Rita J. Simon and James P. Lynch, "A Comparative Assessment of Public Opinion toward Immigrants and Immigration Policies," *International Migration Review* 33, no. 2 (Summer 1999): 461, <https://doi.org/10.1177/0197918399033002>

¹²¹ Miriam J. Wells, 'The Grassroots Reconfiguration of U.S. Immigration Policy', *The International Migration Review* 38, no. 4 (2004): 1308, <https://doi.org/10.1111/j.1747-7379.2004.tb00239.x>

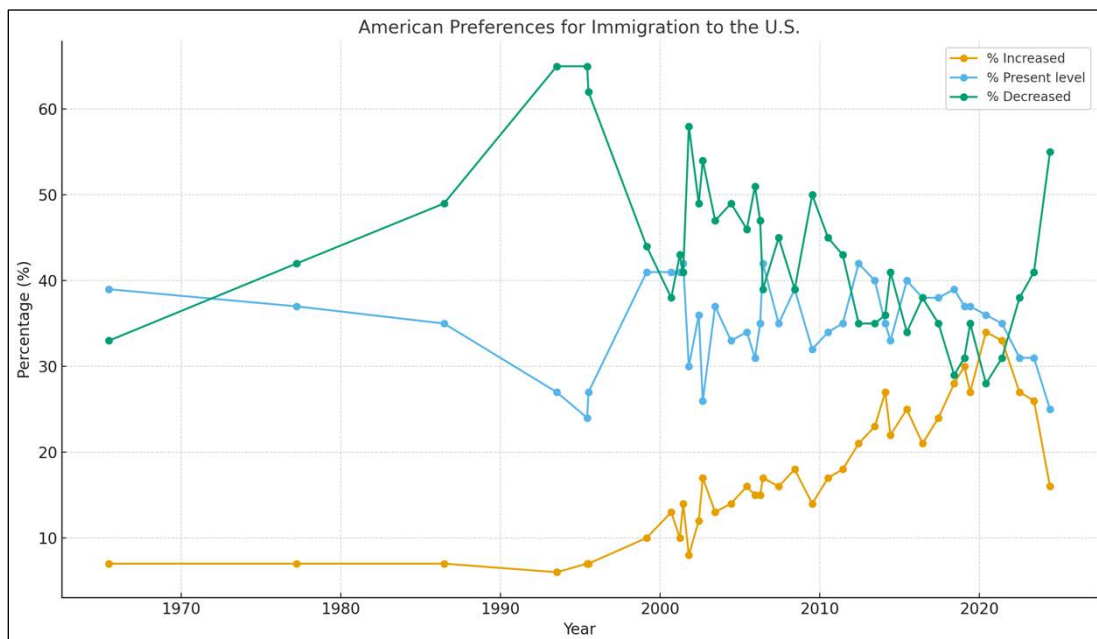


Figure 17. American Preferences to Immigration to the United States

Source: Jeffrey M. Jones, “Sharply More Americans Want to Curb Immigration to U.S.,” *Gallup*, July 12, 2024, <https://news.gallup.com/poll/647123/sharply-americans-curb-immigration.aspx>

For detailed data see Appendix 5.

The year 1991 was of less legislative importance when it came to immigration, though certain provisions of the Immigration Act of 1990 came into effect, including an increase in overall immigration quotas, the introduction of the diversity visa (with applications starting in 1991), and adjustments to employment-based and family-sponsored visa categories.¹²² The government also had to respond and react to a number of international refugee situations.¹²³ Minor legislative developments included the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991¹²⁴ and the Armed Forces Immigration Adjustment Act of 1991.¹²⁵ The latter created a pathway for special immigrant status and permanent residency for non-

¹²² ‘Immigration Act of 1990’, *Immigration History*, 2019, <https://immigrationhistory.org/item/immigration-act-of-1990/>

¹²³ ‘Refugee Timeline’, U.S. Citizenship and Immigration Services, 7 February 2023, *USCIS.gov* <https://www.uscis.gov/about-us/our-history/stories-from-the-archives/refugee-timeline>

¹²⁴ *Miscellaneous and Technical Immigration and Naturalization Amendments of 1991*, Pub. L. No. 102–232, 105 Stat. 1733 (1991), *Congress.gov*, <https://www.congress.gov/bill/102nd-congress/house-bill/3049>

¹²⁵ *Armed Forces Immigration Adjustment Act of 1991*, Pub. L. No. 102–110, 105 Stat. 551 (1991), *GovTrack*, <https://www.govtrack.us/congress/bills/102/s296/text>

citizens who had honourably served in the U.S. military for at least 12 years.¹²⁶

While domestic immigration policy in 1991 saw only modest legislative changes, global events that year significantly shaped the practical realities of U.S. immigration and refugee admissions. The dissolution of the Soviet Union in late 1991 had a notable impact on refugee flows from that region.¹²⁷ Approximately 114,000 refugees were admitted to the United States during Fiscal Year 1991. The majority of these refugees were from Southeast Asia (48%) and Eastern Europe and the Soviet Union (40%).¹²⁸ The 1991 Haitian coup d'État triggered a substantial outflow of Haitian refugees, many of whom attempted to reach the United States by sea.¹²⁹ The situation became highly contentious, as the US Coast Guard intercepted and repatriated many refugees, prompting widespread criticism and accusations that the administration's actions reflected racial bias and a double standard in comparison to its treatment of Cuban refugees.¹³⁰

The Clinton Era (1993-2001): Legislative Overhaul and Expanded Enforcement

The 1990s saw the emergence of a strong bipartisan consensus in favour of harsher immigration controls. This consensus was solidified by the 1993 World Trade Center bombing, which was carried out by individuals who had violated immigration laws.¹³¹ This event provided a powerful national security justification for merging the frameworks of counter-terrorism, criminal law, and immigration enforcement, a trend that culminated in two watershed pieces of legislation in 1996.

The 1993 World Trade Center Attack

On February 26, 1993, the United States was rocked when a group of terrorists, most of whom were citizens of countries in the Middle East (notably from Pakistan, Palestine, Egypt, Jordan, and Iraq) bombed the World Trade Center. Killing six and injuring over a thousand more, the attack renewed political focus on immigration policy and national security. On July 27, 1993, Clinton proposed the Expedited

¹²⁶ U.S. Citizenship and Immigration Services (USCIS), "Volume 6: Immigrants, Part H: Designated and Special Immigrants, Chapter 6," *USCIS Policy Manual*, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/policy-manual/volume-6-part-h-chapter-6>

¹²⁷ Olga Chudinovskikh and Mikhail Denisenko, *Russia: A Migration System with Soviet Roots* (Migration Policy Institute, 2017), <https://www.migrationpolicy.org/article/russia-migration-system-soviet-roots>

¹²⁸ Immigration and Naturalization Service, *1991 Statistical Yearbook of the Immigration and Naturalization Service*, M-367 (U.S. Government Printing Office: Washington, D.C., 1992), 76.

¹²⁹ Immigration and Refugee Board of Canada, "Impact of the September 1991 Coup," Refworld, 1 June 1992, <https://www.refworld.org/reference/countryrep/irbc/1992/en/19733>

¹³⁰ Carl Lindskoog, *Detain and Punish: Haitian Refugees and the Rise of the World's Largest Immigration Detention System* (2018), 121.

¹³¹ Steven A. Camarota, *The Open Door: How Militant Islamic Terrorists Entered and Remained in the United States, 1993-2001*, Center Paper 21 (Center for Immigration Studies, 2002), 15.

Exclusion and Alien Smuggling Enhanced Penalties Act of 1993, which aimed to tackle illegal immigration.¹³² It would have increased penalties for certain alien smuggling offenses, criminalised the use or attempt to use fraudulent documents to enter the United States, and allowed wiretapping, with judicial approval, in cases of INS investigations into human trafficking. The proposal was, according to the President, part of a wider Administration initiative to combat illegal entry and the smuggling of aliens into the United States, at a cost totalling \$172.5 million.¹³³

During remarks and an exchange with reporters following the proposal, the President explained that he had become concerned with human and drug trafficking, entry of international terrorists, and the inflow of illegal immigrants, what he called the “problems along our borders.” Since his arrival in the White House this was the first time immigration had been the main focus of an event. Coming a short time after the World Trade Center bombing, President Clinton discussed the impact of the attack on his government’s policy:

There’s no question that the World Trade Center bombing has caused us to review a whole range of issues, not just involving immigration, in terms of our ability to deal with the whole threat of actual or potential terrorism. And when that happened, we began in earnest to review not only this issue but the capacity of our law enforcement agencies to deal with it, and we will continue to do that.¹³⁴

He insisted on the need to fight human trafficking and terrorism and declared that the American people would not “surrender our borders to those who wish to exploit our history of compassion and justice.” He focused on the importance of immigrating legally:

the solution to the problem of illegal immigration is not simply to close our borders. The solution is to welcome legal immigrants and legal legitimate refugees and to turn away those who do not obey the laws. We must say no to illegal immigration so we can continue to say yes to legal immigration.¹³⁵

In his conclusion, he emphasised the importance of immigrants as a source of strength for the nation. But he also attacked the illegality of certain aspects of immigration:

the kinds of practices that are manifest in who can get into this country on an airplane, what kind of illegal smuggling can go on, and the fact that our borders leak like a sieve, those things cannot be permitted to continue in

¹³² *Expedited Exclusion and Alien Smuggling Enhanced Penalties Act of 1993*, S. 1333, 103rd Cong. (1993), Congress.gov, <https://www.congress.gov/bill/103rd-congress/senate-bill/1333/titles>

¹³³ William J. Clinton. “Message to the Congress Transmitting Proposed Legislation on Illegal Immigration,” July 27, 1993, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/message-the-congress-transmitting-proposed-legislation-illegal-immigration>

¹³⁴ William J. Clinton “Remarks and an Exchange with Reporters on Immigration Policy.” *The American Presidency Project*. July 27, 1993. <https://www.presidency.ucsb.edu/documents/remarks-and-exchange-with-reporters-immigration-policy>

¹³⁵ *Ibid.*

good conscience. It's not good for the American immigrants who are here legally in this country, for the American economy, for the cohesion of our society, or for the rule of law worldwide. And we're going to try to do better. This is a very good first step.¹³⁶

The Clinton administration's immigration policy exemplified the strategic convergence of migration control with law-and-order politics during the 1990s.¹³⁷ By framing unauthorised migrants as both economic and security threats, the administration rooted immigration enforcement within a broader punitive governance framework that prioritised deterrence through enhanced enforcement mechanisms. This discursive strategy employed "rule of law" rhetoric to legitimise increasingly restrictive measures while positioning opposition as fundamentally anti-legal rather than humanitarian. The approach represented a calculated political realignment whereby Democratic leadership adopted traditionally conservative enforcement positions, using legalistic framing to neutralise criticism while appealing to centrist voters concerned with both economic security and public order. In a 1996 memorandum to the president, at the time of the IIRIRA legislation, Clinton's senior policy advisor Rahm Emanuel wrote:

Since Nixon's Law and Order campaign, crime has been a staple of the GOP platform. Over the last four years, your policies have defined the issue and allowed Democrats to achieve parity. The illegal immigration legislation provides that same opportunity. We can build a strong Administration record on immigration.¹³⁸

Following the President's announcement on immigration policy reforms, a senior administration official declared that the announcement marked the culmination of extensive efforts undertaken in response to the World Trade Center bombing and the escalating issue of alien smuggling along the nation's borders.¹³⁹ He added that the administration had worked with members of Congress to assemble a comprehensive package of initiatives and secure the necessary funding to address these challenges. The administration official also acknowledged that despite the U.S.' extensive immigration enforcement budget, its resources were limited. Therefore, it was not possible to detain every individual who had an immigration claim. The aim of this legislation was to "come up with a system so that we can deal with people fairly so that some of the abuses that we've been experiencing we don't experience."¹⁴⁰ He asserted that the implementation of this new system would prevent individuals with

¹³⁶ *Ibid.*

¹³⁷ Quoted in Patrisia Macías-Rojas, 'Immigration and the War on Crime: Law and Order Politics and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996', *Journal on Migration and Human Security* 6, no. 1 (2018): 12.

¹³⁸ Macías-Rojas, 'Immigration and the War on Crime: Law and Order Politics and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996', 12.

¹³⁹ Senior Administration Official, 'Background Briefing', Washington, D.C., 27 July 1993, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/background-briefing-senior-administration-official-56>

¹⁴⁰ *Ibid.*

intentions similar to those responsible for the World Trade Center attacks from gaining entry into the United States, thereby enhancing national security. Congress, however, failed to pass the legislation. Despite having control of both the White House, the House and the Senate,¹⁴¹ Democrats failed to pass any meaningful immigration legislation during Clinton's first two years in office. Deep intraparty divisions,¹⁴² competing legislative priorities,¹⁴³ rising public anxiety about immigration (see table below), and ultimately, the 1994 Republican takeover combined to make meaningful immigration reform politically unachievable. The result was that the Clinton administration's immigration record focused far more on enforcement than on legalisation or expansion, establishing a pattern that would continue for decades.

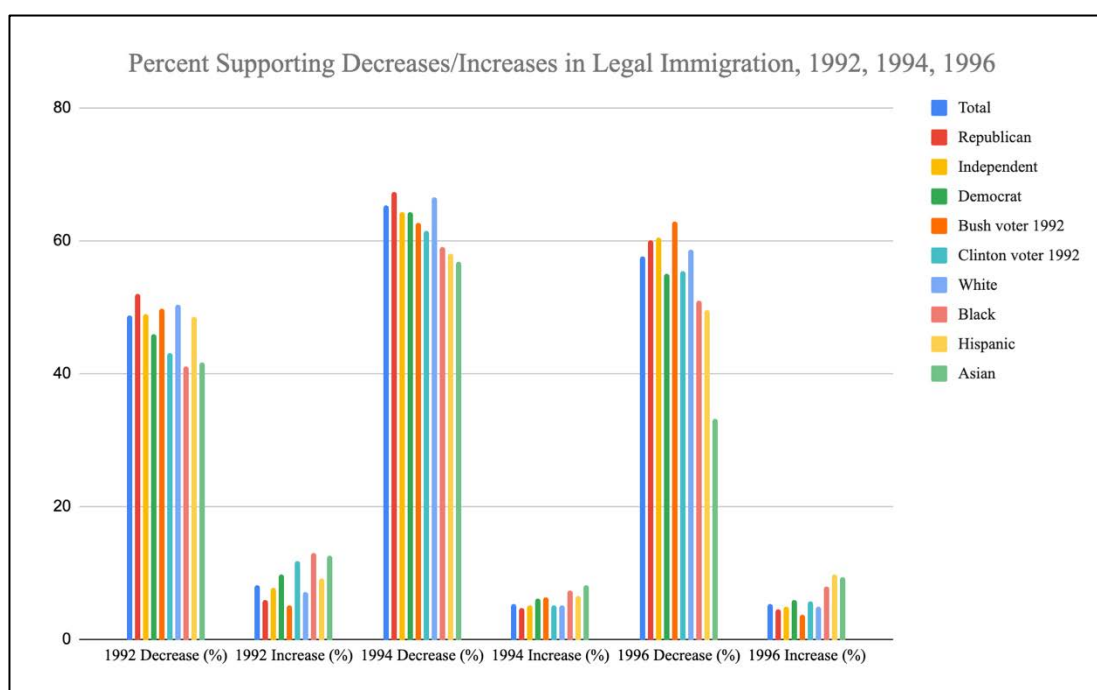


Figure 18. Percent Supporting Decreases/Increases in Legal Immigration in the USA, 1992, 1994, 1996

Source: James G. Gimpel and James R. Edwards, *The Congressional Politics of Immigration Reform*, 1st ed. (Boston: Allyn & Bacon, 1999), 36.

For detailed data see Appendix 6.

¹⁴¹ Something that had not happened since the 96th Congress in 1979.

¹⁴² Many moderate and conservative Democrats, especially from Southern and Western states, were wary of being seen as “soft” on illegal immigration. In contrast, more liberal Democrats emphasised humanitarian and pro-immigrant positions, making compromise difficult.

¹⁴³ Notably the economy, healthcare reform, gun control, and welfare reform.

One of his administration's key foci was on strengthening border control, enhancing worksite enforcement to deter the employment of undocumented workers (therefore enforcing the IRCA provisions), and implementing priorities in the deportation of non-citizens, focusing on immigrants with criminal records. The 1990s saw a transition towards more robust enforcement measures as a central component of immigration policy. The goal was to reduce illegal entry into the US and the presence of undocumented immigrants already within the country. However, the Clinton administration also attempted to streamline the naturalisation processes for legal immigrants, aiming to facilitate their integration into American society and attempted to reduce backlogs in citizenship applications which had accumulated over time.¹⁴⁴

The year 1994 saw a huge economic and political change in the United States, with NAFTA coming into effect on January 1st. The goal of the North American Free Trade Agreement was to remove all tariffs and non-tariff barriers hindering trade and investment among the United States, Canada, and Mexico. This initially boosted Mexico's economy, but political instability and economic crises in 1994-1995 (known as "The Tequila Crisis") led to a collapse in the value of the peso in late 1994.¹⁴⁵

The Violent Crime Control and Law Enforcement Act of 1994

In February 1994, the Clinton administration announced a new immigration strategy that would reorganise the asylum process, prioritise security and deportation, and encourage legal immigrants to obtain citizenship. At the same time, powers were given to local law enforcement, especially in border state, to help deal with the issue of illegal entries of immigrants.¹⁴⁶ These powers were later formalised in the 1996 IIRIRA law under section 287 (g).¹⁴⁷ This in turn pushed migrants into more remote areas, where they were less likely to encounter police or border patrol. That year, Congress also passed an anti-Crime bill.

Despite its name, the Violent Crime Control and Law Enforcement Act of 1994 contained important immigration provisions.¹⁴⁸ The law widened the net of the criminal justice system and is seen as one of the causes of mass incarceration in the

¹⁴⁴ William J. Clinton, "Briefing Paper III-7: The Clinton Administration's Economic Record," *The White House*, circa 1996, https://web.archive.org/web/20250206134558/https://clintonwhitehouse1.archives.gov/White_House/Publications/html/briefs/iii-7.html

¹⁴⁵ Aldo Musacchio, 'Mexico's Financial Crisis of 1994-1995', *Harvard Business School Working Paper* 12-101 (July 2012), <http://nrs.harvard.edu/urn-3:HUL.InstRepos:9056792>

¹⁴⁶ 'A Brief Legislative History of the Last 50 Years on the U.S.-Mexico Border | Mexico Initiatives', 28 April 2020, <https://mexico.arizona.edu/revista/brief-legislative-history-last-50-years-us-mexico-border>

¹⁴⁷ *The 287(g) Program: An Overview* (American Immigration Council, 2025).

¹⁴⁸ *Violent Crime Control and Law Enforcement Act of 1994*, Pub. L. No. 103-322, 108 Stat. 1796 (1994), *GovTrack*, <https://www.govtrack.us/congress/bills/103/hr3355/text>

USA.¹⁴⁹ But beyond its impact on the criminal justice system, it also increased funding for border control and the INS and expedited the deportation of undocumented individuals and those with criminal convictions. The Bill also made changes to asylum procedures, with the goal of speeding up decisions on claims and reducing existing backlogs. The issue of asylum backlogs was also faced by the British government, as later pages will show.

It also mandated the creation of a database to track the legal status of immigrants within the US and funded the State Criminal Alien Assistance Program (SCAAP), which provided for the reimbursement of states for some of the costs associated with incarcerating undocumented immigrants convicted of crimes.¹⁵⁰ The legislation also increased penalties for alien smuggling and the creation or use of fraudulent immigration documents. The Crime Bill heavily increased funding allocated to immigration enforcement and established a more punitive approach to illegal immigration.¹⁵¹ By linking immigration enforcement to broader crime control efforts, the administration likely aimed to garner wider public support for these measures. This shift toward a more punitive immigration policy set the stage for a dramatic expansion of the detention system. As enforcement priorities intensified, subsequent legislation not only increased the number of immigrants subject to detention but also broadened the range of offenses that could trigger removal, effectively linking criminality more closely with immigration status. Indeed, the immigration detention estate was expanded by the 1986, 1990 and 1996 laws, but it was the creation and expansion of the aggravated felony category through the Anti-Drug Abuse Act of 1988, the Crime Control Act of 1990, and the Violent Crime Control and Law Enforcement Act of 1994 that helped fill them (see graph below).¹⁵²

¹⁴⁹ Lauren-Brooke Eisen, 'The 1994 Crime Bill and Beyond: How Federal Funding Shapes the Criminal Justice System', *Brennan Center For Justice*, 9 September 2019, <https://www.brennancenter.org/our-work/analysis-opinion/1994-crime-bill-and-beyond-how-federal-funding-shapes-criminal-justice>

¹⁵⁰ National Conference of State Legislatures (NCSL), "State Criminal Alien Assistance Program," *NCSL*, last modified 3 July 2025, <https://www.ncsl.org/research/immigration/state-criminal-alien-assistance-program.aspx>

¹⁵¹ Eduardo Batista, 'Immigration Control and the Punitive Turn', *Themis: Research Journal of Justice Studies and Forensic Science* 2, no. 1 (2014): 3, <https://doi.org/10.31979/THEMIS.2014.0201>

¹⁵² Walter A. Ewing et al., *The Criminalization of Immigration in the United States* (American Immigration Council, 2015), 13, https://www.americanimmigrationcouncil.org/sites/default/files/research/the_criminalization_of_immigration_in_the_united_states.pdf

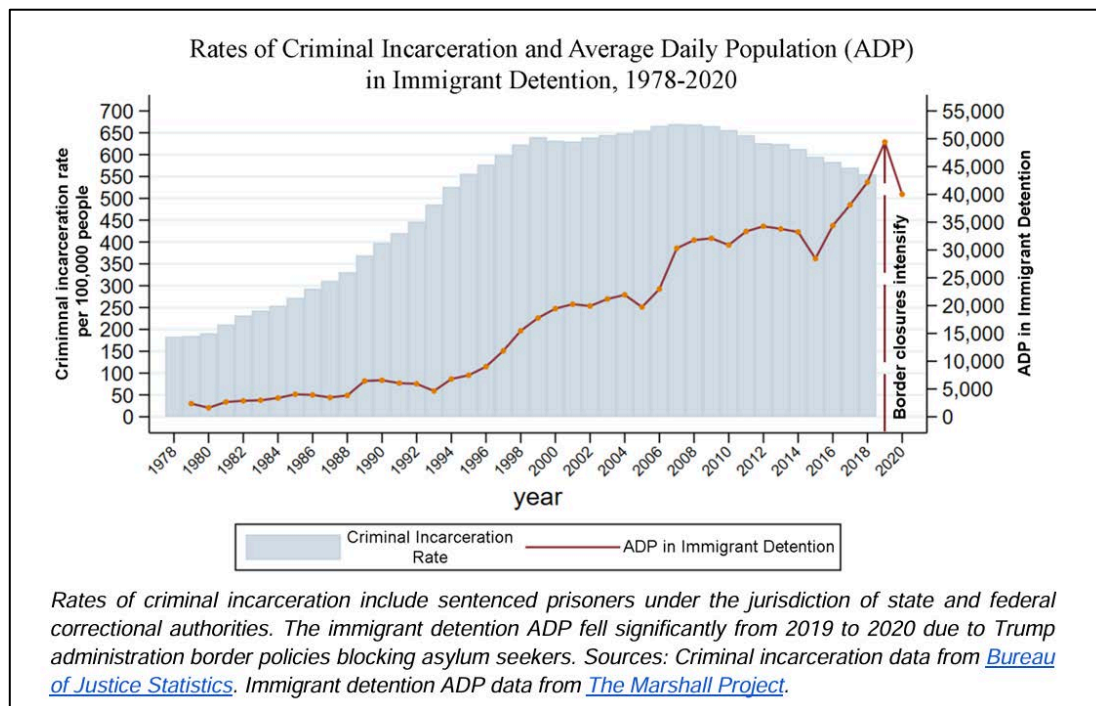


Figure 19. Rates of Criminal Incarceration and Average Daily Population (ADP) in US Immigrant Detention (1978-2020)

Source: Immigrant Justice, *Policy Brief: 5 Reasons to End Immigrant Detention*, p. 2, <https://immigrantjustice.org/research/policy-brief-5-reasons-to-end-immigrant-detention/>

The 1994 Midterms & their Aftermath

Heading into the 1994 midterm elections, Clinton had had mixed success politically and economically. He had won his budget battle, but at a cost.¹⁵³ He had negotiated and signed the NAFTA agreement with Mexico and Canada, albeit against the wishes of many Democratic constituencies and he had failed to implement his healthcare campaign promises. The economy was still struggling, with inflation eroding most of the wage increases, and voters felt that Clinton had failed to live up to his promises on the issue.¹⁵⁴

The 1994 midterm elections delivered a devastating blow to President Clinton's administration and ended Democratic congressional domination. According

¹⁵³ The "budget battle" refers to Clinton's 1993 budget plan for fiscal year 1994, the Omnibus Budget Reconciliation Act, which aimed to reduce the federal deficit through tax increases on the wealthy and spending cuts. Although it ultimately passed and helped stabilise the economy, the plan angered many Democrats and labour groups, creating political backlash that contributed to challenges for Clinton heading into the 1994 midterm elections.

¹⁵⁴ Dean Baker, *The United States Since 1980*. 2007. 135

to economist Dean Baker, the election results “stunned most political observers.”¹⁵⁵ The Republican Party achieved a dramatic reversal of fortunes, securing dominance in the Senate but, most significantly, taking control of the House of Representatives for the first time since the Eisenhower administration in 1954. Led by Newt Gingrich, the ‘Republican Revolution’ saw the party win 54 seats in the House and 8 in the Senate.¹⁵⁶ Running on a policy manifesto entitled the “Contract with America,” Republicans vowed to implement a 10-point legislative plan to “to cut federal taxes, balance the budget and dismantle a host of welfare programmes enacted and expanded during the decades of Democratic rule.”¹⁵⁷ The Contract did not include immigration as an issue, but the Republicans were able to capitalise on frustration among independent voters with Clinton’s first two years in office.¹⁵⁸ *Politico* writer Martin Frost argued that a number of factors explained the results: Democrats had run out of ideas, lacked strong leadership and the Party had become complacent, believing they were a permanent House majority.¹⁵⁹ The undeniable consequence was that the Clinton administration would now face the challenge of governing alongside a Republican legislature for at least the remainder of the President’s first term.

On December 15, 1994, a month after the midterms, the President delivered a nationally televised address discussing what he called a “Middle Class Bill of Rights.” He aimed to “woo disenchanted swing voters with a hastily assembled, \$60 billion package of tax cuts and deductions aimed primarily at middle-income families with young children and education bills to pay.”¹⁶⁰ He made a deliberate appeal for political civility, pushing citizens to “put aside the politics of personal destruction and demonization.”¹⁶¹ Furthermore, his speech seemed to be a direct and calculated response to Proposition 187, in which Californians had voted to restrict undocumented immigrants from accessing public services such as education and healthcare.¹⁶² He admitted that “some people do take advantage of the rest of us by breaking the law, abusing the welfare system, and flaunting our immigration laws,” adding that it was “wrong, and I’m working to stop it.”¹⁶³ This marked a significant shift in his administration’s approach to immigration and welfare policy, likely in an attempt to

¹⁵⁵ *Ibid.*, 137.

¹⁵⁶ Andrew Glass. “Congress runs into ‘Republican Revolution’” *Politico*. Nov. 8, 1994. <https://www.politico.com/story/2007/11/congress-runs-into-republican-revolution-nov-8-1994-006757>

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ Martin Frost “1994 and 2010? There’s no comparison” *Politico*. Oct. 27, 2009. <https://www.politico.com/story/2009/10/1994-and-2010-theres-no-comparison-028741>

¹⁶⁰ Time. “Clinton Unveils “Middle Class Bill Of Rights” *Time Magazine*. Dec. 15, 1994.

¹⁶¹ William J. Clinton, “Address to the Nation on the Middle Class Bill of Rights,” Washington, D.C., 15 December 1994, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/address-the-nation-the-middle-class-bill-rights>

¹⁶² For a much more detailed presentation of Proposition 187 see Appendix 1.

¹⁶³ William J. Clinton, ‘Address to the Nation on the Middle Class Bill of Rights’, Washington, D.C., 15 December 1994, <https://www.presidency.ucsb.edu/documents/address-the-nation-the-middle-class-bill-rights>, *op. cit.*

reclaim political territory lost in the November electoral defeat.

Early the following year, on January 21, 1995, the President made a speech to the Democratic National Committee. He hoped to work with Republicans rather than against them and discussed the issue of illegal immigration and the GOP's focus on the issue:

They say we have to do something about immigration. They're right; there are too many illegal immigrants in America. But we have increased the number of border guards. We have accelerated the deportation of people convicted of crimes. We have faced these problems after they were ignored by the people who were here before. If they want to help in a responsible and fair way, I say, come on.¹⁶⁴

Illegal immigration was becoming an important matter for the Clinton administration as was apparent by its presence in the President's 1995 State of the Union address. Unlike his 1994 State of the Union, in which there was no mention of immigration, in 1995 the issue could no longer be avoided. While he did not name Proposition 187 directly, it was there in essence, as the President discussed the large numbers of illegal aliens entering the country:

All Americans, not only in the States most heavily affected but in every place in this country, are rightly disturbed by the large numbers of illegal aliens entering our country. The jobs they hold might otherwise be held by citizens or legal immigrants. The public service they use impose burdens on our taxpayers. That's why our administration has moved aggressively to secure our borders more by hiring a record number of new border guards, by deporting twice as many criminal aliens as ever before, by cracking down on illegal hiring, by barring welfare benefits to illegal aliens. In the budget I will present to you, we will try to do more to speed the deportation of illegal aliens who are arrested for crimes, to better identify illegal aliens in the workplace as recommended by the commission headed by former Congresswoman Barbara Jordan. We are a nation of immigrants. But we are also a nation of laws. It is wrong and ultimately self-defeating for a nation of immigrants to permit the kind of abuse of our immigration laws we have seen in recent years, and we must do more to stop it.¹⁶⁵

Its mention in the State of the Union was evidence that the immigration issue had moved into the public eye and that the White House acknowledged illegal immigration as a public concern and policy imperative. A few hours prior to Clinton's SOTU, Chief of Staff Leon Panetta had conducted a press briefing to outline the administration's agenda. This included his vision for the following two years but also for the new century, including on the issue of immigration. According to Panetta,

¹⁶⁴ William J. Clinton, "Remarks to the Democratic National Committee," Washington, D.C., 21 January 1995, *The American Presidency Project*,

<https://www.presidency.ucsb.edu/documents/remarks-the-democratic-national-committee>

¹⁶⁵ William J. Clinton, "Address Before a Joint Session of the Congress on the State of the Union," House Chamber of the Capitol, Washington, D.C., 24 January 1995, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/address-before-joint-session-the-congress-the-state-the-union-11>

[The President] indicates a very strong effort to deal with illegal immigration. And the key element of that -- we've obviously emphasized enforcement in the past, and a continuing effort to increase our border patrols as well as our enforcement efforts. But he also supports the verification recommendation contained in the Jordan Commission. For those who are not familiar with that, it's essentially setting up what I would call almost a "Brady-type" system, a centralized system to ensure verification of those that are working.¹⁶⁶

This comparison to the Brady Bill's background check system suggests the administration was considering a comprehensive database approach to employment verification which would have represented a major systemic innovation in immigration enforcement. Panetta confirmed that the Clinton administration had already doubled the number of border patrol agents and would continue to expand the force.

The immigration issue was pushed to the heart of the White House's policies. In February 1996, President Clinton delivered a set of remarks on the proposed 1996 budget. He presented it as having "the most comprehensive immigration plan to fight illegal immigration that any administration has produced."¹⁶⁷ He argued that it toughened the USA's immigration enforcement by strengthening its ability "to deport illegal immigrants, particularly those who commit crimes. It increases our ability to move in the workplace and to identify those who are in the workplace who should not be."¹⁶⁸

In a Presidential memorandum entitled "Deterring Illegal Immigration" that Clinton issued to the heads of executive departments and agencies on February 7th, 1995, he stated that it was a "fundamental right and duty for a nation to protect the integrity of its borders and its laws" and that America must "stand firm against illegal immigration and the continued abuse of our immigration laws."¹⁶⁹ Following this, the President unveiled his immigration policy initiative and informed reporters that after a meeting with several government officials that day, he had

signed a Presidential directive to the heads of all executive departments instructing them to very quickly expand and strengthen our program to reduce illegal immigration in four key areas: first, protecting our borders; second, protecting the interests of our workers in the workplace; third, removing more criminal aliens; and fourth, providing more assistance to the States which are burdened with the problem of illegal immigration.¹⁷⁰

¹⁶⁶ Leon Panetta, "Press Briefing by Chief of Staff Leon Panetta," Washington, D.C., 24 January 1995, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/press-briefing-chief-staff-leon-panetta-2>

¹⁶⁷ William J. Clinton, "Remarks on the 1996 Budget," Washington, D.C., 6 February 1995, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/remarks-the-1996-budget>

¹⁶⁸ *Ibid.*

¹⁶⁹ William J. Clinton, "Memorandum on Illegal Immigration," 7 February 1995, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/memorandum-illegal-immigration>

¹⁷⁰ William J. Clinton, "Remarks on the Immigration Policy Initiative and an Exchange With Reporters," Washington, D.C., 7 February 1995, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/remarks-the-immigration-policy-initiative-and-exchange-with-reporters>

Despite major budget cuts elsewhere, Clinton was asking Congress for an increase of \$1 billion to tackle illegal immigration and \$500 million to help with state reimbursement. He asserted that his administration was the first to “reimburse States for a share of the costs that they bear related to illegal immigration, including the incarceration of illegal aliens.”¹⁷¹

After the President had spoken, immigration officials¹⁷² provided further details of the administration’s policies.¹⁷³ United States Attorney General, Janet Reno, affirmed that the Clinton administration had been focused on immigration from the start: “one of the first issues he talked about was immigration and his desire to effectively control illegal immigration in this country.” One of the primary concerns was the lack of essential resources. Not enough was being done to tackle the push or pull factors. However, she emphasised that Clinton had taken a decisive and proactive approach to addressing this issue since arriving in the White House. Despite Attorney General Reno’s assertion that immigration was a priority for President Clinton, the first two years of his presidency were marked by a conspicuous absence of public discourse on the matter. Although there were actions taking place behind the scenes, there was little effort to bring these activities to the public’s attention. Furthermore, much of the administration’s approach appeared to be reactive, responding to unfolding events rather than proactive. Reno discussed the importance of the 1994 Crime Bill which had given significant resources to the Immigration and Naturalization Service.¹⁷⁴ The Commissioner of the I.N.S., Doris Meissner, stated that the President’s budget was a “comprehensive approach to enforcing the nation’s laws against illegal immigration.”¹⁷⁵ Ultimately the aim was to remove more people from the country, by tripling “the number of criminal aliens and others subject to deportation since the administration began.”¹⁷⁶ The ‘law and order’ approach was intensifying and increases in deportations (see table below) inevitably required increases in detention at a time when opposition to immigration was growing (see figures 16, 17, and 18).

¹⁷¹ *Ibid.*

¹⁷² These included Attorney General Janet Reno, I.N.S. Commissioner Doris Meissner, U.S. Customs Service Commissioner George Weise, Secretary of Labor Robert Reich, El Paso Chief Border Patrol Agent Silvestre Reyes, and I.N.S. Western Region Director Gus De La Vina.

¹⁷³ Attorney General Janet Reno et al., “Remarks on Illegal Immigration,” Washington, D.C., 7 February 1995, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/remarks-illegal-immigration-attorney-general-reno-ins-commissioner-meissner-secretary>

¹⁷⁴ Here she is referring to the *Violent Crime Control and Law Enforcement Act* discussed above.

¹⁷⁵ Attorney General Janet Reno et al., ‘Remarks on Illegal Immigration’, Washington, D.C., 7 February 1995, <https://www.presidency.ucsb.edu/documents/remarks-illegal-immigration-attorney-general-reno-ins-commissioner-meissner-secretary>, *op. cit.*

¹⁷⁶ *Ibid.*

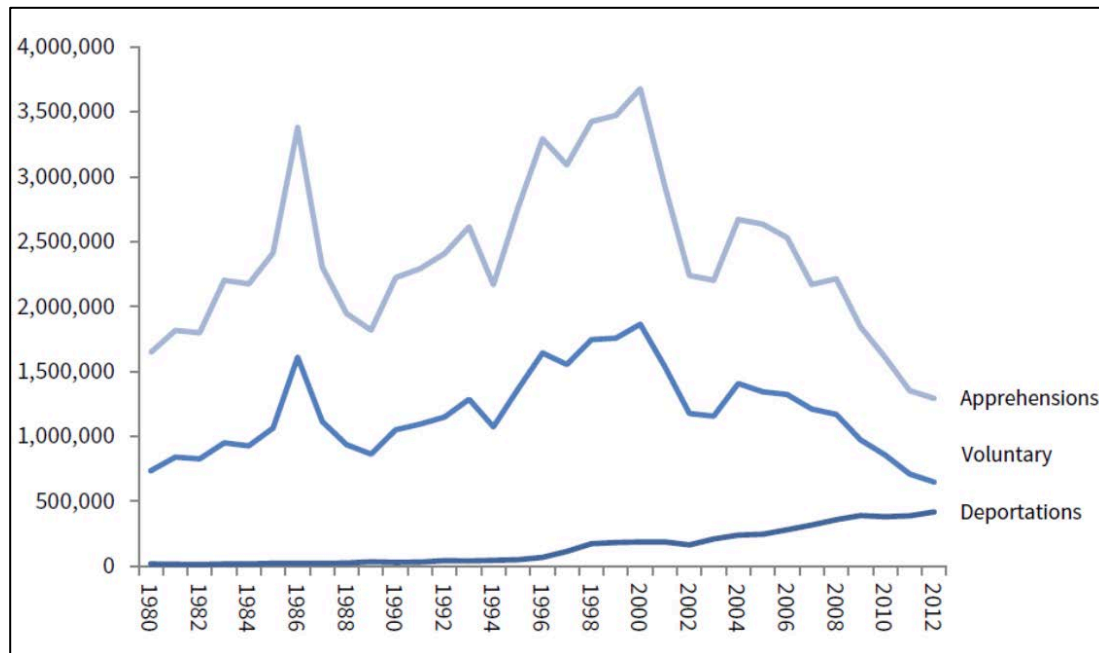


Figure 20. Apprehensions, Voluntary Returns, and Deportations in the US (1980-2012)

Source: American Immigration Council, *The Growth of the U.S. Deportation Machine* (fact sheet), <https://www.americanimmigrationcouncil.org/fact-sheet/growth-us-deportation-machine/>

Following the Republican Revolution, and the GOP taking control of Congress in January 1995, the party quickly moved to implement legislation. However, not all legislative proposals were met with the President's approval. In May 1995, Clinton attacked some of the legislation under consideration. He argued that these measures would hinder the United States' ability to address foreign threats and uphold its commitments. Specifically, he criticized the American Overseas Interests Act, asserting that it would "compromise our efforts to stop North Korea's nuclear, impose conditions that could derail our support for democratic reform in Russia, and restrict the President's ability to prevent illegal immigration."¹⁷⁷ Despite the President's frustrations, the march towards Republican legislative change had begun.

Despite the initial clashes between the Clinton administration and the Republican-led Congress, some areas of policy saw compromise, particularly on issues like immigration. Recognising both political pressures and public concern over border security, the administration began to pursue stricter enforcement measures, signalling a willingness to work within the legislative framework set by Congress. The Clinton

¹⁷⁷ William J. Clinton, "The President's News Conference," Washington, D.C., 23 May 1995, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/the-presidents-news-conference-1078>

administration intensified immigration enforcement efforts by advocating for the construction of additional border barriers, expedited deportations, and the involvement of local police in enforcing immigration laws. It was President Clinton, a Democrat working with a Republican-controlled Congress, who signed these ideas into law through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. As the following sections will show, this legislation marked a significant shift in the federal government's approach to enforcing immigration policy and laid the foundation for the substantial scale of removals that the United States has witnessed since then.

On April 19, 1995, the Alfred P. Murrah Federal Building in Oklahoma City was bombed by anti-government extremists Timothy McVeigh and Terry Nichols. This explosion resulted in the destruction of the government building and claimed 168 lives, injuring hundreds more. The bombing was initially thought to be the work of foreign terrorists (in a similar fashion to the 1993 WTC bombing), which led to widespread fear and suspicion. The incident marked a significant moment in the nation's battle against domestic terrorism and had profound implications for national security policies. The Oklahoma City bombing underscored the fragility of national security and the far-reaching consequences of domestic unrest. In the wake of such events, discussions about law, order, and the stability of federal systems, that included immigration and welfare policies, gained renewed urgency. Just a few weeks later, these concerns would surface in a broader political context, as President Clinton and Speaker Newt Gingrich addressed the nation's immigration system at a bipartisan town meeting.

Immigration and Welfare

On June 11, 1995, in Claremont, New Hampshire both President Clinton and the new Speaker of the House, Newt Gingrich, participated in the town meeting.¹⁷⁸ The immigration issue was raised by the President in relation to the economy. Both speakers congratulated Barbara Jordan, former Member of the House and Chair of the U.S. Commission on Immigration Reform, for her teams' work on immigration reform. Both agreed that the commission's recommendations should be implemented, notably reductions of legal immigration. But Gingrich argued that if the issue of illegal immigration was not dealt with properly the system would break down:

We've got to look very seriously at illegal immigration because I can tell you, even in north Georgia, we now have a very large number of illegal immigrants working, for example, in the chicken industry. And it is on the verge of getting out of control all over this country. And so even if we were to close down legal immigration or slow it down, if the illegal immigration

¹⁷⁸ William J. Clinton and Newton L. Gingrich, "Remarks in a Town Meeting," Claremont, New Hampshire, 11 June 1995, The American Presidency Project, <https://www.presidency.ucsb.edu/documents/remarks-town-meeting-with-speaker-the-house-representatives-newt-gingrich-claremont-new>

just keeps pouring in, the effect of driving out American workers is devastating.¹⁷⁹

Gingrich also focused on welfare and the need to reform the current welfare system. These two issues, immigration, and welfare, just as they had with Proposition 187, became intertwined at a legislative level. The President defended his record:

On illegal immigration—we've increased by about 40 percent the number of border guards we've got, and we're sending illegal immigrants back more rapidly than ever before, especially if they come in contact with the criminal justice system. What we need—and maybe we can work together on this—is the capacity to go into more workplaces and find people who are taking jobs away from Americans illegally. And I think that's important.¹⁸⁰

On welfare, the President agreed that reform was necessary but disagreed on how it should be achieved.

A Pro-work & Pro-legal immigration system

In September, the President congratulated the Commission on Immigration Reform for its ongoing work on legal and illegal immigration. In a statement after the publication of the second report *Legal Immigration: Setting Priorities*,¹⁸¹ the President said that “The Commission has provided the Congress and the Nation with an excellent framework to achieve gradual reductions in the level of legal immigration,”¹⁸² something that Clinton argued was one of his goals. He wished for an immigration system based on “principles that are pro-family, pro-work, and pro-naturalization” and hoped to work “with Congress in a spirit of bipartisanship to craft the specific legislation that will put these principles in practice.”¹⁸³

The desired legislative advances came in 1996. In his State of the Union, the President emphasised the immigration issue, stating the Federal Government should address illegal immigration following years of neglect by his predecessors:

this administration has taken a strong stand to stiffen the protection of our borders. We are increasing border controls by 50 percent. We are increasing inspections to prevent the hiring of illegal immigrants. And tonight I announce I will sign an Executive order to deny Federal contracts to businesses that hire illegal immigrants.¹⁸⁴

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ U.S. Commission on Immigration Reform., *Legal Immigration: Setting Priorities* (Washington, D.C., 1995).

¹⁸² William J. Clinton, “Statement on the Commission on Immigration Reform,” 12 September 1995, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/statement-the-commission-immigration-reform>

¹⁸³ *Ibid.*

¹⁸⁴ William J. Clinton, “Address Before a Joint Session of the Congress on the State of the Union,” Washington, D.C., 23 January 1996, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/address-before-joint-session-the-congress-the-state-the-union-10#axzz1y9IhNx00>

He reiterated his statement from the 1995 SOTU, that the United States was “a nation of laws,” and 1996 was a year of profound transformation of those laws, especially for the immigration system.

A few weeks later, the President signed his announced Executive Order, E.O. 12989, entitled “*Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Naturalization Act Provisions*.”¹⁸⁵ The President insisted on the fact that American jobs should go to the nation’s legal workers and that his administration would “restore the rule of law” to the nation’s immigration system. The goal of the E.O. was simple, to prevent

Federal contracts from going to businesses that knowingly hire illegal workers. It reinforces the principle that Government business—and tax dollars—should not be directed to employers who knowingly hire illegal workers. And for the first time, it will subject those companies to Governmentwide debarment. This will help the efficiency of our Government. And it will have the effect of increasing respect for our laws.¹⁸⁶

The Executive Order was aimed at reducing the job magnet that attracts illegal immigrants to the U.S. and was a stop-gap measure while legislation was being considered by Congress.

In November 1995, the U.S. Commission on Immigration Reform published its second report, *Legal Immigration: Setting Priorities*, which looked at legal immigration, as opposed to the Commission’s 1994 report which had tackled illegal immigration. Following the report, Barbara Jordan, Chair of the Commission, spoke to leaders of the INS and presented the report and their conclusions.¹⁸⁷ She insisted that hostility towards immigrants was “antithetical to our traditions and to [the] national interest,” while recognising that the United States is also “a country of laws”. The Commission had come to three principal conclusions, the embrace of a well-regulated legal immigration systems, the rejection of illegal immigration, and the need for a focus on the “Americanization process”:

1. Properly-regulated, legal immigration is in the national interest. A well regulated system enhances the benefits of immigration while protecting against potential harm. However, there are problems in our current legal immigration system that require reform if it is to continue to serve the national interest.

¹⁸⁵ *Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Naturalization Act Provisions*, Exec. Order No. 12989, 61 Fed. Reg. 32 (15 February 1996), *GovInfo*, <https://www.govinfo.gov/content/pkg/FR-1996-02-15/pdf/96-3646.pdf>

¹⁸⁶ William J. Clinton, “Statement on the Executive Order on Illegal Immigration,” Washington, D.C., 13 February 1996, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/statement-the-executive-order-illegal-immigration>

¹⁸⁷ Barbara Jordan, *Remarks by Barbara Jordan, Chair, U.S. Commission on Immigration Reform, to the Immigration and Naturalization Service*, 28 November 1995, 2011-0376-F, Box 1 of 2, OA 14015, Clinton Presidential Records: WHORM–Subject File–General, FG-017-03, 13469655, Domestic Policy Council, Stephen Warnath, [Operation Gatekeeper] [3], William J. Clinton Presidential Library.

2. Illegal immigration serves no national interest and must be curbed if we are to continue our long tradition of legal immigration. Illegal immigration is the most pressing immigration problem we are facing, and it must receive the highest priority.
3. Admitting immigration is merely the first step in a process of long-term absorption and integration of newcomers. For immigration policy to derive its full benefit to our society, we must focus not only on selection criteria but also the Americanization process.¹⁸⁸

To make its immigration policy coherent, Barbara Jordan maintained that a coherent immigration policy must be rooted in fairness and consistency and that the United States should make clear distinctions between individuals who respect and abide by the law and those who flout legal requirements.¹⁸⁹ By doing so, the country could uphold the rule of law without unfairly penalising those who are law-abiding. Jordan also rejected the notion that any effort to regulate immigration should automatically be viewed as hostile or anti-immigrant. Instead, she suggested that thoughtful regulation could serve both the nation's interests and the rights of immigrants, ensuring that the system is orderly, just, and capable of integrating newcomers in a responsible and humane manner.¹⁹⁰ This perspective framed immigration reform not as a punitive measure, but as a principled approach that balances legal integrity with compassion. Outside the administration, however, the political debate over immigration was far more contentious. Advocates and opponents of stricter controls often framed the issue in starkly moralised or partisan terms, with some portraying any enforcement measures as inherently punitive and anti-immigrant, while others criticised leniency as a threat to national security or the rule of law.¹⁹¹ Jordan's position sought to rise above this polarisation, emphasising that regulation and fairness were not mutually exclusive. By separating the behaviour of individuals from blanket assumptions about immigrants as a group, she argued that the policy discussion could shift from ideological rhetoric to practical, principled solutions.

3.2. The Post-Thatcher Era (1990-2001): Systematising Detention for Asylum Seekers

If the Thatcher era laid the groundwork for significant immigration changes, the 1990s saw the construction of a system designed specifically to manage and control a particular segment of the immigrant population: asylum seekers. The collapse of the Soviet Union and conflicts in the Balkans, Africa, and Asia led to a sharp rise in the number of people seeking asylum in the UK, from approximately 4,000 in 1988 to

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ "The Americanization Ideal," *The New York Times*, 11 September 1995, <https://www.nytimes.com/1995/09/11/opinion/the-americanization-ideal.html>

over 80,000 by the year 2000 (see figures below).¹⁹² This influx was consistently framed by both the government and the popular press as an “asylum crisis,” a narrative of threat that created the political space for an unprecedented series of restrictive laws aimed at deterring and managing asylum claims.

John Major’s time in 10 Downing Street, from November 1990 to May 1997, was marked by significant global and domestic shifts.¹⁹³ The end of the Cold War and conflicts in regions like the former Yugoslavia contributed to shifts in international migration patterns, leading notably to an increase in asylum applications to European nations, including the United Kingdom.¹⁹⁴ At the same time, the approaching handover of Hong Kong to China in 1997 and potential migration of Hong Kong residents holding British Dependent Territories Citizenship as well as greater integration into the European Union required specific policy responses. Overall, Major’s governments tended to represent a continuation of the Conservative approach to immigration that had been developing since the Thatcher years, with a focus on greater control, more restrictions and a policy of deterrence, while maintaining Britain’s commitments to providing refuge for those genuinely fleeing persecution.

The British Nationality (Hong Kong) Act 1990 and the British Nationality Selection Scheme

The British Nationality (Hong Kong) Act 1990 was enacted in anticipation of the transition of sovereignty of Hong Kong from Britain to China, planned for 1997.¹⁹⁵ It allowed up to 50,000 Hong Kong residents, along with their families, to acquire British citizenship through the British Nationality Selection Scheme (BNSS) which was administered by the Governor of Hong Kong.¹⁹⁶ This was a direct response to concerns about the future of Hong Kong and the potential for a “brain drain.”¹⁹⁷ The primary objective of the BNSS was to provide the security of British citizenship to well-educated and highly skilled individuals in Hong Kong to encourage them to remain in the territory during the transition period in order to maintain stability and

¹⁹² *Asylum Statistics United Kingdom 1990-1991*, Home Office Statistical Bulletin no. 12/92 (1992); Madeleine Watson and Philip Danzelman, *Asylum Statistics United Kingdom 1997*, Home Office Statistical Bulletin no. 14/98 (1998); Tina Heath and Rachel Hill, *Asylum Statistics United Kingdom 2001*, Home Office Statistical Bulletin no. 09/02 (2002).

¹⁹³ See Anthony Seldon, *John Major: A Political Life* (London: Weidenfeld & Nicolson, 1997) and David Kavanagh and Anthony Seldon, *The Major Effect* (London: Macmillan, 1994).

¹⁹⁴ Will Somerville et al., ‘United Kingdom: A Reluctant Country of Immigration’, *Migration Policy Institute*, 21 July 2009, <https://www.migrationpolicy.org/article/united-kingdom-reluctant-country-immigration>

¹⁹⁵ *British Nationality (Hong Kong) Act 1990*, c. 34, 1990, *Legislation.gov.uk*, <https://www.legislation.gov.uk/ukpga/1990/34>

¹⁹⁶ Home Office, *British Nationality (Hong Kong) Act 1990: Statement of Policy* (London: HMSO, 1990).

¹⁹⁷ *British Nationality (Hong Kong) Bill*, HL Deb 29 June 1990, vol. 520, col. 1837, *Parliament.uk*, <https://api.parliament.uk/historic-hansard/lords/1990/jun/29/british-nationality-hong-kong-bill>

prevent a mass exodus.¹⁹⁸

These developments occurred within a context of increasing integration with the European Union, notably with the ratification of the Treaty of Maastricht in 1992. During his speech at the 1992 Conservative Party Conference, Prime Minister John Major addressed concerns surrounding the Maastricht Treaty:

Let me come directly to the issue that has caused such controversy. The Treaty of Maastricht seems to have become enshrouded in myth and legend. Certainly, the Treaty I hear about is not the one I negotiated. What are the fears people have about Maastricht? We heard many of them in our debate this week. (...) Immigration? Immigration policy is specifically excluded under the Maastricht Treaty. (...) Defence? Defence is kept out of the control of the Community. (...) Citizenship? We are British citizens and we will always remain British citizens.¹⁹⁹

Major committed to upholding national sovereignty, notably over immigration policy and to resist any transfer of authority in this area to the European Community in order to assuage broader public concerns about closer European integration. The UK's relationship with the European Union exerted a considerable influence on immigration patterns and policies during the 1990s. The creation of the European Union in the early 1990s led to an increase in immigration from member states as a result of the principle of free movement of people within the EU.²⁰⁰

Efforts within the European Economic Community (EEC) to establish a common asylum process in the 1980s culminated in the Dublin Convention in 1990.²⁰¹ The UK signed this convention in 1992, though it only came into full force in 1997 once all members had ratified it. Signed in Dublin on 15 June 1990, the Convention established the criteria for determining which Member State is responsible for examining asylum applications submitted within the European Union. The Convention aimed to ensure that all asylum seekers' applications were examined and that applicants were not left in prolonged uncertainty regarding the acceptance or rejection of their applications. Each application was to be assigned to a single Member State and decided based on objective criteria.²⁰² The Convention stated that asylum seekers

¹⁹⁸ Chabanol, Ghislaine. "Le 'British Nationality (Hong Kong) Act 1990.'" *Bulletin de Sinologie*, no. 71 (1990): 17–20. <http://www.jstor.org/stable/24069559>

With the evolving relationship between China and Hong Kong and the loss of democratic freedoms in recent years, many have used their British Citizenship to leave.

¹⁹⁹ John Major, *Speech to the 1992 Conservative Party Conference*, 9 October 1992, *John Major Archive*, <https://johnmajorarchive.org.uk/1992/10/09/mr-majors-speech-to-1992-conservative-party-conference-9-october-1992/>

²⁰⁰ *Immigration, the European Union and the UK Labour Market* (Centre for Economic Performance, 2014).

²⁰¹ *Dublin Convention*, 15 June 1990, *European Migration Network*, https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/dublin-convention_en

²⁰² *Evaluation of the Dublin Convention*, Commission Staff Working Paper SEC(2001)756 (Commission of the European Communities, 2001), 1.

would generally be processed in the first EU country they arrived in unless:²⁰³

- a relevant family member resided in another country (article 4)
- they were in possession of valid residence permit or visa for another country (article 5)

As early as 1999, some argued that the Convention was failing to live up to its objectives and that it needed to be changed or replaced.²⁰⁴ It was updated in 2003²⁰⁵ and again in 2013.²⁰⁶

Legislating Asylum

Just as asylum seekers travelled to the USA from Cuba and Haiti, as well as Latin American countries, the late 1980s and 1990s saw a significant increase in arrivals of asylum seekers in the United Kingdom, with a peak in 2002. Asylum applications rose from around 300 a year in the late 1970s to 71,160 by 1999 and surpassing 80,000 in 2000 and 2002 (see figure below). Many of the top source countries, including Sri Lanka, Kosovo, Somalia, and Afghanistan, were going through violent Civil Wars at the time. The government increased immigration detention with a larger goal of restricting immigration. The Asylum and Immigration Appeals Act 1993, and the Asylum and Immigration Act 1996 were passed to restrict the asylum process and to increase the detention of some asylum seekers while a decision was being made on their case.²⁰⁷

²⁰³ *Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities*, 97/C 254/01 (Member States of the European Communities, 1997), <https://academic.oup.com/ijrl/article-lookup/doi/10.1093/ijrl/2.3.469>.

²⁰⁴ Agnès Hurwitz, 'The 1990 Dublin Convention: A Comprehensive Assessment', *International Journal of Refugee Law* 11, no. 4 (1999): 646–77, <https://doi.org/10.1093/ijrl/11.4.646>

²⁰⁵ Dublin II created the EURODAC database, which contained asylum seekers' fingerprints. This information was between EU member states and could be used to deport asylum seekers to their first country if need be.

²⁰⁶ Dublin III introduced the right to appeal a country transfer and provided more protections to unaccompanied asylum-seeking children.

²⁰⁷ Mary Bosworth and Sarah Turnbull, 'Immigration, Detention, and the Expansion of Penal Power in the United Kingdom', in *Extreme Punishment*, ed. Keramet Reiter and Alexa Koenig (Palgrave Macmillan UK, 2015), 3, https://doi.org/10.1057/9781137441157_4

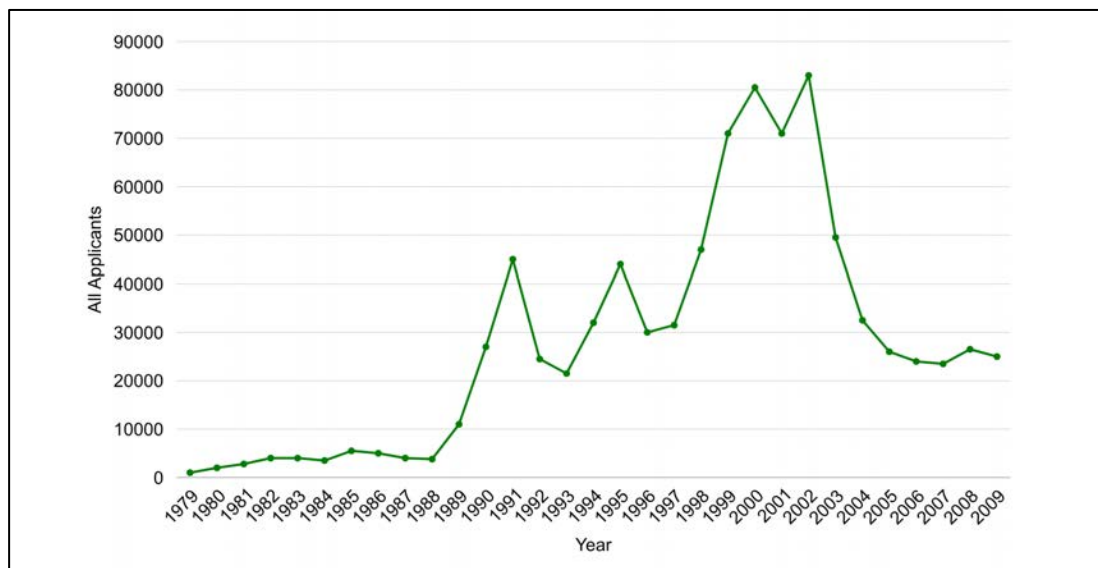


Figure 21. UK Asylum applications 1979–2009

Source: *UK Asylum Applications 1979–2009*, Wikimedia Commons, https://commons.wikimedia.org/wiki/File:UK_asylum_applications_1979–2009.jpg

This situation led the government to reassess existing immigration and asylum policies and contemplate new measures to manage the growing volume of applications, leading to the introduction of new legislation, notably the Asylum and Immigration Appeals Act 1993, the Asylum Act 1996 and the Immigration and Asylum Act 1999, which collectively aimed to improve and modernize the management of the asylum process and enhance immigration control and enforcement.

At the same time, public and political discourse tended to frame immigration and especially asylum seekers in negative terms, often referring to their claims as “bogus”.²⁰⁸ Public concern regarding immigration rose in the late 1990s and continued to rise once New Labour was in office in the late 1990s and 2000s.²⁰⁹ The increase in asylum applications, combined with broader global migration patterns, began to shift public sentiment and contributed to what Gillian McFayden called “politics of hostility”.²¹⁰ Public concern in Britain was twofold. Just like in the USA, it was partially caused by anxieties related to competition in the housing market, employment and public services, but also focused on the impact of immigration on British culture

²⁰⁸ Anne Karpf, ‘We’ve Been Here Before’, *The Guardian*, 8 June 2002, <https://www.theguardian.com/uk/2002/jun/08/immigrationimmigrationandpublicservices>

²⁰⁹ Ben Page, *British Attitudes to Immigration in the 21st Century* (Washington, DC: Migration Policy Institute, 2009), <https://www.migrationpolicy.org/pubs/TCM-BritishPublicOpinion.pdf>

²¹⁰ Gillian McFayden, ‘The Language of Labelling and the Politics of Hostipitality in the British Asylum System’, *The British Journal of Politics and International Relations* 18, no. 3 (2016): 599–617, <https://doi.org/10.1177/1369148116631281>

and national identity, echoing post-WW2 concerns. Public concerns were also fuelled by a growing tendency to view asylum seekers with suspicion.²¹¹ The media and opponents of immigration questioned the legitimacy of their asylum claims and labelled them as “economic migrants” in disguise.²¹² From the late 1980s onwards under Conservatives and New Labour, the term “economic migrant” was employed to justify stricter asylum regulations. This framing presumes that “economic migrants” deliberately disguise themselves as “asylum seekers” in order to gain access to the United Kingdom.²¹³ The rising number of asylum applications during the 1990s, combined with the frequently adverse representation of asylum seekers in political rhetoric and the media, likely contributed to the formation of a negative public perception of an immigration crisis.²¹⁴

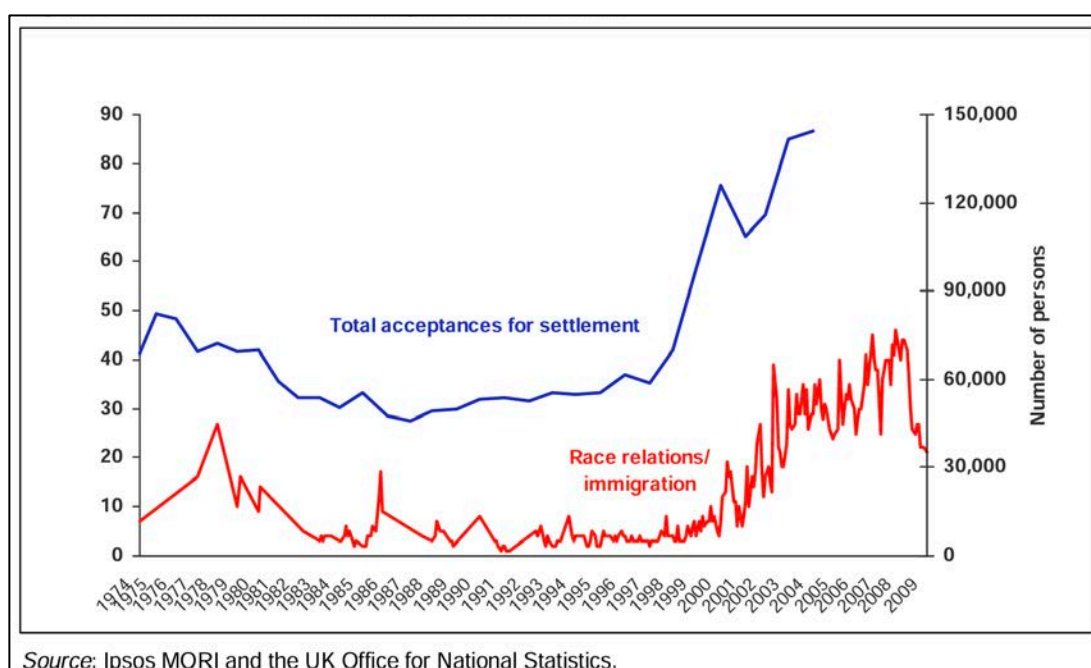


Figure 22. Public Concern about Immigration in the UK (1974-2009)

Source: Ben Page, *British Attitudes to Immigration in the 21st Century* (Washington, DC: Migration Policy Institute, October 2009), <https://www.migrationpolicy.org/research/british-attitudes-immigration-21-st-century>

²¹¹ Holly Grey, *UK Asylum Policy: How Did We Get Here?*, Refugee Law Initiative Blog, 4 July 2023, <https://rli.blogs.sas.ac.uk/2023/07/04/uk-asylum-policy-how-did-we-get-here/>.

²¹² Terry Threadgold, *The Media and Migration in the United Kingdom, 1999 to 2009*, May 2009, Migration Policy Institute, <https://www.migrationpolicy.org/pubs/TCM-UKMedia.pdf>

²¹³ Maya Goodfellow, ‘Interrogating the “Economic Migrant” in British Political Discourse: Race, Class, the Economy and the Human’, *Ethnic and Racial Studies* 46, no. 8 (2023): 1564, <https://doi.org/10.1080/01419870.2023.2181669>

²¹⁴ Carl-Ulrik Schierup, ‘The “Migration Crisis” and the Genesis of Europe’s New Diversity’, in *Migration, Citizenship, and the European Welfare State: A European Dilemma*, ed. Carl-Ulrik Schierup et al. (Oxford University Press, 2006), <https://doi.org/10.1093/0198280521.003.0002>

This discourse surrounding asylum created a climate of fear which pushed successive governments to demonstrate firmness when it came to immigration control and provided justification for the implementation of more restrictive policies, including an increased reliance on immigration detention.²¹⁵ This included policies designed to speed up the processing of asylum claims, deterring people from applying in the first place and strengthening border controls.

The Asylum and Immigration Appeals Act 1993

The Asylum and Immigration Appeals Act 1993, which came into force on 26 July 1993, introduced several key reforms to the asylum and immigration system.²¹⁶ The Act established a two-tier appeal system with initial appeals to Immigration Adjudicators and further appeals to the Immigration Appeal Tribunal, while prohibiting the removal from the United Kingdom of persons with outstanding asylum claims. The legislation also specified conditions for detaining asylum seekers and focused specifically on establishing formal procedures and rights for those claiming asylum in the UK. It was significant in codifying protections for asylum seekers and creating a more structured legal framework for handling asylum and immigration cases, providing statutory safeguards that had previously been less clearly established.

Before the early 1980s, Britain received only a few hundred individual asylum applications annually, primarily from Cold War dissidents. Most refugees entered the country as part of larger sponsored programmes. However, the number of individual asylum applications in the UK rose significantly in the 1990s. The end of the Cold War led to increased cross-border movement due to the collapse of States, a rise in nationalism, civil wars, economic instability, and post-colonial struggles.²¹⁷

Comprehensive statistics on asylum applications from before 1979 are hard to find. According to Tim Raison, Minister of State for the Home Office under Margaret Thatcher, “statistics on such applications were not kept before 1 January 1979.”²¹⁸ But in April 1981, he was able to provide information for 1979 and 1980:

In 1979, 1,550 individual applications were received; 708 of these were granted in that year and 619 were under consideration at the end of the year. In 1980, 3,044 applications were received; 1,413 applications were granted; and 1,566 applications remained under consideration at the end of the year. The above figures do not include people admitted under the special programmes for Vietnamese and Latin American refugees. In 1979,

²¹⁵ This was later used by the Labour party to justify their immigration policy in the ‘White Paper: Fairer, Faster, and Firmer: A Modern Approach to Immigration.’

²¹⁶ Asylum and Immigration Appeals Act 1993, c. 23, 1993, *Legislation.gov.uk*, <https://www.legislation.gov.uk/ukpga/1993/23>

²¹⁷ John Lewis Gaddis, ‘International Relations Theory and the End of the Cold War’, *International Security* 17, no. 3 (1992): 5–58, <https://doi.org/10.2307/2539129>.

²¹⁸ *Political Asylum*, HC Deb 27 April 1981, vol. 3, cols. 950–1010, *Hansard*, <https://hansard.parliament.uk/Commons/1981-04-27/debates/950a51b9-0b74-4680-853b-367183c371ee/PoliticalAsylum>

5,094 Vietnamese refugees were granted asylum in the United Kingdom; the figure for 1980 was 6,953. 60 people were admitted in 1979 under the special Latin American refugee programme and 96 in the first part of 1980; this programme was closed at the end of 1979.²¹⁹

During the 1980s, the asylum system in Britain was seen as manageable but as the rise in claims stretched the system, the need for systematic change became apparent. The Conservative government's initial response was to impose visa restrictions against 'problematic' countries (i.e. those who were producing high numbers of asylum seekers) and, secondly, to pass the 1987 Immigration (Carrier's Liability) Act.²²⁰ This law gave powers to the Secretary of State to fine the owners of a ship or aircraft who had transported a passenger to the UK who

fails to produce (a) either a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship; and (b) if he is a person who under the immigration rules requires a visa for entry into the United Kingdom, a visa valid for that purpose.²²¹

Some members of the judiciary admitted that the 1987 Act, along with visa restrictions, posed significant obstacles for refugees seeking entry into the country.²²²

Faced with a surge in asylum applications in the late 1980s and early 1990s and amid growing public concern, the government decided to reform the asylum process and passed the Asylum and Immigration Appeals Act 1993.²²³ This was the first major piece of legislation in the UK to specifically address the asylum process. The intent was to address the increasing backlog of asylum applications by speeding up decisions on applications and discouraging unfounded claims. In a debate in the House of Lords before the law was passed, the Lord Bishop of Ripon discussed the goals of the bill, and even proposed an amnesty to those having already applied:

It is intended to speed up the system by which the status of an asylum seeker is determined. As such it is a Bill which in principle should be welcomed. If it achieves that aim, I welcome it. There is a backlog of about 47,000 undetermined cases. Each year thousands of further cases are added—about 24,000 in 1992. Will the provisions reduce that number, as the Government hope? I suggest—it may be somewhat naively in your Lordships' House—that possibly the most effective way to reduce that backlog is to give an amnesty to all those whose cases are being considered. I have heard that suggestion made by those who work in the field; perhaps it is not so naive as it seems. Some of them suggest that that is the only realistic way of getting rid of the great backlog. It would then enable us to

²¹⁹ *Ibid.*

²²⁰ Dallal Stevens, 'The Asylum and Immigration Act 1996: Erosion of the Right to Seek Asylum', *The Modern Law Review* 61, no. 2 (1998): 208, <https://doi.org/10.1111/1468-2230.00138>

²²¹ *Immigration (Carriers' Liability) Act 1987*, c. 24, 1987, [Legislation.gov.uk, https://www.legislation.gov.uk/ukpga/1987/24/enacted](https://www.legislation.gov.uk/ukpga/1987/24/enacted)

²²² Ruff, 'The Immigration (Carriers' Liability) Act 1987'. *op. cit.*

²²³ *Asylum and Immigration Appeals Act 1993*.

deal more expeditiously with the cases of those entering the country at present.²²⁴

One of the provisions of the Act allowed the immigration services to take fingerprints of asylum seekers and their dependents, echoing the IDENT system in the USA, though some felt that fingerprinting was treatment that should be reserved for criminals. This was intended to stop people claiming asylum under multiple identities and to fraudulently obtain social security benefits. The Act also limited the obligation of local authorities to provide temporary accommodation for asylum seekers until their applications were decided and removed the right to housing for those who did not apply immediately upon arrival, which echoes Proposition 187 in the U.S. This reflected concerns that asylum seekers might secure permanent housing without a decision having been made on their case, as expressed by Earl Ferrers in the House of Lords debate:

It makes no sense—and it is unfair to people on local authority housing waiting lists—if asylum seekers, whose claims have not yet been decided, were able to secure permanent accommodation in this country. The provisions in the Bill would allow local authorities to take into account the availability to the asylum seeker of other reasonable accommodation. They would also limit the duty on the local authority, so that, until the application is decided, the local authority would have to provide only temporary accommodation which is suitable for the asylum seekers' needs.²²⁵

Changes were also made to the right of appeal for certain categories of asylum seekers, with the goal of streamlining and speeding up the process for those deemed less likely to have a genuine need for protection. Notably, the Act allowed for the detention of asylum seekers while their appeals were being considered. However, it also introduced a new right of appeal to a special adjudicator for all unsuccessful asylum applicants in order to guarantee a level of independent scrutiny of asylum decisions.²²⁶ Finally the law also integrated certain aspects of the 1951 Geneva Convention, notably the Convention's definition of "refugee" and the principle of *non-refoulement*.²²⁷ The inclusion of the Refugee Convention was an attempt at balancing national interests and international humanitarian obligations. However, the 1993 Act failed to reduce the growing backlog and was not serving as an effective deterrent for 'bogus' asylum applicants.²²⁸ In order to hold those who needed to be detained under the law, the Government opened Campsfield House Detention Centre outside Oxford (see chapter four).

²²⁴ House of Lords, *Asylum and Immigration Appeals Bill*, vol. 541, 26 January 1993, col. 1162, Hansard, <https://hansard.parliament.uk/Lords/1993-01-26/debates/80ace433-8d1f-4954-9809-9bc3f76fc3de/AsylumAndImmigrationAppealsBill>

²²⁵ *Ibid*, col. 1149.

²²⁶ *Ibid*, col. 1150

²²⁷ Liza Schuster and John Solomos, 'Asylum, Refuge and Public Policy: Current Trends and Future Dilemmas', *Sociological Research Online* 6, no. 1 (2001): 3, <https://doi.org/10.5153/sro.582>

²²⁸ KPMG Peat Marwick, *Review of Asylum Appeals Procedure* (London: Home Office/Lord Chancellor's Department, 15 December 1994).

3.3. Comparative Analysis

Despite different national contexts, with the US grappling with unauthorised migration across the Mexican border and the UK facing rising asylum applications, both governments framed immigration as a “crisis” that justified extraordinary powers. In both cases, legislation presented detention as a necessary administrative response to restore order. Yet while the American crisis discourse emphasised border integrity and the fear of mass inflows, Britain’s legislative framing cast asylum seekers as abusers of hospitality. The convergence lay in the securitising move: redefining immigration as a threat requiring coercive state intervention.

The legislative trajectories of the UK and the US in the 1980s, while both leading towards more punitive control, reveal fundamentally different state projects. The UK’s legislative project was one of post-colonial consolidation. The British Nationality Act of 1981 was an effort to resolve the lingering ambiguities of Empire by legally severing ties with former colonial subjects and defining the “true” British nation along racialised lines of ancestry.²²⁹ Its primary function was to manage populations that had historical, legal, and cultural claims to Britishness, and to reclassify many of them as outsiders. This process began with the Commonwealth Immigrants Acts of the 1960s, was solidified with the 1971 Immigration Act’s concept of “patriality,” and reached its logical conclusion with the 1981 Act.²³⁰

In stark contrast, the US legislative project was a reactive attempt to manage contemporary migration flows. IRCA was not concerned with historical claims to citizenship but with the immediate reality of a large undocumented population arriving from the US’ southern neighbours, driven by economic and political instability in the region.²³¹ The Act’s dualism, offering amnesty for past arrivals while promising stricter enforcement for future ones, reflects a somewhat practical, if ultimately flawed, attempt to deal with the *fait accompli* of existing migration while trying to prevent its recurrence.

This distinction gave rise to different logics of control. The UK’s approach created a system of internal control. By redefining citizenship, it turned legal status into a point of constant contention within the country, necessitating the development of internal checks on access to welfare and services to police this new reality.²³² It was a project of sorting and disciplining a population already present. The US approach, despite the internal focus of employer sanctions, was primarily driven by an external logic of border control. IRCA’s cutoff date of January 1, 1982, is a classic border-

²²⁹ Pierre, ““Keep Britain White””. *op. cit.*

²³⁰ Samuel Malby, ‘From Borders to Cells: The Evolution of British Immigration Detention, 1905-1970’, *Mémoire(s), Identité(s), Marginalité(s) Dans Le Monde Occidental Contemporain. Cahiers Du MIMMOC*, no. 31 (May 2025): 31, <https://doi.org/10.4000/1406t>

²³¹ Ewing et al., ‘The Past and Present of U.S. Immigration Policy’, *op. cit.*

²³² Medien, ‘No Pass Laws Here! Internal Border Controls and the Global “Hostile Environment”’. *op. cit.*

control mechanism, creating a temporal frontier to separate “old” and deserving migrants from “new” and unauthorised ones. This fundamental difference in logic helps explain the early emergence of the “hostile environment” concept in the UK, versus the American focus on border militarisation and the construction of mass detention centres.

4. The 1996 Legislative Hammer: Divergent Philosophies of Control

The divergent legislative approaches to asylum and immigration control in the 1990s reveal fundamentally different philosophies of state power and administrative discretion. The UK’s 1996 Asylum and Immigration Act exemplified a strategy of expanded executive discretion, introducing the ‘white list’ of supposedly safe countries and benefit restrictions that empowered administrative officials to make increasingly subjective determinations about asylum claims while using welfare exclusion as a deterrent mechanism. In stark contrast, the United States’ 1996 Antiterrorism and Effective Death Penalty Act (AEDPA) and Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) represented a radical ‘crimmigration’ turn that systematically eliminated both judicial and executive discretion by importing mandatory sentencing logic from the criminal justice system into civil immigration proceedings. While the UK expanded bureaucratic flexibility to manage migration flows through administrative gatekeeping, the US chose to constrain its own institutional discretion through rigid, automatised enforcement mechanisms. This comparison illuminates how similar policy objectives, deterrence and control, can be pursued through diametrically opposed approaches to state power. The UK chose to give officials more decision-making power, while the US deliberately removed human judgment in favour of automatic, rule-based enforcement.

The concept of ‘crimmigration,’ or the convergence of criminal and immigration law, is indispensable for understanding the divergence between the two nations.²³³ The United States underwent a ‘hard’ ‘crimmigration’ turn, culminating in the 1996 IIRIRA, which wholesale imported the punitive logic of the criminal justice system into civil immigration proceedings (see chapter three). Mechanisms like mandatory detention for an expanded list of ‘Aggravated Felonies’ removed judicial discretion and made punishment for past crimes automatic, mirroring the ‘tough on crime’ trends in domestic law. The UK, by contrast, pursued a ‘softer’, more administrative form of ‘crimmigration.’ It did not create new immigration ‘felonies’. Instead, it blurred the lines between civil and criminal control through other means. The Asylum and Immigration Act 1996, for example, criminalised the act of employing unauthorised workers and used the withdrawal of welfare benefits as a

²³³ Stumpf, ‘The Crimmigration Crisis’, *op. cit.*

punitive sanction, linking immigration status to economic penalties in a way that was coercive in effect, if not in legal theory. This represents a different path in the 'cimmigration' process: control through administrative hostility rather than overt criminalisation.

4.1. Anti-Terrorism and Illegal Immigration Legislation in the USA

In August 1995, Republican Representative Lamar Smith introduced H.R. 2202, the Immigration in the National Interest Act, in the House of Representatives. The Clinton administration formally expressed opposition to the measure in March 1996, following amendments adopted by the Judiciary Committee that heightened the administration's concerns.²³⁴ On March 21, Press Secretary, Mike McCurry gave a press briefing in which he discussed the administration's position on the bill and acknowledged the administration's desire to implement real legislative reform.²³⁵ He argued that substantial efforts were already being made to address the issue of illegal immigration but he identified several problems with the changes the bill would make to legal immigration:

In the area of illegal immigration, much of what Congress is considering already reflects things the administration is doing through its enforcement activity. On the legal immigration side of the bill there are a number of problems. The House took a very bad step yesterday in the wrong direction with the provision related to public education for those who are here illegally. They seem to be suggesting that if they're not in school, they would be better off out on the streets, participating in gang activities, doing who knows what or, alternatively, turning teachers and principals into adjunct offices of the Immigration and Naturalization Service. That's a nutty idea, and one more reflection of why that provision of the bill would need to be fixed. But we believe we can get on with the work of the right kind of reform and produce the right kind of immigration reform measures as we work through this down the road.²³⁶

In a press briefing the following day, McCurry said that the White House approved of the decision to split the bill into two parts because it facilitated superior legislative action on the two issues. The administration's position on the reform of illegal immigration was, according to McCurry, that illegal immigration reform "codifies much of what the administration is already doing to protect our borders and to enforce U.S. immigration law, and we see those measures as a sense, a vote of

²³⁴ William J. Clinton, "Statement of Administration Policy: H.R. 2202—Immigration in the National Interest Act," Washington, D.C., 19 March 1996, *The American Presidency Project*, <https://www.presidency.ucsbl.edu/documents/statement-administration-policy-hr-2202-immigration-the-national-interest-act>

²³⁵ Mike McCurry, "Press Briefing," Washington, D.C., 21 March 1996, *The American Presidency Project*, <https://www.presidency.ucsbl.edu/documents/press-briefing-mike-mccurry-302>

²³⁶ *Ibid.*

confidence in what the administration had been doing.”²³⁷ On the topic of legal immigration, McCurry said that the administration embraced comprehensive reform, guided by the recommendations of the Jordan Commission and intended to work with Congress to achieve this goal.²³⁸

Since the 1986 Reform and Control Act, and the MacKay amendment which encouraged deportation of immigrants convicted of deportable offenses, the deportation and detention system had continued to grow. Two laws in the mid-1990s increased the number of deportations as can be seen in the graph below.²³⁹ The 1996 Antiterrorism and Effective Death Penalty Act (AEDPA) and the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA or IIRAIRA) went very much hand in hand in transforming the immigration system in the USA. Clinton signed these new laws that “amplified the authority of the federal government to arrest, detain, and deport noncitizens.”²⁴⁰

²³⁷ Mike McCurry, “Press Briefing,” Washington, D.C., 22 March 1996, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/press-briefing-mike-mccurry-303>

²³⁸ *Ibid.*

²³⁹ *The Growth of the U.S. Deportation Machine: More Immigrants Are Being “Removed” from the United States than Ever Before*, Fact Sheet (American Immigration Council, 2014), 9.

²⁴⁰ Dan Kanstroom and M. Brinton Lykes, eds, *The New Deportations Delirium: Interdisciplinary Responses* (New York University Press, 2015), 42.

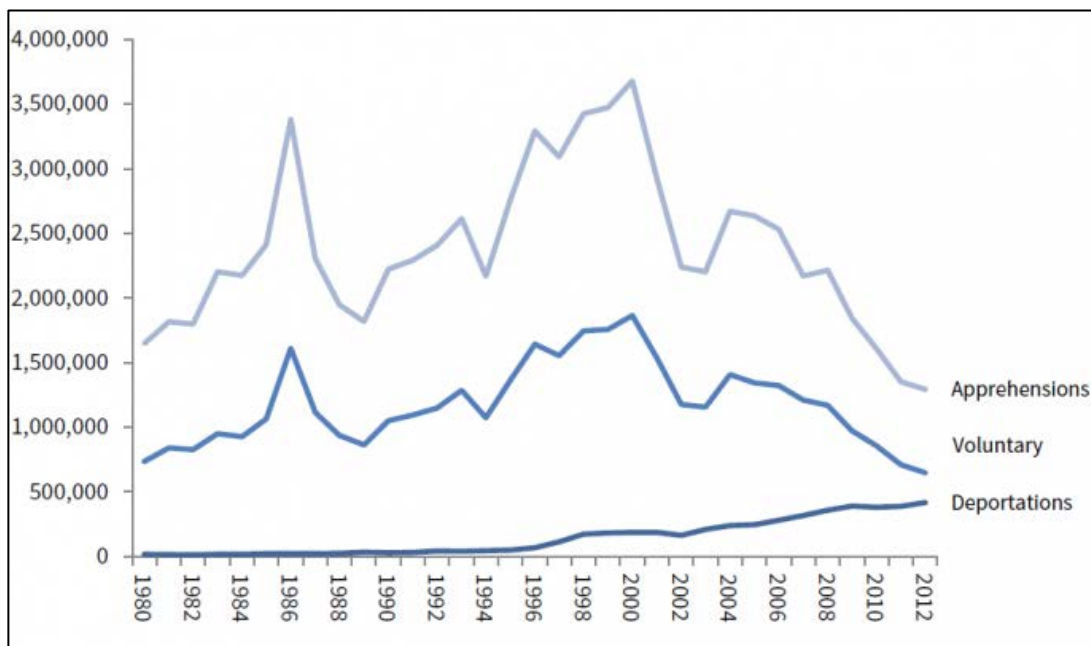


Figure 23. Apprehensions, Voluntary Returns, and Deportations in the USA (1980-2012)

The number of apprehensions has fluctuated significantly, primarily due to varying economic conditions in the United States and Mexico. The number of “voluntary returns” has closely followed apprehensions. Since 2005, the availability of voluntary return has declined as deportation (with criminal consequences for re-entry) has become the preferred option for US immigration authorities.

Source: American Immigration Council, *The Growth of the U.S. Deportation Machine* (fact sheet), <https://www.americanimmigrationcouncil.org/fact-sheet/growth-us-deportation-machine/>

The Antiterrorism and Effective Death Penalty Act (AEDPA)

The Antiterrorism and Effective Death Penalty Act (AEDPA) passed in the wake of the 1995 Oklahoma City bombing.²⁴¹ AEDPA’s significance for this study is less in its anti-terrorism intent and more in how it collapsed distinctions between crime and migration. By expanding deportable offenses and introducing expedited removal, it institutionalised the ‘crimmigration’ framework that culminated in IIRIRA.²⁴²

Title IV of the Act created a new system for the removal of “alien terrorists,” expanded the list of crimes that rendered a non-citizen deportable, and established an

²⁴¹ Lou Michel and Dan Herbeck, *American Terrorist: Timothy McVeigh & the Oklahoma City Bombing*, 1st ed (Regan Books, 2001).

²⁴² Lisa C Solbakken, ‘The Anti-Terrorism and Effective Death Penalty Act: Anti-Immigration Legislation Veiled in an Anti-Terrorism Pretext’, *Brooklyn Law Review* 63, no. 4 (1997): 1381.

“expedited removal” process that allowed for the summary exclusion of non-citizens at the border with severely limited judicial review.²⁴³ AEDPA served as a legislative precursor to the even more sweeping changes that would follow just five months later.

President Clinton signed it into law despite expressing reservations about certain immigration provisions:

It also makes a number of major, ill-advised changes in our immigration laws having nothing to do with fighting terrorism. These provisions eliminate most remedial relief for long-term legal residents and restrict a key protection for battered spouses and children. The provisions will produce extraordinary administrative burdens on the Immigration and Naturalization Service.²⁴⁴

The AEDPA primarily limited *habeas corpus* appeals for death row inmates, expanded the grounds for deportation of non-citizens, created new categories of deportable offenses, and established mandatory detention for certain categories of immigrants. The law also established expedited removal procedures for certain categories of immigrants, while limiting access to many forms of relief from deportation, including waivers that had previously been available to long-term permanent residents.

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 represents one of the most consequential pieces of immigration legislation in recent decades, fundamentally reconceptualising the United States immigration framework through a paradigmatic shift toward criminalization and enforcement mechanisms.²⁴⁵ IIRIRA’s transformative impact on immigration detention exhibited through three provisions that collectively restructured the architecture of immigration enforcement:

1. Mandatory Detention (INA § 236(c)): This was the Act’s most radical innovation. Section 236(c) of the Immigration and Nationality Act, as amended by IIRIRA, *required* the Attorney General to take into custody any non-citizen who was removable for having committed a wide range of criminal offenses.²⁴⁶

²⁴³ Sara Candioto, ‘The Antiterrorism and Effective Death Penalty Act of 1996: Implications Arising from the Abolition of Judicial Review of Deportation Orders’, *Journal of Legislation* 23 (1997): 159–69.

²⁴⁴ William J. Clinton. “Statement on Signing the Antiterrorism and Effective Death Penalty Act of 1996.” *The American Presidency Project*. Apr. 24, 1996, <https://www.presidency.ucsb.edu/documents/statement-signing-the-antiterrorism-and-effective-death-penalty-act-1996>

²⁴⁵ *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. L. No. 104–208, 110 Stat. 3009–546 (1996), *GovInfo*, <https://www.govinfo.gov/content/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf>

²⁴⁶ *Ibid.*

The statute explicitly stated that such individuals were to be detained upon their release from criminal custody and were not eligible for release on bond.²⁴⁷ This provision completely removed discretion from both immigration judges and INS officers, making detention automatic and non-negotiable for a vast category of non-citizens.²⁴⁸ It was a direct importation of the “tough on crime” logic of mandatory minimum sentencing from the criminal justice system into the civil immigration system.

2. Expanded Definition of ‘Aggravated Felony’: To ensure that the mandatory detention provision would have a wide reach, IIRIRA dramatically expanded the definition of an ‘aggravated felony.’ This legal term of art, first created in the Anti-Drug Abuse Act of 1988, was broadened to encompass more than thirty categories of offenses.²⁴⁹ Crucially, many of these were not “aggravated” or even “felonies” under criminal law. For example, a theft offense or a crime of violence with a sentence of just one year was now classified as an aggravated felony for immigration purposes.²⁵⁰ This reclassification had devastating consequences, as even long-term lawful permanent residents with minor, old convictions were suddenly rendered “aggravated felons,” subject to mandatory detention and certain deportation.²⁵¹
3. Limiting Judicial Review: To insulate this new punitive system from legal challenges, IIRIRA included numerous provisions, known as “court-stripping,” that severely curtailed the power of federal courts to review executive immigration decisions.²⁵² The Act explicitly stated that “no court shall have jurisdiction to review” final orders of removal against non-citizens with criminal convictions, nor could courts review many discretionary decisions made by the Attorney General.²⁵³ This represented a significant transfer of power from the judicial to the executive branch, creating a closed loop of enforcement where the agency responsible for arresting, detaining, and deporting non-citizens was largely shielded from judicial oversight (see

²⁴⁷ Alina Das, ‘Immigration Detention: Information Gaps and Institutional Barriers to Reform’, *The University of Chicago Law Review* 80 (2013): 147.

²⁴⁸ Sonia Chen, ‘The Illegal Immigration Reform and Immigrant Responsibility Act of 1996: Another Congressional Hurdle for the Courts’, *Indiana Journal of Global Legal Studies* 8, no. 1 (2000): 169–95.

²⁴⁹ Diana R Podgorny, ‘Rethinking the Increased Focus on Penal Measures in Immigration Law as Reflected in the Expansion of the “Aggravated Felony” Concept’, *The Journal of Criminal Law & Criminology* 99, no. 1 (2009): 30.

²⁵⁰ Dawn Marie Johnson, ‘The AEDPA and the IIRIRA: Treating Misdemeanors as Felonies for Immigration Purposes’, *Journal of Legislation* 27, no. 2 (2001): 477–91.

²⁵¹ *Ibid.*

²⁵² Lucas Guttentag, “‘Court-Stripping’ in the 1996 Immigration Laws: A Dangerous Precedent”, *In Defense of the Alien* 20 (May 1997): 213–25.

²⁵³ Donald S Dobkin, ‘Court Stripping and Limitations on Judicial Review of Immigration Cases’, *The Justice System Journal* 28, no. 1 (2007): 104–8.

chapter six).²⁵⁴

According to Political Scientist Michael Flynn, these laws had more impact than any other law or event since, including the 9/11 attacks. He argues that they have been “instrumental in the ballooning of the US detention estate.”²⁵⁵ In 1994, the country had a budgeted immigration detention capacity of 6,785. By 2009 that number had rocketed up to 33,400 as a result of these legislative changes.²⁵⁶ These new laws have had several significant consequences:²⁵⁷

- Extending the number of offences for which a non-citizen could be expelled
- Authorising retroactive expulsion
- Increasing the categories of people liable to deportation
- Considerably limiting the possibility of legal appeals for migrants
- Expanding the categories of noncitizens who could be detained without possibility of release pending the completion of their removal proceedings

One of the focuses of the law was “to improve border control by imposing criminal penalties for racketeering, alien smuggling and the use or creation of fraudulent immigration-related documents and increasing interior enforcement by agencies charged with monitoring visa applications and visa abusers.”²⁵⁸ Firstly, the bill increased the size of the US Border Patrol. Secondly, the law allocated funds for the construction of a fence along the most heavily trafficked areas of the US-Mexico border.²⁵⁹ Perhaps more significantly, the Act streamlined the process of deporting illegal immigrants. Notably, it expanded the categories of immigrants subject to detention and removal:²⁶⁰

IIRIRA targeted criminal noncitizens for deportation [and] expanded crime-related removal grounds for noncitizens, permitting deportation based on lesser violations than previous policy allowed. For example, the Act provided that any noncitizens convicted of crimes with a sentence of one year or longer be eligible for deportation after their

²⁵⁴ Andrea Lovell, ‘The Property Scope of Habeas Corpus Review in Civil Removal Proceedings’, *Washington Law Review* 73, no. 2 (1998): 459–88.

²⁵⁵ Flynn, ‘There and Back Again: On the Diffusion of Immigration Detention’, *op. cit.*, 175.

²⁵⁶ *Ibid.*

²⁵⁷ Kanstroom and Lykes, *The New Deportations Delirium*, *op. cit.*, 42.

²⁵⁸ *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. L. No. 104–208, 110 Stat. 3009–546 (1996), *Legal Information Institute*, https://www.law.cornell.edu/wex/illegal_immigration_reform_and_immigration_responsibility_act

²⁵⁹ Giovanni Facchini and Max Friedrich Steinhardt, ‘What Drives U.S. Immigration Policy? Evidence from Congressional Roll Call Votes’, *Journal of Public Economics* 95, nos 7–8 (2011): 6, <https://doi.org/10.1016/j.jpubeco.2011.02.008>

²⁶⁰ Jacqueline Hagan et al., ‘U.S. Deportation Policy, Family Separation, and Circular Migration’, *International Migration Review* 42, no. 1 (2008): 64–88, <https://doi.org/10.1111/j.1747-7379.2007.00114.x>

completed sentence. By expanding the categories under which immigrants could be removed on criminal grounds, the IIRIRA led to thousands of deportations to Central American nations.²⁶¹

Historian Miriam Wells asserts that IIRIRA's pledge was to reclaim control of the nation's borders by broadening the scope of offenses that could lead to deportation of immigrants. It also "increased penalties for violations, streamlined apprehension and deportation procedures that abridged immigrants' due process rights, sharp limits on immigrants' access to public services" and it called for an unprecedented accumulation of personnel, equipment, and technology in a militarisation of the 2,000-mile US-Mexico border.²⁶² The policy enabled the U.S. Border Patrol to recruit an additional 1,000 personnel. Moreover, it barred the admission for a total of three years for any aliens found to be unlawfully present in the United States for 180 days or more. If the person had been residing in the country without authorisation for a period exceeding twelve months, they were barred from admission or any legal status for a period of ten years.²⁶³

One of the most contentious aspects of the IIRIRA law was the Gallegly Amendment (introduced by Republican Representative Elton Gallegly), aimed at denying free public education to undocumented immigrant children, echoing Proposition 187 two years earlier. The President threatened to veto the legislation. On August 2, 1996, he wrote to Newt Gingrich, the Speaker of the House. He promoted his administration's record on the issue of illegal immigration and encouraged Congress to provide his administration with the tools needed to continue making progress.²⁶⁴ However, he criticized the Gallegly amendment because it would result in expelling children from school and kicking them onto the streets. The President insisted that "the street is no place for children to learn; children should be in school."²⁶⁵ He promised to veto the bill if the amendment was left in as it was an "unacceptable and ineffective way to fight illegal immigration."²⁶⁶ Ultimately, lawmakers removed the amendment from the bill. However, it's arguable that the time spent fighting this amendment resulted in less time spent discussing other aspects of the law.

The legislation fundamentally transformed removal processes by merging exclusion and deportation proceedings into a single "removal" proceeding, with the

²⁶¹ Jonah M Temple, 'The Merry-Go-Round of Youth Gangs: The Failure of the U.s. Immigration Removal Policy and the False Outsourcing of Crime', *Boston College Third World Law Journal* 31, no. 1 (2011): 193–215.

²⁶² Wells, 'The Grassroots Reconfiguration of U.S. Immigration Policy'. *op.cit.*

²⁶³ Swain and Yetter, 'Federalism and the Politics of Immigration Reform', 189. *op.cit.*, 189.

²⁶⁴ William J. Clinton, "Letter to Speaker of the House of Representatives Newt Gingrich on Proposed Legislation on Illegal Immigration Enforcement," 2 August 1996, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/letter-speaker-the-house-representatives-newt-gingrich-proposed-legislation-illegal>

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*

goal of streamlining the process.²⁶⁷ It established three administrative procedures that significantly expanded the authority of immigration officers while circumventing judicial review:²⁶⁸

1. *Expedited removals*: altered border enforcement by permitting immigration officers to summarily deport individuals without judicial oversight, it applied to those apprehended within one hundred miles of the border whom they deemed inadmissible at the time of entry, unless they could convince an officer they had a legitimate fear of injury, persecution or death
2. *Reinstatement of removal*: authorised immigration officials to reinstate prior deportation orders for individuals who reentered unlawfully, eliminating any right to hearings before an immigration judge, it encompassed individuals with prior formal deportations or prior voluntary departures.
3. *Stipulated removal*: allowed individuals already in deportation proceedings to waive their right to appear before an immigration judge, effectively consenting to their own removal.²⁶⁹

These procedures fundamentally altered how the deportation machine worked and raised important questions about judicial safeguards and due process. For example, a 2011 report by the National Immigration Law Center showed that language barriers cause major issues:

detainees often had no chance to understand the consequences of signing a stipulated removal order due to systemic language barriers and the lack of quality interpretation and translation that are known to plague many immigration detention facilities.²⁷⁰

After 1996, migrants whom officials would have once expelled via voluntary departure now found themselves subject to formal deportation, bans on re-entry ranging from five years to life, and possible felony criminal charges for returning to the United States.²⁷¹ Elliott Young shows how the expansion of crimes in IIRIRA for which immigrants could be deported led to an explosion in the number of mandatory detentions. Within five years of the Act's implementation, the number of non-citizens detained by the INS more than doubled, increasing from approximately 72,000 in 1994 to over 188,000 in 2001.²⁷² This rapid expansion of deportable offences and the corresponding surge in mandatory detentions laid the groundwork for a broader intensification of criminal immigration enforcement. While earlier decades had seen

²⁶⁷ Kate M Manuel, *Aliens' Right to Counsel in Removal Proceedings: In Brief*, no. R43613 (Congressional Research Service, 2016), 2.

²⁶⁸ Adam Goodman, *Deportation Machine: America's Long History of Expelling Immigrants* (Princeton University Press, 2020), 177.

²⁶⁹ *Ibid.*

²⁷⁰ Jennifer Lee Koh et al., *Deportation Without Due Process* (2011), iii, <https://www.nilc.org/wp-content/uploads/2016/02/Deportation-Without-Due-Process-2011-09.pdf>

²⁷¹ Goodman, *Deportation Machine*, 177.

²⁷² Young, *Forever Prisoners*, *op. cit.*, 12.

relatively stable prosecution numbers, the post-IIRIRA period marked a sharp departure, with criminal immigration cases rising dramatically and detention periods lengthening, signalling a deeper institutional entrenchment of these punitive measures.

Between the 1970s and early 2000s, criminal immigration prosecutions were stable, consistently numbering below 20,000 annually.²⁷³ However, by 2008 such prosecutions had quadrupled to exceed 80,000 cases per year.²⁷⁴ This elevated prosecution rate has persisted as a feature of contemporary immigration enforcement. At the same time, detention duration increased from an average of 4 days in 1981, to approximately 30 days by 2001, and has generally continued to increase.²⁷⁵ This extended detention timeframe signals an institutionalisation of these enforcement mechanisms within the federal bureaucracy. These dual trends, heightened criminalisation and extended detention, reflect a fundamental reconceptualization of immigration enforcement within the American legal system, transforming what was once primarily an administrative matter into an increasingly criminalised one (see chapter three).

Mandatory detention

IIRIRA and AEDPA introduced two pivotal changes. The laws widened mandatory detention and deportation provisions for both lawful permanent residents and undocumented immigrants convicted of “aggravated felonies.” This represented a significant departure from previous policy, which allowed for greater discretionary authority among immigration judges. Originally created by the 1988 Crime Bill to target serious offenses like murder and trafficking in drugs or weapons, the category was broadened to encompass a broad swathe of crimes, including less serious offenses (see table below).²⁷⁶ This included crimes like shoplifting, tax evasion, minor drug offenses, failure to appear in court, and receipt of stolen property. This shift reflected the Clinton administration’s “tough on crime” approach that extended to non-citizens, effectively linking immigration enforcement with criminal justice. Many of these newly classified “aggravated felonies” had severe immigration consequences (see graph and table below). Perhaps even more importantly, this classification was retroactive.

²⁷³ Criminal immigration prosecutions are cases where individuals are criminally charged in federal court for violations of immigration laws, rather than just facing civil deportation proceedings. The most common criminal immigration charges include: Illegal entry (a misdemeanour for first-time offenders), Illegal re-entry after deportation (a felony with increased penalties for those with criminal records), Immigration fraud or document fraud. These prosecutions are handled through the federal criminal justice system rather than the administrative immigration court system. This means defendants face potential jail time, criminal fines, and a criminal record in addition to possible deportation.

²⁷⁴ Young, *Forever Prisoners*, 12.

²⁷⁵ *Ibid.*

²⁷⁶ Bertha A. Zuniga, *Aggravated Felony Case Summary* (San Antonio, TX: Executive Office for Immigration Review, U.S. Department of Justice, 15 November 2010 update), <https://www.justice.gov/eoir/vll/benchbook/resources/Aggravated%20Felony%20Outline.pdf>

List of Aggravated Felony Categories	
Class	Aggravated Felony
A	Murder, Rape, Sexual abuse of a minor
B	Illicit trafficking of controlled substances; drug trafficking
C	Illicit trafficking in firearms, destructive devices, or explosives
D	Money laundering; or monetary transactions over \$10,000 derived from unlawful activity
E	Explosive materials or firearms offenses
F	Crimes of violence (with 1+ year imprisonment term); e.g. Assault, Child Abuse, Criminal Trespass, Burglary, Domestic Violence, DWI/DUI, Evading Arrest, Manslaughter, Robbery, Resisting Arrest.
G	Theft/burglary/receipt of stolen property (with 1+ year imprisonment)
H	Demand for or receipt of ransom
I	Child pornography
J	RICO or gambling offenses
K	Owning, controlling, managing, supervising prostitution business; peonage/slavery/involuntary servitude
L	Gathering/transmitting national defence information; protecting identity of undercover agents
M	Fraud or deceit causing loss to victim over \$10,000; tax evasion exceeding \$10,000
N	Alien smuggling
O	Improper entry/reentry by alien previously deported
P	Falsely making/forging/counterfeiting/mutilating/altering passport; document fraud (with 1+ year imprisonment term)
Q	Failure to appear to serve a sentence for an offense punishable by 5+ years
R	Commercial bribery, counterfeiting, forgery, or trafficking in vehicles with altered ID numbers, with term of imprisonment at least 1 year
S	Obstruction of justice, perjury, bribery of a witness, with sentence of at least 1 year
T	Failure to appear after court order to answer felony charge, for which term of 2 years or more may be imposed
U	Attempt or conspiracy to commit any of the above offenses

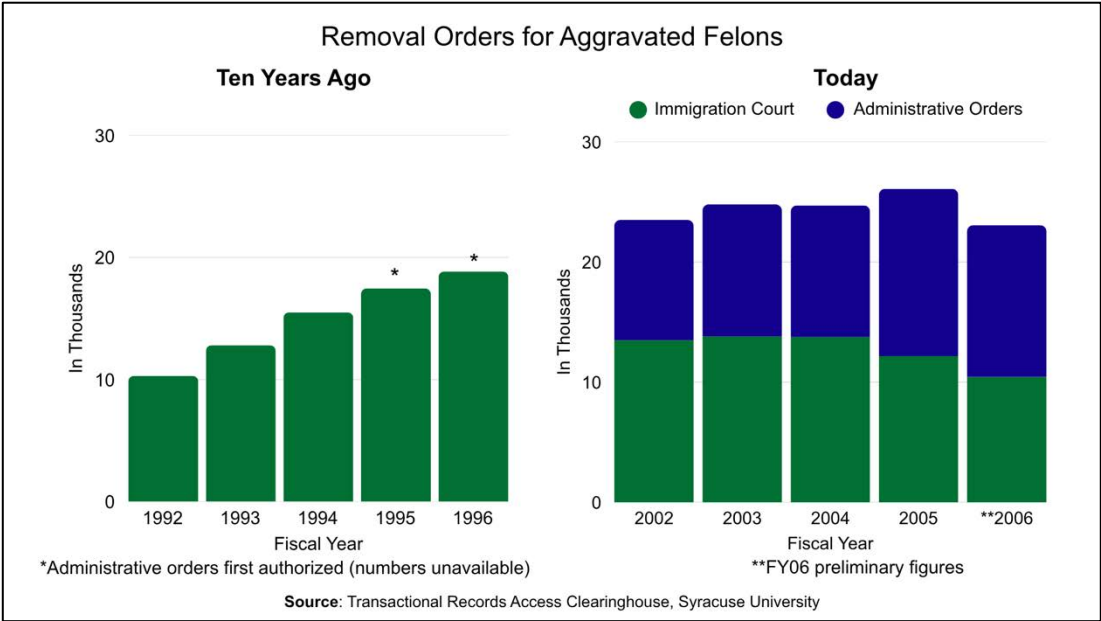


Figure 24. Removal Orders for Aggravated Felonies in the US (1992-2006)

Note: Data from before 1992 was unavailable.

Source: *New Data on the Processing of Aggravated Felons*, TRAC Reports, 5 January 2007, <https://tracreports.org/immigration/reports/175/index.html>

Removal Orders under Aggravated Felony Provisions			
Fiscal Year	Administrative Orders (INS / ICE)	Immigration Court	Total
1992	0	10,303	10,303
1993	0	12,833	12,833
1994	0	15,539	15,539
1995	not available	17,463	not available
1996	not available	18,858	not available
1997	not available	22,098	not available
1998	not available	16,509	not available
1999	not available	19,460	not available
2000	not available	16,929	not available
2001	not available	14,280	not available
2002	10,005	13,490	23,495
2003	10,982	13,807	24,789
2004	10,937	13,765	24,702
2005	13,904	12,170	26,074
*2006	12,617	10,448	23,065

*Because of late recording, FY 2006 are preliminary figures and are likely to rise when recording of removal decisions are completed.

Source: Transactional Records Access Clearinghouse, Syracuse University

Figure 25. Removal Orders under Aggravated Felony Provisions
in the USA (1992-2006)

Source: *New Data on the Processing of Aggravated Felons*, TRAC Reports, 5 January 2007,

Therefore, individuals who had committed minor offenses years or even decades before the 1996 laws found themselves subject to mandatory detention and deportation, despite having completed their sentences and rehabilitated themselves as productive members of society. To accommodate the growing number of detainees, the detention infrastructure expanded considerably during this period, including increased funding for detention beds and a greater reliance on private prison facilities.

IIRIRA also mandated that the Attorney General provide for an increase in the detention facilities of the Immigration and Naturalization Service to at least 9,000 beds before the end of fiscal year 1997.²⁷⁷ The law also required that the Attorney General submit a report every 6 months to the Committees on the Judiciary of the House of Representatives and of the Senate “estimating the amount of detention space that will be required,” during the fiscal year in which the report is submitted and the succeeding fiscal year, to detain all aliens subject to detention under section 236(c) of the Immigration and Nationality Act and section 241(a) of the Immigration and Nationality Act, as well as all excludable or deportable aliens subject to proceedings under section 238 of the Immigration and Nationality Act or section 235(b)(2)(A) or 240 of the Immigration and Nationality Act and any other excludable or deportable aliens.²⁷⁸

The combined effect of these laws was profound. The average daily population (ADP) in immigration detention facilities increased from approximately 6,700 in 1994 to over 20,000 by 2001. To accommodate the increased detention population, the government signed contracts with private prison corporations, leading to the growth of a private immigration detention industry. Many of those who were detained were lawful permanent residents who had lived in the U.S. for decades and had U.S. citizen family members. Immigration judges lost much of their authority to consider individual circumstances, family ties, rehabilitation, or other humanitarian factors that previously would have allowed them to grant relief.²⁷⁹ Some immigrants became subject to potentially indefinite detention when their countries of origin, including Cuba, Vietnam, Cambodia, Haiti, and the USSR refused to accept deportees.²⁸⁰ IIRIRA also added Section 287(g) to the Immigration and Nationality Act of 1952.²⁸¹ Through the 287(g) programme, state and local law enforcement officers collaborate with the federal government to enforce federal immigration laws.²⁸² 287(g) powers

²⁷⁷ Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

²⁷⁸ *Ibid.*

²⁷⁹ The Supreme Court addressed some aspects of AEDPA’s detention provisions in *Zadvydas v. Davis* (2001), *Demore v. Kim* (2003), *Jennings v. Rodriguez* (2018) (see chapter six).

²⁸⁰ For example, Cuban detainees at Oakdale Federal Detention Centre (Louisiana) and Atlanta Federal Penitentiary became central to legal challenges and even riots (e.g. the 1987 Oakdale and Atlanta prison uprisings).

Vietnam and Cambodia refused to issue travel documents for deportees, meaning removals were impossible. Some were detained for long periods (months or years) after finishing their criminal sentences because they had no country to go to and repatriation agreements were not reached until the early 2000s (Vietnam in 2008 and Cambodia in 2002).

The US government detained many Haitians, including asylum seekers at places like Guantánamo Bay. Deportations were delayed or impossible due to unstable conditions and Haiti’s refusal to take back certain individuals.

After the collapse of the USSR and Yugoslavia, some individuals became stateless, with no successor state willing to accept them.

²⁸¹ César Cuauhtémoc García Hernández, *Migrating to Prison: America’s Obsession with Locking up Immigrants* (The New Press, 2019), 68.

²⁸² *The 287(g) Program: An Overview. op.cit.*

were not used until 2002 in Florida and it was only from 2007 onwards that the programme was used on a large scale.

According to Adam Goodman, IIRIRA has done “more to reshape and rebuild the deportation machine and immigration system than any other law over the last half-century.”²⁸³ The laws helped further the criminalization of immigrants and led to a significant increase in detention and deportations.²⁸⁴ Clinton’s tough-on-crime policies, while aimed at taking the issue away from Republicans, had severe consequences for immigrants across the country, whether they were in the country legally or not. The INS themselves recognised the impact of the law on detention:

With the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Congress expanded the number of crimes that made people subject to removal. It also eliminated INS’ discretion to release certain aliens by requiring that virtually any non-citizen subject to removal on the basis of a criminal conviction, as well as certain categories of non-criminal aliens, be detained without bond. As a result of IIRIRA, INS is required to detain a much larger number of people.²⁸⁵

The provisions in IIRIRA requiring long-term detention, along with the rise in sophisticated smuggling operations, the increase in the number of criminal aliens, and the effects of Hurricane Mitch in Central America have resulted in the need for significantly more detention space.²⁸⁶

The combination of IIRIRA and AEDPA served to “eliminate undocumented migrants’ due process rights and any chance of judicial review in expulsion cases.”²⁸⁷ Daniel Kanstroom shows that “the 1996 laws reflected a strong “national security” and “crime control” orientation that radically changed and expanded the U.S. deportation system.”²⁸⁸ The 1996 laws fundamentally transformed the immigration enforcement system, creating what critics such as Patrisia Macías-Rojas (2016) and Matt Bakker (2020) as a “detention-to-deportation pipeline.”²⁸⁹ The expansion of mandatory detention eliminated individualized assessments of flight risk or danger for many immigrants and contributed significantly to the growth of what is now the largest immigration detention system in the world.

A 1999 report from the American Lawyer’s Association argued that despite being touted as laws against illegal immigration, IIRIRA and AEDPA both had significant impacts on legal immigration and posed problems of fairness and due

²⁸³ Goodman, *Deportation Machine*, *op.cit.*, 176.

²⁸⁴ Young, *Forever Prisoners*, *op.cit.*, 163.

²⁸⁵ *INS Fact Sheet: INS Improves Management of Detention Programme: Administration Proposes Legislation, New Resources to Enhance Efforts*, 8 June 1999, 2011-1044-F, Box 1/10, Folder OA25025, William J. Clinton Presidential Library.

²⁸⁶ *Ibid.*

²⁸⁷ Goodman, *Deportation Machine*, 179.

²⁸⁸ Daniel Kanstroom, “Passed Beyond Our Aid:” U.S. Deportation, Integrity, and the Rule of Law’, *The Fletcher Forum of World Affairs*, 2011, 95.

²⁸⁹ Matt Bakker, ‘The Detention-to-Deportation Pipeline and Local Policies of Resistance: A Case Study of Santa Clara County, California’, *Societies Without Borders* 14, no. 1 (2020): 4.

process. They argued, notably, that the laws curtailed access to court review, created bars to admissibility, allowed for the use of “secret evidence” to deport immigrants, was unfairly applied retroactively, limited relief from deportation for long-time legal permanent residents who had committed a crime, and made cancellation of removal much more difficult to obtain.²⁹⁰

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA) marked a profound transformation in the American approach to immigration enforcement. These laws, passed during a period of heightened concerns about crime and national security, fundamentally altered the relationship between criminal convictions and immigration consequences, creating a watershed moment in U.S. immigration history.

Government statistics reveal that hundreds of thousands of non-citizens have been detained and deported for offenses classified as “aggravated felonies,” a category dramatically expanded by the 1996 laws to encompass even minor infractions and misdemeanors. The substantial growth in the detained immigrant population during Clinton’s presidency can be attributed, at least in part to the legislative changes and enforcement priorities of his administration. The stricter laws and increased enforcement efforts led to a higher number of individuals being placed in detention pending removal. Many individuals removed under these provisions had maintained lawful permanent resident status for decades, with deep family and community ties.²⁹¹ Undocumented or illegal aliens were also significantly affected, as enhanced border enforcement and interior raids led to increased apprehensions and removals, often without access to adequate legal representation or due process protections. Latino and Caribbean immigrants, particularly those from Mexico, the Dominican Republic, Jamaica, and El Salvador, have borne the brunt of enforcement actions. This pattern reflects both the demographic composition of immigrant communities and the documented disparities in criminal justice outcomes affecting communities of colour more broadly.

The 1996 reforms also institutionalised a massive expansion of immigration detention, creating a parallel incarceration system operating alongside criminal corrections but with significantly fewer protections. The mandatory detention provisions, coupled with the encouraged use of private detention facilities,²⁹² contributed to a sevenfold increase in the daily detained population between 1994 and 2019, reaching approximately 55,000 individuals in ICE custody immediately prior to the COVID-19 pandemic. These developments exemplify what legal scholar Juliet

²⁹⁰ “Recent Immigration Laws Have Gone Too Far in Denying Access to Justice” (Source: American Immigration Lawyers Association). February 1999. 2011-1044-F, Box 1/10, Folder OA25025. William J. Clinton Presidential Library.

²⁹¹ Goodman, *Deportation Machine*, *op.cit.*, 177-78.

²⁹² César Cuauhtémoc García Hernández, *Migrating to Prison: America’s Obsession with Locking up Immigrants* (New York: The New Press, 2019), 69.

Stumpf identified as ‘crimmigration,’ the increasingly intertwined nature of criminal and immigration enforcement that has fundamentally altered the character of immigration law from its historical roots as a civil, administrative system to one that imposes punishment.²⁹³ The 1996 legislation thus stands as a critical inflection point in American immigration policy, establishing legal foundations and enforcement mechanisms that have facilitated unprecedented levels of detention and deportation in subsequent administrations.

Ultimately IIRIRA only served to increase the undocumented population present in the United States. Between 1986 and 2006, the number of undocumented migrants residing in the United States quadrupled, rising from an estimated 3 million to an estimated 12 million. Rather than moving back and forth across the border to work in the US before returning to Mexico, many remained in the United States, believing the risk of returning too great, the fear was that “either the newly bolstered Border Patrol might catch you or, worse, the desert would.”²⁹⁴ Circular migration was over, and many of those entering the country remained.

Several migration scholars and policy analysts anticipated these unintended consequences before and around the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996. Researchers such as Jorge Durand, Douglas S. Massey, and Emilio A. Parrado,²⁹⁵ as well as Wayne Cornelius²⁹⁶ argued that intensified border enforcement would likely suppress return migration rather than initial entries, thereby transforming a largely circular migratory flow into a more settled population. The policy of border militarisation did not deter undocumented migration but converted what had been a circular flow of male workers into a settled population of families.²⁹⁷ Thus, rather than reducing the undocumented population, IIRIRA and associated enforcement measures contributed to its expansion.

Another important factor to consider is the shifting composition of undocumented migration to the United States. Whereas Mexico was once the predominant country of origin, a growing proportion of undocumented immigrants now arrive from other nations, most notably El Salvador, India, Guatemala, and Honduras. This growing diversification in the origins of migrants carries substantial implications for US immigration policy, as it complicates enforcement strategies traditionally focused on the southern border, requires a redistribution of resources, and introduces new challenges for diplomatic engagement with an expanded array of

²⁹³ Stumpf, ‘The Crimmigration Crisis’. *op.cit.*

²⁹⁴ García Hernández, *Migrating to Prison*, *op.cit.*, 65.

²⁹⁵ Jorge Durand et al., ‘The New Era of Mexican Migration to the United States’, *The Journal of American History* 86, no. 2 (1999): 518, <https://doi.org/10.2307/2567043>

²⁹⁶ Wayne A. Cornelius, ‘Controlling “Unwanted” Immigration: Lessons from the United States, 1993–2004’, *Journal of Ethnic and Migration Studies* 31, no. 4 (2005): 775–94, <https://doi.org/10.1080/13691830500110017>

²⁹⁷ Douglas S. Massey et al., ‘Why Border Enforcement Backfired’, *American Journal of Sociology* 121, no. 5 (2016): 7, <https://doi.org/10.1086/684200>

countries of origin.²⁹⁸

An INS report, published in 2003, looking back at illegal immigration in the 1990s and the consequences of the IRCA amnesty programme, as well as IIRIRA and AEDPA, showed that enforcement portions of the law did little to deter illegal immigration as estimates of the unauthorised immigrant population in the United States shows.²⁹⁹ The report estimated that approximately 700,000 illegal aliens entered the United States each year during the 1990s with peaks at 817,000 in 1998 and close to one million in 1999. Despite the millions legalized under IRCA, the report shows that these individuals were replaced by new undocumented immigrants within a decade and their number hit five million by 1994 and seven million by the turn of the century.³⁰⁰

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)

Clinton campaigned on welfare reform in 1992, promising to “end welfare as we know it.”³⁰¹ However, once elected, other priorities like deficit reduction, signing NAFTA, tackling crime, and healthcare reform took precedence. The administration finally introduced its Work and Responsibility Act in June 1994, by which time it faced competition from numerous other reform bills. After Republicans won control of Congress in the 1994 midterm elections, they seized the initiative on welfare reform through their “Contract with America” platform. This Republican proposal emphasised stricter measures, including benefit reductions, time limits, and work requirements. As the 1996 presidential election approached, both parties found incentives to compromise, resulting in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).³⁰² It created the Temporary Assistance for Needy Families (TANF) programme, to replace Aid to Families with Dependent Children (AFDC) as the main welfare provider for low-income families in the USA. It also gave more control of welfare policy to the states.³⁰³ The final policy document focused on four primary objectives:

²⁹⁸ Jeffrey S. Passel and Jens Manuel Krogstad, ‘What We Know about Unauthorized Immigrants Living in the U.S.’, *Pew Research Center*, 22 July 2024, <https://www.pewresearch.org/short-reads/2024/07/22/what-we-know-about-unauthorized-immigrants-living-in-the-us/>

²⁹⁹ Office of Policy and Planning, ‘Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000’ (Immigration and Naturalization Service, 31 January 2003).

³⁰⁰ CIS, ‘800,000 + Illegals Entering Annually in Late ‘90s’. *Center for Immigration Studies*, 1 February 2003. <https://cis.org/800000-Illegals-Entering-Annually-Late-90s>

³⁰¹ William J. Clinton, ‘Address Accepting the Presidential Nomination at the Democratic National Convention in New York’, New York, 16 July 1992, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/address-accepting-the-presidential-nomination-the-democratic-national-convention-new-york>

³⁰² Michael Wiseman, ‘Welfare Reform in the United States: A Background Paper’, *Housing Policy Debate* 7, no. 4 (1996): 75, <https://doi.org/10.1080/10511482.1996.9521236>

³⁰³ *Short History of the 1996 Welfare Reform Law*, no. RS20807 (Congressional Research Service, 2001).

1. provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
2. end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
3. prevent and reduce the incidence of out-of-wedlock pregnancies;
4. encourage the formation and maintenance of two-parent families³⁰⁴

The law also included significant immigration provisions, echoing Proposition 187 in 1994. According to the Congressional Research Service, the law had a significant impact on immigrant access to welfare:

Alien Eligibility. The 1996 law barred federally funded TANF for newly arriving aliens (other than refugees/asylees) for the first 5 years of residence unless they have a substantial U.S. work history or military/veteran connection – leaving eligibility in other cases up to the states. Without regard to their arrival date, the same noncitizens were barred from food stamps and SSI, and the law placed similar constraints on Medicaid eligibility.³⁰⁵

In July 1996, President Clinton addressed the House's agreement on the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). While supporting the bill's welfare reform goals, he strongly objected to its immigration provisions, expressing disappointment that congressional leadership had included measures that would harm hardworking legal immigrants who pay taxes and serve in the military. He argued these provisions would unfairly deny assistance to immigrant families facing hardships through no fault of their own.³⁰⁶ Clinton accused Republicans of using PRWORA to target legal immigrants with provisions that could not pass as standalone legislation. He condemned as morally wrong the notion that immigrants could work, pay taxes, and serve in the military, potentially dying for America, yet be denied assistance if they faced illness, injury, or other misfortunes.³⁰⁷

The President warned that this bill should not become an excuse to abandon those genuinely in need. He reminded states that having requested more responsibility and executive power, they now had to fulfil these obligations, "to shoulder it and not run away from it."³⁰⁸ The signing of PRWORA was a vindication at the federal level of the GOP's efforts with California's Proposition 187. Clinton's signature of the law led to resignations amongst the White House staff, notably Economist Wendell E.

³⁰⁴ Pamela Loprest et al., 'Welfare Reform under PRWORA: Aid to Children with Working Families?', in *Tax Policy and the Economy, Volume 14*, ed. James M. Poterba (MIT Press, 2000), 158, <https://doi.org/10.1086/654706>

³⁰⁵ *Short History of the 1996 Welfare Reform Law*, 6. *op.cit.*

³⁰⁶ William J. Clinton, 'Remarks on Welfare Reform Legislation and an Exchange With Reporters', Washington, D.C., 31 July 1996, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/remarks-welfare-reform-legislation-and-exchange-with-reporters>

³⁰⁷ *Ibid.*

³⁰⁸ *Ibid.*

Primus,³⁰⁹ Political Scientist Mary Jo Bane,³¹⁰ and Peter B. Edelman.³¹¹ Edelman, who had been Assistant Secretary of Health and Human Services for Planning and Evaluation, told his staff in a memorandum that “I have devoted the last 30-plus years to doing whatever I could to help in reducing poverty in America. I believe the recently enacted welfare bill goes in the opposite direction.”³¹² In an article Edelman penned the following year, he called the Welfare Law “The Worst Thing Bill Clinton Has Done”:

It does not promote work effectively, and it will hurt millions of poor children by the time it is fully implemented. What’s more, it bars hundreds of thousands of legal immigrants – including many who have worked in the United States for decades and paid a considerable amount in Social Security and income taxes – from receiving disability and old-age assistance and food stamps, and reduces food-stamp assistance for millions of children in working families.³¹³

A number of organisations came out against the Law. The National Organization for Women expressed concern that millions of people currently receiving welfare benefits would sink deeper into poverty. Marian Wright Edelman, the president of the Children’s Defense Fund, and wife of Peter Edelman, condemned the bill, arguing that it would cause immense harm and impoverish millions of individuals.³¹⁴ The Urban Institute predicted that welfare reform would exacerbate poverty, potentially pushing an additional 2.6 million people into economic hardship.³¹⁵ Subsequent research has largely validated early criticisms of the *Personal Responsibility and Work Opportunity Reconciliation Act* (PRWORA) of 1996, showing that while welfare caseloads declined and employment among single mothers briefly rose, these effects were primarily driven by the strong late-1990s economy rather than by the reform itself.³¹⁶ The consensus remains that the 1996 reforms reduced welfare dependency without alleviating, and in some cases exacerbating,

³⁰⁹ Primus served in the Clinton Administration within the Department of Health and Human Services until his resignation. Before his appointment at HHS, he held the position of Chief Economist for the House Ways and Means Committee and also served as Staff Director of the Committee’s Subcommittee on Human Resources. For more information see The Bipartisan Policy Center: <https://bipartisanpolicy.org/person/wendell-primus/>

³¹⁰ From 1993 to 1996 she was Assistant Secretary for Children and Families at the U.S. Department of Health and Human Services. For more information see The Harvard Kennedy School: <https://www.hks.harvard.edu/faculty/mary-jo-bane>

³¹¹ Alison Mitchell, ‘Two Clinton Aides Resign to Protest New Welfare Law’, U.S., *The New York Times*, 12 September 1996, <https://www.nytimes.com/1996/09/12/us/two-clinton-aides-resign-to-protest-new-welfare-law.html>

³¹² *Ibid.*

³¹³ Peter Edelman, ‘The Worst Thing Bill Clinton Has Done’, *The Atlantic*, 1 March 1997, <https://www.theatlantic.com/magazine/archive/1997/03/the-worst-thing-bill-clinton-has-done/376797/>

³¹⁴ Robert Rector, ‘Welfare Reform Critics Were Wrong,’ *The Heritage Foundation*, 6 March 2003, <https://www.heritage.org/welfare/commentary/welfare-reform-critics-were-wrong>

³¹⁵ *Proceedings and Debates of the 107th Congress, Second Session. Vol. 148 No.62, Vol. 148 No.62* (House of Representatives, 2002), Congressional Record.

³¹⁶ Rebecca M. Blank, ‘Evaluating Welfare Reform in the United States’, *Journal of Economic Literature* 40, no. 4 (2002): 1105–66, <https://doi.org/10.1257/002205102762203576>

poverty among the most vulnerable.³¹⁷

The extreme harshness of the 1996 laws, particularly their potential to create a class of “undeportable” non-citizens who could be detained indefinitely, inevitably led to constitutional challenges. The culmination of this legal resistance was the landmark 2001 Supreme Court decision in *Zadvydas v. Davis* (see chapter six).³¹⁸

4.2. Incremental Expansion of Administrative Detention in the UK

The UK’s path to mass immigration detention was not a single, revolutionary event but a gradual, legislative creep. Over two decades, a series of Acts, each building upon the restrictions of the previous one, constructed a cumulative architecture of control. This process began under the Thatcher government with laws that redefined the boundaries of national belonging, thereby expanding the population subject to immigration control. It culminated under the New Labour government with legislation that systematised the detention of asylum seekers, creating the bureaucratic machinery and physical infrastructure necessary to manage their confinement on a large scale. This incremental approach was framed in the language of administrative managerialism, masking the punitive reality of an expanding carceral system.

The Asylum and Immigration Act 1996

In 1996, Parliament passed the Asylum and Immigration Act³¹⁹ which served to tighten controls and consolidated detention as an enforcement tool.³²⁰ According to the Secretary of State for the Home Department, Michael Howard, the law had multiple goals:

The Bill has three objectives: first, to strengthen our asylum procedures so that bogus claims and appeals can be dealt with more quickly; secondly, to combat immigration racketeering through stronger powers, new offences and higher penalties; and, thirdly, to reduce economic incentives, which attract people to come to this country in breach of our immigration laws. The Bill would erect a stronger defence against unauthorised employment and provide powers to restrict entitlement to assistance and child benefit.³²¹

The Asylum and Immigration Act 1996 introduced a new criminal penalty for employers hiring unauthorised workers, particularly asylum seekers, exerting

³¹⁷ H. Luke Shaefer and Kathryn Edin, ‘Rising Extreme Poverty in the United States and the Response of Federal Means-Tested Transfer Programs’, *Social Service Review* 87, no. 2 (2013): 250–68, <https://doi.org/10.1086/671012>

³¹⁸ *Zadvydas v. Davis*, 533 U.S. 678 (Supreme Court of the United States 28 June 2001), <https://supreme.justia.com/cases/federal/us/533/678/>

³¹⁹ Asylum and Immigration Act 1996.

³²⁰ Mary Bosworth, *Inside Immigration Detention* (Oxford University Press, 2014), 33.

³²¹ *Asylum and Immigration Bill*, HC Deb 11 December 1995, vol. 268, col. 699, *Parliament.uk*, https://publications.parliament.uk/pa/cm199596/cmhansrd/vo951211/debtext/51211-06.htm#51211-06_head1

additional pressure as a deterrent. It created sanctions (of up to £5,000) for employers who knowingly hired illegal immigrants in a similar system to the 1986 IRCA in the USA. Consequently, it may have compelled some individuals to engage in illegal employment without compensation, or the same protections afforded to other employees.³²² This was complemented by alterations in the benefit system, as asylum seekers lost housing and child benefits until their claims were approved. The Secretary of State, in the same debate, insisted that “Firm but fair immigration control is a necessary condition for such a society” echoing Clinton’s comments that the USA is a nation of laws.³²³ In many senses the UK’s 1996 Asylum and Immigration law had much in common with the USA’s 1986 IRCA and 1996 laws. The law adopted a more punitive approach, with a focus on “bogus” asylum seekers, giving authorities more power to search and arrest, increasing penalties for false claims, and trying to make asylum decisions faster. The Secretary of State also had the power to declare certain countries as “safe,” which meant asylum applications from those places would automatically be rejected. A significant amendment to the UK’s 1996 Asylum and Immigration Act removed entitlement to social security benefits for specific categories of asylum seekers. Again, this echoed Proposition 187 and the changes to welfare for immigrants in the USA in 1996. In the UK, the constructed crisis of the mid-1990s centred not on a physical border but on the asylum system itself, with political discourse focusing on ‘bogus’ applicants abusing the system. The government’s institutional response showed evidence of cross-national policy learning as the 1996 Act introduced employer sanctions similar to those in the US’s 1986 IRCA, aiming to remove the economic incentive for migration.

The Asylum and Immigration Act 1996 introduced several significant changes that substantially tightened the UK’s immigration and asylum system.³²⁴ The Act severely restricted appeal rights for asylum seekers, removing the right to appeal from within the UK in many cases, and introduced fast-track procedures for claims deemed “manifestly unfounded.”³²⁵ It strengthened safe third country provisions and, most controversially, withdrew entitlement to most social security benefits for asylum seekers, including housing benefit and income support, replacing them with a more basic support system. The Act also tightened work restrictions for asylum seekers, strengthened carrier liability penalties for transport operators, enhanced documentation requirements, and limited access to judicial review and legal aid for immigration cases.³²⁶

Crucially, the Act also expanded detention powers significantly, giving immigration authorities broader discretionary powers to detain asylum seekers and

³²² Stuart Turner, ‘Refugee Blues: A UK and European Perspective’, *European Journal of Psychotraumatology* 6, no. 1 (2015): 29328, <https://doi.org/10.3402/ejpt.v6.29328>

³²³ *Asylum and Immigration Bill*, HC Deb 11 December 1995, vol. 268, col. 699

³²⁴ Asylum and Immigration Act 1996.

³²⁵ *Ibid.*

³²⁶ Stevens, ‘The Asylum and Immigration Act 1996’. *op. cit.*

migrants during the asylum process. With restricted in-country appeal rights, more people became subject to detention while awaiting removal or during expedited processes, and the Act established clearer categories of people who could be detained, including those whose claims were considered likely unsuccessful or who were deemed flight risks.³²⁷ This framework laid the groundwork for what would later become the “Detained Fast Track” system and contributed to the development of Immigration Removal Centres.³²⁸ The expanded detention powers affected vulnerable groups including families with children and led to concerns about indefinite detention, particularly when removal was not immediately possible, representing a significant shift toward administrative detention as a core tool of immigration control.

The Act criminalised the act of employing a person who did not have the right to work in the UK. While ostensibly targeting employers, this provision had the effect of pushing undocumented migrants and asylum seekers further into the informal economy, increasing their precarity and making them more vulnerable to detention and removal. More directly, the Act created the ‘white list’ of countries designated by the Secretary of State as generally safe. The first designation Order under the Act specified Bulgaria, Cyprus, Ghana, India, Pakistan, Poland and Romania as countries where there was “in general no serious risk of persecution.”³²⁹ Asylum claims from nationals of these countries were to be presumed “manifestly unfounded” and certified as such, a designation which stripped the applicant of their right to an in-country appeal.³³⁰ This mechanism was explicitly designed to facilitate the detention and rapid removal of entire nationalities deemed to be “bogus” asylum seekers.³³¹

The Special Immigration Appeals Commission Act 1997

The Special Immigration Appeals Commission Act 1997³³² was passed in John Major’s final year in 10 Downing Street, reflecting the need for a specialised legal framework to address the overlap of immigration and national security.³³³ It created a specialized judicial commission known as the Special Immigration Appeals Commission (SIAC). Its goal was to provide a mechanism for hearing appeals against

³²⁷ *Ibid.*

³²⁸ Leroy House, *Fast Track to Despair: The Unnecessary Detention of Asylum-Seekers* (Detention Action, 2011).

³²⁹ The Asylum (Designated Countries of Destination and Designated Safe Third Countries) Order 1996 (1996), <https://www.legislation.gov.uk/uksi/1996/2671/made>

³³⁰ Colin Yeo, *How Does the Asylum ‘White List’ Work and What Does the Government Plan to Change?*, Free Movement, 29 November 2022, <https://freemovement.org.uk/how-does-the-asylum-white-list-work-and-what-does-the-government-plan-to-change/>

³³¹ McFadyen, ‘The Language of Labelling and the Politics of Hostipitality in the British Asylum System’. *op. cit.*

³³² *Special Immigration Appeals Commission Act 1997*, c. 68, 1997, [Legislation.gov.uk, https://www.legislation.gov.uk/ukpga/1997/68/contents](https://www.legislation.gov.uk/ukpga/1997/68/contents)

³³³ Frances Allen et al., ‘Special Immigration Appeals Commission Act 1997: (1997, c. 68)’, in *Immigration Law Handbook*, ed. Frances Allen et al. (Oxford University Press, 2023), <https://doi.org/10.1093/oso/9780192896292.003.0006>

certain immigration and nationality decisions made by the Secretary of State. Its primary focus was exclusions from the United Kingdom if that exclusion is “conducive to the public good (...) in the interests of national security (...) in the interests of the relationship between the United Kingdom and another country, or (...) otherwise in the public interest.”³³⁴ SIAC was created to make decisions in situations that were based on sensitive information that could not be disclosed publicly for reasons of national security, international relations, or public interest.³³⁵ Importantly, the law also allowed for the refusal of bail for individuals detained under the Immigration Act 1971 if the Secretary of State certified that their detention was necessary in the interests of national security or on national security grounds.³³⁶

The Paradox of Immigration under New Labour

The positive economic climate that Blair inherited fostered a growing labour market with an increasing demand for a range of skills across various sectors, including healthcare, construction, and technology.³³⁷ The government viewed immigration as a crucial instrument for stimulating economic growth and addressing emerging labour shortages within key industries.³³⁸ Erica Consterdine and James Hampshire argue that from 1997 to 2010, Labour governments transformed the nation’s economic immigration policy “from one of the most restrictive to one of the most liberal in Europe” despite the apparent lack of public demand for liberalisation.³³⁹ Will Somerville summarises the policy development of the Blair years (1997-2007) as the liberalisation of the economic migration system, heightened restrictions on those seeking asylum, increased control measures for unauthorised immigrants, expanded security measures and a reorientation of the official position on ‘integration’.³⁴⁰

The New Labour era was a period of contradictions when it comes to migration policy. Blair’s government simultaneously embraced economic migration while constructing a security apparatus to control unauthorised entry. This was a calculated response to conflicting pressures: globalisation’s demand for labour mobility against the need to demonstrate border control.³⁴¹ Labour encouraged the immigration of skilled workers through points-based systems and embracing EU expansion. This led to unprecedented migration flows particularly from Eastern Europe after 2004. This economic openness reflected New Labour’s “Third Way” philosophy, accepting

³³⁴ *Special Immigration Appeals Commission Act 1997*, c. 68, § 2C, 1997, [Legislation.gov.uk, https://www.legislation.gov.uk/ukpga/1997/68/section/2C](https://www.legislation.gov.uk/ukpga/1997/68/section/2C)

³³⁵ *Ibid.*, § 2D

³³⁶ *Ibid.*, § 3

³³⁷ Erica Consterdine and James Hampshire, ‘Immigration Policy under New Labour: Exploring a Critical Juncture’, *British Politics* 9, no. 3 (2014): 275–96, <https://doi.org/10.1057/bp.2013.19>

³³⁸ *Ibid.*

³³⁹ *Ibid.*

³⁴⁰ Will Somerville, *Immigration under New Labour* (Policy Press, 2007), 3–4.

³⁴¹ *Ibid.*, 4.

market liberalism while attempting to direct its benefits toward social ends.³⁴²

Paradoxically, this economic openness was paired with increasingly stringent border control mechanisms. This paradox is a product of simultaneously pursuing economic liberalisation and political control. The government established the UK Border Agency in 2008, implemented biometric identification systems, and created detention facilities specifically designed for fast-track asylum processing. Legislation such as the Immigration and Asylum Act 1999 and the Nationality, Immigration and Asylum Act 2002 restricted asylum seekers' rights and aimed to accelerate deportation procedures.³⁴³

New Labour also promoted an integration agenda through instruments like the Race Relations (Amendment) Act 2000 and the Equality Act 2006. The goal was to strengthen anti-discrimination protections and promote community cohesion.³⁴⁴ This legislative focus on integration and equality laid the groundwork for broader inquiries into social cohesion, highlighting the need to understand how segregated communities could hinder mutual understanding and tolerance. In August 2001, Ted Cantle was appointed by the Home Secretary to chair the Community Cohesion Review Team, investigating the causes of summer disturbances in several northern towns and cities. The Cantle Report, published in December 2001, made around seventy recommendations and introduced the concept of 'parallel lives' to describe communities with minimal interaction.³⁴⁵ By emphasising 'contact theory' as a means to reduce prejudice and promote understanding, the report challenged the prevailing multicultural approach to race relations and established the basis for the concept of 'community cohesion'.

The concerns highlighted by the Cantle Report fed into wider debates about migration. While New Labour pursued integration through legislation, the economic realities of migration increasingly complicated the picture, prompting a shift in political consensus that recognised migration as both a social and economic issue as by the end of Labour's tenure, the Conservative opposition had largely accepted the economic case for managed migration.³⁴⁶ The Conservatives recognised that opposing migration outright could harm economic growth and competitiveness. It also allowed them to maintain credibility with business interests and avoid being seen as economically obstructive. Conservatives, by accepting the principle of migration but critiquing its implementation, highlighted the uneasy balance between economic necessity and social concerns.³⁴⁷

The New Labour migration paradox encapsulates a core tension in modern

³⁴² *Ibid.*

³⁴³ *Ibid.*

³⁴⁴ 'Community cohesion', can be defined as the extent to which members of a community share a sense of belonging, trust one another, and participate collectively in social and civic life.

³⁴⁵ Ted Cantle, *Community Cohesion: A Report of the Independent Review Team* (Home Office, 2001).

³⁴⁶ This evolved over the course of the Conservative governments from 2010 to 2024.

³⁴⁷ Somerville, *Immigration under New Labour*, 4. *op. cit.*, 4.

liberal democracies: the need to balance economic openness with social closure, and cosmopolitan values with national identity.³⁴⁸ On one hand, migration is essential for economic growth, labour-market flexibility, and global competitiveness, reflecting a commitment to pluralism and diversity. On the other, rapid demographic change can generate anxieties about integration, community cohesion, and the preservation of shared norms. New Labour's policies, which combined the encouragement of economic migration with legislation promoting equality and social cohesion, sought to navigate this delicate balance. The Conservative response of accepting the principle of migration while critiquing its implementation seems to underscore that this is not merely a partisan issue, but a structural dilemma of liberal democracy itself: reconciling global engagement and openness with the protection of local communities and national identity.

“Fairer, Faster and Firmer”: A Modern Approach to Immigration and Asylum.³⁴⁹

After winning the election, one of the goals of the new Labour government was to modernise the immigration and asylum system. In 1998 they released a White Paper entitled “Fairer, Faster and Firmer: A Modern Approach to Immigration and Asylum.”³⁵⁰ The document represented an example of reactive policy-making within the British administrative tradition, where institutional reform follows perceived system failure rather than anticipating structural weaknesses, a pattern consistent with immigration legislation since the Second World War. The very title of New Labour's 1998 White Paper, ‘Fairer, Faster and Firmer,’ was an act of political statecraft. The language was purely symbolic, designed to project competence and control. It signalled a break from the past while simultaneously appeasing critics demanding toughness (‘firmer’) and those concerned with human rights (‘fairer’), thereby building the political coalition necessary for the subsequent expansion of the detention system.

The legislation proposed sought to establish deterrents preventing asylum seekers and economic migrants from designating the United Kingdom as their final destination, and secondly, to respond to mounting criticism regarding the Immigration and Nationality Directorate's inefficiencies and case backlogs.³⁵¹ It also sought to adopt a stricter approach towards those who exploit the asylum system and to restore public trust in the immigration system.³⁵² Jack Straw, the Home Secretary wrote the preface to the document declaring that:

³⁴⁸ *Ibid.*

³⁴⁹ Jack Straw, *Fairer, Faster and Firmer: A Modern Approach to Immigration and Asylum* (Cm 4018, White Paper, London: HMSO, July 1998), UK Government, <https://assets.publishing.service.gov.uk/media/5a7cdecbed915d7c849adbdd/4018.pdf>

³⁵⁰ *Ibid.*

³⁵¹ Ana J. Aliverti, *Crimes of Mobility: Criminal Law and the Regulation of Immigration*, Routledge Studies in Criminal Justice, Borders and Citizenship (Routledge, 2013), 39.

³⁵² Aliverti, *Crimes of Mobility*, 39.

The Government is committed to protecting genuine refugees. (...) The current arrangements for supporting asylum seekers are a shambles. New arrangements are needed to ensure that genuine asylum seekers are not left destitute, but which minimise the attractions of the UK to economic migrants. Those arrangements and our overhaul of the asylum system are based on recognising and fulfilling the mutual obligations – a new covenant – that exist between the Government and those seeking asylum here.³⁵³

The 1998 White Paper outlined the Labour government’s strategy to modernise its immigration and asylum systems.³⁵⁴ The core objectives were to establish an integrated, efficient, and less abuse-prone system, operate with greater openness, and ultimately deliver an approach to immigration control that was simultaneously fairer, faster, and firmer. The document acknowledged failings in the existing system including delays, extensive backlogs (see table below), outdated and complex procedures, and a reactive, piecemeal approach that had increased costs while weakening overall control.

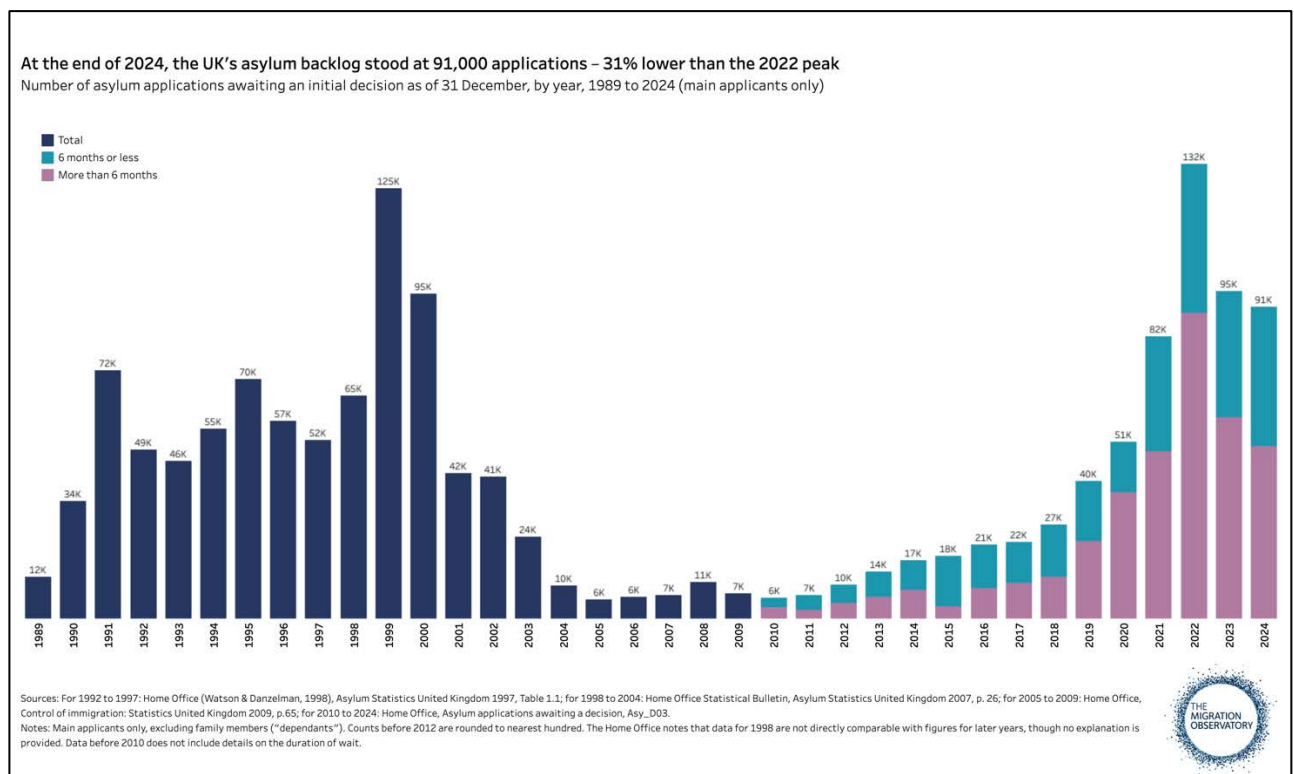


Figure 26. Number of asylum applications awaiting an initial decision in the UK as of 31 December, by year (1989-2024)

Source: Migration Observatory, “The UK’s Asylum Backlog,” *Migration Observatory – University of Oxford*, 28 April 2025, <https://migrationobservatory.ox.ac.uk/resources/briefings/the-uks-asylum-backlog/>

³⁵³ Jack Straw, *Fairer, Faster and Firmer*, 3.

³⁵⁴ *Ibid.*

While they suggested changes to the immigration and asylum system, the White Paper demonstrated a continuation with the overall framework of the Conservative governments who had come before.³⁵⁵

The White Paper detailed a wide array of reforms across different stages of the immigration and asylum process, including changes to entry controls (Pre, On, and After),³⁵⁶ the appeals system,³⁵⁷ asylum procedures,³⁵⁸ protection and settlement,³⁵⁹ and citizenship.³⁶⁰ It also included improvements to enforcement and removals as well as detention. In the case of enforcement and removals, the White Paper proposed strengthening criminal offences against deceitful applications, combating bogus marriages, and fostering a multi-agency approach to tackle immigration-related crime. It also suggested extending the powers of immigration officers, examining the increased use of fingerprinting, and evaluating the potential for readmission agreements and voluntary return programmes. Detention, the government argued, was “regrettable” although “necessary to ensure the integrity of our immigration system.” Reforms, they promised, would mean detainees are provided written reasons for detention, a greater judicial element would be introduced into the detention process, detention facilities would be expanded, and clear statutory rules for the management of detention centres would be introduced. While the White Paper advocated for these reforms, it still justified detention in broad circumstances and did not propose a maximum legal period for detention. This, coupled with plans to increase detention capacity, signalled a continued reliance on detention.

Unlike the United States’ Immigration Reform and Control Act of 1986, the document rejected outright the idea of a blanket amnesty for the existing backlog. The

³⁵⁵ Aliverti, *Crimes of Mobility*, 38. *op. cit.*

³⁵⁶ Proposals included streamlining visa appeals for family visits, piloting a financial bond system for certain visitors, ensuring stricter compliance with carriers’ liability for undocumented passengers, increasing the number of Airline Liaison Officers, and modernizing immigration law to enhance flexibility. The paper also aimed to prevent racial discrimination in employment checks and ensure compassionate factors were appropriately considered in casework.

³⁵⁷ A radical overhaul of the immigration and asylum appeals system was planned, aiming to reduce the number of appeal avenues and reform the Immigration Appellate Authority. The government intended to consult on improving efficiency and introduce statutory controls for unscrupulous immigration advisers.

³⁵⁸ The strategy called for tighter controls on legal aid, the establishment of a “new covenant” outlining mutual obligations for the government and asylum applicants, and significantly faster decision-making on applications and appeals. New support arrangements were proposed to prevent destitution among asylum seekers while minimising incentives for economic migration and alleviating the burden on local authorities. The backlog of asylum cases was to be addressed without a general amnesty, and the “White List” system for accelerated appeals from certain countries was to be abolished in favour of individual case assessments.

³⁵⁹ For those recognised as refugees, the qualifying period for settlement was to be abolished, granting immediate settlement. For individuals granted exceptional leave to remain, this period would be reduced. The government also aimed to improve the quality and transparency of information regarding asylum seekers’ countries of origin.

³⁶⁰ Efforts were planned to reduce waiting times for British citizenship applications and implement a more flexible approach to residency requirements.

White Paper explains the government's rejection of a blanket amnesty for the existing backlog of asylum seekers in two different places:

1. There can be no question of an amnesty for those in the backlog. This would be unfair and would be seen as a reward for those who would abuse the system.³⁶¹
2. We reject the concept of amnesty. This Government is determined to get to grips with the problem, and to tackle it with a practical approach which is fair to those who have suffered the worst delays yet firm with the most blatant abusers of the system.³⁶²

This meant that individuals who had resided in the UK for extended periods due to systemic delays would continue to face uncertainty, although the paper did suggest that delay would be a consideration in some older cases. It also underscored the importance of upholding human rights, promoting race equality, fostering international cooperation, and maintaining frontier controls. However, some critics including Doctors Paramjit S. Gill, and David Jones as well as Lawyer Jane Coker, argued that this new system would be detrimental to immigrants and had questionable Human Rights issues.³⁶³

As promised in their election manifesto, the Labour government abolished the Primary Purpose Rule shortly after assuming office, doing so on June 5, 1997.³⁶⁴ Under the Rule, foreign nationals married to British citizens were required to prove their marriage's primary purpose was not to obtain British residency. It was criticised as being unnecessary, anomalous, inconsistently applied, impossible to implement fairly, and imposing unjust hardship on applicants.³⁶⁵ The effect was immediate, according to Migration Watch, in 1998, 32,200 spouse visas were issued, compared to 26,400 in 1997 and 21,000 in 1996 (see graph below).³⁶⁶

³⁶¹ Jack Straw, *Fairer, Faster and Firmer*, *op. cit.*, 37

³⁶² *Ibid*, 38

³⁶³ Paramjit S. Gill et al., 'UK Government's Immigration Proposals Disregard Human Rights', *The Lancet* 352, no. 9138 (1998): 1468, [https://doi.org/10.1016/S0140-6736\(05\)61292-5](https://doi.org/10.1016/S0140-6736(05)61292-5)

³⁶⁴ *Primary Purpose Rule*, HC Deb 27 October 1997, vol. 299, cc. 565–7, *Parliament.uk*, <https://api.parliament.uk/historic-hansard/commons/1997/oct/27/primary-purpose-rule>

³⁶⁵ David Pannick, *The Primary Purpose Rule: A Rule with No Purpose* (JUSTICE, 1993).

³⁶⁶ *Immigration Under Labour*, Briefing Paper MW 355 (Migration Watch UK, 2015), <https://www.migrationwatchuk.com/briefing-paper/document/355>

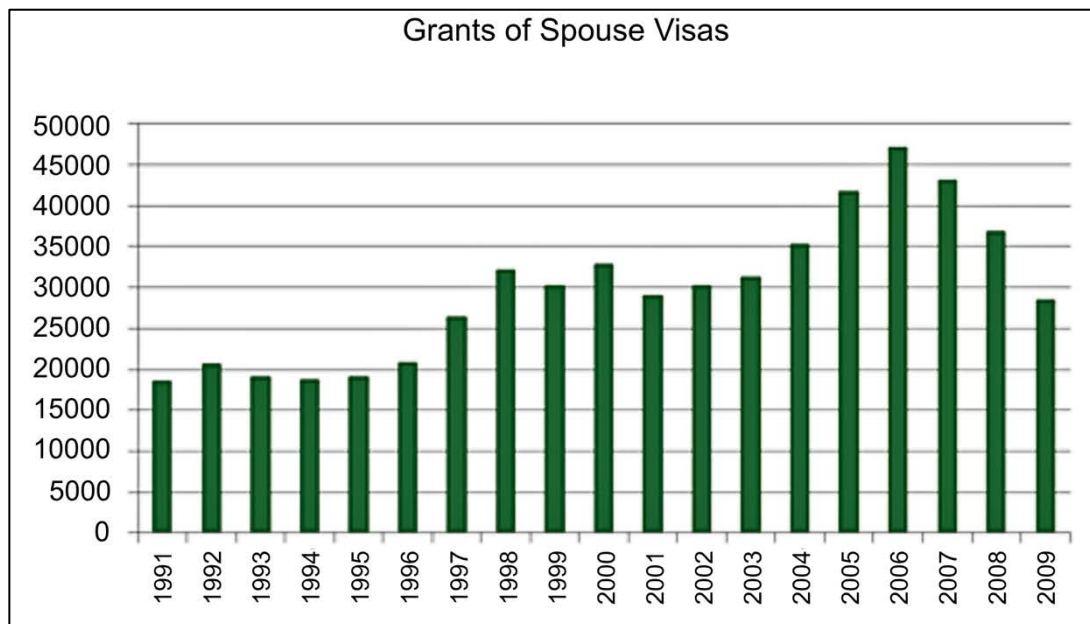


Figure 27. Grants of Spouse Visas in the UK (1991-2009)

Source: *Immigration Under Labour* (Briefing Paper 355, MigrationWatch UK, 2 March 2015), <https://www.migrationwatchuk.org/briefing-paper/355>

In 1998, the Labour government extended the abolition of embarkation controls, commonly known as exit checks. In 1994 the Conservative government had already abolished exit checks for passengers travelling to EU destinations. This was seen as a money-saving change. When abolishing the controls in 1998, Parliamentary Under Secretary Minister of State for Immigration Michael O'Brien explained the reasoning behind the decision:

We have undertaken a detailed study of the residual embarkation control over persons leaving the United Kingdom. I have concluded, in the light of this, that the present arrangements are an inefficient use of resources and that they contribute little to the integrity of the immigration control. They will be replaced by a targeted, intelligence-led approach creating a more efficient and effective control. The revised and improved arrangements will be brought into operation as soon as practicable. We will employ appropriate technology and will build upon the existing co-operation between the border agencies, port operators and carriers.³⁶⁷

The removal of exit checks put an end to the government's systematic record of individuals leaving the UK. It was an odd decision as it made it harder to track those overstaying their visas and those remaining in the country illegally, and therefore who should be deported and who had already left.

³⁶⁷ *Immigration Control*, HC Deb 16 March 1998, vol. 308, *Hansard*, <https://hansard.parliament.uk/commons/1998-03-16/debates/f3a5439e-92b0-48a5-b94d-4cbd209a0b71/ImmigrationControl>

Asylum Seekers Under New Labour

Following the 1997 General Election, Prime Minister Tony Blair, took control of the government and inherited a significant backlog of approximately 54,000 to 60,000 unresolved applications.³⁶⁸ The Blair government implemented a new accelerated process that “detained single men from the initial lodging of their asylum claim until an initial decision could be made on their cases.”³⁶⁹ The UK immigration detention estate continued to expand under Labour in the aftermath of the July 2005 bombings. The 7/7 bombings intensified fears about terrorism, which influenced the government’s approach to immigration. There was a perception that tighter control over who enters and remains in the UK was necessary for national security.

The Immigration, Asylum, and Nationality Act of 2006 authorised “immigration officials at ports of entry to detain any arriving passenger to verify his or her documents.”³⁷⁰ The next Prime Minister, Gordon Brown, continued to oversee immigration detention expansion and the 2007 UK Borders Act “expanded immigration officers’ discretionary powers of search and arrest; it also legislated for administrative immigration detention for noncitizens potentially of interest to the police.” When justifying the detention of migrants in the UK, in 1998, the Lord Bishop of Oxford argued in the House of Lords that immigration detention is “a regrettable but necessary consequence of any immigration policy.”³⁷¹ National security and territorial sovereignty are often used to justify restrictive immigration policies.

Upon arriving in office in 1997, the number of asylum seekers had dropped compared to 1995 and the government believed that faster processing of claims would resolve the asylum backlogs.³⁷² By 1999 and 2000, however, asylum applications surpassed 70,000 and 80,000 respectively and the backlogs continued to grow (see table below).³⁷³ In response to rising asylum numbers and heightened political pressure, detention was employed both as a practical measure and a symbolic gesture. Practically, it enabled the government to control arrivals, streamline claim processing, and manage backlogs. Symbolically, it demonstrated to the public and political critics

³⁶⁸ United Kingdom, House of Commons Home Affairs Committee, *Minutes of Evidence, Session 1997–98*, HC 734-i (1998), *Parliament.uk*,

<https://publications.parliament.uk/pa/cm199798/cmselect/cmhaff/734/8051223.htm>

³⁶⁹ Stephanie J. Silverman, “‘Regrettable but Necessary?’ A Historical and Theoretical Study of the Rise of the U.K. Immigration Detention Estate and Its Opposition”, *Politics & Policy* 40, no. 6 (2012): 1138–39, <https://doi.org/10.1111/j.1747-1346.2012.00393.x>

³⁷⁰ *Ibid.*, 1139.

³⁷¹ *Campsfield House Detention Centre*, HL Deb 29 April 1998, vol. 589, *Hansard*, <https://hansard.parliament.uk/lords/1998-04-29/debates/a8cac05d-22dc-4020-bc58-02cf2ffe2503/CampsfieldHouseDetentionCentre?highlight=%22a%20regrettable%20but%20necessary%20consequence%20of%20any%20immigration%20policy%22#contribution-ba6f5311-b308-4c75-86f6-813600a198e0>

³⁷² Jack Straw, *Fairer, Faster and Firmer*, 37. *op. cit.*

³⁷³ Jo Woodbridge et al., *Asylum Statistics United Kingdom 1999*, Home Office Statistical Bulletin no. 17/00 (2000).

that decisive action was being taken, signalling enforcement of immigration controls even where systemic challenges persisted. This included the combination of fast-track decision making as well as detention before removal. According to Daniel Wilsher, by 2002 detention had a “key role to play in the removal of failed asylum seekers and other immigration offenders.”³⁷⁴ The Nationality, Immigration and Asylum Act 2002 changed the name of “detention centres” to “removal centres.”³⁷⁵ This both highlighted the goal of the facilities and made them more acceptable to the general public, though also served to hide the reality of detention, sometimes for extended periods, without removal necessarily being carried out at the end.

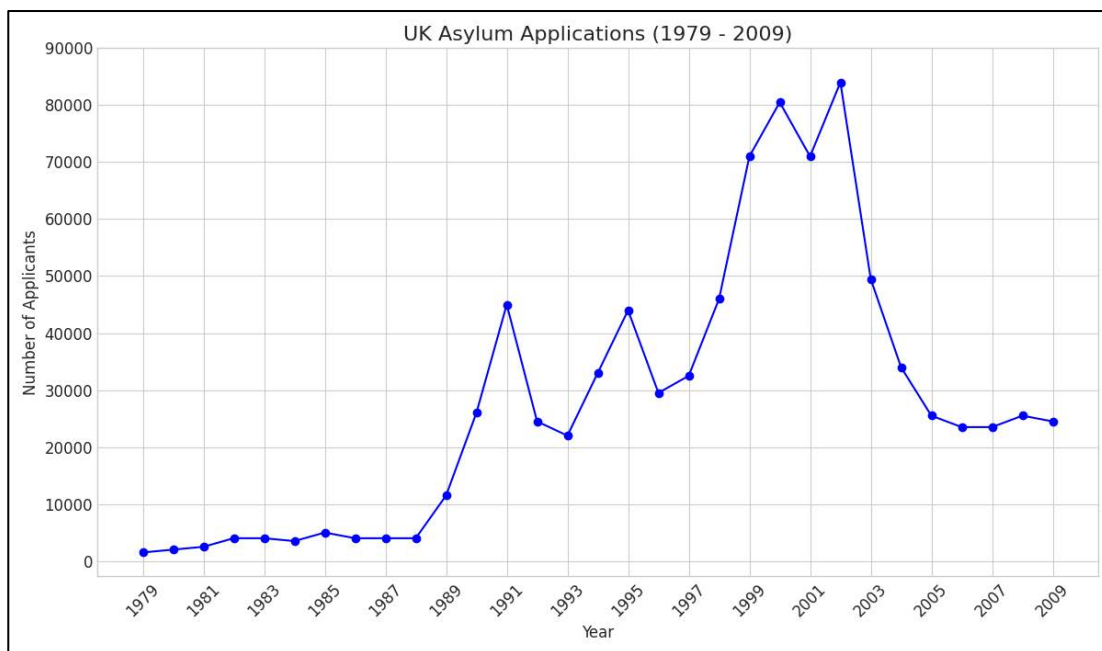


Figure 28. UK Asylum Applications (1979-2009)

Source: *UK Asylum Applications 1979–2009*, Wikimedia Commons, https://commons.wikimedia.org/wiki/File:UK_asylum_applications_1979-2009.jpg.

According to Ana Aliverti, tackling the immigration and asylum issue was a priority for the Prime Minister.³⁷⁶ Tony Blair exercised personal influence over asylum policy during his premiership as he actively pushed for increased deportation targets for unsuccessful asylum claimants, even overriding objections from Home Secretary

³⁷⁴ Daniel Wilsher, *Immigration Detention: Law, History, Politics* (Cambridge University Press, 2012), 92.

³⁷⁵ *Immigration Removal Centre (IRC) Expansion Programme (IRCEP) Accounting Officer Assessment*, Home Office, December 2024, GOV.UK, <https://www.gov.uk/government/publications/home-office-major-programmes-accounting-officer-assessments/december-2024-immigration-removal-centre-irc-expansion-programme-ircep-accounting-officer-assessment>

³⁷⁶ Aliverti, *Crimes of Mobility*, *op. cit.*, 38.

David Blunkett. Aliverti quotes someone involved in the Blair administration, saying that “a lot of the movements to develop the framework to deal with illegal entry was really to do with asylum seekers (...) So, politically asylum is just the huge, huge driver of all of that.”³⁷⁷ The introduction of new immigration legislation bypassed normal bureaucratic channels, instead being directly commissioned by the Home Secretary in response to intense political pressure to demonstrate control over immigration flows.³⁷⁸

Success in managing immigration increasingly became linked to meeting quotas. Controlling asylum numbers symbolized the overall effectiveness of the immigration system. In May 2001, Jack Straw, then Home Secretary, announced plans to limit the number of people given asylum, regardless of the number of applications.³⁷⁹ He declared that “there is a limit on the number of applicants, however genuine, that you can take.”³⁸⁰ The government faced both advantages and disadvantages in implementing this policy. While setting numerical targets for the entire process and removals heightened attention on the asylum process, it also provided a simple means for opponents of the government to criticize them by pointing out missed targets.³⁸¹

Deportations never matched the number of asylum application rejections. This contradiction was pointed out by Matthew Gibney and Randall Hansen in 2003, who asked why “while large numbers of asylum seekers arrive, and few are given refugee status, fewer still are forced to leave the country.”³⁸² By 2004 this was still true. That year, the Immigration and Nationality Directorate (IND) rejected 32,335 applications for an extension of leave or settlement, yet only 10,085 non-asylum applicants were removed from the country. By May of the same year, the backlog of asylum-related removals was estimated to lie between 155,000 and 283,500.³⁸³ The Home Affairs Committee observed that the prevailing rate of removals was insufficient even to match the growing number of individuals not entitled to remain in the UK, highlighting a significant gap between enforcement capacity and demand.³⁸⁴

Gibney argues that rejected asylum seekers remaining in the UK weakened the

³⁷⁷ *Ibid.*

³⁷⁸ *Ibid.*

³⁷⁹ Liza Schuster, *The Use and Abuse of Political Asylum in Britain and Germany* (Psychology Press, 2003), 170.

³⁸⁰ ‘Labour Plans to Set Limit for Numbers of Asylum-Seekers’, *The Telegraph*, 20 May 2001, <https://www.telegraph.co.uk/news/uknews/1330899/Labour-plans-to-set-limit-for-numbers-of-asylum-seekers.html>

³⁸¹ Gareth Mulvey, ‘When Policy Creates Politics: The Problematicizing of Immigration and the Consequences for Refugee Integration in the UK’, *Journal of Refugee Studies* 23, no. 4 (2010): 439, <https://doi.org/10.1093/jrs/feq045>

³⁸² Matthew J. Gibney and Randall Hansen, ‘Deportation and the Liberal State: The Forcible Return of Asylum Seekers and Unlawful Migrants in Canada, Germany and the United Kingdom (Working Paper No. 77)’, *New Issues in Refugee Research*, February 2003, 4.

³⁸³ House of Commons, Home Affairs Committee, *Immigration Control*, Fifth Report of Session 2005–06, HC 775–I (London: The Stationery Office, 23 July 2006), <https://publications.parliament.uk/pa/cm200506/cmselect/cmhaff/775/775i.pdf>

³⁸⁴ *Ibid.*

credibility of the asylum process, giving the government a powerful argument to suppress criticism from human rights activists. In turn, increased deportation rates were justified to maintain the credibility of the asylum system they claimed to value.³⁸⁵

Employing deportation as a tool against asylum seekers, despite them only representing a small portion of the total immigrant population (estimated at 13-15%), allowed the government to make deportation appear more palatable to the public.³⁸⁶ Gibney also emphasises the significance of asylum due to the concept of the 'deportation gap': asylum applications and removals are officially registered, allowing for public monitoring of the government's performance. Conversely, the number of illegal migrants remains undetermined, making the government's shortcomings less apparent and less susceptible to exploitation.³⁸⁷

The asylum system, established with the aim of protecting those fleeing persecution, has paradoxically evolved into a mechanism reinforcing State control through expanded detention and deportation powers. Within both the British and American contexts, those seeking refuge have been systematically reframed. They are no longer presented as individuals deserving protection, but rather as unwelcome drains on national resources and as fundamentally problematic populations requiring management and control. In 2006, Home Secretary Jack Straw defended the Home Office by arguing that

The fundamental problem with the Home Office, which distinguishes it from any other Government Department, is not the quality of the staff, but the nature of the individuals whom the Home Office must deal with. In every other area of Government activity, local or national, those who are the customers, so to speak, of the Department—schoolchildren, parents, patients—are on the whole willing volunteers, but the last thing the customers of the Home Office are is willing volunteers. Many of them are dysfunctional individuals—criminals, asylum seekers, people who do not wish to be subject to social control, the purpose of the Home Office. It is that which places the burden on the staff and provides a challenge to both staff and Ministers.³⁸⁸

The same year, at the Labour Party conference Prime Minister Tony Blair conflated immigration with the issues of crime and violence:

Asylum applications are dealt with faster, removals are greater, the system infinitely better than the chaos we inherited in 1997. But the fact is that the world is changing so fast that the reality we are dealing with - mass migration, organised crime, Anti-Social Behaviour - has engulfed systems designed for a time gone by. 30 million people now come to Britain every year. Visitors, tourists, workers, students. Our economy needs them. 227 million pass through our airports. Yet we have no means of checking who is here lawfully. The fundamental

³⁸⁵ Matthew J. Gibney, 'Asylum and the Expansion of Deportation in the United Kingdom', *Government and Opposition* 43, no. 2 (2008): 169.

³⁸⁶ *Ibid.*

³⁸⁷ *Ibid.*

³⁸⁸ Jack Straw, Home Secretary, *House of Commons*, 25 May 2006, col. 1640, *Hansard*, <https://publications.parliament.uk/pa/cm200506/cmhansrd/vo060525/debtext/60525-0005.htm>

dilemma: how do we reconcile liberty with security in this new world? I don't want to live in a police state, or a Big Brother society or put any of our essential freedoms in jeopardy. But because our idea of liberty is not keeping pace with change in reality, those freedoms are in jeopardy.

When crimes go unpunished, that is a breach of the victim's liberty and human rights. When organised crime gangs are free to practice their evil, countless young people have their liberty and often their lives damaged. When ASB goes unchecked, each and every member of the community in which it happens, has their human rights broken.

When we can't deport foreign nationals even when inciting violence the country is at risk. Immigration has benefited Britain. But I know that if we don't have rules that allow us some control over who comes in, goes out, who has a right to stay and who has not, then instead of a welcome, migrants find fear. We can only protect liberty by making it relevant to the modern world.³⁸⁹

The Prime Minister's deliberate association of migration with criminality, violence, and security risks served to negatively frame migrants within public discourse. This rhetorical strategy facilitated a binary categorisation distinguishing between "desirable" and "undesirable" migrants, those deemed economically beneficial versus those characterised as burdensome. This dichotomy led to policy by the Labour government on the basis that "economic value and social provision should act to encourage only the most wanted, while other migrants would face new restrictions."³⁹⁰ In 2007, Home Secretary John Reid expressed the goal to make unauthorised residence progressively more challenging and limited arguing that authorities had been insufficiently strict in regulating access to public services including council housing, legal aid, and healthcare.³⁹¹

The 1999 Immigration and Asylum Act

The legislative project of this period culminated in the Immigration and Asylum Act 1999, a landmark piece of legislation that created the modern administrative architecture of the UK asylum and detention system.³⁹² Promoted by then-Home Secretary Jack Straw as creating a "firm, fast and fair" system, the Act's primary legacy was the centralisation and systematisation of state control over asylum seekers.³⁹³

Part VI of the Act established the National Asylum Support Service (NASS), a centralised bureaucracy responsible for the welfare of destitute asylum seekers. While framed as a support system, NASS functioned as a powerful tool of administrative control, severing asylum seekers' existing community ties and placing

³⁸⁹ "In Full: Tony Blair's Speech," *BBC News*, 25 September 2006, http://news.bbc.co.uk/2/hi/uk_news/politics/5382590.stm.

³⁹⁰ Mulvey, 'When Policy Creates Politics', *op. cit.*, 447

³⁹¹ *Ibid.*

³⁹² *Immigration and Asylum Act 1999*, c. 33 (United Kingdom), *Legislation.gov.uk*, <https://www.legislation.gov.uk/ukpga/1999/33/contents>

³⁹³ Jack Straw, *Fairer, Faster and Firmer*. *op. cit.*

them in often austere and isolated conditions (see chapter four).³⁹⁴

Most critically for the development of detention, the 1999 Act authorised a massive expansion of the physical detention estate, leading directly to the opening of Oakington Reception Centre in 2000, a former military base converted into a large-scale detention facility.³⁹⁵ The creation of Oakington marked the next logical step in the evolution of UK policy: detention was no longer an *ad hoc* measure for individual cases but a routine, systematised, and integral part of the administrative process for managing the asylum queue. The Labour administration continued this trajectory, implementing a comprehensive facility development strategy that resulted in seven new removal centres becoming operational between 2000 and 2009: Dover, Lindholme, Oakington, Dungavel, Yarl's Wood, Colnbrook, and Brook House.³⁹⁶

Despite the 1996 changes, the asylum process was slow and inefficient, and the new Labour government decided the immigration system needed improving. The 1999 Immigration and Asylum Act provided a number of changes in a bill that spanned over 180 pages and emphasised efficiency and control. One of the frustrations was with the numerous opportunities to appeal leading many unsuccessful asylum seekers to remain in the UK for extended periods, sometimes years. The law therefore implemented the 'One-Stop' appeal procedure.³⁹⁷ It required applicants to provide a list of all grounds of appeal at the same time, after which no new grounds of appeal could be added. It also introduced a policy of "Asylum Dispersal," which meant that those seeking asylum accommodation in the UK would be spread across the country. The intention being that "no one area would be overburdened by the obligation of supporting asylum seekers."³⁹⁸ It introduced penalties (including fines, imprisonment, confiscation of vehicles) for transporting immigrants into the country illegally and intentionally. The law also saw the introduction of a voucher scheme,³⁹⁹ which replaced welfare benefits for asylum seekers, and also required that registrars report 'fake' or suspicious marriages.⁴⁰⁰ The introduction of the 'one-stop' appeal was aimed at creating a more efficient asylum process, while the voucher system and dispersal policy suggest an effort to manage the financial and logistical implications of supporting asylum seekers

³⁹⁴ Nick Gill, *Nothing Personal? Geographies of Governing and Activism in the British Asylum System*, RBS-IBG Book Series (John Wiley & Sons, 2016), <https://doi.org/10.1002/9781118315996>

³⁹⁵ Bosworth, *Inside Immigration Detention*, *op. cit.*, 48.

³⁹⁶ *Ibid.*

³⁹⁷ *Immigration Detention: Sixteenth Report of Session 2017–19*, HC 1484 HL Paper 278 (Joint Committee on Human Rights, 2019), 40.

³⁹⁸ 'Funding Instruction for Local Authorities: Asylum Dispersal Grant 2022-2023', *GOV.UK*, 4 August 2022, <https://www.gov.uk/government/publications/asylum-dispersal-grant-2-funding-instruction/funding-instruction-for-local-authorities-asylum-dispersal-grant-2022-2023-accessible-version>

³⁹⁹ Vouchers, though useful for purchasing basic goods and services, had limited cash value and were only accepted at specific locations.

⁴⁰⁰ The notion of 'sham marriage' was written into the law (see section 24).

across the country.⁴⁰¹

The law also provided a formal definition of detention centres: a detention centre is “a place which is used solely for the detention of detained persons but which is not a short-term holding facility, a prison or part of a prison.”⁴⁰² The 1999 Act also gave Her Majesty’s Chief Inspector of Prisons the responsibility to inspect detention centres. This was the first of seven laws that the Labour government passed between 1999 and 2009.⁴⁰³ The 1999 law represented a significant shift in the UK’s use of detention. It transitioned from being used as an exceptional measure to a normalised administrative tool within the asylum and enforcement system and it created a more comprehensive statutory framework for detention. This in turn increased the number of detentions and therefore the necessity for an equivalent increase in detention capacity as it became a key aspect of asylum policy. The government retained the old policy of detention before removal, but the new policy called for detention of asylum seekers pending a case decision. The law reframed asylum seekers as administrative subjects to be managed rather than individuals seeking protection and reinforced detention as a tool of deterrence.

While the legislative trend was one of ever-expanding executive power, the UK’s common law tradition provided a crucial, albeit limited, judicial check. The 1984 case of *R v Governor of Durham Prison, ex parte Hardial Singh* became the foundational authority on the limits of the Home Secretary’s power to detain under the Immigration Act 1971 (see chapter six).⁴⁰⁴ The principles established in that case argued that immigration detention is not a punitive sanction but a purely administrative tool to facilitate removal, and its lawfulness is contingent on its purpose being achievable within a reasonable timeframe.

The Race Relations (Amendment) Act 2000

The Race Relations (Amendment) Act 2000 emerged from the political fallout of the Stephen Lawrence Inquiry,⁴⁰⁵ which looked at the death of Stephen Lawrence and the subsequent investigation by the police.⁴⁰⁶ This legislation extended statutory

⁴⁰¹ Gareth Mulvey, ‘Immigration Under New Labour: Policy and Effects’, *Journal of Ethnic and Migration Studies* 37, no. 9 (2011): 1477–93, <https://doi.org/10.1080/1369183X.2011.623622>

⁴⁰² *Immigration and Asylum Act 1999*, c. 33, Pt. VIII, 1999, [Legislation.gov.uk, https://www.legislation.gov.uk/ukpga/1999/33/part/VIII/enacted](https://www.legislation.gov.uk/ukpga/1999/33/part/VIII/enacted)

⁴⁰³ The 7 laws were the *Immigration and Asylum Act 1999*, the *Nationality, Immigration and Asylum Act 2002*, the *Asylum and Immigration (Treatment of Claimants, etc) Act 2004*, the *Immigration, Asylum and Nationality Act 2006*, the *UK Borders Act 2007*, the *Criminal Justice and Immigration Act 2008*, and the *Borders, Citizenship and Immigration Act 2009*.

⁴⁰⁴ *R v. Governor of Durham Prison, ex parte Singh*, [1984] 1 All ER 983; [1984] 1 WLR 704; [1983] Imm AR 198 (High Court, Queen’s Bench Division, 13 December 1983), [Refworld, https://www.refworld.org/jurisprudence/caselaw/gbrhcqb/1983/en/35851](https://www.refworld.org/jurisprudence/caselaw/gbrhcqb/1983/en/35851)

⁴⁰⁵ Sir William Macpherson et al., *The Stephen Lawrence Inquiry*, Report of an Inquiry Cm 4262-I (1999).

⁴⁰⁶ Stephen Lawrence was an 18-year-old black British student who was murdered in a racially motivated attack whilst waiting for a bus in Eltham, southeast London, on 22 April 1993. Five white

equality obligations into previously exempted domains, notably the police, and immigration and security services. The 2000 Act ended these exemptions, bringing immigration services under equality requirements for the first time. The Act prohibited discriminatory actions and imposed a proactive duty to “place a duty on specified public authorities to work towards the elimination of unlawful discrimination and promote equality of opportunity and good relations between persons of different racial groups.”⁴⁰⁷ This positive duty obligation signalled a shift from merely preventing discrimination to actively promoting equality, influencing operational practices within detention facilities where power imbalances were most acute.⁴⁰⁸ The legislation’s largest contribution may be its reconceptualisation of institutional responsibility. By focusing on systemic patterns rather than individual prejudice, it established a framework where public institutions bear responsibility regardless of intentionality.

The Dover Lorry Tragedy (2000)

On June 18, 2000, the bodies of 58 Chinese migrants who had suffocated to death were found inside a lorry container in Dover.⁴⁰⁹ The case heightened public and political concern regarding illegal immigration and human smuggling. It also underscored the vulnerability of individuals attempting to enter the UK illegally and the organised criminal networks that help them do so. The chief executive of the Refugee Council at the time, Nick Hardwick, argued that the main problem was that “it is virtually impossible for people feeling persecution to enter Britain legally.”⁴¹⁰ In response to the tragedy, the government intensified its cooperation with law enforcement agencies and customs authorities in other European countries, particularly Belgium and France, to improve the detection and prevention of illegal immigration.⁴¹¹ The government also emphasised the use of civil penalties against hauliers and drivers found to be carrying clandestine entrants in their vehicles which had been introduced under the Immigration and Asylum Act 1999.⁴¹²

youths attacked Lawrence and his friend Duwayne Brooks, stabbing Lawrence twice and he died from his injuries shortly afterwards. The initial police investigation was widely criticised as inadequate, as despite evidence pointing to known suspects, no one was initially convicted. The case led to the 1999 Macpherson Report which determined the Metropolitan Police Service investigation was incompetent with fundamental errors by officers. It found the Metropolitan Police institutionally racist and proposed 70 recommendations for policing and criminal law reform.

⁴⁰⁷ *Race Relations (Amendment) Act 2000*, c. 34, 2000, *Legislation.gov.uk*, <https://www.legislation.gov.uk/ukpga/2000/34/notes/division/3>

⁴⁰⁸ Schuster and Solomos, ‘Race, Immigration and Asylum’, *op. cit.*, 273

⁴⁰⁹ ‘Lorry Deaths a “Stark Warning”, Says Straw’, *The Guardian*, 19 June 2000, <https://www.theguardian.com/uk/2000/jun/19/immigration.immigrationandpublicservices>

⁴¹⁰ *Ibid.*

⁴¹¹ *Deaths at Dover*, HC Deb 19 June 2000, vol. 352, *Hansard*, <https://hansard.parliament.uk/Commons/2000-06-19/debates/25d4fcd9-4229-4b9c-a04c-2bb3f7643bd5/DeathsAtDover>

⁴¹² *Ibid.*

The 2000 Terrorism Act & the security paradigm

Even before the 9/11 attacks in the US, legislative focus in the UK was on terrorism and counter-terrorism proposals. At the turn of the century, the Labour government passed the Terrorism Act 2000.⁴¹³ Section 41 of the Act granted the police the authority to arrest and detain an individual without a charge for a maximum of 48 hours if they were suspected of being a terrorist.⁴¹⁴ This detention period could be extended to up to seven days if the police successfully convinced a judge that further questioning was necessary.⁴¹⁵ This was a departure from the conventional criminal law practice, where suspects were required to be charged within 24 hours of detention or released. The Criminal Justice Act 2003 extended this period to 14 days,⁴¹⁶ and the Terrorism Act 2006, coming shortly after the 2005 bombings, further increased it to 28 days.⁴¹⁷

The Home Office's development of these mechanisms reflected growing governmental frustration with judicial constraints on deportation powers, particularly regarding individuals deemed security threats. While the Hardial Singh principles emphasised detention as a mechanism to facilitate removal, framing the question as an issue of national security allowed the government to introduce a logic of prevention that potentially justified indefinite detention regardless of deportation prospects.

The mid-1990s mark a striking point of convergence. In both countries, legislatures adopted sweeping reforms that redefined detention from an exceptional power into a central enforcement tool. In the US, AEDPA and IIRIRA dramatically expanded mandatory detention, particularly for "criminal aliens," while in the UK the Asylum and Immigration Act 1996 entrenched administrative detention as a routine mechanism for managing asylum claims. Despite differences in scale and legal form, both regimes reflected a common logic: that detention was not merely a secondary power but an indispensable component of immigration control.

5. Comparative Analysis: Convergent Ends, Divergent Paths

The legislative journeys of the United Kingdom and the United States between 1979 and 2001 reveal two distinct paths toward the same destination: the establishment

⁴¹³ *Terrorism Act 2000*, c. 11 (United Kingdom), *Legislation.gov.uk*, <https://www.legislation.gov.uk/ukpga/2000/11/contents/enacted>

⁴¹⁴ *Ibid*, s. 41.

⁴¹⁵ *Ibid*, sch. 8.

⁴¹⁶ *Criminal Justice Act 2003*, c. 44 (United Kingdom), *Legislation.gov.uk*, <https://www.legislation.gov.uk/ukpga/2003/44/enacted>

⁴¹⁷ *Terrorism Act 2006*, c. 11 (United Kingdom), *Legislation.gov.uk*, <https://www.legislation.gov.uk/ukpga/2006/11/enacted>

of mass immigration detention as a normalised instrument of state power. While both nations were influenced by common global pressures and a shared ideological turn towards punitive governance, the specific legislative techniques and political philosophies they employed were shaped by their unique state traditions and legal cultures. The UK built its detention system through the incremental expansion of administrative discretion, while the US engineered a revolutionary fusion of criminal and immigration law.

Despite these divergences, the United States fusing immigration with criminal law, the United Kingdom streamlining asylum through administrative efficiency, the result in both contexts was the same: immigration detention ceased to be an exceptional, temporary measure and became a central, permanent feature of migration governance. By the end of the 1990s, both states had entrenched detention in law, policy, and infrastructure, albeit through strikingly different routes.

Key Legislative Developments in UK and US Immigration (Detention) 1979-2001				
Year	Country	Legislation / Policy / Case	Primary Purpose	Impact on Detention
1981	UK	British Nationality Act	Redefine citizenship; restrict <i>jus soli</i>	Expanded the population of non-citizens subject to immigration control from birth.
1986	USA	Immigration Reform and Control Act	Control unauthorised immigration; penalise employers of undocumented migrants	Increased workplace enforcement and surveillance; limited effect on detention but reinforced interior enforcement.
1988	UK	Immigration Act	Restrict family reunion; ease deportation	Weakened appeal rights and made removal easier, thereby increasing the potential for pre-removal detention.
1993	UK	Asylum and Immigration Appeals Act	Manage rising asylum claims	Introduced new appeals structure; expanded powers for detention during asylum procedures.
1996	UK	Asylum and Immigration Act	Further restrict asylum deter illegal work	Created 'white list' of safe countries to justify detention and rapid removal; criminalised employment of undocumented workers.
1996	USA	AEDPA & IIRIRA	Criminalise immigration violations	Introduced mandatory detention (INA § 236(c)), massively expanded "aggravated felony" definition, and stripped judicial review.
1999	UK	Immigration and Asylum Act	Systematise asylum management	Created NASS for dispersal and control; authorised expansion of the detention estate, leading to Oakington Reception Centre.

Despite their different paths, the expansion of detention in both countries was fuelled by similar political dynamics. Both governments proved adept at leveraging moral panics to pass restrictive legislation. In the UK, the narrative of an “asylum crisis” was used to justify a succession of laws targeting asylum seekers.⁴¹⁸ In the US, the spectre of the “criminal alien,” born from the Mariel boatlift and amplified by the ‘War on Drugs,’ provided the rationale for the ‘crimmigration’ revolution.⁴¹⁹ Furthermore, both nations embraced the neoliberal trend of privatising public services, contracting out the management of their growing detention estates to private security firms like the UK’s Group 4 Securicor (G4S) and the US’s Corrections Corporation of America (now CoreCivic), creating powerful corporate interests vested in the continuation and expansion of detention.⁴²⁰

However, the political accents of this punitive turn differed significantly. The UK’s political rhetoric, exemplified by Home Secretary Jack Straw’s promise of a “firm, fast and fair” asylum system, maintained a facade of administrative managerialism.⁴²¹ The stated goal was efficiency and control of the process. The US discourse, in contrast, was explicitly punitive. The framing of immigration as a criminal threat was far more pronounced, reflected in popular movements like California’s Proposition 187 in 1994.⁴²²

These differing political models were mirrored in the legislative techniques employed. The UK’s approach was fundamentally administrative and discretionary. At no point during this period did Parliament enact a statute mandating the detention of any specific category of migrant. The power to detain, rooted in the 1971 Act, remained legally a discretionary power of the Home Secretary, even as its use in practice became routine for groups like asylum seekers in the fast-track system.⁴²³ The legislative framework was designed to manage a bureaucratic process, the asylum queue, and detention was the tool used to ensure that management was orderly and

⁴¹⁸ Sara Buchanan and Bethan Grillo, *What’s the Story?: Results from Research into Media Coverage of Refugees and Asylum Seekers in the UK*, Forced Migration Review (Article 19, 2003); Roy Greenslade, *Seeking Scapegoats: The Coverage of Asylum in the UK Press*, Asylum and Migration Working Paper 5 (Institute for Public Policy Research, 2005).

⁴¹⁹ Kristina Shull, *Detention Empire: Reagan’s War on Immigrants and the Seeds of Resistance* (The University of North Carolina Press, 2022), 29.

⁴²⁰ Monish Bhatia and Victoria Canning, ‘Misery as Business: How Immigration Detention Became a Cash-Cow in Britain’s Borders.’, in *Marketisation and Privatisation in Criminal Justice*, ed. Albertson K. et al. (Policy Press, 2020); Karen Manges Douglas and Rogelio Sáenz, ‘The Criminalization of Immigrants & the Immigration-Industrial Complex’, *Daedalus* 142, no. 3 (2013): 199–227; G. Menz, ‘Neo-Liberalism, Privatization and the Outsourcing of Migration Management: A Five-Country Comparison’, *Competition & Change* 15 (2011): 116–35, <https://doi.org/10.1179/102452911X13025292603633>

⁴²¹ Jack Straw, *Fairer, Faster and Firmer*.

⁴²² Jeffrey R. Margolis, ‘Closing the Doors to the Land of Opportunity: The Constitutional Controversy Surrounding Proposition 187’, *The University of Miami Inter-American Law Review* 26, no. 2 (1994): 363–401.

⁴²³ Silverman, ‘Regrettable but Necessary?’, *op. cit.*, 1138.

efficient. This reflects what Mary Bosworth has identified as a key feature of the British system: an administrative, paperwork-driven mode of control that is carceral in effect but managerial in its logic and language.⁴²⁴

The US model, particularly after 1996, was based on a fundamentally different philosophy. IIRIRA's mandatory detention provision in INA § 236(c) represents a rejection of administrative discretion in favour of a rigid, criminal-legal logic.⁴²⁵ The statute's command that the Attorney General "shall take into custody" certain non-citizens removed the authority of immigration judges to conduct individualised bond hearings and weigh factors such as flight risk or community ties.⁴²⁶ This legislative choice was a direct import from the US criminal justice system's "tough on crime" era, applying the logic of mandatory minimum sentencing to the civil immigration context.⁴²⁷ The goal was not merely to manage a process, but to punish a status, explicitly linking a non-citizen's past criminal conduct to a mandatory and non-negotiable period of detention.

At its core, the immigration detention systems in both countries rely on the legal concept of administrative detention, that is confinement for non-criminal, administrative purposes like ensuring removal. However, the legislative paths of the 1990s fundamentally altered its application and rationale. In the UK, detention remained, at least in theory, purely administrative. The entire system, including the expansion under the 1999 Immigration and Asylum Act, was built to manage the asylum queue and facilitate removal, a logic upheld by the Hardial Singh principles that detention is lawful only as long as removal is a realistic prospect. Conversely, the US system after 1996 radically corrupted the principle of administrative detention. While still legally classified as 'civil' and not 'criminal' confinement, the introduction of mandatory detention under IIRIRA made detention an automatic and non-negotiable consequence of a past criminal conviction. It ceased to be a forward-looking tool simply to facilitate removal; it became a backward-looking punitive sanction rigidly tied to a past offence. In this way, the US transformed administrative detention into a system of 'crimmigration' incarceration blurring the legal distinction that the UK, for all its practical harshness, officially maintained.

The divergent legislative philosophies were made concrete in the physical infrastructure of the detention estate in each nation (see chapter four). The UK's estate, particularly in the 1990s, developed through the creation of purpose-built Immigration Removal Centres (IRCs) like Campsfield House (1993) and Oakington Reception Centre (2000), often on former military or government property. This reflects the

⁴²⁴ Mary Bosworth, 'Paperwork and Administrative Power in Detention', *Border Criminologies*, 13 June 2016, <https://blogs.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/06/paperwork-and>

⁴²⁵ Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

⁴²⁶ Chen, 'The Illegal Immigration Reform and Immigrant Responsibility Act of 1996: Another Congressional Hurdle for the Courts'. *op. cit.*

⁴²⁷ Young, *Forever Prisoners*, *op. cit.*, 20.

administrative, state-centric logic of its system, a network of dedicated facilities to manage a specific ‘problem’ population of asylum seekers. The US detention estate, in contrast, co-evolved with its criminal justice system, reflecting the ‘crimmigration’ turn. Rather than relying solely on purpose-built federal facilities, the massive expansion post-1996 was achieved through a vast network of contracts with hundreds of local and county jails, alongside a burgeoning private prison industry.

This meant that for many non-citizens, the experience of immigration detention was indistinguishable from criminal incarceration, often taking place in the very same facilities. This physical merging of the detention estate with the local carceral system is the most tangible manifestation of the fusion of immigration control and criminal law.

Taken together, the British and American trajectories forged what can be described as an *Anglo-American model of carceral migration governance*.⁴²⁸ The United States pioneered the fusion of immigration and criminal law, while Britain perfected the technique of everyday bordering through administrative exclusion. Both normalised detention as a core tool of liberal democratic migration management. These frameworks travelled as the UK’s carrier sanctions, and “hostile environment” influenced EU pre-entry controls, while the U.S. model of mandatory detention shaped Australian and Canadian practices. The comparative analysis of these two states therefore reveals not only national logics but the construction of a transatlantic model that reshaped global migration governance.

6. Conclusion

This chapter has demonstrated that the period from 1979 to 2001 was not one of policy stasis but of radical legislative construction in the field of immigration detention. It has traced the divergent yet convergent paths taken by the United Kingdom and the United States in building the legislative systems that exist today. In the UK, a series of incremental Acts, driven by a managerial logic and a securitised narrative of an “asylum crisis,” built a system of mass administrative detention aimed at controlling and processing asylum seekers. The legislative process was cumulative, with each new law adding another layer to an expanding architecture of control, culminating in a system where detention became a routine administrative tool. In the US, the transformation was more abrupt and revolutionary. A political panic surrounding “criminal aliens,” sparked by the Mariel boatlift and fuelled by the ‘War on Drugs,’ led to watershed legislation in 1996. These laws enacted a paradigm shift, fusing immigration law with the punitive logic of criminal law to create a rigid system of mandatory detention for a broad swathe of non-citizens.

The legal infrastructure established during this era had profound and enduring

⁴²⁸ Cetta Mainwaring and Maria Lorena Cook, ‘Immigration Detention: An Anglo Model’, *Migration Studies*, 28 June 2018, <https://doi.org/10.1093/migration/mny015>

consequences. It legitimised detention as a primary, rather than exceptional, tool of immigration control in two of the world's leading liberal democracies. It created a sprawling physical and private-sector infrastructure, the "detention estate," with a vested economic interest in its own perpetuation. The legal categories and procedures invented then, from the UK's "fast-track" system and "white list" to the US's "aggravated felony" and "mandatory detention," became powerful sorting mechanisms. They ensured that the new carceral systems would have a vast and steady population to draw from for decades to come, transforming the lives of millions of migrants and their families and fundamentally altering the relationship between the State and the non-citizen.

By 2001, both the UK and US had institutionalised detention, but through distinct legal strategies: the UK via incremental administrative discretion, the US via the punitive 'crimmigration' turn. Despite divergent legal traditions, both converged on the normalisation of detention as a core tool of migration governance. This convergence underscores the central argument of the dissertation: that neoliberal governance reframed migration as both a security threat and a site for market-based carceral expansion.

By the end of the 1990s, both the UK and US had constructed durable legislative architectures that normalised the use of detention in immigration governance. Their paths diverged in form, with the Americans relying on sweeping federal statutes while the British preferred incremental Acts of Parliament. But they converged in effect with immigrants increasingly experiencing confinement as a routine element of the immigration process. This shared outcome set the stage for a broader transformation in which detention was not only a legal instrument but also a political symbol of control, a securitising dynamic explored in the next chapter.

Chapter 3:

The Rise of the “Criminal Alien” and the Securitisation of Immigration

1. Introduction

The period from the early 1980s to the turn of the 21st century witnessed a fundamental paradigm shift in the governance of immigration in both the United States and the United Kingdom. This chapter argues that during these two decades, immigration was systematically transformed from a civil administrative matter into a pressing issue of crime and national security. This process, termed “securitisation” by scholars of international relations, was not an inevitable response to an objective, material threat posed by migrants.¹ Rather, it was manufactured and sustained through what the sociologist Stuart Hall and his colleagues famously described as a “moral panic.”² This conceptual framework provides a useful lens through which to understand the political and social dynamics at play.

In their seminal work, *Policing the Crisis*, Hall et al. argue that a moral panic emerges when a particular social group is identified and defined by “moral entrepreneurs,” typically politicians and the media, as a threat to societal values and interests.³ This panic serves a key ideological function: it displaces deep-seated public anxieties about complex social and economic problems, such as unemployment, deindustrialization, and the erosion of traditional social structures, onto a readily identifiable and vulnerable scapegoat, a “folk devil.”⁴ The creation of this folk devil, amplified through exaggerated statistics, sensationalist reporting, and simplistic, symbolic rhetoric, generates a sense of societal crisis.⁵ This crisis, in turn, serves to legitimise the expansion of State power and the implementation of “draconian” measures that would be politically untenable in normal circumstances.⁶

In the context of this study, the “criminal alien” in the United States and the “bogus asylum seeker” in the United Kingdom became the quintessential folk devils of the late twentieth century. The moral panic surrounding immigration in both countries were not spontaneous outbursts of public concern but carefully orchestrated by political actors and the media.⁷ This process allowed for the passage of deeply punitive legislation and the establishment of a vast enforcement apparatus that fundamentally altered the relationship between the state and the non-citizen.

¹ Barry Buzan et al., *Security: A New Framework for Analysis* (Lynne Rienner, 2013).

² Stuart Hall, C. Critcher, et al., *Policing the Crisis: Mugging, the State, and Law and Order* (Palgrave Macmillan, 1978).

³ Stanley Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, 3rd edn, Routledge Classics (Routledge, 2011).

⁴ Tony Shenton, “Immigration: The Moral Panic That Never Goes Away,” *Everyday Society*, British Sociological Association, 21 October 2020, <https://es.britisoc.co.uk/immigration-the-moral-panic-that-never-goes-away/>

⁵ Stuart Hall, Chas Critcher, et al., *Policing the Crisis: Mugging, the State and Law and Order*, 2nd edition, 35th anniversary edition (Macmillan International Higher Education, 2019), 322.

⁶ Roy Jenkins, quoted in Clive Walker, *The Prevention of Terrorism in British Law*, 2nd edn (Manchester University Press, 1992).

⁷ Leo R. Chavez, *Covering Immigration: Popular Images and the Politics of the Nation*, Reprint 2020 (University of California Press, 2020), <https://doi.org/10.1525/9780520925250>

The central comparative question of this chapter is how two distinct liberal democracies, albeit ones facing similar pressures of economic recession, and the political rise of conservative ideologies, converged on a policy of securitisation through divergent institutional and legal pathways. How and why was civil immigration enforcement, historically a bureaucratic function concerned with visas, residency, and citizenship, transformed into an arm of the criminal justice and national security apparatus in both nations?

This chapter will demonstrate that while the United States pursued a legal-penal model,⁸ that criminalised the immigrant through new laws and bureaucratic categories, the United Kingdom adopted an administrative-security model,⁹ repurposing existing state security powers to redefine the asylum seeker as a threat.¹⁰

The scale of this transformation is visible in official statistics, which also reveal the different mechanisms through which securitisation was achieved. In the United States, the process was primarily legal and bureaucratic. Deportations based on criminal convictions, a relatively minor aspect of immigration enforcement in 1980, grew exponentially. While precise figures for the earliest years are difficult to find,¹¹ the number of individuals removed under the Institutional Hearing Program, created to process deportations for incarcerated non-citizens, grew from 1,409 in Fiscal Year (FY) 1988 to over 18,000 in FY 1997.¹² The Institutional Hearing Program (IHP) was designed “to obtain the maximum number of final orders of exclusion and deportation while the criminal alien is in State and Federal Custody.”¹³ Its explicit goal, as stated in another report, was to ensure “immediate deportation upon the completion of the alien’s sentence.”¹⁴ The numbers involved in the programme dropped 1997 as changes in the law made it easier to deport people without a hearing.¹⁵

By FY 2000, official statistics from the Immigration and Naturalization Service (INS) recorded 113,104 removals of individuals classified as “criminal aliens,” a

⁸ Often referred to as “Crimmigration” See Stumpf (2006), Kanstroom (2007), and Garcia Hernandez (2015).

⁹ Also referred to as the “securitisation of migration”.

¹⁰ Didier Bigo, ‘Security and Immigration: Toward a Critique of the Governmentality of Unease’, *Alternatives* 27, no. 1_suppl (2002): 63–92, <https://doi.org/10.1177/03043754020270S105>

¹¹ Precise figures for “criminal” deportations were not consistently reported until the late 1980s.

¹² *The Institutional Hearing Program: An Overview* (American Immigration Council, 2021), <https://www.americanimmigrationcouncil.org/fact-sheet/institutional-hearing-program-overview/>

¹³ “Briefing for White House Task Force – ACAP.” 1 August 1988. OA19890, Box 2 of 2. George H. W. Bush Vice Presidential Records, Task Force on Border Control Series, David McMunn Files Subseries. George H. W. Bush Presidential Library.

¹⁴ *Draft “Report on Criminal Aliens,”* 17 January 1992, OA08756, Box 2, White House Office of Policy Development, Betsy Anderson (OPD) Files, George H. W. Bush Presidential Library.

¹⁵ IIRAIRA, AEDPA, the Violent Crime Control, and the Law Enforcement Act of 1994 expanded the list of offenses for which noncitizens could be deported and streamlined the deportation process. This eliminated the need for court hearings. Consequently, the number of removals conducted through the IHP plummeted significantly after FY 1997.

significant increase since the early 1980s (see table below).¹⁶ This dramatic rise points to a deliberate policy shift, driven by the creation and aggressive application of new legal categories.

Fiscal Year	Number of Removals		Difference Between Series	
	Series A*	Series B*	Number	Percent
1996	27,655	38,015	10,360	37
1997	34,113	53,214	19,101	56
1998	35,984	60,965	24,981	69
1999	42,028	70,761	28,733	68
2000	41,155	72,523	31,368	76
2001	40,196	72,908	32,712	81
2002	37,816	72,237	34,421	91
2003	40,356	81,654	41,298	102
2004	42,835	89,986	47,151	110
2005	40,018	89,406	49,388	123

*Aliens formally removed:
 Series A. for criminal violation based upon administrative reason given
 Series B. labeled as a criminal, described as including
 "persons removed based on a criminal charge or those with a criminal conviction."

Source: 2005 Yearbook of Immigration Statistics and 2003 Yearbook of Immigration Statistics

Figure 29. Reported Criminal Removals in the US (1996-2005)

Source: Transactional Records Access Clearinghouse, *Reported Criminal Removals* (side table 2, TRAC Reports), https://tracreports.org/immigration/reports/178/include/side_table2.html

¹⁶ Transactional Records Access Clearinghouse (TRAC), “Reported Criminal Removals,” Syracuse University, 2007. This report compiles data from the 2005 Yearbook of Immigration Statistics and 2003 Yearbook of Immigration Statistics.

https://tracreports.org/immigration/reports/178/include/side_table2.html

This is even clearer when you look at the evolution of removals versus returns during the 1980s, 1990s and the first two decades of the 21st century (see table below).

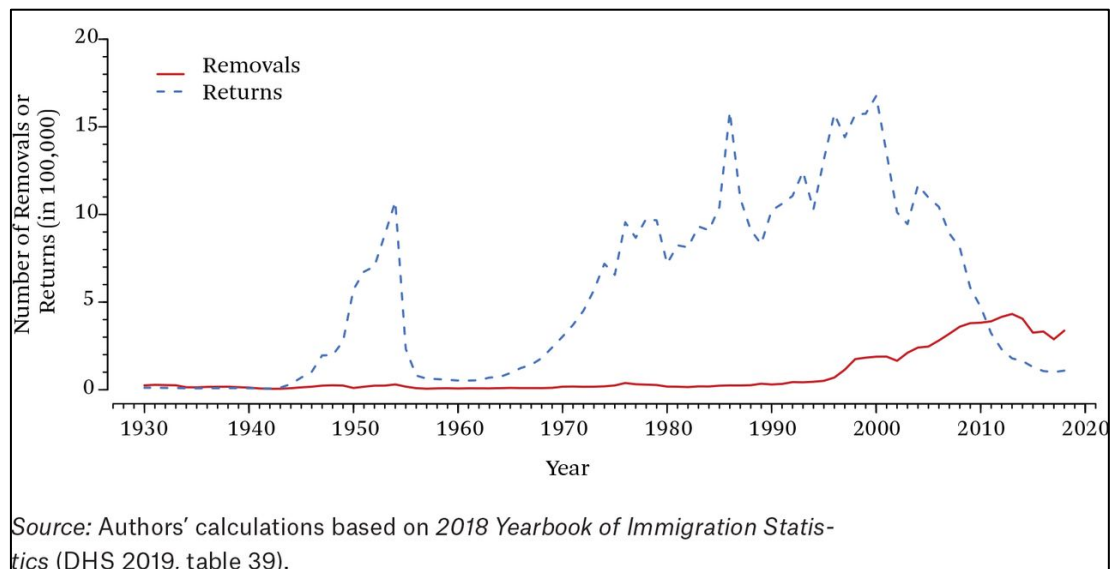


Figure 30. Aliens Removed or Returned in the US (1930-2020)

For data from 1979 to 2020 see Appendix 8.

Source: Punishing Immigrants: The Consequences of Monetary Sanctions, RSF: The Russell Sage Foundation Journal of the Social Sciences 8, no. 2 (2022): 76, <https://www.rsfjournal.org/content/8/2/76>

In the United Kingdom, the process was more discursive and political. While direct statistics for “criminal” removals are less centralized for this period, the securitising trend is clear in the powerful correlation between rising asylum applications and the explosion of hostile media coverage and restrictive legislation. The number of main applicants for asylum rose from 11,640 in 1989 to a peak of 80,315 in 2000.¹⁷ This demographic shift was met not with an expansion of resources for processing claims, but with a political and media narrative that framed these arrivals as a criminal threat. This provided the political justification for a raft of legislation aimed at deterring and rejecting “bogus” applicants.¹⁸

¹⁷ Home Office, Asylum Statistics, United Kingdom, 2002, (London: Home Office, 2003); House of Commons Home Affairs Committee, Asylum and Immigration, Second Report of Session 2003–04, HC 218 (London: The Stationery Office, 2004)

¹⁸ Roy Greenslade, *Seeking Scapegoats: The Coverage of Asylum in the UK Press*, Asylum and Migration Working Paper 5 (Institute for Public Policy Research, 2005).

A key component of this administrative model was to outsource enforcement to the private sector. The government’s 1987 Immigration (Carriers’ Liability) Bill, for example, was designed to “place a direct responsibility on the carrying companies” by levying a fine for each improperly documented passenger they brought to the UK.¹⁹

The data itself thus reveals the divergent nature of the securitisation process. In the US, the State built a machine to formally label non-citizens as criminals and then remove them. In Britain, the State, in concert with the media, built a narrative that equated asylum seekers with criminality, thereby legitimising their exclusion. This chapter will trace these parallel yet distinct pathways, demonstrating how both nations arrived at the same destination: a system where the immigrant is presumptively a threat, and immigration control is a matter of national security.

Although the US and UK began from different policy concerns with the United States focusing on the “criminal alien” and the United Kingdom framing migrants through the lens of terrorism and asylum abuse, both systems converged on a common logic: that migrants were potential security threats, whose presence justified exceptional forms of control. The comparison demonstrates that while the vocabulary differed, the securitisation of immigration was a shared transatlantic project.

2. Criminalising Immigration in the United States

2.1. The Reagan Revolution: Law and Order Meets Immigration

The comprehensive criminalisation of immigration in the United States did not emerge from a vacuum. It was a direct consequence of the “law and order” revolution of the 1980s, and its primary vehicle was the Reagan administration’s ‘War on Drugs.’²⁰ This broad-based campaign was more than a parallel policy initiative, it served as one of the primary catalysts for the transformation of the Immigration and Naturalization Service (INS).²¹ It provided the ideological justification, national security, and the institutional infrastructure, inter-agency task forces, to shift the agency from a primarily administrative and service-providing body into a domestic law enforcement entity focused on interdiction and removal. Immigration control was institutionally enmeshed within the anti-drug effort. A 1989 National Drug Control Strategy document listed the “Immigration and Naturalization Service” alongside the DEA, FBI, and Customs as one of the key federal agencies combatting drug

¹⁹ UK Parliament, House of Commons, “Immigration (Carriers’ Liability) Bill,” *Hansard* 16 March 1987, vol. 112, cc 706-89, 706 (UK), accessed 18 October 2025, <https://api.parliament.uk/historic-hansard/commons/1987/mar/16/immigration-carriers-liability-bill>

²⁰ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Revised edition (New Press, 2012). See Chapters 1, 2 and 3.

²¹ Douglas S. Massey, ‘Creating the Exclusionist Society: From the War on Poverty to the War on Immigrants’, *Ethnic and Racial Studies* 43, no. 1 (2020): 18–37, <https://doi.org/10.1080/01419870.2019.1667504>

trafficking. The strategy paper noted that “Large drug networks are often involved in a host of other unlawful activities including tax evasion, illegal immigration, and weapons offenses, all of which provide opportunities to expose otherwise well-camouflaged drug distribution systems.”²²

The fusion of crime control and immigration control was articulated by the executive branch. President Ronald Reagan’s 1986 National Security Decision Directive 221 formally declared drug trafficking a threat to US national security,²³ a move that authorised the unprecedented involvement of the military and intelligence agencies in domestic law enforcement.²⁴ This directive broke the traditional separation between domestic policing and national defence, creating a conceptual space where non-citizens could be framed not merely as violators of administrative rules, but as threats to the state itself.²⁵

This move exemplified what the scholar Jonathan Simon has termed ‘governing through crime,’ whereby the frameworks of criminal justice become the default solution for complex social issues like migration.²⁶ The INS was thus reoriented towards what Malcolm Feeley and Jonathan Simon identify as the ‘new penology’ an approach focused not on individual adjudication but on managing the risks posed by aggregate populations, in this case ‘criminal aliens’.²⁷

The political rhetoric of the era explicitly and repeatedly linked “illegal drugs” with “illegal aliens,” forging a narrative in the public imagination that justified increasingly harsh enforcement measures against both.²⁸ During the 1980s and 1990s, political rhetoric in the United States frequently intertwined the issues of drug use and immigration, creating a powerful and often racially charged narrative. Politicians, media figures, and government campaigns regularly spoke about “illegal drugs” and “illegal aliens” in the same breath, framing both as existential threats to the nation’s safety, morality, and social order.²⁹

²² “Memorandum for the Domestic Policy Council – National Drug Control Strategy.” 1 August 1989. FG010-03 (DPC), OA17754. George H. W. Bush Presidential Library.

²³ National Security Decision Directive 221, *Narcotics and National Security*, 8 April 1986, *Federation of American Scientists*, <https://irp.fas.org/offdocs/nsdd/index.html>

²⁴ Sara Terrien, ‘The United States Military’s Role in Maintaining National Security During the Height of the “War on Drugs”’ (Center for Interdisciplinary Studies, 2022).

²⁵ Bigo, ‘Security and Immigration’. *op. cit.*

²⁶ Jonathan Simon, *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*, Studies in Crime and Public Policy (Oxford University Press, 2009).

²⁷ Malcolm M. Feeley and Jonathan Simon, ‘The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications’, *Criminology* 30, no. 4 (1992): 449–74, <https://doi.org/10.1111/j.1745-9125.1992.tb01112.x>

²⁸ Walter A. Ewing et al., *The Criminalization of Immigration in the United States* (American Immigration Council, 2015), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_criminalization_of_immigration_in_the_united_states.pdf

²⁹ *Ibid*, 13.

This overlap was not accidental. The so-called ‘War on Drugs,’ formally declared by President Ronald Reagan and continued under George H. W. Bush and Bill Clinton, depended heavily on fear-based messaging. Political leaders and law-enforcement officials often portrayed drug trafficking as something driven by foreign actors, mostly from Latin America and the Caribbean, and reinforced stereotypes of immigrants, particularly Mexicans and Central Americans, as smugglers or criminals.³⁰ For example, Reagan’s speeches often warned of narcotics pouring across the borders. During remarks at a White House meeting for the United States Ambassadors Conference on Narcotics in November, 1986, President Reagan referred to narcotics being smuggled from abroad, saying: “Illegal drugs have infiltrated our schools, invaded our factories, are terrorizing our citizens, and undercutting our institutions.”³¹ At the same time, media coverage of the time sensationalised “crack epidemics” in urban areas that were implicitly racialised as shown by Jimmie L. Reeves and Richard Campbell in *Cracked Coverage: Television News, The Anti-Cocaine Crusade, and the Reagan Legacy* (1994).³²

By linking drugs and immigration, policymakers effectively blurred the line between two distinct issues. This made it easier to justify aggressive border policing, mass deportations, and militarised drug-enforcement tactics as part of a single, cohesive “national security” agenda. The result was a mutually reinforcing cycle: fear of drugs heightened fear of immigrants, and vice versa.³³

In public imagination, this connection shaped popular perceptions of both “drug users” and “undocumented migrants” as dangerous outsiders who threatened the social fabric.³⁴ Consequently, policies such as mandatory minimum sentencing, expanded border patrols, and immigrant detention centres gained broad political support under the guise of law and order.³⁵

This rhetorical fusion was codified into law. The Anti-Drug Abuse Act of 1986, while remembered primarily as a domestic crime bill that introduced draconian mandatory minimum sentences, contained a subtitle with profound implications for immigration law: the “Narcotics Traffickers Deportation Act.”³⁶ This provision

³⁰ Drug Policy Alliance, *Report: The War on Drugs Meets Immigration* (2021), 2.

³¹ Ronald Reagan, “Remarks at a White House Meeting for the United States Ambassadors Conference on Narcotics,” 13 November 1986, *Reagan Library*, <https://www.reaganlibrary.gov/archives/speech/remarks-white-house-meeting-united-states-ambassadors-conference-narcotics>

³² Jimmie Lynn Reeves and Richard Campbell, *Cracked Coverage: Television News, the Anti-Cocaine Crusade, and the Reagan Legacy* (Duke University Press, 1994).

³³ Deborah Weissman, ‘The Politics of Narrative: Law and the Representation of Mexican Criminality’, *Fordham International Law Journal* 38 (2015): 149.

³⁴ Massey, ‘Creating the Exclusionist Society’, *op. cit.*, 9.

³⁵ Sarah Tosh, ‘Drugs, Crime, and Aggravated Felony Deportations: Moral Panic Theory and the Legal Construction of the “Criminal Alien”’, *Critical Criminology* 27, no. 2 (2019): 7, <https://doi.org/10.1007/s10612-019-09446-8>

³⁶ Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986).

explicitly amended the Immigration and Nationality Act to make a conviction for violating *any* law or regulation related to a controlled substance a deportable offense. This created a direct and unambiguous link between the ‘War on Drugs’ and the machinery of deportation. As already seen, the 1988 iteration of the Anti-Drug Abuse Act introduced the legal term of “aggravated felony” into immigration law for the first time. Initially, this category was narrowly defined, applying only to murder and trafficking in drugs or firearms, but its creation established a new and powerful legal instrument for targeting non-citizens for removal.³⁷

The new legislative framework was mirrored by an operational reorganisation that embedded immigration enforcement within the broader federal law enforcement community. The Organized Crime Drug Enforcement Task Forces (OCDETF) programme, established by the Reagan administration in 1982, was designed to be a multi-agency assault on major drug trafficking networks.³⁸ The task forces brought together prosecutors and agents from the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), the Internal Revenue Service (IRS), and, critically, the Immigration and Naturalization Service.³⁹ This formalised cooperation forced the INS, an agency historically preoccupied with border inspections and visa processing, to work hand-in-glove with career criminal investigators. This inclusion allowed the INS to participate directly in tackling major criminal networks, particularly those involved in drug trafficking, and institutionalised an enforcement-oriented approach within immigration operations. The INS became a partner in criminal interdiction rather than just a regulatory agency. It fostered the transfer of investigative techniques from the DEA and FBI into the INS, creating joint task forces and institutionalising the logic of criminal interdiction within the immigration system.⁴⁰ The ‘War on Drugs,’ therefore, did not simply run parallel to immigration enforcement, it served to reconfigure it. It provided immigration officers with a new mission, new partners, and new powers, recasting the figure of the immigrant from an applicant or potential resident into a potential criminal suspect.

³⁷ Adam Goodman, *Deportation Machine: America’s Long History of Expelling Immigrants* (Princeton University Press, 2020), 170–71.

³⁸ U.S. Department of Justice, “Organized Crime Drug Enforcement Task Forces Celebrates 40th Anniversary,” Press Release, October 14, 2022. *Justice.gov*
<https://www.justice.gov/archives/opa/pr/organized-crime-drug-enforcement-task-forces-celebrates-40th-anniversary>

³⁹ Ronald Reagan, Remarks Announcing Federal Initiatives Against Drug Trafficking and Organized Crime, October 14, 1982, *Reagan Library*, <https://www.reaganlibrary.gov/archives/speech/remarks-announcing-federal-initiatives-against-drug-trafficking-and-organized-crime>

⁴⁰ R. W. Giuliani, “Organizing Law Enforcement as Well as Organized Crime,” *Public Administration Review* 45, no. 6 (November 1985): 712–17, *National Criminal Justice Reference Service*, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/organizing-law-enforcement-well-organized-crime-0>.

2.2. The Expansion of “Aggravated Felony”

The “aggravated felony” is the central legal mechanism through which the criminalisation of immigration was accomplished in the United States. It is a legal construct that has no necessary connection to the definition of a “felony” in criminal law.⁴¹ Instead, it represents a parallel and far harsher legal system designed exclusively for non-citizens, demonstrating how the state can use legal redefinition as a powerful tool of securitisation. This focus on crafting a new, expansive criminal-legal category for non-citizens stands in contrast to the British approach, which would rely more on adapting existing national security protocols and administrative discretion.

From its introduction with the Anti-Drug Abuse Act of 1988, the definition was systematically expanded in a “ratchet effect,” where its scope only ever widened, sweeping more and more offenses, many of them minor under its purview and subjecting ever-larger numbers of non-citizens to mandatory detention and deportation.

The legislative evolution of the term reveals a clear and deliberate escalation:

- Anti-Drug Abuse Act of 1988: The term was first introduced into the Immigration and Nationality Act (INA) with a narrow scope, covering murder, drug trafficking, and illicit trafficking in firearms or destructive devices.⁴² At this stage, it created a new ground for deportation but did not yet carry the severe limitations on relief that would later define it.
- Immigration Act of 1990 (IMMACT 90): This Act significantly expanded the definition to include money laundering, crimes of violence, and certain violations of foreign law. Critically, it introduced a sentence requirement. For many of these offenses to qualify as an aggravated felony, a term of imprisonment of at least five years had to be imposed.⁴³ IMMACT 90 also began to attach severe consequences to the label, making individuals convicted of an aggravated felony ineligible for most forms of discretionary relief from deportation, such as asylum and voluntary departure.⁴⁴
- Immigration and Nationality Technical Corrections Act of 1994 (INTCA): Congress again broadened the list of offenses, adding crimes such as burglary, theft, fraud, and obstruction of justice, while generally retaining the five-year sentence threshold.⁴⁵
- The 1996 Revolution: AEDPA and IIRIRA: The passage of the Antiterrorism and

⁴¹ American Immigration Council, “Aggravated Felonies: An Overview,” January 2012. https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/aggravated_felonies_an_overview_0.pdf

⁴² *Anti-Drug Abuse Act of 1988*, Pub. L. No. 100-690, 102 Stat. 4181 (1988)

⁴³ *Immigration Act of 1990*, Pub. L. No. 101-649, 104 Stat. 4978 (1990).

⁴⁴ National Immigration Project of the National Lawyers Guild, “Aggravated Felonies: An Overview and Update,” April 21, 2021.

⁴⁵ *Immigration and Nationality Technical Corrections Act of 1994*, Pub. L. No. 103-416, 108 Stat. 4305 (1994).

Effective Death Penalty Act (AEDPA)⁴⁶ and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)⁴⁷ in 1996 represented a revolution in immigration law.³³ These two statutes, passed in the wake of the Oklahoma City bombing and amidst a political climate of intense anti-immigrant sentiment, dramatically expanded the list of offenses that qualified as aggravated felonies.⁴⁸

More importantly, they fundamentally altered the calculus by reducing the operative sentence requirement from five years to just one year for many crimes, including “crimes of violence” and theft offenses.⁴⁹ This single change had a monumental impact, sweeping thousands of relatively minor state-level convictions, including many misdemeanours that carried a potential one-year sentence, into the “aggravated felony” category for federal immigration purposes.⁵⁰ This single change had a monumental impact. Advocacy groups immediately recognised its devastating potential, explaining that crimes as minor as shoplifting now constitute aggravated felonies.⁵¹ Furthermore, the new expanded definition is retroactive. Thus, legal immigrants today may be placed into deportation proceedings for minor offenses they committed 25 years ago. The measure operated retroactively, reclassifying thousands of relatively minor state-level convictions as federal “aggravated felonies.” In doing so, it eroded the principle of finality in criminal sentencing for non-citizens and produced circumstances in which, for example, a drug-related offense committed by a 16-year-old in 1993, for which the individual had fully served the punishment legally prescribed at the time, was subsequently, years after completion of the sentence, retroactively designated an “aggravated felony,” thereby rendering the individual subject to deportation. This subjected them to a form of double jeopardy, where a past mistake could trigger the devastating consequences of mandatory detention and permanent exile from the United States.⁵²

This mechanical reclassification exemplifies what Feeley and Simon describe as the “new penology,” in which criminal justice policy prioritises the categorical management of offender populations through administrative efficiency and risk classification, rather than individualised assessments of culpability or proportional punishment.⁵³ The designation of “aggravated felon” enabled the state to enforce

⁴⁶ *Antiterrorism and Effective Death Penalty Act of 1996*, Pub. L. No. 104-132, 110 Stat. 1214 (1996)

⁴⁷ *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

⁴⁸ The political context was shaped by fear of terrorism and crime, a media-fuelled perception that immigrants were a threat, and a bipartisan push for “tough on crime/immigration” legislation. This created fertile ground for AEDPA and IIRIRA to pass and to expand punitive measures against immigrants.

⁴⁹ Immigrant Defense Project, *The 1996 Immigration Laws and the Devastation of Immigrant Communities* (New York: Immigrant Defense Project, 2017).

⁵⁰ Immigrant Legal Resource Center, “End Extreme Punishment for ‘Aggravated Felonies’”, fact sheet, May 21, 2013, <https://www.ilrc.org/resources/end-extreme-punishment-aggravated-felonies>

⁵¹ Immigrant Defense Project, *The 1996 Immigration Laws*.

⁵² Immigrant Defense Project, *The 1996 Immigration Laws. op.cit.*

⁵³ Feeley and Simon, ‘The New Penology’. *op.cit.*

mandatory detention and deportation as categorical measures, disregarding the particular circumstances of the individual.

The Evolution of Aggravated Felonies (1988-1996)			
Legislative Act	Year	Key Crimes Added to Definition	Sentence Threshold
Anti-Drug Abuse Act (ADAA)	1988	Murder, drug trafficking, illicit firearms trafficking.	N/A
Immigration Act (IMMACT)	1990	Money laundering, crimes of violence, foreign law violations.	5 years imprisonment
Immigration & Nationality Technical Corrections Act (INTCA)	1994	Burglary, theft, fraud, obstruction of justice.	5 years imprisonment
AEDPA & IIRIRA	1996	Expansive list including domestic violence, tax evasion, document fraud, failure to appear. Applied retroactively.	Reduced to 1 year for many offenses

This process is a stark example of what scholars term ‘legal violence’.⁵⁴ The immense harm of family separation and exile was inflicted not by breaking the law, but by applying it, thereby obscuring the human impact behind a veil of legal procedure.

The statistical impact of these legislative changes was rapidly visible in the removal numbers. An estimated 300,000 individuals were deported under this classification between 1990 and 2006.⁵⁵ The designation of “aggravated felony” emerged as a central mechanism that drove the rapid expansion of the deportation system. The number of deportations based on this classification increased dramatically: whereas only a few hundred removals of “aggravated felons” occurred in the late 1980s, by fiscal year 1992 removal orders for aggravated felons had risen

⁵⁴ Cecilia Menjivar and Leisy J. Abrego, ‘Legal Violence: Immigration Law and the Lives of Central American Immigrants’, *American Journal of Sociology* 117, no. 5 (2012): 1380–421, <https://doi.org/10.1086/663575>

⁵⁵ Transactional Records Access Clearinghouse (TRAC), *New Data on the Processing of Aggravated Felons*, January 5, 2007, TRAC, <https://tracreports.org/immigration/reports/175/>

to 10,303, and by 2002 the total surpassed 20,000 (see tables below).⁵⁶ More comprehensive data reveals that in FY 1996, the year the new laws were passed, there were 65,670 removals of “criminal aliens”; by FY 2000, that number had nearly doubled to 113,678.⁵⁷ The term ‘aggravated felony’ leveraged the public’s fear of serious crime to justify the expulsion of individuals who had committed offences ranging from minor infractions to serious crimes, creating a separate and unequal system of justice for non-citizens.

2.3. Enforcement Mechanisms

The legal transformation created by the expanding definition of the “aggravated felony” was implemented through a set of new and powerful enforcement mechanisms. These programmes and technologies created the institutional infrastructure necessary to identify, detain, and remove the newly defined “criminal alien” on a large scale, enmeshing immigration enforcement within the domestic criminal justice system.

The cornerstone of this new architecture was the Institutional Criminal Alien Program (ICAP), later renamed the Criminal Alien Program (CAP). Mandated by the Immigration Reform and Control Act of 1986 (IRCA), the programme established a formal system for INS officers to work inside federal, state, and local prisons and jails.⁵⁸ Their mission was to screen the incarcerated population, identify non-citizens who were deportable under the newly expanded criminal grounds, and initiate deportation proceedings while the individual was still serving their criminal sentence.⁵⁹ The explicit goal was to ensure that upon completion of their sentence, the individual could be transferred directly from criminal custody to INS custody for immediate removal from the country, preventing their release back into the community.⁶⁰

The programme’s logic reflected the ‘new penology’s’ emphasis on identifying and managing high-risk populations. Rather than adjudicating cases on their individual merits, ICAP was designed as an administrative pipeline for the mass processing of one specific category, transforming correctional facilities into sites of immigration enforcement. This integration created what Michel Foucault described as a ‘carceral archipelago,’ where the disciplinary functions of the prison extend into other civic

⁵⁶ *Ibid.*

⁵⁷ Transactional Records Access Clearinghouse (TRAC), *Reported Criminal Removals*, Syracuse University, TRAC, https://tracreports.org/immigration/reports/178/include/side_table2.html

⁵⁸ Guillermo Cantor et al., *Enforcement Overdrive: A Comprehensive Assessment of ICE’s Criminal Alien Program*, SSRN Scholarly Paper no. 2685372 (American Immigration Council, 2015), 1, <https://papers.ssrn.com/abstract=2685372>

⁵⁹ Patricia Macías-Rojas, *From Deportation to Prison: The Politics of Immigration Enforcement in Post-Civil Rights America*, Latina/o Sociology Series (New York University, 2016), 11.

⁶⁰ Craig Feldman, ‘The Immigration Act of 1990: Congress Continues to Aggravate the Criminal Alien’, *Seton Hall Journal of Legislation and Public Policy* 17, no. 1 (1993), <https://scholarship.shu.edu/shlj/vol17/iss1/7>

realms, in this case blurring the line between criminal incarceration and immigration administration.⁶¹ Prisons were no longer just for punishment, they evolved to become central nodes in a wider network of immigration surveillance and removal.

The explosion in the number of non-citizens subject to mandatory detention as “aggravated felons” following the 1996 laws created a massive and immediate demand for detention space that the federal government could not meet. This deficit created a lucrative market opportunity that was eagerly filled by the nascent private prison industry. Corporations like the Corrections Corporation of America (CCA, now CoreCivic), founded in 1983, and The Wackenhut Corporation (now GEO Group), founded in 1984, identified immigration detention as a primary growth sector.⁶² In 1980, the INS spent just over \$21 million on detention. By 2010, ICE spent almost \$1.8 billion annually detaining immigrants, and by 2018, its yearly spending topped \$3 billion.⁶³

This development marks the birth of what sociologist Tanya Golash-Boza calls the ‘immigration-industrial complex’.⁶⁴ The financial incentives of these for-profit corporations created a powerful new lobby with a vested interest in the expansion of punitive laws that guaranteed a steady flow of detainees, linking immigration policy directly to corporate profit.⁶⁵ This aligned with a broader administration philosophy, articulated by the President’s Commission on Privatization, that “Contracting should be regarded as an effective and appropriate form for the administration of prisons and jails at the federal, state, and local levels.”⁶⁶ Indeed, one of the private prison industries very first federal government contracts was for the operation of immigration detention facilities. In 1984, the CCA began operating a county jail and a juvenile detention centre in Tennessee, and it also opened its first privately owned facility in Houston (a former motel quickly converted to detain immigrants).⁶⁷

As the detained population grew through the 1990s, the federal government’s reliance on private contractors deepened (see table below). These for-profit corporations built and managed a growing network of detention centres (for a map of

⁶¹ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Second Vintage Books edition, trans. Alan Sheridan (Vintage Books, a division of Random House, Inc, 1995), 297.

⁶² Mark Dow, *American Gulag: Inside U.S. Immigration Prisons* (University of California Press, 2004), 89.

⁶³ Elliott Young, *Forever Prisoners: How the United States Made the World’s Largest Immigrant Detention System* (Oxford University Press, 2021), 13.

⁶⁴ Tanya Golash-Boza, ‘The Immigration Industrial Complex: Why We Enforce Immigration Policies Destined to Fail’, *Sociology Compass* 3, no. 2 (2009): 295–309, <https://doi.org/10.1111/j.1751-9020.2008.00193.x>

⁶⁵ American Civil Liberties Union, *Banking on Bondage: Private Prisons and Mass Incarceration* (American Civil Liberties Union, 2011), <https://www.aclu.org/banking-bondage-private-prisons-and-mass-incarceration>

⁶⁶ “Privatisation: Better Service at Lower Cost – Status Report to the President and Cabinet,” Attachment 1, 23 June 1988, Dan L. Crippen Files, Office of the Chief of Staff, Series I, Box 9, Folder “Privatisation [2 of 2],” Ronald Reagan Presidential Library.

⁶⁷ Madison Pauly, ‘A Brief History of America’s Private Prison Industry’, *Mother Jones*, August 2016, <https://www.motherjones.com/politics/2016/06/history-of-americas-private-prison-industry-timeline/>

the US detention centres from 1980-2016 see Appendix 2), often in remote locations, and by the end of the period, they housed over half of all detained immigrants.⁶⁸ This created a powerful corporate lobby with a vested financial interest in the continuation and expansion of punitive immigration laws that guaranteed a steady flow of detainees into their facilities.⁶⁹

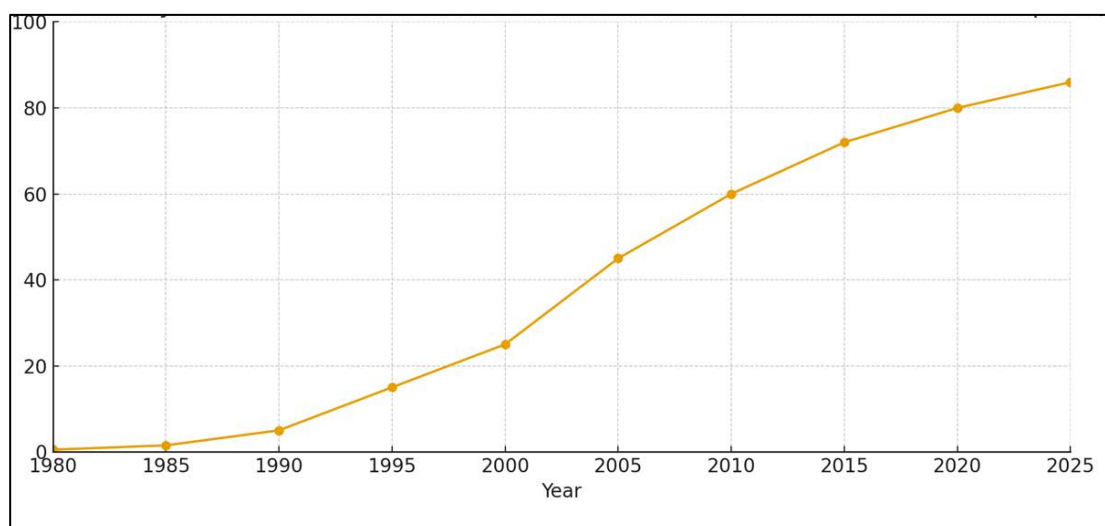


Figure 31. Estimated percentage evolution of privately-operated share of ICE detainees (1980-2025)

Source: Estimate synthesised from TRAC, MPI, Detention Watch Network and related reports

This new enforcement system was strengthened by a revolution in information technology. Developed by the INS in 1994, the Automated Biometric Identification System (IDENT) began as a law enforcement tool for U.S. Border Patrol to collect and match the fingerprints of individuals apprehended at the border.⁷⁰ It evolved into the central biometric repository for the entire Department of Homeland Security.⁷¹ IDENT was used to link biometric data (e.g. digital fingerprints and photographs) to an individual’s biographic information and their complete immigration encounter history. It enabled the sharing of information between criminal databases, such as the FBI’s Integrated Automated Fingerprint Identification System (IAFIS), and immigration

⁶⁸ Sharita Gruberg, *How For-Profit Companies Are Driving Immigration Detention Policies* (2015), <https://www.americanprogress.org/article/how-for-profit-companies-are-driving-immigration-detention-policies/>

⁶⁹ Young, *Forever Prisoners*, 175.

⁷⁰ Thales Group, “DHS’s Automated Biometric Identification System IDENT – The Heart of Biometric Visitor Identification in the USA”, January 19, 2021, <https://www.thalesgroup.com/en/markets/digital-identity-and-security/government/customer-cases/ident-automated-biometric-identification-system>.

⁷¹ *Ibid.*

databases. This technological advance created the backbone for the modern surveillance state, making the “criminal alien” an easily trackable, identifiable, and removable subject across a vast network of local, state, and federal agencies.⁷² An arrest for a minor local offense could trigger an IDENT check, which could reveal a past conviction newly defined as an aggravated felony, leading directly to an immigration detainer and entry into the deportation system.

The expansion of “aggravated felony” in the United States served a similar symbolic function to the United Kingdom’s terrorism-related immigration measures: both created legal categories that redefined migrants as an inherent risk. In the US, this meant that even relatively minor offenses could trigger automatic detention and deportation, while in the UK the threat of terrorism justified extended powers over asylum seekers and suspected foreign nationals. In each case, legislation blurred the line between criminal law and immigration law, inserting securitisation into everyday enforcement.

3. The United Kingdom, Security and Exclusion

While the United States forged its securitised immigration regime in the crucible of the domestic ‘War on Drugs,’ the United Kingdom followed a different, though parallel, path. The British State did not need to invent a new criminal-legal apparatus from scratch. Instead, it adapted its existing national security framework, a system originally designed to manage the internal conflict in Northern Ireland. The logic of exclusion, the primacy of executive power, and the reliance on intelligence-led decision-making, all honed during “the Troubles,” were readily available to be redeployed against a new perceived threat: the rising number of asylum seekers arriving in the late 1980s and 1990s.

3.1. International Terrorism and Immigration Control

The UK’s modern counter-terrorism apparatus was born in response to the bombing campaigns carried out in Great Britain by the Provisional Irish Republican Army (IRA) in the 1970s.⁷³ The mainland attacks, most notably the Birmingham pub bombings of November 1974 which killed 21 people, created a profound sense of national crisis.⁷⁴ The government’s response was swift, the Prevention of Terrorism

⁷² Juan C. Quevedo, ‘The Troubling Case(s) of Noncitizens: Immigration Enforcement Through the Criminal Justice System and the Effect on Families’, *Tennessee Journal of Law and Policy* 10, no. 2 (2024), <https://doi.org/10.70658/1940-4131.1225>

⁷³ Laura K. Donohue, *Counter-Terrorist Law and Emergency Powers in the United Kingdom, 1922-2000*, 1st edn, New Directions in Irish History (Irish Academic Press, 2001).

⁷⁴ Saima Nasar and Gavin Schaffer, ‘The Poetics of Narrativity: Understanding Trauma, Temporality, and Spatiality Forty Years after the Birmingham Pub Bombings’, *Journal of Social History* 53, no. 4 (2020): 1008–32, <https://doi.org/10.1093/jsh/shz004>

(Temporary Provisions) Act 1974 (PTA) was pushed through Parliament in a matter of days.⁷⁵ Then-Home Secretary Roy Jenkins acknowledged that the powers contained within the Act were “draconian” and “unprecedented in peacetime.”⁷⁶

The PTA’s most significant innovation in the context of immigration control was the creation of exclusion orders. This power allowed the Home Secretary to prohibit an individual suspected of involvement in terrorism from entering or being in Great Britain (or, in the case of non-citizens, the entire United Kingdom).⁷⁷ An exclusion order was not a criminal sanction and did not require a conviction or even a formal charge. It was an executive decision based on suspicion, often relying on secret intelligence that was never disclosed to the individual or tested in court.⁷⁸ This established an important legal and political precedent: that national security concerns could justify the suspension of normal legal processes for entry, residence, and removal.

The legal and political precedent for exclusion based on executive fiat rather than criminal conviction was well-established in British law. A 1983 Home Office review of the Prevention of Terrorism Act noted that the power to exclude a person was a “very considerable one” and, crucially, that the decision was “an executive one” taken by the Home Secretary, not a judicial one.⁷⁹ Thus, where the American system began its securitisation project by linking immigration to the domestic ‘War on Drugs,’ the British system repurposed a framework originally designed for an internal political conflict, showing a different path towards the same goal of state-led exclusion. The PTA also granted police and immigration officers extensive powers of arrest, detention without charge for up to seven days, and examination of persons travelling between Great Britain and Ireland.⁸⁰

While the PTA was primarily aimed at controlling the movement of Irish citizens, its provisions explicitly created a separate and more severe regime for non-citizens of the United Kingdom and Colonies, for whom the exclusion order applied to the entire UK.⁸¹ It thus created a ready-made template for using a national security logic to control other foreign nationals. The Act effectively bifurcated the system of control. While most immigration matters were handled through the administrative procedures of the Immigration Act 1971, a parallel security track now existed where

⁷⁵ *Prevention of Terrorism (Temporary Provisions) Act 1974*, c. 56 (United Kingdom).

⁷⁶ Roy Jenkins, HC Deb, vol. 882, col. 35 (25 November 1974), *Hansard*, <https://hansard.parliament.uk/Commons/1974-11-25/debates/8422b814-468c-4637-97ef-77184fe1cde2/Terrorism>

⁷⁷ *Prevention of Terrorism (Temporary Provisions) Act 1974*, c. 56, Pt. II,

⁷⁸ David Anderson, “The Independent Review of Terrorism Laws,” *Public Law* (2014): 403–20, <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2014/07/2014-Public-Law-403-20.pdf>.

⁷⁹ *Home Office Memorandum: “Extradition: Working Party (Reconvened); Report; Circulation of Final Draft.”* 17 January 1983. HO 306/253. The National Archives (Kew).

⁸⁰ *Prevention of Terrorism (Temporary Provisions) Act 1974*.

⁸¹ *Ibid*, s. 6.

the executive could act unilaterally to exclude individuals deemed a threat.

This domestic security focus was complemented by growing international cooperation. The TREVI (*Terrorisme, Radicalisme, Extrémisme et Violence Internationale*) Group, established informally in 1976, provided an intergovernmental forum for the interior and justice ministers of European Community member states to coordinate policies on terrorism, international crime, and policing.⁸² The UK was an important and active participant from the outset. The TREVI Group facilitated the sharing of intelligence and the development of common strategies for combating groups like the IRA and other European terrorist organisations.⁸³ As the prospect of a border-free Europe under the Single European Act emerged in the late 1980s, TREVI’s remit expanded to consider the security implications of free movement, including issues of immigration and asylum.⁸⁴ This forum represented an early internationalisation of the security-migration nexus in Europe, embedding British immigration control within a wider framework of security cooperation long before these issues were formally incorporated into EU treaties.

By the close of the 1980s, the United Kingdom’s counter-terrorism framework had evolved into a complex apparatus that intertwined domestic security and immigration control, reflecting both internal political challenges and the growing internationalisation of policing through mechanisms such as the TREVI Group. However, as the intensity of the Northern Ireland conflict declined during the 1990s, the locus of perceived threat gradually shifted from domestic separatist violence to transnational forms of terrorism associated with Islamist extremism. This reframing of national security increasingly positioned immigration, particularly the entry and residence of non-citizens, as a potential vector of risk, thereby reinforcing the logic of pre-emptive exclusion that had first been institutionalised under the Prevention of Terrorism Acts. It was within this evolving security background that the Labour government introduced the Terrorism Act 2000, seeking to consolidate and modernise the United Kingdom’s counter-terrorism powers in anticipation of new, globalised threats.

3.2. The 2000 Terrorism Act and the security paradigm

Even before the 9/11 attacks in the US, legislative focus in the UK was on Terrorism and counter-terrorism proposals. At the turn of the century, the Labour

⁸² Franca König, ‘The Trevi Group – Birthplace of European Police Cooperation’, in *The Rise of EU Police Cooperation* (Routledge, 2022).

⁸³ Sinem Çevik, ‘The Development Of The EU’s Counter Terrorism Policies In The Post 9/11 Era’ (City University of New York, 2015), 22.

⁸⁴ The Development of Europol, report from Trevi Ministers to the European Council, Maastricht, December 1991.

government passed the Terrorism Act 2000.⁸⁵ Section 41 of the Act granted the police the authority to arrest and detain an individual without a charge for a maximum of 48 hours if they were suspected of being a terrorist.⁸⁶ This detention period could be extended to up to seven days if the police successfully convinced a judge that further questioning was necessary.⁸⁷ This was a departure from the conventional criminal law practice, where suspects were required to be charged within 24 hours of detention or released. The Criminal Justice Act 2003 extended this period to 14 days,⁸⁸ and the Terrorism Act 2006 further increased it to 28 days.⁸⁹

The Home Office’s development of these mechanisms reflected growing governmental frustration with judicial constraints on deportation powers, particularly regarding individuals deemed security threats. The *Hardial Singh* principles, established in case law, hold that immigration detention is only lawful for the purpose of facilitating removal, must last no longer than reasonably necessary to achieve that purpose, and must cease if removal is no longer reasonably practicable. While the *Hardial Singh* principles emphasised detention as a mechanism to facilitate removal, framing the question as an issue of national security allowed the government to introduce a logic of prevention that potentially justified indefinite detention regardless of deportation prospects.⁹⁰

3.3. The Asylum-Crime Nexus

If the PTA provided the legal and institutional precedent for securitising migration, the catalyst for its application to asylum seekers was a media-driven moral panic that erupted in the late 1980s and intensified throughout the 1990s. As the number of asylum applications began to rise, driven by conflicts in Sri Lanka, Somalia, and the former Yugoslavia, the British tabloid press, led by the *Daily Mail* and *The Sun*, launched a sustained campaign to frame these new arrivals as a fundamental threat to British society.⁹¹

This coverage constructed an “asylum-crime nexus” in the public mind.⁹² It consistently and deliberately conflated asylum seekers with “illegal immigrants,” criminals, and terrorists, employing a dehumanising lexicon of “floods,” “swarms,”

⁸⁵ *Terrorism Act 2000*, c. 11 (UK), *Legislation.gov*, <https://www.legislation.gov.uk/ukpga/2000/11/contents/enacted>

⁸⁶ *Ibid*, c. 11, § 41

⁸⁷ *Ibid*, c. 11, Sch. 8

⁸⁸ *Criminal Justice Act 2003*, c. 44 (UK), *Legislation.gov*, <https://www.legislation.gov.uk/ukpga/2003/44/enacted>

⁸⁹ *Terrorism Act 2006*, c. 11 (UK), *Legislation.gov*, <https://www.legislation.gov.uk/ukpga/2006/11/enacted>

⁹⁰ The *Hardial Singh* case will be discussed in more detail in Chapter 6.

⁹¹ Greenslade, *Seeking Scapegoats: The Coverage of Asylum in the UK Press*. *op.cit.*

⁹² Daniel P. Mears, ‘The Immigration-Crime Nexus: Toward an Analytic Framework for Assessing and Guiding Theory, Research, and Policy’, *Sociological Perspectives* 44, no. 1 (2001): 1–19, <https://doi.org/10.1525/sop.2001.44.1.1>

and “invasions” that portrayed their arrival as a hostile act.⁹³ Headlines and news reports created a direct, though often unsubstantiated, link between the rising number of asylum seekers and increases in crime,⁹⁴ pressure on public services, and welfare fraud.⁹⁵ Deterrence was pursued by making life in the UK untenable for asylum seekers. In 1995, the government moved to withdraw social benefits from those who applied for asylum after entering the country, a policy it justified as necessary to “deter abuse of the asylum system by people who have no right to be here and no valid claim for our protection.”⁹⁶

This narrative was not a reflection of reality. Some academic studies from the period demonstrated that immigrants and asylum seekers were, in fact, less likely to commit crimes than the native-born population (see graph below).⁹⁷ A 2013 study by Brian Bell, Francesco Fasani and Stephen Machin from the London School of Economics and Political Science which examined the impact of two large waves of immigration to the UK, including asylum seekers in the late 1990s and early 2000s, found a modest and specific rise in property crime associated with the asylum-seeking wave, but no effect on violent crime. The authors suggest that this is best understood in the context of the severe restrictions placed on asylum seekers’ right to work, rather than an inherent criminality.

⁹³ Sara Buchanan and Bethan Grillo, *What’s the Story?: Results from Research into Media Coverage of Refugees and Asylum Seekers in the UK*, Forced Migration Review (Article 19, 2003).

⁹⁴ Martin Lange and Katrin Sommerfeld, ‘Do Refugees Impact Crime? Causal Evidence from Large-Scale Refugee Immigration to Germany’, *Labour Economics* 86 (January 2024): 102466, <https://doi.org/10.1016/j.labeco.2023.102466>

⁹⁵ Alice Bloch and Liza Schuster, ‘Asylum and Welfare: Contemporary Debates’, *Critical Social Policy* 22, no. 3 (2002): 393–414, <https://doi.org/10.1177/026101830202200302>

⁹⁶ UK Parliament, House of Commons Library. Asylum, Immigration and Benefits. Research Paper 95/124. London: House of Commons Library, 7 December 1995. <https://researchbriefings.files.parliament.uk/documents/RP95-124/RP95-124.pdf>

⁹⁷ Brian Bell et al., ‘Crime and Immigration: Evidence from Large Immigrant Waves’, *The Review of Economics and Statistics* 95, no. 4 (2013): 1279, https://doi.org/10.1162/rest_a_00337

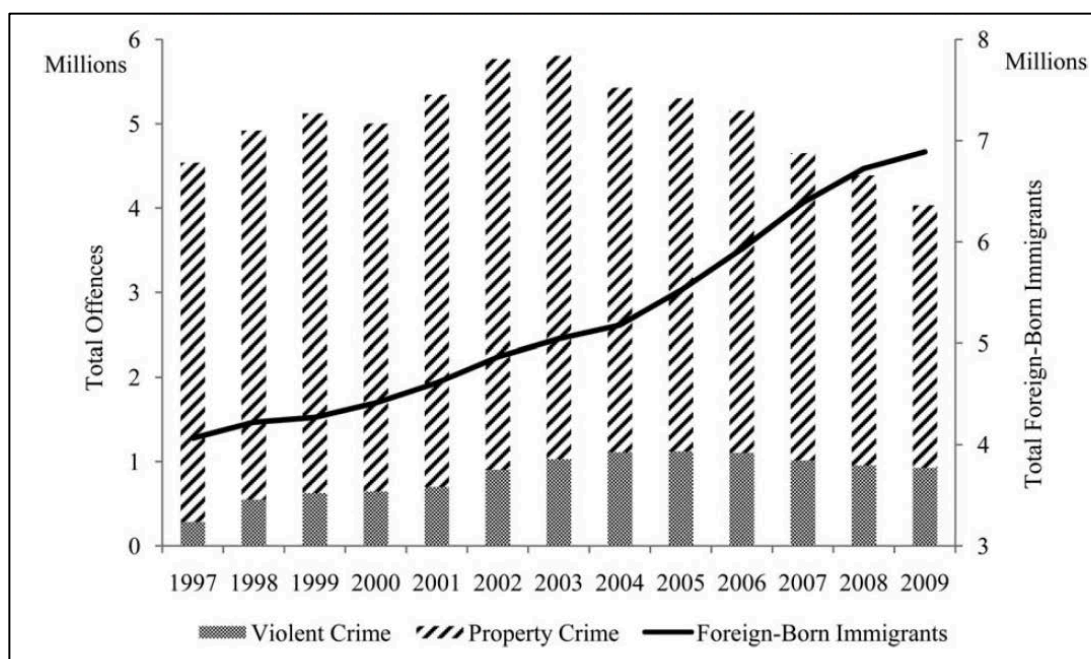


Figure 32. Immigration Stock and Crime Trends, England and Wales (1997-2009)

Source: Brian Bell et al., ‘Crime and Immigration: Evidence from Large Immigrant Waves’, *The Review of Economics and Statistics* 95, no. 4 (2013): 1279, https://doi.org/10.1162/rest_a_00337

A central feature of this moral panic was the discursive creation of a sharp distinction between the “genuine refugee,” a deserving but rare figure, and the “bogus asylum seeker,” an undeserving and duplicitous economic migrant seeking to exploit British generosity. This narrative was not confined to the press, it was adopted and amplified in the chambers of Parliament. The official record of parliamentary debates, Hansard, is replete with this language throughout the 1990s.⁹⁸ During debates on the succession of restrictive asylum bills in 1991, 1993, and 1996, Conservative government ministers and backbenchers repeatedly framed the issue as one of systemic abuse.⁹⁹ In a 1991 debate, Home Secretary Kenneth Baker defended the need for a new Asylum Bill by citing the “unprecedented flow of asylum seekers” and arguing that “many people are now using asylum claims as a means of evading immigration control.”¹⁰⁰ He cited evidence of multiple fraudulent benefit claims and declared that “bogus applications... are completely clogging up the system.”⁷⁰ This rhetoric, echoed by many of his colleagues, served to legitimise policies designed not to fairly assess claims, but to deter and reject them, providing the political cover necessary for the construction of a more hostile and exclusionary asylum system.

⁹⁸ Anne Karpf, ‘We’ve Been Here Before’, *The Guardian*, 8 June 2002, <https://www.theguardian.com/uk/2002/jun/08/immigration.immigrationandpublicservices>

⁹⁹ *House of Commons, Asylum Bill*, HC Deb, 13 November 1991, vol. 198, *Hansard*.

¹⁰⁰ *Ibid*, cols. 1085–1087.

Official government documents from the mid-1980s reveal that the concept of the ‘bogus’ asylum seeker was central to the policy debate. A 1986 draft Home Office memo sought to address what it called “Unmeritorious Applications for Asylum”,¹⁰¹ and a Cabinet Committee paper from the same year stated its purpose was to create “Deterrents to Unmeritorious Claims for Asylum.”¹⁰² The primary justification for the 1991 Asylum Bill was, as a Cabinet paper argued, “to deal with the growing abuse of our asylum procedures by those whose claims are not founded on a genuine fear of persecution but on a desire to evade the normal immigration controls.”¹⁰³

Public concern regarding immigration rose in the late 1990s and continued to rise once New Labour were in Government in the late 1990s and 2000s.¹⁰⁴ The increase in asylum applications, combined with broader global migration patterns, began to shift public sentiment and contributed to what Gillian McFayden called “politics of hostility.”¹⁰⁵ Public concern in Britain was twofold. Just like in the USA it was partially caused by anxieties related to competition in the housing market, employment and public services but also focused on the impact of immigration on British culture and national identity, echoing post-WW2 concerns. Public concerns were also fuelled by a growing tendency to view asylum seekers with suspicion.¹⁰⁶ The media and opponents of immigration questioned the legitimacy of their asylum claims and labelled them as “economic migrants” in disguise.¹⁰⁷ From the late 1980s onwards under Conservatives and New Labour, the term “economic migrant” was employed to justify stricter asylum regulations. This framing presumes that “economic migrants” deliberately disguise themselves as “asylum seekers” in order to gain access to the United Kingdom.¹⁰⁸ The increasing number of asylum applications in the 1990s, coupled with the often negative portrayal of asylum seekers in political discourse and the media, likely fostered a public perception of an immigration crisis and potential

¹⁰¹ Draft Home Office Memo: “Deterring Unmeritorious Applications for Asylum in the UK”, HO 394-476, 28 January 1986, The National Archives (Kew, United Kingdom).

¹⁰² Cabinet Committee Paper, HO 394-476, 24 November 1986, The National Archives (Kew, United Kingdom).

¹⁰³ Cabinet Committee Paper: “Asylum: Proposed Legislation”, HO 394-978, 22 October 1991, The National Archives (Kew, United Kingdom).

¹⁰⁴ Ben Page, *British Attitudes to Immigration in the 21st Century*, Migration Policy Institute, 2009, accessed 21 April 2025, <https://www.migrationpolicy.org/pubs/TCM-BritishPublicOpinion.pdf>

¹⁰⁵ Gillian McFadyen, ‘The Language of Labelling and the Politics of Hostipitality in the British Asylum System’, *The British Journal of Politics and International Relations* 18, no. 3 (2016): 599–617, <https://doi.org/10.1177/1369148116631281>

¹⁰⁶ Refugee Law Initiative, *UK Asylum Policy: How Did We Get Here?*, Refugee Law Initiative Blog, 4 July 2023, <https://rli.blogs.sas.ac.uk/2023/07/04/uk-asylum-policy-how-did-we-get-here/>

¹⁰⁷ Terry Threadgold, *The Media and Migration in the United Kingdom, 1999 to 2009*, May 2009, Migration Policy Institute, <https://www.migrationpolicy.org/pubs/TCM-UKMedia.pdf>

¹⁰⁸ Maya Goodfellow, ‘Interrogating the “Economic Migrant” in British Political Discourse: Race, Class, the Economy and the Human’, *Ethnic and Racial Studies* 46, no. 8 (2023): 1564, <https://doi.org/10.1080/01419870.2023.2181669>

even a moral panic.¹⁰⁹ This discourse surrounding asylum created a climate of fear which pushed successive governments to demonstrate firmness when it came to immigration control and provided justification for the implementation of more restrictive policies, including an increased reliance on immigration detention.¹¹⁰ This included policies designed to speed up the processing of asylum claims, deterring people from applying in the first place and strengthening border controls.

3.4. Institutional & Legal Developments

The political and media pressure to “crack down” on “bogus” asylum seekers drove significant changes in the administrative and legal machinery of the British state. The Home Office, the government department responsible for immigration, was reorganised to adopt a more centralised and enforcement-focused posture. The Immigration and Nationality Directorate (IND) became the central bureaucratic instrument for all aspects of immigration and asylum control, from processing applications to enforcement and removals.¹¹¹ This centralisation allowed for the top-down implementation of the government’s “firmer” approach to asylum.

Simultaneously, the legal powers of immigration officers were progressively expanded, leading to a blurring of the distinction between administrative official and law enforcement officer. While the Immigration Act 1971 had established the core powers of immigration officers, subsequent legislation in the 1980s and 1990s enhanced them. The Immigration Act 1988 curtailed certain rights of Commonwealth citizens¹¹², reinforcing the enforcement mindset.¹¹³ The Asylum and Immigration Act 1996¹¹⁴ further strengthened the state’s hand, creating new immigration offences,

¹⁰⁹ Carl-Ulrik Schierup, ‘The “Migration Crisis” and the Genesis of Europe’s New Diversity’, in *Migration, Citizenship, and the European Welfare State: A European Dilemma*, ed. Carl-Ulrik Schierup et al. (Oxford University Press, 2006), <https://doi.org/10.1093/0198280521.003.0002>

¹¹⁰ This was later used by the Labour party to justify their immigration policy in the ‘White Paper: Fairer, Faster, and Firmer – A Modern Approach to Immigration.’

¹¹¹ *Home Office: Immigration and Asylum Records*, HO 544, IND [Immigration and Nationality Directorate] Website, The National Archives (Kew, United Kingdom), <https://discovery.nationalarchives.gov.uk/details/r/C14465600>

¹¹² From Electronic Immigration Network, “Timeline of policy and legislative changes affecting migration to the UK (1983 to 2024)”: The Immigration Act 1988: repealed section 1(5) of the Immigration Act 1971, which provided that Commonwealth citizens settled in the United Kingdom (and their spouses and children) should not, as a result of the Act, be less free to come into or go from the United Kingdom than if the Act had not been passed. The effect of the repeal of section 1(5) was a reduction in the number of people, particularly wives, accepted for settlement on arrival, and an increase in the numbers of such people accepted after serving a probationary year.

¹¹³ Immigration Act 1988, c. 14 (UK)

¹¹⁴ Asylum and Immigration Act 1996, c. 49 (UK).

From Electronic Immigration Network, “Timeline of policy and legislative changes affecting migration to the UK (1983 to 2024)”: The Asylum and Immigration Act 1996 introduced among other things (1) an extension of the accelerated appeals procedure to a wider range of refused asylum applications; (2) the designation by the Secretary of State, with the approval of Parliament, of selected countries of destination where there is generally no serious risk of persecution – refusals of such cases being liable

increasing penalties, and expanding the powers of arrest and search for immigration officers, moving them ever closer to a police-like role.¹¹⁵

This domestic hardening was complemented by international agreements designed to shift the burden of responsibility for asylum seekers elsewhere. Efforts within the European Economic Community (EEC) to establish a common asylum process in the 1980s culminated in the Dublin Convention in 1990.¹¹⁶ The UK signed this convention in 1992, though it only came into full force in 1997 once all members had ratified it. Signed in Dublin on 15 June 1990, the Convention established the criteria used by Member States to determine which State is responsible for examining asylum applications submitted within the European Community. The Convention aimed to ensure that all asylum seekers’ applications are examined and that applicants are not left in prolonged uncertainty regarding the acceptance or rejection of their applications. Each application was to be assigned to a single Member State and decided based on objective criteria.¹¹⁷ The Convention stated that asylum seekers would generally be processed in the first EU country they arrived in unless:

- a relevant family member resided in another country (article 4)
- they were in possession of valid residence permit or visa for another country (article 5)¹¹⁸

This provided the UK, as an island nation, with a powerful legal mechanism to refuse to consider the claims of many who had transited through continental Europe and to return them to other member states. However, as early as 1999, some argued that the Convention was failing to live up to its objectives and that it needed to be changed or replaced.¹¹⁹ It was updated in 2003¹²⁰ and again in 2013.¹²¹

Technologically, the Home Office relied on extensive, albeit not fully

to the accelerated appeals procedure; and (3) restricting appeals against return to a safe third country within the European Union and other countries so designated.

¹¹⁵ Dallal Stevens, ‘The Asylum and Immigration Act 1996: Erosion of the Right to Seek Asylum’, *The Modern Law Review* 61, no. 2 (1998): 207–22, <https://doi.org/10.1111/1468-2230.00138>

¹¹⁶ *Dublin Convention on the Establishment of the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application*, 15 June 1990, European Communities, https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/dublin-convention_en.

¹¹⁷ *Evaluation of the Dublin Convention*, Commission Staff Working Paper SEC(2001)756 (Commission of the European Communities, 2001), 1.

¹¹⁸ *Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities*, 97/C 254/01 (Member States of the European Communities, 1997), <https://academic.oup.com/ijrl/article-lookup/doi/10.1093/ijrl/2.3.469>

¹¹⁹ Agnès Hurwitz, ‘The 1990 Dublin Convention: A Comprehensive Assessment’, *International Journal of Refugee Law* 11, no. 4 (1999): 646–77, <https://doi.org/10.1093/ijrl/11.4.646>

¹²⁰ Dublin II created the EURODAC database, which contained asylum seekers’ fingerprints. This information was between EU member states and could be used to deport asylum seekers to their first country if need be.

¹²¹ Dublin III introduced the right to appeal a country transfer and provided more protections to unaccompanied asylum-seeking children.

integrated, databases like the Warnings Index and the General Index to track individuals deemed undesirable, flagging them for scrutiny at ports of entry. These institutional developments, a centralised bureaucracy, enhanced enforcement powers, and international burden-shifting agreements, created the operational capacity to translate the securitised rhetoric of the asylum-crime nexus into the practical reality of exclusion.

4. Comparative Mechanisms of Securitisation

A comparative analysis of the developments in the United States and the United Kingdom reveals two distinct models of securitisation, rooted in the unique legal and political traditions of each country. The American approach can be characterised as a legal-penal model (‘crimmigration’), which used the language and tools of criminal law to redefine the immigrant as a criminal. In contrast, the British approach followed an administrative-security model, which used the language and tools of national security and administrative control to redefine the asylum seeker as a threat. Both models, however, were driven by a remarkably similar political discourse and achieved the same outcome: the exclusion and removal of unwanted migrants under the legitimising banner of security.

The divergent models of securitisation are clearly visible in the stated rationale for detention in each country. The United States, pursuing its legal-penal model, explicitly tied detention to criminality and the need to prevent flight. A 1995 INS planning document stated, “Most deportable and excludable aliens who are not in detention abscond. Unless we detain potential abscondee, we hinder our ability to expel them.”¹²² This approach culminated in the US’s 1996 laws, which, as the INS itself explained, mandated detention for a vast new category of non-citizens based on their criminal convictions.¹²³ The focus was on managing a population formally labelled as criminal.

In contrast, the United Kingdom’s administrative-security model framed detention not as a consequence of criminality, but as an administrative tool meant to manage the asylum process itself and deter future applicants. A 2000 Cabinet paper clarified this distinction, stating: “the sole purpose of detaining asylum seekers is to ensure that they are available for examination and for removal if their applications are refused and they have no other basis of stay.”¹²⁴ The goal was not to punish past crimes but to control a population during an administrative procedure and, as Home Secretary Jack Straw proposed in 1998, to “increase our use of detention, both to speed up

¹²² *National Detention, Transportation, and Removal Plan*, 20 June 1995, 2011-1044-F, Box 1 of 10, William J. Clinton Presidential Library (Little Rock, Arkansas).

¹²³ “*Talking Points for Paul Virtue: IIRIRA News Conference*”, 26 March 1997, 2011-0320-F, Box 1 of 1, William J. Clinton Presidential Library (Little Rock, Arkansas).

¹²⁴ *Cabinet Committee Paper: “Detention of Asylum Seekers”*, 22 February 2000, HO 394/992, The National Archives (Kew, United Kingdom).

decisions in particular cases and as a general deterrent.”¹²⁵ Where the US built a system to detain criminals, the UK built one focused on deterring people from applying for asylum in the first place.

Both of these models, however, can be understood as expressions of what criminologist David Garland terms “The Culture of Control,” a broader societal shift in the late twentieth century away from rehabilitation and towards punitive, exclusionary responses to social problems.¹²⁶ The criminalisation of immigration in both nations, therefore, was not an isolated phenomenon but was deeply connected to this wider transformation in how liberal democracies managed social order.”

4.1. Discourse Analysis

A striking feature of the period is the parallel political rhetoric employed by conservative leaders in both nations. President Reagan’s 1983 declaration that “we’ve lost control of our borders, and no nation can do that and survive”¹²⁷ finds a direct echo in Prime Minister Margaret Thatcher’s infamous 1978 warning that the British people were “rather afraid that this country might be swamped by people with a different culture.”¹²⁸ This shared narrative of a nation under siege, losing its sovereignty and identity to an influx of immigrants, was a cornerstone of the securitising discourse.

This sense of a nation under siege was articulated from the highest levels of government, early in Reagan’s first term. In an internal memo from May 1981, the Reagan administration’s concerns were starkly summarised: “Heavy influx of Cubans last year and continuing influx of Haitians and others from the Caribbean are resulting in nearly intolerable problems in Florida and the Gulf States.”¹²⁹ Attorney General William French Smith also articulated this view, stating, “In recent years, this nation truly has lost control of its own borders.”¹³⁰

This political discourse served to justify the construction of what Loïc Wacquant describes as the “iron fist” of penal control required by the ‘invisible hand’ of the deregulated market.¹³¹ As both nations underwent profound neoliberal economic restructuring that increased inequality and anxiety, immigrants served as convenient

¹²⁵ *Cabinet Committee Paper: “Immigration and Asylum Bill: Proposals for Legislation”*, 21 July 1998, PREM 49/379, The National Archives (Kew, United Kingdom).

¹²⁶ David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford University Press, 2002).

¹²⁷ Ronald Reagan, ‘The President’s News Conference’, Washington, D.C., 14 June 1984, *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/the-presidents-news-conference-947>

¹²⁸ Margaret Thatcher, ‘TV Interview for Granada World in Action’, 27 January 1978, *Margaret Thatcher Foundation*, <https://www.margaretthatcher.org/document/103485>

¹²⁹ *Notes on Trip to Mexico*, 4 May 1981, Francis Hodson Files, Box 2, Folder Immigration [Classified] (3), Ronald Reagan Presidential Library (Simi Valley, California).

¹³⁰ *The Immigration Reform and Control Act of 1982*, 1982, Michael Uhlmann Files, OA 9442, Box 5, Folder DOJ Paper on the Immigration Reform and Control Act of 1982, Ronald Reagan Presidential Library (Simi Valley, California).

¹³¹ Loïc Wacquant, *Prisons of Poverty*, Expanded ed, Contradictions (University of Minnesota Press, 2009), 1. (Originally published as *Les Prisons de la misère* in November 1999)

scapegoats, and a more punitive immigration apparatus became the state’s tool for managing the resulting social dislocations.

The language evolved but the theme remained constant. President George H.W. Bush’s focus in the early 1990s on “criminal aliens” as a threat to public safety was conceptually identical to Prime Minister John Major’s simultaneous condemnations of “bogus asylum seekers” who abuse the nation’s hospitality.¹³²

The parallel construction of these threats is striking. In the United States, the central figure of moral panic was the ‘criminal alien’. In the United Kingdom, it was the ‘bogus asylum seeker’. The American securitisation was legitimised by the ‘War on Drugs’ and threats to public safety, whilst the British approach was framed around preventing the abuse of hospitality and protecting national identity. This demonstrates a common political strategy: framing immigration not as a social or economic phenomenon, but as a threat to the fundamental security and order of the nation-state.

This political rhetoric was buttressed by the work of influential conservative think tanks on both sides of the Atlantic. In the United States, organisations like the Heritage Foundation produced reports that, despite a growing body of academic evidence to the contrary, sought to link immigration with crime and a drain on public resources.¹³³

This political rhetoric was buttressed by the work of influential conservative think tanks on both sides of the Atlantic. In the United States, organisations such as the Heritage Foundation and the Center for Immigration Studies produced reports and policy briefs that, despite a growing body of academic evidence to the contrary, sought to portray immigration as a driver of crime and a drain on public resources.¹³⁴ For instance, the Heritage Foundation’s reports in the early 2000s frequently highlighted anecdotal cases of criminal behaviour among undocumented immigrants and framed them as emblematic of broader trends,¹³⁵ despite studies showing that immigrants were, in general, less likely to commit crimes than native-born citizens.¹³⁶

Similarly, the Center for Immigration Studies published analyses arguing that immigrants imposed substantial costs on social welfare systems, even though comprehensive economic studies demonstrated that immigration often contributed positively to the economy, including through tax contributions and

¹³² The Rt. Hon. Sir John Major KG CH, ‘Mr Major’s Speech During 1995 Queen’s Speech Debate’, House of Commons, 15 November 1995, *John Major Archive*, <https://johnmajorarchive.org.uk/1995/11/15/mr-majors-speech-during-1995-queens-speech-debate-15-november-1995/>

¹³³ The Heritage Foundation, *A Pro-Family, Pro-Growth Legal Immigration Policy for America*, Backgrounder no. BG735 (Washington, D.C.: The Heritage Foundation, 1989).

¹³⁴ *Ibid.*

¹³⁵ Kirk Johnson and Tim Kane, *The Real Problem with Immigration... and the Real Solution* (2006), <https://www.heritage.org/immigration/report/the-real-problem-immigration-and-the-real-solution>

¹³⁶ *Debunking the Myth of Immigrants and Crime*, Fact Sheet (American Immigration Council, 2024), https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/debunking_the_myth_of_immigrants_and_crime.pdf

entrepreneurship.¹³⁷

Across the Atlantic, comparable narratives were advanced by think tanks such as the Centre for Policy Studies and MigrationWatch UK. These organisations produced briefing papers and media commentary emphasising the perceived threats posed by immigration to national security,¹³⁸ cultural cohesion, and public spending.¹³⁹ For example, MigrationWatch UK frequently published data suggesting that high levels of immigration were unsustainable for the National Health Service or public housing,¹⁴⁰ even though peer-reviewed research indicated that the impact of immigration on these sectors was far more nuanced and often overstated in media coverage.¹⁴¹ By framing immigration in terms of risk and economic burden, these think tanks provided intellectual ammunition that bolstered populist and conservative politicians’ arguments for stricter immigration controls. These organisations provided an intellectual gloss to the moral panic, translating political rhetoric into policy papers and creating a feedback loop where their reports were cited by politicians and the media as evidence of a crisis.

This securitisation narrative was not, however, uncontested. A significant body of academic research emerged in both countries that directly challenged the immigrant-crime nexus. Scholars in the US and the UK, using census data, crime statistics, and sociological surveys, consistently found that immigrants were less likely to be incarcerated or involved in criminal activity than their native-born counterparts.¹⁴² In the US, major academic works such as Daniel Tichenor’s *Guarding the Golden Door* and the anthology edited by Juan Perea, *Immigrants Out! The New Nativism*, provided critical analyses of the historical and racialised dynamics of American anti-immigrant politics, situating the rise of the “criminal alien” within a longer history of nativism.¹⁴³

¹³⁷ Steven A. Camarota and Jessica M. Vaughan, *Immigration and Crime: Assessing a Conflicted Issue* (Center for Immigration Studies, 2009), <https://cis.org/Report/Immigration-and-Crime>

¹³⁸ Migration Watch UK, *Pressure on the UK Visa System*, Briefing Paper MW127 (London: Migration Watch UK, 22 August 2005), <https://www.migrationwatchuk.org/briefing-paper/127/pressure-on-the-uk-visa-system>

¹³⁹ Migration Watch UK, *The Fiscal Impact of Immigration to the UK*, Briefing Paper MW4 (London: Migration Watch UK, 5 January 2004), <https://www.migrationwatchuk.org/briefing-paper/4/the-fiscal-impact-of-immigration-to-the-uk->

¹⁴⁰ *Health Consequences of Current Immigration Policy*, Briefing Paper 5.1 (Migration Watch UK, 2003), <https://www.migrationwatchuk.com/briefing-paper/document/42>

¹⁴¹ Carlos Vargas-Silva et al., *The Fiscal Impact of Immigration to the UK*, Briefing (The Migration Observatory, 2024).

¹⁴² Ewing et al., *The Criminalization of Immigration in the United States*; Bell et al., ‘Crime and Immigration’. *op. cit.*

¹⁴³ Roger Daniels, *Guarding the Golden Door: American Immigration Policy and Immigrants since 1882* (Hill and Wang, 2005); Juan F. Perea, ed., *Immigrants out! The New Nativism and the Anti-Immigrant Impulse in the United States*, Critical America (New York University Press, 1997).

4.2. Operational Practices

The operationalisation of these securitised policies also differed significantly, reflecting the distinct institutional structures of each state.

The US system increasingly relied on co-opting its vast criminal justice infrastructure. With mandatory detention creating an insatiable demand for bed space, the INS entered into thousands of Intergovernmental Service Agreements (IGSAs) to house immigrant detainees in county jails alongside the pre-trial and sentenced criminal population.¹⁴⁴ This was supplemented by the development and expansion of contracts with the private prison industry, which came to dominate significant parts of the immigration detention landscape.¹⁴⁵ The UK, while also turning to private contractors at times, tended to favour the construction of government-run purpose-built Immigration Removal Centres (IRCs), which were administratively separate from the criminal prison system, even if they often resembled it in practice.

The United States invested heavily in creating a technologically integrated surveillance and tracking system. The development of the IDENT biometric database and the Enforcement Integrated Database were central to this effort, designed to create a unified digital record that could follow a non-citizen from their first encounter at the border through to their final removal, linking immigration and criminal justice data as seamlessly as possible.¹⁴⁶ The UK’s systems, such as the Warnings Index, were less technologically sophisticated during this period, functioning more as a flagging system for individuals of concern at ports of entry rather than a comprehensive biometric tracking network. Though the 1993 Asylum and Immigration Appeals Act allowed the immigration services to take fingerprints of asylum seekers and their dependents, echoing the IDENT system in the USA, though some in Britain felt that fingerprinting was treatment that should be reserved for criminals.¹⁴⁷ This was intended to stop people claiming asylum under multiple identities and to fraudulently obtain social security benefits.

The American model was one of deep operational integration between domestic law enforcement (FBI), drug enforcement (DEA), and immigration (INS), particularly through the OCDETF task forces which created a hybrid enforcement

¹⁴⁴ Macías-Rojas, *From Deportation to Prison*, *op. cit.*, 55-56.

¹⁴⁵ Livia Luan, ‘Profiting from Enforcement: The Role of Private Prisons in U.S. Immigration Detention’, *The Online Journal of the Migration Policy Institute*, 2 May 2018, <https://www.migrationpolicy.org/article/profitting-enforcement-role-private-prisons-us-immigration-detention>; Karen Manges Douglas and Rogelio Sáenz, ‘The Criminalization of Immigrants & the Immigration-Industrial Complex’, *Daedalus* 142, no. 3 (2013): 199–227.

¹⁴⁶ Ana Muñoz, ‘Secondary Ensnarement: Surveillance Systems in the Service of Punitive Immigration Enforcement’, *Punishment & Society* 22, no. 4 (2020): 461–82, <https://doi.org/10.1177/1462474519900325>

¹⁴⁷ House of Lords, *Asylum and Immigration Appeals Bill*, vol. 541, debated on Tuesday, 26 January 1993, col. 1162, *Hansard*, <https://hansard.parliament.uk/Lords/1993-01-26/debates/80ace433-8d1f-4954-9809-9bc3f76fc3de/AsylumAndImmigrationAppealsBill>

culture.¹⁴⁸ The British model was more one of liaison and information sharing between distinct entities: immigration officials, local police forces, and the security services (MI5), especially in cases with a perceived national security or terrorist dimension.¹⁴⁹

4.3. Case Studies in Securitisation

Two high-profile cases from the period, one in the United States and one in the United Kingdom, serve to illuminate the practical application of these divergent models of securitisation and the political forces that shaped their outcomes. The case of Orlando Bosch in the US demonstrates how Cold War geopolitics and domestic ethnic lobbying could override the logic of counter-terrorism, while the case of the Khalistan movement in the UK highlights the clash between national security claims and international human rights law.

The Orlando Bosch Case (US)

Orlando Bosch was a Cuban exile militant, a trained paediatrician, and the leader of the Coordination of United Revolutionary Organizations (CORU), an umbrella group described by the FBI as a terrorist organisation.¹⁵⁰ He was implicated in dozens of bombings and assassinations aimed at the Cuban government of Fidel Castro. Most notoriously, US intelligence agencies linked him to the 1976 bombing of Cubana Airlines Flight 455, which exploded in mid-air after departing from Barbados, killing all 73 people on board, including the entire Cuban national youth fencing team.¹⁵¹ After years as a fugitive and a period of incarceration in Venezuela for the airline bombing, Bosch illegally re-entered the United States in 1988 and was taken into custody by the INS for parole violations stemming from a 1968 conviction for firing a bazooka at a Polish freighter in Miami.¹⁵²

The U.S. Department of Justice conducted a thorough review of Bosch’s case, drawing on a substantial body of evidence from the FBI and CIA. In 1989, Associate Attorney General Joe Whitley issued a formal decision concluding that Bosch was a terrorist and a threat to public security, ordering his deportation. The decision was framed in stark, universal terms, stating:

¹⁴⁸ Juliet Stumpf, ‘The Cimmigration Crisis: Immigrants, Crime, and Sovereign Power’, *American University Law Review* 56, no. 2 (2006): 389, <https://doi.org/10.1515/9780804785419-004>

¹⁴⁹ Martin Innes and Michael Levi, ‘Making and Managing Terrorism and Counter-Terrorism: The View from Criminology’, in *The Oxford Handbook of Criminology* (Oxford University Press, 2023), <https://www.oxfordlawtrove.com/display/10.1093/he/9780198860914.001.0001/he-9780198860914-chapter-30>

¹⁵⁰ Ann Louise Bardach, *Cuba Confidential: Love and Vengeance in Miami and Havana*, 1st ed (Random House, 2002), 136.

¹⁵¹ *Bombing of Cuban Jetliner 40 Years Later*, Briefing Book 202, National Security Archive, *George Washington University*, 6 October 2016, <https://nsarchive.gwu.edu/briefing-book/cuba/2016-10-06/bombing-cuban-jetliner-40-years-later>

¹⁵² Bardach, *Cuba Confidential*, *op. cit.*, 183.

The United States cannot tolerate the inherent inhumanity of terrorism as a way of settling disputes. Appeasement of those who would use force will only breed more terrorists. We must look on terrorism as a universal evil, even if it is directed toward those with whom we have no political sympathy.¹⁵³

The decision found that the government’s files contained “a large quantity of documentary information which reflects that... Bosch has personally advocated, encouraged, organized and participated in acts of terrorist violence”.¹⁵⁴ The DOJ concluded that it would be “prejudicial to the public interest for the United States to provide a safe haven for Bosch”.¹⁵⁵ Crucially, the government determined that Bosch remained an active threat, noting, “it is evident that Bosch has not given up his personal and violent battle. He merely says he will not wage his ‘war’ on our soil anymore”.¹⁵⁶

However, the case became a *cause célèbre* within the politically powerful Cuban-American community in South Florida. An intense lobbying campaign was launched to prevent his deportation, championed by prominent politicians including Representative Ileana Ros-Lehtinen and Jeb Bush, the son of then-President George H.W. Bush.¹⁵⁷

The political pressure proved decisive. In a move that directly contradicted the findings of his own Justice Department, President George H.W. Bush’s administration intervened in 1990. Citing the difficulty of finding a country willing to accept him, the administration overruled the deportation order and granted Bosch an administrative parole, allowing him to live freely in Miami.¹⁵⁸

The Bosch case stands as a useful example of the political contingency of the “terrorist” label in US immigration law during the Cold War. The clear and unambiguous findings of the Justice Department, which determined Bosch’s continued detention and exclusion were necessary for the “public interest, safety, or security”, were ultimately subordinated to political imperatives.¹⁵⁹

It revealed a profound hypocrisy at the heart of the emerging securitisation project: while the state was building a vast legal and institutional apparatus to deport “criminal aliens,” powerful political considerations could allow a notorious terrorist to be let into the country. The case demonstrated that the logic of counter-terrorism could be subordinated to the imperatives of anti-communist foreign policy and the demands

¹⁵³ *Decision of the Acting Associate Attorney General in the Matter of Orlando Bosch-Avila*, 23 June 1989, Subject File IM–OA18269, Series: *Subject File, IM, Immigration*, Scanned [070543CU–076287] through [136771 35–143036CU], OA/ID 18269, Box 2, George H. W. Bush Presidential Library (College Station, Texas).

¹⁵⁴ *Ibid.*

¹⁵⁵ *Department of Justice Press Release*, 23 June 1989, Subject File IM–OA18275, Series: *Subject File, IM, Immigration*, Scanned [000152–006311] through [052256–058649], OA/ID 18275, Box 8, George H. W. Bush Presidential Library (College Station, Texas).

¹⁵⁶ *Decision of the Acting Associate Attorney General in the Matter of Orlando Bosch-Avila*.

¹⁵⁷ Bardach, *Cuba Confidential*, *op. cit.*, 201–2.

¹⁵⁸ *Bombing of Cuban Jetliner 40 Years Later*. *op. cit.*

¹⁵⁹ *Decision of the Acting Associate Attorney General in the Matter of Orlando Bosch-Avila*.

of a key domestic political constituency, thereby undermining the coherence and legitimacy of the very security framework the government claimed to be building.

The Khalistan Movement (UK)

In the 1980s, a violent separatist movement seeking to create an independent Sikh state, “Khalistan,” emerged in the Indian state of Punjab.¹⁶⁰ Following a brutal crackdown by the Indian government, including the 1984 storming of the Golden Temple in Amritsar, thousands of Sikh activists fled India, with many seeking political asylum in the United Kingdom.¹⁶¹ The British government, and particularly its domestic security service, MI5, viewed certain factions of the Khalistan movement as a significant terrorist threat. This perception was fuelled by violent incidents abroad, most notably the 1985 bombing of Air India Flight 182 from Canada to India, which killed 329 people and was orchestrated by Sikh extremists based in Canada.¹⁶² This created a security lens through which all Sikh asylum claims from the Punjab were viewed by the Home Office and the security services. Internal government correspondence from the early 1990s confirms this security focus, with a letter from the Home Secretary noting the need to manage the growth of Indian sub-continent terrorism in support of independence movements in the Punjab and in Sri Lanka:

These terrorists will not willingly return to the sub-continent where they would face imprisonment. We can expect them to resist deportation and to take their cases to the European Court of Human Rights, where the process for examining their cases can take up to four years. It would be politically very unattractive to face a number of cases where people have to be imprisoned for long periods in the United Kingdom without charge, while the Strasbourg proceedings drag on.¹⁶³

The Home Office adopted a policy of presumptive denial for many Sikh asylum claims. The government’s position was that the persecution was not State-sanctioned but was part of a regional conflict, and that applicants could not demonstrate a “country-wide” threat, arguing they could find safety by relocating to other parts of India, in a similar decision by the US Board of Immigration Appeals in the Matter of R-.¹⁶⁴ This “internal flight” argument, which posited that individuals could find safety

¹⁶⁰ Gurharpal Singh, *Ethnic Conflict in India: A Case-Study of Punjab* (Palgrave Macmillan UK, 2000), <https://doi.org/10.1057/9780333981771>

¹⁶¹ Darshan Singh Tatla, *The Sikh Diaspora: The Search for Statehood*, Global Diasporas (UCL Press, 1999), 137.

¹⁶² Michael McAuliffe and Peter Hadzipetros, ‘The Bombing of Air India Flight 182’, *CBC News*, 16 March 2005, <https://web.archive.org/web/20050319051759/http://www.cbc.ca/news/background/airindia/index.html>

¹⁶³ *Asylum Bill: Appeals in Conducive Cases*, 27 August 1991, HO 394/963, The National Archives (Kew, United Kingdom).

¹⁶⁴ In *Matter of R-*, 20 I&N Dec. 621 (BIA 1992), the U.S. Board of Immigration Appeals denied asylum to a Sikh applicant from India, establishing key precedents. The Board held that harm from militants during forced recruitment and mistreatment by police during a legitimate investigation did not constitute persecution on account of political opinion. Crucially, it found the applicant did not have a well-founded

by relocating to other parts of India, was a standard line of reasoning. A similar logic was applied to other groups fleeing civil conflicts at the time, with internal briefings stating, for instance, that the “general assessment is that the majority of Tamils are safe in Colombo and the south of Sri Lanka.”¹⁶⁵

The policy related to Sikhs was challenged in a series of legal cases, culminating in the landmark case of *Chahal v. The United Kingdom*, decided by the European Court of Human Rights (ECHR) in 1996.⁹⁶

Karamjit Singh Chahal was a prominent Khalistan activist who had been granted indefinite leave to remain in the UK. In 1990, the Home Secretary served him with a notice of intention to deport under section 3(5)(b) of the Immigration Act 1971 on the grounds that his presence was “not conducive to the public good” due to national security concerns, alleging his involvement in fundraising and planning for terrorist attacks.¹⁶⁶ The government argued that the intelligence evidence against Chahal was too sensitive to be disclosed to him or his lawyers. This approach reflected a desire within parts of government for “a more flexible approach to exclusion on political grounds.”¹⁶⁷

Chahal argued that if deported to India, he faced a real risk of torture and extrajudicial killing by the Punjab police. The case pitted the UK’s sovereign right to exclude non-citizens on national security grounds against the absolute prohibition of torture under Article 3 of the ECHR.¹⁶⁸

In its 1996 judgment, the ECHR delivered a decisive ruling.¹⁶⁹ It found that the UK’s procedure for reviewing deportation orders based on secret intelligence was inadequate and violated due process rights.¹⁷⁰ More importantly, the Court affirmed that the prohibition on torture under Article 3 was absolute. Even if an individual posed a grave threat to national security, a state could not deport them to a country where they faced a real risk of torture or inhuman or degrading treatment.⁹⁷ The *Chahal* ruling was a landmark decision that placed a critical check on the executive’s power to deport individuals on national security grounds. It established that in the UK’s legal framework, unlike in the US at the time, international human rights obligations could trump sovereign claims of national security. While the government continued to use security assessments to fast-track and deny asylum claims, the *Chahal* precedent

fear of persecution as he could have safely relocated within India, thereby failing to demonstrate a country-wide threat.

¹⁶⁵ *Asylum Seekers: Briefing Paper for President Kumaratunga’s Call on the Prime Minister*, 20 March 2001, PREM 49/2264, The National Archives (Kew, United Kingdom).

¹⁶⁶ Beate Rudolf, ‘Chahal v. United Kingdom. No. 70/1995/576/662’, *The American Journal of International Law* 92, no. 1 (1998): 70–74, <https://doi.org/10.2307/2998063>

¹⁶⁷ *Non-Conducive Refusals*, 27 August 1993, HO 394/963: *Legislation, Asylum Bill: Rights of Appeal in “Conducive Cases”*, The National Archives (Kew, United Kingdom).

¹⁶⁸ Rudolf, ‘Chahal v. United Kingdom. No. 70/1995/576/662’. *op. cit.*

¹⁶⁹ *Chahal v. The United Kingdom*, 70/1995/576/662, European Court of Human Rights, 15 November 1996, *Refworld*, <https://www.refworld.org/jurisprudence/caselaw/echr/1996/en/16884>

¹⁷⁰ Rudolf, ‘Chahal v. United Kingdom’.

institutionalised a crucial, albeit contested, legal safeguard within the UK’s securitised asylum system.

The divergent outcomes of the Bosch and Chahal cases are telling. In the US, domestic political lobbying and Cold War foreign policy imperatives proved capable of overriding the very counter-terrorism logic the State was simultaneously constructing. In the UK, the opposite occurred: an external, supra-national legal body, the European Court of Human Rights, imposed a hard limit on the state’s sovereign security claims, establishing that international human rights law could trump national security concerns. These cases encapsulate the different structural constraints at play: the American system was ultimately vulnerable to internal political pressure, while the British system was checked by external legal obligations.

5. Conclusion

The period between 1980 and 2001 marked a decisive and transformative era in the history of immigration control in both the United States and the United Kingdom. It was during these years that an important paradigm shift occurred, moving immigration from the periphery to the centre of the criminal justice and national security state. The civil bureaucrat was replaced by the enforcement agent, and the immigrant was recast as a potential threat. This process of securitisation, driven by a combination of political opportunism, economic anxiety, and media-fuelled moral panic, has left a deep and enduring institutional legacy that continues to shape policy to the present day.

The comparative analysis reveals that while both nations arrived at hardened, enforcement-first immigration regimes, they travelled there by different paths. The United States pursued a model of legal-penal securitisation. It built its system by crafting and expanding a unique legal category, the “aggravated felony,” which served to criminalise an ever-wider range of conduct for non-citizens. This legal project was operationalised by deeply integrating immigration enforcement with the domestic criminal justice system, utilising its prisons, its task forces, and its data systems. The result was the creation of a vast and efficient deportation machine, legitimised by the language of crime control.

The United Kingdom, in contrast, followed a model of administrative-security securitisation. It adapted the pre-existing powers and mindset of its national security apparatus, originally designed to combat a specific internal terrorist threat, and redeployed them in the context of asylum. This approach was legitimised not primarily through legal re-categorisation, but through a powerful discursive campaign that constructed the “bogus asylum seeker” as a folk devil threatening the nation’s security, resources, and identity. The key mechanisms were executive power, administrative discretion, and the cultivation of a public moral panic, constrained only by the external force of European human rights law.

Yet, these divergent paths were responses to the same structural pressures. Both the legal-penal and administrative-security models can be understood as distinct national articulations of the ‘punitive state’ that, as Wacquant argues, necessarily grows to police the populations made precarious by neoliberal economic policy. In this sense, the ‘criminal alien’ and the ‘bogus asylum seeker’ were both essential figures in the political project of governing through crime during an era of neoliberal growth and welfare state retraction.

These divergent pathways produced similar outcomes. In both countries, civil immigration enforcement was transformed into a quasi-criminal function. A permanent security infrastructure, including detention centres, enforcement agencies, surveillance technologies, and international cooperation agreements, was established and became deeply entrenched. Most consequentially, this period inflicted immense human costs. Families were separated, communities were stigmatised and criminalised, and thousands of individuals, many of whom had spent decades building lives in their new countries, were expelled. The rise of the “criminal alien” and the “bogus asylum seeker” were not merely rhetorical shifts. They also had devastating real-world consequences, the echoes of which are still felt in the lives of countless migrants and their families today. The choices made during this formative period created a powerful path dependency, establishing the institutional and ideological foundations for the even more expansive and punitive immigration control regimes that would emerge in the post-9/11 world.

Ultimately, the ‘criminal alien’ and the ‘bogus asylum seeker’ were not just parallel folk devils, they were the necessary products of two distinct, yet convergent, state strategies for managing the social anxieties of a new era, leaving a shared legacy of securitised exclusion.

By the turn of the millennium, the United States and the United Kingdom had fully intertwined immigration with criminal justice and national security. Each system produced its own legal innovations, aggravated felony in the US, terrorism-linked asylum restrictions in the UK, but the comparative trajectory was the same: detention shifted from a regulatory option to a security imperative. This securitising move laid the groundwork for the physical expansion of detention infrastructure, a development explored in the next part of this dissertation.

Part II:

Building Systems of Control

Chapter 4:

Infrastructure of Confinement: Detention Architecture and Institutional Control

1. Introduction: The Carceral Archipelago of the Unwanted

The physical infrastructure of immigration control, including the detention centres, processing hubs, and removal facilities, is more than a mere collection of buildings: it is the physical embodiment of State policy, a tangible expression of a nation's philosophy towards the non-citizen. Between 1979 and 2001, both the United States and the United Kingdom embarked on a project to build and systematise what had previously been a largely *ad hoc* practice of immigration detention. This period witnessed the birth of the modern detention estate, a network of facilities that, in the theoretical language of Michel Foucault, can be understood as a “carceral archipelago.”¹ This archipelago was not a singular, monolithic prison but a dispersed and interconnected system of islands of confinement, each operating with its own logic yet contributing to a broader continuum of control that blurred the distinction between administrative procedure and punishment.² The architecture of these sites was not a neutral backdrop it served as an active instrument of power, designed to discipline, manage, and ultimately remove populations deemed unwanted.³

This chapter argues that while both the United States and the United Kingdom moved to institutionalise immigration detention during this period, they followed divergent infrastructural pathways that reflected their distinct applications of neoliberal ideology, their unique political and legal contexts, and their differing responses to migration crises. The United States, spurred by the perceived emergencies of the Mariel boatlift and Haitian arrivals, pioneered a sprawling, crisis-driven, and rapidly privatized “immigrant-industrial complex”.⁴ In the American model, the sudden creation of a vast physical and corporate infrastructure became a powerful driver of policy, creating a self-perpetuating demand for detainees to fill the thousands of new beds.⁵ The United Kingdom, by contrast, pursued a more cautious, State-led expansion characterised by bureaucratic inertia, fiscal constraint, and infrastructural

¹ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Second Vintage Books edition, trans. Alan Sheridan (Vintage Books, a division of Random House, Inc, 1995), 297.

² Dominique Moran, *Carceral Geography: Spaces and Practices of Incarceration* (Routledge, 2017), 105.

³ Nicholas De Genova, ‘The Deportation Regime: Sovereignty, Space, and the Freedom of Movement’, in *The Deportation Regime*, ed. Nicholas De Genova and Nathalie Peutz (Duke University Press, 2010), <https://doi.org/10.2307/j.ctv120qtc1.5>

⁴ Karen Manges Douglas and Rogelio Sáenz, ‘The Criminalization of Immigrants & the Immigration-Industrial Complex’, *Daedalus* 142, no. 3 (2013): 199–227; Roxanne Lynne Doty and Elizabeth Shannon Wheatley, ‘Private Detention and the Immigration Industrial Complex’, *International Political Sociology* 7, no. 4 (2013): 426–43, <https://doi.org/10.1111/ips.12032>; Earl Smith and Angela Hattery, ‘If We Build It They Will Come: Human Rights Violations and the Prison Industrial Complex’, *Societies Without Borders* 2, no. 2 (2007): 273–88, <https://doi.org/10.1163/187219107X203603>

⁵ Laura I. Appleman, ‘Cashing in on Convicts: Privatization, Punishment, and the People’, *Utah Law Review* 2018, no. 3 (2018): 579–637; Anita Sinha, ‘Arbitrary Detention? The Immigration Detention Bed Quota’, *Duke Journal of Constitutional Law & Public Policy* 12, no. 2 (2017): 77–121.

decay. Its initial failure to build an adequate state-run system created a vacuum that was only filled in the 1990s by the belated adoption of the American privatized model, once the state-centric approach had proven untenable.⁶

The profound difference in the scale of the two systems by the end of this period underscores the significance of these divergent paths. While approximately 85,000 immigrants were detained in 1995, by 2001, US immigration authorities were detaining approximately 204,000 individuals annually, according to data from the Immigration and Naturalization Service (INS).⁷ In contrast, the United Kingdom held a smaller number, with around 1,700 people detained at any one time under Immigration Act powers.⁸ Although annual totals for the UK are not directly comparable, available estimates suggest that the total number detained over the course of a year was in the around 10,000-12,000.⁹ This disparity was not solely the result of varying migration pressures, national scale, or the geographical distinction between island and continent (though these factors must be acknowledged) but also a direct outcome of the architectural and ideological decisions made over the preceding two decades. The American decision to build a massive, flexible, and geographically dispersed network of facilities, whether repurposed military bases, purpose-built centres, or contracted county jails, made mass detention the default policy option. The UK's initial reluctance and subsequent, more centralised expansion created a system that was smaller but, in its own way, equally potent in its exercise of state control.

The very focus on architecture and facilities reframes immigration control from a purely legal or policy-based issue to a geographical and spatial one. The development of the detention estate was a deliberate spatial project designed to render certain populations invisible, isolated, and governable.¹⁰ The choice to build a facility in a remote Texan desert versus adjacent to London's Heathrow Airport was not simply a logistical calculation, it was a political act with important consequences for legal access, community support, and the psychological experience of confinement. This chapter, therefore, analyses detention as a practice of statecraft enacted through geography and design.

⁶ Christine Bacon, *The Evolution of Immigration Detention in the UK: The Involvement of Private Prison Companies*, RSC Working Paper Series, no. RSC Working Paper No. 27 (September 2005): 39; Monish Bhatia and Victoria Canning, 'Misery as Business: How Immigration Detention Became a Cash-Cow in Britain's Borders.', in *Marketisation and Privatisation in Criminal Justice*, ed. Albertson K. et al. (Policy Press, 2020).

⁷ States of Incarceration, *Immigration Detention: Timeline, States of Incarceration*, accessed 14 October 2025, <https://statesofincarceration.org/timeline/immigration-detention>

⁸ Hansard, *House of Commons Debates*, 26 April 2001, vol. 367, col. 355W, *UK Parliament*, <https://hansard.parliament.uk/commons/2001-04-27/debates/e53fe84c-f1b0-4705-813c-e44b726046c9/ImmigrationDetainees>

⁹ U.S. Committee for Refugees, *World Refugee Survey 2001: United Kingdom*, 2001, <https://www.refworld.org/reference/annualreport/uscri/2001/en/24032>

¹⁰ Moran, *Carceral Geography*; Margot Moinester, 'Beyond the Border and Into the Heartland: Spatial Patterning of U.S. Immigration Detention', *Demography* 55, no. 3 (2018): 1147-93, <https://doi.org/10.1007/s13524-018-0679-2>

Although the United States and the United Kingdom developed their detention systems under different institutional logics, with the United States outsourcing to private contractors to build a profitable “immigrant-industrial complex” and the United Kingdom relying on a more *ad hoc*, state-led approach, both countries ultimately reached the same outcome: the rapid expansion of a carceral geography designed to confine increasing numbers of migrants. This parallel demonstrates that different institutional pathways can nonetheless converge on similar architectures of exclusion.

2. The United States, Forging an Immigrant-Industrial Complex

The American immigration detention estate did not emerge from a coherent, long-term plan. Instead, it developed in response to perceived crisis conditions, expanded through improvisation, and ultimately institutionalised through a powerful alliance between the State and a nascent private prison industry. The period from 1980 to 2001 witnessed the transformation of detention from a marginal, *ad hoc* measure into a central pillar of US immigration enforcement.¹¹ This process was characterised by three key developments: a crisis-driven expansion that repurposed military bases before creating permanent facilities, a geographic and architectural strategy of isolation, and the pioneering of a privatized model of confinement that would come to be known as the “immigrant-industrial complex”.¹²

2.1. Crisis-Driven Expansion: From Military Bases to Permanent Facilities

The catalyst for the modern American detention system was the aforementioned twin migration events of 1980: the Mariel boatlift, which brought approximately 125,000 Cubans to Florida in a matter of months, and the simultaneous arrival of thousands of Haitian asylum seekers fleeing the Duvalier regime.¹³ These events overwhelmed the existing, limited capacity of the Immigration and Naturalization Service (INS) and created a powerful political narrative, grounded in genuine strain on immigration institutions, of a nation “losing control” of its borders.¹⁴ This narrative, articulated by officials like Associate Attorney General Rudolph W.

¹¹ ‘Detention Timeline’, *Freedom for Immigrants*, 2018, <https://www.freedomforimmigrants.org/detention-timeline>

¹² Michael Welch, ‘The Role of the Immigration and Naturalization Service in the Prison-Industrial Complex’, *Social Justice* 27, no. 3 (81) (2000): 73–88.

¹³ Monika Gosin, ‘The Mariel Boatlift, Haitian Migration, and the Revelations of the “Black Refugees”’, *Anthurium A Caribbean Studies Journal* 17, no. 2 (2021), <https://doi.org/10.33596/anth.457>

¹⁴ Kristina Shull, *Detention Empire: Reagan’s War on Immigrants and the Seeds of Resistance* (The University of North Carolina Press, 2022), 64.

Giuliani, who declared, “We can never again permit our immigration policy to be set in Havana or any other foreign capital,” provided the primary justification for a new, robust enforcement infrastructure with mass detention at its heart.¹⁵

The immediate response was one of frantic improvisation. The Carter and Reagan administrations conducted a multi-agency search for facilities capable of holding tens of thousands of people, quickly settling on the use of military installations as a policy of mass detention required an expansion of the government’s carceral capacity. Initial searches focused on military facilities with extensive discussion of Fort Chaffee (Arkansas), Fort Allen (Puerto Rico), and the former Glasgow Air Force Base (Montana).¹⁶ Other facilities being considered were Ellington Air Force Base (Houston, Texas), Hamilton Air Force Base (Novato, California), Roanoke Rapids Air Facility (Gaston, North Carolina), Craig Air Force Base (Selma, Alabama), a Department of Labor Facility near South Bend, Indiana.¹⁷ This decision led to the rapid repurposing of bases across the country (see map below), including Fort Chaffee in Arkansas, Fort Indiantown Gap in Pennsylvania, Fort McCoy in Wisconsin, and Fort Allen in Puerto Rico.

¹⁵ *Statement of Rudolph W. Giuliani, Associate Attorney General, Concerning Emergency Powers*, 30 September 1982, Peter J. Rusthoven Files, OA 11413–11416, Box 5, Ronald Reagan Presidential Library (Simi Valley, California).

¹⁶ *Immigration Fact Sheet and Statement – Comments*, Francis Hodsoll (Frank) S.M.: Files, 1981, Series II: *President’s Task Force on Immigration and Refugee Policy*, Box 14, Ronald Reagan Presidential Library (Simi Valley, California).

¹⁷ “*Attachment D: Site Selection*”, c. 1981, Francis Hodsoll (Frank) S.M.: Files, Series II: *President’s Task Force on Immigration and Refugee Policy*, Box 13, Ronald Reagan Presidential Library (Simi Valley, California).

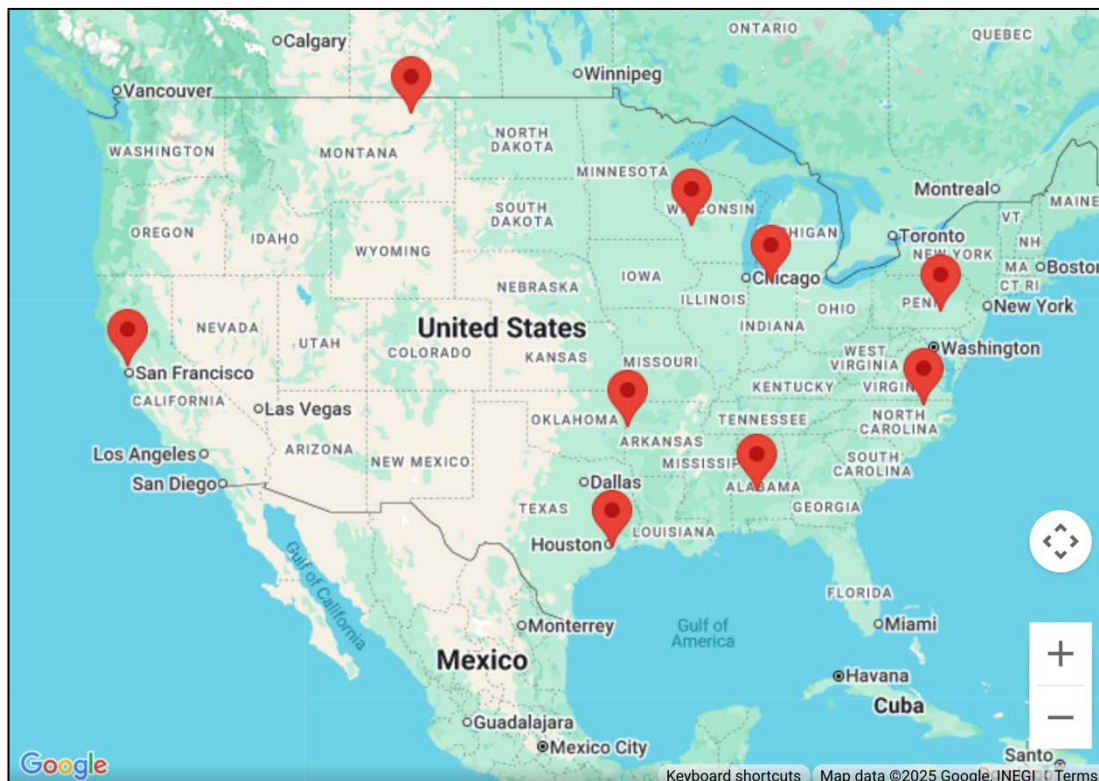


Figure 33. Map of military locations considered in response to the Mariel Boatlift

These sites offered existing infrastructure for housing large populations but were fundamentally unsuited for the long-term confinement of civilians. Detainees were housed in military barracks, often in remote locations that created severe challenges for accessing legal counsel and maintaining family connections.¹⁸ The conditions were frequently harsh, refugees from the Caribbean faced inadequate heating and clothing during the Wisconsin winter at Fort McCoy, while the isolation of all these rural bases systematically severed detainees from the urban centres where established Cuban-American communities and legal aid organisations were located.¹⁹

A search for sites with a total capacity of “10,000 to 20,000 persons” was carried out.²⁰ Specific funding was sought for the construction and operation of these facilities. A 1981 INS budget request sought “\$35 million is for the construction of a

¹⁸ Mark S. Hamm, *The Abandoned Ones: The Imprisonment and Uprising of the Mariel Boat People* (Northeastern University Press, 1995), 84.

¹⁹ Alice Bloch and Liza Schuster, ‘At the Extremes of Exclusion: Deportation, Detention and Dispersal’, *Ethnic and Racial Studies* 28, no. 3 (2005): 491–512, <https://doi.org/10.1080/0141987042000337858>; Félix R. Masud-Piloto, *From Welcomed Exiles to Illegal Immigrants: Cuban Migration to the U.S., 1959 - 1995* (Rowman & Littlefield, 1996).

²⁰ *Memorandum of Decision, President’s Task Force on Immigration and Refugee Policy*, 6 May 1981, Martin Anderson Files, Series I: *Subject File, H Issues (2) – Immigration and Refugee Policy*, Box 19, Ronald Reagan Presidential Library (Simi Valley, California).

permanent Service Processing Center with a capacity to house 2,000 detainees.”²¹ A 1983 document (see table below) lists planned INS construction projects in the Southwest, including detention facilities in Chula Vista, California (\$1,518,000), Otay Mesa, California (\$2,400,000), and El Paso, Texas (\$1,591,000).²²

Immigration and Naturalization Service (FY 1983)		
The following projects include border patrol, port of entry, and detention facilities		
<u>Projects under construction in FY 1983 and 1984</u>		
California	El Cajon	\$800,000
Texas	Eagle Pass	\$1,021,000
<u>Projects planned beyond FY 1984</u>		
Arizona	Ajo	\$1,128,000
	Douglas	\$1,104,000
	Naco	\$486,000
	Sells	\$1,146,000
California	Campo	\$971,000
	Chula Vista	\$1,518,000
	Otay Mesa	\$2,400,000
	San Diego	\$2,500,000
New Mexico	Lordsburg	\$520,000
Texas	El Paso	\$1,591,000
	El Paso	\$132,000
	Pecos	\$774,000
	Van Horn	\$420,000
	Rio Grande City	\$780,000
	Southwest Area	\$2,500,000

The documents show a clear policy of detaining specific sub-populations from the Mariel boatlift, categorised as criminals or mentally ill, who could not be repatriated to Cuba. As of July 1981, “1,800 criminals are incarcerated in the Federal Prison in Atlanta” and “800 anti-socials (emotional and disciplinary problem cases)

²¹ “Overview” of *INS Budget Amendment Request*, c. 1981, Francis Hodsoll (Frank) S.M.: Files, Series II: *President’s Task Force on Immigration and Refugee Policy*, Folder *Immigration and Refugees (General)*, Box 12, Ronald Reagan Presidential Library (Simi Valley, California)

²² “*Immigration and Naturalization Service*”, 1983, D. Edward Wilson Jr.: Files, Folder *Southwest Border Task Force (6 of 8)*, OA 9464–9465, Box 3, Ronald Reagan Presidential Library (Simi Valley, California).

and mentally ill remain at Fort Chaffee, Arkansas.”²³ The policy was to maintain these individuals in “appropriate custodial facilities pending their repatriation to Cuba.”²⁴ A September 1981 Department of Justice paper titled “Immigration Detention Policy” warned that a “crisis point, i.e., apprehensions significantly exceeding available detention space, will be reached by this month.”²⁵ It projected a shortfall of 1,400 beds by October of that year. As the 1986 IRCA failed to stem the entry of immigrants into the US, the undocumented population continued to grow. At the same time, the implementation of detention as a policy enforcement tool, as a system of deterrence and as a mandatory consequence of committing aggravated felonies, meant that by the end of the Reagan Presidency, an average of more than 6,000 immigrants were being detained every day in locations across the country.

While detention data is often sporadic and sometimes contradictory, snapshots show how many people are being detained and where at specific points in time. For example, as of July 22, 1981, there were 1,465 Haitians being detained. A Department of Justice Q&A document provides the following locations and numbers:²⁶

- INS Facilities: Krome North (1,153), Brooklyn (86), Port Isabel (11)
- Federal Prisons: Big Springs, Texas (100), Morgantown, W. Va. (50), Lake Placid, N.Y. (40)
- Contract Facilities: New Orleans (25)

In Miami, which faced the brunt of Caribbean migration, two notable facilities emerged. The Orange Bowl stadium, an iconic sports venue, was hastily converted into a temporary processing centre during the Mariel boatlift, with its parking lots filled with tents and temporary structures (see photo below).

²³ “*Q&A on Immigration Policy*”, 30 July 1981, Department of Justice, Elizabeth Dole: Files, Box 30, Ronald Reagan Presidential Library (Simi Valley, California).

²⁴ “*Cubans and Haitians*” *Policy Papers*, 6 July 1981, Francis Hodsoll (Frank) S.M.: Files, Series II: President’s Task Force on Immigration and Refugee Policy, Box 11, Ronald Reagan Presidential Library (Simi Valley, California).

²⁵ “*Immigration Detention Policy*”, c. September 1981, Francis Hodsoll (Frank) S.M.: Files, Series II: President’s Task Force on Immigration and Refugee Policy, Box 12, Ronald Reagan Presidential Library (Simi Valley, California).

²⁶ “*Q&A on Immigration Policy*”, 30 July 1981.



Figure 34. Photo: Orange Bowl Stadium, converted into a temporary processing centre during the Mariel boatlift.

Source: H. F. Burga, "The Mariel Boatlift and Comprehensive Planning," *Town Planning Review* 92, no. 1 (2021), <https://doi.org/10.1080/02665433.2020.1779793>

The Krome Processing Center, converted from a Project Nike missile base that had been part of Cold War air defences, became one of the most significant detention facilities.²⁷ Initially meant to be temporary, Krome evolved into a permanent detention centre that remained operational for decades, despite repeated criticism for its poor conditions and overcrowding.

The military bases pressed into service as detention centres represented a significant expansion of the INS's capacity:²⁸

- Fort Chaffee, Arkansas, which had previously housed Vietnamese refugees in 1975, was reactivated to hold Cuban detainees. The facility processed over 19,000 Cubans, making it one of the largest detention operations. The base's remote location in western Arkansas created significant challenges for detainees seeking legal representation and maintaining family connections.

²⁷ Carl Lindscoog, *Detain and Punish: Haitian Refugees and the Rise of the World's Largest Immigration Detention System* (2018), 42.

²⁸ Elliott Young, *Forever Prisoners: How the United States Made the World's Largest Immigrant Detention System* (Oxford University Press, 2021), 11.

- Fort Indiantown Gap, Pennsylvania, another former Vietnamese refugee center, was reopened for Cuban detainees. The facility's rural location in central Pennsylvania meant that many detainees were isolated from urban areas with established Cuban-American communities and legal resources.

- Fort McCoy, Wisconsin, transformed from an active military training facility to house thousands of Cuban refugees. The harsh Wisconsin winter posed particular challenges for detainees from the Caribbean, and the facility faced criticism for inadequate heating and winter clothing.

- Perhaps the most striking example of the system's improvisational nature was the use of McNeil Island Federal Penitentiary in Washington state. Over 300 Cuban refugees were sent to this maximum-security prison, mixing immigration detainees with convicted federal prisoners. McNeil Island's isolated location in Puget Sound, accessible only by boat, made it particularly difficult for lawyers and family members to visit detainees. This practice of housing immigration detainees in criminal facilities set a precedent for the criminalisation of immigration detention.

These facilities varied dramatically in their conditions and operations. Military bases like Fort Chaffee and Fort Indiantown Gap had existing infrastructure for housing large populations but were not designed for long-term detention. The conversion of these spaces often resulted in inadequate medical care, limited access to legal services, and poor living conditions. Detainees frequently complained about isolation, cold temperatures (particularly in northern facilities), insufficient food, and lack of access to translators and legal representatives.

The geographic dispersal of these facilities across the country, from Miami to Washington State, also reflected a deliberate strategy to distribute the detained population away from established immigrant communities and legal resources. This pattern of using isolated facilities, often in rural areas, became a standard feature of the US immigration detention system in subsequent decades.

Officials were aware of the possible negative public perception of these facilities.²⁹ The situation was so dire that when a congressional task force visited in 1995 to investigate, INS officials were later found to have deliberately deceived them by temporarily moving detainees out of the facility on buses to hide the true extent of the overcrowding.³⁰ Decisions on the location of detention facilities were also heavily influenced by political considerations.

²⁹ U.S. General Accounting Office, *Immigration Detention: Facilities and Procedures Provide Varied Conditions of Confinement*, GGD-83-68 (Washington, D.C.: U.S. General Accounting Office, July 1983).

Reports from the era paint a grim picture of facilities that were dangerously overcrowded and ill-suited for long-term confinement. The Krome North facility in Miami, which had a design capacity of 524, was holding up to 1,530 Haitians in 1981. A GAO report documented raw sewage overflows, contaminated drinking water, a lack of basic clothing, and inadequate food and medical care.

³⁰ *Alleged Deception of Congress: The Congressional Task Force on Immigration Reform's Fact-Finding Visit to the Miami District of Ins*, Special Report (USDOJ/OIG, 1995), <https://oig.justice.gov/sites/default/files/archive/special/9606/exec.htm>

Detention was presented as a tool to provide political relief to Florida where the impact of the Haitian illegal migration has been concentrated.³¹ Memos from 1981 show the Florida Congressional delegation strongly favouring detention, provided it occurred “only outside of Florida”³² The Carter administration decided to house many of these refugees at Fort Chaffee, a military installation in Arkansas while Bill Clinton was serving his first term as Governor of the State. This federal decision to place the Cuban refugees in his State became a major political liability for Clinton.³³ Arkansas residents grew increasingly frustrated with the situation, particularly after riots broke out at the facility.³⁴ Clinton’s Republican opponent in the 1980 gubernatorial race, Frank D. White, successfully capitalised on this public anger and resentment toward the federal government’s handling of the Cuban refugees. White’s campaign tied Clinton to the unpopular decision, arguing that the governor was weak and had failed to protect Arkansas from federal overreach. This strategy proved effective, White defeated Clinton in the 1980 election, marking the only time in Clinton’s political career that he lost a race as an incumbent.³⁵

An in 1981 it was again seen as a threat to incumbent Governor White of Arkansas if the Fort Chaffee facility remained open, while the political risks of placing detainees in the districts of “Republican friends” was openly discussed.³⁶ Fort Chaffee became a pressure cooker of frustration and despair. Refugees, branded as criminals by the media, faced indefinite waits to find sponsors, hostility from armed local vigilantes and Ku Klux Klan members who demonstrated outside the base, and a lack of communication with authorities. These conditions inevitably boiled over into riots, which saw refugees clash violently with state police, burn barracks, and sustain injuries from gunfire.³⁷ The events at Fort Chaffee demonstrated not only the human cost of the improvised detention policy but also its potential for severe political fallout, reinforcing the administration’s desire for more permanent and controlled solutions.

³¹ “Immigration Detention Policy”, September 1981, Francis Hodsoll (Frank) S.M.: Files, Series II: President’s Task Force on Immigration and Refugee Policy, Box 12, Ronald Reagan Presidential Library (Simi Valley, California).

³² Memorandum for the Attorney General re: Consultations Concerning the Immigration Task Force, 30 June 1981, Martin Anderson Files, Series I: Subject File, H Issues (2) – Immigration and Refugee Policy, Box 19, Ronald Reagan Presidential Library (Simi Valley, California).

³³ Karen De Witt, ‘New Cuban Influx at Fort Chaffee Arouses Hostility’, *The New York Times*, 11 August 1980.

³⁴ Hamm, *The Abandoned Ones*, op.cit., 55.

³⁵ David E. Rosenbaum, ‘G.O.P. Gains Strength in Redistricting By Adding Governors and Legislators; Republicans Add 4 Governorships G.O.P. Spending on State Races’, Archives, *The New York Times*, 6 November 1980, <https://www.nytimes.com/1980/11/06/archives/gop-gains-strength-in-redistricting-by-adding-governors-and.html>

³⁶ “Memorandum for the Vice President”, 29 July 1981, Edwin Meese III (OCP): Files, CFOA 28–29, Box 64 (RR21), Ronald Reagan Presidential Library (Simi Valley, California).

³⁷ ‘Cubans Riot At Center In Arkansas’, *Washington Post*, 2 June 1980, <https://www.washingtonpost.com/archive/politics/1980/06/02/cubans-riot-at-center-in-arkansas/1c050d85-ac99-4e7f-9ac3-d09c67aba3c5/>

This desire led to the transition from temporary military camps to the first generation of permanent, purpose-built facilities, known as Service Processing Centers (SPCs). A key example of this evolution is the Krome Processing Center in Miami-Dade County, Florida.³⁸ Though initially intended as a temporary measure, it quickly became a permanent and notorious fixture of the detention estate. Throughout the 1980s and 1990s, Krome was plagued by chronic overcrowding, poor sanitation, and inadequate medical care.³⁹ It developed a reputation for the abuse of detainees, particularly women, as reports of sexual misconduct by INS officers were common, leading to multiple federal investigations.⁴⁰ The persistent problems and public criticism eventually led to Krome's conversion into an all-male facility in 2000.⁴¹ The history of Krome, from repurposed military site to permanent, troubled institution, mirrors the broader trajectory of the US detention system as it moved from emergency response to institutionalised practice.

2.2. The Geography of Control: Architecture as Isolation

The physical design and placement of US detention facilities were not accidental. Instead, they were integral components of a strategy of control. A defining feature of the expanding detention archipelago was its strategic remoteness.⁴² The INS and, later, private contractors, deliberately sited facilities in isolated rural areas, far from the urban centres where legal aid providers, advocacy groups, and established immigrant communities were concentrated.⁴³ This geography of isolation was a form of disempowerment, designed to impede detainees' access to legal counsel and sever their external support networks, thereby weakening their ability to challenge their detention and deportation.⁴⁴ The use of military bases like Fort Chaffee in western Arkansas or Fort McCoy in rural Wisconsin established this pattern early on. An extreme example of this principle was the use of the McNeil Island Federal

³⁸ Young, *Forever Prisoners*, *op.cit.*, 11.

³⁹ Cheryl Little and Joan Friedland, *Krome's Invisible Prisoners: Cycles of Abuse and Neglect* (Florida Immigrant Advocacy Center, Inc., 1996), <https://aijustice.org/wp-content/uploads/2020/05/KromesInvisiblePrisoners.pdf>

⁴⁰ Little and Friedland, *Krome's Invisible Prisoners*.

⁴¹ 'I'm Not an Inmate. Why Should I Be Treated as One?' *Women Asylum-Seekers Punished for State's Failure to Protect Them*, AMR 51/028/01 (Amnesty International, 2001), 3.

⁴² Alison Mountz, *The Death of Asylum: Hidden Geographies of the Enforcement Archipelago* (University of Minnesota Press, 2020), 129.

⁴³ Emily Ryo, 'Detained: A Study of Immigration Bond Hearings', *Law & Society Review* 50, no. 1 (2016): 117–53.

⁴⁴ Ingrid V. Eagly and Steven Shafer, 'A National Study of Access to Counsel in Immigration Court', *University of Pennsylvania Law Review* 164, no. 1 (2015): 36.

Penitentiary in Washington state.⁴⁵ This practice not only maximised isolation but also set a dangerous precedent by mixing immigration detainees with convicted federal prisoners, physically implementing the criminalisation of migration.

As the system evolved from repurposed bases to purpose-built centres, the architecture itself became more explicitly carceral. The open, “camp-like” layouts of the early military facilities gave way to high-security, prison-like designs featuring cell blocks, secure perimeters with razor wire, and guard towers.⁴⁶ This architectural evolution reflected a philosophical shift from temporarily housing refugees to permanently incarcerating “aliens.” Internal documents from the Reagan administration reveal an awareness of the potential public relations backlash from this punitive turn. Officials were aware of the possible negative public perception of these facilities.⁴⁷ A 1981 task force paper noted a risk of creating an “appearance of ‘concentration camps’ filled largely by blacks”.⁴⁸ Another document described the hastily constructed tent city at Fort Allen in Puerto Rico as having the appearance of “a concentration camp”.⁴⁹ This official anxiety demonstrates that policymakers understood the symbolic power of carceral architecture even as they proceeded to build an infrastructure of control that was functionally and aesthetically indistinguishable from the criminal prison system.

⁴⁵ The site had also been used to detain Chinese immigrants in the late 19th century and early 20th century (See Chapter 1 of Elliott Young’s 2021 book *Forever Prisoners*)

⁴⁶ Maximilian Grönegräs, ‘International Differences in Prison Architecture: What the United States Can Learn from Germany’, *MaRBLE Research Papers* 2 (2019), <https://openjournals.maastrichtuniversity.nl/Marble/article/view/741>

⁴⁷ U.S. General Accounting Office, *Immigration Detention: Facilities and Procedures Provide Varied Conditions of Confinement*, (GGD-83-68). *op. cit.*

Reports from the era paint a grim picture of facilities that were dangerously overcrowded and ill-suited for long-term confinement. The Krome North facility in Miami, which had a design capacity of 524, was holding up to 1,530 Haitians in 1981. A GAO report documented raw sewage overflows, contaminated drinking water, a lack of basic clothing, and inadequate food and medical care.

⁴⁸ *President’s Task Force on Immigration and Refugee Policy Paper*, 21 May 1981, Michael A. Guhin: Files, RAC Boxes 2–6, Box 1, Folder *Immigration and Refugee Policy Review*, Ronald Reagan Presidential Library (Simi Valley, California).

⁴⁹ “Attachment D: Site Selection”, c. 1981, Francis Hodsoll (Frank) S.M.: Files, Series II: *President’s Task Force on Immigration and Refugee Policy*, Box 13, Ronald Reagan Presidential Library (Simi Valley, California).

Full quote: “Fort Allen is a hastily constructed tent city highly compressed... As presently configured, the facility is to all appearances a concentration camp... It must be noted that due to climatic conditions in Puerto Rico, the existing tent city is deteriorating and the hard-backed shells are ridden with termites.”

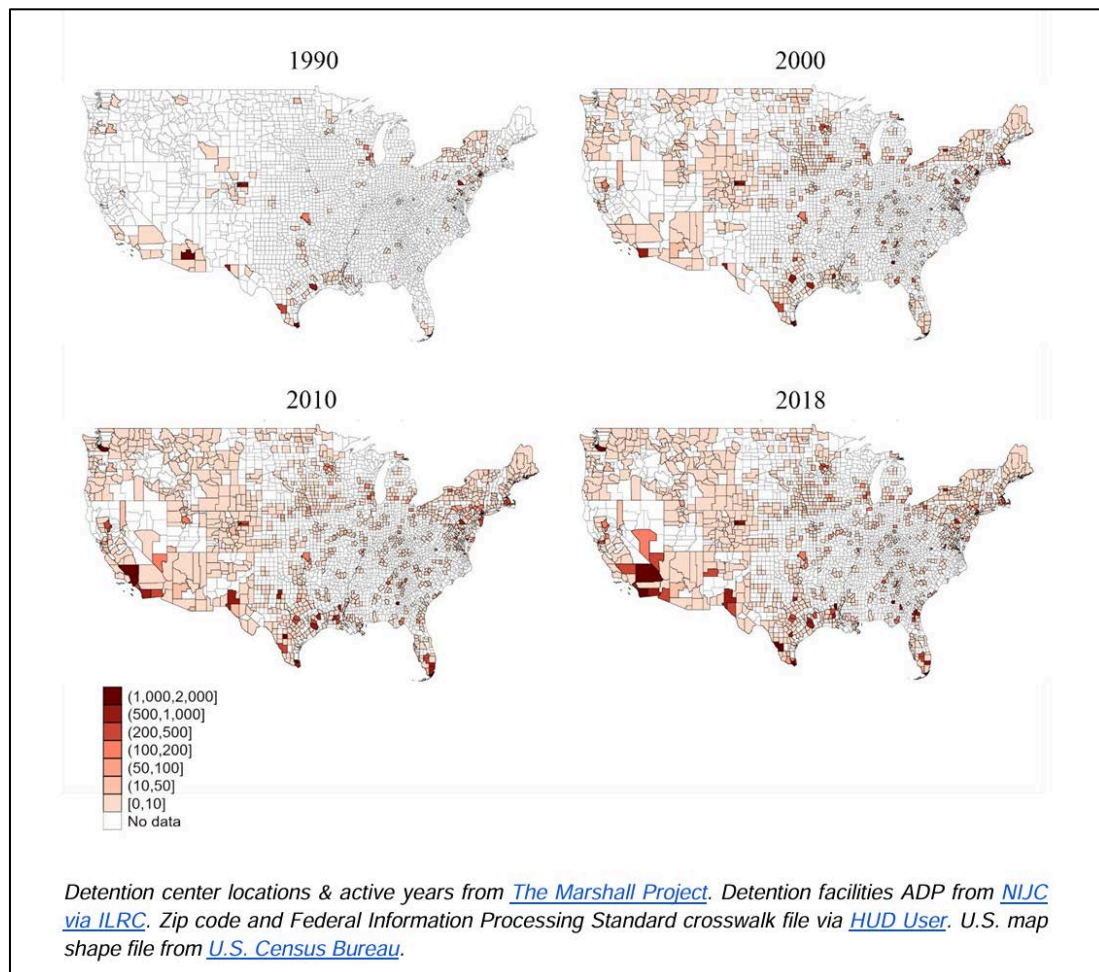


Figure 35. Number of Immigrants in ICE Detention by County (1990-2018)

Source: Immigrant Justice, *Policy Brief: 5 Reasons to End Immigrant Detention*, <https://immigrantjustice.org/research/policy-brief-5-reasons-to-end-immigrant-detention/>

The system was designed to isolate detainees from the outside world, severing crucial support networks. Family visitation was often limited to just a few hours per week, frequently conducted through glass partitions with no physical contact allowed.⁶ Communication by phone was prohibitively expensive, with facilities contracting with companies that charged exorbitant rates for collect calls, often the only option available.⁶

This isolation extended to legal access. Law libraries, when they existed, were often stocked with outdated materials, rendering them useless for navigating the complexities of immigration law.⁶ Accessing legal counsel was a significant hurdle, with many facilities requiring attorneys to provide 48-hour advance notice for visits and compromising privileged communication through inadequate privacy or

monitoring.⁶ For detainees held in remote rural facilities, finding and retaining legal representation was nearly impossible, a deliberate consequence of the system's geography of control.

2.3. Conditions of Confinement: The Lived Reality of Detention

The punitive philosophy underpinning the American system was most evident in the daily lives of those confined within its walls. The conditions were not merely a byproduct of overcrowding or underfunding. They were an integral part of the deterrence strategy, designed to make the experience of detention so harsh that it would discourage others from seeking entry. This reality stands in stark contrast to the administrative label of "civil" detention.

Daily Routines and Punitive Regimes

Life in many US detention centres was highly regimented and mirrored the routines of a medium-security prison. Detainees were often woken as early as 5 AM for mandatory counts.⁵⁰ Movement between housing units was severely restricted, and many facilities required detainees to wear institutional uniforms, stripping them of their personal clothing and a key marker of individual identity.⁵¹ Saleem, a detainee held at the Metropolitan Detention Center in Brooklyn, described the shock of this process: "All of my life, I have never showed my body to anyone. They made me strip completely. They put me in maximum security. That place is for dangerous criminals and I didn't belong there".⁵² This imposition of a prison-like routine on a civil detainee population was a deliberate method of discipline and control. Beyond the daily routine, the conditions of confinement were characterised by systemic deprivation and neglect resulting in preventable suffering and even death (see chapter 5).

Food, Sanitation, and Recreation

Detention facilities routinely subjected individuals to degraded living conditions that exemplified what Foucault termed biopower, the systematic management of bodies and populations through the control of life itself.⁵³ The physical environments were frequently unsanitary and unsafe, with sanitation emerging as a persistent problem across multiple sites.⁵⁴ Inspectors documented the serving of

⁵⁰ Quoted in Voice of Witness, *Stories from Inside Immigrant Detention*, 15 August 2018, <https://voiceofwitness.org/immigrant-detention-stories/>

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ Michel Foucault and François Ewald, *Society Must Be Defended: Lectures at the Collège de France, 1975-76*, trans. David Macey, Lectures at the Collège de France (Penguin, 2008), 243.

⁵⁴ Little and Friedland, *Krome's Invisible Prisoners*, 27. *op. cit.*

mouldy produce and expired meat to detainees, revealing how nutritional provision became a mechanism of institutional control rather than care, an issue that became only worse for those in solitary confinement.⁵⁵

This pattern was particularly pronounced in private detention centres, where daily food budgets became sites of calculated cost-cutting. The systematic provision of poor-quality and spoiled meals represented a form of disciplinary control over detained bodies, managing biological needs not for health or rehabilitation, but for maximising profits.⁵⁶ Such practices embody biopower's darker applications: the deliberate management of life conditions to maintain bare survival while minimising operational costs, effectively reducing individuals to biological units whose sustenance could be optimised according to economic rather than humanitarian principles.⁵⁷

Beyond nutritional deprivation, facilities restricted physical movement and recreation, with some providing as little as one hour of outdoor time daily.⁵⁸ This convergence of poor nutrition, unsanitary conditions, and limited physical activity created a systematic degradation of detainees' physical and mental well-being. The cumulative effect was not merely neglect, but the active production of drained subjects through the voluntary manipulation of basic life conditions which represents a clear example of biopower's capacity to govern through the administration of bodily needs and environmental constraints.

Medical and Mental Health Neglect

One of the most consistent and dangerous failings of the detention system was the provision of medical and mental health care. Numerous reports from the 1990s documented systemic neglect, with detainees facing long delays for appointments, understaffed medical units, and a failure to treat serious conditions.⁵⁹ At Krome, it was common for detainees to wait extended periods for a medical appointment, to be prescribed or injected with drugs such as anti-depressants and anti-psychotic medication without proper surveillance.⁶⁰ Deaths resulting from medical neglect were

⁵⁵ Harvard Immigration and Refugee Clinical Program et al., *"Endless Nightmare" Torture and Inhuman Treatment in Solitary Confinement in U.S. Immigration Detention* (Physicians for Human Rights, 2024).

⁵⁶ 'Cheap Jail and Prison Food Is Making People Sick. It Doesn't Have To.', *Vera Institute of Justice*, 27 February 2024, *VERA*, <https://www.vera.org/news/cheap-jail-and-prison-food-is-making-people-sick-it-doesnt-have-to>

⁵⁷ Tally Amir and Anda Barak-Bianco, 'Food as a Biopower Means of Control: The Use of Food in Asylum Regimes', *American Journal of Law & Medicine* 45, no. 1 (2019): 57–79, <https://doi.org/10.1177/0098858819849992>

⁵⁸ Little and Friedland, *Krome's Invisible Prisoners*, *op.cit.*, 37

⁵⁹ Azadeh N. Shahshahan, 'The Reality of Life Inside Immigration Detention', *American Civil Liberties Union*, 20 November 2012, <https://www.aclu.org/news/immigrants-rights/reality-life-inside-immigration-detention>

⁶⁰ Little and Friedland, *Krome's Invisible Prisoners*, *op.cit.*, 35

documented, including the case of a detainee who collapsed while playing football (soccer) in 1991 and remained unattended for more than 30 minutes.⁶¹ The lack of adequate mental health services was particularly acute. Individuals suffering from conditions like bipolar disorder or PTSD were often placed in solitary confinement as a response to their symptoms, a practice that would lead to a further deterioration of their mental health.⁶²

The Example of the ESMOR facility in Elizabeth, New Jersey

Private contract facilities were seen as a faster, more flexible way to increase detention capacity. According to a report on the ESMOR facility in New Jersey, “a contract facility can be advertised, awarded, and in operation in 18-24 months, whereas a Government facility requires 4-5 years to appropriate, construct, and staff.”⁶³ The use of contract detention facilities is a technique for transferring some detention activities from the government agencies to the private sector. This was seen as “an effective means to maximize the resources available to the INS.”⁶⁴

However, privatisation was often accompanied with higher risks and limited oversight. An official 1995 assessment of the privately-run ESMOR facility found that “detainees were subjected to harassment, verbal abuse, and other degrading actions perpetrated by some ESMOR guards,” noting that “Female detainees reported that they had been issued male underwear on which large question marks had been made in the area of the crotch.”⁶⁵ The ESMOR report is a powerful case study of the perils of privatisation without adequate oversight, with a number of issues and failures highlighted:

- “Based on an overall review, the Assessment Team concludes no real control was exercised over ESMOR guards by their mid-level supervisors.”⁶⁶
- “The Assessment Team concluded that ESMOR commonly failed to provide, and in some instances withheld from INS, access to important information regarding daily operations and problems in the facility.”⁶⁷
- A quote from an INS official within the report reveals ESMOR’s corporate culture: “In that conversation he stated that it was ESMOR’s

⁶¹ *Ibid*, 36.

⁶² M. von Werthern et al., ‘The Impact of Immigration Detention on Mental Health: A Systematic Review’, *BMC Psychiatry* 18, no. 1 (2018): 382, <https://doi.org/10.1186/s12888-018-1945-y>

⁶³ *The Elizabeth, New Jersey Contract Detention Facility Operated by ESMOR Inc. – Interim Report*, 20 July 1995, 2011-10440-F, Box 2 of 10, William J. Clinton Presidential Library (Little Rock, Arkansas).

⁶⁴ *Ibid*.

⁶⁵ Welch, ‘The Role of the Immigration and Naturalization Service in the Prison-Industrial Complex’, 77.

⁶⁶ *The Elizabeth, New Jersey Contract Detention Facility Operated by ESMOR Inc. – Interim Report*.

⁶⁷ *Ibid*.

Corporate policy to keep INS in the dark as much as possible about any problems or incidents which occurred with regard to the facility, i.e., ‘if INS doesn’t ask for it, don’t volunteer or give them anything’”⁶⁸

- “Oversight of the ESMOR operation by the Newark District was minimally effective. Communication between INS and ESMOR was insufficient.”⁶⁹

The report also documented specific and systematic abuses which had led to riots in 1995:

- “The evidence suggests that these incidents were part of a systematic methodology designed by some ESMOR guards as a means to control the general detainee population and to intimidate and discipline obstreperous detainees through the use of corporal punishment.”⁷⁰
- “Detainees cited treatment by ESMOR personnel; frustration over time of detention; lack of communication about their cases, frustration with the hearing process, and deceptive practices by some private attorneys as underlying causes for the disturbance.”⁷¹

Another riot at the Krome Detention Center in 1999 saw 400 detainees protest at the overcrowded institution. The OIG had repeatedly found Krome to be dangerously overcrowded, while a 1996 report from the Florida Immigrant Advocacy Center showed that Krome was a complete disaster on virtually all the standards,⁷² at that for a large part the problems were intentional: “Some of the most serious problems at Krome, such as overcrowding and the dangers to health and safety, are the result of deliberate INS policies to detain people and to limit their release from detention.”⁷³

2.4. The Shift to Privatisation: The Birth of a New Industry

The Reagan administration fundamentally transformed the relationship between government and private enterprise through its commitment to neoliberal principles. Central to this transformation was the administration’s unwavering belief that private sector entities could deliver public services with greater efficiency than

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² U.S. General Accounting Office, *Immigration Detention: Facilities and Procedures Provide Varied Conditions of Confinement*, (GGD-83-68). *op. cit.*

As early as 1981 reports from the painted a grim picture of facilities that were dangerously overcrowded and ill-suited for long-term confinement. The Krome North facility in Miami, which had a design capacity of 524, was holding up to 1,530 Haitians in 1981. A GAO report documented raw sewage overflows, contaminated drinking water, a lack of basic clothing, and inadequate food and medical care.

⁷³ Little and Friedland, *Krome’s Invisible Prisoners*, *op.cit.*, 41.

government agencies.⁷⁴ As David Garland shows, this approach reflects a broader shift in late-modern governance, which saw the state increasingly adopt the language and logic of the market, prioritising efficiency, and outsourcing core functions once considered its sole responsibility.⁷⁵

This ideological conviction drove a comprehensive policy agenda centred on deregulation and privatisation across multiple sectors of the economy, establishing the foundation for what would become one of the most significant shifts in American corrections policy.

The administration's approach to reform was systematically organised through the President's Private Sector Survey on Cost Control, established in 1982 and commonly referred to as the "Grace Commission."⁷⁶ It published its report in 1984 entitled the "President's Private Sector Survey on Cost Control."⁷⁷ The report concluded that vast inefficiency, waste, and mismanagement pervaded the federal government. It proposed thousands of reforms that could save hundreds of billions of dollars without raising taxes or cutting essential services, advocating instead for privatisation, deregulation, and tighter fiscal control. However, despite its ambitious recommendations, most of its proposals were never fully implemented due to political resistance and institutional inertia. While Reagan's privatisation efforts extended beyond high-profile cases such as the Conrail divestiture⁷⁸ and proposed sales of the Postal Service and Amtrak, these initiatives established the ideological foundation for expanding private sector involvement in areas traditionally considered core State functions.⁷⁹

Crime, Politics, and Prison Overcrowding

The neoliberal framework found particularly fertile ground in the realm of corrections, where shifting social and political dynamics of the 1970s had created a crisis ripe for market-based solutions. In what Jonathan Simon terms 'governing through crime,' the Reagan administration extended frameworks for managing crime and security to other domains of social and economic life, a process which helped to

⁷⁴ Jody Freeman and Martha Minow, eds, *Government by Contract: Outsourcing and American Democracy* (Harvard University Press, 2009).

⁷⁵ David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford University Press, 2002).

⁷⁶ Kevin Michels, 'Reagan's State of Grace: J. Peter Grace and the Effort to Cut Reagan's State of Grace: J. Peter Grace and the Effort to Cut Government Expense at the Public's Expense Government Expense at the Public's Expense' (Providence College, 2021), 30.

⁷⁷ Grace Commission, 'President's Private Sector Survey on Cost Control: A Report to the President', 15 January 1984.

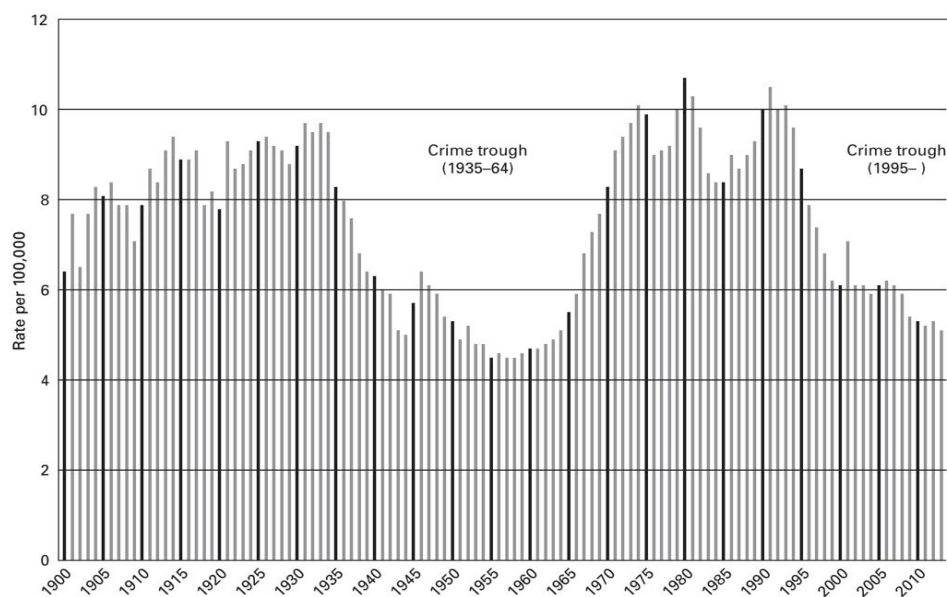
⁷⁸ The United States government sold its 85% interest in the Consolidated Rail Corporation (Conrail) through a public offering. This was the largest initial public offering of a United States industrial company in American history.

⁷⁹ Federal Railroad Administration and U.S. Department of Transportation, *Privatization of Conrail: The Public Offering* (1987), <https://railroads.dot.gov/elibrary/privatization-conrail-public-offering>

normalise market-based solutions for core State functions.⁸⁰

Rising crime rates in urban areas, combined with increased immigration policy violations, generated a powerful “law and order” political backlash in the early 1980s (see tables below).⁸¹ This climate enabled the implementation of increasingly punitive policies, including mandatory minimum sentences, an intensified the War on Drugs (first launched under President Nixon), and enhanced penalties for repeat offenders.⁸²

Figure 1.4 Homicide victimization rates, 1900–2013



Sources: For 1900–1932, see Eckberg, “Estimates of Early Twentieth-Century U.S. Homicide Rates,” 13. For 1933–2013, see U.S. Department of Justice, Bureau of Justice Statistics, “Homicide Rate Trends”; National Center for Health Statistics, *Deaths: Preliminary Data for 2009*, table 2, 43.

Figure 36. Homicide Victimization Rates in the US (1900-2013)

Source: Barry Latzer, *The Rise and Fall of Violent Crime in America*, 1st paperback ed. (New York: Encounter Books, 2017), 19.

⁸⁰ Jonathan Simon, *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*, Studies in Crime and Public Policy (Oxford University Press, 2009).

⁸¹ Thomas O’Toole, ‘Increase in Urban Crime Is Found to Be Nationwide’, *The Washington Post*, 2 March 1982, <https://www.washingtonpost.com/archive/politics/1982/03/02/increase-in-urban-crime-is-found-to-be-nationwide/1bf41051-4569-4063-934f-bc0503db6455/>; Ed Magnuson, ‘The Curse of Violent Crime’, *TIME*, 23 March 1981, <https://time.com/archive/6698615/the-curse-of-violent-crime/>.

⁸² Bethany Groff Dorau, *Private Prison Industry: Overview* (2024), <https://www.ebsco.com/research-starters/law/private-prison-industry-overview>

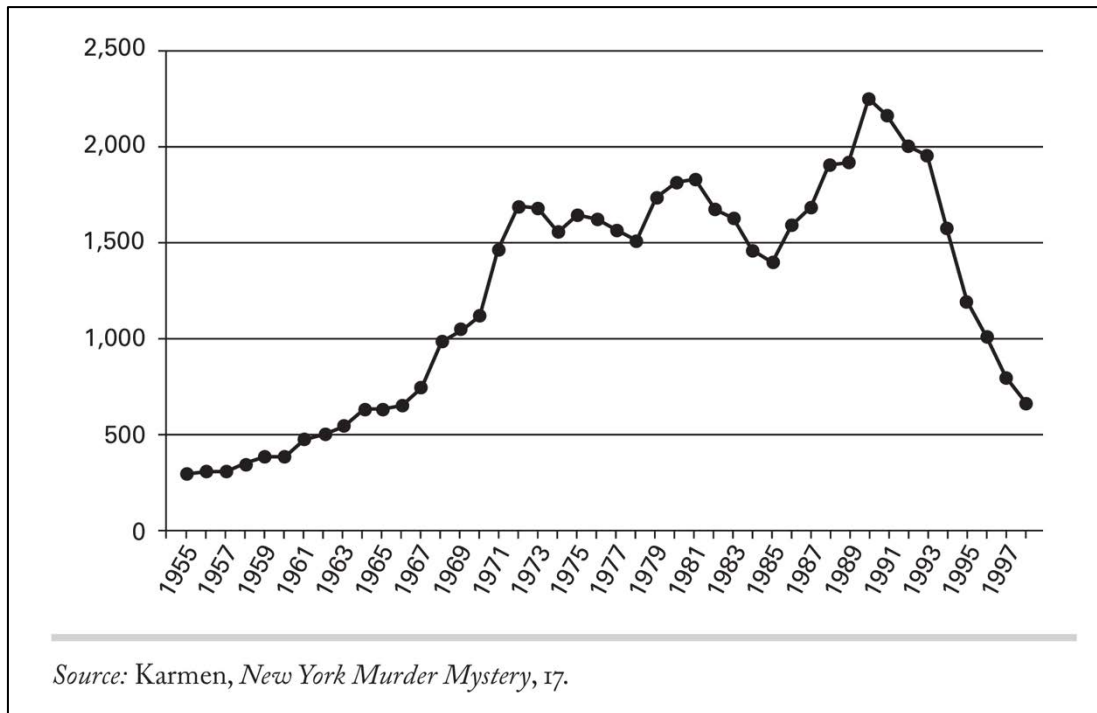


Figure 37. Murders in New York City (1955-1998)

Source: Barry Latzer, *The Rise and Fall of Violent Crime in America*, 1st paperback ed. (New York: Encounter Books, 2017), 172.

The 1980s marked the rise of the Reagan administration's ideological commitment to free markets and the outsourcing of government functions.⁸³ These policies converged to create a dramatic expansion of the incarcerated population, generating a national crisis of prison overcrowding and exponentially increasing costs for corrections departments at all governmental levels. The prison population crisis provided a compelling rationale for Reagan's "small government" philosophy, which positioned privatisation as the optimal solution to wasteful spending and excessive taxation. Corrections systems, facing budgetary constraints and capacity limitations, increasingly turned to private contractors for essential services including transportation, medical care, food services, and laundry operations.

As Marie Gottschalk argues, the neoliberal framework found fertile ground in corrections because a convergence of social and political dynamics had created an intractable crisis. This potent 'law and order' backlash, she explains, fuelled the development of a 'carceral state' that was pathologically dependent on punitive solutions.⁸⁴ Ruth Wilson Gilmore posits that prisons can function as a geographical

⁸³ Michal Laurie Tingle, 'Privatization and the Reagan Administration: Ideology and Application', *Yale Law & Policy Review* 6 (1988): 229.

⁸⁴ Marie Gottschalk, 'Democracy and the Carceral State in America', *The ANNALS of the American Academy of Political and Social Science* 651, no. 1 (2014): 288–95, <https://doi.org/10.1177/0002716213503787>

and economic solution to crises of capital and state capacity.⁸⁵ From this perspective, the overcrowding crisis was not merely a logistical problem but a political-economic opportunity for the state to manage social problems through a new, for-profit model.

The Birth of the Private Prison Industry

A 1988 report from the President's Commission on Privatization explicitly recommended the privatisation of correctional facilities, stating, "Contracting should be regarded as an effective and appropriate form for the administration of prisons and jails at the federal, state, and local levels."⁸⁶ Prior to this, the federal government had already begun exploring private contractors as a cost-saving measure. For instance, as early as 1981, the Glasgow Air Force Base in Montana had been a preferred option as permanent detention centre for Haitians in 1981 in part because a "private contractor involved can do the job for less money than the Federal Government."⁸⁷ The FY 1989 budget included pilot programmes to "lease three new prisons from the private sector and to provide for private management and operation of a minimum security prison."⁸⁸

The First Movers: CCA and Wackenhut

This new market opportunity was seized upon by businesses who saw the potential for profit in incarceration.⁸⁹ This incremental expansion of private involvement culminated in 1983 with the founding of the Corrections Corporation of America (CCA) in Nashville, Tennessee, marking the formal beginning of the modern private prison industry.⁹⁰ The following year CCA established its first privately owned detention facility in Houston, specifically to hold immigration detainees under a federal contract.⁹¹ This was quickly followed by the creation of the Wackenhut

⁸⁵ Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*, American Crossroads 21 (University of California Press, 2007).

⁸⁶ "Privatisation: Better Service at Lower Cost – Status Report to the President and Cabinet," Attachment 1, 23 June 1988, Dan L. Crippen Files, Office of the Chief of Staff, Series I, Box 9, Folder "Privatisation [2 of 2]," Ronald Reagan Presidential Library.

⁸⁷ "Memorandum for the Vice President", 29 July 1981, Edwin Meese III (OCP): Files, CFOA 28–29, Box 64, Ronald Reagan Presidential Library (Simi Valley, California).

⁸⁸ *Ibid.*

⁸⁹ R. Feltz and S. Baksh, 'Business of Detention', in *Beyond Walls and Cages: Prisons, Borders and Global Crisis*, ed. J. M. Loyd et al. (Univ. of Georgia Press, 2012).

⁹⁰ Madison Pauly, 'A Brief History of America's Corporate-Run Prison Industry', Criminal Justice, *Mother Jones*, August 2016, <https://www.motherjones.com/politics/2016/06/history-of-americas-private-prison-industry-timeline/>

⁹¹ Livia Luan, 'Profiting from Enforcement: The Role of Private Prisons in U.S. Immigration Detention', *The Online Journal of the Migration Policy Institute*, 2 May 2018, <https://www.migrationpolicy.org/article/profitting-enforcement-role-private-prisons-us-immigration-detention>

Corporation (now GEO Group) in 1984, which also entered the detention market.⁹² These companies were not passive recipients of government contracts but actively encouraged the government to expand the use of detention as a policy tool, thereby creating more demand for their services.⁹³

The transition from outsourcing a small number of services to full prison management occurred gradually throughout the 1980s. Private enterprises initially secured contracts for transitional facilities, halfway houses, work-release programmes, juvenile facilities, and immigrant detention centres, establishing precedents that would eventually enable comprehensive prison management contracts.⁹⁴

CCA was established by Thomas W. Beasley, a lawyer and businessman who also served as chair of the Tennessee Republican Party. Beasley and his cofounders identified an entrepreneurial opportunity to address substandard conditions in overcrowded government facilities while generating profit through efficient private management. Reflecting the era's business-oriented approach to previously public functions, Beasley famously declared in 1988 that prisons could be marketed "like you were selling cars, or real estate, or hamburgers."⁹⁵

Market Expansion and Competitive Growth

CCA's business model proved immediately viable. The company launched operations through a joint venture with the Federal Bureau of Prisons and the Immigration and Naturalization Service, opening its first facility in a converted Texas motel in January 1984. By the end of that year, CCA had secured its first municipal contract managing jails in Hamilton County, Tennessee.⁹⁶ Although the company's ambitious 1985 proposal to assume control of Tennessee's entire prison system failed due to opposition from unions and public employee organisations, this setback did not

⁹² Richard F. Culp, 'The Rise and Stall of Prison Privatization: An Integration of Policy Analysis Perspectives', *Criminal Justice Policy Review* 16, no. 4 (2005): 412–42, <https://doi.org/10.1177/0887403405275837>

⁹³ Luan, 'Profiting from Enforcement'.

Luan shows that between 2002 and 2010, the three biggest private prison companies dramatically expanded their state-level political contributions, growing from approximately \$850,000 to over \$2 million across five electoral cycles. At the federal level, CoreCivic's political donations through PACs and employee contributions surged from a mere \$6,000 in 1990 to around \$249,000 by 2016, based on data from the Center for Responsive Politics. GEO Group became an even more significant federal contributor, with donations jumping from roughly \$139,000 in 2004 to over \$1.2 million in 2016. The company also substantially increased its congressional lobbying expenditures, rising from \$120,000 in 2004 to \$1 million in 2016. According to Grassroots Leadership's analysis, CoreCivic allocated \$10.6 million to immigration-related lobbying efforts from 2008 to 2014, with nearly \$9.8 million of that amount specifically targeting members of the House Appropriations Committee's Homeland Security Subcommittee, the body responsible for immigration detention funding decisions.

⁹⁴ Dorau, *Private Prison Industry*. *op.cit.*

⁹⁵ Pauly, 'A Brief History of America's Corporate-Run Prison Industry'. *op.cit.*

⁹⁶ Donna Selman and Paul Leighton, *Punishment for Sale: Private Prisons, Big Business, and the Incarceration Binge*, Issues in Crime & Justice (Rowman & Littlefield Publishers, 2010), 44.

impede the broader industry's expansion.⁹⁷

The private corrections market rapidly attracted additional competitors, with US Corrections Corporation securing the first state contract in Kentucky in 1986 (later acquired by CCA in 1998).⁹⁸ Other major players, including Wackenhut Corrections (now GEO Group) and Management and Training Corporation, entered this emerging market, establishing the competitive foundation for subsequent industry growth.

The Private Prison Boom

By the early 1990s, private corrections had entered a period of extraordinary expansion. CCA's transformation into a publicly traded company in 1986 facilitated dramatic revenue growth, from \$14 million in 1986 to \$120 million by 1994.⁹⁹ Wackenhut experienced similarly remarkable growth, with revenues rising from \$19 million in 1989 to \$84 million by 1994.¹⁰⁰ According to a 2001 Institute on Taxation and Economic Policy study, privately managed adult corrections facilities expanded from 3,000 beds in 1987 to 20,000 beds by 1992.¹⁰¹ That included all types of carceral institutions, including prisons and immigration detention centres. This private sector expansion occurred within the context of an unprecedented overall increase in incarceration rates. The total American prison population at federal, state, and local levels tripled from approximately 500,000 in 1980 to more than 1.5 million by 1995.¹⁰²

The Reagan era represented a critical ideological turning point that normalised market-driven approaches to security and corrections provision. The administration's policies and discourse established a framework where profit motives were viewed not merely as acceptable alternatives to government provision, but as potentially generating superior systems for delivering security-related services.¹⁰³ This shift created precedents that would facilitate the substantial expansion of private military contractors, security services, and corrections companies in subsequent decades, fundamentally altering the landscape of American criminal justice and security provision.¹⁰⁴

Privatised Immigration Detention

Critically, the very genesis of the modern private prison industry is inextricably linked to immigration control. This connection is not incidental; it reveals how the

⁹⁷ *Ibid.*, 96.

⁹⁸ *Ibid.*, 47.

⁹⁹ Dorau, *Private Prison Industry*.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² Alfred Blumstein and Allen J. Beck, 'Population Growth in U.S. Prisons, 1980-1996', *Crime and Justice* 26 (January 1999): 17-61, <https://doi.org/10.1086/449294>

¹⁰³ Selman and Leighton, *Punishment for Sale. op.cit.*

¹⁰⁴ Freeman and Minow, *Government by Contract. op.cit.*

state's power to incarcerate non-citizens became a key site for neoliberal experimentation. As Jacqueline Stevens argues, the 'de-nationalisation' of people, that is treating them as bodies to be managed outside the protections of citizenship, is a core feature of neoliberal governance.¹⁰⁵ CCA's first federal contract, awarded in late 1983, was not for a criminal prison but for an immigration detention facility in Houston, Texas. The company initially housed detainees in a converted motel it owned while its first purpose-built facility was constructed.¹⁰⁶ This seminal contract marked the birth of a powerful new industry whose business model depended on the state's power to incarcerate non-citizens.

The Reagan administration's "Mass Immigration Emergency Plan," formulated in 1983, created ideal conditions for this new industry by requiring that 10,000 immigration detention beds be located and ready for use at any given time. The administration actively sought to create new legal authorities to enable a large-scale detention programme with minimal judicial interference. This included Emergency Powers¹⁰⁷ that were never implemented.¹⁰⁸ But even without those powers, the government began to expand its detention capacity.

This policy, designed to prevent a repeat of the logistical chaos of the Mariel boatlift, effectively created a guaranteed, government-funded market for private detention beds.¹⁰⁹ The rapid, crisis-driven creation of this vast physical and privatized infrastructure established a powerful path dependency that would shape US immigration policy for decades. The existence of the infrastructure itself, including the thousands of beds and the corporate contracts to manage them, created a powerful bureaucratic and economic incentive to favour detention over other policy options like

¹⁰⁵ Jacqueline Stevens, *States Without Nations: Citizenship for Mortals*, New Directions in Critical Theory (Columbia University Press, 2010).

¹⁰⁶ Douglas C. McDonald, 'Public Imprisonment by Private Means: The Re-Emergence of Private Prisons and Jails in the United States, the United Kingdom, and Australia', *The British Journal of Criminology* 34 (1994): 30.

¹⁰⁷ This legislation would have granted the President power to declare an "immigration emergency" and authorise federal agencies to establish "holding centers." The proposed bill would have given the government broad detention powers and was specifically intended to "permit indefinite detention of an alien found to be excludable if no country is willing to accept him, such as occurred in the Cuban boatlift". A crucial element of the proposed emergency powers was to insulate detention decisions from the courts.

¹⁰⁸ A 1982 analysis of the bill specified that the "Attorney General's decisions under this subsection as to whether or where an alien should be detained are not subject to judicial review". The only legal recourse available would be a habeas corpus review to determine if the individual fell into the category of aliens subject to detention. To prevent backlogs that would fill detention centres, the administration sought to "reform and expedite exclusion proceedings." This included proposals for summary exclusion of individuals arriving without documents and limiting administrative and judicial appeals. The existing system was described as "overburdened" and "cumbersome," with the backlog of cases preventing "meritorious cases from being heard in a timely fashion".

¹⁰⁹ *Criminal: How Lockup Quotas and 'Low-Crime Taxes' Guarantee Profits for Private Prison Corporations* (In The Public Interest, 2013), Office of Justice Programs, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/criminal-how-lockup-quotas-and-low-crime-taxes-guarantee-profits>

release or community supervision. Policy began to serve the needs of the infrastructure, rather than the other way around. This dynamic helps explain the growth in detention numbers in the subsequent years, a growth fuelled not just by migration flows but by the logic of a system built to be filled.

This new political and economic architecture, founded on contracts and profit motives, would in turn shape the physical architecture of detention itself, prioritising cost-efficiency and scalability in the design and management of carceral spaces.

Key US Immigration Detention Facilities Established or Utilised, 1980-1995						
<u>Facility Name</u>	<u>Location</u>	<u>Year Opened/Utilized</u>	<u>Type</u>	<u>Initial Capacity</u>	<u>Management</u>	<u>Notes</u>
Fort Chaffee	Arkansas	1980	Military Base	19,000+	US Military/INS	Site of major riots in 1980 due to poor conditions and indefinite detention.
Fort Indiantown Gap	Pennsylvania	1980	Military Base	Thousands	US Military/INS	Reopened to house Cuban detainees. Previously used for Vietnamese refugees.
Fort McCoy	Wisconsin	1980	Military Base	Thousands	US Military/INS	Housed Cuban refugees in harsh winter conditions.
Fort Allen	Puerto Rico	1981	Military Base	N/A	US Military/INS	Opened to detain Haitians. Described internally as resembling a “concentration camp.”
Krome Processing Center	Miami, Florida	1980	Service Processing Center (Repurposed Missile Base)	400 (expanded to 600+)	INS	Notorious for overcrowding, abuse. Became all-male facility in 2000.
Houston Contract Detention Facility	Houston, Texas	1984	Private Facility	N/A	CCA	First-ever federal contract for a private prison company. Initially housed in a motel.
Port Isabel Service Processing Center	Port Isabel, Texas	1985	Service Processing Center	N/A	INS	One of the first purpose-built permanent facilities.
Laredo Processing Center	Laredo, Texas	1985	Private Facility	N/A	CCA	CCA’s second facility, first to detain infants and children.
Aurora Processing Center	Aurora, Colorado	1987	Private Facility	N/A	Wackenhut (GEO Group)	First federal contract for Wackenhut/GEO Group.
Varick Street Detention Facility	New York, NY	c. 1990	County Jail Contract	N/A	INS/NYC Dept. of Correction	Urban jail setting. site of mental health crises and suicide attempts.

3. The United Kingdom, A State-Led Infrastructure of Decay and Delay

3.1. The UK's Nascent, State-Led Infrastructure

The development of the modern detention estate in the UK was starkly different from that of the US (see map below). The genesis of the United Kingdom's modern immigration detention estate can be traced directly to the Immigration Appeals Act 1969 which created a formal right of appeal for individuals facing deportation or refusal of entry.¹¹⁰ While expanding migrants' legal recourse, this Act simultaneously created a logistical challenge for the Home Office: where to house individuals during the newly extended appeals process? Prior to this, the system was largely *ad hoc*, with individuals held under Immigration Act powers being accommodated either within the prison system or in a very limited number of rooms at major ports of entry. For instance, the 'detention suite' in the Queen's Building at Heathrow Airport could hold a maximum of 15 people for no more than five days.¹¹¹

Files from the Home Office, Foreign and Commonwealth Office, and Ministry of Public Building and Works from the 1980s reveal a UK immigration detention estate under significant strain, characterised by a reliance on inadequate and temporary facilities, ambitious but ultimately failed expansion plans, and a persistent tension between cost, security, and humanitarian concerns. Documents from the National Archives paint a picture of a system grappling with decaying infrastructure and bureaucratic inertia, where the desire to strengthen immigration control was often hampered by financial constraints and inter-departmental friction. Despite Margaret Thatcher's neoliberal, pro-market and pro-privatisation government, the UK did not use privatisation in the same manner as the USA. It did, however, serve as an important contributor to the government-led British immigration detention system.

¹¹⁰ Vaughan Bevan, *The Development of British Immigration Law* (Croom Helm, 1986), 303.

¹¹¹ Mary Bosworth, *Inside Immigration Detention* (Oxford University Press, 2014), 36.

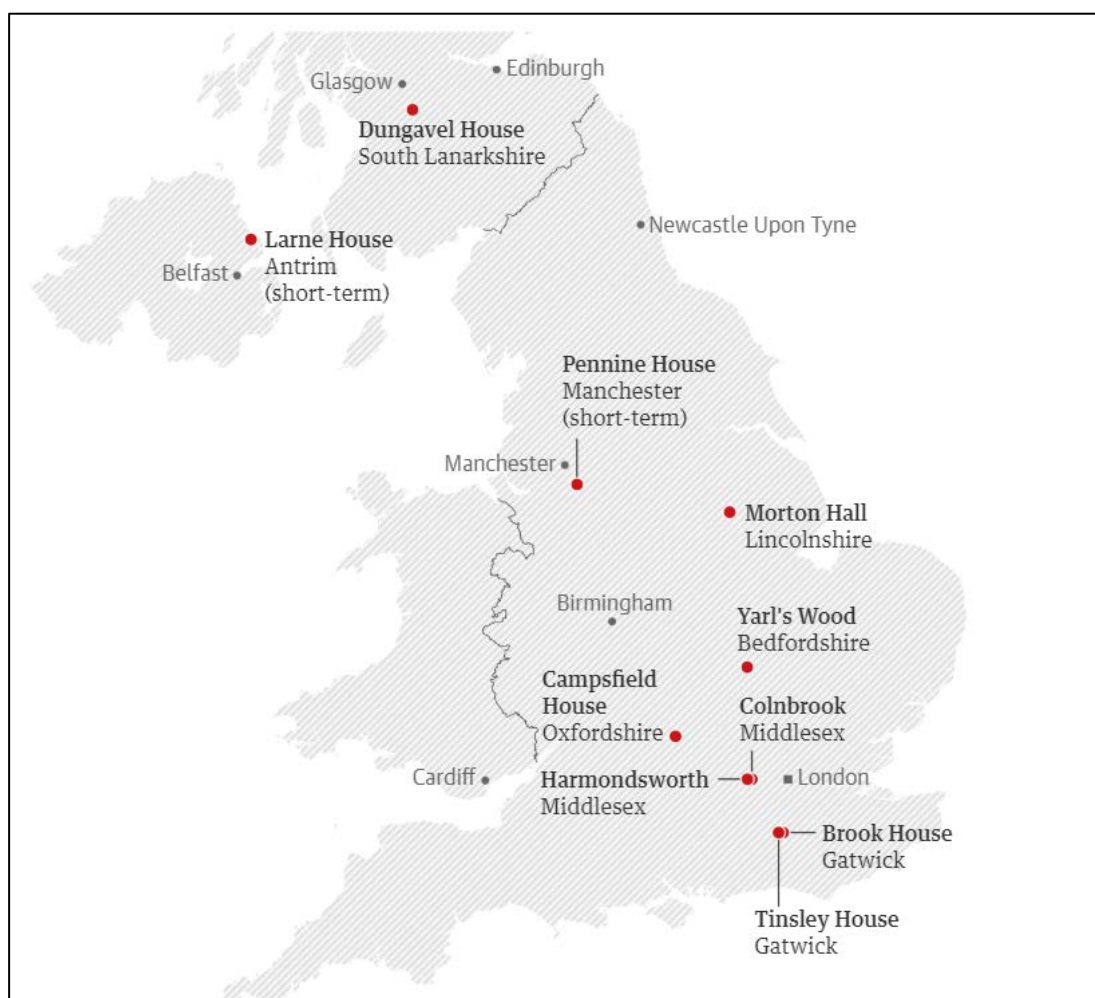


Figure 38. Some of the Detention Centre Locations Used in the UK

Source: *End Deportations Belfast*, WordPress, accessed January 2024, <https://enddeportationsbelfast.wordpress.com/>

3.2. A Detention Estate in a State of Disrepair

Recognising that the 1969 Act would significantly strain existing capacity, the government moved to establish dedicated facilities. In early 1970, the Harmondsworth detention unit was opened. In the same year Harmondsworth opened, a facility with 18 beds was established at Dover Castle, which operated alongside an immigration court until its closure in the late 1980s, though there is little available documentation about the centre.

In the early 1980s, the UK's dedicated detention estate was minuscule and in a state of advanced decay. The primary facilities were legacies of an earlier, smaller-scale immigration system. The general conditions of the few immigration detention facilities in use during the 1980s were considered poor and in need of serious upgrades

or replacement. The primary location for immigration detention was situated at Gatwick Airport in what was known as “The Beehive,” the airport’s original terminal building, converted to a small detention centre in 1974.¹¹² Two other temporary locations were also used at the time, both near Heathrow Airport in London, Heathrow’s Queen’s Building and Harmondsworth Detention Centre. Those who could not be accommodated were placed in prisons, police cells, or hospitals, or were granted temporary admission into the community.

Heathrow’s Queen’s Building was the subject of “severe criticism” for its “cramped and run down” conditions.¹¹³ A 1985 Home Affairs Committee report described it as “unsatisfactory,” noting its “small and depressing day room and the absence of natural light.”¹¹⁴ Harmondsworth Detention Centre was often described as having a more “relaxed regime,” though the physical state of Harmondsworth was considered a major concern.¹¹⁵ A 1983 PSA report described its war-era buildings as “crudely adapted” and noted that maintenance had “fallen so far below standard.”¹¹⁶ One memo discussing renovations ultimately decided they would be insufficient, as it was seen as a waste of money to repair fundamentally unsuitable buildings:

The existing buildings have been crudely adapted for their present usage and their layout/design precludes suitable modification. A maintenance expenditure of about £75,000 would be necessary to bring them up to normal maintenance standard, but since they would then still be unsuitable for their task this expenditure is thought unwarranted.¹¹⁷

The centre’s low security was a known issue, with one official noting that in 1984, “Twenty-four persons absconded from Harmondsworth...the highest number for several years”¹¹⁸ By 1990, officials acknowledged that the “main Centre has come to the end of its natural life”¹¹⁹

¹¹² Samuel Malby, ‘From Borders to Cells: The Evolution of British Immigration Detention, 1905-1970’, *Mémoire(s), Identité(s), Marginalité(s) Dans Le Monde Occidental Contemporain. Cahiers Du MIMMOC*, no. 31 (May 2025): 31, <https://doi.org/10.4000/1406t>

¹¹³ *Sixth Report from the Home Affairs Committee*, 1985, HO 394/736/1, File *Accommodation/Detention*, The National Archives (Kew, United Kingdom).

Full quote: “We found the Queens Building accommodation to be unsatisfactory, though not as scandalous as some accounts implied. The two worst aspects are the small and depressing day room and the absence of natural light, but the accommodation is generally cramped and run down.”

¹¹⁴ *Sixth Report from the Home Affairs Committee*

¹¹⁵ *Harmondsworth Detention Centre Memo*, 21 April 1983, HO 355/55, Folder: *Submission of Deportation Cases in a Schedule*, The National Archives (Kew, United Kingdom).

¹¹⁶ *Report from the District Works Officer, West Drayton*, 6 June 1983, HO 394/476, Folder *Immigration Act 1971, Amendment of the 1912, Immigration (Places of Detention), Direction*, The National Archives (Kew, United Kingdom).

¹¹⁷ *Memo from A. S. D. Armishaw (District Works Officer, PSA) to Mr D. R. Russell-Croucher (Area Officer, Hounslow, PSA)*, 6 June 1983, HO 394/475, Folder *Redevelopment of Harmondsworth Detention Centre*, The National Archives (Kew, United Kingdom).

¹¹⁸ “*Detention Costs: Queen’s Building, Heathrow*”, 12 March 1985, HO 394/736, The National Archives (Kew, United Kingdom).

¹¹⁹ *Harmondsworth Detention Centre: Establishment of Harmondsworth Visiting Committee*, 12 June 1990, HO 394/913, Folder *Detention, Prisons, Detention Centre Harmondsworth Report by H.M. Chief Inspector of Prisons*, The National Archives (Kew, United Kingdom).

In theory these facilities were being used as “temporary” holding facilities, but conditions were often criticised as “unsatisfactory,” overcrowded, and at times dangerous.¹²⁰ A 1981 fire inspectorate report about the Beehive noted the “risk of fire spreading quickly” and the presence of “foamed plastic mattresses which can easily be ignited.”¹²¹ Despite an official view in 1982 that the accommodation was “adequate for present purposes,”¹²² officials acknowledged, as early as 1975 that they had been “making do with unsatisfactory temporary accommodation for far too long.”¹²³

The concentration of detention spaces such as Harmondsworth and the Queen’s Building around Heathrow Airport was no accident. It marked the early formation of what Heike Drotbohm and Ines Hasselberg would later term a ‘deportation corridor’, a series of interconnected sites designed to facilitate the removal of unwanted individuals.¹²⁴ My archival research demonstrates that in the 1980s, this corridor was not a well-oiled machine but a crumbling and improvised set of spaces. The government’s failure to maintain or expand these key nodes, as evidenced by abandoned plans for a new facility at Gatwick, created bottlenecks that paralysed the very system of control they were meant to enable. A letter from the Home Office, which acknowledged overcrowding at the Beehive and the need for a new location at Gatwick, shows that internal frustration with the “infrastructural failure” was present as early as 1975 and was explicitly linked to the political sensitivity of detaining non-criminals in such conditions:

The fact is, we have been making do with unsatisfactory temporary accommodation for far too long. The numerous occasions on which the accommodation has been overcrowded or we have had to resort to housing persons in private hotels at public expense are legion... It is attended by attendant political feeling about the conditions in which persons who are not criminals have to be detained.”¹²⁵

The bizarre use of the *MV Earl William* (explained later in this chapter) can therefore be understood as a desperate spatial fix, a chaotic attempt to create a new,

¹²⁰ Letter from R. E. Parker (Home Office Fire Service Inspectorate) to J. P. Marchant (PSA), 13 January 1981, CM 18/18, Folder Gatwick – Permanent, Detention Accommodation, Home Office Accommodation, Works Services, The National Archives (Kew, United Kingdom).

¹²¹ *Ibid.*

Full quote: “The risk of fire spreading quickly is also quite high due to the lack of any fire separation within the suite and between the suite and the remainder of the building... The safety of the occupants rests very heavily on the supervision exercised by the security staff and their ability to raise the alarm and evacuate the occupants without undue delay.”

¹²² Letter from J. F. Rogers (Home Office) to D. Vine (PSA), 11 June 1982, CM 18/18, Folder Gatwick – Permanent, Detention Accommodation, Home Office Accommodation, Works Services, The National Archives (Kew, United Kingdom).

¹²³ Letter from F. L. Shingleton (Home Office) to L. S. Vanhouse (PSA), 5 March 1975, CM 18/18, Folder Gatwick – Permanent, Detention Accommodation, Home Office Accommodation, Works Services, The National Archives (Kew, United Kingdom).

¹²⁴ Heike Drotbohm and Ines Hasselberg, ‘Deportation, Anxiety, Justice: New Ethnographic Perspectives’, *Journal of Ethnic and Migration Studies* 41, no. 4 (2015): 551–62, <https://doi.org/10.1080/1369183X.2014.957171>

¹²⁵ Letter from F. L. Shingleton (Home Office) to L. S. Vanhouse (PSA). *op. cit.*

isolated node in this failing geography of control.

Plans to replace the inadequate Beehive at Gatwick and to rebuild Harmondsworth were conceived as necessary solutions but became emblematic of a system paralysed by its own bureaucracy. For over a decade, the Home Office pursued the construction of a purpose-built unit at Gatwick, but the project was plagued by a succession of difficulties, from identifying a suitable site to navigating complex funding arrangements. By 1982, the Home Office had formally abandoned the new build, citing high costs and concluding the existing Beehive was sufficient, a stark reversal that prioritised fiscal restraint over the acknowledged need for safe and suitable facilities. However, those requirements increased again as the number of asylum applications increased in the 1990s.

A similar narrative unfolded at Harmondsworth. A 1980 plan to rebuild the centre to a capacity of 200 was accepted by the government, partly to relieve pressure on the prison system. However, the project was beset by escalating costs and by 1982, this project was also scrapped, with the official justification being a temporary decline in detainee numbers, which made the larger centre seem unnecessary “in present circumstances”.¹²⁶ Financial considerations were paramount, frequently leading to the delay or cancellation of essential projects.

While the legal powers for detention in the United Kingdom exceptionally broad, the physical detention estate itself grew much more slowly and remained firmly under State control during the 1980s. In the post-war decades, the small numbers of individuals detained prior to deportation were typically held in local police stations. The country’s first dedicated immigration detention facility, the Harmondsworth Detention Unit near Heathrow Airport, had been opened in 1970, chosen for its suitability for long-term detainment.¹²⁷ Throughout the 1980s, the total number of detainees in the UK remained “relatively low” compared to the mass detentions seen in the US, though sources indicate that the numbers began to increase towards the end of the decade and into the 1990s. But even by 1993 the UK had only 250 places for immigrant detainees.¹²⁸ This chapter argues, however, that these raw numbers belie the system’s significance. It was the State’s failure to manage even this small-scale system characterised by infrastructural decay and bureaucratic inertia that created the political justification for the large-scale, privatised expansion that followed.

By the turn of the decade, the immigration detention system was characterised by a fundamental tension between ambitious planning and practical limitations. A narrative running through the government documents of this period reveals the prolonged and ultimately fruitless effort to build new, permanent detention facilities, particularly at Gatwick and Harmondsworth. These projects, conceived as solutions to

¹²⁶ *Written Answers*, 22 July 1982, HO 355/55, Folder *Heathrow Immigration Centres at Harmondsworth*, The National Archives (Kew, United Kingdom).

¹²⁷ Bosworth, *Inside Immigration Detention*, *op.cit.*, 22.

¹²⁸ Bhatia and Canning, ‘Misery as Business’, *op.cit.*, 4.

the system's acknowledged shortcomings, instead became emblematic of the broader challenges facing immigration policy implementation.

The Beehive

The search for a permanent solution at Gatwick epitomised the government's reactive approach to detention infrastructure. For over a decade, the Home Office and the Property Services Agency pursued the construction of a purpose-built detention unit to replace The Beehive, a facility that officials recognised as fundamentally inadequate. This endeavour was plagued by a succession of difficulties, including identifying a suitable site (with the "Hookwood site" being a recurring but abandoned option), debating the scale and cost, and navigating complex funding arrangements that revealed the complex interplay between policy ambition and administrative reality.¹²⁹ Officials found themselves caught in an endless cycle of debates over scale and cost, while navigating the complex funding arrangements (notably PESC programmes¹³⁰), that characterised inter-departmental cooperation during this period. In 1981, a decision was made that it was "not possible to proceed with this new requirement... due to lack of funds."¹³¹ By 1982, the Home Office had formally decided not to pursue a new build at Gatwick, effectively abandoning the new build due to cost and internal priority setting, and concluding that the existing Beehive accommodation was sufficient:

From the information available, it seems to us that any project to provide new detention accommodation... will most likely exceed the financial banding of £100K and that we would require to obtain financial approval and provision within our own PES programme... This assessment lowers the priority rating of Gatwick and we ourselves, feel unable to justify a submission for expenditure of this nature.¹³²

This decision represented more than a simple cost-cutting measure, it reflected a fundamental shift in priorities that characterised the detention estate throughout the decade.

The Birth and Redevelopment of Harmondsworth: Escalating Costs and Political Tensions

The initial conception of Harmondsworth as a temporary solution gave way to plans for permanent expansion by the late 1970s.

¹²⁹ Letter from L. H. Ford (PSA) to J. F. Rogers (Home Office) re: *Decision Not to Pursue Hookwood Site*, 21 June 1982, CM 18/18, The National Archives (Kew, United Kingdom).

¹³⁰ Terry Ward, 'PESC in Crisis', *Policy & Politics, Policy and Politics* 11, no. 2 (1983), <https://doi.org/10.1332/030557383782718832>

¹³¹ Letter from D. Vine (PSA) to B. L. Shingleton (Home Office), 13 January 1981, CM 18/18, The National Archives (Kew, United Kingdom).

¹³² Letter from J. F. Rogers (Home Office) to D. Vine (PSA), 11 June 1982, CM 18/18, The National Archives (Kew, United Kingdom).

Archival files from The National Archives reveal a protracted redevelopment process, initially stalled in 1981 due to “escalating costs” but revived by 1985.¹³³ This new phase of planning demonstrates a clear shift in government priorities, with a growing emphasis on security and an expectation of a significant rise in detainee numbers.¹³⁴

In June 1980, the government had accepted a 1978 recommendation to rebuild the centre to a capacity of 200, partly to relieve pressure on the prison system:

The Government accept this recommendation and work should begin next year on the building of a new centre. The new building will provide accommodation for 200 persons, including those refused entry on arrival as well as some who have already entered the country but are being detained pending deportation or removal as illegal entrants.¹³⁵

A memo about the New Detention Centre at Harmondsworth the following year provided reasoning for its construction:

The main grounds for going ahead are: the present conditions at Harmondsworth are not satisfactory and have been criticised; the Government is on record as saying that it will rebuild Harmondsworth; we have to plan ahead for an increase in passenger traffic when Terminal 4 at Heathrow and Terminal 2 at Gatwick are built...and the extra capacity in the new Centre will provide accommodation for some illegal entrants and persons subject to deportation procedures who are at present held in prison.¹³⁶

The project was beset by escalating costs, rising from an initial £1.69 million to over £3 million. This led to friction with the Treasury and threats of cancellation. By 1982, circumstances were considered to have changed with the official justification being a decline in detainee numbers, which made the larger centre unnecessary in the “present circumstances” and the project was scrapped:

In view of this decline we have concluded that a new centre for 200 persons, which would have cost an estimated £3.1 million and which would not have been fully used, could not be justified in present circumstances. We have therefore decided not to proceed with the project for the time being.¹³⁷

As circumstances changed the project was revived and considered at multiple times during the 1980s. Financial considerations were deemed paramount and frequently led to the delay or cancellation of projects. In July 1982, the Home Office officially scrapped the planned rebuild, based on unnecessary expense and a reduced need:

¹³³ Bosworth, *Inside Immigration Detention*, 40.

¹³⁴ Bosworth, *Inside Immigration Detention*, 40.

¹³⁵ *Extract from Cmnd. 7948: The Reduction of Pressure on the Prison System*, June 1980, HO 355/55, The National Archives (Kew, United Kingdom).

¹³⁶ *New Detention Centre at Harmondsworth Memo*, 10 March 1981, HO 355/55, The National Archives (Kew, United Kingdom).

¹³⁷ *Written Answers*, 22 July 1982, HO 355/55, The National Archives (Kew, United Kingdom).

In view of this decline we have concluded that a new centre for 200 persons, which would have cost an estimated £3.1 million and which would not have been fully used, could not be justified in present circumstances. We have therefore decided not to proceed with the project for the time being.¹³⁸

Memos detail concerns over rising rents, the high cost of new builds, and the constant need to secure financial approval.¹³⁹

A 1988 letter from H.M. Inspector H.A. Doherty provides a detailed insight into the evolving official mindset. The proposal was for a new 200-bed centre, and the planning discourse was heavily focused on control and management. Doherty's correspondence reveals key debates shaping the future of detention infrastructure:

The detention centre will offer 200 beds and all the accompanying facilities for housing 200 detainees; a gymnasium has been proposed in earlier discussions as an important adjunct to combatting boredom and is included in the analysis. The desirability of having a specified 'secure wing' for, say, 20 persons, has not been examined. If this wing is deemed to be a necessity it could form the hub of the other facilities and they could theoretically be used by those detained in the wing; this would avoid duplication within the secure area. However, it may not be desirable to allow any free association of secure detainees in say the gym, or video room, with the other detainees; it follows then that some duplication would be necessary.¹⁴⁰

A central concern was the "desirability of having a specified 'secure wing' for, say, 20 persons." Planners debated whether these individuals could be allowed to mix with the general population in recreational areas, or if "duplication" of facilities within the secure wing would be necessary to ensure total segregation. The plans initially assumed the new centre would be "Crown built and is IS [Immigration Service] managed." However, the possibility of privatisation was already being considered, with Doherty noting that if a private contractor were to run the facility,¹⁴¹ an Immigration Service manager would be required to "oversee the workings of the security firm."¹⁴² A move towards greater privacy was considered, reflecting changes in prison design. The document notes that "continuing to sleep 3 or 4 detainees to a room rather than offering single cubicles/rooms may be counterproductive," pointing towards the single-cell model becoming standard in the prison service.¹⁴³ Basic welfare provisions were also debated, weighing maintenance against utility. The plans contrasted a "garden or grassed exercise areas," which would require upkeep, with a "tarmac area" that "does not create the same problems." A dedicated chapel, rather

¹³⁸ *Ibid.*

¹³⁹ Letter from J. F. Rogers (Home Office) to D. Vine (PSA), 11 June 1982, CM 18/18, The National Archives (Kew, United Kingdom).

¹⁴⁰ Letter from HA Doherty HM Inspector from Appeals Section Harmondsworth, dated 31 May 1988, signed Iris Russell (pp) to Mr Harris. Document number IS/88 41/25/1, in File CM 8 121/1. National Archives, London (HA Doherty, 1988). (Quote originally found in Bosworth, *Inside Immigration Detention*, 2014)

¹⁴¹ The early Harmondsworth detention unit was guarded by the private company Securicor.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

than a multi-faith prayer room, was also proposed in light of advocacy from religious groups.¹⁴⁴

Furthermore, the stark difference in cost between holding a detainee in a Prison Department establishment (£34 per day) versus an Immigration Service centre (£115 per day) created a strong financial incentive to use prisons, despite the acknowledged desire to avoid this.¹⁴⁵

Ultimately, it would take another 16 years for the new Harmondsworth Immigration Removal Centre to be built, a few hundred metres from its original location. The detailed planning debates of the 1980s, however, are highly significant.¹⁴⁶ They illustrate the transition of immigration detention from a small-scale, *ad hoc* reaction to legislative change into a strategic, securitised, and professionally managed instrument of state immigration control, prefiguring the large-scale expansion of the detention estate that would follow in the 1990s and 2000s.

The nature of the detainee population directly influenced building design. As more “deportation cases” and “illegal entrants” were considered for detention outside of prisons, the security requirements for facilities like Harmondsworth increased.¹⁴⁷ This led to detailed discussions about perimeter fencing, CCTV, and even the creation of separate “secure wings,” which conflicted with the goal of maintaining a “relaxed regime” for those who were not considered criminals.¹⁴⁸

While some discussions took detainee welfare into consideration, this was often framed by external criticism or as a justification for a preferred policy. The poor conditions were a driver for proposing new builds, but when finances were tight, these conditions were deemed acceptable. Discussions on amenities, such as whether to provide air conditioning at Gatwick, reveal a debate about the level of comfort appropriate for “illegal aliens when one recognises the fact that a proportion of them have committed no offence.”¹⁴⁹

¹⁴⁴ *Ibid.*

¹⁴⁵ *Sixth Report from the Home Affairs Committee*, 1985, HO 394/736/1. *op. cit.*

Full quote: “The Home Office estimates the cost per day of holding a detainee as £34 in a Prison Department establishment and £115 in an Immigration Service detention centre. There would also be considerable capital expenditure needed if prison accommodation ceased to be used. We have not examined the figures in detail, but the difference is so great as to constitute a strong case for continued use of prison accommodation.”

¹⁴⁶ Bosworth, *Inside Immigration Detention*, *op. cit.*, 40.

¹⁴⁷ 4 December 1980, Note on the new Harmondsworth Detention Centre, HO355-55 Folder: Heathrow Immigration Centres at Harmondsworth

Full quote: “Thus, it is clear that a very large percentage of the people detained in the new Harmondsworth Centre would in fact be deportation cases. (...) We would thus have to accept from the beginning that most of our detainees would not be IS cases and that many of them would attempt to abscond.”

¹⁴⁸ *Harmondsworth Detention Centre Memo*, 21 April 1983, HO 355/55, Folder *Heathrow Immigration Centres at Harmondsworth*, The National Archives (Kew, United Kingdom).

¹⁴⁹ *Memo* (author not fully legible), 4 November 1973, CM 18/18, Folder *Gatwick – Permanent Detention Accommodation – Home Office Accommodation Works Services*, File 12A/3402/41, The National Archives (Kew, United Kingdom).

More grimly, the first recorded deaths in modern UK immigration custody occurred at Harmondsworth: Siho Iyiguveni in 1989 and Kimpua Nsimba in 1990.¹⁵⁰ Inspection reports from almost half a century later showed conditions had failed to improve, describing Harmondsworth as a place of “drugs, despair and decrepit conditions,” suggesting a long legacy of neglect and poor management that likely has its roots in this early period.¹⁵¹

Documents from the 1980s portray a reactive approach to the immigration detention estate. The government was aware of the system’s significant physical and moral shortcomings but was consistently thwarted by a combination of bureaucratic inertia, inter-departmental conflict, and an overriding focus on financial restraint. The failure to invest in and expand the dedicated detention estate ensured a continued reliance on temporary facilities and the controversial use of the prison system. The tension between security and welfare of detainees reflected broader ambiguities about the punitive versus administrative nature of immigration detention.

Legislation in the 1990s led to an increase in detention needs and in turn led to the opening of new detention locations around the country. Deportation and detention as instruments of immigration control remained relatively marginal state practices until the final decades of the twentieth century. Their limited application stemmed from a combination of logistical constraints, legal complications, and ethical reservations.¹⁵² Before 2000 there were only four dedicated immigration detention facilities. This shifted during the 2000s as governmental authorities substantially expanded detention infrastructure, establishing five additional centres and repurposing three existing facilities specifically for immigrant detention. The Labour government considerably enlarged the detention estate particularly targeted at asylum seekers categorized as either “destitute” or “failed.”¹⁵³ Despite tentatively criticising the treatment of immigrants and asylum seekers in opposition, New Labour expanded powers to detain and deport foreign citizens, leading to the largest expansion of

¹⁵⁰ Kimpua Nsimba, aged 24, deceased 15 June 1990 – A Zairean asylum-seeker found hanged in Harmondsworth Detention Centre. Reports indicate that he had not been engaged in conversation by staff or peers for over four days prior to his death.

Siho Iyiguveni, aged 26, deceased 8 October 1989 – On 5 October 1989, he and another individual of Turkish nationality barricaded themselves in a bedroom at Harmondsworth Detention Centre and set fire to the bedding. He subsequently died from injuries sustained in the incident.

Death in Removal Centres, No Deportations, 6 April 2011, archived at <https://web.archive.org/web/20140305185839/http://www.no-deportations.org.uk/Media-6-4-2011/DeathInRemovalCentres.html>

¹⁵¹ HM Inspectorate of Prisons, *Harmondsworth Immigration Removal Centre: Drugs, Despair and Decrepit Conditions*, 9 July 2024, <https://hmiprisons.justiceinspectorates.gov.uk/news/harmondsworth-immigration-removal-centre-drugs-despair-and-decrepit-conditions/>

¹⁵² Mary Bosworth and Mhairi Guild, ‘Governing Through Migration Control: Security and Citizenship in Britain’, *The British Journal of Criminology* 48, no. 6 (2008): 703–19.

¹⁵³ Margaret S. Malloch and Elizabeth Stanley, ‘The Detention of Asylum Seekers in the UK: Representing Risk, Managing the Dangerous’, *Punishment & Society* 7, no. 1 (2005): 53–71, <https://doi.org/10.1177/1462474505048133>

immigration detention in British history.¹⁵⁴

Many immigrants were detained in prison as the few detention centres that existed were unable to hold fulfil the requirements of the Home Office, but over time an effort was made to transition away from prisons to using immigration detention centres (later renamed immigration removal centres). In 1990, 1304 Commonwealth citizens were detained, greatly surpassing a previous year-high of 200.¹⁵⁵ The detention estate expanded, with more facilities being established across the country and the total capacity expanding rapidly from 250 places in 1993 to 2644 in 2005.¹⁵⁶ Campsfield House Detention Centre and Tinsley House Detention Centre were both opened in the 1990s, revealing two solutions to expanding the detention estate, and more detention centres, including Yarl's Wood were opened in the 2000s.¹⁵⁷

Immigrants in Prison

Until the 1980s and 1990s, immigration detention in Britain operated through an *ad hoc* system that primarily relied upon the existing carceral infrastructure. The state's management of foreign nationals subject to detention existed in a liminal space between administrative processing and punitive incarceration. However, this process became blurred over time. For a time, the prison estate served as the primary infrastructure for holding immigration detainees. This arrangement can be explained both through practical expediency, the lack of specific locations to detain immigrants and the state's framing of certain non-citizens as requiring similar forms of control as criminals. This also represented both a logical response to capacity constraints and a reflection of the government's failure to develop adequate dedicated facilities.

The consistent failure to build dedicated detention centres ensured a continued and controversial reliance on the criminal prison system. Certain prison facilities became default locations for housing immigration detainees. This practice systematically blurred the line between administrative detention for immigration purposes and punitive incarceration for criminal offenses, a foundational confusion that has marked the UK system ever since. The financial logic was also compelling, internal memos noted the stark cost difference between holding a detainee in a Prison Department establishment versus an Immigration Service centre creating a powerful incentive to use prisons despite the stated desire to avoid it:

The Home Office estimates the cost per day of holding a detainee as £34 in a Prison Department establishment and £115 in an Immigration Service

¹⁵⁴ Ana J. Aliverti, *Crimes of Mobility: Criminal Law and the Regulation of Immigration*, Routledge Studies in Criminal Justice, Borders and Citizenship (Routledge, 2013), 37.

¹⁵⁵ Becky Taylor et al., *A History of Immigration Detention in the UK (1914-2018)* (Refugee History and Right to Remain, 2018), 5, <https://righttoremain.org.uk/wp-content/uploads/2018/09/DetentionHistory.pdf>

¹⁵⁶ Bacon, *The Evolution of Immigration Detention in the UK: The Involvement of Private Prison Companies*, 2.

¹⁵⁷ Bosworth, *Inside Immigration Detention*, *op.cit.*, 45.

detention centre. There would also be considerable capital expenditure needed if prison accommodation ceased to be used... the difference is so great as to constitute a strong case for continued use of prison accommodation.¹⁵⁸

While certain prison establishments, like Ashford and subsequently Latchmere House in Richmond, emerged as specialised locations for processing foreign nationals, with designated areas explicitly used for ‘Immigration Act detainees,’ most were held within mainstream prison facilities.¹⁵⁹ Ashford Remand Centre emerged as a primary location for holding deportees and illegal entrants who were not considered suitable for the “relaxed regime” at Harmondsworth.¹⁶⁰ The facility’s role highlighted the government’s acceptance of a two-tier system that distinguished between different categories of detainees. With the impending closure of Ashford in 1985, Latchmere House was identified as a potential replacement, while Pentonville Prison was also considered as an option.¹⁶¹ HMP Holloway served as the default location for detaining women under deportation orders before rule changes allowed for their detention at Harmondsworth.¹⁶²

Beyond the main London-area sites, the detention estate encompassed a network of smaller facilities and temporary arrangements that revealed the system’s essentially improvised character.

Detention units staffed by private company Securicor existed in Glasgow, Manchester, and Birmingham.¹⁶³ A proposal was discussed to close the Glasgow and Birmingham centres to fund improvements elsewhere, suggesting a move towards centralisation.¹⁶⁴ During periods of high demand, the Home Office used *ad hoc* facilities not formally designated for long-term immigration detention. A 1986 memo reveals concern over the legality of using Blantyre House (a detention centre) and Erlestoke House (a Youth Custody Centre), noting they were not specified in the

¹⁵⁸ *Sixth Report from the Home Affairs Committee*, 1985, HO 394/736/1. *op. cit.*

¹⁵⁹ Bosworth, *Inside Immigration Detention*, *op. cit.*, 43.

¹⁶⁰ “Facilities for Detention under Immigration Act Powers”, 21 May 1985, HO 394/736/2, Folder *Deportees in Prison Department Custody*, The National Archives (Kew, United Kingdom).

¹⁶¹ *Ibid.*

Full quote: “It would be possible only if arrangements could be made for late night admissions and early morning releases from Pentonville/Latchmere House and if the POA agreed to cooperate with Securicor.”

¹⁶² *Minute from D. McQueen*, 18 August 1986, HO 394/476, Folder *Immigration Act 1971, Amendment of the 1972, Immigration (Places of Detention), Direction*, The National Archives (Kew, United Kingdom).

Full quote: “The new Direction differs from the 1972 Direction currently in force only in that it allows persons detained under a detention order pending the making of a deportation order to be held in the Immigration Service Detention Centre at Harmondsworth. This provision will enable us to comply with an undertaking given in evidence to the SCORRI inquiry into immigration control that we will use Harmondsworth rather than Holloway to detain females whenever possible.”

¹⁶³ “Facilities For Detention Under Immigration Act Powers”, 21 May 1985.

¹⁶⁴ *Memo from A. A. Holton re: Detention Accommodation (Closure of Glasgow and Birmingham)*, 17 February 1984, HO 394/736/2, Folder *Deportees in Prison Department Custody*, The National Archives (Kew, United Kingdom).

official 1972 Immigration (Places of Detention) Direction. An official warned, “the longer we leave the present unsatisfactory position the more at risk we shall be,” a statement that captured the precarious legal foundations of the expanded detention estate.¹⁶⁵

From 1989 onwards, Haslar Prison, located in Gosport, near Portsmouth, underwent partial conversion to accommodate the growing number of immigration detainees, reflecting the increasing focus on administrative migration control during the late Thatcher and Major administrations. Haslar was originally an army facility, then used to house young male offenders between 1962 and 1989.¹⁶⁶ From 1989 onwards it was used to exclusively hold foreign national prisoners. Under the Labour government, it was redesignated as a Removal Centre and began operating under Detention Centre rules from February 2002 onwards.¹⁶⁷ However, these ‘special prison locations’ remained insufficient to meet the demands of the Home Office, and it continued relying upon prison facilities such as HMP Pentonville (for male detainees) and HMP Holloway (for female detainees).¹⁶⁸ These institutions were primarily used for administrative convenience within the London metropolitan area, which serves as the heart of Britain’s immigration processing and transportation systems.

The Government has welcomed the views of Her Majesty’s Chief Inspector of Prisons and others and, as resources become available, is committed to pursuing a strategy of detaining in dedicated detention and holding centres, not prisons. About half of those currently detained are held in Prison Service establishments. Most of these (350) are in the specially dedicated immigration units at Haslar and Rochester.¹⁶⁹

The repurposing of prisons for immigration detention represented a pragmatic response to fiscal limitations while revealing the state’s conflation of criminal and immigration enforcement mechanisms. The material conditions and functioning of these repurposed facilities effectively criminalised migrants, despite their formal administrative classification as non-criminal detainees. This fundamental contradiction between administrative designation and carceral implementation has helped the government blur the line between immigrant and criminal and dragged immigrants into the punitive penal framework.¹⁷⁰ Over time, specific detention centres

¹⁶⁵ *Minute from A. A. Holton*, 28 October 1986, HO 394/476, Folder *Immigration Act 1971, Amendment of the 1972, Immigration (Places of Detention), Direction*, The National Archives (Kew, United Kingdom).

¹⁶⁶ HM Chief Inspector of Prisons, *Report on an Announced Inspection of Haslar Immigration Removal Centre* (Her Majesty’s Inspectorate of Prisons, 2009), 7.

¹⁶⁷ HM Chief Inspector of Prisons, *Report on an Unannounced Inspection of Haslar Immigration Removal Centre* (Her Majesty’s Inspectorate of Prisons, 2014), 7.

¹⁶⁸ Bosworth, *Inside Immigration Detention*, 43. *op. cit.*

¹⁶⁹ Jack Straw, *Fairer, Faster and Firmer: A Modern Approach to Immigration and Asylum* (Cm 4018, White Paper, London: HMSO, July 1998), UK Government, <https://assets.publishing.service.gov.uk/media/5a7cdecbed915d7c849adbdd/4018.pdf>

¹⁷⁰ Monish Bhatia, ‘Crimmigration, Imprisonment and Racist Violence: Narratives of People Seeking Asylum in Great Britain’, *Journal of Sociology* 56, no. 1 (2020): 37, <https://doi.org/10.1177/1440783319882533>

were opened to house the ‘immigrant-inmate’.

3.3. The 1990s Expansion: A New Generation of Control

The 1990s marked a decisive turning point. Faced with rapidly rising asylum applications, from 1,500 in 1979 to over 71,000 by 2001, the UK government finally committed to building a larger, more systematic detention estate.¹⁷¹ This new phase saw the adoption of the key features of the American model: repurposed institutions, purpose-built facilities, and full private management. We do not have specific numbers for each detention centre, but Asylum statistics for 1990-1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, and 2001 provide snapshots for the detention of asylum seekers on specific dates as well as the nationalities of those detained (see Appendix 3).¹⁷²

Campsfield (1993)

The first centre built specifically to detain immigrants was Campsfield House Detention Centre which opened outside Oxford on 29 November 1993.¹⁷³ It had previously been used as a Young Offenders Institution and was closed on October 1, 1993, only to be re-opened the following month as an immigration detention centre.¹⁷⁴ It housed both men and women and was run by a private company “Group 4 Total Security Ltd under a total management contract” on behalf of the Immigration Service.¹⁷⁵ From its inception, Campsfield was a site of intense controversy, marked by a legacy of detainee protests, hunger strikes, fires, and two suicides that drew sustained opposition from local campaign groups.¹⁷⁶ On Friday 18 March 1994, Charles Waddle, the Parliamentary Under Secretary of State at the Home Office¹⁷⁷, was asked in the House of Commons about detainees at Campsfield House. He provided information on the nationalities of detainees held at Campsfield House on 15

¹⁷¹ Tina Heath and Rachel Hill, *Asylum Statistics United Kingdom 2001*, Home Office Statistical Bulletin no. 09/02 (2002), 2.

¹⁷² These made up the vast majority of those detained for immigration purposes.

¹⁷³ Charles Wardle, *Campsfield House*, House of Commons, Hansard, 17 March 1994, vol. 239, cols. 780–81, <https://hansard.parliament.uk/commons/1994-03-17/debates/bebef4f9-5369-4479-a419-f830acb09cc6/CampsfieldHouse>

¹⁷⁴ *The Closure of Prisons (H.M. Young Offender Institution Campsfield House) Order 1993*, Statutory Instruments 1993 No. 2104, made 1993, <https://www.legislation.gov.uk/ukSI/1993/2104/made>

¹⁷⁵ Bosworth, *Inside Immigration Detention*, 45. *op. cit.*

¹⁷⁶ Barbara Harrell-Bond and Enoch Opondo, ‘La rétention des demandeurs d’asile dans la forteresse britannique (partie 2)’, *Cultures & Conflits*, no. 23 (October 1996): 23, <https://doi.org/10.4000/conflits.620>

¹⁷⁷ Mr Charles Wardle, UK Parliament, <https://members.parliament.uk/member/22/career>

March 1994 as well as the length of time they had been detained (see Appendix 4).¹⁷⁸

In another debate, on March 2, 1995 Labour MP Bernie Grant asked the Secretary of State for the Home Department “if the rules governing the running of Her Majesty’s prisons are applicable to the running of the Campsfield and Harmondsworth detention centres.”¹⁷⁹ MP Nicholas Baker, then junior minister in the Home Office confirmed that neither of the immigration detention centres mentioned were “Prison Service establishments and are therefore not subject to Prison Service rules.”¹⁸⁰

Campsfield House was inspected in 1994 by Lord Ramsbotham, who noted the lack of a clear definition separating detention centers from prisons.¹⁸¹ Subsequent inspections revealed severe issues, including security concerns, poor facilities, and detainee mistreatment, ultimately prompting the establishment of a specialized team for detention estate oversight in 2004.¹⁸² In 2003, around the 10th anniversary of the centre, the Labour Government reversed a previous decision to close Campsfield and instead invested in an additional 100 places.¹⁸³ It finally closed down in May 2019.¹⁸⁴

Tinsley House (1996)

A pivotal moment in building the UK’s detention apparatus came in 1996 with Tinsley House. Its opening represented two key innovations that would define the Anglo-American model: the shift from using prisons to dedicated detention centres, and the formal introduction of private sector involvement. Crucially, the management contract was awarded to Wackenhut (UK) Ltd, a subsidiary of the American private prison corporation that was simultaneously building its portfolio in the US. The opening of Tinsley House signalled the formal importation of the American privatized model into the British system.¹⁸⁵ While initially praised for its “Tinsley Model” of “caring custody,” this approach eroded over time as a more punitive “prison culture” took hold.¹⁸⁶

Tinsley House opened in May 1996 as the United Kingdom’s first purpose-

¹⁷⁸ *Campsfield House Detention Centre*, House of Commons, Hansard, 18 March 1994, vol. 239, <https://hansard.parliament.uk/Commons/1994-03-18/debates/cbb41136-f10b-4c59-89f9-d12cfa517130/CampsfieldHouseDetentionCentre>

¹⁷⁹ *House of Commons Hansard Written Answers for 2 March 1995*, HC Deb 2 Mar. 1995, cols. 635–36, <https://publications.parliament.uk/pa/cm199495/cmhansrd/1995-03-02/Writtens-3.html>

¹⁸⁰ *Ibid.*

¹⁸¹ Bosworth, *Inside Immigration Detention*, 47. *op. cit.*

¹⁸² *Ibid.*

¹⁸³ Michael Welch and Liza Schuster, ‘Detention of Asylum Seekers in the US, UK, France, Germany, and Italy: A Critical View of the Globalizing Culture of Control’, *Criminal Justice* 5, no. 4 (2005): 338, <https://doi.org/10.1177/1466802505057715>

¹⁸⁴ Rt Hon Caroline Noakes MP, ‘Campsfield House Immigration Removal Centre (Letter to Rt Hon Yvette Cooper MP)’, 9 November 2018, <https://www.parliament.uk/globalassets/documents/commons-committees/home-affairs/Correspondence-17-19/181109-Immigration-Minister---closure-of-Campsfield-IRC.PDF>

¹⁸⁵ Bosworth, *Inside Immigration Detention*, *op. cit.*, 46.

¹⁸⁶ *Ibid.*, 192.

built immigration detention facility.¹⁸⁷ Located on Perimeter Road South of Gatwick Airport it marked a significant shift in the UK's approach to immigration detention as it provided a solution to move away from the use of prisons to hold immigrants. As asylum applications began to increase in the 1980s and 1990s, the Conservative government initiated a policy shift toward specialised detention facilities.

Tinsley House also represented a novel approach to financing the construction and running of detention centres. It was an early example of a Private Finance Initiative (PFI)¹⁸⁸ in the UK detention system.¹⁸⁹ According to the Secretary of State for the Home Department "Tinsley house was not fully funded through the private finance initiative; the cost of the building works was borne by the private sector but the running of the facility is the subject of a separate contract."¹⁹⁰ He refused, however, to reveal the terms of the partnership with Wackenhut nor quantify the savings that the contract would provide for the taxpayers. Though he assured the house that "the contract with Wackenhut to run Tinsley house provides very good value for money."¹⁹¹ The Secretary of State did reveal some information, notably that the new facility provided 150 additional detention places that would be used to reduce "the use of more expensive, less suitable, alternative accommodation and to effect the removal of more people with no entitlement to remain in this country."¹⁹²

The initial management contract for Tinsley House was awarded to Wackenhut (UK) Ltd, a British subsidiary of the American Wackenhut Corporation.¹⁹³ Wackenhut received an initial contract set to expire in May 1999 and Serco was sub-contracted to manage the facilities. A 1998 Chief Inspector's report noted that "generally speaking, the quality of services provided within Tinsley House was very good" and detected "a commitment to provide a professional, caring service to detainees."¹⁹⁴ However, the same report also recommended 109 improvements to be implemented by the Immigration Service and Wackenhut. Over time, Tinsley House underwent several

¹⁸⁷ HM Chief Inspector of Prisons, *Report on an Unannounced Short Followup Inspection of Tinsley House Immigration Removal Centre* (Her Majesty's Inspectorate of Prisons, 2009), 7, https://web.archive.org/web/20150215213530/http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/tinsley-house/Tinsley_House_2009_rps.pdf

¹⁸⁸ *Private Finance Initiative: Seventeenth Report of Session 2010–12*, HC 1146, House of Commons Treasury Committee, 18 July 2011, <https://publications.parliament.uk/pa/cm201012/cmselect/cmtreasy/1146/114604.htm#a1>

¹⁸⁹ In November 1992 the then Chancellor of the Exchequer Norman Lamont made an announcement in the Autumn Statement about "ways to increase the scope for private financing of capital projects." [1] This was the beginning of what was to become known as the Private Finance Initiative (PFI), under which groups of private investors manage the design, build, finance and operation (DBFO) of public infrastructure.

¹⁹⁰ Tinsley House Immigration Detention Centre, Volume 278: debated on Tuesday 4 June 1996, *Hansard* <https://hansard.parliament.uk/commons/1996-06-04/debates/45af1058-29b6-4e78-942c-4914967b0a6e/TinsleyHouseImmigrationDetentionCentre>

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ Stephen Nathan, *Prison Report*, Factfile no. 22 (Prison Reform Trust, 1998), 14.

¹⁹⁴ *Ibid.*

management changes.¹⁹⁵ In 2002, Wackenhut Corporation was acquired by Group 4 Falck. The centre was subsequently operated by Global Solutions Ltd (GSL), a Group 4 Falck subsidiary. In 2004, GSL became independent of Group 4 Falck. In 2008, G4S acquired GSL and took over operations and G4S continued to manage Tinsley House until 2020. Since 2020, both Gatwick IRCs¹⁹⁶ (Tinsley House and Brook House) have been run by Serco.¹⁹⁷ The establishment of Tinsley House in 1996 represented a pivotal moment in UK immigration policy, marking the shift toward purpose-built detention facilities and increased private sector involvement in managing immigration detention.

3.4. Expansion under New Labour

This new model was massively scaled up under the New Labour government of Tony Blair. The 1999 Immigration and Asylum Act provided the legislative framework for a major expansion of the detention estate.¹⁹⁸ This led to the opening of new detention centres in 2000 and 2001, the complete rebuilding and expansion of Harmondsworth in 2001 (with a capacity of 550), and the opening of Yarl's Wood in 2001 (with a capacity for 900), which at the time was the largest such centre in Europe. By the end of the period, the UK had abandoned its failed state-led model and fully embraced a large-scale, purpose-built, and privately-managed detention archipelago.

Most¹⁹⁹ centres were operated by private security firms, including GSL (formerly Group 4) and Wackenhut. Following the law's implementation, several new purpose-built detention centres were established, notably:²⁰⁰

- Oakington (March 2000), with a capacity for up to 400 individuals
- Harmondsworth (October 2001) offering 530 places
- Yarl's Wood (November 2001) with a capacity for up to 900 individuals
- Colnbrook detention centre, located at Heathrow airport (2004) could house 400 individuals
- Brook House, situated at Gatwick airport (2009) had space for 448²⁰¹

During its initial nine months of operation (March to December 2000), Oakington handled 3,000 cases. By 2001, the volume of asylum applicants processed

¹⁹⁵ By the mid-2000s, the UK had established six dedicated detention centres plus four prisons for immigration detention.

¹⁹⁶ Tinsley House formed part of the "Gatwick cluster" of immigration removal centres together with Brook House IRC and Cedars PDA.

¹⁹⁷ 'Gatwick Immigration Removal Centre', *Serco*, accessed 1 May 2025, <https://www.serco.com/uk/sector-expertise/immigration/gatwick-immigration-removal-centre>.

¹⁹⁸ *Immigration and Asylum Act 1999*, c. 33 (United Kingdom), *Legislation.gov.uk*, <https://www.legislation.gov.uk/ukpga/1999/33/contents>

¹⁹⁹ Haslar and Lindholme were prison establishments run by the prison service.

²⁰⁰ Welch and Schuster, 'Detention of Asylum Seekers in the US, UK, France, Germany, and Italy', *op.cit.*, 338.

²⁰¹ That increased to 508 in 2017.

there had tripled, reaching 9,125.²⁰² Additional facilities were repurposed to meet the growing demand for detention spaces.²⁰³

- The Lindholme RAF base was reclassified as a removal centre (110 places)
- Dungavel prison transitioned into a detention centre (150 places)
- A closed induction centre was established in Dover (20 places).

Further holding centres were situated at key transit locations such as Waterloo, Heathrow, and Manchester Airport. This expansion of detention infrastructure underscores the evolving approach to immigration control and reflected broader political and administrative priorities in tackling asylum and migration.²⁰⁴

Oakington

Oakington, a detention facility in Cambridgeshire, played a significant role in the UK's immigration and asylum processes at the turn of the century. Opening in 2000, it housed individuals whose asylum claims were processed under the Home Office's 'fast track' system, designed to expedite the process for certain applicants.²⁰⁵ According to the Minister of State for the Home Office, Barbara Roche, the facility would gradually build up to a capacity of up to 400 people. The reception facility would be used to hold people for short periods and "process straightforward applications—we are talking about a seven-day period."²⁰⁶ Oakington, along with other facilities, aimed to make faster decisions on eligibility for asylum. However, the fast-track system faced criticism for compromising fairness and thoroughness.²⁰⁷ Concerns arose about detention conditions, treatment of detainees, and the speed of processing.²⁰⁸ Human rights organisations and asylum advocates argued that insufficient time for review led to unjust decisions and removals.²⁰⁹

Yarl's Wood

The following year, on 19 November 2001, Yarl's Wood detention centre was

²⁰² Welch and Schuster, 'Detention of Asylum Seekers in the US, UK, France, Germany, and Italy', 338.

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

²⁰⁵ *Oakington Detention Centre*, House of Commons, *Hansard*, 6 December 1999, vol. 340, UK Parliament, <https://hansard.parliament.uk/commons/1999-12-06/debates/4750a6ed-1e89-4d8d-8355-98561524f709/OakingtonDetentionCentre>

²⁰⁶ *Ibid.*

²⁰⁷ Sarah Turnbull, 'Vulnerability, Immigration Detention and (Carceral) Reform', *The British Journal of Criminology*, ahead of print, 23 December 2024, <https://doi.org/10.1093/bjc/azae095>

²⁰⁸ Jerome Phelps, 'Ending the Detained Fast Track?', *Oxford Law Blogs*, 15 February 2016, <https://blogs.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/02/ending-detained>

²⁰⁹ Gauri van Gulik, *Fast-Track Unfairness* (Human Rights Watch, 2010), <https://www.hrw.org/report/2010/02/23/fast-tracked-unfairness/detention-and-denial-women-asylum-seekers-uk>

opened.²¹⁰ At the time it was the largest detention centre of its kind in Europe.²¹¹ By 2002, it could hold 900 people, though it was still in the process of expanding. According to a 2002 Guardian article, Group 4 centre manager David Watson said at the opening of the centre's second wing that the facilities were designed to keep detainees in "a caring and secure environment."²¹² The Home Office refused to disclose the cost of the complex, but it is estimated to be around £100 million.²¹³ In 2004, a report on abuse at Yarl's Wood looked at allegations by a Daily Mirror reporter of racism and physical abuse at the facility.²¹⁴ The report argued that while Yarl's Wood had issues and some allegations could be corroborated, there was not a culture of racism and improper use of force in the facility.²¹⁵ The facility was partially destroyed by a fire in February 2002, and eventually reopened in September 2003.²¹⁶

The Floating Detention Centre

The most unusual expansion of the detention estate was the charter of a Sealink car ferry as a direct response to what officials described at the time as "acute" pressure on detention accommodation.²¹⁷ In 1985, the British government had imposed visa restrictions against Sri Lanka in response to an increase in the number of Tamils seeking asylum in the UK.²¹⁸ This was the first time that Commonwealth citizens, albeit from only one Commonwealth country, required a visa to enter this country. Some arrived without visas and were detained. But the detention facilities available were unable to cope with the sudden influx and the government looked for a new detention site.

The ill-chosen solution was to hold up to 90 asylum seekers on a disused car

²¹⁰ *Yarls Wood Immigration Detention Centre*, House of Commons, *Hansard*, 30 October 2001, vol. 373, UK Parliament, <https://hansard.parliament.uk/Commons/2001-10-30/debates/fa10e11f-a8c8-40c0-abde-c1faa2ac5300/YarlsWoodImmigrationDetentionCentre>

²¹¹ David Barrett, 'Profile: Yarl's Wood Detention Centre', UK News, *The Guardian*, 15 February 2002, <https://www.theguardian.com/uk/2002/feb/15/immigration.immigrationandpublicservices>

²¹² *Ibid.*

²¹³ *Ibid.*

²¹⁴ Prisons and Probation Ombudsman for England and Wales, *Investigation into Allegations of Racism, Abuse and Violence at Yarl's Wood Removal Centre* (2004), 2, <https://web.archive.org/web/20081230152030/http://www.ppo.gov.uk/download/special-investigation-reports/special-yarls-wood-abuse-03.pdf>

²¹⁵ *Ibid.*, 3.

²¹⁶ Welch and Schuster, 'Detention of Asylum Seekers in the US, UK, France, Germany, and Italy', *op.cit.*, 338.

²¹⁷ *Detention Accommodation*, 29 January 1987, HO 394/851, Folder *Proposals for New Detention Accommodation*, The National Archives (Kew, United Kingdom).

Full quote: "As Ministers are aware the pressure on detention accommodation remains acute. It is likely to be increased in the near future when we have to surrender prison accommodation at Erlestoke."

²¹⁸ Mr. Leon Brittan (The Secretary of State for the Home Department), *Sri Lankan Tamils*, House of Commons, *Hansard*, 3 June 1985, vol. 80, cols. 52–59, UK Parliament, <http://api.parliament.uk/historic-hansard/commons/1985/jun/03/sri-lankan-tamils>

ferry, the MV Earl William in 1987.²¹⁹ The ship was procured to alleviate overcrowding, allow for the refurbishment of the Queen's Building at Heathrow, and enable a planned enforcement exercise against absconders.²²⁰ It was considered more cost-effective than using hotels, with a nightly cost per place of around £65 compared to £115 at Harmondsworth.²²¹ Officials were aware the policy would be controversial, anticipating "references to a 'prison ship' and to 'hulks'" but believed the better facilities and lower cost were defensible arguments.²²² Officials were fully aware of the negative historical connotations but proceeded anyway, justifying it on cost grounds.

However, an overnight storm caused the boat to break its moorings during the early hours of October 16, 1987 because the prison officers who were not experienced seamen failed to loosen the mooring ropes.²²³ The vessel drifted 200–300 yards away before running aground on a sandbank. While nobody on board was injured, the disaster threw the media spotlight onto the serious issue of asylum seeker detention. It also highlighted the inadequacy of the existing detention centres and the use of prisons for administrative detention.²²⁴ Ultimately, the Home Secretary, Douglas Hurd announced that none of those on board the ship had remained so, and its use as a detention centre was under review. The combination of this incident and "severe pressure" on the Home Office budget led the IND Board to recommend that the lease not be renewed when it expired in November 1987:

70 of the 78 detainees were granted temporary admission on 16 October until their cases are determined, (...) one has been granted leave to enter, six have been removed from the United Kingdom and one other is detained in Harmondsworth awaiting removal.²²⁵

The use of the "Earl William" as a floating detention centre was a politically sensitive issue during 1987. An internal memo notes that the Home Secretary believed the idea "would need very careful and positive public relations work if we were to

²¹⁹ Suke Wolton, 'Immigration Policy and the "Crisis of British Values"', *Citizenship Studies* 10, no. 4 (2006): 461, <https://doi.org/10.1080/13621020600858120>

²²⁰ *Detention Accommodation: Lease of a Ship*, 7 April 1987, HO 394/851, Folder *Proposals for New Detention Accommodation*, The National Archives (Kew, United Kingdom).

²²¹ *Detention Accommodation: "Earl William"*, 5 November 1987, HO 394/851, Folder *Proposals for New Detention Accommodation*, The National Archives (Kew, United Kingdom).

²²² *Detention Accommodation*, 29 January 1987, HO 394/851, Folder *Proposals for New Detention Accommodation*, The National Archives (Kew, United Kingdom).

Full quote: "There would obviously be a great deal of Parliamentary, media, community and other external interest. There would be references to a 'prison ship' and to 'hulks'. But there are contrary arguments. The use of hotels is heavily criticised: the ship would almost certainly mean a saving in public funds."

²²³ *Prison Ships*, House of Commons, *Hansard*, 21 October 1987, vol. 120, cols. 781–83W, UK Parliament, <https://api.parliament.uk/historic-hansard/written-answers/1987/oct/21/prison-ships>

²²⁴ Dallal Stevens, 'The Asylum and Immigration Act 1996: Erosion of the Right to Seek Asylum', *The Modern Law Review* 61, no. 2 (1998): 208–9, <https://doi.org/10.1111/1468-2230.00138>

²²⁵ *Prison Ships*, House of Commons, *Hansard*, 21 October 1987.

implement it.”²²⁶ Another memo from November 1987, after the election, acknowledged that a decision to dispense with the ship might “sweeten the reception of the Immigration Bill” but also conceded that opponents would likely view it as “an admission of error”.²²⁷ This demonstrates that the management of detention was seen through a political lens in an election year.

This novel and highly criticised use of a ship as a prison prefigured later experiments with offshore or unconventional detention sites, demonstrating a similar *ad hoc* impulse to the US use of military bases when faced with a perceived lack of capacity.

Regime and Conditions: The Lived Reality of UK Detention

Contemporary journalistic accounts provide a vivid, if bleak, portrayal of life inside these early facilities. Writing for *The Guardian* in 1975, Amrit Wilson of the Joint Council for the Welfare of Immigrants (JCWI) offered a scathing critique of Harmondsworth:

To enter it you must ring a bell which sounds like a fire alarm. It summons the Securicor men who guard the building . . . Inside, there is a small visitors' room which was dirty both times I went there, a long narrow uncarpeted corridor with bedrooms on either side of it, a television lounge which is furnished in the drabest manner, a 'recreation room' which contains nothing but a few wooden tables and chairs (though I was told playing cards are available), and a kitchen which detainees described as filthy. There is also a yard where one can sit and look through the wire netting at the appeals tribunal. That is how a lot of people spend their first days in Britain. Some people had told me that the place had an atmosphere of fear and distress, but I noticed more the bitterness and sense of betrayal. People coming into country seem not to know about the realities of British racialism. They expect to be treated with courtesy and consideration since they have committed no criminal offence. However, at the detention centre, contemptuous and inhuman attitudes have hardened into set rules. The bedrooms are kept locked from 9am to 9pm and are opened only on doctor's orders. Even young children can't have a comfortable nap during the day. and if you arrive after a long air journey and several hours of questioning at the airport there is nowhere for you to lie down.²²⁸

Despite all of these critiques, Harmondsworth was still considered to be better than the airport detention centre at Queen's Building according to 31 year-old detainee Ashok Bimjani.²²⁹

Three years later, an account by Peter Strafford for *The Times* suggests little

²²⁶ *Detention Accommodation*, 4 February 1987, HO 394/851, Folder *Proposals for New Detention Accommodation*, The National Archives (Kew, United Kingdom).

²²⁷ *Detention Accommodation: "Earl William"*, 6 November 1987, HO 394/851, Folder *Proposals for New Detention Accommodation*, The National Archives (Kew, United Kingdom).

²²⁸ Amrit Wilson, "'Heathrow's Cul-de-Sac'", *The Guardian*, 1 December 1975. (Part of this quote originally found in Bosworth, *Inside Immigration Detention*, 2014)

²²⁹ *Ibid.*

had improved. He described Harmondsworth as “one of the less cheerful places in London,” situated within a “jumble of workshops and government offices”.²³⁰ His description of the interior echoes Wilson’s, noting “bare, drab but clean rooms with little more than the basic necessities”.²³¹ Strafford found the detainees to be “often bitter about being held there,” with recurrent complaints about the quality and monotony of the food and the rudeness of staff.²³²

His description showed that the conditions were far from ideal

Meanwhile, they are held at Harmondsworth, a centre that has a capacity of 72 and was almost full the day that I went there, with 69 detainees, about 15 of them children. They can have visitors at certain times, they can make and receive telephone calls and if they want fresh air, they can pace up and down the few square yards of grass, surrounded by a wall, outside the buildings. It is not a pleasant place for would-be immigrants or visitors to Britain to find themselves, especially as none of them can be sure that he or she will eventually be admitted.²³³

However, he offers a crucial analysis, concluding that “it seemed clear that the basic complaint was not so much about the physical conditions at Harmondsworth as about the system of law that had landed the detainees there”.²³⁴ This distinction highlights the psychological burden of indefinite detention and legal uncertainty as the primary source of distress, a theme that has remained central to critiques of immigration detention ever since.

While the UK government promoted an official philosophy of humane and “decent” conditions, the lived experience within its detention centres often told a different story. The daily regime, though less overtly punitive than in the US, was still one of institutional control, and the UK’s policy of indefinite detention created a unique form of psychological pressure that had profound effects on those confined.

Daily Life and Institutional Control

The government and its private contractors provided a range of voluntary activities, including English classes, vocational training, and access to recreational facilities like a gym, library, and football pitch.²³⁵ Multi-faith chaplaincies were established to cater to religious needs, and kitchens were required to provide for various dietary requirements, such as halal and kosher meals.²³⁶ Family contact was also more liberal than in the US, with daily visiting hours and dedicated children’s

²³⁰ Peter Strafford, ‘Immigrants in the Harmondsworth Limbo’, *The Times*, 11 October 1978. (Quote originally found in Bosworth, *Inside Immigration Detention*, 2014)

²³¹ *Ibid.*

²³² *Ibid.*

²³³ *Ibid.*

²³⁴ *Ibid.*

²³⁵ Felix Bazalgette, ‘Notes on the History of a Detention Centre’, *The White Review*, September 2017, <https://www.thewhitereview.org/feature/notes-history-detention-centre/>

²³⁶ *Ibid.*

play areas, though that also came with the presence of children detained inside immigration detention centres.²³⁷

However, this veneer of “normalcy” was perceived by many detainees as a deceptive trap. One man detained at Harmondsworth described the provision of games consoles, a pool table, and movies as “dangerous temptations” and “false entertainments” designed to lull detainees into a passive acceptance of their confinement.²³⁸ He saw the purpose of detention as a psychological battle “to break you, to separate you from British society and force you to give up your claim to a share in it”.³⁴ The hostile attitude of some staff, who might throw a chocolate bar at a detainee “like you’d throw a bone to a dog,” reinforced this sense of dehumanization.²³⁹

The Psychological Toll of Indefinite Detention

The most damaging aspect of the UK system was its lack of a statutory time limit on detention. Unlike in a criminal prison, where a sentence provides a fixed end date, immigration detainees faced the torment of not knowing if they would be held for weeks, months, or even years.²⁴⁰ This profound uncertainty was a recurring theme in detainee testimonies. As one individual explained, “It’s even more torturing than a prison, because in a prison, if you’re there for two years, you know you’re there for two years (...) In detention, you don’t know when you are gonna go home”.²⁴¹

The constant anxiety and despair led to high rates of mental illness, self-harm, and suicide attempts across the detention estate.²⁴² The psychological pressure was immense, with the uncertainty, isolation, and lack of control weighing heavily on detainees, often manifesting as anger, depression, and a sense of hopelessness.²⁴³ The system, while officially administrative, functioned as a powerful and destructive form of psychological punishment.

The profound uncertainty faced by detainees in the 1980s was not merely an incidental feature of the system, but a core element of its punitive power. Mary Bosworth argues that the chronicity and uncertainty of administrative confinement create a unique form of suffering, distinct from a criminal sentence.²⁴⁴ My findings

²³⁷ Bosworth, *Inside Immigration Detention*, *op.cit.*, 40.

²³⁸ Bazalgette, ‘Notes on the History of a Detention Centre’.

²³⁹ *Ibid.*

²⁴⁰ Mary Bosworth and Sarah Turnbull, ‘Immigration, Detention, and the Expansion of Penal Power in the United Kingdom’, in *Extreme Punishment*, ed. Keramet Reiter and Alexa Koenig (Palgrave Macmillan UK, 2015), https://doi.org/10.1057/9781137441157_4

²⁴¹ *Ibid.*, 6.

²⁴² Kristine Harris, ‘*A Secret Punishment*’: *The Misuse of Segregation in Immigration Detention* (Medical Justice, 2015), 79.

²⁴³ Susannah Willcox, ‘Harmondsworth: Story of Those Detained Within the Walls’, *The Detention Forum*, 23 October 2015, <https://detentionforum.org.uk/harmondsworth-story-of-those-detained-within-the-walls/>

²⁴⁴ Bosworth, *Inside Immigration Detention*, *op.cit.*, 161

suggest that the roots of this chronicity are deeply embedded in the state-led model of the 1980s, where administrative paralysis directly translated into prolonged and indefinite detention for individuals.

While conditions in American facilities were shaped by the logic of mass incarceration and profit incentives, UK detention centres reflected chronic underinvestment and bureaucratic inefficiency. In both systems, however, detainees experienced similar realities: overcrowding, inadequate healthcare, and prolonged uncertainty. The comparison underscores that although the material drivers differed, the embodied experience of confinement was strikingly parallel.

The Ambiguity of Privatisation

While the UK model in the 1980s was predominantly driven by the State, it was not exclusively so. 1970s, predating the widespread adoption of neoliberal free-market policies. The Conservative government awarded contracts to Securicor (later acquired through mergers to become G4S) to operate immigration detention centres at Harmondsworth near Heathrow and a facility near Manchester airport. Securicor's growing influence was reflected in its 1971 London Stock Exchange listing and the 1981 recognition of its chairman Peter Smith with an OBE for services to the security sector.²⁴⁵ These developments marked the emergence of a new dynamic between government and private security firms, establishing a profit-driven model of policing and confinement that drew inspiration from American practices.²⁴⁶

A crucial ambiguity lay in the long-standing contract with the private security firm Securicor to provide guarding and escorting services at Harmondsworth, a practice dating back to the centre's opening in 1970.²⁴⁷ This early form of privatisation, while limited to staffing rather than full management, set a precedent for private sector involvement. A 1986 Hansard record reveals that when questioned in Parliament about the Securicor contract, the government revealed some information:

Securicor Ltd. has been contracted to the Home Office since 1970 to provide staff who act as orderlies for passengers under examination by an immigration officer and for the purpose of guarding and escorting persons detained under the Immigration Act 1971²⁴⁸

However they refused to disclose the cost of the contract, citing commercial confidentiality.²⁴⁹ This points to an early lack of transparency in the private

²⁴⁵ Bhatia and Canning, 'Misery as Business', *op.cit.*, 2.

²⁴⁶ Trevor Jones and Tim Newburn, 'The Convergence of US and UK Crime Control Policy: Exploring Substance and Process', in *Criminal Justice and Political Cultures* (Willan, 2004).

²⁴⁷ *The UK Border Regime: A Critical Guide* (Corporate Watch, 2018), 89.

²⁴⁸ Mr. Waddington (Minister of State for the Home Office), *Securicor*, House of Commons, *Hansard*, 21 July 1986, vol. 102, col. 40, UK Parliament.

Full quote: "Securicor Ltd. has been contracted to the Home Office since 1970 to provide staff who act as orderlies for passengers under examination by an immigration officer and for the purpose of guarding and escorting persons detained under the Immigration Act 1971."

²⁴⁹ *Ibid.*

management of detention, a theme that would become more prominent as privatisation expanded. However, criticism of the use of private companies began almost as soon as the contract was signed. The government acknowledged criticism of the principle of privatisation in immigration detention but defended its continuation on pragmatic grounds, setting the stage for later expansion:

The Home Secretary has taken note of the Expenditure Committee's concern about the principle of using a private security organisation to run the immigration detention centres but there are practical difficulties in the way of providing a suitable alternative... He is satisfied that the existing safeguards should ensure that the arrangements are... satisfactory and he proposes that the use of private security orderlies should continue for the time being.²⁵⁰

The Thatcher government's neoliberal project focused primarily on shrinking the welfare state and breaking the power of organised labour, while simultaneously strengthening the centralised coercive powers of the state itself, such as the police.²⁵¹

The immediate privatisation of a core security function like detention did not fit this specific ideological mould. The State-led approach was tried first, and its manifest failure due to fiscal constraints and bureaucratic incompetence led to the prison system facing a "crisis of legitimacy" in the 1980s, stemming from overcrowding and disorder.²⁵² A 1990 report known as the Woolf Report looked at the Strangeways Prison riot and other disturbances across Britain,²⁵³ its analysis is a comprehensive indictment of the state of British prisons throughout the preceding decade, documenting in detail the "manifest failure" of the system.²⁵⁴ This created the political opening for the subsequent adoption of the American model of total

Full quote: "The cost of the service provided by Securicor Ltd. is a matter of contract which it would not be appropriate for me to disclose."

²⁵⁰ Home Office, *The Reduction of Pressure on the Prison System*, Cmnd. 7948, June 1980, HO355-55, 28.

²⁵¹ Stuart Hall, *The Hard Road to Renewal: Thatcherism and the Crisis of the Left* (Verso, 2021); Andrew Gamble, *The Free Economy and the Strong State: The Politics of Thatcherism*, 2nd edn (Palgrave, 2002).

²⁵² Richard Sparks, 'Can Prisons Be Legitimate?', *The British Journal of Criminology* 34, no. S1 (1994): 14–28, <https://doi.org/10.1093/oxfordjournals.bjc.34.S1.14>

²⁵³ In April 1990, Strangeways Prison in Manchester became the site of Britain's longest-ever prison uprising, lasting 25 days from April 1st to 25th. What started as prisoners seizing the prison chapel rapidly escalated into a facility-wide revolt and rooftop demonstration. The disturbance concluded when authorities finally removed the last five inmates from the roof. The uprising took a significant toll: one prisoner died, while 194 people were injured—147 prison staff and 47 inmates. The physical destruction was extensive, requiring £55 million in repairs (approximately £158 million in today's currency), as large portions of the facility were damaged or destroyed. This major incident triggered copycat disturbances across prisons throughout England, Scotland, and Wales, prompting the British government to launch a comprehensive public investigation led by Lord Woolf. The subsequent Woolf Report determined that prison conditions had been unbearable and called for sweeping reforms to Britain's correctional system.

²⁵⁴ Harry Woolf and Stephen Tumin, *Prison Disturbances April 1990*, Cm 1456 (London: Her Majesty's Stationery Office, 1991).

privatisation.²⁵⁵

Paradoxically, as Thatcher's administration contracted the State's economic and social functions, it simultaneously expanded its coercive capacity. This reflected a conscious strategy of establishing a "strong State" to safeguard the "free economy."²⁵⁶ The government systematically centralised police oversight, dismantling the historic independence of local police authorities and thereby securing direct governmental control over policing policies and operational priorities.²⁵⁷

This Thatcherite approach, shrinking the welfare state while strengthening its coercive arm, did not emerge in a vacuum. It can be situated within the broader political trends identified by scholars such as Eric Kaufman (2019), who charts the growing salience of immigration as a political issue for the Conservative party.²⁵⁸ The government's desire to be seen as 'in control' of the borders provided the political imperative for detention. Yet, as my research shows, this political will was not matched by the financial or administrative commitment to build a functional system. The result was a 'symbolic state' of control, where the harsh reality of decaying facilities and policy paralysis stood in stark contrast to the tough political rhetoric, a contradiction that would ultimately pave the way for a different model of control in the decade to follow.

The United States' embrace of private contractors to manage detention facilities stands in contrast to Britain's more cautious and State-dominated model that gradually transitioned towards privatisation. But both reveal how detention infrastructure became entangled with broader political economies. In the US, private prisons turned migrants into sources of revenue, while in the UK detention expanded despite evidence of systemic dysfunction. Both approaches highlight how once built, detention infrastructure develops institutional inertia, generating vested interests that resist contraction or reform.

3.5. Conclusion: A System in Crisis

In stark contrast to the crisis-driven expansion in the United States, the development of the United Kingdom's immigration detention estate during the 1980s was a story of infrastructural decay, bureaucratic paralysis, and thwarted ambition. While the Thatcher government was ideologically aligned with the Reagan

²⁵⁵ 'Private Prisons', in *Crime and Justice. Volume 28: A Review of Research*, ed. Michael H. Tonry and Richard W. Harding (University of Chicago Press, 2001), 268; Adrian L. James, ed., *Privatizing Prisons: Rhetoric and Reality* (Sage Publ, 2011).

²⁵⁶ Gamble, *The Free Economy and the Strong State. op. cit.*

²⁵⁷ The 1980s saw significant expansion of police powers through legislation like the Police and Criminal Evidence Act 1984 and Public Order Act 1986, which enhanced stop-and-search capabilities and control over public assemblies. The government adopted a more confrontational approach to public order, exemplified by the mass deployment of police during the miners' strike.

²⁵⁸ Eric P. Kaufmann, *Whiteshift: Populism, Immigration, and the Future of White Majorities* (Abrams Press, 2019), 137.

administration in its commitment to neoliberal principles, its application of these principles to the State's coercive functions differed significantly. Rather than immediately outsourcing control, the UK initially pursued a State-led approach to detention that was consistently undermined by fiscal conservatism and inter-departmental friction. The result was a decade of reliance on dilapidated facilities, *ad hoc* solutions, and the controversial use of the criminal prison system. It was only in the 1990s, after the state-centric model had proven inadequate to handle rising asylum applications, that the UK decisively shifted towards the privatised, purpose-built model pioneered in the US.

Key UK Immigration Detention Facilities Established, 1970-2001						
<u>Facility Name</u>	<u>Location</u>	<u>Year Opened</u>	<u>Type</u>	<u>Initial Capacity</u>	<u>Management</u>	<u>Notes</u>
Harmondsworth	Heathrow, London	1970	Repurposed (War-era buildings)	48	Home Office (Guarding by Securicor)	UK's first dedicated facility; noted for poor conditions and decay. Rebuilt in 2001.
"The Beehive"	Gatwick, Sussex	Pre-1980	Repurposed (Airport Terminal)	N/A	Home Office	Criticized for "cramped and run down" conditions and fire hazards.
<i>MV Earl William</i>	Harwich, Essex	1987	<i>Ad hoc</i> (Car Ferry)	~90	Home Office	Controversial "prison ship"; ran aground in a storm, leading to release of detainees.
Campsfield House	Kidlington, Oxfordshire	1993	Repurposed (Young Offenders Institution)	200	Group 4	Site of numerous protests, hunger strikes, fires, and suicides.
Tinsley House	Gatwick, Sussex	1996	Purpose-Built (PFI)	150	Wackenhut (UK) Ltd	UK's first purpose-built and privately-financed IRC, pioneered the "Tinsley Model."
Oakington Reception Centre	Cambridgeshire	2000	Repurposed (RAF Base)	400	N/A	Used for controversial "fast-track" asylum processing.
Yarl's Wood	Bedfordshire	2001	Purpose-Built	900	Group 4	At the time, the largest detention center in Europe.

The development of the detention estate in the 1980s showcases a profound divergence in the political economy of punishment in the two countries. The United States embraced a neoliberal, market-based solution to immigration control. It created a new “detention market” and outsourced the state’s coercive function to private, for-profit corporations.²⁵⁹ This decision had lasting consequences, creating a powerful “prison industrial complex” with a vested economic interest in lobbying for policies that would lead to more detention, such as mandatory sentencing and bed quotas, that would only grow into the 2000s and beyond (see table below).²⁶⁰

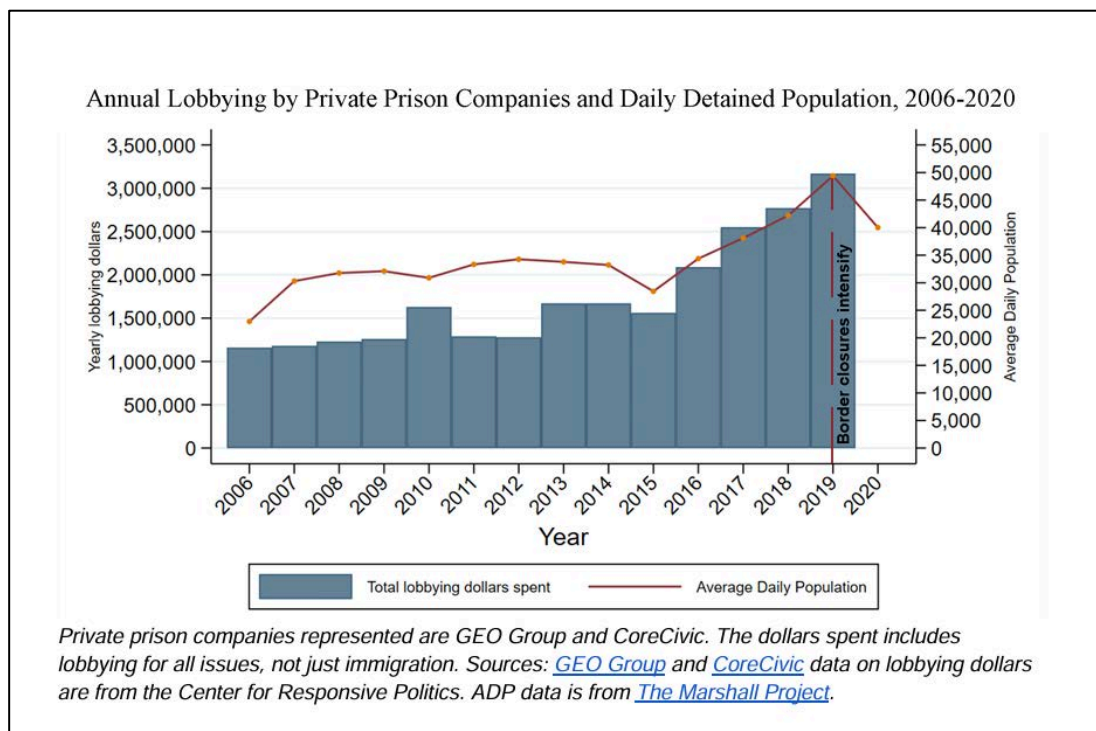


Figure 39. Annual Lobbying by Private Prison Companies and Daily Detained Population in the US (2006-2020)

Source: Immigrant Justice, “Budgeting for a Better Way,” 29 April 2021, <https://immigrantjustice.org/blog/budgeting-for-a-better-way/>

This stands in stark contrast to the United Kingdom. Despite being led by the arch-neoliberal Margaret Thatcher, the UK retained a traditional, state-centric model of detention at its inception, with sporadic use of privatisation. The system was run directly by the Home Office, using state assets like police cells and dedicated, government-run centres. This reveals a key difference in the practical application of the dominant right-wing ideologies of the era. In the US, Reagan-era neoliberalism led

²⁵⁹ Luan, ‘Profiting from Enforcement’. *op.cit.*

²⁶⁰ *Ibid.*

to the privatisation of core state security functions. In the UK, Thatcherism focused more on shrinking the welfare state and disciplining organised labour, while simultaneously strengthening the centralised, coercive security apparatus of the state itself. Privatisation in earnest followed in the UK in the 1990s.²⁶¹

Furthermore, the relationship between infrastructure and policy evolved differently. In the US, the rapid, crisis-driven construction of a large-scale detention infrastructure itself became a driver of policy. Once the thousands of beds existed, whether in military barracks or private facilities, a powerful bureaucratic and economic incentive was created to fill them. The “Mass Immigration Emergency Plan” of 1983, with its requirement for 10,000 ready beds, made mass detention the default, go-to policy option for any future migration event.²⁶² The infrastructure, in effect, created its own demand. In the UK, the relationship was reversed. The more limited infrastructure of the 1980s reflected the fact that detention, while legally possible, was not yet the primary tool of control. The policy focus remained on the legislative and administrative exclusion detailed earlier. In the UK, the policy came first, and the major expansion of the physical detention estate followed in the 1990s and 2000s, once the legal and ideological groundwork for mass removal had been more firmly established.

4. Comparative Analysis of Detention Regimes

The divergent infrastructural pathways taken by the United States and the United Kingdom produced two distinct, yet functionally similar, systems of control. While the US system was vastly larger and more geographically dispersed, and the UK system more compact and centralised, a comparative analysis of their daily operations, architectural principles, management styles, and oversight mechanisms reveals both shared logics of carceral power and critical differences in its application. These differences in the how of detention are as significant as the differences in scale.

4.1. Philosophical Approaches: Punishment vs. Administrative Convenience

At a philosophical level, the two systems presented themselves very differently. The US system, from its inception in the 1980s, increasingly adopted the overt characteristics of criminal punishment. The INS routinely mixed non-criminal asylum seekers with ‘criminal aliens’. A 1998 memo from detention officers at the Krome facility warned of the dangerous practice: “Criminal Aliens and Male Detainees share the same rest-room with minors.” The memo also noted that “Women

²⁶¹ Bhatia and Canning, ‘Misery as Business’. *op. cit.*

²⁶² Kristina Karin Shull, “‘Nobody Wants These People’: Reagan’s Immigration Crisis and America’s First Private Prisons” (UC Irvine, 2014), <https://escholarship.org/uc/item/4v54x9hp>

and children eat their meals on the floor, because they don't have any seats or tables to eat on."²⁶³

The internal papers are explicit about the strategic goals behind the expansion of detention, which went beyond simply holding individuals for processing. The primary rationale was to deter future unauthorised migration. A 1981 policy paper from the Attorney General's Task Force stated, "The prospect of indefinite detention may be an added deterrent to future flows."²⁶⁴ This was seen as a way to "achieve deterrence to counteract continuing illegal alien flows."²⁶⁵

This punitive philosophy was reflected in the daily regime of many facilities. Detainees were often required to wear mandatory uniforms, their movement between housing units was severely restricted, and they were subjected to highly regimented schedules, with early wake-up calls as early as 5:00 AM.²⁶⁶ The conditions themselves including chronic overcrowding, widely reported medical neglect, and poor-quality food functioned as a form of *de facto* punishment, regardless of the administrative label attached to the confinement.²⁶⁷ The experience of detention was designed to be harsh, a clear signal to prospective migrants that they were not welcome.

The United Kingdom, in contrast, officially promoted a philosophy of administrative convenience carried out under "decent" and "humane" conditions. The architectural goal for the rebuilt Harmondsworth was explicitly "hostel-like," featuring shared rooms, communal dining and television areas, and educational facilities. Following an informal visit in 1981, the Chief Inspector of Prisons, Mr. Pearce, optimistically described Harmondsworth as a "benevolent hostel" and indicated that he appreciated how important it is to retain the present system wherever possible.²⁶⁸

The initial management approach at Tinsley House, the so-called "Tinsley Model," emphasised "caring custody," promoting positive staff-detainee relations and a focus on cultural and religious needs.²⁶⁹ Internal government statements from 1980 insist on the official distinction between administrative detention and criminal punishment:

²⁶³ *Memorandum for SDEO and Thru Chain of Command, from Detention Enforcement Officers, Krome SPC, Miami, Florida, Subject: Women and Minors Housed in Processing*, 9 August 1998, 2011-1044-F, Box 1 of 10, William J. Clinton Presidential Library (Little Rock, Arkansas).

²⁶⁴ "Cubans and Haitians" Policy Paper, 6 July 1981, Francis Hodsoll (Frank) S.M.: Files, Series II: President's Task Force on Immigration and Refugee Policy, Box 11, Ronald Reagan Presidential Library (Simi Valley, California).

²⁶⁵ "Immigration Detention Policy", September 1981, Francis Hodsoll (Frank) S.M.: Files, Series II: President's Task Force on Immigration and Refugee Policy, Box 12, Ronald Reagan Presidential Library (Simi Valley, California).

²⁶⁶ Voice of Witness, *Stories from Inside Immigrant Detention*. *op. cit.*

²⁶⁷ Shahshahan, 'The Reality of Life Inside Immigration Detention'. *op. cit.*

²⁶⁸ *Memorandum from P. Tompkins*, 4 March 1981, HO 355/54, Folder Heathrow Immigration Centres at Harmondsworth, Detention at Harmondsworth, Liaison with the Prison Service and Inspectorate, The National Archives (Kew, United Kingdom).

²⁶⁹ Bosworth, *Inside Immigration Detention*, *op. cit.* 148; 188.

The detainees have not committed any criminal offence, and as relaxed an atmosphere as possible is maintained. It is not the aim to maintain a standard of security comparable to that of Prison Department establishments.”²⁷⁰

The official aim was not punishment but the efficient management of individuals pending removal, a goal reflected in the 2001 renaming of “detention centres” to “Immigration Removal Centres” (IRCs).²⁷¹

However, this official philosophy of humane administration often clashed with the lived reality of detention. Official instructions show that internal policy was also framed around detention was framed as being a “last and inevitable option,” highlighting the gap between official policy and the psychological impact that detainees describe:

Detention under Immigration Act powers may be used only when it is essential to effect removal. It should be seen as a last and inevitable option where a person is likely to be removed and release whether unconditional, subject to restrictions or on bail is inappropriate.²⁷²

Detainee testimonies from centres like Harmondsworth paint a picture of psychological distress, dehumanisation, and an environment designed to “break you”.²⁷³ One detainee described the system as designed to induce a passive acceptance of confinement.²⁷⁴ The profound uncertainty caused by the UK’s policy of indefinite detention created an atmosphere of anxiety and despair, leading to high rates of self-harm and suicide attempts.²⁷⁵ Thus, while the UK system eschewed the overt prison-like rituals of the American model, its core feature of indefinite detention produced a unique and equally damaging form of psychological punishment, revealing the “humane” coating to be a superficial gloss on a fundamentally coercive system.

4.2. Architectural and Design Principles: The Panopticon and its Variants

The architectural design of detention facilities provides a concrete illustration of these differing philosophies of control. American centres, particularly those built from the late 1980s onwards, can be analysed as embodiments of Jeremy Bentham’s Panopticon, a design that induces a state of conscious and permanent visibility in the

²⁷⁰ *Immigration Service Detention Centre Background Note*, 4 November 1980, HO 355/54, Folder *Heathrow Immigration Centres at Harmondsworth, Detention at Harmondsworth, Liaison with the Prison Service and Inspectorate*, The National Archives (Kew, United Kingdom).

²⁷¹ Gustavo Henrique Holanda Dias Kershaw, ‘Immigration Removal Centre: Just Another Name for a Prison?’, *Boletim IBCCRIM* 31, no. 364 (2023).

²⁷² *Draft New Section for the Memorandum on Deportation Casework*, December 1985, HO 394/749, Folder *Deportation – Review of Detention Procedures*, The National Archives (Kew, United Kingdom).

²⁷³ Bazalgette, ‘Notes on the History of a Detention Centre’. *op. cit.*

²⁷⁴ *Ibid.*

²⁷⁵ Dominic Aitken, ‘Life and Death in Immigration Detention’, in *Criminal Justice Research in an Era of Mass Mobility*, ed. Andriani Fili et al., Routledge Studies in Criminal Justice, Borders and Citizenship (London, 2018), <https://doi.org/10.4324/9781315269771>

inmate, ensuring the automatic functioning of power.²⁷⁶ The use of cell blocks, secure perimeters topped with razor wire, and central guard towers reflects a design philosophy imported directly from maximum-security prisons. As Foucault asserted, “visibility is a trap.”²⁷⁷ The detainee, constantly exposed to the theoretical gaze of the guard, is compelled to self-regulate.²⁷⁸ This architecture of surveillance is designed for total control and containment, reinforcing the punitive nature of the confinement.²⁷⁹

British IRCs, especially the newer generation built in the late 1990s and early 2000s, employed more subtle forms of architectural control that created a mismatch between form and function. The design of the rebuilt Harmondsworth, was aimed to be more welcoming. Even the architecture reinforced this deception, while the buildings appeared imposing from the outside, their designers at Harmondsworth aimed for interiors with what the architectural firm called a “relaxed, non-institutional aesthetic.”²⁸⁰ This represents a “softer” application of disciplinary power. While less overtly carceral than their American counterparts, these facilities still function to control and manage populations within a secure perimeter. The control is less about the constant threat of observation and more about the management of movement and daily life within a contained, “normalised” environment that nonetheless remains a site of unfreedom.

This difference in approach is also evident in the strategic placement of facilities. As noted, the dominant US strategy was one of remote, rural placement to maximise isolation.²⁸¹ The UK, on the other hand, prioritised administrative efficiency by locating its major centres, Harmondsworth, Colnbrook, Tinsley House, Brook House, close to its largest international airports, Heathrow and Gatwick.²⁸² This geographical choice highlights a key difference in the primary logic of the two systems: the US system was spatially organised to achieve deterrence and to limit legal challenges through isolation, while the UK system was spatially organised to facilitate the logistics of removal.

4.3. External Scrutiny and Reform Pressures

Perhaps the most critical point of divergence lies in the mechanisms for

²⁷⁶ Grönegräs, ‘International Differences in Prison Architecture: What the United States Can Learn from Germany’, 4.

²⁷⁷ Foucault, *Discipline and Punish*, *op. cit.*, 200.

²⁷⁸ Megan Fowler, ‘The Human Factor in Prison Design: Contrasting Prison Architecture in the United States and Scandinavia’, in *The Expanding Periphery and the Migrating Center: Papers from the 2015 Association of Collegiate Schools of Architecture Annual Meeting*, by Lola Sheppard and David Ruy (ACSA Press, 2015), 374.

²⁷⁹ *Ibid.*

²⁸⁰ Bazalgette, ‘Notes on the History of a Detention Centre’.

²⁸¹ Lauren L. Martin, ‘“Catch and Remove”: Detention, Deterrence, and Discipline in US Noncitizen Family Detention Practice’, *Geopolitics* 17, no. 2 (2012): 312–34, <https://doi.org/10.1080/14650045.2011.554463>

²⁸² Bosworth, *Inside Immigration Detention*, *op.cit.*, 4.

external oversight. The United Kingdom possesses a uniquely powerful and independent oversight body in Her Majesty's Inspectorate of Prisons (HMIP). Established in the 19th century, HMIP operates with a statutory mandate to inspect all places of detention, including IRCs, and to report publicly on its findings.²⁸³ Its inspections are a combination of announced and unannounced, rigorous, and result in detailed public reports that assess facilities against four "healthy establishment" tests: safety, respect, purposeful activity, and preparation for release. These reports, such as the 1999 inspection of Harmondsworth which found "reasonably good conditions" or the 2001 inspection of Campsfield House which raised "serious concerns about healthcare," could generate significant media attention and political pressure, forcing the Home Office and its private contractors to respond. For example, the creation of the Harmondsworth Visiting Committee (a key oversight mechanism) was not just about welfare, but also a strategic move to "resist unwarranted critiques of the system, revealing the complex motivations behind accountability structures. An report by HM Chief Inspector of Prisons notes the "positive advantage in an independent body acting as a filter for complaints, monitoring the welfare of detainees and offering advice on the running of the Centre."²⁸⁴ It was also hoped that "the existence of an independent body of this nature would help us resist unfounded criticism of the Centre."²⁸⁵

Numerous investigations have been carried out since.²⁸⁶ The existence of a single, independent, and high-profile inspectorate created a focal point for accountability that, while not always successful in preventing abuses, provided a degree of systematic scrutiny largely absent in the US.

The US system, in contrast, was characterised by a fragmented and significantly weaker oversight structure. The primary internal watchdog was the Office of Inspector General (OIG), whose reports frequently documented severe problems including unsafe and unsanitary conditions, inadequate medical care, and spoiled food

²⁸³ James Ridgeway and Jean Casella, 'Oversight in British Prisons: A Model for the U.S.?', *Solitary Watch*, 14 October 2013, <https://solitarywatch.org/2013/10/14/oversight-british-prisons-model-u-s/>

²⁸⁴ *Report by H.M. Chief Inspector of Prisons on the Immigration Service Detention Centre, Harmondsworth*, 17 February 1989, HO 394/913, Folder *Detention, Prisons, Detention Centre Harmondsworth Report by H.M. Chief Inspector of Prisons*, The National Archives (Kew, United Kingdom).

²⁸⁵ *Ibid.*

²⁸⁶ Prisons and Probation Ombudsman for England and Wales, *Investigation into Allegations of Racism, Abuse and Violence at Yarl's Wood Removal Centre*; Prisons and Probation Ombudsman for England and Wales, *Investigation into Allegations of Racism, Abuse and Violence at Yarl's Wood Removal Centre*; HM Chief Inspector of Prisons, *Report on an Announced Inspection of Haslar Immigration Removal Centre*; HM Chief Inspector of Prisons, *Report on an Unannounced Short Followup Inspection of Tinsley House Immigration Removal Centre*; HM Chief Inspector of Prisons, *Report on an Unannounced Inspection of Haslar Immigration Removal Centre*; *Annual Report of the Independent Monitoring Board at Tinsley House IRC for Reporting Year 01 January 2020 – 31 December 2020* (Independent Monitoring Boards, 2021).

but often lacked the power to compel enforcement.²⁸⁷ Oversight was further diffused among sporadic congressional hearings, which could highlight issues but rarely led to systemic change, and a patchwork of state and local health and safety inspections for facilities operating under county jail contracts.²⁸⁸ This “accountability gap” was a direct result of the system’s fragmented nature. An OIG report on a privately-run federal facility in Texas might have little to no bearing on the conditions in a county jail renting beds to ICE in New Jersey. This lack of a centralized, independent inspection regime meant that litigation by non-governmental organisations (NGOs) like the American Civil Liberties Union (ACLU) and advocacy groups like the Detention Watch Network became a far more critical, albeit piecemeal, tool for exposing abuses and forcing reform than in the UK.²⁸⁹

In the USA, organisations like the American Immigration Lawyers Association (AILA) articulated core principles for the system, calling “on Congress to significantly reduce and phase out the use of immigration detention for immigration enforcement purposes.”²⁹⁰ Reports from groups like Human Rights First provided critical analysis of new enforcement regimes, describing the ‘expedited removal’ process as a system designed to fail:

Our report reveals an alarming pattern of erroneous credible fear decisions that led to asylum seekers ordered deported without asylum hearings, including Haitians, Nicaraguans, and Venezuelans escaping political persecution and many LGBTQ individuals.²⁹¹

Focus should be on protecting refugees at harm, they said, rather than expedited deportations through a “fundamentally flawed process.”²⁹²

Landmark cases like *Flores v. Reno* (1997), which set standards for the detention of children, were the result of sustained legal challenges from civil society

²⁸⁷ Joseph V. Cuffari, Inspector General, *DHS’ Fragmented Approach to Immigration Enforcement and Poor Planning Resulted in Extended Migrant Detention during the 2019 Surge*, OIG-21-29 (Department of Homeland Security, 2021).

²⁸⁸ Adam Goodman, *Deportation Machine: America’s Long History of Expelling Immigrants* (Princeton University Press, 2020), 170–71.

²⁸⁹ American Civil Liberties Union, ‘The Government’s Out-of-Control Detention Practices Could Bail Out the Private Prison Industry’, American Civil Liberties Union, 24 October 2016, <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/governments-out-control-detention-practices>; American Civil Liberties Union, *Banking on Bondage: Private Prisons and Mass Incarceration* (American Civil Liberties Union, 2011), <https://www.aclu.org/banking-bondage-private-prisons-and-mass-incarceration>; Shahshahan, ‘The Reality of Life Inside Immigration Detention’; Victoria Kurdyla, ‘Advocating for Transgender Immigrants in Detention Centers: Cisnormativity as a Tool for Racialized Social Control’, *American Behavioral Scientist* 66, no. 13 (2022), <https://doi.org/10.1177/00027642221083531>

²⁹⁰ American Immigration Lawyers Association, ‘Featured Issue: Immigration Detention and Alternatives to Detention’, *AILA*, 14 March 2025, <https://www.aila.org/library/featured-issue-immigration-detention-and-alternatives-to-detention>

²⁹¹ ‘Flawed Expedited Removal Denies Refugees Asylum Hearings’, *Human Rights First*, 19 September 2022, <https://humanrightsfirst.org/library/flawed-expedited-removal-denies-refugees-asylum-hearings/>

²⁹² *Ibid.*

filling the void left by inadequate state oversight (see chapter six).²⁹³

5. Conclusion: Architecture as Ideology

The physical and managerial structures of immigration detention that emerged in the United States and the United Kingdom between 1979 and 2001 were not neutral or inevitable outcomes of migration pressures. They were, in fact, ideological projects rendered in concrete, steel, and contract law. The architecture of control, its design, its location, its daily regime, embodied the state's evolving philosophical approach to the non-citizen, revealing how abstract political choices are translated into the lived experience of confinement.

The comparative analysis reveals two distinct but related legacies. The United States, propelled by a narrative of crisis and an embrace of market-based solutions, created a sprawling, punitive, and highly profitable carceral archipelago. Its strategy of geographic isolation, its adoption of prison-like architecture, and its fragmented oversight system produced a detention regime designed for deterrence and control, where the very existence of a massive private infrastructure created a powerful incentive for its continued and expanding use. The United Kingdom, after a decade of state-led failure born of fiscal conservatism and bureaucratic inertia, ultimately constructed a more compact, administratively-focused, and centrally-managed private archipelago. Justified by a logic of efficiency and veiled in a language of "humane" treatment, its system was spatially organised to facilitate removal, overseen by a powerful independent inspectorate, yet still capable of inflicting profound psychological harm through the mechanism of indefinite detention.

The development of these vast infrastructures during this foundational period created a powerful "path dependency" that profoundly shaped the future of immigration control in both nations. The network of buildings, the entrenched corporate interests, the established bureaucratic routines, and the normalised legal frameworks did not disappear in 2001. Instead, they became the launching pad for the massive expansion of immigration detention in the post-9/11 era. The architecture of control built in the late 20th century provided the ready-made tools for the hyper-securitized systems of the 21st. The choices made in response to the Mariel boatlift and rising asylum claims in the 1980s and 90s made the subsequent escalation of detention not only possible but, in many ways, the default policy option for both nations as they entered a new century of heightened border anxiety.

By the late 1990s, the United States and United Kingdom had established not only the legal authority to detain but also the physical landscapes that made mass confinement possible. Whether through the US's privatised detention boom or the

²⁹³ American Immigration Lawyers Association, 'Documents Relating to Flores v. Reno Settlement Agreement on Minors in Immigration Custody', *AILA*, 30 January 2025, <https://www.aila.org/flores-v-reno-settlement-agreement>

UK's state-led but equally expanding estate, both countries demonstrated that infrastructure was not neutral: it embodied political choices about deterrence, exclusion, and control. These choices became even clearer as detention was increasingly deployed as a deliberate tool of deterrence, a theme explored in the next chapter.

Chapter 5:

Deterrence as Doctrine: Interdiction, Border Enforcement, and “Hostile Environments”

1. Introduction

The final two decades of the twentieth century witnessed a profound transformation in the governance of migration within the US and the UK. Faced with rising numbers of asylum seekers and unauthorised migrants, driven by geopolitical instability and widening global inequality, states like the United States and the United Kingdom began to fundamentally re-engineer their systems of control. This chapter argues that during the period from 1979 to 2001, both nations progressively abandoned *ad hoc*, reactive measures in favour of a systematic and coherent doctrine of deterrence. This doctrine, rooted in a particular application of rational choice theory, posited that migration itself was a choice that could be discouraged by deliberately increasing its associated costs whether they be physical, financial, legal, or psychological. This chapter argues that deterrence evolved from an emergency tactic into an institutionalised philosophy of governance, a process that systematically embedded cruelty into the State's administrative machinery as an official tool of policy. In this context, both the US and the UK began to govern through migration, using policy to produce specific, desired outcomes within the migrant population itself.

The theoretical underpinnings of this shift can be located in the economic principles of rational choice, most famously articulated by American Economist Gary Becker.¹ Becker's framework assumes that individuals are forward-looking actors who seek to maximise their welfare by weighing the perceived costs and benefits of their actions, subject to various constraints.² He writes "all human behavior can be viewed as involving participants who maximize their utility from a stable set of preferences and accumulate an optimal amount of information and other inputs in a variety of markets"³ While Becker applied this lens to a wide range of human behaviours, from crime to family life, policymakers in the US and UK implicitly and explicitly extended it to the act of migration.⁴ In this state-centric application of the theory, the governments of both nations began to operate as rational actors themselves, seeking to manipulate the cost-benefit calculus of the prospective migrant.⁵ If migration was a rational choice, the logic followed, then it could be prevented by making the choice so costly, so dangerous, so humiliating, so financially and psychologically ruinous, that

¹ Gary S. Becker, *The Economic Approach to Human Behavior* (University of Chicago Press, 1976).

² Rational choice theory holds that individuals make decisions to maximise utility, assuming complete information and stable preferences. Behavioural economists such as Kahneman, Tversky, and Thaler highlight its neglect of heuristics, emotions, and social norms. Becker (1976) extended the theory to domains such as crime and family, emphasising "instrumental rationality," where actors pursue goals by the most efficient means, regardless of the goals' intrinsic worth.

³ Becker, *The Economic Approach to Human Behavior*, 14.

⁴ Catherine Herfeld, 'The Potentials and Limitations of Rational Choice Theory: An Interview with Gary Becker', *Erasmus Journal for Philosophy and Economics* 5, no. 1 (2012): 77–78, <https://doi.org/10.23941/ejpe.v5i1.101>

⁵ Fritz Söllner, 'Towards a Rational Migration Policy', *Analyse & Kritik* 40, no. 2 (2018): 267–92, <https://doi.org/10.1515/auk-2018-0015>

the potential benefits of safety or opportunity would be outweighed.

This logic gave rise to what political scientists Thomas Gammeltoft-Hansen and Nikolas Tan have termed the “deterrence paradigm.”⁶ Emerging in the 1980s, this paradigm came to dominate the response of states to asylum seekers, representing a fundamental shift away from a post-war consensus centred on protection and towards a new consensus centred on exclusion and prevention.⁷ The statistics from the period underscore the pressures that fuelled this paradigm shift. In the UK, asylum applications rose from just 1,500 in 1979 to a peak of 71,025 by 2001.⁸ In the US, the 1980 Mariel boatlift saw 125,000 Cubans arrive in six months, a figure that dwarfed previous annual flows and created a sense of crisis that led to a policy revolution.

Although the United States focused on physically fortifying its borders and interdicting migrants at sea, and the United Kingdom concentrated on administrative controls designed to make everyday life unliveable for unwanted migrants, both pursued deterrence as a guiding doctrine. Deterrence was not tied to geography alone (land borders or islands) but to a broader political imperative to render migration costly, risky, and unattractive.

This chapter poses a central comparative question: How did two liberal democracies with vastly different geographies, legal traditions, and historical relationships to immigration converge on a similar, and similarly punitive, doctrine of deterrence? To answer this, the analysis proceeds in six parts. Part one examines the development of the key “technologies of deterrence” in the United States, focusing on maritime interdiction, the militarisation of the land border under the “Prevention Through Deterrence” strategy, and the weaponisation of civil detention. Part two turns to the United Kingdom, analysing its different but parallel approach focused on externalising the border through visa regimes and carrier liability, and creating an internal “hostile environment” through punitive asylum support systems and fast-track procedures. Part three provides a direct comparative analysis of these strategies, assessing their shared theoretical foundations, divergent mechanisms of implementation, and their mutual record of ineffectiveness and perverse consequences. Part four situates these national policies within their international and diplomatic context, looking at how countries shift the burden and the contested interpretation of international legal obligations. Finally, this chapter will conclude that the deterrence model’s primary consequence was not the control of migration but the creation of a permanent, costly, and brutal infrastructure of exclusion that would define immigration governance for decades to come.

⁶ Thomas Gammeltoft-Hansen and Nikolas F. Tan, ‘The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy’, *Journal on Migration and Human Security* 5, no. 1 (2017): 28–56, <https://doi.org/10.1177/233150241700500103>

⁷ Malene H. Jacobsen and Rhys Machold, ‘Refusing Deterrence’, *Journal of Ethnic and Migration Studies*, 21 January 2025, 1–18, <https://doi.org/10.1080/1369183X.2024.2441604>

⁸ Tina Heath and Rachel Hill, *Asylum Statistics United Kingdom 2001*, Home Office Statistical Bulletin no. 09/02 (2002).

2. Prevention Through Deterrence in the United States

In the United States, the doctrine of deterrence was created in the context of maritime arrivals and subsequently expanded on the vast expanse of the southwestern land border with Mexico. The American approach was characterised by the projection of state power outward, beyond its territorial boundaries and into international waters, and the strategic weaponisation of the nation's most hostile natural landscapes.⁹ This strategy, explicitly named "Prevention Through Deterrence," relied on a combination of mutually reinforcing tactics: intercepting migrants before they could make legal claims, funnelling those who crossed by land into deadly terrain, and using the punitive experience of detention to discourage others from following.¹⁰ While the phrase "Prevention Through Deterrence" first appeared in 1994 in a document entitled "Border Patrol Strategic Plan of 1994 and Beyond," in practice it was being implemented at least as early as the 1980s.¹¹

2.1. Cuban and Haitian Interdiction: The Maritime Strategy

The Mariel Boatlift

The arrival of the refugees in the United States created political problems for President Carter. In late October 1980, the American and Cuban governments reached an agreement to halt the Mariel boatlift. But by then, up to 125,000 Cubans had arrived in the country.¹² The Mariel boatlift and the ongoing arrival of Haitian asylum seekers in small boats, were portrayed by the incoming Reagan administration not as a refugee or humanitarian situation, but as a moment of crisis, as a "loss of control" over US borders and a "serious national problem."¹³ For example later policies were seen by the White House as direct responses to the Mariel situation. Michael A. Guhin, Deputy Legal Adviser at the National Security Council, referred to the crisis in a 1982 memorandum:

You may wish to note the importance of the procedures for dealing with mass arrivals, particularly the emergency procedures, to our foreign and

⁹ Jason De León, *The Land of Open Graves: Living and Dying on the Migrant Trail*, California Series in Public Anthropology 36 (University of California press, 2015).

¹⁰ Joseph Nevins, *Operation Gatekeeper and beyond: The War on 'Illegals' and the Remaking of the U.S.-Mexico Boundary*, 2nd ed. (Routledge, 2010).

¹¹ *Border Patrol Strategic Plan 1994 and Beyond: National Strategy* (U.S. Border Patrol, 1994).

¹² George J. Borjas, 'The Economics of Immigration', *Journal of Economic Literature* 32, no. 4 (1994): 1698.

¹³ "Proposed Illegal Immigration Policy Package", c. 1981, Francis Hodson (Frank) S.M.: Files, Series II: *President's Task Force on Immigration and Refugee Policy*, Box 10, Ronald Reagan Presidential Library (Simi Valley, California).

security policies (for example, to deter another Mariel or to deal with it if deterrence fails), and underline the need to get these back on track as part of the overall package.¹⁴

This framing constituted an explicit political critique of the Carter administration, which was widely perceived as having inadequately managed the influx.¹⁵ Internal documents from the Reagan White House frequently referenced the “Cuban influx” as evidence that existing immigration legislation was insufficient to address mass arrivals.¹⁶ An early draft of a Reagan speech included the assertion that “the bipartisan Select Commission which reported this Spring concluded that the Cuban influx to Florida ‘brought home to most Americans the fact that United States immigration policy was out of control.’”¹⁷

One 1982 decision paper from the Reagan Administration Cabinet Council noted:

“The 1980 Mariel boatlift brought a wave of 125,000 undocumented Cubans to south Florida. Many were criminals, mentally ill, or otherwise maladjusted. CIA estimates an additional 200,000 Cubans could come to the U.S. if Castro reopened the port for this purpose. The Carter Administration had neither a consistent policy concerning the emergency nor an orderly way of implementing the few decisions which were made.”¹⁸ This perceived loss of control was seen as a direct threat to national sovereignty. Attorney General William French Smith articulated this view, stating, “In recent years, this nation truly has lost control of its own borders.”¹⁹ Polling data from the era reflected this anxiety, with one polls showing public concern and opposition to illegal immigration: “Recent polls show 91 percent of Americans want an ‘all-out effort’ to stop illegal immigration, and many are concerned with the level of legal immigration, which is the highest of any country of the world.”²⁰

Within this crisis narrative, detention became the central policy tool. The administration made a conscious decision to abandon the previous policy of paroling most asylum seekers and instead moved to detain them.²¹ This shift was explicitly justified as a means of deterrence. As the Attorney General stated in 1982, the mandatory detention of arriving Haitians was necessary to discourage such

¹⁴ *Memorandum for Robert C. McFarlane from Michael A. Guhin*, 16 April 1982, Michael A. Guhin: Files, RAC Boxes 2–6, Box 1, Ronald Reagan Presidential Library (Simi Valley, California).

¹⁵ *Cabinet Council on Legal Policy Decision Paper*, 16 April 1982, Edwin Meese III (OCP): Files, Box 13, Ronald Reagan Presidential Library (Simi Valley, California).

¹⁶ *Statement by the President (Draft)*, July 1981, Luis Aclé: Files, OA 13781, Box 3 (RR51), Ronald Reagan Presidential Library (Simi Valley, California).

¹⁷ *Ibid.*

¹⁸ *Decision Paper for the Cabinet Council on Legal Policy*, 16 April 1982, Edwin Meese III (OCP): Files, Box 13 (RR20), Ronald Reagan Presidential Library (Simi Valley, California).

¹⁹ *The Immigration Reform and Control Act of 1982*, 1982, Michael Uhlmann: Files, OA 9442, Box 5 (RR18), Ronald Reagan Presidential Library (Simi Valley, California).

²⁰ *Cabinet Council on Legal Policy Working Paper*, 14 April 1982, Michael A. Guhin: Files, RAC Boxes 2–6, Box 1 (RR50), Ronald Reagan Presidential Library (Simi Valley, California).

²¹ U.S. General Accounting Office, *Detention Policies Affecting Haitian Nationals*, Report No. GGD-83-68 (Washington, DC: U.S. General Accounting Office, 17 July 1981), <https://www.gao.gov/assets/ggd-83-68.pdf>

migration.²² A contingency plan under consideration outlined three potential responses to a mass influx, with detention being the first and most forceful option:

There are three main types of response distinguished by the purpose of the federal action toward the people attempting to enter the United States: (1) interdiction of those traveling to the United States, and/or detention and repatriation of those who arrive; (2) temporary haven until conditions in their homeland permit their return; or (3) admission and resettlement of the arrivals into American society, as was done for the Cubans.²³

This established a new and punitive logic at the heart of US policy: detention was no longer just a temporary measure for processing but a tool to punish current arrivals and dissuade future ones.² The executive branch, particularly the Attorney General, was vested with complete and virtually unreviewable discretion to decide who would be detained and where, solidifying the power of the executive to manage this crisis.

A policy decision paper from May 4, 1981 framed “interdiction, apprehension and detention pending repatriation” as a primary tool to control illegal immigration.²⁴ Policy options explicitly budgeted for significant increases in detention resources. The administration offered a formal plan for mass arrivals, which was presented as a direct lesson from the 1980 Cuban boatlift.²⁵ The plan needed to address agency responsibility, funding, and, most importantly, the availability of detention facilities. The documents are explicit that detention serves multiple purposes: processing and legal proceedings, but also for deterrence.²⁶ The prospect of being held in custody was seen as a way to discourage future migration flows. There was also a clear recognition that the US lacked adequate facilities for mass detention.²⁷ As the previous chapter showed, the administration suggested using existing sites like the Krome North Camp in Miami and identifying new, larger-capacity military facilities, such as Fort Allen in Puerto Rico, Ellington Air Force Base in Texas, and Hamilton Air Force Base in California.²⁸

Haiti

Haiti saw its emigration rate in the 1980s increase 25-fold compared with the

²² Mark Dow, *American Gulag: Inside U.S. Immigration Prisons* (University of California Press, 2004), 7.

²³ “Contingency Planning for Mass Arrivals of Refugees or Illegal Aliens”, 4 May 1981, Francis Hodson (Frank) S.M.: Files, Series II: *President’s Task Force on Immigration and Refugee Policy*, Box 9 (RR3), Ronald Reagan Presidential Library (Simi Valley, California).

²⁴ “Illegal Immigration”, c. 1981, Francis Hodson (Frank) S.M.: Files, Series II: *President’s Task Force on Immigration and Refugee Policy*, Box 9 (RR3), Ronald Reagan Presidential Library (Simi Valley, California).

²⁵ “Contingency Planning for Mass Arrivals of Refugees or Illegal Aliens,”

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

1970s.²⁹ The first waves of Haitian migrants fled during the violent dictatorship of François Duvalier and his son Jean-Claude Duvalier, which lasted from 1957 until Jean-Claude's regime was overthrown in 1986, leading to political and economic collapse in Haiti.³⁰ In 1980, there were 92,000 Haitian migrants in the United States, by 2010, that number was close to 600,000 (see figure 5 below). Haitians, as well as certain other national groups were seen as threats to national security and prosperity due to perceptions that they would overburden social services and destabilise local economies. While Cuban refugees, particularly those who arrived during the 1980 Mariel boatlift, faced widespread criminalisation in media coverage and political discourse because they were often portrayed as criminals or undesirables, other Caribbean and Latin American immigrants encountered similar prejudicial treatment.³¹

Whereas the previous policy decision had generally been to parole immigrants while their cases were being decided, and therefore let them into the country, the arrival of large numbers of Cubans and Haitians forced the government to reconsider its options and the executive turned to another enforcement option, detention. The Reagan administration's response to Caribbean migration in the early 1980s marked a significant shift toward using detention as a deterrent, particularly targeting Haitian asylum seekers. In 1981, the administration established the Haitian Programme, which mandated detention for all Haitian migrants while their cases were processed, a stark departure from previous practices of allowing asylum seekers to remain in communities during processing.³²

Detention was again seen as a deterrent, aiming to show that simply arriving in the United States was not enough to guarantee entry or refuge: "Detention of Haitians was an experiment to discourage what INS officials feared would become a "flood of economic refugees from all over the Caribbean."³³ Attorney General William French Smith said in 1982 that "detention of aliens seeking asylum was necessary to discourage people like the Haitians from setting sail in the first place."³⁴

The genesis of America's modern deterrence strategy can be traced to the state's response to Haitian asylum seekers and a policy of maritime interdiction which

²⁹ Michael Welch, *Detained: Immigration Laws and the Expanding I.N.S. Jail Complex* (Temple University Press, 2002).

³⁰ Carlos Ortiz Miranda, 'Haiti and the United States During the 1980s and 1990s: Refugees, Immigration, and Foreign Policy', *San Diego Law Review* 32 (1995): 675–76.

³¹ César Cuauhtémoc García Hernández, *Migrating to Prison: America's Obsession with Locking up Immigrants* (The New Press, 2019), 61.

³² Michael Flynn, 'There and Back Again: On the Diffusion of Immigration Detention', *Journal on Migration and Human Security* 2, no. 3 (2014): 170–71.

³³ Elliott Young, *Forever Prisoners: How the United States Made the World's Largest Immigrant Detention System* (Oxford University Press, 2021), 128.

³⁴ Timothy J. Dunn, *The Militarization of the U.S.-Mexico Border, 1978-1992: Low-Intensity Conflict Doctrine Comes Home*, 1st ed, CMAS Border & Migration Studies Series (CMAS Books, University of Texas at Austin, 1996), 46.

began in earnest with President Ronald Reagan's Executive Order 12324 in 1981, which authorised the U.S. Coast Guard to stop and board Haitian vessels on the high seas.³⁵ A 1981 White House memo following a meeting with the Coast Guard on interdiction notes that the interdiction programme required special authorisation from the President because it went beyond the Coast Guard's existing statutory power: the "purpose of proclamation is to direct Coastguard to take action which is not currently within Coast Guard statutory authority but which the President can mandate."³⁶ Policymakers knowingly acted beyond existing statutory authority, requiring a presidential mandate to create a new sphere of enforcement.

This represented a critical innovation in immigration control: moving the border from the shoreline out into international waters, thereby creating a zone where the government could act pre-emptively before asylum seekers reached US territory and the legal protections it afforded.

Policymakers were aware that interdiction at sea was dangerous, and cruelty was being embedded into the state machinery from the start, with the risk of death a known and accepted potential outcome: "The Coast Guard stressed that if a show of force is necessary, they will prosecute it. Admiral Hayes stressed that death can occur, although the Coast Guard is highly cautious."³⁷ Between 1981 and 1991, this programme resulted in the interception of 433 boats and the summary return of 25,551 Haitians, with only 28 individuals (about one-tenth of one percent) being permitted to enter the US to pursue asylum claims.³⁸

The policy escalated rapidly following the violent military coup that overthrew Haiti's democratically elected President Jean-Bertrand Aristide in September 1991 and the ensuing human rights crisis which triggered a mass exodus. The Coast Guard intercepted over 38,000 Haitians in just eight months.³⁹ Overwhelmed by the numbers, the Bush administration in May 1992 issued the "Kennebunkport Order" (Executive Order 12807), which mandated the direct and immediate return of all interdicted Haitians to Haiti without any shipboard screening or asylum interviews.⁴⁰ This created a legal and humanitarian 'black hole' on the high seas, a clear example of what the

³⁵ Executive Order 12324--Interdiction of illegal aliens <https://www.archives.gov/federal-register/codification/executive-order/12324.html>

³⁶ *Memorandum for Frank Hodsoll from Kate Moore, "Meeting with Coast Guard on Interdiction"*, 4 August 1981, Francis Hodsoll (Frank) S.M.: Files, Box 2, Ronald Reagan Presidential Library (Simi Valley, California).

³⁷ *Ibid.*

³⁸ Norman L. Zucker and Naomi Flint Zucker, *Desperate Crossings: Seeking Refuge in America* (Taylor and Francis, 2016), 78.

³⁹ Patrick Gavigan, 'Migration Emergencies and Human Rights in Haiti', paper presented at Conference on Regional Responses to Forced Migration in Central America and the Caribbean, Organization of American States, Department of International Legal Affairs, Office of Legal Cooperation, 30 October 1997, <https://www.oas.org/juridico/english/gavigane.html#3>.

⁴⁰ *Executive Order 12324: Interdiction of Illegal Aliens*, Federal Register 46, no. 48109 (October 1, 1981), *National Archives*, <https://www.archives.gov/federal-register/codification/executive-order/12324.html>

political philosopher Giorgio Agamben defines as a ‘state of exception’.⁴¹ Within this zone, the normal rules of law were suspended by executive order, allowing state power to operate without legal constraint.”⁴² To manage the overflow of those interdicted prior to this order, the US established a large-scale processing centre at its naval base in Guantánamo Bay, Cuba, a location chosen precisely because it was considered outside the jurisdiction of US domestic courts, thus preventing detainees from filing *habeas corpus* petitions.⁴³ Here, in this archetypal space of exception, individuals were reduced to what Agamben calls ‘bare life’ as they were stripped of political and legal rights, and subject entirely to the will of the sovereign.⁴⁴ This use of extraterritoriality to circumvent domestic legal obligations finds a parallel in the UK’s later use of commercial ‘carrier sanctions’ to prevent asylum seekers from ever reaching British jurisdiction in the first place.

The legal justification for this radical policy rested on the claim that US obligations under both domestic law (the Immigration and Nationality Act) and international law (Article 33 of the 1951 Refugee Convention, which codifies the principle of *non-refoulement*) did not apply extraterritorially.⁴⁵ Human rights advocates fiercely challenged this interpretation, arguing that the duty not to return a person to a place of persecution was absolute and applied wherever a State exercised control. The legal battle culminated in the 1993 Supreme Court case *Sale v. Haitian Centers Council, Inc.*, in which the Court, in an 8-1 decision, sided with the government.⁴⁶ The majority held that neither the INA nor Article 33 constrained the President’s power to repatriate asylum seekers intercepted in international waters.⁴⁷ This landmark decision gave the executive branch a powerful legal shield to pursue deterrence at sea, effectively sanctioning the circumvention of core refugee protections.

The interdiction programme did, however, require securing Haitian government (GOH) agreement to receive back interdicted vessels and permission to board and inspect Haitian vessels. The US sought “blanket permission” but was willing to settle for “case by case” authorisation. The GOH’s reactions were “generally positive” but they desired a “written request, particularly concerning permission to board Haitian vessels”. They also suggested inviting Haitian officials aboard US Coast

⁴¹ Giorgio Agamben, *State of Exception* (University of Chicago Press, 2005).

⁴² Christina Carole De Matteis, ‘Forced Return of Haitian Migrants under Executive Order 12,807: A Violation of Domestic and International Law’, *North Carolina Journal of International Law* 18, no. 2 (1993): 431–55.

⁴³ Jana K. Lipman, *Guantánamo: A Working-Class History between Empire and Revolution*, American Crossroads (Univ. of California Press, 2009), 215.

⁴⁴ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, Meridian (Stanford Univ. Press, 1998).

⁴⁵ Dario Perez, ‘United States Haitian Interdiction Policy: *Sale v. Haitian Centers Council, Inc.*’, *Florida State University Journal of Transnational Law and Policy* 3, no. 1 (1994): 252.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, 250.

Guard vessels to “demonstrate further that this is a joint undertaking.” The GOH promised to prosecute traffickers and confiscate their boats upon return of illegal aliens. A key concern for the GOH was to present the interdiction effort as a “joint undertaking and not simply as a unilateral US action to stop Haitian boat people” to avoid appearing to “knuckl[e] under to US pressure in allowing US to control its waters.” This reveals diplomatic and power imbalances between the two countries and the way the policy was framed geopolitically. This targeted and discriminatory policy was enacted within the long and troubled history of U.S.-Haitian relations, a history marked by American military occupation (1915-1934) and consistent political intervention, which provided a fraught context for a policy that treated Haitian lives as uniquely expendable in the service of immigration control.⁴⁸

While the Haitian interdiction programme established the principle of extraterritorial deterrence, the grounding of the smuggling ship *SS Golden Venture* on a New York City beach on June 6, 1993, solidified the role of *detention* as a central tool of this new doctrine.⁴⁹ The ship was carrying 286 undocumented Chinese migrants, mostly from Fujian province, who had endured a harrowing four-month journey in the vessel’s cramped hold. As the ship ran aground ten people drowned trying to reach the shore.

The incident presented the new Clinton administration with a political and policy crisis. At the time, standard US policy was to parole asylum seekers into the country to await their court hearings, a practice that critics were beginning to decry as “catch and release,” partially due to a lack of detention space to detain all immigrants.⁵⁰ But in response to the *Golden Venture*, the administration, fearing that releasing the passengers would act as a “magnet” for future smuggling operations, made a decisive and punitive choice. Instead of being paroled, the survivors were classified as administrative detainees and dispersed to various local jails and maximum-security prisons across the country, where many would languish for up to four years.⁵¹ This was a deliberate and explicitly articulated policy of deterrence. In a press release issued by the White House, the Clinton administration declared that its “policy of detaining smuggled aliens has deterred smuggling by organised criminal syndicates.”⁵² The message was clear: anyone attempting a similar journey would face not release, but prolonged, punitive incarceration.

In 1995, Barbara Jordan, who served as Chair of the US Commission on Immigration Reform, articulated a renewed commitment to achieving more effective

⁴⁸ Brenda Gayle Plummer, *Haiti and the United States: The Psychological Moment*, The United States and the Americas (University of Georgia Press, 1992).

⁴⁹ Margaret H. Taylor, ‘Symbolic Detention’, *In Defense of the Alien* 20 (1997): 156.

⁵⁰ Daniel Wilsher, *Immigration Detention: Law, History, Politics* (Cambridge University Press, 2012), 69.

⁵¹ Peter Kwong, *Forbidden Workers: Illegal Chinese Immigrants and American Labor*, Current Events Asian-American Studies (The New Press, 1997), 7.

⁵² Taylor, ‘Symbolic Detention’, *op. cit.*, 156.

immigration enforcement through enhanced “credibility” in the system:

Credibility in immigration policy can be summed up in one sentence: those who should get in, get in; those who should be kept out, are kept out; and those who should not be here will be required to leave. The top priorities for detention and removal, of course, are criminal aliens. But for the system to be credible, people actually have to be deported at the end of the process.⁵³

The *Golden Venture* incident thus marked a pivotal moment, transforming civil immigration detention from a short-term administrative tool used to ensure appearance at hearings into a long-term instrument of punishment designed to inflict suffering as a warning to others.

The very purpose and nature of detention shifted from administrative to punitive, marking a decisive turn towards what legal scholar Juliet Stumpf has labelled ‘crimmigration’ (see chapter three).⁵⁴ This merging of immigration control with the logic of criminal punishment saw civil detainees treated as criminals, and incarceration used not for processing, but for punishment and deterrence. The Reagan administration’s detention policy, particularly towards Haitians, was explicitly designed to “punish and deter” migration, a departure from the traditional administrative purpose of ensuring appearance at hearings or removal.⁵⁵ This punitive intent was reflected in the conditions of confinement. A July news article by the *San Juan Star*, quotes a woman named Ayala, representing the Social Workers Association, as claiming that “Fort Allen is a veritable concentration camp, lacking the minimal conditions for human existence.”⁵⁶ Detainees were often held in facilities that were indistinguishable from criminal prisons, including local jails and newly constructed private prisons, where they faced overcrowding, inadequate nutrition, and medical neglect.⁵⁷ Although civilly detained individuals are, in theory, protected from punitive conditions, legal challenges on these grounds were often unsuccessful. The judiciary largely deferred to the executive branch’s “plenary power” over immigration, a doctrine holding that the political branches have near-absolute authority in this

⁵³ Barbara Jordan, Testimony, US Commission on Immigration Reform, US House of Representatives, Committee on the Judiciary, Subcommittee on Immigration and Claims, 24 February 1995.

⁵⁴ Juliet Stumpf, ‘The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power’, *American University Law Review* 56, no. 2 (2006): 367–419, <https://doi.org/10.1515/9780804785419-004>

⁵⁵ “Contingency Planning for Mass Arrivals of Refugees or Illegal Aliens,” *op. cit.*

Full quote: “The prospect of indefinite detention may also be an added deterrent to future flows.”

⁵⁶ *The San Juan Star* – “Group Fears Refugee ‘Flood’ Will Follow”, 24 July 1981, Francis Hodsoll (Frank) S.M.: Files, Box 14, Ronald Reagan Presidential Library (Simi Valley, California).

⁵⁷ *The Christian Century*, “Sanctuary for Refugees”, c. 1981, Carl Anderson: Files, OA 16591, Box 16, Ronald Reagan Presidential Library (Simi Valley, California).

Full quote: Investigators found “inadequate medical care, unsanitary conditions and inhumane treatment in some of the detention centers. Additionally, they found many Salvadorans were ordered to agree to depart the U.S. ‘voluntarily’ and were threatened if they refused.”

area.⁵⁸ This judicial deference was critical in allowing the executive to operate with minimal oversight and to maintain conditions that blurred the line between civil detention and criminal punishment.⁵⁹

2.2. Militarisation of the Border

If maritime interdiction was the first pillar of the new deterrence doctrine, the second was the wholesale strategic redesign of enforcement along the U.S.-Mexico land border. While it had begun earlier, this new approach was formally codified in the U.S. Border Patrol's 1994 "Strategic Plan: 1994 and Beyond," which, for the first time, articulated a national strategy of "Prevention Through Deterrence."⁶⁰ This strategy called for deploying Border Patrol agents directly on the border to deter illegal entry outright:

The Border Patrol will achieve the goals of its strategy by bringing a decisive number of enforcement resources to bear in each major entry corridor. The Border Patrol will increase the number of agents on the line and make effective use of technology, raising the risk of apprehension high enough to be an effective deterrent. Because the deterrent effect of apprehensions does not become effective in stopping the flow until apprehensions approach 100 percent of those attempting entry, the strategic objective is to maximize the apprehension rate. Although a 100 percent apprehension rate is an unrealistic goal, we believe we can achieve a rate of apprehensions sufficiently high to raise the risk of apprehension to the point that many will consider it futile to continue to attempt illegal entry.⁶¹

The plan's logic was not to seal the border hermetically, an acknowledged impossibility. Rather, its core objective was to make unauthorised crossing so difficult and dangerous in traditional urban corridors that migrants would be deterred from trying, or would be "funnelled" into more hostile and remote terrain, where the natural environment itself would become the primary enforcement agent:

The prediction is that with traditional entry and smuggling routes disrupted, illegal traffic will be deterred, or forced over more hostile terrain, less suited for crossing and more suited for enforcement.⁶²

This "funnelling" is clear in INS documents from June 2000:

When INS started concentrating resources on Arizona through Operation Safeguard, the main area of focus was Nogales, which was the busiest illegal immigration corridor in Arizona. Since that time Border Patrol apprehensions in the Nogales area have gone down by more than 30 percent. During that same period, the crime rate in Nogales declined by more than 50 percent. As expected, the increased enforcement pressure in

⁵⁸ Alina Das, 'The Law and Lawlessness of U.S. Immigration Detention', *Harvard Law Review* 138 (2025): 1192.

⁵⁹ *Ibid.*

⁶⁰ U.S. Border Patrol, *Border Patrol Strategic Plan 1994 and Beyond: National Strategy*, prepared by the U.S. Border Patrol, July 1994

⁶¹ *Ibid.*, 6.

⁶² *Ibid.*, 7.

Nogales forced the alien smugglers to shift their operations to the Douglas-Naco corridor. In response, the INS has increased the resources in that area significantly; by the end of this Fiscal Year there will be 534 permanent agents in the Douglas-Naco corridor, a 65 percent increase over 1997.

The phrase “As expected” proves that the funnel effect was a calculated and anticipated outcome of the policy.⁶³ This focus on weaponising the physical landscape stands in stark contrast to the United Kingdom’s approach, which, as we will see, weaponised administrative systems and the social environment rather than geography.⁶⁴

Militarisation of the U.S.-Mexico border expanded significantly during the 1990s.⁶⁵ From 1993 to 1997 a number of strategic operations were carried out by the Border Patrol and the INS that shifted immigration policies from deporting immigrants who had already crossed the border to preventing illegal border entries in the first place. An influx of money from Congress doubled the Border Patrol’s manpower, paid for the construction of walls and fences and increased the surveillance and vehicular capacities of the immigration services at the border. By the turn of the decade, enforcement at the U.S.-Mexico border cost \$2 billion a year.⁶⁶

Operation Hold-The-Line (1993)

The first example in this era of militarisation of the border was carried out in 1993. Operation Hold-the-Line (initially called Operation Blockade), launched at the U.S.-Mexico border in El Paso (Texas) in September that year.⁶⁷ It involved the deployment of four hundred agents and vehicles strategically positioned every 100 yards along a 20-mile stretch of the border in highly visible Border Patrol vehicles 24/7 to effectively prevent illegal crossings. This strategy of deterrence was seen as preferable and more effective than apprehensions at or close to the border. It was an initiative launched by Silvestre Reyes, head of the El Paso Border Patrol sector.⁶⁸ According to a report from the U.S. Government Accountability Office (GAO),⁶⁹ the

⁶³ U.S. Government Accountability Office, *INS’ Southwest Border Strategy: Resource and Impact Issues Remain After Seven Years*, GAO-01-842 (Washington, DC: U.S. Government Accountability Office, August 2001), accessed October 12, 2025, <https://www.gao.gov/assets/gao-01-842.pdf>

⁶⁴ Melanie Griffiths and Colin Yeo, ‘The UK’s Hostile Environment: Deputising Immigration Control’, *Critical Social Policy* 41, no. 4 (2021): 521–44, <https://doi.org/10.1177/0261018320980653>

⁶⁵ Josiah Heyman and Howard Campbell, *The Militarization of the United States-Mexico Border Region*, 38, no. 1 (2012): 21.

⁶⁶ Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton University Press, 2004), 266.

⁶⁷ Frank D Bean et al., *Illegal Mexican Migration & the United States/Mexico Border: The Effects of Operation Hold the Line on El Paso/Juárez* (Population Research Center, 1994).

⁶⁸ Timothy J. Dunn, *Blockading the Border and Human Rights: The El Paso Operation That Remade Immigration Enforcement*, 1st edn, Inter-America Series (University of Texas Press, 2009), 52.

⁶⁹ The U.S. Government Accountability Office (GAO) is an independent, non-partisan agency that serves as the investigative arm of the United States Congress. Its primary role is to audit, evaluate, and

primary aim of the operation was to prevent “significant numbers of aliens from entering the El Paso metropolitan area.”⁷⁰ One of the reasons was that a rise in immigration was presented as a cause for a rise in crime, as the GAO report shows:

Illegal aliens also had a significant impact on the city’s crime rates. El Paso police officials estimated that undocumented aliens committed 75 to 80 percent of all auto thefts, as well as many burglaries. The Mayor of El Paso told us that illegal immigration costs the city about \$30 to \$50 million per year.⁷¹

Multiple studies in the aftermath seemed to show that the operation had succeeded in deterring illegal immigration, though there were also downsides to the strategy. A Center for Immigration Studies paper concluded that Operation Hold-the-Line had proven to be successful and that the strategy was “both more humane and more effective.”⁷² A study commissioned by the U.S. Commission on Immigration Reform and published in July 1994 presented a more nuanced 136-page analysis:

1. Illegal crossings into El Paso have been substantially deterred by Operation Hold the Line
2. The deterrent effect appears to have diminished the longer the operation has lasted
3. Long-distant labour migrants have been less deterred from crossing by the Operation than other kinds of crossers because they seem to have shifted their crossing points to other locations along the border
4. Legal crossers/illegal workers and illegal crossers/illegal workers appear to have changed the daily pattern of their crossings and to have extended the duration of their stays in El Paso⁷³

Importantly they showed that once across the border, “illegal crossers appear less likely to be apprehended by the Border Patrol than they were before the Operation”⁷⁴ However they showed that the Operation had served to reduce the number of illegal crossings down from estimated highs of about eight thousand per day.⁷⁵ A decline in apprehensions was also evident, from seven hundred a day to about

provide oversight of federal government spending and operations, ensuring accountability, transparency, and efficiency in the use of public funds.

⁷⁰ *Border Control: Revised Strategy Is Showing Some Positive Results*, Report to the Chairman, Subcommittee on Information, Justice, Transportation and Agriculture, Committee on Government Operations, House of Representatives GAO/GGD-95-30 (United States General Accounting Office, 1994), 16, <https://www.gao.gov/assets/ggd-95-30.pdf>

⁷¹ *Ibid.*

⁷² John L. Martin, ‘Operation Blockade: Bullying Tactic or Border Control Model?’, CIS.Org, 1 December 1993, <https://cis.org/Report/Operation-Blockade-Bullying-Tactic-or-Border-Control-Model>

⁷³ Bean et al., *Illegal Mexican Migration & the United States/Mexico Border*. *op. cit.*

⁷⁴ *Ibid.*, 124.

⁷⁵ The surge was attributed to a severe financial crisis characterised by depreciated exchange rates, hyperinflation, political instability, and economic dislocation caused by structural adjustment programmes and neoliberal economic policies implemented across Latin America during this period. The crisis was exacerbated by external factors including rising international interest rates, falling commodity prices, and the regional debt crisis that began in 1982 with Mexico’s near-default. The widespread economic devastation led to the 1980s being widely referred to as “la década perdida” (the

two hundred a day.⁷⁶ This success led to a series of other “Operations” throughout the 1990s, notably Operation Gatekeeper, Operation Rio Grande and Operation Safeguard.

Operation Gatekeeper (1994), Safeguard (1995) & Rio Grande (1997)

The following year Operation Gatekeeper was launched to bolster border enforcement in the San Diego-Tijuana sector.⁷⁷ Announced by U.S. Attorney General Janet Reno on September 17, 1994, it began two weeks later on October 1. According to the INS, the goal of Gatekeeper was “to restore integrity and safety to the nation’s busiest border.”⁷⁸ Gatekeeper continued the strategy of “prevention through deterrence” by increasing the number of Border Patrol agents and building a security fence along the border. The government declared it a success in reducing crossings though some have argued that it led to a “militarisation” of the border.⁷⁹ This militarisation takes the form of “the use of military rhetoric and ideology, as well as military tactics, strategy, technology, equipment and forces” to tackle undocumented migration and drug trafficking.⁸⁰ This included the Border Patrol’s implementation of the IDENT fingerprint identification system.⁸¹ The creation of IDENT can be seen as a biopolitical tool to track and categorise bodies at the border. By converting individuals into a set of biometric data points, the state sought to render a fluid, mobile population static and administratively visible, and therefore controllable.

The Clinton administration’s commitment to deterring illegal immigration at the border led to a significant increase in border enforcement resources and infrastructure as the President doubled the number of Border Patrol agents stationed along the southwestern border and allocated \$50 million to the construction of a fourteen-mile security fence, though this simply redirected them towards more dangerous and remote locations.⁸²

lost decade), as most Latin American economies experienced negative or stagnant growth, declining living standards, and social upheaval throughout the decade.

⁷⁶ Bean et al., *Illegal Mexican Migration & the United States/Mexico Border*, *op. cit.*, 124-25.

⁷⁷ U.S. Immigration and Naturalization Service, *Operation Gatekeeper: Landmark Progress*, October 1995, 2011-0376-F, Box 1 of 2, William J. Clinton Presidential Library (Little Rock, Arkansas).

⁷⁸ *Operation Gatekeeper: An Investigation Into Allegations of Fraud and Misconduct* (U.S. Department of Justice Office of the Inspector General, 1998), <https://oig.justice.gov/sites/default/files/legacy/special/9807/index.htm>

⁷⁹ Alison Elizabeth Lee, ‘US-Mexico Border Militarization and Violence: Dispossession of Undocumented Laboring Classes from Puebla, Mexico’, *Migraciones Internacionales* 9, no. 4 (2018): 220, <https://doi.org/10.17428/rmi.v9i35.444>

⁸⁰ Dunn, *The Militarization of the U.S.-Mexico Border, 1978-1992*, *op. cit.*, 3.

⁸¹ U.S. Immigration and Naturalization Service, *Operation Gatekeeper: Landmark Progress*.

⁸² ‘Timeline: U.S. Postwar Immigration Policy’, Council on Foreign Relations, 2025, <https://www.cfr.org/timeline/us-postwar-immigration-policy>

Similar episodes were carried out in 1995, with Operation Safeguard⁸³ at the Tucson sector in Arizona and in 1997, where Operation Rio Grande was launched in the McAllen sector of Texas.⁸⁴ These Operations were generally successful, at least in the short term, but militarizing the border did not address the underlying socioeconomic issues that were the root cause of the problem and so illegal immigration continued. The militarisation of the border failed to put an end to illegal entry, as people found alternative ways to cross the border (more remote and more dangerous locations, paying huge sums to smugglers, entering by stowing away on ships, trucks, and trains. etc.)

The most significant and tragic consequence of this strategic displacement was an increase in migrant deaths. This outcome was not merely foreseeable, it was the logical and calculated result of a policy that deliberately used deadly terrain as a tool of enforcement. As the work of anthropologist Jason De León has shown, the 'Prevention Through Deterrence' strategy functions as a form of necroviolence, where the state achieves its deterrent goals through the death of certain individuals, whose bodies become a warning to others.⁸⁵ The desert itself is weaponised, allowing the state to exercise a lethal power with plausible deniability.⁸⁶ The political scientist Wayne A. Cornelius, one of the foremost chroniclers of this phenomenon, has documented the grim statistics: the number of migrant deaths recorded along the border soared from 87 in 1996 to 499 in 2000.⁸⁷ Though there were likely more cases of people who died but were never found.

⁸³ Janet Reno, *1995 Annual Report of the Attorney General* (U.S. Department of Justice, 1995), ch. 3, <https://www.justice.gov/archive/ag/annualreports/ar95/toc.htm>

⁸⁴ Justin I. Salgado, "Fortifying the U.S.-Mexico Boundary: The 1993 'Hold the Line' Experiment," *Origins: Current Events in Historical Perspective*, The Ohio State University, June 8, 2024, <https://origins.osu.edu/read/fortifying-us-mexico-boundary-1993-hold-line-experiment>

⁸⁵ De León, *The Land of Open Graves*, 69.

⁸⁶ A parallel can be observed in recent years in the thousands of migrant deaths in the Mediterranean Sea, where restrictive European border policies effectively render the sea a site of deterrence through death, transforming human loss into a warning to others seeking entry. Similar dynamics are evident in the English Channel, where repeated drownings of immigrants highlight how border enforcement continues to produce death as a means of control.

⁸⁷ Wayne A. Cornelius, 'Death at the Border: Efficacy and Unintended Consequences of US Immigration Control Policy', *Population and Development Review* 27, no. 4 (2001): 669.

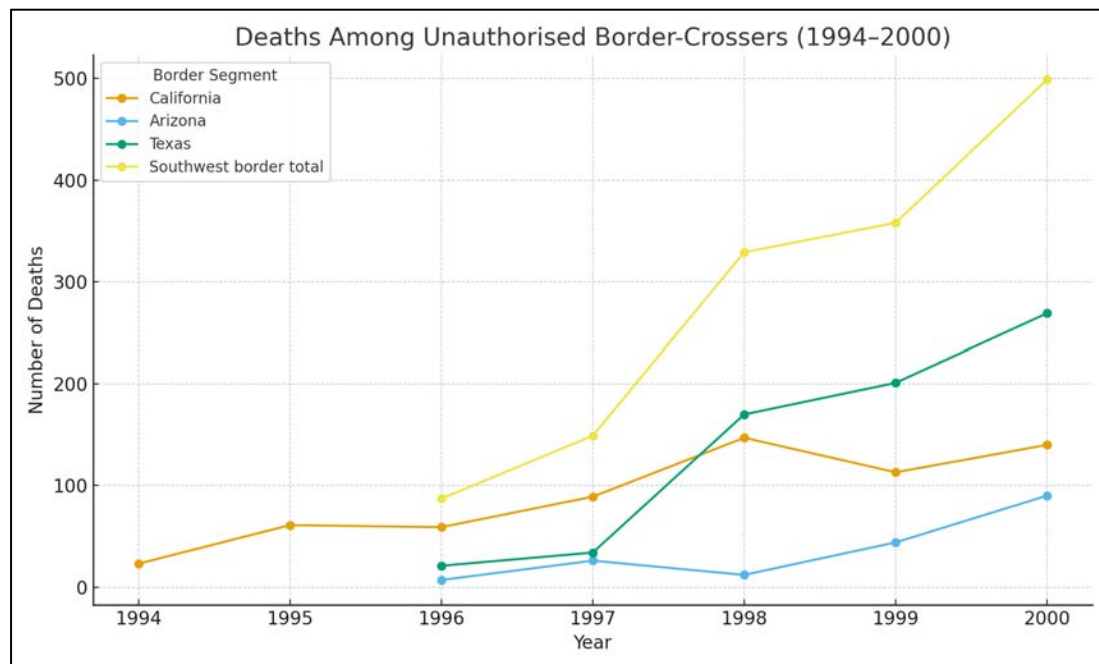


Figure 40. Deaths among unauthorised border-crossers, total Southwest border and California, Arizona, and Texas segments of the border, by calendar year, 1994-2000

Source: Wayne A. Cornelius, 'Death at the Border: Efficacy and Unintended Consequences of US Immigration Control Policy', *Population and Development Review* 27, no. 4 (2001): 670.

An example of this is clear in a report from The Pima County Office of the Medical Examiner in Arizona which looked at the number of bodies found along the border in Pima County (South of Phoenix) from 1990 to 2020:

- 1990-1999: 105⁸⁸
- 2000-2005: 771⁸⁹
- 2006-2013: 1,442⁹⁰
- 2014-2020: 979⁹¹

These individuals perished from heat exposure in a desert where summer temperatures regularly exceed 115 degrees Fahrenheit (46°C), from drowning in swift-moving canals, or from freezing in winter mountain passes.⁹²

⁸⁸ Excludes 15 cases for which GPS coordinates are missing/invalid.

⁸⁹ Excludes 31 cases for which GPS coordinates are missing/invalid.

⁹⁰ Excludes 13 cases for which GPS coordinates are missing/invalid.

⁹¹ No missing GPS data.

⁹² Cornelius, 'Death at the Border', 670.

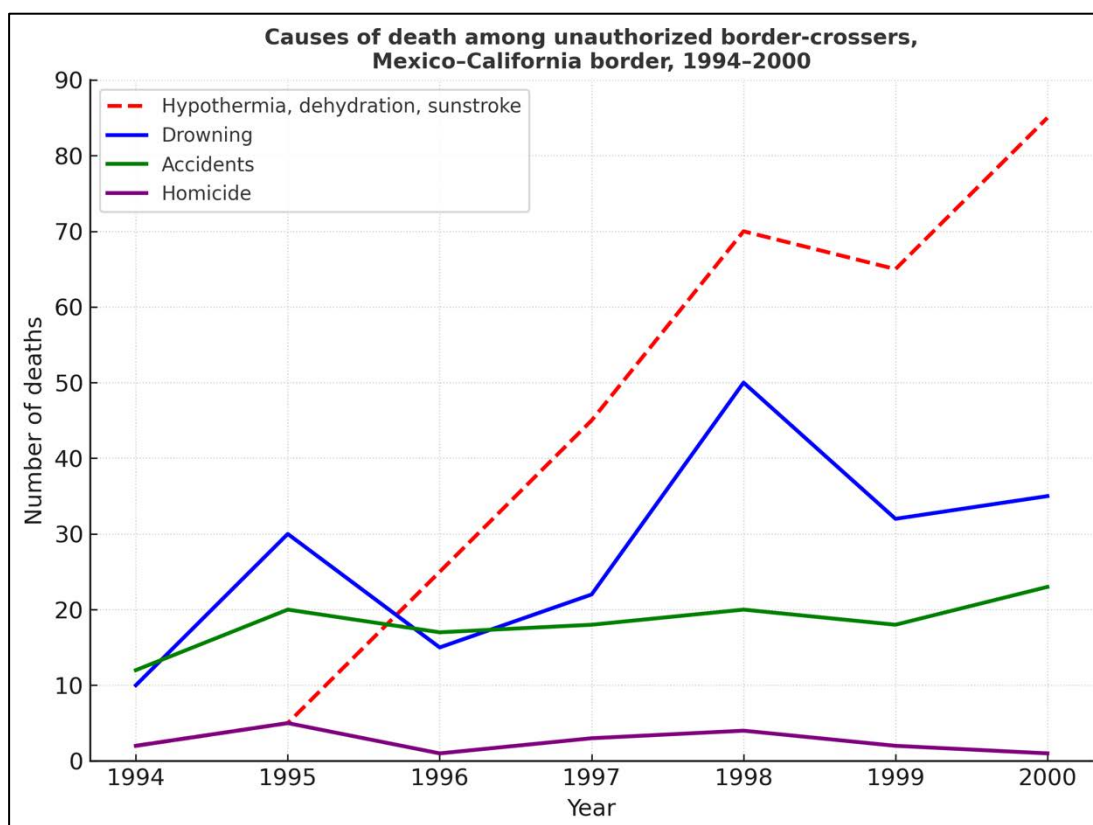


Figure 41. Causes of death among unauthorised border-crossers, Mexico-California border (1994-2000)

Source: Wayne A. Cornelius, 'Death at the Border: Efficacy and Unintended Consequences of US Immigration Control Policy', *Population and Development Review* 27, no. 4 (2001): 670.

The increase in deaths in the sector corresponds to an intensification and militarisation of border enforcement. According to Mae Ngai, Operation Gatekeeper, initiated by the INS in 1994, "pushed illegal entries from the San Diego-Tijuana border area to remote desert sections of California and Arizona."⁹³ This has pushed immigrants into more difficult and remote areas like the treacherous mountains of eastern San Diego county and, most significantly, the vast and deadly Sonoran Desert of Arizona, resulting in turn in increased risks of death. While death may not have been the objective, displacement of migration patterns was an intended goal of the policy.

The strategy amounted to a weaponization of nature, turning the borderlands into a lethal landscape where the state could achieve its enforcement goals with a degree of plausible deniability, attributing the deaths to the elements rather than to its

⁹³ Ngai, *Impossible Subjects*, 266. *op. cit.*, 266.

own deliberate policy choices.⁹⁴

Beyond the humanitarian crisis of border deaths, the “Prevention Through Deterrence” strategy had other profound and perverse consequences. By making the journey significantly more difficult and dangerous, it rendered the services of professional smugglers, or *coyotes*, indispensable.⁹⁵ This led to the rapid professionalisation and consolidation of what had been a more informal system of crossing assistance into a multi-million dollar illicit industry controlled by organised criminal networks:

The median fee had risen to \$700 by 1996. In the pre-Operation Gatekeeper era, coyotes charged an average of \$143 for assistance in crossing the border in the San Diego/Tijuana area; by 1995 the average fee had risen to \$490 (Cornelius 1998a: 131). The INS reported in October 1997 that smugglers’ fees had doubled in many areas, in some cases increasing from \$250 to \$900 (US Immigration and Naturalization Service 1997). Near Douglas, Arizona, the typical charge to be smuggled across the border to Phoenix in 1999 was \$150; by the summer of 2000, the fee was \$800-\$1,300. By mid-2001, smugglers operating in the San Diego and El Centro sectors were charging \$1,200-\$1,500 per head.⁹⁶

This reality was recognised by policy makers. Republican Senator Harrison H. Schmitt from New Mexico argued that increased enforcement enriches smugglers without effectively stopping migration:

It is a problem for our Government because it is impossible to police the border between Mexico and the United States at reasonable cost. The harder we try, the richer the inhuman smugglers get without any significant reduction on the numbers of illegal aliens entering our country.⁹⁷

Wayne Cornelius demonstrates that the surge in smugglers’ fees along the Mexico-US border since 1994 has not been substantial enough to deter economically rational migrants from undertaking the journey. Furthermore, the high cost and risk of crossing disrupted traditional patterns of circular migration, where workers would come to the USA for seasonal labour and then return to Mexico. Faced with a perilous and expensive journey, more migrants opted to remain in the US permanently, paradoxically increasing the very undocumented population the policy was meant to reduce.

2.3. Detention as Tool of Deterrence

The third component of the American deterrence doctrine was the

⁹⁴ Nevins, *Operation Gatekeeper and Beyond*; Reece Jones, *Violent Borders: Refugees and the Right to Move* (Verso, 2017).

⁹⁵ Cornelius, ‘Death at the Border’, 668. *op. cit.*

⁹⁶ *Ibid.*

⁹⁷ *Congressional Record*, “United States–Mexico Good Neighbor Act of 1981”, 5 January 1981, David Swanson (OLA): Files, OA 10315, Box 6, Ronald Reagan Presidential Library (Simi Valley, California).

instrumentalization of the civil detention system itself. The punitive detention of the *Golden Venture* survivors established a precedent that was soon formalized as official policy.

Documents from the Reagan White House, show that as early as 1981, detention was framed not just as a means of control pending a hearing, but as a strategic tool to deter future unauthorized migration (In the Reagan era particularly from Haiti). In March, discussions showed questioned whether detention could deter illegal immigration and reduce impacts on communities:

Resuming detention of aliens pending hearings could possibly deter further migration, especially if expulsion from the U.S. were to occur expeditiously. Detention could also relieve some of the tensions created by release of visaless aliens into the community.⁹⁸

While in July it was believed that “the prospect of indefinite detention may be an added deterrent to future flows.”⁹⁹ In September 1981, a government policy paper on its “Immigration Detention Policy” stated that detention and deportation was needed:

Early in the development of the recommendations of the President’s Task Force on Immigration and Refugee Policy, the Attorney General determined that a policy of detention and speedy return of aliens in exclusion status was required to (1) achieve deterrence to counteract continuing illegal alien flows; and (2) provide relief to Florida where the impact of the Haitian illegal migration has been concentrated.”¹⁰⁰

These quotes are irrefutable evidence of the explicit deterrent logic, showing that this was not a later interpretation but the stated policy goal from the early 1980s. There was a recognition apprehension followed by deportation did not have the same deterrence effect as detention:

Apprehensions along the border may have a minimal deterrent effect if, as is believed to be the situation, most illegal aliens who are apprehended and deported while entering without inspection simply try again a few nights later.¹⁰¹

Clinton-era budget drafts perfectly illustrate the “catch and release” narrative and provide the administration’s own justification for escalating detention. The Clinton administration framed the National Detention Plan as the first serious effort

⁹⁸ “Issue Paper: Policy toward Visaless Persons Entering South Florida”, c. March 1981, Francis Hodsoll (Frank) S.M.: Files, Series II: *President’s Task Force on Immigration and Refugee Policy*, Box 13, Ronald Reagan Presidential Library (Simi Valley, California).

⁹⁹ “*Cubans and Haitians*” Policy Paper, 6 July 1981, Francis Hodsoll (Frank) S.M.: Files, Series II: *President’s Task Force on Immigration and Refugee Policy*, Box 11, Ronald Reagan Presidential Library (Simi Valley, California).

¹⁰⁰ “*Immigration Detention Policy*”, c. September 1981, Francis Hodsoll (Frank) S.M.: Files, Series II: *President’s Task Force on Immigration and Refugee Policy*, Box 12 (RR6), Ronald Reagan Presidential Library (Simi Valley, California).

¹⁰¹ Barry R. Chiswick, “*Guidelines for the Reform of Immigration Policy*”, 15 April 1981, Francis Hodsoll (Frank) S.M.: Files, Series II: *President’s Task Force on Immigration and Refugee Policy*, Box 10, Ronald Reagan Presidential Library (Simi Valley, California).

by any Administration to address the failure of immigrants to appear for their deportation hearings:

One of the biggest problems INS faces in trying to reduce the resident illegal population is its lack of adequate detention space. For the most part, over xx% [sic] deportable aliens who INS manage to apprehend are released pending their deportation hearings. The reality is that most aliens never bother to appear for their deportation hearings.” (...) The 1996 budget therefore provides a program increase of \$172 million to implement the Administration’s comprehensive National Detention and Removal program. This is the first serious effort by any Administration to address a loophole in the immigration control system.¹⁰²

The deterrent effect was achieved through a suite of mechanisms designed to maximize psychological pressure and despair.¹⁰³ As the previous chapter showed, these included harsh conditions, including overcrowding, inadequate medical care, poor nutrition as well as geographic isolation which severely restricted detainees’ access to legal counsel, family members, and community support networks, fostering a sense of hopelessness and dependence on the authorities.

Through these mechanisms, the US government transformed its immigration detention system. It was no longer simply an administrative measure to prevent absconding; it had become a core component of the deterrence doctrine, a punitive system of psychological coercion designed to break the will of asylum seekers and discourage others from attempting to seek protection in the United States.

¹⁰² *Draft Immigration Budget Chapter*, 18 January 1995, 2011-0376-F, Box 2 of 2, William J. Clinton Presidential Library (Little Rock, Arkansas).

¹⁰³ Emily Ryo, ‘Detention as Deterrence’, *Stanford Law Review Online* 71 (March 2019): 237–50.

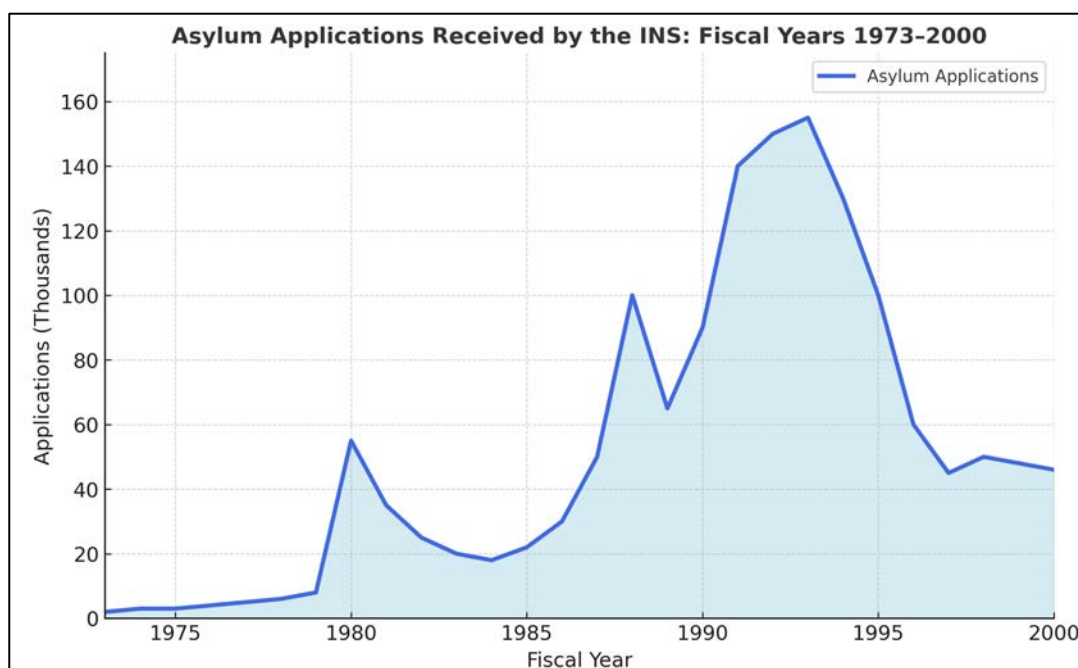


Figure 42. Asylum Applications Received by the INS: Fiscal Years 1973-2000

Source: U.S. Immigration and Naturalization Service, *1990 Statistical Yearbook of the Immigration and Naturalization Service*, M-367 (U.S. Government Printing Office, 1991).

2.4. The Rationale and Purpose of Detention

The internal papers of the Reagan Administration are explicit about the strategic goals behind the expansion of detention, which went beyond simply holding individuals for processing. The primary rationale was to deter future unauthorised migration. A 1981 policy paper from the Attorney General's Task Force stated, "The prospect of indefinite detention may be an added deterrent to future flows."¹⁰⁴ This was seen as a way to "achieve deterrence to counteract continuing illegal alien flows."¹⁰⁵ Detention was also presented as a tool to provide political relief to Florida where the impact of the Haitian illegal migration has been concentrated.¹⁰⁶

Documents from the Reagan White House show a clear policy of detaining specific sub-populations from the Mariel boatlift, categorised as criminals or mentally ill, who could not be repatriated to Cuba. As of July 1981, "1,800 criminals are incarcerated in the Federal Prison in Atlanta" and "800 anti-socials (emotional and disciplinary problem cases) and mentally ill remain at Fort Chaffee, Arkansas."¹⁰⁷ The

¹⁰⁴ "Cubans and Haitians" Policy Paper, 6 July 1981, *op. cit.*

¹⁰⁵ "Immigration Detention Policy", c. September 1981, *op. cit.*

¹⁰⁶ *Ibid.*

¹⁰⁷ "Q&A on Immigration Policy", 30 July 1981, Department of Justice, Elizabeth Dole: Files, Box 30 (RR56), Ronald Reagan Presidential Library (Simi Valley, California).

policy was to maintain these individuals in “appropriate custodial facilities pending their repatriation to Cuba.”¹⁰⁸ A September 1981 Department of Justice paper titled “Immigration Detention Policy” warned that a “crisis point, i.e., apprehensions significantly exceeding available detention space, will be reached by this month.”¹⁰⁹ It projected a shortfall of 1,400 beds by October of that year. As the 1986 IRCA failed to stem the entry of immigrants into the US, the undocumented population continued to grow. At the same time, the implementation of detention as a policy enforcement tool, as a system of deterrence and as a mandatory consequence of committing aggravated felonies, meant that the average daily population of detained immigrants increased from approximately 7,000 in 1994, to 19,000 in 2001.¹¹⁰

3. The United Kingdom, Creating the Hostile Environment

While the United States focused on fortifying its physical borders, the United Kingdom, an island nation, developed a different but parallel set of deterrent strategies. The British approach was less about physical force and more about administrative obstruction and the creation of a social and bureaucratic “hostile environment.”¹¹¹ While this term was only used officially under the Conservatives from 2010 onwards, in practice, its foundations began much earlier. This doctrine was built on three pillars: externalising border controls to prevent arrivals, making life for asylum seekers in the UK untenable through a punitive support system, and using accelerated legal procedures to quickly reject and remove them. Part of this was learnt from other countries. A letter from Liz Lloyd to the Prime Minister explains that no system is perfect, but lessons could be learnt by looking abroad: “However none of these measures can guarantee success. The lessons from other countries are that what works is - faster decision-making, more detention and removing cash benefits.”¹¹²

3.1. Visa Regimes and Carrier Liability

Just as the United States used naval interdiction to push its border outward into the Caribbean, the UK employed carrier sanctions and visa regimes to externalise

¹⁰⁸ “*Cubans and Haitians*” Policy Paper, 6 July 1981

¹⁰⁹ “*Immigration Detention Policy*”, c. September 1981.

¹¹⁰ The number reached 50,000 in 2019 before the Covid Pandemic.

‘Immigration Detention 101’, *Detention Watch Network*, 2024, <https://www.detentionwatchnetwork.org/issues/detention-101>

¹¹¹ Griffiths and Yeo, ‘The UK’s Hostile Environment’; Manon Burbidge et al., ‘Hostile Environments: Housing and Asylum Policies as Drivers of Energy Deprivation Among UK Refugee Communities’, *Housing, Theory and Society* 42, no. 3 (2025): 335–51, <https://doi.org/10.1080/14036096.2024.2413523>.

¹¹² *Note from Liz Lloyd to the Prime Minister, “Asylum Spending for 2000/2001”*, 30 March 2000, PREM 49/1412, Folder Immigration, Series *Home Affairs*, Part 11, The National Archives (Kew, United Kingdom).

migration control at ports of departure. Both strategies sought to prevent migrants from setting foot on national soil, effectively shifting enforcement beyond the border. This convergence underscores how deterrence often operates not at the territorial edge but in distant spaces of control.

This was achieved by systematically externalising¹¹³ its border controls, pushing the apparatus of inspection and refusal outward to points of departure in other countries. The first tool in this strategy was the progressive expansion of visa requirements.¹¹⁴ Beginning in the 1980s, the UK began to dismantle the visa-free travel arrangements that had been a legacy of its Commonwealth ties, imposing new visa requirements on citizens from countries that were producing significant numbers of asylum seekers, including Pakistan, Bangladesh, India, Sri Lanka, Nigeria, Ghana, and Turkey.¹¹⁵ Specific nationalities were targeted with visa requirements based on political and geopolitical contexts. For example, in 1998, Jack Straw (then Home Secretary) wrote that visas should be required for entrant from Slovakia in response to an increase in Roma asylum seekers from the country:

“The time has come when I believe the only effective solution is the immediate imposition of a visa regime on Slovak nationals. Against my better judgement I accepted colleagues’ views last year that we should try other measures as an alternative to a visa regime. But these have palpably not worked.”¹¹⁶

The pivotal legislative instrument in this externalization project was the Immigration (Carriers’ Liability) Act 1987.¹¹⁷ This law imposed a financial penalty, initially £1,000 per passenger, doubled to £2,000 in 1991, on any airline or shipping company that transported an individual to the UK who was found to be improperly documented upon arrival.

A 1989 conference minute stated that “The UK said that carrier sanctions had proved the single most effective tool in preventing the arrival of undocumented passengers,”¹¹⁸ and a 1998 Draft White Paper, provides the government’s own assessment of the policy’s effectiveness, stating that carrier sanctions were essential:

The Government is committed to firm and fair immigration control. An essential part of that is to prevent people travelling to the United Kingdom

¹¹³ Externalisation refers to “the process through which states directly or indirectly operate activities related to border control outside their sovereign territories, namely in other countries or on the high seas” (Cobarrubias et al. 2023).

¹¹⁴ Randall Hansen, *Citizenship and Immigration in Post-War Britain: The Institutional Origins of a Multicultural Nation*, Repr (Oxford University Press, 2004), 222.

¹¹⁵ Matthew J. Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge University Press, 2004), 107, <https://doi.org/10.1017/CBO9780511490248>

¹¹⁶ Letter from Jack Straw, Home Secretary, to the Foreign Secretary, 2 September 1998, PREM 49/380/3, Folder Immigration, Series Home Affairs, The National Archives (Kew, United Kingdom).

¹¹⁷ Frances Nicholson, ‘Implementation of the Immigration (Carriers’ Liability) Act 1987: Privatising Immigration Functions at the Expense of International Obligations?’, *International & Comparative Law Quarterly* 46, no. 3 (1997): 586–634, <https://doi.org/10.1017/S0020589300060814>

¹¹⁸ *Four Countries Immigration Conference Minutes*, 16–19 October 1989, HO 394/931, Folder Four Countries Immigration Conference, The National Archives (Kew, United Kingdom).

who have no claim to be here (...) Carrier sanctions are a key part of our pre-entry control strategy.¹¹⁹

The immediate trigger for the legislation was a surge in asylum applications notably from Tamil refugees fleeing the civil war in Sri Lanka, making clear its deterrent intent.¹²⁰ The effect of the Act was to privatise a core function of immigration enforcement.¹²¹ Airlines, facing the threat of substantial fines, were deputised as frontline immigration officers. Their staff at check-in counters and boarding gates around the world were suddenly responsible for scrutinising passports and visas. Crucially, their decisions were based not on an assessment of a potential asylum claim or humanitarian need, but on a simple financial risk calculation. A passenger with questionable documents, who might well be a genuine refugee fleeing persecution without the ability to obtain a valid passport, was now a £2,000 liability to be refused boarding.¹²² This was highlighted at the time by Labour MP Jeremy Corbyn:

Although I hope that the Bill will be defeated, I have my doubts in that respect. The Government should think for a moment about the effect that it will have on asylum seekers from other places. Earlier, I mentioned the Iran-Iraq war. I have supported several people who have applied for political asylum, some of whom have had horrendous difficulty in escaping the horrors of that war. They have crossed from Iran to Iraq, fled to a third country and then applied for political asylum here. The Kurdish people, who seem to be persecuted throughout the middle east, would have no opportunity to apply for political asylum here, because they could not get here to do it. They would not have valid exit documents, because in Turkey, even the existence of Kurdistan is denied, never mind the Kurdish language or the use of Kurdish names. If they reached a third country and applied to travel to Britain, they would be caught by the Government's privatisation of immigration law—handing responsibility to the airline—and could not obtain tickets to travel here. What will happen to those people?¹²³

Corbyn went on to question Britain's role in the world and criticised the policy as "a squalid, nasty little measure to refuse the right of political asylum to genuine seekers of asylum."¹²⁴ This strategy, a textbook example of what the political scientist

¹¹⁹ *Draft White Paper – Version 5*, c. June 1998, PREM 49/379/1, Folder *Immigration*, Series *Home Affairs*, The National Archives (Kew, United Kingdom).

¹²⁰ *Immigration (Carriers' Liability) Bill*, HC Deb 16 March 1987, vol. 112, cc. 706–89, <https://api.parliament.uk/historic-hansard/commons/1987/mar/16/immigration-carriers-liability-bill>
The Secretary of State for the Home Department (Mr. Douglas Hurd): "The immediate spur to this proposal has been the arrival of over 800 people claiming asylum in the three months up to the end of February. So this is not a Bill about Tamils alone, or about Sri Lanka alone. It goes wider than that. Its aim is to make sure that our immigration control remains effective in the face of rapidly changing international pressures. We have to reconcile that aim with our international obligation to help the genuine victims of persecution."

¹²¹ Nicholson, 'Implementation of the Immigration (Carriers' Liability) Act 1987'. *op. cit.*

¹²² Anne Ruff, 'The Immigration (Carriers' Liability) Act 1987: Its Implications for Refugees and Airlines', *International Journal of Refugee Law* 1, no. 4 (1989): 481–500, <https://doi.org/10.1093/ijrl/1.4.481>

¹²³ *Immigration (Carriers' Liability) Bill*.

¹²⁴ *Ibid.*, col. 756.

Full quote: "It is all very well for the Home Secretary to say repeatedly that Britain can play no part in what is happening in other parts of the world. It is just not true. The British Government play an

Aristide Zolberg termed ‘remote border control,’ proved highly effective at its stated goal.¹²⁵ By creating an administrative and commercial barrier far from its own shores, (while it is impossible to calculate the number) the UK government successfully blocked untold numbers of potential asylum seekers from ever exercising their right under international law to seek protection, effectively outsourcing the act of *refoulement* to private corporations. While the US projected its power outwards through Coast Guard interdictions at sea, the UK achieved a similar ‘remote control’ effect by deputising private airlines as its frontline immigration officers.

3.2. Asylum Support System: Designed Deterrence

For those asylum seekers who managed to circumvent the external controls and reach the UK, the government developed a second layer of deterrence: a domestic policy framework designed to make their lives as difficult and unpleasant as possible. This strategy was enshrined in the landmark Immigration and Asylum Act 1999, a signature policy of Tony Blair’s New Labour government.¹²⁶ The Act fundamentally restructured the system of support for asylum seekers, removing them from the mainstream social welfare system and creating a separate, parallel, and deliberately punitive apparatus administered by the new National Asylum Support Service (NASS).¹²⁷ The National Asylum Support Service (NASS) was established in April 2000 under the Immigration and Asylum Act 1999 to provide welfare support to destitute asylum seekers lacking adequate accommodation or means to meet essential living needs. Previously, local authorities had supported many asylum seekers in an *ad hoc* and uncoordinated manner.¹²⁸

The two central mechanisms of the NASS system were a cashless voucher

enormous part in what happens in other countries. I have mentioned the Government’s military involvement. The bombing of Kurdish villages in Iraq during the past few weeks originated from NATO bases in Turkey. Britain supplies military equipment to Turkey. Who is supplying arms to the Fascist dictatorship in Chile? The British Government are almost alone in the world in being happy to continue supplying arms to the Government of General Pinochet.

I hope that the Bill will be understood for what it is — a squalid, nasty little measure to refuse the right of political asylum to genuine seekers of asylum. Had the Bill operated from before the first world war, many Jewish people who fled from pogroms in central and eastern Europe or from the horrors of Nazism would not have got into Britain.”

¹²⁵ Aristide R. Zolberg, ‘Matters of State: Theorizing Immigration Policy’, in *Handbook of International Migration, The*, ed. Charles Hirschman et al., The American Experience (Russell Sage Foundation, 1999), JSTOR, <http://www.jstor.org/stable/10.7758/9781610442893.11>

¹²⁶ Dallal Stevens, ‘The Immigration and Asylum Act 1999: A Missed Opportunity?’, *Modern Law Review* 64, no. 3 (2001): 413.

¹²⁷ L. M. Clements, ‘Changing the Support System for Asylum Seekers’, *Journal of Social Welfare and Family Law* 23, no. 2 (2001): 173–202, <https://doi.org/10.1080/01418030122392>

¹²⁸ House of Commons, Home Affairs Committee, *Second Report of Session 2003–04: Asylum Applications*, HC 218-II, 26 January 2004), *Parliament.uk*, <https://publications.parliament.uk/pa/cm200304/cmselect/cmhaff/218/21802.htm>

scheme and a policy of compulsory, “no-choice” dispersal.¹²⁹ Instead of receiving standard welfare benefits, destitute asylum seekers were provided with vouchers, redeemable only at a limited number of designated supermarkets and shops. While the US used fingerprints to make the body legible at the border, the UK used administrative systems to make the asylum seeker’s entire life legible and manageable within the country.

A comprehensive 2000 report by the aid organisation Oxfam, titled *Token Gestures*, meticulously documented the impact of this policy.¹³⁰ The report found that the voucher system was humiliating, stigmatizing, and left asylum seekers unable to buy essential items like fresh food, warm clothing, or bus fare. It created profound hardship and anxiety, yet the report found no evidence that it achieved its stated goal of deterring “bogus” claims; in fact, asylum applications continued to rise after its implementation. Some viewed the scheme as “costly, bureaucratic, and stigmatising,” while others considered vouchers “demeaning and stigmatising a vulnerable group in society.”¹³¹ While shadow chancellor Michael Portillo called it “a degrading system.”¹³² Rabbi Julia Neuberger criticised both the voucher system and the dispersal system:

If the Government is truly committed to reducing inequalities in health, it cannot stand back and watch refugees being marginalised and impoverished. Evidence is beginning to emerge that this is exactly what is happening. The voucher system should be abolished at once, and replaced with cash entitlements for all asylum seekers. The dispersal system should be more in tune with the ability of communities to support new arrivals. And the NHS should be given more resources to improve refugees health and give them a better chance of leading an ordinary life if they are given leave to remain in Britain.¹³³

However, this hostile system was planned from the start as is visible in “An Asylum and Immigration Strategy” paper attached to a letter from Jack Straw Home Secretary:

¹²⁹ NASS provides housing to asylum seekers who would otherwise be destitute. This is typically in shared accommodation, often in areas outside of London and the Southeast. Asylum seekers do not get to choose where they are housed, and the accommodation is usually basic but meets essential needs. NASS provides a weekly allowance to cover essential living needs like food, clothing, and toiletries. The amount is set below mainstream benefits levels and is provided via an ASPEN card (a type of payment card) rather than cash. To qualify for NASS support, asylum seekers must demonstrate they would be destitute without it. They typically cannot work while their claim is being processed (though there are some exceptions for those who have been waiting over 12 months). Support generally continues until the asylum claim is decided. If the claim is successful, the person has 28 days to transition to mainstream benefits. If refused, support may continue in some circumstances or may be withdrawn.

¹³⁰ Bill Morris et al., *Token Gestures: The Effects of the Voucher Scheme on Asylum Seekers and Organisations in the UK* (Oxfam, 2000).

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

To minimise the incentive to economic migration and opportunistic use of the asylum process, particularly by keeping cash payments at the lowest possible level and reducing individual asylum seekers' choice when providing support for them. (...) We envisage a tough policy on those who have exhausted the appeals process yet persist in remaining here unlawfully: for them, the principle should be no entitlement to safety net or other support.¹³⁴

Vouchers themselves were seen as a deterrent as is clear in a White Paper on Immigration and Asylum from June 1998:

One option which I intend to explore is the possibility of using vouchers for all food and other costs (...) if it can be achieved, it would send a strong message abroad that cash payments were not available and help to deter economic migrants from coming here in the first place.¹³⁵

This directly links the mechanism (vouchers) to the deterrent goal, proving it was designed to influence choices before migrants even arrived. It is an explicit, undeniable statement of deterrence through destitution. Officials rarely write, "Our goal is to inflict suffering." Instead, they use coded language that masks the profound human consequences of the policy.

This system of enforced poverty was coupled with a policy of dispersal.¹³⁶ Asylum seekers were moved on a "no-choice" basis from their initial points of arrival, primarily London and the Southeast, to designated "dispersal areas" across the UK.¹³⁷ These areas were often towns and cities in the North of England, Scotland, and Wales that were experiencing economic decline and had a surplus of low-quality housing.¹³⁸ This policy deliberately severed asylum seekers from existing ethnic and community support networks, isolating them in unfamiliar places where specialised legal and social services were often non-existent.¹³⁹

The cumulative effect of the NASS system was not merely unsupportive, it was a calculated exercise in social and psychological attrition. Academic research has consistently documented the severe negative mental health consequences of the dispersal policy. The combination of poverty, poor housing, social isolation, and the constant uncertainty of the asylum process was found to exacerbate pre-existing trauma and induce high rates of depression, anxiety, and post-traumatic stress disorder

¹³⁴ "An Asylum and Immigration Strategy" Paper Attached to a Letter from Jack Straw, 27 May 1998, PREM 49/379/3, Folder *Immigration*, Series *Home Affairs*, The National Archives (Kew, United Kingdom).

¹³⁵ *White Paper on Immigration and Asylum: Letter from Jack Straw*, 25 June 1998, PREM 49/379/1, Folder *Immigration*, Series *Home Affairs*, The National Archives (Kew, United Kingdom).

¹³⁶ Rosemary Sales, 'The Deserving and the Undeserving? Refugees, Asylum Seekers and Welfare in Britain', *Critical Social Policy* 22, no. 3 (2002): 456–78.

¹³⁷ *Ibid.*

¹³⁸ José M. Alonso and Rhys Andrews, 'Privatization, Power and Place: The Distributive Politics of Asylum Dispersal in England', *Regional Studies* 55, no. 3 (2021): 508–20, <https://doi.org/10.1080/00343404.2020.1800627>

¹³⁹ Patricia Hynes, *The Dispersal and Social Exclusion of Asylum Seekers: Between Liminality and Belonging* (Policy Press, 2011).

among a population already made vulnerable by persecution.¹⁴⁰ The system was designed not to support, but to deter, by making the experience of seeking asylum in Britain one of misery and despair.¹⁴¹ This policy of engineered destitution was the administrative equivalent of the US strategy of funnelling migrants into hostile desert terrain as both sought to use suffering as the primary tool of deterrence.

In order to avoid providing welfare to immigrants and asylum seekers in the first place, new fast-track decision processes were implemented.¹⁴² In August 2001 the Home Secretary commissioned reviews of voucher and dispersal policies. The report identified “administrative and operational problems resulting in poor service by NASS to asylum seekers.”¹⁴³ By October 2001 the Home Secretary deemed “the system too slow, vulnerable to fraud, and unfair to asylum seekers and local communities”. Consequently, the voucher system was phased out. While acknowledging dispersal had caused “social tensions in neighbourhoods and pressures on local education, social and GP services”, he maintained the principle of dispersal from London and the South-East, promising better local authority liaison. New induction and accommodation centres were to be established, initially providing 3,000 places for first-time asylum seekers with full board, education and health facilities. In April 2002 voucher-only was replaced by vouchers exchangeable for cash.

3.3. Fast-Track Procedures and Detention

The final pillar of the UK’s deterrent strategy was the creation of an accelerated and truncated legal process for certain categories of asylum seekers known as the fast-track system or fast-track process.¹⁴⁴ The key location of this policy was the Oakington Reception Centre, a secure facility opened in Cambridgeshire in 2000 (see chapter four). The Oakington facility operated under an accelerated system for processing asylum claims from individuals originating from countries classified as “safe.”¹⁴⁵ This expedited approach targeted completing assessments and implementing removals within a week to ten days.¹⁴⁶ While Oakington and similar centres were

¹⁴⁰ Jennifer Allsopp et al., ‘Poverty among Refugees and Asylum Seekers in the UK: An Evidence and Policy Review’, *Birmingham: Institute for Research into Superdiversity*, IRiS Working Paper Series, vol. 1 (2014).

¹⁴¹ Aleena Shahzad et al., ‘The Psychological Impact of Spending a Prolonged Time Awaiting Asylum’, *European Journal of Psychotraumatology* 16, no. 1 (2025): 2506189, <https://doi.org/10.1080/20008066.2025.2506189>

¹⁴² *Note from Liz Lloyd to the Prime Minister, “Asylum Spending for 2000/2001”*, 30 March 2000, PREM 49/1412/1, Folder *Immigration*, Series *Home Affairs*, The National Archives (Kew, United Kingdom).

¹⁴³ *Second Report of Session 2003–04: Asylum Applications*, *op. cit.*

¹⁴⁴ Matthew J. Gibney, ‘Asylum and the Expansion of Deportation in the United Kingdom’, *Government and Opposition* 43, no. 2 (2008): 160.

¹⁴⁵ Daniel Ghezelbash, ‘Fast-Track, Accelerated, and Expedited Asylum Procedures as a Tool of Exclusion’, in *Research Handbook on the Law and Politics of Migration*, ed. Catherine Dauvergne (Edward Elgar Publishing, 2021), <https://doi.org/10.4337/9781789902266.00029>

¹⁴⁶ *Ibid.*

established to streamline asylum determination processes, the rapid-processing model drew significant criticism.¹⁴⁷ Critics raised concerns that the emphasis on speed undermined the quality and fairness of asylum reviews.¹⁴⁸ Issues were highlighted regarding detention environments, detainee welfare, and the rushed nature of case evaluations.¹⁴⁹

This policy effectively created a two-tiered asylum system. The procedural rights and the time available to prepare a case were determined not by the individual merits of a person's claim of persecution, but by their nationality depending on whether their country was part of a government "white list" (first created in 1996).¹⁵⁰ This presumption that claims from certain countries (were likely to be "manifestly unfounded" functioned as a powerful form of procedural deterrence. It sent a clear signal that nationals from these designated countries would face a sceptical, rushed process with a small chance of success.¹⁵¹ This was inspired by systems in other countries, notably Germany, as a March 2000 letter from Liz Lloyd to the Prime Minister shows:

The Home Office are working up new legislation on many areas, one of which is to create a list of countries which would be considered safe, to replace the existing procedure which certifies cases from e.g. applicant countries as "manifestly unfounded". Germany introduced a similar rule in 1993, which combined with faster decision-making has meant that applications from e.g. Poland can be moved through the system swiftly and removals made more easily. But they also have bilateral agreements on removals which we should emulate.¹⁵²

The idea was to rapidly deny asylum claims and then deport failed applicants. The Prime Minister's own views are captured in a letter from his Private Secretary, David North:

The Prime Minister thinks that, in the interim, we need to ensure that a greater number of those refused asylum are removed from the UK immediately. We should particularly ensure that this is the case in respect of those from countries who are particularly abusing the system, such as Central and Eastern Europe.¹⁵³

¹⁴⁷ Jerome Phelps, 'Ending the Detained Fast Track?', *Oxford Law Blogs*, 15 February 2016, <https://blogs.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/02/ending-detained>

¹⁴⁸ Sarah Turnbull, 'Vulnerability, Immigration Detention and (Carceral) Reform', *The British Journal of Criminology*, ahead of print, 23 December 2024, <https://doi.org/10.1093/bjc/azae095>

¹⁴⁹ Gauri van Gulik, *Fast-Tracked Unfairness* (Human Rights Watch, 2010), <https://www.hrw.org/report/2010/02/23/fast-tracked-unfairness/detention-and-denial-women-asylum-seekers-uk>

¹⁵⁰ Colin Yeo, *How Does the Asylum 'White List' Work and What Does the Government Plan to Change?*, Free Movement, 29 November 2022, <https://freemovement.org.uk/how-does-the-asylum-white-list-work-and-what-does-the-government-plan-to-change/>

¹⁵¹ *Ibid.*

¹⁵² Note from Liz Lloyd to the Prime Minister, "Asylum Spending for 2000/2001", 30 March 2000, *op. cit.*

¹⁵³ Letter from David North to Hilary Jackson on "Asylum" 4 April 2000, PREM 49/1412/1, Folder *Immigration*, Series *Home Affairs*, The National Archives (Kew, United Kingdom).

While the government presented the fast-track system as a measure to improve efficiency, it was heavily criticized by oversight bodies, including Her Majesty's Inspectorate of Prisons, and by legal and refugee advocacy groups.¹⁵⁴ Critics argued that the compressed timeframes made it nearly impossible for detainees to secure legal representation, gather evidence to support their case, or recover from the trauma of their journey sufficiently to give a coherent account of their experiences.¹⁵⁵ The process, they contended, was designed for refusal, prioritising speed and removal over fairness and accuracy.¹⁵⁶

The use of facilities like Oakington was part of a wider trend during the 1990s that saw the expansion of the Home Office's powers of administrative detention. Legislation progressively broadened the criteria for detention, allowing it to be used during the appeals process and for vaguely defined "public order" reasons. This incremental expansion cemented the role of detention not as a measure of last resort for individuals deemed a flight risk, but as a routine administrative tool for managing and deterring asylum seekers. In 2015, the UK High Court ruled that the fast-track asylum system was "unlawful" forcing the government to find other solutions.¹⁵⁷

In both countries, detention itself became a deliberate instrument of deterrence. The United States justified mass confinement as a way to signal that unauthorised entry would lead to imprisonment, while the UK experimented with fast-track asylum detention to accelerate removals and dissuade new claims. Although the scale differed, the logic was shared: confinement was no longer only about managing individuals already present, but about sending a broader message of unwelcomeness.

4. Comparative Analysis of Deterrent Strategies

A comparative analysis of the deterrent strategies employed by the United States and the United Kingdom between 1979 and 2001 reveals a striking paradox. Despite their profound differences in geography, legal structure, and political history, both nations converged upon the same core doctrine: that the deliberate infliction of hardship was a rational and legitimate means of controlling unwanted migration. However, the methods they used to implement this doctrine were markedly different, shaped by their unique national circumstances. This section will first provide a schematic overview of these divergent mechanisms, then analyse their shared theoretical underpinnings, and finally assess their common record of failure and

¹⁵⁴ Jack Straw, *Fairer, Faster and Firmer: A Modern Approach to Immigration and Asylum* (Cm 4018, White Paper, London: HMSO, July 1998), *UK Government*, <https://assets.publishing.service.gov.uk/media/5a7cdeced915d7c849adbdd/4018.pdf>

¹⁵⁵ Leroy House, *Fast Track to Despair: The Unnecessary Detention of Asylum-Seekers* (Detention Action, 2011).

¹⁵⁶ Ghezelbash, 'Fast-Track, Accelerated, and Expedited Asylum Procedures as a Tool of Exclusion'. *op. cit.*

¹⁵⁷ Dominic Casciani, 'Fast-Track Asylum System "Unlawful", High Court Rules', UK, *BBC News*, 12 June 2015, <https://www.bbc.com/news/uk-33113132>

perverse consequences.

The United States, a continental power with a vast and porous land border, focused its deterrent efforts on the physical act of entry, employing quasi-military tactics at sea and on land. The United Kingdom, an island nation, focused on administrative and commercial choke points, externalizing its border far beyond its shores and creating a hostile social environment for those who managed to arrive.

4.1. Theoretical Foundations and Assumptions

The bedrock of both the American and British deterrence doctrines was a shared set of assumptions about the motivations of migrants, rooted in a simplified application of rational choice theory.¹⁵⁸ Policymakers in both countries operated on the premise that prospective asylum seekers and unauthorised migrants were primarily “utility maximisers” who could be dissuaded from their course of action if the perceived costs were raised to a sufficiently high level.¹⁵⁹ This logic was explicitly articulated in the U.S. Border Patrol’s 1994 “Prevention Through Deterrence” strategic plan, which aimed to increase the “penalty for illegal entry” by forcing migrants into hazardous terrain.¹⁶⁰ It was just as clearly implicit in the UK Home Secretary’s justification for the NASS voucher system, which was designed to remove the supposed financial “pull factor” of cash benefits.¹⁶¹

This is visible in documents from both the US and UK governments. In policy document entitled ‘Building a Comprehensive Southwest Border,’ the INS made clear its deterrent goal “the over-arching goal of the strategy is to make it so difficult and so costly to enter this country illegally that fewer individuals even try.”¹⁶² Whereas in the UK, using vouchers was used to “send a strong message abroad (...) and help to deter economic migrants”¹⁶³ Ultimately, although the methods differed, the underlying rational-choice logic was identical.

This state-level application of the rational actor model, however, was fundamentally flawed, suffering from a profound miscalculation of the migrant’s own cost-benefit analysis. The model’s primary weakness was its failure to adequately weigh the non-economic “push” factors that drive forced migration. For an individual fleeing political persecution, civil war, or systemic violence, the potential “benefit” of

¹⁵⁸ Becker, *The Economic Approach to Human Behavior*. *op. cit.*

¹⁵⁹ Ken McCormick, ‘An Essay on the Origin of the Rational Utility Maximization Hypothesis and a Suggested Modification’, *Eastern Economic Journal* 23, no. 1 (1997): 17–30.

¹⁶⁰ *Border Patrol Strategic Plan 1994 and Beyond: National Strategy*. *op. cit.*

¹⁶¹ “An Asylum and Immigration Strategy” Paper Attached to a Letter from Jack Straw, 27 May 1998, PREM 49/379/3, Folder *Immigration*, The National Archives (Kew, United Kingdom).

¹⁶² *INS Background: Building a Comprehensive Southwest Border Enforcement Strategy*, February 1996, 2012-0101-S, Box 8 of 17, William J. Clinton Presidential Library (Little Rock, Arkansas).

¹⁶³ *White Paper on Immigration and Asylum: Letter from Jack Straw*, 25 June 1998, PREM 49/379/1, Folder *Immigration*, The National Archives (Kew, United Kingdom).

reaching a place of safety is not a marginal economic gain but an existential one.¹⁶⁴ Against this, the “costs” imposed by deterrent policies, a dangerous border crossing, a period of detention, or months of destitution, are perceived as survivable risks rather than absolute barriers. It can be argued that the state’s calculus was misaligned with the migrant’s reality.

Furthermore, as academic critiques of deterrence theory in both criminology and migration studies have shown, the model presumes a level of perfect information and dispassionate calculation that rarely exists in the real world. Prospective migrants often have incomplete or inaccurate information about the specific policies they will face, information that is frequently distorted by smugglers or community rumours.¹⁶⁵ More importantly, decisions made under the extreme duress of flight are not equivalent to a consumer choosing between two products.¹⁶⁶ The state’s rational choice model failed not because migrants were irrational, but because the state was irrational in its assessment of the migrant’s rationality. It projected its own bureaucratic, risk-averse logic onto individuals whose choices were governed by a desperate search for survival.

The state’s model failed because it misjudged the migrant’s rationality. It can also be argued that the policies were an irrational choice for the state itself. Spending vast sums on policies that produce lethal consequences, fuel organised crime, and fail to achieve their primary goal (deterring irregular migration) is a profound form of state irrationality, even within its own cost-benefit framework.

4.2. Implementation Mechanisms

The shared logic of deterrence was translated into policy through strikingly different mechanisms, reflecting the distinct geopolitical and legal contexts of the two nations. The militarisation of the US–Mexico border and the UK’s creation of a “hostile environment” may seem worlds apart, one relying on fences, patrols, and military technology, the other on bureaucratic obstacles and social service restrictions. Yet each represents a form of deterrence personalised to the national contexts: the United States projecting sovereignty through force at its territorial margins, the United Kingdom embedding deterrence within the fabric of everyday life. Both ultimately converged on the same aim, discouraging migration through exclusion.

The United States’ approach was overwhelmingly physical and quasi-military, conditioned by its geography as a continental nation with a 2,000-mile land border with a developing country. The “Prevention Through Deterrence” strategy was, in essence, a territorial project. It involved the construction of physical infrastructure like walls and fences, the deployment of military-grade technology such as infrared night scopes and ground sensors, and a massive increase in the number of uniformed federal

¹⁶⁴ Douglas S. Massey et al., ‘Theories of International Migration: A Review and Appraisal’, *Population and Development Review* 19, no. 3 (1993): 434, <https://doi.org/10.2307/2938462>

¹⁶⁵ Ryo, ‘Detention as Deterrence’, 241. *op. cit.*, 241.

¹⁶⁶ *Ibid*, 245.

agents patrolling the borderlands.¹⁶⁷ The border was reconceptualised as a front line, a zone of low-intensity conflict where the state's primary tools were surveillance, interdiction, and containment.

The United Kingdom's approach, by contrast, was primarily administrative and commercial, shaped by its status as an island nation separated from continental Europe by the sea. Its strategy was not to build walls but to create bureaucratic barriers. The Carrier Liability Act effectively outsourced enforcement to the private sector, turning commercial airlines into a de facto border patrol operating globally.¹⁶⁸ The NASS system weaponized the welfare state, using destitution and social isolation as tools of control.¹⁶⁹ "The UK's "hostile environment" was thus built not with steel and concrete, but with legislation, regulations, and administrative procedures designed to make daily life unbearable. It is a prime example of a biopolitical strategy, one that governs not through overt physical force, but by managing access to welfare, housing, and health, thereby making the migrant's own subsistence the very instrument of state deterrence.¹⁷⁰

The US policy of militarising safe crossing points made migrants dependent on professional smugglers (coyotes), effectively outsourcing the risk to migrants and criminals. The UK's Carrier Liability Act outsourced the act of refusal to airline check-in staff, creating a system of refoulement by proxy. Both states created a system where a third party became the agent of state policy, allowing the state a degree of plausible deniability.

For the US, the border is a physical "front line" requiring militarised defence. For the UK, the border is an administrative concept to be managed globally through visas and carrier liability. This comparison reveals that deterrence is not a monolithic policy but a flexible doctrine that adapts its methods to the state's specific context while retaining its core logic. The US used its sovereign power to control territory directly, while the UK used its regulatory power to control flows at a distance and manage populations internally. Both paths, however, led to the same destination: a system in which the infliction of suffering was the intended, not incidental, outcome of policy.

4.3. Measuring Deterrent Effectiveness

Judged by their own stated goals, the deterrence doctrines in both countries were a signal of failure, producing a cascade of perverse and costly consequences

¹⁶⁷ 'The Wall and Its Shadow: Security in the Borderlands', in *The Politics of Borders: Sovereignty, Security, and the Citizen after 9/11*, ed. Matthew Longo, Problems of International Politics (Cambridge University Press, 2017), <https://doi.org/10.1017/9781316761663.005>

¹⁶⁸ Nicholson, 'Implementation of the Immigration (Carriers' Liability) Act 1987'. *op. cit.*

¹⁶⁹ Clements, 'Changing the Support System for Asylum Seekers'. *op. cit.*

¹⁷⁰ Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978-79*, Paperback edition, ed. Michel Senellart, trans. Graham Burchell, Michel Foucault's Lectures at the Collège de France (Palgrave Macmillan, 2010).

while having little long-term impact on the overall scale of migration.

While both governments could point to narrow, localised successes, these were invariably the result of displacement rather than prevention. In the US, Operation Gatekeeper did drastically reduce crossings in the San Diego sector, but this “success” was achieved by pushing the flow into the Arizona desert, with lethal consequences.¹⁷¹ Overall, unauthorised migration to the US continued to grow throughout the 1990s, with estimates of a 3.5 million increase over the decade, to reach 7.0 million.¹⁷² Similarly, in the UK, the introduction of the NASS system was followed by an initial dip in asylum applications, but numbers quickly rebounded. The number of asylum applications in the UK rose substantially, reaching a record peak of 84,130 main applicants in 2002.¹⁷³ This peak occurred after the NASS system was fully operational, demonstrating that the policy did not have its intended long-term deterrent effect on the volume of applications. The rise was influenced more by global events, such as conflicts in Afghanistan,¹⁷⁴ Iraq,¹⁷⁵ and Somalia,¹⁷⁶ than by the UK’s internal support policies. For people fleeing war and persecution, the specific level of welfare support or the nature of accommodation in a potential host country is a minor consideration compared to the overwhelming need to find safety. The “push” of life-threatening conflict far outweighed the weak (and often negative) “pull” of the UK’s domestic asylum policies.

The unintended consequences of these policies were profound and devastating. In the United States, the most direct result was the humanitarian crisis of migrant deaths at the border, a predictable outcome of the “Prevention Through Deterrence” strategy.¹⁷⁷ The policy also inadvertently fuelled the growth of sophisticated and violent human smuggling networks, which became essential for navigating the newly militarised border.¹⁷⁸ In the United Kingdom, the primary consequence was the creation of a marginalised and impoverished population of asylum seekers, suffering

¹⁷¹ Nevins, *Operation Gatekeeper and Beyond*, *op. cit.*, 47.

¹⁷² *Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000*, no. 1211 (Office of Policy and Planning U.S. Immigration and Naturalization Service, 2001).

¹⁷³ David Matz et al., *Asylum Statistics United Kingdom 2000*, Home Office Statistical Bulletin no. 17/01 (2001); Heath and Hill, *Asylum Statistics United Kingdom 2001*; Tina Heath et al., *Asylum Statistics United Kingdom 2002*, Home Office Statistical Bulletin no. 08/03 (2003); Tina Heath et al., *Asylum Statistics United Kingdom 2003*, Home Office Statistical Bulletin no. 11/04 (2004).

¹⁷⁴ Following years of civil war after the Soviet withdrawal, the oppressive Taliban regime took control in 1996. The subsequent US-led invasion in 2001 created intense conflict and instability, forcing hundreds of thousands to flee.

¹⁷⁵ The rule of Saddam Hussein involved severe political repression. This was compounded by crippling international sanctions throughout the 1990s, which devastated the economy and society. The build-up to the 2003 invasion further intensified the climate of fear and danger.

¹⁷⁶ The collapse of the state in 1991 led to a prolonged and brutal civil war. Famine, violence, and the absence of a functioning government made life untenable for a significant portion of the population.

¹⁷⁷ Cornelius, ‘Death at the Border’. *op. cit.*

¹⁷⁸ Christina Gathmann, ‘Effects of Enforcement on Illegal Markets: Evidence from Migrant Smuggling along the Southwestern Border’, *Journal of Public Economics* 92, no. 10 (2008): 1926–41, <https://doi.org/10.1016/j.jpubeco.2008.04.006>

from high rates of mental illness and social exclusion.¹⁷⁹ This placed immense strain on local charities, faith groups, and public health services, which were left to cope with the human fallout of a deliberate policy of destitution.¹⁸⁰

In both nations, the financial costs of the deterrence doctrine were staggering. The US budget for border enforcement and for the INS (then DHS) exploded (see tables below). The costs of detention also soared, far exceeding the expense of community-based alternatives. These changes result from massive resource increases in U.S. Immigration and Naturalization Service (INS) enforcement, particularly along the U.S.-Mexico border.¹⁸¹ This exemplified a form of ratchet creep, characterised by the substantial expansion of Border Patrol personnel and enforcement technologies aimed at fortifying external boundaries, preventing unauthorized entry, and facilitating the apprehension of undocumented migrants, smugglers, and contraband.¹⁸² The southwest boundary enforcement budget grew from \$400 million (FY 1993) to \$800 million (FY 1997). Border Patrol agents expanded from 4,200 (FY 1994) to 9,212 (end of FY 2000), with plans reaching 10,000 by 2005 and boundary enforcement spending reaching \$3 billion by 2003 (see graph below).

¹⁷⁹ Allsopp et al., 'Poverty among Refugees and Asylum Seekers in the UK: An Evidence and Policy Review'. *op. cit.*

¹⁸⁰ Morris et al., *Token Gestures. op. cit.*

¹⁸¹ Nevins, *Operation Gatekeeper and Beyond, op. cit.*, 3.

¹⁸² Ratchet creep refers to the gradual, incremental expansion of policies, regulations, or institutional practices beyond their original scope or intent. Like a mechanical ratchet that allows movement in only one direction, this phenomenon describes how rules or systems tend to become progressively more restrictive, expansive, or intrusive over time without corresponding mechanisms for reversal. Each small change may seem reasonable in isolation, but collectively they can lead to significant shifts from the original framework. The term is commonly used in discussions of regulatory expansion, where emergency measures become permanent, exceptions become rules, or temporary powers become institutionalised features of governance.

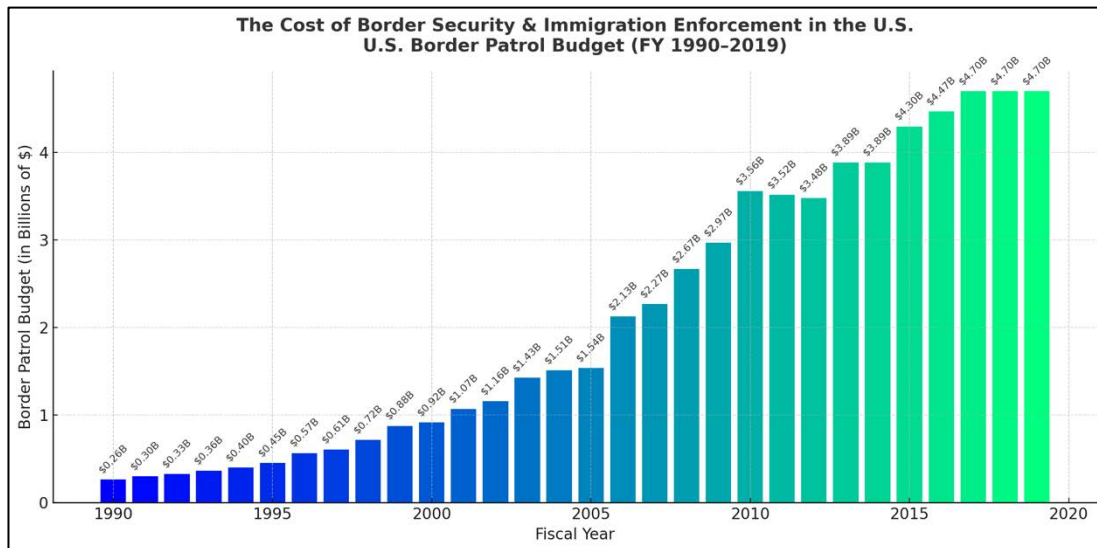


Figure 43. The Cost of Border Security and Immigration Enforcement in the U.S. U.S. Border Patrol Budget (1990-2019)

Source: “This Chart Shows the U.S. Border Security Spending by Year,” *HowMuch*, 16 July 2019, <https://howmuch.net/articles/the-cost-of-border-security-and-immigration-enforcement-in-the-us>

In the UK, the NASS system proved to be more expensive than the welfare system it replaced. In 2002-03 the Home Office’s Immigration and Nationality Directorate spent £1.07 billion in providing accommodation and financial support to asylum applicants and their families, a significant part of which corresponded to high administrative overheads and the costs of private accommodation contracts (see table below).¹⁸³

¹⁸³ National Audit Office, *Improving the Speed and Quality of Asylum Decisions* (London: The Stationery Office, 2004), *National Archives*, 1, <https://webarchive.nationalarchives.gov.uk/ukgwa/20170207052351/https://www.nao.org.uk/wp-content/uploads/2004/06/0304535es.pdf>

Total Spend on Asylum Support Costs and Dispersal Accommodation by the Immigration and Nationality Directorate (IND), 2000/01–2004/05		
Year	Total Spend on Asylum Support Costs by IND (£m)	Amount Spent on Dispersal Accommodation (£m)
2000/01	747	115
2001/02	1,046	247
2002/03	1,070	319
2003/04	1,008	343
2004/05	No figure available	No figure available
Source: National Asylum Support Service, <i>Support for Asylum Seekers</i> (Home Office, 2005), https://assets.publishing.service.gov.uk/media/5a75985040f0b67b3d5c7b85/2847-support-asylum-seekers.pdf .		

Ultimately, the deterrence doctrine proved to be an irrational choice for the states themselves: they spent vast sums of public money to produce immense human suffering in pursuit of a policy goal that remained largely unattained.

4.4. International and Diplomatic Dimensions

The rise of the deterrence doctrine was not merely a domestic policy phenomenon, it was also deeply intertwined with international law and diplomacy. Both the United States and the United Kingdom developed strategies to shift the responsibility for managing asylum seekers onto other nations, and both engaged in controversial legal interpretations to justify their actions in the face of their international obligations. These policies had significant consequences for their bilateral and regional relationships, positioning them as leaders in a global trend toward restrictionism.

Burden-Shifting Strategies

A core objective of the deterrence model was to prevent asylum seekers from becoming the responsibility of the State. This led to the development of sophisticated burden-shifting strategies, though the US and UK pursued this goal through different means.

The United States' approach was largely unilateral and hegemonic, leveraging its power to control its immediate geographic sphere. The Haitian interdiction programme was the quintessential example of this strategy. By stopping boats on the high seas and returning them directly to Haiti, the US unilaterally pre-empted any possibility of the passengers lodging asylum claims and becoming its responsibility.¹⁸⁴

¹⁸⁴ Maryse Fontus and Laura B. Sherman, *Refugee Refoulement: The Forced Return of Haitians under the U.S.-Haitian Interdiction Agreement* (Lawyers Committee for Human Rights, 1990).

The later use of the Guantánamo Bay naval base as an offshore processing centre was an extension of this logic.¹⁸⁵ By holding asylum seekers in a territory deliberately defined as being outside the reach of the US legal system, the government created what Giorgio Agamben called “a zone of exception” where it could manage large numbers of people without affording them the full due process rights they would have on the mainland. This strategy was one of extraterritorial control, projecting American power outward to create a buffer zone that insulated the domestic state from asylum claims. This was acknowledged by Norman Tebbit of the Department of Trade, who highlighted the legal and philosophical conflict when one State seeks to enforce its laws outside its borders in a 1980 letter:

The American proposals affect two crucial points of principle for us freedom of passage on the high seas and their own tendency to take, and seek to enforce in their courts, extra-territorial jurisdiction. Freedom of navigation is a right to be stoutly defended against friend and foe and our general policy should be to resist and protest against proposed or actual encroachments.¹⁸⁶

The UK here is criticising the very principle of extraterritoriality that it would later exploit in different ways, highlighting the hypocrisy inherent in these state-centric policies.

The United Kingdom’s strategy, in contrast, was embedded within a nascent multilateral European framework. While carrier sanctions represented a form of unilateral externalisation, the UK’s key burden-shifting tool in the 1990s was the Dublin Convention, which followed the 1992 signing of the Maastricht Treaty.¹⁸⁷

During his speech at the 1992 Conservative Party Conference, Prime Minister John Major addressed concerns surrounding the Maastricht Treaty:

Let me come directly to the issue that has caused such controversy. The Treaty of Maastricht seems to have become enshrouded in myth and legend. Certainly, the Treaty I hear about is not the one I negotiated. What are the fears people have about Maastricht? We heard many of them in our debate this week. (...) Immigration? Immigration policy is specifically excluded under the Maastricht Treaty. (...) Defence? Defence is kept out of the control of the Community. (...) Citizenship? We are British citizens and we will always remain British citizens.¹⁸⁸

Major committed to upholding national sovereignty, notably over immigration policy and to resist any transfer of authority in this area to the European Community in order to assuage broader public concerns about closer European integration. The

¹⁸⁵ Ana Raquel Minian, *In the Shadow of Liberty: The Invisible History of Immigrant Detention in the United States* (Viking, 2024), 197–224.

¹⁸⁶ *The Americans and Drug Smuggling*, 31 December 1980, HO 306/209, Folder *Treaties between UK and Foreign Countries: U.S.A., Drug Smuggling*, The National Archives (Kew, United Kingdom).

¹⁸⁷ Agnès Hurwitz, ‘The 1990 Dublin Convention: A Comprehensive Assessment’, *International Journal of Refugee Law* 11, no. 4 (1999): 646–77, <https://doi.org/10.1093/ijrl/11.4.646>

¹⁸⁸ John Major, *Speech to the 1992 Conservative Party Conference*, *John Major Archive*, 9 October 1992, <https://johnmajorarchive.org.uk/1992/10/09/mr-majors-speech-to-1992-conservative-party-conference-9-october-1992/>

UK's relationship with the European Union exerted a considerable influence on immigration patterns and policies during the 1990s. The creation of the European Union in the early 1990s led to an increase in immigration from member states as a result of the principle of free movement of people within the EU.¹⁸⁹

The European Economic Community's efforts in the 1980s to standardise asylum procedures led to the Dublin Convention, signed in 1990 and fully enforced by 1997.¹⁹⁰ The UK signed in 1992. The Convention established rules to determine which Member State is responsible for examining an asylum application, aiming to ensure all applications are processed promptly and applicants are not left in uncertainty.¹⁹¹ Generally, asylum seekers are processed in the first EU country they enter, unless they have family in another country or hold a valid residence permit or visa elsewhere.¹⁹²

As mentioned in chapter three, as an island nation at the northwestern edge of Europe, this 'first-country' rule was highly advantageous for the UK. It provided a legal mechanism to return a significant number of asylum seekers to other European countries, particularly southern border states like Italy and Greece, arguing that they were not the UK's responsibility.¹⁹³ This represented a strategy of burden-shifting, using a shared set of rules to deflect responsibility onto its European partners.

International Legal Obligations

Both nations' deterrence policies brought them into direct conflict with their obligations under international refugee law, most notably the principle of *non-refoulement*. This principle, enshrined in Article 33 of the 1951 Refugee Convention, is the cornerstone of international refugee protection and prohibits states from returning a refugee "in any manner whatsoever" to a territory where their life or freedom would be threatened.¹⁹⁴

The United States government adopted a highly restrictive and controversial interpretation of this principle. In the legal battles over the Haitian interdiction programme, it successfully argued before the Supreme Court that the *non-refoulement*

¹⁸⁹ *Immigration, the European Union and the UK Labour Market* (Centre for Economic Performance, 2014).

¹⁹⁰ *Dublin Convention on the Establishment of the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application*, 15 June 1990, European Communities, https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/dublin-convention_en

¹⁹¹ *Evaluation of the Dublin Convention*, Commission Staff Working Paper SEC(2001)756 (Commission of the European Communities, 2001), 1.

¹⁹² *Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities*, 97/C 254/01 (Member States of the European Communities, 1997), <https://academic.oup.com/ijrl/article-lookup/doi/10.1093/ijrl/2.3.469>

¹⁹³ Lauren Moses, 'An Analysis of the Dublin System in the European Union', *Jackson School Journal of International Studies* 6, no. 2 (2016).

¹⁹⁴ Office of the High Commissioner, *The Principle of Non-Refoulement Under International Human Rights Law* (United Nations, 2018).

obligation did not apply to actions taken in international waters.¹⁹⁵ This decision effectively created a geographic loophole in what was widely considered an absolute prohibition, allowing the US to return people to the hands of their persecutors as long as the interception occurred before they technically reached US territory.¹⁹⁶

The United Kingdom, by contrast, was subject to a more robust legal framework. In addition to the Refugee Convention, it was also bound by the European Convention on Human Rights (ECHR), as interpreted by the European Court of Human Rights in Strasbourg. The landmark ruling in the case of *Chahal v. United Kingdom* established that national security concerns could not override the prohibition of torture present in Article 3 of the European Convention on Human Rights,¹⁹⁷ and was interpreted by the court to include a *non-refoulement* obligation.¹⁹⁸

This made a direct, US-style interdiction and return policy legally and politically untenable. Instead, the UK's carrier sanctions policy operated more indirectly. By fining airlines, the government created a system where private, commercial actors made the decision to deny passage to potential asylum seekers.¹⁹⁹ While critics argued that this amounted to *refoulement* by proxy, the indirect nature of the mechanism provided the government with a degree of legal and political cover, insulating the state from direct responsibility for preventing a refugee from fleeing.

Diplomatic Consequences and Relationships

These deterrent policies inevitably had diplomatic repercussions, shaping the US and UK's relationships with other countries.

The US interdiction programme was a persistent source of friction in its relationship with Haiti and other Caribbean nations. The policy was widely condemned by regional bodies and human rights organisations, and it deeply complicated U.S. foreign policy, which simultaneously sought to promote democracy in Haiti while forcibly returning those fleeing its political violence. Similarly, the militarisation of the land border via numerous operations (such as Hold-The-Line and Gatekeeper, as well as anti-drug efforts, such as Operation Intercept II in 1985) became a major irritant in the U.S.-Mexico bilateral relationship, undermining cooperation on other fronts like trade and counter-narcotics.²⁰⁰ This was acknowledged by policymakers. For examples, in 1980, Republican Senator Harrison Hagan "Jack" Schmitt argued that the idea of trying to seal the border risked destabilising Mexico:

¹⁹⁵ Perez, 'United States Haitian Interdiction Policy: *Sale v. Haitian Centers Council, Inc.*' *op. cit.*

¹⁹⁶ Fontus and Sherman, *Refugee Refoulement*. *op. cit.*

¹⁹⁷ *European Convention on Human Rights*, as amended, *Council of Europe*, 1 June 2010, https://www.echr.coe.int/documents/d/echr/convention_ENG

¹⁹⁸ *Chahal v. United Kingdom*, App. No. 22414/93, European Court of Human Rights, 15 November 1996, *Refworld*, <https://www.refworld.org/jurisprudence/caselaw/echr/1996/en/16884>

¹⁹⁹ Ruff, 'The Immigration (Carriers' Liability) Act 1987'. *op. cit.*

²⁰⁰ Peter Andreas, *Border Games: Policing the U.S.-Mexico Divide*, Cornell Studies in Political Economy (Cornell University Press, 2000), 47.

A “Tortilla Curtain” which forced Mexico to absorb the migrants into an already overburdened economy, would create the potential for turmoil south of the border. It would threaten not only our relations with Mexico, but would also potentially destabilize Mexico’s internal situation.²⁰¹

He also recognised the ineffectiveness and negative repercussions of attempts to seal the border: “any effort on our part to seal off our long 900-mile common border is doomed to continued failure, and only benefits the worst kind of smugglers, those who traffic in human beings.”²⁰² The negative diplomatic consequences were foreseen by policymakers long before the strategy was fully implemented.

For the United Kingdom, its asylum policies were a key element in its often-fraught relationship with its European Union partners. The Dublin Convention, while advantageous for the UK, was a source of immense frustration for southern European states, who felt it unfairly burdened them with the vast majority of asylum seekers arriving in the EU.²⁰³ Disputes over burden-sharing and the UK’s general reluctance to participate in common European asylum initiatives created ongoing tensions and foreshadowed the deeper conflicts over sovereignty and migration that ultimately contributed to Brexit. In 1999, Robin Cook, then Foreign Secretary under Tony Blair, warned that imposing visas on the Czech Republic “would contradict everything we have been working for in Central Europe (...) It would severely undermine our position as a driving force in EU enlargement a fundamental plank in our foreign policy.”²⁰⁴ Business interests were also taken into consideration as a 1999 letter from John Weston, CEO of British Aerospace shows:

My purpose in writing is to draw attention to the implications this would have for trade prospects between the United Kingdom and the Czech Republic. British Aerospace, with its Swedish partner Saab, is involved in a competition to re-equip the Czech Air Force. The value of the contract would be about £1.5 billion.²⁰⁵

These examples both highlight tension between the UK’s deterrent asylum policies and its broader foreign and economic policy goals within Europe at the time.

4.5. The Symbolic Role of Deterrence

Detention and deportation are among the most powerful symbolic and practical

²⁰¹ H. Schmitt, *Los Compañeros: A Mexican Migration Policy* (unpublished manuscript prepared with the assistance of D. McCullough, 1980), David Swanson (OLA): Files, OA 10315, Box 6, Ronald Reagan Presidential Library (Simi Valley, California).

²⁰² *Congressional Record*, “United States–Mexico Good Neighbor Act of 1981”, 5 January 1981, David Swanson (OLA): Files, OA 10315, Box 6, Ronald Reagan Presidential Library (Simi Valley, California).

²⁰³ Ashley Binetti Armstrong, ‘You Shall Not Pass! How the Dublin System Fueled Fortress Europe’, *Chicago Journal of International Law* 20, no. 2 (2020): 332–83, <https://doi.org/10.2139/ssrn.3443667>.

²⁰⁴ *Minute from Robin Cook*, “Increase in Asylum Applications”, 10 September 1999, PREM 49/887/2, Folder Immigration, Series Home Affairs, The National Archives (Kew, United Kingdom).

²⁰⁵ *Letter from John Weston*, CEO of British Aerospace, 6 September 1999, PREM 49/887/2, Folder Immigration, Series Home Affairs, The National Archives (Kew, United Kingdom).

instruments through which states assert their sovereignty. Beyond their immediate administrative functions, these measures operate as visible demonstrations of state authority and control over borders and non-citizens. They communicate strength to domestic audiences, signal decisiveness to international partners, and seek to deter potential migrants from attempting irregular entry. In this way, detention and deportation are not only tools of enforcement but also performative acts designed to reaffirm the state's legitimacy in the face of complex social and political pressures surrounding migration, crime, and border management.

Daniel Wilsher captures the symbolic dimension of detention, arguing that

alien detention is of great symbolic value. Governments can be seen to be taking executive action against a threat without waiting for the slow and uncertain workings of the criminal justice system. They can also take such action without facing the legal constraints and political damage that imposing internment and other emergency measures on citizens would bring.²⁰⁶

By acting swiftly and visibly against perceived threats, governments project an image of control and resolve. Detention becomes a spectacle of authority, a way to show that the state is not passive in the face of irregular migration or security concerns.²⁰⁷ Mary Bosworth, however, cautions that such displays of toughness may conceal deeper vulnerabilities. She argues that “harsh policies about foreigners may, like punitiveness, ‘pose as a symbol of strength but (...) should be interpreted as a symbol of weak authority and inadequate controls’.”²⁰⁸ In this sense, the very need to rely on coercive measures such as detention and deportation might suggest an underlying fragility in governance, a failure to manage migration through more stable, preventive, or humane systems. Yet, despite this interpretation of weakness, these symbolic powers remain politically essential. They satisfy domestic demands for visible enforcement and feed into the narrative of deterrence: that the state is not a soft target for irregular migration.

Deterrence operates at multiple levels within these practices. First, at the individual level, detention and the threat of deportation serve to discourage non-compliance with immigration rules, pressuring individuals to leave voluntarily to avoid the stigma and hardship of forced removal. Second, at the collective level, they send a broader message to would-be migrants abroad, warning that irregular entry or unfounded asylum claims will result in swift and punitive consequences. This logic of deterrence transforms detention and deportation into instruments of symbolic communication as much as policy enforcement, shaping perceptions of risk and consequence among immigrant communities.

²⁰⁶ Wilsher, *Immigration Detention*, *op. cit.*, 255.

²⁰⁷ Cetta Mainwaring and Stephanie J. Silverman, ‘Detention-as-Spectacle’, *International Political Sociology* 11, no. 1 (2017), <https://doi.org/10.1093/ips/olw016>

²⁰⁸ Mary Bosworth, ‘Border Control and the Limits of the Sovereign State’, *Social & Legal Studies* 17, no. 2 (2008): 210, <https://doi.org/10.1177/0964663908089611>

Nevertheless, the effectiveness of deterrence in this context remains deeply contested. Critics argue that such measures often fail to prevent migration, particularly among those fleeing violence, persecution, or extreme poverty, individuals for whom the dangers of staying outweigh the risks of moving.²⁰⁹ In these cases, detention and deportation may function less as genuine deterrents and more as political performances aimed at reassuring domestic audiences of the state's control. They thus serve a dual purpose: a practical attempt to enforce immigration law, and a symbolic gesture designed to sustain public confidence in the integrity of the border.²¹⁰

Deportation, in particular, is often presented as a necessary enforcement mechanism to maintain the credibility of the asylum system. If rejected applicants are not removed, the legitimacy of the entire asylum process is called into question. Without effective deportation, governments risk undermining their ability to offer protection to those who are genuinely in need, a paradox that reveals the delicate balance between humanitarian obligation and sovereign enforcement. Yet even here, deterrence plays a central role: by enforcing removal, states seek not only to uphold the rule of law but also to send a clear message that irregular migration will not be tolerated.

Public attitudes toward these practices remain deeply ambivalent. As Gibney and Hansen observe,

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. (...) 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.²¹¹

This paradox underscores the tension between moral sentiment and political pragmatism. While citizens often endorse strong border control in principle, the human consequences of deterrence-based policies provoke ethical unease.

Detention and deportation embody the intersection of power, symbolism, and deterrence in modern migration governance. They function as both performative and practical tools, designed to project authority, manage migration flows, and dissuade potential entrants. Yet, their reliance also exposes the state's insecurities, as they reveal that the projection of strength sometimes masks a struggle to maintain control. Ultimately, deterrence lies at the heart of this paradox: it is both the justification for and the symptom of a state's ongoing battle to balance compassion with control.

²⁰⁹ Gammeltoft-Hansen and Tan, 'The End of the Deterrence Paradigm?' *op. cit.*

²¹⁰ Mainwaring and Silverman, 'Detention-as-Spectacle'. *op. cit.*

²¹¹ Matthew J. Gibney and Randall Hansen, *Deportation and the Liberal State: The Forcible Return of Asylum Seekers and Unlawful Migrants in Canada, Germany and the United Kingdom*, Working Paper No. 77, UNHCR (February 2003), <https://www.unhcr.org/research/working/3e59de764/deportation-liberal-state-forcible-return-asylum-seekers-unlawful-migrants.html>

5. Conclusion

The period from 1979 to 2001 was not static, it was characterised by a dynamic process of policy evolution, in which the doctrine of deterrence became progressively more entrenched, sophisticated, and punitive. This evolution was driven by a perverse feedback loop of perceived failure and subsequent escalation. It was accelerated by the international diffusion of restrictive practices. The ultimate assessment of this two-decade experiment is one of profound failure, with its limited successes outweighed by its enormous and lasting costs.

A defining feature of the deterrence paradigm in both the US and the UK was its tendency to escalate in the face of failure. When a particular deterrent measure proved insufficient to halt migration flows or gave rise to new challenges, the institutional response was rarely to question the underlying logic of deterrence itself. Instead, the response was to double down, intensifying the existing policy or introducing a new, even harsher one.

In the United States, when Operation Hold the Line's initial implementation in El Paso in 1993 simply displaced migrant traffic elsewhere, the Border Patrol's response was not to abandon the strategy but to expand it, launching Operation Gatekeeper in San Diego, California, Operation Safeguard near Tucson, Arizona and Operation Rio Grande in the McAllen sector of Texas.²¹² The result was not a reduction in migration but a widening of the lethal corridor along the border.²¹³ This pattern exemplifies ratchet creep, a theory describing how institutional growth often becomes irreversible.²¹⁴ In response to a perceived crisis, the border enforcement apparatus secures a significant expansion of its budget, personnel, and authority. Due to the ratchet effect, this new, elevated level of resources becomes a permanent baseline that is not scaled back, even if the initial crisis abates. This process creates a powerful institutional momentum, fostering a bureaucratic constituency whose organisational survival and future growth are contingent upon the continuation of the very crisis it was ostensibly meant to solve, as the 'ratcheted-up' state requires perpetual justification.²¹⁵

A similar pattern of adaptation and escalation occurred in the United Kingdom. The 1987 Carrier Liability Act was followed by the 1993 Asylum and Immigration Appeals Act, which introduced fast-tracking and expanded detention.²¹⁶ This was

²¹² William J Krouse, *U.S. Border Patrol Operations*, nos 97-989 EPW (Congressional Research Service, 1997).

²¹³ De Léon, *The Land of Open Graves*. *op. cit.*

²¹⁴ Alan Peacock and Jack Wiseman, *The Growth of Public Expenditure in the United Kingdom*, 1st edn (Routledge, 1967), <https://doi.org/10.4324/9781003503484>

²¹⁵ Robert Higgs, *Crisis and Leviathan: Critical Episodes in the Growth of American Government* (Oxford University Press, 1987), ch. 2.

²¹⁶ Frances Nicholson, 'Implementation of the Immigration (Carriers' Liability) Act 1987: Privatising Immigration Functions at the Expense of International Obligations?', *International & Comparative Law Quarterly* 46, no. 3 (1997): 586-634, <https://doi.org/10.1017/S0020589300060814>; Dallal Stevens,

followed by the 1996 Immigration and Asylum Act, which further restricted welfare benefits, and then the comprehensive 1999 Act that created the NASS system.²¹⁷ Each piece of legislation built upon the restrictive logic of its predecessor, creating an ever-denser web of administrative barriers.

This domestic escalation was amplified by a process of international policy diffusion. Governments and policymakers in developed nations learned from one another, sharing “best practices” in restrictionism. As Frances Nicholson shows, the UK’s adoption of carrier sanctions, for instance, followed similar models already in place in the United States, Canada, and Australia.²¹⁸ This cross-national policy transfer helped to normalise deterrent measures and created a sense of international consensus around restriction, accelerating a global convergence toward more punitive immigration and asylum policies. Lisa Hassan argues that governments cannot legitimately decide in advance which refugees are “authentic.”²¹⁹ She contends that countries like the UK and US employ deterrent policies not to help refugees, but to advance their own agendas. Hassan suggests that nations adopt these deterrent strategies for several self-serving purposes: to decrease the total number of asylum seekers (without regard to whether their claims are valid), to cut costs, to treat foreign nationals as criminals and prevent them from settling permanently, and to appease particular segments of their populations while reinforcing governmental authority.

The period between 1979 and 2001 marks a watershed in the history of immigration control in the United States and the United Kingdom. It was during these two decades that both nations, driven by parallel anxieties about rising migration and a perceived loss of sovereign control, decisively shifted their policy frameworks toward a systematic doctrine of deterrence. What began as a series of reactive, emergency measures in response to specific crises (the Mariel boatlift in the US, rising asylum claims in the UK) was, by 2001, a fully institutionalised, bureaucratically entrenched, and ideologically coherent system of exclusion. The central logic of this system was the belief that the infliction of human suffering was a rational and legitimate tool of statecraft.²²⁰

The comparative analysis reveals that while the US and the UK took different paths to this destination, their underlying philosophy converged. The United States, a continental power, pursued deterrence through the physical fortification of its borders and the projection of its enforcement power into the lethal landscapes of the desert and

‘The Asylum and Immigration Act 1996: Erosion of the Right to Seek Asylum’, *The Modern Law Review* 61, no. 2 (1998): 208, <https://doi.org/10.1111/1468-2230.00138>

²¹⁷ ‘Refugee Timeline’, U.S. Citizenship and Immigration Services, 7 February 2023, <https://www.uscis.gov/about-us/our-history/stories-from-the-archives/refugee-timeline>

²¹⁸ Nicholson, ‘Implementation of the Immigration (Carriers’ Liability) Act 1987’. *op.cit.*

²¹⁹ Lisa Hassan, ‘Deterrence Measures and the Preservation of Asylum in the United Kingdom and United States’, *Journal of Refugee Studies* 13, no. 2 (2000): 184–204, <https://doi.org/10.1093/jrs/13.2.184>

²²⁰ Roxanne Lynn Doty, *Anti-Immigrantism in Western Democracies: Statecraft, Desire and the Politics of Exclusion* (Routledge, 2003), 1.

the high seas.²²¹ The United Kingdom pursued deterrence through administrative warfare, externalising its borders via commercial partnerships and creating an early “hostile environment” of social and economic deprivation for those who arrived.²²² One path led to a policy of physical attrition, the other to a policy of psychological attrition. Both were rooted in a flawed application of rational choice theory that profoundly misjudged the motivations of those fleeing persecution and poverty. The US policy assumed migrants were calculating physical risk and probability of apprehension. The UK policy assumed migrants were calculating the availability of cash benefits and the ease of living. Both models failed because they ignored the overwhelming “push factor” of fleeing for one’s life or the potential economic advantages far outweighing possible risks and costs.

The ultimate legacy of this era is a testament to the doctrine’s profound failure. It was a failure of efficacy, despite vast expenditures and escalating harshness, the policies did not achieve a sustained reduction in migration flows but instead created perverse and counter-productive consequences, from the rise of professional smuggling rings to the entrenchment of permanent undocumented populations.²²³ Billions or millions were spent on enforcement and detention systems that were ultimately ineffective. The deterrence doctrine also normalised cruelty, leading directly to the deaths of thousands of people on the US border and the infliction of widespread destitution and psychological trauma on vulnerable asylum seekers in the UK. While one strategy led to bodies in the desert and the other to minds in despair, both flowed from the same foundational decision to institutionalise cruelty as a tool of the State.

The infrastructure of control created during this formative period, including the militarised border in the, the remote detention centres, the privatised enforcement mechanisms, the parallel welfare systems, the fast-track legal procedures, did not disappear in 2001. Instead, it became the foundation upon which the even more restrictive and security-focused policies of the post-9/11 era would be built.

Understanding the evolution of the deterrence doctrine between 1979 and 2001 is therefore essential to understanding the contemporary landscape of immigration control. It reveals how two of the world’s leading liberal democracies came to embrace punitive exclusion as a central tenet of governance and establishing a system whose human and financial costs continue to mount to this day.

By the close of the 1990s, deterrence had become doctrinally entrenched in

²²¹ Fontus and Sherman, *Refugee Refoulement*; Bean et al., *Illegal Mexican Migration & the United States/Mexico Border*. *op. cit.*

²²² Rob Waters, ‘Small Boats, Border Incredulity, and the Hostile Environment in Britain, 1967–1978’, *History Workshop Journal* 98 (November 2024): 27–54, <https://doi.org/10.1093/hwj/dbae021>; Griffiths and Yeo, ‘The UK’s Hostile Environment’.

²²³ Gathmann, ‘Effects of Enforcement on Illegal Markets’; *Estimates of the US Unauthorized Immigrant Population (Office of Policy and Planning)*; Phillip Connor and Jeffrey S Passel, *Europe’s Unauthorized Immigrant Population Peaks in 2016, Then Levels Off* (Pew Research Center, 2019).

both the United States and the United Kingdom. Whether through militarised interdiction or bureaucratised hostility, both governments sought to prevent migration not only by controlling borders but by reshaping the legal and social landscapes migrants might encounter. The next chapter examines how these deterrent strategies fared when challenged in the courts, and how judicial intervention, or its absence, further shaped the scope of immigration detention.

Chapter 6:

The Legal Front: Due Process, Appeals, and the Role of the Courts

1. Introduction

The expansion of immigration detention in the United States and the United Kingdom between 1979 and 2001 presents a profound constitutional and political paradox. During these two decades, both nations, standard-bearers of liberal democracy and the rule of law, constructed vast administrative systems for the deprivation of liberty, largely insulated from the robust judicial scrutiny that would be considered expected in any other context. This chapter argues that the period reveals how the judiciaries in both countries, while operating within distinct and proud liberal-legal traditions, ultimately facilitated, rather than halted, the expansion of an executive-dominated detention regime. This occurred through divergent but functionally convergent paths: American courts, historically constrained by the judicially-created “plenary power” doctrine, found their authority further eroded and ultimately stripped by an act of legislative supremacy. In parallel, British courts practiced a form of constitutional self-restraint, deferring to executive authority under the doctrine of Parliamentary Sovereignty, a deference limited only modestly by the gradual development of common law principles and the burgeoning influence of European human rights norms.

This phenomenon can be understood through the lens of the “liberal paradox,” a concept developed by political scientists such as James Hollifield, to explain the inherent conflict within liberal states between economic liberalism’s push for openness to migration and domestic political pressures as electoral pressures and national identity concerns compel states to restrict immigration.¹ While Hollifield’s framework focuses on the tension between markets and politics, this chapter repositions the judiciary as a central, and conflicted, actor within this paradox.² The legal front was not merely a passive site where these tensions played out, instead it was an active arena where the fundamental conflict between universalist claims to human rights and the sovereign power of the nation-state to define and police its community was decided.³ As legal scholars have noted, constitutional democracies are bounded communities, and the claims of non-citizen immigrants inherently challenge and destabilise the construction of these communities, which presupposes a degree of closure and exclusion.⁴ The courts, as arbiters of these claims, were forced to navigate this

¹ James F. Hollifield, *Immigrants, Markets, and States: The Political Economy of Postwar Europe* (Harvard University Press, 1992).

² Katharina Natter, ‘Autocratic Immigration Policymaking: The Illiberal Paradox Hypothesis’, *International Migration Institute Network Working Papers* 147 (2018), <https://dare.uva.nl/search?identifier=4b1e5074-b1a6-42f9-8b0e-d2681b4d3620>

³ George Gigauri, ‘Resolving the Liberal Paradox: Citizen Rights and Alien Rights in the United Kingdom’, *Refugee Studies Centre Working Paper*, Working Paper Series, vol. 31 (July 2006); James F Hollifield et al., ‘The Liberal Paradox: Immigrants, Markets and Rights in the United States’, *Southern Methodist University Law Review* 61, no. 1 (2008).

⁴ Vladislava Stoyanova, ‘Populism, Immigration and Liberal Democracies: Inherent Instability or Tipping of the Balance?’, in *Migrants’ Rights, Populism and Legal Resilience in Europe*, ed. Vladislava

“constitutive dilemma at the heart of liberal democracies.”⁵

The legal “front” was, for migrant rights, a scene of steady retreat. The courts did not create the political pressures for restriction, but their jurisprudence created the legal space for executive-led detention policies to flourish.

This chapter will trace this process through a comparative analysis. Part I examines the United States, detailing a narrative of judicial retreat culminating in a legislative override that codified executive power and stripped the courts of their traditional oversight role. Part II turns to the United Kingdom, analysing a more gradual evolution shaped by the common law, administrative justice, and the growing, but limited, constraints of supranational European law. Finally, Parts III, IV, and V will conduct a direct comparative analysis of the legal protections, landmark cases, and structural limitations within both systems, concluding that despite their profound differences in legal tradition and constitutional structure, the judiciaries of the US and the UK converged on a similar outcome: the normalisation of mass administrative detention as a legitimate tool of state power.

Despite operating within different constitutional traditions, the United States, with its written Bill of Rights, and the United Kingdom, with its reliance on common law and parliamentary sovereignty, courts in both countries faced a parallel dilemma: how far to defer to the executive in matters of immigration and detention. The comparison illustrates how two distinct legal cultures nonetheless converged on a posture of judicial restraint, effectively reinforcing legislative supremacy in the governance of migrants.

2. The United States: Judicial Retreat and Legislative Supremacy

The legal history of immigration detention in the United States from 1979 to 2001 is a story of the dramatic erosion of judicial oversight, in which the courts, armed with the powerful tools of constitutional review, largely chose not to wield them, deferring instead to a near-absolute conception of executive and legislative power over immigration. This judicial self-restraint created a political vacuum that, as it usually is, was filled in 1996 by a congressional backlash, which not only codified the most expansive detention powers in the nation’s history but also pushed to permanently remove the judiciary from the field. The result was the creation of a state of exception, a zone of executive discretion over the liberty of non-citizens that was unparalleled in any other area of American administrative law.⁶

Stoyanova and Stijn Smet (Cambridge University Press, 2022), 50, <https://doi.org/10.1017/9781009040396.004>

⁵ Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens*, The John Robert Seeley Lectures 5 (Cambridge University Press, 2004), 2.

⁶ Giorgio Agamben, *State of Exception* (University of Chicago Press, 2005).

2.1. The Foundation of Deference: Early Challenges and the Plenary Power Doctrine

The legal framework governing immigration in the United States is grounded in the plenary power doctrine, a judicially constructed principle that confers nearly absolute authority over immigration to Congress and the Executive, thereby insulating their decisions from the substantive judicial review that is ordinarily applied in other areas of policy.⁷

Originating in the late-nineteenth-century *Chinese Exclusion Cases*, the doctrine is rooted in the idea that immigration control is an inherent feature of national sovereignty, closely linked to foreign affairs and national security, and thus ill-suited for judicial intervention.⁸ While many contemporary legal scholars, such as Adam Cox, have compellingly argued that this modern, absolutist understanding of plenary power is a “myth” based on a distortion of earlier precedent, its influence on the judiciary during the period under examination was profound, pervasive and undeniable.⁹ It provided the crucial legal and intellectual justification for the courts’ subsequent deference to increasingly harsh executive detention policies.

While United States courts generally grant the legislative and executive branches broad authority over immigration, a principle known as the “plenary power” doctrine, the cases of *Haitian Refugee Center v. Civiletti* (1980), *Plyler v. Doe* (1982), and *Jean v. Nelson* (1985) demonstrate that this power is not absolute. These rulings illustrate that the judiciary will intervene to ensure that immigration laws and their execution comply with constitutional principles of due process and equal protection, as well as with the government’s own statutes and regulations.

These cases are not a rejection of the plenary power doctrine but rather a clarification of its limits. They establish that even in the realm of immigration, the government is not above the law and must act within the framework of the Constitution and federal statutes.

Haitian Refugee Center v. Civiletti (1980)

The first major test of this framework in the modern era came with the arrival of Haitian asylum seekers in the late 1970s and early 1980s. The landmark district court decision in *Haitian Refugee Center v. Civiletti* (1980) stands as an important, if

⁷ Asim Zaidi, ‘Major Questions in the Plenary Power Domain’, *U.C.L.A. Law Review* 72 (May 2025): 260.

⁸ Matthew J. Lindsay, ‘Immigration as Invasion: Sovereignty, Security, and the Origins of the Federal Immigration Power’, *Harvard Civil Rights-Civil Liberties Law Review* 45 (2010): 6, <https://doi.org/10.2139/ssrn.1563453>

⁹ Adam B. Cox, ‘The Invention of Immigration Exceptionalism’, *The Yale Law Journal* 134, no. 2 (2024): 333.

ultimately fragile, testament to the potential for judicial intervention.¹⁰ Judge James Lawrence King, of the United States District Court for the Southern District of Florida, found that the Immigration and Naturalization Service (INS) had implemented a clandestine “Haitian Program” designed for the “expedited mass deportation of Haitian nationals.”¹¹ The court found overwhelming evidence of intentional, class-wide discrimination based on race and national origin, noting that “no greater disparity can be imagined” between the treatment of the Black Haitian plaintiffs, none of whom were granted asylum under the programme, and that of predominantly non-Black Cuban refugees who routinely received protection.¹² Furthermore, the court documented a litany of “systematic” and “pervasive” due process violations, including the imposition of arbitrary deadlines that made effective legal representation impossible, the coercion of applicants to waive their right to remain silent, and the conduct of asylum interviews in a hostile and careless manner.¹³ The decision was an assertion of judicial power to enforce constitutional and statutory norms against a stubborn executive agency. Yet, its status as a district court ruling, subject to the vagaries of appeal and immense political pressure, highlighted the vulnerability of such legal victories.

Doe v. Plyler (1982):

In a landmark Supreme Court case regarding education rights for undocumented immigrant children, the Court upheld the decision of the federal district court in Texas. In this decision, the Supreme Court ruled 5-4 that states cannot deny free public elementary and secondary education to undocumented immigrant children. The case originated in Texas, which had passed a law allowing school districts to charge tuition to undocumented students or exclude them entirely. The Supreme Court held that:

1. Even undocumented immigrants are entitled to Equal Protection under the 14th Amendment when physically present in the United States.
2. While not declaring education a fundamental right, the Court recognised its unique importance to both individuals and society.
3. The law was subject to intermediate scrutiny because it targeted children for their parents’ conduct and affected education.

¹⁰ *Haitian Refugee Ctr. v. Civiletti*, 503 Federal Supplement 442 (US District Court for the Southern District of Florida 1980), <https://law.justia.com/cases/federal/district-courts/FSupp/503/442/1467096/>

¹¹ *Ibid.*

¹² Monika Gosin, “The Mariel Boatlift, Haitian Migration, and the Revelations of the “Black Refugees””, *Anthurium A Caribbean Studies Journal* 17, no. 2 (2021), <https://doi.org/10.33596/anth.457>

¹³ *Haitian Refugee Ctr. v. Civiletti. op. cit.*

4. Texas could not demonstrate that excluding these children would significantly improve education quality or reduce costs enough to justify the harm.¹⁴

The decision established that undocumented children have the same right to K-12 public education as citizens and legal residents. This ruling remains in effect today and has prevented states from implementing laws that would deny basic education to undocumented immigrant children.

***Jean v. Nelson* (1985)**

The long-standing doctrine of “plenary power” led courts to be extremely reluctant to interfere in the executive’s management of immigration, even when conditions and policies appeared to violate constitutional norms.¹⁵ The Supreme Court’s 1985 decision in *Jean v. Nelson*, which explicitly sidestepped the constitutional question of whether excludable aliens have equal protection rights, is a prime example of this judicial deference.¹⁶

Jean v. Nelson was a class-action lawsuit first filed in 1981 on behalf of Haitian asylum seekers who were being detained indefinitely without parole in Florida.¹⁷ The lawsuit attacked the administration’s new no-parole policy on two fronts: first, that it had been implemented without the proper rule-making procedures required by the Administrative Procedure Act (APA), and second, that it was discriminatory, violating the equal protection guarantee of the Fifth Amendment by explicitly targeting detainees based on their race and national origin.¹⁸ In 1985 the *Jean v. Nelson* case reached the Supreme Court which took the case to address the constitutionality of detaining only Haitian immigrants.¹⁹ Rather than confront this central constitutional question, however, the Supreme Court engaged in an act of judicial avoidance. Writing for the majority, Justice Rehnquist sidestepped the constitutional issue entirely, holding that existing INS regulations and statutes did not authorise discrimination on the basis of race or national origin in parole decisions, and remanded the case for a factual determination of whether low-level officials had complied with these non-constitutional directives.²⁰

While the Court did not directly rule on the constitutional question, it required the INS to apply its detention policies without regard to race or national origin. This decision effectively forced the administration to choose between abandoning detention

¹⁴ *Plyler v. Doe*, 457 U.S. 202 (1982), *Justia*, <https://supreme.justia.com/cases/federal/us/457/202/>

¹⁵ Alina Das, ‘The Law and Lawlessness of U.S. Immigration Detention’, *Harvard Law Review* 138 (2025): 1186–259.

¹⁶ *Jean v. Nelson*, 472 U.S. 846 (1985), *Justia*, <https://supreme.justia.com/cases/federal/us/472/846/>

¹⁷ *Ibid.*

¹⁸ Das, ‘The Law and Lawlessness of U.S. Immigration Detention’. *op. cit.*

¹⁹ Michael Flynn, ‘There and Back Again: On the Diffusion of Immigration Detention’, *Journal on Migration and Human Security* 2, no. 3 (2014): 171.

²⁰ *Jean v. Nelson*.

altogether or expanding it to all nationalities.

The administration chose the latter option, extending mandatory detention to other groups, particularly focusing on Cuban and Haitian arrivals. This expansion occurred without traditional legislative oversight or proper administrative procedures, justified as an emergency response to what the administration termed an immigration crisis. The Coast Guard increased its interdiction operations in the Caribbean, and makeshift detention facilities were set up across the country (see chapter four).²¹

This decision, while providing a narrow victory for the petitioners, had profound and damaging long-term implications. By refusing to rule on the constitutional question, the Court signalled its deep reluctance to impose firm constitutional limits on the executive's power over "excludable" aliens, thereby reinforcing the core tenets of the plenary power doctrine.²² The powerful dissent by Justice Thurgood Marshall, who argued that the Fifth Amendment's protections apply to "all persons within the territorial jurisdiction" and that the majority's avoidance was based on a "tenuous" reading of the regulations, articulated a compelling counter-narrative of universal rights.²³

However, it was the majority's deferential approach that carried the day, creating a clear political opening for the executive and legislative branches to press their advantage, secure in the knowledge that the nation's highest court was unwilling to stand in their way.

2.2. *Zadvydas* (2001) and the Limits of Detention

In the years following passage of the 1996 Immigration , the federal courts grappled with the new landscape of diminished authority. The culmination of this struggle came in 2001 with the Supreme Court's decision in *Zadvydas v. Davis*, which stands as the most significant, albeit carefully circumscribed, judicial pushback against the post-1996 detention regime.²⁴ The case concerned the fate of "stateless" non-citizens, notably individuals who had been ordered removed from the United States but whose country of origin, or any other country, refused to accept them. Under a literal reading of the post-removal detention statute, the government claimed the authority to detain these individuals indefinitely, potentially for the rest of their lives.²⁵

Faced with this stark prospect, the Supreme Court once again turned to the

²¹ Daniel Wilsher, *Immigration Detention: Law, History, Politics* (Cambridge University Press, 2012), 67.

²² Mary Jane Lapointe, 'Discrimination in Asylum Law: The Implications of *Jean v. Nelson*', *Indiana Law Journal* 62, no. 1 (1986): 127–49.

²³ *Jean v. Nelson*, 472 U.S. 846 (Supreme Court of the United States 1985), <https://www.refworld.org/cases,USSCT,3ae6b65e4.html>

²⁴ *Zadvydas v. Davis*, 533 U.S. 678 (2001), *Justia*, <https://supreme.justia.com/cases/federal/us/533/678/>.

²⁵ Nicole Hallett et al., 'Commentary on *Zadvydas v. Davis*, 533 U.S. 678 (2001)', in *Feminist Judgments: Immigration Law Opinions Rewritten*, ed. Jennifer Lee et al., Feminist Judgment Series: Rewritten Judicial Opinions (Cambridge University Press, 2023), <https://doi.org/10.1017/9781009198950.010>

canon of constitutional avoidance. Writing for a 5-4 majority, Justice Breyer reasoned that a statute permitting indefinite detention would raise “serious constitutional questions” under the Fifth Amendment’s Due Process Clause, which protects the fundamental right to freedom from imprisonment.²⁶ To avoid confronting these questions directly, the Court interpreted the statute to contain an implicit “reasonable time” limitation.²⁷ It held that detention beyond the 90-day statutory removal period was permissible only for a period reasonably necessary to secure the person’s actual removal.²⁸

To give this standard practical effect, the Court established a presumptively reasonable period of six months for post-order detention.²⁹ After six months, if the non-citizen could provide “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the burden would shift to the government to provide evidence to rebut that showing. If the government could not, the detention would become unlawful.³⁰

The *Zadvydas* decision was an important victory for due process and a crucial safeguard against the threat of perpetual executive detention for immigrants. It affirmed that even non-citizens with final orders of removal retain a constitutionally protected liberty interest that cannot be extinguished by administrative fiat.³¹ However, the decision’s limitations were as significant as its protections. By using the tool of statutory interpretation, the Court avoided a direct constitutional ruling that would have struck down the statute itself.³² The ruling was narrowly tailored to the specific problem of post-removal-order detention for individuals who could not be removed. It did not question the constitutionality of mandatory detention pending a final removal order, nor did it challenge the broader jurisdiction-stripping provisions of IIRIRA or the plenary power doctrine itself. It carved out a vital but narrow exception for a specific class of detainees, while leaving the vast machinery of the post-1996 detention and deportation system fully intact.

The legal trajectory in the United States thus followed a clear and politically driven path. When early legal challenges in the 1980s tested the limits of plenary power deference, the Supreme Court chose to avoid a direct constitutional confrontation, signalling its unwillingness to intervene forcefully in executive immigration policy. This judicial reticence created a political opening that a restrictionist-minded Congress exploited in 1996, transforming the landscape not

²⁶ *Zadvydas v. Davis*, 533 U.S. 678 (Supreme Court of the United States 28 June 2001), <https://supreme.justia.com/cases/federal/us/533/678/>

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Hallett et al., ‘Commentary on *Zadvydas v. Davis*, 533 U.S. 678 (2001)’.

³⁰ *Zadvydas v. Davis*, 533 U.S. 678.

³¹ Alejandra Arroyave, ‘Preserving the Essence of *Zadvydas v. Davis* in the Midst of a National Tragedy’, *University of Miami Law Review* 57, no. 1 (2002): 235–65.

³² Hallett et al., ‘Commentary on *Zadvydas v. Davis*, 533 U.S. 678 (2001)’.

through gradual judicial evolution but through a pair of decisive legislative acts. IIRIRA and AEDPA did not merely request deference, they commanded it, notably by stripping courts of much of its jurisdiction on immigration cases. Consequently, the judiciary's most significant subsequent response in *Zadvydas* was not a broad reassertion of constitutional authority, but a targeted, remedial intervention designed to fix the most constitutionally unpalatable outcome of the new system, the possibility of indefinite detention, while implicitly accepting the legitimacy of the broader legislative framework. In the American system, the battle over the legality of immigration detention was primarily fought and lost in the political arena, with the law and the courts playing a reactive and ultimately subordinate role.

The United States' doctrine of plenary power, which insulated immigration decisions from robust constitutional scrutiny, finds a counterpart in the UK's traditional deference to parliamentary sovereignty. While the languages of sovereignty differ, both produced a similar effect: courts reluctant to assert strong protections for migrants against detention powers. In both systems, law effectively legitimised executive control rather than challenging it.

By the mid-1990s, both countries experienced pivotal moments where courts were asked to confront the rapid expansion of detention powers. In the US, landmark challenges to the 1996 laws exposed the constitutional limits of indefinite detention, culminating in *Zadvydas v. Davis*. In the UK, European human rights law increasingly constrained administrative detention, especially through Article 3 of the ECHR. Taken together, these episodes demonstrate that while national courts hesitated, supranational or constitutional rights-based frameworks forced at least modest limits on executive discretion.

3. The United Kingdom: Administrative Justice and Supranational Constraints

The legal evolution of immigration detention in the United Kingdom during the same period followed a different path, shaped by a distinct constitutional arrangement and a different set of legal traditions. In the absence of a written constitution and a powerful doctrine of judicial review similar to that in the United States, the UK system was founded upon the principle of Parliamentary Sovereignty, which grants near-absolute legal authority to the executive acting with legislative backing.³³ Challenges to immigration detention, therefore, were not typically framed as defence of fundamental constitutional rights, but as arguments about the proper limits of administrative discretion under common law. This domestic legal framework, inherently deferential to the executive, was increasingly constrained by an external force: the growing body of human rights jurisprudence emanating from the European

³³ V. Bogdanor, 'Imprisoned by a Doctrine: The Modern Defence of Parliamentary Sovereignty', *Oxford Journal of Legal Studies* 32, no. 1 (2012): 179–95, <https://doi.org/10.1093/ojls/gqr027>

Convention on Human Rights (ECHR).³⁴ The UK's legal journey was thus not one of dramatic legislative revolution and judicial power-stripping, but a more gradual and incremental negotiation between the sovereign power of the state and the emerging authority of supranational law.

3.1. The Common Law Foundation

The Hardial Singh Principles

The statutory basis for immigration detention in the United Kingdom is found in the broad, discretionary powers granted to the Home Secretary under the Immigration Act 1971.³⁵ The Act provides the authority to detain individuals pending examination and a decision to grant or refuse entry, and to detain those subject to a deportation order pending their removal.³⁶ Crucially, the statute itself contains no express time limit on the length of this detention.³⁷

In this legislative silence, the domestic courts intervened to establish common law limits on what would otherwise be an open-ended executive power. The foundational case in this regard is *R v. Governor of Durham Prison, ex parte Hardial Singh* (1984).³⁸ The High Court, in a judgment by Justice Woolf, articulated what became known as the “Hardial Singh principles,” a set of implied limitations on the Home Secretary's statutory power to detain.³⁹ These principles do not constitute a right to be free from detention, but rather a framework for assessing the lawfulness of its duration and purpose.

The principles, which became the bedrock of UK immigration detention law, are fourfold. First, the power to detain may only be used for the specific purpose for which it is granted, namely, to help carry out a person's removal from the country, and not for any other purpose, such as punishment or general deterrence.⁴⁰ Second, the detention may only last for a period that is “reasonable in all the circumstances” to achieve that purpose.⁴¹ Third, the Home Secretary must act with “all reasonable expedition” to effect removal.⁴² Fourth, and most critically, if it becomes apparent that the Home Secretary will not be able to effect removal within a reasonable period, the

³⁴ Marco Tabarelli, “The Influence of the EU and the ECHR on “Parliamentary Sovereignty Regimes”: Assessing the Impact of European Integration on the British and Swedish Judiciaries”, *European Law Journal* 19, no. 3 (2013): 340–63, <https://doi.org/10.1111/eulj.12027>

³⁵ Immigration Act 1971 <https://www.legislation.gov.uk/ukpga/1971/77/contents>

³⁶ *Ibid.*

³⁷ Sarah Turnbull, “‘Stuck in the Middle’: Waiting and Uncertainty in Immigration Detention”, *Time & Society* 25, no. 1 (2016): 61–79, <https://doi.org/10.1177/0961463X15604518>

³⁸ *R v. Governor of Durham Prison, Ex Parte Singh*, [1984] 1 All ER 983, [1984] 1 WLR 704, [1983] Imm AR 198 (High Court, Queen's Bench Division, 13 December 1983), <https://www.refworld.org/jurisprudence/caselaw/gbrhcqb/1983/en/35851>

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *R v. Governor of Durham Prison, Ex parte Singh*.

⁴² *Ibid.*

power to detain should not be exercised and the person should be released.⁴³ These judge-made principles provided the primary domestic legal tool for individuals to challenge prolonged detention through applications for judicial review or *habeas corpus*, requiring the Home Office to justify the continued deprivation of liberty by demonstrating that removal remained a realistic prospect.

The Legal Basis for Detention in UK Law

In UK law, the deprivation of liberty has long been rooted in strict legal safeguards. As one 1981 Home Office report stated, “we should not deprive a person within our jurisdiction of his liberty unless evidence is produced to suggest that he has committed an offence, whether here or abroad.”⁴⁴ UK extradition law, and by analogy, immigration detention, has been understood as administrative rather than punitive. As a 1983 draft US extradition bill observed, “the guilt or innocence of the person sought to be extradited of the charges with respect to which extradition is sought is not an issue before the court.”⁴⁵ This reflects the principle that such proceedings are concerned with the procedural legality of transfer, not with criminal punishment. Similarly, immigration detention is justified on the basis of ensuring compliance with removal procedures, not as a sentence for wrongdoing.

Even in non-punitive contexts, detention powers have limits. A Home Office legal advice memo clarified that for individuals agreeing to voluntary departure, “the power to detain exists only where there are reasonable grounds for doubting that the individual genuinely intends to leave voluntarily” and where removal directions would be issued if they failed to depart.⁴⁶ This underscores the legal necessity for “reasonable grounds” in any detention decision.

By the mid-1980s, the Home Office sought to widen detention authority in immigration control. In 1986, a proposed amendment to the Immigration Act 1971 aimed to grant immigration officers an explicit power to “examine or detain a person ‘reasonably suspected’ of being an illegal entrant.”⁴⁷ Internal debate questioned whether this standard was too vague and whether officers should instead have power

⁴³ *Ibid.*

⁴⁴ *Draft Report, Chapter 4: “The Requirement of a Prima Facie Case”*, 16 December 1980, HO 306/253, Folder *Extradition, Working Party (Reconvened), Report, Circulation of Final Draft*, The National Archives (Kew, United Kingdom).

⁴⁵ *H.R. 3347 Bill*, 16 June 1983, HO 306/208, Folder *Treaties between UK and Foreign Countries, U.S.A., Amendment of Extradition Law*, The National Archives (Kew, United Kingdom).

⁴⁶ *Memo to Mr Tompkins*, 3 February 1982, HO 344/605, Folder *Policy, Deportation/Courts, Returned Deportees: Removal as Illegal Entrants or under Existing Deportation Order, B3 Papers*, The National Archives (Kew, United Kingdom).

⁴⁷ *ISHQ List: Proposed Amendments to the Immigration Act 1971* (undated), HO 394/800, Folder *Immigration Act 1971, Immigration Rules, Amendments to the Immigration Act 1971 – Proposals for New Legislation*, The National Archives (Kew, United Kingdom).

to detain “for police purposes.”⁴⁸

The most significant late-20th-century reform came with the 1999 Immigration and Asylum Bill. The Bill was intended to streamline appeals by creating a single, comprehensive right of appeal to replace a complex and often abused system.⁴⁹ Politically, it balanced this administrative efficiency with measures to manage public concern over illegal immigration and foreign offenders.

A major concession during the Bill’s passage was the introduction of a statutory presumption in favour of bail. Under this provision, the Immigration Service would bear the burden of proving “on the balance of probabilities” that a person was unlikely to comply with bail conditions.⁵⁰ However, this presumption came with broad exceptions: it could be overridden if the detainee was likely to abscond, commit an offence, or had knowingly participated in efforts to enter the UK illegally.⁵¹

Furthermore, the Bill excluded “foreign criminals” notably those recommended for deportation by a court from these bail protections, “maintaining the current inclination towards detention in such cases”⁵²

Across both extradition and immigration contexts, UK detention powers have been justified as statutory, evidence-based, and administrative in nature, not punitive. The law has evolved from a narrow evidentiary principle, requiring proof of offence or reasonable suspicion, towards broader discretionary powers for immigration control, balanced (at least nominally) by bail protections. Political pressures, especially around illegal entry and foreign offenders, shaped these powers, often resulting in wide exceptions that preserve the state’s capacity to detain.

3.2. The European Influence: The ECHR and the Primacy of Article 3

While the Hardial Singh principles provided a crucial check on the duration of detention, the most significant substantive constraints on the UK’s power to remove non-citizens came from an external source: the European Convention on Human Rights. Although the UK had been a signatory to the ECHR since the 1950s, its influence on domestic law intensified throughout this period, as individuals could

⁴⁸ *Memo from D. McQueen re: B3 Proposals for Legislation*, 10 December 1986, HO 394/800, Folder *Immigration Act 1971, Immigration Rules, Amendments to the Immigration Act 1971 – Proposals for New Legislation*, The National Archives (Kew, United Kingdom).

⁴⁹ *Letter Regarding Immigration and Asylum Bill: Statutory Presumption in Favour of Bail*, 28 May 1999, PREM 49/886/2, Folder *Immigration*, Series *Home Affairs*, The National Archives (Kew, United Kingdom).

⁵⁰ *Ibid.*

⁵¹ *Annex A to Letter on the Statutory Presumption in Favour of Bail*, 28 May 1999, PREM 49/886/2, Folder *Immigration*, Series *Home Affairs*, The National Archives (Kew, United Kingdom).

⁵² *Letter Regarding Immigration and Asylum Bill: Statutory Presumption in Favour of Bail*, 28 May 1999.

petition the European Court of Human Rights (ECHR) in Strasbourg.⁵³ This process culminated in the passage of the Human Rights Act 1998, which incorporated the Convention directly into UK domestic law, requiring British courts to adjudicate human rights claims themselves. The 1998 Act had a profound impact on immigration cases:

- Article 5 (Right to Liberty): This article guarantees the right to liberty and security of person, with specific exceptions for the “prevention of unauthorised entry.” It also includes procedural guarantees, such as the right to challenge the lawfulness of detention
- Article 3 (Prohibition of Torture): This article prohibits torture and inhuman or degrading treatment, which has been applied to the conditions of detention and the principle of non-refoulement (not returning someone to a country where they face torture)

The most pivotal ECHR decision impacting UK immigration and asylum law during this period was *Chahal v. United Kingdom* (1996).⁵⁴ The landmark ruling established that national security concerns could not override the prohibition of torture present in Article 3 of the European Convention on Human Rights.⁵⁵ This ruling led to the creation of the Special Immigration Appeals Commission (SIAC).⁵⁶

The United Kingdom, unlike most other countries, has no time limit for immigration detention. The absence of temporal limitations created the conditions for extended detentions like that of Karamjit Singh Chahal, whose six-year detention represents one of the most extreme examples of administrative confinement in recent years. Chahal was a British Sikh who migrated from India, was an outspoken supporter of the Khalistan movement, advocating for an independent Sikh homeland.⁵⁷ During the political unrest in Punjab in the 1980s, his activism drew the attention of both Indian and British authorities. The UK government detained him and sought his deportation to India on national security grounds, but Chahal maintained that he faced a real risk of torture or mistreatment if returned there.⁵⁸ The Chahal case ultimately reached the European Court of Human Rights, resulting in a landmark judgment that influenced subsequent British counter-terrorism legislation. The Court ruled that

⁵³ Katja S. Ziegler et al., ‘Introduction - The UK and European Human Rights: A Strained Relationship?’, in *The UK and European Human Rights: A Strained Relationship?*, ed. Katja S. Ziegler et al. (Hart Publishing, 2015), 4.

⁵⁴ *Chahal v. United Kingdom*, App. No. 22414/93, European Court of Human Rights, 15 November 1996, *Refworld*, <https://www.refworld.org/jurisprudence/caselaw/echr/1996/en/16884>

⁵⁵ *European Convention on Human Rights*, as amended, *Council of Europe*, 1 June 2010, https://www.echr.coe.int/documents/d/echr/convention_ENG

⁵⁶ *Chahal v. United Kingdom*.

⁵⁷ Jonathan Ford, ‘Every Day I Ask Myself, “Why Am I Here?”’, *Lifestyle, The Independent*, 19 September 1995, <https://www.the-independent.com/life-style/every-day-i-ask-myself-why-am-i-here-1601947.html>

⁵⁸ *Ibid.*

Chahal could not be deported due to the risk of torture in India, despite security concerns. This judgment established the principle of non-refoulement not as a matter of policy discretion, but as an absolute, binding legal obligation, directly challenging the UK government's long-held position that it could balance the risk of harm to an individual against the interests of national security. The British government responded by establishing the Special Immigration Appeals Commission (SIAC)⁵⁹ in 1997 (implemented in 1999) to reconcile national security and human rights considerations.⁶⁰

At the same time, the Convention provided a clear legal basis for the practice of immigration detention itself. Article 5 guarantees the right to liberty and security of person, but Article 5(1)(f) provides a specific exception, permitting the "lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."⁶¹ This provision gave ECHR-level sanction to the principle of administrative detention for immigration control, a power that would later be tested in cases challenging its scope and proportionality, such as *R v. Secretary of State for the Home Department ex parte Saadi*.⁶²

Internal Home Office legal advice shows a growing awareness of the European Convention on Human Rights (ECHR) as a significant legal constraint on detention practices, particularly regarding discrimination and the right to liberty and correspondence. In a 1985 review of extradition law, a proposal to provide fewer legal protections to foreign nationals than to British citizens raised concerns about potential breaches of the ECHR:

But a distinction in treatment falling within the scope of article 5 is only discriminatory, and hence a breach of the Convention, if no reasonable and objective justification (as viewed as such by the Court of Human Rights) for the distinction can be put forward (...) The real reason for the distinction is because, as I understand it, there are doubts about the standards of justice elsewhere and it is felt that British citizens should be entitled to something better. But if there are such inadequacies then everyone should be protected from them and it may not be easy to justify special protection for British citizens.⁶³

Legal advisers also warned that holding detainees incommunicado without a clear basis in statute could be challenged under Article 8:

⁵⁹ See previous section.

⁶⁰ Eric Metcalfe, "Representative but Not Responsible": The Use of Special Advocates in English Law', *Justice Journal* 1, no. 2 (2004): 13.

⁶¹ *Guide on Article 5 of the Convention – Right to Liberty and Security* (European Court of Human Rights, 2025), 12.

⁶² *R v Secretary of State for the Home Department, ex p Saadi* [2002] UKHL 41, House of Lords, 31 October 2002, <https://publications.parliament.uk/pa/ld200102/ldjudgmt/jd021031/regina-1.htm>

⁶³ *Memo from Mrs S. A. Evans, Legal Adviser's Branch*, 9 August 1985, HO 306/291, Folder *Extradition (Model Draft Treaty)*, *Legislation, Responses to the Green Paper*, The National Archives (Kew, United Kingdom).

“The Legal Adviser’s Branch take the view that without a clear statutory basis such a provision could be open to challenge under Article 8 of the European Convention on Human Rights as constituting interference with a person’s correspondence.”⁶⁴

By 1999, the need to comply with ECHR Article 5(4) was an explicit consideration in the design of the bail system, with judicial review and habeas corpus seen as the key mechanisms for compliance:

You have confirmed that it is your view that the magistrates’ court, in exercising its functions under Part III, is not to be given the power to look into the legality of detention and any challenges of this nature will, as now, go for judicial review or habeas corpus. In this way, compliance with Article 5(4) of the European Convention on Human Rights is achieved.⁶⁵

These quotes show the growing influence of European law and the government’s internal debate on how to respond. For example, in a case concerning the restriction of correspondence and the possibility that it might breach Article 8 of the ECHR, as it lacked a basis in domestic law. A.R. Rawsthorne, a policy official involved in the case provided a candid response was: “I take it from Mrs Evans’s note that we would be open to a possible challenge under the European Convention (...) but I think that we could live with that.”⁶⁶ James Mackay, The Lord Chancellor presented his view on rectifying ECHR conflicts:

It seems to me plain that once it is acknowledged that our domestic law is in conflict with our international legal obligations, it is incumbent upon us to take steps to rectify that situation. I really do not think that any other position is tenable.⁶⁷

In another example of the ECHR’s role, a 1999 paper noted that the power for a Minister to issue a “conclusive” national security certificate to prevent a legal challenge to a discriminatory act was “now believed to be incompatible with Article 6 (1) of the ECHR,” citing the 1998 *Tinnelly and McElduff v UK* judgment.⁶⁸

⁶⁴ “Background Note” on Mr Dubs’s PQ, 5 June 1984, HO 394/715, Folder *Persons Refused Entry on Security or Political Grounds, Detention Arrangements, “Holding Detainees Incommunicado”*, The National Archives (Kew, United Kingdom).

⁶⁵ *Letter Regarding Immigration and Asylum Bill: Bail*, 10 June 1999, PREM 49/886, Folder *Immigration, Series Home Affairs*, The National Archives (Kew, United Kingdom).

⁶⁶ *Memo from A. R. Rawsthorne, “Communications with Persons Refused Entry on Security or Political Grounds”*, 26 June 1984, HO 394/715, Folder *Persons Refused Entry on Security or Political Grounds, Detention Arrangements, “Holding Detainees Incommunicado”*, The National Archives (Kew, United Kingdom).

⁶⁷ *Letter from Lord Mackay of Clashfern to Kenneth Baker MP*, 20 September 1991, HO 394/963, Folder *Legislation, Asylum Bill, Asylum Bill: Rights of Appeal in ‘Conducive Cases’*, The National Archives (Kew, United Kingdom).

⁶⁸ *Paper for Home Secretary Committee Members on the Proposed Bill Amending the Race Relations Act 1976*, 16 June 1999, PREM 49/894/2, Folder *Race Relations, Series Home Affairs*, The National Archives (Kew, United Kingdom).

3.3. The Evolution of the Immigration Appeal System

The UK's modern immigration-appeals structure was created by the Immigration Appeals Act 1969, which established a two-tier system of adjudicators (first instance) with appeals to the Immigration Appeal Tribunal (IAT) (second tier).⁶⁹ Parliament's debates on the Bill confirmed that the "appellate authorities" would comprise the IAT and adjudicators. The Immigration Act 1971 then consolidated this framework and, in Schedule 2, paragraph 22, provided a statutory bail power which allowed immigration detainees to apply for release on bail to an immigration officer or an adjudicator, with conditions set by the adjudicator.⁷⁰

The scope of these appeal rights was a constant site of political contestation, with successive immigration Acts throughout the 1980s and 1990s altering and often restricting the grounds and availability of appeals. Nevertheless, the existence of a specialised tribunal system meant that many immigration disputes were resolved within a quasi-judicial administrative framework, rather than in the ordinary courts.

In the 1990s, specialised jurisdictions were added: the Asylum and Immigration Appeals Act 1993 created special adjudicators to hear asylum appeals.⁷¹ While the Special Immigration Appeals Commission Act 1997 set up SIAC for national-security-related immigration cases and adapted the bail regime for those proceedings.⁷² The Immigration and Asylum Act 1999 re-worked procedures but retained the two-tier adjudicator/IAT model, and (as explained in the Act's Explanatory Notes) introduced a system of bail hearings with a presumption in favour of bail for people detained under immigration powers.⁷³ Throughout this period, judicial review in the High Court (Administrative Court) remained available, notably on procedural fairness, and immigration matters formed a large share of Judicial Review litigation.

By the 1980s, the UK's tribunal system was well-established, but internal reviews highlighted significant issues, including very low success rates for appellants and questions about the impartiality of Home Office statements. For example, appeals against refusal of entry that were heard from abroad had a success rate of less than 4% over a decade: From 1973 to 1982, 8,718 appeals against refusal at the port were heard from abroad, "of which only 335 were allowed — a success rate of less than 4%."⁷⁴

⁶⁹ Immigration Appeals Act 1969, c. 21 (UK), *Legislation.gov.uk*, <https://www.legislation.gov.uk/ukpga/1969/21/contents/enacted>

⁷⁰ Immigration Act 1971, Sch. 2, para. 22, *Legislation.gov.uk*, <https://www.legislation.gov.uk/ukpga/1971/77/schedule/2/enacted>

⁷¹ Asylum and Immigration Appeals Act 1993, c. 23 (UK), *Legislation.gov.uk*, <https://www.legislation.gov.uk/ukpga/1993/23>

⁷² Special Immigration Appeals Commission Act 1997, c. 68 (UK), *Legislation.gov.uk*, <https://www.legislation.gov.uk/ukpga/1997/68/contents>

⁷³ Immigration and Asylum Act 1999, c. 33 (UK), *Legislation.gov.uk*, <https://www.legislation.gov.uk/ukpga/1999/33/contents>

⁷⁴ "Appeals Port Refusals", 5 May 1983, HO 394/530, Folder *Immigration Appeals: Review of Appeals: Discussion Document: Consideration of Comments*, The National Archives (Kew, United Kingdom).

The burden of proof was inconsistent across different types of appeals, shifting between the immigration officer and the applicant depending on the case. In entry clearance refusal cases, “the Tribunal has ruled... that the onus of proof that false representations were made is on the immigration officer”. However, for a dependant, “the Tribunal has held that the onus is on the applicant to establish the claimed relationship.”⁷⁵ There were also at times allegations that the statements provided by the Home Office to the tribunals were not purely factual: “Various parties comment about explanatory statements and allege that they are not necessarily statements of fact but represent the Home Office view of the facts and appear to be a mixture of opinion and argument.”⁷⁶

The UK’s domestic legal framework for detention evolved significantly, moving from a position where certain individuals had no statutory right to apply for bail to the introduction of a statutory presumption in favour of bail. A 1980 Home Office memorandum stated a clear policy that illegal entrants had no right to apply for bail, with “temporary admission” being the appropriate administrative power: “Persons detained as illegal entrants do not appear to have a statutory right to apply for bail to the courts or to an adjudicator.”⁷⁷ The absence of bail provisions for illegal entrants stemmed from the argument that bail is inappropriate in the case of an illegal entrant who in law has not been admitted to the United Kingdom and whose right of appeal against removal can only be exercised from overseas.⁷⁸

In a major policy shift, the 1999 Immigration and Asylum Bill introduced a statutory presumption of bail, driven by political pressure:

The argument that we should introduce a statutory presumption of bail... is compelling. It will shift the burden on to the Immigration Service to show, on the balance of probabilities, that the person is unlikely to comply with conditions of bail if released.⁷⁹

For decisions where no statutory right of appeal existed, or for challenges to the lawfulness of detention itself, the primary legal remedy was an application for judicial review to the High Court.⁸⁰ Unlike a statutory appeal, judicial review is not a reconsideration of the merits of a decision. Instead, its purpose is to ensure the legality

⁷⁵ “Review of Appeals under the Immigration Act 1971”, c. April 1983, HO 394/530, Folder *Immigration Appeals: Review of Appeals: Discussion Document: Consideration of Comments*, The National Archives (Kew, United Kingdom).

⁷⁶ *Ibid.*

⁷⁷ *Memorandum by the Home Office*, 11 January 1980, BS 12/599, Folder *RCCP (80) 7–19*, The National Archives (Kew, United Kingdom).

⁷⁸ *Ibid.*

⁷⁹ *Letter Regarding Immigration and Asylum Bill: Statutory Presumption in Favour of Bail*, 28 May 1999, PREM 49/886/2, Folder *Immigration*, Series *Home Affairs*, The National Archives (Kew, United Kingdom).

⁸⁰ Bernard Andonian, ‘Immigration Judicial Review in the UK Court System’, Immigration, *Gulbenkian Andonian Solicitors*, 7 March 2025, <https://www.gulbenkian.co.uk/immigration-judicial-review-uk-court-system/>.

of the decision-making process.⁸¹ The traditional standard of review in UK administrative law was “Wednesbury unreasonableness,” a highly deferential standard that asks whether the decision was so unreasonable that no reasonable decision-maker could ever have come to it.⁸² This high threshold gave the Home Office considerable leeway in its detention decisions. The *Hardial Singh* principles operated as a specific application of this reasonableness review to the context of detention duration. With the passage of the Human Rights Act 1998, courts were also empowered to review decisions for compatibility with Convention rights, introducing a more rigorous standard of “proportionality” for certain claims, which began to shift the deferential culture of judicial review, though this transformation was still in its early stages by 2001.⁸³

The UK’s legal framework for detention thus evolved through a complex interplay of forces. The system’s foundation was one of near-absolute executive discretion, rooted in the constitutional principle of Parliamentary Sovereignty. The domestic judiciary, using the tools of the common law, did not challenge this foundation but rather carved out modest, process-based limitations on its exercise, focusing on the reasonableness of detention’s duration as articulated in *Hardial Singh*. The most significant and substantive constraints on state power emerged not from domestic constitutionalism but from a supranational source: the European Convention on Human Rights. The landmark ruling in *Chahal* imposed a hard, non-negotiable limit on the government’s power to deport individuals to a risk of torture, an obligation that domestic courts were increasingly compelled to enforce. This created a bifurcated legal reality: the act of detention itself was generally viewed with deference through the deferential lens of administrative law and the “reasonableness” standard, while the ultimate outcome of that detention, deportation, became subject to strict, absolute scrutiny under international human rights law. The UK’s legal framework was therefore reshaped not by a single legislative act, but by a continuous, gradual negotiation between sovereign state power and the growing influence of external legal norms.

4. A Comparative Analysis of Legal Protections and Access to Justice

A direct comparison of the legal frameworks governing immigration detention in the United States and the United Kingdom at the close of 2001 reveals two systems built on fundamentally different constitutional and philosophical foundations. The US

⁸¹ *Ibid.*

⁸² *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*, 1 KB 223 (Court of Appeal (England and Wales), 10 November 1947), *Refworld*, <https://www.refworld.org/jurisprudence/caselaw/gbr/caciv/1947/en/57799>

⁸³ *The Government’s Independent Review of the Human Rights Act*, HC 89 HL Paper 31, with Joint Committee on Human Rights (2021).

system was characterised by a rights-based discourse, albeit one frequently denied to non-citizens, which was ultimately subverted by legislative action. The UK system was grounded in principles of administrative fairness and executive discretion, a framework that proved more resilient to political overhaul but also more inherently deferential to state power. Despite these divergent starting points, both systems struggled to provide effective and consistent legal protection against the expansion of administrative detention, with the most critical differences emerging not in high legal doctrine but in the practical realities of access to justice.

Figure 44. Comparative Overview of Legal Frameworks for Immigration Detention

<u>Feature</u>	<u>United States</u>	<u>United Kingdom</u>
Primary Legal Basis for Detention	Immigration and Nationality Act (INA), esp. as amended by IIRIRA (1996).	Immigration Act 1971 (Schedules 2 & 3).
Dominant Constitutional/Legal Doctrine	Plenary Power Doctrine (judicial deference to political branches on immigration).	Parliamentary Sovereignty (legislative supremacy) & Common Law principles of administrative fairness.
Judicial Limits on Detention Duration	“Reasonable time” limit (presumptively 6 months) for post-removal order detention only (<i>Zadvydas v. Davis</i> , 2001). No limit on pre-order detention.	“Reasonable period” limit based on prospect of removal (<i>Hardial Singh</i> principles, 1984), applicable to all detention.
Mandatory Detention Regime	Widespread mandatory detention for a broad range of criminal convictions, including retroactive “aggravated felonies” (INA § 236(c)).	No statutory mandatory detention regime, detention is a discretionary power of the Home Secretary.
Primary Judicial Remedy	Writ of Habeas Corpus (28 U.S.C. § 2241) to challenge legality of confinement.	Judicial Review to challenge the lawfulness of the detention decision, Habeas Corpus for clear cases of illegality.
Standard of Judicial Review	Highly deferential on substantive immigration matters. Post-IIRIRA, judicial review was severely restricted (“jurisdiction	“Wednesbury unreasonableness” (highly deferential), Proportionality (more intensive) for claims under the Human Rights Act

<u>Feature</u>	<u>United States</u>	<u>United Kingdom</u>
	stripping”).	1998.
Key External Legal Influence	Minimal, primarily domestic constitutional and statutory law.	European Convention on Human Rights (ECHR), esp. Article 3 (no refoulement to torture) and Article 5 (right to liberty).
Access to Legal Counsel	No right to government-appointed counsel in immigration proceedings.	Legal aid available for asylum claims and challenges to detention.
Specialised Adjudication System	Executive Office for Immigration Review (EOIR) - Immigration Courts and Board of Immigration Appeals (within Dept. of Justice).	Immigration Appeal Tribunal (IAT) and Adjudicators (independent quasi-judicial body).
Landmark Rights-Protective Case	<i>Zadvydas v. Davis</i> (2001)	<i>R v. SSHD ex parte Hardial Singh</i> (1984)
Landmark Government-Favourable Case	<i>Jean v. Nelson</i> (1985)	<i>R v. SSHD ex parte Saadi</i> (2002)

4.1. Constitutional Rights vs. Administrative Fairness

The conceptual approaches to challenging detention in the two countries diverged significantly. In the United States, legal challenges were framed within a “rights-based” discourse, invoking the foundational text of the U.S. Constitution.⁸⁴ Litigants argued that detention violated fundamental rights, such as the Fifth Amendment’s Due Process Clause, which prohibits the deprivation of “liberty without due process of law,” and the Suspension Clause, which protects the writ of habeas corpus.⁸⁵ The central legal question in American litigation was often existential: “Does this non-citizen possess constitutional rights that the government is bound to respect?” In the American story the answer, filtered through the plenary power doctrine, was often “no,” or at least, “not in the same way as a citizen”.⁸⁶ This created a stark binary: one was either inside the protective sphere of the Constitution or largely outside of it, subject to the near-absolute power of the political branches.

In contrast, the legal discourse in the United Kingdom was grounded not in a foundational constitutional text but in the common law principles of administrative law: “procedural fairness” and “reasonableness”.⁸⁷ The primary legal question was not about an individual’s inherent rights, but about the lawful exercise of state power: “Has the Home Secretary acted lawfully, fairly, and reasonably within the broad discretionary powers granted by Parliament?”⁸⁸ This approach was more deferential, as it began from a presumption of executive authority limited only by judge-made rules of good administration.⁸⁹ The incorporation of the ECHR through the Human Rights Act 1998 began to inject a more explicit rights-based language into UK law, particularly around the concept of “proportionality”.⁹⁰ However, by 2001, the deep-seated tradition of administrative law and deference to parliamentary sovereignty remained the dominant legal culture. This comparison reveals a critical distinction: the US model, focused on constitutional status, created a rigid but brittle system that was vulnerable to being shattered by the political branches’ assertion of plenary power. The UK’s administrative model was more flexible and resilient but also provided a weaker, more procedural check on the exercise of executive discretion.

⁸⁴ Frederick F Shauer, ‘English Natural Justice and American Due Process: An Analytical Comparison’, *William and Mary Law Review* 18, no. 1 (1976): 47–72.

⁸⁵ *Ibid.*

⁸⁶ Cox, ‘The Invention of Immigration Exceptionalism’. *op. cit.*

⁸⁷ Shauer, ‘English Natural Justice and American Due Process: An Analytical Comparison’.

⁸⁸ *Ibid.*

⁸⁹ ‘The Limits on Parliamentary Sovereignty’, *LawTeacher*, 2 February 2018, <https://www.lawteacher.net/free-law-essays/administrative-law/the-limits-on-parliamentary-sovereignty-administrative-law-essay.php>

⁹⁰ *The Government’s Independent Review of the Human Rights Act*; Ziegler et al., ‘Introduction - The UK and European Human Rights: A Strained Relationship?’

4.2. Access to Justice: The Crucial Role of Counsel

Perhaps the most significant practical difference between the two legal systems lay in the provision of legal representation. The United States guarantees no right to government-appointed counsel in immigration proceedings.⁹¹ This single fact had a profound impact on the nature of legal challenges. The vast majority of detained immigrants faced the complex machinery of the INS and the immigration courts alone, or *pro se*.⁹² This reality led to extremely low success rates. The U.S. Government Accountability Office's research, for example, showed that having a lawyer significantly improved the likelihood of a favourable outcome for asylum petitioners.⁹³ Systemic legal challenges depended almost entirely on the resources of non-profit organisations like the American Civil Liberties Union (ACLU) and the professional association of the American Immigration Lawyers Association (AILA), which coordinated vast *pro bono* efforts. The result was a legal landscape characterised by large-scale, resource-intensive class-action lawsuits that sought to establish broad principles applicable to thousands of individuals at once, such as in *Haitian Refugee Center* and *Flores*.⁹⁴

The expedited removal process created by IIRIRA was criticised for denying meaningful access to legal counsel, with life-or-death decisions being made by low-level officers with “little expertise,” and the refugees themselves “have no access to legal assistance.”⁹⁵

A consistent critique was the INS practice of transferring detainees to remote facilities, which effectively cut them off from their families and legal representatives:

The direction that INS is taking in its current detention policy is troubling. INS appears to be increasingly relocating aliens with removal hearings

⁹¹ Ingrid Eagly, Esq. and Steven Shafer, Esq., *Access to Counsel in Immigration Court* (American Immigration Council, 2016).

⁹² *U.S. Asylum System: Significant Variation Existed in Asylum Outcomes Across Immigration Courts and Judges*, GAO-08-940 (United States General Accountability Office, 2008).

⁹³ *Ibid.*

⁹⁴ The Haitian Refugee Center cases refer to a series of lawsuits filed in the 1980s, including *Haitian Refugee Center v. Civiletti* (1980), which challenged the treatment and detention procedures for Haitian asylum seekers. These cases addressed issues such as INS procedures that failed to allow asylum applicants to be informed of or challenge adverse evidence, denied opportunities to present witnesses, and provided inadequate interpreters for non-English speaking Haitian applicants.

Flores v. Reno was filed in 1985 to address the serious mistreatment of immigrant children in federal custody *Flores v. Reno*. The case resulted in the 1997 Flores Settlement Agreement, which established strict national regulations and standards regarding the detention and treatment of minors by federal agencies. The settlement set national standards for the treatment, placement, and release of all immigrant children detained in federal custody, requiring that children be promptly released to appropriate sponsors when possible.

American Immigration Lawyers Association, ‘Documents Relating to Flores v. Reno Settlement Agreement on Minors in Immigration Custody’, *AILA*, 30 January 2025, <https://www.aila.org/flores-v-reno-settlement-agreement>; *Haitian Refugee Ctr. v. Civiletti*.

⁹⁵ Raul Yzaguirre, *Letter from the National Council of La Raza to Hon. Janet F. Reno*, 26 March 1999, BC22 – 2017-1120-S, Boxes 37–49, Folder Irene Bueno Files: OA/ID 19894, William J. Clinton Presidential Library (Little Rock, Arkansas).

pending to detention facilities that are so geographically remote that legal representation is difficult, if not impossible, to obtain.⁹⁶

The United Kingdom, by contrast, provided a system of non-means-tested legal aid for asylum claims and means-tested legal aid for challenges to detention, such as bail applications and judicial review. The key factor determining whether a means test is applied is whether the asylum seeker is in receipt of specific government support. Asylum seekers who receive support under Section 95 or Section 4 of the Immigration and Asylum Act 1999 (which includes housing and basic living expenses) are “passported” through the means test for controlled work, which covers the initial stages of an asylum claim.⁹⁷ For this significant group of destitute asylum seekers, legal aid is effectively provided without a separate assessment of their financial means. For asylum applicants who are not in receipt of this specific support, a means test is applied. This involves an assessment of their income and capital to determine their financial eligibility for legal aid.⁹⁸ Therefore, while a substantial portion of asylum seekers receive legal aid without a direct means test due to their recognised state of destitution, it is not a universally non-means-tested system.

For legal challenges related to immigration detention, such as bail applications and judicial reviews, the provision of legal aid is subject to a means test.⁹⁹ Individuals in immigration detention have access to the Detention Duty Advice Scheme, which provides a free 30-minute consultation with a legal adviser, irrespective of their financial situation.¹⁰⁰ This initial advice is a crucial non-means-tested provision. However, for ongoing legal representation in a bail application or to pursue a judicial review to challenge the lawfulness of their detention, applicants must pass a means test. Their income and capital are assessed to determine if they qualify for legal aid.

The stringent nature of the means test has been a subject of considerable debate and research, with many academic and third-sector reports highlighting the difficulties individuals face in accessing justice due to their inability to meet the financial eligibility criteria, despite being in detention.

While this system was far from perfect and was subject to increasing political pressure and funding cuts, its existence fundamentally shaped the legal front.¹⁰¹ It

⁹⁶ *Testimony of Warren R. Leiden*, 25 March 1992, Bobby Charles (OPD): Files, OA 07338, George H. W. Bush Presidential Library (College Station, Texas).

⁹⁷ *Civil Legal Aid: Means Testing*, GOV.UK, published 1 June 2014, last updated 27 June 2025, <https://www.gov.uk/guidance/civil-legal-aid-means-testing>

⁹⁸ *What Is Covered by Legal Aid*, NRPF Network, updated 30 June 2025, <https://www.nrpfnetwork.org.uk/information-and-resources/rights-and-entitlements/legal-aid/what-is-covered-by-legal-aid>

⁹⁹ Anna Lindley, “‘Hit and Miss’? Access to Legal Assistance in Immigration Detention”, *Journal of Human Rights Practice* 13, no. 3 (2022): 629–53, <https://doi.org/10.1093/jhuman/huab045>

¹⁰⁰ Joint Committee on Human Rights, *The Government’s Independent Review of the Human Rights Act: Evidence*, 6th Report of Session 2017–19, HL Paper 1484, <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/148406.htm>

¹⁰¹ *Securing Access to Justice: The Need for Legal Aid in Immigration* (Joint Briefing from 71 Organisations, 2024).

fostered a professionalized sector of immigration lawyers and non-governmental organisations, such as Bail for Immigration Detainees (BID), focused on individual casework.¹⁰² This enabled a higher volume of individual challenges to detention through the tribunal and judicial review systems.

A 1999 Legal Aid Board report provides a stark assessment of the poor quality of legal advice available to immigrants and asylum seekers in the UK, particularly at the point of detention: “There is a great deal of inadequate advice particularly in the early stages of cases and some abuse of the scheme resulting in distress to clients, and unnecessary expense as poor quality work may have to be repeated”¹⁰³ A conundrum was identified where duty solicitors at police stations often lacked immigration expertise, while immigration specialists lacked criminal defence experience:

This raises two important quality considerations. First, a solicitor called to the police station (or elsewhere) to assist under PACE may not have any experience of immigration law and practice. Second, an adviser attending a detainee under the green form may not have the necessary police station skills and experience of running a criminal defence.¹⁰⁴

The UK model thus promoted a more case-by-case form of legal resistance, in contrast to the US model of high-stakes, systemic litigation. However, in both countries, the efficacy of legal counsel was severely hampered by a shared practical barrier: the increasing tendency to locate detention facilities in remote, rural areas (more noticeably so in the USA), far from the urban centres where legal expertise was concentrated, creating significant geographic obstacles to justice.

4.3. Judicial Remedies: Habeas Corpus vs. Judicial Review

The primary legal tools available to challenge detention also differed in their nature and power. The foundational remedy in the Anglo-American legal tradition is the writ of habeas corpus, the “Great Writ,” which allows a person to challenge the legality of their physical confinement directly before a court.¹⁰⁵ The principle of habeas corpus has followed distinct yet occasionally intersecting trajectories in the United Kingdom and the United States, particularly concerning immigration law.

¹⁰² *Written Evidence by the Bail for Immigration Detainees: Hearing on ASU0063 before the Human Rights (Joint Committee)*, UK Parliament (2022).

¹⁰³ *Report, “Access to Quality Services in the Immigration Category”*, May 1999, PREM 49/886/1, Folder *Immigration*, Series *Home Affairs*, The National Archives (Kew, United Kingdom).

¹⁰⁴ *Ibid.*

¹⁰⁵ Hernandez D. Stroud et al., ‘Habeas Corpus, Explained’, *Brennan Center for Justice*, 18 June 2025, <https://www.brennancenter.org/our-work/research-reports/habeas-corpus-explained>.

The United States: From Robust Protection to Judicial Deference

In the US, this remedy is protected by the Constitution and has historically served as a vital check on executive detention.¹⁰⁶ However, its potency in the immigration context was systematically eroded.¹⁰⁷ In the early history of the United States, habeas corpus was an essential protection against arbitrary confinement for everyone in the United States, citizen and non-citizen alike.¹⁰⁸ This was rooted in a libertarian distrust of governmental overreach into personal freedoms.¹⁰⁹ During debates on the Alien Act 1798, figures like James Madison argued that expulsion and the associated detention were severe punishments that required due process, a protection underpinned by habeas corpus.¹¹⁰

However, Daniel Wilsher demonstrates a significant shift with the rise of federal immigration controls, particularly laws targeting Chinese migrants in the late nineteenth century.¹¹¹ While the courts on the West Coast initially processed thousands of habeas corpus applications from detained Chinese individuals, often leading to their release, a series of Supreme Court decisions fundamentally altered the landscape.¹¹²

The Supreme Court established that Congress has broad, almost unreviewable power over immigration, viewing it as an issue of national sovereignty akin to war powers.¹¹³ In cases like *Nishimura Ekiu v. United States* (1892), the Court ruled that the decisions of executive officers regarding exclusion were considered “due process of law,” effectively limiting the scope of habeas corpus to a review of the formal legality of detention rather than its factual basis.¹¹⁴ In *Wong Wing v. United States* (1896), the Supreme Court made a crucial distinction, holding that while criminal punishment of aliens required full constitutional safeguards, immigration detention was a “temporary confinement” and “not imprisonment in a legal sense”.¹¹⁵

Daniel Wilsher shows that while habeas corpus remains formally available, its historical purpose as a substantive safeguard against executive detention of immigrants

¹⁰⁶ David D. Cole, ‘In Aid of Removal: Due Process Limits on Immigration Detention’, *Emory Law Journal* 51 (2002): 1003–40, <https://doi.org/10.2139/ssrn.356980>

¹⁰⁷ David M Grable, ‘Personhood Under the Due Process Clause: A Constitutional Analysis of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996’, *Cornell Law Review*, no. 3 (March 1998): 820–66.

¹⁰⁸ Wilsher, *Immigration Detention*, *op. cit.*, 27.

¹⁰⁹ *Ibid*, 2.

¹¹⁰ *Ibid*, 3.

¹¹¹ Roger Daniels, *Guarding the Golden Door: American Immigration Policy and Immigrants since 1882* (Hill and Wang, 2005), 3.

¹¹² Shoba Sivaprasad Wadhia, ‘Discretion and Disobedience in the Chinese Exclusion Era’, *Asian American Law Journal* 29 (2022): 49–90, <https://doi.org/10.15779/Z38PK0730Z>

¹¹³ Wilsher, *Immigration Detention*, 23.

¹¹⁴ *Nishimura Ekiu v. United States*, 142 U.S. 651 (1892), *Justia*, <https://supreme.justia.com/cases/federal/us/142/651/>

¹¹⁵ Elliott Young, *Forever Prisoners: How the United States Made the World’s Largest Immigrant Detention System* (Oxford University Press, 2021), 33.

was significantly eroded by doctrines that ceded vast authority to the political branches of government.¹¹⁶

In the United States, in the 20th century, the use of habeas corpus for immigrants was severely limited by legal doctrines that categorised immigration detention as a non-punitive, administrative measure, effectively placing it outside of traditional constitutional protections.¹¹⁷ While the writ remained formally available, its power was curtailed by the judiciary's deference to the political branches on matters of immigration, which were often framed as issues of national security.¹¹⁸

This framework was exploited during national security crises, such as the post-WWII "Red Scare" and the Cold War, where immigration powers were used to indefinitely detain thousands of foreign-born individuals, often without bail or meaningful judicial review.¹¹⁹ Supreme Court decisions during this period, notably *Shaughnessy v. Mezei* (1953), solidified the executive's authority to hold even long-term residents in a legal limbo, especially if they were deemed not to have officially "entered" the country.¹²⁰

While a more liberal approach emerged mid-century with the Immigration Act of 1952, which set statutory time limits on post-order detention, this was a temporary reprieve.¹²¹ As explained in chapter two, from the 1980s onwards, responding to political pressures surrounding the arrival of Cuban and Haitian asylum seekers and concerns over crime, the legal landscape shifted dramatically back towards restriction.¹²²

Throughout the 20th century, therefore, while habeas corpus was never formally suspended for immigrants, its effectiveness was hollowed out by a legal framework that treated immigration control as a matter of national sovereignty rather than individual liberty. The courts consistently upheld the executive's power to detain individuals based on their immigration status, creating a parallel legal track where the profound loss of freedom was not considered "imprisonment in a legal sense."¹²³ This resulted in prolonged and often indefinite detention for thousands, justified by administrative or national security rationales that were largely insulated from the searching inquiry that habeas corpus traditionally provided.

First, the plenary power doctrine led courts to conclude that as long as the government asserted a valid immigration-related reason for detention, the writ could

¹¹⁶ Lindsay, 'Immigration as Invasion', *op. cit.*, 31

¹¹⁷ Wilsher, *Immigration Detention*, *op. cit.*, 72.

¹¹⁸ *Ibid*, 150.

¹¹⁹ *Ibid*, 63.

¹²⁰ *Shaughnessy v. U.S. Ex Rel. Mezei*, 345 U.S. 206 (1953), *Justia*,

<https://supreme.justia.com/cases/federal/us/345/206/>

¹²¹ Dan Kanstroom, *Deportation Nation: Outsiders in American History* (Harvard Univ. Press, 2010), 170.

¹²² Alberto J Perez, 'Wet Foot, Dry Foot, No Foot: The Recurring Controversy Between Cubans, Haitians, and the United States Immigration Policy', *Nova Law Review* 28 (2004).

¹²³ Wilsher, *Immigration Detention*, 27.

not be used to second-guess that reason. Second, the jurisdiction-stripping provisions of IIRIRA were a direct legislative attempt to eliminate habeas review for many classes of non-citizens, a move the Supreme Court only partially reversed in 2001 in *INS v. St. Cyr* by preserving the writ for “pure questions of law”.¹²⁴ Indeed, the 1996 laws severely curtailed the ability of immigration judges to grant discretionary relief, such as waivers of deportation, even in compelling humanitarian cases:

Congress took away the power of judges to consider mitigating factors. It barred ‘aggravated’ felons from applying for waivers of deportation, even those who were longtime legal immigrants. On Oct. 9, the law required that almost all criminal aliens be held without bond ‘even if they are legal, permanent residents who are not dangerous or pose no risk of flight.’¹²⁵

The differences in procedural mechanisms, habeas corpus petitions in the United States versus judicial review in the United Kingdom, mask a deeper similarity: in both systems, access to justice was formally available but practically limited. Migrants often lacked legal counsel, faced restrictive procedural rules, and encountered courts predisposed to uphold executive authority. The comparison underscores that remedies on paper did not always translate into substantive protection in practice.

The United Kingdom: From Constitutional Ideal to Modern Revival

Similarly to the US, nineteenth-century Britain held a strong view that habeas corpus protected foreigners from arbitrary state action, with legal scholars asserting that the Crown had no right to interfere with the free entry of “alien friends”¹²⁶ The parliamentary debates surrounding the first Aliens Act in 1905 revealed a tension between the need for administrative control and the common law respect for personal freedom, with critics viewing executive detention as an affront to the habeas corpus tradition.¹²⁷

During the First World War, however, the courts demonstrated significant deference to the executive, upholding the internment of both enemy and friendly aliens and placing a heavy burden of proof on the detainee.¹²⁸ In landmark cases like *R v. Halliday*, the judiciary upheld sweeping executive powers to detain even British citizens, prompting sharp dissent that such measures effectively repealed the Habeas

¹²⁴ *INS v. St. Cyr*, 533 U.S. 289 (2001), *Justia*, <https://supreme.justia.com/cases/federal/us/533/289/>

¹²⁵ *San Diego Union-Tribune*, 4 January 1999, Files of Stephen Warnath, Folder *Criminal Aliens, Detention, Deportation*, 2011-10440-F, Box 2 of 10, William J. Clinton Presidential Library (Little Rock, Arkansas).

¹²⁶ Wilsher, *Immigration Detention*, *op. cit.*, 1.

¹²⁷ *Ibid.*, 40.

¹²⁸ Stephanie J. Silverman, ‘Internment in the United Kingdom During the Twentieth Century and Its Links to the Evolution of Immigration Detention’, *International Journal of Criminology and Sociology* 3 (May 2014): 168–74, <https://doi.org/10.6000/1929-4409.2014.03.15>

Corpus Acts in substance.¹²⁹ Daniel Wilsher highlights an important revival of the habeas corpus tradition in the UK after the Second World War, particularly in response to new restrictions on Commonwealth citizens, who were previously considered British subjects.¹³⁰ When Commonwealth citizens began to face detention in the 1960s, British courts rediscovered habeas corpus as a tool to scrutinise the legality of immigration decisions, placing the burden of proof firmly on the executive to justify detention.¹³¹

The House of Lords decision in *Khawaja* marked a crucial turning point, affirming that habeas corpus protection extends to all persons within the jurisdiction, not just British nationals.¹³² In the *Khawaja* judgment, Lord Bridge expressed a narrow view of the power to deport on grounds that a person's presence was not conducive to the public good: "I cannot suppose that this power was ever intended to be invoked as a means of deporting a perfectly respectable established resident on grounds arising from the circumstances of his original entry."¹³³ Though interestingly, five years later, in *R v. Immigration Appeal Tribunal, ex parte Patel* (1988), Lord Bridge reversed his own earlier opinion, providing the government with a favourable ruling that broadened its power to use "conducive" deportation for deception cases: "I am at liberty, with the concurrence I believe of all your Lordships, to resort to the more direct and satisfactory expedient, not available in the courts below, of recognising that the opinion I expressed was simply mistaken."¹³⁴

Wilsher shows that modern British jurisprudence, particularly in the *Belmarsh* case concerning the detention of foreign terror suspects, has moved to assert that the right to liberty is a fundamental right belonging to everyone in the country, irrespective of nationality or immigration status.¹³⁵ This directly challenged the idea that immigration control could justify discriminatory deprivations of liberty.

Courts have been able to impose these judge-made limits on executive power because, somewhat unexpectedly, lawmakers have stayed out of immigration detention policy even amid fierce political debates over immigration during this time. This legislative absence might stem from the fact that courts have generally preserved

¹²⁹ *R v. Halliday* [1917] UKHL 1, [1917] AC 260, *Casemine*, <https://www.casemine.com/judgement/uk/5a8ff8ca60d03e7f57ecd765>

¹³⁰ Wilsher, *Immigration Detention*, 79.

¹³¹ *Ibid*, 82.

¹³² *R v. Secretary of State for the Home Department, Ex Parte Khawaja* [1982] 2 All ER 523, [1982] 1 WLR 625 (Court of Appeal (Civil Division) 26 February 1982), *Refworld*, <https://www.refworld.org/jurisprudence/caselaw/gbraciv/1982/en/15660>

¹³³ *Speech of Lord Bridge of Harwich in In re Khawaja*, 10 February 1983, HO 394/730, Folder *Illegal Entry – Implications of Khera & Khawaja: Greater Use of Deportation under Section 3(5)(b)*, The National Archives (Kew, United Kingdom).

¹³⁴ *Speech of Lord Bridge of Harwich in R v Immigration Appeal Tribunal, Ex parte Patel*, 5 May 1988, HO 394/730, Folder *Illegal Entry – Implications of Khera & Khawaja: Greater Use of Deportation under Section 3(5)(b)*, The National Archives (Kew, United Kingdom).

¹³⁵ *A and others v Secretary of State for the Home Department* [2004] UKHL 56 (United Kingdom House of Lords, 16 December 2004), *Bailii*, <https://www.bailii.org/uk/cases/UKHL/2004/56.html>

executive authority over how long detention lasts, intervening primarily as a backup safeguard only in the most extreme or obviously unreasonable situations.¹³⁶

While both the UK and the USA share a common legal heritage in habeas corpus, its application in the immigration context has diverged significantly. In the United States, the judiciary largely deferred to the political branches, creating the “plenary power” doctrine that treated immigration as a matter of national security outside the traditional scope of judicial protection of liberty. In the United Kingdom, after a period of deference during wartime, the courts have increasingly reasserted their role as guardians of individual liberty, using habeas corpus and the rule of law to impose substantive limits on the executive’s power to detain foreigners, thereby pushing back against the notion that immigration status diminishes fundamental rights.

Both systems contained mechanisms for challenging detention, but these were subject to significant constraints and time limits. A long-standing principle in UK extradition law was the power for the High Court to order a person’s discharge if they were not removed within a set period: “Finally, if he is not surrendered within two months of being committed to await his return, he may apply to the High Court, which has power to order his discharge.”¹³⁷ Similar provisions were included in US draft legislation, creating a remedial path for release due to administrative delay:

A person who is found extraditable... may, upon reasonable notice to the Secretary of State, petition the court for release from official detention if... (1) the Secretary does not order the person’s surrender... within forty-five days after his receipt of the court’s findings... or (2) the person is not removed from the United States within thirty days after the Secretary ordered the person’s surrender.”¹³⁸

The introduction of routine bail hearings in the 1999 Immigration and Asylum Bill marked a significant procedural innovation, moving the UK system towards greater judicial oversight of detention. The Home Secretary described the introduction of a statutory presumption of bail as a “major concession”:

During the course of the Special Standing Committee there has been intense pressure... to strengthen still further the safeguards for immigration detainees in particular by introducing a statutory presumption in favour of bail.¹³⁹

By 2001, both the United States and United Kingdom had developed immigration detention systems that, despite different constitutional foundations, converged on a troubling outcome: the systematic erosion of meaningful legal

¹³⁶ Wilsher, *Immigration Detention*, *op. cit.*, 80.

¹³⁷ *Draft Report Chapter 1: Introduction*, 11 February 1981, HO 306/253, Folder *Extradition, Working Party (Reconvened), Report, Circulation of Final Draft*, The National Archives (Kew, United Kingdom).

¹³⁸ *Comprehensive Crime Control Bill*, c. 1984, HO 306/208, Folder *Treaties between UK and Foreign Countries, U.S.A., Amendment of Extradition*, The National Archives (Kew, United Kingdom).

¹³⁹ *Letter regarding Immigration and Asylum Bill*, 28 May 1999, PREM 49/886/2, Folder *Immigration, Series Home Affairs*, The National Archives (Kew, United Kingdom).

protection for detained migrants. The American rights-based framework proved brittle under legislative assault, while Britain's administrative approach offered only procedural safeguards against executive power.

The most decisive factor was not constitutional doctrine but access to legal representation. The UK's legal aid system, however imperfect, enabled individual challenges that maintained some judicial oversight. The US denial of appointed counsel created sporadic, high-stakes litigation that failed to provide consistent protection. Both systems ultimately demonstrated that formal legal remedies are only as strong as the institutional structures supporting them.

5. Landmark Cases in Comparative Perspective

Juxtaposing landmark judicial decisions from the United States and the United Kingdom reveals in sharp relief the divergent legal paths the two nations took to address similar challenges posed by immigration detention. These paired case studies demonstrate how different constitutional structures, legal traditions, and judicial philosophies produced both surprising convergences in outcome and profound differences in reasoning. They illustrate the arguments from the preceding section in concrete terms, showing how the American judiciary grappled with constitutional rights and legislative supremacy, while the British judiciary navigated the terrain of administrative discretion and supranational human rights law.

5.1. Rights-Protective Decisions: Limiting Indefinite Detention

The most striking example of convergent outcomes arrived at through divergent legal reasoning is found in the highest courts' efforts to place limits on indefinite detention. In both countries, the judiciary confronted a statutory scheme that, on its face, permitted the executive to detain non-citizens for an open-ended period. Both legal systems, drawing on deep-seated liberal principles against arbitrary and purposeless confinement, recoiled from this possibility and judicially imposed a "reasonableness" limitation.¹⁴⁰

In the United States, this moment came in *Zadvydas v. Davis* (2001).¹⁴¹ The Supreme Court was faced with a post-IIRIRA statute that authorised the continued detention of a non-citizen beyond the 90-day removal period. The Court's majority, led by Justice Breyer, explicitly invoked the Fifth Amendment's Due Process Clause as a constitutional backstop. A statute permitting indefinite civil detention, the Court

¹⁴⁰ Lisa Cox, 'The Legal Limbo of Indefinite Detention: How Long Can You Go', *American University Law Review*, 2001, 725–54; Rayner Thwaites, *The Liberty of Non-Citizens: Indefinite Detention in Commonwealth Countries* (Hart Publishing, 2014).

¹⁴¹ *Zadvydas v. Davis*, 533 U.S. 678.

reasoned, would raise “serious constitutional concerns”.¹⁴² To avoid this constitutional minefield, the Court interpreted the statute as containing an implicit limit, holding that detention was authorised only for a period “reasonably necessary” to bring about removal, establishing a presumptively reasonable period of six months.¹⁴³ The legal logic was typically American: a potential conflict with a fundamental constitutional right compelled a narrowing construction of a federal statute.

Seventeen years earlier, the UK High Court reached a remarkably similar conclusion in *R v. Governor of Durham Prison, Ex parte Singh* (1984) but through a completely different legal methodology.¹⁴⁴ Faced with the Immigration Act 1971, which contained no express time limit on detention pending deportation, Justice Woolf did not invoke a constitutional text or a supranational treaty.¹⁴⁵ Instead, he drew upon the common law tradition of administrative law, which presumes that Parliament does not intend to grant arbitrary or unlimited power to the executive. He reasoned that the statutory power to detain was granted for a specific purpose, to effect removal, and therefore, the power must be implicitly limited by that purpose. If removal was not a realistic prospect within a “reasonable period,” then continued detention would cease to be for its proper purpose and would become unlawful.¹⁴⁶ The legal logic was typically British: a broad statutory discretion was constrained by an implied, judge-made duty of reasonableness. This pairing powerfully demonstrates that despite the vast differences between American constitutionalism and British common law, the bedrock liberal legal principle that state detention must have a purpose, and a foreseeable end found a path to judicial expression in both systems.

5.2. Government-Favourable Decisions: Affirming Executive Discretion

While courts on both sides of the Atlantic were willing to curb the most extreme manifestation of executive power, indefinite detention, they were far more deferential when it came to the executive’s core discretionary authority to detain in the first place. This deference is evident in two key cases that, while dealing with different legal questions, both served to affirm and legitimise broad executive power.

In the United States, the Supreme Court’s decision in *INS v. St. Cyr* (2001) is often hailed as a rights-protective victory because it preserved the availability of

¹⁴² *Ibid.*

¹⁴³ Hallett et al., ‘Commentary on *Zadvydas v. Davis*, 533 U.S. 678 (2001)’.

¹⁴⁴ *R v. Governor of Durham Prison, Ex parte Singh. op. cit.*

¹⁴⁵ Stéphane Porion, ‘La question de l’immigration au Royaume-Uni dans les années 1970 : le Parti conservateur, l’extrême droite et l’« effet Powell »’, *Revue Française de Civilisation Britannique. French Journal of British Studies* 22, no. hors-série (2017): hors-série, <https://doi.org/10.4000/rfcb.1724>

¹⁴⁶ *R v. Governor of Durham Prison, Ex parte Singh.*

habeas corpus review in the face of IIRIRA's jurisdiction-stripping provisions.¹⁴⁷ The Court held that Congress had not spoken with sufficient clarity to eliminate the writ for "pure questions of law."¹⁴⁸ However, the victory was a narrow and procedural one. In preserving this sliver of jurisdiction, the Court implicitly accepted the constitutionality of the rest of IIRIRA's radical curtailment of judicial review.¹⁴⁹ It did not question Congress's power to eliminate review of factual determinations or discretionary decisions, which constitute the vast majority of removal cases.¹⁵⁰ *St. Cyr* thus represents a strategic judicial compromise: the Court saved the core of its habeas power from total legislative eradication but, in doing so, left the government's vastly expanded substantive power to detain and deport largely immune from meaningful judicial oversight.

In the United Kingdom, the House of Lords' decision in *R v. Secretary of State for the Home Department ex parte Saadi* (2002) went even further in legitimising executive power.¹⁵¹ The case challenged the policy of detaining asylum seekers for a short period upon arrival at a special facility, Oakington, for the purpose of fast-tracking their claims. The applicants argued this was unlawful because they posed no risk of absconding and were being detained purely for "administrative convenience."¹⁵² The House of Lords rejected this challenge, holding that detention to ensure the speedy and efficient processing of asylum claims was a legitimate purpose that fell within the scope of Article 5(1)(f) of the ECHR, which permits detention "to prevent his effecting an unauthorised entry into the country" or in the case of "a person against whom action is being taken with a view to deportation or extradition."¹⁵³ This ruling was a significant affirmation of executive power, explicitly sanctioning the use of detention not as a tool of last resort for individuals deemed a flight risk, but as a routine case management tool for administrative efficiency.¹⁵⁴ The comparison is telling, the American court fought a defensive battle to preserve a narrow channel for legal review, while the British court proactively endorsed a broad rationale for detention, significantly expanding the Home Office's discretionary authority.

¹⁴⁷ *INS v. St. Cyr*, 533 U.S. 289 (Supreme Court of the United States, 2001), Justia, <https://supreme.justia.com/cases/federal/us/533/289/>

¹⁴⁸ *Ibid.*

¹⁴⁹ Rachael K. Hinkle, 'Casenotes: *INS v. St. Cyr*', *Ohio Northern University Law Review* 28 (2002): 815–29.

¹⁵⁰ *Ibid.*

¹⁵¹ *R v. Secretary of State For The Home Department Ex Parte Saadi (Fc) and Others (Fc)*, UKHL 41 (United Kingdom House of Lords 31 October 2002), <https://publications.parliament.uk/pa/ld200102/ldjudgmt/jd021031/regina-1.htm>

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ 'Regina (Saadi and Others) v. Secretary of State for the Home Department', *International Law Reports* 133 (2008): 482–98, <https://doi.org/10.1017/CBO9781316152652.020>

5.3. Procedural Innovations: Systemic vs. Grassroots Reform

The final pairing contrasts two different models of achieving procedural reform in the face of systemic deficiencies. Both countries saw the development of important new safeguards for vulnerable detainees, but these reforms originated from very different legal and social processes.

The *Flores Settlement Agreement* of 1997 in the United States is a prime example of litigation-driven, systemic reform.¹⁵⁵ It was the culmination of a decade-long, nationwide class-action lawsuit challenging the INS's treatment of unaccompanied migrant children in detention.¹⁵⁶ The resulting settlement was not a mere court order but a comprehensive, court-enforced regulatory code that established detailed national standards for the detention, treatment, and release of all minors in immigration custody. It mandated release to family members "without unnecessary delay," required that children be held in the "least restrictive setting" appropriate, and set minimum standards for care, from sanitation to education.¹⁵⁷ *Flores* exemplifies the American model of legal change: a broad, adversarial lawsuit aimed at forcing systemic reform through a judicially-managed consent decree.¹⁵⁸

In the United Kingdom, a different model of reform emerged from the grassroots. The establishment and work of the non-governmental organisation Bail for Immigration Detainees (BID) in the late 1990s represents a model of advocacy-driven, practical reform.¹⁵⁹ Recognising that many detainees languished in detention simply because they lacked the knowledge or legal support to apply for bail, BID did not launch a single, overarching lawsuit. Instead, it worked within the existing legal aid and tribunal system to empower detainees and their lawyers.¹⁶⁰ The organisation developed standardised protocols and "do-it-yourself" bail application packets, trained a network of volunteer lawyers and representatives, and provided direct legal assistance to thousands of individuals.¹⁶¹ The impact was a significant increase in the number of successful bail applications, achieved not through a single judicial mandate but through the cumulative effect of thousands of individual interventions and the

¹⁵⁵ American Immigration Lawyers Association, 'Documents Relating to Flores v. Reno Settlement Agreement on Minors in Immigration Custody'.

¹⁵⁶ Rebeca M. López, 'Codifying the Flores Settlement Agreement: Seeking to Protect Immigrant Children in U.S. Custody', *Marquette Law Review* 95, no. 4 (2012): 1635–77.

¹⁵⁷ *The Flores Settlement Agreement & Unaccompanied Children in Federal Custody*, with National Center for Youth Law et al. (2019), 4.

¹⁵⁸ Gina Starfield, 'A "Binary Choice" for Families in ICE Detention: Examining the Legitimation Costs of Litigating the Flores Settlement Agreement', *Georgetown Immigration Law Journal* 36 (2021): 399–429, <https://doi.org/10.2139/ssrn.3906240>

¹⁵⁹ Anna Jackson (BID), 'The Detention of Asylum Seekers in the UK: Bail for Immigration Detainees', *Feminist Review* 73, no. 1 (2003): 118–22, <https://doi.org/10.1057/palgrave.fr.9400080>

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

professionalization of bail practice.¹⁶² This comparison highlights the different ecosystems of legal advocacy: the US system, with its lack of legal aid, incentivised large-scale, top-down litigation, while the UK system, with its legal aid framework, enabled a more bottom-up, casework-focused approach to procedural reform.

5.4. The Limits of Legal Protection

The preceding analysis demonstrates that while the judiciary in both the United States and the United Kingdom provided occasional and sometimes significant checks on the exercise of executive detention power, its role was ultimately constrained by powerful structural forces and political realities. The courts could mitigate the harshest excesses of the detention regime, prohibiting indefinite confinement or establishing standards for the care of children, but they proved unable or unwilling to halt its fundamental expansion. This was because the legal front was nested within a broader constitutional and political landscape where the doctrines of executive and legislative supremacy in immigration matters remained deeply entrenched, and where judicial decisions that favoured migrants were often met with a swift and decisive political backlash.

5.5. Structural Constraints: The Doctrines of Supremacy

The judiciary's room for manoeuvre was fundamentally limited by the dominant constitutional doctrines in each country. In the United States, the plenary power doctrine operated as a form of constitutional exceptionalism, effectively carving out immigration law from the normal system of checks and balances.¹⁶³ This doctrine, consistently reaffirmed by the Supreme Court, holds that the political branches' power over the admission and exclusion of non-citizens is largely immune from judicial scrutiny. It created a powerful presumption of constitutionality for any legislative or executive action in the immigration sphere, forcing challengers to overcome an almost insurmountable barrier of judicial deference. This doctrine explains why courts were so reluctant to apply the full force of the Due Process and Equal Protection Clauses and why, even in a rights-protective decision like *Zadvydas*, the Court went to great lengths to avoid a direct constitutional ruling.¹⁶⁴ The plenary power doctrine was the structural foundation upon which the entire edifice of deferential immigration jurisprudence was built.

In the United Kingdom, the analogous structural constraint was the doctrine of Parliamentary Sovereignty. This core principle of the unwritten British constitution holds that an Act of Parliament is the highest source of law and cannot be struck down

¹⁶² *Annual Report 2005* (Bail for Immigration Detainees, 2005), 6.

¹⁶³ Lindsay, 'Immigration as Invasion'. *op. cit.*

¹⁶⁴ *Zadvydas v. Davis*, 533 U.S. 678. *op. cit.*

by the courts. Furthermore, internal documents reveal a structural tension where administrative convenience and the desire for control often outweighed the preservation of legal rights. In 1978, officials debated two procedures for removing returned deportees, acknowledging that the administratively convenient option would strip individuals of their right to appeal from within the UK:

In these circumstances, when there are two alternative administrative procedures available for the removal of those who have entered in breach of a deportation order, I do not consider that it would be right to follow a procedure, however administratively convenient, which could be construed as deliberately depriving an illegal entrant of a right of appeal in the United Kingdom.¹⁶⁵

In 1983, the proposal to remove the *prima facie* case requirement in extradition was internally criticised as an unacceptable transfer of power from the courts to the executive.¹⁶⁶ In arguing against abolishing the *prima facie* requirement in favour of a system where a government official would review the facts, the Criminal Bar Association provided a strong warning against the erosion of judicial oversight:

The proposal that an officer of the Home Office should examine the statement of facts and seek the clarification he considers necessary represents an unacceptable transfer of the judicial power to the executive. It deprives the accused of the right to make representations or call evidence himself and it deprives the magistrate of the power to seek from either side evidence which he or they consider assists in determining the legal issues he has to decide.¹⁶⁷

While the Human Rights Act 1998 empowered courts to issue a “declaration of incompatibility” if a statute conflicted with the ECHR, this declaration has no binding legal effect and serves only as a political signal to Parliament to amend the law.¹⁶⁸ This doctrine fundamentally positions the judiciary as subordinate to the legislature. When Parliament chose to pass legislation that broadened detention powers or, as it did in the Asylum and Immigration Act 2004 shortly after our period, attempted to oust the jurisdiction of the courts entirely, the judiciary’s ability to resist was constitutionally limited.¹⁶⁹ The courts could interpret statutes narrowly to protect rights, as in *Hardial*

¹⁶⁵ Note from G. Harrison, 14 November 1978, HO 344/605, Folder Policy, *Deportation/Courts, Returned Deportees: Removal as Illegal Entrants or under Existing Deportation Order B3 Papers*, The National Archives (Kew, United Kingdom).

¹⁶⁶ *Prima facie* is a Latin legal term meaning “at first sight” or “on its face.” It refers to evidence or a case that appears sufficient to establish a fact or raise a presumption of law unless rebutted or contradicted by other evidence. For example, a *prima facie* case of negligence would include all the basic elements needed to prove negligence (duty, breach, causation, damages) such that, if uncontested, would be sufficient for a judgment. The term is also used more broadly to describe something that seems true or valid based on initial evidence, though it may be overturned upon deeper examination.

¹⁶⁷ *Submissions of the Criminal Bar Association*, 17 February 1983, HO 306/254, Folder Extradition (Model Draft Treaty), Legislation, Extradition Working Party (Reconvened) – Comments on Working Party Report, The National Archives (Kew, United Kingdom).

¹⁶⁸ *The Government’s Independent Review of the Human Rights Act. op. cit.*

¹⁶⁹ *Asylum and Immigration Act 2004*, c. 19, [legislation.gov.uk](https://www.legislation.gov.uk/ukpga/2004/19/contents), <https://www.legislation.gov.uk/ukpga/2004/19/contents>

Singh, but they could not fundamentally question the authority of Parliament to legislate as it saw fit. In both countries, therefore, a core doctrine of political branch supremacy served as a durable structural barrier to a more robust judicial defence of migrant rights.

5.6. Political Realities: Backlash and Legislative Override

These structural doctrines were reinforced by potent political realities. Judicial decisions that were perceived as interfering with the state's ability to control immigration were frequently met with intense political and media backlash, which in turn fuelled legislative action designed to reverse or circumvent those decisions.

The most obvious example of this dynamic is the passage of IIRIRA in the United States. The Act was, in many respects, a direct legislative rebuke to what its proponents saw as years of judicial activism that had hampered the INS's enforcement capabilities.¹⁷⁰ The jurisdiction-stripping provisions were an explicit attempt to wrest control over immigration law away from the courts and consolidate it within the executive and legislative branches. This legislative override effectively ended a generation of court-led procedural innovations and replaced it with a rigid statutory regime that prioritised enforcement above all else.

In the United Kingdom, the dynamic was more subtle but no less real. While there was no single legislative event equivalent to IIRIRA, the period was marked by a recurring cycle of media-driven panics over “bogus” asylum seekers, which created immense political pressure on the government to appear tough.¹⁷¹ This pressure consistently led to new immigration Acts (in 1988, 1993, 1996, and 1999) that progressively tightened asylum procedures, expanded the grounds for detention, and restricted rights of appeal. These legislative changes often had the effect of narrowing the impact of prior court decisions or closing legal loopholes that advocates had successfully exploited. For example, as courts began to apply the *Hardial Singh* principles more robustly, the government responded with policies like the “fast-track” detention system at Oakington, which was later upheld in *Saadi*, to expedite cases and minimize the window for legal challenges.¹⁷² This demonstrates the ultimate supremacy of the political process in shaping the legal landscape. The courts could

¹⁷⁰ Sonia Chen, ‘The Illegal Immigration Reform and Immigrant Responsibility Act of 1996: Another Congressional Hurdle for the Courts’, *Indiana Journal of Global Legal Studies* 8, no. 1 (2000): 169–95.

¹⁷¹ Michael Welch and Liza Schuster, ‘Detention of Asylum Seekers in the UK and USA: Deciphering Noisy and Quiet Constructions’, *Punishment & Society* 7, no. 4 (2005): 397–417, <https://doi.org/10.1177/1462474505057117>; Gillian McFadyen, ‘The Language of Labelling and the Politics of Hostipitality in the British Asylum System’, *The British Journal of Politics and International Relations* 18, no. 3 (2016): 599–617, <https://doi.org/10.1177/1369148116631281>

¹⁷² ‘Regina (Saadi and Others) v. Secretary of State for the Home Department’; Mary Bosworth, *Inside Immigration Detention* (Oxford University Press, 2014), 49.

win individual battles, but the political branches, responding to public pressure, consistently controlled the strategic terrain of the war.

6. Conclusion: The Judiciary as a Contested but Subordinate Forum

Returning to the central paradox of this chapter, the history of the legal front in the expansion of immigration detention from 1979 to 2001 is not one of judicial triumph. In both the United States and the United Kingdom, the period ended with a vastly larger and more punitive detention system operating with significantly less judicial oversight than when it began. Despite their profoundly different legal traditions, constitutional structures, and judicial tools, the courts in both nations proved to be a contested but ultimately subordinate forum in the broader political struggle over immigration control. They were unable to prevent the executive and legislative branches from institutionalising mass administrative detention as a routine instrument of state power.

The comparative analysis yields an interesting finding. The erosion of legal protection followed two distinct paths that converged on a similar outcome. In the United States, the process was one of confrontation and political rupture. A period of rights-based legal challenges, which probed the weaknesses of the plenary power doctrine, provoked a powerful legislative backlash in 1996 that effectively dismantled much of the judiciary's traditional oversight role. The American story is one of a politically driven, legislative gutting of judicial authority. In the United Kingdom, the process was more one of gradual evolution and negotiation. The domestic judiciary practiced self-restraint, carving out modest common law limits on executive discretion while largely deferring to the principle of Parliamentary Sovereignty. The most significant constraints came not from within, but from the external pressure of European human rights law, which forced a reluctant sovereign state to accept certain absolute limits on its power. The British story is one of judicial deference to domestic political power, tempered only by the slow, creep of supranational legal norms.

Ultimately, the history of these legal battles underscores the profound limits of judicial remedies when confronted with a determined political will to control national borders. The courts could, and did, articulate principles of fundamental importance. The US Supreme Court's stand against indefinite detention in *Zadvydas* and the UK High Court's articulation of the "reasonableness" standard in *Hardial Singh* were vital affirmations of the rule of law. Yet, these decisions were tactical victories in a strategic retreat. They could improve the most constitutionally offensive features of the detention system, but they could not halt its relentless growth or challenge the political consensus that sustained it. This places the ultimate responsibility for the rise of the

detention state not on a failure of judicial will, but squarely within the democratic political processes of these two liberal nations. The courts did not lead the charge toward mass detention, but they were, in the final analysis, unable to stand in its way.

By the turn of the century, courts in both the United States and the United Kingdom had affirmed their role as reluctant referees rather than robust protectors of migrant rights. The American reliance on plenary power and the British reliance on parliamentary sovereignty each produced a judiciary that, while occasionally asserting limits, largely accepted detention as a legitimate tool of governance. This convergence highlights a central paradox of liberal democracies: even where due process traditions are strong, migrants remain at the legal margins, their liberty subordinated to the State's claim of sovereign necessity.

General Conclusion

General Conclusion

Returning to the Core Puzzle

This dissertation began with a puzzle that at once seemed deceptively simple yet deeply consequential: why, in the space of just two decades, did the United States and the United Kingdom, two liberal democracies with distinct political traditions and legal systems, construct expansive immigration detention regimes that had previously been marginal to migration governance? The period between 1980 and 2001 witnessed nothing less than the transformation of immigration detention from a residual, *ad hoc* practice into a central institution of State power, with profound implications for the governance of mobility, the boundaries of citizenship, and the reach of carceral authority. To close the circle, this conclusion returns explicitly to the three research questions that have structured the thesis:

1. Why did immigration detention expand so dramatically in the US and UK between 1980 and 2001?
2. How were these systems shaped by national politics, institutions, and discourses?
3. What insights emerge from a comparative lens that a single-country study would obscure?

The answers to these questions form the backbone of the argument advanced throughout this dissertation. At its core, the thesis has contended that the rise of detention cannot be explained as a mechanical response to migration pressures, nor as a narrow legal-technical adaptation. Rather, detention emerged and consolidated as part of a broader political project in which neoliberal restructuring, the securitisation of migration, and punitive governance converged to generate new logics of control.

In both the US and the UK, political elites reframed immigration as a site of threat, in the guise of the “criminal alien” and the “bogus asylum seeker” and developed institutional mechanisms to render detention routine. Yet these processes unfolded through distinct national architectures: the United States institutionalised detention via the fusion of immigration and criminal law, whereas the United Kingdom did so through executive discretion and the administrative expansion of security logics. Functional similarities emerged, but without institutional uniformity.

Answering the Core Questions: Divergent Paths, Shared Logics

The expansion of detention was not reducible to a single cause such as rising migration flows, institutional inertia, or security shocks. Rather, it reflected the convergence of multiple political logics. First, political and ideological shifts were decisive. In both the US and the UK, the ascendancy of Reagan and Thatcher heralded the consolidation of neoliberal governance: the retrenchment of welfare, the

valorisation of markets, and the politicisation of law and order. Within this ideological terrain, immigration was increasingly framed as both an economic burden and a cultural threat, legitimising punitive forms of control.

Second, securitisation discourses provided the symbolic architecture. In the US, the figure of the “criminal alien” gained traction, especially after the 1986 Anti-Drug Abuse Act and the 1996 Illegal Immigration Reform and Immigrant Responsibility Act. Migration became synonymous with crime, drugs, and national vulnerability. In the UK, the trope of the “bogus asylum seeker” served a parallel function, casting migrants as fraudulent opportunists abusing the generosity of the welfare state. These discourses provided the rationale for the normalisation of detention, portraying it as a necessary measure of control rather than an extraordinary practice.

Third, geopolitical context mattered. In the US, Cold War legacies and regional instability, especially in Central America and the Caribbean, produced migration flows that were readily politicised. In the UK, post-colonial anxieties were refracted through anxieties about asylum and multiculturalism. Both states responded by embedding detention within broader deterrence strategies. Thus, detention’s rise was the outcome of a political project rooted in shifting ideological landscapes, securitising discourses, and geopolitical pressures, and not simply a neutral reaction to migration “crises.”

The comparative analysis demonstrated that while the US and UK pursued the normalisation of detention as a central pillar of migration governance, they did so through different institutional logics. The US fused criminal and immigration law into a distinctive regime of ‘crimmigration.’ Legislative innovations such as the creation of the “aggravated felony,” coupled with judicial deference to executive authority, produced a system in which detention was legally mandated and infrastructurally entrenched. The expansion of private prison contracts, coupled with doctrines of deterrence, underwrote massive growth in detention capacity. In the UK, detention expanded through administrative discretion and executive authority. Legislation in the 1980s and 1990s granted wide-ranging powers to detain, while the asylum system was progressively re-engineered to prioritise deterrence and speed over rights protections. Mechanisms such as carrier sanctions externalised enforcement, while the judiciary exercised only cautious oversight. Detention thus became normalised less through statutory mandates and more through the everyday exercise of administrative power.

The comparative approach revealed a central paradox: functional similarity without institutional uniformity. Both the US and the UK arrived at systems where detention was integral to migration governance, but they did so through divergent legal and political architectures. This insight challenges diffusionist accounts that assume one model was exported wholesale, instead suggesting parallel yet distinctive trajectories shaped by national contexts.

Contributions to Knowledge

This thesis offers the first sustained comparative archival history of US and UK immigration detention between 1980 and 2001. Drawing on government documents, legislative debates, and judicial decisions, it reconstructs how detention shifted from a marginal tool to a mainstream institution. By contrasting two national cases, the study provides a foundation for future comparative research.

Theoretically, the thesis reframes detention not as a policy instrument or humanitarian dilemma, but as a political technology of control. Detention is interpreted as a practice through which the State reconfigures the boundaries of belonging and exclusion. This perspective foregrounds detention as an active site of statecraft rather than simply a reactive measure.

Methodologically, the thesis demonstrates the value of comparative-historical analysis in migration studies. By situating detention within longer temporal arcs and cross-national contrasts, the study looks to avoid the pitfalls of presentism and exceptionalism. It shows how comparative work can illuminate both shared logics and national specificities.

Conceptually, the research complicates narratives of an “Anglo model” of migration control. While convergence occurred at the level of function, detention as a routine tool, the form of institutionalisation diverged significantly. This nuance challenges both diffusionist accounts and overly generalised typologies, looking to offer a more granular understanding of convergence and divergence.

This research intervenes in several strands of scholarship. First, it builds upon and complicates the legal scholarship on detention and ‘crimmigration.’ Works such as Juliet Stumpf’s account of ‘crimmigration’ provided a conceptual vocabulary for understanding the fusion of criminal and immigration law in the US.¹ Yet, as critics have noted, the framework has often been applied in ways that naturalise US exceptionalism or underplay comparative variation. By juxtaposing the US with the UK, this thesis both affirms the utility of the ‘crimmigration’ lens and reveals its limits. In the UK, detention’s expansion was not underwritten by criminal-immigration fusion but by executive discretion and administrative authority. Thus, ‘crimmigration’ explains part of the story, but not the whole.

Second, the research engages with critical criminology and carceral studies, notably the work of Mary Bosworth² and Alison Mountz,³ who have illuminated the lived experiences of detainees, the global spread of detention, and the dynamics of carceral expansion. While this thesis did not focus primarily on detainee voices, it contributes to this literature by situating detention’s emergence within political-

1 Juliet Stumpf, ‘The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power’, *American University Law Review* 56, no. 2 (2006): 367–419, <https://doi.org/10.1515/9780804785419-004>

2 Mary Bosworth, *Inside Immigration Detention* (Oxford University Press, 2014).

3 Alison Mountz, *The Death of Asylum: Hidden Geographies of the Enforcement Archipelago* (University of Minnesota Press, 2020).

historical trajectories.

Third, the dissertation extends migration and asylum studies, challenging diffusionist or “Anglo model” accounts. Scholars such as Matthew Gibney have emphasised how liberal States reconcile humanitarian commitments with restrictive policies.⁴ This thesis supports their observation of a liberal paradox but pushes further: it demonstrates that detention was not merely an awkward compromise but a deliberate political technology that redefined the terms of governance.

Fourth, the study contributes to state theory and debates over neoliberalism. Scholars like Loïc Wacquant⁵ and David Garland⁶ have described the rise of punitive governance under neoliberalism, primarily in relation to criminal justice. This thesis shows how similar dynamics permeated the migration field. It suggests that neoliberalism entailed not only welfare retrenchment but also the active construction of coercive apparatuses to govern populations deemed surplus, threatening, or undeserving.

Finally, the thesis speaks to securitisation studies. Building on the Copenhagen School, securitisation theory highlights how political actors frame issues as existential threats requiring extraordinary measures.⁷ The US discourse of the “criminal alien” and the UK trope of the “bogus asylum seeker” exemplify precisely such moves. Yet the comparative evidence suggests that securitisation did not operate in a vacuum, instead it was institutionalised differently depending on legal architectures, political traditions, and bureaucratic structures. Thus, the research supports securitisation theory’s central insights while urging greater attention to institutional context.

In sum, the thesis is positioned at the intersection of legal studies, carceral scholarship, migration studies, state theory, and securitisation. Its distinctive contribution is to weave these literatures into a comparative political history, one that foregrounds the designed character of detention regimes.

Significance and Implications

The findings resonate with and refine broader theoretical debates. For State theory, they show that liberal democracies sustain their legitimacy not in spite of but through practices of exclusion. The “liberal paradox” is not a paradox to be resolved but a constitutive feature of liberal governance.⁸ Detention embodies this: it suspends rights in order to sustain the fiction of liberal order.

4 Matthew J. Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge University Press, 2004), <https://doi.org/10.1017/CBO9780511490248>

5 Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Duke University Press, 2009).

6 David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford University Press, 2002).

7 Barry Buzan et al., *Security: A New Framework for Analysis* (Lynne Rienner, 2013).

8 James F. Hollifield et al., ‘The Liberal Paradox: Immigrants, Markets and Rights in the United States’, *Southern Methodist University Law Review* 61, no. 1 (2008).

For studies of neoliberalism, the thesis underscores Wacquant's argument about the rise of punitive States, but it extends it beyond the penal sphere.⁹ Immigration detention exemplifies the roll-out of coercive governance to manage populations rendered precarious by neoliberal restructuring and global inequality.

For securitisation theory, the research shows how discourses become embedded in durable infrastructures. The designation of migrants as threats did not remain rhetorical, it translated into concrete facilities, contracts, and laws that persist even when the discursive intensity wanes. This highlights the material afterlife of securitisation.

The path dependence of detention infrastructure poses dilemmas for reform. Once facilities are built and contracts signed, economic and political interests emerge that resist dismantling. The US experience with private prison companies and the UK's reliance on detention centres illustrate this dynamic. Policymakers seeking alternatives to detention must therefore confront entrenched institutional interests, not just discursive frames.

Moreover, deterrence logics have produced perverse consequences. Evidence shows that harsher enforcement rarely reduces migration pressures. Instead, it pushes migrants toward more dangerous routes, increasing fatalities and fuelling smuggling networks. The humanitarian costs are borne by migrants, while the political dividends accrue to governments signalling toughness.

Finally, the normalisation of detention reshapes societal understandings of governance. Detention is increasingly perceived not as an extraordinary emergency measure but as a commonsense tool of border control. This shift erodes public sensitivity to rights violations and fosters a climate in which coercive practices are accepted as routine. The carceral logics developed in the migration field also seep into broader governance, reinforcing cultures of suspicion and surveillance.

Limitations

No study is without limitations, and this dissertation is no exception. Archival asymmetries inevitably constrained the research, with US sources proving more abundant, accessible, and detailed than those available from the UK. This imbalance shaped not only the granularity of findings but also the comparative weight each national case study could bear. Moreover, the dissertation has concentrated primarily on the practices and rationales of state actors, necessarily leaving less space for the perspectives of those who resisted, advocated, or endured detention. Accounts of detainee experiences, while incorporated where possible, remain mediated through official documentation and secondary analysis, underscoring a structural imbalance in whose voices are most clearly heard. Relatedly, the analysis adopts a deliberately top-down orientation, proposing an analysis from above, that focuses on the institutional,

⁹ Wacquant, *Punishing the Poor*.

bureaucratic, and policy-making dimensions of detention. This approach privileges state perspectives and decision-making processes over the dynamics of public opinion or wider societal debates. The limited engagement with public sentiment is thus less a matter of omission than of methodological emphasis, reflecting an intention to trace how state rationales were articulated, justified, and operationalised within official spheres of governance. Chronologically, the decision to end the study in 2001 sacrifices engagement with the transformations of the post-9/11 period, when counterterrorism policies intensified and globalised. Yet this cut-off is also deliberate, offering analytical clarity by situating the findings within a distinct historical moment rather than allowing later developments to dominate the narrative. Finally, as with all interpretive research, the positionality of the researcher, shaped by disciplinary background, linguistic competencies, and theoretical commitments, has influenced both the framing of questions and the interpretation of evidence. These limitations do not undermine the study's contributions but should be borne in mind when evaluating its conclusions and considering avenues for future research.

Future Research Directions

The study opens several intellectual pathways. Post-9/11 detention must be studied not simply as counterterrorism but as the intensification of pre-existing logics. For instance, Guantánamo Bay can be understood as an extrapolation of detention's exceptionalism. Similarly, the UK's counterterrorism legislation reinforced patterns already evident in asylum governance. Some researchers have begun to do so, but as events unfold and new information comes to light that research must continue. Comparative work should incorporate other liberal democracies. Australia and Canada, often grouped with the "Anglo model," present intriguing contrasts. Australia's offshore processing and Canada's rights-based framework highlight both parallels and divergences. Continental Europe, with its Schengen architecture, adds another layer. Future work should examine micro-histories of particular facilities, tracing how local actors, private contractors, and bureaucratic routines shaped detention's everyday operation. Research should also explore how cities and towns have reacted to the establishment and operation of immigration detention centres, including the social, economic, and political dynamics that these institutions generate within local communities. The lobbying power of private prison companies in the US, and security contractors in the UK, also deserves detailed study. Another important avenue would be to investigate the electoral impact of detention and immigration control policies, analysing how political parties and candidates have mobilised these issues to shape public opinion and voting behaviour. Perhaps the most urgent direction is to centre detainee voices as people such as Mary Bosworth and Elliott Young have done. Ethnographic and oral-history research could illuminate how detention is experienced, resisted, and narrated by those subjected to it. Intersectional analyses that look at race, gender, sexuality, and class would also enrich our understanding of how

detention regimes stratify populations. Finally, detention practices are increasingly global, diffused through international organisations, policy transfers, and corporate actors. Future research should trace these networks, revealing how ideas and techniques travel across borders. Although the majority of these research areas have begun to receive scholarly attention, considerable opportunities remain for further academic investigation.

Since 2001: Continuities and Accelerations

Since 2001, immigration policy in both the United States and the United Kingdom has undergone profound transformation, shaped by shifting political priorities, security concerns, and economic pressures. Across successive administrations, policymakers in both countries have sought to balance competing imperatives of border control, national security, humanitarian protection, and economic need. By the end of 2001, the legislative frameworks, carceral infrastructure, and ideological rationales underpinning immigration detention were already firmly established, providing the foundation for the construction of an even more expansive and punitive system (see maps below). The security panic that followed the terrorist attacks of September 11, 2001, intensified these existing trajectories of securitisation and ‘crimmigration’ that had been developing over the previous two decades. The following overview traces these developments chronologically, highlighting how each government’s approach, whether reformist or restrictive, has reflected broader domestic and international dynamics, from the post-9/11 securitisation of migration to the evolving challenges of globalisation, public sentiment, and geopolitical instability.

USA

The Bush Presidency (2001-2009)

During the presidency of George W. Bush, US immigration policy was characterised by a tension between national security priorities and efforts toward comprehensive reform. Early in his administration, Bush pursued a cooperative approach with Mexico, emphasising guest-worker programmes and pathways to legal status. However, the September 11, 2001 terrorist attacks shifted the focus toward security, prompting the creation of the Department of Homeland Security (DHS) and the establishment of new agencies, including U.S. Citizenship and Immigration Services (USCIS) to manage benefits and naturalisation, U.S. Immigration and Customs Enforcement (ICE) to oversee enforcement, and U.S. Customs and Border Protection (CBP) to secure the nation’s borders.¹⁰ Legislation such as the USA

¹⁰ ‘Creation of the Department of Homeland Security’, Homeland Security, 8 May 2023, *DHS*, <https://www.dhs.gov/creation-department-homeland-security>

PATRIOT Act (2001)¹¹ expanded federal authority to detain and deport noncitizens suspected of terrorism-related activities and strengthened data-sharing and visa controls, while the Enhanced Border Security and Visa Entry Reform Act (2002) mandated biometric identifiers for visas and travel documents and enhanced monitoring of foreign students through the SEVIS system.¹² Starting in 2002, the federal government launched the 287(g) programme, which authorised state and local law enforcement officers to carry out specific immigration enforcement duties. By the end of the Bush administration, over 70 of these agreements had been signed.¹³

These measures shifted the policy focus from reform to enforcement, resulting in increased border surveillance, detention, and deportations, and contributing to hardened public opinion on immigration amid security concerns (see table below). In his second term, Bush revived calls for comprehensive immigration reform that would balance enforcement with legalisation, but bipartisan proposals in 2006 and 2007 collapsed amid political opposition from both conservative and liberal groups. Meanwhile, Congress enacted enforcement-oriented measures such as the REAL ID Act (2005)¹⁴ and the Secure Fence Act (2006),¹⁵ which expanded border infrastructure and interior enforcement. By the end of Bush's presidency, US immigration policy had become increasingly securitised, with institutional reforms that strengthened federal enforcement capacity but failed to achieve lasting legislative change.

The Obama Presidency (2009-2017)

During the Barack Obama administration, US immigration policy was characterised by a tension between enforcement and reform. Early in his presidency, Obama expressed a commitment to comprehensive reform but initially deferred major action to prioritise health care and economic recovery. At the same time, he expanded Bush-era programmes such as Secure Communities, resulting in record deportations.¹⁶ Under his administration over 1.5 million removals were carried out by 2012, earning him the label “Deporter-in-Chief” from immigrant-rights advocates (see table

11 Department of Justice, *The USA PATRIOT Act: Preserving Life and Liberty*, Circa 2002, 4.

12 F. James Rep. Sensenbrenner, ‘H.R.3525 - 107th Congress (2001-2002): Enhanced Border Security and Visa Entry Reform Act of 2002’, 14 May 2002, *Congress.gov*, <https://www.congress.gov/bill/107th-congress/house-bill/3525>

13 Muzaffar Chishti et al., *The Obama Record on Deportations: Deporter in Chief or Not?* (Migration Policy Institute, 2017), <https://www.migrationpolicy.org/article/obama-record-deportations-deporter-chief-or-not>

14 Magdalena Krajewska, ‘Implementing the REAL ID Act: Intergovernmental Conflict and Cooperation in Homeland Security Policy’, *Publius: The Journal of Federalism* 50, no. 3 (2020): 398–422, <https://doi.org/10.1093/publius/pjaa010>

15 Ryan Abman and Hisham Foad, ‘Border Walls and Crime: Evidence From the Secure Fence Act’, *Eastern Economic Journal* 48, no. 2 (2022): 167–97, <https://doi.org/10.1057/s41302-021-00207-6>

16 Rachel Zoghlin, ‘Insecure Communities: How Increased Localization of Immigration Enforcement under President Obama through the Secure Communities Program Makes Us Less Safe, and May Violate the Constitution’, *The Modern American* 6, no. 2 (2011): 20–35.

below).¹⁷ Legislative efforts, including the DREAM Act in 2010 and broader immigration reform in 2013, failed to pass, prompting the administration to increasingly rely on executive action. In 2012, the Deferred Action for Childhood Arrivals (DACA) programme provided temporary relief and work authorisation to undocumented immigrants brought to the United States as children, benefiting an estimated 800,000 “Dreamers,” while the proposed 2014 Deferred Action for Parents of Americans (DAPA) aimed to extend similar protections to parents but was blocked by the courts.¹⁸ Humanitarian challenges, notably the 2014 influx of unaccompanied minors from Central America, further tested policy priorities.¹⁹ By the end of Obama’s second term, deportations had declined and enforcement was refocused on serious offenders.²⁰ Yet persistent legislative gridlock left millions without a path to legal status, highlighting the administration’s dual legacy of significant executive innovation alongside the enduring limits of unilateral reform in a polarised political environment.

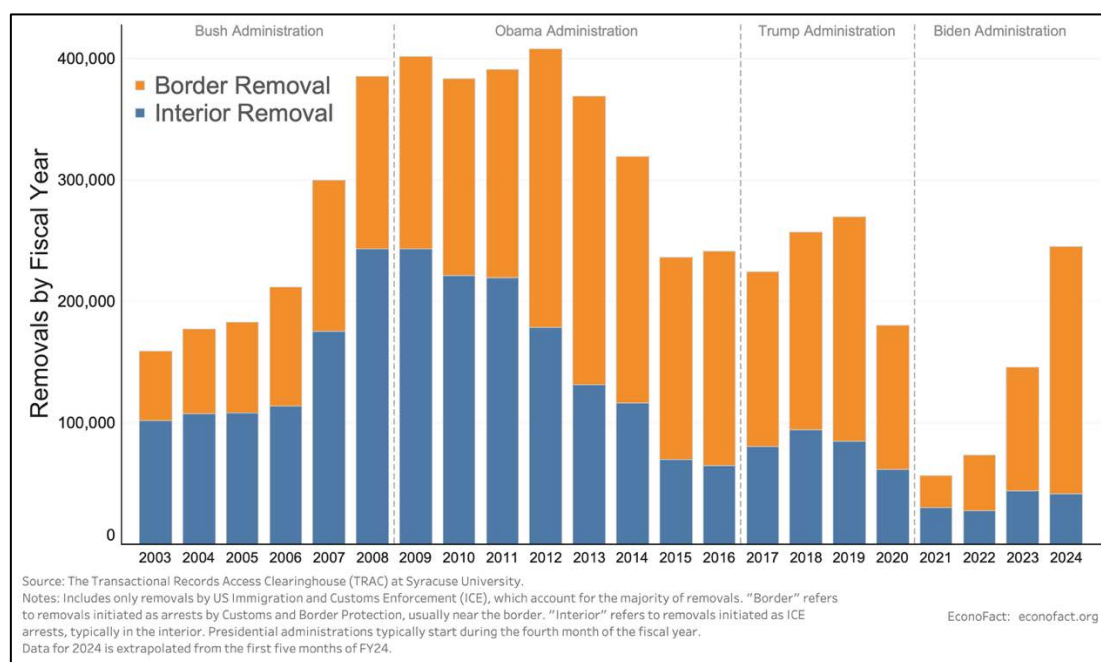


Figure 45. Deportations from U.S. Interior and Border Enforcement (2003-2024)

Source: Giovanni Peri, “Immigrant Deportations: Trends and Impacts,” *EconoFact*, 30 October 2018, <https://econofact.org/immigrant-deportations-trends-and-impacts>

17 Bill Ong Hing, ‘Deporter-in-Chief: Obama v. Trump’, SSRN Scholarly Paper no. 3254680 (Social Science Research Network, 1 December 2018), <https://papers.ssrn.com/abstract=3254680>

18 Deferred Action for Childhood Arrivals (DACA): An Overview, Fact Sheet (American Immigration Council, 2024).

19 Elliott Young, *Forever Prisoners: How the United States Made the World’s Largest Immigrant Detention System* (Oxford University Press, 2021), 180.

20 Muzaffar Chishti et al., *The Obama Record on Deportations*. *op. cit.*

The First Trump Presidency (2017–2021)

As Elliott Young shows in his 2021 book, Donald Trump’s 2016 presidential campaign frequently invoked the notion of “criminal aliens,” a term he associated with “rapists and criminals” or “bad hombres.”²¹ He pledged to construct a thirty-foot-high border wall “visible from space” and to deport all estimated 11 million undocumented immigrants residing in the United States.²² These promises suggested that Americans would soon witness a dramatic escalation in apprehensions, detentions, and deportations. However, during Donald Trump’s first administration (2017–2021) that expansion did not immediately materialise. Despite the administration’s hyperbolic rhetoric about a “border invasion” and migrant “caravans” allegedly composed of gang members, Trump’s deportation apparatus proved less extensive than that of his predecessor.²³ Early measures included the 2017 travel bans targeting several Muslim-majority countries,²⁴ efforts to terminate the Deferred Action for Childhood Arrivals (DACA) programme, and directives to expand border security, notably through the proposed U.S.–Mexico wall, popularised by the campaign slogan “Build the Wall.” That same year, Executive Order 13768, “Enhancing Public Safety in the Interior of the United States,” broadened deportation priorities to include not only criminals but also individuals with any immigration violations.²⁵ They also revoked the Obama-era Priority Enforcement Program, and withheld federal grants from so-called “sanctuary cities.” In 2018, the administration’s “zero tolerance” policy led to the separation of migrant families and the implementation of the “Remain in Mexico” programme, which required asylum seekers to wait outside the United States for hearings.²⁶ Subsequent policies institutionalised these restrictions through the expansion of the “public charge” rule, limitations on asylum eligibility, historically low refugee admissions, and bureaucratic slowdowns that created an “invisible wall” to immigration.²⁷ The COVID-19 pandemic in 2020 further enabled immigration

21 Young, *Forever Prisoners*, 182. *op. cit.*

22 Hilary Parsons Dick, “‘Build the Wall!’: Post-Truth on the US–Mexico Border”, *American Anthropologist* 121, no. 1 (2019): 179–85, <https://doi.org/10.1111/aman.13189>

23 Young, *Forever Prisoners*, 182.

24 Sabrina Siddiqui et al., ‘Trump Travel Ban: New Order Targeting Six Muslim-Majority Countries Signed’, *US News, The Guardian*, 6 March 2017, <https://www.theguardian.com/us-news/2017/mar/06/new-trump-travel-ban-muslim-majority-countries-refugees>

25 *Executive Order 13768: Enhancing Public Safety in the Interior of the United States* (2017), The White House, <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/>

26 Elena V. Cordonean, “‘Remain in Mexico’ Policy and Its Progeny: Is There Hope?’, *Southwestern Law Review* 52 (2024): 623–44.

27 Charles Davis, ‘Bureaucracy as a Weapon: How the Trump Administration Is Slowing Asylum Cases’, *US News, The Guardian*, 23 December 2019, <https://www.theguardian.com/us-news/2019/dec/23/us-immigration-trump-asylum-seekers>

restrictions under Title 42 and the suspension of visa programmes.²⁸ By the end of Trump's term, legal immigration had fallen sharply, refugee admissions had reached record lows, and executive authority had become the dominant force shaping US immigration policy.

The Biden Presidency (2021-2025)

During the Biden administration, US immigration policy underwent significant shifts aimed at reversing many restrictive measures from the Trump era while confronting record levels of migration at the southern border (see table below) during an ongoing Covid pandemic.²⁹

28 Daniel E. Martínez et al., 'Impeding Access to Asylum: Title 42 "Expulsions" and Migrant Deaths in Southern Arizona', *Journal on Migration and Human Security* 12, no. 3 (2024): 182–203, <https://doi.org/10.1177/23315024241256642>

29 Muzaffar Chishti et al., Biden's Mixed Immigration Legacy: Border Challenges Overshadowed Modernization Advances (Migration Policy Institute, 2024), <https://www.migrationpolicy.org/article/biden-immigration-legacy>

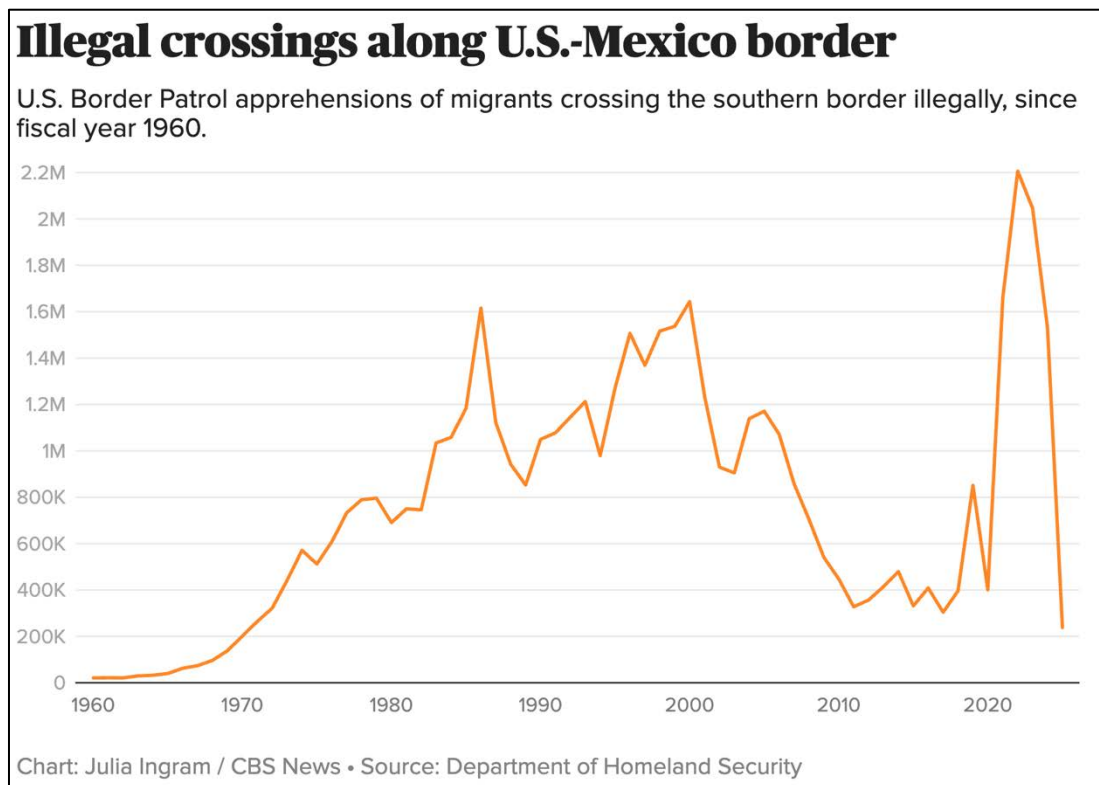


Figure 46. Illegal Crossings Along the U.S.-Mexico Border (1960-2024)
U.S. Border Patrol apprehensions of migrants crossing
the southern border illegally, since fiscal year 1960.

Source: “*Illegal crossings along U.S.-Mexico border plummet to lowest annual level since 1970*,” AllOnGeorgia, 7 October 2025, <https://allongeorgia.com/chattooga-local-news/illegal-crossings-along-u-s-mexico-border-plummet-to-lowest-annual-level-since-1970/>

Early actions included halting border wall construction, rescinding travel bans, reinstating and expanding Temporary Protected Status (TPS), and reestablishing refugee admissions (raising the annual cap to 125,000 by 2022). Although Biden sought a more humanitarian framework, policies such as the continued use of Title 42 expulsions and later the “Circumvention of Lawful Pathways” rule reflected growing emphasis on deterrence and border management. The administration also created parole programmes for nationals of countries like Cuba, Haiti, Nicaragua, and Venezuela. Despite progress in naturalisations, refugee resettlement, and legal immigration pathways, persistent court challenges, overwhelmed asylum systems, and high migrant encounter rates underscored the complexity of balancing humanitarian commitments with enforcement imperatives. Overall, Biden’s immigration record reflects an ongoing tension between restoring lawful, humane migration channels and addressing domestic political and operational pressures at the U.S.–Mexico border.

The Second Trump Presidency (2025-Present)

Upon taking office in January 2025, the second Trump administration initiated a sweeping overhaul of US immigration policy, using executive authority to impose substantial restrictions on both unauthorised and lawful migration. At the southern border, a national emergency was declared, the Migrant Protection Protocols (‘Remain in Mexico’) were reinstated, and access to asylum, particularly through digital platforms like the CBP One App,³⁰ was severely curtailed. Humanitarian programmes, including Temporary Protected Status, refugee admissions, and parole initiatives such as the CHNV (Cuban, Haitian, Nicaraguan, Venezuelan) programme, were significantly reduced or rescinded, while travel bans targeted specific countries. On US soil, Immigration and Customs Enforcement (ICE) adopted an aggressive enforcement strategy, pursuing expedited removals nationwide, targeting sanctuary cities, and mobilising both military and local law enforcement in immigration operations, with the stated aim of conducting the largest deportation operation in US history. This approach extended to all individuals in the country illegally, regardless of the length of residence or criminal record, raising serious due process concerns. The expansion of detention facilities, revived cooperation agreements with local police, and executive actions, including attempts to reinterpret the Fourteenth Amendment’s birthright citizenship clause and proposals to restrict family- and employment-based visas, which fuelled further controversy and extensive litigation. In some instances, such as in *Vasquez Perdomo v. Noem*, temporary Supreme Court rulings allowed racial profiling in ICE arrests and affected American citizens, while other decisions cleared the administration to lift protections for more than 300,000 Venezuelan immigrants previously shielded from deportation.³¹ Despite legal challenges, these measures reflected a broader policy agenda prioritising border security, deterrence, and strict restrictions on both legal and unauthorised migration.

UK

The Labour Governments (2001-2010)

Between 2001 and 2010, the Labour government, under Tony Blair and later Gordon Brown, implemented a multifaceted immigration policy characterised by a dual strategy of restriction and liberalisation, balancing economic needs with stricter asylum enforcement. Early in the decade, legislation such as the Nationality, Immigration and Asylum Act 2002 tightened asylum procedures and expanded

³⁰ Since March 2025, the application has been known as CBP Home.

³¹ How the Supreme Court’s Latest Decision Clears the Way for Racial Profiling During Immigration Raids (American Immigration Council, 2025), <https://www.americanimmigrationcouncil.org/blog/supreme-courts-decision-racial-profiling-immigration-raids>

enforcement powers to deter irregular entry.³² At the same time, the government actively pursued managed economic migration. A defining moment came with the 2004 expansion of the European Union, when Labour's decision not to impose transitional restrictions on workers from new member states led to significant migration from Eastern Europe, filling labour shortages and contributing to public finances, while intensifying public debate over service pressures and social cohesion.³³ In 2006, the introduction of a points-based system for skilled non-EU workers, alongside the Immigration, Asylum and Nationality Act 2006 and the Borders, Citizenship and Immigration Act 2009, sought to streamline legal migration, enforce border control, and promote integration through measures such as the 2005 "Life in the UK" citizenship test and language requirements.³⁴ Overall, Labour's policies reflected a pragmatic balance of economic utility, controlled migration, and social integration, reshaping the UK's immigration landscape and laying the groundwork for subsequent reforms.

The Conservative Governments (2010-2024)

Between 2010 and 2024, Conservative-led governments in the UK implemented a series of increasingly restrictive and transformative immigration policies aimed at reducing net migration and controlling both legal and illegal entry. Initially, during the 2010–2015 coalition government, the party pledged to cut net migration to "the tens of thousands" and, under Home Secretary Theresa May, introduced the controversial "hostile environment" policy, later codified in the Immigration Acts of 2014 and 2016.³⁵ These measures restricted migrants' access to public services and strengthened enforcement against overstayers, though immigration was never reduced to the promised levels. The period also saw the Windrush Scandal, a significant consequence of the hostile environment approach.³⁶

Following the 2016 Brexit referendum, the Conservatives under Theresa May and later Boris Johnson pursued a post-Brexit immigration strategy that ended free

32 *Nationality, Immigration and Asylum Act 2002*, c. 41 (2002), [legislation.gov.uk, https://www.legislation.gov.uk/ukpga/2002/41/contents](https://www.legislation.gov.uk/ukpga/2002/41/contents)

33 Matej Navrátil and Marko Lovec, 'From New to Indispensable: How the 2004 Enlargement Reshaped the EU's Transformative Powers', *Politics and Governance* 12 (April 2024): 7516, <https://doi.org/10.17645/pag.7516>

34 Frances Allen et al., 'Immigration, Asylum and Nationality Act 2006: (2006, c. 13)', in *Immigration Law Handbook*, ed. Frances Allen et al. (Oxford University Press, 2023), <https://doi.org/10.1093/oso/9780192896292.003.0013>; Frances Allen et al., 'Borders, Citizenship and Immigration Act 2009: (2009, c. 11)', in *Immigration Law Handbook*, ed. Frances Allen et al. (Oxford University Press, 2023), <https://doi.org/10.1093/oso/9780192896292.003.0017>

35 Maya Goodfellow, *Hostile Environment: How Immigrants Became Scapegoats*, Second edition (Verso, 2020).

36 The Windrush scandal refers to the wrongful detention, denial of legal rights, threats of deportation, and actual deportations of Commonwealth citizens (mainly from the Caribbean) who legally settled in the UK (sometimes decades ago) but were misclassified as illegal immigrants due to government policy failures.

movement for EU citizens and culminated in the 2021 points-based system, designed to prioritise skills-based labour migration.³⁷ In its later years, the government's focus shifted further toward an attempt to "take back control" by deterring irregular migration, a policy prominently encapsulated by Prime Minister Rishi Sunak's pledge to "Stop the Boats."³⁸ This was implemented in response to a significant rise in the number of people crossing the English Channel in boats (see table below).

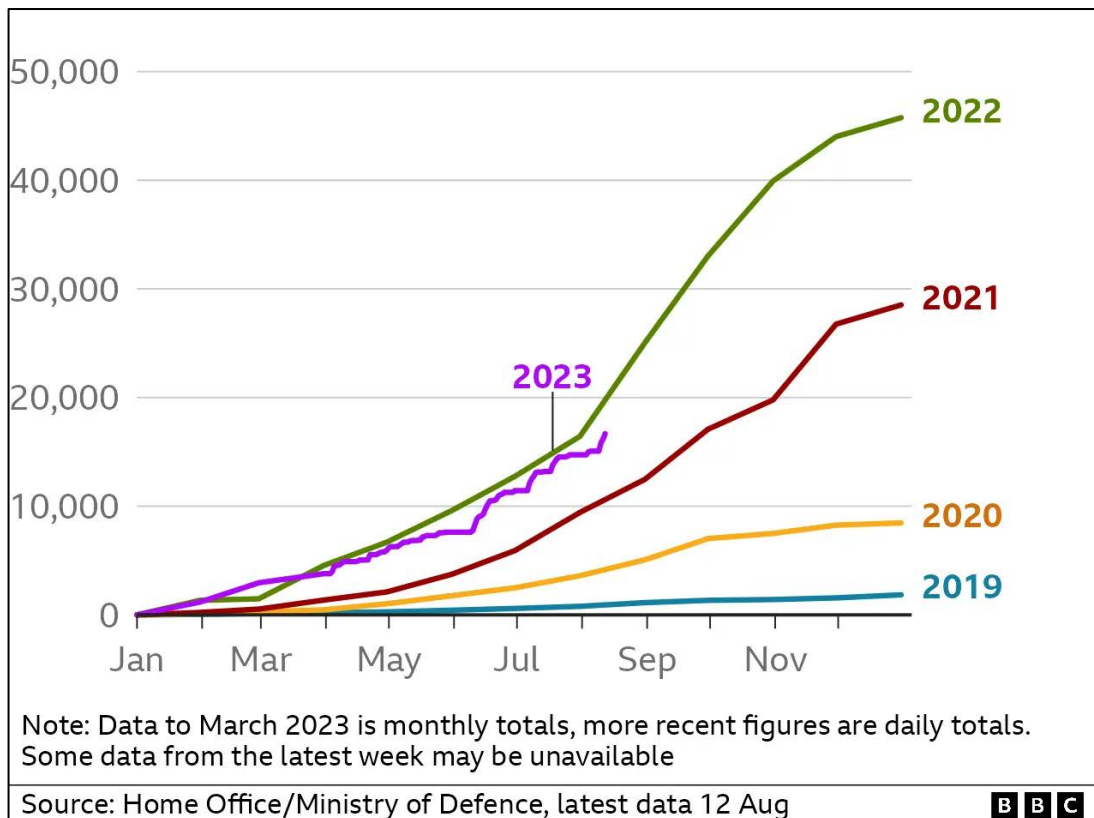


Figure 47. People crossing the English Channel in boats
(Cumulative people detected by year)

Source: "Labour Attacks Government Plan to House Migrants in Tents," BBC News, 28 July 2023, <https://www.bbc.com/news/uk-politics-66335618>

This priority led to highly contentious legislation such as the Illegal Migration Act 2023 and the development of the Rwanda asylum plan, formalised in the 2024 Safety of Rwanda (Asylum and Immigration) Act.³⁹ Throughout this period, public

37 Joanna Clifton-Sprigg et al., 'A Bad Break-up? Assessing the Effects of the 2016 Brexit Referendum on Migration', IZA Institute of Labor Economics, September 2023.

38 Nesrine Malik, 'Vote Brexit, Stop the Boats – the Goalposts on Immigration Keep Moving, and Those Who Oppose It Will Never Be Appeased', Opinion, *The Guardian*, 1 September 2025, <https://www.theguardian.com/commentisfree/2025/sep/01/immigration-nigel-farage-donald-trump>

39 Kate Ritchie, 'The Rwanda Case: Testing the Limits of Judicial Competence', *Judicial Review* 29, no. 2 (2024): 91–106, <https://doi.org/10.1080/10854681.2024.2395153>

concern over immigration remained high, shaping successive governments’ emphasis on stricter border control, deportation measures (see table below), and legal reforms.

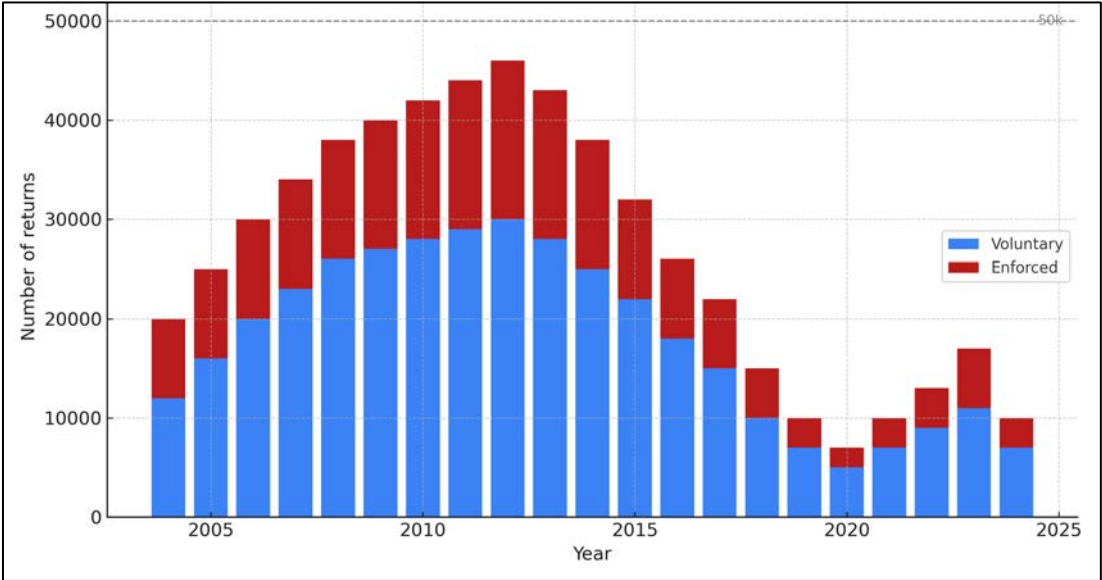


Figure 48. Number of Returns in the UK by Calendar Year

Note: 2024 figures are from January to March only. Voluntary Returns includes those assisted by the Home Office and those arranged independently.

Source: Jennifer McKiernan and Kate Whannel, “Ministers Pledge to Return More Illegal Migrants,” *BBC News*, 21 August 2024, <https://www.bbc.com/news/articles/c5y87yp75ego>

The Labour Government (2024-Present)

Between 2024 and 2025, following its general election victory, the Labour government under Prime Minister Keir Starmer implemented a comprehensive overhaul of UK immigration policy, combining a shift from the previous government’s approach with a continuation of certain restrictive measures. Central to this strategy was the cancellation of the Rwanda asylum scheme and a renewed focus on processing the existing asylum backlog. The administration introduced a range of policies aimed at reducing net migration, enhancing border security, and promoting integration. Key measures included stricter visa requirements, such as higher salary thresholds for Skilled Worker visas, limitations on family reunification, closing the overseas recruitment route for social care workers, reducing the length of the Graduate visa, and extending the qualifying period for indefinite leave to remain from five to ten years. The government also proposed “earned citizenship” based on societal contributions, reflecting a shift toward a more controlled, merit-based immigration system.

To strengthen border enforcement, Labour established the Border Security

Command, formalised a new UK–France “One In, One Out” agreement for Channel migrants, and negotiated a returns agreement with France to tackle illegal crossings.⁴⁰ The introduction of the digital BritCard system to verify the right to work, alongside the suspension of automatic refugee family reunification, sparked public debate over privacy, human rights, and integration. These reforms, collectively articulated in the 2025 “Restoring Control Over the Immigration System” White Paper and the Border Security, Asylum and Immigration Bill, marked a significant recalibration of legal migration pathways, emphasising both societal contribution and greater state control over national borders.⁴¹

Across both countries the key insight is continuity: post-2001 developments did not rupture but accelerated earlier trends. Securitisation, deterrence, and punitive governance were already embedded.

Stepping Back: Synthesising the Thesis

Looking across the analysis, six dimensions stand out: historical trajectories, legal architectures, securitisation discourses, infrastructure building, deterrence logics, and judicial responses. Together, these dimensions reveal a narrative of transformation: detention evolved from marginal practice to entrenched institution. The overarching insight is one of convergence of logics but divergence of institutionalisation. Both States normalised detention through securitisation and deterrence, yet they did so via different architectures. Detention is revealed as a political project, a technology of governance, and a constitutive element of the modern carceral state.

A State of Exception by Design

Between 1980 and 2001, immigration detention in the United States and the United Kingdom was transformed from a marginal administrative measure into a carceral archipelago entrenched at the core of migration governance. This transformation was neither inevitable nor accidental, but rather the outcome of deliberate political projects that mobilised discourses of securitisation, deterrence, and punitive governance to construct enduring states of exception by design. By tracing this history comparatively, this study demonstrates that immigration detention is not a policy aberration but a core institution of liberal democracy in its neoliberal, securitised form, built not despite liberal commitments but through them, as States sought to reconfigure the boundaries of citizenship, rights, and belonging. The comparative political history developed here thus underscores the necessity of

40 Kathryn Armstrong, ‘First Arrivals in UK under “one in One out” Deal’, *BBC News*, 24 September 2025, <https://www.bbc.com/news/articles/cwywv34w00ro>

41 Home Office, Restoring Control over the Immigration System, CP 1326 (2025), *GOV.UK* <https://www.gov.uk/government/publications/restoring-control-over-the-immigration-system-white-paper>

understanding detention as a central technology of governance within the evolving carceral state. Despite its entrenchment, the expansion of immigration detention in both countries since the 1980s shows few signs of abating, even though it at times targets non-citizens who have committed no criminal offence and often results in deportation, family separation, and significant psychological and financial harm.⁴² Moreover, detention fails to achieve its stated aims: as Alice Edwards observes, “no empirical evidence is available to give credence to the assumption that the threat of being detained deters irregular migration, or more specifically, discourages persons from seeking asylum.”⁴³

42 Kalina M. Brabeck et al., ‘Immigrants Facing Detention and Deportation: Psychosocial and Mental Health Issues, Assessment, and Intervention for Individuals and Families’, in *The New Deportations Delirium: Interdisciplinary Responses*, ed. Dan Kanstroom and M. Brinton Lykes, Citizenship and Migration in the Americas (New York University Press, 2015), 192–93.

43 Alice Edwards, Back to Basics: The Right to Liberty and Security of Person and ‘Alternatives to Detention’ of Refugees, Asylum Seekers, Stateless Persons and Other Migrants, PPLA/2011/01.Rev.1, Legal and Protection Policy Research Series (The UN Refugee Agency, 2011).

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Appendices

Appendix 1. Proposition 187 in California

In the 1990s, a nation-wide recession hit the U.S. and to a large extent, doomed George H. W. Bush's 1992 campaign. In this context, immigration grew as a political issue in a number of states, notably New York, California, Florida, Illinois and Texas who focused primarily on illegal immigration. It was seen as a less volatile political issue. They argued that their concerns were budgetary, rather than political or racial. Their main frustrations were with the costs that the states were incurring despite the fact that immigration was a federal issue. Florida took the lead in challenging the federal government. The state filed a lawsuit to recover costs associated with illegal immigration. In March 1994, the Executive Office of the Governor released a report on the issue: 'The Unfair Burden: Immigration's Impact on Florida'. The report highlighted the fact that in 1993, Florida spent approximately \$2.5 billion on services for immigrants, spent approximately \$884 million of that was on illegal immigrants.¹ It also showed that the state incurred \$44 million in criminal justice costs related to immigrants, including over \$52 million in unreimbursed costs to incarcerate Mariel Cubans since 1988.² The report further stated that incarcerated immigrants exacerbated prison overcrowding, resulting in early releases of violent offenders leading to rises in crime rates. Florida Governor Lawton Chiles argued that although immigration falls under federal jurisdiction, inadequate federal oversight had imposed substantial financial costs on the state's taxpayers.³

Florida did not stand alone, other states quickly followed in its footsteps, preparing similar lawsuits to seek federal reimbursement for expenses related to immigration. In Texas, officials provided justification for the filing of their suit against the Federal government:

[the goal is to] correct a glaring budget imbalance under which many illegal immigrants paid taxes that were collected by the Federal Government while the state and local governments were left with the financial obligation for providing services ranging from emergency medical care to public education.⁴

Before the lawsuits were filed, President Clinton was asked about the possibility of some states suing the government. He acknowledged that the federal government should pay more but added that "under my administration we are paying more than ever before."⁵

Frustrations with immigration continued to grow also in California in a context of economic difficulties in the state. The recession hit the Golden State particularly hard: unemployment rose from around 5% in 1990 to peak at approximately 9.8% in

¹ *The New York Times*, 'Florida Says Illegal Immigrants Cost \$884 Million in Services'.

² *Ibid.*

³ *Ibid.*

⁴ Verhovek, 'Texas Plans to Sue U.S. Over Illegal Alien Costs'.

⁵ Clinton, 'Exchange With Reporters in Miami, Florida'.

1993, the state lost about 750,000 jobs between 1990-1993, defence spending cuts following the end of the Cold War resulted in approximately 200,000 aerospace and defence-related job losses, and housing prices fell by 10-20% in many California markets during the early 1990s. Another consequence of the recession was that state tax revenues declined substantially, creating severe budget shortfalls. This in turn led the state to look at where it could reduce expenses and improve efficiency. One issue that quickly came to the fore was the cost of immigration, both legal and illegal. California had absorbed 35 percent of all the legal foreign immigrants to the United States from 1980 to 1990.⁶ In November 1991, a report by California Governor Pete Wilson's administration claimed that immigrants would contribute a \$20-billion budget gap in California within a decade.⁷

In August 1993 Governor Wilson sent a letter to President Clinton.⁸ In the letter he commended some of the president's actions on immigration but pushed him to go further. He asked that the federal government move to remove "incentives" for immigrants:⁹

Why does the U.S. government reward illegal immigrants who successfully violate the law and manage to have a child born on U.S. soil? Rather than penalizing it, we reward their illegal act: we pay for delivery and confer U.S. citizenship upon the baby.

Why does U.S. law reward illegal immigrants by requiring the states to provide and pay for the exploding costs of their health care, education, and other benefits?

Why should state taxpayers have to pay the costs of prison for illegal immigrant felons when it is the federal government that failed to prevent their illegal entry?

The Governor stated that two thirds of all the babies born in Los Angeles public hospitals were born to illegal immigrant parents, that the state paid over a billion dollars per year to educate illegal immigrants, over 3/4 of a billion dollars per year for emergency health care of illegal immigrants and half a billion dollars per year to incarcerate illegal immigrants, who he said could "fill 8 state prisons to design capacity."¹⁰

Wilson also argued that budget shortfalls would lead to cuts for social programs while significant sums were being spent on incarcerating immigrants: "State tax dollars are cut from our needy elderly, blind and disabled programs while we are

⁶ Robert Reinhold, 'In California, New Talk Of Limits on Immigrants', *The New York Times*, 3 December 1991, sec. U.S., <https://www.nytimes.com/1991/12/03/us/in-california-new-talk-of-limits-on-immigrants.html>

⁷ *Ibid.*

⁸ National Security Council, Speechwriting Office, Robert Boorstin, 'Immigration - [Governor Pete] Wilson Proposal', August 9, 1993. 51, 2006-0460-F, Box 5, William J. Clinton Presidential Library, accessed 6 April 2025, <https://clinton.presidentiallibraries.us/items/show/10074>.

⁹ National Security Council, Speechwriting Office, Robert Boorstin, 'Immigration - [Governor Pete] Wilson Proposal', 51.

¹⁰ *Ibid.*

compelled to imprison growing numbers of illegal immigrants at a yearly cost of \$20,000 per inmate.”¹¹ He concluded his 5-page letter telling the president that the only option off the table was inaction:

How you do what is required to stem illegal immigration is, of course, your decision. The only option you do not have, Mr. President, is to ignore and fail to deal with massive over-land illegal immigration. The federal government must gain control of our borders and must prevent massive illegal immigration. And the federal government must, in the interval until you succeed, reimburse state taxpayers for the costs of federal failure.¹²

The recession coincided with relatively high levels of immigration to California, particularly from Mexico (see table below).¹³

Table 1
Legal Immigrants to the US and California, 1984–1994

Year	US	California	CA/US (%)
1984	543,903	140,289	25.8
1985	570,009	155,403	27.3
1986	601,708	168,790	28.1
1987	601,516	161,164	26.8
1988	643,025	188,696	29.3
1989	612,110	180,930	29.6
1990	656,111	186,225	28.4
1991	704,005	194,317	27.6
1992	810,635	238,281	29.4
1993	880,014	247,253	28.1
1994	798,394	205,872	25.8
Total	7,421,430	2,067,220	27.9

Economic hardship led to increased tensions over immigration, as several key political figures and organizations blamed immigrants for taking jobs, being a source of crime and straining public services during a time of economic contraction. State Senator Richard Mountjoy, who co-authored Proposition 187 frequently characterized undocumented immigrants as draining California’s resources. Member of the U.S. House of Representatives from California Dana Rohrabacher regularly made statements linking immigration to crime and economic burden. In January 1994, he declared that

“I want the people of California to understand that hundreds of millions of dollars that should be going to them as citizens and legal residents are instead going to illegal aliens, and it’s absolutely outrageous (...) Once

¹¹ Robert Reinhold, ‘In California, New Talk Of Limits on Immigrants’, *The New York Times*, 3 December 1991, sec. U.S., <https://www.nytimes.com/1991/12/03/us/in-california-new-talk-of-limits-on-immigrants.html>.

¹² National Security Council, Speechwriting Office, Robert Boorstin, ‘Immigration - [Governor Pete] Wilson Proposal’, 51.

¹³ *Legal Immigration to California, 1984-1994: A Summary* (Department of Finance, 1997).

people realize that there is free money available, the line will be never-ending and will reach all the way to the border”¹⁴

The following month he criticized the fact that immigrants were able to take advantage of benefits and public services:

I’ve been on this issue for three years now, and my approach has always been the same--if we’re going to get control of this flood of illegal immigration, we’ve got to eliminate the benefit package that serves as their main attraction for coming here,”¹⁵

The frustrations culminated with Proposition 187 in 1994. A grassroots campaign pushed for an anti-illegal immigration ballot measure to be added onto the ballot for the November elections.¹⁶ Supporters gathered enough signatures, and Proposition 187 was added to the ballot; it was known as the ‘Save Our State’ initiative. Its official title and summary were worded as following:¹⁷

ILLEGAL ALIENS. INELIGIBILITY FOR PUBLIC SERVICES.
VERIFICATION AND REPORTING. INITIATIVE STATUTE.

- Makes illegal aliens ineligible for public social services, public health care services (unless emergency under federal law), and public school education at elementary, secondary, and post-secondary levels.
- Requires various state and local agencies to report persons who are suspected illegal aliens to the California Attorney General and the United States Immigration and Naturalization Service. Mandates California Attorney General to transmit reports to Immigration and Naturalization Service and maintain records of such reports.
- Makes it a felony to manufacture, distribute, sell or use false citizenship or residence documents.

Proposition 187 aimed to deny public education, healthcare, and social benefits to undocumented immigrants and their children.¹⁸ It also called for certain state and local agencies, including teachers, healthcare professionals, welfare workers, law enforcement and more to report “persons who are suspected illegal aliens to the

¹⁴ Rene Lynch, ‘Rohrabacher Proposes Legislation to Deny Federal Quake Relief to Illegal Immigrants’, California, *Los Angeles Times*, 23 January 1994, <https://www.latimes.com/archives/la-xpm-1994-01-23-me-14685-story.html>.

¹⁵ Eric Lichtblau, ‘Rohrabacher Has New Ploy : Government: Congressman to Step up Drive against Illegal Immigration by Asking Congress to Cut off Certain Types of Aid to Undocumented Schoolchildren.’, Politics, *Los Angeles Times*, 25 February 1994, <https://www.latimes.com/archives/la-xpm-1994-02-25-me-27122-story.html>.

¹⁶ A ballot measure is a According to Ballotpedia.org: “In the United States, a ballot measure is a law, issue, or question that appears on a statewide or local ballot for voters of that jurisdiction to decide. Most ballot measures are placed on the ballot through citizen initiatives or legislative processes. Others are placed on the ballot automatically, by a special commission, or by a state constitutional convention.”

¹⁷ *Voter Information Guide for 1994, General Election*, California Ballot Propositions and Ballot Initiatives (1994), 50.

¹⁸ Margolis, Jeffrey R. “Closing the Doors to the Land of Opportunity: The Constitutional Controversy Surrounding Proposition 187.” *The University of Miami Inter-American Law Review* 26, no. 2 (1994): 363-401. <http://www.jstor.org/stable/40176355>

California Attorney General and the United States Immigration and Naturalization Service.”¹⁹ A number of political organizations were involved in the fight for Proposition 187. Save Our State (SOS), the grassroots organization behind Proposition 187, framed immigrants as a fiscal burden on California taxpayers. FAIR, the Federation for American Immigration Reform helped local activists gather signatures and provided strategic assistance in getting the initiative on the ballot. While the California Coalition for Immigration Reform, led by Barbara Coe used particularly harsh rhetoric about immigrants and social decline. On their website at the time, their ‘Credo’ was as follows:

Liberals, self-serving politicians and cheap labor advocates have made a mockery of these laws. They have not only allowed MILLIONS of ILLEGAL ALIENS to jeopardize our very way of life, but defend their ‘right’ to do so! Statistics repeatedly prove that ILLEGAL ALIENS, first committing a criminal act by violating our borders and then bringing their values and culture to our midst, are major contributors to our mounting financial burdens as well as moral and social decay.²⁰

In addition, the state Republican party was one of Proposition 187’s biggest financial supporters.

The ballot measure was a direct consequence of the recession in the early 1990s and California’s economic struggles. It faced heavy opposition as well as significant support. California’s incumbent Republican Governor, Pete Wilson campaigned on the issue for his re-election and was one of its primary supporters. In a 1994 article on California’s Proposition 187 in the University of Miami Inter-American Law Review, lawyer Jeffrey Margolis concurred with Governor Wilson’s view of the situation, stating that:

The U.S. is being overburdened by wave after wave of illegal immigrants. The country does not have the social or economic capacity to absorb so many newcomers. Illegal immigrants to the U.S. use states’ school systems, medical services, and other public benefits. As a result of this overuse, illegal aliens adversely affect and infringe upon benefits that rightfully belong to U.S. citizens. By entering into the U.S., illegal immigrants are breaking the law. They should not be rewarded for this wrongdoing. While many illegal immigrants are fleeing deplorable social and economic conditions, they do not have an inalienable right to cross the U.S. border.²¹

Governor Pete Wilson, perhaps the most prominent figure who championed this narrative, debuted his “They Keep Coming” ad on May 13, 1994. The ad faced widespread criticism for presenting shadowy footage of undocumented immigrants crossing the San Ysidro border checkpoint on foot. Polls from 12 months before

¹⁹ *Voter Information Guide for 1994, General Election*, 50.

²⁰ ‘Barbara Coe’, Southern Poverty Law Center, accessed 7 April 2025, <https://www.splcenter.org/resources/extremist-files/barbara-coe/>

²¹ Jeffrey R. Margolis, ‘Closing the Doors to the Land of Opportunity: The Constitutional Controversy Surrounding Proposition 187’, *The University of Miami Inter-American Law Review* 26, no. 2 (1994): 393–94.

showed that the California Governor trailed prospective Democratic challenger Kathleen Brown by 23 points. The immigration issue was seen as a way back into the California Governor's race. At a news conference in L.A., he referenced floods that devastated the Midwest that year before saying "California is being flooded as well. Californians are being overwhelmed by a flood of illegal immigration."²²

Peter Nunez, a former United States Attorney for the Southern District of California, who was involved in the campaign to promote Prop 187 encapsulated the deterrence goal of the ballot measure clearly:

The idea was let's make California an unfriendly place for people who are here illegally, with the hope that no more would come and that those that were here would leave.²³

On September 17, 1994, at the California GOP convention in San Diego, Pete Wilson officially endorsed Proposition 187. He addressed the crowd, stating, Proposition 187, the Save Our State initiative, is the two-by-four we need to finally force Washington to accept its responsibility for illegal immigration."²⁴

Several groups actively opposed proposition 187. Latinos and immigrant rights organisations staged protests and marches, most notably a 70,000-person demonstration in Los Angeles on October 16, 1994. However, the waving of Mexican flags by many attendees provoked a backlash from both liberals and conservatives.²⁵ Other groups including religious leaders, labour unions (including the AFL-CIO), and civil rights organizations like the Mexican American Legal Defense and Education Fund (MALDEF), the ACLU, and the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) all opposed measure and a number of them later filed legal challenges. It was also opposed by medical associations on grounds it would create risks to public health and educational organisations and teachers' unions protested the measure due to the negative impact it would have on students.

Proposition 187 ignited a heated debate on immigration enforcement and its potential for systemic discrimination. The absence of clear, objective guidelines for identifying undocumented individuals raised serious concerns about racial profiling and unequal treatment. Critics argued that the proposition's ambiguous language would inevitably lead to discriminatory practices. Without precise, legally defensible criteria for determining an individual's immigration status, law enforcement and public service providers would likely rely on subjective and prejudiced indicators of perceived foreignness. This meant that individuals with specific physical

²² 'Prop. 187 Timeline: The Rise and Fall of California's Anti-Immigrant Law', California, *Los Angeles Times*, 29 October 2019, <https://www.latimes.com/california/story/2019-10-06/proposition-187-timeline>

²³ 'Transcript: How Prop. 187 Transformed the Immigration Debate and California Politics', *Retro Report*, 3 December 2021, <http://retroreport.org/transcript/transcript-how-prop-187-transformed-the-immigration-debate-and-california-politics/>

²⁴ *Los Angeles Times*, 'Prop. 187 Timeline'.

²⁵ 'March Against Proposition 187', Politics, *Los Angeles Times*, 25 October 1994, <https://www.latimes.com/archives/la-xpm-1994-10-25-me-54333-story.html>

characteristics, particularly those of Hispanic or Latino descent, would be disproportionately subjected to scrutiny and potential harassment. However, this was part of the creators' objective of Proposition 187: to instill fear that would deter people from entering and prevent further immigration.

At a City Hall rally in Los Angeles four days before the November 1994 midterms, President Clinton criticized the initiative claiming that it was "not the answer" to the issue of illegal immigration in the state.²⁶ Clinton acknowledged that the Golden State had unfairly borne the burden of the cost of illegal immigration and emphasized the need for the federal government to take action. However, he also insisted that his administration had increased spending on the Border Patrol and provided aid to California to offset some of the costs associated with immigration.²⁷ Proposition 187 was, according to the President, an attack on children, by "denying health coverage to those in the country illegally and turning the "teachers into police officers."²⁸ Clinton's Attorney General Janet Reno echoed those comments saying "it doesn't make sense to turn school teachers and nurses into border patrol agents, it doesn't make sense to kick kids out of school or not to give them immunizations."²⁹ Reno insisted on the fact that the Justice Department had increased control of illegal immigration: "we have developed over these last 18 months a comprehensive effort along the border."³⁰ The Clinton administration had pledged early in October to stop illegal immigration across the Mexican border. At that time, Deputy Attorney General Jamie Gorelick announced that new fences, lights, sensors, night-vision scopes, and additional Border Patrol agents were being deployed along the 2,000-mile border with Mexico.³¹

Opponents were unsuccessful in their attempts to dissuade voters from supporting the initiative as it passed 59% to 41%. More than 5 million Californians voted in favour of Proposition 187 (see table below).³² The people of California seized the opportunity to express their dissatisfaction with immigration policies, particularly those related to illegal immigration. This dissatisfaction also helped Wilson to re-election victory and put the issue of illegal immigration back in the headlines.

²⁶ *Los Angeles Times*, 'Prop. 187 Timeline'.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Roberto Suro and Pierre Thomas, 'Reno Criticizes California Immigration Measure as Polls Tighten', *The Washington Post*, 28 October 1994, <https://www.washingtonpost.com/archive/politics/1994/10/28/reno-criticizes-california-immigration-measure-as-polls-tighten/3b3a118d-2349-40d7-8ed9-3bc347f95517/>

³⁰ Domestic Policy Council, Bruce Reed, Subject Files, 'Immigration - Proposition 187', 27 October 1994, 1, Box 115 - White House Staff and Office Files, William J. Clinton Presidential Library.

³¹ Domestic Policy Council, Bruce Reed, Subject Files, 'Immigration - Proposition 187', 1.

³² Margolis, Jeffrey R. "Closing the Doors to the Land of Opportunity: The Constitutional Controversy Surrounding Proposition 187." *The University of Miami Inter-American Law Review* 26, no. 2 (1994): 363-401. <https://www.jstor.org/stable/40176355>

California Proposition 187		
Result	Votes	Percentage
Yes	5,063,537	58.93%
No	3,529,432	41.07%

The day after the election, a number of lawsuits were filed in an attempt to stop Proposition 187 from going into effect. The claim was that the proposition violated the U.S. Constitution (notably *Plyler v. Doe* in 1982³³). On November 17th, a federal district judge in Los Angeles Judge Matthew Byrne, Jr. issued a temporary restraining order that prevented the implementation of Proposition 187 until a legal review could be executed.³⁴ Ultimately, federal judge Mariana R. Pfaelzer imposed a temporary injunction in November 1995³⁵, and in a final ruling on the issue in March 1998 she declared it ‘unconstitutional’. In her ruling she argued that that Sections 1, 4, 5, 6, 7, 8 and 9 of Proposition 187 “are declared to be in violation of the Supremacy Clause, preempted by federal law, and of no force or effect.”³⁶ Between 1994 and 1998 important changes to welfare had taken place at the federal level, notably with the passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996. PRWORA is often referred to as “welfare reform,” but contained significant immigration provisions.

Despite being largely struck down by the courts, Proposition 187 had lasting effects. It propelled immigration to the forefront of the agenda. Proposition 187 was present, in essence, in Clinton’s State of the Union in 1995 just a few weeks after the November midterm elections.

³³ In *Plyler v. Doe* SCOTUS decided that a state cannot prevent children of undocumented immigrants from attending public school unless a substantial state interest is involved.

³⁴ Paul Feldman and James Rainey, ‘Parts of Prop. 187 Blocked by Judge: Immigration: Temporary Order Targets Medical, Educational and Social Services. Jurist Says Measure May Conflict with Federal Laws and U.S. Constitution.’, World & Nation, *Los Angeles Times*, 17 November 1994, <https://www.latimes.com/archives/la-xpm-1994-11-17-mn-63833-story.html>

³⁵ Patrick J. McDonnell, ‘Prop. 187 Found Unconstitutional by Federal Judge’, *Los Angeles Times*, 15 November 1997, <https://www.latimes.com/archives/la-xpm-1997-nov-15-mn-54053-story.html>

³⁶ ‘Federal Judge Issues Final Ruling on Prop. 187 Measure Unconstitutional’, ACLU of Southern California, 18 March 1998, <https://www.aclusocal.org/en/news/federal-judge-issues-final-ruling-prop-187-measure-unconstitutional>

Appendix 2. Freedom for Immigrants Maps of U.S. Immigration Detention Centers 1980-2016³⁷

1980



1984



³⁷ Freedom for Immigrants, Immigration Detention Map, accessed October 12, 2025, <https://www.freedomforimmigrants.org/map>

1988



1992



1996



2000



2004



2008



2012



2016



Appendix 3. Snapshots of the Number of Asylum Applicants Detained in the UK on Specific Dates

The following dates and number of asylum applicants detained are provided:

- 3 April 1992: 172³⁸
- 3 April 1993: 230³⁹
- 21 May 1994: 616⁴⁰
- 18 November 1994: 654⁴¹
- 13 January 1995: 572
- 10 May 1995: 646
- 3 July 1995: 690
- 28 November 1995: 776
- 31 January 1996: 733
- 30 April 1996: 725
- 4 September 1996: 809
- 5 November 1996: 808
- 31 January 1997: 768
- 27 March 1997: 777
- 31 May 1997: 733
- 31 July 1997: 772
- 28 November 1997: 787
- 31 January 1998: 817
- 31 March 1998: 765
- 29 May 1998: 758
- 28 July 1998: 845
- 29 September 1998: 759
- 30 November 1998: 860
- 29 January 1999: 766
- 30 December 1998/4 January 1999: 741
- No data readily available for 1999 or 2000⁴²
- 29 December 2001: 1,280

³⁸ Only people detained for more than one month appear in the statistics

³⁹ Only people detained for more than one month appear in the statistics

⁴⁰ According to a note page 11 in the 1993 statistics, the increase is most likely to be caused by the appeals process introduced with the 1993 Asylum and Immigration Appeals Act which has added to the time asylum applicants now spend in detention.

⁴¹ According to a note page 13 of the 1994 statistics, the majority of those detained for November 1994, January 1995, and May 1995 have had their application or asylum refused and were awaiting the outcome of appeal or removal.

⁴² This information most likely exists, but the author has unfortunately been unable to track it down.

Appendix 4. Information on the Nationalities of Detainees Held at Campsfield House on 15 March 1994

On Friday 18 March 1994, Charles Waddle, the Parliamentary Under Secretary of State at the Home Office provided the following information on the nationalities of detainees held at Campsfield House on 15 March 1994.⁴³

Nationality	Number
Algeria	3
Angola	4
Bangladesh	6
Cameroon	1
China	2
Colombia	3
Cote d'Ivoire	4
Cyprus	1
Ethiopia	7
Ghana	28
India	27
Jamaica	1
Kenya	8
Liberia	4
Malawi	1
Niger	1
Nigeria	28
Pakistan	2
Peru	1

⁴³ Campsfield House Detention Centre
Volume 239: debated on Friday 18 March 1994 <https://hansard.parliament.uk/Commons/1994-03-18/debates/cbb41136-f10b-4c59-89f9-d12cfa517130/CampsfieldHouseDetentionCentre>

Philippines	2
Poland	1
Romania	5
Sierra Leone	3
Somalia	3
Sri Lanka	8
Sudan	1
Togo	1
Turkey	6
Uganda	4
Zaire	8
Nationality doubtful	5
Total	179

	Number
Overall length of detention (including any detention elsewhere)	
Less than one month	29
One to six months	139
More than six months	11
Total	179

Appendix 5. American Preferences for Immigration to the USA⁴⁴

Thinking now about immigrants -- that is, people who come from other countries to live here in the United States. In your view, should immigration be kept at its present level, increased or decreased?			
Date	% Increased	% Present level	% Decreased
Jun 24 1965	7	39	33
Mar 25 1977	7	37	42
Jun 19 1986	7	35	49
Jul 9 1993	6	27	65
Jun 5 1995	7	24	65
Jul 7 1995	7	27	62
Feb 26 1999	10	41	44
Sep 11 2000	13	41	38
Mar 26 2001	10	41	43
Jun 11 2001	14	42	41
Oct 19 2001	8	30	58
Jun 3 2002	12	36	49
Sep 2 2002	17	26	54
Jun 12 2003	13	37	47
Jun 9 2004	14	33	49
Jun 6 2005	16	34	46
Dec 9 2005	15	31	51
Apr 7 2006	15	35	47
Jun 8 2006	17	42	39
Jun 4 2007	16	35	45
Jun 5 2008	18	39	39
Jul 10 2009	14	32	50
Jul 8 2010	17	34	45
Jun 9 2011	18	35	43
Jun 7 2012	21	42	35
Jun 13 2013	23	40	35
Feb 6 2014	27	35	36
Jun 5 2014	22	33	41

⁴⁴ Jeffrey M. Jones, "Sharply More Americans Want to Curb Immigration to U.S.," *Gallup*, July 12, 2024, <https://news.gallup.com/poll/647123/sharply-americans-curb-immigration.aspx>

Jun 15 2015	25	40	34
Jun 7 2016	21	38	38
Jun 7 2017	24	38	35
Jun 1 2018	28	39	29
Jan 21 2019	30	37	31
Jun 3 2019	27	37	35
May 28 2020	34	36	28
Jun 1 2021	33	35	31
Jul 5 2022	27	31	38
Jun 1 2023	26	31	41
Jun 1 2024	16	25	55

Appendix 6. Percent Supporting Decreases/Increases in Legal Immigration, 1992, 1994, 1996⁴⁵

Group	1992 Decrease (%)	1992 Increase (%)	1994 Decrease (%)	1994 Increase (%)	1996 Decrease (%)	1996 Increase (%)
Total	48.8	8.1	65.3	5.3	57.6	5.3
Republican	52.1	6	67.4	4.7	60.1	4.6
Independent	48.9	7.7	64.4	5.2	60.5	5
Democrat	45.9	9.9	64.4	6.2	55.1	5.9
Bush voter 1992	49.8	5.2	62.7	6.3	63	3.7
Clinton voter 1992	43.2	11.9	61.5	5.2	55.4	5.8
White	50.4	7.1	66.5	5.2	58.6	4.9
Black	41.2	13	59.1	7.3	50.9	8
Hispanic	48.5	9.2	58.1	6.6	49.6	9.8
Asian	41.8	12.7	56.8	8.1	33.3	9.5
Less than 8th Grade	52.3	7.8	63.8	2.5	54.8	6.5
College	40.4	11.7	58.2	6.5	45.8	4.8
Post-Graduate	31.9	15	44.4	14.8	40.7	8
Liberal	40.7	13.3	53.5	8.4	53.2	5.5
Moderate	51.1	7.7	70.6	3.5	57.2	7.2
Conservative	51.5	6.8	63.1	6.5	59.9	4.9
Less than \$9,000	42.7	10	56.9	8.8	51.4	8
More than \$50,000	46.8	8.6	60.9	6.6	51.8	5.6
Large city	49.9	10.9	60.3	9.2	54.2	7.3
Rural, farm	52.4	6.3	68.5	4	63	6.5
Labor household	52.6	6.4	65.2	3.8	62	5.3
Male	48.7	7.5	63.9	6.3	56.1	5.8
Female	48.8	8.5	66.5	4.7	58.7	4.8

⁴⁵ James G. Gimpel and James R. Edwards, *The Congressional Politics of Immigration Reform*, 1st ed. (Boston: Allyn and Bacon, 1999), 36.

Economic assessment better	44.9	5.1	64.6	6.8	52.5	6
Economic assessment worse	49.9	8.5	69.4	4.7	65.8	3.8
Catholic	46.2	8	64.8	5.5	56.7	5.5
Jewish	30.3	24.2	47.1	11.8	33.3	22.2

Appendix 7. UK Asylum applications per year (1990-2010)

UK Asylum applications per year (1990-2010):

Year	Total	Year	Total
1990	26,205	2000	80,315 ⁴⁶
1991	44,840	2001	71,365
1992	24,605	2002	84,130
1993	22,370	2003	49,405
1994	32,830	2004	33,960.
1995	43,965	2005	25,710
1996	29,640	2006	23,610
1997	32,500	2007	23,430
1998	46,015	2008	25,930 ⁴⁷
1999	71,160	2009	24,485 ⁴⁸
		2010	17,790 ⁴⁹

⁴⁶ Significant increases from Iran, Iraq and Afghanistan

⁴⁷ 10 May 2011: Column 1102W

<https://publications.parliament.uk/pa/cm201011/cmhansrd/cm110510/text/110510w0002.htm#11051093004830>

⁴⁸ 10 May 2011: Column 1102W

<https://publications.parliament.uk/pa/cm201011/cmhansrd/cm110510/text/110510w0002.htm#11051093004830>

⁴⁹ 10 May 2011: Column 1102W

<https://publications.parliament.uk/pa/cm201011/cmhansrd/cm110510/text/110510w0002.htm#11051093004830>

Appendix 8. Aliens Removed or Returned: Fiscal Years 1979 To 2019 (U.S.)⁵⁰

ALIENS REMOVED OR RETURNED: FISCAL YEARS 1979 TO 2019 (USA)

Year	Removals ¹	Returns ²
1979	26,825	966,137
1980	18,013	719,211
1981	17,379	823,875
1982	15,216	812,572
1983	19,211	931,600
1984	18,696	909,833
1985	23,105	1,041,296
1986	24,592	1,586,320
1987	24,336	1,091,203
1988	25,829	911,790
1989	34,427	830,890
1990	30,039	1,022,533
1991	33,189	1,061,105
1992	43,671	1,105,829
1993	42,542	1,243,410
1994	45,674	1,029,107
1995	50,924	1,313,764
1996	69,680	1,573,428
1997	114,432	1,440,684
1998	174,813	1,570,127
1999	183,114	1,574,863
2000	188,467	1,675,876
2001	189,026	1,349,371
2002	165,168	1,012,116
2003	211,098	945,294
2004	240,665	1,166,576
2005	246,431	1,096,920
2006	280,974	1,043,381
2007	319,382	891,390
2008	359,795	811,263
2009	379,739	582,567
2010	382,449	471,798
2011	390,423	322,047
2012	415,607	231,107
2013	432,228	178,976
2014	405,090	163,843
2015	325,328	129,661
2016 ⁴	331,717	106,458
2017	287,093	100,695
2018	328,716	159,940
2019	359,885	171,445

⁵⁰ U.S. Department of Homeland Security. *Yearbook of Immigration Statistics, 2019*. Table 39. Accessed 19 June 2025. <https://ohss.dhs.gov/topics/immigration/yearbook/2019/table39>

1 Removals are the compulsory and confirmed movement of an inadmissible or deportable alien out of the United States based on an order of removal. An alien who is removed has administrative or criminal consequences placed on subsequent reentry owing to the fact of the removal.

2 Returns are the confirmed movement of an inadmissible or deportable alien out of the United States not based on an order of removal.

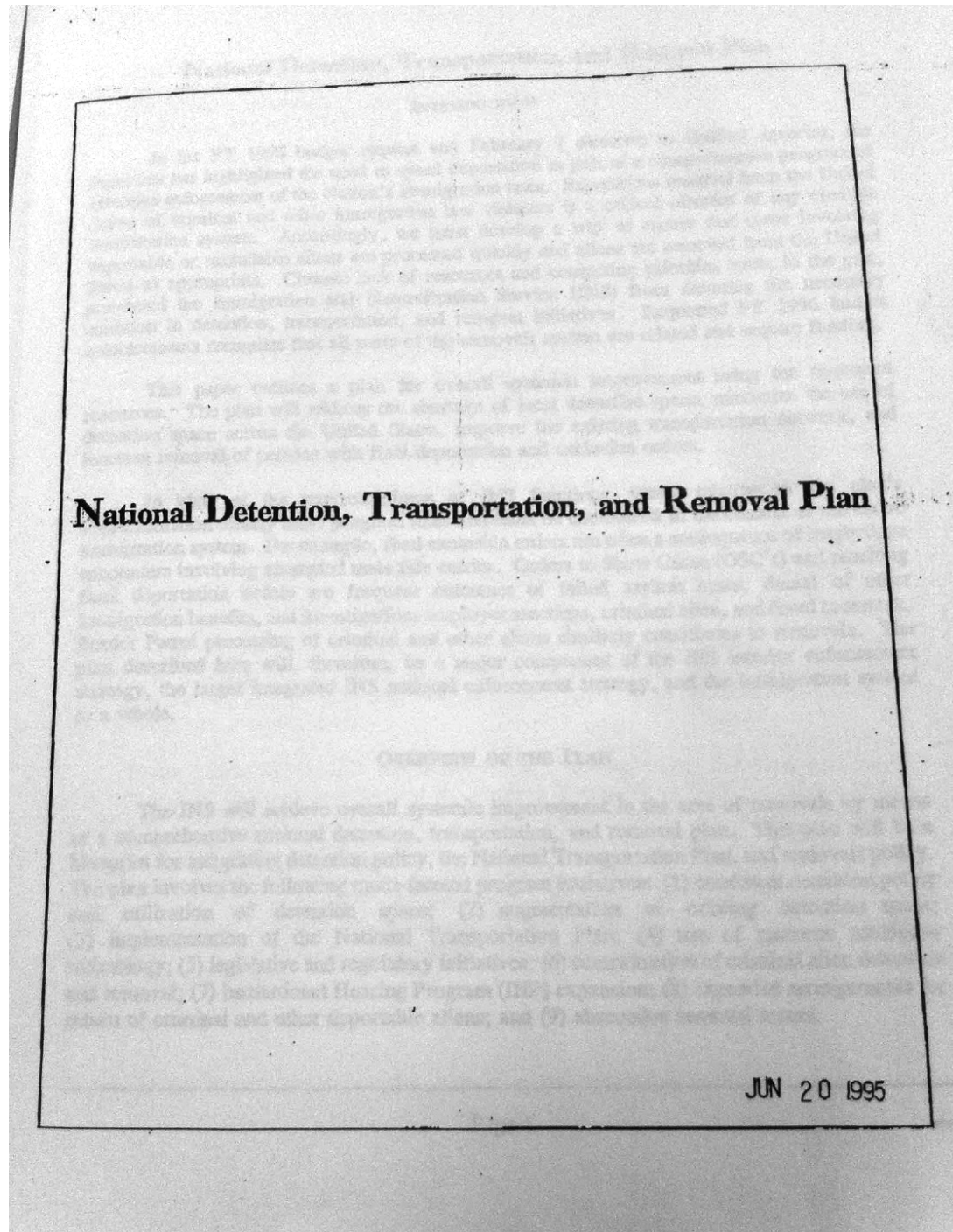
3 Includes the 15 months from July 1, 1975 to September 30, 1976 because the end date of fiscal years was changed from June 30 to September 30.

4 The counting methodology for administrative arrests by ICE ERO was revised to align with ICE ERO reporting for 2016; for earlier years only one administrative arrest could be counted for the same person on the same day.

Source: U.S. Department of Homeland Security.

Appendix 9. National Detention, Transportation, and Removal Plan, June 20, 1995 (U.S.)⁵¹

Clinton Archives (BC6): 2011-1044-F Box 1/10 National Detention, Transportation, and Removal Plan, June 20, 1995, 5-18 p.13



⁵¹ *National Detention, Transportation, and Removal Plan*, 20 June 1995, Box 1/10, Collection 2011-1044-F, Clinton Presidential Library.

National Detention, Transportation, and Removal Plan

INTRODUCTION

In his FY 1996 budget request and February 7 directive to Cabinet agencies, the President has highlighted the need to speed deportation as part of a comprehensive program of effective enforcement of the Nation's immigration laws. Expeditionary removal from the United States of criminal and other immigration law violators is a critical element of any credible immigration system. Accordingly, we must develop a way to ensure that cases involving deportable or excludable aliens are processed quickly and aliens are removed from the United States as appropriate. Chronic lack of resources and competing priorities have, in the past, prevented the Immigration and Naturalization Service (INS) from devoting the necessary attention to detention, transportation, and removal initiatives. Requested FY 1996 budget enhancements recognize that all parts of the removals system are related and require funding.

This paper outlines a plan for overall systemic improvement using the requested resources. The plan will address the shortage of local detention space, maximize the use of detention space across the United States, improve the existing transportation network, and increase removal of persons with final deportation and exclusion orders.

In view of the interrelatedness of INS functions, issues relating to the plan's implementation clearly cross program lines and must be considered in the context of the entire immigration system. For example, final exclusion orders are often a consequence of Inspections encounters involving attempted mala fide entries. Orders to Show Cause (OSC's) and resulting final deportation orders are frequent outcomes of failed asylum cases, denial of other immigration benefits, and Investigations employer sanctions, criminal alien, and fraud casework. Border Patrol processing of criminal and other aliens similarly contributes to removals. The plan described here will, therefore, be a major component of the INS interior enforcement strategy, the larger integrated INS national enforcement strategy, and the immigration system as a whole.

OVERVIEW OF THE PLAN

The INS will achieve overall systemic improvement in the area of removals by means of a comprehensive national detention, transportation, and removal plan. This plan will be a blueprint for integrating detention policy, the National Transportation Plan, and removals policy. The plan involves the following multi-faceted program initiatives: (1) consistent detention policy and utilization of detention space; (2) augmentation of existing detention space; (3) implementation of the National Transportation Plan; (4) use of resource multiplier technology; (5) legislative and regulatory initiatives; (6) centralization of criminal alien detention and removal; (7) Institutional Hearing Program (IHP) expansion; (8) expanded arrangements for return of criminal and other deportable aliens; and (9) abscondee removal teams.

As a result of the program initiatives, the INS will realize significant increases in removals, assuming receipt of all requested FY 1996 budget enhancements. The INS will do this through a three-phase implementation plan providing for successful integration of the various parts of the nine program initiatives.

IMPLEMENTATION SCHEDULE

Under *Phase I*, to be completed during FY 1995 using existing resources, the INS will conduct a pilot removals project at a selected INS district office. Phase I also includes the following: (1) implementing new legislative measures intended to improve the removals system; (2) establishing a new priority order for entry of cases into the National Crime Information Center database (NCIC); (3) proceeding apace with implementation of the National Transportation System Trial Implementation Plan (scheduled for completion by October 1995); (4) enhancing targeted IHP sites to generate a total of 8,250 IHP removals and formulating, in coordination with the Executive Office for Immigration Review (EOIR), operational plans for Federal, state, and local IHP expansion sites to be phased in during all four quarters of FY 1996; (5) completing construction of a new kitchen, dining area, medical unit, and administration building at the El Centro, California, Service Processing Center (SPC) to permit full utilization of this detention facility; and (6) expanding, in concert with the EOIR and incarcerating entities including the Federal Bureau of Prisons (BOP), use of Video Teleconferencing (VTC) in expulsion hearings to four immigration courtrooms and four detention sites.

Phase II, to be completed during the first two quarters of FY 1996, entails full implementation and evaluation of the National Transportation System Trial Implementation Plan as well as evaluation of recently implemented legislative measures. Contingent on receipt of the requested FY 1996 budget enhancements, Phase II includes the following: (1) hiring staff to fill requested new positions by the beginning of the third quarter; (2) acquiring new and replacement vehicles for the current aging fleet to be distributed to strategic transportation hubs beginning in the third quarter; and (3) developing implementation plans for an enhanced NCIC program and for abscondee removal teams.

Under *Phase III*, the INS will complete the following during the third and fourth quarters of FY 1996: (1) implementing the National Transportation Plan including a merger of INS and United States Marshals Service (USMS) prisoner/detainee air transport operations; (2) implementing the enhanced NCIC program and abscondee removal teams; (3) developing the Optimization System, an automated decision support system to maximize detention and transportation resource utilization; (4) improving the infrastructure of INS SPC's so they can operate at full rated capacity; and (5) completing implementation of targeted IHP expansion sites. Accomplishment of all Phase III objectives assumes receipt of FY 1996 resources at the requested enhanced levels.

SUMMARY OF REQUESTED FY 1996 BUDGET ENHANCEMENTS

Requested FY 1996 removal-related budget enhancements are as follows: (1) \$69.1 million for infrastructure and staffing to ensure maximum use of SPC's and available non-INS detention beds; (2) \$3 million for an automated system to maximize detention and transportation resource utilization and permit more meaningful future adjustments in detention policy; (3) \$9.3 million for vehicles; (4) \$10.4 million for administrative deportation implementation; (5) \$42.3 million for staffing and removal at the five targeted state IHP's and the Federal IHP and expansion of the IHP into two more states and targeted local jails; (6) \$11.2 million for abscondee location and removal; (7) \$5.2 million for expanded use of NCIC and related detention and removal; (8) \$9.9 million to support the removal of failed asylum seekers; and (9) \$6.6 million for removal-related employer sanctions and interior repatriation activity.

RESOURCE ALLOCATION

The INS Detention and Deportation Division (HQDDP) will work with INS Field Operations (HQOPS) to develop concepts relating to the cities designated as "zones of deterrence". HQDDP will conduct a resource allocation study for purposes of dividing any resources received as a result of the request for FY 1996 budget enhancements. In so doing, HQDDP will take into consideration workload analysis based on data extracted from the Deportable Alien Control System (DACS). DACS is the INS automated removals-related case tracking system which provides the status and/or disposition of individual cases, as well as statistical and summary data of cases by type, status, and other attributes.

EXPECTED RESULTS

Full implementation of the national detention, transportation, and removal plan assumes receipt of all requested enhancements. As a result of the plan, the INS will use existing and enhanced transportation and detention systems more efficiently. This will increase the agency's ability to detain aliens and effect their removal from the United States.

Emphasis on other priorities has, to date, permitted INS expulsion initiatives only modest success. According to April 5, 1995 INS data, during FY 1994, a total of 22,252 deportations were based on criminal, narcotic, or related to criminal or narcotic activities (a 10% increase over FY 1993). Total deportations were 39,543 (6% higher than in FY 1993), plus 10,811 other enforced departures (exclusions and required departures).

With the successful achievement of initiatives in progress, the INS anticipates significantly increased removals of criminal and other illegal aliens. Contingent upon receipt of FY 1996 budget enhancements, total criminal and non-criminal alien removals will more than double in FY 1996, as compared with FY 1995.

PROGRAM INITIATIVES

Consistent detention policy and utilization of detention space. HQDDP has requested \$3 million in FY 1996 funding to develop the Optimization System, an automated system to enable the INS to maximize the utilization of detention and transportation resources. This system will: (1) provide coordinated booking to select the "optimal" transportation and detention options available for each detainee; (2) maintain an accurate inventory of beds, detention costs, and transportation expenses related to housing detainees at various locations; (3) predict the receipt and discharge of various types of detainees at specific detention facilities; and (4) profile alien detainees and predict the estimated time that the detainees will be held in custody.

In addition to telling the INS the optimal available INS detention sites throughout the United States, this Optimization System will provide decision support recommendations on the best allocations of the existing INS transportation fleet. The system will also furnish capital budgeting recommendations required for long-range planning for future detention sites and fleet additions.

The INS currently has a detention policy and priority system. However, the Optimization System will permit more meaningful adjustments in detention policy in the future. Without such a system and the National Transportation Plan discussed later in this paper, decisions on where to detain an alien are generally made "innitively," using the closest available detention facility.

Augmentation of existing detention space. We must help secure our borders by expelling unlawful entrants and make our country safer from alien criminals through detention and expedited expulsion of aliens, particularly criminals, unlawfully here. Deportation is a major deterrent to unlawful immigration. Detention is a critical step in the deportation process.

Most deportable and excludable aliens who are not in detention abscond. Unless we detain potential absconders, we hinder our ability to expel them. Inadequate detention capacity limits our expulsion potential. Sufficient safe, secure, and humane detention capacity is the key to expeditious expulsion. As of February 1995, the INS had a backlog of roughly 48,000 absconders with final orders of deportation, as well as a comparable number who failed to appear for deportation hearings.

INS detention needs have increased radically due to growth in the criminal alien population, Mariel Cuban criminal detention, and major increases in attempted mala fide entries at airports. Legislative changes such as mandatory INS custody of some aggravated felons after completion of their sentences also has had a major effect. Further, the complexity of the immigration and expulsion processes, as mandated in the statute and regulations, has contributed to an increased average time in detention.

The INS does not have the detention capability to handle the increased workload. This is evidenced by the decrease in the number of INS detainees from about 112,000 in FY 1989 to about 82,000 in FY 1994. Most INS detention space is occupied by criminal aliens.

In April 1993, expansion of the Seattle contract facility was completed, with 50 new beds available. At the El Centro SPC, four 50-bed dormitories plus 18 segregation cells were completed in August 1993. In August 1994, a 300-bed User Fee contract detention facility in Elizabeth, New Jersey, and a joint INS/BOP criminal alien facility for housing 500 INS detainees opened in Eloy, Arizona. In 1994, the following space was completed at the Florence SPC: 155 additional beds; EOIR courtrooms, offices, and judges' chambers; and an INS litigation section.

Of the 33 domestic INS districts, 15 now have an SPC and/or a major INS contract detention facility. INS is implementing an aggressive bedspace capacity expansion plan that will support a meaningful enforcement effort and maintain the correct balance between apprehension and removal. Additional detention beds continue to become available at existing facilities.

Plans for additional space are in progress. The INS requested enhancements in FY 1996 for infrastructure improvements to INS SPC's required to ensure that they can operate at full rated capacity. At the El Centro SPC, a new kitchen, dining area, medical unit, and administration building will be completed in May 1995. The El Paso, Krome, and Port Isabel SPC's require funding in the amount of \$10 million to complete badly needed renovations. Additionally, \$15 million is required for completing construction of new strategically located SPC's in Buffalo and San Francisco.

Increased staffing (200 positions, 100 workyears, and \$6.4 million) to maximize existing SPC and contract facility usage will enable the INS to utilize already existing bedspaces more fully. The INS also asked for the following FY 1996 enhancements: (1) \$15.1 million to permit full utilization of all available bedspaces along the Southwest border (a total increase of 1,010 beds); and (2) \$22.6 million for non-INS detention [\$13.6 million for 1,441 beds and related alien travel and \$9 million for 218 related positions (109 workyears)]. Development of a new 200-bed contract facility in the New York area is in the contracting process.

Implementation of the National Transportation Plan. Legislative changes starting in 1988 created a new class of aliens called aggravated felons and directed the INS to place increased emphasis on their removal. Detention and deportation patterns have shifted from the removal of administrative detainees along the Mexican border to a focus on removal of criminal aliens from various jurisdictions throughout the country.

With these shifting patterns came a dramatic increase in INS detention needs and in the transportation required to move excludable and deportable aliens to sites from which they may be removed from the United States. This geographical dispersion, combined with limited

nationwide detention space and the necessity to transport, escort, and effect removal of illegal aliens, has made development of a national alien transportation plan critical.

Further, as detention expenditures impact enormously on the economics and efficiency of removal initiatives, these costs must be minimized. Detention costs, however, may vary substantially at different locations, ranging, for example, in FY 1993, in the Eastern Region, from a low of approximately \$25 a day to a high of approximately \$100 a day.

National Transportation Plan development began in 1994 when INS Headquarters managers and representatives of all INS regions met to discuss transportation requirements including ground and air transport operations. In August 1994, the Deputy Attorney General directed the consolidation by FY 1996 of all prisoner and detainee air transportation functions performed by the USMS and the INS into a single entity to be managed by the USMS.

Through extensive coordination efforts, the Director, Office of Investigative Agency Policies (DIAP) Aviation Policy Working Group, with the assistance of the USMS and the Federal Bureau of Investigation (FBI), developed a comprehensive merger plan. On February 3, 1995, the Commissioner approved the development of a National Transportation System Trial Implementation Plan. On March 7, 1995, the Attorney General approved the comprehensive plan to merge the INS and USMS prisoner/detainee air transport operations into a new entity called the Justice Prisoner and Alien Transportation System (JPATS).

The schedule for the INS regions to implement the National Transportation System Trial Implementation Plan is as follows:

Eastern Region	-	March 15, 1995
Central Region	-	July 1, 1995
Western Region	-	September/October 1995

The INS is currently developing evaluation criteria to measure the overall effectiveness of the Trial Implementation Plan.

The merger of consolidated INS and USMS resources will begin in the third quarter of FY 1995. Over the next fiscal year, the two agencies will effect the merger and implement JPATS. Benefits will include improved security, increased cost effectiveness, improved customer service, reduced detention costs per alien/detainee, and more efficient use of aircraft.

The National Transportation Plan will permit the INS, USMS, and FBI to utilize air operations resources to move criminal aliens efficiently to locations where detention space is readily available. This initiative will help address the current shortage of detention space and increase the effectiveness of removal efforts by relocating criminal aliens to appropriate facilities and improving the ability to remove individuals with existing deportation orders.

An effective detention and removal network is essential to support an increase in alien removals. New and replacement vehicles to enhance an aging fleet are a crucial element. Funding in the amount of \$9.3 million will enable the INS to acquire the necessary vehicles. These vehicles will be distributed to strategic transportation hubs throughout the nation.

The combined use of INS, USMS, and FBI air transportation resources is an extremely positive development for the INS and represents an impressive example of what may be accomplished through cooperative interagency efforts. The success of the National Transportation Plan depends on effective integration of the regional passenger/van transportation networks and the combined air transport operations of the newly formed JPATS.

Use of resource multiplier technology. Equipment was delivered and installed during the last quarter of FY 1993 and the first quarter of FY 1994 to test VTC in the hearing process. In February 1994, the immigration court in Chicago conducted the first expulsion hearings using VTC while the aliens under proceedings stayed at the BOP facility in Lexington, Kentucky. Monthly VTC hearings were conducted during the remainder of 1994. Approximately 25 hearings were held during the pilot program. The INS evaluated the equipment and concept and found VTC to be beneficial although some changes in equipment will be necessary. VTC will be implemented in FY 1995 in four EOIR courts linked to four detention sites. The courts are identified as those located at Baltimore, Maryland; Oakdale, Louisiana; Big Spring, Texas; and Dallas, Texas.

The INS, in coordination with the EOIR, began a telephonic hearing pilot program in the INS Portland, Oregon, district for shorter-term alien inmates who volunteer for the program. The INS, with EOIR cooperation, will pursue the expansion of the telephonic hearing program.

VTC does not require additional positions; only equipment, communication lines, and maintenance. Using VTC to eliminate the need to take alien inmates to hearings outside detention facilities decreases travel time and expenses and improves security and public safety by reducing inmate transportation. Similarly, telephonic hearings eliminate the need for an immigration judge or immigration court staff to visit the jail site. Use of telephonic hearings has proved to be an extremely cost-effective way to obtain a significant number of final expulsion orders and remove criminal aliens quickly. With the successful achievement of these technological initiatives, the INS anticipates increased removals with a decrease in the average detention time per case.

The INS will pursue additional technological improvements in addition to the Optimization System. These include deployment of INS Enforcement case tracking and biometric identification systems.

Due to enabling legislation contained in the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322), the INS will expand its usage of the NCIC system to locate aliens who fail to appear for deportation. In order to expand the existing NCIC Program, an

additional 68 positions (34 workyears) are needed, at a cost of \$2.8 million. Additionally, \$2.4 million will be required for detention and the removal of 1,800 abscondee. The total cost for this initiative is estimated at \$5.2 million.

Legislative and regulatory initiatives. The INS will complete implementation of newly enacted removals-related legislation including the following: (1) administrative deportation (which eliminates the requirement for a hearing before an immigration judge for an alien convicted of an aggravated felony who is not a lawful permanent resident); (2) criminal penalties for failing to surrender for deportation regardless of the deportation charge; (3) enhanced criminal penalties for reentry without permission after expulsion; and (4) judicial deportation.

Proposed administrative deportation regulations were published March 30, 1995. After the 60-day comment period, the INS will analyze any comments received and, contingent upon Department of Justice (DOJ) approval, publish final regulations. The INS will also initiate proactive quality control measures (policy guidance, a field operations manual, and a formal Servicewide training program).

The administrative deportation initiative, when properly staffed and funded, will simplify the deportation process in a large number of cases and significantly improve the removals system. Funding in the amount of \$3.7 million is being sought to support staffing increases of 92 positions (46 workyears). An additional \$6.7 million for detention and removal of 3,600 aggravated felons is required. The total cost for this initiative is estimated at \$10.4 million.

The INS will continue to pursue statutory and regulatory changes to improve the removals process such as civil penalties against aliens who fail to surrender for deportation or otherwise obstruct their own removal. The INS will also proceed with its ongoing review of a wide variety of other legislative proposals. Finally, the INS will study the feasibility of promulgating regulations to take an alien into custody as soon as an immigration judge issues a final deportation order in which voluntary departure is not included.

Centralization of criminal alien detention and removal. The disturbing increase in the criminal alien population in the United States has led to dramatic changes for the INS. Beginning in 1980, events beyond INS control relating to criminal aliens have profoundly affected the agency.

The 1980 Mariel boatlift brought a major influx of criminal and other Mariel Cubans to the United States with a resulting lengthy detention of Mariel Cuban criminals. Smuggling activities of large organized crime syndicates have radically increased INS detention and expulsion needs. Also, the INS Criminal Alien Program, criminal alien legislation, and institution of cooperative INS/BOP detention facilities for criminal aliens have heavily impacted detention and removal operations.

Criminal alien centralization, in coordination with the EOIR and BOP, is a proactive, practical way to address the critical nature of these changes. Criminal alien centralization is a

program under which aliens are brought into several discrete sites for expulsion processing and removal from the United States.

The INS conducts this program at sites with sufficient detention space and personnel to process cases and to expedite both expulsion hearings and removal. Through centralized resources, the INS and EOIR maximize the number of final orders by making efficient use of the time of immigration judges (who are part of the EOIR). From FY 1989 when the program started through FY 1994, the INS effected a total of 22,021 criminal alien centralization expulsions.

IHP expansion. Sections of the Immigration Reform and Control Act of 1986 and the Anti-Drug Abuse Act of 1988 reflected Congressional intent that expulsion proceedings for criminal aliens be conducted during the aliens' incarceration. The INS and EOIR established the IHP, a program under which criminal alien inmates have expulsion hearings while they serve their sentences. The IHP is a cooperative effort among the INS, EOIR, and various incarcerating entities to expedite the hearing process. The program was implemented in a number of state incarceration systems and within the BOP system. However, since the IHP was established within existing resources, the program has not yet reached its full potential to improve the efficiency of criminal alien removals.

Significant improvements have been made in the IHP over the past two years. The INS requested and received resources in FY 1995 to begin an expansion program for the IHP's in five targeted states (California, Florida, Illinois, New York, and Texas) and in the Federal IHP. Additional resources are requested in the President's FY 1996 Budget.

The enhanced New York State IHP began operation in April 1994, with the number of IHP hearing sites reduced from seven to three. During the first nine months of operation, the EOIR conducted 3,332 hearings, as compared with 1,759 hearings held during all of FY 1993. These hearings resulted in 769 final orders of deportation, as compared with 399 orders issued during FY 1993.

In the Federal IHP, three new sites have been added within the past two years. New sites for females were opened in institutions on the East and West coasts of the United States. At the joint INS/BOP contract facility which opened in Eloy, Arizona, in 1994, the 500-bed BOP section will serve as an IHP site, while INS' 500-bed section will serve as a centralization site for aliens who completed their sentences in Federal, state, and local institutions.

Enhancement plans have been prepared for all five state IHP's and the Federal IHP. Each plan includes resource requirements and a program oversight mechanism. For California, Florida, New York, and Texas, the enhancements will result in a reduction in the number of intake hearing and/or release sites. This reduction will translate into a decrease in travel costs and time expended by INS personnel.

Recruitment action is currently underway for the positions authorized in the FY 1995 enhancement. A new lower-graded general investigative position will be used to identify and process criminal aliens in the various IHP's.

A total of 8,250 IHP removals are projected for FY 1995: 5,950 through the five state IHP's; 1,450 Federal IHP cases; and 850 among the other 45 states.

For FY 1996, the Administration has requested additional resources to complete staffing and provide removal funding for the five targeted state IHP's and the Federal IHP. Funding is also requested to expand into two additional states (New Jersey and Arizona) and targeted local jails. Resources requested include 577 positions, 290 workyears and \$42.3 million. A total of 23,700 IHP removals are projected in FY 1996.

Expanded arrangements for return of criminal and other deportable aliens. The International Organization for Migration (IOM) and INS recently signed a Memorandum of Understanding (MOU) to assist migrants and refugees. IOM will assist with the voluntary return of persons denied asylum in the U.S. and aliens who voluntarily decide they wish to abandon pending asylum claims or other proceedings. A pilot program will be implemented and tested in 1995.

To further facilitate return of deportable aliens, the INS plans to continue to pursue legislation to expand sanctions under section 243(g) of the Act. Sanctions are currently limited to not issuing immigrant visas to nationals of countries which delay the issuance of, or refuse to issue, travel documents to their nationals.

In addition, the INS will continue to arrange special flights for certain groups that are difficult to remove (e.g., charter flights to repatriate Chinese nationals and remove aliens who have exhibited violent behavior and cannot be removed by commercial air). The INS will also continue use of its aircraft for removal in other troublesome cases such as those relating to Jamaican and Mariel Cuban criminals. Additionally, the INS will publish the recently revised Travel Document Handbook for its officers.

Abscondee removal teams. Apprehension and removal of absconders under final orders is an important part of an effective removal policy. The INS cannot continue to front load the system with new final orders without executing as many of the roughly 48,000 final deportation orders relating to absconders as possible. These cases have already gone through the extremely laborious removals system, which entailed a very substantial resource investment by both the INS and EOIR. Working those of the cases likely to result in removal is an immediate way to salvage some of the resources expended. The INS can do this by concentrating on the cases with sufficiently recent leads to ensure a high degree of success. Careful screening to select cases with factors such as travel document availability and low probability of further administrative procedures or judicial challenge will minimize length of stay in detention and associated costs and free up detention beds for other cases. This focus will improve program

effectiveness through measurable results and move the INS closer to its goal of a balanced, integrated enforcement effort to expedite the apprehension and removal of illegal aliens.

Funding is being sought to support efforts to remove aliens with final orders of deportation and to locate and remove abscondee. Funding in the amount of \$5.8 million will support staffing increases of 142 officers (71 workyears). An additional \$5.4 million for detention and removal of 8,600 alien abscondee is required. The total cost for this initiative is estimated at \$11.2 million.

SPECIAL INITIATIVES

The following removal-related FY 1996 budget enhancements have been requested to support various critical INS initiatives: (1) \$9.9 million from the Violent Crime Reduction Trust Fund (VCRTF), in addition to the \$300,000 appropriated for FY 1995, to support the removal of up to 6,600 aliens denied political asylum; and (2) \$2 million (45 positions and 23 workyears) and \$4.6 million (6 positions and 3 workyears) respectively for removal-related employer sanctions and interior repatriation activity.

Appendix 10. Detailed Extract of the First Four Boxes from the Catalogue created of Documents from the President Reagan Archives (Simi Valley, California)

Box Reference	Folder Reference	Document
Francis Hodsoll Box 1		CIA activities in LA
	Immigration (1)	Newspaper articles : WaPo & NYT, 11/10/1979
		USA v. Hanigan and Hanigan
		Doe v. Plyler, 20/10/1980
	Immigration (2)	Temporary Workers Programs (A Report, by CRS, 02/1980)
		Governor William P. Clements, Jr. Report To The Regional Governors Association - Committee On Immigration And Boundary Relations, Denver, Colorado, 03/08/980
		Policy Position : Visiting workers from Mexico
		Remarks by Eddie Aurispa on Mexico-USA relations
		Briefing Paper Consultation – 21/07/1980 “ Seasonal Workers: Need And Supply”
		Executive Summary: Consultation On Seasonal Workers: Need And Supply 21/07/1980
		SCIRP – Brief Summary of Research Findings on Refugees, 10/11/1980
	Immigration (3)	Planning for Immigration: A business perspective, 11/02/1981
		Refugee related budgets
		Department of State Memorandum : Status of Haitian Asylum Seekers, 19/05/1981
		Letter to INS commissioner
		Sannon v. United States
		Country Reports on Human Rights Practices (by DOS), 02/02/1981
		Memo : State Department Submission for Inclusion in Appellate Brief, Haitian Refugee Center v. Civiletti
		Letter to Dan??
	Immigration (4)	Department of State Memorandum : State Department Study Team on Haitian Returnees, 19/06/1979
		Justifications of Appropriation Estimates for Committee on Appropriations, Fiscal Year 1982 : Refugee and Entrant Assistance
		Indochina Refugee Action Center Memorandum: A Private Sector Initiative to Support Domestic Refugee Resettlement, 14/07/1981
		Memorandum : Status of Haitian Refugees Transfer to Ft. Allen, Puerto Rico
		Immigration and Refugee Policy

	Immigration (5)	Press Conference of the Honorable William French Smith, Attorney General of the United States with Members of the Press, 30/06/1981
		Newspaper articles : LA Times, 31/07/1981
		Newspaper articles : Dallas Morning News, 07/08/1981
		Remarks by Governor Clements
		Jimmy Carter Refugee Resettlement Grants Program, 13/01/1981
		Organizational Location of Refugee Reception and Placement Grants, 28/11/1980
	Immigration (6)	The Tarnished Golden Door : Civil Rights Issues in Immigration (Chapter 7 - Rights of Detainees after Detention or Apprehension)
		Newspaper articles : NYT, Washington Post, Houston Chronicle, 14/08/1981
		Letter from Congressional Black Caucus to President Reagan (Opposition to Interdiction of Haitian Vessels), 13/08/1981
		Multiple Letters back and forth from AFL-CIO and White House: 1. Letter from The American Federation of Labor and Congress of Industrial Organizations to President Reagan (Number of Indochina Refugees), 19/08/1981 2. Letter from The American Federation of Labor and Congress of Industrial Organizations to President Reagan (Number of Indochina Refugees), 16/03/1978 3. Statement by The American Federation of Labor and Congress of Industrial Organizations Executive Council (Number of Indochina Refugees), 24/02/1978 4. Letter to Lane Kirkland, 25/09/1980 5. Letter to President Reagan, 25/08/1980
	Immigration (7)	Memorandum to Members of the President's Task Force on Immigration and Refugee Policy from David Hiller (Cost Estimates for Immigration Legislation), 20/08/1981
		Letter Exchange between Eileen Mackin (Lutheran Social Services of Colorado) and the White House, June-August 1981
		Report of the Committee on the Judiciary United States Senate (Border Patrol, 1 Page)
		Letter to Lutheran Church (Refugees)
		Newspaper Article : Washington Post (Haitian Plight), Date Unclear
		Multiple Documents about Refugees in Oregon and Financial Difficulties, and suicide of one refugee, July-August 1981
		Multiple Documents about the "Interdiction of Undocumented aliens: Presidential Proclamation and Executive Order" 25-28/08/1981
		Letter from Lutheran Church (Refugees and Private Sector), 12/06/1981

		Letter from Barney Frank to President Reagan, 08/07/1981
	Immigration (8)	Newspaper Article: Washington Post (by William French Smith, Attorney General of the USA) & Unknown, 2/08/1981
		List of Interviews/Apearances by DOJ Personnel to Promote the President's Immigration and Refugee Policy, July 30-September 4, 1981
		Marketing Plan for Immigration and Refugee Policy August-September, 1981
		Letter from Lawrence H. Fuchs, Chairman of American Studies Department (Brandeis University) about his opinion on Immigration Policy Proposals, 28/08/1981
		Memorandum for the President (options about 1982 Refugee Consultations), multiple version, 01/09/1981
		Multiple Documents about Refugees in Oregon and Financial Difficulties, and suicide of one refugee, July-August 1981
		Letters, news articles and caricatures about refugee situation at Fort Chaffee in Arkansas
		Memo 1982 Refugee consultations & admissions
		Multiple Documents about the "Interdiction of Undocumented aliens: Presidential Proclamation and Executive Order" 25-28/08/1981
Francis Hodsoll Box 2	Immigration [Classified] (1)	Letter from Under Secretary of State for Management (Richard T. Kennedy) to Frank Hodsoll (opposition of transfer of power from INS to State Department), 19/08/1981
		Memo and documents about meeting with Coast Guard about interdiction in Haiti and haitian boat people, July-August 1981
	Immigration [Classified] (3)	Mexican Policy Framework Paper 7/04/1987 (date unclear- maybe 1981)
		Cable from Embassy in Mexico about their attitudes on immigration, 04/03/1981
		Notes on Trip to Mexico (before May 1981)
		Illegal Alien Options
		President memo establishing the Task Force on Immigration and Refugee Policy, 06/03/1981
		Cable from Embassy in Mexico about their attitudes on immigration, 04/03/1981
Francis Hodsoll Box 9	Immigrant Labor (1)	Letter from Senator Harrison Schmitt to Frank Hodsoll about S.47 the United States-Mexico Good Neighbor Act, 05/05/1981
		Los Companeros: A Rational Mexican Migration Policy, (date assumed May 1981)
	Immigrant Labor (4)	Memo from William French Smith, Attorney General which includes 5 revised decision papers to be discuss at an upcoming meeting., May 4, 1981
	Immigrant Labor (5)	Letter to FH with statistics and statement about economic impact of immigration
		Letter from Vernon M. Briggs (Professor) introducing following documents, May 8, 1981
		Working Paper Foreign Foreign Labor Programs as an

		Alternative to Illegal Immigration into the United States : A Dissenting View (by Vernon M. Briggs, April 30, 180
		Article by Vernon M. Briggs : The Impact of the Undocumented Worker on the Labor Market
Immigrant Labor (6)		Cuban/Haitian Options Table & Illegal Alien Options Table
		Memo from Kate Moore (Office of the Chief of Staff) about the visit of the Attorney General Task Force Delegation to Mexico City
		Results of Gallup Poll on Immigration, November 30, 1980
		Note on Immigraiton adn Refugee Issues, 11/2/1981
		Academic Article : The Labor Market and Illegal Immigration: THe Outlook for the 1980s
Immigrant Labor (7)		Testimony by George E. Hall (Bureau of the Census), about Census & Immigration, statistics on immigration
		Immigration Options Table
		Series of tables on characteristics and impacts of undocumented/illegal aliens
Immigrant Labor (9)		Memorandum on the President's Task Force on Immigration and Refugee Policy, May 6, 1981
		Draft by HHS : Welfare Assistance and Services for Refugees, Asylees, and Applicants for Asylum, April 27, 1981
		Report (Economic Discussion Paper 13): Labor Shortages and Immigration: A Survey and Taxonomy (U.S. Department of Labor), September 30, 1980
Immigration and Refugee Announcement File		Statement by the President, July 30, 1981
		U.S. Immigration and Refugee Policy: The Problem, July 30, 1981
		Testimony of William French Smith, Attorney General before the Senate Subcommittee on Immigration and Refugee Policy and the House Subcommittee on Immigration, Refugees, and International Law, July 30, 1981
		Memo : from Martin Anderson to Ed Meese about Illegal Alien Policy
		Statement by the President (Draft version?)
		U.S. Immigration and Refugee Policy: The Problem (Draft version?)
		List of Congressional members notified about President's announcement on Immigration, July 22, 1981 & Newspapers
		Memo: Advertising Roll out plan for Immigration and Refugee Policy Announcement, June 19, 1981
		Memo: Positioning of Immigration and Refugee Policies, June 30, 1981
		Memo: Communications Plan - Immigration and Refugee Policy, June 30, 1981
Immigration and Refugee Policy		Notes on Trip to Mexico

	Development (1)	
		Note for JAB(?): Immigration and Refugee Matters , April 30, 1981
		Notes on Trip to MExico (Repeat?)
		Opinion Roundup: The Refugees and Northern Inhospitallity (Public Opinion, June/July, 1980)
		Proposed Illegal Immigration Policy Package
	Immigration and Refugee Policy Development (2)	Polls
		Memorandum of Decision: President's Task Force on Immigration and Refugee Policy, April 22, 1981
		Draft Presidential Decision Memo, April 28, 1981
		Letter from Deputy Secretary of Transportation : what to expect if a policy of interdiction at sea of undocumented aliens is implemented (Date Unclear, but after April 15, 1981)
		Draft Presidential Decision Memo: Immigration, April 24, 1981
	Immigration and Refugee Policy Development (3)	Letter and Spreadsheets about Illegal immigration and Cuban/Haitian migration, April 28, 1981
		Section of Law that permits giving adjustment of status after 7 or 10 years (in cases of extreme hardship)
		Contingency Planning for Mass Arrivals of Illegal Aliens
		Multiple Documents about a 1977 Bill (Law Attempt): Office of the White House Press Secretary : White House to the Congress of the United States (under Jimmy Carter), August 4, 1977
Francis Hodsoll Box 10	Immigration and Refugee Policy Development (4)	Proposed Illegal Immigration Policy Package (Date Unclear : After June 1980)
		Immigration Statistics
		Proposed Illegal Immigration Policy Package
		1980 Census of Population and Housing
	Immigration and Refugee Policy Development (5)	Letter and Guidelines for the Reform of Immigration Policy, April 15, 1981
	Immigration and Refugee Policy Development (6)	Letter from David Crosland, Acting Commissioner for the INS to Frank Hodsoll, 17 Feb, 1981
		Memo: Range of Considerations and Factors in Developing a Cohesive Policy for Cubans and Haitians, 6 March, 1981
		Processing of Refugees by INS officers, 6 March, 1981
		Processing of Refugees in Hong Kong, 20 Feb, 1981
		Letter from Subcommittee on Immigration, Refugees, and International Law to President Jimmy Carter, 29 September, 1980

		Letter from W. R. Smyser (Acting Director, Bureau for Refugee Programs) to David Crosland about cases of Indochinese Refugees, February 27, 1981 with other Letter
	Immigration Refugee Policy - Draft Public Statements	Entire Folder
	Immigration and Refugees (1)	Letter and documents: Task Force on Immigration and Refugee Policy, March 31, 1981
		Memo: Draft Decision Paper, March 30, 1981
		Illegal Aliens Presently in the United States, March 31, 1981
		Financial Year 1982: Consultations on Refugee Admissions Calendar
		Summary of Report to the Congress on Proposed Refugee Admissions and Allocations for Fiscal Year 1981, September 1980
	Immigration and Refugees (2)	Memo for David Hiller from Karen Deasy: HHS Papers on Domestic Assistance, March 31, 1981
	Immigration and Refugees (3)	Policy Position Visiting Workers from Mexico (Clements' Proposal)
		Enforcement Prevention of Illegal Entry (Draft): Question 1
		Enforcement Prevention of Illegal Entry (Draft): Question 2
		Enforcement Prevention of Illegal Entry (Draft): Question 3
		Enforcement Prevention of Illegal Entry (Draft): Question 4
		Enforcement Prevention of Illegal Entry (Draft): Question 5
		Memo and documents about at-sea interdiction of migrants enroute to South Florida, March 31, 1981
	Immigration and Refugees (4)	Message to Members of the Task Force from David Hiller, April 2, 1981
		Message to Members of the Task Force from David Hiller, Draft Option Papers, April 1, 1981
		Message to David Hiller from John C. Keeney, Immigration and Refugee Task Force (Employer Penalty issue), March 27, 1981
		Mexico: Illegal and Legal Immigration U.S. Policy Options, April 8, 1981
		Issue Paper (from Kathy Collins to Fran?): response to the recommendations of the Select Commission on Immigration and Refugee Policy
	Immigration and Refugees (5)	Issue Paper: What Policy should the United States adopt with regard to foreign persons who enter south Florida without visas with Attachments
		Memo to Ken Starr from Mike Uhlmann, April 9, 1981: Abuse of Form I-94 with Attachments
	Immigration and Refugees (6)	Letters and Attachments from The Episcopal Church and the American Council of Voluntary Agencies for Foreign Service, Inc. (ACVAFS)
	Immigration and Refugees (7)	The Great American Immigration Nightmare, News Article : U.S. News & World Report, June 22, 1981

		Letter to President Reagan from Robin Beard, 6th District Tennessee about the Task Force Report, June 17, 1981
		Letter from Two Senators to President Reagan (U.S.-Canadian trans-boundary air pollution), June 22, 1981
		Letter from Assistant to the President, to Senator Baucus (U.S.-Canadian trans-boundary air pollution)
		Letter from John Paul Hammerschmidt (Member of the House) to President Reagan (and copy to Edwin Meese III) about the Fort Chaffee situation, June 11-12, 1981
		Letter from Doris Meissner to Paula Hawkins, Senator (Florida): Actions planned to alleviate conditions in Miami related to the inflow of Cubans and Haitians, June 5, 1981
		Temporary Foreign Labor Programs (From H. Michael Semler to Martin Anderson (Policy Development office), May 20, 1981
		Letters about the Fort Chaffee problem, June 24, 1981
		News Articles about the Fort Chaffee situation
		Memorandum from George Bush, VP to William French Smith, AG about LULAC National Convention, June 22, 1981
		Memo about National Identification Card (with Survey) from Richard B. Wirthlin to Jim Baker, Ed Meese, Michael Deaver, June 18, 1981
	Immigration and Refugees (8)	Talking Points for Briefing of President on Immigration, no date
		Memo to Martin Anderson about Illegal Alien Proposal (Option 3): Regulatory and Paperwork Burden of Increased Enforcement and Employer Sanctions, date unclear
		Memorandum for Frank Hodsoll from James M. Medas List of State and Local Officials to be Contacted about Administration's Position on Refugee and Immigration Issues, June 30, 1981
		Documents related to Presidential Statement on Immigration & Refugee Policy, July 1, 1981
		Memo from Frank Hodsoll to Kate Moore (Response to Inter-American Council on Manpower and Development) with attached letter from ICMD, June 6, 1981
		Letter to Frank Hodsoll from Richard W. Day about Mass Asylum - Cuban/Haitian Hearings, June 15, 1981
		Draft Speech on crime and immigration policy by the Attorney General to the Florida Bar Association Convention (on June 27), June 24, 1981
	Immigration and Refugees (9)	Inter-American Resource Corporation Report : "A Worthy Idea": U.S.-Mexico Guest Worker Program: A Proposal
		Documents about Fort Chaffee Situation - Memorandum for Ed Meese, Jim Baker, Mike Deaver from Frank Hodsoll (Fort Chaffee Population), July 14, 1981 - NYT News Article: Ther Haitians and Walrus Courts, July 16, 1981 - More
		Memorandum for the President from Ed Meese and Jim Baker, June 3, 1981

	Immigration and Refugees (10)	Memorandum: Immigration and Refugee Policy Statement, July 23, 1981
		Letter Exchange between Frank Hodsoll and Colleen Shearer (Iowa Department of Job Service)
		Plan for Cubans in detention
		Recommended Phone Call about Haitians, July 23, 1981
		Senator Complaint : Haitians to Texas, July 21, 1981
		National Governors association opinion on refugee coordination
		Memo about Illegal Aliens and National Identity Cards, June 23, 1981
		Memo : public opinion on illegal aliens and attachments
		Meeting with Senator Laxalt
	Immigration and Refugees (11)	Presidential Statement on Immigration and Refugee Policy,
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		Series of exchanges: Letter from Attorney General to Committee on the Judiciary, July 9, 1981 : Definition of refugee
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		Exchange with Mayor Isbell about Detention Center at Ellington Air Force Base in Texas, June 19 - July 14, 1981
		Memorandum for the President: Immigration Lopez-Portillo Visit, June 3, 1981
		Letter from Senators about Immigration Policy, July 8, 1981

Appendix 11. Extract from the Catalogue created of Documents from The National Archives (Kew, Richmond)

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HO 213/2584	Prisoners - Repatriation Outline Scheme for the Transfer of Convicted Offenders Within the Commonwealth
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HO 344/216	Deportation of Illegal Entrants: Delays in Obtaining Travel Documents
HO 344/244	Illegal Immigration and Overstaying Statistics
HO 344/479	Committee on Immigration Appeals: Preparation of White Paper on Deportation
HO 344/505	U.K.P.H. in India and East Africa - Miscellaneous Correspondence 1967-70 19/6/70-28/10/70
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	Detention under Art. 3(3) of the Aliens Order – Necessity for Deportation Order
	Access of Consuls to aliens detained under the Aliens Order
	Places of Detention under the Aliens Order 1953
HO 352/121	Detention. Policy. Places of detention for persons under 17. Refused leave to land or deportation
HO 352/121	Detention. Policy. Places of detention for young aliens. Ad hoc orders under Art 28(2) of the Aliens Order
HO 352/122	Detention. Statement of Aliens in Prison. 1948, 1949, 1950, 1951
HO 352/122	Parliamentary Question: Aliens detained, wherer from, how long?, July 30, 1953
HO 352/122	Parliamentary Question: Maximum Time an Alien can be Held?, October 10, 1953
HO 355/41	General, Immigration Service Progress & Planning; Immigration Control - Future Policy
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Résumé substantiel en français :

Sécuritisation, dissuasion et contrôles : analyse comparative de
la détention des migrants aux États-Unis et au Royaume-Uni
(1980-2001)

Samuel Malby

Université Toulouse Jean Jaurès

Introduction Générale

Le mardi 4 décembre 1979, David Steel, député libéral britannique, déclara à la Chambre des Communes : « Nous nous sommes toujours enorgueillis de ne pas avoir de détention sans procès. Malheureusement, c'est une conséquence secondaire grave et croissante des règles d'immigration actuelles, et je vois cette conséquence s'amplifier avec celles qui nous sont présentées aujourd'hui. »¹ Ces remarques prémonitoires annonçaient l'expansion du système de rétention administrative des immigrés au cours des décennies suivantes, une évolution qui, au Royaume-Uni, faisait écho à la croissance du système américain sur une période similaire.

Alors que la rétention des immigrés aux États-Unis restait marginale dans les années 1970, elle concernait déjà plus de 200 000 personnes en 2001, et dépassait 350 000 migrants en 2010.² Parallèlement, la population moyenne quotidienne d'immigrés détenus est passée d'environ 7 000 en 1994 à 19 000 en 2001, puis à plus de 50 000 en 2019, soit une multiplication par plus de sept en vingt-cinq ans.³ Au Royaume-Uni, en 1975, le pays n'avait retenu que 188 migrants sur toute l'année. En 2010, les chiffres de la rétention s'élevaient à plus de 25 000.⁴ Le système britannique de publication des données rend difficile le suivi des tendances de la rétention d'une année sur l'autre. Le gouvernement ne publie pas de statistiques complètes sur le nombre annuel de personnes retenues, leur âge, le stade de leur procédure d'immigration ou d'asile, ou les issues de leur rétention. À la place, la Direction de l'Immigration et de la Nationalité (IND) ne fournit que des statistiques trimestrielles, qui ne donnent qu'un

¹ House of Commons, *House of Commons Debates (Hansard)*, vol. 975, 4 décembre 1979, col. 286, « Immigration », discours de M. Steel, *UK Parliament Hansard Online*, <https://hansard.parliament.uk/Commons/1979-12-04/debates/527f2ed6-5ff3-4f51-af9b-29b61e14482c/Immigration>.

² U.S. Immigration and Customs Enforcement, *Weekly Departures and Detention Report (WRD): As of June 20, 2016, as Provided by the Statistical Tracking Unit* (Washington DC : Office of Enforcement and Removal Operations, Information Resource Management, U.S. Department of Homeland Security, 2016), <https://perma.cc/5K8K-MVJ6>.

³ 'Immigration Detention 101', Detention Watch Network, 2024, <https://www.detentionwatchnetwork.org/issues/detention-101>

⁴ UK Home Office, « How many people are detained under immigration powers in the UK », *Immigration System Statistics, Year Ending December 2024*, publié le 27 février 2025, <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2024/how-many-people-are-detained-under-immigration-powers-in-the-uk>

« instantané » limité du parc de rétention à un jour donné.⁵ Cette approche occulte l'ampleur, la dynamique et les conséquences de la rétention administrative, limitant ainsi la transparence et la redevabilité.

Les données des deux pays montrent néanmoins que ce qui n'était autrefois qu'une pratique exceptionnelle est désormais une institution solidement ancrée dans la loi, la bureaucratie et les infrastructures. Cette thèse pose une question simple : pourquoi la rétention administrative des immigrés a-t-elle connu une expansion aussi spectaculaire aux États-Unis et au Royaume-Uni entre 1980 et 2001 ? Elle s'interroge aussi sur la manière dont les deux systèmes ont été façonnés par leurs politiques nationales, et examine si une analyse comparative peut révéler des transformations qu'une étude unilatérale ne permettrait pas d'identifier. Répondre à cette question exige plus qu'un simple recensement de statistiques ou un catalogue de réformes juridiques. La rétention administrative doit être comprise comme le produit de décisions politiques, de luttes institutionnelles et de discours publics changeants. Certaines expansions ont été soigneusement planifiées, d'autres ont été des réponses ponctuelles à des crises, et beaucoup sont le produit de contestations plus larges autour de la souveraineté nationale, des questions ethniques et raciales, et de la sécurité nationale. Mon argument central est que la montée de la rétention dans ces deux démocraties libérales ne peut s'expliquer uniquement par des impératifs de sécurité ou des « pressions » migratoires. Elle traduit plutôt une convergence de logiques politiques. Celles-ci ont redéfini le contrôle de l'immigration comme un instrument de contrôle social et comme un symbole de l'autorité étatique.

Les raisons de l'augmentation de la rétention sont multiples : parfois intentionnelles, parfois issues de décisions improvisées, et souvent le résultat de luttes politiques et économiques au sein du gouvernement et de ses partenaires. Cette thèse examine les raisons de l'expansion spectaculaire de la rétention administrative aux États-Unis et au Royaume-Uni entre 1980 et 2001, et ce que ce phénomène révèle des logiques politiques propres aux démocraties libérales.

Politiquement, la rétention est au cœur des débats sur la démocratie, les droits et le pouvoir de l'État. Les gouvernements la présentent comme nécessaire à la

⁵ Christine Bacon, *The Evolution of Immigration Detention in the UK: The Involvement of Private Prison Companies*, RSC Working Paper Series, no 27 (septembre 2005).

dissuasion et à la sécurité nationale. Les critiques la dénoncent comme inhumaine, coûteuse et corrosive pour l'État de droit. Comprendre comment la rétention s'est normalisée est crucial pour interpréter les différends contemporains sur les frontières et l'appartenance.

Les enjeux de cette enquête sont à la fois académiques et sociétaux. Historiquement, la rétention a suscité moins d'attention que la politique d'immigration dans son ensemble. Bien qu'il existe une vaste littérature sur la migration, la citoyenneté et l'incarcération, peu de travaux abordent la rétention en tant qu'institution méritant une analyse comparative approfondie. Rares sont ceux qui examinent conjointement les cas des États-Unis et du Royaume-Uni, malgré leurs liens politiques, juridiques et culturels étroits. À ce jour, aucune monographie n'a fourni une histoire comparative systématique de la rétention dans ces deux pays.

Cette thèse apporte trois contributions principales à l'étude de la rétention administrative et de la politique comparée. Elle propose la première analyse approfondie retraçant la rétention à travers six dimensions interconnectées : les héritages historiques, les fondements législatifs, la sécuritisation, l'infrastructure institutionnelle, la doctrine de la dissuasion et les réponses judiciaires. En tissant ces dimensions ensemble, la thèse démontre comment les États-Unis et le Royaume-Uni ont suivi des chemins parallèles mais distincts vers la normalisation de la rétention. Plutôt que de se concentrer sur les conditions à l'intérieur des centres de rétention, la thèse analyse les processus politiques, juridiques et institutionnels qui ont rendu la rétention possible et durable. Ce changement de perspective montre comment la rétention s'est inscrite dans des stratégies de gouvernance plus larges, notamment à travers la législation, la privatisation, la sécuritisation et des doctrines de dissuasion, la reconfigurant ainsi comme une technologie politique de contrôle. Enfin, elle montre que, si les deux pays ont convergé vers l'expansion du pouvoir discrétionnaire de l'exécutif et la normalisation de la rétention, leurs trajectoires ont divergé : les États-Unis selon des logiques de justice pénale et d'infrastructures privatisées ; le Royaume-Uni, selon une superposition parlementaire, un pouvoir discrétionnaire administratif et une stratégie d'« environnement hostile ». Cette dualité complique les récits simplistes de convergence, suggérant plutôt que des traditions partagées ont permis une similarité fonctionnelle sans une uniformité institutionnelle complète.

Cadre Comparatif et Problématisation

Le choix de comparer le Royaume-Uni et les États-Unis ne relève pas du hasard. Le Royaume-Uni et les États-Unis sont fréquemment comparés dans le contexte de l'immigration en raison de leurs liens historiques communs, de leurs connexions linguistiques et de leurs héritages coloniaux qui ont influencé les schémas migratoires. Les deux États ont été façonnés par des vagues successives d'immigration, qui ont transformé leur diversité culturelle et leur structure économique. Les deux nations ont mis en œuvre des politiques d'immigration restrictives depuis les années 1980. Elles ont souvent constitué une réponse à un discours public hostile et à des controverses récurrentes sur la question migratoire. Cette thèse montre comment chaque pays aborde les complexités de l'immigration. Malgré les similitudes, il est crucial de reconnaître les contextes et les politiques uniques qui façonnent les expériences migratoires dans les deux États.

Cette thèse examine la question de la rétention des migrants aux États-Unis et au Royaume-Uni, des années 1980 à la fin des années 2000. Elle tente de répondre à la question de savoir pourquoi la rétention des migrants a considérablement augmenté au cours du dernier quart du XXe siècle et de la première décennie du XXIe. L'objectif principal est de replacer la rétention des migrants dans leurs pays respectifs et d'identifier les principes communs régissant l'utilisation de la rétention et des contrôles de l'immigration dans les deux nations.

Il convient de souligner que, dans le contexte de cette recherche, la rétention administrative est bien mieux documentée aux États-Unis qu'au Royaume-Uni, tant dans les données publiques que dans la littérature académique. Cette disparité d'accès aux archives peut biaiser l'analyse, en privilégiant parfois le cas américain par la richesse empirique et la visibilité des sources. Les études comparatives offrent des perspectives précieuses, mais comportent aussi le risque d'effacer des différences significatives de culture politique, de pratiques institutionnelles et de discours public entre les deux pays. Pour atténuer ce risque, l'étude replace chaque résultat dans son contexte national et s'appuie sur des sources primaires qualitatives, des documents politiques et une vaste littérature académique. Cette approche garantit que la comparaison fait ressortir à la fois les similitudes structurelles et les divergences

propres à chaque culture politique.

Sources

Les sources primaires principales de cette thèse proviennent des archives nationales des deux pays : les Archives nationales du Royaume-Uni (périodes Thatcher, Major et Blair) et les Archives présidentielles de Reagan, Bush et Clinton aux États-Unis. Les sources archivistiques utilisées dans cette thèse comportent plusieurs limites intrinsèques. Les collections d'archives sont sélectives. Les décisions relatives à la conservation, à la déclassification ou au catalogage reflètent les priorités institutionnelles et politiques, de sorte que certaines voix ou certains événements demeurent sous-représentés, voire absents. Au Royaume-Uni, les dossiers relatifs à la rétention administrative sous les gouvernements Thatcher et Major sont souvent fragmentaires, et nombre de documents sensibles demeurent classifiés. Aux États-Unis, les archives présidentielles se concentrent principalement sur la prise de décision de l'exécutif, privilégiant les perspectives descendantes tout en excluant largement les expériences des détenus, des fonctionnaires de première ligne et des acteurs non gouvernementaux.

Cette thèse s'appuie principalement sur des publications gouvernementales. Cependant, d'autres sources seront également mobilisées : les lois adoptées pendant la période étudiée, les archives parlementaires et du Congrès, ainsi que les publications d'acteurs externes comme les *think tanks* et les entreprises privées de gestion carcérale, lorsque celles-ci sont disponibles.

Au Royaume-Uni, les publications gouvernementales incluent les *Command Papers* : livres blancs, communications officielles, projets de loi, rapports de comités et enquêtes indépendantes. S'y ajoutent les discours des Premiers ministres et des responsables des administrations en charge de l'immigration. Aux États-Unis, les sources principales comprennent les documents présidentiels : décrets, discours, communications de la Maison Blanche au Congrès et aux agences fédérales, déclarations relatives à la signature ou au veto de lois, communiqués de presse et mémos internes à la Maison Blanche. Les sources primaires comprennent également les rapports des comités du Congrès, le *Congressional Record* et les rapports des agences gouvernementales. Lorsque cela est possible, les publications de *think tanks*,

les documents produits par les entreprises privées gérant des prisons et centres de rétention, ainsi que divers rapports d'ONG seront également examinés.

Cette recherche vise à mieux comprendre les raisons et la logique de l'expansion de la rétention et du contrôle migratoire dans les deux pays, ainsi que la place qu'ils occupent dans leurs systèmes politiques et administratifs respectifs. Il se peut que les deux pays aient des causes d'expansion similaires, ou que la rétention dans les deux pays ait évolué de manière similaire, mais pour des raisons distinctes. L'objectif de cette recherche est double : replacer la rétention des migrants dans les contextes nationaux de contrôle et identifier les principes généraux qui régissent son usage dans les deux États-nations.

Chronologie

Cette étude est délimitée dans le temps, commençant au tournant des années 1980. Bien que la rétention et l'expulsion d'immigrés remontent aux origines des États-Unis et jalonnent toute l'histoire britannique, la fin des années 1970 et le début des années 1980 constituent un tournant décisif dans la mise en œuvre de la rétention administrative. Cette ère correspond également à l'arrivée au pouvoir de deux dirigeants politiques clés, porteurs d'idées politiques révolutionnaires. Margaret Thatcher est devenue Première ministre du Royaume-Uni en mai 1979, tandis que Ronald Reagan a été élu Président des États-Unis l'année suivante et a pris ses fonctions en janvier 1981. C'est au cours de leurs mandats que les réformes ayant conduit à l'expansion des parcs de rétention ont réellement débuté. Cette période coïncide aussi avec l'adoption de politiques néolibérales dans les deux pays, lesquelles ont fortement influencé l'expansion de la rétention des migrants, notamment à travers la privatisation.⁶ Au cours de la décennie suivante, John Major (1990-1997) et Tony Blair (1997-2007) sont devenus successivement Premiers ministres de Grande-Bretagne. Aux États-Unis, Reagan a été succédé par son vice-président George H. W. Bush (1989-1993) et le démocrate Bill Clinton (1993-2001) à la Maison Blanche. L'étude s'achève en 2001, à la fin du millénaire, point d'arrêt naturel avant les profonds changements politiques survenus dans les deux pays à l'ère postérieure au 11

⁶ Kevin Vallier, « Neoliberalism », *Stanford Encyclopedia of Philosophy*, publié le 9 juin 2021, <https://plato.stanford.edu/entries/neoliberalism/>.

septembre. Malgré leurs systèmes politiques distincts, les deux pays présentent des similitudes notables. Il convient de noter, par exemple, que tous deux ont connu une alternance politique, avec des gouvernements de droite et de centre-gauche se succédant au pouvoir. Cette alternance soulève des questions de continuité et de rupture, d'autant plus que les lois d'immigration les plus restrictives ont souvent été promulguées par des gouvernements situés à gauche de l'échiquier politique.

Aperçu de la Structure

Cette thèse est organisée en deux grandes parties, chacune comprenant plusieurs chapitres qui abordent différents aspects de la rétention administrative aux États-Unis et au Royaume-Uni de 1980 à 2001. La première partie expose les fondements historiques, politiques et conceptuels de la rétention ; la seconde en examine les dimensions doctrinales, institutionnelles et pratiques.

La Partie I, Fondements Historiques et Conceptuels, situe la rétention dans des histoires plus larges du contrôle de l'immigration et établit les fondements législatifs et politiques des développements ultérieurs. Le Chapitre 1 fournit une histoire sur la longue durée du droit et de la politique de l'immigration, montrant comment les deux pays sont progressivement passés de l'ouverture à l'exclusion et à l'utilisation précoce de la rétention comme outil de contrôle de l'immigration. Le Chapitre 2 examine les années 1980-1990 comme des années formatrices où le droit de l'immigration a été remodelé par des réformes législatives majeures. Il compare comment les États-Unis et le Royaume-Uni ont tous deux étendu le pouvoir discrétionnaire de l'exécutif et recadré l'immigration à travers des récits de « crise ». Le Chapitre 3 analyse comment l'immigration est devenue de plus en plus liée aux logiques de justice pénale et de sécurité nationale, en se concentrant sur la catégorie de l'« étranger criminel » aux États-Unis et sur le lien entre terrorisme et asile au Royaume-Uni.

La Partie II (Construire des Systèmes de Contrôle) examine l'expansion concrète de l'infrastructure de rétention et l'utilisation de la dissuasion comme doctrine directrice. Le Chapitre 4 retrace le développement des parcs de rétention, des installations privatisées des États-Unis au système britannique dirigé par l'État mais sous-financé, et explore comment l'espace, la conception et la pratique institutionnelle ont renforcé l'exclusion des migrants. Le Chapitre 5 compare comment la dissuasion

a façonné les politiques des deux pays, que ce soit par la militarisation de la frontière américaine et l'interdiction maritime ou par les restrictions administratives et les stratégies d'« environnement hostile » du Royaume-Uni. Le Chapitre 6 enquête sur la manière dont les tribunaux des deux systèmes ont abordé la rétention, soulignant la déférence judiciaire envers le pouvoir exécutif, les obstacles procéduraux aux droits des migrants, et les interventions limitées mais significatives des cours supérieures.

Partie I : Fondements Historiques et Conceptuels

Chapitre 1 : De l'Ouverture à l'incarcération : Trajectoires Historiques du Contrôle de l'Immigration aux États-Unis et au Royaume-Uni

Le Royaume-Uni et les États-Unis ont tous deux une longue et complexe histoire avec l'immigration. Pendant plusieurs siècles, cette histoire s'est confondue avec celle de la migration vers le Nouveau Monde, des Britanniques quittant leur pays pour s'établir dans les colonies d'Amérique du Nord. Mais à mesure que les États-Unis ont obtenu leur indépendance de la Grande-Bretagne, ces histoires ont divergé, tout comme les politiques qui les gouvernaient. Au cours des dernières décennies, les deux ont de nouveau convergé, les deux mettant en œuvre des politiques de restriction de l'immigration qui, entre autres outils, se sont tournées vers la rétention.

L'immigration et l'émigration sont les deux faces d'une même médaille : elles retracent les parcours de millions d'individus traversant les frontières dans l'espoir d'une vie meilleure. Parfois, ce sont des histoires de liberté, de libération de la pauvreté, de la guerre, de la violence, de la persécution (religieuse, politique, nationale, sexuelle, etc.) et plus encore. D'autres fois, la migration vise à rechercher la prospérité économique, ou simplement à fuir des conditions matérielles difficiles dans le pays d'origine. Beaucoup émigrent également pour rejoindre des membres de leur famille : parents, frères, sœurs ou enfants. Mais pour beaucoup, ces rêves se sont terminés brutalement, car les immigrants espérant une vie meilleure se retrouvent derrière les barreaux dans des centres de rétention au Royaume-Uni et aux États-Unis.

Pour comprendre comment les deux pays en sont arrivés à la situation observée

dans les années 1980-2000, il est essentiel de retracer l'évolution de leurs politiques d'immigration et de rétention. Les États-Unis ont connu des phases d'ouverture et de fermeture. L'immigration y a tour à tour été encouragée et combattue, et si le pays se définit comme une « nation d'immigrés », il n'a jamais été une nation ouverte à tous les immigrés. Comme le montrera ce chapitre, la politique d'immigration est complexe et généralement définie en réponse à des conditions changeantes qui façonnent la politique d'immigration en configurations complexes et souvent incohérentes, illustrées par la segmentation du système américain : une « porte principale » pour l'immigration générale, une « porte dérobée » pour les réfugiés et une « porte de service » pour les travailleurs agricoles temporaires.⁷

L'un des principaux objectifs de cette recherche sera de montrer comment les politiques d'immigration et de rétention se sont lentement reflétées pour créer des systèmes de rétention qui détiennent aujourd'hui des centaines de milliers de personnes aux États-Unis et des dizaines de milliers au Royaume-Uni.

Bien qu'il soit impossible de proposer un aperçu exhaustif d'une période couvrant plus de deux siècles et deux pays, l'objectif est de faire ressortir les grandes vagues et les périodes clés de l'immigration et des politiques migratoires. Elle montrera également que s'il n'y a peut-être pas de ligne droite entre le passé et le présent, le contexte est essentiel pour comprendre les nombreuses nuances de l'histoire. Comme le montre Mary Bosworth pour le cas britannique, le contexte, surtout à long terme, met en lumière des dynamiques qui ne sont pas immédiatement perceptibles.⁸ Bosworth, par exemple, soutient que les restrictions à l'immigration et les mécanismes stricts de contrôle des frontières en Grande-Bretagne sont dans une large mesure des « inventions du XXe siècle ».⁹ Cela inclut, bien sûr, les centres de rétention administrative.

Historiquement, le Royaume-Uni et les États-Unis ont des histoires d'immigration qui sont liées à leur expansion et à leur déclin dans l'ordre mondial. Une grande partie de l'immigration vers le Royaume-Uni s'est produite après la

⁷ Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge MA : Harvard University Press, 2006), 19.

⁸ Mary Bosworth, *Inside Immigration Detention* (Oxford University Press, 2014), 25.

⁹ *Ibid.* 29.

Seconde Guerre mondiale, au moment où l'Empire britannique s'effondrait pour devenir le Commonwealth. Les États-Unis, cependant, ont connu l'immigration depuis leurs débuts et cette immigration a alimenté une grande partie de l'expansion territoriale de la nation au fil des siècles. Le rôle que les deux ont joué et jouent actuellement sur la scène mondiale explique également leur rôle de centres d'attractivité pour de nombreux immigrés. À mesure que la relation entre la Grande-Bretagne et ses anciennes colonies a évolué, les droits des citoyens du Commonwealth ont également évolué. De même, à mesure que la relation que les États-Unis entretenaient avec les populations immigrées a évolué au fil du temps, le pays est devenu plus restrictif et plus sélectif quant aux personnes qu'il laissait entrer.

À mesure que les États renforcent leurs pouvoirs pour traiter divers enjeux, dont l'immigration, ils y renoncent rarement une fois qu'ils les ont acquis. Dans le cas de l'immigration, c'est clair, comme le montrera ce chapitre :

Une vision à plus long terme démontre la nature durable des pouvoirs d'intervention accrus. Une fois développé, l'État rend rarement son contrôle. Même lorsque les pouvoirs étaient rarement utilisés (...) Cependant, sapant toute hypothèse facile sur l'utilisation délibérée ou systématique de pouvoirs exceptionnels, les documents parlementaires et archivistiques exposent également un manque de planification durable en ce qui concerne le contrôle des frontières. Il est souvent simplement réactif. Il n'est presque jamais fondé sur des principes et, par conséquent, beaucoup le reconnaissent, difficile à justifier.¹⁰

Ce chapitre retrace l'évolution des politiques d'immigration et la formation des systèmes modernes de contrôle et de rétention administrative. Il commence par les premières vagues migratoires vers les États-Unis et le Royaume-Uni, examine les réponses politiques qu'elles ont suscitées, et s'achève au tournant des années 1980, avec l'arrivée au pouvoir de Margaret Thatcher et de Ronald Reagan. Le chapitre commence par l'histoire de l'immigration américaine avant de se tourner vers le Royaume-Uni. Des parallèles entre les deux pays seront établis, et les similitudes et les divergences seront mises en évidence chaque fois que cela sera pertinent.

Les États-Unis ont instauré plus tôt des restrictions migratoires, notamment par

¹⁰ *Ibid.* 25

des lois ouvertement racialisées, comme la Chinese Exclusion Act de 1882 et, plus tard, le système de quotas des années 1920. La Grande-Bretagne, elle, n'a établi un cadre similaire qu'au début du XXe siècle. Cette divergence reflète leurs différentes trajectoires nationales : les États-Unis étaient une nation construite par l'immigration et l'expansion territoriale, tandis que la Grande-Bretagne était principalement une nation d'émigration et d'empire jusqu'au milieu du XXe siècle. Pourtant, les deux ont fait face à des pressions similaires, notamment le surpeuplement urbain, la concurrence sur le marché du travail et la montée du sentiment nationaliste, qui ont progressivement transformé l'immigration en un problème social et de sécurité perçu. Comme le montreront les pages suivantes, l'Aliens Act de 1905 au Royaume-Uni a donc reflété les lois d'exclusion américaines dans sa fonction, sinon dans son calendrier, en introduisant l'idée que l'immigration pouvait être activement gérée et les groupes indésirables légalement exclus. La trajectoire américaine de la restriction à la hiérarchie raciale basée sur des quotas au début du XXe siècle trouve des échos dans l'adoption par la Grande-Bretagne de contrôles une génération plus tard.

En examinant ces deux trajectoires nationales, les États-Unis et le Royaume-Uni ont suivi des chemins chronologiques différents mais ont finalement convergé vers des logiques similaires de contrôle de l'immigration et de rétention. Aux États-Unis, l'immigration a été centrale dès le début, façonnant le projet même de construction de la nation, mais les politiques ont oscillé entre ouverture et restriction. Au Royaume-Uni, la politique d'immigration s'est développée plus tard, initialement façonnée par la distinction juridique entre « sujets » et « étrangers », puis par les héritages de l'empire et de la décolonisation. Malgré ces différences, les deux pays révèlent trois schémas communs :

- le contrôle de l'immigration est apparu comme une réponse réactive à des crises perçues
- la rétention et l'exclusion ont été normalisées par les expériences de temps de guerre
- une fois accordés, les pouvoirs de contrôle ont rarement été abandonnés.

À la fin du XXe siècle, la Grande-Bretagne et les États-Unis avaient établi des

régimes de rétention qui reflétaient à la fois les anxiétés nationales autour de la race, du travail et de la sécurité, et leur statut commun de puissances mondiales attirant la migration.

Les États-Unis, dès la fin du XIXe siècle, ont intégré le restrictionnisme dans leur cadre national, expérimentant très tôt les quotas, les exclusions et la rétention administrative.¹¹ En revanche, la Grande-Bretagne est entrée dans le XXe siècle avec une présomption de longue date de libre circulation, ne construisant que progressivement un système de contrôle de l'immigration par le biais de l'Aliens Act de 1905 et des internements en temps de guerre.¹²

Malgré ces points de départ différents, les deux systèmes partagent des thèmes récurrents. Chaque État a étendu son autorité progressivement, présentant souvent de nouvelles mesures comme temporaires ou exceptionnelles mais renonçant rarement aux pouvoirs une fois acquis. Aux États-Unis, la tension entre la libération conditionnelle et la rétention reflétait une culture juridique qui donnait la priorité au pouvoir discrétionnaire administratif mais ouvrait la voie à la rétention de masse lorsque les conditions politiques ont changé dans les années 1980. Au Royaume-Uni, le « pouvoir latent » de la loi sur l'immigration de 1971 démontre comment l'autorité de retenir existait bien avant qu'elle ne devienne une pratique courante. Les deux pays ont été façonnés par des contextes plus larges, la géopolitique de la Guerre Froide et les conflits du travail aux États-Unis, le déclin impérial et la migration post-coloniale au Royaume-Uni, mais ces pressions les ont poussés dans une direction similaire : la normalisation de la rétention.

Le tableau comparatif révèle ainsi une divergence temporelle mais une convergence des résultats. Là où les États-Unis sont passés rapidement du restrictionnisme à la rétention, la Grande-Bretagne a progressé de manière plus prudente et progressive. Néanmoins, les deux trajectoires illustrent une dynamique commune : une fois acquis, les pouvoirs coercitifs à l'égard des migrants tendent à s'étendre et à perdurer, même lorsqu'ils sont d'abord présentés comme

¹¹ Elliott Young, *Forever Prisoners: How the United States Made the World's Largest Immigrant Detention System* (Oxford University Press, 2021), 3

¹² Stephanie J. Silverman, "“Regrettable but Necessary?” A Historical and Theoretical Study of the Rise of the U.K. Immigration Detention Estate and Its Opposition", *Politics & Policy* 40, no. 6 (2012): 1135, <https://doi.org/10.1111/j.1747-1346.2012.00393.x>.

exceptionnels.¹³ Cette trajectoire aide à expliquer pourquoi, à la fin du XXe siècle, les deux pays avaient adopté la rétention non pas comme une anomalie mais comme une pierre angulaire du contrôle de l'immigration.

Les racines historiques de la rétention administrative aux États-Unis et au Royaume-Uni sont liées aux inquiétudes concernant le contrôle des frontières. Ces politiques sont souvent façonnées par des préoccupations sous-jacentes liées à la race, à l'ethnicité, à la culture et à l'identité nationale. Au fil du temps, la politique d'immigration a également fusionné avec les politiques de lutte contre la criminalité, le terrorisme et la sécurité nationale, car les décideurs politiques ont réagi à des moments de crise et de panique en adoptant des lois et en créant ce que Zolberg appelle un « régime d'immigration ».¹⁴ Comme il le soutient, ces régimes, une fois créés, luttent pour se maintenir et visent à étouffer la réforme :

Une fois qu'ils ont vu le jour, un processus prolongé s'étalant sur un demi-siècle environ, ces régimes acquièrent un pouvoir inertiel par le simple poids des institutions établies et des intérêts de certains acteurs à préserver le statu quo, transformant les tentatives de changement de politique en une lutte acharnée et façonnant ainsi le cours ultérieur de l'histoire.

Avant 1979, le Royaume-Uni et les États-Unis disposaient déjà de vastes pouvoirs légaux pour retenir les migrants, mais la pratique dominante restait celle de la libération sous condition plutôt que de la détention. Aux États-Unis, une culture profondément institutionnalisée de libération par le biais de la libération conditionnelle rendait la rétention exceptionnelle. Au Royaume-Uni, la rétention était autorisée par la loi mais administrativement découragée, et n'était utilisée que dans des cas précis : aux points d'entrée ou dans l'attente d'une expulsion. Les deux cas illustrent ce que l'on pourrait appeler un potentiel carcéral latent, car la loi permettait une utilisation extensive de la rétention, mais les pratiques politiques, culturelles et bureaucratiques la contraignaient. Cette capacité latente était cruciale, car des changements législatifs ultérieurs pouvaient activer des pouvoirs qui existaient déjà.

Comme le montreront les chapitres suivants, à la fin du XXe siècle, les

¹³ Michael Flynn, « There and Back Again: On the Diffusion of Immigration Detention », *Journal on Migration and Human Security* 2, no 3 (2014): 170.

¹⁴ Zolberg, *A Nation by Design*, 19.

trajectoires de la Grande-Bretagne et des États-Unis avaient commencé à converger à nouveau. Malgré leurs points de départ différents, les États-Unis étant un pays d'immigration de longue date et la Grande-Bretagne un nouveau venu façonné par la décolonisation, les deux pays se sont de plus en plus appuyés sur la rétention, l'expulsion et des lois restrictives pour gérer l'immigration. La mondialisation des pressions migratoires, les craintes racialisées et la sécuritisation des frontières ont rapproché les deux systèmes, même si leurs histoires révèlent des héritages distincts. En cherchant à gérer l'immigration, les gouvernements ont considérablement étendu les capacités de rétention des deux pays depuis les années 1980. Ces systèmes n'ont pas grandi de manière linéaire, et cette croissance n'a pas toujours été intentionnelle ou contrôlée. Mais à mesure que la capacité de retenir les immigrés a augmenté, les deux nations l'ont utilisée.

Chapitre 2 : Fondements Législatifs de l'Immigration et de la Rétention

La période entre 1979 et 2001 marque l'ère fondatrice des systèmes modernes de rétention administrative de masse au Royaume-Uni et aux États-Unis. En 1979, cette pratique était un aspect marginal du contrôle de l'immigration dans les deux nations. En 2001, toutefois, ce qui n'était qu'une mesure exceptionnelle s'était transformée en une entreprise carcérale tentaculaire. Cette transformation n'a pas constitué une réponse fortuite ou passive à l'évolution des flux migratoires. Elle résulte de choix législatifs délibérés et calculés, révélant une profonde inflexion idéologique des politiques anglo-américaines.

Dans les années 1980 et 1990, la législation a profondément remodelé, au Royaume-Uni comme aux États-Unis, les cadres juridiques du contrôle migratoire. À rebours de la voie progressive et administrative suivie au Royaume-Uni, les États-Unis ont connu une transformation rapide et radicale de leur système de rétention. Les objectifs immédiats divergeaient : au Royaume-Uni, les lois des années 1980 visaient une refonte complète de la nationalité (British Nationality Act) ; aux États-Unis, elles combinaient une large amnistie avec un renforcement des contrôles (Immigration Reform and Control Act) et une criminalisation accrue des immigrés (Anti-Drug

Abuse Acts). Si l'Immigration Reform and Control Act de 1986 entendait d'abord traiter l'immigration via la légalisation et des sanctions aux employeurs, la réaction politique ultérieure et les échecs de contrôle perçus ont favorisé une puissante « panique morale » autour de la figure de l'« étranger criminel », ¹⁵ débouchant sur une architecture juridique durable et rigide avec la législation décisive de 1996. Toutefois, elles poursuivaient un même objectif : construire juridiquement, différencier et réguler la figure de l'« étranger ». Ce processus de redéfinition juridique était nécessaire pour l'expansion des pouvoirs de rétention. Dans les années 1980, le Royaume-Uni a cherché à y parvenir par une réécriture de l'identité nationale, excluant certaines catégories de personnes et instaurant un système de différenciation interne, tandis que les États-Unis adoptaient une stratégie, politiquement opportune mais paradoxale, alliant légalisation et durcissement répressif, qui a scindé la population immigrée entre « sans-papiers » et « documentés », « illégaux » et « légaux » et a conduit à la fusion lente du droit de l'immigration avec le système de justice pénale. Ce nouveau cadre juridique, caractéristique de la « crimmigration » a fusionné les logiques pénales et migratoires : introduction de la rétention obligatoire, extension sans précédent des infractions expulsables, et réduction du rôle de contrôle du pouvoir judiciaire. ¹⁶ Le résultat a été la création du système de rétention administrative le plus grand et le plus punitif du monde.

Ce chapitre soutient qu'entre 1979 et 2001, le Royaume-Uni et les États-Unis ont construit des cadres législatifs distincts mais convergents qui ont transformé la rétention administrative d'une mesure exceptionnelle en un outil normalisé et central de la gestion des migrations. L'approche britannique s'est traduite par une extension progressive, de nature administrative, du pouvoir discrétionnaire de l'exécutif, instituant un modèle à la fois carcéral et gestionnaire destiné surtout à encadrer les flux de demandeurs d'asile. À l'inverse, les États-Unis ont opéré un virage radical vers la « crimmigration », culminant en 1996 avec une législation liant explicitement et rigidement migration et criminalité, rendant la rétention obligatoire et réduisant le

¹⁵ Judith Ann Warner, « The Social Construction of the Criminal Alien in Immigration Law, Enforcement Practice and Statistical Enumeration: Consequences for Immigrant Stereotyping », *Journal of Social and Ecological Boundaries* (2005): 68.

¹⁶ *Antiterrorism and Effective Death Penalty Act of 1996*, Pub. L. No. 104-132, 110 Stat. 1214 (1996).

pouvoir discrétionnaire de l'exécutif comme du judiciaire.¹⁷

Ce chapitre a démontré que la période de 1979 à 2001 n'a pas été une période de stagnation politique mais de construction législative radicale dans le domaine de la rétention administrative. Il a retracé des trajectoires à la fois divergentes et convergentes au Royaume-Uni et aux États-Unis, dans l'édification des dispositifs législatifs actuels. Au Royaume-Uni, une série de lois progressives, motivées par une logique de gestion et un récit sécuritaire d'une « crise de l'asile », a construit un système de rétention administrative de masse visant à contrôler et à traiter les demandeurs d'asile. Le processus législatif a été cumulatif : chaque texte a ajouté une strate à une architecture de contrôle en expansion, jusqu'à faire de la rétention un outil administratif de routine. Aux États-Unis, la transformation a été plus abrupte et révolutionnaire. Une panique politique entourant les « étrangers criminels », déclenchée par l'exode de Mariel et alimentée par la « guerre contre la drogue », a conduit à une législation décisive en 1996. Ces lois ont opéré un changement de paradigme, fusionnant le droit des étrangers avec la logique punitive du pénal pour instaurer un système rigide de rétention obligatoire touchant une large frange de non-citoyens.

L'infrastructure juridique établie pendant cette ère a eu des conséquences profondes et durables. Elle a légitimé la rétention comme un outil principal, plutôt qu'exceptionnel, du contrôle de l'immigration dans deux des principales démocraties libérales du monde. Elle a créé une infrastructure physique et privée tentaculaire, le « parc de rétention », avec un intérêt économique direct dans sa propre perpétuation. Les catégories et procédures forgées alors, du « procédure accélérée » et de la « liste blanche » britanniques au « crime aggravé » et à la « rétention obligatoire » américains, sont devenues de puissants mécanismes de tri. Elles ont assuré que les nouveaux systèmes carcéraux auraient une population vaste et stable à exploiter pendant des décennies, transformant la vie de millions de migrants et de leurs familles et modifiant fondamentalement la relation entre l'État et le non-citoyen.

En 2001, Royaume-Uni et États-Unis avaient institutionnalisé la rétention, selon des stratégies juridiques distinctes : pouvoir discrétionnaire administratif

¹⁷ Joshua Linder, « The Amnesty Effect: Evidence from the 1986 Immigration Reform and Control Act », *The Public Purpose* 9 (printemps 2011).

croissant au Royaume-Uni ; virage punitif de la « crimmigration » aux États-Unis. Malgré des traditions juridiques divergentes, les deux ont convergé vers la normalisation de la rétention comme outil central de la gouvernance migratoire. Cette convergence étaye l'argument central de la thèse : la gouvernance néolibérale a recadré la migration à la fois comme menace sécuritaire et comme vecteur d'une expansion carcérale fondée sur le marché.

À la fin des années 1990, le Royaume-Uni et les États-Unis avaient tous deux construit des architectures législatives durables qui normalisaient l'utilisation de la rétention dans la gouvernance de l'immigration. Les trajectoires ont divergé quant à la forme : les États-Unis s'appuyaient sur des lois fédérales de large portée, tandis que le Royaume-Uni privilégiait des lois parlementaires successives. Mais ils ont convergé dans les faits, les immigrants subissant de plus en plus la détention comme un élément de routine du processus d'immigration. Ce résultat partagé a préparé le terrain pour une transformation plus large dans laquelle la rétention n'était pas seulement un instrument juridique mais aussi un symbole politique de contrôle, une dynamique de sécuritisation explorée dans le chapitre suivant.

Entre 1980 et 2001 s'ouvre une ère décisive, véritablement transformatrice, dans l'histoire du contrôle migratoire aux États-Unis et au Royaume-Uni. Durant ces années, un changement de paradigme majeur a fait passer l'immigration de la périphérie au cœur de l'appareil pénal et sécuritaire de l'État. Le fonctionnaire civil a cédé la place à l'agent de contrôle, et l'immigré a été redéfini comme menace potentielle.¹⁸ Ce processus de sécuritisation, motivé par une combinaison d'opportunisme politique, d'anxiété économique et de panique morale alimentée par les médias, a laissé un héritage institutionnel profond et durable qui continue de façonner la politique jusqu'à nos jours.

L'analyse comparative révèle que si les deux nations sont arrivées à des régimes d'immigration durcis et axés sur le contrôle, elles y sont parvenues par des chemins différents. Les États-Unis ont poursuivi un modèle de sécuritisation juridico-pénale. Ils ont construit leur système en élaborant et en élargissant une catégorie juridique unique, le « crime aggravé », qui a servi à criminaliser une gamme de plus

¹⁸ Didier Bigo, « Security and Immigration: Toward a Critique of the Governmentality of Unease », *Alternatives* 27, no 1_suppl (2002): 63–92, <https://doi.org/10.1177/03043754020270S105>.

en plus large de comportements pour les non-citoyens. Ce projet juridique a été opérationnalisé en intégrant profondément le contrôle de l'immigration au système de justice pénale national, en utilisant ses prisons, ses groupes de travail et ses systèmes de données. Il en a résulté la mise en place d'un appareil d'expulsion vaste et efficace, légitimé par le registre du contrôle de la criminalité.

Le Royaume-Uni, pour sa part, a suivi un modèle de sécuritisation à dominante administrative et sécuritaire. Il a adapté les pouvoirs et la mentalité préexistants de son appareil de sécurité nationale, initialement conçu pour combattre une menace terroriste interne spécifique, et les a redéployés dans le contexte de l'asile. Cette approche a été légitimée non pas principalement par une re-catégorisation juridique, mais par une puissante campagne discursive qui a construit le « faux demandeur d'asile » comme un bouc émissaire menaçant la sécurité, les ressources et l'identité de la nation. Les leviers essentiels furent le pouvoir exécutif, le pouvoir discrétionnaire administratif et l'entretien d'une panique morale publique, tempérés seulement par la contrainte externe du droit européen des droits de l'homme.

Pourtant, ces chemins divergents étaient des réponses aux mêmes pressions structurelles. Les modèles juridico-pénal et administrativo-sécuritaire peuvent être compris comme des articulations nationales distinctes de l'« État punitif » qui, comme le soutient Wacquant, croît nécessairement pour contrôler les populations rendues précaires par la politique économique néolibérale. En ce sens, l'« étranger criminel » et le « faux demandeur d'asile » furent deux figures clés d'un gouvernement par le crime, dans une ère de croissance néolibérale et de recul de l'État-providence.

Ces voies divergentes ont produit des résultats similaires. Dans les deux pays, le contrôle civil de l'immigration a été transformé en une fonction quasi-criminelle. Une infrastructure de sécurité permanente, comprenant des centres de rétention, des agences de contrôle, des technologies de surveillance et des accords de coopération internationale, a été établie et s'est profondément enracinée. Plus important encore, cette période a infligé d'immenses coûts humains. Des familles ont été séparées, des communautés ont été stigmatisées et criminalisées, et des milliers d'individus, dont beaucoup avaient passé des décennies à construire leur vie dans leur nouveau pays, ont été expulsés. La montée de l'« étranger criminel » et du « faux demandeur d'asile » n'était pas un simple déplacement rhétorique ; elle a eu des conséquences dévastatrices

dans le monde réel, dont les échos se font encore sentir dans la vie d'innombrables migrants et de leurs familles aujourd'hui. Les choix faits pendant cette période formatrice ont créé une puissante dépendance au sentier, établissant les fondements institutionnels et idéologiques pour les régimes de contrôle de l'immigration encore plus étendus et punitifs qui émergeraient dans le monde de l'après-11 septembre.

En définitive, l'« étranger criminel » et le « faux demandeur d'asile » ne furent pas de simples boucs émissaires parallèles : ils furent les produits nécessaires de deux stratégies d'État distinctes mais convergentes pour canaliser les anxiétés sociales d'une nouvelle ère, laissant un héritage commun d'exclusion sécurisée. Au tournant du millénaire, les États-Unis et le Royaume-Uni avaient entièrement entremêlé l'immigration avec la justice pénale et la sécurité nationale. Chaque système a produit ses propres innovations juridiques, le « crime aggravé » aux États-Unis, les restrictions d'asile liées au terrorisme au Royaume-Uni, mais la trajectoire comparative est restée la même : la rétention est passée d'une option réglementaire à un impératif de sécurité. Ce mouvement de sécuritisation a jeté les bases de l'expansion physique de l'infrastructure de rétention, un développement exploré dans le chapitre suivant.

Chapitre 3 : La Montée de l'« Étranger Criminel » et la Sécuritisation de l'Immigration

La période allant du début des années 1980 au tournant du XXI^e siècle a été le témoin d'un changement de paradigme fondamental dans la gouvernance de l'immigration aux États-Unis et au Royaume-Uni. Ce chapitre soutient que, pendant ces deux décennies, l'immigration a été systématiquement transformée d'une affaire administrative civile en une question pressante de criminalité et de sécurité nationale. Ce processus, que les spécialistes des relations internationales appellent « sécuritisation », n'était pas une réponse inévitable à une menace objective et matérielle attribuée aux migrants.¹⁹ Il a plutôt été fabriqué et entretenu par ce que le sociologue Stuart Hall et ses collègues ont décrit, de façon célèbre, comme une « panique morale ». Ce cadre conceptuel offre un prisme utile pour comprendre les

¹⁹ Barry Buzan, Ole Wæver et Jaap de Wilde, *Security: A New Framework for Analysis* (Boulder CO : Lynne Rienner, 2013).

dynamiques politiques et sociales à l'œuvre.

Dans leur ouvrage fondateur *Policing the Crisis*, Hall et ses collègues soutiennent qu'une panique morale surgit lorsqu'un groupe social est désigné et défini par des responsables politiques, les médias, ou autres, comme une menace pour les valeurs et les intérêts de la société.²⁰ Cette panique remplit une fonction idéologique clé : elle déplace les anxiétés publiques profondes concernant des problèmes sociaux et économiques complexes, tels que le chômage, la désindustrialisation et l'érosion des structures sociales traditionnelles, sur un bouc émissaire facilement identifiable et vulnérable, un « démon populaire ».²¹ La création de ce démon populaire, amplifiée par des statistiques exagérées, des reportages sensationnalistes et une rhétorique simpliste et symbolique, génère un sentiment de crise sociétale. Cette crise, à son tour, sert à légitimer l'expansion du pouvoir de l'État et la mise en œuvre de mesures « draconiennes » qui seraient politiquement intenable dans des circonstances normales.²²

Dans le contexte de cette étude, l'« étranger criminel » aux États-Unis et le « faux demandeur d'asile » au Royaume-Uni sont devenus, à la fin du XXe siècle, les « démons populaires » par excellence. Les paniques morales liées à l'immigration n'ont pas jailli spontanément de l'opinion ; elles ont été soigneusement orchestrées par des acteurs politiques et par les médias.²³ Ce processus a permis l'adoption d'une législation profondément punitive et l'établissement d'un vaste appareil de contrôle qui a fondamentalement modifié la relation entre l'État et le non-citoyen.

La question comparative centrale est la suivante : comment deux démocraties libérales, confrontées à des pressions similaires (récessions, montée des idéologies conservatrices), ont-elles convergé vers une politique de sécuritisation par des voies institutionnelles et juridiques pourtant divergentes ? Comment et pourquoi le contrôle civil de l'immigration, historiquement une fonction bureaucratique concernée par les

²⁰ Stuart Hall, C. Critcher, et al., *Policing the Crisis: Mugging, the State, and Law and Order* (Palgrave Macmillan, 1978).

²¹ Tony Shenton, "Immigration: The Moral Panic That Never Goes Away," *Everyday Society*, British Sociological Association, 21 October 2020, <https://es.britisoc.co.uk/immigration-the-moral-panic-that-never-goes-away/>.

²² Roy Jenkins, cité dans Clive Walker, *The Prevention of Terrorism in British Law*, 2^e éd. (Manchester : Manchester University Press, 1992).

²³ Leo R. Chavez, *Covering Immigration: Popular Images and the Politics of the Nation*, Reprint 2020 (University of California Press, 2020), <https://doi.org/10.1525/9780520925250>.

visas, la résidence et la citoyenneté, a-t-il été transformé en une branche de l'appareil de justice pénale et de sécurité nationale dans les deux nations ?

Ce chapitre montre que, tandis que les États-Unis ont suivi un modèle juridico-pénal criminalisant l'immigré via de nouvelles lois et catégories bureaucratiques, le Royaume-Uni a adopté un modèle à dominante administrative et sécuritaire, réaffectant des pouvoirs existants pour redéfinir le demandeur d'asile comme une menace.

L'ampleur de cette transformation est visible dans les statistiques officielles, qui révèlent également les différents mécanismes par lesquels la sécuritisation a été réalisée. Aux États-Unis, le processus était principalement juridique et bureaucratique. Les expulsions fondées sur des condamnations pénales, aspect encore marginal du contrôle migratoire en 1980, ont ensuite augmenté de façon exponentielle. Bien que les chiffres précis pour les premières années soient difficiles à trouver, le nombre de personnes éloignées dans le cadre du *Institutional Hearing Program*, créé pour traiter les expulsions des non-citoyens incarcérés, est passé de 1 409 pour l'année fiscale (FY) 1988 à plus de 18 000 pour l'année fiscale 1997.²⁴ Le *Institutional Hearing Program* (IHP) a été conçu « pour obtenir le nombre maximum d'ordonnances finales d'exclusion et d'expulsion pendant que l'étranger criminel est sous la garde de l'État et du gouvernement fédéral ». Son objectif explicite, comme indiqué dans un autre rapport, était d'assurer « l'expulsion immédiate à l'achèvement de la peine de l'étranger ». Le nombre de personnes concernées par le programme a diminué en 1997, car des changements dans la loi ont facilité l'expulsion des personnes sans audience.

En 2000, les statistiques officielles du Service de l'immigration et de la naturalisation (INS) faisaient état de 113 104 éloignements d'« étrangers criminels », soit une hausse marquée depuis le début des années 1980.²⁵ Cette augmentation spectaculaire indique un changement de politique délibéré, motivé par la création et l'application agressive de nouvelles catégories juridiques.

Cette tendance apparaît plus nettement encore si l'on compare l'évolution des

²⁴ *The Institutional Hearing Program: An Overview* (American Immigration Council, 2021), <https://www.americanimmigrationcouncil.org/fact-sheet/institutional-hearing-program-overview/>.

²⁵ Transactional Records Access Clearinghouse (TRAC), « Reported Criminal Removals », *Syracuse University*, 2007, https://tracreports.org/immigration/reports/178/include/side_table2.html.

éloignements et des retours dans les années 1980-1990 et au début du XXI^e siècle. Au Royaume-Uni, le processus était plus discursif et politique. Bien que les statistiques directes sur les éloignements pour motif « criminel » soient moins centralisées pour cette période, la tendance à la sécuritisation est claire dans la forte corrélation entre l'augmentation des demandes d'asile et l'explosion de la couverture médiatique hostile et de la législation restrictive. Le nombre de demandeurs d'asile principaux est passé de 11 640 en 1989 à un pic de 80 315 en 2000.²⁶ Ce changement démographique n'a pas été accueilli par une augmentation des ressources pour le traitement des demandes, mais par un récit politique et médiatique qui a présenté ces arrivées comme une menace criminelle. Cela a fourni la justification politique pour une série de lois visant à dissuader et à rejeter les demandeurs « frauduleux ».²⁷

Un élément clé de ce modèle administratif était d'externaliser le contrôle au secteur privé. Le projet de loi sur l'immigration (responsabilité des transporteurs) du gouvernement de 1987, par exemple, a été conçu pour « placer une responsabilité directe sur les compagnies de transport » en imposant une amende pour chaque passager sans documents en règle qu'elles amenaient au Royaume-Uni.

Les données elles-mêmes révèlent donc la nature divergente du processus de sécuritisation. Aux États-Unis, l'État a construit une machine pour étiqueter formellement les non-citoyens comme des criminels, puis les expulser. En Grande-Bretagne, l'État, de concert avec les médias, a façonné un récit assimilant les demandeurs d'asile à la criminalité, légitimant ainsi leur exclusion. Ce chapitre retracera ces chemins parallèles mais distincts, démontrant comment les deux nations sont arrivées à la même destination : un système où l'immigré est présumé constituer une menace, et où le contrôle migratoire relève de la sécurité nationale.

Même si les États-Unis se focalisaient sur l'« étranger criminel » et le Royaume-Uni sur le terrorisme et l'abus de l'asile, les deux systèmes ont convergé vers une même logique : considérer les migrants comme des menaces potentielles, justifiant des formes de contrôle exceptionnelles. La comparaison démontre que, bien

²⁶ Home Office, *Asylum Statistics, United Kingdom, 2002* (Londres : Home Office, 2003); House of Commons Home Affairs Committee, *Asylum and Immigration, Second Report of Session 2003–04*, HC 218 (Londres : The Stationery Office, 2004).

²⁷ Roy Greenslade, *Seeking Scapegoats: The Coverage of Asylum in the UK Press*, Asylum and Migration Working Paper 5 (Institute for Public Policy Research, 2005).

que le vocabulaire ait différé, la sécuritisation de l'immigration était un projet transatlantique partagé.

La période entre 1980 et 2001 a marqué une ère décisive et transformative dans l'histoire du contrôle de l'immigration aux États-Unis et au Royaume-Uni. C'est au cours de ces années qu'un changement de paradigme important s'est produit, déplaçant l'immigration de la périphérie vers le centre de l'État de justice pénale et de sécurité nationale. Le fonctionnaire civil a cédé la place à l'agent de contrôle, et l'immigré a été redéfini comme une menace potentielle. Ce processus de sécuritisation, motivé par une combinaison d'opportunisme politique, d'anxiété économique et de panique morale alimentée par les médias, a laissé un héritage institutionnel profond et durable qui continue de façonner la politique jusqu'à nos jours.

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Le Royaume-Uni, pour sa part, a suivi un modèle de sécuritisation à dominante administrative et sécuritaire. Il a adapté les pouvoirs et la mentalité préexistants de son appareil de sécurité nationale, initialement conçu pour combattre une menace terroriste interne spécifique, et les a redéployés dans le contexte de l'asile. Cette approche a été légitimée non pas principalement par une re-catégorisation juridique, mais par une puissante campagne discursive qui a construit le « faux demandeur d'asile » comme un bouc émissaire menaçant la sécurité, les ressources et l'identité de la nation. Les leviers essentiels furent le pouvoir exécutif, le pouvoir discrétionnaire administratif et l'entretien d'une panique morale publique, tempérés seulement par la contrainte externe du droit européen des droits de l'homme.

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Ces voies divergentes ont produit des résultats similaires. Dans les deux pays, le contrôle civil de l'immigration a été transformé en une fonction quasi-criminelle. Une infrastructure de sécurité permanente, comprenant des centres de rétention, des agences de contrôle, des technologies de surveillance et des accords de coopération internationale, a été établie et s'est profondément enracinée. Plus important encore, cette période a infligé d'immenses coûts humains. Des familles ont été séparées, des communautés ont été stigmatisées et criminalisées, et des milliers d'individus, dont beaucoup avaient passé des décennies à construire leur vie dans leur nouveau pays, ont été expulsés. La montée de l'« étranger criminel » et du « faux demandeur d'asile » n'était pas un simple déplacement rhétorique. Elle a eu des conséquences dévastatrices dans le monde réel, dont les échos se font encore sentir dans la vie d'innombrables migrants et de leurs familles aujourd'hui. Les choix faits pendant cette période formatrice ont créé une puissante dépendance au sentier, établissant les fondements institutionnels et idéologiques pour les régimes de contrôle de l'immigration encore plus étendus et punitifs qui émergeraient dans le monde de l'après-11 septembre.

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Au tournant du millénaire, les États-Unis et le Royaume-Uni avaient entièrement entremêlé l'immigration avec la justice pénale et la sécurité nationale. Chaque système a produit ses innovations juridiques, le « crime aggravé » aux États-Unis, les restrictions d'asile liées au terrorisme au Royaume-Uni, mais la trajectoire comparative est demeurée la même : la rétention est passée d'une option réglementaire à un impératif de sécurité. Ce mouvement de sécuritisation a jeté les bases de

l'expansion physique de l'infrastructure de rétention, un développement exploré dans la partie suivante de cette thèse.

Partie II : Construire des Systèmes de Contrôle

Chapitre 4 : Infrastructure de Confinement : Architecture de Rétention et Contrôle Institutionnel

L'infrastructure du contrôle migratoire, centres de rétention, de traitement et d'éloignement, est plus qu'un ensemble de bâtiments : elle incarne la politique de l'État et matérialise la philosophie d'une nation à l'égard du non-citoyen. Entre 1979 et 2001, les États-Unis et le Royaume-Uni ont entrepris de construire et de systématiser une pratique jusque-là largement ponctuelle : la rétention administrative. Cette période a vu naître le parc de rétention moderne, un réseau d'installations qui, dans le langage théorique de Michel Foucault, peut être compris comme un « archipel carcéral ».²⁸ Cet archipel n'était pas une prison unique et monolithique, mais un système dispersé et interconnecté d'îlots de confinement, chacun régi par sa propre logique, mais contribuant à un continuum de contrôle plus vaste brouillant la frontière entre procédure administrative et sanction.²⁹ L'architecture de ces sites n'était pas un simple décor : elle constituait un instrument actif de pouvoir, destiné à discipliner, gérer et, in fine, éloigner les populations jugées indésirables.³⁰

Ce chapitre soutient que, bien que les États-Unis et le Royaume-Uni aient tous deux cherché à institutionnaliser la rétention administrative pendant cette période, ils ont suivi des voies infrastructurelles divergentes qui reflétaient leurs applications distinctes de l'idéologie néolibérale, leurs contextes politiques et juridiques uniques, et leurs réponses différentes aux crises migratoires. Aux États-Unis, les « urgences » perçues de l'exode de Mariel et des arrivées haïtiennes ont favorisé l'essor d'un

²⁸ Michel Foucault, *Surveiller et punir : Naissance de la prison*, trad. Alan Sheridan (New York : Vintage Books, 1995).

²⁹ Dominique Moran, *Carceral Geography: Spaces and Practices of Incarceration* (Londres : Routledge, 2017).

³⁰ Nicholas De Genova, « The Deportation Regime: Sovereignty, Space, and the Freedom of Movement », dans *The Deportation Regime*, dir. Nicholas De Genova et Nathalie Peutz (Durham NC : Duke University Press, 2010), <https://doi.org/10.2307/j.ctv120qtc1.5>.

« complexe immigranto-industriel » tentaculaire, fondé sur la logique de crise et rapidement privatisé.³¹ Dans le modèle américain, la création rapide d'une vaste infrastructure physique et contractuelle est devenue un puissant moteur des politiques publiques, générant une demande auto-entretenu de détenus pour occuper des milliers de nouveaux lits.³² Le Royaume-Uni a, à l'inverse, opté pour une expansion plus prudente, pilotée par l'État et marquée par l'inertie bureaucratique, les contraintes budgétaires et la dégradation des infrastructures. L'échec initial à bâtir un dispositif étatique adéquat a créé un vide comblé seulement dans les années 1990, par l'adoption tardive du modèle privatisé américain, l'approche étatique s'étant révélée intenable.

La différence profonde dans l'échelle des deux systèmes à la fin de cette période souligne l'importance de ces chemins divergents. On estimait à environ 85 000 le nombre d'immigrés retenus en 1995 ; en 2001, les autorités américaines en détenaient près de 204 000 par an, selon le Service de l'immigration et de la naturalisation (INS). En revanche, au Royaume-Uni, environ 1 700 personnes étaient retenues à un instant donné au titre des pouvoirs conférés par la législation sur l'immigration. Les totaux annuels n'étant pas directement comparables pour le Royaume-Uni, les estimations disponibles situent toutefois le volume annuel entre 10 000 et 12 000 personnes retenues. Cette disparité n'était pas uniquement le résultat de pressions migratoires variables, de l'échelle nationale ou de la distinction géographique entre île et continent (bien que ces facteurs doivent être reconnus), mais aussi un résultat direct des décisions architecturales et idéologiques prises au cours des deux décennies précédentes. Le choix américain d'ériger un réseau massif, flexible et géographiquement dispersé, bases militaires réaffectées, centres dédiés, prisons de comté sous contrat, a fait de la rétention de masse l'option par défaut. La réticence initiale du Royaume-Uni, puis son expansion ultérieure, plus centralisée, ont produit un système plus réduit, mais, à sa manière, tout aussi efficace dans l'exercice du

³¹ Karen Manges Douglas et Rogelio Sáenz, « The Criminalization of Immigrants & the Immigration-Industrial Complex », *Daedalus* 142, no 3 (2013): 199–227; Roxanne Lynne Doty et Elizabeth Shannon Wheatley, « Private Detention and the Immigration Industrial Complex », *International Political Sociology* 7, no 4 (2013): 426–43, <https://doi.org/10.1111/ips.12032>; Earl Smith et Angela Hattery, « If We Build It They Will Come: Human Rights Violations and the Prison Industrial Complex », *Societies Without Borders* 2, no 2 (2007): 273–88, <https://doi.org/10.1163/187219107X203603>.

³² Laura I. Appleman, « Cashing in on Convicts: Privatization, Punishment, and the People », *Utah Law Review* 2018, no 3 (2018): 579–637; Anita Sinha, « Arbitrary Detention? The Immigration Detention Bed Quota », *Duke Journal of Constitutional Law & Public Policy* 12, no 2 (2017): 77–121.

contrôle étatique.

Mettre l'accent sur l'architecture et les installations déplace l'analyse du seul registre juridique ou politique vers une lecture géographique et spatiale du contrôle migratoire. Le développement du parc de rétention était un projet spatial délibéré conçu pour rendre certaines populations invisibles, isolées et gouvernables. Implanter une installation dans un désert texan plutôt qu'à proximité de l'aéroport d'Heathrow ne relevait pas d'un simple calcul logistique : c'était un acte politique, aux effets décisifs sur l'accès au droit, le soutien communautaire et l'expérience psychologique du confinement. Ce chapitre analyse donc la rétention comme une pratique de l'art de gouverner mise en œuvre par la géographie et la conception.

Malgré des logiques institutionnelles distinctes, externalisation à des contractants privés aux États-Unis pour bâtir un « complexe immigranto-industriel » rentable ; approche plus ponctuelle et étatique au Royaume-Uni, les deux pays ont convergé vers le même résultat : l'expansion rapide d'une géographie carcérale destinée à confiner un nombre croissant de migrants. Ce parallèle démontre que des voies institutionnelles différentes peuvent néanmoins converger vers des architectures d'exclusion similaires.

Les structures physiques et managériales de la rétention administrative qui ont émergé aux États-Unis et au Royaume-Uni entre 1979 et 2001 n'étaient pas des résultats neutres ou inévitables des pressions migratoires. Elles relevaient, en réalité, de projets idéologiques traduits en béton, en acier et en droit des contrats. L'architecture du contrôle, conception, implantation, régime quotidien, incarnait l'évolution de l'approche étatique à l'égard du non-citoyen, montrant comment des choix politiques abstraits se traduisent dans l'expérience concrète du confinement.

L'analyse comparative fait apparaître deux héritages distincts, quoique liés. Portés par un récit de crise et une forte adhésion aux solutions de marché, les États-Unis ont créé un archipel carcéral tentaculaire, punitif et très rentable. Par l'isolement géographique, l'architecture carcérale et un dispositif de surveillance fragmenté, ce régime de rétention a été pensé pour la dissuasion et le contrôle, l'existence même d'une infrastructure privée massive a, en outre, alimenté une puissante incitation à son usage continu et croissant. Le Royaume-Uni, après une décennie d'impasse étatique conservatisme budgétaire et inertie bureaucratique, a finalement mis en place un

archipel privé plus compact, à visée gestionnaire et piloté de façon centralisée. Justifié par une logique d'efficacité et voilé dans un langage de traitement « humain », son système était organisé spatialement pour faciliter l'éloignement, supervisé par un puissant corps d'inspection indépendant, mais toujours capable d'infliger de profonds dommages psychologiques par le mécanisme de la rétention à durée indéterminée.

Le développement de ces vastes infrastructures pendant cette période fondatrice a créé une puissante « dépendance au sentier » qui a profondément façonné l'avenir du contrôle de l'immigration dans les deux nations. Le réseau de bâtiments, les intérêts corporatifs bien établis, les routines bureaucratiques établies et les cadres juridiques normalisés n'ont pas disparu en 2001. Au contraire, ils sont devenus la rampe de lancement pour l'expansion massive de la rétention administrative à l'ère de l'après-11 septembre. L'architecture du contrôle construite à la fin du XXe siècle a fourni les outils prêts à l'emploi pour les systèmes hyper-sécurisés du XXIe siècle. Les choix opérés face à l'exode de Mariel et à la hausse des demandes d'asile dans les années 1980 et 1990 ont fait de l'escalade ultérieure de la rétention non seulement une possibilité, mais, à bien des égards, l'option politique par défaut à l'entrée d'un nouveau siècle d'anxiété frontalière accrue.

À la fin des années 1990, les États-Unis et le Royaume-Uni avaient établi non seulement l'autorité légale de retenir, mais aussi les paysages physiques qui rendaient le confinement de masse possible. Qu'il s'agisse du boom de la rétention privatisée aux États-Unis ou d'un parc de rétention étatique en expansion au Royaume-Uni, les deux pays ont montré que l'infrastructure n'est pas neutre : elle incarne des choix politiques de dissuasion, d'exclusion et de contrôle. Ces choix sont devenus encore plus clairs à mesure que la rétention était de plus en plus déployée comme un outil délibéré de dissuasion, un thème exploré dans le chapitre suivant.

Chapitre 5 : La Dissuasion comme Doctrine : Interdiction, Contrôle aux Frontières et « Environnements Hostiles »

Les deux dernières décennies du XXe siècle ont été le témoin d'une transformation profonde dans la gouvernance de la migration aux États-Unis et au Royaume-Uni. Confrontés à l'augmentation des demandes d'asile et des migrations

sans autorisation, sur fond d'instabilité géopolitique et d'inégalités mondiales croissantes, les États-Unis et le Royaume-Uni ont entrepris une réorganisation en profondeur de leurs systèmes de contrôle. Ce chapitre soutient que, pendant la période de 1979 à 2001, les deux nations ont progressivement abandonné les mesures ponctuelles et réactives au profit d'une doctrine systématique et cohérente de dissuasion. Cette doctrine, fondée sur une application particulière de la théorie du choix rationnel, postulait que la migration, en tant que choix, pouvait être découragée en en accroissant délibérément les coûts physiques, financiers, juridiques ou psychologiques. Ce chapitre soutient que la dissuasion a évolué d'une tactique d'urgence vers une philosophie de gouvernance institutionnalisée, intégrant systématiquement la cruauté dans la machinerie administrative de l'État comme instrument officiel de politique. Dans ce contexte, les États-Unis et le Royaume-Uni ont commencé à gouverner par la migration, en utilisant la politique pour produire des résultats spécifiques et souhaités au sein de la population migrante elle-même.

Les fondements théoriques de ce changement peuvent être trouvés dans les principes économiques du choix rationnel, le plus célèbrement articulés par l'économiste américain Gary Becker. Le cadre de Becker suppose que les individus sont des acteurs prospectifs qui cherchent à maximiser leur bien-être en pesant les coûts et les avantages perçus de leurs actions, sous diverses contraintes. Il écrit que « tout comportement humain peut être considéré comme impliquant des participants qui maximisent leur utilité à partir d'un ensemble stable de préférences et accumulent une quantité optimale d'informations et d'autres intrants sur une variété de marchés ».³³ Alors que Becker a appliqué cette lentille à un large éventail de comportements humains, de la criminalité à la vie de famille, les décideurs politiques aux États-Unis et au Royaume-Uni l'ont implicitement et explicitement étendue à l'acte de migration.³⁴ Dans cette application étatique de la théorie, les gouvernements des deux pays ont agi en « acteurs rationnels », cherchant à infléchir le calcul coûts-avantages

³³ Gary S. Becker, *The Economic Approach to Human Behavior* (Chicago : University of Chicago Press, 1976).

³⁴ Catherine Herfeld, « The Potentials and Limitations of Rational Choice Theory: An Interview with Gary Becker », *Erasmus Journal for Philosophy and Economics* 5, no 1 (2012): 77–78, <https://doi.org/10.23941/ejpe.v5i1.101>.

du migrant potentiel.³⁵ Si la migration relevait d'un choix rationnel, alors, selon cette logique, on pouvait l'entraver en rendant ce choix si coûteux, dangereux, humiliant, financièrement et psychologiquement ruineux que les gains attendus de sécurité ou d'opportunité s'en trouveraient annulés. Cette logique a donné naissance à ce que les politologues Thomas Gammeltoft-Hansen et Nikolas Tan ont appelé le « paradigme de la dissuasion ».³⁶ Né dans les années 1980, ce paradigme a fini par dominer la réponse des États aux demandeurs d'asile, marquant le passage d'un consensus d'après-guerre centré sur la protection à un nouveau consensus axé sur l'exclusion et la prévention.³⁷ Les statistiques de la période soulignent les pressions qui ont alimenté ce changement de paradigme. Au Royaume-Uni, les demandes d'asile sont passées de seulement 1 500 en 1979 à un pic de 71 025 en 2001.³⁸ Aux États-Unis, l'exode de Mariel (1980) a vu l'arrivée de 125 000 Cubains en six mois, éclipsant les flux annuels précédents et instaurant un sentiment de crise aux effets politiques majeurs.

Si les États-Unis ont privilégié la fortification frontalière et l'interdiction en mer, et le Royaume-Uni des contrôles administratifs destinés à rendre la vie quotidienne invivable aux migrants jugés indésirables, l'un et l'autre ont fait de la dissuasion leur doctrine directrice. La dissuasion ne relevait pas de la seule géographie (frontières terrestres ou îles), mais d'un impératif politique plus large : rendre la migration coûteuse, risquée et peu attractive.

Ce chapitre pose une question comparative centrale : comment deux démocraties libérales avec des géographies, des traditions juridiques et des relations historiques avec l'immigration très différentes ont-elles convergé vers une doctrine de dissuasion similaire, et tout aussi punitive ? Pour répondre à cela, l'analyse se déroule en six parties. La première partie examine les principales « technologies de dissuasion » aux États-Unis : interdiction maritime, militarisation de la frontière terrestre (stratégie de « prévention par la dissuasion ») et usage de la rétention civile

³⁵ Fritz Söllner, « Towards a Rational Migration Policy », *Analyse & Kritik* 40, no 2 (2018): 267–92, <https://doi.org/10.1515/auk-2018-0015>.

³⁶ Thomas Gammeltoft-Hansen et Nikolas F. Tan, « The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy », *Journal on Migration and Human Security* 5, no 1 (2017): 28–56, <https://doi.org/10.1177/233150241700500103>.

³⁷ Malene H. Jacobsen et Rhys Machold, « Refusing Deterrence », *Journal of Ethnic and Migration Studies* (21 janvier 2025): 1–18, <https://doi.org/10.1080/1369183X.2024.2441604>.

³⁸ Tina Heath et Rachel Hill, *Asylum Statistics United Kingdom 2001*, Home Office Statistical Bulletin no 09/02 (2002).

comme arme. La deuxième partie porte sur le Royaume-Uni : externalisation de la frontière (régimes de visas, responsabilité des transporteurs) et création d'un « environnement hostile » interne (soutien à l'asile punitif, procédures accélérées). La troisième partie fournit une analyse comparative directe de ces stratégies, évaluant leurs fondements théoriques partagés, leurs mécanismes de mise en œuvre divergents, et leur bilan mutuel d'inefficacité et de conséquences perverses. La quatrième partie replace ces politiques dans leur contexte international et diplomatique, en examinant la façon dont les pays déplacent le fardeau et contestent l'interprétation des obligations juridiques internationales. Enfin, ce chapitre conclura que la principale conséquence du modèle de dissuasion n'a pas été le contrôle de la migration mais la création d'une infrastructure d'exclusion permanente, coûteuse et brutale qui définirait la gouvernance de l'immigration pour les décennies à venir.

La période 1979-2001 n'a rien de statique : un processus dynamique d'évolution politique y a progressivement ancré, sophistiqué et durci la doctrine de la dissuasion. Cette évolution a été alimentée par une boucle de rétroaction perverse d'échec perçu et d'escalade subséquente. Elle a été accélérée par la diffusion internationale des pratiques restrictives. L'évaluation finale de cette expérience de deux décennies est celle d'un échec profond, avec ses succès limités surpassés par ses coûts énormes et durables.

Une caractéristique déterminante du paradigme de la dissuasion aux États-Unis et au Royaume-Uni était sa tendance à l'escalade face à l'échec. Quand une mesure dissuasive se révélait insuffisante ou générait de nouveaux défis, la réponse institutionnelle consistait rarement à interroger la logique même de la dissuasion. Au lieu de cela, la réponse était de redoubler d'efforts, en intensifiant la politique existante ou en introduisant une nouvelle, encore plus dure.

Aux États-Unis, lorsque la mise en œuvre initiale de l'Opération *Hold the Line* à El Paso en 1993 a simplement déplacé le trafic de migrants ailleurs, la réponse de la Patrouille frontalière n'a pas été d'abandonner la stratégie mais de l'étendre, en lançant l'Opération *Gatekeeper* à San Diego, en Californie, l'Opération *Safeguard* près de Tucson, en Arizona, et l'Opération *Rio Grande* dans le secteur de McAllen au Texas.³⁹

³⁹ William J Krouse, *U.S. Border Patrol Operations*, no. 97-989 EPW (Congressional Research Service, 1997).

Le résultat ne fut pas une baisse des migrations, mais l'élargissement du couloir mortel le long de la frontière.⁴⁰ Ce schéma illustre l'effet de cliquet, une théorie décrivant comment la croissance institutionnelle devient souvent irréversible.⁴¹ En réponse à une crise perçue, l'appareil de contrôle des frontières obtient une expansion significative de son budget, de son personnel et de son autorité. Par effet de cliquet, ce niveau de ressources accru devient une base permanente, non réduite même lorsque la crise initiale s'atténue. Il en résulte une dynamique institutionnelle puissante : une circonscription bureaucratique dont la survie et la croissance futures dépendent de la perpétuation de la crise qu'elle était censée résoudre, l'État « enclenché » exigeant une justification permanente.⁴²

Un schéma similaire d'adaptation et d'escalade s'est observé au Royaume-Uni. La loi sur la responsabilité des transporteurs de 1987 a été suivie par la loi sur l'asile et les appels en matière d'immigration de 1993, qui a introduit le traitement accéléré et a étendu la rétention.⁴³ Celle-ci a été suivie par la loi sur l'immigration et l'asile de 1996, qui a encore restreint les prestations sociales, puis par la loi complète de 1999 qui a créé le système NASS. Chaque texte a consolidé la logique restrictive du précédent, densifiant progressivement le réseau de barrières administratives.

Cette escalade nationale a été amplifiée par un processus de diffusion internationale des politiques. Les gouvernements et les décideurs politiques des pays développés ont appris les uns des autres, partageant les « meilleures pratiques » en matière de restrictionnisme. Comme le montre Frances Nicholson, l'adoption par le Royaume-Uni des sanctions contre les transporteurs, par exemple, a suivi des modèles similaires déjà en place aux États-Unis, au Canada et en Australie.⁴⁴ Ce transfert transnational de politiques a normalisé les mesures dissuasives et installé l'idée d'un consensus international en faveur de la restriction, accélérant une convergence

⁴⁰ Jason De León, *The Land of Open Graves: Living and Dying on the Migrant Trail*, California Series in Public Anthropology 36 (University of California press, 2015).

⁴¹ Alan Peacock et Jack Wiseman, *The Growth of Public Expenditure in the United Kingdom*, 1^{re} éd. (Londres : Routledge, 1967), <https://doi.org/10.4324/9781003503484>.

⁴² Robert Higgs, *Crisis and Leviathan: Critical Episodes in the Growth of American Government* (New York : Oxford University Press, 1987).

⁴³ Frances Nicholson, « Implementation of the Immigration (Carriers' Liability) Act 1987: Privatising Immigration Functions at the Expense of International Obligations? », *International & Comparative Law Quarterly* 46, no 3 (1997): 586–634, <https://doi.org/10.1017/S0020589300060814>.

⁴⁴ *Ibid.*

mondiale vers des politiques d'immigration et d'asile plus punitives. Lisa Hassan soutient que les gouvernements ne peuvent pas légitimement décider à l'avance quels réfugiés sont « authentiques ». ⁴⁵ Elle affirme que des pays comme le Royaume-Uni et les États-Unis emploient des politiques dissuasives non pas pour aider les réfugiés, mais pour faire avancer leurs propres agendas. Hassan suggère que les nations adoptent ces stratégies dissuasives à plusieurs fins intéressées : diminuer le nombre total de demandeurs d'asile (sans tenir compte de la validité de leurs demandes), réduire les coûts, traiter les ressortissants étrangers comme des criminels et les empêcher de s'installer de manière permanente, et apaiser des segments particuliers de leurs populations tout en renforçant l'autorité gouvernementale.

La période de 1979 à 2001 marque un tournant dans l'histoire du contrôle de l'immigration aux États-Unis et au Royaume-Uni. C'est au cours de ces deux décennies que les deux nations, animées par des inquiétudes parallèles concernant l'augmentation de la migration et une perte perçue de contrôle souverain, ont résolument orienté leurs cadres politiques vers une doctrine systématique de dissuasion. Ce qui avait débuté comme une série de mesures réactives et d'urgence face à des crises spécifiques (l'exode de Mariel aux États-Unis, l'augmentation des demandes d'asile au Royaume-Uni) était devenu, en 2001, un système d'exclusion pleinement institutionnalisé, solidement ancré bureaucratiquement et idéologiquement cohérent. La logique centrale de ce système était la conviction que l'infliction de souffrances humaines était un outil rationnel et légitime de l'art de gouverner. ⁴⁶

L'analyse comparative révèle que, bien que les États-Unis et le Royaume-Uni aient emprunté des chemins différents pour arriver à cette destination, leur philosophie sous-jacente a convergé. Les États-Unis, une puissance continentale, ont poursuivi la dissuasion par la fortification physique de leurs frontières et la projection de leur pouvoir de contrôle dans les paysages mortels du désert et de la haute mer. ⁴⁷ Le

⁴⁵ Lisa Hassan, « Deterrence Measures and the Preservation of Asylum in the United Kingdom and United States », *Journal of Refugee Studies* 13, no 2 (2000): 184–204, <https://doi.org/10.1093/jrs/13.2.184>.

⁴⁶ Roxanne Lynn Doty, *Anti-Immigrantism in Western Democracies: Statecraft, Desire and the Politics of Exclusion* (Londres : Routledge, 2003).

⁴⁷ Maryse Fontus and Laura B. Sherman, *Refugee Refoulement: The Forced Return of Haitians under the U.S.-Haitian Interdiction Agreement* (Lawyers Committee for Human Rights, 1990); Frank D Bean et al., *Illegal Mexican Migration & the United States/Mexico Border: The Effects of Operation Hold the Line on El Paso/Juárez* (Population Research Center, 1994).

Royaume-Uni a poursuivi la dissuasion par une guerre administrative, externalisant ses frontières via des partenariats commerciaux et créant un « environnement hostile » précoce de privation sociale et économique pour ceux qui arrivaient.⁴⁸ L'un des chemins a mené à une politique d'attrition physique, l'autre à une attrition psychologique. Les deux étaient enracinés dans une application erronée de la théorie du choix rationnel qui a profondément méjugé les motivations de ceux qui fuyaient la persécution et la pauvreté. La politique américaine supposait que les migrants calculaient le risque physique et la probabilité d'être appréhendés. La politique britannique supposait que les migrants calculaient la disponibilité des prestations en espèces et la facilité de vie. Les deux modèles ont échoué parce qu'ils négligeaient le « facteur de poussée », fuite pour sa survie, ou des gains économiques potentiels largement supérieurs aux risques et aux coûts.

L'héritage ultime de cette ère est un témoignage de l'échec profond de la doctrine. Ce fut un échec d'efficacité : malgré des dépenses considérables et une dureté croissante, les politiques n'ont pas abouti à une réduction durable des flux migratoires mais ont plutôt créé des conséquences perverses et contre-productives, de la montée des réseaux de passeurs professionnels à l'enracinement de populations sans papiers permanentes.⁴⁹ Des sommes considérables, de l'ordre de millions, voire de milliards, ont été consacrées à des systèmes de contrôle et de rétention qui se sont révélés inefficaces. La doctrine de la dissuasion a également normalisé la cruauté, entraînant directement la mort de milliers de personnes à la frontière américaine et l'infliction d'une misère généralisée et de traumatismes psychologiques à des demandeurs d'asile vulnérables au Royaume-Uni. Si l'une des stratégies a conduit à des corps dans le désert et l'autre à des esprits en détresse, toutes deux procédaient de la même décision fondamentale : institutionnaliser la cruauté comme instrument de l'État.

L'infrastructure de contrôle créée durant cette période, frontière militarisée, centres de rétention éloignés, mécanismes privatisés, systèmes de protection sociale parallèles, procédures juridiques accélérées, n'a pas disparu en 2001. Au contraire, elle

⁴⁸ Rob Waters, « Small Boats, Border Incredulity, and the Hostile Environment in Britain, 1967–1978 », *History Workshop Journal* 98 (novembre 2024): 27–54, <https://doi.org/10.1093/hwj/dbae021>.

⁴⁹ Christina Gathmann, « Effects of Enforcement on Illegal Markets: Evidence from Migrant Smuggling along the Southwestern Border », *Journal of Public Economics* 92, no 10 (2008) : 1926–41, <https://doi.org/10.1016/j.jpubeco.2008.04.006>.

est devenue la base sur laquelle les politiques encore plus restrictives et axées sur la sécurité de l'ère post-11 septembre seraient construites.

Saisir l'évolution de la doctrine de la dissuasion entre 1979 et 2001 est donc essentiel pour appréhender le paysage contemporain du contrôle de l'immigration. Elle révèle comment deux des principales démocraties libérales du monde en sont venues à adopter l'exclusion punitive comme un principe central de gouvernance, établissant un système dont les coûts humains et financiers continuent de s'accumuler à ce jour.

À la fin des années 1990, la dissuasion s'était ancrée doctrinalement aux États-Unis comme au Royaume-Uni. Que ce soit par l'interdiction militarisée ou l'hostilité bureaucratisée, les deux gouvernements cherchaient à empêcher la migration non seulement en contrôlant les frontières, mais aussi en remodelant les paysages juridiques et sociaux que les migrants pourraient rencontrer. Le chapitre suivant analyse la mise à l'épreuve de ces stratégies devant les tribunaux et montre comment l'intervention judiciaire, ou son absence, a encore façonné l'ampleur de la rétention administrative.

Chapitre 6 : Le Front Juridique : Procédure Équitable, Appels et Rôle des Tribunaux

L'expansion de la rétention administrative aux États-Unis et au Royaume-Uni entre 1979 et 2001 présente un paradoxe constitutionnel et politique profond. Au cours de ces deux décennies, ces deux nations, porte-étendards de la démocratie libérale et de l'État de droit, ont édifié de vastes dispositifs administratifs de privation de liberté, largement soustraits au contrôle judiciaire robuste attendu dans tout autre domaine. Ce chapitre montre que, malgré des traditions juridiques libérales distinctes et revendiquées, les systèmes judiciaires des deux pays ont, au final, facilité, plutôt qu'entravé, l'expansion d'un régime de rétention dominé par l'exécutif. Ce résultat a suivi des voies différentes mais, fonctionnellement, convergentes : aux États-Unis, des tribunaux déjà bridés par la doctrine jurisprudentielle du « pouvoir plénier » ont vu leur autorité encore érodée, puis en grande partie neutralisée par une affirmation de suprématie législative. Parallèlement, les tribunaux britanniques ont pratiqué une autolimitation constitutionnelle, se remettant à l'autorité de l'exécutif au nom de la

souveraineté parlementaire ; cette déférence n'a été que modestement tempérée par l'essor progressif des principes de *common law* et l'influence naissante des normes européennes des droits de l'homme.

Ce phénomène peut être compris à travers le prisme du « paradoxe libéral », un concept développé par des politologues tels que James Hollifield, pour expliquer le conflit inhérent au sein des États libéraux entre la poussée du libéralisme économique pour l'ouverture à la migration et les pressions politiques nationales, car les pressions électorales et les préoccupations d'identité nationale obligent les États à restreindre l'immigration.⁵⁰ Si le cadre de Hollifield cible la tension entre marchés et politique, ce chapitre replace le pouvoir judiciaire comme acteur central et conflictuel de ce paradoxe.⁵¹ Le « front » juridique n'était pas un simple théâtre passif ; c'était une arène active où se tranchait le conflit fondamental entre les prétentions universalistes des droits de l'homme et le pouvoir souverain de l'État-nation de définir et contrôler sa communauté. Comme l'ont noté des juristes, les démocraties constitutionnelles forment des communautés délimitées ; les revendications des immigrants non citoyens défient et déstabilisent intrinsèquement cette construction, qui suppose un certain degré de fermeture et d'exclusion.⁵² Les tribunaux, en tant qu'arbitres de ces revendications, ont été contraints de naviguer dans ce « dilemme constitutif au cœur des démocraties libérales ».⁵³

Pour les droits des migrants, le « front » juridique a été le théâtre d'un recul constant. Les tribunaux n'ont pas créé les pressions politiques pour la restriction, mais leur jurisprudence a créé l'espace juridique pour que les politiques de rétention menées par l'exécutif puissent prospérer. Ce chapitre retrace ce processus à travers une analyse

⁵⁰ James F. Hollifield, *Immigrants, Markets, and States: The Political Economy of Postwar Europe* (Cambridge MA : Harvard University Press, 1992).

⁵¹ Katharina Natter, « Autocratic Immigration Policymaking: The Illiberal Paradox Hypothesis », *International Migration Institute Network Working Papers* 147 (2018), <https://dare.uva.nl/search?identifier=4b1e5074-b1a6-42f9-8b0e-d2681b4d3620>.

⁵² Vladislava Stoyanova, « Populism, Immigration and Liberal Democracies: Inherent Instability or Tipping of the Balance? », dans *Migrants' Rights, Populism and Legal Resilience in Europe*, dir. Vladislava Stoyanova et Stijn Smet (Cambridge : Cambridge University Press, 2022), 50, <https://doi.org/10.1017/9781009040396.004>.

⁵³ Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens*, *The John Robert Seeley Lectures* 5 (Cambridge : Cambridge University Press, 2004).

comparative. La partie I examine les États-Unis, détaillant un récit de recul judiciaire culminant en une dérogation législative qui a codifié le pouvoir exécutif et a privé les tribunaux de leur rôle de surveillance traditionnel. La partie II se tourne vers le Royaume-Uni, analysant une évolution plus progressive façonnée par le *common law*, la justice administrative et les contraintes croissantes, mais limitées, du droit supranational européen. Enfin, les parties III, IV et V mèneront une analyse comparative directe des protections juridiques, des affaires marquantes et des limitations structurelles au sein des deux systèmes, concluant que, malgré leurs profondes différences de tradition juridique et de structure constitutionnelle, les systèmes judiciaires des États-Unis et du Royaume-Uni ont convergé vers un résultat similaire : la normalisation de la rétention administrative de masse comme un outil légitime du pouvoir de l'État.

Malgré des traditions constitutionnelles différentes, les tribunaux des deux pays ont affronté un même dilemme : jusqu'où se remettre à l'exécutif en matière d'immigration et de rétention. La comparaison montre comment deux cultures juridiques distinctes ont convergé vers une posture de retenue judiciaire, renforçant de facto la suprématie législative dans la gouvernance des migrants.

Revenant au paradoxe central de ce chapitre, l'histoire du front juridique dans l'expansion de la rétention administrative de 1979 à 2001 n'est pas celle d'un triomphe judiciaire. Aux États-Unis comme au Royaume-Uni, la période s'est terminée avec un système de rétention beaucoup plus vaste et plus punitif, fonctionnant avec beaucoup moins de contrôle judiciaire qu'à ses débuts. En dépit de traditions, de structures constitutionnelles et d'outils judiciaires très différents, les tribunaux des deux pays se sont révélés un forum disputé mais, au final, subordonné dans la lutte politique plus large autour du contrôle migratoire. Ils ont été incapables d'empêcher les branches exécutive et législative d'institutionnaliser la rétention administrative de masse comme un instrument de routine du pouvoir de l'État.

L'analyse comparative conduit à un constat éclairant. L'érosion de la protection juridique a suivi deux chemins distincts qui ont convergé vers un résultat similaire. Aux États-Unis, le processus a été celui de la confrontation et de la rupture politique. Une période de contentieux fondés sur les droits, mettant à nu les failles de la doctrine du pouvoir plénier, a suscité, en 1996, une réaction législative puissante qui

a, de fait, démantelé une large part du rôle traditionnel de contrôle du pouvoir judiciaire. L'histoire américaine est celle d'une éviscération législative de l'autorité judiciaire, motivée par des considérations politiques. Au Royaume-Uni, le processus a été plus celui d'une évolution et d'une négociation progressives. Le pouvoir judiciaire national a pratiqué l'autolimitation, définissant des limites modestes fondées sur le *common law* au pouvoir discrétionnaire de l'exécutif tout en s'en remettant largement au principe de la souveraineté parlementaire. Les contraintes majeures ne sont pas venues de l'intérieur, mais de la pression externe du droit européen des droits de l'homme, qui a contraint un État souverain réticent à accepter certaines limites absolues à son pouvoir. L'histoire britannique est celle de la déférence judiciaire envers le pouvoir politique national, tempérée seulement par la lente progression des normes juridiques supranationales.

En définitive, ces batailles juridiques soulignent les limites profondes des recours judiciaires face à une volonté politique déterminée de contrôler les frontières nationales. Les tribunaux pouvaient, et ont, articulé des principes d'une importance fondamentale. La prise de position de la Cour Suprême des États-Unis contre la rétention à durée indéterminée dans l'affaire *Zadvydas* et l'articulation par la Haute Cour du Royaume-Uni de la norme de « raisonnabilité » dans l'affaire *Hardial Singh* ont été des affirmations vitales de l'état de droit. Pourtant, ces décisions tenaient de la victoire tactique au sein d'une retraite stratégique. Elles pouvaient améliorer les caractéristiques les plus offensantes sur le plan constitutionnel du système de rétention, mais elles ne pouvaient pas arrêter sa croissance implacable ni contester le consensus politique qui le soutenait. La responsabilité ultime de l'essor de l'État de rétention tient donc moins à une défaillance de la volonté judiciaire qu'aux processus politiques démocratiques de ces deux nations libérales. Les tribunaux n'ont pas mené la charge vers la rétention de masse, mais ils ont été, en dernière analyse, incapables de se mettre en travers de son chemin.

Au tournant du siècle, les tribunaux des États-Unis et du Royaume-Uni avaient affirmé leur rôle d'arbitres réticents plutôt que de protecteurs robustes des droits des migrants. La dépendance américaine au pouvoir plénier, comme la dépendance britannique à la souveraineté parlementaire, ont produit des systèmes judiciaires qui, tout en affirmant parfois des limites, ont largement entériné la rétention comme outil

légitime de gouvernance. Cette convergence éclaire un paradoxe central des démocraties libérales : même là où les traditions de procédure équitable sont fortes, les migrants demeurent en marge du droit, leur liberté restant subordonnée à l'invocation de la nécessité souveraine de l'État.

Conclusion Générale

Cette thèse a commencé par une énigme qui semblait à la fois d'une simplicité trompeuse et profondément conséquente : pourquoi, en l'espace de seulement deux décennies, les États-Unis et le Royaume-Uni, deux démocraties libérales avec des traditions politiques et des systèmes juridiques distincts, ont-ils construit des régimes de rétention administrative étendus qui étaient auparavant marginaux dans la gouvernance des migrations ? Entre 1980 et 2001, la rétention administrative est passée d'une pratique résiduelle et ponctuelle à une institution centrale du pouvoir de l'État, avec des implications profondes pour la gouvernance de la mobilité, les frontières de la citoyenneté et l'extension de l'autorité carcérale. Pour boucler la boucle, cette conclusion revient explicitement aux trois questions de recherche qui ont structuré la thèse :

- Pourquoi la rétention administrative s'est-elle étendue de manière si spectaculaire aux États-Unis et au Royaume-Uni entre 1980 et 2001 ?
- Comment ces systèmes ont-ils été façonnés par la politique, les institutions et les discours nationaux ?
- Quelles perspectives émergent d'une lentille comparative qu'une étude d'un seul pays occulterait ?

Les réponses à ces questions forment l'épine dorsale de l'argument avancé tout au long de cette thèse. En substance, la thèse soutient que la montée de la rétention ne s'explique ni par une réponse mécanique aux pressions migratoires, ni par une simple adaptation juridico-technique. Au contraire, la rétention a émergé et s'est consolidée dans le cadre d'un projet politique plus large dans lequel la restructuration néolibérale, la sécuritisation de la migration et la gouvernance punitive ont convergé pour générer de nouvelles logiques de contrôle.

Aux États-Unis comme au Royaume-Uni, les élites politiques ont recadré

l'immigration comme une menace : « étranger criminel », « faux demandeur d'asile », et mis en place des mécanismes institutionnels destinés à rendre la rétention routinière. Pourtant, ces processus se sont déroulés à travers des architectures nationales distinctes : les États-Unis ont institutionnalisé la rétention via la fusion du droit de l'immigration et du droit pénal, tandis que le Royaume-Uni l'a fait par le pouvoir discrétionnaire de l'exécutif et l'expansion administrative des logiques de sécurité. Des similitudes fonctionnelles ont émergé, mais sans uniformité institutionnelle.

Trajectoires Divergentes, Logiques Partagées

L'expansion de la rétention ne se réduit ni à l'augmentation des flux migratoires, ni à l'inertie institutionnelle, ni aux chocs sécuritaires. Elle reflétait plutôt la convergence de multiples logiques politiques. Premièrement, les changements politiques et idéologiques ont été décisifs. Aux États-Unis comme au Royaume-Uni, l'ascension de Reagan et Thatcher a annoncé la consolidation de la gouvernance néolibérale : le recul de l'État-providence, la valorisation des marchés et la politisation de la loi et de l'ordre. Dans ce contexte idéologique, l'immigration a été de plus en plus présentée à la fois comme fardeau économique et menace culturelle, légitimant des formes de contrôle punitives.

Deuxièmement, les discours de sécuritisation ont fourni l'architecture symbolique. Aux États-Unis, la figure de l'« étranger criminel » a gagné du terrain, en particulier après l'Anti-Drug Abuse Act de 1986 et l'Illegal Immigration Reform and Immigrant Responsibility Act de 1996. La migration est devenue synonyme de criminalité, de drogue et de vulnérabilité nationale. Au Royaume-Uni, le trope du « faux demandeur d'asile » a joué un rôle analogue, présentant les migrants comme des opportunistes abusant de la générosité de l'État-providence. Ces discours ont fourni la justification de la normalisation de la rétention, la présentant comme une mesure de contrôle nécessaire plutôt qu'une pratique extraordinaire.

Troisièmement, le contexte géopolitique a compté. Aux États-Unis, les héritages de la Guerre Froide et l'instabilité régionale, en particulier en Amérique centrale et dans les Caraïbes, ont produit des flux migratoires qui ont été facilement politisés. Au Royaume-Uni, les anxiétés post-coloniales ont été réfractées à travers les anxiétés concernant l'asile et le multiculturalisme. Les deux États ont répondu en

intégrant la rétention dans des stratégies de dissuasion plus larges. Ainsi, la montée de la rétention résulte d'un projet politique ancré dans des cadres idéologiques changeants, des discours sécuritaires et des pressions géopolitiques, plutôt que d'une réaction neutre aux « crises » migratoires.

L'analyse comparative a démontré que, bien que les États-Unis et le Royaume-Uni aient poursuivi la normalisation de la rétention comme un pilier central de la gouvernance migratoire, ils l'ont fait par des logiques institutionnelles différentes. Les États-Unis ont fusionné le droit pénal et le droit de l'immigration en un régime distinct de « crimmigration ». Des innovations législatives, telles que la catégorie de « crime aggravé », conjuguées à la déférence judiciaire envers l'exécutif, ont produit un système où la rétention était légalement obligatoire et solidement ancrée dans l'infrastructure. L'expansion des contrats de prisons privées, associée aux doctrines de dissuasion, a soutenu une croissance massive de la capacité de rétention. Au Royaume-Uni, l'extension de la rétention a reposé sur le pouvoir discrétionnaire administratif et l'autorité de l'exécutif. La législation des années 1980 et 1990 a accordé de larges pouvoirs de rétention, tandis que le système d'asile a été progressivement réorganisé pour privilégier la dissuasion et la rapidité au détriment de la protection des droits. Des mécanismes tels que les sanctions contre les transporteurs ont externalisé le contrôle, tandis que le pouvoir judiciaire n'exerçait qu'une surveillance prudente. La rétention s'est ainsi normalisée moins par des mandats statutaires et plus par l'exercice quotidien du pouvoir administratif.

L'approche comparative met en évidence un paradoxe central : similarité fonctionnelle sans uniformité institutionnelle. Les États-Unis et le Royaume-Uni sont tous deux arrivés à des systèmes où la rétention était intégrale à la gouvernance migratoire, mais ils l'ont fait par des architectures juridiques et politiques divergentes. Cette perspective remet en question les récits diffusionnistes qui supposent qu'un modèle a été exporté en bloc, suggérant plutôt des trajectoires parallèles mais distinctes façonnées par les contextes nationaux.

Contributions de la thèse

Cette thèse propose la première histoire archivistique comparative approfondie de la rétention administrative aux États-Unis et au Royaume-Uni (1980-2001).

S'appuyant sur des documents gouvernementaux, des débats législatifs et des décisions judiciaires, elle reconstruit comment la rétention est passée d'un outil marginal à une institution courante. En contrastant deux cas nationaux, l'étude fournit une base pour de futures recherches comparatives.

Sur le plan théorique, la thèse recadre la rétention non comme simple instrument politique ou dilemme humanitaire, mais comme technologie politique de contrôle. La rétention est interprétée comme une pratique par laquelle l'État reconfigure les frontières de l'appartenance et de l'exclusion. Cette perspective met en avant la rétention comme un site actif de l'art de gouverner plutôt qu'une simple mesure réactive.

Sur le plan méthodologique, la thèse montre la valeur de l'analyse historico-comparative dans les études migratoires. En situant la rétention dans des arcs temporels plus longs et des contrastes transnationaux, l'étude cherche à éviter les écueils du présentisme et de l'exceptionnalisme. Elle montre comment le travail comparatif peut éclairer à la fois les logiques partagées et les spécificités nationales.

Conceptuellement, la recherche nuance l'idée d'un « modèle anglo-saxon » de contrôle des migrations. Si une convergence s'est produite au niveau de la fonction (la rétention comme outil de routine), la forme de l'institutionnalisation a divergé de manière significative. Cette nuance remet en question à la fois les récits diffusionnistes et les typologies trop généralisées, cherchant à offrir une compréhension plus granulaire de la convergence et de la divergence.

Cette recherche intervient dans plusieurs domaines de la recherche. Premièrement, elle s'appuie sur et complique la recherche juridique sur la rétention et la « crimmigration ». Des travaux, comme celui de Juliet Stumpf sur la « crimmigration », ont fourni un vocabulaire conceptuel pour penser la fusion du droit pénal et du droit des étrangers aux États-Unis. Pourtant, comme l'ont noté les critiques, le cadre a souvent été appliqué de manière à naturaliser l'exceptionnalisme américain ou à sous-estimer la variation comparative. En juxtaposant les États-Unis avec le Royaume-Uni, cette thèse affirme à la fois l'utilité de la lentille de la « crimmigration » et révèle ses limites.⁵⁴ Au Royaume-Uni, l'expansion de la rétention n'a pas été soutenue par la

⁵⁴ Juliet Stumpf, « The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power », *American University Law Review* 56, no 2 (2006) : 367–419, <https://doi.org/10.1515/9780804785419-004>.

fusion pénal-immigration mais par le pouvoir discrétionnaire de l'exécutif et l'autorité administrative. Ainsi, la « crimmigration » explique une partie de l'histoire, mais pas la totalité.

Deuxièmement, la recherche engage un dialogue avec la criminologie critique et les études carcérales, notamment les travaux de Mary Bosworth et Alison Mountz, qui ont éclairé les expériences vécues des détenus, la propagation mondiale de la rétention et les dynamiques de l'expansion carcérale.⁵⁵ Bien que cette thèse ne se soit pas concentrée principalement sur les voix des détenus, elle contribue à cette littérature en situant l'émergence de la rétention dans des trajectoires politico-historiques.

Troisièmement, la thèse étend les études sur la migration et l'asile, remettant en question les récits diffusionnistes ou de « modèle anglo-saxon ». Des chercheurs comme Matthew Gibney ont souligné comment les États libéraux concilient les engagements humanitaires avec les politiques restrictives. Cette thèse confirme l'hypothèse d'un paradoxe libéral, mais va plus loin : elle montre que la rétention n'a pas été un simple compromis, mais une technologie politique délibérée redéfinissant les termes de la gouvernance.

Quatrièmement, l'étude contribue à la théorie de l'État et aux débats sur le néolibéralisme. Des chercheurs comme Loïc Wacquant⁵⁶ et David Garland⁵⁷ ont décrit la montée de la gouvernance punitive sous le néolibéralisme, principalement en relation avec la justice pénale. Cette thèse montre comment des dynamiques similaires ont imprégné le champ de la migration. Elle suggère que le néolibéralisme n'a pas seulement entraîné un recul de l'État-providence, mais aussi la construction active d'appareils coercitifs pour gouverner les populations jugées excédentaires, menaçantes ou indignes.

Enfin, la thèse contribue aux études sur la sécuritisation. S'appuyant sur l'École de Copenhague, la théorie de la sécuritisation met en évidence comment les acteurs politiques présentent des problèmes comme des menaces existentielles

⁵⁵ Alison Mountz, *The Death of Asylum: Hidden Geographies of the Enforcement Archipelago* (University of Minnesota Press, 2020).

⁵⁶ Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham NC : Duke University Press, 2009).

⁵⁷ David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford : Oxford University Press, 2002).

nécessitant des mesures extraordinaires. Le discours américain de l'« étranger criminel » et le trope britannique du « faux demandeur d'asile » illustrent précisément de telles démarches. Pourtant, les preuves comparatives suggèrent que la sécuritisation n'a pas opéré dans le vide ; au contraire, elle a été institutionnalisée différemment selon les architectures juridiques, les traditions politiques et les structures bureaucratiques. Ainsi, la recherche soutient les idées centrales de la théorie de la sécuritisation tout en préconisant une plus grande attention au contexte institutionnel.

En somme, la thèse se situe à l'intersection des études juridiques, de la recherche carcérale, des études sur la migration, de la théorie de l'État et de la sécuritisation. Sa contribution distinctive est de tisser ces littératures en une histoire politique comparative, qui met en avant le caractère délibéré des régimes de rétention.

Limites de la thèse

Aucune étude n'est sans limites, et cette thèse ne fait pas exception. Des asymétries archivistiques ont inévitablement contraint la recherche : les sources américaines se sont révélées plus abondantes, accessibles et détaillées que celles disponibles au Royaume-Uni. Ce déséquilibre a façonné non seulement la granularité des résultats mais aussi le poids comparatif que chaque étude de cas nationale pouvait supporter. De plus, la thèse s'est concentrée principalement sur les pratiques et les justifications des acteurs étatiques, laissant nécessairement moins de place aux perspectives de ceux qui ont résisté, plaidé ou subi la rétention. Les récits d'expérience des détenus, bien qu'intégrés lorsque possible, demeurent médiatisés par la documentation officielle et l'analyse secondaire, ce qui souligne un déséquilibre structurel des voix les plus audibles. Sur le plan chronologique, le choix d'arrêter en 2001 limite l'analyse des transformations post-11 septembre, période d'intensification et de mondialisation des politiques antiterroristes. Cette césure est toutefois délibérée : elle offre une clarté analytique en situant les résultats dans un moment historique distinct, sans laisser les développements ultérieurs dominer le récit. Enfin, comme pour toute recherche interprétative, la positionnalité du chercheur, façonnée par son parcours disciplinaire, ses compétences linguistiques et ses engagements théoriques, a influencé à la fois la formulation des questions et l'interprétation des preuves. Ces limitations ne sapent pas les contributions de l'étude mais doivent être gardées à

l'esprit lors de l'évaluation de ses conclusions et de la considération de pistes pour de futures recherches.

Depuis 2001 : Continuités et Accélération

Depuis 2001, la politique d'immigration aux États-Unis et au Royaume-Uni a subi une profonde transformation, façonnée par des priorités politiques changeantes, des préoccupations de sécurité et des pressions économiques. À travers les administrations successives, les décideurs politiques des deux pays ont cherché à équilibrer les impératifs concurrents du contrôle des frontières, de la sécurité nationale, de la protection humanitaire et des besoins économiques. Fin 2001, les cadres législatifs, l'infrastructure carcérale et les justifications idéologiques de la rétention administrative étaient déjà solidement établis, fournissant la base d'un système encore plus étendu et punitif. La panique sécuritaire qui a suivi les attaques terroristes du 11 septembre 2001 a intensifié ces trajectoires existantes de sécuritisation et de « crimmigration » qui s'étaient développées au cours des deux décennies précédentes. L'aperçu suivant retrace ces développements dans l'ordre chronologique et montre comment l'approche de chaque gouvernement, réformiste ou restrictive, a reflété des dynamiques nationales et internationales plus larges : sécuritisation post-11 septembre, mondialisation, opinion publique et instabilité géopolitique.

Synthèse de la Thèse

En regardant l'ensemble de l'analyse, six dimensions se distinguent : les trajectoires historiques, les architectures juridiques, les discours de sécuritisation, la construction d'infrastructures, les logiques de dissuasion et les réponses judiciaires. Ensemble, ces dimensions révèlent un récit de transformation : la rétention a évolué d'une pratique marginale à une institution bien établie. La perspective globale est celle d'une convergence des logiques mais d'une divergence de l'institutionnalisation. Les deux États ont normalisé la rétention par la sécuritisation et la dissuasion, mais ils l'ont fait via des architectures différentes. La rétention apparaît comme un projet politique, une technologie de gouvernance et un élément constitutif de l'État carcéral moderne.

Un État d'Exception par Conception

Entre 1980 et 2001, la rétention administrative aux États-Unis et au Royaume-Uni a été transformée d'une mesure administrative marginale en un archipel carcéral ancré au cœur de la gouvernance migratoire. Cette transformation n'était ni inévitable ni accidentelle, mais plutôt le résultat de projets politiques délibérés qui ont mobilisé des discours de sécuritisation, de dissuasion et de gouvernance punitive pour construire des états d'exception durables et intentionnels. En retraçant cette histoire de manière comparative, cette étude démontre que la rétention administrative n'est pas une aberration politique mais une institution centrale de la démocratie libérale dans sa forme néolibérale et sécurisée, construite non pas malgré les engagements libéraux, mais à travers eux, les États cherchant à reconfigurer les frontières de la citoyenneté, des droits et de l'appartenance. L'histoire politique comparative développée ici souligne donc la nécessité de comprendre la rétention comme une technologie centrale de gouvernance au sein de l'État carcéral en évolution. Malgré son enracinement, l'expansion de la rétention administrative depuis les années 1980 montre peu de signes de ralentissement, bien qu'elle vise parfois des non-citoyens n'ayant commis aucune infraction pénale et entraîne souvent expulsions, séparations familiales, ainsi que de lourds préjudices psychologiques et financiers. En outre, la rétention n'atteint pas ses objectifs déclarés : comme l'observe Alice Edwards, « aucune preuve empirique n'accrédite l'idée que la menace d'être détenu dissuade la migration irrégulière ou, plus spécifiquement, décourage les demandes d'asile ».⁵⁸

⁵⁸ Alice Edwards, *Back to Basics: The Right to Liberty and Security of Person and "Alternatives to Detention" of Refugees, Asylum Seekers, Stateless Persons and Other Migrants, Legal and Protection Policy Research Series*, PPLA/2011/01.Rev.1 (Genève : The UN Refugee Agency, 2011).

Titre : Sécuritisation, dissuasion et contrôles : analyse comparative de la détention des migrants aux États-Unis et au Royaume-Uni (1980-2001)

Mots clés : immigration, détention, États-Unis, Royaume-Uni, migrant, prison

Résumé : Cette thèse examine les fondements historiques, juridiques et institutionnels de la détention des migrants aux États-Unis et au Royaume-Uni, en retraçant l'évolution des pratiques d'enfermement, de déportation et de contrôle des frontières. Par le biais d'un cadre comparatif, elle interroge les terminologies, les politiques et les idéologies changeantes qui structurent le traitement des immigrés, en mettant en évidence l'articulation entre sécurité nationale, exclusion raciale et souveraineté étatique.

La première partie établit les fondements historiques et conceptuels de la détention. Elle situe le contrôle migratoire dans des trajectoires plus longues de construction nationale, de colonialisme et de racialisation, en soulignant la transition progressive d'une relative ouverture vers des régimes restrictifs, orientés par la sécurité. L'analyse des jalons législatifs, du début du XX^e siècle jusqu'à la fin des années 1990, montre comment les crises économiques, politiques et sécuritaires ont été mobilisées pour justifier des mesures de plus en plus punitives. L'émergence de la figure de « l'étranger criminel » et la sécuritisation du droit de l'immigration illustrent la manière dont la migration a été reformulée à la fois comme menace juridique et menace existentielle.

La deuxième partie analyse l'institutionnalisation de la détention et de la dissuasion. Elle explore les infrastructures de l'enfermement, en opposant le système largement privatisé des États-Unis au système britannique, piloté davantage par l'État. Les deux, néanmoins, traduisent des idéologies de contrôle inscrites dans l'architecture et les pratiques administratives. L'étude se penche également sur les stratégies de contrôle aux frontières, telles que l'interception maritime, la militarisation et les politiques d'« environnement hostile » qui visent à décourager la migration en rendant l'entrée et l'installation toujours plus précaires. Enfin, le rôle du pouvoir judiciaire est examiné, montrant comment les tribunaux, dans les deux pays, oscillent entre protections limitées et déférence à l'égard de l'exécutif.

En confrontant les approches américaine et britannique, la thèse soutient que, malgré des trajectoires divergentes, les deux systèmes convergent vers la normalisation de la détention comme pilier central de la gouvernance migratoire, reflétant des tendances mondiales plus larges à la sécuritisation, à la dissuasion et à la criminalisation des migrations.

Title: Securitisation, Deterrence, and Control: A Comparative Analysis of Immigration Detention in the United States and the United Kingdom (1980–2001)

Key words: immigration, detention, United States of America, United Kingdom, migrant, prison

Abstract: This dissertation investigates the historical, legal, and institutional foundations of immigration detention in the United States and the United Kingdom, tracing how practices of confinement, deportation, and border control have evolved from the early modern period to the present, with a particular focus on 1980 to 2001. Through a comparative framework, it interrogates the shifting terminologies, policies, and ideologies that underpin the treatment of immigrants, emphasising the interplay between national security, racial exclusion, and state sovereignty.

Part I establishes the historical and conceptual foundations of detention. It situates immigration control within longer trajectories of nation-building, colonialism, and racialisation, highlighting the gradual transition from relative openness to restrictive, security-driven regimes. By examining legislative milestones from the early 20th century through the late 1990s, the study reveals how economic, political, and security-related crises have been mobilized to justify increasingly punitive measures. The rise of the “criminal alien” and the securitisation of immigration law illustrate how migration has been reframed as both a legal and existential threat.

Part II analyses the institutionalisation of detention and deterrence. It explores the infrastructures of confinement, contrasting the U.S.'s privatised, profit-driven detention complex with the U.K.'s state-led yet decaying system. Both, however, reflect ideologies of control embedded in architecture and administrative practice. The study further examines border enforcement strategies such as maritime interdiction, militarisation, and hostile environment policies that seek to deter mobility by making entry and settlement increasingly precarious. The role of the judiciary is then assessed, demonstrating how courts in both jurisdictions have oscillated between limited protections and deference to executive authority, ultimately constrained by political realities.

By juxtaposing U.S. and U.K. approaches, the dissertation argues that despite divergent paths, both systems converge on the normalisation of detention as a central pillar of immigration governance, reflecting broader global trends toward securitisation, deterrence, and the criminalisation of migration.