Journal of Global History (2014), **9**, pp. 26–48 © London School of Economics and Political Science 2014
doi:10.1017/S174002281300048X

Immigration restriction: rethinking period and place from settler colonies to postcolonial nations*

Alison Bashford
School of Philosophical and Historical Inquiry, Building A14, University of Sydney, NSW 2006 Australia
E-mail: alison.bashford@sydney.edu.au

Abstract

Immigration acts have long been analysed as instrumental to the working of the modern nation-state. A particular focus has been the racial exclusions and restrictions that were adopted by aspirationally white, new world nation-states: Australia, New Zealand, Canada, and the United States. This article looks again at the long modern history of immigration restriction in order to connect the history of these settler-colonial race-based exclusions (much studied) with immigration restriction in postcolonial nation-states (little studied). It argues for the need to expand the scope of immigration restriction histories geographically, temporally and substantively: beyond the settler nation, beyond the Second World War, and beyond 'race'. The article focuses on the Asia-Pacific region, bringing into a single analytical frame the early immigration laws of New Zealand, Australia, the United States, and Canada on the one hand and those of Malaysia, Singapore, Hong Kong, and Fiji on the other.

Keywords exclusion, migration, quarantine, race, settler colonialism, twentieth century

What is the first order of business when a nation-state comes into being? For eighteenth-century republics this was an idiosyncratic and highly context-dependent matter. The Congress of the new United States of America, for example, first ruled on how and when oaths of loyalty were to be made.[1] For the Convention of the First French Republic it was to strip the king of his power. By the twentieth century, it had all become much more standard. The statute most likely to follow constitutional declarations of independence of various kinds was an immigration act. Typically, new nation-states quickly established the rules whereby certain people were denied admission, or might be deported, as undesirable

* The author extends thanks to Sunil Amrith, Paul Kramer, Jane McAdam, and participants at the World History Seminar, University of Cambridge, as well as the editors of, and anonymous readers for, this journal. This research has been funded by the Australian Research Council.

1 United States Congress, *Act to regulate the time and manner of administering certain oaths*, chap. 1, stat. 23, 1789.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

entrants. Thus, the first new nation of the twentieth century, the Commonwealth of Australia, passed the *Immigration Restriction Act* in 1901, in its initial parliamentary session. And the first new nation of our own century, the nearby Democratic Republic of Timor-Leste, passed its law regulating *imigração e asilo* (immigration and asylum) in October 2003.[2]

Immigration acts have long been analysed as instrumental to the working of the modern nation-state. A particular focus has been the racial exclusions and restrictions that were adopted by aspirationally white, new world nation-states, especially those where British imperial and North American histories intersected: Australia, New Zealand, Canada, and the United States.[3] Taking the twentieth century as a whole, however, most nation-states have not emerged from such settler-colonial circumstances at all, but rather as decolonized polities declaring independence. Put another way, the more representative case is not Australia but Timor-Leste. But what is the connection between the history of settler-colonial race-based exclusions (much studied) and immigration restriction in postcolonial nation-states (little studied)? In posing and beginning to answer such an embracing question, this article moves across the modern period and across multiple jurisdictions, from settler colonies to postcolonial nations. The aim is to re-adjust the historiographic frame of reference, showing the reasons why and how future histories of immigration restriction might well enlarge their temporal and geographic reach.

Histories of nineteenth- and twentieth-century intra- and inter-continental migration fall into two broad types. On the one hand, the movement of people itself has been documented and analysed in detailed studies of causation, numbers, routes, and destinations of people journeying out and returning, in the age of mass migrations: Europeans to the Americas and to Australasia; Chinese around East Asia and Southeast Asia, and across the Pacific; Indians into Southeast Asia and in smaller numbers as indentured workers across the Pacific in several directions, and to the Caribbean; Arab diasporas across the Indian Ocean and to the Malay world. This scholarship has collectively examined the effects of mass movement in multiple domains, from the demographic to the economic to the cultural and subjective.[4]

---

2 Commonwealth of Australia, *Immigration Restriction Act*, no. 17, 1901; Republic of Timor-Leste, *Immigration and Asylum Act*, no. 9, 2003.

3 Marilyn Lake and Henry Reynolds, *Drawing the global colour line: white men's countries and the international challenge of racial equality*, Cambridge: Cambridge University Press, 2008. For Canada, see W. Peter Ward, *White Canada forever: popular attitudes and public policy towards Orientals in British Columbia*, Montreal: McGill-Queens University Press, 1990. For New Zealand, see P. O'Connor, 'Keeping New Zealand white, 1908–1920', *New Zealand Journal of History*, 2, 1968, pp. 41–65. For Australia, see A. T. Yarwood, *Asian migration to Australia: the background to exclusion*, Carlton, Victoria: Melbourne University Press, 1964; Sean Brawley, *The white peril: foreign* relations and *Asian immigration to Australia and North America, 1919–1978*, Kensington, NSW: University of New South Wales Press, 1995. For the US, see Andrew Gyory, *Closing the gate: race, politics, and the Chinese Exclusion Act*, Chapel Hill, NC: University of North Carolina Press, 1998; Desmond King, *Making Americans: immigration, race, and the origins of diverse democracy*, Cambridge, MA: Harvard University Press, 2000. See also Sally Peberdy, *Selecting immigrants: national identity and South Africa's immigration policies, 1910–2008*, Johannesburg: Witwatersrand University Press, 2009.

4 For example, Patrick Manning, *Migration in world history*, New York: Routledge, 2005; Ulrike Freitag and William G. Clarence Smith, eds., *Hadhrami traders, scholars and statesmen in the Indian Ocean, 1750s to 1960s*, Leiden: Brill, 1997; Timothy J. Hatton and Jeffrey G. Williamson, *Global migration and the world economy*, Cambridge, MA: MIT Press, 2008; Adam McKeown, 'Global migration, 1846–1940', *Journal of World History*, 15, 2, 2004, pp. 155–89; Dirk Hoerder and Leslie Page Moch, *European migrants: global and local perspectives*, Boston, MA: Northeastern University Press, 1996; Sunil S. Amrith, *Migration and*

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

On the other hand, historians have assessed the growing *regulation* of this massive modern phenomenon by states of various kinds.[5]

The latter – the politico-legal history of immigration acts and their relation to nation-states – is my specific object of inquiry here: not migration but migration control. I analyse a large set of Anglophone immigration laws from the Asia-Pacific region, and from the nineteenth century to the twenty-first. The laws are as notable for their similarity to each other as for their escalating number over time. Anglophone laws were not, of course, the only regulations contributing to the international system historically. Yet the coincidence of American and British imperial controls, especially over the Pacific, makes them by far the most numerous across the modern period, constituting both a founding and a comparable set. Analysis of this region shows how, for all their other vast differences, polities of all kinds have progressively ruled on border control, towards a remarkably standard endpoint. The pattern of the whole suggests the need to expand analysis of the period, the place, and the content of immigration restriction histories; beyond the settler colonies and settler nations, beyond the Second World War, and even beyond 'race'.

First, let us consider period. Current scholarship suggests a temporal arc that has a false start in the 1850s with early anti-Chinese measures, a high moment from the 1880s to the 1930s, and a challenge and decline in the decades after the Second World War.[6] Adam McKeown influentially traces a diffusion of border control until the war, and ends his monumental study with a contemporary coda that sketches the regimes within which individuals are currently categorized by, caught within, and also evade the system. Technologies of border control ultimately 'became part of the very fabric of the international system of self-determining nation states'.[7] Similarly, in seeking to understand the global system of international migration, Giovanni Gozzini drew a twentieth-century history by analysing the migration era at two temporal slices: 1900 and 2000.[8] Such a comparison yielded much. However, both approaches leave open the question of what happened after the Second World War, in the decades of decolonization. Far from being an endpoint, after

---

diaspora in modern Asia, Cambridge: Cambridge University Press, 2011; Jan Lucassen and Leo Lucassen, 'From mobility transition to comparative migration history', *Journal of Global History*, 6, 2, 2011, pp. 299–307.

5 International and comparative studies include Wayne A. Cornelius, Philip L. Martin, and James F. Hollifield, eds., *Controlling immigration: a global perspective*, Stanford, CA: Stanford University Press, 1992. This book covers North America, Europe, and Japan, but fails to recognize the great uptake of immigration restriction in decolonized nations. Eytan Meyers examines Western nations (Australia, Britain, Canada, France, Germany, the Netherlands, Sweden, Switzerland, and the United States) in 'The causes of convergence in Western immigration control', *Review of International Studies*, 28, 1, 2002, pp. 123–41. See also Anita Böcker et al., eds., *Regulation of migration: international experiences*, Amsterdam: Het Spinhuis, 1998. Adam McKeown has brought these strands together most influentially in his monumental study of border control that also analyses patterns of mass migration: Adam M. McKeown, *Melancholy order: Asian migration and the globalization of borders*, New York: Columbia University Press, 2008.

6 Adam McKeown, 'Chinese emigration in global context, 1850–1940', *Journal of Global History*, 5, 1, 2010, pp. 95–124. Lake and Reynolds also end their study with post-war 'universal rights' apparently ensuring 'individual rights without distinction': *Global colour line*, pp. 352–56.

7 McKeown, *Melancholy order*, pp. 320–48, 368. See also José C. Moya and Adam McKeown, 'World migration in the long twentieth century', in Michael Adas, ed., *Essays on twentieth century history*, Philadelphia, PA: Temple University Press, 2010, p. 11.

8 See Giovanni Gozzini, 'The global system of international migrations, 1900 and 2000: a comparative approach', *Journal of Global History*, 1, 3, 2006, pp. 321–41.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

which border control became so ubiquitous as to be almost unremarkable, the 1950s and 1960s should be seen as a period in which the older generation of national and colonial migration laws converged with those of the new postcolonial nations. This is where 'diffusion' took place, and took off; the point at which national migration law became globally normalized.

The main explanation and rationale for the received periodization *c.*1850–1950 has long been historians' particular concern to trace racial discrimination within immigration restriction: from the 'Chinese restriction acts' to the slow repeal of racial criteria over the 1940s, 1950s, and 1960s. But did the immigration acts only function in terms of race, nationality, and ethnicity? Plainly not. In intent, in substance, in origin, and in their current form, immigration restriction laws have always been about other, and more, criteria of restriction and exclusion. Second, then, this article deals squarely with the content of immigration law; with the multiple health, political, criminal, and moral criteria by which people's movement was (and is) governed. This feeds back to the periodization question, suggesting a chronology both earlier than the 1850s (beginning with quarantine acts in the 1830s) and later than the apparent decline after the Second World War.

Finally, we must take account of place. A reassessment of the period and the content of these laws is simultaneously required by and demands a wider geographical reach. Immigration restriction was never limited to the so-called white settler colonies – the overwhelming focus of scholarship to date – but simultaneously involved any number of other kinds of colonies from Malaya to Fiji, from Brunei to Singapore. When colonies became nation-states, postcolonial sovereignty was typically declared with new immigration acts. Furthermore, these statutes were similar to, even identical with, the older colonial laws. Indeed, verbatim textual repetition across vast reaches of time and across kinds of polities becomes evident: this is revealed by examining an Anglophone legal world in particular.

This article argues for extensions to what is already an impressively transnational historiography, beginning but certainly not completing a more expansive history of immigration restriction. I begin with a recapitulation of work on the settler colonies and on immigration restriction in the US, surely one of the earliest forays into transnational history-writing.[9] I then argue for the significance of other criteria of exclusion – 'beyond race' – an intervention that itself begs a fresh look at regional indenture and migration law. In turn, the world of immigration restriction beyond the settler colonies invites investigation into the era after 1945. By looking at the statutes produced in and by regional postcolonial nations between the 1940s and the 1970s I identify the substance of the globalization of border control that is asserted often enough, but whose unfolding is rarely investigated closely. The stunning uniformity of migration law is one key element of modern global convergence.

Settler-colonial laws in the Asia-Pacific region

It was over the Pacific Ocean that race-based immigration regulation in the British empire of settlement crossed paths with that in North America. In the 1850s an early concentration of

9 For example, Robert Huttenback, *Racism and empire*, Ithaca, NY: Cornell University Press, 1976; Andrew Markus, *Fear and hatred: purifying Australia and California, 1850–1901*, Sydney: Hale & Iremonger, 1979.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

procedures began to govern the movement of Chinese people seeking gold in the triangle between China, the Pacific coast of North America, and the newly self-governing colonies in Australia.[10] These measures did not 'exclude' Chinese but did begin to enforce strong disincentives: landing taxes, head taxes, or limits on numbers of Chinese 'immigrants' per vessel. Early laws nominated Chinese people specifically, both in their clauses and in their titles. The first Victorian Act (1855), for example, defined 'immigrants' as 'any male adult native of China or its dependencies or of any islands in the Chinese Seas or any person born of Chinese parents'.[11] In South Australia two years later, an *Act to make provision for levying a charge on Chinese arriving in South Australia* was even more explicit.[12] Many of these Chinese-specific laws were quickly repealed, having served as extraordinary responses to the gold rush circumstances.

These were 'experiments in border control', as Adam McKeown has put it; 'experiments' because in general free movement, free trade, and the free migrant were highly valued in the mid nineteenth century.[13] International law, as well as many states, had long favoured open movement, with some nominated exceptions (for example, criminals) and in some emergency periods (for example, wartime or in times of epidemic disease).[14] There were national exceptions too: Japan's control of outward movement is perhaps the most rigid and well-known instance.[15] As a rule, then, there was considerable international anxiety in the middle of the nineteenth century about the prospect of limiting movement. Some of the earliest agreements about immigration were precisely to ensure such freedom, mainly to safeguard commercial exchange. In 1868, the Chinese emperor and the US president agreed on 'the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of free migration and emigration of their citizens and subjects, respectively from one country to the other, for the purposes of curiosity, of trade, or as permanent residents'. Both parties eschewed 'any other than an entirely voluntary emigration' and agreed to make removal of individuals against their will a penal offence: and so, at least in the United States (but also, as we shall see, in the British settler-colonial instances), 'immigration laws' had one counter-intuitive origin in the enforcing, as it were, of *free* migration, that is, the restriction of the 'coolie' trade, of indenture.[16]

10 Roger Daniels, 'The growth of restriction immigration policies in the colonies of settlement', in Robin Cohen, ed., *The Cambridge survey of world migration*, Cambridge: Cambridge University Press, 1995, pp. 39–44; Mae M. Ngai, 'Chinese miners, headmen, and protectorates on the Victorian goldfields, 1858–68', *Australian Historical Studies*, 42, 1, 2011, pp. 10–24; Lake and Reynolds, *Global colour line*, ch. 1.

11 Victoria, *Act to make provision for certain immigrants*, no. 34, 1855, section 1.

12 South Australia, *Act to make provision for levying a charge on Chinese arriving in South Australia*, Act 3, 1957.

13 McKeown, *Melancholy order*, pp. 126–9.

14 Jane McAdam, 'The right to leave any country: an intellectual history of freedom of movement in international law', *Melbourne Journal of International Law*, 12, 1, 2011, pp. 27–56.

15 For Japan's later history of border control, see Tessa Morris-Suzuki, *Borderline Japan: foreigners and frontier controls in the postwar era*, Cambridge: Cambridge University Press, 2010.

16 United States of America, *Proclamation by the President: additional articles to the treaty between the United States and China of June 18 1858*, 1868, article 5. See also United States of America, *Act to prohibit the coolie trade by American citizens in American vessels*, chap. 27, 1862. For important discussion, see Marilyn Lake, 'Chinese colonists assert their "common human rights": cosmopolitanism as subject and method of history', *Journal of World History*, 21, 3, 2010, pp. 375–92.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

The early 1880s saw another round of legislative activity across many jurisdictions. In 1881 there were new Chinese restriction acts in Victoria, South Australia, Queensland, New South Wales, New Zealand, California, and British Columbia. A new United States' treaty with China proclaimed in October 1881 that the government of China would recognize the US right to suspend or limit Chinese immigration 'but may not absolutely prohibit it': the treaty applied only to labourers, 'other classes not being included in the limitations'.[17] This great proliferation of laws also led to the formation of a regional bloc, an Anglosphere produced by 'great white walls' as some studies have put it,[18] or a 'global colour line' as the phenomenon was characterized first by W.E.B. Du Bois in the early twentieth century and historicized a century later by the historians Marilyn Lake and Henry Reynolds.[19] It is perhaps too often overlooked that the production of the settler colonies as 'white' involved immigration laws that were sometimes not about exclusion at all, but the opposite; they were also measures that encouraged entry, migration, naturalization, and settlement. The Queensland *Immigration Act* of 1882, for example, aimed to stimulate immigration to Queensland by people from the United Kingdom and Europe.[20] The very first immigration law in New Zealand promoted immigration from the United Kingdom. Qualifying the sometimes too-easy conflations of immigration restriction with anti-Chinese activity, it was in fact colonial Australians who were restricted in the latter case.[21]

The regulation of immigration in the late nineteenth century affected not only Chinese, Japanese, and Indians, but Europeans as well. In the US and Canada, restriction measures on the west coast were mirrored by (but, as we shall see, also preceded by) regulation of European immigration on the east coast.[22] At federal and at state/provincial levels, restrictions on entry proliferated, with slightly differing chronologies for various borders.[23]

---

17 *Treaty between the United States and China concerning immigration*, 1881, article 1.

18 Charles Price, *The great white walls are built: restrictive immigration to North America and Australasia, 1836–1888*, Canberra: Australian National University Press, 1974; Aristide R. Zolberg, 'The great wall against China: responses to the first immigration crisis, 1885–1925', in Jan Lucassen and Leo Lucassen, eds., *Migration, migration history, history: old paradigms and new perspectives*, Bern: Peter Lang, 1997, pp. 291–315.

19 W. E. B. Du Bois, *The souls of black folk*, New York: New American Library, 1903, p. 19; Lake and Reynolds, *Global colour line*.

20 Queensland, *Immigration Act*, Act 7, 1882.

21 The act aimed to facilitate an infrastructure to bring immigrants to New Zealand, 'from the United Kingdom of Great Britain and Ireland or elsewhere with the exception of the Australian Colonies'. New Zealand, *Immigration Act*, Act 42, 1868, section 2.

22 See, for example, Walter Nugent, *Crossings: the great transatlantic migrations, 1870–1914*, Bloomington, IN: University of Indiana Press, 1992; K. Calavita, *U.S. immigration law and the control of labor*, London: Academic Press, 1994; Aristide R. Zolberg, *A nation by design: immigration policy and the fashioning of America*, Cambridge, MA: Harvard University Press, 2006; Mae M. Ngai, *Impossible subjects: illegal aliens and the making of modern America*, Princeton, NJ: Princeton University Press, 2004; Donna R. Gabaccia, *Foreign* relations*: American immigration in global perspectives*, Princeton, NJ: Princeton University Press, 2012. Arab immigration to the US has also been examined, in Sarah M.A. Gualtieri, *Between Arab and white: race and ethnicity in the early Syrian-American diaspora*, Berkeley, CA: University of California Press, 2009.

23 For Mexican and Canadian borders, see Erika Lee, 'Enforcing the borders: Chinese exclusion along the US borders with Canada and Mexico, 1882–1924', in Donna R. Gabaccia and Vicki L. Ruiz, eds., *American dreaming, global realities: rethinking U.S. immigration history*, Urbana, IL: University of Illinois Press,

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

Population movement over territorial borders within the Americas increasingly became part of the immigration restriction story as well. Canadian laws, for example, managed northward migration from the US, targeting certain US sub-populations. The country reserved powers to prohibit 'immigrants belonging to any race deemed unsuited to the climate or requirements of Canada'.[24] 'Unsuitability' also marked out populations defined by different economic-cultural codes, effectively excluding Dukhobor, Mennonite, and Hutterite communities living in the US and seeking entry to Canada. In 1919 it was proclaimed that they were 'undesirable' because of 'peculiar customs, habits, methods of holding property and because of their probable inability to become readily assimilated'.[25]

This was the emerging tradition within immigration law, arguably still in operation, of restricting particular populations without actually naming them. In fact Canada, like New Zealand,[26] continued to nominate Chinese people specifically in early twentieth-century laws, but they were the outliers. As a general trend, statutes that had once made up an international body of Chinese restriction acts began to move away from such nominations, instead deploying a range of devices and criteria for the restriction of 'coloured aliens', but through seemingly 'raceless' law. The United States shifted from the specification of race to the nomination of a geographic zone, barring the natives of a quadrant of the globe.[27]

Australia's *Immigration Restriction Act* (1901) was the exemplary 'raceless' act. A new federal statute, it replaced prior colonial laws that had specifically nominated Chinese or 'coloured' exclusion or restriction: the Victorian *Chinese Act* (1890), the West Australian *Chinese Immigration Restriction Act* (1889), the Tasmanian *Coloured Races Immigration Act* (1896), the New South Wales *Coloured Races Restriction and Regulation Act* (1896), and the Queensland *Chinese Immigrants Regulation Act* (1877/1884). The new Act, by contrast, was a generic 'immigration act', and, after battles with the Colonial Office in London, did not mention Chinese, Japanese, or Indians. Yet it served very effectively to limit their entry. It did so through a combination of international reputation (of a white Australia policy) and the device of a dictation test in any European language, borrowed from Natal.[28] This act declared a new nation-state and was a general immigration act, not 'just' a race-based one, notwithstanding the historical analysis it has garnered. The law regulated the entry of *all* people into the new nation, including, it was noted with some alarm in the

---

2006, pp. 158–89; Daniel Tichenor, *Dividing lines: the politics of immigration control in America*, Princeton, NJ: Princeton University Press, 2002. For a short overview, see David Reimers, 'Explaining migration policy: historical perspectives', in Marc R. Rosenblum and Daniel F. Tichenor, eds., *The Oxford handbook of the politics of international migration*, Oxford: Oxford University Press, 2012, pp. 274–300.

24 Canada, *Immigration Act*, chap. 27, 1910, section 38.

25 'Landing in Canada of Dukhobors, Hutterites and Mennonites Prohibited'; proclaimed under section 38 of the *Immigration Act*. See *Canada Gazette*, 52, 1919, p. 3824.

26 The New Zealand *Chinese Immigrants Act* of 1881 was amended and strengthened in 1901; the 1899 New Zealand *Immigration Act* functioned quite separately. New Zealand, *Chinese Immigrants (Amendment) Act*, no. 3, 1901.

27 United States, *Act to regulate the immigration of aliens to, and the residence of aliens in the United States*, chap. 29, 1917.

28 Jeremy Martens, 'A transnational history of immigration restriction', *Journal of Imperial and Commonwealth History*, 34, 3, 2006, pp. 323–44.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

United Kingdom, British subjects and citizens.[29] Far from being a postcolonial law, it was nonetheless, and in this sense, a declaration of independence.

Beyond race: other criteria of exclusion

Much studied, the dictation test device that effectively excluded 'coloured aliens' did not encompass the Australian Act's full scope or powers. People could also be (and were) excluded or deported on a range of fitness, health, economic, and political criteria – a list of prohibitions that became standard. 'Coloured aliens' were not the only people subject to the new international system of the regulation of movement. Historians tend to downplay these other powers and prohibitions, or else see them as unremarkable. However they clearly shaped national populations (including in racialized ways), and fed newly independent nationalist cultures and agendas. They warrant attention because they were so similar between jurisdictions, and because they remained largely unchanged over the twentieth century and into the present. Indeed these other criteria by which entry (and sometimes exit) were managed were both more longstanding and more enduring than the race-based prohibitions on entry, with which they were nonetheless connected.

In some, even most, jurisdictions, these other elements became codified before the 'race' clauses emerged, constituting a nascent international system of border control implemented in the main on English, Scottish, Welsh, and Irish migrants. Most, if not all, nineteenth-century statutes ended up including a clause prohibiting 'idiots or the insane', terminology that by the early twentieth century was often refined to specific conditions – epilepsy, for example – and later again typically reverted to generic 'mental disorder' or 'mental disability'.[30] Likewise, almost all immigration acts rendered people with contagious diseases prohibited entrants. The third class of prohibited entrant that was common across immigration statutes covered prostitutes and those living off the earnings of prostitution. This, also, was sustained over time (indeed, migration acts are one neglected instrument by which an international traffic in women was protested).[31] Fourth, migration laws all included some kind of 'public charge' clause: variously worded stipulations that would-be immigrants unable to support themselves financially would be refused entry or admitted with qualifications (for example, an undertaking by a resident or citizen that they would incur all costs). Finally, most immigration acts included clauses about political asylum on the one hand (protection for persons convicted of political offences) and the exclusion of those considered dangerous to the political order on the other. These powers had a provenance in extradition law.[32] Linked was a standard clause enabling a nation-state to exclude or deport a person who had been convicted of a criminal offence.

29 Alison Bashford and Catie Gilchrist, 'The colonial history of the 1905 Aliens Act', *Journal of Imperial and Commonwealth History*, 40, 3, 2012, pp. 409–37.

30 Alison Bashford, 'Insanity and immigration restriction', in Catherine Cox and Hilary Marland, eds., *Migration, health, and ethnicity in the modern world*, Basingstoke: Palgrave, 2013, pp. 14–35.

31 In Hong Kong, for example, the protection of women and abuses of emigration came under the same ordinance in 1873. Hong Kong, *Ordinance for the better protection of Chinese women and female children, and for the repression of certain abuses in* relation to *Chinese emigration*, ordinance no. 6, 1873.

32 See Alison Bashford and Jane McAdam, 'The right to asylum: Britain's 1905 *Aliens Act* and the evolution of refugee law', *Law and History Review*, 32, 2014.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

Some of these powers had early modern or eighteenth-century lineages, implemented temporarily in wartime (political security, asylum, enemy aliens) or in times of epidemic (quarantine). But their consolidation within immigration laws, and their implementation as more or less permanent rules governing entry, was a phenomenon of the late modern period. That is to say, once they became ordinary not extraordinary, these powers and the increasingly elaborate infrastructure, personnel, and bureaucracy around them constituted the globalization of borders every bit as much as, and often in concert with, race-based restrictions of movement.

If we accept that the history of immigration control must include the multiple criteria for exclusion beyond (but also integrating with) 'racial' restriction, alternative chronologies emerge: it becomes insufficient to point to the 1850s 'experiments in border control' as an origin or to gesture generally towards multiple other preceding practices that regulated mobility.[33] One alternative origin of immigration restriction might well be a set of quarantine laws that emerged in the 1830s. The threat of the global spread of cholera prompted colonial governments, especially those situated continentally at first points of entry, to pass laws that could see ships and people detained, screened, and potentially returned. The New South Wales *Quarantine Act* of 1832, for example, screened vessels and individuals 'to prevent the introduction of the disease called the malignant Cholera or any other infectious disease highly dangerous to the health of His Majesty's subjects'.[34] This Pacific activity mirrored the measures taken on the Atlantic seaboard of the Americas.[35] The nineteenth-century chronology of quarantine laws suggests something much more substantial and enduring than mere experiments. While laws restricting Chinese immigration started (1850s) and then stopped (1860s) and then started again (1880s), quarantine laws, once introduced, steadily expanded into a network of procedures that governed entry and exit: in the 1830s and 1840s, New South Wales, Newfoundland, and Western Australia; in the 1850s, Hong Kong; in the 1860s, Queensland, the Straits Settlements, and Canada; in the 1870s, New Zealand, Fiji, South Australia, and the US; in the 1880s, Ceylon, Tasmania, and Natal. These were laws that generally became permanent, not emergency, measures. For example, a Newfoundland Act, originally passed in 1833, was amended ten years later by an *Act to render perpetual* powers 'to provide against the introduction of Infectious or Contagious Diseases and the spread thereof in this Island'.[36]

Widening our analysis to incorporate other 'prohibited classes', especially with regard to disease, also reveals the limitations of the current settler-colonial historiographical focus. In 1855 – the same year that California and Victoria began to regulate the movement of Chinese people in earnest – the British government in Hong Kong passed the *Chinese Passengers Act*. Part of the continuum of quarantine laws, this, and a suite of regulations that followed, governed the mobility of Chinese people with health and disease firmly in focus. Unlike the

33 McKeown, *Melancholy order*, pp. 41–42, 324–6, analyses medical inspection mainly as part of the diffusion of border control in the interwar years, after the fact of race-based immigration restriction. However, as far as legal history is concerned, it is more correct to invert this sequence.

34 New South Wales, *Quarantine Act*, no. 1, 1832, preamble.

35 Charles E. Rosenberg, *The cholera years: the United States in 1832, 1849, and 1866*, Chicago, IL: University of Chicago Press, 1962.

36 Newfoundland, *An Act to Render Perpetual … Quarantine*, chap. 17, 1843.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

better-known settler-colonial laws, the rationale was to monitor outgoing not incoming vessels, seeking to minimize the threat of disease as Chinese people moved from Hong Kong to other hemispheres. Chinese passenger ships were defined as 'every ship carrying from any port in Hong Kong, and every British ship carrying from any port in China or within 100 miles of the coast thereof, more than 20 passengers, being natives of Asia'. All such vessels were to adhere to strict regulations, and captains and shipping companies were to produce valid emigration papers (including passenger lists) on departure and arrival.[37] This law and an 1858 amendment sought to ensure that for voyages 'eastward of the Cape of Good Hope', and those bound for the west coast of America, a qualified European or American surgeon would be on board, and failing that possibility 'a Chinese medical practitioner, properly qualified to the satisfaction of the Emigration Officer'.[38] Medical inspections of Chinese passengers and crew of outbound ships became, in theory, compulsory.

This additional legislative activity in 1855 complicates the picture of transpacific immigration, since we see movement regulated at both ends of a voyage: Hong Kong activity accompanied the new Californian and Australian procedures regulating entry. Screening at points of departure was a process that became common over the twentieth century, but it was unusual a century earlier. Indeed, Hong Kong laws continued to function as the mirror of settler-colonial laws: when, by the First World War, 'Chinese' restriction had largely disappeared from national acts, the colony of Hong Kong consolidated its multiple laws as the *Asiatic Emigration Ordinance*. Medical inspection continued to be required, for assisted emigrants specifically, before embarkation.[39]

Suggesting such quarantine laws as an earlier nineteenth-century origin for immigration restriction is more than mere quibbling about start dates. Taken together they were not a prelude to immigration restriction; they *were* immigration restriction. Quarantine and immigration laws were effectively interchangeable, the former enabling the deportation and return of people as well as their compulsory isolation, the latter almost universally including infectious disease as a reason to limit movement. Sometimes quarantine and immigration laws were consolidated. For example, the 1866 Canadian *Act respecting emigrants and quarantine* brought together the various powers in anticipation of Canadian confederation in 1867 (another founding immigration Act). It ruled on customs, bonds for entry, fines for masters of vessels for bringing 'lunatic, idiot, deaf and dumb, blind or infirm' passengers, and detention of a 'vessel, person, or thing' infected with any contagious disease.[40] In Canada, disease clauses proliferated within both Chinese restriction acts and generic immigration acts. Its 1903 *Chinese Immigration Act* excluded paupers, idiots, the insane, and any Chinese person suffering from any loathsome, infectious, or contagious disease.[41] The 1906 *Immigration Act* likewise prohibited immigrants with 'loathsome, contagious or infectious disease'.[42] Indeed, it is difficult to find an immigration law

37 Hong Kong, *The Chinese Passengers Act*, chap. 104, 1855.

38 Hong Kong, *An Ordinance for Chinese Passenger Ships*, no. 13, 1858, section 1.

39 Hong Kong, *Asiatic Emigration Ordinance*, no. 30, 1915, part III.

40 Consolidated Statutes of Canada, *Act respecting emigrants and quarantine*, chap. 40, 1866.

41 Canada, *Chinese Immigration Act*, chap. 8, 1903.

42 Canada, *Immigration Act*, chap. 19, 1906, section 27.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

that did not include a section that prohibited entry on these grounds, often using precisely these words.

Highlighting other criteria and prohibited classes of people does not minimize the racialization of immigration restriction that took place over time: it neither equates these kinds of exclusions nor calibrates them according to political significance. Rather, it more carefully explains the origins and refinements of immigration restriction, including the reliable grafting of race-based discriminations onto these pre-existing and co-existing devices, procedures, and powers to limit mobility. It recognizes the growing intricacy of just who made up 'prohibited classes' and who were 'undesirable immigrants': the agreement and uniformity among multiple jurisdictions becomes all the more remarkable because of this intricacy. Race discrimination alongside discrimination based on health, political, financial, and moral criteria were all elements of a larger system that governed inter-continental movement, a steadily growing phenomenon. Unlike the race discrimination clauses and statutes, however, quarantine laws – the ubiquitous contagious disease, mental health, public charge, and political security clauses and prohibitions – form an unbroken legal provenance over time. As we shall see, this demonstrates the clear links between settler-colonial legislation and later twentieth-century laws of postcolonial nations.

Beyond the settler colonies: indenture and immigration restriction

Not a few historians have noted the incorrect presumption of total 'exclusion', with regard to immigration laws. In fact the regulation of movement was at least as much about managing the conditions on which people entered a jurisdiction as it was about keeping people out.[43] Accordingly, there has been important recent US analysis that foregrounds selective entry by class and race. Chinese merchants, for example, were often exempted from immigration agreements since existing trading networks needed to be maintained and new ones opened. Thus Paul Kramer explores the otherwise unlikely opposition to Chinese restriction laws by some southern US traders.[44] Commercial opportunities with China needed safeguarding. That, indeed, is one reason why agreements about immigration were 'race' specific: they were refinements of trading treaties between the US government and the Chinese emperor.[45] One way or another, all immigration laws stipulated 'classes' of entrants, from merchants to indentured labourers to 'paupers' apparently unable to work (and so likely to become a public charge). Such work signals the significance of trading and entrepreneurial diasporas to immigration restriction over the long modern period and in many regions. It also signals the inescapable centrality of labour.

43 Adam McKeown, 'Ritualization of regulation: the enforcement of Chinese exclusion in the United States and China', *American Historical Review*, 108, 2, 2003, pp. 377–403; McKeown, *Melancholy order*, pp. 121–33.

44 P. A. Kramer, 'Empire against exclusion in early 20th century trans-pacific history', *Nanzan Review of American Studies*, 33, 2011, pp. 13–32. See also Donna R. Gabaccia, 'The 'Yellow Peril' and the 'Chinese of Europe': global perspectives on race and labor, 1815–1930', in Lucassen and Lucassen, *Migration*, pp. 177–96.

45 Gabaccia, *Foreign relations*, pp. 127–9.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

In this spectrum, and for the Asia-Pacific region, the system of indenture is especially important. There has been a trend for historians to minimize the significance of indentured labour, especially to the settler colonies,[46] but for the history of immigration *regulation* two elements warrant emphasis: many immigration laws concerning indenture were sometimes (and often originally) about regulating admittance, not facilitating exclusion; and in the Asia-Pacific context, immigration laws concerning indenture create a regional geographical story far larger than a settler-colonial one.

In the British imperial world, indenture was practiced controversially, although legally, after the abolition of slavery, between 1834 and 1920.[47] There were constant efforts to regulate terms such that indenture could be distinguished from a slave trade, and these manifested on occasion as immigration restriction laws. Thus, at the same time that settler colonies in Australia, New Zealand, and British Columbia were passing immigration acts generally and Chinese restriction laws specifically, there was also a flurry of related activity concerning indenture in British Pacific protectorates and crown colonies. In Fiji, for example, there were twenty-five different ordinances passed between 1876 and 1890 that governed Indian and Polynesian entry to that newly acquired British colony. A Fijian Ordinance of 1876 regulated the movement to and from the colony of Polynesian immigrants.[48] The 1877 *Immigration Ordinance* provided for the better regulation of the relations between Polynesian immigrants and their employers. It also laid out the rules for the medical inspection of workers upon arrival, for their return passages, against the unlawful harbouring of deserters, and regarding prohibitions around the landing of immigrants without a passport.[49] One year later the *Indian Immigration Ordinance* was enacted to encourage the introduction into the Colony of Fiji of indentured immigrants from the East Indies. On arrival all immigrants were to be registered and medically inspected.[50] Indeed, almost every year over the 1880s and 1890s, British rule in Fiji was bedded down with statutes regarding the movement of people into and out of the islands from the surrounding region. All of this legislative activity around indenture shaped the lives and opportunities of Islanders and Indians themselves. It was also intended to rein in the traders: those who engaged labourers, negotiated contracts, and managed the shipboard conditions under which workers were ferried around the South Pacific.[51]

---

46 Sunil S. Amrith, 'Indians overseas? Governing Tamil migration to Malaya, 1870–1941', *Past & Present*, 208, 1, 2010, pp. 231–61; Moya and McKeown, 'World migration', p. 13. For a response to McKeown's work and on indenture, see Sucheta Mazumdar, 'Localities of the global: Asian migrations between slavery and citizenship', *International Review of Social History*, 52, 1, 2007, pp. 124–33.

47 See Kay Saunders, ed., *Indentured labour in the British empire, 1834–1920*, London: Croom Helm, 1984; David Northrup, *Indentured labor in the age of imperialism, 1834–1922*, Cambridge: Cambridge University Press, 1995; Madhavi Kale, *Fragments of empire: capital, slavery, and Indian indentured labor in the British Caribbean*, Philadelphia, PA: University of Pennsylvania Press, 1998.

48 Fiji, *Ordinance to regulate and control the conveyance and recruiting of Polynesian immigrants*, no. 24, 1876.

49 Fiji, *Immigration Ordinance*, no. 11, 1877.

50 Fiji, *Indian Immigration Ordinance*, no. 6, 1878.

51 Tracey Banivanua Mar, *Violence and colonial dialogue: the Australian–Pacific indentured labor trade*, Honolulu, HI: University of Hawai'i Press, 2007; Peter J. Hempenstall and Noel Rutherford, *Protest and dissent in the colonial Pacific*, Suva, Fiji: Institute of Pacific Studies of the University of the South Pacific, 1984.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

Importantly, emigration came to be regulated as well. The *Emigration Ordinance* of 1892 forbade the departure of any 'native' without the written permission of the governor. It prohibited the emigration of Indians and Polynesians without a passport and a work contract, and they were absolutely prohibited from emigrating to Australia, New Zealand, and other Pacific Islands.[52] Thus, although settler-colonial historiography is decisively driven by the question of 'immigration restriction', that frame of reference needs qualification within a regional history marked strongly by emigration controls.[53] Equally, the emphasis on emigration not immigration control in India itself needs to be taken into account.[54] As with the Hong Kong and Japanese instances, the regulation of departure becomes important to integrate into regional and global history.

The Fijian ordinances summarized here (and Hawaiian laws are a further instance, another plantation economy) had a different purpose from the settler-colonial laws that were proliferating at the same time – the Chinese exclusion acts noted above. But they were nonetheless part of the growing international system of the control of movement at multiple national and colonial borders. Indeed, regionally speaking, the Fijian laws might be seen as more typical than idiosyncratic. For example, between 1856 and 1890, sixteen pieces of legislation were introduced in the Straits Settlement that governed Indian and Chinese labourers' entry. Another instance is the restriction of Chinese immigration into the Colony of British New Guinea.[55] And in 1880 the nearby self-governing colony of Queensland passed the *Pacific Island Labourer's Act*, requiring licences for any person wishing to introduce labourers into the Colony. Labourers were to be registered and issued with a certificate of health after medical inspection. They were also subject to strict rules surrounding their movement.[56]

As early studies made clear, Queensland's *Pacific Island Labourer's Act* was part of a suite of laws that governed and facilitated the movement of Islanders, Chinese, and Indians in the region – 'coolie' laws that were intended to set and keep minimum standards for conditions of indenture.[57] More recent scholarship, however, tends to place it within a national and nationalist trajectory, alongside the Chinese restriction laws, and as part of a transnational settler-colonial complex. But this law reveals the link between white settler colonies and other kinds of colonies that also restricted free movement. Settler-colonial laws thus need to be assessed as part of a regional complex as much as, or as well as, a bloc of white nations. In short, transpacific history is not just a settler-colonial one. Instead, thinking regionally requires that a range of national and colonial histories be brought alongside one another, but often in quite different chronologies of colonialism, anti-colonialism, and independence.

52 Fiji, *Emigration Ordinance*, no. 1, 1892.

53 Departure and the right to leave have been analysed in Nancy L. Green and Francois Weil, eds., *Citizenship and those who leave: the politics of emigration and expatriation*, Urbana, IL: University of Illinois Press, 2007.

54 Amrith, 'Indians overseas?', pp. 231–61.

55 Act no. 8, 1898. See Edward Manson, 'The admission of aliens', *Journal of the Society of Comparative Legislation*, 114, 1902, p. 122.

56 Queensland, *Pacific Island Labourer's Act*, no. 17, 1880.

57 Persia Crawford Campbell, *Chinese coolie emigration to countries in the British empire*, London: P.S. King & Son, 1923; Myra Willard, *A history of the white Australia policy*, Melbourne: Melbourne University Press, 1923; Norman Mackenzie, ed., *The legal status of aliens in Pacific countries*, London: Oxford University Press, 1937.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

Postcolonial exclusions

Thinking about immigration laws in the Asia-Pacific region beyond the settler colonies draws us necessarily into the period following the Second World War and the complicated histories of decolonization. In almost every case, postcolonial nation-states established between the 1950s and the 1980s enacted new immigration statutes as a legislative priority. They had hybrid provenances. In part they were legacies of indenture – statutes that had morphed into generic foreign-labour-regulating law, and as matters of bureaucratic efficiency were straightforwardly incorporated into new national statutes. In larger part, however, there was a new generation of laws that announced and governed the territoriality of emergent nation-states. Immigration acts founded and in many ways declared sovereign independence to the world, much as Australia, New Zealand, and Canada (or, to take an example from another region, the Union of South Africa) had done in an earlier period.

Malaysia offers a neat example. In 1957 the *Federation of Malaya Act* (UK) established a sovereign nation-state that was an independent member of the British Commonwealth. By 1959, new laws determined immigration, deportation, and processes for identification. The *Immigration Act* of 1959 was accompanied in the same year by the *Banishment Act* and the *National Registration Act*: who could not enter, who was to leave, and who belonged. This is why immigration law persisted into the postcolonial era: not because it was (necessarily) a practice that distinguished between people of certain races or ethnicities, but simply because it was the key practice that identified all aliens, and asserted and displayed newfound sovereignty over both territory and people.

The complicated sequence of inclusions and exclusions of territories and people in the Malay Federation over the 1950s and 1960s was bolstered by, even made most meaningful through, associated immigration laws. In 1963, Sabah, Sarawak, and Singapore were included within the new Federation of Malaysia. Corresponding immigration acts were passed that year. In 1965, when Singapore was excluded, further immigration laws were triggered to match and announce this territorial change to the Federation.[58]

Post-war Singapore itself declared successive stages of independence through its own new immigration laws, first separation from the UK and then secession from the Malaysian Federation. British colonial authorities in Singapore had long managed Chinese entry to the island, laws that formed the common-sense basis of later regulations, as bureaucratic and legal knowledge was passed on.[59] Singapore transitioned from the status of separate crown colony in 1946 to partial self-governance in 1955 when a new *Immigration Ordinance* was passed. Full self-governing status in 1959 was marked by a new *Immigration Act*.[60] Its inclusion in the Federated Malaysian States was consolidated by the 1963 *Immigration Act*; and its exclusion from that federation and the proclamation of the Republic of Singapore in August 1965 was swiftly followed in January 1966 by Act 1, an *Immigration*

58 Malaysia, *National Registration Act*, Act 12, 1956; *National Banishment Act*, ordinance 11, 1959; *Immigration Act*, no. 12, 1959; *Immigration Act*, Act 27, 1963; *Immigration (Amendment) Act*, Act 15, 1965.

59 Joyce Ee, 'Chinese migration to Singapore, 1896–1941', *Journal of Southeast Asian History*, 2, 1, 1961, pp. 33–7, 39–51.

60 Singapore, *Immigration Ordinance*, no. 12, 1959. This replaced Colony of Singapore, *Immigration Restriction Ordinance*, no. 5, 1952; *Aliens Restriction Ordinance*, no. 37, 1952.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

Amendment Act.[61] Accompanying all of this activity strictly around immigration, and not incidentally, were multiple quarantine and infectious disease acts (each with powers of exclusion and deportation), citizenship and naturalization acts, and banishment and registration acts.[62]

Elsewhere in the region, as decolonization unfolded and new nation-states came into existence – sometimes quickly, sometimes through slower transitions – immigration acts proliferated. These states declared independence of various kinds. The transitional Burmese government passed the *Immigration (Emergency Provisions) Act* in 1947.[63] Ceylon was announced by its 1948 *Immigration and Emigration Act*.[64] The Pacific island state of Nauru became self-governing in 1966 and independent in 1968; its government passed an *Immigration Restriction Ordinance* in 1967. Fiji's *Immigration Act* of 1971 immediately followed its independence in 1970. In Brunei, an immigration act of September 1947 accompanied the post-war transfer to civil administration. Brunei's *Immigration (Prohibition of Entry) Act* was proclaimed in 1958, when the Sultan was granted full executive powers. In 1984, when Brunei formally separated from Britain, an *Immigration (Amendment) Act* followed.[65] To take a final example, Papua New Guinea's *Migration Act* of 1978 followed swiftly after its independence from Australia in 1975.[66] In this way, decolonization was accompanied by an expansion not a decline of immigration restriction. At the same time, independence was often accompanied by the deportation of non-native populations. Immigration law served this function too, since power to deport 'undesirable aliens' had long been standard.[67]

The new national acts, from the late 1950s, 1960s, 1970s, and even 1980s, were not just similar to the prior colonial statutes that had governed those populations and territories. Many had identically worded clauses, especially in sections defining prohibited persons. In structure, in terminology, and in terms of actual powers, this suite of postcolonial laws was an extension of the older settler-colonial and US immigration statutes: so much so that any student of US immigration law of the late nineteenth and early twentieth centuries, or of Canadian, Australian, New Zealand, or South African law, would recognize immediately the clauses that reappeared in the postcolonial immigration acts of Malaysia, Singapore, Fiji, Brunei, Papua New Guinea, and more. This duplication over time and place, sometimes *verbatim*, is arresting.

Even the sequence of prohibited criteria is the same in many postcolonial statutes as in any number of early restriction acts. The standard list proceeded from a clause on mental

61 Published 3 January 1966 and commenced March 4 1966.

62 For example, the *Quarantine and Prevention of Disease Amendment Ordinance* (1946); *Leprosy Ordinance* (1949); *Deportation (British Subjects)* (1952); *Registration of Persons Ordinance* (1955); *Singapore Citizenship Amendment Ordinance* (1959); *Banishment* (1960); *Extradition Act* (1968).

63 Union of Burma, *Burma Immigration (Emergency Provisions) Act*, Act 31, 1947.

64 Ceylon, *Immigration and Emigration Act*, no. 20, 1948.

65 Brunei, *Immigration Act*, no. 17, 1986.

66 Papua New Guinea, *Migration Act*, chap. 16, 1978.

67 For example, United States of America, *Act to deport certain undesirable aliens and to deny readmission to those deported*, chap. 174, 1920; Fiji, *Act to consolidate and amend the law relating to immigration*, chap. 88, 1971; Hong Kong, *Immigration Ordinance*, chap. 115, 1989.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

health to those concerning disease, criminal offences, and prostitution, and almost always including a clause on pauperism (or public charge); they were usually laid out in that order. The Philippine *Immigration Act* (1940), which was passed by the transitional Commonwealth government as the US loosened its colonial ties, nominated excluded classes in just such a way: idiots or insane persons; persons afflicted with a loathsome or dangerous contagious disease, or epilepsy; persons who have been convicted of a crime involving moral turpitude; prostitutes, or procurers, or persons coming for any immoral purposes; persons likely to become public charge; paupers, vagrants, and beggars; persons who might overthrow government by force and violence.[68] In Fiji, to take another example, prohibited persons were defined in the familiar list, with the familiar wording. A prohibited person was anyone unable to show that 'he has the means of supporting himself and his family and dependents (if any) or that he has a permit to work in Fiji or who is likely to become a pauper or a charge on the public'. The following clause prohibited any person refusing to submit to medical examination, who was suffering form a contagious or infectious disease, or from 'mental disorder or is a mental defective'. This was followed by the standard clauses on prostitution, on living off earnings of prostitution, and on criminal offences.[69]

Singapore statutes likewise aligned with many clauses in the 'settler' exclusions acts. We might usefully compare it to the US 1917 *Act to regulate the immigration of aliens to, and residence of aliens in, the United States*. The latter had one of the more detailed list of exclusionary criteria, excluding, in its own terminology, all idiots, imbeciles, and insane persons; chronic alcoholics; paupers, professional beggars, and vagrants; persons with tuberculosis or a loathsome or dangerous disease; persons convicted of a felony; anarchists or persons who believe in or advocate the overthrow by force or violence the government; prostitutes or those who are supported by the proceeds of prostitution; contract labourers.[70] The 1970 Singapore *Immigration Act* specified the following prohibited classes: 'any person who is unable to show that he has the means of supporting himself … or who is likely to become a pauper or a charge on the public'; 'any person suffering from mental disorder or being a mental defective, or suffering from a contagious or infectious disease which makes his presence in Singapore dangerous to the community'; 'any person who refuses to submit to a medical examination'; 'any person who has been convicted of an offence': 'any prostitute, or any person who is living on or receiving … the proceeds of prostitution'; 'vagrants or habitual beggars'.[71] The 1970 Singapore Act had its own colonial provenance, drawing from the 1953 *Immigration Ordinance*, which itself derived from the 1922 *Aliens Restriction Ordinance*.[72]

68 The Philippines, *Immigration Act*, no. 613, 1940, section 29(a). See Wong Kwok-chu, *The Chinese in the Philippine economy, 1898–1941*, Manila: Ateneo de Manila University Press, 1999.

69 Fiji, *Act to consolidate and amend the law relating to immigration*, chap. 88, 1971, section 11(2).

70 United States, *Act to regulate the immigration of aliens to, and the residence of aliens in, the United States*, chap. 29, 1917, section 3.

71 Republic of Singapore, *Immigration Act*, 1970, section 8(2)(a)–(g).

72 Section 3 of the 1953 Ordinance also listed the usual definitions of prohibited immigration: likely to become a public charge; mental disorder or defective; refuses medical examination; convicted of an offence; prostitute or living on proceeds of prostitution; vagrants; political criteria (for example membership of an unlawful organization, or anyone advocating overthrow of government). *Immigration Ordinance*, no. 102, 1953.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

In a similar way, Malayan and Malaysian immigration acts were in large part inherited from colonial ones, the Straits Settlement laws having long managed Indian and Chinese entry and exit. It is perhaps unsurprising that the postcolonial laws did not just follow but borrowed directly from the immigration and aliens laws of the late colonial period, given the training and experience that both political leaders and civil servants had within the late colonial administration. As Tim Harper has shown, 'a pool of expertise was developed that laid the foundations for the spectacular projects of post-war colonial rule'.[73] Postcolonial civic institutions were managed by a colonially trained managerial class,[74] and decolonization, in this respect, was more a process of incorporation than rejection. Both the colonial and the postcolonial state scrutinized who entered the territorially bounded polity and then how they functioned within it.

In this sense, Malaysia was just like its near neighbour, Australia. Kevin Blackburn has discussed Malayan protest against the white Australia policy (the *Immigration Act*), arguing that this was one manifestation of Malayan (and Singaporean) anti-colonialism.[75] Australian commentators at the time thought this protest thin, since the new nation-state to the north was busy establishing its own immigration law.[76] But the irony was greater than this: few noted then or have done since just how similar the laws themselves were. Australian law – both the old *Immigration Act* (1901) and the new *Migration Act* (1958) – defined undesirable entrants as those likely to become a public charge; any insane person or person suffering from a contagious disease; any person convicted of an offence who has not received a pardon; any prostitute or person living on prostitution.[77] The Malaysian Act, likewise, defined as prohibited any person likely to become a pauper or a public charge; suffering from mental disorder or a contagious disease; convicted of an offence; a prostitute or person living on the proceeds of prostitution; a vagrant; any persons advocating the overthrow of the government.[78]

Both the Australian *Immigration Act* of 1901 and the Malaysian *Immigration Act* of 1959 might reasonably be seen as informal declarations of independence, proclaimed at the point where each federation was formed. Creating national populations was the active project of both of these nations and their immigration acts were similarly at the frontline of the processes and procedures, even though their political histories were so starkly different. The fact that the Australian *Immigration Act* had in practice excluded people on the basis of race or ethnicity was a major point of difference. But even this is perhaps less distinctive than it might seem at first glance. In fact, both of these federations were characterized by longstanding political and legal debate over the inclusions and exclusions of Chinese people within their territory and civic structures, albeit at different times and in different ways.

73 T. N. Harper, *The end of empire and the making of Malaya*, Cambridge: Cambridge University Press, 1999, p. 23.

74 Ibid., p. 195.

75 Kevin Blackburn, 'Disguised anti-colonialism: protest against the white Australia policy in Malaya and Singapore, 1947–1962', *Australian Journal of International Affairs*, 55, 1, 2001, pp. 101–17.

76 Ken Rivett to Sripati Chandrasekhar, 13 March 1964, Box 14, Folder 14, Chandrasekhar Papers, University of Toledo Library, Toledo, OH.

77 Commonwealth of Australia, *Immigration Act*, no. 17, 1901, section 3.

78 Malaysia, *Immigration Act*, ordinance no. 12, 1959/63, part 2, section 8(3).

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

The civic status of ethnic Chinese in Malaya was the subject of active debate and ruling, first on the part of the British and later on the part of Malays. This was compounded by the decade of post-war insurrection, in which the status of ethnic Chinese became especially contentious.[79]

The 1959 *Immigration Act* was passed in the context of the communist insurgency. These were indeed extraordinary circumstances: the 'Malayan Emergency' was a war fought between the Malayan National Liberation Army and Commonwealth forces made up of Malayan, Australian, and British contingents. Unsurprisingly, therefore, the *Immigration Act* included clauses regarding political security. Malaysian law prohibited any person 'who believes in or advocates the overthrow by force of violence of any Government in Malaysia' or 'any person who is a member of or affiliated with any organization entertaining or teaching disbelief in or opposition to established government'.[80] But rather than signalling the admittedly extraordinary circumstance of the Malayan Emergency, we might just as easily place this within a longer twentieth-century history of the connections between immigration restriction, communism, and anti-communism. The point to note here is that the Malayan clauses about political security were not novel, but were shaped from the standard clauses on insurrection that were to be found in almost any immigration law, old or new. In other words, pre-existing political security clauses could easily be shifted from the old generation of migration laws to the new. In the post-war anti-communist Southeast Asian context, it might even be claimed that the political security powers were mobilized as anti-Chinese 'devices', a mid twentieth-century twist on the settler-colonial traditions.

Powers to deport politically dangerous persons were standard in the nineteenth century: for example, the 1871 Hong Kong ordinance relating to the 'banishment of persons dangerous to the peace and good order of the colony'. Indeed Hong Kong laws came to include a set of ordinances concerned with the extradition of fugitive criminals from what were then the Malay States.[81] Both general and specific measures for political security were refined by communist threats, but not just in the Cold War. Fifty years before the Malaysian act, in 1919, Canada amended its already-detailed list of prohibited immigrants to include anyone who sought to overthrow government 'by force or violence'. This long clause also signals the global significance of linked defences of British dominions on many continents; the domestic laws of the British Commonwealth always constituted an international system. Canada prohibited the entry of anyone who sought to overthrow:

> government of or constituted law and authority in the United Kingdom of Great Britain and Ireland, or Canada, or any of the provinces of Canada, or the government of any other of His Majesty's dominions, colonies, possessions or dependencies, or advocates the assassination of any official of any of the said governments or of any foreign government, or who in Canada defends or suggests the unlawful destruction of property or by word or act creates or attempts to create any riot or public disorder in

79 Tim Harper, *End of empire*, p. 317, explains the debates about ethnic Chinese being granted *jus soli* in Malaya.

80 Malaysia, *Immigration Act*, ordinance no. 12, 1959/63, part 2, section 8(3)(i)–(j).

81 Hong Kong, *Banishment of dangerous characters*, ordinance no. 4, 1871; Hong Kong, *Surrender of fugitive criminals from the Malay States*, ordinance no. 4, 1903.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

> Canada, or who without lawful authority assumes any powers of government in Canada … shall for the purposes of this Act, be deemed to belong to the prohibited or undesirable classes.[82]

The Canadian–Malaysian continuity instanced here could be drawn between any number of jurisdictions over the twentieth century. There was one distinction in Malaysian law, however: it rendered lawful the whipping of illegal entrants with 'not more than six strokes'.[83]

Race beyond the Second World War

The post-war link between immigration restriction and postcolonialism pulls two ways. In one direction, post-war decolonization and associated nation-building manifested as a whole new generation of immigration laws, often entirely similar to those that had come before: in this sense, postcolonialism and immigration restriction were, unexpectedly, of a piece.[84] However, postcolonialism read as a critique of colonial-inspired racism also clearly inspired the welcome *undoing* of the classic immigration laws, with their offending 'race' clauses.

The post-war decades were certainly a watershed in the latter respect. The remnant nominations of prohibited persons by racial and ethnic criteria (though not by nation) were excised from most laws in the Anglophone world, and most of the 'raceless' legal devices – the world's worst-kept open secret – were in the main repealed. This took place in many jurisdictions with an eye to the international public sphere, in particular the Universal Declaration of Human Rights (1948) (though this instrument asserted the right to leave any country, not the right to enter) and the International Convention on the Elimination of All Forms of Racial Discrimination (1969). In Canada, Chinese exclusion acts were repealed in 1947.[85] In Australia, the statute that included requirement for a dictation test – the device by which admission was refused to so-called coloured aliens – was repealed and replaced in 1958 with a new *Migration Act* that significantly omitted that clause.

In the US, the Chinese Exclusion Acts were repealed in 1943.[86] In 1952 an *Immigration and Nationality Act* abolished the 1917 Asian Barred Zone and allowed immigration into the US, but still implemented quotas.[87] In 1965 'natural origins' was removed as the basis of

82 Canada, *Immigration Amendment Act*, chap. 26, 1919, section 41. See also Canada, *Immigration Amendment Act*, chap. 25, 1919, section 6.

83 Malaysia, *Immigration Act*, ordinance no. 12, 1959/63, part 2, section 6(3).

84 This might be claimed in other regions too, or even generally. That is, as a new kind of nationalism, post-war and postcolonial independence was often accompanied by policies that either excluded (or forcibly repatriated) diasporic communities or newly restricted a flow of people and money that had long been relatively open. See for example, Christian Lekon, 'The impact of remittances on the economy of Hadhramaut', in Freitag and Clarence-Smith, *Hadhrami traders*, pp. 272–3.

85 Canada, *Act to amend the Immigration Act and to repeal the Chinese Immigration Act*, chap. 19, 1947.

86 United States of America, *Act to repeal the Chinese Exclusion Acts and the parts of other Acts relating to the exclusion or deportation of persons of the Chinese race*, chap. 344, 1943. For a counter-argument see Son-Thierry Ly and Patrick Weil, 'The antiracist origin of the quota system', *Social Research*, 77, 1, 2010, pp. 45–78.

87 United States of America, *Immigration and Nationality Act*, chap. 477, 1952. This Act abolished the 1917 Asian Barred Zone, but, an expression of the Cold War era, it also created the Asia-Pacific Triangle, delineating the exclusion of and right to deport any alien who has engaged in or has had purpose to engage in activities prejudicial to the public interest or subversive to national security.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

American immigration legislation: 'No person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence'.[88] In general, for US historians the 1965 amendments are understood to have completed a winding-down process that had begun two decades earlier, an endpoint for their studies. The impression is sustained that this was the end of an exclusionary era. Donna Gabaccia more accurately nominates an era of 'restriction' to 1965, and an era of 'immigration and globalisation' from 1965 to the present.[89] Yet it is too optimistic to claim that these decades left discriminatory 'restriction' behind. Even as 'national origins' was removed, other odious discriminations were retained and even introduced: distinctions between men's and women's freedom of movement continued, contingent on marital status; mental health exceptions stayed more or less the same; and clauses explicitly prohibiting 'sexual deviants' were new.[90]

In this overall post-war decline of the nomination of 'national origin' or 'race' or 'ethnicity' in immigration laws, one curious identifier remained: 'British subject'. Always ambiguous, 'British subject' had a long legislative life and needs to be incorporated into analysis of 'race' and immigration law over many jurisdictions and eras: too often it is taken to be unremarkable when applied to 'whites' but of interest when applied to 'non-whites'. Scholars have written extensively on debates about who fell inside and outside the category of British subject in the late nineteenth- and early twentieth-century imperial context, mainly in terms of Indians' status.[91] But ruling Indians in and out of British subjecthood was the contested part of the issue. Behind that, in effect and in implementation, was the work that this category did to select 'whites'. Attempts at clarification shifted the status of 'British subject' rather more from a political meaning towards an ethnic or racial identity. 'Natural-born' was often added. An early New Zealand *Aliens Act*, for example, specified a person 'born in Her Majesty's Dominions of a mother being a natural-born subject of the United Kingdom'.[92] Another retained this nationality/race criterion, negatively defined: 'Any person other than of British (including Irish) birth and parentage' was to undergo a dictation test in any European language.[93]

Being a British subject was a kind of 'race', but it also signalled an allegiance. In this sense, and ironically, it was most like nineteenth-century identification of 'Chinese' – less a

88 United States of America, *Act to amend the Immigration and Nationality Act, and for other purposes*, no. 89, 1965, section 15–18.

89 Gabaccia, *Foreign relations*, pp. 225–64. Historians recognize that the 1965 Act was a triumph of liberal pluralism but that it sustained major problems in US immigration history. See, for example, Estelle T. Lau, *Paper families: identity, immigration administration, and Chinese exclusion*, Durham, NC: Duke University Press, 2006, pp. 155–6; Ngai, *Impossible subjects*, pp. 225–64.

90 Bashford, 'Insanity', p. 29. See also Eithne Luibhead, *Entry denied: controlling sexuality at the border*, Minneapolis, MN: University of Minnesota Press, 2002; Margot Canaday, *The straight state: sexuality and citizenship in twentieth-century America*, Princeton, NJ: Princeton University Press, 2009.

91 Sukanya Banerjee, *Becoming imperial citizens: Indians in the late Victorian empire*, Durham, NC: Duke University Press, 2010; Reiko Karatani, *Defining British citizenship: empire, commonwealth, and modern Britain*, London: Frank Cass, 2003; Daniel Gorman, 'Wider and wider still? Racial politics, intra-imperial immigration and the absence of an imperial citizenship in the British empire', *Journal of Colonialism and Colonial Citizenship*, 3, 3, 2002, online edition.

92 New Zealand, *Aliens Act 1866*, section 2.

93 New Zealand, *Immigration Restriction Act*, act 33, 1899, section 3(1).

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

racial identifier than one signalling allegiance to the emperor, a subject within an empire.[94] The ambiguity between allegiance and ethnicity makes this a useful comparison, albeit a qualified one in that being a British subject tended to rule one into, and not out of, any given polity. In any case, 'British subject' was perhaps the most enduring of all such ethnic/national/racial nominations within Anglophone immigration laws.

There is a post-war history to incorporate in this respect too, which is part of the reason to extend the periodization of immigration restriction well into the 1950s, 1960s, and 1970s. Admission into Singapore in 1953 was permitted for 'a British subject born in Malaya' and the wives and children 'by blood' of that person.[95] The 1958 Australian *Migration Act* defined an alien as a person 'who is not a British subject'.[96] If anything, the whole question of being 'British', and what that meant in terms of national regulations regarding international movement, became even more complicated after the Second World War, as the United Kingdom itself joined the inclusion/exclusion tradition in earnest. The 1968 *Commonwealth Immigrants Act* (UK) gave preference to those individuals with 'substantial connection' to Britain, defined as those with a parent or grandparent born in Britain. This served to distinguish between 'white' dominions and other 'non-white' members of the British Commonwealth.[97] Indeed, citizens of Commonwealth nations with 'UK ancestry' – a British grandparent or Irish grandparent born before 1922 – can still acquire special entry through the UK Border Agency.[98] This no longer retains its racialized intent, though demographically it may well preserve that effect.

Conclusion

In what seems like one of the greatest ironies of twentieth-century international history, the laws declaring the territorial sovereignty of multiple postcolonial nation-states have one lineage in the Chinese restriction acts of the late nineteenth century. Bringing these laws into a single frame points to more than this irony, however, and in some ways points away from it. The continuity from settler colonies to postcolonial nations requires an understanding that immigration acts were always about more than race-based restrictions.

Accordingly, this article has begun to map the other criteria and powers by which people were prohibited entry. On occasion, these were mere devices to restrict the entry of so-called coloured aliens; though they could alternatively be described as face-saving means of discriminating between humans in a world that found explicit exclusions intolerable or uncomfortable. Yet these clauses were more than that. Restriction of people on grounds of disease, mental health, character, fitness, and national security was both widespread geographically and enduring temporally, and for this reason needs to be analysed alongside,

94 This allegiance is examined in Lake, 'Chinese colonists'.

95 Colony of Singapore, *Act to consolidate the law relating to and further to regulate immigration into the Colony*, chap. 102, 1953, section 7.

96 Commonwealth of Australia, *Migration Act*, no. 62, 1958, section 5.

97 United Kingdom, *Commonwealth Immigrants Act*, chap. 9, 1968; See K. Paul, *Whitewashing Britain: race and citizenship in the postwar era*, Ithaca, NY: Cornell University Press, 1997.

98 UK Border Agency, 'UK Ancestry', http://www.ukba.homeoffice.gov.uk/visas-immigration/working/uk-ancestry/ (consulted 6 July 2013).

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

and indeed as part of, the settler-colonial history of 'great white walls' and a 'global colour line'. Such restrictions were common from one jurisdiction to another and so became the core element of immigration law by the middle of the twentieth century and beyond. In short, race-based restrictions 'reversed' or 'declined' from the middle of the twentieth century, but immigration restriction itself did not.

This, in turn, invites a different geography for analysis. Immigration restriction was not just part of the history of settler colonialism, the national and racial territorialities of New Zealand, Australia, Canada, and the US *c.*1900. It also constituted the territorial nationalisms of postcolonial nation-states, *c.*1950. Indeed, a new generation of immigration acts were themselves major expressions of post-war decolonization. A regional focus – in this instance the Asia-Pacific region – enforces relational analysis of different kinds of polities: settler colonies, settler nations, crown colonies, protectorates, postcolonial federations, and republics. This, then, is a mirrored study, across the Pacific Ocean, to studies that have usefully begun to align all of the Americas into the same modern story: Canada, the US, and Mexico, for example.[99] Attempts to bring regional studies together should continue, as we build a global history of immigration restriction, including territorial as well as maritime borders, and critically including the era since the Second World War. The South American republics are especially important to the long story, as new nation-states proliferated, and as foreign labour was regulated both out and in. The Francophone world is perhaps distinct in the global story because of the citizenship and territorial implications of *outre-mers* that gave rise to a quite different past (and to some extent present) of exclusion, inclusion, and migration regulation.[100]

Far more significant to fleshing out the long twentieth-century history of immigration restriction is communism. Communist regimes' restriction of emigration and the means by which outsiders were prohibited entry is of a different order to the rules for exit and entry focused on here. But it is nonetheless a key part of global history whereby the subscription to free movement that in general characterized international relations in the mid nineteenth century had been decisively overturned by the middle of the twentieth century. More specifically, as suggested here, twentieth-century communism, both after the First World War and again in the Cold War, directly shaped counter-measures of immigration restriction by the anti-communist bloc, including new postcolonial states in Southeast Asia.

Although migration law is domestic law, not international law, it is international in another sense. This article has shown substantively how statutes became unmistakably and increasingly similar, even standardized, across multiple jurisdictions and across time. In this sense, migration law itself became globalized to a striking degree, not just in effect or by intention but as documents, as texts. So familiar are we, as high-modern subjects, with the rules and conduct entailed in crossing from one nation-state into another that the process can

99 Erika Lee, 'Orientalisms in the Americas: a hemispheric approach to Asian American history', *Journal of Asian American Studies*, 8, 3, 2005, pp. 235–56; Jeffrey Lesser, *Immigration, ethnicity, and national identity in Brazil, 1808 to the present*, Cambridge: Cambridge University Press, 2013; David Cook-Martin and David FitzGerald, 'Liberalism and the limits of inclusion: race and immigration law in the Americas, 1850–2000', *Journal of Interdisciplinary History*, 41, 1, 2010, pp. 7–25.

100 See, for example, Miriam Ticktin, 'Medical humanitarianism in and beyond France: breaking down or controlling borders?', in Alison Bashford, ed., *Medicine at the border: disease, globalization and security, 1850 to the present*, Basingstoke: Palgrave, 2006, pp. 116–35.

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press

seem quotidian. But what is in fact notable is that the historic change has been so large, so swift, and, as stressed here, so uniform. The similarity of the laws themselves needs to be assessed as one of the more remarkable convergences of the modern world – imperial, national, and postcolonial in equal measure.

Alison Bashford is Professor of Modern History at the University of Sydney and elected Vere Harmsworth Professor of Imperial and Naval History at the University of Cambridge. She is author, most recently, of Global population: history, geopolitics and life on earth *(2014) and co-editor with David Armitage of* Pacific histories: ocean, land, people *(2014).*

https://doi.org/10.1017/S174002281300048X Published online by Cambridge University Press