

“I had no choice but to flee – surely I must be welcome to seek to live here?”

Is there any Misuse of Migration law in the United Kingdom?

Global migration :Complex set of tensions

- **“I had no choice but to flee”**
- At a time of great tension in the laws around migration to the UK – role of those arriving, the population receiving them in, the role of Parliament and the role of the lawyer.
- What drives a migrant to leave the land of their people, when do they consider they have no choice?
- War, persecution, starvation – something which might lead to their death if they remain.
- Economic betterment – more of a choice to remove oneself – perhaps not a time when someone could claim they have no choice.
- Looking at those who have had “no choice”, and approached the United Kingdom over the past century or so, have they all been treated the same?

UK Borders : arbitrary human marks, the results of wars, colonialism, island boundaries

- Borders/territory
- England
- Scotland
- Wales
- Ireland/ Northern Ireland
- France – 1801 Geo 3 stopped claiming the title King of France – last time any part of France was in British hands was 1453 when England possessed Calais.
- GB, UK, arbitrary borders lead to system of arbitrary cultural identity which creates communities.

Article 1A(2) 1951 UN Convention on the Status of Refugees - definition of a Refugee

- A refugee is a person who “ *owing to a well-founded fear of being persecuted* for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country’ or, who, not having a nationality and being outside the country of his former habitual residence is unable, or owing to such fear, unwilling to return to it.”
- 1951 purpose was framed specifically by lawyers (at a conference of plenipotetoto the history of the time, and therefore then limited to those fleeing events before 1951.
- Primarily with events of the Cold War in Europe in mind, in 1967 the Protocol Relating to Refugees removed that limitation.

1905 Aliens Act : the creation of UK border control

- Human tensions led to first formal immigration controls, with Parliament seeking to appease an irritated already British population.
- First time the United Kingdom introduced immigration controls and registration of those entering the country.
- The history of language in border control over the past 120 years has been remarkably consistent.
- First time the word “undesirable” was introduced into legislation.
- Intention was to keep the Jews of Eastern Europe from migrating to the UK. It was successful. In 1906 505 Jewish refugees were granted asylum. In 1910, only 10. and over the same period 1378 Jews had been returned to their countries of origin for displaying “symptoms of poverty” – generally illness.
- It is possible to track from the 1905 Aliens Act to the so called Windrush “hostile environment” and further to the Border Security , Asylum and Immigration Bill today.

Parliament and the Media – 125 years ago

- Major Evans-Gordon MP for Stepney 1900-07, was elected on an “anti-alien” platform creating the “British Brothers League” – a keep Britain white campaign – where he spoke out against Jewish migration to the UK, fearing “ a storm is brewing, which if allowed to burst, will have deplorable results.”
- The media of the day took up his baton, The Manchester Evening News writing in 1905 and urging the Aliens Bill through, so “that the dirty, destitute, diseased, verminous and criminal foreigner who dumps himself on our soil, and rates, shall be forbidden to land.”

Parliament and the People – 1968 / 2022

- **Intolerance of incomers – those making a choice / those needing to flee**
- Enoch Powell, MP for Wolverhampton West, spoke in much the same terms as the former MP for Stepney in his infamous speech :.....as I look ahead, I am filled with foreboding; like the Roman, I seem to see the River Tiber foaming with much blood....”
- In 1978, Prime Minister Margaret Thatcher said “.... People are really rather afraid that this country might be rather swamped by people with a different culture ...’
- Open doors to those fleeing war and persecution
- In 2022, Home Secretary, Suella Braverman complained in the House of Commons of an asylum seeker “invasion” of those crossing the English channel in small boats.
- In the post-WW2 period, fears of immigration turned from Jewish migrants to the primarily African-Caribbean and African population invited to the UK by the government to work as Citizens of the United Kingdom and Colonies, a colonial status given to British Subjects in 1949 and gradually stripped from them by Immigration Act 1971 onward.

European Convention on Human Rights

European Court of Human Rights (ECHR)

Human Rights Act (HRA)

- In 1972 the United Kingdom joined the EEC (EU) and in 1992 signed the Treaty of Maastricht enabling free movement within the member states.
- Despite having left the European Union, the UK remains a signatory to the European Convention on Human Rights which sets out a list of rights and guarantees (Articles and Protocols) which we respect.
- There is however, no longer free movement between the UK and the EU.
- The European Court of Human Rights (ECHR) hears cases related to the European Convention.
- The Human Rights Act in the UK directs UK Courts to “take into account” decisions of the ECHR.
- Combined with Article 1 of the 1951 Convention on the Rights of a Refugee, the HRA, especially Articles 2,3 and 8 provide the legal framework to support domestic immigration law.

“Are we welcome to seek to live here?”

Overlap between any welcome or tolerance of, refugees fleeing persecution, and a welcome and tolerance of economic migrants has become blurred and very complex, in the attitude of the British citizen, just as, presumably in the heart of the newly arrived.

A seeming human need for borders affects the response.

And there appears to be support from the government to prefer to look to white western cultures to support, and now colonial legacies have mostly dwindled, to ignore the needs of non-western nations.

“Windrush scandal” – Home Office destruction of evidence of dates of arrival.

2024 : UNHCR Refugee population statistics

122.6 million forcibly displaced people globally

- 37.9 million are refugees
- 8 million are asylum seekers

- 65% refugees originate from 4 countries – Syria, Ukraine, Afghanistan and Venezuela (approximately 6.2 million each)
- 32% refugees hosted in 5 countries – Iran (3.8 million), Turkey, Colombia, Uganda (1.7 million)

- United Kingdom **2022**, 231,597 refugees + 127,421 asylum applications.

Refugee benefits in the United Kingdom

- Banned from working as an asylum seeker
- Long wait for a decision on whether you are granted asylum
- Lack of access to English language lessons
- Unappealing housing – damp, unheated, mouldy hotel rooms and food unfit for consumption
- £5.84 pp per day as asylum support
- Intolerance of religion, culture, ethnicity and race.

- The Rule of Law

Afghanistan : Ukraine

Sudan : Palestine

- After 20 years, on August 29 2021 the UK withdrew the last of its troops from Afghanistan
- 2021 -2024 - 30,000 Afghans were permitted into the UK via ACRS and ARAP. The vast majority before the last of the UK troops withdrew.
- 24th February 2022 : Russia invaded the Ukraine.

by December 2024 296,300 visas issued to non-combatants

Those coming from Afghanistan are included in the HO asylum statistics.

Those coming from Ukraine are not.

Who is misusing migration law in the UK?

- In 2023 1,218million people migrated to the UK (Home Office stats)
- 84,000 Asylum seekers
- 42,000 Ukrainians
- 4,000 Resettled or relocated migrants
- 10,000 Family reunion visas

So, of 1,218,000 migrants to the UK in 2023 = just 11% were recorded as arriving as a result of a “*well founded fear of persecution.*”

UK choices on “who to welcome here”

- 1906 Aliens Act : to keep out the Jews
- 1951 UN Charter after German persecution of Jews, Africans, the disabled, Gypsies, homosexuals, communists – amongst others. Lawyers’ answer to WW2 and the Nuremberg prosecutions.

Laws aimed at limiting African Caribbean migration

- 1948 British Nationality Act – to welcome all the Commonwealth
- 1962 Commonwealth immigrants Act – curtailing right of entry
- 1971 Immigration Act
- 1981 British Nationality Act

The Rule of Law : the privilege of lawyers

- “Today we must look again into our collective conscience, and ask whether we are doing enough. Each generation has its part to play in the age-long struggle to strengthen the rule of law for all – which alone can guarantee freedom for all.”
- Kofi Annan, United Nations Secretary-General to the General Assembly 2004.

International law remains the same today

- The 1951 Convention and the 1967 Protocol are still recognised as international law.
- Refugees can still seek asylum under similar terms to those set out in 1951.
- In the UK we are also reliant on the ECHR and the HRA to enhance international law and as lawyers it is our duty to uphold that law.

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