

Masayuki Tadokoro

The International Politics of Migration

Interstate Relations and the Peoples
Who Cross Borders

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About the Author

Masayuki Tadokoro is a specially appointed professor of international relations at the International University of Japan and a professor emeritus of Keiō University in Tokyo. Born in Osaka in 1956, he received his doctorate in law from Kyoto University. He was a professor at the National Defense Academy and Keiō University before assuming his current post in 2022. He also attended the London School of Economics. In 1988–1989, he stayed in Washington D.C. as a fellow of the American Council of Learned Societies, and in 1991 he taught for a semester as a fulbright scholar in Residence at the University of Pittsburgh. His primary field of expertise is international political economy, but he works also on Japanese foreign and security policy. His publications in English include *After Dollar?* in *International Relations of the Asia-Pacific*, Vol. 10, No. 3 (2010) and “Why did Japan fail to become the ‘Britain’ of Asia” in David Wolff et al. (eds.) *The Russo-Japanese War in Global Perspective* (Brill, 2007). He also edited, with David Welch and Yoshihide Soeya, *Japan as a ‘Normal Country’?: A Nation in Search of Its Place in the World* (Toronto University Press, 2011).

Chapter 1

International Politics of Migration—The Issues and Basic Facts



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Abstract In this opening chapter, the author discusses the nature of states and nationality, and whether, in an age of globalization and cyberspace, it is even meaningful any longer to talk about national borders. It is noted that the movement of people is a phenomenon as old as human history itself, and that in comparison, the system of sovereign states that mutually recognize each other's defined territorial sovereignty has a much shorter history. The author provides an overview of migration flows, whilst enumerating the various reasons people have for migrating from one region to another, and the historical tragedies and triumphs often involved. He notes that immigration, though high on the political agenda in Western societies, is not a central political issue in Japan at the moment, but challenges the view that Japan is an unusually xenophobic country or, conversely, that it has remarkably maintained its cultural homogeneity. This chapter also lays out the structure of the whole volume.

1 People Who Cross Borders, States, and the International Order

1.1 Borders, States, and Nationality

“To found a nation derives from private rather than public sensibilities.”¹ This bold statement is how Fukuzawa Yukichi starts his essay *Yasegaman no Setsu* (“The Spirit of Manly Defiance”), said to have been written in 1891. People the world over are born on this earth, they farm, manufacture, and trade, and they strive to live out the one life they have to the fullest extent possible; on this point, there are no differences among them. The fact that they purposely divide themselves up with borders to create various countries is, from the perspective of all of humanity, certainly not a public matter; it is merely the pursuit of private benefit by individual groups. How strange, then, that protecting the system of borders and states is praised as a virtue. That is the gist of Fukuzawa’s opening.

Altogether natural, in contrast, is the movement of people who, when exposed to danger, suffering from starvation, and facing an uncertain future in a country that by happenstance is where they were born, attempt to create a new fate for themselves and their families by crossing borders; there is nothing strange about it. And yet, time and again we see throughout the world scenes of people seeking to escape from starvation, persecution, and the chaos of war who are prevented from doing so by borders. When we witness the reality of the idea that “national borders are the boundaries of life,” we cannot all help but feel the absurdity of the system of national borders, nationality, and the states that underpin it all.

And yet, crossing a border has technologically become vastly easier to do today, in the twenty-first century. In the Meiji era (1868–1912) when Fukuzawa lived, it was extremely costly to move long distances by railroad, steamboat, or airplane, and so there was a feeling that it was something reserved for a certain group of wealthy individuals. It has now become increasingly commonplace. In addition, the eye-popping advances in information technology (IT), as represented by the Internet and the mobile phone, have enabled people to experience the world beyond their border on a daily basis. Even for those who, by a simple stroke of ill fortune, were born in a dangerous, impoverished country, the world beyond the border is not wholly unknown to them, with its rich consumer lifestyles, magnificent urban spaces, and the lives of their own circle of friends who have already moved there; it is something that they are able to experience virtually in cyber space.

And so, in a world where goods, money, and information actively traverse borders, a phenomenon called globalization, have borders become increasingly meaningless? In the world of goods, transnational supply chains have sprung up within the same corporation. Consequently, intracompany trade now occupies a considerable share of exports and imports, and organic production systems that transcend borders are becoming a reality. Globalization’s progress in the world of money is even more remarkable. Now information stored inside a computer, money can move on a large scale instantaneously across borders in response to slight interest rate differentials.

There is probably not much I could add on the statelessness of cyberspace. The claim has been repeatedly made for quite some time that the advance of such economic interdependence will render the state and sovereignty meaningless.

Yet Fukuzawa's contention that founding a nation was an act associated with private interests does not mean that he thought the state was not worth protecting. Far from it! A short while later in the same essay, he goes on to argue:

How then should people react to the imminent collapse of their country, to a situation in which people know that there is no chance of victory over enemies at the door? Should people overcome many hardships and exert themselves until their powers are exhausted, but at the point of defeat, negotiate peace and surrender? Or should they accept death as the public way citizens have of fulfilling the duty to serve their country?"²

This nationalist manner may strike many Japanese today as odd, especially coming from Fukuzawa, a rationalist through and through, who in his autobiography called the feudal system "my father's mortal enemy" for limiting people's potential to their status at birth. Perhaps Fukuzawa's argument is obsolete, a condition of the time in which he wrote his essay, the age of imperialism of the late nineteenth century.

If we presume the institution of the state had become obsolete, however, the steady and continuous growth in their number as we enter the twentieth century is inexplicable. There were 40 member states when the League of Nations was established after World War I. When the United Nations was established after World War II, the number of founding members had grown to 51 states. Subsequently, a series of colonies primarily in Africa and Asia became independent from their colonizing metropolitan state; after the Cold War, many new states, mainly in the former Soviet Union, seceded and gained their independence. Consequently, as of 2018, there were 196 states that were UN members, quadruple the number in the span of 100 years. Moreover, around 10 countries could be added to that, "unrecognized states" that are *de facto* independent but have not been officially recognized by the international community. Numerous wars of national liberation were waged, and countless lives lost, in the process of secession and independence. It bespeaks the enormous sacrifice these people paid, not for the sake of the community of man, but for the political independence of a group to which they believed they belonged.

The assertion that the advance of globalization has rendered borders meaningless is rather unpersuasive. When we wait in long lines to answer the questions of surly, and at times unpleasant, immigration officials at airports overseas; when we are made to wait endlessly at a window counter of a foreign consulate having just paid a tidy sum for an entry visa to that country; or when we have to fill out onerous paperwork at a bank just to send a bit of money overseas—in each instance we are taught the lesson that borders exist. Indeed, since 1989 when solidarity and fraternity were highly celebrated after the Berlin Wall was torn down, border walls globally have become longer and sturdier, a trend that has grown even stronger after instability in Syria and other countries in the Middle East precipitated large outflows of refugees. As Fig. 1 shows, since the Cold War actual physical border barriers have been reinforced throughout the world. Setting aside the discussion of whether this is good or bad, arguably it evinces how seriously people feel about borders and states.

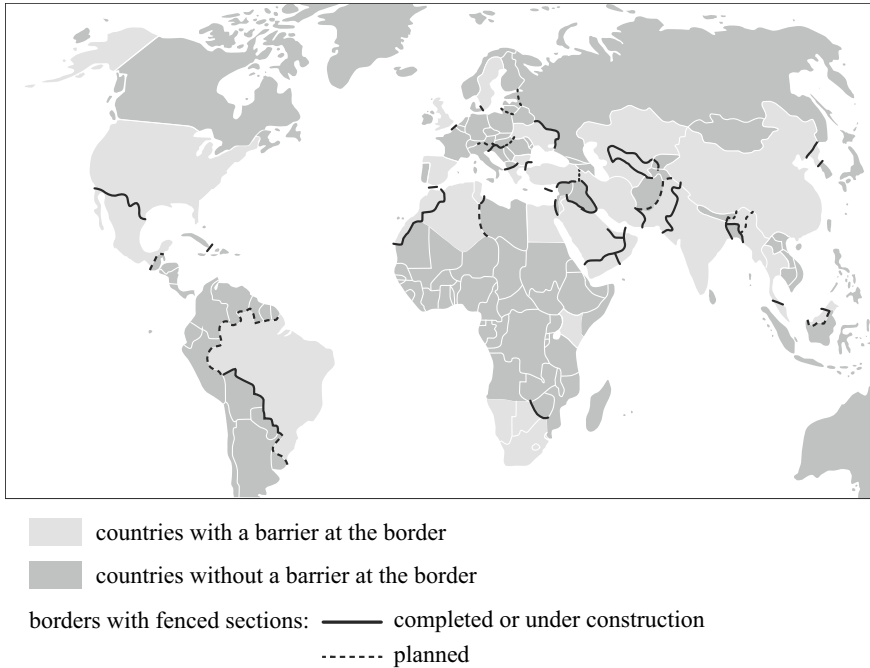


Fig. 1 National boundary walls and fences worldwide (2016). Source <https://www.economist.com/blogs/graphicdetail/2016/01/daily-chart-5>

1.2 *Movement of People and States*

The movement of people has grown easier, larger, and more frequent. But if territorial sovereign states separated by borders remain the fundamental system that supports the world order, then what sort of problems does such movement pose to modern states? Perhaps I must hasten to add that the movement of people across borders should not be thought of as a uniquely modern phenomenon, nor that it always creates problems. The ancestors of modern man can all be traced back to Africa. In this sense, we all moved from there.³

Ever since history has been written down, it has recorded the occurrences of large-scale population movements. The mass migrations of Germanic tribes put the Roman empire under great strain, and as a result gave rise to major historic changes: the breakup of the Western Roman Empire and the development of the medieval order. Successive Chinese empires repeatedly came under pressure from attacks by northern nomads, yet because those people who came to China from the north largely became culturally Sinicized, China has maintained a surprising historical continuity up to today.

After the period commonly referred to as the Age of Discovery, which began in the sixteenth century, Europe spread out globally, with large numbers of its people

emigrating to many parts of the world, and it came to hold political sway over each region. In particular, many Europeans left for the North and South American continents, but many people were also forcibly moved there from the African continent as slaves. The indigenous peoples who lived in these areas were marginalized by the new inhabitants, and their civilizations were destroyed. Surprisingly little known are the stories of hardships endured by the indigenous peoples in places such as Hawaii and Tahiti, which many people envision as tropical paradises.⁴

The movement of people, a phenomenon as old as human history, has many stories to tell us: of the adventures of pioneers staking their fate in new lands; of the hardships of people forced by poverty and violence to move, leaving their beloved homelands behind; and of the apocalyptic catastrophe that befell people whose civilization and way of life were destroyed by a large number of immigrants.

Compared to this phenomenon of the movement of people, the system of sovereign states, mutually recognizing each other's defined territorial sovereignty, has a much shorter history. The modern system of sovereign states came into being in Europe in the seventeenth century, at the earliest. It was much later, in the nineteenth century, that nationalism became the prevailing thought, holding that a nation-state should be made up of a single nation of people who share a common identity. The influential rise of democracy, which holds that all members of the state should be political actors, is a more recent phenomenon. As the ideal form the state should take changed, the relationship between the state and its members also changed, and with that, the meaning held by people who cross borders changed accordingly.

In modern democracies, the ultimate actors of the state are its members, who enjoy equal rights to political participation. Furthermore, the modern state plays a very large economic role, providing the social security services and income redistribution functions on which its people heavily rely. The role played by the nation, both politically and economically, cannot happen without a shared sense of "we" among its members. The fact the minority accepts the results of a vote and follows the will of the majority may derive from an awareness that they all share a common destiny. Income transfers to the poor become possible only when the wealthy share a sense of being fellow members of a society who help one another. This is precisely why the issue of where to set the scope of "us" and "our fellow members" necessarily becomes important politically and economically, and is a condition of modern times. No matter how open it is said to be, a state cannot accept new immigrants without limit or condition because it expects a long-term commitment, accompanied by feelings of trust, from its members, especially members of democratic nation-states; it is not a members-only club where members can freely enter and exit.

1.3 Movement of People and Interstate Relations

What sort of relation should the state have with people seeking to immigrate across its borders? As is widely known, this has become a major political issue in Western countries for the reasons mentioned earlier. However, the problem does not end there,

inevitably becoming an issue of state-to-state relations, i.e., a matter of international politics. This is because people crossing borders to enter one country necessarily must have left another country, and that sending country, too, has an interest of some type in the people who leave. So then, when the interests of the sending and receiving countries do not correspond, the possibility arises of a conflict developing between the two states.

Moreover, once large numbers of people are actively moving across borders, states become involved with their own members beyond their borders as well as the nonmembers within their borders. This leads to a mismatch between the state's territorial and personal jurisdictions. The order composed of sovereign states is established on the fact that each sovereign state holds exclusive jurisdiction over its own territory and does not interfere in what happens in the territory of other states. This has enabled countries with vastly different customs, beliefs, and political systems to coexist as long as they mutually recognize the extent of their exclusive jurisdiction, i.e., territory. If people do not move and remain within the country, then the state's territorial and personal jurisdictions match and no problems arise. But as people start to move more actively, it gives rise to overlapping jurisdictions as one state's members settle in other states' territories and other states' members come to live within that state's territory. This situation may complicate the maintenance of the international order, a fundamental arrangement that is based on states coexisting peacefully through the mutual recognition of each other's jurisdictions.

If there is an overlap of personal jurisdictions of states, and several of them simultaneously demand the allegiance of a single individual or set about to protect that person, it may lead to an interstate conflict, just as in the case of overlapping territorial rights. Conversely, abandoned people who do not enjoy any country's protection emerge when, stuck between states, they are no longer subject to the jurisdiction of any country. The state cannot remain indifferent to the distinction between members and non-members when, as previously mentioned, a strong relationship is required between the state and its members, and when members participate politically in, and receive economic services from, the state. Furthermore, when interstate relations become strained, states will mobilize their members and seek to procure various resources. Were that to happen, the states would have to become even more sensitive to who are members (from whom allegiance can be expected) and who are non-members (with ties to foreign powers and who may even pose a threat). This has the potential to develop into a complex international political issue, especially now when migrant-sending countries are increasingly engaging with their countrymen overseas.

This book examines the implications of the movement of people across national borders for the state and for international politics. From the standpoint of international politics, the focus of the examination is the international political meaning of the transnational phenomenon, the movement of people. This is an interest that extends from the study of international political economy, which questions the significance for international politics of the transnational phenomena, international trade and international finance. It is important to acknowledge, however, that there is a crucial difference between the flow of people, the flow of goods, and the flow of money:

people are not objects passively reacting to prices like things (commodities) or money (currency). They are subjects who shape and influence their environment, seeking not only to master it but also to change it. Furthermore, while products traded in the market need a price, they can lack a nationality. It is just not possible, however, for a person to be completely unknown, as though existing in a vacuum without ties to any other people. Moreover, such people's sense of belonging is not fixed in advance; it is dynamic, being remade constantly under the influence of various conditions.

Therefore, what ultimately decides the scope of state membership is not official arrangements such as nationality, but the intersubjectivity established between the people who migrate, those who accept them, and those who remain behind. The mysterious societal dynamics generated by these human beings is what makes this issue a complex and deeply interesting subject for consideration.

2 Current Status of International Population Movement

2.1 *Who Are Migrants?*

What is the scale of the migrant issue, which has long been a major political issue in the United States and Europe? The proponents who argue for the expulsion of migrants tend to exaggerate the scale, whereas the advocates of a tolerant policy toward migrants and refugees tend to emphasize that the scale of migrants is being exaggerated. Contrarily, those who expect migrant flows will prompt changes in the state attach great importance to migrants. The starting point for making a rational argument, no matter which viewpoint you take, would be to verify all the facts.

According to UN statistics, the total stock of migrants worldwide as of 2015 was 244 million people, approximately 3.4% of the world's total population.⁵ That figure stood at 173 million in 2000 and 222 million in 2010, steadily increasing over the past 15 years. But looking at it as a share of world population, it has hardly changed at all.⁶

However, the question now becomes, what is the definition of a migrant? The UN statistics are an aggregation of the population statistics of its member states, which means that the definitions and precision of each country's data varies. Some of the developing country members have no data. In the UN statistics, in principle, "an international migrant is a person who is living in a country other than his or her country of birth,"⁷ but when country data on the foreign-born is unavailable, it substitutes the data on foreign citizens (whose citizenship/nationality differs from their country of residence). The question then becomes, what does "residence" mean? The UN Statistics Division defines "long-term migrants" as "persons who move to a country other than that of their usual residence for a period of at least one year"; ("short-term migrants" at least three months). The World Bank statistics shown below are based on this approach.

According to these definitions, then, people working overseas or studying abroad for over a year, even if they plan to return home, are counted as migrants. If we examine the case of Japan, this means that trainees in the Technical Intern Training Program⁸ who can stay up to five years as well as foreign students attending Japanese language schools in Japan for a period over one year would be considered migrants. By contrast, people born in Japan but who have foreign nationality, for instance second- and third-generation ethnic Korean residents of Japan, are not supposed to be considered migrants.

Just as there may be some people who, even after living in their current country of residence for generations, perceive themselves as migrants and not as citizens of that country, there are also those people born abroad who assimilate into their current country of residence and have no emotional ties with their country of birth, even though they hold the nationality of both countries. The discrepancy between the self-perceptions of such people and the statistical classifications is unavoidable. People's self-perceptions change under a variety of conditions, of course. Some people who believed they had assimilated are awoken to the fact that they are an immigrant when they are alienated by the society and state of their country of residence, and become an outsider, a foreigner. There are even cases of people who involuntarily wind up as migrants, not because they moved, but because the national border did. Herein lies the reason that the phenomenon of migration should be distinguished from finance and trade—it is people who migrate, not money or goods, and they are agents with a soul.

2.2 *Migration Flows*

When looking at migration flows (i.e., the cross-border flow of people in a given period), we find that the routes do not spread out homogeneously around the globe; instead, relatively clear patterns emerge (see Fig. 2). Among the countries receiving migrants, the US is far and away the top host country, followed by the Gulf states and European countries. Yet the picture is completely different when looking at it as a share of population. The proportion of Gulf states with small populations to begin with, like Qatar and the United Arab Emirates (UAE), is overwhelmingly high, and city-states such as Monaco, Andorra, and Singapore, as well as other small countries in Europe appear in the list. Just as these small-scale states find it impossible to be self-sufficient materially, it is natural that they are unable to meet all of their need for people domestically in terms of education, marriage, employment, etc.

From the other side, looking at the absolute numbers for emigration countries, it probably is not surprising that there are many middle-income countries with large populations, such as India, Mexico, and China (see Fig. 3). That Russia is in the number three slot may be unexpected, but it is a phenomenon deriving from the movement of borders, not people, when the end of the Cold War led to the breakup of the Soviet Union. Looking at countries sending out migrants as a share of population, we see that there are many outflows from countries with small populations.

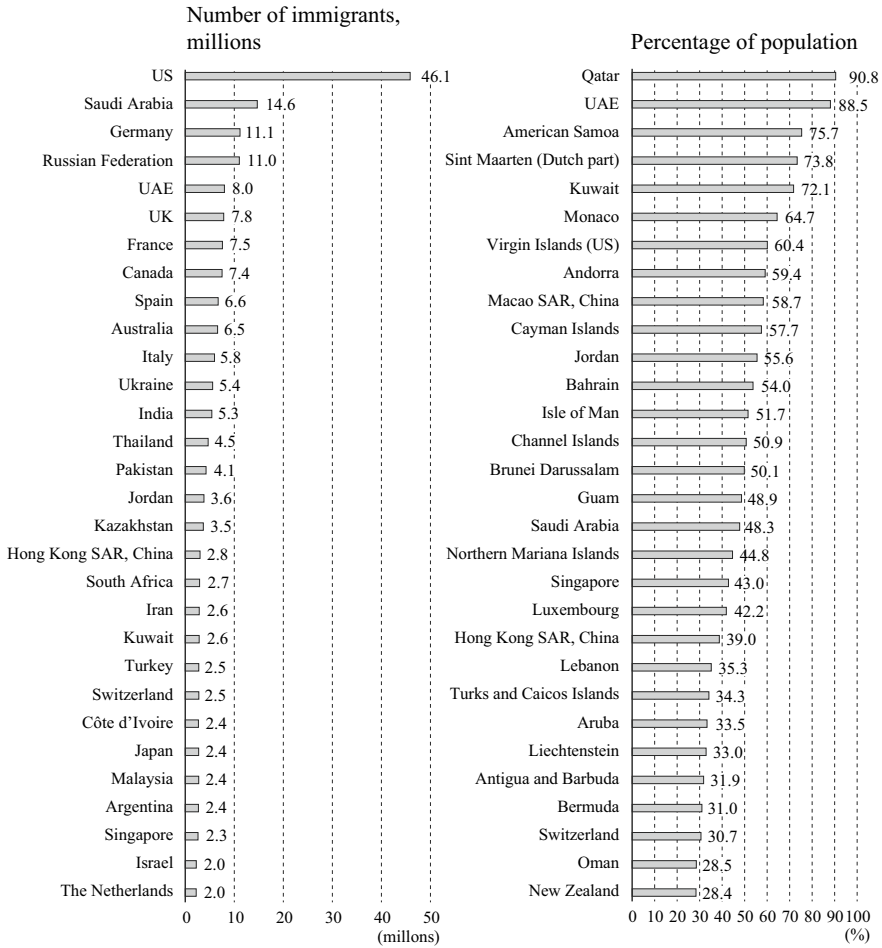


Fig. 2 Top 30 countries receiving migrants (2013). *Source* World Bank Group, *Migration and Remittances Factbook 2016*, 3rd ed., World Bank Publications, 2016, 1–2

In addition, there are very large-scale population outflows from island states, such as the Caribbean countries.

In the movement of people, unlike that of goods and capital, once a certain route is established, there is a strong tendency for that route to expand; globally, several large migrant “corridors” have come into being (see Fig. 4). The largest of these bilateral corridors, by a wide margin, is between Mexico and the US, with the number of Mexican migrants in the US reaching 13 million. One can understand how bringing this movement under control has become a major political issue for the US. While the large number of people moving between countries that are geographically close and have a long history of relations is striking, two examples that fall outside that framework are the large-scale movements of people from China and India to the US.

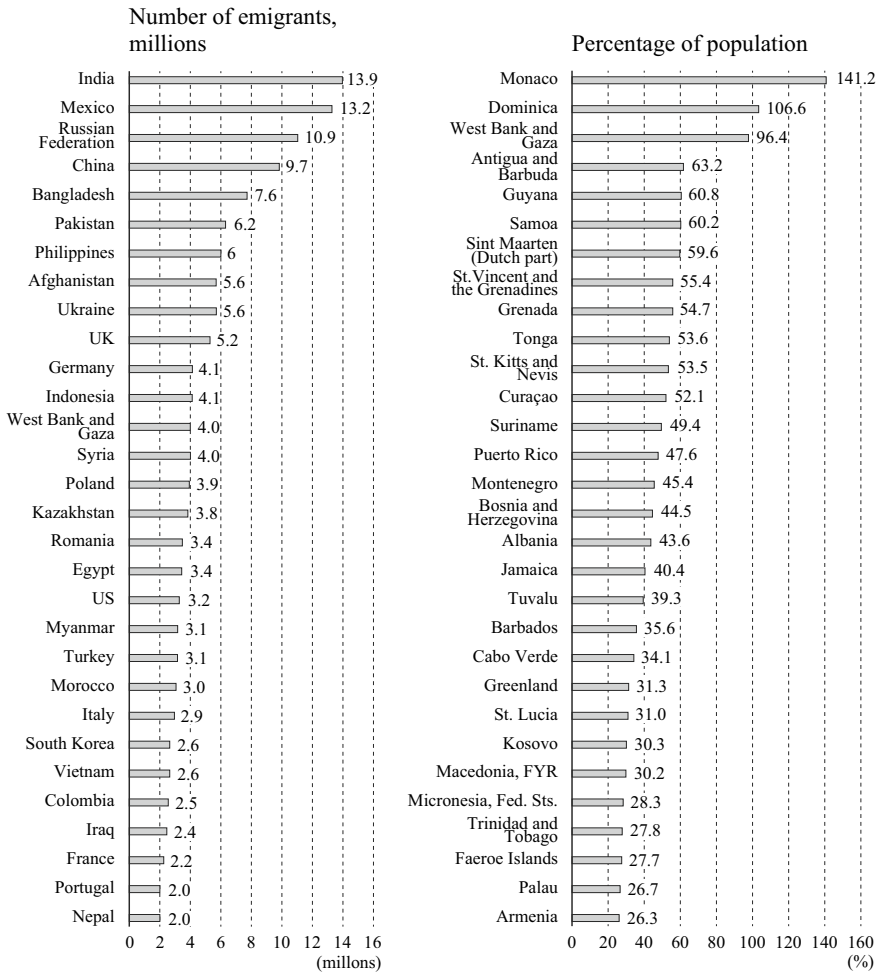


Fig. 3 Top 30 countries sending out migrants (2013). *Source* World Bank Group, *Migration and Remittances Factbook 2016*, 3rd ed., World Bank Publications, 2016, 3–4

There are 2.4 million people from China and 2.1 million people from India residing in the US. In any case, the meaning of this human penetration occurring among the major players in global geopolitics is something that should be further examined in the future.

As can be naturally predicted from these flows, there is a large level of remittances from these migrants in host countries to the countries from which they came, a total amount that has already surpassed that of official development assistance (ODA), and is even comparable to that of direct investment (see Fig. 5). Given that the total value of India's exports in 2014 was around \$460 billion, the fact that its overseas remittances topped \$70 billion takes on a greater significance. Or again, the gross

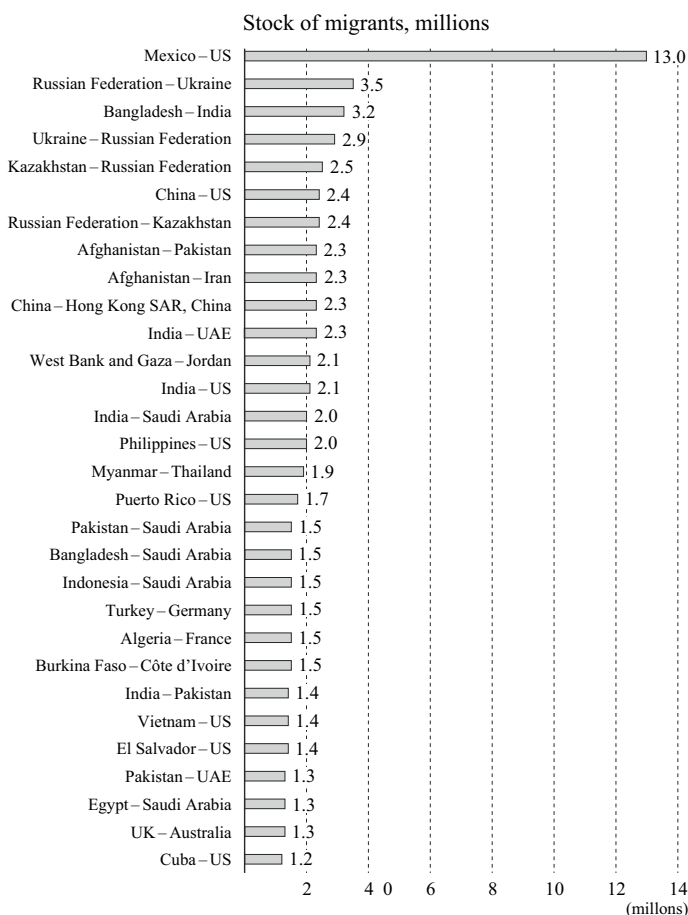


Fig. 4 Top migration corridors (2013). *Source* World Bank Group, *Migration and Remittances Factbook 2016*, 3rd ed., World Bank Publications, 2016, 5

domestic product (GDP) of the Philippines for 2014 was around \$280 billion, so the nearly \$30 billion in remittances from abroad are large enough to influence the whole domestic economy. No wonder the countries sending out migrants have an interest in this source of funds.

This section has explained in general terms the current state of international population movements. What emerges from this overview is that the scale of the global flow of people reflects, as one can easily imagine, the pressure to migrate for those people attempting to move from the poor South to the rich North in search of a better life. Yet people are more than a labor force: they are beings of flesh and blood with families and a cultural background. Moving residences carries large risks, and requires some initial investment, so it is telling that people from middle-income countries have higher mobility than those from the poorest countries. Furthermore,

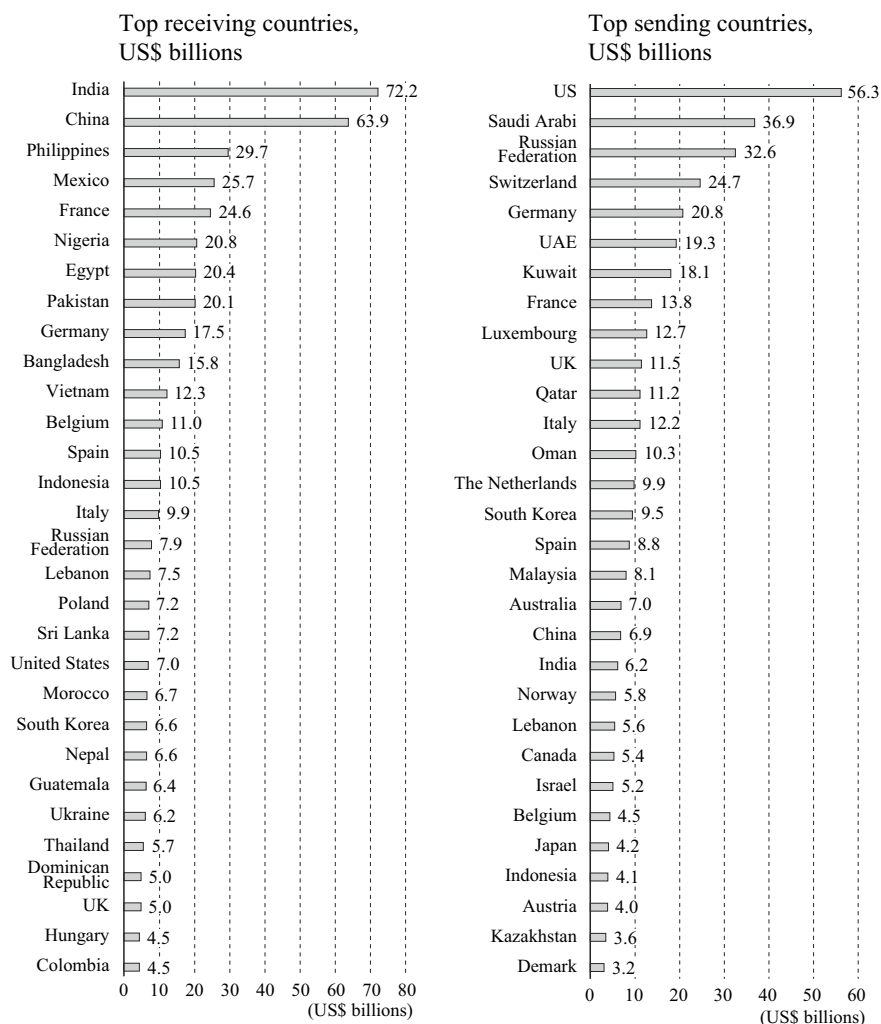


Fig. 5 Remittance flows (2014). *Source* World Bank Group, *Migration and Remittances Factbook 2016*, 3rd ed., World Bank Publications, 2016, 12,14

when we consider that some migrant corridors are being reproduced, there is a large part of the movement of people that cannot be explained by wage differentials alone.

I must stress that there are various motives for people moving. Many irregular migrants are not reflected in the population statistics cited above. Aside from economic motivations, refugees fleeing from political persecution, conflict, natural disasters, literally for their very lives, have reached a level where they have become a political issue that goes beyond the humanitarian issue. On the other end of the spectrum, there has been an increase in the movement of sports players, business

executives, entertainers, and other highly skilled workers with marketable talents in the global labor market. Then there are the fortunate few who cross borders in search of a better lifestyle. Just as there are people freely traversing borders in pursuit of their own career and lifestyle, there are also those people who move just in order to survive. And then, there are the overwhelming majority of people who have no choice but to accept the homeland they have been given, regardless of their will, as a part of themselves and to share their fate with it.

3 Concept and Structure of This Book

3.1 Current State of Migration Research

Migration has long been one of the most important political issues in Europe and the US, and the trend arguably has accelerated especially after the Cold War. Characteristic of Western discussions is the very strong sociological interest in migration as it relates to citizenship, identity, and even gender, and, in contrast, the waning interest as it relates to interstate relations and foreign policy, the traditional themes of international politics. Indeed, the interstate geopolitical conflict and tense relations enveloping the countries in the Western world has receded to a large extent after the Cold War. What has displaced the traditional geopolitical issues to become the most urgent issues in international politics are the “non-traditional” issues of terrorism, refugees, and the related policies for stabilization and peacebuilding. Furthermore, the problem with population movements toward the West is that the impoverished, fragile states on the periphery generally are failed states. In the European case, partly due to a strong regional organization, the European Union, the dominant discourse in this field is an intellectual attitude that is critical of the traditional perspective emphasizing interstate relations and is oriented toward a post-national world.

Thus, this prompted many normative discussions about protecting refugees and asylum seekers from a humanitarian and human rights standpoint. The issue has also been discussed from the perspective of peacekeeping and economic development theory, because conflict and underdevelopment have been posited as being behind the emergence of refugees. Economists are actively researching the issue, since the receiving countries naturally have a great interest in the sort of economic effects that accepting these migrants produces. In addition, what kind of societal implications migration has on both the sending and receiving countries has become an important subject of research for sociologists. The search for multicultural social cohesion, in particular, poses serious societal and cultural challenges for many rich host countries. Furthermore, as Islamic terrorism began to attract attention, an interest was taken in the societal integration of Muslim residents in Western countries as one aspect of non-traditional security issues.

In the past, scholars of international politics in Japan had traditionally not shown a keen interest in this issue. The reason is perhaps that in international politics, discussions are predicated on a state's exclusive jurisdiction, or sovereignty, and so the jurisdictional scope of that sovereignty has been conceptualized in terms of territory. Moreover, as the state transformed into the nation-state, and its territory became more than merely the lands ruled by a dynasty, taking on a semi-sacred existence as the homeland of a people sharing an identity in some sense, its inviolability further increased. As a consequence of the strengthened bonds between the state and the people under its jurisdiction, that people would traverse and reside across states' territorial jurisdictions was deemed an exceptional phenomenon by international political scholars, whose core interest was conflict and cooperation between states.

A major reason why it is difficult to grasp this issue in a comprehensive way is probably because the realities of international population movement are so diverse and require a multifaceted examination. For many people, the most familiar way to cross a border is to travel abroad. The majority of international travelers are people who go abroad for some kind of work reason, and there may also be tourists who are intent on enjoying an extraordinary experience as well as students with the purpose of studying abroad.

People crossing borders for settlement purposes are immediately associated with those who cross for work in search of riches, and today these international population movements for work have become a common sight. In addition, there are quite a few refugees fleeing from domestic societal and economic chaos and asylum seekers crossing borders to escape political and religious persecution.

In reality, it is often not easy to clearly distinguish between the two. But in the former case, whether to grant them entry depends on the country's discretion. In the latter case, in contrast, the principle of non-refoulement (prohibition to repatriate) has been established in the international community and providing them protection is an obligation under international law,⁹ and therefore it is crucial to distinguish between voluntary migration based on economic motives and involuntary international population movements to escape persecution.

At the same time, there is now a growing presence of cosmopolitan professionals who frequently fly business class around the world, effortlessly crossing borders in pursuit of prosperous careers. Often forgotten are the people who migrate from rich countries to poorer countries in search of a different lifestyle or through marriage. It is hard to discuss the significance of the cross-border movements of such people in the same way as irregular migrants and refugees, as they are too distant from each other.

3.2 Migration Research in Japan

In Japan, there is quite a low level of recognition of migration as an actual political issue, but in terms of research, a great many studies have been published already; this book has learned much from them. Many of them, however, appear to adhere to

the Western framework of discussion that is the dominant intellectual influence in the world today. The discourse on Japanese exceptionalism, thus, is also powerful, attributing the attitude of the Japanese government which has not adopted a policy of accepting unskilled immigrant labor on a large-scale to the idiosyncrasies of Japanese society, described by its backward, closed, and exclusionary nature.

Yet it is not as though Japan is immune to the conditions prompting cross-border population movements. At the same time, Japan's international environment and historical context differ from those of Europe and America. First, Japan had been a country sending out emigrants until the 1960s. Its acceptance of immigrants only became a realistic topic beginning roughly in the 1980s, and subsequently, as Japan's economy stagnated, the pressure of migrant inflows eased. Second, as Japan has no land borders, it is plausible that its border control is relatively effective. Although it may well be exaggerated, it is relatively true. Third, the reality is that the international environment in East Asia surrounding Japan is quite far from a European-like security community, but it does not mean that Japan is surrounded by failed states that are effectively unable to control their borders. If anything, the economic growth rates of China and South Korea have been much higher than Japan's in the post-Cold War era, so in that sense one might say that the pressure of population inflows on Japan's borders has been relatively light.

3.3 Migration in the World Today

In contrast, European countries have promoted broad-based integration rooted in high and noble liberal principles since the end of the Cold War. Although the word "liberal" is used with a variety of meanings, it can generally be thought of as an attitude that values progress and individual freedoms over tradition and belonging to a community. It traditionally placed emphasis on liberation from state and religious oppression, and in economic terms it advocated a free market economy. Yet, in modern times, it expects the state to play an active role in protecting the religious and cultural rights of minorities and supporting the economically weak. Therefore, the liberal position is that even toward migrants the state should be tolerant and inclusive, without questioning their race, religion, customs, or any matters of the inner self, and should protect their cultural identity. The EU has formed a unified market, liberalizing not only the movement of goods and capital, but also the movement of people between member states. Societally, they have worked to protect the rights of minorities through human rights guarantees and multiculturalism policies. It is an unmistakable fact that this has enabled the EU countries to build closer and more stable relations with each other than ever before. However, the quite apparent reality is that the EU's liberal project has faced a wide-ranging backlash in the 2010s and since. Anti-immigrant forces, on the whole, are gaining strength across EU countries.

In the UK, the backlash against immigrants coming up from Eastern and Southern Europe was one of the reasons why the "Brexit" camp gained the majority of votes to leave the EU in the 2016 referendum. Furthermore, an effective solution has yet

to be found to the difficult problem of societal integration of some Muslims, due to the continuing influx of people from the unstable Middle East. Especially sparked by the Arab Spring that began in Tunisia in 2010, hopes that liberal democracies would emerge in place of authoritarian states in the Middle East were brutally disappointed. State failure and growing extremism have led to rising numbers of refugees and irregular migrants, which reached critical levels in 2015 and beyond.

History records that, even in the US, proud of its founding as a nation developed by freedom-seeking immigrants, anti-immigration movements have often increased against the backdrop of racial tensions. Among these, immigration from Mexico has been a long-standing issue. The fact that Donald J. Trump, who repeatedly made controversial statements during the 2016 US presidential race and who vowed to build a huge wall on the US-Mexico border and have Mexico pay for it, was elected against most expectations indicates that international population movement is a very complex political challenge.

With the sudden spike in such anti-immigrant dynamics in the West, the supposed bastion of liberal ideals, we have begun hearing the arguments of Japanese exceptionalism, running counter to the existing assessments, such as “Japan should not accept immigrants after all” or “Japan is great because it does not accept immigrants.” However, people moving across borders reflects global trends, and it is illusory to think it possible, even if it were desirable, for Japan to be an exception to these trends.

I am an international political scientist, by no means an expert on the issue of immigration. Although many experts have already done research on this topic, I wrote this book out of an exceptional interest in traditional politics. I wanted to examine what kind of problems people crossing borders pose to the international order that is based on states’ coexisting through the mutual recognition of territorial sovereignty. My interest is also an extension of my specialty, international political economics, which has examined what the movement of goods and capital across borders means for international politics.

3.4 Structure of This Book

This book is structured as follows. The topic of people crossing borders is considered from a flow perspective in the following two chapters. A state first encounters such people when they attempt to cross the state’s borders. A state unable to control entry and exit at its borders cannot survive. Thus, every state monitors and carefully controls the flow of people crossing its borders using various means. When the sender and host countries disagree over what flow of people is desirable, it may develop into a political conflict between the countries involved. This point can be easily understood by analogy with international relations regarding the flow of goods and capital, that is, international trade and international finance.

Unlike goods and capital, however, people are actors, each with their own will, seeking to carve out their own destiny. Their actions to cross borders often contravene the will of the state, yet the state’s ability to control them is limited. Chapter 3

examines the irregular flows of people that are beyond the control of the state, in other words, irregular migrants and refugees.

Although an international system for the protection of refugees exists, the response to people who crossed borders in an irregular manner is primarily the responsibility and authority of the host country. A country cannot rely solely on its own border controls to control such irregular population movements; it must depend to a considerable extent on the cooperation of the sending and transit countries from and through which these people came. That being the case, the countries involved engage in various political negotiations and bargaining. This chapter will examine the political relations between such states.

Chapters 4–6 examine the international politics related to the people who have crossed borders, i.e., the stock of migrants. One of the insights gained from the examination in Chaps. 2 and 3 is that there are limits to a state's ability to control people crossing its borders, and therefore borders are not watertight systems, but are more porous than is generally thought. If, to some extent, people enter a country regardless of the will of the state, what kind of relationship will be built between them and the state?

In preparation, Chap. 4 first examines what it means to be a member of a state. It discusses how states have conceptualized and institutionalized membership, and how state membership has developed into an international political issue. The relationship between states and their members has changed significantly, along with changes in state regimes. For this reason, the chapter provides an overview of the development of the nationality systems of the major European countries that are considered the models of modern nation-states. Additionally, the chapter provides a historical overview of the US nationality system, which is said to have been established based on a contract between immigrants. Each state decides its own (national) system of nationality, but since the nationality system determines who belongs to which state—i.e., it is a system that determines the personal jurisdiction of the state—it has international implications. In fact, inconsistencies among nationality systems have sometimes generated political friction between states. Such logical possibilities are illustrated based on historical examples.

For a state to continue to exist, it faces the challenge of integrating new entrants into its current members and reproducing the nation. A state's relationship with the people who have newly come to live in its territory develops through several stages. Chapter 5 examines the issues of naturalization and dual nationality, systems by which a state grants formal membership to non-members. Furthermore, a nation has a cultural dimension that goes beyond the formal institutions of nationality. This chapter also touches on the issues of societal and cultural integration, which have become very politically controversial in the Western world today.

A state's integration of its new residents often fails, however. People's sense of identity often becomes de-territorialized, and may be driven by long-distance nationalism, in which bonds with compatriots in the far-off country of origin are emphasized over ties with neighbors in the country of current residence. Meanwhile, the countries of origin of these migrants may make efforts at diaspora engagement, attempting to leverage this kind of de-territorialized sense of belonging. Chapter 6

analyzes such diaspora engagement. The purposes of diaspora vary, from the purely cultural to the economic, such as attracting investment. The chapter notes that the diaspora could become a security issue between the country of current residence and the country of origin, depending on their bilateral political relationship.

I wrote this book, originally in Japanese, with the Japanese reader in mind. Immigration, high on the political agenda in Western societies, is not a central political issue in Japan at the moment. Given this fact, it is unfortunate that there is a notion so deeply rooted at home and abroad of a Japanese exceptionalism, which purports that Japan is an unusually xenophobic country or, conversely, that it has remarkably maintained its cultural homogeneity. Such an argument is intellectually lazy, reminiscent of the revisionist view of Japan popular in the West in the late 1980s, which claimed that Japan was an economic threat with an abnormal culture. In reality, there are already a considerable number of immigrants living in Japan, and for better or worse, it is unlikely that this number will decrease in the future. In order to clarify this point for Japanese readers, I provided an overview of the current situation of immigrants in Japan in Chap. 7.

In Japan, much has been written on immigration, but the literature is dominated by micro-sociological concerns that focus on the protection of immigrants' human rights and on their domestic societal integration, whereas there is very little mention of the potential for immigration to develop into an interstate political issue. It is not the intent of this book to discuss policy. But I hope that by gleaned the appropriate lessons from the experiences of other countries regarding immigration that are examined herein, Japan's discussion of immigration policy will be unfettered from the barrenness of Japanese exceptionalism to become more intellectually sophisticated and constructive.

Notes

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2. Ibid., 12. [English version, 142.].
3. On this point, see Wade, Nicholas. Yasuda, Yoshinori and Numajiri, Yukiko (trans). 2007. *Gomannenmae: kono toki jinrui no sōdaina tabi ga hajimatta*. Tokyo: East Press. [Translation of Wade, Nicholas. 2006. *Before the Dawn: Recovering the Lost History of our Ancestors*. New York: Penguin Books.
4. On the history of Hawaii, see, for example, Saruya, Kaname. 2003. *Hawai ōchō saigo no joō (The last queen of the Hawai'ian kingdom)*. Tokyo: Bunshun Shinsho; Yaguchi, Yūjin. 2002. *Hawai no rekishi to bunka ichi higeiki to hokori no mozaiku no naka de (The history and culture of Hawai'i: a mosaic of tragedy and pride)*. Tokyo: Chūkō Shinsho. An interesting book that follows in the footsteps of Captain Cook, who conducted large-scale research expeditions in the Pacific Ocean in the eighteenth century, and that touches on the current state of those regions, is Horwitz, Tony. Yamamoto, Mitsunobu (trans). 2003. *Aoi chizu: kyaputen Kukku o oikakete (The*

- blue map: chasing Captain Cook*) Vol. 1 and Vol. 2. Tokyo: Basilico [Translation of Horwitz, Tony. 2002. *Blue Latitudes: Boldly Going Where Captain Cook has Gone Before*. New York: Picador.].
5. World Bank. 2016. *Migration and Remittances Factbook 2016*, 3rd ed. Washington, DC: World Bank. <https://doi.org/10.1596/978-1-4648-0319-2> (accessed March 11, 2024).
 6. United Nations, Department of Economic and Social Affairs, Population Division. 2017. *International Migration Report 2017: Highlights* (ST/ESA/SER. A/404), 4. https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017_Highlights.pdf (accessed March 11, 2024).
 7. Textbox: “International migrant stock by age, sex and origin: Definitions and data availability.” *Ibid.*, 3.
 8. There are not supposed to be any unskilled labor migrants. For background on this program, see Japan International Trainee & Skilled Worker Cooperation Organization. “What is the Technical Intern Training Program?” <https://www.jitco.or.jp/en/regulation/index.html> (accessed February 20, 2024).
 9. Article 33 (1) of the 1951 Refugee Convention provides that: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees#article-33> (accessed March 11, 2024).

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Chapter 2

Policy of Population Movement and Foreign Relations



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Abstract How to control the movement of people across borders has become an increasingly important political issue. This chapter inquires into the means by which migrant-sending and migrant-receiving states can maintain harmonious relations and avoid the conflict often resulting from differing national policies. It looks at various kinds of policy discord, freedom of movement as a human right, differing exit and entry regulations, and regimes for migrant laborers, as well as the phenomenon of the “brain drain” from one nation to another. Among specific cases analyzed are

political exile involving North and South Korea, the issue of Jewish emigration, Cuba's population dumping policy, the refugee crisis from the Third Indo-Pakistani War of 1971, and the Bracero program, a US-Mexican attempt at migration control.

Whether or not to allow foreigners to enter its territory is usually considered to constitute part of a country's sovereignty. As to the treatment of refugees and political asylum seekers, there are certain international norms. Furthermore, the treatment of visitors is often regulated by bilateral treaties. Apart from these cases, where the movement of people is concerned, however, there is no international regime comparable to the Charter of the World Trade Organization (WTO), which globally regulates cross-border transactions of goods. Whether or not to permit entry is, in principle, a matter left to the discretion of the receiving country.

If borders were completely opened without controls and cross-border migration were liberalized, the political and cultural identity of many regions around the world would surely be unsustainable. In fact, the indigenous communities of the New World, which were considered by modern European nations to lack the qualifications of civilized nations, were unable to effectively control the influx of settlers. As a result, their civilizations were gravely impacted by settlers who migrated from Europe on a massive scale. Cases such as these, where large-scale population inflows from the outside cause the destruction of indigenous societies, are rather commonplace when you look back into time, regardless of the extent to which they are recorded in history. Japanese history is no exception. One such example is the fate of the Ainu, an indigenous people who lived in Hokkaido before its inclusion as part of the territory of "Japan" in the modern era. Given this, it would be perfectly reasonable for a relatively sparsely populated community to believe that its identity was threatened by an influx of people from the outside. The political and cultural identity of Myanmar, Eastern Siberia, southern Europe, and the southern United States would undergo a complete change of character if they were to experience large-scale immigration from their heavily populated neighbors or an unrestricted cross-border influx of people from politically unstable neighboring regions. In other words, one security issue for a state is to manage population inflow in a way that is compatible with what it regards as its vital interests.

That statement does not at all mean to suggest, however, that population movements are always effectively controlled by the state. The reality is quite the opposite, and in recent years restrictions on international population movements have been tightened in many regions. How to control the movement of people across borders has become an increasingly important political issue.

International population movements are already a reality in most parts of the world, but as long as states seek to take responsibility for governing their own territories, it is difficult to imagine them not exercising any border control. States' immigration policy interests will not always be mutually compatible, so long as each state has some kind of policies for immigration and for immigration control, and so long as it is largely left up to each state's discretion what sort of immigration regulations

to implement. When the interests of two states conflict, and their wills clash, it may develop into a political problem.

How can people who cross borders trigger conflict between states? Conversely, under what conditions can migrant sending and receiving states maintain harmonious relations? The purpose of this chapter is to consider this line of inquiry.

1 Types of Policy Discord

A standard cause of interstate friction and conflict is the simultaneous pursuit of incompatible goals by multiple states. The most typical case is a dispute over territory, where multiple countries claim exclusive jurisdiction, or territorial rights, over the same location. Various other incompatible goals are possible, such as two countries simultaneously trying to increase exports and decrease imports, or two countries simultaneously attempting to devalue their currencies. With respect to population movement, there is a possibility that different states will pursue incompatible policy goals as long as the cross-border movement of people is managed at the liberal discretion of individual states.

To be sure, states can avoid such policy discord by reaching some kind of international agreement in advance. Global international practices and norms have been established to a certain extent regarding refugees and political asylum seekers, which arguably has given rise to a sort of regime. In addition, there are also multilateral agreements that recognize the freedom of movement over a wide area, the European Union's (EU) Schengen Agreement being the typical example.

Furthermore, two states often conclude international agreements to ensure the orderly flow of people. The most familiar of these is the bilateral visa agreement. Today, many countries have entered into visa agreements in which they mutually agree on entry conditions in advance or provide visa exemptions reciprocally based on specific criteria.

There are also many cases where governments have agreed on the number and conditions of guest workers who may enter the country for temporary work purposes. Starting in the 1950s, Germany entered into agreements to introduce guest worker systems with countries such as Italy, Spain, Portugal, Greece, Yugoslavia, and Turkey.¹ In order to resolve its labor shortage during World War II, the US signed an agreement with the Mexican government to bring in workers from Mexico, guaranteeing them certain working conditions. As will be examined in greater detail later (starting on page 37), this Bracero Program continued until 1964, during which time more than 4 million Mexicans crossed the border into the US.²

Conversely, states may also reach agreements to limit the number of immigrants. Japan and the US signed a "Gentlemen's Agreement" in 1908 to restrict Japanese immigration to the US (the contents of the informal arrangement were kept secret and not made public until 1939). In 1906, Japanese immigrant schoolchildren in San Francisco public schools were forced to transfer to the Oriental school established exclusively for those of Asian descent. To amicably resolve the incident, under this

agreement, Japan effectively stopped issuing passports to all laborers seeking to go to the US mainland. At the same time, the agreement stipulated that Hawaii would be exempted from these restrictions and that the US government would not unilaterally exclude Japanese immigrants.³ Initially, the US had approached Japan on a bilateral treaty reciprocally limiting labor migration, but inasmuch as US emigration to Japan was non-existent at that time, the gentlemen’s agreement was the result of Japanese insistence on voluntary measures to avoid the appearance of being discriminated against. Though there was no explicit link, the implication was that the US would acquiesce to Japan’s sphere of influence on the Asian continent in exchange for maintaining the gentlemen’s agreement.

However, a universal international migration regime that coordinates states’ policies regarding the cross-border movement of people remains underdeveloped. This issue is largely determined by the discretion of the parties concerned, rather than by international rules. Individual states unilaterally promote or restrict the movement of people across their borders, depending on how they interpret the significance of people exiting or entering their country. This leads to policy discord, which often gives rise to political friction. Table 1 shows the types of harmony and discord in policies regarding population migration. Section 2 will focus on friction over exit regulations, and Sect. 3 will focus on friction over entry regulations, with a look at the international politics that unfold in each.

Table 1 Schema of international conflict over migration flows

		Migrant-receiving country	
		Welcome	Restrict
Migrant-sending country	Promote	Harmony (e.g., North America and European migrant-sending countries until the late nineteenth century)	Frictions over exit regulations <ul style="list-style-type: none">• Economic migrant restrictions• Strategic engineered migration policies
	Restrict	Frictions over entry regulations <ul style="list-style-type: none">• Political asylees• Competition to acquire highly skilled professionals	Harmony (e.g., Japan had a policy of national seclusion (<i>sakoku</i>) and China had bans on maritime trade (<i>haijin</i>).)

Source Created by author

2 Exit Regulations and International Politics

2.1 *Historical Development of the Freedom of Exit*

To start with, there are states that restrict their citizens from leaving the country, and others that wish to take in those people. For today's democracies to deny their citizens the rights to exit the country or renounce their nationality would be an exception.⁴ This is because the idea that freedom of movement constitutes a part of human rights has become a general norm.⁵ The Universal Declaration of Human Rights states in Article 15, Paragraph 1 that "everyone has the right to a nationality," and further states in Paragraph 2 that "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." The Constitution of Japan stipulates in Article 22 that "Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate."

However, historically this was not a given. Under the feudal system, even domestic movement was severely restricted for a long time. Serfs were not free to leave the land; even if they had been, the practical barriers to movement were high since a labor market for making a living off the land had not been developed. Agricultural production accounted for the lion's share of the pre-modern economy. The largest source of employment apart from agriculture was domestic work for the nobility, but such domestic laborers could not move freely without their employers' permission. In other words, inasmuch as labor was not traded freely in the absence of an integrated national labor market, with the exception of peddlers and traveling entertainers, ordinary people who left their areas of residence often became impoverished, jobless refugees. In an era when providing relief to the poor was left up to local communities, an influx of poor people meant a heavy burden on local communities. In this sense as well, domestic population movements had to be strictly controlled.

2.2 *Establishing the Right to Exit*

In Europe, leaving a country became recognized as a right only after the French Revolution. Due in part to the fact that capitalism, as it was developing at the time, required free market transactions of labor through contracts, freedom of movement came to be regarded as an important part of human rights. Influenced by the French Revolution, Prussia carried out liberal reforms such as freeing its serfs in the early nineteenth century, but until the 1840s leaving Prussia required official permission from the authorities, even for foreigners.⁶ Russia issued the Emancipation Manifesto in 1861, granting serfs certain rights, but it tightened restrictions on departing the country, in place of measures that noble landowners had imposed. The preponderance of Russians had to wait until the end of the nineteenth century to be able to obtain passports and leave the country; accordingly, 2.3 million Russians, mainly of Jewish and Polish descent, left the country as emigres between 1881 and 1910.⁷

In the US, slavery was finally abolished after the Civil War, well after serfs had been emancipated in Russia. However, a system was introduced requiring blacks to carry proof of employment, effectively restricting their movement. Freedom of movement for blacks was not the norm until the latter half of the nineteenth century; even after they had been emancipated they still had various restrictions imposed on their movement.⁸

The prevailing mercantilist view held that population was one resource of national power; under the feudal system, the inhabitants of a territory controlled by a lord had been the labor force associated with that territory. There was a long period when the emigration of craftsmen, engineers, and other people with skills deemed useful by the state, who in today's terms would be highly skilled workers, was strictly regulated. For instance, under the *Ancien Régime* in France, the prevailing view was that the outflow of migrants would lead to a decline in the country's population and the loss of valuable technology, such that Jean-Baptiste Colbert, Louis XIV's Controller-General of Finances, decided to impose the death penalty on those who illegally left the country. The United Kingdom also placed strict restrictions on the emigration of seamen and artisans until the 1820s.⁹

In many cases, feudal lords and kings welcomed exiled merchants and workers. The Magna Carta of 1215 states that the king protected the right of foreign merchants to freely travel into and from England "save in time of war." As part of Russia's modernization project in the eighteenth century, both Peter the Great and Catherine the Great enthusiastically accepted colonists from Germany.¹⁰ England had traditionally been eager to accept Protestants from the continent. Protestants in France were persecuted as a result of Louis XIV's repeal in 1685 of the Edict of Nantes, which had been issued almost 100 years earlier to promote sectarian reconciliation in France. Consequently, England actively took in 40,000–50,000 Huguenots who had left France. Because the Huguenots had superior skills, Charles II of England encouraged them to naturalize. They were welcomed and accepted:

The children of immigrants should be admitted to British schools without discrimination; they should be encouraged to engage in commerce and trade; their personal belongings should not be subject to customs duties. They should be received with the utmost care, such as dispatching a British immigration official to their port of departure and issuing them a passport to enter Britain free of charge.¹¹

In addition to political and religious reasons for protecting asylum seekers from France, a Catholic state with which England had a long rivalry, the British economic view that population is the strength of the nation was also at play.¹² Protestants from France in fact played an important role in British industry. Also, French Protestant soldiers who came to England were to hold important positions in the British army, such as John Ligonier, who became commander-in-chief of the forces in 1757.

Around the same time, roughly the same number of people were leaving England for France. They were the Jacobites, mainly Catholics swearing allegiance to King James II who was exiled during the Glorious Revolution (1688–89) in England. Following James II, who had his court on the outskirts of Paris, they often plotted to retake power in England with French support. The Jacobites produced many French

soldiers. Afterwards, they produced two marshals of France and 18 generals in the French army, and held a near monopoly of command in the French colonies. In other words, Protestants from France and Catholics from England faced each other on the battlefield as émigré soldiers for generations.¹³

2.3 Freedom of Movement as a Human Right

Freedom of exit came to be understood as constituting a human right in Western European countries after the popular revolutions. Furthermore, freedom of movement increased substantially as the international environment became more stable. For liberal states, the problem became their relationship with non-liberal states. In continental Europe in the mid-nineteenth century, liberal revolutions were suppressed on occasion, and activists defeated at home often went into exile. The countries that accepted such political asylum seekers tended to have strained relations with the governments of their countries of origin. However, in Europe, royal families and aristocrats who had fled abroad as a result of religious conflicts and dynastic struggles were given asylum and were sometimes used for political purposes. Of course, granting asylum to those who seek it is a state's right derived from its sovereignty, but there is lively debate as to whether it should be established as customary international law.¹⁴ It has been a fairly well-established custom since pre-modern times. In the case of Europe, there may also have been strong class, religious, and kinship ties that transcended the national framework. In addition, there may have been practical reasons as well: in times of intense internal strife, regimes may have found affording defeated anti-government forces a relatively easy "exit" more convenient than resigning them to a fight to the death.

The story suddenly takes on a political overtone, of course, if such exiles were to systematically plot to overthrow the regime of their home country while abroad. Indeed, crackdowns on the political movements of the German, Polish, Italian, and Russian exile communities in Paris and London in the nineteenth century oftentimes became a diplomatic issue.¹⁵

Once the freedom of exit is established, receiving countries, more than sending countries, will have to play a greater role in managing international population flows. Anti-immigrant movements did, in fact, intensify beginning in the late nineteenth century in the US, Canada, Australia, and New Zealand, which had traditionally accepted immigrants on a large scale. Arguably one contributing factor was the wider recognition of the freedom of exit.

However, restrictions on movement were stringently enforced once again in the twentieth century, especially in communist countries. The Soviet Union enforced the collectivization of its agricultural sector and the allocation of resources from rural to urban areas for the purpose of rapid industrialization. To control the resultant pressure on the population to move to urban areas, it introduced a passport system to manage movement within the country. In addition, it required a separate passport and exit visa to move abroad. Freedom of movement was severely restricted.¹⁶

That freedom of exit was not guaranteed in the countries of the USSR-led Eastern bloc was a fact used politically by the US-led Western bloc during the Cold War as being emblematic of the repression in those societies. In fact, allowing their citizens merely to have unrestricted contacts with foreigners within their countries, let alone to travel freely abroad, would lead to the widespread knowledge of Western lifestyles and ideas domestically, which the Communist countries recognized would lead to a crisis for their regimes. Especially those countries whose very legitimacy was shaky took blatantly repressive measures to prevent their citizens from leaving the country. To be sure, members of the supposedly open Western camp did not generally recognize freedom of entry into their own countries. At the height the Cold War, however, both East and West treasured political exiles from the adversary as the perfect political grist to symbolize the oppressive rule of the opposing camp. It is typified by the Cold War era events concerning population movement that unfolded across the borders between Western and Eastern Europe. The basic idea was to encourage defectors to leave the enemy camp and welcome them into one's own country, for the political value the defectors were deemed to have, symbolizing the political legitimacy of one's own camp.

2.4 Competing Systems and Exit Regulations—The German Experience

The border between East and West Germany, particularly the wall installed between East and West Berlin, was the front line of the conflict between exit restrictions and entry incentive policy.

The product of Germany's division after World War II, East Germany is often compared to other Eastern European countries, such as Czechoslovakia, Poland, and Hungary, that were forcibly established by the Soviet Union regardless of the will of the local people. But it had a major weakness in its legitimacy: the country to the west of the border was not only freer and more prosperous, but was also inhabited by people with exactly the same linguistic and cultural traditions. Therefore, people who were dissatisfied with the East German government had the option of making a new life for themselves by exiting the country rather than protesting against it. There were anti-establishment groups in East Germany, as there were in other Eastern European countries, but after the Berlin riots of 1953 there were no large-scale anti-regime demonstrations that shook the system comparable to the Hungarian Uprising of 1956 or the Prague Spring of 1968; the country remained the relatively wealthy and stable honor student of the Eastern bloc. One of the reasons for this may have been that people had the option of leaving the country to relieve their grievances in addition to protesting against the government.

In fact, since Germany was first divided into East and West, more than 100,000 people a year, and in some years more than 300,000 people, continued to move to West Germany, mainly via Berlin, where movement was free (see Table 2). The

cumulative total from 1949 to 1961 exceeded 2.5 million—a number corresponding to about 13% of East Germany's population at the time. East German authorities initially tolerated this to some extent; it served as a convenient safety valve to exclude “class enemies” such as landlords, the self-employed, and other bourgeois (capitalist) elements. However, as the young generation of doctors and engineers continued to leave the country without cease, it came to be seen as a threat to the survival of the regime. The infamous Berlin Wall, built between East and West Berlin in 1961, was erected by the East German authorities in response to these new conditions.¹⁷

There is no need to elaborate here that the Berlin problem was one of the major focal points of the Cold War. What I would like to emphasize here is that the population outflow through West Berlin was a matter of life and death for East Germany, whereas for West Germany it was not only about the protection and humanity of its fellow Germans, but also related to the possibility of German reunification in the future. The plainly repressive restrictions on exit from East Germany, such as the construction of the wall, did drastically reduce the number of people leaving East Germany. Still, more than 10,000 people left annually. This number included not only people who risked their lives to flee over the wall to the West, but also dissident intellectuals and artists who had been expelled by the East German authorities, such as the social satirist Karl Wolf Biermann.

This method of expelling people (*abschieben*) would have contributed to the system and peaceful coexistence based on the division of East and West. However, it was a major blow to East Germany, as described below.

The most creative, most critical or simply most adventurous people moved, often at the risk of their lives, across the German-German border and thereby contributed to the consolidation of stagnation and mediocrity [in the East]. Only when groups of dissidents started to advocate change in the GDR instead of simply leaving it, did the leaders of the country, who had long been aware of the damaging impact of the exodus on the economy, understand that it did contribute to political stability, with the result that they now resorted to Abschiebung as a sedative. In this way they also revealed that the mediocrity of the country matched their own to a fault.¹⁸

There were also political reasons why the authorities permitted some of people who left East Germany to leave the country in exchange for a ransom from West Germany. In the 1980s, the average ransom paid per person in this transaction reached 40,000 marks and was said to have become a valuable source of foreign currency for East Germany at the time.¹⁹

This peaceful coexistence between East and West Germany came to a dramatic end. Over 45,000 people left East Germany, both legally and illegally, in the first half of 1989 alone, according to a secret report by the Stasi (the East German secret police) released in July 1989. Of these, 37% were people in their prime working age (between 25 and 40 years old), and 44% were trained engineers. The exodus of skilled engineers, doctors, and dentists was a big problem: “Newspapers in the West often printed stories of villages where all their dentists disappeared, having escaped abroad; of craftsmen fleeing to the West during summer vacation; or of bakeries that could no longer bake bread.”²⁰ In November 1989, a large number of East German citizens passed through Hungary, which had already opened its borders to the West,

Table 2 Migrants and refugees from East Germany to West Germany

Year	Refugees	Authorized migrants	Including ransomed political prisoners	Total
1949	129,245			129,245
1950	197,788			197,788
1951	165,648			165,648
1952	182,393			182,393
1953	331,396			331,396
1954	184,198			184,198
1955	252,870			252,87
1956	279,189			279,189
1957	261,622			261,622
1958	204,092			204,092
1959	143,917			143,917
1960	199,188			199,188
1961	207,026			207,026
1962	16,741	4,624		21,365
1963	12,967	29,665	8	42,632
1964	11,864	30,012	880	41,876
1965	11,886	17,666	1,160	29,552
1966	8,456	15,675	400	24,131
1967	6,385	13,188	550	19,573
1968	4,902	11,134	700	16,036
1969	5,273	11,702	850	16,975
1970	5,047	12,472	900	17,519
1971	5,843	11,565	1,400	17,408
1972	5,537	11,627	730	17,164
1973	6,522	8,667	630	15,189
1974	5,324	7,928	1,100	13,252
1975	6,011	10,274	1,150	16,285
1976	5,110	10,058	1,490	15,168
1977	4,037	8,041	1,470	12,078
1978	3,846	8,271	1,480	12,117
1979	3,512	9,003	900	12,515
1980	3,988	8,775	1,010	12,763
1981	4,340	11,093	1,584	15,433
1982	4,095	9,113	1,491	13,208
1983	3,614	7,729	1,105	11,343
1984	3,651	37,323	2,236	40,974

(continued)

Table 2 (continued)

Year	Refugees	Authorized migrants	Including ransomed political prisoners	Total
1985	3,484	21,428	2,676	24,912
1986	4,660	21,518	1,536	26,178
1987	6,252	12,706	1,247	18,958
1988	9,718	27,939	1,083	37,657
1989				343,854

Source Albert O. Hirschman. 1993. "Exist Voice, and the Fate of German Democratic Republic: An Essay in Conceptual History." *World Politics*, Vol. 45 No. 2, 179

Note East Germany includes East Berlin; West Germany includes West Berlin

crossed the border with Austria, and fled to the West. The conservative leadership in East Germany was forced to change. The new leadership, with Hans Modrow as prime minister, tried to bring the situation under control by easing foreign travel restrictions, but amidst the chaos, large crowds demanding complete liberalization rushed to the gates separating East and West Berlin. The border guards lacked the will to use force to suppress the crowds; once the gates were opened, tens of thousands of East German citizens poured into West Berlin. A few days later, citizens began tearing down the Berlin Wall. Less than a year later, East and West Germany were reunified, and the East German government was completely abolished. What brought about the collapse of East Germany was not external pressure, but the mass defection of its people who had abandoned their country.²¹

2.5 Normalization of Political Exile—North and South Korea

Cases like East Germany, where a population outflow literally determined the survival of a nation, are rare. No matter how repressive a country's system is, choosing to express one's dissatisfaction by leaving the country involves various risks and costs. The choice between leaving one's homeland or staying to resist is often a difficult one, both morally and psychologically. Indeed, even as East Germany was coming apart, the crowds of protesters gathering in Leipzig could be heard chanting things like "We will stay here" and "We are the people."²² In Germany's case, however, it is thought that large-scale pressure to leave the country arose because many Germans believed that Germany should essentially be a single homeland.

There are arguably similar characteristics in the population movement in the current situation of the divided Korean Peninsula. Although it achieved independence from Japanese colonial rule, the Korean Peninsula was incorporated into the global East–West Cold War structure after World War II and was thereby divided in two: the Republic of Korea (ROK, South Korea) and the Democratic People's Republic of Korea (DPRK, North Korea). For a long time, given that the governments of both

sides did not recognize the other's very existence, both considered it treason for their own nationals to leave the country for the adversary's; conversely, they adopted a policy of welcoming an influx of their adversary's citizens as patriots. Furthermore, not only was there a severe ideological confrontation between the DPRK and ROK governments, but a fierce and heated battle was waged for four years starting in 1950. Ever since the Armistice Agreement was signed, the border between the two Koreas has remained a literal military front line, with hordes of troops from both armies facing off against each other day and night, making it virtually impossible for refugees to cross the 38th parallel.

In terms of the inter-Korean legitimacy contest, it was not until the 1970s that South Korea gained a decisive advantage over North Korea, which had traditionally been more economically advantaged. Furthermore, it was only after democratization in 1987 that the ROK began to surpass the DPRK in terms of political freedom. In other words, because two authoritarian regimes confronted each other over a highly impenetrable, hard border during the Cold War period, the number of defectors from the North to the South was very limited, mainly male political elites and military personnel.

Inter-Korean competition thus tended to happen in third countries, going on actively even in Japan, where many ethnic Koreans lived. For instance, under a repatriation program promoted by the General Association of Korean Residents in Japan (Chongryon), Korean residents in Japan who wished were sent to North Korea via the Japanese and North Korean Red Crosses; the project began in 1959 and continued intermittently, and in the end had sent more than 90,000 Koreans and their Japanese families to North Korea. Naturally, the ROK and the Korean Resident's Union in Japan (Mindan) strongly opposed this. The ROK's Syngman Rhee administration organized a task force to stop the repatriations to the North, drawing on Koreans in Japan who had volunteered to go to South Korea to defend the country during the Korean War. There was a failed attempt at terrorism made in December 1959 against the Japanese Red Cross center in Niigata, a port city facing the Korean Peninsula, from which the returnees departed.²³

The situation changed dramatically in the late 1990s, when an economic slump in North Korea became more serious and developed into a food crisis. Consequently, there was a growing number of young people with relatively low levels of education, and a rapid increase in the proportion of women, among the defectors to South Korea (Table 3). Since 2002, more than half have been female; by 2013, the ratio had topped 70%. Moreover, beginning in the twenty-first century, more North Korean defectors are contacting family members they left behind in the DPRK or China and bringing them for family reunification. A growing number of North Korean defectors desire to migrate from South Korea to Europe and the US in recent years. In contrast, some defectors, disillusioned with life in South Korea, return home to North Korea.²⁴ These facts suggest a change in the nature of these people, from something political to something more akin to refugees.

Most North Korean defectors cross the border into Chinese territory and wait for an opportunity to move on to their next destination while they evade detection by the Chinese authorities with the support of ethnic Koreans in China. According to one

Table 3 Number of North Korean Defectors Entering South Korea (persons)

Category	~ 1998	~ 2001	2002	2003	2004	2005	2006	2007	2008
Male	831	565	510	474	626	424	515	573	608
Female	116	478	632	811	1,272	960	1,513	1,981	2,195
Total	947	1,043	1,142	1,285	1,898	1,384	2,028	2,554	2,803

Category	2009	2010	2011	2012	2013	2014	2015	2016	2017
Male	662	591	795	404	369	305	251	302	188
Female	2,252	1,811	1,911	1,098	1,145	1,092	1,024	1,116	939
Total	2,914	2,402	2,706	1,502	1,514	1,397	1,275	1,418	1,127

Category	2018	2019	2020	2021	2022	2023	Total
Male	168	202	72	40	35	32	9,542
Female	969	845	157	23	32	164	24,536
Total	1,137	1,047	229	63	67	196	34,078

Source https://www.unikorea.go.kr/eng_unikorea/relations/statistics/defectors/ (accessed March 23, 2024)

survey, 64% of respondents want to head to South Korea, followed by the US as the next most popular destination with 19%, and those who answered they want to remain in China at 14%.²⁵ Chinese authorities, seeking to avoid provoking the DPRK, often adopt a tolerant posture, tacitly allowing these people to leave the country for third countries. On occasion, they round up these defectors and deport them to the DPRK. As a result, there have been incidents in which North Korean defectors, with the support of South Korean non-governmental organizations (NGOs), rushed en masse into foreign diplomatic compounds in China to seek protection. (These include the North Korean defectors who rushed through the gates of the Japanese Consulate General in Shenyang in 2002, and a similar incident that occurred at a Japanese school in Beijing in 2004.) Each time this happens, it inevitably further complicates relations between these diplomatic missions' home countries, China, and the DPRK. Pyongyang does not comment on defectors actively, but it cannot simply ignore when a more notable incident occurs. It has lambasted Seoul for "premeditated kidnapping, abduction, and terrorism by South Korea against the people of North Korea," necessarily destabilizing North–South relations.

For these North Korean defectors arriving in South Korea, the ROK government runs a settlement support program. They first undergo questioning by the intelligence and security agencies and other security measures. Then the government takes steps to welcome them as fellow Koreans and help them to become established in South Korean society. They are provided courses teaching them the basic common sense any ROK citizen would have. In addition, they are provided employment, housing, and settlement support, as well as a certain amount of financial assistance.²⁶

The ROK's policy goals arguably shifted focus, from regime change in the DPRK to stabilizing inter-Korean relations, since both Koreas simultaneously joined the United Nations in 1991 and the Kim Dae-jung administration later started its "Sunshine Policy." To be sure, unifying the peninsula is recognized as the long-cherished desire of the Korean people, but given the extremely impoverished state of the North Korean economy, the cost of Korean reunification will be incomparably greater than Germany's was. Furthermore, inasmuch as fundamental systemic change, like that which took place in the Soviet Union with the arrival of Mikhail S. Gorbachev, has not happened in China, geopolitical conflict over the state of the Korean Peninsula has yet to be resolved. Therefore, a sudden mass population outflow, such as that in East Germany, would be interpreted as a major crisis for South Korea and its surrounding international environment, rather than an opportunity for regime change.²⁷ This is obviously not something Beijing wants to happen either, for a large-scale, disorderly population outflow from North Korea, if it were to occur, would severely impact China, with its large number of ethnic Koreans residing within its borders. This means that none of the governments of neighboring countries, including Seoul, actively promote a large-scale population exodus from North Korea. If a large-scale population outflow were to take place, quite dissimilar to the case of East and West Germany, it would more likely be seen as a security crisis than as an opportunity for peaceful reunification.

2.6 The Irony of Human Rights Diplomacy—The Jewish Emigration Issue

Up to this point, we have looked at cases where legitimacy contests between divided states sparked emigration that created diplomatic issues. Let us next consider a case in which freedom of exit became an international political issue. The most famous example of this is the departure of Jews living in the Soviet Union which became an issue between the US and the Soviet Union in the early 1970s.

The state of Israel was founded in 1948, the culmination of the Zionist movement since the late nineteenth century that sought to reestablish a Jewish homeland. At first, Israel thus founded was inhabited by a large number of Arab residents; today, Israelis of Arab descent still make up a quarter of Israel's population, enjoy citizenship rights, and a few have even been elected to the Knesset. Israel, a Zionist state, established the Law of Return in 1950, which provides that every Jew has the right to immigrate to Israel. It has in fact sought to strengthen the Jewish homeland by vigorously accepting Jewish settlers from all over the world. The largest group among them are the Ashkenazi Jews (Ashkenazim) who immigrated from Europe, from which Jews had long been expelled; both in terms of numbers and political and economic influence, they far outstrip the Sephardic Jews (Sephardim), who came from the Iberian Peninsula and the non-European world.

Many Jews resided in the territory of the Soviet Union (Russia), and theirs is a history of repeated persecution. Approximately 300,000 Jews are estimated to have lived within Soviet territory during the 1950s, making it the second-largest Jewish population in the world at the time. Even after the end of the violence of Stalinism, they continued to suffer from religious and cultural oppression, their synagogues were closed and speaking Yiddish was prohibited.

As it was, the Soviet Union had quickly recognized Israel in 1948, initially welcoming anti-British Zionism as an anti-imperialist force. This stance changed, becoming anti-Israel, with Soviet support of the Arab side in the Arab–Israeli War of 1967. As a result, the oppression of Jews in the Soviet Union only became more severe. Jewish organizations in Europe and the US began campaigning actively for the better treatment of Jews in the Soviet Union, and influential Western intellectuals also began to raise this issue with some frequency.

The Israeli government's consistent support efforts are said to have been behind these Jewish lobby groups. The government of Israel established the Lishkat Hakesher (the Liaison Bureau), a secret unit code-named Nativ (path), within the prime minister's office in 1952. Using regular diplomatic organizations to handle official relations with the Soviet Union, it used this secret unit to build a network with the many Jewish compatriots in Soviet territory, attempting to assist their emigration to Israel.²⁸ At the same time, it organized Jewish communities around the world, mobilized progressive intellectuals and influential politicians, and supported a movement to raise international interest in the treatment of Jews in the Soviet Union as a human rights issue. This activity was particularly successful in the US, where interest in the issue grew.²⁹

2.7 *America, Israel, and the Soviet Union*

The US has had the largest Jewish population in the world, long surpassing Israel on into the twenty-first century. A reason why the US has consistently provided Israel with firm support is because Jewish Americans in the country have had strong political influence. Jewish emigration became a major political issue at the time the US began its policy of détente toward the Soviet Union in the early 1970s. In a move to restore America's foreign standing weakened by the Vietnam War, the Richard M. Nixon administration of the time set out to dramatically improve relations with China while it simultaneously promoted détente with the Soviet Union. The US gave the Soviet Union economic benefits, such as lifting the ban on grain exports and providing export credits, and in return it sought to secure cooperation from the Soviet Union in other areas.

This conciliatory policy toward the Soviet Union, however, was met with condemnation from the Jewish lobby. After human rights groups, anti-Soviet hardliners, and even trade protectionists joined in, the pressure grew to link trade to the issue of Jewish emigration. Although Nixon and his national security advisor, Henry A. Kissinger, had resisted this, fearing that obvious pressure on the Soviet Union would

ruin their détente policy, the Congress, in an effort led by Senator Henry M. Jackson, passed an amendment to the Trade Act of 1974, the Jackson-Vanik Amendment (sponsored in the House by Representative Charles A. Vanik). A section of the Act stipulates that the granting of most-favored-nation treatment and provision of export credits or investment guarantees would be prohibited to nonmarket economy countries (i.e., Communist countries) that deny its citizens the right to emigrate, or effectively infringe on that right by imposing a tax or by other means. However, a country can be exempted from these restrictions provided the US president makes a determination and reports to Congress that the country in question does not deprive its nationals of the opportunity to emigrate and does not impose more than a nominal tax on emigration.

Although written in general terms, this section of law linked trade opportunities with the US together with freedom of exit for Jews from the Soviet Union. The passage of this Act signified a major victory, both for American Jewish groups, whose country showed remorse for having silently stood by as Nazi persecution of the Jews began in the 1930s, and for Senator Jackson, who was able to demonstrate US commitment to human rights.

For the Soviet Union, the Jewish emigration issue itself may not have been all that serious. Indeed, at a time when a trade agreement with the US was increasingly likely and the momentum for détente was strong, the steady rise in the number of Jews leaving the Soviet Union was probably due in part to efforts by the US (Table 4). That is, Moscow in effect made some concessions. In contrast, Jackson, in the course of negotiating with the administration, hinted that he was willing to compromise, and that it would be permissible to exempt the Soviet Union from application of the statute provided Moscow gave assurances that approximately 60,000 Jews would be allowed to emigrate a year, a number Kissinger thought would not be out of the realm of possibility.³⁰

The Soviet Union was reluctant to bow to American pressure and provide explicit assurances regarding the treatment of its own citizens. It made clear its opposition by abrogating its 1972 trade agreement with the US.

As a result, the number of Jews leaving the Soviet Union, which had hitherto been rising, fell sharply in 1975. The extent to which American policy was effective in encouraging Jewish emigration is debatable. It is clear, however, that this provision alone did not liberalize Jewish departures from the country to any great degree. In the end, it was not until the appearance of Gorbachev and the end of the Cold War that Jews were freely allowed to leave the Soviet Union.

The irony is that many of the Jews who somehow left the Soviet Union chose to go to America rather than Israel (known as “dropouts”). Israel, which had severed diplomatic relations with the Soviet Union in the wake of the third Arab–Israeli War, was unable to transport Jewish emigrants from the Soviet Union on direct flights to Israel. Many were supposed to make their way overland to Vienna, where they were to board planes the Israeli authorities had prepared for them. At one point, however, more than 80% of Jews who left the USSR applied for asylum in the hopes of emigrating to the US or other Western countries.

Table 4 Number of Jews who left the Soviet Union

People, %				
	Emigrants from the Soviet Union	Immigrants to Israel	Dropouts	Percentage of Dropouts
1967	1,162	1,162		0.0
1968	231	231		0.0
1969	3,033	3,033		0.0
1970	999	999		9.0
1971	12,897	12,839	58	0.4
1972	31,903	31,652	251	0.7
1973	34,733	33,277	1,456	3.6
1974	20,767	16,888	3,879	18.7
1975	13,363	8,435	4,928	36.9
1976	14,254	7,250	7,004	49.1
1977	16,833	8,350	8,483	50.4
1978	28,956	12,090	16,866	58.2
1979	51,331	17,278	34,053	66.3
1980	21,648	7,570	14,078	65.0
1981	9,448	1,762	7,687	81.4
1982	2,692	731	1,961	72.8
1983	1,314	861	453	34.5
1984	896	340	556	34.5
1985	1,140	318	792	69.5
1986	904	201	703	77.8
1987	8,155	2,072	6,083	74.6
1988	18,961	2,173	16,788	88.5
1989	71,005	12,117	58,888	82.9
1990	228,400	183,400	45,000	19.7
1991	187,500	147,520	39,980	21.3
1992	122,398	64,648	57,750	47.2
1993	101,887	66,145	–	–
1994	100,830	68,079	–	–

Source Lazin, Fred A. 2005. *The Struggle for Soviet Jewry in American Politics: Israel versus the American Jewish Establishment*. Lexington Books, 310

Though irked, the Israeli government did not make a formal protest to the US or request that Washington refuse to accept Jewish refugees, as it did not want to harm its US relations. Zionism's principled position was that Israel was the homeland of Jews around the world. Also, in contrast to Jews who came from the Arab world to settle in Israel in the 1950s and 1960s, Soviet Jews at that time had a high level of

education and skills, and so their presence was felt to be essential for the future of Israel.³¹ On the other hand, American Jewish organizations, which enthusiastically supported the Jackson-Vanik Amendment and assisted with the admission of Jews, took a position supporting Jewish emigration from the Soviet Union on the basis that refugees had the “freedom of choice” to choose where they would go. Consequently, they came into conflict with the Israeli government.

Conflict between the two parties did not surface during 1980s era of the renewed Cold War, when Jewish emigration once again was restricted stringently. At the end of that decade, however, with the Cold War ending and Jewish emigration largely eased, that hundreds of thousands of Jews would apply for asylum in the US every year became a real possibility. Once again, the governments of Israel and the US, and American Jewish organizations faced a dilemma. Tensions ran high between the Israeli government and Jewish groups within the US, which had previously lobbied Washington on the issue of Jewish emigration together.

The Israeli government wanted Jews to come to its country, but not at the expense of relations with the US government. The US administration truly did not want to accept an unusually large number of Jews, since the total number of refugees it could accept was limited, as determined each year in consultation with Congress. That would be hard to admit publicly, however, after all the pressure it had applied to the Soviet Union under the pretext of human rights, and the issue was expected to be pursued in Congress. Although Jewish organizations in the US followed the principle of “freedom of choice,” in reality their capacity to support new Jewish immigrants was limited, and they also had to consider their relations with other minority groups.³²

Eventually, in 1989, the US made several decisions. It stopped accepting asylum applications from Soviet citizens in Western cities, limiting them to Moscow, citing significant improvements in Jewish religious and cultural rights within the Soviet Union. It set the limit for accepting refugees from the Soviet Union at 50,000 per year, of which Jewish organizations would bear the costs of accepting 8000 refugees. And it would give priority to Jewish families already in the US for refugee admissions. These were, in effect, measures to curb the acceptance of Jewish refugees from the Soviet Union. In addition, the Israeli government established new flights from Eastern European countries to prevent Soviet refugees from becoming dropouts mid-way.

2.8 Competition for Highly Skilled Professionals

The issue of freedom of exit receded from the international political agenda once the political-ideological confrontation was resolved with the end of the Cold War. The economic significance and social implications of people crossing borders next came to the fore as factors that influence the behavior of states. Once again, countries arguably took a stronger mercantilist attitude to secure human resources of use to them.

Human resources with special skills and information have been welcomed no matter the era. Competition for experts having confidential information or military

technology has occurred throughout the ages, not just in the Cold War. A well-known example is that the US and the Soviet Union both sought to acquire German experts in nuclear weapons development immediately after World War II. Similar characteristics were observed in the cross-border movement of engineers involved in weapons of mass destruction (WMD) immediately after the end of the Cold War. To wit, it was greatly feared after the Cold War that the mass exodus of Soviet experts in the field would lead to WMD proliferation. Even semi-secluded North Korea, it is assumed, has been ardently trying to acquire experts in nuclear-related and rocket technologies.

However, the real issue is likely to be the competition to acquire highly skilled professionals. The term “brain drain” first came into use in the 1950s, it is said, when the flow of scientists from India to its former colonial power, the UK, was seen as a problem.³³ Such international movement of human resources in fields relatively unaffected by language and culture, such as sports and music, has been making considerable progress for some time. Furthermore, in fields such as medical care and nursing, which have specialized skills that are highly versatile throughout the world, there is a dynamic at work in which human resources from developing countries are attracted to rich countries where wage levels are overwhelmingly higher. Indeed, rare human resources, which require time and capital to train, are drawn to former colonial powers, a phenomenon that has already been observed in some African countries.

Today, even as the knowledge society progresses and highly competent professionals with advanced skills are a state’s greatest resource, the scarcity of such human resources is increasing. Countries have stepped up their efforts to acquire engineers in the field of information technology (IT), for example, ever since the IT boom in the 1990s.

2.9 *The Cases of America and Canada*

The US, which remains at the cutting edge of global intellectual production, is a remarkable success story when it comes to acquiring highly skilled human resources. The US produced 100 Nobel Prize winners in science between 1901 and 1991, of which 44 were either foreign-born or their children. Especially remarkable are the activities of Jewish scientists who had fled Nazi persecution. The proportion of immigrant recipients has been even more pronounced since 1965, when national-origins quotas for immigrants were abolished; in 2016, all six American recipients were foreign-born.³⁴ The fact that foreign professionals occupy the majority of a field is not limited to some cutting-edge researchers. Of America’s estimated 12 million scientists and engineers, 17% are foreign-born; of those holding doctoral degrees, 38% are foreign-born. US corporate research and development departments consequently rely heavily on foreign talent.³⁵ The presence of excellent universities and research institutions, a relatively open immigration policy, a competitive society, and

performance evaluations are among the factors cited as having enabled US success in attracting such highly skilled human resources.

From the perspective of the immigration system, the amendments in the Immigration and Nationality Act of 1965 held great significance in attracting highly skilled professionals. It replaced the prior method of allocating the number of immigrants based on their country of origin and introduced a system giving preferential treatment to the family members of naturalized immigrants (family reunification) as well as immigrants with vocational skills. This opened the door wide to non-European immigrants, who had hitherto been explicitly excluded, and provided the institutional basis for the increasing immigration of highly skilled human resources from Asia. When President Lyndon B. Johnson signed the Act, he remarked, "...from this day forth those wishing to immigrate to America shall be admitted on the basis of their skills...." The immigration law has been amended frequently since then. With respect to introducing highly skilled professionals, America's basic framework is to issue H-1B visas for workers in specialty occupations to allow highly skilled personnel to enter the country and work in fields such as architecture, engineering, mathematics, physics, medicine/hygiene, education, business administration, accounting, law, and so on. There are even cases where such personnel are immediately granted permanent residency.³⁶

It can no longer be said, however, that the US has a monopoly on such efforts (Fig. 1). Canada's approach is a leading example in this respect. Its "point system" has been in place since 1967, which determines whether to issue immigrant visas on the basis of certain objective criteria, with points given for factors such as educational level, English and French proficiency, age, and work experience in Canada.³⁷ Its purpose is to select individuals "who by reason of his [or her] education, training, skills or other special qualifications is likely to become successfully established in Canada"; the point system was explicitly designed "as a steady policy of recruitment based on long-term considerations of economic growth."³⁸ Immigrants who receive permanent residency can become citizens after four years.

This system also influenced other native English-speaking, traditionally immigrant states. Australia introduced a system more open than Canada's in 1973, departing from a system based on a blatantly racist "White Australia" policy. New Zealand, too, joined the competition for talent through legal reforms in 1991 that introduced its own points system.³⁹

These developments also stimulated America's policy to recruit highly skilled workers. In addition, European countries, which had basically stopped letting in immigrants with the economic recession of the 1970s, since the 1990s have opened the door for skilled laborers, adopting a variety of systems to accept them, while it has also firmly excluded irregular migrants.

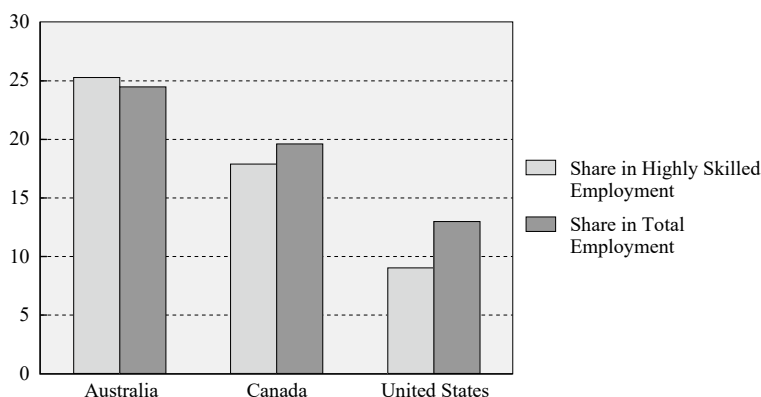


Fig. 1 Share of Immigrant Labor Force (%). *Source* Shachar, Ayalet. 2006. “The Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes.” *New York University Law Review*, Vol. 81, No. 1, 178

2.10 Some European Cases

Under the Labour government of Tony Blair, which came to power in 1997, the UK began to expand its acceptance of immigrants against the backdrop of strong economic growth. In 2001, it introduced the Highly Skilled Migrant Programme (HSMP) to admit highly skilled professionals. Consequently, acceptance under the program was decided by points given according to the applicant’s qualifications, regardless of whether the applicant had an employer or not.⁴⁰ [HSMP was closed in 2008, replaced by a new Tier 1 (General) route, which itself was closed for applications in 2011.]

Germany stopped bringing in guest workers from southern Europe, the Balkans, and Turkey in the 1970s. Germany remained reluctant to accept immigrants in the 1990s, in part because German reunification actually increased the supply of labor. In order to resolve a shortage of IT engineers, however, it introduced a “green card” system in 2000, admitting IT-related engineers from outside the EU. Although this was repealed in 2005, Germany established provisions to exclude sham and forced marriages, enhance security measures, and obligate immigrants who could not speak German to participate in integration courses. In 2012, Germany enacted the “Law to Improve the Assessment and Recognition of Professional and Vocational Education and Training Qualifications Acquired Abroad” (Recognition Act) and the “EU Blue Card” Act, and moved to ease regulations and provide preferential treatment to foreigners with specialized skills from outside the EU.⁴¹

Even with its longer experience taking in immigrants than Germany, France stopped accepting immigrants in principle in 1974. In reality, population inflows continued with reuniting families and the influx of refugees, but France’s basic stance was to severely limit accepting new immigrants while it bolstered efforts to integrate the immigrants it had already accepted as citizens. However, this policy underwent a

major change under the Nicolas Sarkozy administration. The 2006 Immigration Law had strengthened the policy of “opening the door to highly competent foreigners who can be expected to contribute to the French society and economy, while tightening the conditions of stay for other migrants.”⁴²

2.11 Highly Skilled Labor Sending Countries

These measures are probably contributing; highly skilled workers are a rapidly increasing proportion among immigrants. The number of highly educated immigrants entering the countries in the Organization for Economic Co-operation and Development (OECD) increased by 70% in the first decade of the twenty-first century, reaching 27 million.⁴³ The destination of highly skilled human resources, as one might easily imagine, is far and away the West, especially the US. Canada, Australia, and other anglophone countries are also popular destinations for high-level talent (Fig. 2; see also Fig. 6 in Chap. 7). Western countries, especially native English-speaking ones, enjoy an overwhelmingly dominant position in terms of the number of international students at institutions of higher learning, a veritable reserve of highly skilled potential immigrants. From this the idea appears, as it were, that a country sells its higher education services to outstanding global talent, which it then utilizes in its own economy. Asian countries such as India and China are the first to be cited as sending countries, but the number of highly skilled immigrants from Africa is also significant.

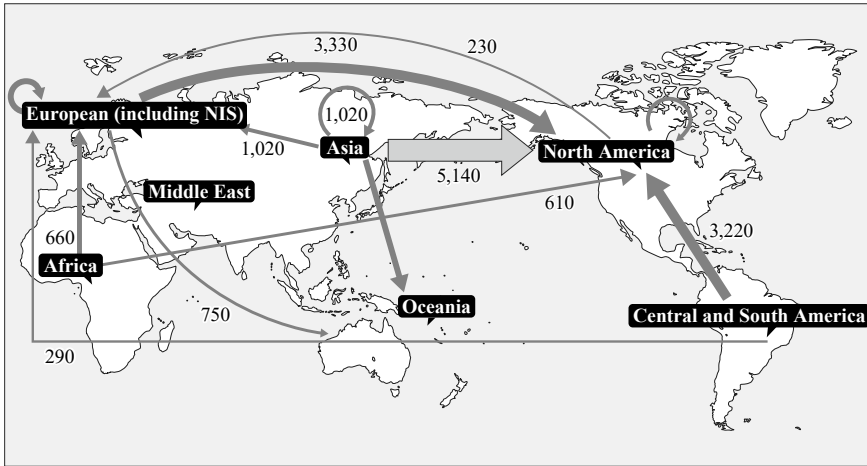
The outflow of highly skilled human resources is a serious problem for small countries in Africa and Latin America, as well as island countries in the Caribbean. In 2010, close to 90% of highly skilled persons born in Guyana lived in OECD countries. More people with a higher education lived outside Barbados, Haiti, and Trinidad and Tobago than in these countries. The proportion of highly educated people residing in OECD countries rather than in their home country exceeded 40% in Jamaica, Tonga, Zimbabwe, and Mauritius.

An outflow of human resources is a serious problem even for a country like Singapore, economically open with a small domestic population. Singapore has a system for training human resources that is designed quite rationally. In addition to rigorously selecting talented people, the country invests heavily to foster competitive human resources, spending 20% of the national budget on education costs. However, those who have acquired high academic ability and the international lingua franca, English, have no incentive to return to Singapore because they have the ability to make better lives in various parts of the world. Senior Minister Goh Chok Tong has spoken frankly on the issue of talent loss: “the most talented Singaporean students who study abroad do not return home.”⁴⁴

That the global movement of highly skilled workers has led to their uneven distribution in the medical field—skills requiring a large amount of capital to train yet are easily transferrable globally—is a problem evident to anyone. According to a 2007 OECD report, 18% of doctors employed in OECD countries are foreign-born, with

1) Movement of college graduate workers

[Units: Thousands of people]



2) Movement of foreign students

[Units: Thousands of people]

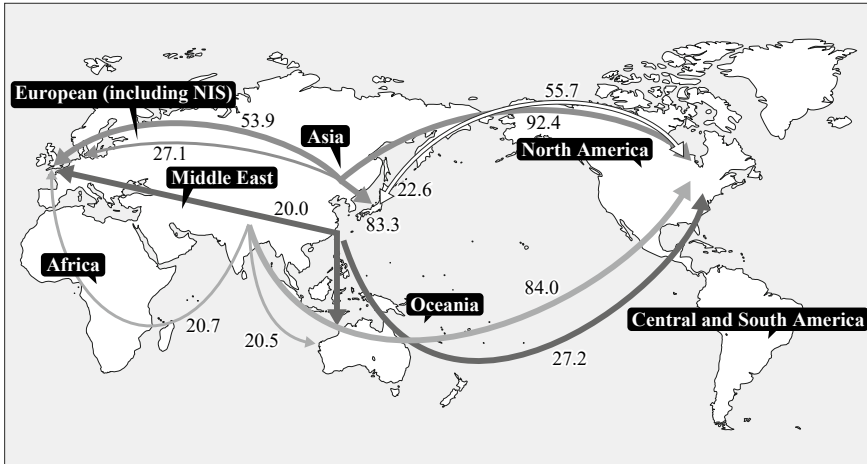


Fig. 2 Flow of highly skilled human resources. *Notes* NIS: Newly independent states of the former Soviet Union. **a** Lowell, B. Lindsay. 2007. "Trend in International Migration Flows and Stocks, 1975–2005." *OECD Social, Employment and Migration Working Papers*, No. 58. Paris: OECD Publishing. **b** OECD "Online Education Database"; Ministry of Education of the People's Republic of China, "China Education Yearbook". *Source* Figures are based on Japan Cabinet Office. 2008. "Kōdō jinzai ukeire no genjō to kadai (Heisei 20-nen) [Accepting highly skilled human resources: current status and challenges (2008)]." Government materials, 2

India being the largest supplier. The US is, of course, the world's largest importer of medical professionals, with 25% of its doctors being foreign-born.⁴⁵ "Medical staff from Africa and Asia make up the core of the UK National Health Service. Of the 12 Zambian doctors trained after their country gained independence, only one still practices medicine in Zambia. Estimates suggest that more Malawian doctors work in the northern English city of Manchester than in the entire country of Malawi (population 13 million)."⁴⁶

Such trends are not limited to the medical field. Developed countries have shown vigorous demand since the 1990s for IT engineers in the information and communications field, which has made explosive progress in technology as well as applications. Developed countries' selective immigration policies to draw in highly skilled workers, which promotes the uneven distribution of talent, unsurprisingly may seem like exploitation to developing countries.

2.12 Regulating Brain Drain

What countermeasures are available for developing countries, those primarily at risk of suffering a brain drain? The first possibility is to prohibit people from physically leaving the country. The freedoms of exit and to renounce one's nationality, as mentioned above, generally constitute a part of human rights, principles of the international community that started with the Universal Declaration of Human Rights. The effectiveness of such human rights norms is clearly limited, because in reality people are not free to leave poor countries. Principled criticism from Western countries and human rights non-governmental organizations (NGOs) notwithstanding, developing countries tend to lack advanced administrative capacity. States could also restrict exit by limiting the issuance of passports, for instance. Yet such measures usually stimulate the desire to circumvent them, diminishing their effectiveness. We have already seen that there were limits to the effectiveness of strict emigration controls even in the case of the former Eastern European countries during the Cold War. The limitations that poor developing countries face with respect to emigration control are more evident. Moreover, highly skilled human resources in developing countries are often members of the elite class. They are likely to belong to a privileged class in terms of money, access to information, and political influence. They are highly likely to be able to circumvent the repressive measures implemented by already fragile states.

The second approach instead of restricting exit itself, might be to impose an obligation to provide a certain amount of "compensation" for those left behind in their home countries. A well-known example in this regard is called the "Bhagwati tax," proposed by prominent Indian-born economist Jagdish N. Bhagwati.⁴⁷ This proposal, unlike the Soviet Union's exit tax, would levy a certain tax on emigrants' income post departure, and would use the collected tax revenues for development purposes in the country of origin through the UN. "Compensation" does not necessarily have to take the form of a tax. Some commentators advocate imposing certain compulsory service obligations on emigrants. It would require the government of the country of origin

to send those who emigrated to the most disadvantaged areas of their homeland, typically poor rural areas, for a set period of time to perform service work such as education or health care.⁴⁸

The difficulty with these proposals lies in the ability to enforce cross-border taxation and volunteer activities in an effective manner. In 1976, the Pakistani government did attempt to impose an income tax of up to 20% on its citizens living overseas, but it backed down in the face of intense protests.⁴⁹ How realistic it would be for a state to compel tax payments or service work from native-born emigrants living outside its territory depends on its political relationship with the country receiving these emigrants; that is perhaps an even bigger problem. To implement such measures in reality, the sending country would need the cooperation of the governments of the countries where its emigrants currently reside. However, for the government of the current country of residence to exercise its power of taxation or compel voluntary service on behalf of a foreign government would most likely infringe upon its own fundamental principles such as territorial sovereignty, taxation rights, and civil liberties. In the case of the US, for instance, it would probably be considered illegal if the government of the world's largest immigrant receiving country were to tax its own residents on behalf of a foreign government or the UN.⁵⁰

In addition to such difficulties developing countries would face in taking unilateral countermeasures, their bargaining power is weak, for they are unable to offer attractive benefits to highly skilled human resources. For these reasons, brain drain has been a problem since the 1960s and yet, to the best of my knowledge, there have been no cases in which it has surfaced as an actual diplomatic issue.

2.13 From Brain Drain to Brain Circulation

Since the start of the twenty-first century, there have been important changes in the discourse over the international movement of highly skilled professionals. It stresses that the movement of highly skilled human resources is not a "brain loss," depriving emigrant countries of their resources, and that it also benefits these countries in several ways. The movement of highly skilled human resources is no longer regarded as a zero-sum game of allotting a fixed pool of abilities; rather, its dynamic effect in increasing the global supply of skills has drawn greater attention. The benefits that sending countries derive from their brain drain include the economic growth effect contributed by emigrants sending remittances back to their home countries. Certainly, sending remittances home is not limited to highly skilled workers. Moreover, highly skilled workers, who tend to emigrate with their families, may only send a small proportion of total remittances to their home countries. Yet what monies they remit home will still be at a level that cannot be ignored.

Of greater importance, the education and experience that these workers acquire overseas is contended to have a two-way effect, enhancing the quality of this human capital as well as benefitting the sending country when some of those human resources return home. This is called "brain circulation," and is illustrated with the following

oft-cited case: many IT-related engineers and entrepreneurs working in Silicon Valley are from India, China, or Taiwan, and many of them return home to start new businesses there.⁵¹

Moreover, they are more likely to use the networks they have acquired in developed countries to facilitate the transfer of technology to their countries of origin, contribute to better management methods, stimulate investment, and even develop joint ventures. The argument emphasizes that such positive externalities bestow benefits on both the sending and receiving countries of highly skilled workers.

To be sure, there is a negative effect from the talent outflow, so the overall evaluation depends on weighing the positive and negative effects. There must be an optimal emigration rate; one study suggests it lies between 5 and 10%, with negative effects beyond the 15–20% threshold. Since this ratio is less than 10% in more than two-fifths of developing countries, the assessment is that “Many of these countries (including most large and middle-sized countries) are reasonably benefiting from the mobility of their skilled labor force. On the contrary, the majority of sub-Saharan and central American countries are well above this threshold and suffer from the brain drain.”⁵²

In any case, regulating the outflow of human capital is not effective. Given the change in the discourse, the reality is that the response of sending countries is no longer taxation and regulation; their policy emphasis has shifted to organizing ties with (former) nationals living abroad, strengthening diaspora engagement (discussed in detail in Chap. 5 and providing them with various incentives to encourage voluntary remittances and investments. Clearly a considerable number of mainly small developing countries are being harmed by a brain drain, so its negative effect is hard to deny. Indeed, even India, regarded as the epitome of a mutually beneficial relationship in many analyses, expressed concerns about a brain drain at the first BRICS (Brazil, Russia, India, China, and South Africa) ministerial migration meeting (heads of migration authorities).⁵³ Like the issue of free trade, it certainly is doubtful that a satisfactory political solution to this problem will be found solely in the theoretical knowledge that the movement of highly skilled personnel is desirable on the whole. There is no consensus among developing countries, either. This issue will undeniably be a political issue again in the future, within the global landscape for the competition for human resources.⁵⁴

3 Entry Regulations and International Politics

3.1 *Population Transfers and Regulating Entry*

As I have already discussed, according to liberal norms, freedom of exit should be respected as part of human rights. Even if a person can freely leave a country, however, whether he or she will be able to enter a foreign country is another matter, for even the most generous of immigration countries do not allow unlimited and unconditional freedom of entry. A small number of political asylum seekers fleeing

hostile states, as well as those who at some future date will immigrate to a third country, as in the case of the Soviet Jews going to Israel, may receive sympathy and political support. But no country welcomes a flood of refugees.

The aforementioned Jackson-Vanik Amendment became a political issue with China, too, when the US granted most-favored-nation status to China. The issue was China's human rights violations. When President Deng Xiaoping visited the US in 1979, President Jimmy Carter, a vocal proponent of human rights diplomacy, urged China to respect human rights and allow freedom of exit. To this, Deng responded: "Fine. We'll let them go. Are you prepared to accept ten million?"⁵⁵ Since 1980, in fact, China had been granted a waiver from the Jackson-Vanik Amendment every year, driven by strategic considerations vis-à-vis the Soviet Union, rather than by virtue of any particular improvement in the human rights situation in China, including freedom of exit. The US Congress began actively debating human rights issues in China after the Tiananmen Square protests occurred in 1989. Around that time, there was growing US interest in cracking down on illegal Chinese migrants smuggled into the country by snakeheads and other immigration brokers. In another incident, the cargo ship *Golden Venture* ran aground off the coast of New York in 1993, and 300 Chinese people sought political asylum. A considerable number of Chinese people were also allegedly smuggled into California.⁵⁶ A massive inflow of unskilled workers from poor and unstable countries is far from welcomed, even by the US, traditionally a nation of immigrants, which claims to be the bastion of freedom and democracy.

A sudden, large-scale population movement would naturally be a burden on the receiving country. Thus, to intentionally send large numbers of people to another country can be a form of coercive diplomacy. For example, on November 6, 1975, King Hassan II of Morocco sent approximately 350,000 unarmed civilians to the disputed Spanish Sahara in what he called a "Peaceful March of Conquest (Green March)." Spain, then in the final stage under the Franco regime, was losing its ability and will to govern this colonialist era remnant that it had acquired as a result of the 1884 Berlin Conference. Yet along with Morocco, Mauritania, neighboring the area to the south, claimed the territory; in addition, the indigenous Polisario Front asserted independence. Spain, Morocco, and Mauritania continued to hold consultations following an advisory opinion from the International Court of Justice (ICC). Perhaps in an attempt to influence the outcome of the talks, and partly under pressure from domestic public opinion, Hassan ordered the 350,000 volunteers who gathered from all over the country to march, escorted by 20,000 Moroccan troops. Seeking to avoid bloodshed, Spanish troops deployed in the area not only refrained from firing but removed landmines that had been laid there. Yet the march was halted after the group had advanced only about 10 km into the border.⁵⁷

It is difficult to militarily disperse a large crowd of civilians when it suddenly surges, even if it is unarmed. Pointing guns at unarmed civilians, particularly in a state in which liberal norms have been established, is impracticable, for if the event is reported in major Western media, not only can it be expected to draw international criticism, but it will also evolve into a major domestic political issue. In other

words, concrete political disadvantages would arise through audience cost. In addition, NGOs that have calculated this cost in advance may prepare to collaborate with the media to add to the audience cost. The same could be said of masses of refugees thronging at national borders, or of large numbers of fishing boats (or government vessels disguised as fishing boats) surging into territorial waters or exclusive economic zones (EEZs).

Historically, territorial expansion and border changes have not always come through military conquest. In the nineteenth century, a stream of Americans “peacefully” settled in what was then Mexican territory and what is now Texas, building up a *fait accompli* and paving the way for the subsequent ceding of the territory to the US in the Mexican–American War. In the example of the UK’s forcibly sending prisoners, and sometimes orphans, to North America and Australia for the purpose of colonial management, the policy intention aimed to kill two birds with one stone: population “dumping” and reinforcing local control. Furthermore, Israel’s settlements in the West Bank area of the Jordan River, albeit not measures in and of themselves involving the use of force, are arguably a policy of population transfer intended to strengthen control over the settlements.⁵⁸

Although in the case of Morocco the march failed to achieve the goal of making possession of the territory a *fait accompli*, as the march itself ended prematurely, the domestic political objective was apparently more important: to mobilize public opinion and, by allowing it to vent, stabilizing the government.

3.2 *Cuba’s Strategic Population Dumping Policy*

Still, there are surprisingly many examples of countries using their own citizens as “demographic bombings” to achieve external political objectives based on very careful calculations. Kelly M. Greenhill, who conducted a systematic study of these examples, examined various cases using three criteria: whether the population exodus was organized; whether it was based on strategic calculations, and whether it was intended to exert pressure on other countries. She consequently identified 64 cases between 1951 and 2006 in which states implemented policies to strategically manipulate mass population movements, which she called “strategic engineered migration.”⁵⁹

Caribbean countries such as Cuba and Haiti attempted such coercive diplomacy relatively frequently against the US and were often successful. The US has long taken an imperialistic attitude toward the region and traditionally viewed the Caribbean as its own backyard (Fig. 3). Also, Spain and France once possessed the islands in this region; their rule was generally oppressive. Later, as the dominance of these European countries declined, governance became increasingly chaotic. In addition to its frequent military interventions in the region, the US had ties to the corrupt ruling class in these nominally independent countries, which generated mistrust among the local populations.⁶⁰

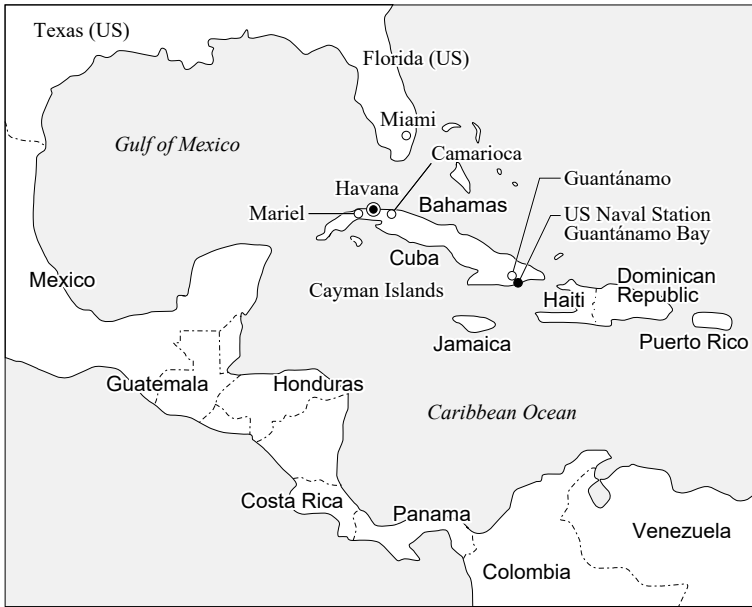


Fig. 3 Countries of the Caribbean. *Source* Created by author

(1) Camarioca boatlift (1965)

I shall not discuss the details here of Fidel Castro's Cuban Revolution (1959) and the subsequent Cuban Missile Crisis (1962). But let me just reaffirm that through these events, US-Cuba relations became one piece of the Cold War confrontation. After the revolution, the US continued to isolate Cuba economically and put pressure on it, thereby straining the Cuban economy and further increasing Cuba's dependence on the Soviet Union. At the same time, Cubans who opposed the Castro regime sought political asylum in the US, and with the support of the US authorities launched an invasion of Cuba aimed at overthrowing the regime, known as the Bay of Pigs Incident (1961). Afterwards, they continued to call for the overthrow of the Castro regime. Joined in the US by economic refugees due to the deterioration of the Cuban economy, they formed a large anti-Castro community in Florida. So, there has always been strong pressure for Cubans to immigrate to the US together with a large community within the US to support them.

In 1965, when it became clear that his attempts to improve relations with the US had failed, Castro suddenly announced on September 28 that all Cubans with relatives in the US were free to leave the country by ship from Cuba's northern port of Camarioca.⁶¹ To the astonishment of the government and the Cuban community in the US, the Cuban government also announced that Cuban exiles living in the US would be allowed to take their relatives back in Cuba by boat.

Immediately, President Johnson publicly declared that he would welcome Cuban exiles, who were symbols of the Castro regime's tyranny. At first, some people did

not take Castro's statements seriously, seeing them as mere threats. However, the Cuban community in Florida reacted promptly, chartering a number of small boats to sail to the port of Camarioca. Opposition among local Florida residents swelled as the prospect of a sudden influx of thousands of Cubans became a reality.

In response to these moves, the Johnson administration began secret negotiations with Cuba. They formally agreed on the means and procedures for transporting refugees from Cuba to the US, and refugee flights commenced. To bring the situation under control, it was decided to accept the Cuban refugees all over the US to prevent their concentrating in Florida, and that the federal government would bear the cost of resettlement support. As a result of these negotiations, Castro closed the exit route from the port of Camarioca. The practical consequences of this series of events were modest: relatively quickly, Cuba dropped its policy of encouraging departure, so only 681 people actually emigrated to the US. But Castro learned that this was an effective technique to force the US to the table for serious negotiations with Cuba.

(B) Mariel boatlift (1980)

Cuba once again used population transfer as political leverage in 1980. In the 1970s, the US and Cuba had sought to normalize relations, and some bilateral talks began in secret under the Gerald R. Ford administration.⁶² Under the Carter administration, too, limited progress was made in improving ties, such as opening "Special Interests Section" representation offices between the two countries and starting some personnel exchanges. However, improvements in relations soon hit a wall as the Cuban community in the US remained firmly anti-Castro. Also, improving relations with Cuba did not go as the executive branch had planned, for Cuba sent troops to Angola in 1975 and Ethiopia in 1978 to intervene in their civil wars, which provoked Congressional hawks in the US.

Cuba's economic slump worsened once again under these circumstances. Furthermore, the Carter administration's lifting of restrictions on US travel to Cuba prompted Cuban exiles living in the US to start making temporary returns to Cuba. Through interactions with these visitors, many Cubans became aware of the vast disparity in living standards between the US and Cuba, which in turn fueled the pressure to leave Cuba. The method used by Cubans planning to flee the country at that time was to seize ships. In fact, hijackings between the US and Cuba were frequent occurrences, committed by mere criminals in many cases. Therefore, the two governments had reached an agreement in 1973 aimed at preventing hijackings, which also included some provisions for criminal extradition between the two countries. Regardless, the US ascribed the hijackings to opposition to the repressive Cuban regime, and so it took a stance that partially encouraged them and did not cooperate with Cuba in handing over the culprits, behavior which of course caused Cuba deep dissatisfaction.

Cuban Vice President Carlos R. Rodríguez told the US Interests Section in Havana on February 19, 1980:

You turn people away everyday at the Interest Section when they apply for entry documents, but if they enter illegally you greet them with open arms....As you are not applying your laws, we may well stop applying ours. We are considering [an] announcement that any Cuban who

wishes to leave will be given [an] exit permit and can go to... Camarioca to be picked up by relatives or friends from [the] US.⁶³

These warning signals from the Cuban side were ignored. On April 1, 1980, six Cubans rushed into the Peruvian Embassy in Havana, and a Cuban guard was killed. Peru rebuffed Cuba's request for extradition and granted the six political asylum, so Cuba pulled its security from the embassy and issued a statement saying that anyone wishing to leave Cuba should go to the Peruvian Embassy. As a result, approximately 10,000 people rushed to the embassy over three days, and sanitary conditions within the embassy compound rapidly deteriorated.

The Costa Rican government's offer to take them in on a temporary basis wound down the incident. Castro contacted the Cuban American community and issued a statement on April 20 to the effect that Cubans wishing to leave the country would be allowed to exit through the port of Mariel. And similar to the results of 15 years prior, a steady stream of people arrived from Cuba, primarily by small boats sent by the Cuban community from Florida, so that by September, 125,000 people had arrived in Florida.

President Carter, a vocal proponent of human rights diplomacy, was publicly more sympathetic to Cuban refugees than Johnson. On May 5, he declared, "we'll continue to provide an open heart and open arms to refugees seeking freedom from Communist domination...."⁶⁴ Vice President Walter F. Mondale also said that the US could not do what it had criticized other countries for doing.⁶⁵ Around that time, it had criticized Thailand and Malaysia for forcing Indochinese boat people, refugees fleeing from Vietnam, back to the sea.

This stance received strong support from anti-Cuba hardline lawmakers, liberal human rights defenders, and even the Cuban American community. There was an immediate backlash to the mass inflows, however, from local communities in Florida, where thousands of refugees were arriving by sea daily. Moreover, there was growing anger in the African American community over the fact that Cuban refugees were afforded preferential treatment compared to Haitian refugees.⁶⁶

Ultimately, reversing its stance within about 10 days, the Carter administration announced a new policy on May 14. Designed to halt further inflows of refugees from Cuba, it effectively banned the passage of small boats from Florida to Cuba to pick up Cubans. In addition to detaining violators, imposing fines, or confiscating their boats, the policy also provided for limited transportation by sea and air. Naturally, this new policy immediately earned the Cuban community's great displeasure.

The Carter administration's erratic behavior yet again gave the American people the impression that the president was indecisive. It probably contributed to his loss to Ronald W. Reagan in the presidential election that fall. For his part, Castro was surprised by the unexpected scale of the population outflow. Also, perhaps fearing that Reagan would be elected president and replace Carter, Castro "unilaterally" banned the free departure of boats from Mariel Harbor in September.

(C) *Balseros* crisis (1994)

Improvements in US-Cuba relations stalled with the arrival of the Reagan administration and the start of the new Cold War. Moreover, as the Cold War later ended

and the Soviet Union weakened dramatically, Cuba lost its Soviet backing, which compounded its economic woes and put it in a state of political crisis. A riot erupted in Havana and there were frequent foreign embassy break-ins, skyjackings, and seajackings. Like the pro-Soviet regimes in Eastern Europe, the Castro regime itself appeared badly shaken. Intoxicated with a sense of victory in the immediately aftermath of the Cold War, America's attitude must have appeared quite high-handed in Castro's eyes. Castro again resorted to the tactic of a strategic policy of population dumping, well aware of the danger to his regime, in order to bring the US to the negotiating table.

At an internationally televised news conference on August 5, 1994, Castro accused the US of being behind the uprising in Havana by spreading rumors that it would support illegal emigration to Miami by sea. If the US continued to strangle Cuba economically, "Cuba will no longer be able to afford to be the guardian of the North Americans' coasts," he said, hinting at a repeat of the Mariel crisis.⁶⁷

President Bill Clinton had suffered a bitter experience as governor of Arkansas during the Mariel crisis. An army base in Arkansas was used as a detention center for Cuban refugees; irritated by delays in processing their asylum applications, the Cubans rioted. This incident was a political blunder for Clinton and may have contributed to his defeat in that year's gubernatorial election.

The Clinton administration announced that it would respond with countermeasures that had been prepared for some time called *Operation Distant Shore*, which included a resettlement program for Cuban refugees and a blockade of the Florida Straits. In the event, only a small number of people left Cuba by raft. Florida Governor Lawton M. Chiles, however, criticized Clinton's policies vehemently amid strong local public opinion against the inflow of Cubans. He adopted a firm policy, declaring a state of emergency in Florida on August 18 and mobilizing the National Guard to detain and quarantine Cubans washing ashore on rafts.

Protecting Cuban exiles had lost much of its political meaning because so much time had passed since the Cuban Revolution, and the Cold War had already ended. The Clinton administration quickly reversed the nearly 30-year-long US policy of unconditionally welcoming Cuban exiles; it decided that it would treat Cubans attempting illegal entry as it would people from other countries. Cubans rescued at sea were not allowed to enter the US and were held at Guantánamo base in Cuba (which the US has leased permanently from Cuba since 1903, and which the Castro regime has denounced as illegal). Clinton justified his policy change with the rationale that those leaving Cuba were not exiles or refugees, but people Castro had intentionally expelled. Clinton also hoped to deter departures from Cuba by weakening the attraction of the US. At the same time, he strengthened economic sanctions, such as restrictions on remittances to Cuba, to placate anti-Cuban hardliners, in an attempt to balance various domestic interests. However, it was a contradictory policy, squeezing Cuba while trying to weaken the pressure to leave the country.

Many Cubans boarded rafts and headed for Florida after Castro officially announced the lifting of restrictions on exit on August 21. In just 12 days, from August 13 to 25, the US Coast Guard "rescued" 13,000 Cubans, a faster pace than during the Mariel crisis. Guantánamo base accommodations were rapidly approaching its

maximum capacity. This pressured the US to the point where it had no choice but to settle the situation through negotiations with Cuba. At the negotiations, held September 1 to 10, the two sides reached a new immigration accord and decided to continue talks on other topics.

In April of the following year, Cuba again hinted at a similar lifting of exit restrictions. The purpose was to check the Helms-Burton Act stipulating strong economic sanctions against Cuba that had been introduced in Congress. The issue of the treatment of Cubans detained at Guantánamo base also remained in limbo between the two countries. A new refugee crisis was a major political risk with midterm elections scheduled for 1996, so the Clinton administration began negotiations with Cuba again. As a result, Cubans held at Guantánamo would be individually screened and admitted to the US, and the executive branch pledged to oppose the Helms-Burton Act.

3.3 Escalating from Strategic Engineered Migration

Strategic engineered migration is one of the few methods small countries can use as a means of coercive diplomacy. The influx of refugees generates a variety of domestic political dynamics within their large neighbors, which puts the governments of those receiving countries under troublesome pressure. Accepting large numbers of refugees creates various economic and social costs, which are especially acutely felt by those local communities experiencing the population inflows. Groups that regard refugees and immigrants as a human rights and humanitarian issue, meanwhile, will press hard for their acceptance. A country will face strong pressure to accept them when there is domestic support for the refugees, such as from the same ethnic group. Furthermore, there is the concept of the audience cost that can harm the international political credibility and prestige of countries that advocate human rights and humanitarian norms. And finally, special political significance is also attributed to political asylum seekers from adversarial states.

It should not be forgotten, however, that such extortion by the weaker party has natural limits. It is true that Castro played his few cards well to drag the US to the negotiating table. Yet, the matter would have been settled relatively soon if the US had refrained from furthering illegal departures to destabilize Cuba and made concessions on practical regulations on hijacking and the movement of people, even if Cuba failed to score points on restoring diplomatic relations or suspending US economic sanctions.

One reason may be that the worry that forcing dissidents to leave the country, although perhaps expedient for regime maintenance, can actually destabilize the regime once it goes beyond a certain point and becomes uncontrollable. This is because it is perceived as a loss of human capital, as seen in the case of East Germany. Also, a mass exodus of citizens carries the risk of shaking the legitimacy of any regime. Furthermore, the extent to which the receiving country is vulnerable to this extortion by the weak is uncertain and depends on a variety of conditions. For a

country that advocates the right to exit and speaks loudly about the superiority of its own political system, the “hypocrisy cost” is considerable since it lays bare the true intent of championing freedom of exit while simultaneously denying freedom of entry. Yet the strength of domestic support for the entry of refugees and migrants varies across countries and time periods.

Moreover, this is still extortion by the weak. It would all be for naught if this strategic manipulation of mass population movement caused the conflict between the sending and receiving countries to escalate. The case between East Pakistan and India in 1970 is one example of a conflict escalating to a military level due to the mass influx of refugees.

3.4 Third Indo-Pakistani War (of 1971)—An Escalated Refugee Crisis

There is no need to go over the fact that, after fiercely struggling for, then achieving, their independence after World War II, Pakistan and India separated with intensive bloodshed.⁶⁸ India moved ahead with nation-building on the principle of secularism, whereas Pakistan’s unifying principle was based on its Muslim religious identity. Consequently, Pakistan was left with a very unique domain, its territory split, east from west, by more than 1000 miles of India in between (Fig. 4). Although majority Muslim in both East and West Pakistan, the two were very different economically, ethnically, and culturally. Political power rested in West Pakistan, whereas the majority of the population were Bengalis, who lived in East Pakistan. In the 1970 elections, thus, the Bangladesh Awami League won an unexpectedly great victory in East Pakistan despite taking no seats in West Pakistan. The military and West Pakistan’s leaders refused to transfer power in accordance with the constitutional system; in May 1971, they dispatched troops to East Pakistan, arrested Awami League leaders, and imposed martial law, effectively placing the country under military occupation in the end. A series of tragic episodes of bloodshed ensued between fierce anti-government protests and the military cracking down on them. Against this backdrop of civil war, a mass of refugees, said to number around 10 million, flowed out from East Pakistan into India.

For India, this was a grave situation. First, once a refugee population reaches this size, simply setting up camps and providing even the most basic services presents an enormous burden for any country. But for a poverty-stricken India, this posed a much more serious economic crisis even with international support. The huge influx of refugees also precipitated a rapid deterioration of sanitary conditions, leading to outbreaks of cholera and other infectious diseases. Accordingly, it was no longer a problem limited to just the refugees in the camps; it signified a major crisis for the entire host region. Furthermore, tensions arose with the local residents of this already densely populated area, who shared their living space with the refugees. The influx



Fig. 4 The South Asia Region (1947). *Source* Based on a map from Sunaga, Emiko. 2014. *Gendai pakisutan no keisei to hen'yō: isurāmu fukkō to urudūgo bunka (Modern Pakistan's formation and transformation: Islamic revival and Urdu language culture)*. Kyoto: Nakanishiya Shuppan.

of refugees into the local labor market, for instance, allegedly caused a sudden drop in wage levels, putting pressure on the livelihoods of local residents.

But perhaps most importantly in the context of this case, the mass inflow of refugees had the potential to suddenly destabilize the region's already fragile order.⁶⁹ The Communist Party was powerful in the state of West Bengal, where refugees were concentrated, and relations between the state and the central government were always tense. In addition, the North Eastern Region of India, with its complex ethnic composition and its territorial disputes with China, made the central government nervous about its stability. The influx of large numbers of Bengali refugees caused a sudden change in the ethnic composition of Assam, Tripura, and other areas, a situation that ethnic minorities could not afford to ignore, so it was quite natural for India to be worried about regional instability.

That the civil war sparked the outflow of refugees is a fact, but whether Pakistan intentionally engineered this situation is doubtful. What is undeniable, however, is that India truly believed that Pakistan had intentionally done so, given their extremely strong mutual distrust. The government of India issued the following statement on May 14, 1971: "This deliberate expulsion of such a large number of people from their homes has created a human problem of unparalleled magnitude which is capable

of producing serious repercussions in the area, leading to a threat to peace in the region.”⁷⁰

Pakistan, meanwhile, held suspicions that India had consistently supported separatist movements and threatened Pakistan’s territorial integrity in the East Pakistan issue, which it regarded as an internal matter. India unmistakably supported Bangladesh’s Provisional Government Forces (Mukti Bahini) in waging an armed struggle by providing them with equipment and training. Thus, to what extent the refugee flow was orchestrated by Pakistan is not clear. But it would not have been unthinkable for Pakistan to have imagined that the expulsion of the “traitorous” Hindu minority in East Pakistan would not be such a bad idea. This would be all the more expedient if it would cause India to suffer. At the very least, Pakistan had absolutely no intention of acceding to India’s request of repatriating these refugees and restricting their outflow.

In December 1971, India intervened directly in the conflict in support of the Provisional Government of Bangladesh, which shortly overwhelmed the Pakistani military. This led to the Third India-Pakistan War. Pakistan was ultimately forced to accept the loss of East Pakistan which would lead to the creation of an independent Bangladesh. The refugee flow from East Pakistan to India was a major factor that provoked India’s intervention. It would have been a major strategic blunder had Pakistan intentionally engineered this flow.

3.5 Controlling the Import of Migrant Labor

What is usually perceived as an immigration problem in rich countries today is not the asylum seekers or coerced refugees crossing borders for political reasons or intentions, as discussed up to now. Rather, it is how to bring order to the large numbers of economic migrants who move from poor countries to rich countries seeking opportunities for a better life.

Though globalization is a cliché in describing today’s world, the existence of enormous wealth disparities is an undisguisable reality. Huge wage differentials between countries create a dynamic in which products produced using cheap labor move from poor countries to rich countries. A further dynamic is created in which capital moves so as to produce using cheap labor.

As we have seen repeatedly, the developed countries of the West loudly promote freedom of exit as part of human rights while they do not, in principle, recognize the freedom of entry as a right for those who have left their country. Accordingly, once large numbers of people flock to a country’s borders, they are transformed from persons subject to humanitarian protection to sources of vexing political problems. It is inevitable that, given the huge gap between rich and poor in the world and advances in migration methods, there will be pressure from people attempting to enter some rich countries in order to join their labor markets.

Therefore, contrary to the case of highly skilled workers, low-wage labor will inevitably become the biggest export commodity of a poor developing country with

limited domestic employment opportunities when its exports, which take advantage of its low wages, are blocked by a range of protectionist measures in developed countries. A desire to send large numbers of unskilled workers to developed countries naturally comes into play provided the country can ease population pressures at home through large migrant outflows and can then utilize these emigrants' remittances for development purposes.

Developed countries are under pressure to accept immigrants from the business community and some industries seeking a cheap labor force, and from liberal groups who see tolerance of immigrants and refugees as a test of national openness. And they face a backlash for accepting immigrants from domestic unskilled workers and low-income earners who tend to compete with them in the labor market and for public services, as well as from conservative groups who view the traditions of the established majority as the basis for national integration. At least when it comes to accepting immigrants, the likely truth is that even countries keenly interested in the human rights and welfare of migrants seek to avoid being bound by international arrangements that limit their sovereignty to decide whether to allow foreigners into their countries. In the context of such domestic political dynamics, the state probably wishes unskilled labor migrants to be a workforce of convenience, welcoming them as a cheap, marginal labor force when necessary, but hoping they would go back home as economic and social conditions call for.

3.6 International Regime for Migrant Laborers

The landscape of competing interests is similar, in a sense, to that of international trade. The majority of economists hold the view that free trade and the ability to buy and sell goods regardless of national borders are most desirable. The general mode of behavior for states involved in actual international trade negotiations, however, is a mercantilist attitude of wanting to export to the counterparties' markets while protecting the domestic market. The international community has made considerable progress institutionalizing international trade. For instance, the General Agreement on Tariffs and Trade (GATT) was established after World War II, and at the end of the twentieth century it became the World Trade Organization (WTO), of which many countries around the world are now members. Furthermore, regional agreements have been concluded to mutually promote further liberalization. The European common market is the exemplar, and it has undergone a greater degree of liberalization than the WTO. The number of free trade agreements (FTAs) has rapidly increased in other regions aside from Europe since the 1990s.

Although an international regime of a sort exists for refugees, there is a low level of institutionalization regarding the movement of economic migrants. No global regime comparable to the WTO exists for economic migration, and migrants' rights only receive limited mention as part of international human rights and labor norms within frameworks such as the UN and the International Labour Organization (ILO).

The ILO can trace its origins to the period after World War I and is one of the few international organizations to have survived World War II. It is a unique international organization that brings together representatives of workers and employers in addition to government representatives, and an important part of its mission has been to set international labor norms. The issue of migrant workers was addressed early on: Convention No. 97, concluded in 1949, prohibits the discrimination of migrant workers, and enshrines the principle making the remuneration and other working conditions of migrant workers “no less favorable than” that of its own national workers. Furthermore, against the backdrop of the recession following the oil crisis, Convention No. 143 (1975) called on member states to impose penalties on employers who illegally hired migrant workers and to collaborate internationally to prevent illegal immigration.⁷¹

The UN has been setting norms on this issue primarily from the standpoint of human rights protection. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the UN General Assembly in 1990, after 10 years of negotiations, entered into force in 2003. It reaffirms the principle of equal remuneration in the aforementioned ILO Convention and its Article 44 reads, “States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.”⁷²

3.7 *Absence of an International Migrant Regime*

These international norms for human rights and for labor, by establishing minimum rights for migrant workers, form part of the governance surrounding economic migration. Unless these international norms are joined by the host country’s public institutions, employment practices, and social norms, however, their effectiveness with remain insufficient in reality. Yet it is generally only immigrant-sending countries, mainly from Latin America and the Caribbean, North Africa, and Southeast Asia, that have ratified the conventions above. Few Western developed countries, the major recipients of immigrants, have ratified them. Especially since neither the US nor Canada, the countries that receive labor migrants on a large scale, have ratified it, the limits of the effectiveness of these norms are clear. What is of greater importance is that these norms only stipulate the rights of migrants who have been accepted; they say nothing about the decision to accept migrants, and under what conditions. In other words, unlike the international import and export of goods, the acceptance of labor from abroad in large part remains left to the discretion of the receiving country.

Why is there such a big difference between the movement of goods and the movement of people? A major reason is perhaps that, inasmuch as the relationship between countries receiving and sending economic migrants is asymmetrical, it is not one in which both sides can benefit from cooperating. The global international trade regime extends its benefits to all members, has uniform trade rules, and has

dispute resolution procedures in place. Consequently, one country's enjoyment of benefits does not compete with the interests of other countries. That is, it has the characteristics of a "club good." Furthermore, since a country imports as well as exports, even if it opens up its own market, provided it expands its access in the other country's market, it takes on the character of a positive-sum game in which both parties benefit.

Some commentators argue that the international migration regime is also an international public good because its benefits extend throughout the world and the benefits obtained from it are non-rivalrous. Other commentators make further distinctions: the international refugee regime is a public good; the management regime for economic immigration of unskilled workers is a club good; and the management regime for highly skilled talent is a private good with no externalities for unrelated states.⁷³

However, the interests arising from the movement of people go beyond measurable economic benefits, such as whether gross domestic product (GDP) increases or decreases, to include social, political, and moral values unaccustomed to being calculated in monetary terms. For this very reason, relations between immigrant-sending and -receiving countries are largely dictated by how each perceives its "interests." Besides, the positions of sending and receiving countries are fairly fixed, for the economic migration flow of unskilled labor is not reciprocal like trade, and the direction of the flow of migrants, like that of a river, rarely reverses in the short term.⁷⁴

In addition, the developing countries that are currently sending migrants tend to emphasize the inviolability of their territorial sovereignty, as they are young states that have experienced the colonial era. And unlike exporting, sending labor abroad may not be regarded as a success of the government's economic management, but rather may be perceived domestically as a policy of labor dumping that symbolizes its failure. All these circumstances mentioned here may explain why the international migration regime is underdeveloped, unlike the trade regime.

3.8 Marketing One's Own Workers—The Philippines' Case

Whatever the reasons, the international regime regulating economic migration is weak, and moreover, the position of migrant-sending countries is usually weak. It is thus rare for differing interests over economic migration between sending and receiving countries, when they do exist, to immediately become a point of contention in international politics. Therefore, a sending country that actively positions labor exports as part of its economic strategy must work hard to market its own citizens as though it was selling products in a buyer's market.

The Philippines, a country that has traditionally relied heavily on the export of labor, has systematically rolled out campaigns promoting its own workers. The total number of documented overseas Filipino workers (OFWs) as of 2014 is estimated to be approximately 2.4 million, of which approximately 500,000 are laborers working at sea, as crew and in similar jobs. Looking at the geographical distribution of where

land-based OFWs reside, the top rankings are held by Gulf countries such as Saudi Arabia, the United Arab Emirates (UAE), Qatar, and Bahrain, as well as in Asian economies such as Singapore, Hong Kong, and Taiwan. Most of these OFWs probably consist of female domestic workers, such as housekeepers; workers on factory production lines and construction sites; and some agricultural workers. The many people working in auxiliary jobs in medical and nursing care settings, such as nurses and caregivers, are evident as well.⁷⁵

The government of the Philippines has established the Philippine Overseas Employment Administration (POEA) and the International Labor Affairs Service (ILAS) and actively seeks to send its citizens to labor markets overseas.⁷⁶ The POEA's mission is to generate and maintain strong employment opportunities for OFWs through the worldwide network it has built. It reportedly protects OFWs deployed abroad and assists in their reintegration into Philippine society upon their return.

The POEA, in addition to publishing information about job opportunities on its website, such as 50 factory workers in Taiwan and 300 nurses in Saudi Arabia, registers applicants and acts as an intermediary between them and prospective employers. It is structured so that the sending country's public institutions, through its intermediation of the movement of economic migrants, send them off as regular migrant workers having obtained visas from the receiving country. Furthermore, by centralizing administrative and employment contract procedures that are quite burdensome for individuals leaving the country, the POEA assists them in their move abroad.

Beyond collecting job information and mediating for OFWs, the Philippine government focuses its efforts on training the workers it sends abroad as well. English is often used in public education in the Philippines, by dint of its history as a US colony. English proficiency is one of the strengths of Filipino workers in the international labor market.⁷⁷ Still, when OFWs obtain work visas and seek employment overseas, they are often required to prove their skills that are highly valued in the international labor market, such as in computer-related fields, electrical engineering, cosmetology, barbering, nursing care, and caregiving. So technical education is promoted as a supplement to school education. The Technical Education and Skills Development Authority (TESDA) has been set up and approves and licenses a large number of technical training courses offered by the private sector (i.e., at private expense). The aim of these courses is to rate the competencies of OFWs and thereby increase their "added value." From the receiving country's perspective, this procedure facilitates the selection of "desirable" migrants by obtaining information evaluating the "commercial value" of these migrant laborers. Through these efforts, the Philippine government seeks to differentiate itself from other migrant labor-sending countries and enhance the attractiveness of its own migrant labor force.

At the same time, the government will also get involved when the workers it sent out return home. It has cooperated in their repatriation from receiving countries in the following instances: when the host country's economic situation deteriorates significantly, such as during the Asian Financial Crisis; or when a political crisis occurs, such as during the Gulf War; or even when the conduct of undocumented Filipino migrants risks becoming a political issue in the host country.⁷⁸ Absent

such cooperation, the trust of host countries would be lost, making it more difficult to keep sending out labor. This sort of labor export diplomacy is also subject to various diplomatic considerations. A bilateral agreement concluded with Myanmar, for example, would also have to take relations with other Association of Southeast Asian Nations (ASEAN) countries into account. The Philippines also sends large numbers of workers to China, especially Hong Kong, and to Taiwan, so it must manage its relationship with the Taiwanese authorities while upholding the “one China” principle that Beijing persistently demands, operating at the risk of retaliatory measures from the Chinese authorities if it fails to do so.⁷⁹

The Philippine government is naturally concerned about protecting its own workers. A 1995 law requires that OFW employment contracts be defended, so that the Philippine government becomes involved as a party should a labor dispute or abuse of Filipino workers occur overseas. It is not easy for a country to play two roles simultaneously, “selling” its own workers to foreign governments while protecting them abroad. A work visa is essential to enter a foreign labor market legally; only the host country can issue it, exclusively. That migrant-receiving countries are in an advantageous position compared to migrant-sending countries, which must “sell” their wares, is true as long as the world’s labor market remains segmented by country and work visas remain scarce, and as long as it is the host country that decides how many of these visas to distribute among workers from which countries.

3.9 *Bracero Program—A US-Mexican Attempt at Migration Control*

In reality, though, sending countries may be able to exercise a certain degree of influence over receiving countries; a receiving country may also need the sending country’s cooperation. This is the case when a receiving country feels its ability to control migrant flows unilaterally is limited and finds it desirable to order the flow of migrant labor through agreements with sending countries. In that case, the position of the sending country will become stronger.

Between 1942 and 1962, the Bracero Program was a bilateral agreement to control migration between Mexico and the US, the world’s largest migration corridor. Under this framework, approximately 5 million Mexican unskilled workers crossed the border into the US.

(1) Formation of the US-Mexico border

The long border spanning more than 3000 km that separates Mexico and the US took its current shape in the mid-nineteenth century. After it gained independence from Spain, the new Mexican Republic’s internal affairs were in turmoil. An influx of illegal American settlers, taking advantage of the Mexican central government’s weakness, poured steadily into the former Spanish territory of Texas, which at the time belonged to Mexico. Because Mexican authorities could not effectively control their borders, these irregular immigrants took over Texas, which achieved independence

in 1836. Later, after Texas had been annexed by the US, the Mexican–American War broke out in 1846 over a subsequent dispute concerning the border between Texas and Mexico. US victory resulted in the signing of the 1848 Treaty of Guadalupe Hidalgo, under which Mexico ceded a vast swath of land to the US equivalent to one-third of its territory, including parts of present-day Texas, Colorado, Arizona, New Mexico, and Wyoming, as well as California, Nevada, and Utah. The outcome formed the US territory we see today and established the general outline of the US–Mexico border. Currently, perhaps more people cross the US–Mexico border than anywhere else in the world, with well over 300 million people crossing *legally* each year. More than 1 million people annually are thought to enter the US from Mexico *illegally*. It became a major issue in the 2016 US presidential election. Considering the historical circumstances mentioned above, one can only be amused by the historical irony that the winner, Donald J. Trump, had campaigned on building a huge wall on the US–Mexico border and having Mexico pay for it.

America's borders were very open up until the end of the nineteenth century. Domestically, a large immigrant workforce filled the rapidly expanding US economy's demand for labor at the same time as Native Americans were displaced onto reservations. There was virtually no security on the US–Mexico border, such that Mexicans living in the border areas could freely travel back and forth to visit relatives living in US territory, which was originally Mexican territory. When the US was founded, its people were homogeneous, mostly Anglo-Saxon Protestants; subsequently, immigrants from Catholic Ireland and Italy increased. As Eastern Europeans, Russians, Jews, as well as Chinese and Japanese joined the mix, there was an increase in racialized anti-foreignism and an intensification of various societal frictions. A range of immigration regulations were introduced, starting with the Chinese Exclusion Act of 1882, which banned Chinese migrants. Keeping Japanese immigrants out, too, was an oft-raised issue: as mentioned in the first section of this chapter, immigration from Japan to the US was virtually shut off in the early twentieth century. It was in this context that all Asians were deemed unassimilable under the Immigration Act of 1924 and Japanese immigrants were officially excluded.

Yet Mexicans were generally exempt from these regulations. Once the supply of Asian immigrants was cut off, they were widely employed to fill that gap by US commercial farmers in what was originally part of Mexico.⁸⁰ Mexican workers were also valuable to the US. There were many positive aspects, too, for the Mexican government; sending labor to the US served as a convenient safety valve to stabilize domestic society, in light of the contemporary state of the Mexican economy, which was unable to provide employment opportunities commensurate with its rapid population growth and urbanization.

(B) US–Mexico relations during World War II

The migrant labor force from Mexico suddenly increased during World War I. Congress had passed a generally restrictive immigration act in 1917, but the law had a loophole that allowed entry for temporary employment, such as agricultural labor. Accordingly, 73,000 Mexican workers entered the US between 1917 and 1921.⁸¹ To be sure, there was a labor shortage at the time caused by America's participation

in World War I. Amid the growing agricultural depression that began in the 1920s, American agriculture was beset by the plight depicted in John Steinbeck's novel *The Grapes of Wrath*. As a consequence, Mexican workers, who were in a position to compete with American agricultural workers, were suddenly treated as a nuisance; in 1929 alone, an estimated 350,000–600,000 Mexican workers were rounded up and deported to Mexico.⁸²

Throughout much of the twentieth century, anti-American nationalism was strong in Mexico, which at least officially had a somewhat restrictive policy vis-à-vis emigration to the US.⁸³ There is a clear difference in power between Mexico and the US, as was evident from the course of the Mexican–American War; the Mexican government has always had to be very careful not to damage relations with the US, its militarily and economically powerful, and often highhanded neighbor. In contrast, the US has always been able to act unilaterally, with no consideration for Mexico's interests, without being the least bit affected. Sometimes these situations can take unexpected turns.

A shift in the balance of bargaining power between the US and Mexico took place with the outbreak of World War II, as the Japanese attack on Pearl Harbor brought about the US entry into the war. Mobilizing labor for military production became a top priority for America's prosecution of the war, which tightened the supply–demand relationship in the labor market. The agricultural sector in the South began to press to let in many of the more convenient, low-wage workers from Mexico. Also, the US wanted to gain diplomatic support from Mexico and other countries in Latin America and the Caribbean in order to fight World War II. Therefore, a committee consisting of representatives from the National War Labor Board and the Departments of Labor, State, Justice, and Agriculture began studying the issue of bringing in Mexican workers, taking the interests of labor unions and agricultural lobbies into account.

In Mexico, there was a strong sentiment among public opinion, political parties, left-wing groups, and even conservative groups intensely repulsed by American hegemony that Mexico should remain neutral in World War II. President Manuel Ávila Camacho, however, saw the war as an opportunity to obtain US cooperation on a variety of issues in exchange for cooperating with it on labor migration. Mexico declared war on the Axis powers on May 1, 1942. The US responded that same month by proposing the Bracero Program to Mexico through diplomatic channels.⁸⁴

Interestingly, Mexico was initially skeptical about the US proposal. First, it had suspicions about unstable US demand for labor. Mexico certainly sought to avoid a situation like what actually happened in 1929 when changing US circumstances resulted in the sudden mass deportation of Mexican workers. There were also concerns that the loss of so many workers would impede the development of Mexican industry. The Mexican government also had to consider a public backlash. There was naturally a sense of humiliation in the government's involvement in sending its own citizens as migrant workers to the southern states of the US, where working conditions were very bad, and incidents of abuse were common.⁸⁵ Conservative forces opposed it based on their anti-American views; the Catholic Church rejected the idea of migrant labor separating families. For Marxists and leftists, this

was the exploitation of Mexican workers by American imperialism, pure and simple. There were additional concerns that exporting labor to the US might further increase Mexico's structural dependence on the US, and that the purchasing power of workers returning from America would cause price levels in Mexico to soar.⁸⁶

The Mexican government could expect more of a say with the intergovernmental agreement and it could lead to better treatment of Mexican workers. Mexican agriculture would also benefit from the skills Mexican workers gained in the US. Diplomatic considerations were also at play, for showing a willingness to cooperate with the US war effort through this program was desirable in terms of bilateral relations. Best of all, Mexico could expect cooperation with the US to lead to tangible economic benefits beyond enabling its workers to receive wages, because the war provided an opportunity to export large quantities of its natural resources to the US.

Owing to this coincidence of motives, in July 1942, after just 10 days of negotiations, the two governments reached a formal agreement on the Bracero Program, which would remain in effect for the next five years. The program was administered by a bilateral committee, with the responsible agencies being the Departments of Agriculture and State for the US side and the bureau of migrant labor within the Ministry of Foreign Affairs on the Mexican side. The general framework was as follows: the Mexican side allocated each Mexican state a share of the total number of workers to be recruited under the program; both governments established procedures for setting up recruitment centers and vetting applicants; and hired workers were sent to the US and apportioned to farms across the country.

The principles of this program, which continued for the next 22 years, reflected the following Mexican wishes. First, Mexican workers were prohibited from serving in the US military. Second, Mexican workers were not to be subjected to discriminatory treatment. Third, Mexican workers' transportation, living, and repatriation costs must be covered in accordance with Mexican law. And fourth, Mexican workers who entered the country through this program were not to be pressured by any changes in American workers' employment and wage levels. Employment contracts under this program were between Mexican workers and the US government, which entered into subcontracts with individual farms, a system that enabled the US government to assume responsibility for protecting the Mexican workers and also to cover their transportation, living, and repatriation costs. Under this program, some 4000 workers left for the US as soon as July-December 1942. This total reached 200,000 in the five years spanning from 1942 to 1947.

(C) Post-World War II Bracero Program

As labor market conditions changed with the war's end, so too did the content of the intergovernmental agreement. The agreement for the 1948–51 period reduced US government involvement and expanded the purview entrusted to individual employers and workers. For example, the US government could no longer be held legally responsible for the performance of contracts, and employers took over responsibility for paying for transportation and living expenses.⁸⁷

Although dissatisfied, the Mexican government wanted the agreement itself to continue. The boom in illegal emigration from Mexico was one reason why. Whereas

there were 200,000 regular workers under the Bracero Program between 1948 and 1950, it is believed that about twice that number entered the US illegally. Maintaining some kind of route for regular labor migrants under the Mexican government's authority was thought to have the effect of curbing illegal departures. Also, it was hoped that the presence of regular workers might somewhat improve the situation for Mexican residents who had already illegally emigrated. The rapid increase in illegal immigration was also a problem for the US. The State Department worried that incidents of the mistreatment of undocumented immigrants, which came to light around this period, would have a negative impact on relations with Mexico; closing the route for regular migration, it feared, could make the situation even worse. In any case, the wages earned by workers were of great importance to Mexico, so it viewed it as preferable to have some kind of employment opportunity in any form, which would also leave room to change the content of the agreement to something more advantageous if the situation changed in the future.⁸⁸

And indeed, when the US labor market tightened again with the outbreak of the Korean War, Mexico's bargaining power increased significantly once more. The agreement that the two countries signed in August 1951 once again recognized the US government's involvement and responsibilities. It also strengthened the protection of the rights of Mexican workers by establishing in greater detail the legitimate employment conditions and employment procedures as well as blacklisting employers who hired illegal workers or violated these conditions, excluding them from the program.⁸⁹

Mexico's negotiating power declined again with the conclusion of the Korean War, but the Bracero Program continued until 1964, to protect the interests of southern farmers. One issue that arose between the two countries during this period was the location of the recruitment center. The US wanted them near the border, where its costs were low; Mexico was dissatisfied with its uneven employment environment, with labor shortages occurring in the northern regions. A greater problem was its dissatisfaction with a lack of serious US efforts to crack down on illegal Mexican migrants (what was referred to at the time at the "wetback problem"). This is hard to imagine, given what would later become the image of the US frantically cracking down on undocumented immigrants from the south. But, in the early days of the Bracero Program, for instance, Texas sought to acquire Mexican labor unilaterally, bypassing the national government program, and going so far as to open its southern border against Mexico's wishes.

In fact, the stances of both countries have been inconsistent with respect to irregular immigration because each has contradictory domestic interests. Southern ranchers in the US have an interest in using Mexican workers, even undocumented immigrants, as a cheap labor force. Others in the region, such as labor unions, worried about the negative impact on their wages and employment. When the economic situation was extremely poor in Mexico, US employment of Mexican workers, even if undocumented, served as a safety valve, easing domestic societal tensions. For Mexico, having its own citizens employed or chased away solely at the convenience of the US was a situation that was remarkably damaging, not only from the perspective of its economic interests, but to national pride.

An important unintended effect of the Bracero Program was the establishment of a migration route between Mexico and the US. Although both governments had temporary labor migration in mind when starting the program, a robust network of interdependence was formed between American employers and Mexican workers, which also led to a rapid increase in the number of irregular migrants. This rise was especially prevalent in the late 1940s and early 1950s after World War II; in 1954, more than three times as many irregular migrants were arrested as the number of legal migrants.⁹⁰ By hiring irregular migrants, there was no need to go through the hassle of the hiring procedures required by the program, and the wages were so low. In addition, a considerable portion of the Mexicans who entered the US under this program remained in the country illegally, making them highly dependent on these illegal employment opportunities.

(D) Growing criticism

The Bracero Program was pushed forward by an unusual combination of America's southern farmers and the Mexican government, joined by US diplomatic officials who attached importance to diplomatic considerations with the Mexican government. The program was institutionalized as a direct result of the tight supply and demand relationship in the US labor market caused by the war. As labor market conditions changed, however, it became difficult to preserve the interests of only a small number of farmers reliant on Mexican workers for their agricultural labor force. Furthermore, the US labor union's opposition movement was able to gain supporters from among the previously indifferent populace at large as the harsh working conditions of migrant workers in the agricultural sector became known nationwide.

The CBS documentary program *Harvest of Shame*, which aired in 1960, exposed the American viewing public to the harsh reality faced by the many immigrant workers on American farms.⁹¹ It also exposed the Dwight D. Eisenhower administration to public criticism, and although the Bracero Program was somehow renewed for two years in 1961, opposition to it rapidly took on a moralistic tone.

The year after the documentary aired, its producer, Edward R. Murrow, became director of the US Information Agency (USIA) in the Democratic John F. Kennedy administration that had just taken office; later, after Johnson assumed the presidency, Murrow was a member of the National Security Council (NSC). It was considered inconvenient and embarrassing, in both the "New Frontier" Kennedy and the "Great Society" Johnson administrations, for the government to be involved in the arranging of low-wage agricultural workers.⁹² The Mexican government requested that the Bracero Program continue, but the reality of American domestic politics in 1963 was that the program had run its course, and so it was concluded in 1964.⁹³

The US government thereby was allowed to escape responsibility for contributing to the plight of these agricultural workers. Even after the official program ended, however, Mexican migrant workers did not disappear, only their legal status changed.

So how did the actual conditions of the Bracero Program appear to the workers from Mexico? The following is a summary of a case study of a Mexican worker recorded in the late 1950s⁹⁴:

Juan Garcia lived in a region where work was scarce and poorly paid when available. So, like many young men in his area, Juan decided to become a bracero [and go to America]. The first step was to secure a permit from a local mayor indicating his eligibility to apply to the program. The contracting process required bribes (mordida). Having secured his permit, Juan Garcia journeyed, at his own expense, to the nearest recruiting center. Once inside, he was interrogated by Mexican and US officials, answered a variety of questions regarding his eligibility and security risks, and then underwent a thorough physical examination. Having passed, Juan was transported, at the expense of his future employer, to a US reception center near the border. Theoretically, he could have chosen his employer, but in reality, Juan was contracted by a grower association. Once Juan signed the contract, he was quickly transported inland by bus to an association labor camp. During the next six weeks Juan and his countrymen worked for various farmers who were members of the contracting organization.

Juan exclusively harvested tomatoes, difficult work with long hours. Juan averaged \$35 a week, of which he paid \$11 dollars for meals. He managed to save more than \$100 in addition to purchasing some clothing and small gifts for his family. Like the majority of his fellow braceros, he had no complaints to register with the Mexican consul who, along with a foreign-labor service representative, questioned the braceros about their work, food, and general treatment. Juan would be glad to do the program again in the future, but at the end of six weeks he was homesick for Mexico and his family.

Upon completion of his contract, Juan was returned at employer expense to his original contracting station in Mexico. Juan was given a laminated identification card that classified him as a dependable worker and proved to be invaluable when he again became a bracero. Once he returned home, Juan had some definite thoughts on his stay in the United States: he felt that the only thing he knew about life in the United States was what he had seen from the fields and heard in the barracks; he never got a chance to know the local people or to socialize with a US family. Yet, he felt much more worldly than before. He really did not understand all the rights and protections granted under his contract. Still, it seemed his employers had been honest and fair. His only real regret concerned his isolation while a bracero. Juan definitely planned to contract again in the future. He would, in fact, like to return as a visased immigrant.

This recollection reveals the fact that many migrant workers want to earn money, even under poor conditions with insufficient protection of rights doing hard labor for low wages, by the standards of the host country. If so, the pressure on people to cross borders in search of employment opportunities, whether legally or illegally, is unlikely to go away.

3.10 Political Landscape of Labor Migration

Under these conditions, when labor exports are organized through intergovernmental agreements, the sending countries will generally seek to improve the treatment of their nationals and ensure the protection of their rights. The sending country's bargaining power is usually weak, however, as long as many of its nationals would even be willing to work under poor conditions. A rivalry arises within the host country, between the interests of employers seeking a cheap, flexible labor force and labor unions and others concerned about the deterioration of the domestic employment environment. In addition, those interested in diplomatic relations with sending countries and the

human rights of migrant workers will participate in political bargaining at various stages. That is the general landscape.

In general, political dynamics within the host country play a large role in determining the form of these arrangements. However, power relations with the sending country may change, and cooperation between the sending and receiving countries conceivably may better serve the interests of both parties and the migrant workers themselves than if the receiving country were to act unilaterally. Yet there is a problem here: the black market that exists outside the legal framework. The more regulation protects legal immigrants, the greater the incentive to buy and sell labor on the black market, and the higher the risk of corruption, such as bribes paid in legal immigration quotas. Given this, sending countries need to implement effective exit regulations and border controls, as well as to operate fair screening processes for regular migrants. This will not be easy to achieve for many countries, especially developing countries.

Host countries will also need to strengthen regulations on migrants within their borders who have overstayed their visas. To do so, it will be essential for them to tighten border controls and to detect and remove irregular immigrants. They will need firmer penalties for employers of irregular migrants. However, such crackdowns on foreign nationals in Japan are met with strong opposition from civil liberties groups and employers alike. In short, a dynamic is created whereby the greater the effort made to control the movement of migrant workers in an orderly manner within the framework of intergovernmental agreements, the greater the need to control illegal migration and employment. Both migrant-sending and -receiving countries have diverse domestic interests, so it is essential for both parties to have consistent political will and effective administrative capacity on this issue in order to organize the orderly movement of economic migrants through bilateral cooperation.⁹⁵

4 Summary

This chapter has analyzed the state of international politics surrounding international population migration, focusing on the clash of wills between migrant-sending and -receiving countries. Freedom of exit became a prominent issue in the context of the Cold War, but it will likely remain a recurrent point of contention in interstate relations in the broader human rights context. Yet policies of strategic engineering migration sometimes become a means for the weak states to extort the strong ones. Furthermore, there appears to be competition for highly skilled human resources, whereas there is basically an oversupply of unskilled labor, and host countries negotiate from a position of strength. Why is population movement sometimes welcomed and sometimes feared? One reason for this may be found in the inconsistent normative structure stating that exit from a country should be free whereas entry falls within the jurisdiction of each state. Or that political asylum seekers who have fled their home countries are victims of persecution who deserve protection, whereas the emphasis when masses of refugees inundate the borders is on the responsibility of each state to protect the lives of its own nationals.

The significance the state ascribes to people who move changes depending on various conditions. Those who leave the country may be traitors to their homeland or a loss of human capital, but they may also be a politically and economically expedient way for their home country to rid itself of a nuisance. Those entering the country may be persons eligible for protection or beneficial talent, but they may also be perceived as a burden or a risk to social stability. The diversity of interests and positions that exists within both receiving and sending countries regarding the type and number of people to allow to enter and exit that would be suitable politically, economically, and morally does not facilitate the formation of a consensus of will. Furthermore, there is little hope that a broad agreement will be reached in the near future regarding what the internationally desirable immigration order would be.

The flow of people into and out of a country is not something the state can easily manage. People who cross borders are not computer central processing units (CPUs) that arrive at some optimal solution in response to wages and other conditions; they are actors attempting to carve out their own destinies using their own strategies. Such people create a dynamic reality that goes beyond the expectations of receiving and sending countries. Migrants who were brought into the US and Europe as marginal labor forces formed various networks and eventually established immigrant communities and put down roots in their new countries of residence. This was not the result of the state's policy intentions. Also, for the East German government, expelling dissidents was supposed to be an expedient pressure release valve. It was surely not the state's intent for the exodus of people to reach an uncontrollable level, finally leading to the dramatic collapse of the regime.

The limits of national immigration control become even clearer as borders become more porous in terms of goods, money, and information. That being the case, population movements that go beyond the will of the state necessarily become a topic for study. In the next chapter, I would like to examine the implications such international population movements hold for interstate relations.

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Chapter 3

The Limits of Policy—Irregular Population Movement



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Abstract This chapter focuses on irregular migration and refugee status, examining the international political issues of population movements that arise from the limitations of state policies, and not from any clash between states’ policy goals. It seeks to distinguish between “illegal” immigrants and refugees, while bearing in mind the limitations of these conceptual categories. While there is a fairly well-established international system for handling refugees, irregular migration is in principle regarded as a matter for the receiving country’s own immigration controls. But the author concludes that issues relating to the movements of people—be they irregular migrants, refugees, or internally displaced persons—are no longer merely

human rights issues that apply to a limited or exceptional number. They inevitably become politically charged, and a failure to effectively address the resulting political issues will place the achievement of humanitarian objectives in jeopardy.

In the previous chapter, I discussed political issues surrounding people crossing borders in relation to conflicts of states' will. To be sure, people who cross borders are not agents acting to embody the will of the states to which they belong; they are nothing but actors with their own interests and strategies. Most decisions to cross a border that people make are independent of, and often run counter to, the will of the state. States naturally try to influence the movement of people through various means, but the consequences of their policies are difficult to predict. They have the potential to exceed initial expectations, leading to unexpected results for both sending and receiving countries. This chapter examines the international political issues of international population migration that arise from the limitations of state policies, not from a clash of states' policy goals.

In order to protect their territorial jurisdiction, states not only physically defend their borders, but also regulate the movement and stay of people through passports, visas, residence permits, and similar arrangements. The reality of the world is that there are many people who cross national borders or live in other countries in violation of state-established arrangements. These people are called illegal immigrants or clandestine migrants from the perspective that their entry was in violation of the host country's immigration system. There has been a backlash against these terms from the standpoint of defending the human rights of these people,¹ and so terms such as irregular immigrants or undocumented migrants are often used. Admittedly, the people who, of their own free will, enter another country either by clandestinely bypassing border control, or by paying smugglers or purchasing fake documents, have most certainly entered the country by illegal means. Yet most irregular migration would not occur if the receiving country did not have some kind of demand for it. There are also quite a few times when the authorities, considering the presence of such people a convenience, have not strictly enforced the rules. If this is the case, it would be somewhat hypocritical to treat such migrants as criminals.

The greater problem with these terms, from an analytical sense, is that they cannot fully capture the diverse realities of the people who deviate from the state-established systems to cross borders. The term irregular immigrant encompasses political prisoners and soldiers who have fled their home countries, as well as people who make a living through criminal activities such as smuggling. On the other hand, there are many people who were forced to leave the country against their will. Refugees are the archetype of such people, and some among them should rather be called victims of human trafficking. In addition to civil wars and political persecution, natural disasters, such as droughts and floods, and drastic changes in the environment force some people to cross borders. The term forced migrants would be more appropriate to describe these people. In reality, however, it is often difficult to distinguish between

free will and coercion in harsh environments and impossible to draw a clear line between the act of fleeing political persecution and of seizing economic opportunity.

Given this book's purpose to examine the international politics of population migration, this chapter will advance the discussion by distinguishing between "illegal" immigrants and refugees while bearing in mind the limitations of these conceptual categories. While there is a fairly well-established international system for handling refugees, irregular migration is in principle regarded as a matter for the receiving country's immigration control.

1 Irregular Migration

1.1 Current State of Irregular Migration

It is impossible to know the total number of irregular migrants exactly. The estimates vary greatly. For example, the International Organization for Migration (IOM) estimated that 10–15% of the world's stock (total) of 214 million international migrants in 2010 were undocumented. The United Nations Development Program (UNDP) estimated that approximately one-third of all migration flows in developing countries were irregular migrants.² Regardless, it is safe to assume that the total number will not fall below tens of millions. This number is comparable to the population of a medium-sized European country.

Among these estimates, the US figures are thought to be relatively accurate. For example, according to the Pew Research Center, a prominent US research organization, there were approximately 11 million unauthorized immigrants in the United States in 2015. This is equivalent to approximately 3.4% of the US population. The number spiked briefly but has been stable since 2010. Of the total, 5.6 million, or more than half, were Mexican, a proportion that was decreasing; in their place, unauthorized immigrants from Asia (mostly China) and Central America were rising, as well as an increasing proportion of undocumented immigrants from sub-Saharan Africa. Additionally, nearly 60% of undocumented immigrants were concentrated in six states: California, Texas, Florida, New York, New Jersey, and Illinois. States such as Massachusetts, Pennsylvania, Virginia, and Washington were also seeing increases in the number of undocumented immigrants from countries other than Mexico. Furthermore, undocumented immigrants continue to live in the US for longer periods of time, with two-thirds of them having lived in the US for more than 10 years.³

In Europe, there were between 1.9 and 3.8 million irregular foreign residents living in the European Union (EU) in 2008, according to estimates by the EU-sponsored Clandestino Project. This corresponds to 0.39–0.77% of the population of the 27 EU countries.⁴ The number of persons detected by EU authorities to be illegally present in the member states in 2014 totaled approximately 550,000; broken down by nationality, many people migrated mainly from the Middle East and Africa, countries such as Syria, Eritrea, Afghanistan, and Morocco. Others have come from

former colonies, such as India and Pakistan, where immigrant communities already have roots in their former European colonial powers.⁵

Irregular migration is a cause for concern in many countries, not just for Western countries. A United Nations report found that almost all of the 146 countries surveyed considered irregular migration a problem, with 75% saying it was a major concern for their country.⁶

Irregular immigration has long been a major political issue in Western discourse. Jews who moved to what is now Israel from as early as the 1920s until the country's founding in 1948 were recognized by the British authorities who ruled the region as illegal immigrants who should be stopped or removed.⁷ There has been a continuous flow of labor migrants from Mexico to the US since the nineteenth century, as discussed in the previous chapter. They were highly prized as a useful marginal labor force. They were also arrested as undocumented immigrants and forcibly deported, in accordance with the supply/demand relationship in the US labor market, as plans to reduce undocumented immigrants were implemented on a large scale.

On the whole, however, irregular immigration arguably became a major political issue in the West after the 1980s. Large-scale recipients of immigrants during their post-World War II period of economic growth, wealthy Western countries shifted their policy focus to curbing the influx of immigrants in the 1970s. One reason why once welcomed immigrant labor came to be treated as a nuisance might be because of declining domestic demand for labor as the period of high economic growth from the 1950s to the 1960s ended. Especially as manufacturing industries in Japan and other Asian countries rapidly caught up to their Western counterparts, demand for factory labor declined, and Western countries' policies began to restrain immigration inflows. Another underlying factor may be that significantly lower costs for travel and information increased pressure on the illegal movement of migrants.

However, immigrant communities had already put down roots and had become familiar neighbors within their host country. They could not simply be taken as a marginal buffer mechanism in the labor market and driven out of the country. Even if a developed country prohibits the inflow of new immigrant labor, it cannot from a human rights perspective take a policy to essentially prohibit immigrants already in the country from bringing in their family members to reunite with them. Furthermore, once an immigrant community is established, a transnational network with its country of origin is also formed. Immigrant communities are able to assist compatriots from their homeland and provide them with a social niche that supports their livelihood after entry. As a result, people attempting to leave their home countries now have an environment in which they can make a living upon entering the country, whether they cross the border legally or illegally.

1.2 Post-Cold War Migration Policy

Moreover, in the context of the growing trend of neoliberalism since the 1980s, the end of the Cold War brought the overwhelming majority of people on earth into the

global market economy. In a world brought dramatically closer by the international movement of goods, capital, and information, the lives of the working class in affluent countries, which have been protected by various welfare systems and labor agreements, have become threatened by competition from “emerging market” countries, exemplified by China and India. Immigrants have come to be perceived as a threat to the livelihoods of working-class people in developed countries who are in a competitive relationship with immigrant labor in the labor market. Though they had been tolerated in the days when they were a relatively small, convenient marginal labor force, immigrant workers were now recognized as a social and economic problem, increasingly seen as targets to be cracked down on.

There is now an emphasis on irregular immigration in connection with public safety and national security issues. The tie between illegal immigration and drug smuggling has been viewed as a problem in the US since the 1980s; consequently, attention has been drawn to the domestic safety connections, as well. When large numbers of people suddenly stream in across the border in a disorderly manner, the resultant change in the demographic composition of the local community will be regarded as a threat to the existing residents. For example, Jewish settlers in the West Bank, the treatment of Palestinians in Jordan, and the increase in the number 6132240-6,132,240-of Muslims in Lebanon are all issues that have the potential to change the respective identities of the local communities. This was the context in which the immigration issue has traditionally been recognized as a security issue. The issue of undocumented immigration in the US was dramatically elevated to a national security issue and became a high-priority political issue with the terrorist attacks that occurred on September 11, 2001, and the ensuing series of “wars on terror.” Almost in parallel to this development, in Western Europe, where the end of the Cold War prompted the sudden disappearance of geopolitical pressure from the Soviet Union that had caused long years of stress, countries continue to struggle to integrate Muslim immigrants into society, despite making various efforts. It was against this background that Islamic nationals carried out shocking terrorist attacks in the United Kingdom and France; here, too, there was a growing tendency to designate immigration, especially irregular immigration, as a national security issue. This trend was further strengthened by the startling terrorist incidents in several countries on the heels of the 2015 refugee crisis in Europe.

As a result, parties opposed to unrestrained and excessive immigration such as the *Front National* (FN) formerly led by Jean-Marie Le Pen in France, the *Alternative für Deutschland* (AfD) in Germany, the UK Independence Party (UKIP) in the UK, and other political parties that in the past would have been treated as fringe parties and not been taken seriously, have steadily grown in power. Furthermore, Donald J. Trump, who received loud cheers on the campaign trail for claiming he would build a huge wall along the US-Mexico border at Mexico’s expense, won the 2016 US presidential election, against many media expectations. These developments attest to the fact that stronger measures to deal with migration, especially irregular immigration, is no longer limited to the calls of radical and racist fringe groups and has gained widespread popular support. In other words, anti-immigrant political movements are gaining democratic support and gaining strength in Europe and the US, which

remain powerfully influential in the international discourse. Even with the post-Cold War trend of globalization, measures to counter irregular immigration have become a national security issue for the Western world, where there were no imminent traditional geopolitical threats.

These irregular immigrants are in a vulnerable position. Having an illegal status in the country of residence, they are forced to make a living in the informal sector of the economy. So they are forced to endure poor working conditions, unable to receive medical care or other social security services, and constantly exposed to the risk of exploitation and abuse. They are unable to seek public relief for fear of being forced to leave. Not only is it a human rights issue for irregular immigrants, but it is also a socio-economic issue for the receiving country as a whole. Irregular immigration risks bloating the informal sector and increasing the criminalization of a country's entire economy, which in turn may intensify social problems, including issues of public safety. When this happens, it affects all people living in the same society. The societal exclusion of a fixed group of people from public services will see the growth of social divisions, the erosion of fundamental liberal democratic norms such as equality and the universality of human rights, as well as the widening of social rifts that weaken the country's unity.

1.3 Border Control—The US and European Examples

How will the state respond to prevent illegal entry? One possibility, naturally, would be to reinforce control of the borders and stop irregular movement of people before they enter the country. Ports were once the most important loci for national border control; international airports are the main entry points for the movement of people today. The passport and visa checks conducted at these places are supposed to confirm entry status and eliminate illegal entry. Even by land, conducting immigration inspections at several major checkpoints along the border while prohibiting passage through other points should also eliminate irregular migration.

However, the reality is that borders are much more porous than most people think, and there are many ways to bypass official immigration controls. The first is to smuggle people into the country physically. Crossing flat land borders is physically easy; crossing rivers and steep mountains is dangerous, but not impossible. Clandestine landings by sea on the destination country's coast is another possibility.

The state deploys police forces to guard its borders and coasts. The US, the country with the world's largest influx of undocumented immigrants, has also made significant efforts to control its borders. The US Border Patrol has its roots in the US Immigration Service's mounted watchmen system, which was established in 1904. The organization initially consisted of only 75 people whose role was to monitor the border with Mexico as required. In fact, the targets of the surveillance were Chinese immigrants, not Mexican smugglers, who would later become the most important target in America's efforts to combat irregular immigration. Although the Immigration Act of 1882 had effectively banned Chinese immigration, many Chinese

migrants attempted to enter the US through its poorly guarded border with Mexico after Mexico and Qing China concluded a Treaty of Amity and Commerce in 1899 and established regular sea routes between them. Although the Border Patrol was reorganized in 1924 into its current shape, it remained a small and fairly inconspicuous organization. The organization has expanded rapidly since the 1990s, becoming a sudden priority after the September 11, 2001, terrorist attacks. Employing 21,000 as of 2012, the Border Patrol, once an obscure law enforcement branch, has been thrust into the spotlight.⁸

The US border is long and passes through desolate desert and mountainous terrain; establishing physical barriers along all of it is impossible. Yet fences have been erected at strategic points, and Border Patrol agents monitor the border using state-of-the-art equipment, including electronic sensors, video monitors, and night vision scopes. Vehicle inspections near borders are also considered an important means of surveillance.

In the case of Europe, the Schengen Agreement concluded in 1985 liberalized the movement of people within EU member states in principle, so internal border controls within the area were basically suspended. At the time, some expressed concerns that the filtering function to monitor drugs and other criminal activity would be lost with the end of the existing border controls. The reality was that this border function had already been lost at borders internal to the EU. Regardless, the EU has liberalized the movement of people within the area and abolished internal border controls. Once that was secured, it placed an even greater burden on controlling the region's external boundaries. The incentive to enter an EU member state illegally grows because of the ability to move freely once inside the EU's Schengen area. Moreover, unless EU countries cooperate and coordinate their external border control systems, irregular migrants can enter through the least guarded of the area's 44,000 km sea and 9000 km land borders, allowing them to move freely throughout the EU.

The EU thus established the European Border and Coast Guard Agency (FRONTEX) to strengthen control of its border with the world outside the region. FRONTEX serves to strengthen the border management capabilities of EU member states, whose relevant government agencies basically carry out the actual border control work. FRONTEX assists by regularly conducting risk analysis to analyze and identify areas with high border control pressure, and through sending support personnel and additional equipment, as well as conducting information exchange and technical training.⁹ With the EU's eastward enlargement at the start of the twenty-first century, expanded border control capabilities of the countries involved had to take over a function which the Iron Curtain had played during the Cold War: restricting the movement of people at the EU's eastern border. This was arguably successful for the most part on the eastern border. But the EU's southern border is weak. Consequently, the EU has invested a concentration of resources, both human and technological, in countries such as Italy, Greece, and Malta.¹⁰

1.4 The Difficulty of Border Control

We have looked at border control in Europe and the US, where the pressure of irregular migrants to enter for economic purposes is strong. But border control is practiced by all countries around the world, including Japan. Developing countries generally have low border control capabilities, and countries with long land borders have a greater border control burden than island countries like Japan.

Therefore, physical border control has inherent limitations and often has an effect opposite to what was intended, even in the cases of Europe and the US, which have invested a relatively large amount of human and material resources and sophisticated management techniques. To begin with, it is technologically impossible to constantly monitor borders without fail. The reality is that border guards can monitor only a small portion of the entire border; they are destined to be unable to physically prevent every possibility of people sneaking across the border.¹¹ Irregular migrant labor is even more desirable for employers, as it is cheaper than hiring legal migrants, and it does not entail the hassle of preparing cumbersome documents.

We probably believe that even if only some clandestine entrants are detected, it will act as a deterrent and reduce future illegal immigration. The reality is, however, that even if they are arrested for sneaking across the border, the best we can hope for is their departure from the country, forcibly or voluntarily. Thus, they are apt to attempt entry into the country clandestinely once again. In such cases, deciding whether to smuggle oneself into a country becomes a matter of probabilistic cost-benefit calculation. It becomes a high-risk, high-return business; the stronger the demand for migrant labor, the greater the cross-border economic disparity between the countries involved, and the more stringently regulations with limited enforcement ability are imposed on both those being smuggled and those smuggling. The paradox is that, given the prospect of high profits, tightening border controls will encourage smugglers to continually devise new methods.

There is a tendency for authorities who crack down on smugglers to assess their success through arrests and seizures of contraband; when that happens, it may give rise to a strange symbiotic relationship. The more people who repeatedly attempt clandestine entry, and the easier it is to catch smugglers, the easier it will be to prove the importance of the organization by evaluating their achievements, thereby resulting in greater authority and budget allocation. Indeed, some argue that smugglers and regulatory authorities have a functionally interdependent relationship, given that “It’s now possible for a drug dealer to serve time in a forfeiture-financed prison after having been arrested by [US Border Patrol] agents driving a forfeiture-provided automobile while working in a forfeiture-funded sting operation.”¹²

In addition to physical smuggling, methods such as forging the required immigration documents are also used. Passports were just documents at first, but later photos came into wide use to authenticate people. With the right skills, it is possible to forge passports, since they are made of paper after all; falsification, such as pasting a different photo onto a stolen passport, is a widely used method. Today, passports in many developed countries, including Japan, contain integrated circuit (IC) chips,

making them even more difficult to forge. As this will likely give rise to new innovations in counterfeiting technology, it will not prevent counterfeiting indefinitely. Alternatively, a legitimate passport obtained by someone forging a birth certificate or other such document will not be detected at immigration inspection. In extreme cases, corrupt states themselves may become integrated with businesses that are parasitic to the rights and interests generated by regulation, such as smuggling and document forgery. For low-income civil servants employed by poor states in areas monopolized by state authority, there are strong incentives to become corrupt. There is also a dynamic at play that makes the issue of irregular immigration even more serious: as the risks and costs of crossing the border rise on stricter border security, undocumented migrants, who until then had repeatedly entered and exited the country for short periods of time, may remain in the country for longer periods of time once they have entered the country.¹³

In fact, the most common method of illegal entry is the overstay (illegal stay), in which foreigners who legally enter a country for tourism or business purposes do not depart by the end of the duration of stay and remain in the country. It is impossible to clamp down on this category of people through physical border control. The dramatic sights of people rushing across borders and of people being smuggled across the ocean, especially when they enter democratic countries, are an ideal subject for media coverage, and thereby provoke strong reactions from the migrant-receiving society. After entering the country legally, however, these overstayers are rarely in the spotlight, living inconspicuously on the fringes of society.

1.5 External Extension of Border Controls

Border controls have clear limitations, be it against the smuggling of contraband or of human beings, so states try to extend control beyond their borders. The liberalization of the international movement of goods and services, which has been the basic post-Cold War policy of Western countries, has naturally led to an explosion of the lawful movement of people across borders. Given the sheer scale of such cross-border movement, it is becoming nearly impossible to selectively screen out illegal migration at the border without disrupting legitimate entry.

States have therefore intensified their efforts to extend their border control outside their national borders, to detect unwanted immigrants before they reach their borders and prevent an influx. For instance, the governments of many countries, including the US, outsource some of the screening to private companies, obligating airlines and shipping companies to check the entry status of prospective travelers in advance and to submit passenger lists electronically. In addition, countries such as the US dispatch immigration officials to foreign airports to conduct preliminary screenings. This direction of control methods has expanded since the 9/11 terrorist attacks in 2001.

In addition to extending their border inspections abroad, receiving countries are developing efforts to strengthen sending countries' ability to control departees,

carrying out a variety of information exchange and technical assistance, thereby encouraging stronger crackdowns on clandestine migrants, smugglers, and human traffickers. For example, after the Iron Curtain fell, Germany provided financial aid to Poland, exempted Poles from visas, provided a certain number of Poles with work permits in Germany, and supported Poland's EU membership; in return, it sought to secure Polish cooperation with border control. Upon joining the EU, Poland—a member of the Warsaw Pact that opposed the West during the Cold War—now served as a buffer zone on Germany's eastern border, patrolling its northeastern border with British-made Land Rovers and Austrian-made rifles.¹⁴

Each time the EU expanded, there were concerns about the border control capabilities of its new member states, not just of Poland's. Once these countries joined the free movement area defined by the Schengen Agreement, it was feared that irregular migrants who entered those countries through their external borders would flow into the entire EU. Therefore, new member candidate countries were required to strengthen their border controls as a condition for joining the EU. Since the 1990s, the EU's control of its external borders has been strengthened, with prospective member states also actively cooperating.¹⁵

Another commonly used method is to facilitate the deportation of detected illegal immigrants with the cooperation of the relevant countries, such as by signing repatriation agreements with countries that send undocumented immigrants. For example, the EU is empowered under the Treaty of Amsterdam (1999) to enter into agreements with countries outside the EU to conclude deportation agreements for illegal immigrants. The purpose is to ensure that those refused entry can be deported; such agreements have been concluded with Hong Kong, Macao, Sri Lanka, and Russia.¹⁶

This external expansion of border control would not be possible without some kind of cooperation from foreign companies and governments, which requires something in return. If their cooperation on border control would simplify and speed up border procedures for passengers on their own flights and for those departing from their own countries, it would incentivize airlines and foreign governments to take over responsibility for immigration screening. States have also engaged in diplomatic bargaining, inserting conditions such as crackdowns on smugglers and stronger border security when concluding aid, trade, or visa exemption agreements.

1.6 Limits to Outsourcing—The Example of Spain and Morocco

However, there are limits to these sorts of measures. This can be better understood by looking at the following example. The Strait of Gibraltar generally divides the EU's external borders from Africa. However, in reality, two Spanish enclaves, Ceuta and Melilla, are situated on the African side, forming the only land border between the EU and Africa (see Fig. 1).



Fig. 1 Spain and its surrounding countries. *Source* Created by author

As with the US-Mexico border, the economic realities of Spain and Morocco are vastly different. The Strait of Gibraltar has been called “Europe’s Rio Grande.” There has been significant pressure on illegal immigration at this border, driven by the realities of Moroccan youth without hope. “Ask any teenage Moroccan male what his future will be and he will tell you he has three options: to escape across the sea to Europe; become a contraband dealer; or get into the hashish trade and end up either rich or in prison.”¹⁷

The illegal crossing of people and goods across the border between Morocco and Spain has largely been tolerated. Until relatively recently, Spain had been a rather poor country in Europe, and was a migrant sending country. But as a result of experiencing steady economic growth through the progress of democratization and Europeanization, the country has now begun to receive migrants. As long as the majority of migrants arriving in Spain were native Spanish speakers from South America, their presence did not become politically problematic.

Since the 1980s, however, as its economy grew and labor became scarce with economic liberalization, the country became increasingly dependent on low-wage

labor from Morocco. Initially, most of these Moroccan labor migrants simply entered Spain legally as tourists, then overstayed and sought employment illegally.

When Spain signed the Schengen Agreement in 1991, its border controls suddenly became more stringent. For Spain, which under the regime of General Francisco Franco had not been treated as a member of Western Europe, there was a strong political need to control the EU's external borders, to emphasize its identity as a major European country. All at once, the Spanish government tightened its border controls, employing cutting-edge technology as well as obligating citizens of Morocco and other Maghreb countries to obtain visas. Consequently, Moroccan migrants began to enter Spain by various illegal means. For example, smugglers in Tangier, a hub for smuggling between Africa and Europe for centuries, made a fortune by offering clandestine passage into Spain for \$700–\$1000 per person, as if they were travel agents.¹⁸ Of course, the journey is perilous, so when drowning victims from shipwrecks began to wash ashore on the Spanish coast, mass media across Europe began widespread news reports of irregular migrants from Morocco, which had previously received no attention.¹⁹

As a result, the Spanish government pressed the Moroccan government to clamp down on smugglers, threatening to cancel trade agreements if it did not.²⁰ The Moroccan government wanted to conclude a new fisheries agreement with Spain and strengthen economic ties with the EU. Therefore, in response to Spain's demand, it mobilized the military to guard the border, and carried out draconian crackdowns against smugglers while Spain was introducing harsher penalties for human traffickers.²¹ Due to strong pressure from the EU, the Moroccan government also softened its stance on illegal immigrants from sub-Saharan Africa who had entered Spain through Morocco. This reversed the previous policy of refusing to take back individuals that had been deported by Spain.

The irregular movement of people and goods, however, creates a symbiotic relationship between sending and receiving countries. It is true that Spain depends in part on low-wage labor from Morocco, and it actually benefits from smuggling, too. Ceuta and Melilla were originally fortresses built by the Spanish to monitor attacks from Islamic forces after they had been expelled from Spain. The border between the two cities and Morocco is the only land border between the EU and Africa. The EU has spent large sums of money building a double wall to monitor this border; even so, there is no end to the number of people who cross the border and enter these enclaves illegally. Furthermore, it is an open secret that Ceuta is a major hub for smuggling from Spain to Morocco, estimated to be worth \$2 billion, with Spanish warehouses lined up right next to the border. For Moroccans witnessing this situation, it is only natural that “no Moroccan finds it tolerable for Europe to ask Morocco to fight clandestine emigration and drug trafficking while a neighboring country like Spain allows its police and customs officers to stand by as merchandise flows illegally toward Morocco.”²²

Influential figures in the Moroccan government close to King Hassan II were involved in drug smuggling, according to a study secretly commissioned by the European Commission in 1995, which concluded that the measures taken in the early 1990s were merely for show.²³ Even if countries already sending poor irregular

migrants had the ability to continuously crack down on clandestine routes in an effective manner, there is little incentive for them to do so.

Moreover, even if a state is able to strengthen external control of its borders with the cooperation of its neighboring countries, it would then be necessary to control the borders with countries outside of those neighbors. For example, in the case of Morocco and Spain, when border controls between the two countries were tightened, clandestine migrants who had transited through Morocco began attempting to smuggle themselves into the country by the more dangerous route from Mauritania to the Canary Islands. Once Spain managed to secure cooperation from Mauritania after negotiations, clandestine migrants heading to Europe went further south, leaving from Côte d'Ivoire and Senegal. Needless to say, these routes are even more perilous.

In other words, even if border control is extended externally covering a wide area, the problem then becomes control of the borders external to that area. Logically, the challenge of controlling external boundaries will not go away unless a global system of control is established. Also, in order to extend its border control externally, a state must secure cooperation from the countries concerned, which inevitably requires diplomatic negotiations, and in many cases, necessitates compensating the other countries in some form. Since the flow of irregular migrants is, above all, caused by large economic disparities between sending and receiving countries, that pressure is difficult to resist through the border measures of impoverished sending countries.

1.7 Internal Restrictions

If it is the case that border controls have limitations, there will be an elevated need to crack down on irregular migration within the borders. One possibility, for instance, would be to crack down on illegal overstayers through random checks of identity documents (ID) on the street. Such crackdowns are, in fact, carried out sometimes in France, in Paris subway stations and immigrant areas. Its effectiveness is highly questionable, however, and it provokes a wide range of opposition in liberal democracies, not from minorities alone.²⁴

Usually, a measure considered to be more effective is to impose restrictions so that domestic employers are unable to hire undocumented migrants. Without job opportunities, people taking risks to enter a country as irregular migrants have no incentive to enter illegally. The reason why US measures against undocumented immigrants from Mexico have been inadequate is they have failed to deal with the reality that some economic sectors in the US, agriculture foremost, have depended on the low-wage labor of such irregular migrants. If this is the case, a possible policy measure would be to exclude irregular labor from the job market by requiring employers to check employment permits and imposing penalties for violations.

This method has been implemented quite thoroughly in Germany, for example. Germany makes resident registration compulsory and issues ID cards on that basis. All job seekers must present an ID card, and employers are obligated to report this number to the Federal Employment Agency. This arrangement is required not only

for employment, but also for acquiring various qualifications and even opening a bank account. In addition, services such as education, social welfare, labor, and justice are also linked to resident registration, so this is significant.²⁵ The US, too, for the first time introduced provisions to sanction employers for hiring unauthorized immigrants with the Immigration Reform and Control Act (IRCA), passed in 1986 after long and difficult deliberations that began in the administration of President Gerald Ford.²⁶

However, there are questions about how successful these systems for sanctioning employers have been. First of all, verifying employment qualifications is not that easy. It would have been easier to put this system into practice in continental European countries, such as Germany, which was cited above, as there is a basis for such regulations to be accepted as a matter of course. However, methods for pursuing employer accountability are politically controversial in nature in the US and the UK. American conservatives, advocates for small government, would be strongly opposed to the federal government's control over citizens' lives. There is still resistance to a nationwide ID card system in the UK, where it is not even compulsory to carry a driver's license. In addition to such libertarian opposition, human rights groups would also be expected to oppose such a system. Moreover, since the IRCA was passed, the number of unauthorized immigrants in the US has not decreased dramatically. On the contrary, it almost tripled from an estimated 4 million in 1986 to over 11.5 million people a quarter century later. Looking at these figures, the system of employer sanctions has arguably not achieved the results expected in the US.²⁷ The failure of this system provided the backdrop for candidate Trump's popularity during the 2016 presidential election as he boasted that he would build a border wall at Mexico's expense.

Moreover, the introduction of such regulatory measures will certainly encourage people to circumvent the system through means such as forging documents. In the case of the US, the IRCA stipulates that employers who "knowingly" hire undocumented immigrants will be held accountable, yet it is difficult for employers to verify work eligibility because, unlike Germany, there is no uniform system for resident registration and ID cards nationwide. Rather, it is even said that fraudulent documents to prove employment eligibility became a growth industry overnight. In addition, some employers used this provision to force illegal immigrants to work in poor working conditions.²⁸ Since irregular immigrants cannot seek public redress even if they are exploited under illegal working conditions, the result is to encourage illegal acts by unscrupulous employers who have no intention of complying with the employer accountability provisions in the first place. In other words, irregular migrants have been driven to the more shadowy parts of the informal sector of the economy, leading to an expansion of the black market for labor.

1.8 Deportation

Even if irregular immigrants are detected, it is not always easy to deport them. Yet there are many cases where large-scale deportations have actually been carried out. New governments in Nigeria announced in 1983 and 1985 the expulsion of irregular immigrants and the closure of the country's borders against the backdrop of a sharp decline in oil revenues. This prompted a chaotic rush to the border of people trying to leave Nigeria for their neighboring countries of origin, such as Ghana. There have been frequent large-scale forced repatriation measures in the Middle East, as well. From time to time, there would be a tightening of the rather vague standards on irregular immigration, which had been tolerated up until then. For example, Egyptian workers have been expelled from oil-endowed Libya every time ties fray between the two neighboring countries. Even in Europe, there is a historical record in Eastern Europe and the Balkans of ethnic minorities being persecuted and forced into exile.²⁹

The US has also frequently deported illegal immigrants from Mexico since the 1930s. One of the most well-known is *Operation Wetback*, which the Dwight D. Eisenhower administration carried out in 1954 using military veterans to round up and forcibly repatriate approximately 1 million Mexicans. Candidate Trump advocated such a large-scale deportation again during the 2016 US presidential election. In contrast, there is almost no support for that sort of mass deportation in Europe, which prioritizes human rights. Perhaps it is difficult to accept, too, because it brings to mind Germany's forced internment of Jews and Gypsies (Roma people) during World War II. France and Germany, however, have encouraged some people to leave the country voluntarily by offering financial support.

Setting aside the merits of deportation, it is extremely difficult to actually repatriate irregular migrants to their countries of origin. Unless their cooperation has been secured through a deportation agreement or other means, there is a possibility that these countries may refuse to take their people back. Even if there is cooperation, such measures would likely face opposition from existing immigrant communities and could also have a negative impact on diplomatic relations with the countries of origin. Indeed, Mexico has always had a strong distrust toward unilateral measures taken by the US.

In addition, even though undocumented immigrants were staying or working "illegally," this cannot be called a "crime" in a common-sense meaning of the word. That people working and living together in one society can be forced to leave their homes and be deported just because they do not have documents is, from the perspective of civil society that is supposed to be made up of equal individuals, not a comfortable situation, to say the least. Human rights organizations and minority groups naturally object to this. Furthermore, carrying out forced deportation even for irregular migrants who voluntarily return to their home countries entails costs and is also an administrative burden. To make matters worse, their deportation can have a major impact on the economy as a whole, let alone on the sectors that had depended on their labor. Some estimates hold that if the US actually deported the approximately 11 million undocumented immigrants from Mexico, as Trump advocated during the

2016 presidential election, it would need approximately \$400 billion in new federal spending, and that the US gross domestic product (GDP) would decline by about \$1 trillion.³⁰

1.9 Legalization

The inability of a country to prevent illegal entry and to deport people to other countries gives rise to the situation where people live in the country and are employed who rightfully should not be. One possible way to normalize this situation is to legalize the status of the undocumented immigrants and include them in the legal system. Various countries have implemented a process whereby they recognize as a *fait accompli* the people who have already entered the country and have lived there for a considerable period of time, clear the record of the circumstances of their irregular entry, and grant them legal status (Table 1). In Germany, there was a strong resistance against legalization on the grounds that it would effectively ratify previous illegal acts and undermine the authority of legal norms. Yet even Germany was forced to carry out *de facto* legalization in a limited manner for humanitarian reasons to allow people to receive public services in certain areas such as medical care.³¹

These sorts of legalization measures are limited to aliens unlawfully residing in the country at a specific point in time. In some cases, legal status is provided only to undocumented immigrants who meet certain eligibility criteria, such as being

Table 1 Examples of legalization (1960–1992)

Country/Area	Year(s)	Number of people legalized
Canada	1980	11,000
Venezuela	1980–81	351,000
France	1981–82	124,000
Argentina	1984	142,330
Gabon	1985	110,000
Italy	1987–88	105,176
Spain	1985–86	43,815
US	1987–88	3,000,000
Spain	1991	108,848
France	1992	10,000
South Korea	1992	61,000
Malaysia	1992	320,000
Taiwan	1991–92	22,549

Source Bernstein, Ann and Weiner, Myron eds. 1999. *Migration and Refugee Policies: An Overview*. London: Pinter, 37. © Bloomsbury Publishing Plc. All rights reserved. This table is not governed by the same OA CC BY-NC-ND 4.0 license as this book

of a particular nationality or being employed in a particular industry. Such legalization regimes are usually implemented in conjunction with other measures, such as tightening restrictive measures against people who do not meet these eligibility conditions. They are also emphasized as being an exceptional, one-time measure. Failing to take such actions, it is feared, would not only lead to a loss of legal consistency, but would also undermine the credibility of the system and even encourage further inflows of irregular migrants.

The aforementioned IRCA in the US stipulated the legalization of irregular immigrants with 1982 as the cutoff date for eligibility together with undertaking the subsequent pursuit of employer sanctions and tightening of border controls. As a result, the US border control budget has expanded significantly: from just under \$700 million in 1986, it more than doubled in a decade; spurred on after the September 11, 2001, terrorist attacks, it reached \$11 billion dollars by 2012.³² When Venezuela legalized immigration in 1980–81, authorities announced legalization measures followed by the announcement of a large-scale crackdown on irregular immigration. The Gabonese government's 1985 legalization measures included the threat of deportation for undocumented migrants who did not register.³³

In the US case, approximately three-quarters of eligible people applied for legal status, and 90% of them were approved. As a result, nearly 3 million people actually gained legal status in the US; their wages rose, the number of poor households decreased, and educational standards and employment conditions improved.³⁴ In that sense, the IRCA can be seen as a fairly successful policy. Yet the influx of new undocumented migrants, mentioned earlier, meant that the scale of irregular immigration expanded significantly rather than shrinking. In the case of Venezuela, out of a total population of 13.5 million, it was estimated that there were between 1.2 million and 3.5 million undocumented immigrants. Yet only 350,000 people applied for legalization and only 6000 people were detected in the ensuing crackdown. Also, many people did not respond to this measure in the case of Gabon. A large part of the reason for this failure of legalization efforts is the undocumented immigrants' mistrust of authorities. Being in a vulnerable position, they fear that filing an application will put them at a disadvantage because the authorities will find out about their illegal status.

Another reason why these legalization regimes do not work as well as expected is that their eligibility requirements are often vague, so it is sometimes difficult to prove one's eligibility. Some undocumented immigrants who could be legalized do not apply if some family members do not meet the qualifications, another drawback to such regimes.

Consequently, writing off previous irregularities in what was supposed to be a one-off measure has actually been carried out numerous times. Although this has stabilized the legal status of many people, it has most likely damaged the credibility of the system, itself.

1.10 Sisyphean Dilemma

This section has discussed how dealing with illegal immigrants is a challenge fraught with limitations and dilemmas. Borders are more porous than generally imagined; physically preventing clandestine immigration is actually not easy. It is increasingly difficult to detect illegal immigration in today's world with the active growth in the movement of people and goods. Moreover, border measures cannot eliminate the sort of irregular immigration that often occurs when people who have entered the country legally remain illegally.

Extending border control externally is a powerful strategy for, without question, greater efficiency can be gained from bilateral or regional cooperation than from unilateral border measures. However, achieving international cooperation requires a certain degree of diplomatic leverage against the other country, which is not always possible. Even when sending countries make serious efforts, the problem will likely then become how to control the border beyond those countries.

It is necessary to bolster internal restrictions in addition to extending controls externally, but there are limits here as well. Weakening the labor demand for illegal immigrants through employer sanctions is effective, but its effectiveness depends largely on the domestic institutions involved; it may also have the effect of pushing irregular immigrants deeper into the black market.

Legalization, providing legal status to undocumented immigrants, is ultimately only a temporary stopgap measure unless new illegal entry can be prevented by other means. Otherwise, if legalization creates the expectation that once a person enters the country and continues to live there for a certain period of time, it becomes a fait accompli, it perversely provides a stronger incentive to enter the country through illegal means even at greater risk.

In any case, just as there is no definitive way for a state to crack down on all illegal activities by its own citizens, there is virtually no definitive way for it to stop illegal immigration, barring taking extreme steps amounting to national isolation. The best the state can hope for is to minimize the problem by appropriately combining various measures, taking into account the economic, political, and moral costs and benefits. And here, the degree of social acceptance of irregular immigrants in the state, as well as its diplomatic relations with sending and transit countries, hold important significance. And yet, even if a state enacts policy measures to simultaneously reinforce border controls, reduce incentives for illegal immigration while establishing pathways for legal immigration, and strictly sanction employers for hiring undocumented migrants, it is inevitable that a certain number of people will deviate from this system. It is necessary to design and draw up policies and institutions on the basis of this reality.

2 Refugees

2.1 *Who Are Refugees?*

In general, refugees are people who cross national borders to escape persecution or conflict in their home country and seek protection in another country. According to the principles of the order of sovereign states, each territorial state should be responsible for protecting the basic needs of its people. In reality, however, the state in control of a territory may not have the ability or will to protect the people within it, or the state itself may actively suppress them. There are also some people who, even if they do not move themselves, become minorities in a new territory due to the movement of borders. These people, to escape ethnic or religious oppression, have often migrated across borders to the homelands where their fellow countrymen live. Thus, refugees are people fleeing conflict or civil war; people fleeing the dangers of a complete breakdown in order due to the failure of a state; and people fleeing oppression by the territorial state itself for religious, ethnic, or political reasons.

Refugees are an exception to the principles of the order of sovereign states, in which each territorial state is responsible for protecting its own people. Seldom do they obtain a passport or visa and attempt to cross the border through normal immigration procedures. In that sense, they can also be considered a type of irregular migrant. The appearance of refugees is by no means a new phenomenon; in fact, it can be traced as far back as the history of countries and borders. A well-known example from European history involves people crossing borders to escape religious oppression caused by the conflict between Protestants and Catholics after the Reformation, which I mentioned in the previous chapter. That the English Puritans and members of various Protestant sects fled to America to protect their faith is also well known as part of the story of the founding of the US. Furthermore, the protection of people fleeing their own countries for political and ideological reasons in the world divided by the US-Soviet Cold War—a twentieth century version of religious division, as it were—was the central theme of refugee issues in the West.

2.2 *Dissolution of Empire and Refugees*

Nationalism, the belief that one nation of people should have one state, became more influential and spread from Europe to the rest of the world beginning in the latter half of the nineteenth century. As a result, states that had been ruled by the tenets of empires or dynasties were reorganized according to the principle of national self-determination. Ethnic minorities within these new nations, in many cases, were forced to cross national borders and settle. A well-known case is the mass of people who left their familiar places of residence to move across the newly drawn national borders in vast areas of the Balkans and the Middle East when traditional multiethnic empires were dismantled and reorganized into ethnic states as a result of World War

I. Many tragedies occurred upon the dissolution of the Ottoman Empire, for instance, amid the confusion and conflict between Greece and the new Turkish Republic. Both countries forced residents to move from their respective territory to the other in an attempt to fit the ethnic distribution within the new borders (see Chap. 5, Sect. 1).

It was not in the Ottoman Empire alone that the dissolution of empires generated refugees. In vast regions of Asia and Africa, large numbers of refugees also emerged from the newly formed states that became independent as a result of the dissolution of European and Japanese colonial empires after World War II. These newly independent states emphasized a national/ethnic identity as a principle for their political integration and so ethnic minorities within these countries often moved abroad to avoid danger. An enormous tragedy occurred when India and Pakistan separated and became independent in 1947; according to one explanation, more than 1 million people lost their lives in the riots and massacres that broke out amid the chaos that ensued when over 10 million refugees crossed the border between the two new states. In Africa, many people from the Indian subcontinent who had settled in East African countries under British imperial rule fled abroad as refugees. There are numerous records, too, of the many Chinese people who fled the country because of the Chinese civil war and the founding of a Communist state that took place after Japan's defeat in the war.

The end of the Cold War saw the collapse of the Soviet Union as well as the breakup of states within the Soviet sphere of influence; here too, the ensuing reorganization of national borders has been accompanied by ethnic conflicts and given rise to outflows of refugees in many regions. In addition, in Africa and the Middle East, a series of failed states appeared where the state itself disintegrated and effective central authority dissolved. Fleeing from the resulting chaotic anarchy, hordes of people flocked to the border, often starving, in search of richer and safer places, a scene that was oft repeated.

2.3 Enlarging the Concept of Refugee

There are well-established international norms and rules regarding the protection of refugees, even with their irregular status; the discretion of states regarding the entry of asylum seekers is limited. Once recognized as a refugee, a person can obtain a certain legal status, which puts them in a more privileged position than other undocumented immigrants, as well as those unable to leave their homeland. Their rights to certain protections from host countries and international organizations are recognized.

Furthermore, the scope of people who should be internationally protected as refugees has been steadily expanded. Internally displaced persons (IDPs), who are forced to move within a country though they do not cross borders, are increasingly recognized as a problem that requires the international community to address. In contrast, as the number of refugees has increased by an order of magnitude, there has been a rising trend since the 1980s to make refugee recognition generally more

stringent. In addition, policy responses have moved beyond humanitarian relief operations with the growing tendency to perceive refugees as a political issue or, in some cases, a security issue that includes the use of military force.

2.4 *Refugee Convention*

The core of the post-World War II international institutional framework for refugees is the UN Refugee Convention concluded in 1951.³⁵ Arrangements for the protection of refugees had already been made under the League of Nations, during the period of turmoil following the Russian Revolution in 1917, for example. The content of these arrangements was limited, both geographically and temporally, as each country responded to the specific needs. The Office of the United Nations High Commissioner for Refugees (UNHCR), the core organization of the regime for refugee assistance, was later established as an agency (or rather, an official) within the UN General Assembly. Its original mission was limited to providing legal protection to individuals persecuted by the state; that it would carry out large-scale refugee relief projects had not been envisioned. World War II had resulted in a large number of refugees in Europe, including those forcibly relocated by the Nazis. Against this backdrop, the issue of refugee protection was raised at the United Nations Human Rights Committee, and the UN General Assembly in 1950 adopted a resolution (A/429) to convene a separate Conference of Plenipotentiaries to discuss and consider a permanent refugee convention. The UN General Assembly itself did not adopt this draft convention with the aim of leaving room for non-UN member states to participate in the convention.

Thus, the Conference of Plenipotentiaries, attended by representatives from 26 states, was held in July 1951, and established what became known as the Refugee Convention. Article 1 paragraph 2 of the Convention defines refugees as people who “as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” cannot avail themselves of the protection of their country of nationality or of former residence. Furthermore, Article 33, paragraph 1 stipulates that “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” This is the principle of non-refoulement, the cornerstone of the 1951 Convention. The second paragraph of that Article provides exceptions to this principle for refugees for whom there are reasonable grounds to believe that they are a danger to national security, or for refugees who have been convicted of a serious crime.

It is clear from the qualification “as a result of events occurring before 1 January 1951” that the convention originally had in mind the refugees who had arisen as a result of World War II, mostly in Europe, and did not anticipate the large number of refugees who would later appear in Asia, Africa, and other regions. UN General

Assembly Resolution 2198 (A/XXI/2198) in 1966 took note of the draft Protocol Relating to the Status of Refugees and requested that the text be sent to states to enable them to accede to it, and the protocol entered into force in 1967. The Protocol eliminated the time period qualification of the Refugee Convention, but more importantly, the UNHCR’s mandate continued to expand in response to actual needs in Asia and Africa. Thus, the mandate now includes the protection of people who fall outside the definition of refugee as set out in the Refugee Convention, such as IDPs, and refugee measures have expanded to include long-term, comprehensive activities such as the development and stabilization of potential refugee-sending countries.

2.5 Magnitude of the Refugee Issue

The number of refugees in the world, according to UNHCR, is as follows³⁶ (Fig. 2).

The total number of forcibly displaced people worldwide was an estimated 65.6 million as of 2016—a number that made it the 21st most populous state in the world at that time, greater than the total population of the UK. This includes 22.5 million recognized refugees, approximately 40 million IDPs, and an additional 2.8 million asylum seekers. In contrast to the total (stock), 10.3 million people were newly forcibly relocated in 2016 (flow), of which 6.9 million were IDPs and 3.4 million were new refugees and asylum seekers. During 2016, approximately 190,000 people were resettled in third countries and more than 550,000 returned to their home countries. Approximately half of the world’s refugees are children below the age of 18.

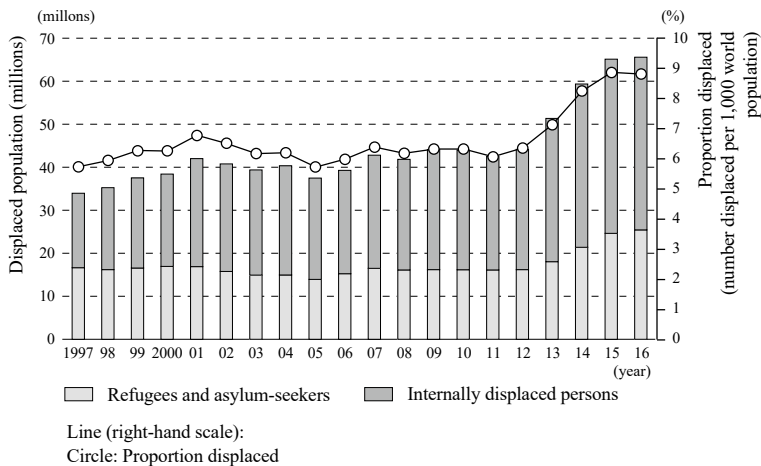


Fig. 2 Trend of global displacement and proportion displaced (1997–2016). *Source* UNHCR. 2017. *Global Trends: Forced Displacement in 2016*, 6

The top five source countries for refugees account for over 55% of the world's refugee population: Syria, Afghanistan, South Sudan, Somalia, and Sudan (Fig. 3). The configuration of refugee-sending countries is relatively stable. Syria is the world's largest refugee-sending country, having sent 5.5 million refugees around the world since civil war broke out in 2011 in the wake of the Arab Spring. Afghanistan has also been plagued by intermittent conflict since the late 1970s, and as a result of this conflict it too has been a major source of refugees for over 30 years since the 1980s. As a result, there are still 2.5 million Afghan refugees around the world (as of the end of 2016). Myanmar, a country that is more familiar to Japanese people, is the eighth largest refugee-sending country in the world.

An often overlooked fact is that the majority of refugee-hosting countries are not affluent countries in Europe, the US, or Japan, but developing countries located around these refugee-sending countries (Figs. 4 and 5). Among the countries hosting the largest refugee populations in the world, Turkey tops the list with a total of 2.7 million people at the end of 2016, an increase by about 400,000 in 2016 alone. It is followed by Pakistan, Lebanon, Iran, Uganda, Ethiopia, and Jordan.

In summary, people leave their homeland to escape hardship when civil war or conflict severely degrades governance in their country. Many of them remain within the borders as IDPs, but some flee to neighboring countries, where they register as refugees at UNHCR-established camps and remain there. This is the general picture that emerges from the facts. The images of refugees pouring into Europe from Syria, Afghanistan, and other places in 2015 suddenly captured the attention of international media, but the problem of refugees had been escalating long before many of them had arrived in Europe. The refugee problem from a global perspective is that the majority of refugees live in poor developing countries near conflict areas, where they remain for long periods of time.

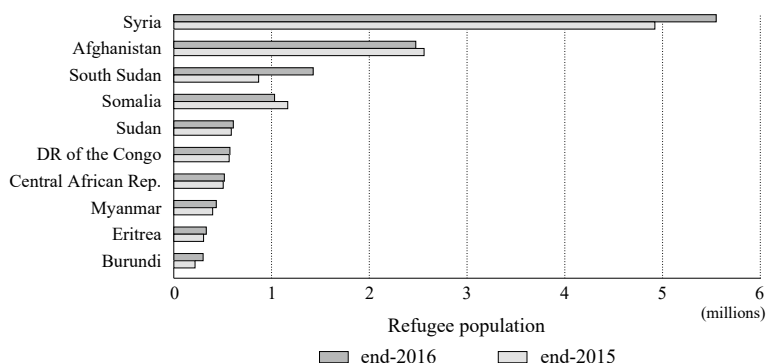


Fig. 3 Major source countries of refugees. *Source* UNHCR. 2017. *Global Trends: Forced Displacement in 2016*, 17

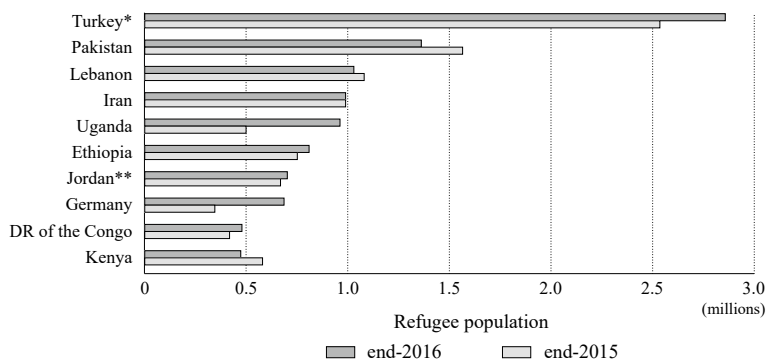


Fig. 4 Major refugee-hosting countries. * Refugee figure for Syrians in Turkey was a government estimate. ** Includes 33,100 Iraqi refugees registered with UNHCR in Jordan. The government estimated the number of Iraqis at 400,000 individuals at the end of March 2015. This includes refugees and other categories of Iraqis. *Source* UNHCR. 2017. *Global Trends: Forced Displacement in 2016*, 5

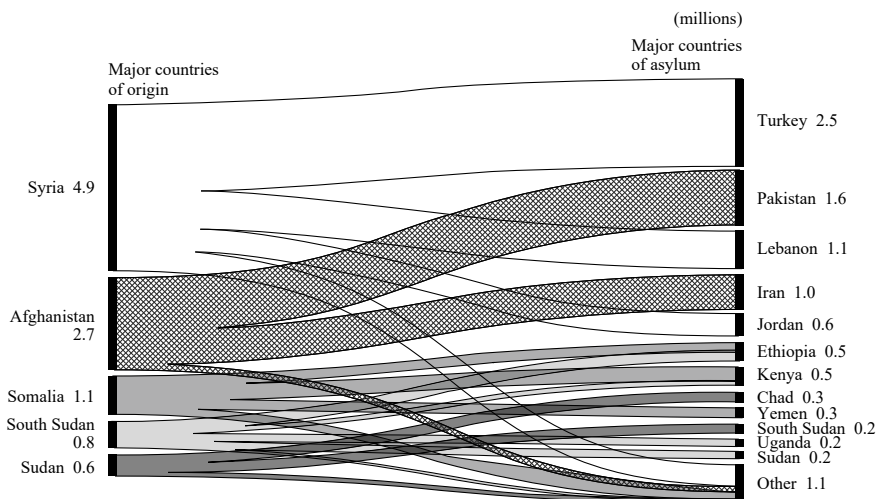


Fig. 5 Where refugees from top 5 countries of origin found asylum (end-2015). *Note:* In 2015, the majority of refugees were able to find asylum in neighboring countries. Of the 10.1 million refugees from the five highest countries of origin, all but 1.1 million (11%) found safety in a neighboring country. This is the case for most of the refugee populations of concern to the UNHCR. *Source* UNHCR. 2016. *Global Trends: Forced Displacement in 2015*, 21

2.6 Recognition and Protection

States cannot refuse entry to refugees, according to the provisions of the Refugee Convention, mentioned above. Refugee status determination (RSD)—deciding who

is and who is not a refugee—in the case of developed countries, is made by each country's refugee screening officers after examining each individual case. For poor developing countries, the UNHCR may shoulder the RSD duty and grant "mandate refugee" status. In addition, a mass influx of refugees is, for the sake of convenience, granted the provisional status of *prima facie* refugee. They are either provided UNHCR assistance in limited areas such as refugee camps or are registered as asylum seekers and later it is determined whether they are recognized as refugees. For individual refugees to be able to provide solid evidence proving their eligibility is rather rare, naturally, and there is rampant document forgery. Asylum seekers' claims are questioned, and determining their credibility necessarily is largely at the discretion of the host country's authorities and screeners.

Processing the asylum applications of a sudden mass influx of refugees places a burden on the administrative capacity of the receiving country. At the height of Europe's refugee crisis in 2015, Germany received over 440,000 new asylum claims, the largest number in the world, more than double the number of claims the year before.³⁷ Other countries hosting a large number of refugees are in similar situations, which means the backlog of applications as well as the time to make a final determination have both increased. Not all asylum requests are approved. The recognition rate varies widely, reflecting differences in the attitudes of each country, but globally, the recognition rate has ranged between 30 and 60% since 2000.³⁸ Approximately 600,000 people applied for asylum in the EU-28 countries during the 2015 refugee crisis. About three-fifths of them ultimately gained the right to stay in the host country, although that includes those who did not meet the refugee criteria but were deemed worthy of protection, a status variously called complementary (or subsidiary) protection or protection on humanitarian grounds.

Once granted refugee status, refugees are in a position to receive formal support to remain in the country of asylum. Many refugees do not receive generous daily support, however. Looking at housing, for instance, only a small percentage of the total refugee population lived in refugee centers similar to those found in some developed countries as of the end of 2015, according to UNHCR statistics. The majority live in refugee camps or in individual accommodations. However, many of these accommodations are no more than tents or shacks that barely provide protection from the elements.³⁹

There are generally three possible paths for refugees to return to a normal life. The first is voluntary repatriation. The most desirable solution for the refugees, the host country, and the country of origin is for the situation in the country of origin to improve enough to enable refugees to return home and rebuild their lives there. To this end, the UNHCR has prepared a repatriation support program to assist in resettlement by providing daily necessities and funds to pay for the purchase of land upon return.⁴⁰ As a result, approximately 550,000 refugees from Afghanistan, Sudan, Somalia, and other countries returned to their countries of origin in 2016. Difficult conditions must be met for this to happen: conditions on the ground improve, the local government agrees to the repatriation, and the refugees themselves agree to return home. In other words, many refugees cannot return home until stability is restored in regions where

civil war continues and states have failed. In fact, the 550,000 voluntary returnees represent only a tiny fraction of the more than 22.5 million refugees worldwide.

The second path is resettlement in a third country. If repatriation is not possible because conditions in the country of origin have not improved (and the country of asylum is not suitable), resettlement in a third country is an option. In 2016, 37 countries accepted nearly 190,000 refugees for resettlement. The majority of host countries are affluent, traditionally immigrant-receiving countries, such as the US, Canada, and Australia, which accounted for more than 80% of the total. The total number remained fewer than the number of voluntary returnees even though a high-level international meeting was held in 2016 and resettlement quotas nearly doubled.⁴¹ As a result, many refugees will have no choice but to take path three: to settle in their countries of asylum. Yet this local integration is not an easy task, either. This is clear looking at the current situation in affluent, liberal Western countries, the loudest advocates for human rights and democracy, where despite considerable efforts, the problem is becoming more serious and anti-immigration political parties are on the rise.

2.7 *People with Unrecognized Status*

What happens to those who are not recognized as refugees? Indeed, it is true that mixed in among the many asylum seekers are those who lie about their nationality, are fugitive criminals, or are simply economic migrants rather than refugees. The international refugee regime's official stance is that, since the screening country has determined that these people face no danger requiring protection, they should return to their country of origin barring some other circumstances. German Chancellor Angela Merkel, who was praised for her noble idealism when she said in September 2015 that "[t]he right to political asylum has no limits on the number of asylum seekers,"⁴² just one year later stated, "The most important thing in the coming months is repatriation, repatriation and once more, repatriation." Merkel then worked out a plan to speed up the deportation of migrants denied asylum status.⁴³

Forced deportation is largely ineffective in practice for a variety of reasons. Capturing illegal overstayers already in the country, detaining them, and forcibly deporting them is a costly task, as is easily imagined. Experience has taught us well, moreover, that it has no significant effect for all the effort. A prime example of a mass deportation is the aforementioned *Operation Wetback*, in which the US literally did a mass roundup of undocumented Mexican immigrants and expelled them across the border in the 1950s. The limits of this approach are clear judging from the rise in the number of undocumented Mexican migrants since then. Furthermore, such coercive measures entail significant political costs for liberal states because they are viewed as problematic from a human rights and humanitarian standpoint.

Returning countries, therefore, must encourage rejected applicants to choose voluntary repatriation, but this requires efforts such as convincing them that their country of origin is safe and offering financial incentives to return home. The

returning countries also need to secure acceptance from the returnees' destination, so they must diplomatically engage the government of the country of origin to negotiate so that arrangements are in place to accept the returnees and to ensure their safety. It is natural that, here too, diplomatic bargaining will be carried out and that returning countries will need to offer incentives.⁴⁴

However, these people, who at great risk have already fled their own country to try to carve out a new life in a foreign country, will not simply return voluntarily. They might try to obtain refugee status in another country seeking better chances for protection. A significant number of asylum seekers who arrived in Europe from Syria and Afghanistan, in fact, kept moving from one country where they were denied refugee status to the next, hoping to obtain some form of resettlement rights. Since intra-regional movement is liberalized within the EU, the member states have adopted what is known as the Dublin system, so that once a person has filed an application for asylum with one EU member state, no other state need examine that claim. For this system to work, asylum seekers must undergo fingerprint registration and verification and various other procedures in order to officially apply for refugee status; but this system is too complex, is not understood by many asylum seekers, and is not actually working as intended. They will keep moving towards countries where they believe they will have easier access to refugee status and better treatment.⁴⁵

The reality is that many rejected applicants under these conditions end up as irregular immigrants. A 1992 study found that 80% of all asylum seekers continued to stay in the country even though only 25% of their asylum applications had been approved.⁴⁶ It is difficult to fully grasp the reality of people such as these, who find themselves in an unstable situation in which they have no legal right to stay in the country, yet deportation orders are not enforced in accordance with the law. Often these people will be forced to conceal themselves in their ethnic or religious communities and find a niche to eke out a living in the informal sector, away from legitimate, public society. And so, it would not be surprising if some of them even secreted themselves deep within underground society, such as criminal or terrorist organizations.

2.8 Externalizing Refugee Processing

As the definition of refugee expands, refugees have flooded national borders on a scale incomparable to when the system was first created. Faced with this situation, even countries with lofty ideals frankly want to keep this influx of refugees in check. Tightening refugee recognition criteria, however, does not make it possible to exclude people who actually enter the country and apply for asylum, as we have already seen. One policy vector that has emerged from this is for states to move asylum applications outside of their own territory.

Some European countries have granted special legal status to some of their international airports, restricting the right of people who land there to apply for asylum and exempting them from the non-refoulement principle. As a result, there have been

cases of asylum seekers with their legal status in limbo staying in airport transit areas for long periods.⁴⁷ For example, Iranian Mehran Karimi Nasseri, who became widely known for being the model for Steven Spielberg's film *The Terminal*, actually lived at Charles de Gaulle Airport for 18 years starting in 1988.⁴⁸

States have also made attempts to examine asylum claims in locations away from their territory and closer to the refugees' countries of origin, apprehending asylum seekers at sea before they land, or extending their refugee processing functions abroad.

For instance, the US has struggled since the 1960s to rein in undocumented immigrants from Haiti seeking to escape oppression and poverty. The US government began taking measures to do so under a 1981 agreement with the Haitian government: the US Coast Guard would intercept refugee ships from Haiti on the high seas and hand the passengers over to the Haitian side without conducting a full-fledged review to determine whether they deserved to be protected as refugees. These measures resulted in 364 Haitian ships seized and 21,000 Haitians repatriated in the 10 years from 1981 to 1990. Only six of these people were formally interviewed by US authorities as having a high likelihood of being a refugee. When political upheaval in Haiti in 1991 precipitated a surge in the number of Haitian ships heading to the US, the passengers were transferred to Guantánamo base in Cuba rather than to the US. The US took measures to deport them to Haiti without applying the principle of non-refoulement, on the grounds that Guantánamo is not the US (it only has a lease; sovereignty lies with Cuba). Those measures sparked strong protests from human rights groups from the beginning and were challenged in the US Supreme Court, but in the end the federal government won the case.⁴⁹

The US is not the only state to round up asylum seekers at sea and then detain them outside its territory; Australia, too, has taken such measures in its struggle to deal with stowaways transiting through Indonesia from Asia and the Middle East. In 2001, Australia was involved in the *Tampa* affair, where it refused to allow the Norwegian freighter to dock or its crew to land after it had rescued asylum seekers from Afghanistan at sea. People who attempt to enter the country risking their lives at sea are subject to humanitarian protection, yet they are also clandestine migrants who must be kept under control. Australia was denounced for its inhumanity whereas the *Tampa's* captain, who sailed to Australian territory at the wishes of the stowaways, was honored with the Nansen Refugee Award (awarded by the UNHCR to individuals, groups, or organizations who have made a significant contribution to refugees). Less well known, however, is that the Australian government, faced with this refugee dilemma, has been screening asylum claims at refugee processing centers in neighboring Nauru and Papua New Guinea, and recognizing many of them.⁵⁰

The most common measure for extending RSD work abroad is to create a buffer zone outside the country to control the influx of refugees into the country. To curb the influx of refugees from the Middle East, for example, Western European countries have designated "safe zones" and have begun to refuse applications from refugees streaming in from these areas. Their point is that asylum applications should be made in the first safe country the refugee arrives at, so their public attitude is that refugees should not be picky about which country accepts them. Western European countries

have thus designated the Balkan countries and Turkey as “safe third countries” based on the judgment that they meet standards: there is no torture or suppression of human rights, and the security situation is good. Nordic countries have also designated Russia as a “safe third country” and have strengthened their stance against accepting applications from asylum seekers arriving from this region.

In addition, EU states have stepped up their diplomatic efforts to urge countries that act as routes for refugees to reach Europe to strengthen their controls over refugees and irregular migrants. We have already discussed how Southern European countries have offered a variety of rewards, such as aid and trade agreements, to encourage North African countries situated across the Mediterranean Sea to prevent irregular migration. This is where refugee-transit countries gain diplomatic leverage. For example, Libyan leader Colonel Muammar Gaddafi visited Rome in 2010 at a time when Italy was having trouble dealing with the arrival of refugees crossing the Mediterranean Sea. “Tomorrow Europe might no longer be European, and even black, as there are millions who want to come in,” he reportedly said at a ceremony attended by Prime Minister Silvio Berlusconi, and overtly threatened that the EU ought to pay Libya at least 5 billion euros every year to stop such illegal immigration.⁵¹ In fact, Italy concluded a Treaty of Friendship, Partnership and Cooperation in 2008 after repeated negotiations with Libya; Italy established joint patrols in the Mediterranean Sea and refugee detention facilities in Libya as well as provided a range of aid to Libya in an effort to improve relations with the notoriously extremist Gaddafi regime. In 2009, the number of irregular migrants crossing the Mediterranean plummeted.⁵²

The EU agreed to a Joint Action Plan with Turkey in November 2015 in order to rein in the masses of Syrian refugees flooding into the region. The plan included the EU bearing the costs for the deportation to Turkey of irregular migrants and asylum seekers who were not granted refugee status who crossed from Turkey to the Greek Islands; the EU also agreed to accept and resettle one Syrian from Turkey to an EU member state for each Syrian deported from the Greek islands that Turkey accepts. In addition, the EU agreed to pay Turkey 3 billion euros up front and to consider an additional 3 billion euros once the initial sum was used up. (By the end of 2022, all 6 billion euro had been contracted out, of which 5 billion euros had been disbursed through the Facility for Refugees in Turkey, and the EU had allocated an additional 4 billion euros to assist refugees in Turkey.)⁵³

In addition, the EU promised to liberalize visas between the EU member states and Turkey and aim to eliminate visa requirements for Turkish citizens.⁵⁴ The EU has long rejected Turkey’s application for EU membership on human rights and other grounds. But by having Turkey act as a dam in holding back refugees, the EU has now found itself in a position of having to make significant concessions.

2.9 Refugees Staying in Developing Countries

The vast majority of refugees, unable to return home or be resettled in a third country, have no choice but to live for a lengthy time in refugee camps that are often isolated

from local communities, in poor developing countries adjacent to their countries of origin.

The situation in Dadaab, said to be the largest refugee camp complex in the world, is even surreal. The Dadaab refugee complex—currently three separate camps—is located in northeastern Kenya, in an arid and barren area 80 km from the Somalia border (Fig. 6). The refugee camps were opened in 1991 to accommodate the roughly 90,000 refugees fleeing the Somali civil war. A UN peacekeeping operation (PKO) force was sent to Somalia, and a central government recognized by the international community was re-established there. Yet the Somali government remains weak and is in a permanent state of civil war with the Islamic extremist group al-Shabaab. Owing to a series of droughts, the number of refugees at Dadaab has grown, so that as of 2016 approximately 350,000 refugees, mainly Somali, were living there.⁵⁵ With that population, it is more on the scale of a city than a camp; in fact, Dadaab is actually the third-largest city in Kenya after Nairobi and Mombasa.

The UNHCR administers the camps in terms of the budget and the Kenyan government's police force is responsible for law enforcement, but there is also a UN program in place to determine democratic leadership through camp elections. Elected representatives are also involved in camp governance, albeit in a very limited way, through negotiations with aid stakeholders. The Kenyan government does not allow the residents of the camps to freely go out to live or work, making it a kind of closed space. A black market for aid supplies and goods smuggled in from Somalia has grown spontaneously, and some refugee entrepreneurs have made a fortune. The growth in trade with local Kenyans contributes to Kenya's tax revenue. The camps have hospitals, and makeshift soccer leagues and movie theaters. UN-supported schools offer a liberal curriculum; the enrollment rate is not high, however, and there are many private institutions that teach the Quran. Steadily the number of generations is increasing who were born in these living spaces that have been maintained for over 25 years, who have never seen any other place, and who have no place to return to.⁵⁶ While life here for the majority of the refugees is not idyllic, it is a relatively safe place. "In the camps are schools for their children offering a high standard of education, and hospitals providing free, quality healthcare—all unavailable in the warring countries from which they fled."⁵⁷ It is under these circumstances that refugee communities are being expanded and reproduced in isolated spaces in neighboring countries, relying on outside aid.

The people of Dadaab, in the eyes of those who regard refugees as a humanitarian issue, are eligible for support. The Kenyan government, as a signatory to the Refugee Convention, has a responsibility to protect them. Just like in developed countries, however, Somali refugees are not welcome. The Kenyan government agreed to open the refugee camps only on the condition that the refugees remain in the camps near the border. Kenya is a developing country, it argues, and it is beyond the country's capacity to support a large number of refugees. Western countries tried to persuade the Kenyan government by providing it with aid.

But that is not all. Since their independence, Kenya and Somalia have had a territorial dispute over this area, and their relations have not always been peaceful. A more pressing issue is the concern that the refugee camps, infiltrated by members

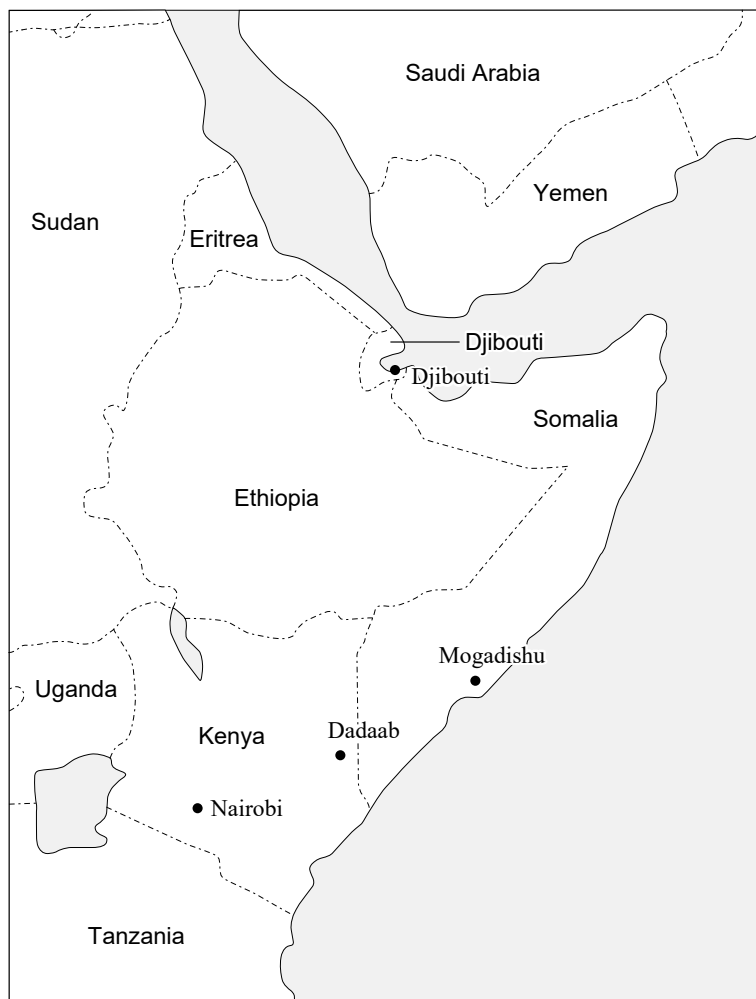


Fig. 6 The Horn of Africa. *Source* Created by author

of the Islamic extremist organization al-Shabaab, might be becoming hotbeds of terrorism. Naturally, that poses a security risk for Kenya. Two Spanish staff members of Médecins Sans Frontières were in fact kidnapped in Dadaab in 2011, taken to Somalia, and held for nearly two years.⁵⁸ It remains unclear whether it was a crime for money or a terrorist attack by al-Shabaab. But in 2013, al-Shabaab carried out a large-scale terrorist attack at the Westgate shopping mall in Nairobi, Kenya's capital, killing 67 people. In 2015, members of the militant group staged an assault on Garissa University in northern Kenya, killing nearly 150 students.⁵⁹ The Kenyan government claims that these terrorist attacks were staged from Dadaab and has repeatedly insisted that it will close the camps.

The extent to which a refugee camp poses a security risk to the host country depends on the time and situation; just because it is for humanitarian purposes, refugee assistance should not be assumed to be free from politics and unrelated to security issues.

A camp set up in Thailand in the 1980s to support Cambodian refugees became a haven for the Khmer Rouge, which according to the UN, “managed to get its hands on 50–80% of all the food aid and pharmaceuticals medicine provided there.” Around the same time, refugee camps in Pakistan were nurturing Taliban fighters and in appearance almost functioned as supply bases for their fighting in Afghanistan. The Tutsis, who had been driven out of Rwanda in the 1950s by the Hutu majority, had prepared themselves to become refugee warriors in refugee camps in neighboring Congo. In 1994, after the genocide in Rwanda, the Tutsis took complete control of the entire country, resulting in large outflows of Hutu refugees, some of whom became refugee warriors themselves, occasionally conducting military operations back home.⁶⁰

All over the world, refugee camps act as a magnet to warriors. Strategic withdrawal to a camp allows armies and militias on the losing side to avoid getting minced. In a refugee camp, they have time to regroup, civilians to hold hostage as human shields against attacks, and a chance to recuperate. Rich international aid organizations provide food, clean drinking water, medical care, shelter, education, and welfare, both for the fleeing troops themselves and for their families and supporters. It costs the fighters nothing, and supplies will be brought to the camps from thousands of miles away if necessary. By forcing fellow camp dwellers and INGOs [international NGOs] to pay “taxes” and “protection money,” they can top up their war chests at the same time.

Since aid organizations have neither the power nor the resources to prevent abuse, they ignore or keep quiet about the problem. The UNHCR, the largest refugee aid organization, makes only very occasional reference to the phenomenon of refugee warriors on its Web site, and even then, only as a responsibility of international politics.⁶¹

2.10 Options Available to Refugees

For affluent countries in the North, especially European countries worried about the arrival of refugees from sub-Saharan countries, their true concern is what can be done to prevent throngs of refugees from flooding their borders and destabilizing their own political and social order. Said more plainly, their genuine interest is how to deal with the matter in areas close to the refugees’ countries of origin, that is, in areas far from these Northern countries.

Yet we must not forget what life in these camps means to the refugees themselves. There is no way that they can entrust their own fates to the goodwill of others in an isolated environment over the long term, and so they will attempt to carve out their own lives in the conditions given to them. Though their options are limited, they do have some choices in their lives.

The first is repatriation. The UNHCR and the Kenyan and Somali governments agreed in 2013 on a refugee repatriation program, to encourage the voluntary return

of the refugees. Though some may question how “voluntary” the program may be given the Kenyan government’s pressure, it certainly has the advantage that refugees can receive a certain amount of assistance if they voluntarily return. Four-fifths of refugees in Dadaab did not want to return home to Somalia, according to interviews conducted by Médecins Sans Frontières in 2013. Refugees cited the same priorities as conditions for returning: security, peace, a functioning government, healthcare services, education, food, water, shelter, land, and job opportunities.⁶² For people who have already lived as refugees for a long time, returning home is a big psychological decision. The land and property that they had in Somalia will now be in the hands of others, and their various human networks will have to be rebuilt from scratch. Many of the younger refugees have never even seen Somalia before. Some returnees, even after having received some money under the repatriation program, reportedly end up returning to the camps.

The second choice is resettlement to a third country, which is perhaps many refugees’ greatest hope. They dream of immigrating to an affluent developed country, especially the US. Resettlement quotas are limited, and their distribution is competitive, so they would be willing to bet their lives on it, even if they must rely on family and relatives to apply for family reunification or perhaps even employ illegal means. Notwithstanding Kenyan government efforts to prevent refugees from integrating into Kenyan society by isolating them in camps, the reality is that it is impossible to completely confine several hundred thousand people; indeed, Somali refugees have formed a variety of connections with Kenyan society (many of which are black market trading and sometimes even criminal acts). Since Kenyan citizenship can effectively be bought with money, some refugees have moved to Nairobi and are living in urban Kenya.

The third choice is to become a new irregular immigrant in a developed country, a choice taken by some of the ambitious younger generation who see no prospects in living in refugee camps, dependent on meager rations. The cheapest route from Dadaab, Kenya to affluent Europe is go across the sea to Yemen, then head north through Saudi Arabia until they reach Europe. They could also go to Europe through Egypt, Israel and Turkey, then head to Greece, or again, via the Caucasus. A further option is to cross the Sahara Desert to Libya, then cross the Mediterranean Sea to Italy.

It is easy to realize that the journey is extremely dangerous. These clandestine migrants are treated harshly by the authorities; they are sometimes kidnapped and held for ransom. Still, those who risk their lives smuggling themselves into Europe are young people who have the courage to take such a risk. But more important than courage is money. The average going rate for getting smuggled into Europe via the overland route was \$11,000, according to Somalis interviewed in the Netherlands. Relatives usually manage to find a way to pay for such a large smuggling fee. Naturally, they do so in the hope that the successful migrant will return the favor and petition for family reunification allowing them to escape the camps to Europe. Of course, people are often fooled by smugglers. Two Somali girls are known to have attempted to cross the Mediterranean Sea nine times.⁶³

Even if they manage to reach Europe, it does not mean that they will be recognized as a refugee. Yet once they arrive in an EU member state, they are protected by European human rights ethics, so even if they are not recognized, it is highly unlikely that they will be forcibly deported, as was previously mentioned. In other words, there is an endless number of refugees who, as long as they see no hope in life in a refugee camp, are willing to take big risks because the payout for successfully beating such tough odds is so great. There are very few paths to regular immigration in affluent countries, yet once these refugees reach Europe after undergoing many trials and tribulations, they are protected by lofty human rights ethics. It comes at no surprise at all, then, that some refugees from among those trapped in refugee camps in developing countries who have money or who are in danger are willing to venture their lives traveling to Europe.

2.11 A Comprehensive Approach and Internally Displaced Persons

The large numbers of refugees moving in search of safer spaces has sparked the debate over who should be responsible for protecting them and where, and how that responsibility should be allotted among countries. Yet merely limited to the discussion of burden sharing, the debate cannot possibly lead to resolving the refugee issue itself. The influx of refugees far exceeds the scale envisaged by the Refugee Convention. Should the issue become so serious that it threatens to shake up the international order as well as being a political and social problem, then merely providing humanitarian aid to the refugees will not be enough to deal with it, and more extensive efforts will be required. What it boils down to is that the only option is to take early or preventive steps, and to reach out to the countries that are the source of refugees.

With these considerations in mind, the trend in recent years has been to begin full-fledged support for IDPs and to develop more intrusive refugee measures. The number of persons internally displaced by conflict-induced situations reported by UNHCR offices increased from just 4.3 million in 1995 to 36.6 million in 2016, with the UNHCR providing assistance to approximately 14 million of them.⁶⁴ In 2015, Yemen was by far the largest source of new IDPs, with 2.5 million people (approximately 10% of its population) internally displaced due to the renewed internal conflict. Other sources of new IDPs, following in order, included Iraq, where fighting continues in the northwest; Ukraine, where armed conflict with Russian forces continues in the east; and Sudan, where civil war continues.⁶⁵ In 2016, new IDPs emerged mainly in the Democratic Republic of the Congo (DRC), South Sudan, Afghanistan, and other countries. Looking at the stock of IDPs, Colombia has 7.4 million and Syria has 6.3 million, followed by Iraq, the DRC, and Sudan. Syria's number has decreased considerably in recent years, owing in part to some residents returning to their homes, but more importantly as a result of IDPs fleeing abroad to become refugees.⁶⁶ This

point shows that refugees and IDPs are on a continuum and illustrates the concept that IDPs are a reserve of refugees in waiting.

The state that has jurisdiction over a territory is, in principle, responsible for protecting the people displaced from their homes within that territory. But there is no hiding the reality that the states with large-scale internally displaced populations generally lack the capacity or will to uphold such responsibilities. Therefore, an attitude of not providing aid until such people cross the border is arguably, from a human rights and humanitarian perspective, meaningless formalism. The reality of these refugees is behind the expansion of UNHCR's activities to encompass IDPs. At the same time, UN General Assembly resolutions have supported the expansion of the UNHCR's mandate and developed countries, through voluntary contributions, have provided the material means for its activities. This suggests that both developed countries, wary of a mass influx of refugees, as well as developing countries, lacking adequate resources to uphold their responsibilities toward IDPs, have high hopes for these more proactive preventive measures that go beyond traditional refugee protection.

However, there are difficulties with this approach, too. A holistic, comprehensive approach is easier said than done—that is the reality of the UN system. UN funds, programs, agencies, and other bodies each have their own mandates, are governed by their own executive boards, and have their own institutional philosophies and traditions; on-the-ground collaboration among them on the issue of development has been a major challenge since the UN's founding, and the same could be said for refugee assistance.

Furthermore, such external intervention, when carried out with the consent of the government having jurisdiction over the area, will be linked to development cooperation and nation-building. It is an activity that aligns with a wide range of activities such as post-conflict stabilization, nation building, and development assistance, and as such, it is expected that responsibility for this activity, too, will be shared among the implementing bodies, starting from the local governments, development aid agencies, NGOs, and all the actors that make up the international community. IDP protection and resettlement assistance should be positioned to play a role in these comprehensive and integrated efforts. This stabilization endeavor, however, demands steady efforts over an extended period of time, which will lead to the most essential solution to the refugee problem; it does not provide the sort of immediate results sought by public opinion and the mass media in developed countries.

However, a more fundamental difficulty lies in the dangers posed by refugee support activities venturing into countries where refugee populations originate. Gaining support for refugee protection across political lines was easy precisely because it has been limited to nonpolitical humanitarian aid. Yet in order to support IDPs, it is impossible to ignore the wishes of states holding territorial sovereignty, which means that aid agencies wind up appearing to support oppressive states rather than to protect the rights of IDPs. Undeniably, this could produce undesirable outcomes. In many cases, it is the local state that is the cause of the problem to begin with. Moreover, when grave, internal conflict-induced, humanitarian disasters

generate mass refugee and IDP situations, there are times when external intervention may happen without the consent of the local government, or instances when the legitimate government that would have granted consent may have collapsed.

During the Cold War, the predominant view in the Western world was that refugee flows were essentially caused by the tyranny of socialist countries. The Soviet Union and other socialist countries would never agree with this view, and so refugee policy inevitably would have become bogged down unless it was treated as a purely humanitarian issue outside of the ideological confrontation. But in the early 1990s with the end of the Cold War, as Western countries drove the UN agenda and consensus became easier to form, the UN became actively involved in numerous conflicts.

UN intervention was first put into practice in the process of dealing with the conflicts arising from the breakup of the former Yugoslavia and the ensuing pressure on refugees flows to Western Europe. The UN Security Council made the important decision to take preventative action to protect people at risk of persecution in the conflict area, by deciding to deploy the UN Protection Force (UNPROFOR) to intervene in the local conflict in order to allow the UNHCR to establish safe areas on the ground.⁶⁷ This experience, while it may have saved lives and curtailed the outflow of refugees, left a bitter feeling. The parties to the conflict did not respect the established safe areas and UNPROFOR was given neither the military force nor mandate to defend them. Consequently, UNPROFOR personnel themselves, as well as the civilian UNHCR staff, were exposed to danger; what is worse, their failure to protect the people who had taken refuge in safe areas resulted in tragic incidents of ethnic cleansing.⁶⁸ Humanitarian aid without the backing of force is like “passing out sandwiches at the gates of Auschwitz.”⁶⁹

If strong military intervention is required to protect IDPs, it may in turn undermine the humanitarian nature of refugee protection. Now and again, a vexing dilemma arises: to provide humanitarian aid to friend and foe alike; or to resolve the conflict, restore order, and prevent people from becoming refugees. Even though the majority of refugees are victims of conflict and chaos, they too actually play active roles in and could even be responsible for the local armed conflict. Refugee aid organizations, by when, where, and to whom they provide their support, end up becoming more deeply involved in the local politics, whether they like it or not.

3 Summary

For the sovereign state, controlling entry and exit to and from its territory is an essential activity. But national borders are more porous than is commonly believed. For the state to eliminate irregular migrants altogether is nearly impossible, and whether it is even desirable is up for debate. Even with all the talk of globalization, however, the major states around the world have strengthened their border controls in various ways, a move their public opinion has also desired. There is no possibility of completely doing away with border controls, in fact, as long as there are efforts to preserve the system of sovereign states.

Furthermore, issues relating to these people—be they irregular migrants, refugees, or internally displaced persons—are no longer human rights or humanitarian issues that apply to a limited number of people who are the exceptions. These issues inevitably become politically charged, and a failure to effectively address the political issues will put achieving the humanitarian objectives in jeopardy.

Were that to happen, states would continue to seek to bolster the efficiency of their border controls in various ways, even if imperfectly. In order to reduce the pressure of dealing with irregular migrants at the border, meanwhile, states will extend their border controls externally as well as strengthen measures internally to identify the legal status of persons within their territory. However, there are limits to dealing with population influx pressures through border controls alone, so ultimately there is no other option than to seek improved governance in population-sending countries. This necessitates the development of political efforts both bilaterally and multilaterally.

It is not realistically possible for a state to stop some number of people from crossing its border and relocating into its country, whether legally or illegally, regardless of what kind of border controls it introduces. Twenty-first century states cannot escape the task of figuring out what kind of relationship to establish with such people.

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Chapter 4

The State and Its Membership



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Abstract In this chapter, the author examines what it means to be a member of a state, and discusses how states have conceptualized and institutionalized membership, and how this membership has developed into an international political issue. He covers such topics as the old state orders, religious communities under the state, and the development of the conception of passports. The chapter provides an overview of the development of the nationality systems of the major European countries that are considered the models of modern nation-states, as well as a historical overview of the US nationality system. Since nationality systems determine who belongs to which state, they have international implications, with political friction sometimes

generated by the inconsistencies among these systems. Historical case studies include the revolutions in America and France, the differences between French and German systems, and the tightening of British and American immigration regulations.

If it is inevitable that people will move across borders, states will be forced to make choices about the kinds of relationships to establish with those who have left their territory and those who have newly come in. To rephrase, in addition to the challenges that states face in terms of migration *flows* that were discussed in the previous two chapters, they face challenges in terms of *stock*. The next three chapters will examine this issue. To address the issue, we must first inquire what membership means to a state. If the basic arrangement for coexistence is for states to be partitioned into their own domains, each state living separately within its own jurisdiction, then a state's territorial jurisdiction must be consistent with its personal jurisdiction. If this were the case, states would need to consider revoking membership status from people who have left their territory and granting new membership status to people who have immigrated.

This chapter, therefore, will examine the evolution of systems related to the cross-border movement of people, i.e., immigration control, and systems that set the conditions for acquiring and losing state membership that occurs as a result of that movement of people in Western countries, regarded as the models for forming modern nation-states. That is to say, I would like to discuss the evolution of the nationality, naturalization, and nationality revocation systems. Western European countries such as the United Kingdom and France experienced feudal systems and modernized from the old order in the nineteenth century. In contrast, the UK's former colony, the United States, also became a model of a nation-state that legally included all people within its territory as equals after the War of Independence. These countries also constitute precedents in the sense that they have both promoted globalization and been exposed to its effects.

In addition, major European countries have developed global trade networks since modern times, which has led to an active movement of people. Cross-border exchanges between societies had been dramatically liberalized from the nineteenth century onward, as evinced in the British-led free trade policies; with advances in technology, Western nations experienced large-scale population movements. The UK is also perhaps the most successful migrant-sending country in history; it built up a vast empire by sending its own people to the colonies it possessed around the world while physically and socially marginalizing the indigenous peoples there.

The United States of America, a state founded by British immigrants, developed into an enormous power in the twentieth century by accepting immigrants from all over the world, while eliminating its indigenous people and introducing enslaved blacks. Who is an "American" and how does someone become an American remains to this day serious questions for the US, the world's largest immigrant receiving country. It is also important for those who have newly become Americans to ask how they should think about their relationship with their country of origin. Such

issues are no longer limited to the US. They are also confronting European countries, which became large-scale recipients of immigrants in the second half of the twentieth century.

1 The State Under the Old Order and Its Members

1.1 *The State Under the Old Order*

What kinds of bonds connect people when they form a group? The family, formed on the basis of blood relationships, is considered to be the most natural basic unit of society. When large numbers of families gather together to form permanent groups, they form what anthropologists refer to as clans or tribes. Today, what is meant by the term nation is a larger, unspecified group of people. Natural bonds of kinship and custom are insufficient to govern such a large group; symbolic devices indicating the rationale for the group and trappings of authority that ensure collective action are essential.

The countries that comprised the world under the old order of the feudal system were economically predicated on agricultural production and founded upon fealty ties between the liege lord and his vassals through the land. The people residing in the territory controlled by the state formed a hierarchical structure according to social status; these members of the state were not a legally equal, culturally cohesive “nation.” The peasantry, who made up the better part of the population, were, so to speak, attachments to the land controlled by the feudal lords. Such ordinary residents, moreover, were not even thought of as constituent subjects of the power structure that was the state. Emotional bonds between the state and its members were relatively tenuous under the old order. Although the duties of obedience of feudal lords differed depending on which side of the border they belonged to, whichever state the common folk belonged to might have made little difference in practical terms, for they continued to do the same work, on the same land, anyway. Territory changed hands in a relatively flexible manner in order to balance power in Europe prior to nationalism becoming a dominant force. The weak ties between the state and the people residing in the territory it controlled made this possible.

Yet it is not to suggest that the state during this period was open to people traversing across its borders and had a tolerant attitude toward new arrivals from abroad. To start with, even freedom of movement domestically was not a guaranteed right during this period. For ordinary people in Europe under the old order, a greater part of their sense of belonging was to a feudal regional community rather than to a nation. The feudal community influenced where they could live, what occupation they could have, and whether they could participate in religious ceremonies and mutual aid services. Save for royalty and nobility, the people who traversed the boundaries of the feudal communities in which many people lived out their entire lives were, if

anything, rather exceptional. Many were people on the fringes of society, treated with suspicion, such as traveling entertainers and vagabonds.

1.2 Religious Communities and the State

Equally important was the sense of religious belonging organized around the church. It is well known that antisemitism inherent in Christian society was behind the repeated persecutions in Europe of Jews who moved there. Also, the conflict between Catholic and Protestant denominations in Christendom was a fault line running through Europe since the sixteenth century. As an example, England was therefore tolerant of the influx of Protestants but always remained wary of Catholics, for they were linked to its rivalry with continental powers, such as France and Spain.

Islamic society was more thorough, from the point that belonging to a religious community carried more weight than belonging to a state when considering individual identity. The Ottoman Empire ruled over ethnic groups inhabiting its vast territory that were highly diverse religiously, culturally, and linguistically. As Islamic principles of legitimacy underlay his authority, the sultan did not treat people from different religious communities equally. Sultans successfully achieved long-lasting Islamic coexistence by granting a certain degree of autonomy and protection to non-Muslims. “For these ethnic groups, belonging to the Ottoman state as a polity held very little meaning within their sense of identity.”¹ Belonging to a religious community, rather than allegiance to a territorial state, is what determined people’s sense of “we.”

In contrast, the sixteenth century Reformation in Christendom caused sharp divisions within the religious community, and thus, the political order was reorganized along territorial compartments. As a result of European global expansion from the sixteenth century onward, exclusive territorial jurisdiction, i.e., the inviolability of territorial sovereignty, has through many twists and turns come to be accepted around the world.

In any case, because the state is a territorial entity, it has long exercised control over who, other than its members, can enter its territory, i.e., border and immigration controls. For example, it is said that in England the system for controlling entry originated with William the Conqueror, who had castles built on the southern British coastline and immigration officials stationed at the Cinque Ports, to prevent aggressors from invading England by the same route his successful Norman Conquest had taken in 1066. It was a system for the weak Kingdom of England to stop the infiltration of continental powers at its ports.² Furthermore, the origins of the passport, indispensable in today’s immigration control, are as documents to control entry at ports, as its name would suggest.³ The usage in England of the term “passport” itself is said to trace back to documents that mail couriers plying between Antwerp and London in 1589 had obtained from the king of England to help facilitate entry into the country.⁴

1.3 *Passports Before the Nineteenth Century*

Pre-nineteenth century passports were quite different from how we imagine them today—a state certifying the nationality of its citizens and asking foreign governments to provide them protection. First of all, carrying a passport was not always compulsory, and it was not strictly enforced even if it was. Furthermore, the purpose of a passport was not, as is common knowledge today, for a state to prove the nationality of its bearer and to seek the protection of foreign governments for its citizens. Passports were issued by influential people and organizations such as military commanders, guilds, and universities, but not by the state. Its purpose, rather, was to prove the bearer's identity, and it was used for domestic travel purposes, too, with no distinction made between use abroad. It was large merchants and aristocrats who generally carried passports; ordinary people started carrying passports only after the French Revolution, when the feudal class system was abolished, and nation-states began to emerge. In other words, passports were originally more like identification documents for individuals and organizations with strong creditworthiness.⁵

Under the feudal system, serfs and servants were not free to choose where they lived, so documents issued by authorities such as the local church were required to confirm their social position and their right to travel freely. During this period prior to the appearance of concepts like a “national” or “citizen,” it was social status, rather than a “nationality” that expressed belonging to a state, that was important for a person's identity, and so it was not necessary that it be a state that provided a guarantee or proof of a person's background and identity.

Attempting to cross a border in continental Europe under the old order would lead to undergoing complicated and humiliating checks at border checkpoints, and it seems that carrying a passport was more strictly required than in Britain. For example, since the Middle Ages, small territorial states had existed side by side under the roof of the Holy Roman Empire in the region that is today Germany; even crossing the borders of these states within the region required going through cumbersome procedures. It was mandated that people from the lower orders unaccompanied by their masters had to carry imperial travel documents, a type of passport, to pass through the territory of those domains. Rather stringent restrictive measures were taken in eighteenth-century Prussia: emigration outside the territory by peasants was prohibited; all travelers, except for military officers or other “distinguished persons,” were required to be in possession of a passport; and innkeepers were obligated to notify the authorities if strangers were among their guests.⁶

The primary border control concern during peacetime was the exclusion of poor migrants and refugees, not the security risks from foreign entrants, so it is said that persons of “respectable status” could essentially avoid most screening. The state took, from today's perspective, a very tolerant attitude towards political exiles from abroad, perhaps because most of them were members of royalty and the aristocracy. Seeing as there were no “nationals” or “citizens,” “foreigners” did not exist. Also, nationality, or being a member of some state, did not matter much at a time when the movement of people was actually limited. Under these conditions, “others” meant

people who came from outside the feudal community, who believed in different religions, or who had a different social status, rather than people who belonged to a different state.

1.4 *Indelible Allegiance*

How was state membership conceptualized under the old order? What kinds of systems regulated the acceptance of new members and the departure of old members? Under the old order, where people were merely attachments to the land, the state controlled its inhabitants through its control of the land. In England, according to common law principle, it was understood that a person born within the king's dominions, regardless of parentage, was from the moment of birth a subject who owed a natural "indelible allegiance" to the crown and in turn was entitled to the king's protection. This principle, it is said, was explicitly laid out in the fourteenth century, but at a time where there was a limited meaning of belonging to a state, it mainly became an issue in disputes over land ownership. That is because one's nationality was questioned in disputes over inheritance of land, for only subjects could enjoy the crown's protection with respect to land ownership.

A judicial decision, what is referred to as *Calvin's Case* (1608), is often mentioned in this regard. The case was fought over whether land in England could be inherited by Robert Calvin, who was born in 1606 in Scotland, which had long been an independent kingdom. Yet in 1603, James VI, king of Scotland, had succeeded the heirless Elizabeth I and was crowned James I, king of England. This development complicated the issue of the nationality of Scottish-born persons. The opinion expressed by Sir Edward Coke, the chief justice of the common pleas, has long been influential in the understanding of the British system of nationality. According to Coke, persons born in the crown's domain remain subjects for life, their duty of allegiance continuing even should the current territory of the kingdom be conquered and ruled by a foreign sovereign. It thus meant that no matter where such persons moved and resided, renouncing nationality was impossible. Coke's opinion was based on the worldview that government and society are reflections of principles of natural law, and that subjects' duty of allegiance to their king was part of a divinely established order.⁷

1.5 *How Aliens Become State Members*

But what about the possibility of becoming a new state member by acquiring nationality? The text of the ruling in *Calvin's Case* indicates the following judgment about aliens. It distinguishes aliens either as *amicus* (friendly)—members of states in league with the English king, etc.—or *inimicus* (enemy)—members of states in open war, etc.—with the former given preferential treatment in terms of rights protection. No

alien is allowed to own land, however, since a friendly state may someday become an enemy state. All “infidels” are in law *perpetui inimici* (perpetual enemies) being inherently hostile to Christian kingdoms. If indelible allegiance was at the basis for eligibility as an Englishman, then foreigners could be considered to have a duty of indelible allegiance. If that is the case, it might be logical to conclude that just as it was impossible for Englishmen to renounce their nationality, it was also impossible for aliens to become naturalized in England. Yet if allegiance to the king was the basis for eligibility as an Englishman, one might think it not entirely impossible for aliens to become subjects by proving their loyalty. Indeed, there long existed a system for alien-born to become members of England; generally speaking, two methods of naturalization had been established by the seventeenth century.

One method was to naturalize specific groups of aliens on a case-by-case basis through individual acts of Parliament, thereby allowing naturalized subjects who became members of England to enjoy the same rights as Englishmen. In other words, they were given the same rights to land ownership as Englishmen. The other method was to grant the status of denizen (permanent resident alien) through the king’s letters patent. Denizens were a sort of intermediate quasi-citizen status, more advantageous than being an ordinary alien but with fewer guaranteed rights than natural-born Englishmen. Denizens were more disadvantaged in terms of taxes and other matters than naturalized subjects, and although they could own land, they were not allowed to inherit it. Moreover, there were other restrictions, such as their children were allowed to inherit land only in cases where the land was acquired at some time after their birth.⁸

By the early seventeenth century, naturalized subjects came to enjoy full rights as a member of the state, including political rights, such as the right to become a Member of Parliament. However, legislation was passed restricting the political rights of naturalized aliens when, with the Glorious Revolution of 1688, many of William III’s followers entered England from the Netherlands. Similar measures were taken again in 1714 when George I, of the House of Hanover, became king.⁹

In any case, becoming a naturalized alien in England was a very complicated and costly process. Aside from individual treatment for an exceptionally small number of people, it was not possible to decide whether to bestow nationality on large numbers of immigrants, no matter which of the two methods was adopted. In fact, the UK had to wait until the latter half of the nineteenth century for its naturalization system to become a process of standardized administrative procedures instead of letters patent or individual acts of Parliament.

2 Popular Revolutions and State Membership

The relationship between the state and its members underwent a major transformation as a result of the late eighteenth-century popular revolutions that occurred in the US and France. With subjects becoming citizens, the legitimacy of the state to govern rested in the consent of its constituent members. This would become the dominant

principle. The relationship that a state's members formed with the state was said to have changed with the advent of the citizen, from something "natural" based on a feudal class system to being grounded in a contract established by the free will of its equal members with equal civil and political rights. Along with freedom to choose a profession, the freedom of movement became part of civil rights within a country, which had now become a space of equality formed by citizens equal under the law.

2.1 *America*

It is believed that, with the American Revolution (1775–1783), US colonists severed their obligations of allegiance to the British king that had been assumed for life at birth and founded the USA on the basis of their own free wills. Yet it is also true that a considerable number of colonists swore their allegiance to the king and opposed independence. And if people are free to choose political allegiance according to individual will, it follows that just as there was freedom to swear allegiance to the US, there should also be freedom to remain loyal to the British crown. Here, American patriots found themselves in a dilemma. If they denied royalists the freedom to decide to whom to swear their allegiance, they would end up oppressing the very freedom they were seeking—the freedom to resist tyranny and choose for themselves to which political community to pledge allegiance. Yet achieving and maintaining independence might be jeopardized by leaving the actions of these people unaddressed.

No matter how free a state may be, its members need a certain degree of cohesion. If this were not the case, a state would divide without end, and taken to its extreme, as many new states would be created as the number of individuals. That would effectively mean anarchy. Regardless of that logical possibility, for the new American Republic fighting a war of independence against the British Crown, the ability to mobilize people for war was a pressing issue. Any state in sharp conflict with the outside world will step up the mobilization of its members and restrict individual freedoms. The same was true of the new American Republic.

The obligation to submit to an independent America was justified by contractual logic. Namely, the 13 colonies were originally political communities distinct from the mother country, and the original contracts under which they were established allowed the will of the majority to demand obedience from the minority. Or, following other logic, the new American state had conquered the colonies, thus it could demand the allegiance of its residents regardless of their feelings toward the former mother country. Furthermore, based on this logic, property owned by loyalists was confiscated on a large scale. The people who adhered to the British Crown in the War of Independence were not "Americans" but enemy combatants, though judges and juries were wary of executing loyalists as traitors: if captured, they were often dealt with as prisoners of war.¹⁰

The US was unable to unconditionally welcome new members as citizens because it was a frail new state that had gained its independence while riven with internal

divisions, unable to stabilize the scope of its membership. In particular, there were serious concerns that a large influx into the US of people steeped in the ideas and customs of the old order would pose a threat to the weak new state with its political system so unique at that time in the world. Thomas Jefferson, author of the Declaration of Independence and third president of the US, said of immigrants:

[They] will bring with them the principles of the governments they leave, imbibed in their early youth; or, if able to throw them off, it will be in exchange for an unbounded licentiousness, passing, as is usual, from one extreme to another. It would be a miracle were they to stop precisely at the point of temperate liberty.¹¹

In other words, it was not only the influx of political ideas from the despotic old regimes of the Old Continent that gave Jefferson concern. The politics that embodied the “temperate liberty” of the US depended not only on a liberal political ideology but also on practices and cultural attitudes that esteem temperate liberty. If that was so, accepting new members who did not share these cultural attitudes, he feared, might be dangerous to the future of the weak new American Republic. America is certainly a nation of immigrants, yet the US was at the time of its founding neither a melting pot of races nor a testing ground for multiculturalism. The dominant group in America at the time were not only bound together by liberal political ideology, but were also highly homogeneous, sharing a Protestant faith, a common language of English, and cultural attitudes of British origin.

As ideological and geopolitical conflicts in Europe intensified after the French Revolution, there was increasing concern that such conflicts would, through foreign immigration, exert a negative influence on the US, and so there was growing suspicion of foreign-born people. Albert Gallatin, who later served as secretary of the Treasury, provides one example. Born in Switzerland, Gallatin moved to the US in 1780, and 14 years later he was elected to the US Senate in 1793, but he was stripped of his eligibility to hold his seat because, it was alleged, he had not fulfilled the required nine years of citizenship after his naturalization.¹²

Also, the naturalization laws of this period were becoming increasingly restrictive. America’s first naturalization law, the Nationality Act of 1790, was rather liberal. Someone could become an American citizen as long as he or she was a free white person of good character, after residing in the US for two years and taking an oath to uphold the Constitution.

US naturalization requirements rapidly became stricter, however, as more and more politically active people of diverse backgrounds began to migrate to the US once the French Revolution escalated into a major war in 1792: exiled aristocrats from Europe; exiled political activists; Irish nationalists seeking independence from the British just as the US had; and French plantation owners forced to leave Saint-Domingue (Haiti) as a result of Toussaint Louverture’s rebellion. In 1795, the residency requirement was extended to five years, and nobility was required to renounce their titles and embrace American egalitarianism. Regulations were further tightened in 1798, extending the residency requirement to 14 years. The new Act prohibited the naturalization of aliens from states at war with the US and strengthened the alien registration system.¹³ The Immigration Act of 1802 relaxed these extreme provisions,

but maintained the basic framework of naturalization requirements, which remained in place until the Civil War. The requirements included: a five-year residence period; a three-year period after declaring the intention to naturalize; an oath to sever ties with foreign countries and a declaration swearing allegiance to the US Constitution; and good behavior.

The extent to which these federal government arrangements actually suppressed the influx of immigrants, however, is different question. Furthermore, security concerns in the US rapidly receded with the end of the War of 1812 (1812–1815) between the US and the UK and the restoration of peace in Europe. Fears that diverse immigrants posed a threat to political stability receded as the new American Republic's foundations solidified and confidence in its own security grew. Against the backdrop of territorial expansion, there instead rose a keen awareness of the economic benefits to be gained from accepting more and more people. In fact, nineteenth century America was perhaps the largest immigrant-receiving country in history, with millions of people flocking to the US from across the Atlantic in search of new opportunities.

Although the outcome of the Revolutionary War had decided the matter of independence, it remained unclear whether the new object of allegiance would be the individual states that originated from the settler communities, or the new political community uniting the 13 new states. Thus, the naturalization system at the start of independence differed from state to state. If eligibility for membership is not uniform across the states, it will lead to various problems unless interstate population movement is strictly regulated—a situation similar to that in the European Union's Schengen Area. For example, if the eligibility of one state's members is not recognized by another state, it may lead to a situation where those members are denied their basic rights as citizens. Or conversely, it may lead to effectively circumventing state regulations that set strict eligibility requirements for membership. To be established as a single sovereign state, it is necessary to decide on a uniform membership eligibility. The differences in positions regarding authority split between the federal and state governments, well-known in US history, were not easily overcome.

The Constitution of the United States, which was established as a result of various compromises, stipulates the qualifications for the presidency in Article II: "No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President." Article IV also provides that "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States" and that a fleeing criminal shall be transferred to the state in which the crime was committed.¹⁴ But then who exactly is a citizen of the US? The Constitution states nothing definite regarding this matter.

Although the basis of the state was said to be based on the free contract among its members, in reality, at the time of its founding, nationality in the US was determined by birthright (*jus soli*), the same principle as in the UK. If you were born in a settler community in a colonial state, you automatically became a member of that community. This came about as a result of inheriting the British common law tradition without giving it much thought, as it probably was the most natural thing to do. Yet important exceptions did exist. First of all, there are America's indigenous peoples,

the people belonging to the “Indian” tribes. They were not considered members of the American democratic state, regardless of the fact that their ties to the land traced back much further than those of the white settlers.

To regard the indigenous tribes as foreign states and the indigenous people as aliens, because the Native American tribes had no intention of becoming part of the settler communities and did not pay taxes, may have had its own degree of logic. But it was trickier by far to deal with enslaved blacks with the birthright concept of membership. Unlike the indigenous peoples, they did not belong to their own community. Therefore, it was unreasonable to think of them as aliens, and it was also far too unreasonable to view them as mere property of slaveholders. What further complicates the story is that not all black people were enslaved. The legal status of free black persons differed according to each state’s institutions. Another issue arose as to how to deal with runaway slaves who fled to free states that prohibited slavery, or who legally emigrated and returned to slave states. It would be something akin to an influx of political asylum seekers and refugees today. Furthermore, as the US rapidly expanded westward and new states were added, the conflict quickly grew over whether black people should be members of the new states.¹⁵

The Civil War (1861–1865) broke out because, after various compromises to maintain the Union had failed, the Southern states sought to secede and become independent from the US in order to preserve their own institutions. The North took the position that inasmuch as the federal government was sovereign, allegiance to it could not be withdrawn, and that secession and independence would be treason. The South’s reasoning, in contrast, held that since ultimate sovereignty rests with the states, secession and independence to resist oppression and protect the values and way of life of their communities was justified, the same as in the American Revolution. The outcome of the Civil War settled this debate. It was not until the Fourteenth Amendment to the Constitution, enacted in 1868, that Congress was acknowledged to hold final authority over eligibility requirements for US membership and that the principle of birthright citizenship was established throughout the US.¹⁶

2.2 France

Under the *Ancien Régime*, the French system of nationality was based on the birthright principle, just like in England. And just as in England, the question of whether a person was French was often raised in disputes over inheritance. However, who exactly was French was an even more pressing question for those involved than in England because the system in France was that the king would appropriate an estate if there were no French heirs (royal right of escheat). In 1515, the *Parlement de Paris* (high court under the monarchy) confirmed the birthright principle, holding that anyone born and resident in France was entitled to inherit property, regardless of parentage. Also, similar to England, the king was able to approve the naturalization of foreigners by *lettres de naturalité*. According to one study, approximately 6000 people became naturalized French nationals between 1660 and 1789.¹⁷

With the French Revolution, the idea of state membership in France underwent a literally revolutionary transformation. Arrangements regarding nationality and the movement of people became complex and unstable during the revolutionary period. Initially, restricting the people's movement and systems such as passports used for that purpose were roundly denounced as the evils of the *ancien régime*. As the revolution resulted in growing internal and external conflicts, however, the principles of the republic became inextricably linked to patriotism, and the emphasis fell on the security imperative of defending against counterrevolutionary forces and of defending the motherland from foreign intervention. In defense of the revolution, the state's control over movement was strengthened, and the *ancien régime* passport was reintroduced even for internal movement. Controls on international movement were suddenly tightened, especially after the king attempted to flee abroad. Given that liberal principles were not in place all at once worldwide, the revolutionary government was unable to control its borders with the anti-liberal world based on liberal principles. The defense of the motherland took precedence over the principles of civil liberties, suspicion of foreigners deemed counter-revolutionary increased, and many restrictions on movement were introduced.¹⁸

If the state is a group established by mutual contract among its citizens, then perhaps eligibility requirements for citizenship should be distinguished from those for nationality, which is determined by place of birth or lineage, wholly unrelated to a person's will. It has been pointed out that the provisions of the revolutionary-era constitution distinguished the qualifications of being a Frenchman from those of a French citizen.¹⁹ Once the revolutionary ideals or the motherland were exposed to external threats, responding to the immediate needs for territorial defense became the revolutionary government's most urgent task. In the early years of the French Revolution, a majority of foreigners residing legally in France were made French nationals, regardless of their will, and thereby they were immediately enrolled in the army due to the ongoing Revolutionary War.²⁰

After the turmoil of the revolutionary period, a set of laws known as the Napoleonic Code was enacted in 1804. Not only did this lay the foundation for later French institutions, but it strongly influenced civil law legal systems around the world, both in continental Europe and Japan. This established patrilineal descent (*jus sanguinis* through the father) as the principle of citizenship, a central element of the French nationality system for many years thereafter. Napoleon Bonaparte himself was a strong advocate of pure birthright citizenship in order to expand the labor force that could be conscripted.

Napoleon's opinions notwithstanding, François Denis Tronchet, who played a central role in compiling the Napoleonic Code, insisted that *jus sanguinis* (based on the Roman law tradition) should be the basis for the system of nationality. A jurist with a reputation that transcended partisanship, Tronchet was a man of steadfast beliefs who never compromised his principles, as evidenced by the fact that during the Revolution he served as defense counsel to Louis XVI, who was eventually executed after his ill-fated attempt to flee the country. The grounds on which Tronchet and others opposed *jus soli* was that it had a stronger element of chance than *jus sanguinis*

and so the ties between a member and the state were weaker. Opponents of *jus soli*, for instance, gave the following argument:

“The son of an Englishman can become French; but should he be French simply because his mother, passing through France, gave birth to him in this territory to which she and her family are foreign? [In such a case,] one’s country would depend less on one’s affection for it, one’s choice, or one’s domicile than on the accident of birth.”²¹

Perhaps the reason for their difference in opinion was that Napoleon had envisioned commoners born in France as potential military conscripts whereas Tronchet probably had in his mind French people belonging to a relatively wealthy class who might live abroad. In other words, Tronchet might have been concerned that if France were to adopt the birthright principle, the children of Frenchmen living abroad would automatically become foreign nationals, thus potentially infringing on their inheritance and property rights in France.²²

3 Increased Mobility and Mutual Adjustment of Membership

3.1 *A Time of Open Borders*

The feudal system had been abolished and freedom of movement had come to be understood as a right of the citizen (a civil right). Yet only after the French Revolution and the Napoleonic Wars subsided and peace arrived in Europe did the freedom of cross-border movement actually increase there. Freedom of movement increased to a substantial degree after the security and public order rationale receded. Taking the UK as an example, legislation in 1720 banned British seamen, artisans, and workers in key industries from emigrating.²³ “Only after [the Battle of] Waterloo did the mercantilist impulse in migration policy begin to give way definitively to free trade”²⁴ and did the UK abolish these exit restrictions. The departure of emigrants instead came to be welcomed as measures to relieve poverty and address joblessness. The various systems that the UK had introduced during the French Revolution to deny entry to and deport migrants came under growing criticism; the cost of maintaining control over aliens who posed no real danger had become too much to ignore. Consequently, restrictions on aliens were gradually eased. The Aliens Registration Act of 1826 required aliens to register their address in the UK and, for those entering the country, to deposit their passports with the Alien Office in London; it abolished the deportation system, however. The Registration of Aliens Act of 1836 abolished the passport deposit system and the Alien Office. The law also stipulated that “masters of vessels” entering a British port must declare any alien passengers to port customs, and that these aliens must present any passports which might be in their possession.

However, in reality, the 1836 Act’s system of declaration and registration appears to have been “very generally disregarded by Foreigners and ... never enforced by

the authorities.”²⁵ Furthermore, no one was actually deported under the law in the 80 years from 1823 to 1905, when the Aliens Act of 1905, described below, came into effect.²⁶ In other words, from a public institutional perspective, the UK’s borders probably remained the most open in history between 1823 and 1905, with the exception of a brief period of political turmoil from 1848 to 1850.²⁷

3.2 *Developments in the German Confederation*

Meanwhile, in the area that is Germany today, many independent territorial states coexisted peacefully until the late nineteenth century, and nationality meant belonging to one of the territorial states. There were various obstacles involved in crossing their borders. Foreigners entering or leaving Prussia were, for military reasons, required to present a passport. The security environment deteriorated after several events such as the series of revolutions in 1848, the outbreak of the Crimean War following Napoleon III’s accession to the throne in the 1850s, and the January Insurrection in Poland (1863–4). Each time, restrictions on exit were tightened out of necessity for military conscription. Moreover, in the early nineteenth century, freedom of movement was not recognized for serfs, who were unable to leave their feudal lord’s land, or for craftsmen bound by guilds. The immigration system, including passports, was regulated in detail and entry and exit were severely restricted.

Nonetheless, liberal reforms progressed as a general trend after the French Revolution, even in Germany, which was in such a state of affairs. In Prussia in 1806–07, Karl Freiherr vom Stein and Karl August von Hardenberg initiated a series of policies inspired by the French Revolution (Stein–Hardenberg Reforms), which included issuing an edict emancipating the peasants and recognizing the freedom of enterprise (*Gewerbefreiheit*). A Prussian law in 1817, issued after the end of the Napoleonic Wars, eased entry restrictions at a stroke, restoring the authority to border officials to issue entry documents and recognizing the validity of identification documents issued by other German states.²⁸

A number of bilateral agreements were signed between the German states, which led to a steady opening of their borders.²⁹ This took place against the backdrop of a growing momentum toward German integration; the liberalization of movement within what was to be a unified Germany made progress as part of the political integration project. In addition, the advance of industrialization centered in western Germany sparked a rapid increase of pressure for intraregional population movement from northeastern Germany towards the Ruhr area in the west. The technical limitations on controlling population movements using passports and visas were obvious at a time that did not even have photographs, much less fingerprinting techniques, and there was always a possibility that a document was a forgery. The number of people traversing borders rose dramatically with the development of railroads, exceeding the limits of the administrative capacity of border control from the era of horse-drawn carriages. Consequently, the Passport Treaty concluded in 1865 between

Saxony, Bavaria, Hanover, and Württemberg was very liberal, allowing those states to liberalize entry for their respective nationals and completely abolishing passport controls at their borders. A similar system was introduced in the Prussian-led North German Confederation in 1867.³⁰ This system, which mutually recognized freedom of movement between member countries of the agreement, was a sort of harbinger of the EU's Schengen Agreement that would be concluded 120 years later. As a result, population movements between German states increased; Prussia, for example, is said to have seen an influx of 700,000 people between 1823 and 1840.

However, this led to confusion in some regions where immigrants were refused entry. Many of the German territorial states still lacked codified nationality laws after the Napoleonic Wars. Even Prussia, the most powerful state, had to wait until 1842 for nationality laws to be enacted. For this reason, each territorial state in their constitutions and various related laws distinguished between its members and foreigners (*Ausländer*, although they were generally Germans from another state). Moreover, eligibility requirements for membership in the German territorial states lacked uniformity and were mutually contradictory because although their various nationality systems were generally based on the rule of descent (*jus sanguinis*), some states conferred nationality after long-term residence, and similarly stipulated that nationality would be lost due to long-term absence.³¹

Cross-border population movements in Europe increased during this period, but that did not render the identification of a person's affiliation with a state meaningless. In the peaceful era following the Napoleonic Wars, states were less interested in stopping foreign threats at their borders and became more concerned than ever before with the need to address challenges such as establishing responsibility to protect poor migrants and determining where to deport criminals and military deserters. As the German states enacted measures to deal with these issues in the absence of codified nationality systems, what was substantively a system of citizenship began to take shape that would cover the entire German Confederation.³² No longer could the authorities of the states arbitrarily expel criminals, vagrants, and poor migrants to other states in this era, for if they did, it was obvious that it would undermine relations with those other states. Thus, deportation treaties were signed between neighboring German states aiming to establish the location of responsibility for the jurisdiction over "undesirable" migrants who posed a burden on the states. The contents of these agreements came to function as a *de facto* nationality law. The 1816 treaty concluded between Württemberg, Baden, and Bavaria was the first of its kind and preceded the nationality laws of each state. The web of treaties subsequently expanded such that most of the German states had signed one by the 1850s. Grounds for nationality under these agreements did not strictly follow a single principle, be it lineage or birthplace, and were based on factors such as a person's residence for a certain period of time or the place where the person was found.³³ An administrative system for keeping track of residents, let alone a family registration system, was underdeveloped at that time. Under such circumstances, it was not easy either to determine the nationality and birthplace of the parents of commoners, or to get a handle on their place and period of residence in the complicated territory of the former Holy Roman Empire. Due to increased mobility, however, the matter of which state had jurisdiction over whom,

and thus was responsible for their protection, had to be determined for practical purposes.

3.3 International Issues Concerning Overlapping Personal Jurisdictions—The British Nationality System

As mentioned above, British membership was determined by the principle of *jus soli* founded on the indelible allegiance to the king. In principle, this meant that a vast number of people born and living under the king of England's reign—not only in Scotland and Wales, but also in the whole of Ireland (united with Great Britain with the Act of Union of 1800) as well as in lands from the self-governing states such as present-day Canada and Australia to colonies spread throughout Asia and Africa by the end of the nineteenth century—were all considered British subjects with the British king as their head of state.

In reality, the UK's overseas colonies, spread all over the globe, had their own systems for immigration and naturalization, depending on the regional needs.³⁴ Communities made up of white settlers, such as Canada and Australia, needed to accept new settlers from European countries other than the UK as members because of the pressing need for colonial development. Conversely, these countries were extremely closed off to the influx of non-whites, even settlers from within the British Empire, let alone their own indigenous peoples. Being a British subject did not guarantee equal rights, and the rights guaranteed by being a British subject were also limited.

The inconveniences of this system of nationality became apparent in the peaceful era of the nineteenth century as the movement of people increased. First of all, the problem was that this was an inconsistent, patchwork system. Under a strict understanding of *jus soli*, the foreign-born children of British nationals would not be able to obtain British nationality whereas the children of foreign ambassadors stationed in the UK could become British nationals. These issues were addressed through a patchwork of legislative fixes, but nationality-related legal norms were becoming inconsistent by this time.³⁵

Furthermore, since a British subject's allegiance to the king was thought to be indelible, unalterable for life, it gave rise to situations in which the UK's jurisdiction overlapped with that of another state, depending on that state's nationality system. For instance, a person born in the UK to a French father was British and, at the same time, French under France's system of nationality, which followed *jus sanguinis* in principle. This person thus had dual nationality. War between the UK and France was always a real possibility until the early twentieth century, for the two states had almost always regarded each other as potential enemies for centuries. Were war to break out, a person with dual nationality who served in the French army and was captured by the British would not be legally protected as a foreign military officer, but instead would be charged with treason. Or, to take another case where the problem of dual

nationality arose, a British woman marrying a foreign man would not lose her British nationality but, under continental European systems, she would automatically acquire her husband's nationality. It was virtually impossible to renounce British nationality short of committing the most heinous acts that would cause the king to relinquish his protection.

Becoming a naturalized British subject was easier than renouncing British nationality because there were measures to do so, such as individual acts of Parliament and crown prerogative, mentioned above; yet, in reality, these methods required powerful connections and a large sum of money and even so, naturalized subjects still had certain limitations placed on their rights. Within the generally peaceful and liberal post-Napoleonic Wars international environment, the desirability of the free movement of labor was a growing intellectual trend, partly because of the influence of free trade theory, which was a major social movement at the time. The Aliens Act of 1844 finally removed most restrictions on the rights of naturalized British subjects, although it still barred them from becoming a Privy Counsellor or a Member of Parliament.³⁶ There was also concern in the UK, the most powerful empire in the world at the time, that it would be a burden on its foreign relations if more people naturalized to take advantage of the protection that it could afford its subjects overseas.³⁷ For this reason, it was decided from about 1850 onward that naturalization in a colony outside the UK would only confer British subject status in that colony, and measures were taken to temporarily suspend the issuance of passports to naturalized subjects. This in turn led to the extreme absurdity of naturalized British subjects being unable to go abroad, and so measures were introduced to restart the issuance of passports valid for a limited period of time.

Diplomatic problems with the US prompted the UK to make drastic changes to its outdated systems for naturalization and renunciation of subject status. Its principled position was that in the event of war, the government could impress British emigrants to the US and imprison those who refused in accordance with British law, because, as we saw above, everyone born in the UK was British in theory. From the US perspective, this was tantamount to its own naturalized citizens being kidnapped by a foreign government. From the UK's point of view, however, US poaching of British seamen with offers of high pay after the War of Independence seemed to be instigating desertion from the Royal Navy. (The converse was also possible: that people of British origin could appear in America seeking the protection of the British government by claiming British status. In fact, British-born immigrants in some parts of the US did seek the British government's protection during the American Civil War, claiming they were exempt from US conscription on the grounds of being British-born.³⁸) Furthermore, the Royal Navy's impressment on the high seas of British-born seamen who had become naturalized Americans, occurring against the backdrop of fundamentally stormy UK-US relations, also became one of the causes of the War of 1812.³⁹

3.4 *The US System of Nationality*

Then again, since renouncing nationality (expatriation) had not been codified in the US, its position that a person becomes American upon naturalization, the original nationality being no longer valid, was not always consistent either. In the early years of independence, Thomas Jefferson advocated legalizing expatriation as a natural individual right, a view Alexander Hamilton opposed, arguing that allegiance to the state could not be withdrawn by individual will alone, and if that proposition were accepted, the number of deserters from the American army would rise.⁴⁰ Also, the debate over whether American citizenship meant membership in the federal government or in the various states invariably led to an irresolvable impasse.

Growing immigration to the US gave rise to situations in which newly naturalized Americans, having returned to Europe or European colonies in the Caribbean where renouncing nationality was also not adequately institutionalized, sought US government protection after military service or other obligations were imposed on them. Restrictions on expatriation were not unusual at the time. In addition to the UK, as we have seen, France, Germany, and the Scandinavian countries required military service even for persons naturalized in a foreign country. Russia went so far as to establish such provisions as not allowing its subjects who became naturalized in a foreign country to return home.⁴¹ As a result, when naturalized Americans returned to their countries of origin, they were subject to various obligations such as military service, and in some cases were even subject to criminal punishment. The US at the time was powerless to intervene in European systems of nationality, so it had to deal with each situation separately through diplomacy.⁴²

3.5 *US-UK Conflict Over Irish Migrants*

This ad hoc process finally became unworkable when large numbers of Irish migrants immigrated to America due to the Great Potato Famine of the 1840s and became naturalized. These Irish immigrants felt a sense of belonging toward Ireland, not the British monarch. Many of them were actively involved in the Irish independence movement, so when the British authorities began severe crackdowns, the US appeared to be a major base for the movement. Here again, according to British nationality law, a person born in Ireland was still a British subject even after becoming a naturalized citizen of the US. The US and UK thus now had overlapping jurisdictions over Irish immigrants to the US. Even so, the two countries could have resolved the matter diplomatically as before if they had enjoyed sufficiently good relations. However, their bilateral ties were stormy to begin with, on top of which, the US had experienced a growing dissatisfaction with the UK's favorable attitude toward the South during the Civil War. Therefore, it now felt an even stronger sympathy for Ireland.

Irish-born Americans who were deeply involved in the 1867 Fenian Rising that called for Irish independence were arrested upon their return to Ireland, some of

whom were sentenced to death. In response, a bill was introduced in the US Congress that would give the president the power to arrest British nationals in the US, as the political influence of the Irish residents could not be ignored.

The Fenian raids took place in 1866, 1870, and 1871, carried out by the Fenian Brotherhood, an Irish nationalist group in the US that sent armed militia across the border to attack Canada, which was then a British territory. The men who masterminded the raids aimed to occupy Canada as a steppingstone for an invasion of Ireland, as well as to draw the US into conflict with the UK. The US president at the time was Andrew Johnson, elevated to the presidency after Abraham Lincoln's assassination in 1865. Although Johnson had no intention of getting into a dispute with the UK, rather than prevent these attacks on another country from his own territory he took an ambiguous position, mindful that his domestic political base was weak and he could ill afford to lose the Irish vote. In the actual fighting, the Fenians were quickly repulsed because their strategy was unrealistic and reckless. In addition, the Irish residents in Canada showed no signs of starting a revolt in response to the raids; though of Irish descent, many were Ulster Protestants who were satisfied with the Canadian system.

Though the raids were militarily unimpressive, they were a rude awakening for Canada. Threats from the larger, less-than-friendly neighbor to the south fueled Canadian nationalism. Conversely, it led to a complete loss of influence for the annexationist movement seeking union with the US that, albeit small, had existed until then, driven by dissatisfaction with British colonial rule. The incident is what prompted the colonies of British North America toward Confederation as the Dominion of Canada under the United Kingdom in 1867.⁴³

3.6 Gaining the Freedom of Expatriation

To prevent overlapping personal jurisdiction from causing such knotty situations, the US concluded a series of agreements known as Bancroft treaties. The US federal government established its authority over the American system of nationality after the Civil War, as we have seen. And on that basis, the US sought to forestall international disputes over personal jurisdiction by legalizing the right of expatriation (voluntary renunciation of citizenship) in 1868 and by preventing dual nationality through Bancroft treaties; starting with Prussia in 1868, it concluded 25 treaties by 1937 (Table 1). The parties to these treaties mutually recognized the right of their citizens who left the country as immigrants to renounce their nationality; the treaty with Prussia stipulated that they could become naturalized after five years of uninterrupted residence.⁴⁴ In other words, having allowed mutual renunciation of nationality under certain conditions, these treaties thereafter ensured that the states' personal jurisdiction would not overlap. The UK and the US, following this basic direction, aimed to resolve their long-standing issue over expatriation by mutually recognizing the right to voluntarily renounce nationality.⁴⁵

Table 1 Bancroft treaties

Signatories (with the US)	Date signed
North German Confederation (Prussia)	February 22, 1868
Bavaria	May 26, 1868
Mexico	July 4, 1868
Baden	July 19, 1868
Württemberg	July 27, 1868
Hesse	August 1, 1868
Belgium	November 16, 1868
Sweden and Norway	May 26, 1869
Austro-Hungarian Empire	September 20, 1870
UK	February 23, 1871
Denmark	July 20, 1872
Haiti	March 22, 1902
Inter-American Convention of 1906	August 13, 1906
Salvador	March 14, 1908
Brazil	April 27, 1908
Uruguay	August 10, 1908
Portugal	May 7, 1908
Honduras	June 23, 1908
Peru	October 15, 1907
Nicaragua	December 7, 1908
Costa Rica	June 10, 1911
Bulgaria	November 23, 1923
Czechoslovakia	July 16, 1928
Albania	April 5, 1932
Lithuania	October 18, 1937

Notes Inter-American Convention (1906) was signed by the US, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, and Uruguay.

Source Adapted from Ben Herzog. 2017. *Revoking Citizenship: Expatriation in America from the Colonial Era to the War on Terror*. New York: New York University Press, 59.

It had become evident in the UK, too, that the principle of perpetual allegiance was unreasonable and inconsistent with reality, and no longer could the aforementioned frictions be ignored. There was growing support for the opinion that the right to renounce nationality should be recognized. A report submitted by a parliamentary subcommittee in February 1869 led to the passage of the Naturalization Act in 1870, which allowed Britons to renounce their nationality of their own free will. Further, British nationals who became naturalized in another country would automatically

lose their British nationality unless they chose to retain it within two years, and a British subject woman who married a foreign man would lose her British subject status. Also, the UK's naturalization requirements were also eased, with a minimum five-year period of residency. Distinctions between the rights of naturalized and other British subjects were done away with. People from the UK could also maintain their nationality without restrictions when traveling overseas.⁴⁶

The UK and the US signed a convention on naturalization in 1871, thereby enabling the US to stabilize their relations by removing the cause of conflict with the UK, the government of the country from which so many people crossed the Atlantic Ocean to settle in the US as naturalized citizens. In other words, although it did not allow the Southern states to secede collectively, it did recognize the right of individual Americans to choose, of their own volition, the country to which they would pledge allegiance.

3.7 Reconciling Personal Movement and Personal Jurisdiction

Thus, we have seen that in the post-popular revolutionary era in which interstate relations became stable and liberalism prevailed, freedom of movement was strengthened, and national borders became much more open than before. The opening of borders and greater personal mobility did not mean that belonging to a state lost its meaning. Rather, it drove the evolution of systems concerning people's belonging to the state. Furthermore, issues of members' belonging to the state (i.e., the state's personal jurisdiction) inevitably arose when events such as independence or national unification led to the redrawing of national borders or to territorially rearranging a state. The question of who belonged where was inextricably linked to the questions of who had what rights and whom the state could mobilize. Consequently, differences in positions and interests regarding the answers to these questions sometimes led to diplomatic conflicts.

Issues could generally be resolved during this period by common consent between the states involved, be they the German states or the US in its relations with other countries. One likely reason it was easy to reach diplomatic solutions is that even though borders did open to a larger degree, in reality, the practical barriers preventing cross-border migration remained quite high, limiting the scale of movement. The openness of the British borders was certainly impressive, yet given that the UK is surrounded by water, migrants had to go through emigration procedures in their own country before arriving at a British port as passengers on a ship, and boarding the ship came at considerable cost. Another reason was the relatively stable interstate relations between Western countries at the time, which enabled them to resolve any issues that might arise over personal jurisdiction or personal movement through negotiations without escalating into armed conflict.

Conversely, even during this period, states immediately tightened their control over movement and membership of people whenever tensions increased in the international political environment. Furthermore, the abolition of passport control in the German states did not mean that they had completely stopped control over aliens. Once they had entered the state, aliens were still obligated to prove their identity with various documents; the German states reserved the right to reintroduce the passport system if necessary.⁴⁷ This strengthening of control emerged as a dominant trend in subsequent periods.

4 The Nation-State

By the end of the nineteenth century, the use of railroads and steamships made movement technically much easier. The dominant ideology during this period was nationalism, the belief that members of a state should be a people or a nation connected by some kind of cultural bond.

Free, compulsory education was introduced in France in 1882 and in England and Wales around the same time. The state, by promoting a homogeneous national culture, was trying to turn out educated citizens into society. Military service, along with elementary education, stimulated the emergence of the “nation.” A national military—in which all adult males in principle share the dangers in service to the state in place of armed forces composed of mercenaries and professional soldiers of a certain rank—is the product of nationalism as well as a device to strengthen it. Citizens certainly participated in the management of state authority to a much greater extent. Though still limited to male property owners, suffrage generally tended to expand, and democratization became an irresistible trend of the times. Equality, liberty, and political participation all increased, but these values were all developments that occurred within the framework of the state. Therefore, belonging to a state took on greater meaning than ever before.

With the growing sense of national identity in major Western countries at the time, the accompanying sense of the otherness of foreigners inevitably grew as well. Moreover, whether a state was capable of domestically mobilizing its people and resources when exposed to fierce external competition became a critical matter of life or death for the state. Nationalism, as a result, took on unprecedented political significance as a symbol, and also became linked to racist discourse, as exemplified by the Yellow Peril. In short, a stronger, more exclusive bond between a state and its members was called for at the same time that cross-border movement of people increased. States thus began to pursue more stringent controls over personal movement as well as personal jurisdiction.

4.1 *Tightening of UK Immigration Regulations*

Though its borders were once open, the UK began tightening its immigration regulations at the end of the nineteenth century. As mentioned above, it had been without strict immigration controls since the 1830s. However, the situation changed in the 1880s with the arrival of Jewish refugees from Russia and Eastern Europe in large numbers. The persecution of Jews (pogroms) in Russia and Poland intensified starting in that decade, resulting in Russian and Polish Jews migrating to other parts of the world. Many Jews began settling in London, too, concentrating in the East End. The mass influx of impoverished people with unfamiliar customs, religion, and languages caused a rise in societal tensions.⁴⁸ Amid this situation, Parliament made several attempts to pass legislation to restrict immigration, influenced by America's tightening of its immigration regulations as well as by the discussions of social Darwinism and eugenics that were popular at the time. Liberals and Liberal Party governments of the time resisted such moves, but a Royal Commission on Alien Immigration was set up in 1902 to consider immigration controls. Although the Commission dismissed many of the anti-immigrant arguments of the time as baseless, its discussions ultimately led to the enactment of the Aliens Act of 1905. This Act established a system of immigration officers and gave the Secretary of State for the Home Department the power to refuse entry to aliens from the perspective of public interest. The regulations that were actually introduced were full of loopholes as a result of various compromises, and so the Act did not radically tighten restrictions on entry into the UK. It did, however, become the basis for a further tightening of restrictions during World War I, including provisions for deportation.⁴⁹

Canada, Australia, and other white-ruled, self-governing dominions within the British Empire embarked on tightening immigration restrictions based on racist discourse to a greater extent than mainland Britain. While it was economically rational for colonial development to accept large numbers of Chinese and Indian immigrants as cheap labor, white settlers were more sensitive to Anglo-Saxon homogeneity than their home countries, and they vehemently rejected immigration by other races, arguing that it diluted their identity. Consequently, these self-governing dominions implemented a range of measures that, while formally unrelated to race, effectively excluding non-white immigrants, such as entry taxes, tonnage restrictions limiting the number of immigrants that can a ship can transport to its size, and literacy tests in Western languages.⁵⁰ The British imperial government in London showed little enthusiasm for blatant racial discrimination, partly owing to the need to govern a multi-ethnic empire, and partly because of its 1902 alliance with a non-white country, Japan. However, it repeatedly enacted legislation, similar to the immigration restrictions in the self-governing dominions, that effectively excluded people such as Chinese and Indians without formally discriminating based on race. As a result, immigration from Asia was almost completely excluded by World War I.⁵¹

4.2 *Tightening of US Immigration Regulations*

The anti-immigration movement gained strength in the 1880s even in the US, which had been the largest recipient of international immigrants in the nineteenth century. Throughout the century, as American territory expanded westward, securing settlers had been a major national goal for the US. To be sure, having started out as a homogeneous community of white, English-speaking Protestants, America experienced some discord among the diverse peoples who arrived in successive waves. Each influx of immigrants from Catholic countries and Eastern Europe always generated friction. The issue of immigration took on greater racial implications, however, with the influx of non-whites toward the end of the nineteenth century to meet America's vigorous demand for labor.

The US and the Great Qing Empire (China) signed what is known as the Burlingame Treaty in 1868 that established an equal bilateral relationship. While it does not mention naturalization, Article 5 of the treaty does provide for free migration and immigration of their two peoples.⁵² Consequently, large numbers of Chinese went to the US as contract laborers and were employed as a cheap labor force in the American West. However, as early as 1882, temporary legislation was passed to exclude Chinese immigrants, which became a permanent law in 1902 and remained in effect until 1943, during World War II. In addition, a registration system for controlling Chinese living in the US was established and enhanced. Chinese people living in the US were thus used as cheap labor but were unable to naturalize. The exclusion of Japanese immigrants that began on America's West Coast after the Russo-Japanese War was part of this general trend to exclude immigrants.

Increasingly systematic and "scientific" border control methods were introduced as advances in the modes of international migration put mounting pressure on national borders. A federal government immigration office was established on Ellis Island, off the coast of New York's Manhattan Island, and beginning in 1892 it was responsible for screening immigrants arriving across the Atlantic Ocean. Three-quarters of the immigrants coming to America at the time were screened at this huge facility (now the National Museum of Immigration) in a workflow process not unlike a factory production line. Here, medical examinations, document checks, and interviews were used to prevent people from entering the country: those with infectious diseases, passengers who did not pay their ship passage, polygamists, prostitutes, and anarchists. It was also hoped that conducting some intelligence and academic ability tests would play a role in keeping out "undesirable" immigrants at the border. A similar facility was established in 1910 on the West Coast, on Angel Island in San Francisco, where immigration screenings were conducted mainly for Chinese and Japanese immigrants.⁵³

4.3 Development of the French System

As we have already seen, France made patrilineal *jus sanguinis* the principle of its nationality system with the enactment of the Napoleonic Code. France in the nineteenth century was a major center of European civilization and an immigrant receiving country. The Napoleonic Code had no provisions regarding naturalization, but a route to obtaining French nationality was open to foreigners who declared their intention to naturalize after ten years of residence.⁵⁴ But the naturalization procedure was, in reality, complicated, costly, and time consuming. Moreover, even foreigners could effectively acquire many aspects of citizenship if they obtained a residence permit. Therefore, only a small number of foreigners actually were naturalized.⁵⁵

Under the *jus sanguinis* rule of the Napoleonic Code provisions, children born of alien parents remained forever aliens. Amending the Napoleonic Code itself, even if attempting to amend just that aspect, would have implications for the French legal system as a whole; moreover, the principle of *jus sanguinis*, being accepted in continental Europe at the time, had become a kind of international standard. And so the system evolved in a way to allow naturalization in a more flexible manner.

In 1851, under the Second Republic, the law was amended to grant, in principle, French nationality to French-born children, even if both parents were aliens, as long as at least one parent was born in France; in other words, the path to naturalization was opened to third-generation immigrants. Even in this case, they were still allowed the freedom to choose French nationality when they came of age.

Actually, the fact that there were children of immigrants living in France having the right to naturalize who did not seek to acquire French nationality was an issue at that time. This resulted in a rise in the number of foreign nationals permanently residing in France: the country's foreign population, which was approximately 655,000 in 1866, or 1.7% of the total population, almost doubled 10 years later to nearly 1.13 million, or 3% of the population.⁵⁶ This provoked a backlash from ordinary French people. The military conscription system, previously full of loopholes to escape serving, had become more rigorously enforced out of military necessity. It was unreasonable for those obligated to serve to live among those who were not in a republic that was supposed to be made up of equal citizens. It was thought unfair for someone born in France, resident since their parents' generation, to enjoy various state protections without fulfilling the attendant duties.

Another point, in addition to this perspective on civil equality, was a concern at the time about matters of national defense created by the growing number of foreign residents. France is a continental country, separated from its neighbors by long land borders. It was feared that having a sizable number of foreigners living in border areas might be undesirable from the standpoint of national defense. Such national security concerns were taken more seriously on the growing awareness, after France's crushing defeat in the Franco-Prussian War of 1870–71, that the country had become inferior in terms of population to the unified Germany.⁵⁷ It was felt that those French-born people who lived in France since their parents' generation had completely assimilated, in both language and customs. If so, a popular view held

that the country should promote their naturalization, both from the perspective of expanding human resources and from the perspective of accepting social reality.

That was the lead up to the Nationality Law enacted in 1889 under the Third Republic. The law denied the right to refuse French nationality that had been granted to third-generation immigrants under the 1851 law, and it granted French nationality, automatically and irrevocably, to anyone born in France of French-born parents. Also, it granted French nationality, in principle, to second-generation immigrants reaching the age of majority provided that they still resided in France, but they could retain their foreign nationality if they made a declaration within a year of reaching the age of majority.⁵⁸ There is no question that the French authorities took a stance of promoting naturalization, although they did leave some room for maintaining foreign nationality. At the same time, the French government encouraged resident aliens to naturalize by limiting their rights; it set a time limit on the right of residence that had previously been granted indefinitely and attached nationality conditions to civil service jobs and admission eligibility to some public schools that had previously been open to foreigners. Furthermore, by making the procedure for renouncing French nationality very strict, the government strongly induced second-generation immigrants to acquire French nationality. In other words, this effectively meant that French nationality law came to incorporate *jus soli* elements.⁵⁹

4.4 Development of the German System

Germany, which was unified in 1871, inherited its nationality law from the North German Confederation, which had enacted its Law on Nationality and Citizenship the year before; that law, too, had been inherited from the former German states, which meant that even in Imperial Germany, nationality was something each territorial state decided. The law was based mostly on the principle of descent but supplemented by factors such as place of birth and place of residence. It also included the ability to naturalize under certain conditions, and the loss of nationality when residing abroad for 10 years.⁶⁰ There was a sudden need to reconsider the question of who was German, arising from two new issues: the status of residents in the territories acquired from Denmark and France during the process of German unification and, as in France, a growing awareness of draft evasion. Strictly applying the *jus sanguinis* principle would not only make these residents aliens, exempting them from military service obligations, but it would also mean passing their same status down to their next generation. The rising number of youths not serving in the military, in the Alsace-Lorraine region in particular, was seen as problematic.⁶¹ In addition, by the end of the nineteenth century, Germany had begun acquiring overseas colonies, necessitating a reconsideration of the status of residents in those overseas territories.

Liberal arguments of immigrant integration, which held that incorporating new members into Germany was morally and economically correct, were also prevalent at the time. Also widely advocated was a mercantilist argument for immigrant integration, akin to one Napoleon had asserted. It argued that Germany's external

competitiveness would decline unless its new residents were integrated as Germans, and so to incorporate as many residents as possible, Germany should strengthen the *jus soli* principle in determining nationality. France's amended nationality law of 1889, which we saw made birthright-based naturalization almost automatic, further aroused the concerns of the German Army, as it prepared for a French war of revenge. Indeed, in 1892 Hohenlohe, then governor of Alsace-Lorraine, asked German Chancellor Caprivi to grant German nationality to children born in Germany to foreign parents under certain conditions.⁶²

But interestingly enough, the story was quite different at the eastern border. Fear of immigration dominated the debate as pressure from the influx of immigrants from the east began to increase in the 1880s. Germany had been an immigrant sending country until the mid-nineteenth century, and tens of thousands of poor German peasants settled in the Volga River region, with Russian state encouragement, as far back as the 1760s during the reign of Catherine the Great. Later, a great many emigrants, sailing from Hamburg and other northern German ports, crossed the Atlantic Ocean for the New World such that their numbers are said to have reached 1.25 million by the 1850s. There was slight awareness of a large influx of immigrants as being a problem, apart from poor immigrants, at the time of German unification in 1871. However, the US became less eager to accept immigrants starting around the 1880s, and there was growing talk in some quarters of fears that the large-scale immigration that went along with the steady development of German industry would turn the country Polish or Slav owing to the expanded number of immigrants from Poland, which had been partitioned and annexed by Russia, Prussia, and Austria in the late eighteenth century.

German Chancellor Otto von Bismarck ordered the deportation of "Russians" without residence permits from eastern Prussia in March 1885. He then took similar measures in July against Austrians in the country. His apparent aim was to remove ethnically Polish migrant workers whose nationality was Russian or Austrian from Prussia. By 1887, upwards of 30,000 Poles (a third of whom were probably Jews) were forced out of Germany as a result. Expelling a great number of people from the country who, although aliens, were neither criminals nor economic burdens was a heavy-handed policy even by the standards of the time; these measures, in fact, invited opprobrium from the countries involved.⁶³ It is an episode that speaks to the German inclination toward ethnic nationalism of the time, an attempt to make Germany a purely Protestant Germanic nation.

The rise in ethnic nationalism during this period was not a phenomenon unique to Germany, however. Pan-Slavism was on the rise in Russia, and German immigrants there were also suffering. However, it was the Jews who were subjected to even more severe exclusion. Many Jewish immigrants migrated to Germany to escape the pogroms and repeated persecution of Jews in Russia. Germany responded by tightening restrictions on entry from its eastern border, on the pretext of preventing the spread of a plague from Russia.⁶⁴ The international political environment of this period saw states increasing national mobilization by strengthening their national unity, which in turn stimulated states to reconceptualize membership in more exclusive ways.

German nationalists campaigned for a system that would make it easier for Germans who emigrated abroad to maintain their nationality, and that would prevent foreigners from becoming naturalized.⁶⁵ The enactment of the Nationality Act in 1913 is a symbolic culmination of this trend. It strengthened the *jus sanguinis* principle: no longer would the nationality of German emigrants be automatically revoked after 10 years of residence abroad, theoretically making it possible for them to pass their German nationality down to their descendants, and it also contained provisions making it easier to restore nationality upon return to Germany.

It was all but impossible for emigrants who left Germany to fulfill their duty for military enlistment required to maintain their German nationality. Furthermore, providing “protection” to “Germans” in the US or Russia was fanciful talk that surely would have led to diplomatic problems. With the approval of the 1913 Act, Germany took the path towards “an unusually strict and consistent German definition of the citizenry as a community of descent,”⁶⁶ according to one assessment, but the changes were more procedural, rather than using ethnic criteria to determine nationality. To be sure, blatantly racist policies were also adopted, such as refusing to grant German nationality to children born in German protectorates like Samoa or in Africa to German colonists and native women, or even worse, prohibiting interracial marriages altogether. Moreover, there was no shortage of racist practices and discourses that considered East Slavs and Jews as inferior peoples.⁶⁷ Yet, as evidenced by the fact that it took almost 20 years to enact the Nationality Act that was first proposed in the Imperial Diet in 1894, the bill’s deliberations had stalled on opposition from German colonists, liberals, and the Social Democratic Party, which was a powerful force in the Reichstag (Imperial Diet).

It would be an over-interpretation to regard the Act as purifying the German Empire into a community of descent, thus paving the way for the Nuremberg Laws, enacted in 1935 under the Nazi regime, that prohibited Germans from marrying Jews. In any case, purifying the country, making it a pure ethnic community, was an unfeasible project for Germany, whose empire already held a significant number of non-Germanic peoples.

4.5 *Differences of the French and German Systems*

It is an undeniable fact that Polish residents experienced discriminatory treatment in Germany, where they lived in large numbers following the partition of Poland in the eighteenth century. Immigrants working in Germany were treated only as temporary guest workers; a public agency was established to control these migrants from the East, to arrange their employment and issue them entry permits. Their employment was restricted to specific industries in specific regions, and the duration of their residency permits was strictly set according to the worker’s skill level. They were a labor force; no attempt was made to treat them as neighbors sharing daily life.⁶⁸ Moreover, it is true that whereas the French system of nationality sought a semi-coerced assimilation of immigrants through its de facto change from *jus soli* to *jus*

sanguinis, the German system reinforced the exclusion of immigrants living in the country by purifying its principle of descent.

Why did Germany and France, each galvanized by changes the other made, ultimately move toward contrasting systems of nationality? Rogers Brubaker, a professor of sociology, attributes this to the contrasting self-perceptions of the “who we are” eligibility requirements for membership in the two countries. This was contractual and rational in France, which tried to incorporate immigrants. He notes that, in contrast, Germany had strong historicist and culturalist tendencies and conceptualized its members in ethnic terms, which led to exclusion of immigrants and racial purification (and later, under the Nazi regime, carrying out radical large-scale expulsion of Jews).

However, as I have already pointed out, *jus soli* was the concept of nationality under the feudal class system, and *jus sanguinis* was first introduced as a legal principle by France after the revolution. Furthermore, French universalistic inclusivity did not extend to Algeria, which France occupied in 1830 and subsequently ruled as overseas departments, and the local Muslim population were not incorporated as equal French citizens. Considering this, eligibility for French membership cannot be said to be universal at all. Furthermore, recalling the intensity of antisemitism seen in the Dreyfus Affair in France, which started at the end of the nineteenth century, it is hard to consider racial prejudice as being any less prevalent in France than in Germany. Similarly, France lost its tolerance for cross-border population movements and for incorporating new members when it grew more aware of external threats. In fact, France granted its police authorities strong powers to control foreigners and, beginning in 1893, implemented a system for registering places of residence.⁶⁹ During the Third Republic, a number of laws to restrict immigration were also deliberated, although few passed.

Perhaps the key difference between Germany and France is that France, being the traditional center of Europe, had a long experience as an immigrant receiving country up to the nineteenth century. In that century, too, immigrants from Belgium, Switzerland, Portugal, and elsewhere poured into France once Napoleon’s defeat put an end to the series of conflicts that followed the French Revolution. And in the latter half of the century, as industrialization advanced, Jews from Eastern Europe and Russia continuously flowed into France, as they had in Italy, Poland, and even Britain, as well as immigrants from North Africa and Indochina. Consequently, late nineteenth-century France confronted the challenge of how to integrate domestically resident immigrants into the state. French nationalism, it should be pointed out, has become inextricably linked to a strong confidence in the universality and centrality of its own civilization. With France being a central power in the international politics of Europe, however, its nationalism is expansive and, backed by military capability, has long demonstrated a dynamic for outward expansion. Napoleon’s conquest of the continent is the most recent example of this. France was a proud empire with characteristics similar to that of the traditional Chinese Empire, or of twentieth-century Soviet Union and the US, expecting all immigrants to convert to French civilization in the belief that, in principle, anyone can become French.

In contrast, Germany was a newly independent state, just established through the unification of its territorial states, that had remained a large-scale emigrant sending country in the 1870s; its leaders had little confidence that the country's domestic stock of immigrants could be integrated as new members. A state may regard immigrants, especially highly skilled human workers, as a valuable human resource, and so have a strong desire to incorporate them as members. Or a state might be wary of immigration causing ties to weaken between the state and its members, a wariness activated especially when a state must demand strong allegiance from its members in an unforgiving international political environment. France, a traditional empire, placed emphasis on the former consideration, whereas Germany, a late-starting nation, emphasized the latter. It was in 1999, with the Cold War over, West and East Germany reunified, and the EU steadily gaining strength, that Germany undertook a major revision of its nationality law, moving away from *jus sanguinis* in a *jus soli* direction, by granting nationality automatically to second-generation immigrants. Despite having many immigrants, Germany long upheld *jus sanguinis* owing to the ethnic German compatriots left behind in the east because of the country's having been divided after World War II and having lost a vast amount of territory with its defeat in two world wars in the twentieth century. The end of the Cold War saw borders becoming adequately stable and concerns that dual membership would lead to interstate conflict receding; for Germany, this development symbolizes the shift in political agenda, away from those compatriots and toward the unintegrated immigrant communities within the country.⁷⁰

5 Summary

Under the old order, most members of the state were people without the freedom to leave the land of their feudal lords; in that case, the relationship between territory, people, and state was generally fixed. Thus, eligibility for membership in state was conceptualized in relation to land, and the majority of countries actually had systems of nationality based on the principle of *jus soli* (birthright). Regardless, interstate personal jurisdiction discord did not emerge inasmuch as freedom of movement itself was restricted. As a result of the American and French revolutions, the people were liberated from feudal restrictions and freedom of movement was established as a civil right, while the state was reconstituted as a rational institution established through a contract among its citizens. Accordingly, the French birthright system of nationality was seen as a relic of the feudal system.

The UK long kept the old order concept of membership, perhaps because it maintained the continuity of its constitutional system, undisrupted by revolution, since the seventeenth century. Perhaps, too, a principle of gradual integration may be more realistic in governing a vast empire than is required for a nation-state. In the case of the UK with its far-flung territories, a multi-layered structure emerged: it maintained a somewhat anachronistic eligibility requirement for membership within the British Empire, allegiance to the Crown, while various regions of the empire developed their

own systems of eligibility. In addition, the *jus soli* principle is a more rational system from the perspective of reproducing more white settlers as citizens for immigrant states, such as the US, that were established through the marginalization of indigenous people by white immigrants—perhaps why a system that had its origins in the old order was maintained.

Meanwhile, the revolution in France resulted in reconstituting the state as a rational institution established through a contract among the people. The French nationality system, introduced after the revolution, became the model for continental Europe in the nineteenth century, and most European states accepted it as the basis of their own nationality system. *Jus sanguinis* thus became an effective system of nationality, thereby causing the nationality systems of the major Western states to no longer be consistent with one another.

In the late nineteenth century, amid and coincident with rising nationalism and racialism, the bond between the state and its citizens were strengthened in various ways, such as conscription, education, and the expansion of suffrage whereas relations between states grew more acrimonious. With the shrinking of technological barriers to crossing borders, states began to stringently control international population movement. The US and the UK both reinforced their immigration controls, employing newly developed scientific techniques for this purpose. In this era that emphasized the otherness of foreigners which was amplified by racism, many states tried to gain the upper hand in interstate competition by emphasizing distinctions between their members and non-members, and by strengthening their engagement with the former, whether immigrant communities within their borders or compatriots beyond their borders.

When World War I started, eligibility requirements for membership in a state became extremely exclusive. Many people's fates came to be influenced largely by the nation to which they belonged. In France, the UK, and Germany, enemy country nationals were first required to register and then either be repatriated or sent to internment camps. There were as many as 60,000 internees in France, 32,000 in the UK, and 100,000 in Germany. In the US, there were 4.7 million residents born in enemy countries, making full-scale internment completely impossible, but at its peak some 6300 enemy nationals were interned in 1918.⁷¹ When it came to the bond with the state, a widespread tendency in all countries was to ignore official nationality and to regard the innate racial or ethnic bond as more reliable than a bond acquired through naturalization.

Notes

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2. Roche, T. W. E. 1969. *The Key in the Lock: a History of Immigration Control in England from 1066 to the Present Day*. London: J. Murray, 13.

3. “The five key control points, the Cinque Ports, were at Hastings, Romney, Dover, Hythe and Sandwich: the process of passing through these ports gave birth to the word ‘passport.’” Cohen, Robin. 1994. *Frontiers of Identity: The British and the Others*. London: Longman, 37.
4. Roche, op. cit., 40.
5. Fahrmeir, Andreas. 2000. *Citizens and Aliens, Foreigners and the Law in Britain and the German States, 1789–1870*. New York: Berghahn Books, 101; Fahrmeir, Andreas. 2007. *Citizenship: the Rise and Fall of a Modern Concept*. New Haven: Yale University Press, 47.
6. Torpey, John. Fujikawa Takao (trans). 2008. *Pasupo-to no hatsumei: kanshi, shitizunshippu, kokka* (*The Invention of the Passport: Surveillance, Citizenship, and the State*). Tokyo: Hōsei University Press, 93–94 [Translation of Torpey, John C. 2000. *The Invention of the Passport: Surveillance, Citizenship, and the State*. Cambridge: Cambridge University Press, 58–59.].
7. A detailed analysis of the decision in the Calvin case can be found in the following literature: Yanai Ken’ichi. 2004. *Igrisu kindai kokusekihōshi kenkyū: kenpōgaku, kokumin kokka, teikoku* (*The origins of the modern British nationality law: constitution, nation-state and empire*). Tokyo: Nippon Hyōronsha, 38–56 [English readers might refer to Price, Polly J. 1997. “Natural Law and Birthright Citizenship in Calvin’s Case (1608).” *Yale Journal of Law & the Humanities*, Vol. 9, 73–145. <http://hdl.handle.net/20.500.13051/7701> (accessed March 12, 2024).].
8. Kettner, James H. 1978. *The Development of American Citizenship, 1608–1870*. Published for the Institute of Early American History and Culture, Williamsburg, VA by Chapel Hill: University of North Carolina Press, Chapter 2.
9. *Ibid.*, 35.
10. *Ibid.*, 180–181.
12. Huntington, Samuel P. Suzuki, Chikara (trans). 2017. *Bundansareru amerika (America divided)*. Tokyo: Shūeisha, 301 [Translation of Huntington, Samuel P. 2004. *Who are we? The challenges to America’s national identity*. New York: Simon & Schuster, 186.].
12. Kettner, op. cit., 232–239.
13. *Ibid.*, 243.
14. Matsui, Shigenori. 2012. *Amerika kenpō nyūmon, dai 7-han* (*American constitutional law, 7th ed.*). Tokyo: Yūhikaku [English readers might refer to <https://www.archives.gov/founding-docs/constitution-transcript> (accessed March 12, 2024).].
15. Refer to “Kokujin dorei to Amerika kenpō (Enslaved blacks and the US constitution)” in Agawa, Naoyuki. 2013. *Kenpō de yomu Amerika shi(zen)* [*Looking for America through reading its constitution (complete)*]. Tokyo: Chikuma Gakugei Bunko.
16. Section 1 of the Fourteenth Amendment of the US Constitution states: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...” (Matsui, op. cit., 444; or <https://constitution.congress.gov/browse/amendment-14/>). Despite this Amendment, it was a different story for native American Indians: not until the enactment of the Indian Citizenship Act of 1924 was citizenship status was conferred on them. <https://constitutioncenter.org/blog/on-this-day-in-1924-all-indians-made-united-states-citizens/> (accessed March 12, 2024).
17. Weil, Patrick. Porter, Catherine (trans). 2008. *How to be French: Nationality in the Making since 1789*. Durham: Duke University Press, 11–12.
18. On the system of nationality and restrictions on movement during the French Revolution, see Torpey, op. cit., Chapter 2.
19. Tateda, Akiko. 2006. “Furansu ni okeru kokuseki seido to kokumin gainen (2): sono rekishiteki kōsatsu (System of nationality and the concept of nation in France (2): Historical considerations).” *The Hokkaido Law Review*, Vol. 56, No. 5. <http://hdl.handle.net/2115/6101> (accessed March 12, 2024).
20. Weil, op. cit., 19.
21. Brubaker, Rogers. Satō, Shigeki and Sasaki, Teru (trans). 2005. *Furansu to Doitsu no kokuseki to nēshon: kokuseki keisei no hikaku rekishi shakaigaku* (*Nationality and nation in France and Germany: a comparative historical sociology of the formation of nationality*). Tokyo: Akashi

- Shoten, 146 [Translation of Brubaker, Rogers. 2002. *Citizenship and Nationhood in France and Germany*. Cambridge: Harvard University Press, 88.].
22. Weil, op. cit., 23.
 23. Zolberg, Aristide R. 2007. "The Exit Revolution," in Green, Nancy L. and Weil, François (eds). *Citizenship and Those Who Leave: The Politics of Emigration and Expatriation*. Urbana: University of Illinois Press, 37.
 24. Torpey, op. cit., 108 [English edition, 68.].
 25. Fahrmeir 2000, op. cit., 105–106. House of Commons Select Committee on the Laws Affecting Aliens. 1843. Vol. V, page ix, as quoted by Bevan, Vaughan. 1986. *The Development of British Immigration Law*. Beckenham: Croom Helm, 64.
 26. Bevan, op. cit., 63–64.
 27. Fahrmeir 2007, op. cit., 73; Torpey, op. cit., 110–113. [English edition, 70–71.] Torpey interprets the 1836 Act as strengthening immigration control, but also states that it was not strictly enforced.
 28. Torpey, op. cit., 99–100 [English edition, 62.].
 29. Fahrmeir 2000, op. cit., 118.
 30. Torpey, op. cit., 143 [English edition, 82.]; Fahrmeir 2000, op. cit., 80.
 31. Fahrmeir 2007, op. cit., 64.
 32. Fahrmeir 2000, op. cit., 22.
 33. *Ibid.*, 26–28 and 37.
 34. Karatani, Rieko. 2003. *Defining British Citizenship: Empire, Commonwealth and Modern Britain*. London: Frank Cass, 50–58.
 35. Fahrmeir 2000, op. cit., 45–46.
 36. For the contents of the Aliens Act of 1844, see Yanai, op. cit., Chapter 6.
 37. For example, there is the Don Pacifico affair in 1850, in which a Gibraltar-born Jewish British merchant living in Greece demanded compensation from the Greek government. Lord Palmerston, the British Foreign Secretary at the time, dispatched the Royal Navy to Greece to put pressure on the government, but his actions provoked strong criticism from within Britain as well as from other countries.
 38. Tsiang, I-Mien. 1942. *The Question of Expatriation in America Prior to 1907*. Baltimore: The Johns Hopkins Press, 83.
 39. *Ibid.*, 45–47.
 40. *Ibid.*, 25–30.
 41. *Ibid.*, 95.
 42. *Ibid.*, 72.
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 46. Fahrmeir 2000, op. cit., 48–50.
 47. Torpey, op. cit., 133–134 [English edition, 80–81.].
 48. Coleman, David. 1995. "Immigration Policy in Great Britain," in Heckmann, Friedrich and Bosswick, Wolfgang, eds. *Migration Policies: A Comparative Perspective*. Stuttgart: Enke, 115–116.
 49. Bevan, op. cit., 68–72; Fahrmeir 2000, op. cit., 101; Karatani, op. cit., 77 and 99.
 50. Bevan, op. cit., 66.

51. Daniels, Roger. 1995. "The Growth of Restrictive Immigration Policies in the Colonies and Settlement," in Cohen, Robin, ed. *The Cambridge Survey of World Migration*. Cambridge: Cambridge University Press, 39–40; Torpey, op. cit., 154–161 [English edition, 96–101.].
52. For the text of the Burlingame Treaty, please see: <https://history.iowa.gov/sites/default/files/history-education-pss-war-burlingame-transcription.pdf> (accessed March 12, 2024).
53. Fahrmeir 2007, op. cit., 97–98.
54. Weil, op. cit., 31.
55. Ibid., 32–33.
56. Ibid., 45.
57. For more information on France's concerns at the time about demographic trends and the foreign policy implications, see the following works: Cole, Joshua. 2000. *The Power of Large Numbers: Population, Politics, and Gender in Nineteenth-Century France*. Ithaca: Cornell University Press; and Offen, Karen. 1984. "Depopulation, Nationalism, and Feminism in Fin-de-Siècle France." *The American Historical Review*, Vol. 89, No. 3, 648–676. <https://doi.org/10.1086/ahr/89.3.648> (accessed March 12, 2024).
58. Regarding the contents of the 1889 amended law, see Weil, op. cit., 49.
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62. Ibid., 300.
63. Fahrmeir 2007, op. cit., 89–90.
64. Torpey, op. cit., 173–174 [English edition, 108–109.].
65. Brubaker, op. cit., 190 [English edition, 116.].
66. Ibid., 187 [English edition, 114.].
67. Moriya 2009, op. cit., 302 and 305.
68. Bade, Klaus J. 1995. "Germany: Migrations in Europe up to the End of the Weimar Republic" in Cohen (ed.), op. cit., 133–134; Fahrmeir 2007, op. cit., 100.
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71. Fahrmeir 2007, op. cit., 120.

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Chapter 5

Inclusion and Reproduction of Members



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Abstract For a state to continue to exist, it faces the challenge of integrating new entrants into its current members and reproducing the nation. A state's relationship with the people who have newly come to live in its territory develops through several stages. This chapter examines the issues of naturalization and dual nationality, systems by which a state grants formal membership to non-members. It also touches on the issues of societal and cultural integration, which have become politically controversial in the Western world. Other specific topics addressed in this chapter include the acceptance of migrant workers in postwar Western Europe, the rights of permanent resident aliens, naturalization in the post-Cold War Baltic states, and the development of—and disappointment with—multiculturalism.

The “short twentieth century,” from the outbreak of World War I in 1914 to the end of the Cold War in 1989, was the heyday of the “crustacean type of nation,”¹ firmly protected by the hard shell of its borders, which it used to control interaction with the outside. This development was driven in large part by constant, large-scale interstate conflict: two total wars and the ensuing Cold War. As states mobilized their populations for long periods of time in mutual confrontation, they were forced to secure strong allegiance from their members residing in the territories under their control, which required creating a relationship with their members that was at times pathologically close. This phenomenon was observed no matter the state’s political and economic system or ideological position.

Accepting large numbers of immigrants from potential enemy states and magnanimously incorporating these immigrant communities has become a rather exceptional, laudable story. Receiving states tightened restrictions on accepting immigrants when their governments were in conflict with sending states. Host states and societies also lost the psychological wherewithal for tolerant acceptance of previously settled immigrant communities. Even the United States, a nation supposedly proud of being founded by immigrants on the basis of liberty and democracy, forcibly isolated members of the Japanese immigrant community in concentration camps during World War II, even including second-generation members who undoubtedly had citizenship under the US Constitution. Considering that German and Italian immigrants did not experience anything similar, racial prejudice could have been a factor. This is but one of many examples illustrating how minority immigrant communities have found themselves placed in difficult positions in an international political environment fraught with conflict.

At the same time, it was expected that the state of this period would play an incomparably greater role in various areas of the lives of its people than it did in the nineteenth century. Achieving equality among the people through income redistribution—in addition to providing them with a variety of services, such as education, medical care, pensions—has, to varying degrees, become a role widely expected of state. Such wide-ranging roles naturally require the resources to pay for them. The state’s finances, previously funded through customs duties and state monopolies on certain products, were forced to assume a larger role in the twentieth century, by broadly taxing the income of the entire populace. It also became a global trend for the state’s members, now expected to support their state with these ample taxes, to firmly demand to take part in political decisions. In short, not only did the state control the territory in which its members live, but it also became responsible for their lives in general. This entailed the state having to procure from its members the enormous resources necessary to provide them with a variety of services. Being a member of the state also means being a member of the state’s redistribution and sharing of risk. The extent to which someone can receive services hinges therefore on whether he or she is a member of the state. And a state member is expected to provide resources to the state. As such, members naturally came to expect the right to participate in the decision-making of the state.

The borders between states with different regimes during the Cold War in the second half of the twentieth century were probably the most stoutly defended in

history. The Berlin Wall, which separated East and West Berlin, and the 38th parallel, which bisects the Korean Peninsula into north and south, are typical examples of such hard borders. In addition, even the traditional immigration states of the West adopted state policies regulating the flow of immigration openly on the basis of race. As mentioned in the previous chapter, the world's largest receiving country starting in the late nineteenth century, the US, gradually tightened its immigration laws and did not abolish its racially discriminatory quota limits by country until the Hart-Celler Act of 1965.² It was also official policy in Australia to exclude immigrants of *colored* races through the White Australia policy, which was not changed until the 1970s. Even Canada, arguably the world's most successful multi-ethnic immigrant state at the start of the twenty-first century, is no exception. Until it introduced its points system in 1967, immigrants of colored races were deemed "undesirable," ineligible to become new members of Canada.³

A unique international environment emerged in the period from the end of World War II to the 1970s. Somewhat paradoxically, relations between states within the Eastern and Western camps were strengthened by virtue of the Cold War itself, and the use of force became virtually unthinkable, especially within the Western camp. The result was a significant development of cross-border economic and social exchanges within the camp. The liberalization of economic and social exchanges progressed rapidly particularly among the Western European countries, a development actively backed by the US, which aimed to strengthen its camp. These economic exchanges gave rise to steady economic growth, which in turn led to higher demand for labor in Western countries, and the costs of migrating were decreasing, too. Amid this liberalization of the movement of goods, money, and information, it thus was simply not possible to stringently control only the movement of people. In other words, even as the state became a "crustacean type of nation," strictly controlling the flow of people into its territory and tightening control over membership eligibility, people, in fact, moved across borders consecutively. This meant that the state had no choice but to face the task of the kind of relationship it should establish with its new residents.

In this chapter, I shall examine how states tackled this task from the experience of Western European countries, the long-regarded models of the nation-state.

1 Accepting a Foreign Labor Force

1.1 *Migrant Workers in Postwar Western Europe*

Since the time of their economic recovery after World War II, developed Western European countries have tried to respond to a vigorous demand for labor by actively accepting laborers from abroad on the premise that they would return home after a certain period of time: i.e., guest workers. The United Kingdom and France brought in large numbers of workers from their newly independent former colonies. Prevented by the Cold War confrontation from importing labor from the Eastern European

countries that were its traditional economic hinterland, West Germany relied heavily on bringing in labor from southern Europe, such as Italy, and from Turkey, with which it had historically deep ties. Yet as they all were assumed to be migrant workers staying temporarily in order to alleviate labor shortages, it was not envisaged that they would be incorporated as members of the state. Guest workers were positioned as a marginal labor force that was cheap, convenient, and easy to dismiss.

Western European countries suddenly stopped accepting guest workers and expected them to return home as the economic recession triggered by the 1970s oil crises precipitated a rise in unemployment. But many guest workers, having already established their base of livelihood, chose to remain in the countries where they resided. They instead had their family members join them, thereby continuing the flow of immigrants into Europe thereafter. Contrary to the host country's intentions, the immigrant community was thus reproduced on a larger scale.

Having large groups of people who are economically disadvantaged, socially isolated, and without political rights in the space of a democratic nation-state, which is supposed to be made up of members whose rights are guaranteed equally, is a situation that goes against the principles on which a democratic nation-state should originally stand. That these guest workers living among "us" and doing the same work continued to be excluded from state-provided social systems and services just because their nationalities were different, was naturally perceived as unreasonable in Western European countries where the welfare state was advancing, especially in light of the principle of equality, the foundation of democracy, as well as from the premise of the universality of human rights. Some of these states, at different paces and to varying degrees, began to take liberal policies of incorporating these foreigners into their welfare systems, in order to avoid the societal frictions that would arise from internally having large groups of people dissatisfied with unreasonable treatment. Providing benefits to foreigners in this way sometimes generates a sense among the populace who are already members of the system for mutual support that "our" system for helping each other is being used by "them." This sense will grow stronger notably in situations when security, the public good provided by the state, is threatened, or when economic growth is stagnant and the resources to be distributed are limited.

1.2 Broken Incentives to Return Home

As a strategy to deal with this problem, logically, there are the following options. One is to physically remove the immigrants from the country. An extreme measure would be to physically deport them. Measures to forcibly promote national homogeneity, being reminiscent of the Nazi-perpetrated Jewish Holocaust, were highly unpopular in postwar Western European countries, especially Germany. Even were such measures acceptable in terms of human rights norms, they would face resistance from economic sectors reliant on immigrant labor. Moreover, expelling a large, domestically resident population against its will is, realistically speaking, an option

with high administrative and political costs. Enforcing such measures may very likely harm diplomatic ties with the governments of the expelled immigrants' countries of origin, which have an interest in their treatment. The Mexican government vehemently opposed the plan that President Donald Trump rolled out in 2017 to step up crackdowns on illegal immigration in the US, and if a further deterioration of relations led to losing the Mexican government's cooperation, the US would have found it more difficult to carry out deportations.

Setting extreme coercive measures aside, these Western states have implemented measures in various forms that provide incentives to encourage these workers to depart. For example, Germany tried to encourage Turkish guest workers to return home by enacting the Return Assistance Act in 1983, which offered quite generous financial incentives.⁴ Some immigrants naturally choose to return home once they have lost their job opportunities. Relatively few immigrants who go abroad intend to settle down right from the beginning, and there is a natural dynamic for the many people who migrate with the intention to return home once they have built up some assets that they will opt to go home if there is no economic merit in staying. Obviously, this also depends on the economic and political conditions of the migrant's country of origin. But moving to a foreign country is a risky choice for most people if their home country had stable politics, a stable society, and abundant employment opportunities.

However, the postwar experiences of Western European countries generally show that, after a certain period of time, measures such as these are not powerful enough to encourage immigrants to return home once they have established a base of livelihood in their current country of residence. And particularly for those people in the second generation or later in the immigrant community who were born and raised in their current country of residence, encouraging them to leave the country may have the same meaning as expulsion. After all, they were born in their current country of residence, received education there, and grew up speaking that country's language as their mother tongue. Furthermore, it is natural that over time a certain number of marriages will occur between members of the immigrant community and nationals of the receiving country; it is not necessary to bring up advanced human rights norms to understand the absurdity of policies that encourage such people to "return home."

2 Guaranteeing the Rights of Permanent Resident Aliens

2.1 *Denizen—Institutionalized Permanent Resident Aliens*

If, for reasons such as those mentioned above, it is not possible for the state to maintain the homogeneity of its membership by expelling immigrants outside its borders, then the challenge for the state becomes how to incorporate the number of non-nationals that presumably will be permanently residing in the country. Many countries have made attempts to establish systems that guarantee immigrants certain rights and provide them with a stable living environment rather than the precarious

status of foreign worker. They expected that doing so would eliminate various inconsistencies, prevent the emergence of spaces in domestic society where minorities were separated and isolated, and ensure political and social stability. In other words, they would establish a system to treat non-nationals who meet certain conditions as quasi-members of the state. These legal permanent resident aliens are sometimes called denizens.⁵

There are multiple systems for making denizens of foreigners. In the US, the permanent residence system is commonly referred to as a Green Card. Green Cards are issued primarily based on an applicant's skills and qualifications to measure his or her contribution to the US; some immigrants are granted eligibility for permanent residency through a lottery. In Japan, special permanent resident status was granted to Korean residents in Japan (South and North Koreans) as a result of the Japan-South Korea negotiations to normalize diplomatic relations in the 1960s. This status provides stronger rights guarantees than normal permanent resident status. In Western European countries, permanent resident status has been institutionalized for foreigners who have lived in the country for a certain period of time, making the renewal of their residence status and work status almost automatic.

What new rights do immigrants gain under such a system? It is common practice for liberal democracies to equally protect the liberal rights of foreigners, such as personal freedom, freedom of speech, freedom of opinion and expression, and freedom of religion. So, perhaps permanent residency and access to the labor market are the key rights that distinguish denizens from other resident foreigners. In addition, denizens can obtain the same eligibility as nationals for public social security systems such as pensions and medical care. So what differences separate denizens from nationals who are formal members of the state? Perhaps the most decisive difference is the right to participate in the formation of the state's will as a constituent subject, i.e., the right to vote.

2.2 *Suffrage Status*

The reality in this regard is more complex, however. In fact, there are many countries, mainly Western European, that grant denizens a certain level of enfranchisement (Tables 1 and 2). A 2016 study of Europe and the Americas found that 42 of the 53 states in the study's dataset grant some form of franchise to foreigners.⁶ Outside of Europe and the Americas, New Zealand and South Korea (since 2006) have also introduced systems that allow some permanent foreign residents the right to vote in local elections. The movement to enfranchise foreigners has been gradually expanding in Europe since the late 1970s; European Union (EU) member states agreed under the Maastricht Treaty, which entered into force in 1993, to allow foreigners—so long as they are EU nationals—to vote in European Parliamentary elections and in local elections in their country of residence. This movement arguably gained further impetus from deeper European integration and the dramatic improvement in the security environment after the ending of the Cold War.⁷

Table 1 Non-citizen and non-resident franchise in the Americas and Europe

Non-resident franchise		Non-citizen franchise					N (%)
Non-resident franchise			None	Monolevel (local only)		Multilevel (national and/or local)	
				Restricted	Unrestricted	Restricted	Unrestricted
	None		Guatemala Nicaragua Suriname	Cyprus Greece Malta		Belize Guyana	Ireland* Uruguay
	Monolevel (national only)	Restricted	Canada	Germany	Denmark Iceland Sweden	UK	
		Unrestricted	El Salvador US Costa Rica Honduras Mexico Panama Switzerland	Austria Bolivia Bulgaria Czech Republic Spain France Croatia Italy Latvia Poland Romania	Argentina Belgium Colombia Estonia Finland Hungary Lithuania Luxembourg Netherlands Peru Paraguay Slovakia Slovenia Venezuela	Brazil Portugal	Chile Ecuador
Multilevel (national and/or local)	Restricted			Norway			
							1 (1.9)
							(continued)

(continued)

Table 1 (continued)

Non-citizen franchise							N (%)
	Unrestricted						0 (0)
N (%)		11 (20.7)	15 (28.3)	18 (34.0)	5 (9.4)	4 (7.5)	53 (100)

Note *Non-citizen franchise in Ireland is unrestricted in local but restricted in national elections.
Source Arrighi, Jean-Thomas and Bauböck, Rainer. 2017. "A Multilevel Puzzle: Migrants' Voting Rights in National and Local Elections." *European Journal of Political Research*, Vol. 56, No. 3, 624

Table 2 Suffrage for resident aliens after World War II

Enactment of a laws granting suffrage		Repealing/Rejecting laws granting suffrage
Finland		
	1945	
Australia		
UK		
Israel	1950	
Uruguay		
	1955	
	1960	
Ireland (regional)		
	1965	
New York City (Board of Education)		
	1970	
		Belgium
New Zealand		Canada
	1975	
Portugal, Sweden		
Denmark		
Norway		
Amsterdam		
Switzerland (Neuchâtel, Canton Jura, 1849 ~)		
The Netherlands		
Venezuela	1980	France
Ireland (national politics)		
Spain		Australia
Iceland	1985	
Chile		
Barbados		
Columbia		Germany
EU (Maastricht Treaty)	1990	
Estonia		Washington, D.C., Los Angeles (State of California)
Takoma Park (Maryland)		
Arlington (Virginia, Board of Education)		
Bolivia		
	1995	Iceland
EU (Treaty of Amsterdam)		Italy

(continued)

Table 2 (continued)

Enactment of a laws granting suffrage		Repealing/Rejecting laws granting suffrage
		Massachusetts
	2000	France, Japan, Latvia
Vienna (Austria)		
Belgium		Belgium
Republic of Korea (ROK)	2005	

Source Arrighi, Jean-Thomas, and Bauböck, Rainer. 2017. "A Multilevel Puzzle: Migrants' Voting Rights in National and Local Elections." *European Journal of Political Research*, Vol. 56, No. 3

Still, the number of countries that allow non-citizens the right to vote at the national political level is quite limited, estimated to be around 10. Moreover, even in these cases, voting is often allowed only for foreign nationals from countries with special ties. For example, in the case of the UK, just about the only major industrial country that allows foreigners the national level franchise, this right to vote is limited to citizens of Commonwealth countries and Ireland, clearly stemming from the former British Empire's historical connections. Brazil and Portugal, too, allow reciprocity-based franchise at the national level, related to the fact that both countries, the former colony and former colonial power, share a common language.

Only five countries allow permanent foreign residents the right to vote in national elections in principle: New Zealand, Ireland, Uruguay, Chile, and Ecuador. Formerly, New Zealand granted only immigrants from the UK the right to vote in national politics, but changed its policy in 1975 by granting the right to all immigrants regardless of nationality upon one year of permanent residency. The fact that countries like New Zealand and Ireland have such open systems is probably not unrelated to their favorable security environments.⁸ In the case of Uruguay, although there are no nationality restrictions for franchise, the requirements for immigrants to vote are tougher than the requirements to naturalize: 15 years of residency, having family in the country, good behavior, and property or professional occupation.⁹ The fact that it was General Augusto Pinochet, an autocratic leader, who introduced this system in Chile in 1980 may be somewhat surprising. It is said that by enfranchising the relatively small number of European immigrants, he sought to have his proposed draft authoritarian constitution ratified in a national referendum, and thereby remain in power. Ecuador since 2008 has given foreigners with at least five years of residency the right to vote, including at the national level. However, as Ecuador is overwhelmingly an immigrant sending country, this system is presumed to be a sort of demonstration measure aimed at expanding the rights of its own emigrants abroad.¹⁰

There are also some cases where the aforementioned special historical ties have weakened and the system of suffrage for foreigners has been abolished. Australia and Canada, both with a history as white-ruled, self-governing territories of the British Empire, used to grant voting rights to citizens of Commonwealth countries. However, Canada abolished this arrangement in 1975 and Australia in 1984.¹¹ Several of the states in nineteenth century America allowed foreigners the right to vote in order

to encourage immigration and integrate new immigrants into local communities; by 1875, the number had increased to 22. However, the number of Asian immigrants increased toward the end of the nineteenth century and the state became a “crustacean type of nation” partly due to the influence of World War I, so that alien suffrage had been abolished in all US states by 1928.¹²

2.3 The Dilemma of Liberal States

In any case, permanent resident alien systems such as these represent a move to protect people’s rights by emphasizing the fact of residence rather than nationality determined by place of birth or descent. From the perspective of the country of residence, this is a practical way of responding to the need for societal coexistence with immigrant communities that have actually established a base of livelihood. From the perspective of the members of these immigrant communities, the ability to solidify their legal status in the country of residence without losing their nationality in their home countries may be a more attractive option than naturalization.

Even though liberal states enhanced the rights guarantees of denizens, they are careful to avoid involving them in national politics, especially in decisions regarding foreign relations. In addition, these liberal states necessarily are left with no choice but to enter into asymmetrical relationships with non-liberal states. Nationals of non-liberal states can exercise political influence in liberal states, but nationals of liberal states cannot exercise the same influence in countries that do not hold elections. The implications of this are not so simple and it is difficult to make an immediate determination whether it will contribute to the spread of liberal values or lead to an increase in the influence of non-liberal states. Whichever the case may be, even liberal states will find it difficult to remain indifferent to such asymmetry in interstate relations fraught with conflict. The emergence of postnational membership, as some contend,¹³ is still hard to call a general trend globally; whether it is an irreversible trend is also highly questionable, considering that the twenty-first century is marked by the reemergence of non-liberal states like China and Russia. Moreover, one cannot rule out the possibility that, under certain circumstances, those holding nationality in the country of residence will change the system, depriving denizens of their rights, too, as they are not constituent members of the state. After all, a denizen is what you might call a “middle state” between foreigners and citizens, a system of compromise aimed at coexistence between immigrants residing in a country and the nationals who are that country’s main actors.

3 Naturalization and Dual Nationality

3.1 *Jus Sanguinis or Jus Soli*

As a general principle of the sovereign-state system, the expected method for permanent resident aliens to fully participate in will formation as constituents of the state in which they currently live is, ultimately, for them to acquire nationality and confirm their bond with the state through a formal system. In fact, as the community of denizens passes through the second and third generations, the unnatural status of people called denizens cannot but become more apparent. The second and third generations in immigrant communities are born in their current country of residence, many receiving the same education, working in the same workplaces, and having economic interests in the society of their current country of residence; they are essentially no different from the majority population of nationals. That being so, the unnaturalness of their being put in a different legal status and living under different rights and duties due to their parents' different nationality, a condition beyond their control, will inevitably come to light. When that happens, the state will have to consider whether to accord them citizenship, that is, naturalization.

As we have already seen, the principles of descent (*jus sanguinis*) and place of birth (*jus soli*) are the traditional methods by which states determine their membership. There is a strong tendency to regard the former as a pre-modern system that emphasizes the character of the state as a community of blood. Yet the adoption of *jus sanguinis* in many countries can be traced to the Napoleonic Code, which was compiled in response to the French Revolution, as we have already seen (in Chap. 3, Sect. 2). However, whether by birthright or by descent, nationality is accorded based on conditions at birth unrelated to one's will, and in that sense, both systems can be said to be unreasonable from the standpoint of respecting the independence of personhood and free choice. In this respect, there is no difference between the two.

From the perspective of naturalization, however, there are significant differences between the two. With *jus soli*, immigrants in the second and successive generations automatically acquire the nationality of their country of residence. In contrast, with *jus sanguinis*, people inherit the nationality of their parents even if they immigrate or if national borders shift. That the US and other states founded by immigrants have adopted birthright-based nationality systems, inheriting the legal tradition of the UK, which had adopted the principle of *jus soli* rooted in feudal tradition, is a coincidence as well as a convenient system for assimilating continuous streams of new members as citizens.

On the other hand, that major continental European countries came to adopt *jus sanguinis* in the nineteenth century owed less to a deep attachment to bloodline or ethnicity and more to the fact that these states generally were sending emigrants to the New World during this period. Germany purified its *jus sanguinis* principle at the end of the nineteenth century and opted to exclude the Polish residents in its territory (see Chap. 3, Sect. 4). It should also be recalled that up until that time, Germany had been a migrant sending country. It is further conjectured that a background factor

for Germany's fundamental preservation of the descent-based Nationality Law of 1913 long after World War II was its awareness of the ethnic Germans who were left behind outside West Germany because of the postwar division of East and West Germany and the loss of eastern territories.¹⁴

In the 1980s, the Germany that Chancellor Helmut Kohl declared "is not a country of immigration" also stabilized its borders with the reunification of its East and West. Incorporating immigrants residing in the country then became a much higher priority and thus the nationality system was significantly revised. The nationality law was amended in 1999, after the end of the Cold War, allowing the German-born children of foreign residents to become German citizens, albeit with various conditions. The nationality law has been amended several times since, and *jus soli* elements have been strengthened.¹⁵ As a result, the major European countries can be said to have oriented themselves, by the start of the twenty-first century, toward granting citizenship to second-generation immigrants.¹⁶

3.2 *Post-Cold War Baltic States*

Of interest in this regard is the issue surrounding the handling of the legal status of ethnic Russian residents in the three Baltic states, which regained their independence with the end of the Cold War. Estonia, Latvia, and Lithuania have preserved their own cultural and ethnic identities, even as they were influenced by their larger neighbors: Russia, Germany, Sweden, Finland, and Poland. All three gained independence after World War I but were annexed by the Soviet Union in 1940 under the secret protocol of the Treaty of Nonaggression between Germany and the Soviet Union. The Soviet Union colonized them, so to speak, implementing a program of Sovietization/Russianization, so that when the three Baltic states regained their independence post-Cold War, many Russians who had immigrated during the Soviet era were living in each country.¹⁷ Approximately 1.7 million Russians were living in the Baltic states, according to Russian census data in 1989, making up 30% of the total population in Estonia, 34% in Latvia, and 9.4% in Lithuania. And so their legal status became a major question.¹⁸ Since they were Russian, should they acquire Russian nationality and return (home) to Russia as part of the decolonization, as did the Japanese settlers who had moved to Manchuria and the Korean Peninsula, and the many white settlers who had lived in African countries?

In fact, a great many Russians experienced a change of nationality following the breakup of the Soviet Union. Between February 1992 and 1996, 1.5 million people applied for Russian nationality, and about 40,000 people renounced it. Of the people who newly acquired Russian nationality residing in Central Asian countries such as Azerbaijan and Kazakhstan, 80% of them emigrated to Russian territory; almost all of those in the Baltic states remained in those countries.

Were they legitimate members of the new states, like the descendants of white settlers in the Americas and Oceania? In 1993 and 1994, Russia asked the Commonwealth of Independent States (CIS) countries, which had gained independence from

the former Soviet Union, to recognize dual citizenship with Russia. Not surprisingly, all of them rejected this, similar to when Asian and African countries achieved national independence after World War II.¹⁹

How were the Russians who remained in the Baltics treated by the states that had regained independence for the first time in half a century? Of the three, Lithuania, with the relatively smallest number of Russian residents as part of its population, most generously offered them nationality. Lithuanians were defined by the Law on Citizenship of 1989 as people who were citizens before Soviet annexation in 1940, as well as their descendants, so permanent residents, regardless of language or length of residence, could automatically acquire nationality provided they could show that at least one parent or grandparent was Lithuanian. Otherwise, they could still obtain citizenship if they swore an oath of allegiance to Lithuania to abide by its constitution and respect Lithuania's sovereignty and territorial integrity. As a result, roughly 95% of the adult population held Lithuanian citizenship in 1994.²⁰

In contrast, Latvia took the legal position that, as the country had been in a state of illegal occupation during the Soviet era, the nationals of the new state should be strictly limited to those who were citizens of the Republic of Latvia as of the 1940 Soviet annexation and their descendants. Accordingly, just about all the ethnic Russians who immigrated during the Soviet era were "foreigners" and had to acquire nationality through naturalization in order to become Latvian citizens.²¹ The 1994 Law of Citizenship basically adopted a *jus sanguinis*-based stance; it required that, at the time of applying for naturalization, a person had to have lived in the country for at least five years starting from 1990 and possess an income. Applicants were also tested on their proficiency in Latvian—which is very different from Russian—and knowledge of Latvia's constitution and history. They were also required to take an oath of allegiance to the Republic of Latvia.

Similarly, in Estonia, a law on citizenship was enacted in February 1992, stipulating two or more years of residence and Estonian language proficiency among other requirements for naturalization. The law was amended in 1995, tightening naturalization requirements by, among other things, extending the residency requirement to five years, and adding questions regarding its constitution and citizenship law to the existing exam on the Estonian language in addition to a minimum income requirement. Finally, an oath of allegiance to Estonia was required.²²

In response, European institutions such as the European Union (EU) and the Organization for Security and Co-operation in Europe (OSCE; Conference on Security and Co-operation in Europe until 1994) applied strong pressure on Latvia and Estonia, calling on them to respect the human rights of minorities within their states.²³ Pressure from EU countries was very effective, for both states wanted to join the EU. A national referendum was held in Latvia in 1998 and the results led to an amendment of its citizenship law. Naturalization requirements were significantly eased, in particular, no longer requiring a Latvian language test from the children of non-citizens born in Latvia after the restoration of independence in 1991, effectively granting citizenship to second-generation immigrants.

Estonia, too, took some measures such as easing naturalization requirements and granting local suffrage to permanent resident aliens (i.e., Russian residents), so now

there are even some who consider its naturalization system to be comparatively more open than that of EU countries.²⁴

3.3 *Naturalization Requirements*

Even for the countries of continental Europe, which traditionally followed the principle of *jus sanguinis*, the integration of minorities residing within their states became a priority as their national borders became more stable and their security environment improved after the Cold War. Consequently, their systems have converged, with state membership eligibility for second-generation immigrants being based on place of birth, and for first-generation immigrants based on long-term residence (*jus domicili*). The EU has played a role in promoting this kind of institutionalization and improved institutional coherence to promote the liberalization of the movement of people within the area and not merely for normative reasons.²⁵

It is also true, however, that naturalization is not granted unconditionally, even to immigrants who have settled permanently. Naturalization requirements vary from country to country, but it is common for many liberal countries to impose the following requirements.²⁶ The first is one we have already seen: the residency requirement, which requires that a person has lived in the country for a certain period of time. Many countries require around five years of residency, but that varies at the state's discretion. As shown in Table 3, even among Western European countries, the time period ranges from a minimum of three years (Belgium) to a maximum of 12 years (Switzerland), which can also change depending on each state's policies. For example, Germany maintained a 15-year residency requirement prior to 1999, at which time the law was amended to shorten the duration to eight years. What the term residency means is something that each state determines. For example, in the case of Eastern European countries, only the time after obtaining permanent residence counts toward residency, so actually it means that a longer period of residency is required for naturalization.

The second is the livelihood requirement, which shows that a person can be financially self-supporting. The more generous a state's welfare policy is, the more essential it becomes to be careful not to be exploited by welfare tourism, the term used to refer to the movement of people who try to take advantage of more generous welfare systems. The third requirement is the issue of the person's good behavior. Criminal history, tax records, and similar materials are generally used to concretely judge behavior. Even a liberal state would not venture to offer membership to persons who might act in a way that threatens its own security, or who clearly espouse an ideology that poses such a risk.²⁷

Table 3 Residency requirements for ordinary naturalization

Years of residency required	Country
3	Belgium
4	Ireland
5	Bulgaria, Croatia, Czech Republic, France, Latvia, Malaysia, the Netherlands, Poland, Sweden, Turkey, the UK
6	Finland, Portugal
7	Greece, Iceland, Luxembourg, Norway
8	Cyprus, Estonia, Germany, Hungary, Romania, Slovakia
9	Denmark
10	Austria, Italy, Lithuania, Moldova, Slovenia, Spain
12	Switzerland

Source Wallace Goodman, Sara. 2010. *Naturalisation Policies in Europe: Exploring Patterns of Inclusion and Exclusion*. EUDO Citizenship Observatory, 2010/07, Comparative Reports, 7

3.4 What Are the Core Values of a State?

To respect its members' inner freedom and to be value-neutral are principles of a liberal state. Even from among such countries, a growing number of them undertake a sort screening for allegiance to some of their core values, as well as having a citizenship test that tests for language ability and knowledge of their history, culture, and constitutional system (Figs. 1 and 2).

How each state perceives its own core values is an interesting question. No matter how rational and universal a state may be, inasmuch as the world is made up of independent states, we are left to believe that there must be something that distinguishes one state from the others, something that the state must protect. In formulating these core values, even liberal states that are not supposed to intrude into the inner world of the individual are forced to make its new members cognizant of the national identity and demand their allegiance to these values.

In the case of France, the issue becomes allegiance to *valeurs républicaines* (republican values). In materials targeting those interested in becoming citizens, in addition to democracy and "Liberty, Equality, and Fraternity"—the motto of the French Revolution—the emphasis on secularism (*laïcité*), which demands a strict separation of church and state, is notable. It also touches on the duties of French citizens to contribute to the national defense as well as to pay taxes, making clear that "In the event of war, all citizens may be called up to the army to participate in the country's defense."²⁸

In the case of the UK, along with British values and the responsibility of British people to respect the law and act fairly, the citizenship test material lists "look after yourself and your family," "look after the area in which you live and the environment," "treat everyone equally regardless of gender, race, religion, age, disability, class, or sexual orientation" and to "work for yourself and your family."²⁹

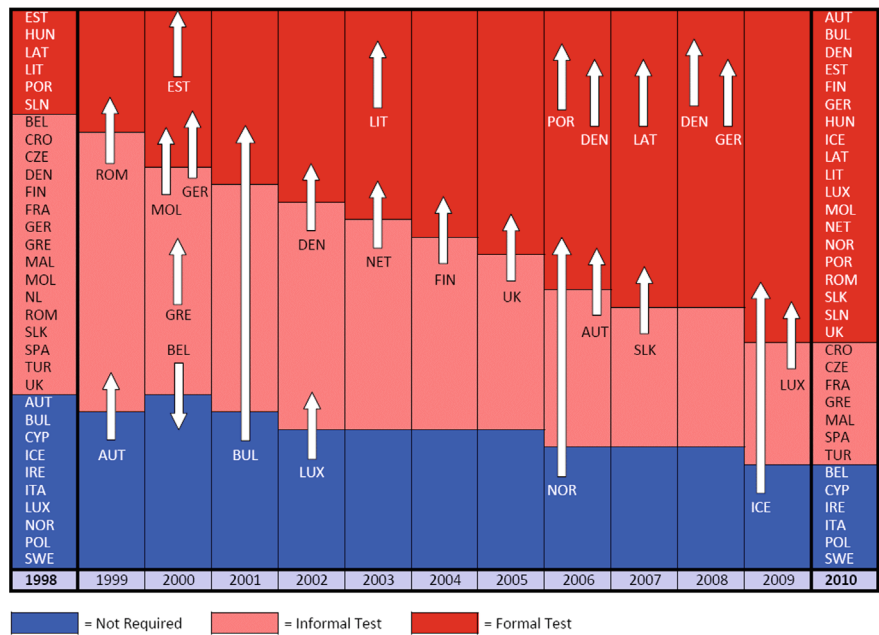


Fig. 1 Changes in language requirements for ordinary naturalization. *Source* Wallace Goodman, Sara. 2010. *Naturalisation Policies in Europe: Exploring Patterns of Inclusion and Exclusion*. EUDO Citizenship Observatory, 2010/07, Comparative Reports, 16

In the case of Canada, which has perhaps the most open immigration policy in the world today, the Oath of Citizenship still requires a declaration of allegiance to the reigning monarch of England in addition to observing its constitution and laws.³⁰ Furthermore, according to the official study guide for the citizenship test that the country administers to naturalization applicants, Canadian citizens are responsible for obeying the law, serving on a jury, supporting their family, and protecting the environment; it goes on to state the following about the defense of Canada:

There is no compulsory military service in Canada. However, serving in the regular Canadian Forces ... is a noble way to contribute to Canada and an excellent career choice... . You can serve in your local part-time navy, militia and air reserves and gain valuable experience, skills and contacts. Young people can learn discipline, responsibility and skills by getting involved in the cadets... .

You may also serve in the Coast Guard or emergency services in your community such as a police force or fire department. By helping to protect your community, you follow in the footsteps of Canadians before you who made sacrifices in the service of our country.³¹

In major Western countries after the Cold War, compulsory military service was abolished, the economy has become marketized, and the redistribution function of the state has been reduced. But if a state seeks to govern effectively, it must secure material resources from its members as well as gain their loyalty.³² As long as this is the case, it is not possible to dodge the questions of who can become a member,

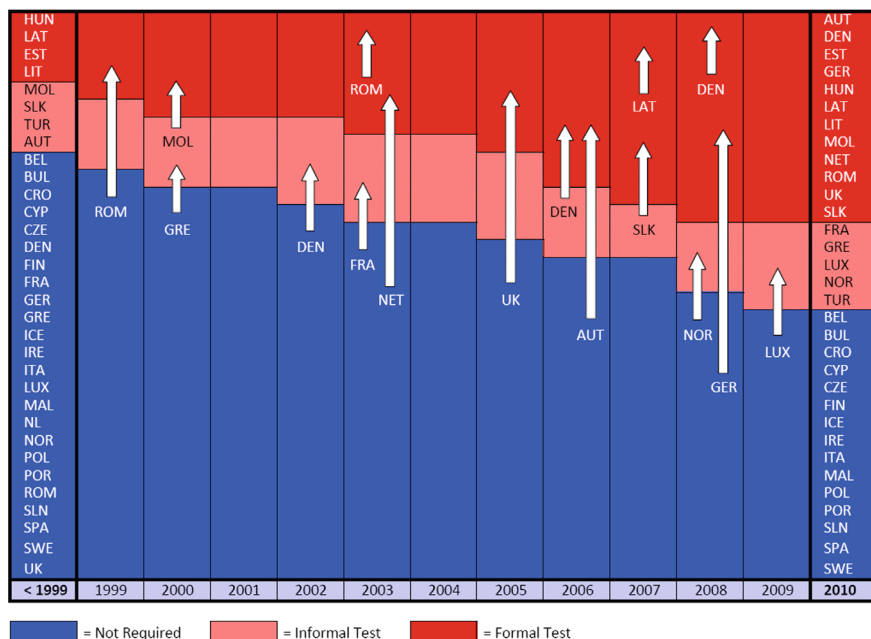


Fig. 2 Changes in country knowledge requirements for ordinary naturalization. *Source* Wallace Goodman, Sara. 2010. *Naturalisation Policies in Europe: Exploring Patterns of Inclusion and Exclusion*. EUDO Citizenship Observatory, 2010/07, Comparative Reports, 17

what the state expects from its members, and what the state guarantees its members. In order to provide threat protection, ensure economic and social stability, and carry out mutual aid and income redistribution functions for its members, the state must strengthen its capacity to mobilize its members materially and spiritually, grant them the rights that come with membership, as well as ask for members to share sacrifices and risks. When the time for that comes, the ultimate question will be who will share the risks of protecting the state and how. The dramatic improvement in the post-Cold War security environment saw the countries of Europe change their systems for nationality and naturalization in a more open direction. However, in the twenty-first century, with the frequent occurrence of terrorist attacks by Islamic extremists, these states have tightened their naturalization requirements to varying degrees and more of them have instituted citizenship tests. This speaks to the growing importance of the aforesaid ultimate question.³³

3.5 Dual Nationality

It is known that many immigrants have actually chosen to remain in denizen status, notwithstanding the easing of requirements so as to encourage naturalization. It might

be because as denizen status becomes more satisfying, the desire to participate in politics becomes less pressing. Yet at the same time, the hesitancy denizens feel about severing the bond with their country of origin as a result of naturalizing is not unusual. This is especially true for first-generation immigrants. It may also be related to the degree of progress of a denizen's integration into society.

To boost the naturalization rate, a movement to promote naturalization by allowing dual nationality has spread over the past few decades, mainly in European countries (Fig. 3). As we have seen, nationality systems are determined at each state's discretion; an international mechanism to coordinate among these systems, much less one unified system, does not exist. Therefore, it does happen that there are people with multiple nationalities or, conversely, people with no nationality.

It has traditionally been considered undesirable to hold multiple nationalities/citizenships. Internationally, the "Convention on Certain Questions Concerning the Conflict of Nationality Laws" was adopted at the League of Nations Codification Conference held in 1930, and after World War II, the "Convention on the Reduction of Cases of Dual Nationality and the Obligation of Military Service in Cases of Dual Nationality" was adopted by the Council of Europe in 1963. These conventions basically took the position of preventing dual nationality to the greatest possible extent.³⁴ The grounds for the argument against dual nationality is that immigrants who become new citizens should demonstrate allegiance to the state in which they become naturalized. There was also a wariness that a dual national might be forced into a relationship of incompatible loyalties between their country of origin and the country of naturalization. A severe conflict between the two countries, even one falling short of the extreme situation of war, would put dual nationals in a sort of test of loyalty, having to decide which state to prioritize their relationship with. Furthermore, the political participation of citizens under democratic principles demands that citizens equally share in the results of their political choices, but it is possible that this mechanism does not work for dual nationals. In other words, for a dual national taking part in public decision-making in one country to have the option, if dissatisfied with the outcomes, of fleeing to the other country violates democratic equality represented by the principle of "one person, one vote."³⁵

Here, I would like to remind the reader that dual nationality means overlapping personal jurisdiction, a potential source of interstate conflict. This issue of multiple nationalities was the backdrop against which the War of 1812 was fought between the UK and the US, and the very issue that the US sought to resolve by concluding the Bancroft Treaties after the Civil War, as we saw in the previous chapter.

3.6 Rise in Countries Allowing Dual Nationality

It is an unmistakable fact that an increasing number of countries allow dual nationality despite the traditional argument against it. In the US, which had dealt with this issue in the nineteenth century through the Bancroft Treaties, it became permissible as a result of a 1952 US Supreme Court ruling that dual nationality is "a status long

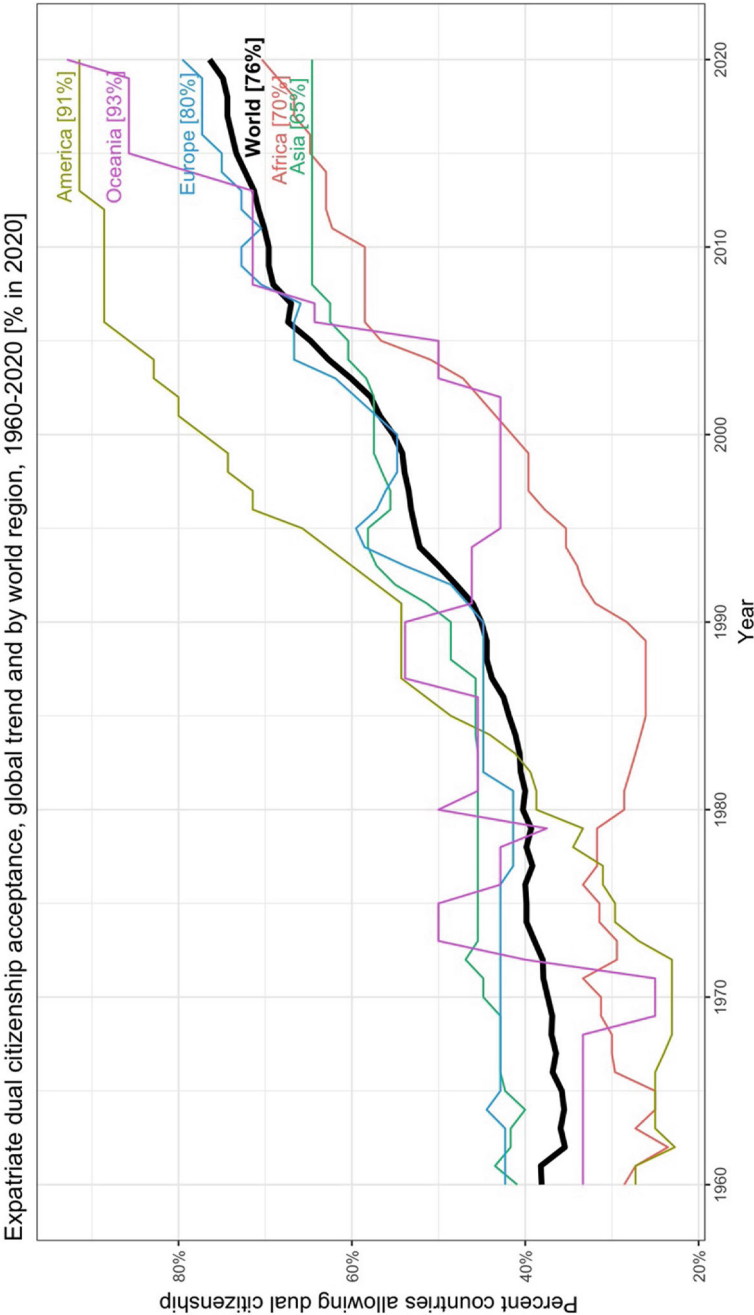


Fig. 3 Percentage of countries that allow dual citizenship, by region and global average. *Source* <https://macimide.maastrichtuniversity.nl/dual-cit-database/>
Accessed March 18, 2024

recognized in the law” and that “a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both.”³⁶ Hence, although not actively supportive of this change, the US government did accept it, and many of the Bancroft Treaties, now unenforceable, were abrogated during the Jimmy Carter administration. The current US government has taken a nuanced position: while acknowledging the legality of dual nationals, it does not, as a policy, encourage dual nationality owing to various predictable issues.³⁷

As possible reasons for this trend, we can point to the growing influence of the norm that possessing nationality constitutes a part of human rights and the growing emphasis on women’s rights. Based on the premise that a child ought to be able to inherit the nationality of both parents because forcing the child to choose either the father’s or the mother’s nationality is improper, then the argument is persuasive that it is natural for a child to inherit both if the parents’ nationalities differ.

Furthermore, as I shall discuss in the next chapter, conditions have become more supportive of dual nationality with the stronger push among emigrant-sending countries to maintain relationships with their own nationals who emigrate. In light of this development, emigrant-sending countries find themselves having to allow dual nationality for immigrants entering their countries. For example, southern European countries, traditionally a source of migrants to the industrialized countries of northern Europe, as EU members have become recipients of immigrants from Africa and the Middle East in the twenty-first century. It is therefore difficult for a country of emigrants to take the position of allowing dual nationality for its nationals who leave the country, while at the same time denying it to immigrants entering the country.

But most of all, operating a system strictly allowing for only one nationality may be difficult in today’s world, where each state controls its own nationality separately in its own system, as throngs of people cross borders to build lives in their new places of residence. A child of immigrants coming from a country with descent-based nationality laws who is born in a country with a birthright-based nationality law has dual nationality, regardless of the child’s (or the parents’) wishes. Conversely, a child born to parents from a birthright-based country in a descent-based country may be stateless. Dual nationality, which used to occur in a handful of exceptional cases, has become nigh impossible to eliminate, given that resident registration and birth certificate systems vary from country to country, and such systems do not function effectively in many countries.

It should also be recalled that behind this trend is the emergence of an international environment that facilitates the holding of multiple memberships. Integration among EU countries post-Cold War has deepened to the point where geopolitical competition between member states has become unthinkable, and a cross-jurisdictional membership, a so-called EU citizen, has gained ground. It has also developed as a supra-national system uniting different nationalities. The EU has come to hold real meaning, although it cannot yet be said that a European identity that transcends “German” or “French” has replaced the existing national identities. Western European countries in succession did away with military conscription after the Cold War, and with it has receded the real possibility of their members being tested with the ultimate question of belonging (i.e., risking one’s life to defend the state). Moreover,

even should an issue of overlapping personal jurisdiction arise, so long as it happens between established liberal democratic countries without a territorial dispute between them, it can be resolved within a common legal framework.

Yet that the three Baltic states, which also belong to the EU, are cautious about dual nationality is indicative. Article 12 of Lithuania's constitution stipulates that dual citizenship is prohibited with the exception of individual cases provided for by law. Dual nationality is prohibited in Estonia in principle, but it is tacitly allowed in practice. Its constitution states that no person who acquired Estonian citizenship by birth can be deprived of it; only naturalized citizens, by holding another nationality, can be deprived of Estonian citizenship. Latvia, which allows dual citizenship under its 2013 Citizenship Law, has an interesting system that limits the countries with which persons may hold another citizenship, including countries of the EU, North Atlantic Treaty Organization (NATO), and others with which Latvia has concluded special treaties. What is clear is that the Baltic states are extremely guarded toward dual nationality with Russia. The obvious reason appears to be the sense of geopolitical wariness and political discomfort that they feel toward Russia.

4 Societal Integration

When an immigrant community, no matter its origin, becomes an official member of its country of residence, at that stage the integration of the new members into the state is complete, in terms of the public system. It is another matter, however, whether those new citizens will be able to integrate societally with members of the indigenous majority in the country of residence. Societal integration of ethnic groups is a major challenge in many immigrant-receiving countries.

4.1 Assimilation/Isolation

The traditional approach to societal integration is called assimilationism. Initially, the new members spent their lives helping each other within their own minority community, living in specific areas or working together in specific occupations. As the generations pass, however, their places of residence and occupations become more diverse, and they come to learn the language of their country of residence as their mother tongue. As intermarriage among different communities increases, the identity of the immigrant community dissolves into the national identity of the country of residence. This is the sketch of assimilationist social integration. This attitude implicitly assumes the existence of a dominant culture or core cultural system that remains stable over time. In other words, this position holds that a sense of "we" has continued unbroken from a distant past before modern times, regardless of

whether a country's identity originates from its language, its religion, or its ecosystem such as climate or geography.

Advances in studies on nationalism have thrown emphasis on the fictitious nature of what used to be considered the identity of a nation. It is now evident that what had been regarded as the traditional and distinctive culture of a country is in fact the product of political will from a national integration project to unite the modern state, and that the history of a "tradition" that is considered traditional is surprisingly shallow and has changed over time.³⁸ It is true that, whatever the political system, extremely repressive measures are required when seeking assimilation through social customs and religious beliefs that are deeply rooted in the personality. During the era of the White Australia policy, a program that separated indigenous children from their parents to raise, and nominally to "protect," them, continued until the late 1960s.³⁹ This is an extreme example of assimilating conquered indigenous peoples, but the "civilizing project" that imperialist states forced on indigenous peoples in the course of colonial rule wounded the pride of these peoples and eventually stoked a huge backlash.

In cases where assimilation is deemed impossible, isolation or segregation may emerge as an alternative strategy. It means acknowledging the existence of unassimilable groups, which in fact has been linked to racial discrimination. An example well known to Japanese people is the Japanese Exclusion Act (the Immigration Act of 1924) in the US. The US, supposedly a melting pot of races and a country of immigrants, acknowledged that there were groups that could not assimilate into American society; all people of color, including the yellow Asian races and African Americans, fell into this category. It is also well known that Jewish communities that did not accept the Christian traditions dominant in European societies faced long years of discrimination and isolation.

There was a bitter conflict between Catholics and Protestants within the Christian community, too. For example, there was a long history of Catholics in the UK since the Tudor dynasty being ostracized as a transnational security threat having ties to Catholic states on the continent. Not until the nineteenth century was this problem resolved. Many Western countries are currently struggling with the societal integration of Muslim communities.

4.2 The Development of Multiculturalism

Isolation clearly is incompatible with liberal norms firmly claiming the equality of humanity and the universality of human rights. Multiculturalism has thus become influential as a progressive position, replacing assimilationism. Multiculturalism holds that individuals belonging to each ethnic group should be respected as members of groups each with their own cultural traditions, rather than as members of a single national community.

For example, multiculturalism became official policy in Canada in 1971. Forced to respond to the separatist push by French residents of Quebec, the government made

efforts to preserve national unity by adopting French as one of the official languages and by treating the minority French culture and the dominant British culture as equal. In the US where African Americans struggled to improve their status even after the 1960s civil rights movement, there was a growing attitude to affirmatively highlight differences among ethnic groups and encourage that they be preserved rather than be melted into an American identity. Europe began adopting multiculturalist policies in the late 1970s to improve relations with immigrant communities, as could be seen in the UK, where race riots occurred. The Scandinavian countries, the Netherlands, and Germany also began implementing policies to encourage and support the various ethnic groups within their countries to maintain their cultural identities.

4.3 Disappointment with Multiculturalism

Yet there was growing disappointment with multiculturalism as the twenty-first century opened. Putting multiculturalism into practice requires recognizing which groups are the bearers of their cultures, then determining who belongs to which group. This recognition process by the state itself is not only unavoidable, but it also tends to disregard the diversity and oppression within groups. This fueled growing misgivings that the effort was furthering division rather than societal integration. Some argue that, widespread agreement to respect the cultural values of minorities notwithstanding, multiculturalism ultimately fosters and entrenches rivalry among ethnic groups within a society, which they suspect has resulted in divisions among these groups on an expanded scale.

The state still must ensure some kind of unity. This is something especially keenly felt by states in times when their people must share more hardships than benefits or states that must survive in a harsh international environment. Although multiculturalism's acceptance of diversity and its spotlighting of the oppressiveness of the state's push toward homogeneity are laudable, it is deeply disappointing that not much can be said about its tenets to unite diverse peoples.

Nor can a tolerant and liberal state become completely value-neutral. In Canada, the birthplace of multiculturalism, two disturbing incidents occurred. In the 1980s Sikh extremists blew up an airplane departing from Montreal in support of the independence movement in their home country, India. Sri Lankan activists are known to have raised funds for the Liberation Tigers of Tamil Eelam (LTTE; Tamil Tigers), a terrorist organization in their home country.⁴⁰

In the post-Cold War 1990s, as the civil war raged in the former Yugoslavia, ethnic Croats and Serbs in Canada engaged in a war of words via their own radio stations. Their identities remained oriented towards Croatia or Serbia, not Canada. Furthermore, Canada dispatched troops in support of the United Nations peacekeeping operation that was deployed during the Yugoslav civil war. In September 1993, Canadian troops tasked with protecting the minority Serb population from Croatian attacks became embroiled in the most brutal fighting for the Canadian military since the Korean War. Ironically, the Croatian Minister of Defense at the time, Gojko Šušak,

was an immigrant who had lived in Canada for many years. He spiritedly organized the Croatian nationalist movement in Canada, collecting and remitting funds to the newly seceded Croatia. Some of the money allegedly turned into artillery and mortar shells that hit Canadian troops. A further irony is that this fierce Croatian nationalist movement was aided by the Canadian government's multiculturalist policies.

The [Canadian] federal government funded language schools and folklore centres but unbeknownst to them they also paid for publications disseminating the message of the radical right wing. The federal support was naive and often foolish: city halls in Toronto and Waterloo allowed Croats to fly the flag of the wartime Ustashe's Independent State of Croatia on the anniversary of the defunct state's foundation in 1945. [Ustashe was the Croatian fascist nationalist party, known to have collaborated with the Nazis to secure Croatian independence and to commit mass genocide against Jews and Serbs.]⁴¹

To be sure, it would be too hasty to evaluate a country's entire multiculturalism policy from a single case. It would be just as easy to find examples of people from diverse backgrounds cooperating and sharing risks. Canadian forces with their multicultural makeup have traditionally deployed around the world for UN peace-keeping operations; while serving as part of the International Security Assistance Force (ISAF) in Afghanistan in 2002, they carried out their duties despite suffering casualties into the triple digits. It should also be noted that members of immigrant communities are not the only ones to oppose the foreign policies of their own state.

What I would like to point out here is that Canada's multiculturalism policy may make it more difficult to create "Canadians," who can share the risks and burdens in times of hardship, from people of diverse origins, which would mean trouble when combined with a harsh international environment. In the example cited, Canada itself was not under threat, and there were no casualties among the Canadian troops deployed to the former Yugoslavia. Yet it would not be surprising for multiculturalism, which emphasizes bonds with home countries beyond the border, to be regarded as problematic if it dilutes ties among people within the border.

Disappointment with multiculturalism seems to be greater in Europe, with its nation-states having a history of feudalism, than in North America and Oceania, with its traditional immigration states created by white settlers as they marginalized the native populations. Many European states have worked hard to share multiculturalism with immigrants from Muslim countries. Yet the shocking fact is that some of the operatives who joined the Islamic State (IS) and other radical Islamist movements energized by the instability in Middle Eastern countries and who carried out terrorist attacks in Europe were among the young people who were born in, held the nationality of, and received a multicultural education from the very countries that had made efforts to achieve multicultural coexistence. German Chancellor Angela Merkel said in 2010 that "multiculturalism in Germany has failed."⁴² The disappointment with multiculturalism is vividly reflected in the fact that in all Western countries, doubts about immigration policies have spread well beyond a few radical far-right groups.

4.4 *Foundering Societal Integration*

There are positions that seek to de-ethnicize the principle of integration. Indeed, the principle of integration that is at work between people of different ethnic backgrounds cannot possibly be something ethnic. Even if we seek integration based on liberal principles such as democracy, freedom, and equality, emphasizing their universal validity, however, it may be seen as merely a form of assimilationism unless most people around the world accept these same liberal principles. It is a stark fact that there are still groups that do not support liberal positions on issues such as secularism and gay rights.

Rights guaranteed by formal institutions are important, of course, but alone do not achieve societal integration. Societal integration is related to informal institutions and customs rooted in society that, over time and through repeated trial and error, are shared by countless people. Societies may also differ in their ability to integrate new members. For example, French historian and demographer Emmanuel Todd deduced two anthropological types of society: the universalist and the differentialist. From that he argues that in countries where the family system prototype is authoritarian, such as Germany and Japan, the state's ability to assimilate immigrants is low and the immigrant community remains in a state of segregation for a long time, but in universalist societies typified by France, immigrants soon become assimilated through marriage. If this is truly the case, then in a universalist society like France, while multiculturalism may soften the shock of the first generation of immigrants who begin to live in a society with a different culture, it should hinder what Todd implies is naturally occurring assimilation.⁴³ In reality, France has not adopted multiculturalism; it adopted a liberal policy of assimilation that integrates society based on the equal human rights of individuals, not groups. Even so, many of the perpetrators of the shocking terrorist attacks that occurred in Paris in 2015 and Nice in 2016 were French (including those with dual nationality).

Of course, this does not mean that terrorist attacks are exclusively caused by immigrants. The examples of successful societal integration are numerous. We should be cautious about judging the overall picture of societal integration solely from shocking and attention-grabbing incidents. Yet, looking at the current situation (as of the time of writing in 2018), one can hardly say there is any noticeable difference in the degree of social integration of the Muslim communities in Germany and France. The undeniable reality is that many voters feel a strong sense of disillusionment toward both liberal (which many Western commentators tend to refer to as "Western") assimilationism and tolerant multiculturalism, which in turn has led to the rise of anti-immigration parties in Western countries.

What we might conclude from the country experiences examined here is that the formation of a political community is unlikely to make any headway solely through window dressing. What makes it possible for people with different customs and religious and political beliefs to bond under one society is the ceaseless process of learning and compromise on all sides. It is the natural act of reproducing identity—mutually learning to coexist with others, establishing and internalizing it such that

it might be called a custom, and continually integrating new “others” as they appear in succession.

At the same time, policies cannot freely change internalized norms and customs. In that event, policies and formal institutions are not very likely to achieve societal integration right away. It is not possible here to formulate an easy answer to the complex question of what conditions expedite societal integration. But what is certain is that promoting societal integration requires a safe environment and sufficient time for mutual learning. Even the current identity of a “nation,” which is regarded as relatively stable, was in fact formed through a long-term process and is constantly reproduced. Even Japanese society, which is often assessed as being exceptionally homogeneous, has unresolved issues regarding the societal integration of native-born Japanese nationals, such as persons from discriminated communities and the indigenous Ainu people from Japan’s northern regions; societal integration of immigrant communities can be said to be a similar issue in that sense.

5 Summary

States generally control the acceptance of new members through their operation of five interrelated gates. The first gate is physical immigration control at the border. As long as a state is a state, control of its national borders is essential; but borders are more porous than is generally imagined (see Chaps. 1 and 2). There are clear and insurmountable limitations to controlling the entry and exit of people, particularly at present when freedom of movement is held as a fundamental principle and globalization is advancing.

The second gate is the institutionalization of the status, rights, and obligations of foreigners who have entered the country. It is a basic norm of a liberal democracy that human rights should be guaranteed to all persons staying within its territory, regardless of nationality. Furthermore, there is no choice but to institutionalize in some form long-term residents, irrespective of their nationality, inasmuch as they are neighbors who share a living space. In many cases, local government and other public institutions responsible for administering public services such as education, health, medical care, policing, and justice stand at the frontline of relations between foreign sojourners and residents. Often, it is through their daily operations that a concrete institutionalization process gradually develops.

The major decision point that a state must face regarding institutionalization is the third gate: whether to recognize non-members as denizens and guarantee them the legal rights of permanent residency and access to the labor market. What can be said from the experiences to date of Western countries, especially postwar Western European countries, is that, contrary to the state’s expectations, people allowed to enter the country as guest workers for a limited period of time do not return to their home countries. It is natural for a considerable number of immigrants to continue living in their country of residence, whether legally or illegally, once they have established a base of livelihood. Moreover, it is not surprising that immigrant communities put

down deep roots and begin to reproduce as, either through marriage with regular members of the country of residence or by bringing in family members from the country of origin, they form families and the next generation is born.

A country of residence that continues to disregard its actual residents will be denying them the right to continue to live in the same society solely on basis of their nationality, an unreasonableness that is hard to square with liberal norms. At the very least, it is essential to be good neighbors and guarantee them the right to permanent residence and access to the labor market. And then, to exclude people who do the same work and pay the same taxes from social security and income redistribution networks based solely on their nationality will lead to the erosion of liberal norms themselves. Furthermore, having a minority group subjected to discrimination can cause various problems for any state, a fact so obvious that one need not even bring up advanced human rights norms. This is how the dynamics of enlarging denizen's rights work.

Denizens, unlike regular members of the state, may also be subject to restrictions on certain economic rights, such as taxation and land ownership, but these restrictions have been eased as the economy becomes increasingly marketized. Perhaps the biggest difference between regular members and denizens is the eligibility to participate in the will formation of the state, i.e., the right to vote. Yet there are quite a few countries that allow local franchise to foreigners—this holds true particularly for post-Cold War Europe, which rapidly developed a supranational regional framework along with seeing a marked improvement in its international environment. Even so, qualifications to vote in national elections or to become public servants representing the state abroad are red lines for a state and are oftentimes not granted to foreigners. This is even more true for countries with harsh security environments.

For some people in a society to have the right to political participation while others do not is an extremely unfavorable situation from the standpoint of advancing the equality of mankind and the universality of human rights. That is why facilitating naturalization became a major trend in Europe, where the EU area's role expanded after the Cold War. Still, many denizens may often prefer remaining in denizen status to naturalization. Many among the first-generation of immigrants in particular will have a strong desire to preserve their cultural bond with their home countries. Citizenship also comes with duties. In particular, serving in the military and risking life and limb for one's country may be the ultimate test of loyalty. Historically, many issues surrounding nationality have arisen in connection with military service (see Chap. 3, Sect. 1). However, the conscription system itself has disappeared in many states, in post-World War II Japan, and most countries in the West since the Cold War. Consequently, the trend in many developed countries is to promote naturalization even if it means allowing dual nationality.

Naturalization, which constitutes the fourth gate, is the final stage of integration by the state, public institution-wise. At the stage an immigrant obtains nationality and becomes a citizen, the state's incorporation of the member is complete, in terms of the official system. But it is another matter entirely whether these immigrants now having the same legal rights and duties and possessing the same passports (though not limited to just one) will be integrated as members of a single society. In the 2010s,

there was a spreading sense of frustration and dismay on this point, whether it be liberal assimilationism or multiculturalism. Things might improve in the future, but in any case, societal integration, which constitutes the fifth gate, will be a long-term process and will require persistent efforts.

The pressures on these five gates are interrelated. When the first gate is completely closed, of course, no pressure will be applied to the second and subsequent gates. The twenty-first century reality is that it is virtually impossible for the first gate to completely insulate the internal from the external. The knowledge that an immigrant who entered and then resided long-term within the country could obtain various rights and become a denizen, easily passing through the third gate, would be expected to fan the desire for others to enter the country, even illegally, thereby increasing the pressure on the first gate. And it would be only natural for there to be demands to grant those living for a long time as denizens their civil rights, including political participation, thus generating pressure on the fourth gate, naturalization. Yet many may choose not to acquire the nationality of their country of residence if denizen status were attractive enough. That is also related to the fifth gate, societal integration. It would also be natural for a person to choose not to naturalize if he or she is not accepted into society as a fellow citizen even after acquiring nationality, especially if naturalizing requires the renouncing of previous nationality because the state does not allow dual nationality.

Regardless of how the five gates are institutionalized, one thing seems certain: a growing number of people with legal statuses and cultural and ethnic backgrounds more diverse than ever before will be living together in the domestic space, a trend that is likely irreversible. Irreversible because it is hard to imagine that in the future their numbers will decrease, not merely those who acquire multiple nationalities from voluntary choice or pragmatic reasons but the people who, because their parents were refugees or immigrants, are living with the destiny of being a minority in their countries of residence. The rise in the number of people changing nationality and holding dual nationalities will compel a change in what being a member of the state means. Yet for the majority of people in the world who cannot migrate even if they want to, nationality is not the same as membership in a club, which can be freely joined or left at will; nationality is unrelated to personal will, being largely determined by a person's origins, whether that means a place of birth or the nationality of their parents. Nationality is something absurd and often irreplaceable that we have no choice but to accept as a part of ourselves, just like our own bodies.

If what I have argued above is correct, states will have unprecedented heterogeneity within their territories even as they will be required to overcome the challenges of integration. Basing solidarity in ethnic mythology does not work to tie ethnically diverse people together as members of one society. There are clear limits to the effectiveness of "tradition" in bringing together groups with different historical memories. This is why the current direction of Western countries has been to emphasize state membership as a rational system based on contracts, regarding it as something like "citizenship light"⁴⁴ founded in the secular and sometimes the practical. With military service now a thing of the past in many Western countries, being a member of a state may gradually become less meaningful if the significance of the

state-organized redistribution and social welfare functions diminish in the face of the global market economy. The meaning of state membership is bound to be something more consequential, however, especially at times of strain in the international environment, as long as states have ultimate responsibility for the safety and security of their members.

Notes

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Chapter 6

Overseas Compatriots and the State



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Abstract A state's integration of its new residents often fails. People's sense of identity can become deterritorialized and may be driven by long-distance nationalism, in which ties with compatriots in the far-off country of origin are emphasized over those with neighbors in the new country of residence. Meanwhile, the countries of origin of these migrants may aim at diaspora engagement in an attempt to leverage this deterritorialized sense of belonging. This chapter analyzes such diaspora engagement. It distinguishes between various kinds of diaspora—victim, labor, imperial, and trade diasporas—and shows how the purposes of diaspora also vary, from the purely cultural to the economic. The chapter notes that diasporas could become a

security issue between the country of residence and country of origin, depending on their bilateral political relationship.

The dominant interest regarding immigration in the United States and Europe as well as Japan today is the issue and policy concerning the acceptance of immigrants. Since immigrants arriving from abroad are people who have left another country, we should naturally consider what immigration means not just from the perspective of the receiving country, but also from the that of the sending country and the people left behind there. In this chapter, I would like to examine the relationship between communities of immigrants residing outside their native countries and the governments of their countries of origin, and what implications this has for international relations.

Unlike the flow of goods or money, which responds sensitively to prices established in the market, the pattern of the movement of people is more like a river: once a route has been established, it flows continuously in that channel. When people want to establish a base of livelihood in a foreign country, it is overwhelmingly easier to go to a place where a community of their own people already exists. The communities built by preceding immigrants provide new immigrants with a variety of information and services. When moving to a foreign land, it is matter of course for people to rely on the connections of relatives and acquaintances who have come before them. In this case, a transnational network of people from the same country or region who speak a common language and have similar needs will be maintained. Should this flow of immigration continue in the same direction over a long period of time, a considerable number of (former) nationals will end up residing in specific locations abroad.

As for a government of the country of origin of these people who have moved abroad, what kind of relationship does it build with these groups of compatriots living outside its own territorial jurisdiction? What it must bear in mind when building these ties is that the overseas compatriots, the target of engagement, are actors with interests and identities independent of the intentions of the governments of their country of origin and country of current residence. They must also remember that neither the states of origin nor of residence can unilaterally control how these people behave. The state cannot control their sense of belonging and behavior as its wishes. The interests and identities of people who live outside their home countries for long periods of time change over time. And it cannot be uniform.

European migrant-sending countries since the sixteenth century have maintained a variety of bonds with people who emigrated to the New World, which have been a political asset at times. Although the British Empire is a thing of the past, the gentle bonds of the Commonwealth still retain political significance for the United Kingdom.¹ The relationship between immigrants and their home countries is not always a straightforward matter. This is evident in the fundamentally rocky relationship throughout the nineteenth century between the UK and the US, founded through rebellion against her home country.

Immigrant groups, it is true, are often in a vulnerable position as minorities in their countries of current residence, especially in the Western world, which dominates the global discourse. Yet it is not correct to arbitrarily conclude that they are powerless and utterly passive. They are no different from other people in that they constantly search for the optimal strategy for living within the conditions given them in pursuit of their own interests and ideals. For the people who have left their country of origin, the bond with their home country can be an asset or a burden.

The ties between such (former) migrants and the government of their country of origin is, in some cases, a matter of concern to their country of current residence. It is natural for the host country government to take an interest particularly when a large group residing in its territory has close ties with the government of another country.

In this chapter, I would like to focus on the international political significance of policies advanced by country of origin governments to foster involvement with their countrymen living overseas. Policies for involving overseas compatriots are often referred to as diaspora engagement. In recent years, there has been a large amount of research on the topic in Europe and the US. Many sociological studies have focused on the nature of the diaspora, and many have related tragic narratives of breakups and dispersals, since diasporas are typically a marginalized minority in society. There are also many essays that critically examine their human rights and the exclusivity of the majority in a society. Conversely, just because diaspora deviate from the international political framework of sovereign states, their territories, and their peoples, oftentimes this research projects expectations on them as pioneering entities embodying a new post-statal and post-nationalist worldview. Perhaps stemming from this emphasis on the post-statal nature of the diaspora, research on the topic has shown little interest in interstate relations, which is a central focus of international politics.

In this chapter, I would like to examine the policies of the home country governments that seek to preserve and strengthen relations with the diaspora and how these policies affect the diaspora groups themselves as well as relations between the countries of origin and of current residence.

1 Who Are the Diasporas?

1.1 Who Are the Diasporas?

The term diaspora is generally used to refer to “a group of immigrants with a strong feeling of attachment to their homeland.”² Yet this term, capitalized as Diaspora, was long used to describe the experience of the Jewish people, remembered for being stateless and having suffered repeated persecutions mainly in the Christian world. As a result, the word came to be strongly colored by a nuance of the dispersion of a tragic people from their homeland. Since the 1980s, however, the term has become so widely used that even “expatriates, expellees, political refugees, alien residents, immigrants and ethnic and racial minorities” are sometimes referred to as diasporas.

Some view that the concept has become overly expansive in terms of analytical utility. As an experiment, a search for “diaspora” in English and in Japanese on Google.co.jp that I made in March 2018 resulted in about 150,000 and 270,000 hits, respectively. Regardless, I would like to confirm that this word today is not limited to the Jewish people but is used to refer to immigrant groups in general.

Even if we follow this general terminology, some ambiguity will inevitably remain. To speak of “immigrant groups,” all of humanity today spread throughout the world from Africa about 50,000 years ago. In this sense, most of humanity are immigrants who moved to their current place of residence at some point in the past. Even without looking that far back into the past, those now regarded as “indigenous people” often excluded the people who had been on those lands before them. Just how far back in time must we go to determine our country of origin? Furthermore, migration was the norm for pastoralists moving across grasslands with their livestock, unlike agriculturalists whose lifestyle was based on a vital relationship with a specific piece of land. Their concept of home was not something fixed and would have been thought of as a geographically broader area (at least when compared to the common Japanese sense of the term).³

The most important issue is a strong sense of affinity. “Affinity” is not directly observable because it is a state of people’s consciousness. The content varies, with some feeling cultural affinity and others having a sense of a place to which they should return someday. It may also mean continued political involvement and participation. Although overextending the concept of diaspora should be avoided, the abovementioned ambiguities are unavoidable to some extent as long as human consciousness is concerned. In any case, it is important to note the diversity of peoples who are called diasporas. Sociologist Robin Cohen classifies these diverse diaspora concepts into types—victim diaspora, labor diaspora, imperial diaspora, trade diaspora, and deterritorialized diaspora—each which we shall examine in this order.

1.2 *Victim Diaspora*

The classic example of the victim diaspora is, of course, the Jewish people. As is widely known, the self-awareness of the Jewish people was shaped by being the protagonists of their tragic history of conquest and captivity by Babylon, rebellion against Rome and expulsion, subsequent persecution in Christendom, and the Holocaust by the Nazis. Yet, who is a Jew? The answer to that question is not simple; that all present-day Jews are descendants of people expelled from ancient Israel by Rome is merely a legend, some argue.⁴ The identity of Jews distributed throughout the world today is diverse, and it is widely acknowledged that many Jewish communities were formed as a result of voluntary migration for purposes such as trade. There are also many people, after assimilating into the countries in which they have lived for so long, who have lost their Jewish identity or for whom it has only a limited meaning.

Israel, established in 1948 as the homeland for the Jewish people without a homeland, also granted citizenship to the Arab people (Palestinians) who lived there at the time of its founding. Arab Israeli citizens currently make up around 20% of the population and are elected members of the Knesset (parliament). Yet it is inevitable that these non-Jewish groups will feel alienated as long as Israel remains a Zionist state. At the same time, the State of Israel cannot be sure of the allegiance of these people. This explains why Israel imposes the heaviest military conscription on its citizens in the world, even requiring women to serve for a year, yet its Arab citizens are exempt from this obligation.

To begin with, there are also various ways of considering who is a Jew. One 2016 estimate puts the total number of Jews, strictly defined as people who consider Judaism solely central to their identity, at around 14.4 million people worldwide. Approximately 6.3 million of these reside in Israel, and the remaining 8.1 million live in countries other than Israel as members of the diaspora. Of these, approximately 6.1 million are said to live in North America, a figure comparable to the Jewish population of Israel.⁵ Israel proclaims in its founding declaration that it “will be open for Jewish immigration and for the Ingathering of the Exiles [all countries of their dispersion].” The Law of Return, enacted in 1950, provides that all Jews have the right to settle in Israel. A Jew is defined here as “a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion.” Since then, amendments have been made that further expand the principle of descent by granting immigration rights to Jewish children and grandchildren, as well as the spouses of Jewish grandchildren.⁶

The driving force behind the reproduction of Jewish identity has been the memory of being forcibly expelled from a homeland promised them by God to suffer persecution in the Christian world for a long period of time. Discrimination and persecution in Christendom reproduced their identity thereafter. As they established an influential position in the West, particularly in the US, the transnational network of Jews became powerful. This has unquestionably been a valuable resource for Israel, judging from the consistent support of the US for Israel in the international political arena.⁷

While the Jewish experience may be unique, Jews are not the only people who share a history of hardship after having been violently separated from their homelands. Innumerable Africans suffered a harsh fate as a result of the slave trade conducted by Western countries. Although the institution of slavery was not a European invention, the Atlantic slave trade carried out continuously and systematically over a long period from the sixteenth to the nineteenth centuries is said to have resulted in the forced migration of some 10–14 million people from their homelands. A significant proportion of these people and their descendants, treated as literal livestock for labor in the Caribbean, the Americas, and elsewhere, have lived separated from their homelands over generations. Furthermore, a significant number of people of African descent often had a weak sense of belonging to their countries of residence as oppression continued even after the official end of slavery. Many felt that their homeland was in Africa. The repatriation to Africa movement, as discussed below, can be said to be similar to the Zionist movement in that it was driven by the thoughts of those in the diaspora.

1.3 *Labor Diaspora*

The most common type of diaspora today is the labor diaspora. The typical example cited is Indian indentured labor. To meet the demand for agricultural labor after slavery was banned, large numbers of people migrated within the British Empire from India to Africa and the Caribbean as temporary contract workers (Table 1). Their working conditions were extremely poor, so in that sense they were not much different than slave labor. Even so, their descendants were not sold, and once the contract expired, they were allowed to return home at full or partial expense to their employers. However, the majority of Indian migrants remained in the area. The reason for this was less that they had established a sense of belonging to the local society, and more because they had economic expectations that by continuing to do contract work and saving enough money they would be able to acquire their own land. Moreover, staying outside India was also an opportunity to break free from India's rigid caste system. "A common in-group joke among contemporary Indo-Trinidadians is that while there were no Brahmins when the ships set out from Calcutta, by the time they arrived in Port of Spain (Trinidad) several gentlemen had assumed a puffed-up, priestly mien."⁸

1.4 *Imperial Diaspora*

Cohen calls the people who emigrated from an empire's home country to its colonies the imperial diaspora. This typically applies to the descendants of white immigrants from former colonial empires such as Spain, Portugal, the Netherlands, France, and the UK. European countries today are generally immigrant receiving countries, particularly struggling with societally integrating their Muslim populations. But looking further back in time, Europeans were emigrant sending countries on an extremely large scale. Migrants, especially those from the UK and Spain, marginalized indigenous people in many parts of the world and established their own states that continue to this day. Although quite limited, Japan, too, sent a considerable number of migrants and colonists abroad as a result of its imperialist territorial expansion, an often overlooked fact today. Most of these people were left with no choice but to pull out of their places of residence and return home to Japan with the dissolution of its empire.⁹ Hokkaido, on the other hand, had not been established as Japanese territory until modern times. Thus, from the point that the country established its territorial control through colonization while it marginalized the indigenous people, it is similar to what Russian settlers in Siberia and European settlers in North America had done. However, it would be inappropriate to call today's Anglo-Americans who have already established a sense of homeland in their places of residence the British diaspora, or Russians living in the Far East the Russian diaspora, or the non-indigenous peoples living in South America the Spanish or Portuguese diaspora based on their historical origins.

Table 1 Indentured Indians and Indian population (1980, latest estimates (c. 2007))

Colony/Country	Period	Indentured workers	Indian pop. 1980	Latest estimates 2007
Mauritius	1834–1912	453,063	623,000	850,558
British Guiana/ Guyana	1838–1917	238,909	424,400	384,547
Natal (South Africa)	1860–1911	152,184	750,000*	923,994*
Trinidad	1845–1917	143,939	421,000	422,643**
Réunion	1829–1924	118,000	125,000	156,800**
Fiji	1879–1916	60,969	300,700	343,584
Guadeloupe	1854–85	42,326	23,165	40,000***
Kenya and Uganda	1895–1901	39,771	79,000	12,000***
Jamaica	1854–85	36,420	50,300	61,500***
Dutch Guiana/ Suriname	1873–1916	34,000	124,900	174,190
Martinique	1854–89	25,509	16,450	14,000***
Seychelles	1899–1916	6,319	n.a	5000***
St Lucia	1858–95	4,350	3,700	4,095
Grenada	1856–85	3,200	3,900	3,698
St Vincent	1861–80	2,472	5,000	7,088
Total in countries of indenture		1,361,431	2,952,495	3,403,697
Total Indians overseas (2001)				17,000,000

Notes *South Africa in total; **excluding mixed population; ***source poor

Source Cohen, Robin. Komai, Hiroshi (trans). 2012. *Shinpan gurōbaru diasupora*. Akashi Shoten, 138. [Translation of Cohen, Robin. 2008. *Global Diasporas: An Introduction (second ed.)*. Oxon: Routledge, 63.]

Background elements of the imperial diaspora include the political and military power of the mother country and the dominant-subordinate relationship of authority with the indigenous people in the country of residence. Nevertheless, many of these immigrants were rather marginalized in their home countries. Desperate farmers with no land to cultivate, unemployed workers, orphans, religious minorities, and even prisoners risked their fates by emigrating to distant frontiers of the empire.¹⁰ From the empire's perspective, it was hoped that the imperial diaspora would serve to kill two birds with one stone: stabilizing the home country's society by alleviating population pressure, and providing the human resources essential to manage the empire.

1.5 Trade Diaspora

The trade diaspora is what Cohen calls the people who make a living through trade with distant lands, maintaining trade networks with their home countries while based in faraway locations, citing the Chinese diaspora as the typical example. Emigration from China allegedly can be traced back as far as the Han Dynasty (206 BC–220 AD). Chinese people with advanced skills and knowledge were welcomed by dynasties all over Southeast Asia, and Chinese communities existed throughout Southeast Asia already in the Ming Dynasty (1368–1644). There were communities of Chinese merchants in Japan, too, in Nagasaki and Hirado. Most Japanese are familiar with Zheng Chenggong—known internationally as Koxinga—who resisted the Qing Dynasty in the seventeenth century based out of Taiwan. He was the son of Zheng Zhilong, a maritime merchant living in Hirado, and a Japanese mother.

Chinese emigrants are not an imperial diaspora backed by the policies of successive Chinese empires: Confucianism, China's dominant ideology, disdained commerce, and both the Ming and Qing dynasties adopted a long-term *Haijin* policy (a “sea ban” on overseas travel and trade). Instead, China's international trade system was based on a tribute (*chaogong*) trade form of state monopoly, in which both international trade and emigration were suppressed. This state monopoly system in fact sparked a growth in smuggling, so even as China prohibited foreign ships from visiting its shores, it was forced to allow Chinese merchants to go overseas and trade under certain conditions. This is how a trading base for the Chinese was established in Southeast Asia.¹¹

After being defeated by the UK in the First Opium War (1839–42), Qing China was virtually unable to implement its sea ban policy and a large number of emigrants flowed out of the country. Many of today's Chinese diaspora are descendants of people who went overseas during this period. Many migrants of the time were contract laborers working on farms, mines, and construction sites; in that sense, the Chinese diaspora was also a labor diaspora. As these migrants gradually found success in small and medium-sized commercial activities, settled in the area, and reunited with their families, they formed the Chinese communities that continue to this day in Southeast Asia and around the world.¹²

Cohen cites Lebanese immigrants as a similar people who settled mainly in Mediterranean port cities and formed a continuous trade network to engage in trade between the Middle East and Europe from the seventeenth to the nineteenth century. Three factors are thought to be behind the emergence of immigrants from Lebanon. First, Lebanese Christians were at a disadvantage under the rule of the Muslim-majority Ottoman Empire. Second, there was an impact from conflicts in the Middle East that endure to this day. A third important factor is that Lebanese immigrants have spread out in large numbers in Europe and North and South America forming successful trading communities. There are many people, even today, who live abroad for work purposes. If they were to settle outside their home countries for various reasons, such as marriage or political change in their country of origin, and form a

lasting trade network of a certain scale, they too could be referred to as a modern trade diaspora.

1.6 *Deterritorialized Diaspora*

A diaspora may also be created as a result of shifting borders.¹³ Mexico has the world's largest diaspora population, the majority of which resides in the US. The first generation of the Mexican diaspora living in the US were people who became a diaspora in 1848 when Mexican territory was ceded to the US as a result of the Mexican–American War. The US government demanded that residents of the new territory acquire US citizenship or else relocate to Mexican territory. At that time, between 75,000 and 100,000 people of Mexican descent decided to remain, took American citizenship, and became part of the diaspora.¹⁴

The Russian diaspora has reached a huge number comparable to that of Indians and Chinese, and many of them were created with the change in national borders that ensued after the collapse of the Soviet Union. With the 1991 breakup, calculations based on 1989 statistics suggest that approximately 25 million Russians and approximately 18 million non-Russians ended up living as minorities in states named after other ethnicities. Russians, who had been the majority in the Soviet Union during the former Soviet era, account for about 30% of the overall population in present-day Latvia and Estonia and their number is close to 20% of the population in Ukraine.¹⁵

Upon the founding of the State of Israel, Palestinians became residents of Israel. As long as Israel is a Zionist state and a homeland for Jews, however, it is nothing more than a foreign country for non-Jews. Consequently, the establishment of a homeland for the Jewish diaspora ironically created a new diaspora.

The dissolution of the Ottoman Empire after World War I is a well-known example of the creation of a new diaspora. The empire, whose rule spanned an area from today's Middle East to parts of the Balkan Peninsula, was broken up, and states were reorganized based on the principle of national self-determination. Complex conflicts and numerous tragedies arose with its dissolution. Each ethnic group sought to enlarge its own territory after becoming independent, while the involvement of the European powers complicated the local problems. Borders were demarcated after the signing of a peace treaty at the Lausanne Conference in 1923, leaving many countrymen on the other side of the border. As a result, a situation emerged in which “more Greeks lived in Istanbul, the capital of the Ottoman Empire, and in cities on the eastern Aegean Sea, such as Smyrna (Izmir), than in the territories of independent Greece.”¹⁶ Therefore, an attempt was made to maintain the integrity of the population within the border by moving the residents along with the movement of the border.¹⁷ Turkey and Greece signed an agreement to mutually exchange populations, and approximately 2 million people were forcibly moved from their hometowns, where they were born and raised, to their new “homelands” (Fig. 1). Yet the dynamics between the diasporas that emerged with the Ottoman Empire's dissolution and their

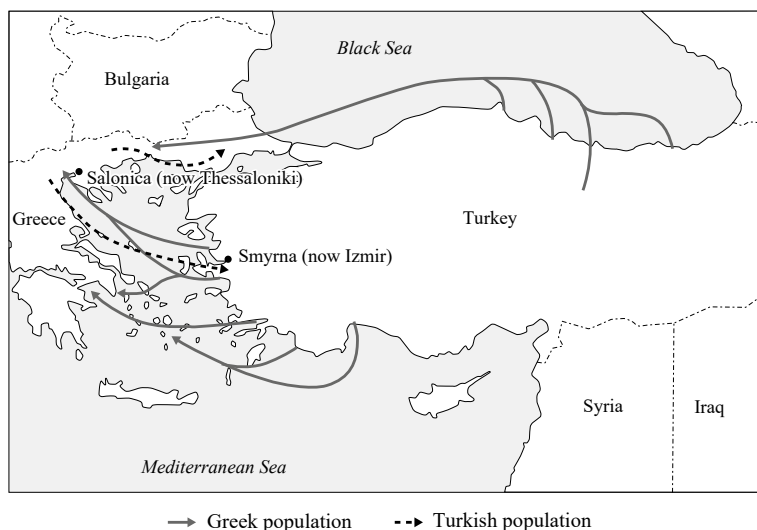


Fig. 1 Migration of Turks and Greeks through “population exchanges”. *Source* Ikeuchi, Satoshi. 2016. *Saikusu = Piko kyōtei hyaku-nen no jubaku: Chūtō daikonmei o toku (The 100 year curse of the Sykes-Picot agreement—Understanding the utter chaos in the Middle East)*. Tokyo: Shinchō sensho, 113.

respective “homelands” continue to cause appalling conflicts a century later, and there is still no visible path to a stable order.

2 Diaspora Engagement

As was laid out in Sect. 1, there are many people who, for various reasons, live abroad and who retain some sense of belonging to a country other than the country in which they reside. Many countries of origin have adopted so-called diaspora engagement policies, seeking to strengthen their relations with such communities of their (former) nationals who have emigrated abroad and their descendants. China and the Philippines have long pursued institutionalizing ties with their diasporas. In recent years, countries have stepped up their organized efforts to revitalize these bonds, viewing their overseas compatriots as a resource for their own development. This phenomenon coincides with the development of globalization post-Cold War, with its expanded scale of the movement of people and liberalized international capital flows.

2.1 *Institutions of Engagement Policy*

In 2011, 114 countries had established some kind of governmental unit to implement policies to strengthen relations with their diaspora, according to a United Nations report.¹⁸ One study found that 15 countries, including Armenia, Bangladesh, the Commonwealth of Dominica, and India, have ministerial-level departments implementing these policies, many of which were established after 2001.¹⁹ In the case of India, for example, the Ministry of Non-Resident Indians' Affairs, later renamed the Ministry of Overseas Indians' Affairs (MOIA), was established in 2004 to be solely responsible for diaspora engagement. Some countries, such as the Commonwealth of Dominica, also have hybrid ministries that combine functions such as foreign affairs, labor, and tourism.

In the Philippines, the Commission on Filipinos Overseas (CFO) was established in 1980 as an agency directly under the Office of the President. It is primarily responsible for policies targeting the diaspora permanently residing or having acquired citizenship abroad.²⁰ Heavily reliant on overseas remittances from its emigrants, the Philippines also established the Overseas Workers Welfare Administration (OWWA) under the Department of Labor and Employment in 1981, an organization that runs a variety of assistance programs for Filipino migrant workers overseas, such as protecting them, assisting their repatriation, and providing them with loans for new businesses in their country of residence. In addition, the Philippine Overseas Employment Administration (POEA) is responsible for short-term overseas employment-related matters (see Chap. 1), and the Department of Foreign Affairs has appointed an Undersecretary for Migrant Workers' Affairs.²¹ Furthermore, because diaspora engagement policies touch on various aspects such as external relations, economy, and labor, Mexico, Chile, and other countries have established interministerial committees to coordinate policies. In Brazil, the Ministry of Foreign Affairs is in charge of migration issues, and an Undersecretary General for Brazilian Communities Abroad has been appointed.²² The largest destination for migrant workers from Brazil is Japan.

With its enormous diaspora spread all over the world, China set up a special organization that is directly connected to the highest political levels.

A political party of overseas Chinese, the China Zhi Gong Party, was also invited to participate at the People's Political Consultative Conference held in Beijing in 1949 to establish the People's Republic of China and formulate the framework of the new government. The "Common Program," the provisional constitution that the Conference adopted, defines the new government as a people's democratic dictatorship with a broad united front, lists "the overseas Chinese" as one of the constituent representatives, and stipulates that the government would protect the proper rights and interests of Chinese residing abroad and facilitate remittances from overseas Chinese. In addition, the Committee of Overseas Chinese Affairs was established under the Government Administration Council (later the State Council), which corresponds to the Japanese Cabinet, and it was made clear that [Beijing] would place the same importance on overseas Chinese as the Nationalist Government [in Taiwan].²³

Under this policy, a Cabinet-level chair of the Committee of Overseas Chinese Affairs was established, and He Xiangning was appointed; He was the widow of

Liao Zhongkai, a Kuomintang leader second only to Sun Yat-sen and who was of overseas Chinese origins. Liao Chengzhi, He's eldest son who was born and raised in Japan, succeeded her in 1959 and remained in that position for a long time. In 1970, the Committee was officially abolished and the priority of the engagement policy was formally downgraded out of consideration for diplomatic relations with Southeast Asian countries, which were on alert, "seeing the Committee of Overseas Chinese Affairs as an organization to mobilize overseas Chinese people for the benefit of China." However, its successor agency, the Overseas Chinese Affairs Office of the State Council (OCAO), occupies a unique position of reporting directly to the premier.²⁴ The OCAO is said to have a staff of approximately 120 people and to be responsible for a wide range of projects, such as establishing databases on overseas Chinese for each region in China and operating two universities for overseas Chinese.²⁵

2.2 *Objectives of Engagement*

What are the objectives of the countries behind this push? In the case of the Commonwealth of Dominica, the total number of people in its diaspora has reached a size comparable to the population living within the country's territory. In a 2010 policy document, the Dominican government clearly laid out its expectations for the overseas diaspora, the great majority of whom are in the US, to play the following roles:

1. Recognizing and strengthening of the Diaspora's potential to act as lobbyists on behalf of Dominica in the host countries.
2. Utilizing the skills and knowledge of the Diaspora in policy development and national development matters, especially where our national development is influenced by the host country.
3. Providing information on areas of expertise for the development of the Diaspora data-base.
4. Sharing of skills and knowledge with Dominicans at home in the interest of national development.

So that the diaspora can fulfill these roles, the Dominican government is implementing the following measures:

- Grant citizenship to Dominicans living abroad and to their grandchildren
- Promote their investment in Dominica
- Recruit development-related engineers and medical professionals to Dominica
- Enhance information exchange between the Dominican government and the diaspora
- Invite the diaspora to travel to Dominica
- Strengthen trade and investment relations with the diaspora

- Support the diaspora's cultural projects and recognize its outstanding contributions.²⁶

The policy document went on to note that meetings are held annually between Dominican government Cabinet ministers and representatives of the diaspora, and the prime minister himself meets with diaspora representatives in the host countries. In addition, 2008 was designated as the "Year of Reunion," and the Dominican government made intensive outreach efforts to the diaspora community. As bases for diaspora-related activities, embassies, consulates, and other overseas diplomatic missions are to provide services beyond traditional consular services, such as information about issues affecting the local diaspora as well as taking proactive methods to maintain and strengthen ties with the diaspora community.²⁷ Furthermore, the country established the Ministry of Employment, Trade, Industry and Diaspora Affairs, which is in charge of overall economic issues, in order to continue to be involved in diaspora issues.²⁸ Countries in Latin America and the Caribbean are very similar in that they all have large native diaspora communities in the US; as they share information and inspire each other, they are developing similar engagement policies.²⁹

As seen in the example of the Commonwealth of Dominica, the diaspora is primarily positioned as a resource for the economic development of the country. Many emigrant-sending countries are impoverished, dependent on the export of labor, so for them overseas compatriots are a valuable resource for their development. Notably, emigrants' remittances to their families and local communities in their home countries have steadily increased over the past 20 years, and the pace of growth shows a stable trend less affected by economic and financial conditions. Remittances to developing countries surpassed \$430 billion in 2014, according to the World Bank. This figure is more than three times the total amount of global official development assistance (ODA), is on par with private debt and portfolio investment, and is about 70% of foreign direct investment (Fig. 2). Moreover, since there are no conditions that are imposed on remittances as in the case of assistance, it is a convenient means for developing countries to secure foreign currency.³⁰ In addition, economically successful diasporas in rich countries can be expected to be a source of direct investment funds, not just remittances, and are regarded as promising trade partners.

The specialized skills and information the diaspora possesses are also attractive development resources for developing countries. Developing countries often lack the human resources that require long-term higher education in fields such as civil engineering, medical technology, and information technology. Their ability to train experts in these fields domestically is limited. In addition, valuable professionals who have been educated overseas, especially those who have acquired internationally applicable skills such as medical technology, are increasingly drawn to job opportunities offered in affluent countries that are far better than those offered in their countries of origin. Against the backdrop of this phenomenon, which was at

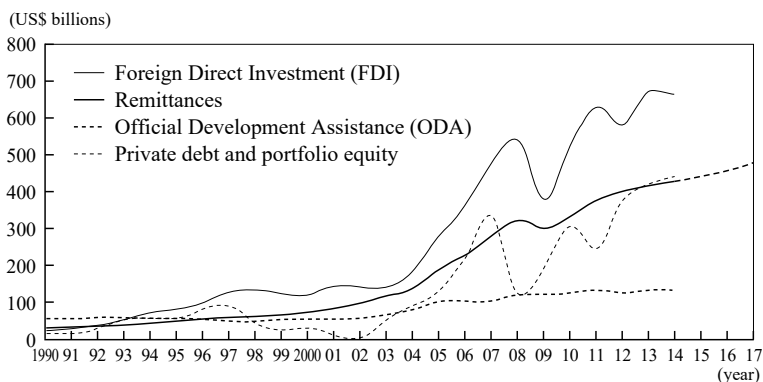


Fig. 2 Trend of remittances to developing countries. *Source* World Bank Group. 2016. *Migration and Remittances Fact Book 2016, 3rd ed.*, World Bank Group, 17

one time called a “brain drain,” a major motive for the engagement policies of developing country governments is to somehow make use of such expertise and skills accumulated overseas for the purpose of their own development.

The home country’s government also expects its diaspora to exercise political influence on the home country’s behalf within their countries of residence, to act as “lobbyists,” as we saw expressed in the Dominican government’s policy document. Particularly in the case of a democratic and traditional immigrant nation such as the US, lobbying activities by various ethnic groups, in concert with their countries of origin, to influence the host country government are considered legitimate and occur on a daily basis.

The most remarkable example is the role that Israel entrusts to the Jewish community in the US, who Middle East policy, as is well known, cannot be discussed without regard to the influence of its Jewish community.

But this is not limited to Jewish Americans. It is well known that Americans of Polish descent exerted a strong influence on the US government in the early 1940s, to prevent compromise with the Soviet Union with respect to the future of the Polish state after Nazi Germany’s defeat, and that this became one of the causes of the Cold War.³¹

As a more recent example, in the late 1980s and early 1990s, the Mexican government called on the more than 10 million people of Mexican descent in the US to support the conclusion of the North American Free Trade Agreement (NAFTA), inviting prominent members of the diaspora to Mexico City where President Carlos Salinas personally urged their support.³²

There is also the episode involving Armenia and its rival, Azerbaijan, that brought in Americans of other ethnic origins. Armenians are Christian, which also helps provide them with a more advantageous position of political influence in Western society than their Muslim counterparts. In 1998, Armenia and its diaspora in the US extracted approximately \$90 million in aid from the US government while blocking any move to resume US aid to Azerbaijan.³³ However, Turkey, a fellow Muslim

country with close ties to Azerbaijan, and oil companies with an interest in developing oil fields in the Caspian Sea fought back. The American Jewish lobby also stood in support of the Turkish side, given Israel's strategic cooperative relationship with Turkey. By the end of 1998, plans were moving forward for a pipeline from Azerbaijan that would bypass Armenia and Russia. American Jewish organizations paid for an opinion advertisement that ran on November 8 in the *New York Times* (alleged to have a pro-Israel bias) celebrating the 75th anniversary of the founding of the Republic of Turkey. This in turn sparked a backlash from Greek American associations, which later began to criticize the entire US policy toward the Balkans at the time from the perspective of their home country, Greece (which has long had poor relations with Turkey).

Chinese American and Korean American organizations have been active in the US regarding the issue of the comfort women. Diaspora are often expected to play the role of cheerleaders for their home governments within their countries of residence.

It is more common for diaspora engagement policies to have little connection to specific government economic or political objectives and to aim instead at improving the international environment surrounding their countries of origin. Many governments advance their public diplomacy by popularizing their language and promoting their culture internationally. Naturally, they target people in the diaspora interested in their own roots for spreading their own culture and language abroad. One underlying factor is the rise of multiculturalism, which, as mentioned in the previous chapter, calls for respecting each ethnic community's cultural uniqueness, a movement that has grown along with the increase in immigration in Western countries. Governments want their diaspora to remain interested in the country of origin and to become a source for transmitting the country's culture and information. If possible, they would like their diaspora to project a favorable impression in the country of residence and to serve as a network that the country of origin can use for future outreach when political or economic needs arise. For these reasons, the diaspora has been targeted for engagement by the governments of their countries of origin.

To that end, Morocco, for example, hosts conferences on issues related to its diaspora, holds exhibitions, and has established permanent memorials and museums, at home and abroad, as well as implementing programs to set up Moroccan cultural centers and dispatch instructors of its language, literature, and religion.³⁴ Japan, formerly an emigrant-sending country, has been running support projects for the Japanese diaspora community in Latin America, with the hope that they will carry on their identity as persons of Japanese descent and serve as a bridge between Japan and their current country of residence.³⁵ Once perceived as deserters who fled abroad to escape the hardships of their homeland, the diaspora is now seeing many countries around the world developing organized attempts to remember them as heroes supporting their country from abroad.³⁶

2.3 *Methods of Engagement*

As we see in the example of the Commonwealth of Dominica, one concrete measure that countries of origin can take to revitalize relations with the diaspora is to grant them some kind of legal status. Even in impoverished developing countries, granting membership is easy to do, as states may freely produce it at essentially no cost. Furthermore, this will enable the diaspora to participate politically and be involved in shaping the will of their country of origin. The reason behind this move is that the diaspora can now maintain citizenship in their country of current residence even after acquiring a new citizenship; in other words, it is related to the fact that many Western countries now allow dual nationality.

However, this point was controversial in Mexico, which has a very large diaspora population in the US. First, there is the fundamental question of whether it is appropriate from the perspective of democracy that the diaspora, who are currently residing abroad, should have equal voting rights with those left behind in the home country. Politically speaking, various considerations will naturally come into play among political parties if the votes of countrymen living overseas influence the outcomes of elections. That said, it is very difficult for a state to deny the right to vote to its citizens even if they live overseas; states recognize voting rights for their nationals living abroad more broadly than for foreign nationals residing in their territory.

For example, most countries in the European Union (EU), with the exception of Greece and Ireland, allow their nationals living abroad the right to vote. It is expected that states would encounter enormous administrative difficulties in conducting a fair vote with large numbers of their citizens living abroad. In reality, there are usually various restrictions in place when the diaspora is given the right to vote. For example, some countries, such as Israel and Nicaragua, require all voters to cast their vote in their home country on election day; other countries require residence in their home country for a certain period of time. Some countries, such as France, Italy, and Portugal, also allocate specific parliamentary seats to their diaspora.³⁷ It is presumed that this approach ensures that the diaspora has a say in politics while at the same time limiting its political influence.

Citizenship comes with duties. Even if the country of current residence allows dual citizenship, the overseas diaspora would be far less attracted to having the citizenship of the country of origin should that country conscript them into the military and tax their income, which would also dampen their desire to deepen ties with their country of origin. As a practical matter, it is difficult to have non-resident citizens fulfill their duties in a fair manner, particularly for developing countries with limited administrative resources. As a consequence, even if the overseas diaspora is given some kind of legal status, their rights and duties, such as the right to vote and the duty to serve in the military, are often restricted.

It is also possible to provide some kind of preferential legal status to the diaspora that does not go as far as formal citizenship. India, for instance, has traditionally been reluctant to engage its diaspora and, as a leading member of the non-aligned countries, it has a principled position of respecting the sovereignty of newly independent

states, so it does not allow dual nationality. Consequently, people of Indian descent were not given protection or support even when they met with severe ostracism in the newly independent East African states from the 1960s onwards.³⁸ In response to the shift toward a market-oriented economic policy, India since the 1990s has increasingly tended to make active use of its diaspora as a resource. India classifies its citizens living abroad for more than six months “Non-Resident Indians” (NRIs), and in 1999, began granting the legal status of “Persons of Indian Origin” (PIO) to the Indian diaspora with foreign citizenship. The conditions at the time for PIO were whether the applicant ever held Indian nationality; had parents, grandparents, or great-grandparents who were born and lived in territory that is now India; or is the spouse of an Indian citizen or PIO. Applicants could obtain a PIO Card by meeting any of these conditions, which allowed them benefits related to entry into India and undertaking economic activities there. Interestingly, the government has carefully determined which citizenships are incompatible with PIO status: nationals of Afghanistan, Bangladesh, Bhutan, China, Nepal, Pakistan, or Sri Lanka are ineligible.³⁹ In 2005, the government established the “Overseas Citizenship of India (OCI)” status in response to requests from the Indian diaspora. Although OCI does not come with any political rights, it does give OCI holders almost the same rights as NRIs; in 2015, PIO was integrated with OCI.

Trade, investment, and other economic incentives are often linked to the aforementioned legal statuses. It is common practice to provide the diaspora with preferential treatment such as tax reductions or exemptions related to direct investment, securities investment, and trade; preferential treatment in the provision of accommodations; priority rights in licensing matters; and simplification of other administrative procedures. According to the UN, 46 countries, mainly developing countries, had such systems in place in 2011.⁴⁰ Nearly all countries have some form of restrictions on direct investment by foreigners, and many countries have restrictions on land ownership.⁴¹ In such cases, granting national treatment to the diaspora might stimulate direct investment. Other possibilities include providing access to a range of home country markets. Japan, for instance, provides opportunities for Japanese Brazilians to enter its labor market. Mexico has adopted a policy of increasing the diaspora’s desire to invest by using public funds to provide matching funds for direct investments of a certain amount. There are also examples of governments setting up remittance networks to facilitate small remittances from the diaspora back to their country of origin.

Along with providing such legal status and the associated right to participate in the national economy, there are a set of measures for states to strengthen networks, and reinforce spiritual bonds, with the diaspora. Whether a diaspora behaves like a diaspora depends on how its members perceive themselves. To that end, attempts to symbolize the relationship with the home country’s government hold important significance. An approach commonly adopted by country-of-origin governments is to develop and maintain relationships with the diaspora, by symbolically affirming the spiritual bonds with them, acknowledging their journeys of hardship abroad, and honoring their contributions to their countries of origin. For example, in 2003 India designated January 9 as Non-Resident Indian Day (Pravasi Bharatiya Divas)

to recognize the contribution of the Indian diaspora to the motherland. Morocco has also established August 10 as a National Day of the Moroccan Community Abroad.

Another widely seen policy approach is to use language and culture to affirm and reproduce bonds with the diaspora. National broadcasters in Hungary, Turkey, and Italy have channels targeting their diasporas, disseminating information from the governments of their countries of origin.⁴² Mexico uses its network of consulates in the US to coordinate with the groups of its large diaspora, such as the “home town associations,” of which there are many throughout America. As well as sponsoring visits to Mexico for diaspora delegations, organizing sports tournaments, and hosting cultural programs such as art exhibitions, Mexico sends teachers to US schools every summer to support bilingual education in English and Spanish. In addition to donating Spanish-language teaching materials and teaching Spanish to American instructors, the government runs programs to assist children of Mexican residents in the US to receive an education in Spanish, and to boost the Spanish literacy of migrant workers.⁴³

3 National Origin for the Diaspora

3.1 *Sense of Belonging*

We have seen the efforts made by country-of-origin governments to build bonds with their compatriots abroad. How the diaspora responds to these efforts is another matter entirely.

Affirming a self-identity and a sense of cultural belonging is an essential psychological need for human beings. The diaspora is often seen in a negative light as those who have abandoned their homeland, so members might welcome engagement by their countries of origin, if only the acknowledgment of their efforts and hardships. They may even become more sensitive to their own ethnic identity than people in their home country, inasmuch as they live surrounded by the majority of “others” in their current country of residence. There is a psychological dynamic at work, in which people wish to liberate themselves through a connection with their great fatherland; in particular, the more alienated these people are from the society of their country of residence, the more their self-esteem is strongly influenced by “long-distance nationalism”⁴⁴ that seeks solidarity with a distant homeland. A notable example of this is that the persistent discrimination in European Christian societies energized the Zionist movement, so that even today Israel can count on the support of Jews around the world. There are also many other examples of people staking their honor on the independence and advancement of their homeland.

It has already been mentioned that, along with Jews, the large number of people enslaved in Africa and sent to the New World are typical of the victim diaspora. Long after their ancestors had been enslaved, treated like livestock, and forced to migrate across the Atlantic Ocean, many people of African descent were pushed

to the margins of society even after slavery was officially abolished. As a result, a sense formed among some black people that Africa is their “homeland,” based on the color of their skin and their origins dating back more than 200 years. In the first half of the twentieth century, it took the form of the Pan-Africanism movement, with growth centered in Jamaica. Its leader, Marcus Garvey, organized the Universal Negro Improvement Association and African Communities League (UNIA-ACL) hoping to develop a movement to improve the status of black people, as well as to promote their return to Africa and to further the development of Liberia. Garvey is still considered a hero in Jamaica, having also influenced the Rastafari movement, which advocated a return to Ethiopia, the only independent country in Africa at the time.

Yet other Africans who returned were Westernized and Christianized people. For many blacks, Liberia was a hope for liberation, but those who returned there “soon took on the appearance of colonists—refusing to learn the local languages, imposing American-style institutions, acquiring the air of a social elite and ruthlessly monopolizing political power. In the 1930s a League of Nations investigation found that some Americo-Liberians, including a number holding political office, had reinstituted slavery...”⁴⁵

There are also many examples in which the diaspora has launched national liberation movements from abroad. The Irish people living in America, who were mentioned in Chap. 3, actively supported the Irish independence movement after the nineteenth century. During the Irish War of Independence (1919–21), Éamon de Valera, the American-born representative of the Provisional Government of the Irish Republic, gained political support for Irish independence from the US government, which had advocated national self-determination at the Versailles Peace Conference, and also attracted financial support from Irish Americans.⁴⁶ Starting in 1919, de Valera stayed in the US for about a year and raised over \$5 million primarily from the Irish diaspora by issuing bond certificates that could be exchanged for gold-value securities once the Irish government was internationally recognized.⁴⁷ Of that amount, \$1 million was remitted to Ireland before the armistice in July 1921, and is claimed to have been used in the anti-British struggle.

The Indian community living in Africa is known for having actively supported India’s independence movement. Indian emigration picked up during the period of British rule from the latter half of the nineteenth century to the early twentieth century. While slavery was abolished in the first half of the nineteenth century, Indians began to leave the motherland to toil as agricultural workers on white-managed plantations as demand grew with the expansion of the British Empire, as well as a labor force on civil engineering works such as railway construction. One estimate puts the total number of Indian emigrant workers between 1834 and 1947 at 30 million; they emigrated around the world, from the Caribbean islands to Kenya and Uganda in East Africa, west to Malaysia and as far away as Fiji and other islands in the Pacific Ocean. Though they migrated as indentured laborers, many of them ended up settling in the area.⁴⁸ Furthermore, these immigrants from India often served as lower-level administrative officials, positioned between the natives and whites in British colonies in Africa, and in intermediary roles associated with commercial activities in urban areas of Africa

where commerce was underdeveloped. Some classes achieved considerable success in local society, yet all faced obvious discrimination by whites. It was this class of Indian diaspora that supported Indian nationalism, and it was their support that the leaders of the Indian independence movement actively sought. The leader of the independence movement, Mahatma Gandhi himself had worked as a lawyer in South Africa. In a similar vein, many activists in China's national liberation movement, such as Sun Yat-sen, Zhou Enlai, and Deng Xiaoping, are known to have used Japan and other overseas bases for their activities, where they were provided support by the local Chinese diaspora community.

People who flee abroad to escape poverty, corruption, and political and religious persecution often become fierce critics of the government of their country of origin, not its cheerleaders.⁴⁹ For example, Cuban immigrants in the US comprise those close to the old regime who fled the Cuban revolution as well as those who later fled political oppression and economic hardship under the Castro regime (see Chap. 1). Traditionally, it has long been the Cuban diaspora community within the US that has firmly opposed restoring US diplomatic relations with Cuba. The diaspora is strongly inclined to support the Republican Party. This is observable from the facts that US Senators Rafael Edward "Ted" Cruz and Marco A. Rubio, who vied to be the Republican nominee in the 2016 US presidential election, are both of Cuban descent, and that they spearheaded the opposition to improving relations with Cuba initiated by President Barack Obama. The Chinese diaspora that fled the country as a result of the Chinese civil war naturally were rather critical of the Communist government in Beijing. Many Chinese students abroad and members of the diaspora took part in demonstrations in Western countries against Beijing's repressive crackdown on the Tiananmen Square protests in 1989. The Iranian community that fled the country due to the collapse of the Mohammad Reza Shah Pahlavi government in 1979 did not sympathize with the Iranian regime after the Islamic revolution.

Conflicts and societal rifts occurring within the country of origin may become even more pronounced among diaspora groups. The Communist government in Beijing and the Kuomintang government in Taipei vied to engage and garner support from the overseas Chinese diaspora. The rivalry between North and South Korea was also reproduced within the Korean diaspora in Japan. Such phenomena have long been observed. There are also cases where diaspora may have a stronger sense of belonging to a sub-national region, rather than country, of origin. Rather than by being ethnically Chinese, the Chinese diaspora came to be organized in various ways based on the region of China they originated from, with "groups that shared the same language variant organizing mutual aid organizations (*bang*), around which they developed economic and social activities."⁵⁰ In the case of the Indian diaspora that had emigrated before India's independence, its members brought their differences in regional languages, religions, and (in the case of Hindus) caste differences with them to their countries of residence; after all, the "Indian diaspora" as a group is just a simplified category.

A person's identity is shaped though conditions that are diverse and complex; the identity of the diaspora, therefore, is not as easily susceptible to controlling as the country-of-origin government might wish. The bond with the homeland is

neither fixed nor uniform. Whereas the country of origin's significance weakens over passing generations, there is another dynamic at work, stemming from alienation in the current country of residence, that reproduces the religious and cultural bonds. Various conditions determine whether the diaspora develops a long-distance nationalism for the country of origin based on oppression in the current country of residence, or conversely comes to hold an antipathy toward the country of origin, or even assimilates completely into the society of their country of residence, becoming indifferent to their country of origin. Yet the truth is, the most significant conditions are the efforts to engage the diaspora by the country of origin as well as the success or failure of incorporating the diaspora by the state and society of the country of current residence.⁵¹

3.2 *Utility of the Diaspora*

For most members of the diaspora, their daily reality is more concerned with maintaining their own livelihoods than with the politics of their country of origin. Particularly when diaspora members are economically and socially in a vulnerable position in the country of current residence, their unease about their fundamental rights being under threat is something very real. They would welcome help from the government of their country of origin to protect their rights, which might lead to their support for the country of origin. Responsibility for protecting the people in a given area, regardless of their nationality, lies with the state with jurisdiction over that territory, i.e., the government of the country in which the diaspora currently resides. The diaspora may look to their country of origin, however, if members feel that they have inadequate protection or are ostracized by the government itself in their country of residence.

Labor diasporas usually are in a weak position in their countries of residence and are at high risk of being exploited as a marginal labor force. The Philippine government has established a governmental organization to protect its overseas guest workers, as was mentioned in earlier chapters. Human rights issues have frequently surfaced with regard to Filipino women working as domestic workers. The 1995 execution of a Filipino household maid in Singapore sparked a backlash in the Philippines, where it was believed that she was wrongfully convicted. Consequently, she was viewed as a martyr.⁵² Approximately 300,000 foreign domestic workers, mostly Filipino, live in Hong Kong, and from time to time they stage protests against their mistreatment and poor working conditions.⁵³ The families of those involved, as well as public opinion in the Philippines, often strongly urge the government to intervene. In fact, public opinion spurred the Philippine government in the 1995 case to act, recalling its ambassador to Singapore. In Japan, the issue of the status of Korean residents in Japan (*Zainichi*) was one of the major agenda items during the negotiations to normalize diplomatic relations between Japan and the Republic of Korea (ROK) in 1965. The *Zainichi* community welcomed the ROK government's interest

in the issues of local suffrage and fingerprinting, which was legally required of all registered aliens after 1952 as the diaspora considered this to be discriminatory.

The 10-million-member Mexican diaspora in America has also sought the protection of Mexican consulates across the US.⁵⁴ The Mexican community would seek the Mexican government's support whenever the interests of Mexican immigrants are threatened, and they would receive the sympathy of the Mexican people, too. Moreover, the Mexican government would be sensitive about responding to such requests from the diaspora, given that members can now participate in shaping the will of the Mexican government through elections.⁵⁵ US President Donald Trump stirred up controversy during his 2016 campaign by repeatedly making provocative statements, such as calling Mexican immigrants "drug dealers, criminals, and rapists." Mexican public opinion viewed this as so insulting and antagonistic that the Mexican government could not ignore it. In an unusually strong reaction, in January 2017, Mexican President Enrique Peña Nieto canceled his planned visit to the US and meeting with the president immediately after Trump had issued an executive order directing the construction of a wall along part of the US border.

The ability to actually protect the diaspora overseas varies greatly depending on the country of origin. The Bible records that when St. Paul preached in Jerusalem, he was able to escape punishment by the authorities because he was a Roman citizen. The episode shows the great power Roman citizenship wielded within the vast empire. During the golden age of imperialism, European countries often intervened in foreign countries, nominally to protect Christians and their own nationals. Japan, too, carried out several military expeditions to Shandong in the 1920s to protect its own citizens. Even today, some might expect that the possession of US citizenship will offer greater protection to a foreigner in China or North Korea who engages in political activities prohibited by the authorities.

However, many large-scale migrant-sending countries are in the South, not very wealthy and geopolitically weak, so their ability to protect their own diaspora is limited. For example, in the examples of Mexico mentioned above, the Mexican government has long carefully avoided measures that the US would consider to be interference in its internal affairs, since it holds an overwhelmingly inferior position in the balance of power and had once lost territory in a war. The diaspora must also understand the reality that the Mexican government cannot be expected to take any action that would harm relations with the US.⁵⁶ For a diaspora to expect support (already limited) from their country-of-origin government would raise the visibility of their position as a minority group in the country of residence, thereby increasing the risk that their position will become even less stable. Moreover, should that lead ties between the countries of origin and residence to deteriorate, the diaspora's bond with the country of origin will become nothing more than a burden.

Economic incentives provided by the governments of their countries of origin may be attractive to diasporas. Having a less costly way to remit small sums abroad is a real concern for many in the diaspora who send money to their families back in their countries of origin. The Mexican government issues identification cards to the diaspora at its consulates throughout the US, enabling them to open US bank accounts and thus obviating the need to rely on black market moneylenders and

other dubious means. It should be of great help to the diaspora and generate greater willingness on the part of its members to send remittances to their relatives and communities back home. Additionally, if the country of origin relaxes procedures for immigration and regulations on direct investment, it may prompt an increase in international transactions, and if it facilitates entry into its labor market, the number of diaspora members returning home will likely rise. Indeed, such steps may foster mutually beneficial economic relationships since the diaspora have language and network advantages when doing business with their country of origin.

Economic activities are primarily motivated by profit, however, even for the diaspora, which does not invest or do business solely out of patriotism. The country of origin may simply be too risky a business partner for a diaspora that fled abroad to escape turmoil and persecution. A simpler, more effective system may be to introduce preferential treatment for trade and direct investment to all foreigners in general, in a non-discriminatory manner. From a perspective of pure self-interest, for a diaspora to have a strong interest in the social stability and economic prosperity of the country of current residence is both natural and, in this respect, no different from the interest of the majority group in that country. And in that sense, the diaspora's own attitude toward immigrants is quite interesting. Naturally, the diaspora strongly opposes anti-immigrant policies and statements that lead to discrimination and disrespect because of their own ethnic background. It also goes against their own interests because it will complicate efforts to bring family and relatives to the country of residence. But a large influx of new immigrants also means more intense competition in their own economic niches. These interests presumably are reflected in study showing that the Mexican diaspora in the US, like the white Anglo majority, feels that the current number of immigrants is excessive.⁵⁷

4 Diaspora and Interstate Relations

What does it mean for a state to have groups within its borders that have strong bonds with other states? This has been a topic of active debate in the US, traditionally a receiving country for immigrants and a state that has maintained its position of overwhelming political and economic hegemony since the mid-twentieth century. Interest in this topic has arguably increased since the 1970s, with the retreat of the traditional "racial melting pot" theory of assimilationism and the rising influence of multiculturalism, in which each ethnic group puts its uniqueness and its rights front and center.

4.1 *Influence on the Country of Residence*

One view is alarmist, arguing that diaspora groups create foreign enclaves within their countries of residence, thereby resulting in a loss of social cohesion, hindering

the formation of a unified view of national interests and the implementation of a consistent foreign policy, and giving rise to balkanization. The US, an immigration nation that is recognized by itself and others as having preeminent influence in the world, has long struggled with this issue. In the nineteenth century, the issue of Irish American affiliation was a major factor in Anglo-American relations (see Chap. 3). This is not only a matter concerning people of Irish descent; for example, when World War I broke out in Europe, the belligerent European states sought to exert influence over the US government through the use of their respective diaspora groups.

At the time, German Americans opposed war with Germany, Irish Americans opposed an alliance with the UK, and Scandinavian and Jewish Americans (the latter who had fled persecution in Russia) opposed an alliance with Russia. Their presence could not be ignored from a demographic perspective. In 1910, the total US population was 92 million, of which 13.5 million (roughly 15%) were foreign-born. By origin, the foreign-born American population came from the UK (1.2 million), Ireland (1.4 million), the Scandinavian countries (1.3 million), Germany (2.3 million), Poland (1.0 million), Italy (1.3 million), the Austro-Hungarian Empire, including Czech, Slovak, Romanian, and Yugoslav subjects (1.3 million), as well as ethnic Russians, including people from the Baltic countries (1.4 million).⁵⁸ Adding second-generation immigrants, the numbers become even larger. Moreover, first-generation immigrants very likely had an out-sized impact on elections because they were more likely to be of voting age and because they often lived concentrated in specific geographic areas.

Considering these circumstances, it arguably would have been an extremely risky political choice for the US to take an active role in the war in Europe, one that would have divided the country. Indeed, President Woodrow Wilson remarked in 1914, “We definitely have to be neutral since otherwise our mixed populations would wage war on each other.”⁵⁹

The Cold War period after World War II was an exceptional time of bipartisan consensus on an anti-Communist US foreign policy, and so the influence of these diaspora groups on foreign policy fit rather neatly into a relatively strong framework. As the fundamental policy line for US diplomacy has grown more fluid and interest in it, never strong to begin with, has waned, post-Cold War America has seen a return to a time when its foreign policy is susceptible to groups representing a variety of separate interests. Therefore, the question must be asked, how America’s views of its national interests will be shaped and influenced by the large Hispanic population, as well as the rapidly swelling new generations of Chinese and Indian diasporas.

4.2 Influence on the Country of Origin

While it is true that diaspora groups are a channel of influence from their countries of origin to their country of residence, it can also be observed that they are also a conduit of influence from their country of residence to their countries of origin. Political scientist Yossi Shain argues that rather than representing the interests of

their home country governments, diaspora groups in the US have played a role in projecting America's fundamental values abroad, in the sense that they have become a force for independence and democracy in their home countries.⁶⁰

I have already mentioned the initiative of Irish Americans who promoted anti-British national self-determination. Eastern Europeans and Russian Jews in the US who had experience with the Soviet empire's rule during the Cold War were known for being strong supporters of the US Cold War policy. When Jean-Bertrand Aristide, the democratically elected president of Haiti, was ousted from power in 1991 by a military coup, the Haitian diaspora living in the US responded by campaigning for the return of democratic government in the Caribbean state. This put pressure on President Bill Clinton, who had been reluctant to intervene militarily, and the US Department of State, and led to the dispatch of US troops as part of a UN mission. Various other diaspora groups within the US have demonstrated their strength in helping to usher in democracy by overthrowing authoritarian regimes, such as the administrations of Chun Doo-hwan in the ROK and Ferdinand E. Marcos in the Philippines.⁶¹ Diaspora groups operate within America's free and democratic political system and are socialized by American democratic values.⁶² These diaspora groups therefore pose a danger to undemocratic home country governments. That is precisely why, when the Tiananmen Square protests occurred in 1989, the Chinese authorities, gripped by a sense of impending danger of large-scale protests by the diaspora, launched measures toward overseas Chinese. According to documents reportedly leaked from the Communist Party, China attempted to deal with Chinese studying in the US by offering bribes to "patriotic" students who toed the party line and by compelling students with anti-government tendencies to return home, where they were given preferential treatment in terms of employment and housing, in an effort to incorporate them into the system. Meanwhile, it imposed financial penalties on hardline dissidents, such as withholding scholarships, and prohibited their relatives from traveling abroad. The Chinese government is said to have adopted a policy of punishing anti-regime leaders who testify in the US Congress against China, stripping them of their nationality or exiling them, as well as attacking their character and pressuring their families back in China.⁶³

It is unclear whether these measures by the Chinese authorities have been successful, but nearly 30 years later, the Chinese diaspora has burgeoned without any resulting signs that the Chinese system is becoming democratic. That the majority of the Chinese diaspora would rather avoid any involvement is quite natural. It is hard to make a speedy judgment whether, overall, they are serving to project America's democratic beliefs to China to a greater or lesser degree than to project the interests of the increasingly powerful Chinese government overseas, influencing America's view of its national interests and international perceptions, instead. However, the Chinese carry a heavy cultural baggage of Confucian values deeply ingrained in their consciousness, and any effects of Americanization may accumulate only gradually. In other words, Yossi Shain argues that it will take a long time to take effect, suggesting a kind of Chinese exceptionalism, interestingly enough.⁶⁴ Yet if this is the case, does the same not apply to the possibility of the Indian diaspora and the Islamic diaspora being socialized under Western liberal values?

What is certain is that illiberal regimes in China, Russia, and Islamic countries will regard any efforts by their diasporas to project liberal values such as democracy and liberalism back into their countries of origin as nothing less than a threat. It may be an appropriate foreign policy objective for the West to project liberal values transnationally, out of a belief that they are universally appealing and valid. But the threat they pose to affected states is not unlike the threat liberal states see in Islamic extremism. In any case, when countries in the West enjoyed an overwhelming geopolitical dominance in the immediate post-Cold War world, they were confident in proselytizing their liberal values via the diaspora, and they may have taken a tolerant stance regarding influence being projected in the opposite direction. If coexisting with powerful illiberal forces is the challenge of the next era after the post-Cold War period, then it is quite conceivable that the political role of diaspora groups will become a destabilizing factor in international relations.

4.3 Political Relations Between the Countries of Residence and of Origin

From the standpoint of its diplomatic relations, the country of residence may welcome the diaspora as a beneficial channel to the country of origin, and the bonds mediated by the diaspora may also lead to economic benefits. The diaspora thus often becomes a useful diplomatic resource for both their countries of residence and origin. It is the political relationship between these two countries that necessarily becomes the major determinant of the significance of a diaspora group.

Let us attempt to create a simple typology below. This will classify cases as those in which state involvement with its members politically, economically, and psychologically is very strong, and those in which its involvement is relatively weak (Fig. 3). First, in terms of politics, we can conceive of a state where its people participate in political will formation and are required to contribute to the state. In the city-states of ancient Greece, citizens were expected to participate in public will formation in the assembly (*ecclesia*), hold public office and be involved in government administration, and in times of war to risk their lives for the state as soldiers. A contrary state is also conceivable, in which its members have little involvement in public will formation while at the same time bearing no obligatory political duties such as military service. In the pre-modern feudal system, people were a labor force attached to the land, and they might have expected protection from the state in exchange for paying taxes, but they never participated politically or served in a national military for the state. Political democratization has not progressed in many developing countries in the modern world, and political participation by the people and political mobilization by the state are both limited.

In economic terms, we can distinguish between concepts of big government and small government. A big government state collects huge sums in taxes and social security contributions from its members and provides welfare services such

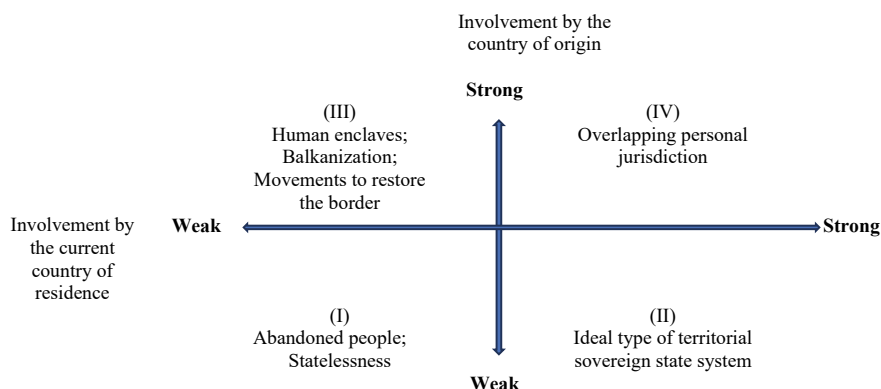


Fig. 3 State-diaspora relations

as medical care and pensions as well as actively redistributes income among its members—think of Scandinavian and Western European countries. In contrast, there are states whose economies are largely dependent on the autonomous market. The extreme case is a state, like a tax haven, where personal income and corporate taxes are either not imposed at all or at very low rates. Also, in the case of a state that relies on natural resources to finance its budget, called a rentier state, there is no need to collect taxes from its people, and in that sense it has a small degree of economic involvement with the people. An example of this type is the oil-rich Gulf countries, which rely heavily on immigrant labor.

The psychological bond between a state and its people is the most complicated to discuss. The nation-state model is based on the principle that an independent political state should be formed by a single a nation, a people sharing a common identity. States were able to use a sense of national unity to mobilize enormous energy from their people, which gave them an advantage over empires and city-states beginning in the nineteenth century. Colonial empires were dissolved into many independent nations throughout Asia and Africa in the latter half of the twentieth century. At the same time, it became regarded as tragic when a single nation became divided and failed to establish its own state. Both are based on the idea that a state and its members should be linked by a strong psychological tie.

Democracy, arguably the sole legitimate political system in the world today, requires some form of national unity for it to function. Given that democracy ultimately considers the will of the majority to be the will of the whole, and that the defeated minority accepts the will of the majority without seeking secession or autonomy is possible because there exists a sense of “we” that connects the two. The fact that many countries do not have stable democratic politics even when voting has been institutionalized suggests that despite having democratic institutions, effective collective decisions cannot be made when the people are as disunified as grains of sand.

4.4 Loose Relations Between a State and Its Members

Yet there are quite a few states that have a rather loose psychological bond with its members. The relationship between a traditional empire and its members was a loose one. Subjects of the British Empire, which ruled almost a quarter of the land on earth, lived in large numbers outside of the British mainland, in Africa, India, and even Hong Kong and Singapore; their emotional ties to the British crown varied by class and origin. This sort of relationship applies to the Chinese, the Ottoman, and the Habsburg empires, too. Governance in the empire was to a sizable degree left up to self-rule within each region, and the peoples' sense of belonging was probably oriented toward ethnic, clan, or religious groups.

Empires may have been relegated to history, but in many countries today members regard their relationship with the state solely as an instrument. The nationality of such countries can be effectively bought and sold. States that have introduced programs granting nationality in exchange for large investments or donations include not only Caribbean countries such as Antigua and Barbuda, the Commonwealth of Dominica, and Grenada but also European countries like Austria, Bulgaria, Cyprus, Malta, and the Netherlands. It is mainly a wealthy class of people of Chinese, Russian or Middle Eastern origin who obtain these as a second or third nationality. High net worth individuals looking to diversify their portfolio of nationalities to protect against risk, just as they would diversify their investment in stocks, are the main customers of the nationalities on offer by these countries.⁶⁵ Some nationality sales advisors recommend buying a nationality from an EU member state, such as Austria, Cyprus, or Malta, which provides the benefit of automatically obtaining an EU passport and thus enabling easy visa-free travel to many countries.⁶⁶

Naturally there is an argument that the buying and selling of citizenship should be prohibited as it represents a corruption of the citizenship system. The major EU countries in particular are not pleased about such sales by member states.⁶⁷ However, nationality and citizenship only have meaning in terms of daily life benefits and risk reduction. If you think citizenship is purely an instrument, then the proposal made by two microeconomists on when it should be put up for sale is also reasonable. They believe it would be more effective in reducing illegal immigration and preventing human trafficking.⁶⁸

If a state is thought of as a members-only club, in which a group of people can freely join for the purpose of obtaining security and welfare in exchange for a certain membership fee (i.e., tax), then it might be considered rational to buy and sell membership. However, the people in the world who actually enjoy the freedom to choose their nationality are an overwhelming minority, and it is a privileged few who have the resources to make a successful bid for a nationality with good services. For the vast majority of people who must share their fate with a fatherland not of their choice, the possibility of freely choosing one's nationality is as divorced from reality as choosing one's own parents.

In any case, let us confirm that the relationships that states hope to establish with those residing within their territory are diverse, ranging from those that are

purely an instrument, to those that require full-scale involvement. For the state, the meaning of a domestically resident diaspora group of non-members depends on what membership means to that state in the first place. The relationship between the diaspora's country of origin and its current country of residence is also shaped by how these states identify diasporas within and beyond their own national borders and what they expect of them. Figure 3 simply categorizes the relationship between the countries of origin and residence according to the degree of their involvement with the diaspora. Let us examine the relationship between the two countries in each case.

4.5 *Abandoned People*

The first type is where the governments of both countries have a low level of involvement with the diaspora, or in extreme cases, avoid involvement altogether. In this type, because the government of the country of origin is indifferent, the diaspora's living environment depends on the conditions in the country of residence. Although diaspora members may experience societal discrimination as minorities in the country of residence, that government neither offers them protection as members nor strongly promotes their assimilation and does not even try to mobilize them.

Traditional empires were generally tolerant of immigrants, but the rights and duties attendant upon membership were relatively minimal in an empire having diverse ethnic groups in the vast territories under its control. As empires were incapable of mobilizing their equal constituent members at a uniformly high level, they were relatively unconcerned that their members' origins and cultural traditions differed. Today's liberal Anglo-Saxon states, such as the US, which are relatively tolerant of immigrants, have a strong liberal tradition that limits state involvement in the private sphere, which may also be a reason why it is easier for diasporas to maintain their own identities.

The stateless are the most extreme example of this type. There are currently (as of 2015) at least 10 million stateless persons in the world, according to estimates by the United Nations High Commissioner for Refugees (UNHCR).⁶⁹ Statelessness is said to arise from gaps between the nationality laws of multiple states—for example when a child is born in *jus sanguinis* (descent) country to parents from a *jus soli* (birthright) country—or when a newly independent state makes specific ethnic ties a requirement for nationality.⁷⁰ No state has personal jurisdiction over those persons, so in that sense, no state is ultimately responsible for their protection. Therefore, the guarantee of their rights is weak and vulnerable.

The Rohingya people of Myanmar's Rakhine State are a tragic example. They are a Muslim minority population, estimated to total some 1 million, in Myanmar, where Buddhists are the overwhelming majority. Even since the pro-democracy forces led by Aung San Suu Kyi came to power, Myanmar regards them as irregular migrants from Bangladesh. Bangladesh, meanwhile, treats Rohingya who have fled to its territory as illegal immigrants, repeatedly imprisoning and deporting them, demanding

that the Myanmar government take them back.⁷¹ In this case, more than being indifferent, both countries shun involvement with the Rohingya, and their foisting of this deemed nuisance on the other country has become a source of tension in the bilateral relationship.

A person having a nationality formally can be seen as being in *de facto* statelessness if neither the country of origin nor the country of residence provides effective protection. Many refugees in developing countries are in a situation close to this one: *de facto* statelessness arises within the current country of residence if it attempts to deport these irregular immigrants, but their country of origin refuses to take them back. It is widely known that there are many transit migrants heading to the US via Mexico coming from Guatemala and Honduras to the south, or to Spain via Morocco from Algeria, Mauritania, and even as far away as sub-Saharan countries like Sierra Leone. Mexico and Morocco are critical of the way their citizens have not been treated humanely in these countries to the north, yet they fail to fulfill their own responsibilities to protect these irregular migrants who are not their own nationals transiting through their countries.⁷² Thereupon, these migrants appear to be people who have literally been abandoned by the state.

4.6 Ideal Type of an Order of Territorial Sovereign States

The second type is the case where the country of origin's level of involvement is low and that of the current country of residence is high. In this case, the situation that emerges is as one would expect with the territorial sovereign state order. In other words, the host state strongly engages the diaspora and expects a high level of integration in exchange for recognizing the diaspora as members of the country of current residence. No problems would arise should the diaspora be assimilated politically and socially into the country of residence. But, in this case, the country-of-origin government shows no concern even should the diaspora face political and societal persecution within their country of residence.

The Indian diaspora that migrated to East Africa in the nineteenth century provided firm support for Indian independence. The diaspora occupied an intermediate status in British-ruled East Africa between the white community and the local native African community, into which they were not socially integrated. That is why, when Kenya and Uganda gained independence in the 1960s, the Indian diaspora was ostracized due to the nationalism of the newly independent host countries. Particularly in Uganda under the regime of President Idi Amin, the Indian diaspora was severely ostracized, and Indian diaspora members without Ugandan nationality were deported. Out of consideration for its diplomatic relations with African countries, the Indian government response was to encourage the Indian diaspora to assimilate into their countries of residence, without seeking to actively engage or protect them⁷³ (see Sect. 2 of this chapter). Being a leader of the non-aligned countries, India itself embodied the nationalism of a newly independent state; with its own diverse ethnic groups, India was itself in a position to be wary of foreign government involvement

in those domestic diasporas. These facts may have had something to do with the Indian government's attitude.

In this case, the fate of the diaspora will depend on how the state and society of the country of residence treats minorities. As a minority, the members of the diaspora are in a socially vulnerable position and will undoubtedly find themselves in a tough spot if the country-of-residence government not only fails to protect their rights, but also actively supports their persecution. In fact, there are many such examples. Yet, with this case, there are no diplomatic issues over jurisdiction between the country of origin and the country of residence.

4.7 Deviation from the Order of Territorial Sovereign States

The third type is the case where the level of involvement of the host country government is low and the home country government's involvement is strong. This situation deviates from what one would expect in a sovereign state order that emphasizes territorial sovereignty.

There are some situations that can be observed in which diasporas are more strongly influenced by their country of origin than by the government of their country of residence. For example, a diaspora's country of residence will often tacitly accept the strong influence the diaspora receives from its motherland with which the country shares a border. The Pakistani government has little administrative authority over the Federally Administered Tribal Areas in western Pakistan, and it is said that the Taliban in Afghanistan had a stronger influence in the early 2000s. Some of the Russian diaspora, now minorities in the countries neighboring Russia following the breakup of the Soviet Union, feel a sense of belonging to Russia, and quite a few members actually have Russian nationality. Also, some Muslims in Europe feel a stronger sense of belonging to local and religious communities back in their countries of origin than to their countries of residence; they in effect form virtually closed communities. The governments of their countries of residence know that extremist organizations such as the Islamic State have ties to these communities.

This kind of situation is a deviant case from the perspective of the principle of territorial sovereign state order. However, if the countries of origin and residence enjoy good relations, the government of the country of residence should be able to remain accommodating even if the diaspora forms an enclave within its borders. This point might hold truer when the bilateral power relationship favors the country of residence. Large cities around the world are home to large numbers of foreigners, but not all countries immediately view this as a problem.

Even when the South American diasporas residing in a liberal "empire" like the US maintained their Spanish-speaking communities and increased sending remittances home from the US, as desired by the governments of their countries of origin, that in and of itself was of no concern to the US government. The Chinese diaspora, living in Chinatowns in most major cities around the world, has formed communities fairly isolated from the society of their countries of residence, and their sense of belonging

is directed toward the government of China or Taiwan. Yet this is unlikely to cause any immediate concerns unless relations between the various states involved become extremely tense.

It is a different story, however, when the country of origin is a geopolitical threat, and its diaspora collaborates with the government. Ever since national self-determination became a widely accepted principle, there have been numerous instances in which this situation led to a push to restore a former border. A well-known example is the case of the Sudetenland in the late 1930s, when Czechoslovakia was forced to cede this region with its large German population to Germany in response to Nazi demands.

The dissolution of the multi-ethnic empire that was the Soviet Union resulted in Russia strengthening ties with its compatriots left behind in the surrounding states. If these successor states fail to incorporate their ethnic Russian residents, the treatment of the Russian diaspora may develop into an international issue.

In fact, in 2014 Russia successfully brought about the *de facto* cession and independence of the Crimean Peninsula from Ukraine. It also provided support to groups comprised of Russian diaspora in eastern Ukraine that then effectively seceded from Ukraine. Russia felt a growing sense of crisis over Ukrainian membership in Western European organizations such as the North Atlantic Treaty Organization (NATO) and the EU. The Ukrainian government in Kiev, meanwhile, was unstable, lacked the ability to unite to deal with these externally provoked crises, and failed to fully incorporate its ethnic Russian residents. Furthermore, the ethnic Russian population, which constituted the majority in these separatist regions, was exposed to statements from the Russian central government through Russian-language mass media on a daily basis rather than through Ukrainian-language commentary emanating from Kiev. In 2022, Russia began a military invasion of Ukraine, at that time citing the need to protect the pro-Russian population of eastern Ukraine as a reason for starting the war. However, overall, the military invasion seems to have stimulated Ukrainian nationalism and strengthened the anti-Russian identity of the Ukrainian people.

Russian residents account for nearly one-third of the populations in Estonia and Latvia, but their legal status has been an issue in each country since they regained independence (see Chap. 4). Whether these people can be effectively incorporated goes beyond a human rights issue; it is nothing less than a security issue for both countries, which are adjacent to Russia, which is a geopolitical threat to them. On the other hand, minorities within Russia do not pose a geopolitical threat to Russia.

4.8 *Jurisdictional Overlap*

The fourth and final type is the case where both the country of residence and the country of origin attempt to strongly engage with the diaspora. When these two forms of engagement are incompatible, it becomes one of the most difficult problems in international politics. The most extreme example is a situation where a war breaks out between the country of residence and the country of origin, and the diaspora's

belonging is torn between the two homelands. One can easily imagine this situation by recalling the plight of Japanese Americans in the US during World War II and of Muslims in Western countries after the September 11 terrorist attacks. In the two total wars of the first half of the twentieth century, this problem was realized in its most dramatic form, as states asked their citizens to bear the ultimate risk of falling on the battlefield. All-out wars such as those became obsolete, and fewer major countries maintained military conscription after the Cold War. Yet even today, when interstate conflict and confrontation emerge, it is inevitable that the diaspora regardless of nationality will be viewed with suspicion. Since diasporas in most cases are just a minority within their countries of residence, and rarely do they pose an actual geopolitical threat to the governments of those countries, even should they be influenced by their country-of-origin governments.

When we consider the potential that a diaspora's relationship with the government of its country of origin has to destabilize the system and domestic society of its country of residence, history teaches us that the relationship has given rise to a variety of complications, though none so extreme as territorial loss. Soon after its establishment, the Communist government in Beijing expected remittances from the Chinese diaspora concentrated in Southeast Asia. In a competitive relationship with the Kuomintang government in Taiwan, it also sought to actively engage and mobilize the overseas Chinese diaspora in its bid to have the new government be internationally recognized. The wave of new states created from national liberation movements across Southeast Asia, however, oriented themselves toward stronger, nationalism-based relationships with the people within their territory, unlike the local administrative authorities of the former European colonial empires. Throughout the newly independent Southeast Asia, the Chinese diaspora began to be driven out, partly because it occupied a dominant position in regional trade networks, and partly because of China's descent-based nationality law. In the case of Indonesia, this resulted in some 120,000 overseas Chinese, including those possessing Indonesian nationality, having to "return home" to China between 1959 and 1963.⁷⁴

The Chinese government was unable to provide effective protection to its nationals living abroad; if anything, it took the position of encouraging the Chinese diaspora to accept the laws of their country of residence and to localize. This position was inconsistent, however, reflecting domestic power struggles and "line struggles". Many members of the Chinese diaspora were killed during the Thirtieth of September Movement that took place in Indonesia in 1965. Although much of the incident remains shrouded in mystery, there is a strong argument indicating that forces within the Chinese Communist Party (CCP) controlled by Mao Zedong were behind the Indonesian Communist Party, which led to its repression.⁷⁵ Once the Cultural Revolution began in 1966, the CCP openly attacked the governments of Southeast Asian countries in fiery language, calling them "reactionary" and "imperialist stooges" and making repeated appeals to the peoples of those countries to overthrow their governments. "From its diplomatic missions in Indonesia, Burma, and Cambodia, China distributed the works of Mao Zedong to overseas Chinese and held study sessions on these texts, and encouraged and taught Red Guard activities to students at overseas

Chinese schools. As a result, some Chinese youths engaged in Red Guard activities, clashed with locals, and sparked riots.”⁷⁶

The Chinese government’s engagement with the diaspora was not consistent, for whenever overseas Chinese returned to China, they were criticized as “bourgeois” and suspected of being spies. It is also questionable how influential the calls to respond to the Cultural Revolution were among the overseas Chinese in Southeast Asia. It is an undeniable fact that China’s official media continued to broadcast radical messages supporting the Chinese diaspora’s “revolutionary activities” and criticizing the “oppressive” response of the host country governments. It treated the members of the diaspora who were deported to China by those governments as heroes and, in some countries, demanded the right of allegiance to the homeland for its diaspora, based on Mao Zedong thought. Labeling the host country governments “fascist states,” the media went so far as to call on the overseas Chinese to overthrow them.⁷⁷ It is not at all surprising, given China’s outsized presence, that countries in which the Chinese diaspora resides would feel it a threat were something like this to happen.

Islamic State and other Islamic extremist groups have succeeded in arousing some Muslims who, though born and raised in Western countries and holding the nationality of the country where they reside, feel alienated from the local society. Repeated terrorist attacks have taken place in their current countries of residence. Islamic State is not a state, and it would be going too far to conceptualize all Muslims around the world as a diaspora. Since their own nationals were organized by hostile foreign forces to carry out indiscriminate acts of terrorism, the shock felt in these Western countries cannot be overstated. While Islamic State is not a geopolitical threat to them in the standard sense, it is a source of serious anxiety for their societies. It would therefore be unreasonable to dismiss the host country governments’ efforts to acknowledge the group as a threat and to take measures to counter it as simply xenophobia.

Actions by the government of the country of origin to protect its diaspora have often stirred up an adverse reaction in the country of residence, which deems such actions as interference in the country’s internal affairs, although rarely does it become a serious security issue.

For example, amid a rising tide of anti-Japanese sentiment, San Francisco city officials ordered Japanese children attending public schools to transfer to the Oriental School in 1906 under the pretext that the local schools had become overcrowded as a result of the recent earthquake. The Japanese side objected to this segregation of Japanese schoolchildren and approached the federal government to remedy the situation. In the end, the city government agreed to return the Japanese students to their normal schools the following year (though the measure was not formally rescinded until 2017).⁷⁸ In exchange, Japan agreed to impose a voluntary restriction on immigration to the US. In such cases, the more advantageous position is usually held by the government of the diaspora’s country of residence, which has territorial sovereignty, in which case the government of the country of origin may calculate that the best approach is to resolve the situation cooperatively. Domestic public opinion in both countries can complicate a diplomatic solution, however. In this example,

the two governments of the time had a reasonably cooperative relationship, but the US federal government was not in a position to fully control the situation, lacking any direct authority over the measures of local governments. For its part, Japan was unable to prevent the immigration issue from later fermenting anti-American public opinion in the 1920s.

It is also conceivable for the economic interests of the government of the country of origin to conflict with those of the government of the country of residence. For example, the diaspora's remittances and investments back home may in some cases be understood as an outflow of wealth from the country of residence, so that government might impose some kind of regulation on such outbound flows. If so, the home country government may see it as a serious violation of national interests; if it then approaches its diaspora to exert influence over the host country government, it may prompt a backlash and have the opposite effect. To reiterate, the government of the diaspora's country of current residence is generally in a better position than the government of their country of origin. After all, it is the government that physically controls the territory where the diaspora resides, and being the country receiving immigrants, is often economically richer and more powerful.

Yet here, too, there are times when that is not the case, such as when a geopolitically or economically dominant country of origin's government takes a firm stance against the country in which its diaspora resides. This is similar to the examples of the protection offered by the great powers of the past to their nationals overseas. For example, the British Empire is known to have employed gunboat diplomacy from time to time for the benefit of British subjects living overseas. Anti-government protesters and human rights activists who flee their countries may also anticipate enjoying greater protections if they hold American passports. Beyond that, Russia, China, and India, in addition to having vast populations and regional geopolitical dominance, are stepping up engagement with their large diasporas. To mobilize and protect these overseas compatriots, naturally it is possible for these emerging market countries to take a strong stance against the diaspora's host countries. If these countries—all geopolitically powerful, large-scale migrant-sending states that possess nuclear weapons—become more engaged with their own diasporas, there is a realistic chance that it could have serious international political implications.

5 Summary

In the ideal type of territorial sovereign state, the state's territorial and personal jurisdictions coincide. Yet this is merely the ideal. In reality, it is more common for a country to have ethnic minorities within its borders. Furthermore, the cross-border movement of people and the dissolution of empires have resulted in many diasporas residing in states to which they have a weak sense of belonging. In this chapter, we ascertained that the country-of-origin governments are becoming increasingly involved in their overseas diasporas and examined the potential political implications for relations with the governments of the countries of the diasporas' current residence.

Even if diaspora members hold the nationality of their country of origin, their rights there are almost always limited. Even when that is not the case, for countrymen living overseas to have the same rights and duties as nationals residing in the country is difficult in reality. It is the exception for a state to be able to directly provide effective protection to its nationals living outside its territory. There may be situations today when a state sends troops to a foreign country to protect its nationals, but even in the golden age of imperialism this was no easy task. Even if the state has the military capabilities, this has become all the more challenging in the twenty-first century, where external sovereignty is an established norm. In many cases, a diaspora is a vulnerable minority, and even if it enjoys the active protection of its country-of-origin government, the government of its country of residence, which has control over its territorial jurisdiction, is in a position of strength.

However, it is natural for the government of the country of residence to perceive the country of origin's involvement with its diaspora as a threat, depending on the two countries' geopolitical, political, and economic standings. Even falling short of that extreme, should friction between the two countries destabilize their relations, it would not be surprising for the presence of the diaspora to be viewed as a problem.

To be sure, it would be a mistake to treat the existence of diasporas and diaspora engagement policies solely as being problematic, for conceivably a diaspora often can serve as a medium for constructive bilateral relations. However, the strong relationship between a diaspora residing in one country and the government of its country of origin contains new risks, and is something that cannot be handled within the traditional international political framework based on territorial sovereign states coexisting, each compartmented within their own jurisdictions.

Notes

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2. Cohen, Robin. Komai, Hiroshi (trans). 2012. *Shinpan gurōbaru diasupora* (Global Diaspora [New Edition]). Tokyo: Akashi Shoten, 23–24 [Translation of Cohen, Robin. 2008. *Global Diasporas: An Introduction* (second ed.). Oxon: Routledge.].
3. For a discussion of the order of nomadic peoples based on movement, see, for example, Saitō, Shigeo. 2016. "Kodai Toruko-kei yūbokumin no kōiki chitsujo (The Far-Flung Political Order of Turkic Nomads from the Mongolian Steppe)." *Asteion*, Vol. 84. <https://www.suntory.com/sfnd/asteion/vol84-en/index.html>
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5. DellaPergola, Sergio. 2016. "World Jewish Population, 2016," in Dashefsky, Arnold and Sheskin, Ira M. (eds). *The American Jewish Year Book, 2016*, Volume 116. Dordrecht: Springer, 253–332. As found at the Berman Jewish DataBank: <https://www.jewishdatabank.org/databank/search-results?search=World+Jewish+Population%2C+2016> (accessed March 12, 2024).
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10. That Britain used Australia as a penal colony is well known. Large numbers of orphans were also systematically sent to the colonies. Gill, Alan. 1998. *Orphans of the Empire: The Shocking Story of Child Migration to Australia*. Milsons Point: Random House Australia.
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12. Ryō, Sekiyō (Liao, Chi-yang). 2011. "Kakyō kajin no rekishi-teki tenkai: 1950-nendai made no harukanaru tabi (The historical development of overseas Chinese: a distant journey to the 1950s)" in Komai, Hiroshi, Chin, Tenji, and Kobayashi, Tomoko (eds). *Higashiajia no diasupora* (Soshō gurōbaru diasupora 1) [East Asian diaspora (global diaspora series no. 1)]. Tokyo: Akashi Shoten, 36–38; Tanaka, Kyōko. 2001. "Chūgoku no taigai kankei to kakyō kajin (China's foreign relations and overseas Chinese)" in Okabe, Tatsumi (ed). *Chūgoku o meguru kokusai kankyō* (International environment surrounding China). Tokyo: Iwanami Shoten, 282.
13. I still remember a story I heard from an elderly local researcher when I visited Poland in the 1990s. There was a man, born before World War I in what is now Lithuania, whose nationality changed seven or eight times, even though he never left his hometown. "It would have been easier to move the people than the border lines," I joked, to which the researcher replied, "That would have been pointless. The people would have come back eventually."
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20. *Ibid.*, 8–9.
21. *Ibid.*, 6.
22. *Ibid.*, 7.
23. Tanaka, *op. cit.*, 286.
24. *Ibid.*, 294.
25. Agunias, *op. cit.*, 10.

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Chapter 7

International Population Movement: What It Means for Japan



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Abstract The final chapter focuses specifically on Japan, providing an overview of the current situation of immigrants in the country. The previous literature on immigration in Japan is dominated by microsociological concerns that focus on the protection of immigrants' human rights and on their domestic societal integration, whereas there is little mention of the potential for immigration to develop into an interstate political issue. The author aims to show that by gleaning the appropriate lessons from the experiences of other countries, Japan's discussion of immigration policy will be unfettered from the barren notion of Japanese exceptionalism to become more intellectually sophisticated and constructive. The chapter examines population inflows and outflows, including sections on Japan's historical policy of national seclusion (*sakoku*) and on the emigration phenomenon during the Meiji era, and also looks

at Japan-US friction over Japanese immigrants to America, and the conditions for becoming a *Nihonjin*.

1 What is the Agenda for Japan?

How should twenty-first century Japan grasp the issues posed by people crossing borders? In this final chapter I shall briefly examine the issues in line with the book's framework for examining them. But before doing so, let me briefly review the discussion thus far.

1.1 *Migrant Flows and International Politics*

As seen in the introduction, large numbers of people are already moving across national borders in today's world, a reality that comprises a diversity of peoples, from a global elite engaged in transnational activities to those who have been abandoned by their own state and are in obvious need of a humanitarian response. The rise in the number of these border crossers is not attributable merely to advances in transportation technology. Moreover, the total migrant population worldwide, estimated at several hundred million people at the beginning of the twenty-first century, is not particularly large from a historical perspective. Indeed, perhaps the scale of human migration should be regarded as still rather limited when factoring in the conditions today, such as the advances in transportation and information technologies, as well as the reality of astonishingly large disparities in economic conditions, social stability, threats of violence, and political repression. States control the movement of people at their borders, and immigration control technology is improving apace with transportation technology. Above all, choosing where to live is often a once-in-a-lifetime choice for human beings, so it is not a phenomenon caused solely by price differentials, like the movement of goods or money. What generally happens is that a certain route is formed, much like a river flows, as many people rely on the networks of those who went before them, and a stream of people will move along the migration corridor created in this way.

People moving across borders hold implications for both for the states they leave behind and for the states they enter. A state may stringently prohibit people from exiting the country if it perceives the loss of its population as a leakage of valuable resources. Conversely, it may actively encourage their departure if it understands overpopulation to be detrimental to its economic and social stability. Repressive regimes unsure of their political legitimacy may consider the departure of a small number of dissidents as contributing to regime stability. I looked at these ideas in Chap. 1. In some cases, states with limited economic opportunities welcome their own people leaving the country as emigrants and systematically promote their departure as a policy.

Host countries may also welcome the entry of immigrants from outside their territory as a labor force or as a means of introducing advanced skills, adopting policies to accept them proactively. Even when introducing this labor is beneficial for the national economy as a whole, those competing against these immigrants in the local employment market regard them as a threat, the same way trade protectionism regards imports as threatening domestic industry. For refugees fleeing political repression and conflict, certain international norms have been established to protect and support them. When confronted by a sudden surge of refugees, no state, no matter how humane, would be willing to accept an unlimited number of migrants.

Considered in this way, then, the issues surrounding the treatment of these border crossers becomes a matter of interstate politics when the interests or intentions of the sending and receiving states are in conflict. Host country immigration policies heavily influence the international flow of people at the present time, when territorial jurisdiction is strictly respected and freedom of exit is commonly considered a fundamental right. In cases where the people have economic value to the receiving country, such as highly skilled professionals, it may result in a competition for human resource acquisition between the sending and receiving countries, which sometimes manifests as political conflict. Conversely, when a state adopts a policy of strategic engineered migration or population dumping, sending its people away in droves as a form of political pressure, as was pointed out in Chap. 1, the situation resembles one state foisting unwelcome people on the other.

Thus, for a range of motives, states try to control border crossers and have been making attempts at technological and institutional innovation to that end. They have also pushed forward with international cooperation for that purpose. A state's ability to control its borders has limits, however; a significant number of people will inevitably cross its borders, regardless of the will of the state, although there may be differences in degree. This point was emphasized in Chap. 2. As a practical matter, it is nearly impossible, technically and politically, for a state to completely stop large numbers of undocumented immigrants attempting to cross the border, even if it is illegal. Irregular migrants and refugees become an international political problem particularly in a failed state or civil war situation, in the absence of a unified state that is supposed to be responsible for protecting its citizens, not because of a state conflict of will, but as a result of the lack of the sending country's border controls and the limited ability of the receiving country to control its borders.

1.2 Migrant Stock and International Politics

Because of the limits on their ability to control their borders, states have a significant number of foreign-born residents, both legal and illegal, within their territory as well as a number of their (former) nationals residing in the territories of other states. States are therefore forced to make choices about the kind of relationships they form with non-members within their borders as well as with their (former) compatriots outside of their borders.

In Chaps. 3 through 5 I examined the kinds of political issues that may arise in terms of the stock of international migrants. In modern democratic states, the nationality system that determines whether someone is a member of a country is the fundamental system for determining a person's political and economic rights. That a state should be formed by people with a certain cultural unity remains a prevalent idea. In Chap. 3, I tracked how the meaning of state membership evolved historically and looked at the historical development of systems related to the acquisition and withdrawal of membership status, i.e., naturalization and renunciation of nationality.

The primary focus of interest in immigration in major Western countries today is the issue of accepting new members, as considered in Chap. 4. Liberal universalism—which holds that all people must be respected as individuals and that new residents, regardless of racial or ethnic origin, should be incorporated as members of the state—is generally tolerant of immigration. Yet even liberals who expects the state to play a major role in welfare and income redistribution face a dilemma, for no matter how they try to incorporate new members broadmindedly and to enlarge the scope of the mutual support network, they cannot escape the need to strictly distinguish between members and non-members.

In contrast, nationalists, who seek to preserve the cultural bonds held by existing members by emphasizing the importance of solidarity among them, cannot deny the need to acquire human resources from abroad, whether it be a marginal labor force or highly skilled professionals, because a policy of national seclusion is inappropriate and impracticable if a state is to become more competitive in the global marketplace. Nationalists face their own dilemma, putting the state at a global competitive disadvantage if they seek to exclude new talent by demanding strict conditions for membership.

The reason behind dilemmas such as these is that the major modern state is somewhat ambiguous, having aspects of being a universal and rational system able to accept new members regardless of origin while also being a community of people linked together by nonrational bonds such as language, customs, religion, history, and mythology. These dilemmas cannot be resolved in principle until the construction of a universal order, such as a world government where the state is dismantled, or until the emergence of an anarchic stateless (dis)order.

The issue in terms of international politics, it should be noted, is that the deterritorialization of people's belonging results in overlapping personal jurisdictions of states, which makes maintaining the international order based on compartmented territorial sovereign states more difficult. The most basic principles for coexistence in a peaceful international order of sovereign states are respect for the territorial jurisdiction of other states and mutual recognition of each state's exclusive jurisdiction. When a country-of-origin government becomes more actively engaged with its overseas compatriots in an immigrant community that remains unintegrated as members of their country of residence, it may sow seeds of conflict in relations between these states, depending on the international environment.

In Chap. 5 I examined the political issues of the relationship that immigrant sending countries create with their (former) compatriots and the effect it has on the relations with the current country of residence.

Using various methods to manage relations that fundamentally are in tension is a perennial challenge in real politics. Modern states must also seek optimal solutions to intractable dilemmas with their given socio-economic, historical, and geopolitical conditions. We should recall that state membership has changed throughout history, and that the bonds between members have a dynamic character that is constantly reproduced. Whether a country is able to accept new members and make them a national strength, or whether it will alienate them, turning them into anti-social forces, is an issue that goes beyond the welfare and rights of the immigrant community, an issue that is also connected to that country's development and external relations.

These points also apply to Japan, to be sure. In the sections that follow, I would like to conclude with a brief examination of the issues for Japan surrounding cross-border population movement, in line with the framework of this book.

2 Japan and Population Inflows and Outflows

2.1 Movement of People in Japanese History

Since the distant past, when very little transportation technology existed as compared to today, people have staked their fate on dangerous migrations across deserts and oceans. In that sense, the history of the people who live in Japan today is not at all a global exception. Like people in all the other countries around the world, the Japanese today are not the descendants of people who lived on the Japanese archipelago consistently since the world began. Humans are said to have migrated to the Japanese islands tens of thousands of years ago, and *Nihon* (or *Nippon*) only came into use as the name of the country in the seventh or eighth century. (Japan, from *Cipangu*, hails from Marco Polo's account in the late thirteenth century.)

Without a doubt, in the state formation of *Nihon*, there was a significant influence from the continent, in a human sense, as well. Even after *Nihon* was established as a cohesive political unit, there are records of people-to-people exchanges with the outside world. It is known that many *toraijin* from the continent came to Japan in ancient times and played a major role in the formation of Japanese culture and institutions. Furthermore, history records that pirates known as *wakō* actively engaged in smuggling and acts of piracy on the Korean Peninsula and coastal areas of China repeatedly since the fourteenth century. Dealing with them was a chief matter in the continental dynasties' diplomacy toward Japan. Some studies assert that the *wakō* active from the sixteenth century onwards were a transnational group of maritime people that included Koreans and Chinese as well.¹ In pre-modern states, there was a limited centralization of power and a lack of clear distinction between what was inside and outside of their borders, a tendency that apparently became more pronounced when the central government was weakened.

The movement of people in and out of Japan increased during the Age of Discovery with the start of large-scale European maritime expansion. From the sixteenth century

onwards, Europeans began arriving, and *Nanban* trade boomed, leading to the flourishing of trading cities such as Sakai, south of Osaka. This trade brought guns, mechanical clocks, oil paintings, copperplate engravings, and other European products, and Christianity rapidly enlarged its following. During this period, Luís Fróis, who visited Japan as a Jesuit missionary, wrote that the Japanese, especially Buddhist forces, subjected the missionaries to various forms of harassment, but that the Japanese people also showed great curiosity about the worldview the missionaries preached, and that so many of them crowded into the area that the Westerners became utterly exhausted.²

The number of Japanese going overseas had reached a level that could not be ignored. Japanese people migrated throughout Southeast Asia for trade, and forming Japantowns in Thailand, the Philippines, and Java. The story of Yamada Nagamasa, who became a commander of a Japanese mercenary corps in the Kingdom of Siam, is quite famous. Also, Japan's shipbuilding and navigation technology had become quite advanced by this time.³ Hasekura Tsunenaga sailed round-trip across the Pacific Ocean on his mission to Europe in the early seventeenth century aboard the *San Juan Bautista*, a Western-style galleon build in Sendai for that purpose. This took place 250 years before Katsu Kaishū and his entourage sailed to America on the *Kanrin Maru*, a steam-powered warship that was built in the Netherlands.

At this point, Japan and Europe were "never as far apart in their level of 'modernity,' both in terms of production technology and socio-economic systems, as they were at the end of the Edo period."⁴ In Europe, this period was also a time when a system of sovereign states was in the process of taking shape, which international political scientists call the Westphalian system, and terrible wars of religion were being waged. The Jesuit missionaries who came to Japan were themselves anti-Reformation forces, not people devoted to modern enlightenment or progress.

2.2 Policy of National Seclusion (*sakoku*)

It was Japan's policy of national seclusion that drastically changed the course of history thereafter. Watsuji Tetsurō argued in 1950 that this *sakoku* was Japan's tragedy:

[Tokugawa] Ieyasu was the one who steadily carried through this conservative movement [i.e., *sakoku*]. To that end, he restored once-ruined traditions, using Buddhism and Confucianism as the foundation for his conservative movement. In particular, he took care that the rise of Confucianism supported the institutionalization of samurai rule. Thus, in an age when the spirit of modernity was already manifesting itself in Francis Bacon, a philosophy based in ancient Chinese society from two millennia past was employed as the guiding spirit of governance and institutions. It was the wisest method to establish *domestic order*, perhaps. It was the most unfortunate method, however, to establish the global status of the Japanese people.⁵

This is where [the Japanese] *sense of adventure* in a spiritual sense atrophied. It was this *lack of adventurous spirit*, this *spiritual cowardice* that finally led to closing the country from a

fear of Christianity. Never would Japan have been conquered in the same way as Mexico or Peru, no matter how Christianized the Japanese people of the time became.⁶

Since then, there have been several critical studies done on the topic of national seclusion, and today there is a growing debate among historians that emphasizes the interconnectedness between Japan and the international environment of East Asia.⁷ National seclusion was in fact a diplomatic policy for the state to monopolize foreign relations in order to secure the benefits of trade while expelling Christian forces, and the Spanish and Portuguese presence backing them. Tokugawa's *sakoku* policy was in contrast to the plan to invade the continent of his predecessor, Toyotomi Hideyoshi, and the expansionist scheme of the major European powers who vied against each other as they invaded various parts of the world. Yet, because 250 years of peace ensued, it is hard to say with certainty that the policy was a one-sided tragedy.

No matter how *sakoku* is assessed, there is no doubt that the flow of people in and out of the country suddenly shrank, as Japanese were prohibited from departing and foreigners were allowed entry only on an exceptional basis under strictly controlled conditions. Although the policy resulted in stable domestic governance, it hindered Japan's dynamic development in various fields because it severely limited contact with foreigners, a fact of which the Japanese people were reminded with the arrival of US Commodore Matthew C. Perry and his black ships in the mid-nineteenth century. In any case, after having exited from the grand global story of the cross-border movement of people for a time, Japan reappeared on stage in the Meiji era, where it continued to play a different role than that of the West.

2.3 Meiji Japan—As a Migrant-Sending Country

With the Meiji Restoration, Japan's old order was dismantled, and the movement of people who had been freed from the feudal system suddenly became more active. The Constitution of the Empire of Japan, which entered into force in 1890, clearly states in Article 22 that "Japanese subjects shall have the liberty of abode and of changing the same within the limits of the law," making the freedom of movement a constitutional right. The introduction of steamships and similar technologies spurred greater mobility of the people. Japan appeared in the international population migration narrative as an immigrant sending country from the Meiji era onwards (Fig. 1). Although it tends to be forgotten, this development is the same as in many other modernizing countries.

As early as 1868, the first year of the Meiji era, some 150 Japanese contract workers went to Hawai'i, an independent country at the time, arranged by an American merchant living in Yokohama. Since they were forced to labor under poor working conditions there, the Japanese government had to step in to protect them, sending an envoy to Hawai'i for talks, which resulted in measures to allow those who wished to be repatriated to Japan.⁸ Learning hard lessons from such troubles, the Meiji government did not promote emigration overseas for about 20 years, focusing its efforts instead

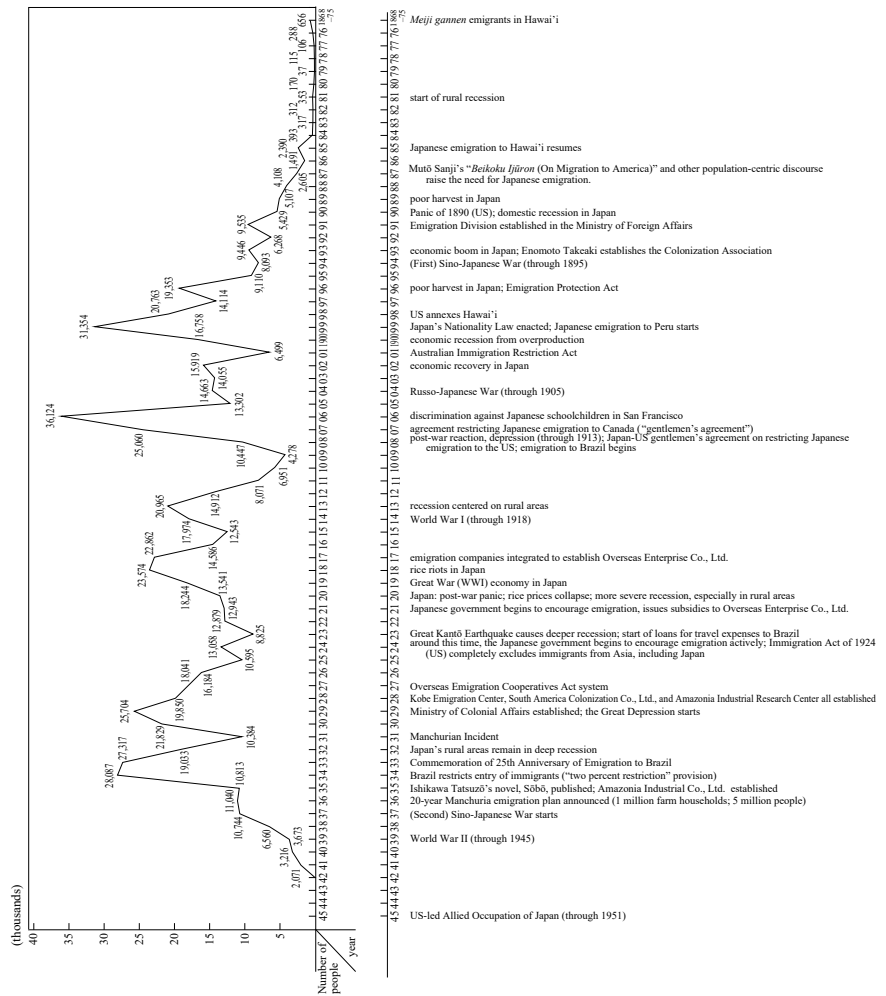


Fig. 1 Overseas emigration trends up to World War II. *Source* Based on Japan International Cooperation Agency (ed). 1994. “Kaigai ijū tōkei (Overseas Migration Statistics, FY1952-1993).” Gyōmu shiryō, No. 891, 9–10. <https://www.jica.go.jp/Resource/jomm/outline/library/ku57pq00000lx70u-att/statistics.pdf> (accessed March 23, 2024)

on the development of Hokkaido.⁹ When Japanese emigration to Hawai'i resumed in 1885, it was decided to adopt a system of government-contracted migration (*kan'yaku imin*) based on an immigration convention between the two countries.¹⁰ Emigration to various parts of South America got underway with programs to that end in the 1890s, beginning with 790 Japanese going to Peru in 1899.¹¹

Behind this rise in Japanese emigration was a discourse about overpopulation. Japan's total population, approximately 30 million in the early Meiji period, was rapid increasing, and there was a generally recognized need to seek an overseas

outlet for the population pressure. Made foreign minister in 1891, Enomoto Takeaki established the Emigration Division in the Ministry of Foreign Affairs. It was said to be “the result of the belief that overseas emigration was the only way for the Japanese people to continue to develop far into the future.”¹² Enomoto feared for Japan’s future, concerned that the country could not survive with an overabundant population in a confined territory, which led him to aspire to send Japanese people overseas to lay the cornerstones for future construction of colonies. He took part in establishing the Tokyo Geographical Society in 1879 and the Settlement Society in 1893, and also proposed colonizing Papua New Guinea and purchasing the islands of Borneo and New Guinea.

These Japanese immigrants overseas soon confronted a range of obstacles in the late nineteenth century. As discussed in earlier chapters of this book, racial nationalism was approaching a peak in the late nineteenth century in Western countries, which tightened restrictions on immigration, particularly for non-white immigrants. Countries that traditionally accepted immigrants, such as the United States and Canada (within the British Empire) saw a growth of movements to exclude Chinese and other Asian immigrants, with Japanese immigrants also excluded in each country as part of these movements. I shall discuss later how this developed into a diplomatic issue between Japan and the US.

During the period when Japan was impoverished and felt strong pressure to send migrants abroad, it did not experience significant pressure from migrant inflows. Nevertheless, how to approach the matter of foreign residents in the country was a subject of vigorous debate in the context of revising the unequal treaties of the *Ansei* era (five treaties the Tokugawa shogunate signed in 1858 with the US, the Netherlands, Russia, the United Kingdom, and France). The controversy focused on the issue of mixed residence in the country’s interior. The *Ansei* Five-Power Treaties provided a system of settlements along with consular jurisdiction for foreigners (extraterritoriality), thereby limiting the residence and activities of foreigners to specific settlements established in open ports such as Yokohama and Kobe. Revising these unequal treaties was the Meiji government’s most pressing diplomatic matter, and yet there was vociferous opposition to the idea of mixed residence in the interior, which meant abolishing the foreign settlements and allowing people from treaty signatory countries the freedom to travel, conduct business, and live among Japanese. Thus, a heated debate raged in the 1880s and 1890s.¹³

For Kuga Katsunan and Inoue Tetsujirō, who opposed mixed residence in the interior, their argument was grounded in concerns that the intellectually and economically inferior Japanese would lose in a competition against Westerners within the country, and that Japan would be effectively taken over. Kuga developed a counterargument, what he called encroaching (*sanshoku*), which is the act of manipulating the minds and interests of foreigners to make them voluntarily subordinate, in contrast to gobbling up (*rōdon*) a territory through invasion by force of arms.

Fukuzawa Yukichi sternly criticized these arguments as “base cowardice,” writing that such an approach “is exactly like someone who first sheathes his weapons without a fight, as though he planned to surrender from the very beginning.”¹⁴ Fukuzawa noted the dynamic effect that interaction with Westerners had in stimulating the

Japanese people, stating, “If we are to develop the knowledge of our people in even the slightest degree, we should only reach our goal through experiencing foreign things and coming into contact with foreigners ... If intercourse with foreign countries is the only good remedy for the paltry foolishness of our people, I see no reason to hesitate using it.”¹⁵ Similarly to Fukuzawa, Taguchi Ukichi, too, referred to the dynamic effect that capital and technology brought in by foreigners would have in strengthening the Japanese economy, and argued that it would more dangerous for Japan’s independence if foreigners were to concentrate in their settlements and exercise their own administrative power there.

In the end, the issue was settled through a series of revised treaties, led off by the Japan-UK Treaty of Commerce and Navigation in 1894, that abolished consular jurisdiction and permitted mixed residence in the interior. All sides in the debate, no matter the position, had shared an interest in the implications that an influx of foreigners would hold for Japan’s international standing. The debate arguably evinced the nationalist dilemma between the stability of domestic rule and the acceptance of external stimuli linked to socio-economic progress.

It was in the Meiji period, after contacts with foreigners reached a certain level, that Japan felt the need to set up a system of nationality. The first such law was the Grand Council of State (*Dajōkan*) Edict of 1873, which stipulated the acquisition and loss of nationality resulting from marriage with a foreigner.¹⁶ The first civil code that had been promulgated in 1890 also provided for a nationality system modeled after the Napoleonic Code, but it did not take effect because this “Meiji Civil Code” itself was never implemented. Japan’s system of nationality took shape with the Nationality Law of 1899, enacted in response to Article 18 of the Meiji Constitution, which states that “The conditions necessary for being a Japanese subject shall be determined by law.” The law is based on the principle of patrilineal descent (*jus sanguinis a patre*), and establishes the acquisition of nationality through naturalization and marriage. Later, it was amended in 1916 to put in place provisions regarding renunciation of nationality, probably arising from the need to address the status of Japanese emigrants to *jus soli* countries such as the US.

2.4 *Enlargement of Japan’s Territory*

We must remember that, as pre-World War II Japan expanded its territory, the Japanese state faced the challenge of how to organize its relations with the local population as well as with Japanese people who had moved to new territories. Japan had not established its control over Hokkaido and Okinawa as its territory in the early modern period. In the case of Okinawa, Japan established territorial control through the Ryūkyū Disposition (1872), which meant annexing the Ryūkyū Kingdom, as well as excluding Qing Dynasty China, which had opposed this move by asserting its own traditional suzerainty, through victory in the (First) Sino-Japanese War (1894–95). In the case of Hokkaido, Japan undertook negotiations with Russia to delineate their national borders as it strengthened its territorial control through immigration

from the mainland. These Japanese immigrants established new control while they marginalized the indigenous Ainu people, so from that point it is similar in character to European immigration to the Americas.

In addition, the pre-WWII Japanese state had the challenge of incorporating the local populations in places such as Korea and Taiwan as the Japanese empire expanded. Residents of areas that became new Japanese territory were accorded Japanese nationality automatically. Korea and Taiwan, however, were regarded as dependencies, considered to be regions with different laws (*ihō kuiki*) that were outside the scope for applying the Constitution; they were treated as spaces for governance of a different nature, in which the relationship of rights and duties between residents and the state differed from that of the mainland.¹⁷ As a result, local residents could not enjoy constitutional rights, including the right to vote; at the same time, the military conscription system only applied to immigrants from Japan. Yet as mainland immigration to these areas increased, immigrants from Japan sought political rights under Taishō democracy after World War I. There was a sense of needing to respond to the rise in local nationalism as well. The Japanese government thus made some efforts to incorporate local residents. For instance, local elections were held in Korea, and Koreans, who formed an overwhelming majority there, also held a majority in local assemblies. Although elections were not held in Taiwan, a government-elected advisory body was established opening the way for local Taiwanese residents to participate in politics, albeit to a limited extent.¹⁸ Inasmuch as Japanese mainland immigrants were an extreme minority in Korea and Taiwan, there was a natural sense that rather than unilaterally oppressing and exploiting the local populace, gaining their support was necessary to mobilize them and to have stable governance. Japan stepped up its assimilation policies, such as enhancing the education to make good imperial subjects (*kōminka kyōiku*) and compelling the adoption of Japanese names (*sōshi kaimei*). In the final years of World War II, the Japanese government began conscription in Korea and Taiwan, while also granting franchise at the national level that provided them with voting rights for the House of Representatives.¹⁹

To be sure, the assimilation of Korean and Taiwanese residents as Japanese subjects through such policies cannot in any way be deemed a success. Actually, Koreans and Taiwanese, as long as they lived in Japan proper, were able to enjoy the right to vote, so a Korean Diet member did exist. Korean-born Park Choon-geum ran for office in Tokyo's Fourth Ward in 1932 and was elected, becoming the only Korean member of the Diet. Park said, "We have been imperial subjects since the day Korea was annexed, and being His Majesty's subjects, it is natural that we should demand our rights as nationals." He argued, "Since we are the same Japanese nationals, it is only natural that we should hold the duty to serve in the military and be granted the right to vote." He consistently maintained that all Japanese subjects should be given equal and rightful status as subjects.²⁰ The government, however, refused to accede to Park's requests, saying it was premature, citing the need for careful consideration, and making other excuses. In the face of unchanging discriminatory measures, Park made the following remarks in the Diet:

“Please put yourselves in our shoes and consider it from our perspective. You say ‘Isn’t it normal to be dissatisfied?’ that ‘There is no overt discrimination’ and ‘We regard all men as equals.’ And yet, in reality, discrimination is everywhere.” “I do not say such things for the sake of Korea. I am demanding equality from the viewpoint of the Empire of Japan.”²¹

From Park’s indignation emerges an image of Imperial Japan’s having betrayed its loyal subjects.

2.5 *Dissolution of the Empire of Japan*

With Japan’s defeat in World War II in 1945, the country’s territory was rapidly reduced, and Japanese membership status was also reorganized. First of all, the victors’ basic policy regarding Japanese people who had emigrated to areas that fell outside of Japan’s postwar borders was to repatriate them rather than incorporate them as members of the local successor state. As a result, approximately 3 million returnees were repatriated to Japan proper after the defeat. The majority of returnees originated from territories that had been controlled by the former Japanese Empire, such as Manchuria, Korea, and Taiwan. It is also known that there were a significant number of residents of Japanese descent who were repatriated from Australia, the US, and Canada.²²

Meanwhile, the nationality of Japanese subjects who had been born in Korea and Taiwan was transferred to the successor state. The nationality of the people residing in areas that were no longer under Japanese sovereignty as a result of Japan’s accepting the Potsdam Declaration and concluding the San Francisco Peace Treaty, naturally belonged to the state that controlled the area. It is also customary that a state created from the dissolution of an empire is usually founded on ethnic nationalism, which holds that one ethnic group should form one state. For this reason, the governments in mainland China and on the Korean Peninsula did not try to incorporate as new members the Japanese immigrants living there after Japan’s defeat in the war. In contrast, those countries actively went about incorporating their nationals living in Japan. Moreover, civil wars in mainland China and the Korean Peninsula were fought over who would occupy the position of the legitimate government after the dissolution of the Japanese Empire, with the parties concerned vying against each other to gain the support of their own people.

Taiwanese and Korean residents in Japan would have had little incentive to maintain their Japanese nationality in order to live in Japan, a country in turmoil and devastated after its defeat. Given the civil war chaos in their homeland, it would not be surprising for there to have been an avid demand to live in Japan. Although the actual situation is unclear, a significant number of irregular migrants are estimated to have streamed into Japan right after the war’s end and during the Korean War (1950–53), partly due to the marked decrease in Japan’s border control capabilities.

In any case, the dominant perception after World War II held that the dissolution of the Japanese Empire reorganized Japan into a realm made up of a homogeneous people and having uniform institutions. The country’s image became Japan,

the peaceful state, that should protect the borders of “Japan’s inherent territory” where only “Japanese people” reside. The idea of territorial expansion was out of the question, and issues of coexisting with, incorporating, and excluding others within Japanese territory were forgotten. Consequently, even though problems related to *Zainichi* Koreans, Ainu, and “others” living in Japan became material for critical discourse as a human rights issue, the matter of who was a member of Japan was never felt to be a fundamental political issue.

2.6 Postwar Overseas Emigration

Japan’s population was widely understood as being still too large after World War II, and so even after avenues of territorial expansion had been closed, there was continuing interest in sending migrants abroad and the country adopted policies to support overseas emigration. Postwar overseas emigration is said to have begun in 1952, when jute cultivators moved to the Amazon River basin in Brazil. Racist immigration policies in North America and Australia meant their doors were closed to Japanese immigrants; consequently, the many Japanese people who crossed the ocean in search of a new life went mainly to South America (Table 1). The government became involved in supporting the sending of migrants, establishing the Federation of Japan Overseas Associations in 1954 and the Japan Emigration Promotion Co., Ltd. the following year, which developed programs to provide loans to emigrants from Japan. As a rationalization measure, those two organizations were dissolved and their overseas operations were taken over by the Japan Emigration Service (JEMIS), established in 1963 as a public corporation under the Ministry of Foreign Affairs.

After peaking in the late 1950s, however, the number of Japanese emigrants rapidly declined such that the wave had subsided for the most part by the mid-1960s. (Fig. 2). The reason for the drop, as was the case in late nineteenth century Germany, was that rapid domestic economic growth and expanded range of economic opportunities led to decreased pressure for population outflows. In 1974, JEMIS, the organization that had been supporting Japanese emigration, was reorganized into the Japan International Cooperation Agency (JICA), which is responsible for Japan’s foreign assistance. This development symbolized that the Japanese economy had graduated from the stage of exporting labor overseas, and the country had shifted the focus of its foreign economic policy, moving to a stage where the fruits of its economic growth could be allocated to foreign aid.

2.7 Debate Over Accepting Immigrants

Not until the late 1980s/early 1990s, during what later became known as the asset price bubble era, did Japan become aware of the influx of people into the country. As the external value of the yen soared and howls about the domestic labor shortage

Table 1 Distribution of overseas *Nikkei* (as of 2022)

Country	Number of people
Brazil	1,900,000
US (mainland)	1,484,186
Hawai'i	172,049
Canada	121,485
Peru	100,000
Australia	36,000
Philippines	33,000
Argentina	65,000
Mexico	20,000
Bolivia	11,350
Paraguay	10,000
Indonesia	4,500
Chile	3,000
Colombia	1,800
Cuba	1,100
Dominican Republic	800
Venezuela	800
Uruguay	350
Ecuador	300
Total estimate	Approximately 4,000,000

Note Overseas *Nikkei* here refers to permanent residents and their descendants (second, third, fourth generation, etc.), regardless of nationality or degree of Japanese ethnicity. The above table does not include *Nikkei* residing in Japan.

Source Association of Nikkei and Japanese Abroad website: <https://jadesas.or.jp/en/aboutnikkei/> (accessed March 27, 2024).

grew, demand for labor from overseas suddenly increased. However, interest in this immigrant labor force disappeared at once with the sudden onset of stagnation in Japan's economy.

In addition, while the Japanese economy remained sluggish, Japan's neighbors, starting with China, experienced remarkable economic growth, which may have helped moderate the pressure of population migration towards Japan.

By the start of the twenty-first century, however, growing concerns about Japan's declining population coupled with economic recovery led some within Japan's business and political circles to offer a series of proposals regarding the full-scale acceptance of immigrants (Table 2).

In the interim, Japan followed a policy of accepting highly skilled human resources, foreign professionals with special skills, and not masses of unskilled labor. For example, the *Japan Revitalization Strategy (2014 revision)*, approved by the Abe Shinzō Cabinet in June 2014, aimed at “developing a Japanese society where

Table 2 Policy proposal examples

Date announced	Group/Title	Contents
March 2007	Keidanren (Japan Business Federation): “Second set of recommendations on accepting non-Japanese workers”	Consider securing human resources from overseas for those skilled workers expected to be in short supply in the future, while regulating the number of skilled non-Japanese workers by introducing a labor market test
June 2008	Liberal Democratic Party (LDP) National Vision Project Headquarters, Path to a Japanese-style immigration nation Project Team (PT): “Opening Japan to human resources from abroad! The path to a Japanese-style immigration policy”	To cope with the declining population, it is necessary to accept 10 million immigrants (approximately 10% of the population); doing so calls for significant legal system improvements and organizational reforms
July 2008	LDP National Vision Project Headquarters, Foreign workers issues PT: “Proposal to form a ‘Temporary work system for foreign workers’”	Accept foreign workers through a “temporary work system” without restrictions on industries or occupations. At that time, an annual acceptance limit will be set with a term of three years
July 2008	Tokyo Chamber of Commerce and Industry: “Proposals on accepting foreign workers and opinion on revising the foreign trainee/technical intern program”	Broaden their acceptance as a response to the decline in the labor force population. It would be desirable to grant permanent residency to foreign workers who meet certain requirements
September 2008	Japan Economic Research Institute: “Recommendations on the acceptance of foreign workers—a proposal for a new acceptance system”	Need to make the scope of work more flexible and developing the skills of foreign workers. Need to review the existing qualifications, introduce “specified skilled worker” classification
October 2008	Keidanren: “An economy and society that responds to the challenges of a declining population”	Japan should more widely accept workers with certain qualifications or skills who are needed in industrial sectors with labor shortages and to maintain a vigorous economy and society
June/September 2009	Japan Immigration Policy Institute: “Towards a Japanese-style immigrant nation”	Japan should aim to transform into an immigrant nation in response to population decline. In order to reduce conflicts with the host society, implement a “nurturing type” of acceptance

(continued)

Table 2 (continued)

Date announced	Group/Title	Contents
May 2010	Council on Population Education/ Akashi Research Group, “Considering the future of Japan”: “Seven proposals for Japan to reestablish its place As a Respected Member of the International Community: Taking a Global Perspective on Japan’s Future” (Proposal 3: Japan should develop a model immigration policy with the slogan of “Opening Japan to Human Resources”)	Japan needs an active approach to immigration policy. Japan should offer thorough Japanese language education and vocational training, accepting people on the assumption that they will stay permanently
November 2010	The Japan Forum on International Relations “Prospects and challenges for the acceptance of foreign migrants to Japan”	Caution is warranted in importing labor in unskilled fields. Limit the types of occupations that are necessary and accept applicants ready to assist with their human resource development and acquiring vocational qualifications
March 2011	Sasakawa Peace Foundation, “Global Demographic Change and Labor Migration in Asia” Project: “Japan’s shrinking society and its options—recommendations regarding foreign workers”	Implement an employment permit system and labor market tests. Promote domestic labor market improvements while accepting people in the fields of nursing, nursing care, and housework in preparation for a super-aging society

Source Table created based on Akashi, Jun’ichi. 2013. “Gendai Nihon ni okeru nyūkoku kanri seisaku no kadai to tenbō (Contemporary Japan’s immigration control policy: topics and prospects),” in Yoshihara, Kazuo, ed. *Gendai ni okeru hito no kokusai idō: Ajia no naka no Nihon (Modern International Movement of People: Japan in Asia)*. Tokyo: Keio University Press, 70.

diverse sets of experiences and skills demonstrate their abilities in Japan. The Abe administration is not thinking of adopting a so-called immigration policy.”²⁴ Thus, he made clear that the Japanese government’s position is not to have any immigration policy.

Who is an “immigrant” is, of course, a matter of definition. For example, the United Nations Statistics Division generally defines international migrants as persons living in a country other than their country of birth; UN estimates therefore use data on place of birth, or when that is unavailable, substitutes data on foreign citizens to identify immigrants (see the introduction). And “residence” refers to “long-term migrants” as “persons who move to a country other than that of their usual residence for a period of at least one year.” By these definitions, it would mean that there are already more than 2 million immigrants living in Japan. The Ministry of Justice also estimates that the number of foreign nationals residing in Japan (i.e., the number of medium- to long-term residents plus special permanent residents, excluding tourists) was approximately 3.22 million as of the end of June 2023. This figure is about 2.5%

of Japan’s population, meaning that 1 in 40 people living in Japan is an “immigrant” who are not supposed to be accepted as a matter of policy.²⁵

2.8 The Existence of a “Side Door”

So why are there “immigrants” in Japan when there are not supposed to be any? The reason is that Japan initially did not have an official entrance to accept foreigners wishing to migrate to the country for the purpose of permanent residence, but people from other countries began to enter and reside in Japan through various side doors. The Immigration Control and Refugee Recognition Act, as revised in June 2023, provides 29 types of residence status that allow people to stay in Japan for a specific period of time.²⁶ Special permanent residents, made up of *Zainichi* Koreans, were once the largest group among minorities residing in Japan, but now the biggest group of resident foreigners are permanent residents, who have an indefinite residence status and, in principle, have unlimited access to the labor market (Figs. 3 and 4).

To become a permanent resident, a person must have already resided in Japan for a certain period of time. For example, it is possible that a person who enters Japan as a resident, and is allowed to stay in Japan for a specified period of time, may eventually secure a path to permanent residency after having lived and worked in Japan for a certain period.²⁷

Additionally, the numbers of international students and technical intern trainees have been on the rise in recent years. Amid declining birthrates and aging populations,

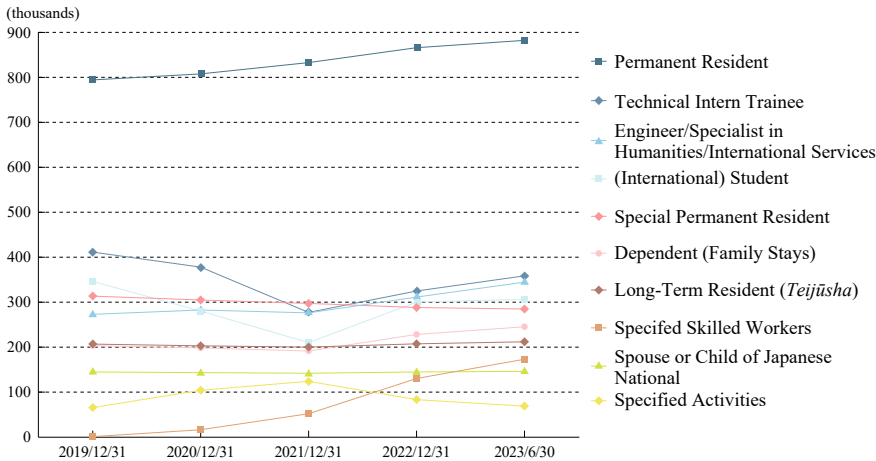


Fig. 3 Changes in the number of foreign residents (by status of residence, end-June 2023) (people, 1000s). *Source* Japan Immigration Services Agency. 2023. “Regarding the number of foreign residents as of the end of June 2023.” October 13, 2023. https://www.moj.go.jp/isa/publications/press/13_00036.html (accessed March 27, 2024)

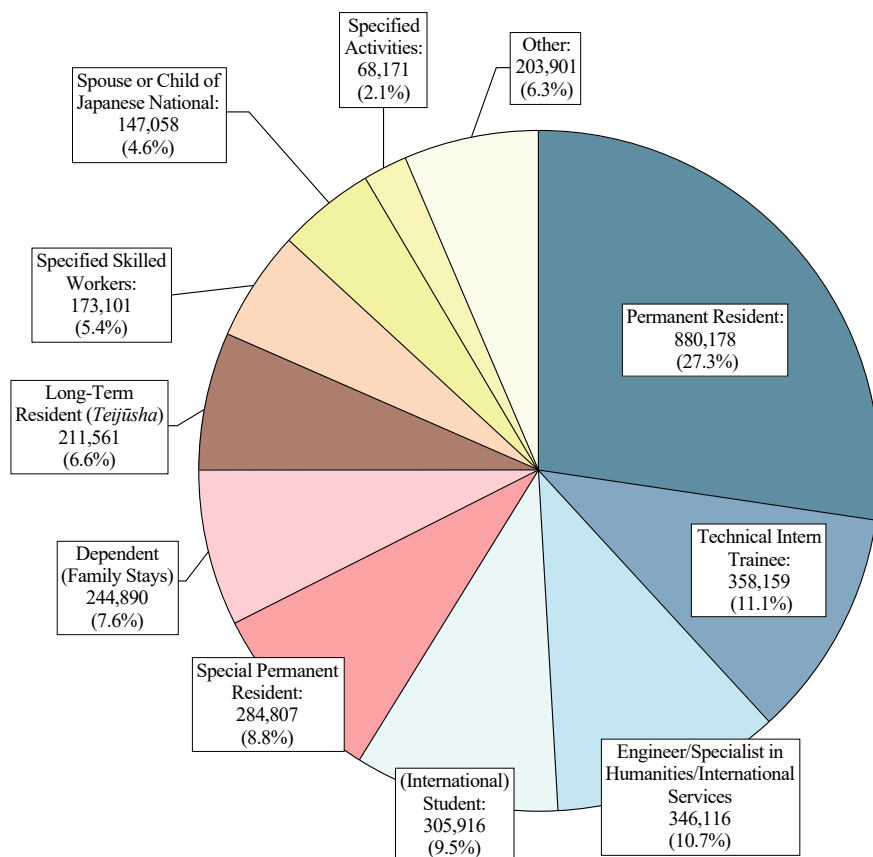


Fig. 4 Composition ratio of foreign residents (by status of residence, end-June 2023). *Source* Japan Immigration Services Agency. 2023. “Regarding the number of foreign residents as of the end of June 2023.” October 13, 2023. https://www.moj.go.jp/isa/publications/press/13_00036.html (accessed March 27, 2024)

universities in majority English-speaking countries, which dominate the market for global higher education, have grown ever dependent on the tuition fees paid by the dramatic rise in the number of international students from China. Japanese universities, too, are becoming more dependent on foreign students as its own population of 18-year-olds shrinks. These international students are allowed to work part-time to a certain extent. Many industries in Japan depend on their labor, a fact anyone can understand without referring to statistics by shopping at a convenience store in an urban area. If they work in Japan for a certain period of time after graduation, they should also be able to obtain permanent residency.

The Technical Intern Training Program is officially regarded as an arrangement for development cooperation, where trainees are said to master practical skills in Japanese workplaces over a three-year period. The actual situation, however, is the

acquisition of a cheap marginal labor force, no different from a system for accepting guest workers. Technical intern trainees' rights protections have long been pointed out as being extremely inadequate. Also, under the program, trainees are supposed to return to their home countries once their training period ends. Yet a certain number of them stay on in Japan even after the completion of their training period, which should be considered inevitable, judging from the experience of guest worker programs in other countries. It is also a possibility that some of them will go missing, becoming irregular immigrants, which inevitably will spawn legal and illegal businesses to mediate this process.²⁸ Furthermore, the outcome of increasing numbers of foreigners visiting Japan for a certain period of time (whether as students, technical interns, or tourists) and of Japanese people going abroad would be an increase in the number of international marriages between Japanese and non-Japanese. In that case, the rise in the number of people residing in Japan as spouses of Japanese nationals is a natural trend, one hard to imagine reversing.

Looking at these resident foreigners by country of origin, around one-third of the total are Chinese, followed by Koreans. It is hardly surprising that about half of the foreigners living in Japan are nationals of Japan's neighbors, China and South Korea. Yet there are some non-negligible facts: China is both an important economic partner and the most serious security threat for Japan; with South Korea, the historical, territorial, and other diplomatic issues are endless.

3 The International Politics of Population Flows and Japan

Chapters 1 and 2 of this book discussed the conditions under which international population movements develop into political issues between states. In Japan's case, the problems did not concern accepting immigrants into the country—for Japan had consistently been an emigrant-sending state until the 1960s—but rather relations with countries that restricted immigrants from Japan. In this regard, the archetypical case is the serious diplomatic row between Japan, which wished to send its migrants, and the US, which sought to restrict or prevent them from arriving.²⁹

3.1 *Japan-US Friction Over Japanese Immigrants*

The rising backlash among white workers against the surge of low-wage Japanese immigrant labor in early twentieth century San Francisco moved the city authorities to act in 1905, adopting a measure to segregate Japanese schoolchildren. Notwithstanding the subtle changes in Japan-US diplomatic relations after the Russo-Japanese War (1904–05), ties between the two governments were generally good. The federal government in Washington, DC, regarded this as a local problem happening in one part of the state of California and had no intention to let bilateral relations deteriorate. Japan and the US made attempts to resolve the situation diplomatically,

concluding a gentlemen's agreement in 1908, under which Japan agreed not to issue passports except for the purpose of family reunions, effectively prohibiting Japanese immigration to America.

However, the anti-Japanese movement on America's West Coast grew even more strident, and the US Congress took up immigration legislation in 1924. Although the bill passed easily in the House of Representatives, the consensus view was that it would find adoption by the Senate more difficult. The atmosphere completely changed when Henry Cabot Lodge, the chairman of the Senate Committee on Foreign Relations, took issue with a letter that Ambassador Hanihara Masanao had sent to Secretary of State Charles E. Hughes. All of a sudden, Lodge began to denounce a passage toward the end of the letter where Hanihara had written about "the grave consequences which the enactment of the measure ... would bring" as "a veiled threat" against the US.³⁰ The letter, sent only after the Japanese side had discussed its text with the US State Department, was carefully and thoughtfully written on the whole. Lodge's remarks were mere pretense to gain leverage in US domestic politics, allegedly to win him the support of lawmakers in Western states ahead of the presidential election that year.

This was understood in Japan as a great humiliation and fermented strongly anti-US public opinion. Despite being called the "Anti-Japanese Immigration Act" in Japan, the Immigration Act of 1924 set immigration quotas for each country on the basis of the existing population structure. And Japan was not the only target: it focused on restricting immigration from southern and eastern Europe, and it by and large prohibited all Asian and Arab immigrants based on racial grounds that were tolerated openly in the world at the time. Moreover, the practical impact of the new law would have been negligible for Japan, which had essentially prohibited emigration to the US already under the gentleman's agreement still in force. The reason why Japanese public opinion was so incensed by this was out of a sense of humiliation that the world still openly looked down upon it, despite its self-image as a first-class power that had become a civilized nation.

It would be incorrect to say that this incident immediately set Japan-US relations on a path toward war. But it is a fact that it caused a significant change in how the Japanese people thought about the US, a country they had felt an affinity for, unlike Europe, since the Meiji Restoration. In short, it left many Japanese with the impression that international society's liberal democratic ideals, symbolized by Wilsonism, advocated so loudly by the US, were white hypocrisy. Against this backdrop of public opinion, Japanese leaders undoubtedly found it more difficult to manage relations with the US as before.

3.2 Japan as a Migrant-Receiving Country

Since Japan's history of facing inward pressure to accept immigrants is shorter than that of the US, a traditional immigration state, or of European countries, it has not experienced many similar diplomatic issues as a migrant-receiving country.

Generally speaking, host countries enjoy a greater degree of discretion than migrant-sending countries regarding regular immigration in interstate relations, and thus their bargaining power in international negotiations is stronger. In addition, given that the official policy of the Japanese government is that it does not adopt immigration policies, so far there has been only a limited development of international political issues related to immigration.

In the course of Japan's negotiating Economic Partnership Agreements (EPAs) with Indonesia, the Philippines, and Vietnam, these countries in fact requested that Japan accept their nationals as workers in the fields of nursing and long-term elderly care. Japan agreed to this request in the EPAs reached with these three countries and began accepting certified care workers, albeit on a limited basis. Appraised by some as offering a potential solution in the area of human resources for labor-strapped Japan, this system requires applicants to undergo Japanese language training before coming to Japan to ensure a certain level of language ability. Then they come to Japan as care worker candidates where, after three years of practical experience at a facility that accepts them, they take a national exam, the same as Japanese candidates. The general idea is that candidates who pass the exam and obtain the qualification will be granted a status to reside in Japan (Fig. 5).

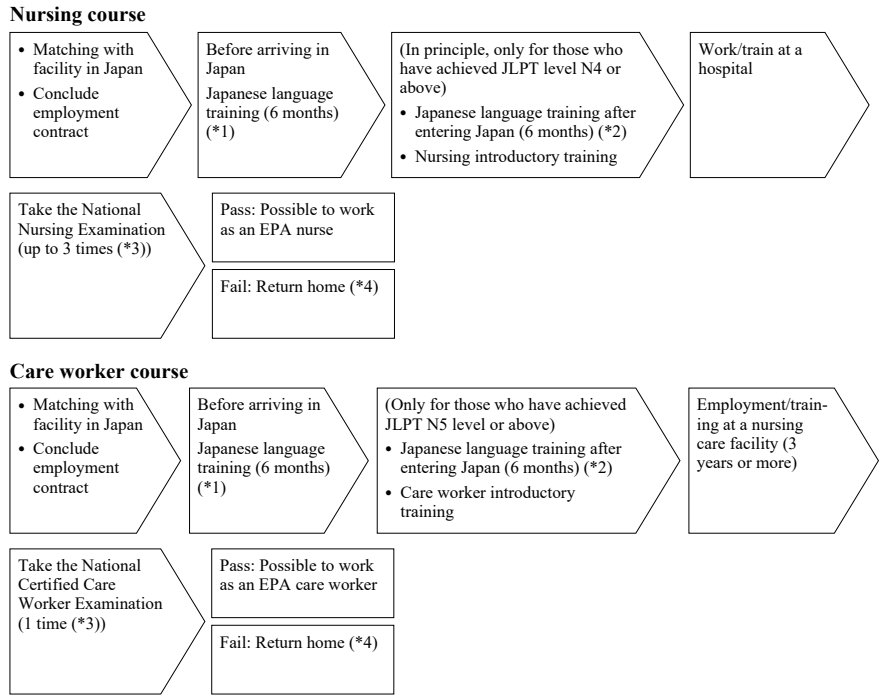
More than 2000 care worker candidates came to Japan from 2008 to 2015, but only about half of them obtained the qualification. Whether this outcome is considered as a step towards changing the system or a continuation of a closed-door policy, the really interesting fact is that a considerable number of these foreign workers return home even after having obtained residency status, such that only about two-fifths of all candidates who get certified go on to work in Japan.³¹

There are various reasons why the percentage of people who settle in Japan is lower than expected. For example, people who come to Japan may not intend to settle in Japan in the first place. Some have noted that foreign candidates who gain experience and qualifications in Japan can earn a satisfactory income in their home countries.³² Put another way, it is conceivable that the Japanese job market is not attractive enough to make it worth the demands of acquiring Japanese (a language only spoken by Japanese people) and to pass the qualification exams. It is true that the Japanese economy has been sluggish for a long time, whereas other Asian economies have been growing rapidly, leading to a relative decline in the Japanese economy's position in East Asia. We should remember, too, that Asian countries in general are experiencing rapidly declining birth rates, and that Taiwan and South Korea, in particular, which have lower birth rates than Japan, are accepting immigrants and are well placed to compete for human resources.

This statement is all the more apt when it comes to accepting highly skilled human resources. Although the Japanese government has repeatedly stated that it will not accept unskilled labor, it has made moves to actively accept foreign professionals with skills that are useful to Japan. The Japanese government introduced a point system in 2012 to certify highly skilled professionals, adopting promotional policies such as granting foreigners who get certified preferential treatment in terms of immigration control.³³ The government further decided in 2016 to loosen the requirements to apply

~ Accepting Indonesian nurse/care worker candidates ~

Regarding the acceptance of Indonesian nurse/care worker candidates in FY2024, nurse/care worker candidates who have been matched with care service providers will take Japanese language training (*1) six months before coming to Japan, after which only those with Japanese Language Proficiency Test (JLPT) level N4 or higher will be allowed to enter Japan. After entry, candidates take an additional six months of Japanese language training and nursing/long-term care introductory training. Then they will work and train at the accepting facility specified in their employment contracts in order to obtain national qualifications as a nurse or certified care worker. Those who obtain the national qualification will be allowed to continue working as EPA nurses and EPA care workers in Japan.



Notes:

*1 Candidates who have passed the JLPT level N4 or N3 before the start of the pre-arrival Japanese language training will be exempted from that training.

*2 Candidates who have passed JLPT level N2 or above or have received Japanese language education for 12 months or more at a Japanese language educational institution announced by the minister of Justice will also be exempted from post-arrival Japanese language training.

*3 Those who fail the last national exam during their stay who are recognized as special candidates will have one more chance to take the exam.

*4 Candidates may re-enter the country on a short-term stay or similar visa to retake the exam.

Fig. 5 Pamphlet on acceptance of foreign nurse and certified care worker candidates under EPA. *Source* Japan International Corporation of Welfare Services (JICWELS), “Pamphlet on Acceptance of Foreign Nurse and Certified Care Workers Candidates under EPA, FY2024 edition”, 4. <https://jicwels.or.jp/wp-content/uploads/2023/08/2024年度版-EPAに基づく外国人看護師・介護福祉士候補者受入れパンフレット-Rev.pdf> [For English information (based on earlier requirements), see pages 6–7.] (accessed March 28, 2024)

for a permanent residence permit and to create a “Japanese Green Card for Highly-Skilled Foreign Professionals.”³⁴ These moves arguably created a human resources pathway for foreigners (mainly international students from Asia) to permanently reside in Japan.

However, the more internationally competitive a worker’s skills are, the more likely he or she will not find employment in Japan attractive enough to justify the effort to adapt to the “Galapagos-like” environment of Japan’s language and society. In other words, Japan is at a decisive structural disadvantage in the competition for highly skilled human resources, so it will be unable to secure a large amount of prime talent merely by relaxing the system. At the same time, highly skilled Japanese professionals already adapted to the Japanese environment have had little incentive to move abroad, at least until now, given the relative risks and benefits of staying in Japan versus entering the international job market. This means that if Japan becomes the host country for a large-scale brain drain from developing countries, there is a low likelihood that it will cause political problems with the sending countries, for better or for worse (Fig. 6).

3.3 Population Flow Involving Japan—Strategic Use of Population Movement, Limits of National Border Control Capabilities

What is the possibility that Japan will be the target of a policy of population dumping that uses coerced population migration as a strategic tool? Neighboring China, one of the world’s most populous countries, has no shortage of resources for this strategy. Although it has sent democracy activists, ethnic minority leaders, and other Chinese dissidents into de facto exile, as far as I can ascertain, there are no examples of China’s deploying a policy of manufacturing a mass migration with strategic objectives similar to Cuba or other countries. These sorts of policies, intentionally carried out to rid a state of its own people, are drastic remedies that may shake the legitimacy of a domestic regime based on nationalism, even in states with non-democratic political systems, and destabilize the systems of both the targeted country as well as the sending country. Even North Korea, with the most repressive regime in the world, strictly restricts its own people from leaving the country. There are cases regarding North Korea’s treatment of its defectors, but to the best of my knowledge, there are no examples where North Korea deliberately sent out large numbers of defectors for political purposes. North Korea arguably is aware of the political benefits of accepting asylum seekers as part of its legitimacy contest with South Korea. Strategic engineered migration policies are measures of last resort. It is unknown whether Japan will be the primary target, but the country should prepare itself against the future possibility of a North Korean strategy to intentionally send out its defectors.

The treatment of refugees and political asylum seekers has become politicized on occasion. One example that comes to mind is the 1973 abduction by the South Korean

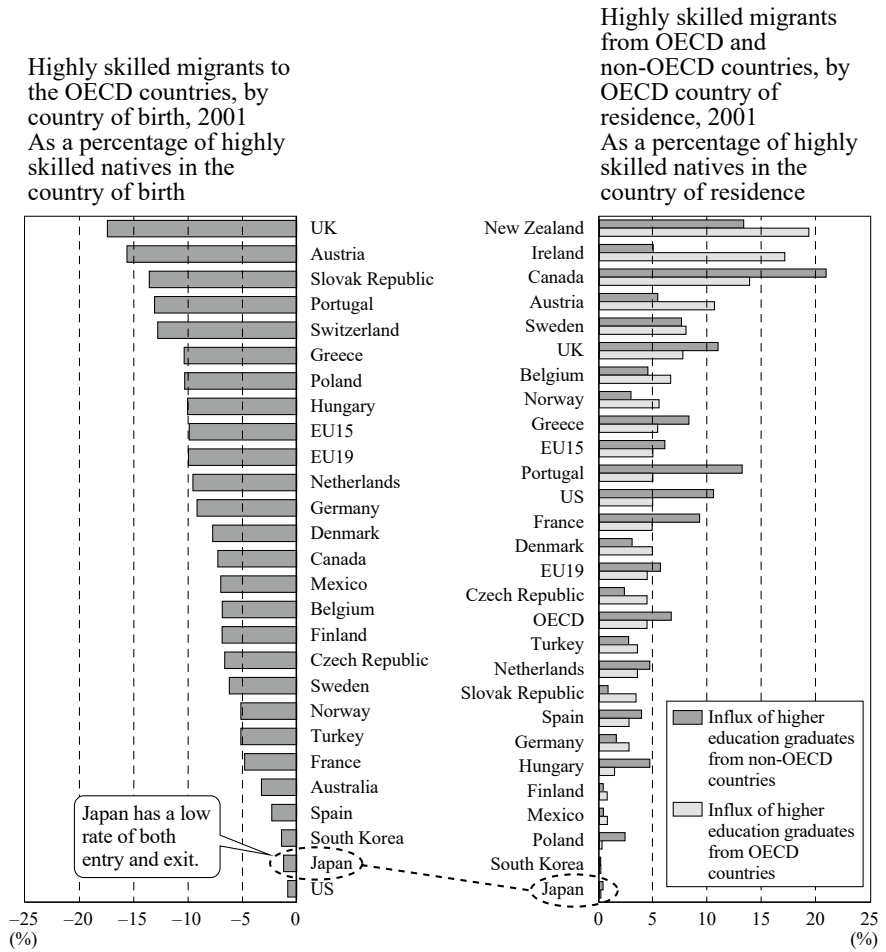


Fig. 6 Percentage of people who have completed higher education in OECD countries leaving/entering the country (2001). *Source* Naikakufu (Cabinet Office, Government of Japan). 2008. “Kōdo jinzai no ukeire no genjō to kadai (Current status and challenges of accepting highly skilled human resources),” December 2, 2008, 5. <https://warpp.ndl.go.jp/info:ndljp/pid/12251721/www.kantei.go.jp/jp/singi/jinzai/dai1/siryou2.pdf>. [Source information is based on OECD. 2005. *OECD Science, Technology and Industry Scoreboard 2005*. OECD Publishing, Paris, 57. <https://doi.org/>.] (accessed March 28, 2024)

intelligence agency of Kim Dae-jung, a South Korean dissident politician who was active in Tokyo and later became president. We can also consider the following:

Although there are striking human rights violations in China, this huge empire could only be ruled by the non-liberal single-party system. So, let us hypothetically assume that the Japanese government actively confirms the status of Chinese refugees. It would set a precedent and, coupled with geographical proximity, might lead to Chinese dissidents coming en masse to apply for asylum in Japan. It is probable that along with Han Chinese

democracy activists and members of the Falun Gong religious group, there will be ethnic activists seeking independence for Tibet and Uyghur Autonomous Region of Xinjiang (East Turkestan). Should this trend take root, Japan would become a major base for the Chinese anti-government movement.

A country open to refugees might well become a country that allows the overthrow of foreign governments. This is insightful, if we aim to democratize China. This has been proven in the past. The Tongmenghui, which brought about the Xinhai Revolution and overthrew the Qing Dynasty, was formed in Akasaka, Tokyo.³⁵

Publicly declaring another country's dissidents to be refugees to harbor them is a highly political undertaking that, were it to happen, quite conceivably would spark diplomatic friction between Japan and China.

Rather than due to a clash of national wills, population flows around Japan are most likely to turn political when the limits of the state's ability to control its borders become apparent. We could cite the past example of Indochinese refugees. More than 1 million refugees, mainly ethnic Chinese, streamed out of Indochina in the late 1970s as the Vietnam War concluded, Vietnam and other Indochinese countries became socialist, and the Sino-Vietnamese War broke out. As some of these refugees had escaped by boat, they are often called boat people. Some sought refuge in Japan, either by being rescued at sea by Japanese vessels or by directly coming ashore in Japan. Their number grew rapidly starting around 1977, and during four years from 1979 to 1982, over 1000 people reached Japan's shores each year.³⁶ The influx of refugees subsided after that but picked up again at the end of the 1980s; only about 200 boat people drifted ashore in Japan in 1988, but the number hit 2804 the following year. However, an investigation later revealed that almost all of them were Chinese, irregular migrants disguised as refugees seeking employment.³⁷

The Japanese government's initial response was to disallow the settlement of the boat people it provided refuge. However, it decided in April 1978 to adopt a policy allowing some Vietnamese refugees to settle in Japan, in part owing to growing domestic opinion to accept their settlement. The decision also came in response to criticism from, and out of diplomatic consideration for, the Southeast Asian countries surrounding Vietnam, which had no choice but to offer protection to masses of refugees. Japan also decided to gradually loosen the conditions for resettlement permits so that refugees in Asian refugee camps could reunite with their families and resettle in Japan. It thereby ended up accepting more than 11,000 people. To support their resettlement, the Refugee Assistance Headquarters was established, which implemented programs such as Japanese language education, employment referral services, and vocational training at facilities it set up for this purpose in Himeji city, Hyogo Prefecture; Yamato city, Kanagawa Prefecture; and Shinagawa Ward, Tokyo.

The fact that the number of refugees accepted by Japan was lower than that of developed European countries such as Germany and the UK, not to mention the US, Australia, and Canada, is indicative of Japan's negative attitude toward accepting refugees. Furthermore, the small scale of resettled immigrant communities in Japan means that they are unlikely at this point in history to serve as a political mechanism for generating pressure to accept more refugees. The reality is that, aside from

some human rights activists, the Japanese public were perplexed by this unexpected situation, and so there was no groundswell of humanitarian public opinion. This point has been used as an indication of Japan's insularity and low consciousness toward human rights. It is true that Japan's response to build its refugee system while gradually expanding the framework for accepting them was in reaction to external pressure.

However, the fact remains that Japan's attitude toward accepting refugees is passive at the government level, and even more negative at the level of public opinion. This has made Japan an easy target for criticism by liberal commentators and human rights activists in the West, where the issue has become a major political problem.³⁸ The Japanese negative/passive response was repeated during Europe's refugee crisis that escalated in 2015 with people coming from Syria primarily. Strong public opposition to accepting large numbers of refugees in the West, especially in Europe, precipitated a rise of anti-immigrant forces in various countries. As accepting refugees in the West intensified, Japan responded by launching a program to accept 100 international students in the fall of 2016.³⁹ Then again, the West can hardly be called proactive in accepting refugees, the majority of whom are housed in refugee camps around conflict areas around the world, unless they directly surge at their own national borders.

3.4 How to Deal with Large-Scale Refugee Flows

There is a strong possibility that Japan, irrespective of its attitude, will be forced to respond to refugee flows on an order of magnitude greater than ever before in the event of instability in the areas surrounding Japan, such as a conflict on the Korean Peninsula, political turmoil in China, or the collapse of the North Korean regime. A large-scale refugee event is likely to become a diplomatic issue with the countries involved over sharing the responsibility for protecting them. Moreover, the experiences of other countries have shown that dealing with large numbers of people who at first blush might be refugees or deserters may well go beyond a humanitarian issue to take on political implications, too.

Dealing with a large-scale refugee problem is a major ordeal for any country, a fact easily understood by the 2015 refugee crisis and its aftermath experienced by EU countries, which considered themselves the world leaders in humanitarian norms. Still, there is no reason to arbitrarily conclude that Japan alone is doomed to fail in addressing this problem. As for the Indochinese refugees mentioned earlier, despite its slow initial response, Japan's settlement support for the 11,000 or so people the country accepted might not be called a success story to be proud of, but it cannot be rated a major failure judged by international standards.⁴⁰

Japan's attitude toward refugees and immigrants is commonly explained by reducing it to Japan's backward, insular, and exclusionary nature. Explanations that rely solely on the unchanging uniqueness of the Japanese people are not convincing, for we have already seen in this book that the exclusion of immigrants and refugees

itself is a phenomenon widely evident in Western countries. Japanese feelings about refugees and immigrants have been shaped by conditions such as its shallow tradition as an immigrant receiving country and the fact that immigrant groups remain politically weak in Japan. The international environment is yet another important condition: the East Asian states surrounding Japan are, at present, irrespective of regime, modern (or in the process of modernizing) “crustacean type” of nations with generally firm borders. Moreover, it is easy to develop an excessive sense of trust in the physical control of borders in Japan, a state with no land borders.

To be sure, there are no failed states around Japan, and it has yet to encounter a nearby country that has used a policy of strategic engineered migration. The maritime areas surrounding Japan have never been consistently controlled by a hostile state, at least not since the war, and the early postwar period aside, border control has been relatively easy. In the future, however, Japan and its US ally may lose command of the sea in the waters surrounding Japan. Even if that is not the case, there are limits to any border control ability, as already noted in Chap. 2. There is also a strong possibility that complex problems will increase along with active people-to-people exchanges with China, Japan’s huge authoritarian neighbor. Furthermore, Japan should be prepared for a considerable number of refugees to head for the country in the event of an emergency on the Korean Peninsula or the Taiwan Strait. Lastly, the possibility of a repressive state that is cornered to employ a policy of strategic engineered migration cannot be ruled out.

4 The Diaspora and Japan—From *Nihon* to *Japan*

I have contended thus far that Japan has been a migrant sending country until relatively recently; it has not actively accepted immigrants into Japan, and even when it has to a limited degree, it has merely accepted them passively and sluggishly. Furthermore, the Empire of Japan may have faced the problem of integrating and incorporating new members as it expanded, yet as the empire was both small from a global perspective and completely dismantled after a few decades at most, the result was for Japan’s domestic population structure to become peremptorily homogenized. Thus, there is a certain reality attached to the widely held perception that Japan became a place where a highly homogeneous population lives in relative equality. Yet in reality, Japan’s immigrant community has been expanding since the 1990s, reaching a level where it can no longer be treated as an outlier. Moreover, it is difficult to imagine this proportion will shrink in the future. There is a growing need to consider how the country is administered, including its foreign policy, premised on the fact that a significant number of people other than “Japanese” will be living in Japan.

4.1 Conditions for Being a “*Nihonjin*”

First of all, who are the *Nihonjin*, the official members of Japan? As I mentioned above, Japan first officially determined the scope of its membership with the Nationality Law it enacted in 1899. Thereby, Japanese nationality was by the principle of patrilineal descent, a principle carried over in the Nationality Act of 1950, which was enacted under the new constitution. The Nationality Act amended in 1984 maintained the *jus sanguinis* principle but allowed children to also inherit their mother’s nationality. I have also argued the weak grounds for regarding *jus sanguinis* as more backwards than *jus soli*, the principle of birthplace (see Chap. 3). Considering the experiences of continental European countries that have traditionally followed *jus soli*, the increase in Japan’s communities of immigrant residents will inevitably be accompanied by a growing dynamic in which the state tries to incorporate immigrants in the second generation onward born in Japan by strengthening *jus soli* elements.

People from abroad are already moving to Japan through various side doors. A fair proportion of these people have already become denizens as foreign permanent residents; the conditions for doing so have gradually been eased and, at least in terms of the formal system, are less restrictive than is generally believed.

First, the Ministry of Justice’s 2017 “Guidelines for Permission for Permanent Residence” lists the following conditions for permanent residency: in principle, the person has stayed in Japan for more than 10 years consecutively, is of “good conduct,” and “has sufficient assets or ability to make an independent living.” It then relaxes some conditions for refugees, highly skilled professionals based on a points system, and long-term residents (*teijūsha*: some persons with Japanese ancestry, Indochinese refugee settlers, the spouse or children of Japanese nationals left behind in China, etc.). As far as we can see, the conditions for permanent residency in Japan do not appear significantly different from those in the Western countries discussed in Chap. 4.⁴¹

Regarding naturalization, Article 5 of the Nationality Law stipulates that:

The Minister of Justice shall not permit the naturalization of an alien unless he or she fulfills all of the following conditions:

- 1) that he or she has domiciled in Japan for five years or more consecutively;
- 2) that he or she is twenty years of age or more and of full capacity to act according to the law of his or her home country;
- 3) that he or she is of upright conduct;
- 4) that he or she is able to secure a livelihood by one’s own property or ability, or those of one’s spouse or other relatives with whom one lives on common living expenses;
- 5) that he or she has no nationality, or the acquisition of Japanese nationality will result in the loss of foreign nationality;
- 6) that he or she has never plotted or advocated, or formed or belonged to a political party or other organization which has plotted or advocated the overthrow of the Constitution of Japan or the Government existing thereunder, since the enforcement of the Constitution of Japan.⁴²

In other words, Japan's conditions for naturalization include residence, legal capacity, good behavior, livelihood, preventing dual nationality, and obeying the Constitution. Judging from these conditions and the fact that Japan's conditions for naturalization do not impose any citizenship test, it is hard to conclude that Japan is peculiarly more closed than Western countries.

To be sure, many critics highlight that, in reality, the process is costly, requires submitting many documents, is full of complicated procedures, tests rudimentary Japanese language proficiency, and leaves the Ministry of Justice with considerable room for discretion. But similar things are often said about other countries, so even here it is unclear whether Japan operates a particularly strict system.

In the case of Japan, foreigners are not allowed the right to vote in local elections. And dual nationality, though often tacitly accepted in reality, is not formally recognized. Whether by expanding the rights of denizens or by promoting naturalization, the integration of foreign residents will remain a growing challenge going forward. These points have already been raised from the perspective of protecting the rights of foreign residents.

4.2 How to Promote Societal Integration

Still, we should be aware that alienating people who contribute to Japan in various ways is a huge loss from the perspective of the Japanese national interest. The benefits that immigration brings to host countries extend beyond simply bringing in labor and specialized skills from the outside. These benefits include the dynamism that can be gained by bringing in different types of human resources, which serves to stimulate innovation and prevent social sclerosis. As the number of foreigners residing in Japan increases from now on, a condition that cannot be ignored—not only from the perspective of protecting minorities, but also for the future of Japan's national power—will likely concern how to incorporate these people into Japanese society as competitive assets.

Systems allowing foreigners the local franchise and dual nationality were institutionalized by Western countries in the context of their responses to the policy needs that arose from their respective historical conditions, so whether they are universally “advanced” is debatable. Having membership in multiple states means overlapping personal jurisdictions of these states, which has actually caused international problems in the West as well (see Chap. 3). A succession of mainly European countries has recognized dual nationality and limited suffrage for foreigners, conditioned on the strengthening of supranational frameworks such as the EU as well as on stable political relations between the countries involved to be sure that issues of overlapping personal jurisdiction could be resolved peacefully. The problem in Japan's case is that the major immigrant communities in Japan are either people originally from China, a country that poses the greatest security threat to Japan, or people originally from North and South Korea, states still situated at the frontline of geopolitical tensions whose relations with Japan are unstable, both in diplomatic and national sentiment

terms. It would probably be a mistake to categorically deem as xenophobic any concerns about the possibility of introducing a new cause of conflict into Japan's international relations in the event of overlapping personal jurisdiction with these countries, with whom mutual territorial jurisdiction has not even been established. Looking at this issue from a different angle, it also means that there is room for various institutional innovations with people from countries where there is no likely problem with overlapping memberships.

The societal integration of immigrants is a greater challenge than the official system represented by nationality, suggests the experience of the West, which has struggled with societally integrating its Muslim populations. Regardless of official rights and duties at the national level, informal customs for coexistence may evolve over time among people living together in the same area if certain conditions are met. The front lines of Japan's immigration response may be the local governments and local communities where large concentrations of foreigners live. They must smoothly provide education, medical care, garbage collection, and other day-to-day administrative services, as well as obtain the necessary cooperation to do so from their residents, regardless of nationality or ethnic origin; it is a daily imperative that cannot be shirked, not a matter of multicultural ideals. In addition, once the immigrant community grows to a certain size, they will likely become organized, becoming a force that cannot be ignored politically or administratively, and grassroots-level movements to support them can be expected to grow stronger. Indeed, there is the example of Ōta city in Gunma Prefecture, where Brazilian residents of Japanese descent, through trial and error, were vested with more authority, as well as the examples of Kanagawa Prefecture's Ichō Danchi and the Ichō Elementary School (the school district for the apartment complex) that have successfully formed communities with foreign residents at the grassroots level.⁴³ The Chinatowns in Yokohama and Kobe, now such an integral part of the local community, may lack a strong sense of even being "immigrant communities."

Yet the fact is that without national systems and policy support, an excessive burden would fall on local governments and the private sector.⁴⁴ In this sense, it calls for a unified immigration policy. At the time of writing (July 2018), however, Japanese public opinion did not seem sufficiently aware that immigration is already a real issue for the country. There is no comprehensive immigration policy because, for the government of Japan, immigrants do not exist in Japan. Thus, no one has proposed a comprehensive vision for how Japan should tackle this issue. The government's approach is one characterized by incrementalism, cautiously opening the side doors a little at a time, gradually expanding the conditions and periods for entry and stay by keeping within the framework of the existing system.

Certainly, the content of the *Japan Revitalization Strategy 2016* that advocates the "utilization of foreign human resources" is more fully developed than in previous versions, introducing a point system and a Japanese Green Card for highly skilled foreign professionals as well as references to improving the living environment for foreigners, in terms of education and medical care.⁴⁵ Calls for a systematic immigration policy remain generally limited to human rights activists, multiculturalism advocates, and those businesses wishing to import labor. The effort lacks the power to

mobilize national politics because existing immigrant communities have not grown sufficiently large and the local governments on the front lines of dealing with immigrants remain concentrated in a few regions. From the perspective of promoting societal integration, it is desirable for the government to have the policy foresight to implement consistent measures over the long term. Just how difficult it is to address a minority group once it forms with structural discrimination in society can be grasped without drawing from the examples of Muslims and black people in Western society: Japan need only recall its own issues with persons from discriminated areas and the societal integration of *Zainichi* Koreans.

4.3 *International Political Implications*

Given this book's focus on the international politics of population movements, I must also inquire into the international political significance of the immigrant communities and foreigners in Japan. To start, I would like to confirm the obvious: an immigrant community is not the surrogate of its home country government, it is a group composed of real people of flesh and blood, each with their own lives, interests, and ideals. Even if the country-of-origin government tries to influence and engage the immigrant community, there are limits on its ability to do so, clearly evident from the fact that Japanese descendants living overseas do not always take Japan's side. Furthermore, for oppressive regimes with no freedoms, often the communities of their overseas nationals in liberal countries are dissident groups. Rather, it is the exception when one of these communities is organized as a monolithic group. Between the ethnic Taiwanese and mainland Chinese living in Japan, or between *Zainichi* Koreans with North Korean nationality and those with South Korean nationality, their sense of political allegiance will vary, and is not fixed by origin alone. Instead, the identity of these diaspora groups is often a dependent variable, influenced by their political and social environment.

It is natural, however, for an immigrant community, as a vulnerable minority in the country of residence, to actively seek and welcome protection from the government of its country of origin. The coincidence of the immigrant community's interests with its home country government's strategic interests provides the perfect rationale for political intervention. The possibility of a state to intervene militarily to protect its own people, although an extreme situation, cannot be dismissed as a relic of the past—indeed, Russian intervention caused the Crimean Peninsula to effectively secede and become independent from Ukraine in 2015. Even when the governments of the countries concerned have no intent to make trouble, any blatant persecution of immigrant communities in Japan quite possibly could rile public opinion in their countries of origin via transnational migration channels. The treatment of *Zainichi* Korean residents in Japan has indeed become a diplomatic issue between Japan and South Korea on several occasions. When that happens, the situation itself is an independent variable that does harm to international relations, with the possibility that diplomatic relations will deteriorate beyond the intentions of the countries involved.

Let us consider some hypothetical cases that comport with the reality in Japan. For instance, the treatment of technical intern trainees has been noted for being problematic; should the problem get worse, it may harm ties with the governments of the sending countries. Or again, China, a huge immigrant-sending country that has steadily built up its strategic superiority in East Asia, has both the motivation and the opportunity to strategically utilize the overseas Chinese diaspora. Conversely, it might try to control the activities of Chinese dissidents outside its territory. When it is perceived that Chinese residents in Japan have been treated unfairly, the Chinese government, reliant on Chinese nationalism for the legitimacy of its regime, may find it difficult to control anti-foreign hardline sentiment—perhaps even more challenging than for the Japanese government when the US “anti-Japanese” immigration law aroused Japanese public opinion during the period of Taishō democracy (1920s).

What I would like to emphasize here is that a person’s identity, while shaped by ethnic origin, is not immutably fixed; it is something that is constantly reproduced under various conditions. This of course applies to immigrants as well. The conditions that influence their perception of self also include the extent of involvement they have with their country of origin and country of residence. Whether an immigrant community becomes a supporter of a hostile country of origin or has a sense of belonging to its current country of residence also depends on the country of residence’s ability to integrate the community politically and societally. The question that will test the capacity of the entire country of Japan is this: will the Japanese state and society integrate these immigrants, making them an asset for the country, or in the worst-case scenario, will it drive them to side with hostile external forces? In other words, whether new Japanese residents can become members of Japan who share the benefits, hardships, and future with the indigenous Japanese people goes beyond an idealistic matter of protecting the human rights of the weak; it is an issue that will determine the trajectory of Japanese national power.

To return to the fundamentals once more, the essence of politics lies in how to bring diverse peoples together to form an effective collective will. Until now, humankind has structured political communities based on various common elements such as clan, religion, and ethnicity. While it achieved rapid modernization by creating the narrative of a Japan that transcended its social status and place of origin, modern Japan experienced a pathological overdevelopment. The tale of the homeland will be sought hereafter for as long as the human community remains the ideal. Native Japanese people and those newly immigrated to Japan alike will need to show their creativity in sharing a new narrative of Japan, one in which they all are the protagonists.

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 36. According to the Japan Ministry of Foreign Affairs website: <https://www.mofa.go.jp/mofaj/gaiko/nanmin/main3.html> [For a less detailed English version: <https://www.mofa.go.jp/policy/refugee/japan.html>] (accessed March 12, 2024).
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 38. On this point, Hakata Kei, who was actually involved in the refugee screening process, says that the reality of rejected refugee applications is that the majority of applicants either have low refugee status or are pretending to be refugees. “While Japan’s refugee administration gives off an image of a ‘country that is cold towards refugees,’ it deals with refugees humanely to an appropriate extent,” he says, though he doubts whether the system as it stands will be able to continue to deal with refugee issues. (Hakata, op. cit., 179).
 39. Japan International Cooperation Agency. 2016. “Shiria nanmin ryūgakusei ukeire no boshū kaishi: Shiria nanmin ni kyōiku kikai no teikyō e (Starting recruitment for Syrian refugee students: Providing educational opportunities for Syrian refugees).” https://web.archive.org/web/20190510022103/https://www.jica.go.jp/press/2016/20161205_01.html (accessed March 12, 2024).
 40. The following work is a fact-finding survey and critical examination from a humanitarian assistance perspective of Japan’s accepting Indochinese refugees. Yamada, Hiroshi et al. 2007. *Nihon no nanmin ukeire: kako genzai mirai* (*Refugee acceptance in Japan: past, present, future*). Tokyo: Tokyo Foundation (Chūō Kōron Jigyō Shuppan) 2007. Additionally, the following work is excellent for understanding the lives of Vietnamese refugees who have settled in Japan. Yasuda, Minetoshi. 2015. *Mājinaru man: nanmin, imin, teikōsha. Kuni to kuni no kyōkaisen ni tatsu hitobito* (*Marginal Man: Refugees, survivors, resisters. People who stand on the border between countries*). Tokyo: Kadokawa Shoten (especially Chapter 1 “My Classmates are Refugees—Vietnam in Japan”).
 41. Japan Immigration Services Agency website: “Status of Residence List” op. cit. [footnote 27].
 42. Japan Ministry of Justice website. “The Nationality Law.” <https://www.moj.go.jp/ENGLISH/information/tnl-01.html> (accessed March 28, 2024).
 43. Regarding Ōta City, see Mizuno, Tatsuya. 2016. *Imin no uta: Ōizumi Burajiru taun monogatari* (*Immigrant poetry: the story of Ōizumi Brazil town*). Tokyo: CCC Media House. For more information about Ichō apartment complex (*danchi*) and Ichō Elementary School, see the website of the Yokohama City Iida Kitaichō Elementary School (<http://www.edu.city.yokohama.jp/sch/es/iidakitaicho/information.html>) and Nakano, Wataru. 2015. “Kurasu no hansū ijō ga ‘gaikoku ni tsunagaru’ jidō: kyōsei susumu Yokohama ichō danchi” (Over half the class are children with ‘ties to foreign countries’: advancing symbiosis at Yokohama Ichō Housing Complex).” *HUFFPOST* November 13, 2015. https://www.huffingtonpost.jp/2015/10/28/symbiosis-in-yokohama_n_8406106.html (accessed March 12, 2024).
 44. Formed in 2001, the *Gaikokujin Shūjū Toshi Kaigi* (Conference of Multicultural Cities) serves as an information-sharing venue for local governments with high concentrations foreign residents. The conference is an outstanding display of the predicament of local governments that must respond day and night within an institutional framework that does not assume the

presence of foreign residents, utilizing their own limited resources to provide services, such as school enrollment for foreign children, applying the social security system to foreigners, Japanese language communication assistance, and foreign language support at public office service counters. <http://www.shujutoshi.jp/gaiyou/index.htm> (accessed March 12, 2024).

45. Japan Economic Revitalization Headquarters 2016, op. cit., 206–209 [English edition, 159–162.].

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Addendum for the English Language Edition

The immigration control system in Japan has undergone several changes since 2017, about the time I finished writing this book. Some research of note on recent immigration trends in Japan has been published, as well. Allow me, then, to add some supplementary information about these developments for the publication of the English language edition of my book.

The amendment to the Immigration Control Act that passed in 2018 added a new status of residence to the already fairly complex list of categories: Specified Skilled Worker (SSW). There are two types, SSW (i) and SSW (ii). The first type allows foreign nationals who work in jobs that require considerable knowledge of or experience in specified industry fields to stay in Japan for up to five years, provided they pass the requisite skills examination and the Japanese Language Proficiency Test. (Foreign nationals who successfully completed the Technical Intern Training Program (TITP) are exempt from these tests.) The second type allows foreign nationals in jobs that require proficient skills in specified industry fields with increasingly acute labor shortages, such as food service, construction, and agriculture, to stay in Japan indefinitely and to bring their family members with them. Since the period of stay is unlimited, SSW (ii) workers should be able to obtain permanent residence (in principle, in 10 years, but in reality probably earlier), and should face no obstacles to acquiring Japanese nationality. In short, guest workers known as technical interns should also be able to obtain Japanese nationality through this system. If that is the case, it might seem that Japan has decided to finally start accepting immigrants.

At this stage, however, it is uncertain just how large an effect this immigration system reform will have. The system has not been in place for long, and the coronavirus pandemic had severely restricted the international movement of people beginning in 2020. Also, applicants wishing to obtain this status of residence must clear hurdles, such as a skills test and a Japanese language test, but it remains unclear how high the hurdles will be. Be that as it may, the number of foreign residents in Japan under the status of SSW (i), which is effectively an extension of the TITP, topped 170,000 as of June 2023, a mere four years since the system was launched in April 2019. The number of residents with SSW (ii) status, however, was just 12.¹

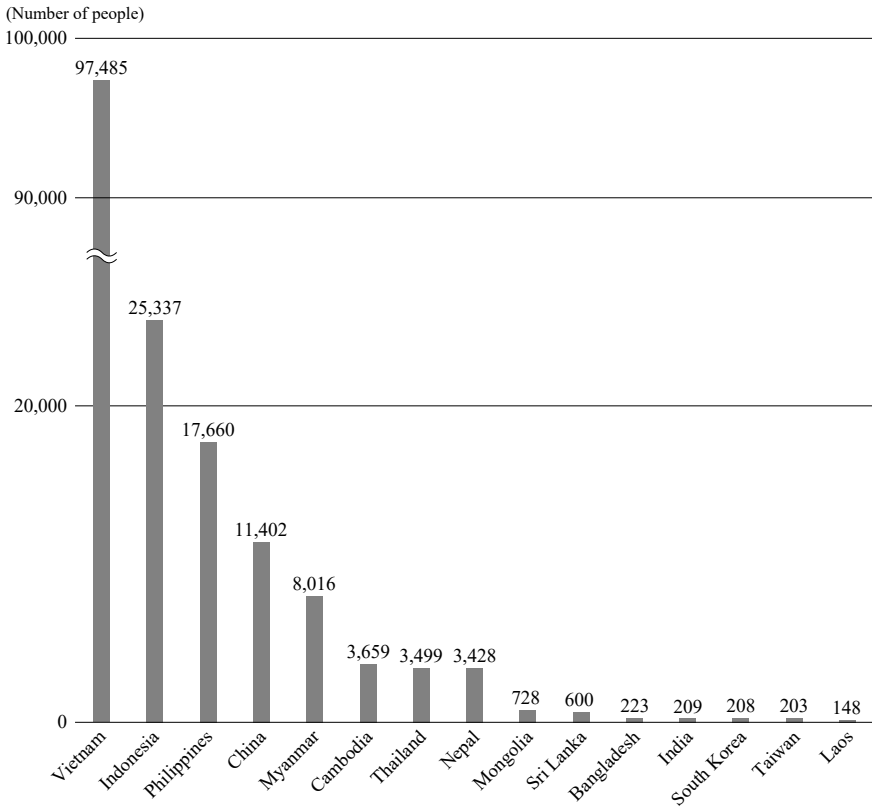


Fig. A.1 Foreign residents with specified skills by nationality. *Note* Preliminary figures. Specified Skilled Workers (i) only. *Source* Immigration Services Agency “Tokutei ginō zairyū gaikokujin-sū [gaiyō-ban] (Number of foreign residents with specified skills [summary])” June 2023. https://www.moj.go.jp/isa/policies/ssw/nyuukokukanri07_00215.html (https://www.moj.go.jp/isa/policies/ssw/nyuukokukanri07_00215.html?hl=en)

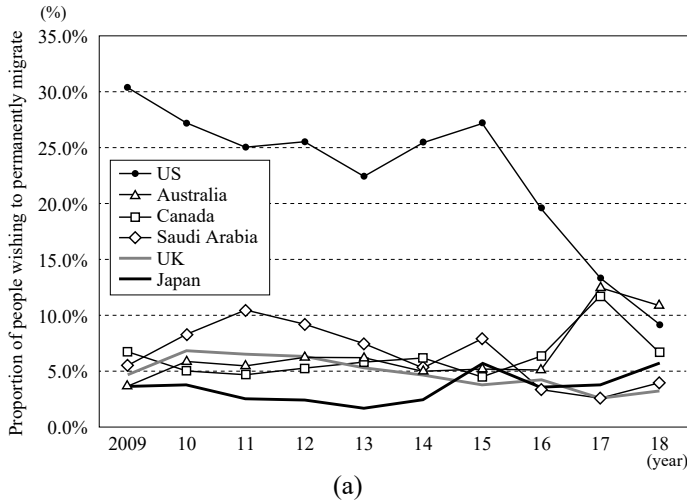
The majority of residents with SSW (i) status come from Vietnam and Indonesia whereas those from Korea and China, which used to constitute the greater part of the foreign community in Japan, are among the minority. Accounting for this are the facts that there is little economic incentive for South Koreans to move to Japan seeing as their country has attained the same level of economic development as Japan, whereas in the case of China, its population is beginning to decline as its economy continues its remarkable growth. Southeast Asian countries have shown steady growth on the whole in contrast to the stagnation of the Japanese economy over the past 30 years; Japan can no longer be called an outstandingly attractive country in terms of wages. If wages were the only incentive, foreign workers would not prefer Japan over other, more attractive places to work in the world, such as in the Gulf countries (Fig. A.1).

A not widely known fact is that unskilled workers are not the only ones who wish to immigrate to Japan. The popularly accepted assessment is that Japan is an extremely

unpopular country as a workplace for highly skilled foreign professionals. Yet the actual number of highly skilled professionals who have been accepted in Japan has been steadily on the rise since 2012, when the points system was introduced. One inference that can be drawn from this is that because the resources available for studying and emigrating abroad also rise as incomes rise, the number of highly educated people with a desire to emigrate also increases. The preference among Asian, especially Southeast Asian, countries for Japan as a migration destination is increasing rather than decreasing, a trend that is stronger among highly educated people, according to a study based on an opinion survey conducted by Gallup. While we do not know what future trends may be, the reality is that immigrants coming to Japan for the purpose of work are diverse and cannot be judged just by the image of menial labor imported from nearby countries. Future changes will not be determined solely by Japan's systems and policies. They are, we must remember, the result of various conditions governing the global labor market (of which Japan is a part) (Fig. A.2a, b).

The Immigration Control Act was amended once more in 2023. The focus of the amendment concerned the treatment of refugees. The main change in the amendment allows authorities to deport persons applying for refugee status for the third time or more unless they have submitted "materials with reasonable grounds" on which they should be recognized as refugees. The amendment arises from previous examples of people avoiding deportation by repeatedly applying for refugee status, taking advantage of the provision that existed suspending deportation while there was a pending application for refugee recognition. Indeed, a similar amendment bill was submitted to the Diet in 2021. At that time, the death of a Sri Lankan national detained at an immigration facility caused a scandal, subjecting the Immigration Bureau to harsh criticism, and scrapping the bill. However, the government revised the bill, softening the content somewhat, and resubmitted it to the Diet two years later. Despite opposition from refugee protection organizations and human rights groups, who argued that the protection of human rights for refugees was inadequate, and over the objections from some opposition parties, the bill was passed by the Diet in 2023.

This 2023 amendment has arguably made the repatriation procedures more stringent, yet it has broadened some aspects of the scope of refugee protection by establishing a system of complementary protection to protect foreign nationals who are not refugees under the Refugee Convention but are quasi-refugees. Since the system has yet to start (as of this writing), how it will actually operate is still unclear. To date, the Japanese government has tended to prefer flexible means for protecting refugees, allowing residence as a humanitarian measure over formally recognizing refugee status. In 2022, refugee status determination procedures resulted in 202 people being recognized as refugees, whereas a far greater number of 1760 people, although not recognized as refugees, were allowed to stay on humanitarian grounds.² In addition, Japan accepted and provided financial assistance to more than 2000 Ukrainians following Russia's invasion of Ukraine in 2020 and granted an extension of stay to nearly 5000 Myanmar nationals after the coup in Myanmar in 2021. Furthermore, with the establishment of the Taliban government in Afghanistan in 2020, Japan



Rank	University graduate or above	High school, junior college graduate	Middle school and below
1	US (20.6%)	US (23.7%)	US (21.7%)
2	Australia (12.5%)	Australia (7.3%)	Saudi Arabia (10.4%)
3	Canada (10.3%)	Canada (7.1%)	United Arab Emirates (5.0%)
4	UK (5.6%)	UK (5.6%)	Canada (3.5%)
5	Japan (4.4%)	Saudi Arabia (4.6%)	Australia (3.3%)
6	Germany (3.9%)	Singapore (4.4%)	UK (3.2%)
7	Singapore (3.5%)	Japan (4.3%)	Singapore (2.5%)
8	France (3.0%)	France (2.8%)	South Korea (2.4%)
9	Switzerland (2.7%)	Germany (2.4%)	Japan (2.4%)
10	New Zealand (2.6%)	Italy (1.8%)	India (1.8%)

(b)

Fig. A.2 **a** Trends in desired destinations for international migrants from Asian countries (Top 10 countries). **b** Top desired destinations of international migrants from Asian countries (by level of education). Note 2015–2018. Source of the preceding two figures: Korekawa, Yū. 2022. “Gurōbaru ni mita kokusai idō ikō no bunseki (Analysis of International Migration Intentions from a Global Perspective)” in Kokuritsu shakai hoshō jinkō mondai kenkyūjo (National Institute of Population and Social Security Research), et al., ed. Kokusai rōdō idō nettowāku no naka no Nihon: dare ga Nihon o mezasu noka (Japan in the International Migrant Labor Network: Who is Aiming for Japan?). Tokyo: Nihon Hyōronsha, 34–35. The author’s underlying data comes from Gallup, 2021. Gallup World Poll 2021

accepted groups of Afghan evacuees, and in this case, it ultimately recognized them as refugees.

Japan is often criticized for its low refugee recognition numbers, yet its level of refugee acceptance is governed largely by factors owing less to Japan’s system or its exclusionism, and deriving simply from a lack of geopolitical turbulence or of failed states around Japan at the moment. Indeed, Turkey and Pakistan are the world’s largest refugee-accepting countries, yet Western commentators would hardly judge

their systems to be tolerant or culturally open to refugees. Japan's low rate of refugee recognition, while indicative that its recognition standards are strict, might result from the attributes of the applicants, because the refugee recognition system itself works and it is possible to appeal to the courts. To begin with, there are considerable doubts with respect to how objective and globally uniform the standards for refugee recognition are.

In summary, as outlined above, there have been no revolutionary changes in Japanese immigration control policy since I finished the manuscript for the original Japanese version of this book. But in addition to those accepted under *de facto* guest worker programs, there has been a steady increase in highly educated immigrants coming to Japan as incomes in Asian countries have risen. Therefore, if we were to say that Japan has a policy of rejecting immigrants, we must conclude that it is a complete failure, for better or worse. There are scant grounds to think that Japan's immigration control system is exceptionally closed from a global perspective. As for settling in Japan, the 10-year (in principle) residency requirement to obtain permanent residence status is viewed as an extremely long period. Yet the period will be shortened if the applicant is in a marital relationship with a Japanese national or is a highly skilled professional with more than a certain number of points, so in reality it can be assumed that in many cases permanent residence is obtained within a fairly short period of time. The residency requirement for acquiring nationality, moreover, is rather short at five years, a period which can be reduced under various conditions.³ Although individual cases can be cited to argue that Japan's ethno-nationalism is exceptionally strong, there is a paucity of credible, internationally comparable evidence—rather similar to the revisionist views of Japan, which were popular in the West in the late 1980s, that attributed Japan's trade surplus to the closed nature of its market and the uniquely exclusionary nature of Japanese culture. The stock of immigrants in Japan has already reached several percent of the population and the scale of the flow of immigrants, just looking at immigrants for labor purposes and excluding family reunions, refugees, and such, already surpasses that of Germany or the United Kingdom. These facts, more than anything else, cast doubt on the view that Japan is a unique exception.⁴

If Japan's current policy has anything distinctive, it would probably be that it avoids using the term "immigrants" and that it continues taking an incremental approach of patching the system together. Consequently, Japan seemingly has no comprehensive policy, one that not only protects the rights of immigrants, which is often an issue, but also addresses head-on the challenges brought about by international population movements: societal and political integration as well as security challenges.

There are signs that Japan's attitude is changing. For instance, the Immigration Bureau itself organized an advisory panel of experts and commenced a review of the TITP, which has been heavily criticized for some time. In its interim report issued in May 2023, the panel recommends that authorities consider abolishing the current TITP that aims to make international contributions through human resource development, recasting it as a system to secure and develop a labor force, and that it be linked to the SSW system, but that some kind of brokerage function between

the migrant-sending countries and the employers in Japan be maintained because of the significant information asymmetry between job recruiters and job seekers in the international labor market.⁵ This suggests that policymakers have begun to move in the direction of bringing unrealistic systems into line with reality.

Japan's demographic trends are behind this move. The rapidly declining birthrate is being strongly felt, which has heightened expectations for immigrant labor among some industries. It is unrealistic, however, to think about using immigrant labor to fill the gap, given the enormity of Japan's population shrinkage. Japan would need to accept hundreds of thousands of immigrants each year up until 2050 to maintain its population, according to a United Nations estimate: 381,000 on average per year to maintain its total population (as of 2005) and 609,000 annually to maintain its working age population (at the 1995 level). Moreover, to maintain the ratio of the working-age population (aged 15–64) to the retired-age population (aged 65 and over) at the 1995 level (a potential support ratio of 4.8), Japan would need to accept more than 10 million immigrants each year, which means that by 2050, 87% of Japan's total population would be people who immigrated to Japan after 1995 or their descendants! Clearly, this is an unrealistic scale for any country.⁶ Moreover, even supposing Japan wanted to bring in such large numbers of immigrants, it is doubtful whether it could attract them, given global demographic trends and the Japanese economy's relative decline. In Japanese society today, there is widespread agreement that the declining birthrate and aging population are serious problems that demand action. Thus, even if this agreement does not lead to solving the problem, it may have the effect of persuading ordinary Japanese people of the need for immigration in the declining birthrate/aging population narrative.

Perhaps even more importantly, Japanese society has become accustomed to interacting with people of foreign origin. Once unseen, they have clearly become a natural part of daily life in Japan's urban areas with the rise in immigrant labor over the past 30-plus years. It takes more than official systems and high-minded ideals for people with different customs and worldviews to coexist; mutual learning put into practice over a long period of time is essential. We can expect that through their interaction with immigrants in everyday settings such as restaurants and convenience stores, Japanese will experience friction and problems but also benefit from the learning effect.

Should a dramatic geopolitical event occur somewhere near Japan, the country would inevitably see a sudden surge of refugees, regardless of these recent domestic developments. Of course, there is no guarantee that geopolitical upheaval comparable to the Arab Spring or the Syrian conflict will not occur around Japan. If anything, since it neighbors China, North Korea, and Russia, Japan is now situated at the forefront of intensifying global geopolitical conflicts. If conflict were to break out on the Korean Peninsula or if China were to invade Taiwan, there is a very real possibility that a substantial number of evacuees would attempt to seek shelter in Japan.

Koreans and Chinese, the main diaspora groups in Japan, have already formed large communities. Should conflict break out on the Korean Peninsula, tensions would flare between the North and South Korean diaspora communities within Japan,

each with bonds to their respective regimes on the peninsula. Or again, were China to invade Taiwan, Japan would have to be prepared for a serious confrontation between the mainland Chinese and Taiwanese diasporas in Japan.

Furthermore, as China and North Korea pose a security threat to Japan itself, it is not immediately determinable whether their diasporas in Japan (which have transnational ties to these states) and those who will come to Japan as refugees seeking protection (who shall also rely on these diaspora communities) are persons whom Japan should protect or should be wary of as a security risk, or even should be welcomed as new members of Japan. Whatever the case may be, it is not enough to respond to these people merely from a perspective of human rights protection; it calls for diverse and complex considerations.

On the topic of transnational immigrants living in Japanese society, no one in the Japanese government has objected so far to the idea of “multicultural coexistence” (*tabunka kyōsei*), but they only talk about ill-defined goals; they have avoided asking the people directly what kind of stance the authorities should take toward those who shall become new members of the Japanese state, and by the same token, Japanese society. It is just not possible that Japan is the sole exception in the world, and so it must confront many of the same issues faced by European countries, which are in some way the precedents for accepting immigrants. And when it does, the Japanese will have to ask themselves what they will offer the new members of Japan and what they will ask of them in return. Ultimately, it comes down to the Japanese people reaffirming for themselves what it means to belong to the state.

For a variety of reasons, it was rare for Japanese after the war to be conscious of their belonging to the state. While relations with the Korean diaspora, a vestige of Japanese imperialism, have always been difficult, for Japan, traditionally an immigrant-sending country, to feel the pressure of an influx of immigrants is just a phenomenon of the past 30 years or so. Moreover, partly due to Japan’s having become heavily reliant on the United States for security after World War II and having no conscription system, the majority of Japanese never even imagined, much less experienced, this ultimate test of belonging to the state. Probably the only time they are conscious of their nationality is presenting their passport at immigration inspection when traveling abroad. Yet, for better or worse, Japan cannot be free from the conditions that govern the world. The choice available to Japan is not whether or not to accept people seeking to migrate across borders to Japan; the only issue is how to institutionalize the process and overcome the inevitable challenges and dilemmas. This is a momentous challenge for any country. Western countries, grappling with growing social division and the rise of politically influential anti-immigration parties, do not offer an attractive model for Japan to emulate. Japan has no choice but to meet this challenge in its own way.

Notes

1. Shutsunyūkoku Zairyū Kanrichō (Immigration Services Agency). 2023. “Tokutei ginō zairyū gaikokujin-sū (Reiwa 5-nen 6-gatsu genzai) [Announcement of the number of foreign residents with specified skills (as of June 2023)].” <https://www.>

- [moj.go.jp/isa/policies/ssw/nyuukokukanri07_00215.html](https://www.moj.go.jp/isa/policies/ssw/nyuukokukanri07_00215.html) (https://www.moj.go.jp/isa/policies/ssw/nyuukokukanri07_00215.html?hl=en).
2. Shutsunyūkoku Zairyū Kanrichō (Immigration Services Agency). 2023. “Rei wa 4-nen ni okeru nanmin ninteishasū-tō ni tsuite (Regarding the number of recognized refugees in 2022)” March 24, 2023.
https://www.moj.go.jp/isa/publications/press/07_00035.html (https://www.moj.go.jp/isa/publications/press/07_00035.html?hl=en).
 3. Regarding the conditions for acquiring permanent residence and nationality, see Kondō, Atsushi and Chen, Tianshi. 2018. “Eijū-ken to kokuseki shutoku (Permanent residency and nationality acquisition)” in *Imin seisaku no furontia: Nihon no ayumi to kadai o toinaosu (Frontiers of immigration policy: Reexamining Japan's Progress and Challenges)*. Tokyo: Akashi Shoten, 112–115.
 4. Korekawa, Yū. 2022. “Gurōbaru ni mita kokusai idō ikō no bunseki (Analysis of International Migration Intentions from a Global Perspective)” in Kokuritsu shakai hoshō jinkō mondai kenkyūjo (National Institute of Population and Social Security Research), et al., ed. *Kokusai rōdō idō nettowāku no naka no Nihon: dare ga Nihon o mezasu noka (Japan in the International Migrant Labor Network: Who is Aiming for Japan?)*. Tokyo: Nihon Hyōronsha, 25–26.
 5. The final report was issued November 30, 2023. https://www.moj.go.jp/isa/policies/policies/03_00033.html
Interim Report (Summary) (Advisory Panel of Experts on Ideal Form of Technical Intern Training Program and Specified Skilled Worker System), May 11, 2023 <https://www.moj.go.jp/isa/content/001399727.pdf> and *Advisory Panel of Experts on Ideal Form of Technical Intern Training Program and Specified Skilled Worker System Interim Report (May 11, 2023)* (Excerpt) <https://www.moj.go.jp/isa/content/001402537.pdf>.
 6. Population Division, Department of Economic and Social Affairs, United Nations Secretariat, *Replacement Migration*, ESA/P/WP.160, March 21, 2000, 49–50. <https://digitallibrary.un.org/record/412547>.

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