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Migrant Illegalities since 1800

MARLOU SCHROVER

This chapter discusses changes in migration control and the idea of illegal migration. Over time, the wish to control and the ability to control started to converge, although it took until after World War I for desire and capacity to become more or less aligned. Overall, illegal migration increased with attempts to stop and regulate migrations.

Scholarship about migration control and illegal migrations is uneven in its geographic coverage. There are more publications about migration control to and from western countries than about migrations to, from, and within Asia, Latin America, the Soviet Union/Russia, or Africa. Furthermore, migration to, from, and within Asia and Africa continues to be seen largely in connection with European actions. Gender dynamics are also treated differently. Men are portrayed as active and in control, women as passive and as victims. The illegal migration of men is more often discussed in terms of smuggling, while that of women is described in terms of trafficking. Trafficking implies that people are transferred against their will, while smuggling stresses movement to which migrants agree and for which they pay. Most of the literature focuses on illegal entry or stay, and less on departure.

After 1900, authorities became increasingly keen to know the number of migrants who stayed or entered a country illegally, but these data were and are difficult to gather. Fluctuations in numbers are related to changes in migration, migration control, policy priorities, societal debates, and technological change (such as the introduction of thermal imaging radar). The likelihood of being apprehended differs according to class, gender, ethnicity, age, religion, and ability. People who stand out are more likely to be stopped. Women are less likely to be captured than men, and upper-class white migrants are less likely to be caught than lower-class migrants of color. People with large networks can more easily avoid detection than those without networks. These biases are reflected in the literature.

Lastly, the scholarly literature pays little attention to illegal intercountry adoptions. Millions of children have been adopted across borders, often without the permission of birth mothers, with falsified papers and with the exchange of large sums of money. Although there is scholarship on (illegal) intercountry adoptions, it is not yet a part of the literature on illegal migration.

Illegal?

There are strong objections in the scholarship – and also outside academia, including in the media – to the use of the term illegal migrants, and to a lesser extent also against the use of the term illegal migration.¹ The objection in the first case is that illegality is not an identity: migrants themselves are not illegal, although their moves or stay can be. Authors have introduced alternative terms such as clandestine, irregular, and undocumented. These alternatives present limitations of their own. The term clandestine evokes associations with crime and has no advantage over the term illegal. The term irregular is confusing because its antonym is regular, which refers to patterns of migration. Undocumented is ambiguous because it is sometimes used for migrants who have not been registered, and sometimes for migrants without documents. Some migrants leave without papers because population registrations are incomplete or non-existent. Authorities in the country of origin may ignore such departures, while countries of arrival may label them as illegal migration. People who stay in a country illegally frequently do have documents. They can enter legally with documents (e.g. as exchange students, au pairs, or tourists) and overstay permits, whereupon their stay becomes illegal. Their illegal migration can also have been documented (e.g. when they were instructed to leave). Furthermore, migrants can stay in a country legally (e.g. while waiting for a decision on their asylum application) but work illegally (without a permit), or they can use illegal ways to legalize their stay, for instance via sham marriages. The term undocumented therefore does not provide clarity. Although there are valid objections against the term illegal, it is a word that was used by authorities, lending it some validity. Authors who use alternative terms define the subject of their study as a “movement or stay violating laws,” which is the definition of illegal. This chapter, therefore, uses the term illegal migrations, but not illegal migrants.

¹ Part of the examples in this chapter are based on Marlou Schrover, Joanne van der Leun, Leo Lucassen, and Chris Quispel, *Illegal Migration and Gender in a Global and Historical Perspective* (Amsterdam: Amsterdam University Press, 2008).

Legalization and Illegalization

Illegal migration only exists if the legality of borders and the legal power of those who seek to enforce rules are recognized. Laws and restrictions generate illegality; without restrictions there is no illegal migration. The illegalization of migration meant that migration law and criminal law started to intertwine – this is sometimes called crimmigration.

In the nineteenth century, control frequently lapsed soon after the introduction of new rules and regulations. Governments made no serious effort to enforce laws, since they knew they were not able to do it effectively. Laws were not introduced to control, but rather to create an image of being in control. Furthermore, before 1900, few efforts were made to register people by nationality, and many people did not know what nationality they had, and this made control difficult. Some migrations were considered illegal, but this had few consequences in practice. Over time, control moved from the local level to the state level and to international bodies such as the European Union (EU). Control and restriction increased where and when rights increased (for instance the right to vote, or the right to financial state support). This claim applies mostly to western countries, on which the bulk of the literature focuses. However, even in countries without such rights, or with fewer rights, the desire and the ability to control increased over time.

Illegal stays can be legalized via an amnesty or pardon. There are differences among countries regarding the likelihood of pardons. For instance, Italy, France, Spain, and Greece had large-scale amnesties in recent decades, while other countries had fewer. Also, sometimes migrants can legalize their stay by proving they have worked in the country of settlement for a certain number of years. As a rule, providing this proof is easier for men than for women. Much of the work immigrant women do (as domestic servants, au pairs, cleaners, and in restaurants and the house industries) is part of the informal economy, and this does not give access to pardons based on work history. Women, however, do have alternatives men do not have: several countries, such as the Czech Republic, have legalized the stay of women from Ukraine, Russia, Belarus, Moldova, Lithuania, Romania, Bulgaria, Slovakia, China, and Vietnam who were the victims of trafficking and who spoke out against pimps. Debates about risks for migrant women, however, also illegalized some migrations. In recent decades, Bangladesh, Indonesia, Burma, and Nepal have forbidden women to leave, claiming they needed to be protected from pimps and traffickers. The bans did not stop women from leaving, but it did make their departure illegal.

More general transformations also illegalized some migrations. The end of the slave trade, for instance, illegalized the transport of captured people, but it did not mean these forced moves stopped. Five hundred thousand Africans were illegally taken to Brazil and 126,000 to Cuba after the termination of the slave trade.² Remaining could also be illegalized, for example, when non-migrant women married migrant men and acquired their nationality. When the husband was deported, the wife – an alien because of her marriage – had to leave with him. In 1885–1886, 32,000 Poles and foreign Jews were forced to leave Prussia. The majority of the men were married to Prussian women and these women had to leave as well. If they did not leave or if they went back, their stay in their country of birth was regarded as illegal.

Illegal entry or stay need not be a disadvantage to migrants. In Malaysia, foreign women who work as domestic servants without a contract, and thus illegally, are not forced to leave after five to seven years, while those who came legally are.³ Similarly, foreign domestic servants who migrate illegally to the Middle East have more opportunities to change jobs or employers than those who migrated legally. Israel severely restricts the immigration of non-Jewish immigrants. Domestic servants from Latin America migrated illegally to Israel, and this allows them to find work, which they could not access legally.⁴ For them, legalization of their stay is not an (attractive) option.

Colonialism and Illegal Migration

In the nineteenth century, colonialism illegalized some migrations. The colonization of Northern Scandinavia by Swedes, Norwegians, and Russians, for instance, meant Sami reindeer herders were forced off their land. National borders became more important, cutting across the lands Sami herders had used for centuries. In 1889, Russia closed the Swedish-Finnish border completely and confiscated the reindeer of those who tried to pass.⁵

2 Leslie Bethell, "The Decline and Fall of Slavery in Nineteenth Century Brazil," *Transactions of the Royal Historical Society* 1 (1991), 71–88.

3 Amarjit Kaur, "Labor Crossings in Southeast Asia: Linking Historical and Contemporary Labor Migration," *New Zealand Journal of Asian Studies* 11, 1 (2009), 276–303.

4 Rebeca Raijman, Silvina Schammah-Gesser, and Adriana Kemp, "International Migration, Domestic Work, and Care Work: Undocumented Latina Migrants in Israel," *Gender and Society* 17, 5 (2003), 727–749.

5 Stefan Ekenberg, *Indigenous Peoples and Rights: A Baseline Study of Socio-Economic Effects of Northland Resources or Establishment in Northern Sweden and Finland* (Luleå: Luleå University of Technology, 2008).

The effects of colonialism on migration patterns of the peoples of colonized lands were similar elsewhere. In precolonial times, large numbers of people had moved across the African continent as herders and traders, and for the hajj to Mecca. In the nineteenth century, colonizers arbitrarily drew borders across Africa, cutting across these routes. While illegalizing some migrations, colonizers also created new ones because they needed labor for farms and mines, and workers for the construction of infrastructures. The discovery of gold in Witwatersrand, for instance, led to a sophisticated system of control of African migrant labor, which was meant to prevent workers from settling permanently, while ensuring a steady supply of labor. In 1920, there were 100,000 foreign contract laborers working in the South African mines. When they stayed too long, their presence was regarded as illegal.⁶

Colonizers also tried to restrict migrations to the colonies and to select what they thought of as suitable immigrants. Natal's 1897 Immigration Restriction Act, for instance, introduced a reading and writing test for all immigrants over age sixteen. Migration officials made the tests easier or harder depending on their assessment of their culture's unique notions of immigrant desirability. They usually aimed to exclude Asians, Eastern Europeans (usually meaning Jews), disabled migrants, and people they called Tropical Africans, or colored persons. The migration of people who evaded controls was regarded as illegal.⁷

The Transport Revolution

In the nineteenth century, the transport revolution changed migration fundamentally, giving new meaning to legality. The construction of railroad networks transformed the importance of regions and borders. In the first half of the nineteenth century, for instance, the border between Korea and Russia was crossed by few people and their moves were not even recorded. Beginning in the 1860s, helped by large-scale railroad projects, Russia began developing its far eastern territories. Economic opportunities attracted migrants from Korea, who crossed the border into Russia in large numbers to work as farmers, in the mines, or on railroad construction. Russia welcomed the immigrants, but also started to worry about controlling them; it

6 Oliver Bakewell and Hein de Haas, "African Migrations: Continuities, Discontinuities and Recent Transformations," in *African Alternatives*, ed. Patrick Chabal, Ulf Engel, and Leo de Haan (Leiden: Brill, 2007), 95–118.

7 Rachel K. Bright, "'A Great Deal of Discrimination Is Necessary in Administering the Law': Frontier Guards and Migration Control in Early Twentieth-Century South Africa," *Journal of Migration History* 4, 1 (2018), 27–53.

introduced passport and visa requirements. Koreans continued to cross the border, but those who could not get papers did so illegally.⁸

Changes in shipping and railroad travel made migration faster, cheaper, and safer.⁹ The United States wanted cheap labor, but anti-immigrant parties warned that the country was becoming the dumping ground for European paupers and criminals. This point was echoed by other countries of destination. Ports in all countries of destination sought to restrict the entry of unwanted immigrants. In 1847, for instance, forty ships lay off Grosse Île in Quebec, Canada, with 12,500 passengers on board, waiting for permission to disembark. Grosse Île acted as a quarantine station and authorities worried about the large number of Irish people who were arriving, fleeing the Famine. Immigrants to the United States were similarly checked at Castle Garden and Ellis Island in New York (opened in 1855 and 1892, respectively) and on Angel Island near San Francisco (opened in 1910). Shipping companies found this form of control highly inefficient because they had to pay for the return of migrants who were rejected and cover the expenses of detention. They decided that it would be more efficient to check immigrants before embarkation and started to perform checks in European harbors and at railway stations along the migrants' travel routes. Shipping companies became a part of the control system, but some also actively worked to evade controls. The Dutch shipping line HAL, for example, assisted people, especially Eastern European Jews without documents, and helped them to travel through Hungary to Vienna, and on to the Dutch port of Rotterdam. In 1881, Hungarian authorities tried to forbid these operations of foreign shipping agents. Shipping companies responded by using Hungarian agents (labeled as secret agents), who avoided Hungarian controls. Shipping companies flooded Hungary with these not-so-secret secret agents, who visited villages and, according to the authorities, enticed people to emigrate.

In 1921 and 1924, the United States introduced restrictions on migration in the form of quotas that severely reduced the possibilities to migrate to the United States, especially from Eastern and Southern Europe (see Chapter 4 by Bryce in this volume). Migrants sidestepped these restrictions by traveling via Canada or Central American countries. Because there were few US restrictions for Cuban migrants, 15,000 Poles, Russians, Italians, Turks, Armenians, and

8 Alexander I. Petrov, "Koreans in Russia in the Context of History of Russian Immigration Policy," *International Journal of Korean History* 12, 1 (2008), 157–197.

9 Tobias Brinkmann, "Traveling with Ballin: The Impact of American Immigration Policies on Jewish Transmigration within Central Europe, 1880–1914," *International Review of Social History* 53, 3 (2008), 459–484.

Japanese traveled to Cuba, applied for Cuban citizenship, and then migrated to the United States. US officials, however, focused mainly on restricting the entry of Jews attempting to travel in this fashion. In 1925, the United States and Cuba signed a treaty, declaring this use of Cuban citizenship by migrants as illegal.¹⁰

The number of European migrants moving to Central and South American countries was far smaller than that to North America, but these migrants profited as much as others from the transport revolution, especially after the opening of new shipping lines, leaving from Mediterranean ports. The migration from Italy, Spain, Portugal, and the Ottoman Empire increased. Borders within Central and South America were not well monitored, making control difficult and illegal migration easy.

Changes in shipping also meant that pilgrimage to Mecca became cheaper, safer, and faster. In the mid-nineteenth century, the number of people traveling from Asia to Mecca had been low, and the number of people returning was even lower since many died on the way. At the end of the nineteenth century, both numbers rose. Shipping companies seeking to make a profit encouraged pilgrimage from Southeast Asia to Mecca. The increase in the number of returning pilgrims was seen as a threat to colonial regimes, because they seemed more devoted to their faith, and it was feared they might fuel anti-colonial, pan-Islamic ideas. Dutch colonial authorities tried to control pilgrimage by requiring that pilgrims have a passport for which they had to pay the immense sum of 110 guilders. If they traveled without a passport, they were fined 1,000 guilders.¹¹ Dutch authorities kept changing rules and introduced new restrictions repeatedly, which indicated that they had problems maintaining control. After World War I, authorities introduced a system that required future pilgrims to save up for their journey by depositing savings at the colonial state bank. This allowed the state to monitor closely who was planning to leave, who left, with whom, when, and from where. Pilgrimages outside this system were labeled illegal.¹²

Cheaper transport and increased mobility (especially of the poor) led to fears about the spread of contagious diseases. The cholera epidemic of 1866 killed 600,000 people worldwide. It started in 1865 in the Ganges Delta and

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

11 Moch Nur Ichwan, "Governing Hajj: Politics of Islamic Pilgrimage Services in Indonesia Prior to Reformasi Era," *Al-Jami'ah: Journal of Islamic Studies* 46, 1 (2008), 125–151.

12 Martin van Bruinessen, "Muslims of the Dutch East Indies and the Caliphate Question," *Studia Islamika* 2, (1995), 115–140.

was carried by pilgrims to Mecca, killing 30,000 persons. From the Middle East, it spread to Europe and the rest of the world. In 1881, a new cholera epidemic started in Asia, which spread to Africa and Europe. In 1892, it killed 8,600 people in Hamburg alone. Migrants coming from Eastern Europe and Russia were blamed for taking it to Hamburg. Extensive restrictions on mobility followed.

In 1918, the Spanish flu killed 25 to 100 million people worldwide. In 1920, it was followed by a typhus epidemic which started on the eastern front during World War I, and infected 30 million people, killing 3 million. Typhus spreads via body lice. Shipping companies worked with local and national authorities in the construction of quarantine and delousing stations along railroad routes and at harbors. Migrants had to undress and shower, while their clothes and luggage were gassed. Evasion of these controls made migrations illegal.

The Red Scare, the White Slavery Scare, and the Yellow Slavery Scare

Around 1900, there were three large and connected panics about migration, called the red scare, the white slavery scare, and the yellow slavery scare. All led to migration restrictions. The red scare was connected to a series of anarchist attacks that increased fears of revolutionaries on the move. There were attempts to assassinate the Russian tsar (who was killed in 1881), and there were the murders of the president of France (1894), the prime minister of Spain (1897), the empress of Austria (1898), the king of Italy (1900), the US president (1901), the king and crown prince of Portugal (1908), the Buenos Aires chief of police (1909), the prime minister of Spain (1912), and the king of Greece (1913). In 1893, the Barcelona Opera was bombed and, in 1897, the London Underground. There were also anarchist attacks in Japan, China, Egypt, and Australia. In Egypt, the anarchist movement started with the arrival of Italian workers – recruited for the construction of the Suez Canal – and Italian political exiles, who saw Egypt as a good country from which to organize activities against Italy. In Japan – where anarchists planned to kill the emperor – the leaders were Japanese, but as in all countries its leaders, like Kōtoku Shūsui, traveled abroad frequently, meeting other anarchists and attending international conferences. These attacks and the mobility of anarchists created a worldwide fear of revolutionaries on the move. After the Russian Revolution, 1.5 million Russians fled west, and authorities in several countries feared that revolutionaries might be hiding among the refugees. In 1919, US authorities deported the anarchist Emma Goldman (whose US citizenship had been revoked) and 249

others whose stay was declared illegal, to the Soviet Union. In the 1920s, in response to the red scare, authorities in many countries introduced registrations of foreigners and restrictions on migration.

Authorities worried not only about revolutionaries on the move, but also about women traveling alone. Newspapers wrote endlessly about the risks migrant women faced. England, the Netherlands, Germany, Belgium, and France were at the forefront of drafting international treaties against trafficking in women. Countries blamed each other for not solving the problem: England blamed Belgium, the Netherlands blamed Germany, and all blamed France. Numerous international conferences were organized at which treaties were drafted. The assumption was that women were taken across borders against their will and ended up in prostitution in faraway destinations. Committees against what was called the white slave traffic were set up in Austria, Belgium, Denmark, France, Germany, the Netherlands, Russia, Sweden, and Switzerland. In 1899, these committees organized an international conference in London that became the starting point of an international campaign against the white slave trade, leading to numerous other conferences, the drafting of protocols, and promises to tighten border controls. In 1910, Brazil also signed a protocol, and in 1913, colonial territories were included in treaties. In 1919, The League of Nations (LoN) declared that it would oversee the international anti-sex trafficking movement.

By 1920, the white slavery scare was firmly associated with Jewish traffickers and their connections with brothels in Argentina.¹³ Although Cuba and Brazil were also mentioned, the press and the LoN focused on Argentinean and Jewish pimps. Reports led to anti-Semitic outbreaks in Argentina and calls to restrict Jewish migration. Since many activists used the term Jews as a synonym for Russian and Communist, the white slavery scare was compounded by the red scare. After the introduction of an anti-procuring law in Argentina, and court cases against pimps, thousands of pimps, mostly Eastern European Jews, were said to have fled Buenos Aires, only to return illegally shortly afterward. Fearing restrictions on migration, Jews in Argentina and elsewhere organized to reduce the role of Jews as pimps and to improve the image of Eastern European Jewish migrants.

In 1921, a LoN conference attended by representatives from thirty-four countries decided to replace the term white slavery with a new term, traffic in women and children, so as to make clear that all women, not merely

13 Mir Yarfitz, *Impure Migration: Jews and Sex Work in Golden Age Argentina* (New Brunswick: Rutgers University Press, 2019).

white ones, were affected. Attention shifted to Asia, and the yellow slavery scare emerged. The LoN reports about Asia mentioned very large numbers of young women and girls who were treated horribly. The LoN named the Dutch East Indies as a hub in a trafficking system, through which women (some of whom were half European) traveled to Hejaz (current Saudi Arabia), Bangkok, Singapore, and Egypt to be sold into prostitution. In 1937, the LoN organized a conference in Bandung attended by representatives of Hong Kong, the Malayan Straits, China, France, the British Indies, Japan, the Netherlands, Portugal, Siam, and the United States. Afghanistan, Iran, and Iraq declined the invitation. Attempts were made to restrict the migration of women, illegalizing the mobility of those who moved despite restrictions.

The Yellow Peril

The move of attention from the white to the yellow slavery scare was connected to fears generated by the so-called yellow peril posed by Chinese workers. At the end of the nineteenth century, the German Kaiser used the term yellow peril (*die Gelbe Gefahr*) as an excuse to invade China. The idea that the Chinese posed a threat to the western world was presented in pictures, comic books, movies, reports, and newspaper articles. The Chinese were presented as undermining attempts to improve the position of workers, as opium addicts, and as a threat to women. These fears increased as a result of the Boxer Rebellion, an anti-imperialist, anti-Christian rebellion in China that occurred from 1899 to 1901. The Boxers killed 32,000 Chinese Christians and 200 western missionaries. Russia, Germany, France, Austria-Hungary, Italy, Japan, the Netherlands, Britain, the United States, Australia, and India sent troops to suppress the rebellion and protect their interests in China, killing 100,000 Chinese.

The Rebellion paralleled restrictions on Chinese migration in many countries. The Chinese government had forbidden emigration until 1893, although these laws were poorly enforced and Chinese emigration peaked between 1850 and the 1920s. After the end of slavery, so-called coolies from China (and India) were shipped across the globe, including to Peru and Cuba, and within the Dutch, British, French, and German colonial empires. More than 12,000 Chinese workers, for instance, arrived legally in Cuba between 1917 and 1921, and an unknown number arrived illegally after restrictions had been introduced. Cuban authorities sought to restrict this immigration, but largely failed.¹⁴

14 FitzGerald and Cook-Martín, *Culling the Masses*, 202.

The conditions under which these labor migrants were shipped and worked were slave-like (see Chapter 7 by Atkinson in this volume). Some workers voluntarily signed labor contracts; others were forced to do so because of debts, or they were kidnapped and sold. In response to protests against the transport, living, and working conditions of these workers, Chinese authorities tried to control the coolie trade, pushing it into illegality.

In 1882, the United States introduced the Chinese Exclusion Act. Many other countries also illegalized Chinese immigration, although often with little effect in practice. In 1890, Uruguay, for instance, attempted to restrict the immigration of those they called Africans, Asians, and Gypsies. Restrictions elsewhere were similar. In the period 1900–1927, the tin and rubber industries in Malaya expanded, and thousands of migrant workers entered the country unrestricted. In the 1930s, the British, however, introduced new legislation in Malaya, which was applicable to all immigrants, but was mainly used to ban Chinese, particularly those considered to be – in the parlance of the time – of the criminal type.

Overall, the restrictions on Chinese migration did not stop migration, but it made moves illegal. There was also a black peril, similar to the yellow peril, but based on stories about the threat Black men supposedly posed to white women. Such accusations were mainly used to restrict the mobility of Black men in South Africa.

Shifts in Migration Patterns

In the first decades of the twentieth century, the number of people wanting to leave Europe increased dramatically because of revolutions and wars. There were 20 million refugees in Europe at the end of World War I. People fled from states that ceased to exist and whose successor states refused to take back people whom they did not regard as their subjects. Redefinitions of citizenship and the creation of new states left some people stateless, resulting in more migrations that were labeled illegal. After immigration restrictions had been introduced in many countries, people had few places to migrate.

In 1933, with rising unemployment and increasing protests against those termed foreign aliens, colonial authorities also started registering alien residents in the colonies. In 1938, these undesirables were deported from Malaya after labor unrest. They included Indians, who were British subjects and thus were legally not aliens, but who were considered undesirable. Overall restrictions increased in the 1930s. Authorities pointed toward anti-immigrant parties to justify their measures, in combination with the claim that they needed to protect people (their own as well as migrants) and fight crime.

Restrictions on entry sometimes coincided with restrictions on departure. This was the case, for instance, in Portugal. Popular countries of destination for the Portuguese were France and Brazil. In 1920, 430,000 Portuguese were residing in Brazil (increasing to 656,000 by the end of the decade), while in 1921, 29,000 Portuguese were living in France. France was initially rather lenient in its immigration policies because it was trying to repopulate the country after World War I. Portuguese farmers, however, complained about the loss of labor, and authorities in response tried to restrict departures. Shipping companies sought to avoid these restrictions, and helped people depart illegally. When Brazil restricted immigration in 1930, Portugal introduced more restrictions on departure, and the number of departures fell to 12,000 in 1938. In the 1930s, France also restricted immigration from Portugal because of the economic crisis. Portuguese emigrants tried to leave via Spain, but the Spanish Civil War frustrated this option. Emigration agencies in Portugal had to have a license. If they failed to apply, or if their license was denied or revoked, they either had to stop their business or continue illegally. Agencies lost their license because they forged invitation letters or work contracts, falsified documents (e.g. military licenses, criminal records, birth certificates, and passports), provided wrong information about occupation or place of residence, stole identities, recruited customers illegally, extorted money from emigrants, and abused administrative formalities.¹⁵

Overall, the increase in migration control in the 1930s affected entry, stay, and departure. With fewer options to move west, some Europeans looked east. During the Great Depression, the numbers of illegal migrants crossing the border into the Soviet Union increased greatly; in the period 1930–1933, thousands of people migrated legally and illegally into the Soviet Union, mostly from Finland and Poland.

Illegalizing Refugee Migrations

In the 1930s, refugee migration increased worldwide. In Europe, 500,000 people fled from Spain during the Civil War. In the first year of that war, thousands of refugees moved to France and back into Spain repeatedly. French authorities tried to move refugees away from the border to stop them from crossing back and forth, but they did not consider the crossings illegal. In 1937, the French government, however, restricted entry from Spain and reinforced

¹⁵ Yvette Santos, "The Political Police and the Emigration Industry in Portugal during the 1930s," *Journal of Migration History* 5, 3 (2019), 466–488.

border controls. They sought to create what they imagined as an impassable barrier and tried to repatriate refugees reliant on public funds, except for children, the sick, and the injured. Protests against the so-called undesirable refugees in France increased, and French authorities improbably tried to distinguish between good and bad foreigners. The bad foreigners were labeled clandestine foreigners or irregular guests. Toward the end of the Spanish Civil War, French authorities closed the border completely, but they opened it shortly afterward to let in women, children, and the elderly; men were stopped.¹⁶ Migrations from Spain to France were thus illegalized when authorities feared the number of people trying to cross would be high, and especially if they considered some of these migrants as undesirable.

Jews trying to flee from Germany also met with increasing restrictions. In July 1938, representatives of twenty-nine governments met in Evian (near Geneva) to discuss the situation of refugees trying to escape Nazism. The United States did not send a delegate, did not increase its quotas, and only accepted very few Jewish refugees. Other countries also took few or no refugees, and all justified their choice by saying they feared increasing anti-Semitism and anti-immigrant sentiments in their countries.¹⁷ In 1939, 900 Jews escaping from Europe on the *MS St. Louis* were not allowed to disembark in Cuba, Canada, and the United States. The ship was forced to return to Europe, where most of the Jews died during the Holocaust. In 1938, Dutch authorities stopped allowing Jews fleeing neighboring Germany to enter the Netherlands, even when they fulfilled all the requirements of the Dutch Alien Law. Border-crossing was illegalized. After the Kristallnacht, in November 1938, the number of Jews trying to cross the German-Dutch border increased despite restrictions. Migrants who did cross the border were deported back to Germany or put in a holding camp.

Argentina, like other countries, also restricted Jewish immigration, although official regulations were said to restrict the entry of people who had been expelled from their country of origin because they were undesirable. Between 1933 and the end of World War II, 43,000 to 45,000 Jewish refugees did manage to migrate to Argentina, with the illegal help of bureaucrats in Argentina, diplomats from Argentina, Bolivia, and Chile in Europe, and because of Argentina's inability to control its borders. Argentina became the largest per capita destination of Jewish refugees in the world after Palestine.

16 Scott Soo, *The Routes to Exile: France and the Spanish Civil War Refugees, 1939–2009* (Manchester: Manchester University Press, 2013), 30–39.

17 Irial Glynn, "More Power, Less Sympathy: The Response of IGOs in Western Europe to Unwanted Migration during Economic Crises Compared," *Comparative Population Studies* 37, 1/2 (2012), 99–120.

Because the British restricted Jewish migration into the Mandate of Palestine in 1939, the Jewish organization Haganah brought Jews into Palestine illegally. It continued to do so during World War II, although the number of Jews who reached Palestine was low. After the war, Haganah organized illegal immigration on a larger scale, while the British authorities kept to their quota, tried to stop the migrants, and sent them back to Germany or detained them in camps in Cyprus. In 1946, 18,000 Jews entered Palestine, more than half of them illegally. After the establishment of the State of Israel, in May 1948, all restrictions were lifted, and Jews could migrate to Israel legally.

After the creation of the State of Israel, 700,000 Palestinian Arabs left, fled, or were expelled. About 30,000 to 90,000 of them tried to return to Israel, in attempts to reunite with family members or to retrieve possessions. Israeli authorities tried to restrict these returns and labeled the border crossings illegal.

End of Empires

The end of World War II was also the beginning of large-scale decolonization. Migrations within empires disappeared and national borders between former parts of the empires became more important. In 1948, British India became two independent states, India and Pakistan, which led to the exchange of 12.5 million Muslim and Hindu citizens. People who had been forcibly “exchanged” tried to cross back into the regions they came from, and this was regarded as illegal.

French Indochina, which included parts of present-day Vietnam, Laos, Cambodia, and China, broke up in 1954. Decades of war followed, which generated large refugee migrations. After 1975, 800,000 people fled by boat from Vietnam, of whom 200,000 to 400,000 died at sea. The British set up enormous refugee camps in Hong Kong, where some refugees stayed for ten to twenty years. Leaving the camp without permission was illegal. Other countries, to which the refugees fled by boat, also constructed camps and received refugees until the camps became too full. They started to push boats full of refugees back into the sea. Refugees who managed to land were seen as doing so illegally. About 400,000 Vietnamese refugees, mainly ethnic Chinese who had been in Vietnam for generations, fled north overland into China. In China they were resettled in the countryside, on bad farmland, although many had not been farmers in Vietnam. Some of these refugees fled from the resettlement sites and from China, movements which were considered illegal by Chinese authorities.

Escapees, Returnees

After World War II, countries worldwide agreed that people had a right to leave the country to which they belonged. The decision had clear Cold War connotations, since it was mainly communist countries that denied their subjects the right to leave, and it was mostly non-communist countries that agreed to the right-to-leave principle. During the Cold War, people who wanted to leave were encouraged by evidence of what the west thought to be heroic escapes. The Berlin Wall was built in 1961 to keep people in rather than out. About 5,000 people successfully escaped from behind the Wall, while 100 to 200 died trying. The escapees paid for forged papers and to be smuggled out of the country. Those who managed to leave were not seen in the west as illegal migrants but rather as heroes.

Immediately after the end of World War II, 12 to 14 million Germans of so-called ethnic Germans (*Volksdeutsche*) were expelled from Central and Eastern Europe to Germany. Dutch authorities declared that the 25,000 people with German citizenship living in the Netherlands were undesirables who had to be deported to Germany. This included women who were born in the Netherlands and who had held Dutch citizenship before their marriage to a German man. Those who avoided deportation and remained became illegal.¹⁸

In addition, 4.5 million people were allowed to settle in West Germany as *Aussiedler* and *Spätaussiedler* (departing settlers and late departing settlers). These migrants – mainly from the Soviet Union – could migrate to West Germany because they were legally regarded to be part of the German people. They were labeled returnees, although many had never been to Germany and did not speak German. Some forged papers to claim German ancestry, making their move illegal.

So-called returnees also originated in former colonies. For instance, 400,000 people moved from the former Dutch East Indies (when it became independent Indonesia) to the Netherlands, and after 1962, 800,000 *piets-noirs* (people of mixed or French ancestry) moved to France when Algeria became independent. From other former colonies – such as Belgian Congo, British India, and Rhodesia – people also returned to the so-called mother country. Numbers could have been much larger than they were, but not everybody could prove paternal European ancestry, although some tried, based on false papers.

¹⁸ Marlou Schrover, “The Deportation of Germans from the Netherlands 1946–1952,” *Immigrants and Minorities* 33, 3 (2015), 264–271.

More recently, other countries also used similar laws of return to enable legal migrations into their country, such as Poland (for co-ethnic returnees from Kazakhstan), Greece (including 155,000 people from the former Soviet republics of Georgia, Kazakhstan, Russia, and Armenia), Hungary (co-ethnics from Romania, Ukraine, and the former Yugoslavia), and Finland (including 60,000 Ingrian Finns from the former Soviet Union). In 2014, Spain granted the right to return to descendants of those driven out by the Spanish expulsions of 1492. Until 2018, 6,432 Jews with Spanish ancestry had obtained Spanish citizenship based on this rule. It is estimated that 90,000 to 2.2 million people can apply. The laws of return offer options for legal immigration in an increasingly restrictive setting.

Spontaneous Labor Migrants

In the post-World War II period, authorities organized large-scale labor migrations (see Chapter 13 by Hahamovitch in this volume). The Bracero Program, which regulated temporary labor migration from Mexico to the United States, was established in 1942 as a wartime measure because of the shortage of workers. This and other guestworker programs brought 4 to 5 million people into the United States, 89 percent of them from Mexico. The end of the Bracero Program, in 1964, was not the end of migration from Mexico; migrants continued to arrive, albeit now illegally. Indeed, the practice of illegal migration was widespread during the Bracero years, when illegal crossings ran parallel to legal ones, often with the complicity of US employers and border officers.¹⁹ The 1965 Immigration Act for the first time imposed quantitative limits on migrations within the Americas, thereby illegalizing the hundreds of thousands of Mexicans arriving per year who began facing an annual limit of only 20,000. Measures were taken to legalize the stay of those who arrived illegally. The 1986 Immigration Reform and Control Act legalized the status of 2.7 million persons who were illegally residing in the United States. After 1996, the Nicaraguan Adjustment and Central American Relief Act legalized the residence status of 70,000 migrants from Nicaragua, Cuba, El Salvador, Guatemala, and countries from the former Soviet Bloc. Despite these legalizations, there were still large numbers of migrants in the

19 Wayne A. Cornelius, "Controlling 'Unwanted' Immigration: Lessons from the United States, 1993–2004," *Journal of Ethnic and Migration Studies* 31, 4 (2005), 775–794; Nicholas De Genova, "The Legal Production of Mexican/Immigrant 'Illegality,'" *Latino Studies* 2 (2004), 160–185.

United States illegally: 11 million in 2010, with 60 percent from Mexico. Many migrants enter the United States illegally because although they are able to, and do, find employment and have families and networks in the United States, they will never qualify for the statuses that provide legal immigration – family reunification (close relationships), “skilled” employment, and refugee standing – or they enter illegally because they face very long waits of over a decade. Other immigrants entered the United States legally and then overstayed their visas. The Bracero Program and its aftermath shows that migrations continued after rules changed. The same applied to guestworker migration to northwestern Europe.

In the period from 1958 to 1972, 8 million work permits were issued to guestworkers from Spain, Portugal, Italy, Yugoslavia, Greece, Morocco, and Turkey to work in Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany. Only a small proportion of the workers was officially recruited. Many more migrated on their own account, and employers were happy to have these so-called spontaneous immigrants because it saved them the costs of recruiting. Employers also did not have to provide housing for non-recruited guestworkers, as they did for the recruited workers. The economic crisis that began in the mid-1970s was the reason for stopping recruitment. Since the crisis also hit the countries of origin, migrants did not want to return and arranged for their families to join them. Some of the countries of origin were simultaneously affected by political instability, such as Turkey during the 1970s and Morocco between 1960s and 1980s. While some of the guestworkers got the opportunity to legalize their stay via pardons or using their work histories, not all did. Those who did not manage to do so left or stayed illegally.

The German Democratic Republic (GDR) also had a guestworker migration regime, albeit with smaller numbers. Until German reunification, there were 69,000 Vietnamese, 50,000 Poles, 40,000 Hungarians, 25,000 Cubans, and 22,000 migrants from Mozambique, as well as workers from Algeria, Angola, China, and North Korea. Workers received a five-year contract and did not have a right to family housing. Permission by the state was required for marriages with a German partner (and seldom granted). Migrant women who became pregnant were offered a choice between abortion and return. Avoidance or violation of these regulations regarding family life made their stay illegal.

The 1973 oil crisis heralded the beginning of labor recruitment by oil-producing countries. Egypt embarked on its open-door policy and facilitated the migration of workers from Sudan, and countries from the

Maghreb and the Horn of Africa. Workers were followed by family members (who migrated legally and illegally) throughout the 1980s and 1990s. In the 1980s, Asian migrants replaced Arab workers. The 1991 Gulf War led to massive expulsions, but after the war migrations resumed. Many workers entered the Gulf claiming they were making a pilgrimage and overstayed permits to find work.

In the 1970s and 1980s, herders, workers, and traders from Mali, Niger, and Chad migrated to farms, mines, construction sites, and the oil fields in Algeria and Libya. In Algeria, migrants revitalized underpopulated regions. Since the 1960s, thinly populated Mauritania allowed large numbers of Senegalese, Malian, Guinean, and Gambian migrants to work as fishermen, in the iron mining industry, and in local services. In the 1990s, the UN embargo imposed on Libya increased trans-Saharan migration and the consolidation of trans-Saharan migration routes and networks. Libya stimulated the entry of sub-Saharan Africans, mostly from Sudan, Chad, and Niger. They lacked formal rights and were regularly deported, but also largely tolerated. Their stay was not seen as legal.

Relatively prosperous economies such as that of Ghana or Côte d'Ivoire attracted large numbers of immigrants. In 1969, after the 1966 coup, economic crisis, and rising unemployment, Ghana, however, expelled 155,000 to 213,000 immigrants, mainly from Nigeria, Togo, Burkina Faso, and Niger. In 1983 and 1985, during the economic crisis, Nigeria similarly expelled 2 million low-skilled West African migrants, mostly Ghanaians. Some did not answer the call to leave and their stay became illegal, or they tried to move to Libya, South Africa, Europe, the United States, and the Gulf States legally and illegally. Overall, we see that during periods of economic growth the concept of illegal migration carried less weight, while it increased in weight when the economy slumped.

The Erased

When Yugoslavia fell apart in the 1990s, Yugoslav citizenship disappeared. In Slovenia, this led to the creation of a group of 18,000 so-called erased persons who were considered as nationals of another Yugoslav successor state who lived in Slovenia. They did not apply for or were denied Slovenian citizenship. They were asked to register as foreigners and when they refused or failed to do so, they were removed from the Registry of Permanent Residence. As a result, they lost social, civil, and political rights and experienced difficulty in getting papers to travel. Even though they did not cross any border, their stay became illegal.

Similar changes took place in Soviet Union successor states such as Ukraine, Belarus, Kazakhstan, and Kyrgyzstan. Changes also occurred in Estonia and Latvia (which had been part of the Soviet Union since 1940) when these countries became independent in 1991. Citizenship was automatically granted to people who had been Latvian or Estonian citizens before 1940 and their descendants. People who arrived after 1940 and their offspring did not receive citizenship automatically. They had to apply for naturalization as immigrants (even when they were not), and this process included a knowledge test and a language test in Estonian or Latvian. Those who failed to apply, or failed the tests, were regarded as stateless, although their stay was not per se illegal. When Latvia and Estonia joined the EU, the stateless people were given papers which allowed them to travel within the EU freely. This made it unattractive for them to apply for Russian citizenship, since they would lose the right to free travel.

Not every migrant has access to proper documents; nineteen of the fifty-six countries in Africa have either no data or unreliable population data. Furthermore, land borders between African countries are easily crossed without formalities, and people try to leave countries which do not recognize them as their subjects and which will not issue them papers. In some cases, people have to travel far in order to get passports or visas; whether they can do so depends on their means (money, time, contacts), the safety on the roads, and restrictions on women traveling alone. Some groups are discriminated against. Kurds, for instance, have had difficulties leaving Iraq in recent years because they could not get visas. Rohingya Muslims from Myanmar, Tibetan refugees in Nepal, and Bidoon in Saudi Arabia, Bahrain, the United Arab Emirates, Kuwait, and Iraq experience similar problems. Today, several sub-Saharan African countries, such as Mauritania, stop people from leaving with the help of Frontex, the EU border security organization (see Chapter 29 by Albahari in this volume). The departure is seen as illegal by state authorities, while international human rights lawyers see the attempts to stop people leaving as a violation of rights (for instance, the right to apply for refugee status).

Conclusion

Over the past 200 years, the wish to control migrations and the ability to do so increased. This happened especially in countries where people had many rights, but it happened also in countries where they had few rights. Overall, there are now very few differences among the various parts of the world. The transport revolution, epidemics, economic growth and decline,

and political changes (wars, revolutions, the end of colonialism, and the Cold War) influenced attempts to control migrations. Authorities condoned and encouraged illegal migrations when they were seen as economically beneficial and became more restrictive when migrations were seen as an economic or political threat. Illegal migration increased because of the attempt to restrict it. More rules and restrictions meant more people were violating them. Legalizations via work, marriage, pardons, reporting on traffickers, and laws of return reduced the number of people who were considered to be migrating or staying illegally. However, processes of illegalization were more important than those of legalization. Overall, more control and more illegality went hand in hand.

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