

MIGRATION CONTROL AND STATE POWER

ESSAYS



Jasper Theodor Kauth

Nuffield College

University of Oxford

A thesis submitted in partial fulfilment of the requirements for the degree of DPhil
in Politics in the Department of Politics and International Relations at the
University of Oxford.

Michaelmas Term 2023

81,550 words

Abstract

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How and why has migration control turned into one of the defining attributes of modern nation-states? And what explains the mode of its practical expression? This thesis investigates the relationship between migration control and state power. I argue that migration control has an external and an internal dimension rooted in the ideational politics of belonging which are foundational to nation-state membership. Related to this, state power has a vertical and a horizontal dimension applying to a states control over its population and territory, respectively. These dimensions are explored and their developments explained through three related essays. First, in *Controlling the Marginalised*, I compare practices of Internal Mobility Control in the UK, the British Empire, the US, and Germany in the 19th and early 20th centuries to show how states controlled groups on the margins of society, especially in response to claims of full societal membership. Internal Mobility Control also has a horizontal dimension as it draws jurisdictional boundaries of belonging which produce conflicts between sub-state units and the central state that demand centralised standard setting and enforcement. In the second essay, *Origins of Modern Migration Control*, I turn to the external dimension of migration control and explain the shift towards restrictionist and exclusionary migration control in interwar Germany. I propose my hypothesised explanation of racial-political orders as a generalisable mechanism that can account for the emergence of exclusionary modern migration control in other cases as well. In the third essay, *Assessing Mechanisms of the Emerging Migration State*, I introduce the novel method of Explicit Bayesian Analysis to the overarching meta-theoretical framework of the thesis, Critical Realism. By testing the preceding hypothesised mechanisms against empirical evidence, I assess their relative explanatory power and propose wider use-cases for Explicit Bayesian Analysis within Critical Realism.

81,550 words

For Margit

*Nichts gehört der Vergangenheit an,
alles ist noch Gegenwart und kann wieder Zukunft werden.*

*Nothing is bound to the past,
everything is still present and can become the future, once again.*

Fritz Bauer (1903-1968)

Acknowledgements

This DPhil thesis came together over the course of four years at the University of Oxford and Nuffield College, two of which were heavily impacted by the coronavirus pandemic. The pandemic disrupted all aspects of our lives and social science research was no exception. The lockdowns as well as personal circumstances made it necessary to change the focus and structure of this thesis several times. It was only thanks to the unwavering support of my supervisor, Desmond King, that I was able to complete this project despite the challenges of the past years. Desmond's work was one of the inspirations for my decision to study political science, and he encouraged me to apply for a DPhil. Words cannot express my gratitude for his indispensable academic input and intellectual guidance which challenged and emboldened me to think more analytically and critically on topics ranging from migration to illiberalism. He was always available to help and provided generous feedback on theoretical ideas, empirical research, and on linking it all together in writing. Moreover, he introduced me to scholars all around the world. I am sincerely thankful for Desmond's generous counsel and his regular and frequent encouragements. In short, I could not have asked for a better mentor. I was fortunate to also have the support of Andrew Thompson as my college supervisor. I am grateful for Andrew's detailed input on historical research, migration, and empire as well as his feedback on my written work and support with career development. I would be remiss in not mentioning Matthew Gibney as my departmental supervisor who has helped in developing my project and whose work was a source of inspiration. In addition to my supervisors, I would like to express my deepest gratitude to Rogers Smith. Rogers first took the time to meet with me in Philadelphia back in 2017, and he has offered invaluable and kind support, thoughtful advice, and constructive feedback ever since. I am indebted to his mentoring and to the opportunities with which he has provided me. Rogers and Desmond invited me to assist them with their research on racial politics in America.

This allowed me to develop new research skills and gain valuable theoretical insights. I must also sincerely thank my examiners for their detailed feedback and tireless offers to read and re-read my work throughout all my years working on this thesis. I am grateful for the commitment and dedication of Giovanni Capoccia, Robert C Lieberman, Nicholas Owen, and Alexander Betts.

My research was generously supported by the Economic and Social Research Council [grant 2262721] through the Grand Union Doctoral Training Partnership and Nuffield College. They provided the financial means to undertake this research but also offered many invaluable opportunities for personal and career development. This thesis would not exist without them, and I am beyond grateful for their trust. At Nuffield College, I must extend special thanks to Eleni Kechagia-Ovseiko who worked tirelessly to mitigate the fallout of the pandemic and always had an open ear. One of the opportunities that the ESRC/DTP and Nuffield made available to me was to leave Oxford for three months for an overseas institutional visit. It was an honour to get invited to spend my OIV at the International Institute of Social History in Amsterdam where I met many outstanding scholars who welcomed me and advanced my work and thinking. I would like to especially thank Leo Lucassen, Beste İşleyen, Darshan Vigneswaran, Tobias Blanke, and Rey Koslowski. I had started learning Dutch long before this visit became a possibility, but knowing the language sure helped when relocating to the Netherlands and analysing documents in Dutch archives. For this, I must thank my brilliant teacher, Karin de Wijs.

Amsterdam was not the only destination for DPhil-related travels over the past years. Following the pandemic, the ESRC/DTP and Nuffield provided generous travel grants to attend conferences. It was a great honour to present my work at the University of Toronto thanks to an invitation from Randall Hansen. I must extend my sincere gratitude and appreciation to Randall not just for the generous invitation and warm welcome but for his general academic, professional, and personal support.

His feedback, encouragement, and advice were of immense help, and they have opened new avenues of thinking and career development for me. I am also grateful for Tasha Fairfield's intellectual mentoring. Tasha introduced me to Bayesian reasoning, and it was a great honour to join her on a panel at APSA. She never hesitated to offer detailed feedback and her methodological work was an inspiration for this research. I would like to thank several other colleagues for their feedback and advice on conference panels and in private discussion, including Inés Valdez, James Morone, Phil Triadafilopoulos, Emily Yankowitz, Sabrina Axster, Craig Parsons, Marcelo Bohrt, Lois McNay, and Howard Erlanger.

I have been working on the themes of this thesis since 2016 when Nils Steffen and Cord Arendes invited me to join a project on migration and antisemitism in interwar Germany at Heidelberg University. Nils and Cord have been major influences on my academic journey since then, and I am deeply grateful for the opportunity to develop my interest in historical migration research and archival documents. Another major influence during my time in Heidelberg was Torsten Riotte. To this day, I am sincerely grateful to him for inviting me to present my work at the University of Frankfurt in 2018. All three of them supported me on this journey, and, without them, I could not have come this far.

I have been fortunate to enjoy the kind and unwavering support of friends including Christian Moritz, Per Engzell, Giacomo Bertuzzi, Jake White, Boyd van Dijk, Eva Schitter, Margie Cheesman, Nasir Hamid, Katie Rader, Julia Leschke, Jörg Holsten, Maye Henning, Lukas Gutzweiler, Lena Alwang, Mathis Ebbinghaus, Claire Dobson, Dan Snow, Tiphaine Le Corre, Ani Avestisyan, and Mark McGuigan. Words cannot do justice to how much they helped me, personally and academically, over the years. None of this would have been possible without their encouragement, their critical and constructive feedback, and their open ears and arms.

Any doctoral programme has its ups and downs and to make it through you need those that celebrate the successes as well as hold you up when it gets rocky. I could not have submitted this work without my partner and my family who have been more loving and more supportive than anyone could imagine. I am extremely grateful to my rock, Mimi Lu, who was here for me through every bout of doubt and every moment of joy. She stayed up with me through every long night of typing. She is the best writer and gives the best feedback. Her patience is from beyond this world. For my next project, I would like to write a text in which she is the subject of each verb. My parents, Susanne Kauth and Henning Müller, never stopped believing in me and never ceased to help and support me. They jumped on the phone at every hour, day and night, proofread every word, were the best editors, and, fortunately, insisted on some breaks every now and then as well. My dear brother Emil Kauth even stepped in as an impromptu research assistant when travel was impossible. Many other family members supported me throughout these past years, and I am grateful to them all.

This thesis is dedicated to the memory of Margit Diamond who took me in during my time at the Holocaust Center of Greater Pittsburgh, fresh out of high school. She shared her life's stories with me and never stopped encouraging me to pursue academic endeavours. I ended up researching many of the topics that had impacted her life. In many ways, she was the starting point of this journey. Sadly, Margit passed away in the first weeks of my DPhil programme. She could not read the result of the ideas she planted over a decade ago. I am deeply indebted to her.

I must thank the many people and supporters who accompanied me over the past years. All the positive aspects of this work are thanks to them. All the mistakes are mine.

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Abbreviations

CR	Critical Realism
EBA	Explicit Bayesian Analysis
IMC	Internal Mobility Control
H_{EC}	Employer-Capture Hypothesis
H_{LI}	Labour Integration Hypothesis
H_{RO}	Racial-Political Order Hypothesis
H_{EE}	Economic Elite Hypothesis
H_{CH}	Cultural-Hierarchy Hypothesis
BArch	Bundesarchiv
PA AA	Politisches Archiv des Auswärtigen Amts
GLAK	Generallandesarchiv Karlsruhe
TNA	The National Archives

1 Introduction

1.1 Migration and Modern Nation-States

Modern nation-states exert control over the movements within and over access to their territories and borders in various ways. State authorities issue visas and passports, they determine the number of immigrants and asylum seekers they admit, they patrol borders and set up detention camps, they grant residence and work permits to those they deem admissible while removing and deporting those they label undesirable or illegal. States may actively direct movements by setting up settlement schemes, by accommodating refugees, inviting immigrants and so-called guest workers, but also by forcing relocations and removing ethnic minorities or indigenous peoples from their homelands. In short, states can restrict as well as promote migration through migration control.¹ In his now famous slogan, James Hollifield describes this omnipresence of especially Western liberal nation-state activity in migration matters as constituting the ‘emergence of the migration state’.²

Following a brief moment of welcoming refugees during the 2015 European ‘refugee crisis’ and with the exception of accepting Ukrainian refugees after the 2022 Russian invasion,³ the migration state has seemingly mostly reared its illiberal and exclusionary head in the liberal democracies of the West over recent years. Despite liberal democracy’s emancipatory promises of freedom, inclusion, and equal treatment, potential immigrants and asylum seekers, often fleeing from war, destruction, and destitution, now face deadly journeys, physical barriers, and

¹ Darshan Vigneswaran and Joel Quirk, eds., *Mobility Makes States: Migration and Power in Africa* (Philadelphia, PA: University of Pennsylvania Press, 2015).

² James F. Hollifield, 'The Emerging Migration State', *International Migration Review* 38, no. 3 (2004): pp. 885-912.

³ Lucas Rasche, *Ukraine: A Paradigm Shift for the Eu’s Asylum Policy?*, Hertie School: Jacques Delors Centre (2022); Seth M Holmes and Heide Castañeda, 'Representing the “European Refugee Crisis” in Germany and Beyond: Deservingness and Difference, Life and Death', *American ethnologist* 43, no. 1 (2016): pp. 12-24.

internment camps on their route to safety and a new life. Legal migration routes are being closed off and the so illegalised migrants face an ever more violent ‘border spectacle’ of restrictionism consisting of Kafkaesque bureaucracy, police raids, and prison-like deportation camps.⁴ Thousands die each year trying to cross the Mediterranean to claim asylum in the European Union.⁵ Meanwhile, within the EU, nation-state borders have become fluid and mobility is highly encouraged. Restrict and promote.

How and why has migration control turned into one of the defining attributes of modern states? And what explains the mode of its practical expression? To approach an answer to these questions, I turn to the historical development of modern nation-states and the two-way relationship of migration control and state power. Unlike Hollifield who locates the rise of the migration state in the second half of the 20th century and as the logical continuation of a 19th century trading state, I argue in favour of a more distal and more foundational relationship between migration and the nation-state: Migration control is an expression of the internal and external politics of belonging which draw the boundaries nation-state membership.⁶ Enforcing these boundaries requires states to expand their horizontal and vertical

⁴ Jasper Theodor Kauth and Desmond King, 'Illiberalism', *European Journal of Sociology* 61, no. 3 (2020): pp. 365-405; Desmond King and Inés Valdez, 'From Workers to Enemies: National Security, State Building, and America's War on Illegal Immigrants'. In *Narrating Peoplehood Amidst Diversity*, ed. Michael Böss (Aarhus: Aarhus University Press, 2011), pp. 145-182; Amy Nethery and Stephanie Jessica Silverman, *Immigration Detention: The Migration of a Policy and Its Human Impact* (London: Routledge, 2015).

⁵ Estela Schindel, 'Death by ‘Nature’: The European Border Regime and the Spatial Production of Slow Violence', *Politics and Space* 40, no. 2 (2022): pp. 428-446; Iosif Kovras and Simon Robins, 'Death as the Border: Managing Missing Migrants and Unidentified Bodies at the Eu's Mediterranean Frontier', *Political Geography* 55(2016): pp. 40-49; Henk Van Houtum and Freerk Boedeltje, 'Europe's Shame: Death at the Borders of the Eu', *Antipode* 41, no. 2 (2009): pp. 226-230.

⁶ Rogers Brubaker, 'Migration, Membership, and the Modern Nation-State: Internal and External Dimensions of the Politics of Belonging', *The Journal of Interdisciplinary History* 41, no. 1 (2010): pp. 61-78.

state power, that is, their infrastructural and despotic power across their territory and population.⁷

Nation-states and migration control, I argue, are thus more closely intertwined than the model of the emerging migration state initially suggests. But even before the rise of modern nation-states, states engaged in migration matters to restrict and promote the movements of different groups of people. Darshan Vigneswaran and Joel Quirk argue through a *Mobility Makes States* thesis of state development, that researchers need to ‘move beyond the conventional notion that preventing and managing human mobility constitutes one among any number of state functions. The main problem with this familiar point of departure is that it treats mobility as an external aberration or intrusion that (preexisting) states must address, rather than *a key ingredient in the constitution of state authority in the first place. Mobility has long been the historical norm, not the exception*’.⁸ While various forms of mobility have long been the historical norm, the modes of states’ promoting and restricting engagement with mobility has changed dramatically over time.

This can be seen in the well documented shift from a ‘liberal moment in migration politics’⁹ of the 19th century to the ‘global walls against migration’¹⁰ of the years following World War I, especially in Europe, North America, and the wider

⁷ Michael Mann, ed., *The Rise and Decline of the Nation State* (Oxford: Basil Blackwell, 1990); Michael Mann, 'The Autonomous Power of the State: Its Origins, Mechanisms and Results', *European Journal of Sociology* 25, no. 2 (1984): pp. 185-213.

⁸ Vigneswaran and Quirk, *Mobility Makes States*, p. 2. Emphasis added.

⁹ Aristide R Zolberg, 'Labour Migration and International Economic Regimes: Bretton Woods and After'. In *International Migration Systems: A Global Approach*, ed. Mary M. Kritz, Lin Lean Lim, and Hania Zlotnik (Oxford: Clarendon Press, 1992), pp. 315-334; Jose C. Moya, *Cousins and Strangers: Spanish Immigrants in Buenos Aires, 1850-1930* (Berkeley, CA; London: University of California Press, 1998).

¹⁰ Aristide R Zolberg, 'Global Movements, Global Walls: Responses to Migration, 1880-1925'. In *Global History and Migrations*, ed. Gungwu Wang (Boulder, CO; Oxford: Westview Press, 1997), pp. 279-307; Aristide R Zolberg, 'The Great Wall against China: Responses to the First Immigration Crisis, 1885-1925'. In *How Many Exceptionalisms? Explorations in Comparative Macroanalysis*, ed. Aristide R Zolberg (Philadelphia, PA: Temple University Press, 2008 [1997]).

‘Atlantic World’:¹¹ After a long period of border fluidity and migration *laissez-faire* throughout the Middle Ages and early modern period, states further institutionalised this hands-off approach in a wide-ranging network of bilateral trade treaties that routinely included free migration and settlement provisions.¹² This first changed in the last years of the 19th century, with the US placing prohibitions on the immigration of Asians, and rapidly changed in the years between the two wars with the introduction of ever more restrictions on the movement of people based on racial hierarchies and a simultaneous failure to return to pre-war *laissez-faire* arrangements.¹³ As I show in the second essay of this thesis, from the 1920s onwards, migration policies were mostly separated from international free-trade negotiations and political parties started to frame sustained immigration as a racialised threat to the public.¹⁴ A threat that had to be fought and neutralised with a new set of measures that aimed at restricting the movement of people: passports, visas, border controls, state surveillance, expulsions, refugee and deportation camps, limited and unequal rights, and even the formal and factual exclusion of foreigners from national

¹¹ Andreas Fahrmeir, Olivier Faron, and Patrick Weil, *Migration Control in the North Atlantic World: The Evolution of State Practices in Europe and the United States from the French Revolution to the Inter-War Period* (New York, NY; Oxford: Berghahn Books, 2003).

¹² Jasper Theodor Kauth, 'Fremdenrecht Und Völkerbund: Das Scheitern Der International Conference on the Treatment of Foreigners 1929', *Archiv des Völkerrechts* 56, no. 2 (2018): pp. 202-228; Christoph Alexander Rass, *Institutionalisierungsprozesse Auf Einem Internationalen Arbeitsmarkt: Bilaterale Wanderungsverträge in Europa Zwischen 1919 Und 1974* (Leiden: Brill, 2019).

¹³ Erika Lee, *America for Americans: A History of Xenophobia in the United States* (New York, NY: Basic Books, 2019); Erika Lee, 'The Chinese Exclusion Example: Race, Immigration, and American Gatekeeping, 1882-1924', *Journal of American Ethnic History* 21, no. 3 (2002): pp. 36-62; Zolberg, 'Global Movements, Global Walls'; Zolberg, 'Great Wall against China'; Kauth, 'Fremdenrecht Und Völkerbund'; Desmond King, *Making Americans: Immigration, Race, and the Origins of the Diverse Democracy* (Cambridge, MA; London: Harvard University Press, 2000); Adam McKeown, 'Global Migration, 1846-1940', *Journal of World History* 15, no. 2 (2004): pp. 155-189; Adam McKeown, *Melancholy Order: Asian Migration and the Globalization of Borders* (New York, NY: Columbia University Press, 2008); Leo Lucassen, 'The Great War and the Origins of Migration Control in Western Europe and the United States'. In *Regulation of Migration: International Experiences*, ed. Anita Böcker et al. (Amsterdam: Amsterdam Spinhuis, 1998), pp. 45-72.

¹⁴ Kauth, 'Fremdenrecht Und Völkerbund'. See also King, *Making Americans*.

legal systems.¹⁵ Those arguing for restrictive policies framed immigrants coming to Western Europe and the United States from Eastern Europe as ‘bolshevik spies’ and ‘barbarian invaders’ who were ‘unfit for democracy’ and of inferior and incompatible ‘racial stocks’.¹⁶ Xenophobia, racism, and forms of policing and exclusion of foreigners had already existed before World War I. However, the interwar years were marked by an unprecedented politicisation of ‘the migration problem’¹⁷ as a salient issue of mass politics which was, moreover, brought to the fore on the back of exclusionary ideas of racial hierarchies.¹⁸ Meanwhile, European states were blatantly exporting their own populations as colonisers across the globe.¹⁹

But control of international cross border movements is only one of two dimensions of migration control. States have not only been concerned with the promotion and restriction of immigration but also with population movements within their territories. For centuries, the ability to move freely within a state’s territory was tied to the status of a person as free or unfree. Slavery extended this well beyond the end of feudalism. Even during the absence of restrictive external border controls, the movement of enslaved and formerly enslaved persons was highly restricted within the early United States.²⁰ On the other hand, the US also employed various mobility

¹⁵ Zolberg, 'Global Movements, Global Walls'.

¹⁶ Katherine Benton-Cohen, *Inventing the Immigration Problem: The Dillingham Commission and Its Legacy* (Cambridge, MA: Harvard University Press, 2018); Jasper Theodor Kauth, 'Der Fall Isaak Nouhim – Ein Bolschewistischer Spion in Baden?'. In *Geflüchtet, Unerwünscht, Abgeschoben. Osteuropäische Juden in Der Republik Baden (1918–1923)*, ed. Nils Steffen and Cord Arendes (Heidelberg: Universitätsbibliothek Heidelberg, 2017), pp. 237-251; Lee, *America for Americans*; Małgorzata Radomska, 'The Political Origins of the Social Protection of Polish Migrant Workers in the German Interwar Labor Market', *Annales de Démographie Historique* 124, no. 2 (2012): pp. 105-140.

¹⁷ Benton-Cohen, *Inventing the Immigration Problem*.

¹⁸ Lucy Mayblin, *Asylum after Empire: Colonial Legacies in the Politics of Asylum Seeking* (London; New York, NY: Roman & Littlefield International, 2017).

¹⁹ E. Tendayi Achiume, 'Reimagining International Law for Global Migration: Migration as Decolonization?', *AJIL Unbound* 111(2017): pp. 142-146.

²⁰ Gerald L. Neuman, 'The Lost Century of American Immigration Law (1776-1875)', *Columbia Law Review* 93, no. 8 (1993): pp. 1833-1901.

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promoting policies to expand territorial claims and administratively and violently replace non-white populations with white European settlers.²¹ As I show in the first essay of this thesis, such practices of Internal Mobility Control also define different groups' ability to occupy public space and involve policing and incarceration to uphold those standards.

This brief discussion of different forms of state engagement in migration control already highlights the key themes of this thesis. First, migration control has an internal and external dimension, not just in terms of expanding power across a given territory and controlling the borders of that territory, but also in terms of deciding which members of the internal population are granted the rights to freely move across this territory and which members of external populations should be admitted to join the internal territory and population. Second, these two dimensions involve an ideational component in that they answer the question of 'who belongs?' and an institutional component in enforcing the answers given to that question. Third, despotic and infrastructural power are required for states to build these institutions and expand them across their territory. Fourth, this means that states are not fixed entities that uniformly interact with migration movements as part of a teleological development of states. Rather, states are dynamic and layered. Fifth, despite the dynamic nature of states, their behaviour is not random but can be explained through the interaction of distinct generative mechanisms of ideational and institutional development. While these developments are not teleological, they are still products of the past. Whereas many of the shifts described above have been amply documented in historical scholarship, researchers have struggled to provide theoretical explanations that account for both the common patterns in state engagement that can be observed in a wide variety of settings as well as the empirical

²¹ Paul Frymer, *Building an American Empire: The Era of Territorial and Political Expansion* (Princeton, NJ: Princeton University Press, 2017).

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evidence pointing to the contingent and non-logical outcomes of state development. This difficulty, I argue below, is rooted in a widespread positivist understanding of the social world which assumes, in the words of William H Sewell Jr, an experimental conception of temporality.²² In a positivist world of covering laws of the constant conjunction of empirical events, historical developments are the outcome of constant causes which just happen to have occurred in the past: ‘The experimental conception rests on two fundamental assumptions: a uniformity of causal laws across time and causal independence of every sequence of occurrences from previous occurrences.’²³ Instead, I opt for an eventful conception of temporality in which earlier sequences of events not only influence the range of potential outcomes of later sequences but also the social structures within which those later sequences take place. In short, history matters for the development of contemporary migration control and state power.

The research in this thesis operates from within a critical realist understanding of the world in which the interactions of generative mechanisms produce the empirical events that can be observed. No one mechanism will be able to explain an outcome as complex as the modern nation-state. But as the three essays in this thesis show, the shape of contemporary states cannot be explained without their promotion and restriction of movements across and within their borders. In this way, contemporary states are not just emerging migration states because they engage in migration control presently, as suggested by Hollifield. They are migration states because they have been formed through past migration control.

The three papers of this thesis home in on these developments. While the individual articles each contribute to debates on their respective empirical, theoretical, and methodological puzzles, the overall goal of this thesis is to show that

²² William H. Sewell, Jr., *Logics of History: Social Theory and Social Transformation* (Chicago, IL; London: University of Chicago Press, 2005), pp. 91-100.

²³ Sewell, *Logics of History*, p. 100.

by changing our base assumption about fixed states engaging in migration control to further fixed interests, we not only gain a better understanding of state development and the nature of state power but are also able to resolve paradoxes of migration control. To this end, and in parallel to Charles Tilly's 'war makes states' thesis of state formation in Western Europe, Vigneswaran and Quirk propose a horizontal 'mobility makes states' thesis.²⁴ They argue that mobility makes states because states have 'sought to augment their power and resources by promoting and channeling human mobility'.²⁵ At the same time, 'the movement of people has consistently shaped how and why state power has come to be distributed and concentrated across space.'²⁶ Through the essays making up this thesis, I complement Vigneswaran and Quirk's thesis with an investigation of the vertical dimension of migration control: How and why has the power of the modern nation-state been applied to control the movements of specific groups of people?

The key link between the institutional factors of state power and migration control are the ideational outcomes of the politics of belonging. Legitimising myths that develop outside the initial purview of the state form powerful hierarchies of differential humanity that define the groups fit to be included within the inclusionary boundaries of the nation-state as well as those that are cast to stand outside those boundaries – even if they are formally members of the state, they are being pushed to the margins of 'normal' society. Controlling these marginalised groups becomes a key function of the nation-state which legitimises itself by 'protecting' those on the inside.²⁷ This results in the expansion of state power and thus constrains the range

²⁴ Charles Tilly, *Coercion, Capital, and European States, A.D. 990-1990* (Oxford: Basil Blackwell, 1990); Vigneswaran and Quirk, *Mobility Makes States*.

²⁵ Vigneswaran and Quirk, *Mobility Makes States*, p. 7.

²⁶ Vigneswaran and Quirk, *Mobility Makes States*, p. 7.

²⁷ See, e.g., Michel Foucault, *Discipline and Punish: The Birth of the Prison* (London: Allen Lane, 1977); Zygmunt Bauman, *Modernity and the Holocaust* (Cambridge: Polity, 1989); Zygmunt Bauman, *Wasted Lives: Modernity and Its Outcasts* (Cambridge; Oxford: Polity, 2004); Zygmunt Bauman, 'Soil, Blood and Identity', *The Sociological Review* 40, no. 4 (1992): pp. 675-701.

Introduction

of future outcomes of the ongoing politics of belonging. But that does not mean that marginalisation and exclusion are irreversible. If the dominant narratives of belonging change, state power may be employed to reverse their effects. Restrictive migration control may be transformed into migration promotion.

In the first essay of this thesis, titled *Controlling the Marginalised*, I investigate the development of Internal Mobility Control in the UK, the British Empire, the US, and Germany from the 19th century onwards to establish a mechanism of vertical and horizontal state power expansion and centralisation through the control of the internal movements of marginalised groups. The second essay, titled *Origins of Modern Migration Control*, focuses on the external politics of belonging. Here, I analyse the interwar shift from *laissez-faire* liberalism to exclusionary external migration control in Weimar Germany. In the third essay, titled *Assessing Generative Mechanisms of the Emerging Migration State*, I turn to the critical realist framework of this research and ask: How can researchers ensure that their theorised mechanisms, such as the ones proposed in the first two essays, actually hold up to empirical scrutiny? For this, I introduce and apply the method of Explicit Bayesian Analysis to Critical Realism.²⁸ I conclude by picking up the themes of this introduction by bringing the results of the individual essays into conversation with each other.

In what remains of this introduction, I first offer a thematic overview by going into more detail about the topics of the individual essays while highlighting their relationship to the five themes introduced above. In the next chapter, I provide a brief literature review that frames my research in the wider study of migration control and state power along a discussion of the core concepts used across the three essays of this thesis and their theoretical backgrounds.

²⁸ Tasha Fairfield and Andrew E. Charman, *Social Inquiry and Bayesian Inference: Rethinking Qualitative Research* (Cambridge: Cambridge University Press, 2022).

1.2 Thematic Overview

This thesis takes a comparative and historical angle not only to explain specific outcomes but also to abstract the generative mechanisms from single cases and small-N comparisons to provide theoretical models that help us illuminate broader developments.²⁹ I will do so through three related essays:

1.2.1 *Controlling the Marginalised: Internal Mobility Control and State*

Development in the UK, the British Empire, the US, and Germany

First, in this comparative historical case study, I analyse the development of restrictive practices of Internal Mobility Control (IMC), ranging from vagrancy-type laws, internal expulsions, to labour camps, in the UK, the British Empire, the US, and Germany. Practices of IMC are based on vague legal definitions enabling local authorities to threaten individuals deemed ‘undesirable’, such as members of marginalised groups, with severe punishment for their presence in public spaces and the exercise of their freedom of movement. Taking a *longue durée* perspective and analysing historical events across the four cases, I argue that IMC was used in response to socio-political transformations that led to new claims of societal membership to further exclude marginalised groups. This is the vertical dimension of the politics of belonging: Powerful legitimising myths of differential humanity led to dominant hierarchies that case certain groups as less deserving of full societal membership. A key expression of this was states’ efforts to limit their mobility and

²⁹ John Gerring, 'Single-Outcome Studies: A Methodological Primer', *International Sociology* 21, no. 5 (2006): pp. 707-734; Dietrich Rueschemeyer, 'Can One or a Few Cases Yield Theoretical Gains?'. In *Comparative Historical Analysis in the Social Sciences*, ed. Dietrich Rueschemeyer and James Mahoney (Cambridge: Cambridge University Press, 2003), pp. 305-336. See also George Steinmetz, 'Odious Comparisons: Incommensurability, the Case Study, and “Small N's” in Sociology', *Sociological Theory* 22, no. 3 (2004): pp. 371-400; George Steinmetz, 'Critical Realism and Historical Sociology. A Review Article', *Comparative Studies in Society and History* 40, no. 1 (1998): pp. 170-186; Douglas V. Porpora, *Reconstructing Sociology: The Critical Realist Approach* (Cambridge: Cambridge University Press, 2015); Berth Danermark et al., *Explaining Society: Critical Realism in the Social Sciences* (London; New York, NY: Routledge, 2002).

presence in public space. But IMC also has a horizontal dimension: The control of internal mobility involves drawing societal and administrative boundaries of belonging. These can lead to conflicts between different sub-state units and the central state and cause demands for the central state to step in and set and enforce uniform standards of treatment across the state's territory. Either by enforcing inclusion and equality or by enforcing exclusion. I argue that this mechanism of IMC and the development of centralised state power needs to be seen as a general, dynamic mechanism of nation-state development.

1.2.2 Origins of Modern Migration Control: Racial-Political Orders in Interwar Germany.

In the second essay, I focus on the development of immigration control in interwar Germany and thus the external dimension of migration control. By drawing from racial-political order approaches, I build a causal model that accounts for Weimar Germany's shift towards restrictive migration politics over the course of the 1920s. This generative mechanism puts two competing racial-political orders of migration liberals and migration restrictionists at the centre of the developments during a critical juncture.³⁰ Based on an in-depth analysis of newly uncovered archival material from German government archives, I show that previous accounts of the interwar emergence of exclusionary migration control as opposed to the pre-war *laissez-faire* are unable to explain the crucial role of ideational factors in the interwar discussions on migration. Neither mechanisms focusing on the role of employers and economic cycles nor those pointing to labour market competition can explain a

³⁰ Desmond King and Rogers M. Smith, 'Racial Orders in American Political Development', *American Political Science Review* 99, no. 1 (2005): pp. 75-92; Robert C. Lieberman, 'Ideas, Institutions, and Political Order: Explaining Political Change', *American Political Science Review* 96, no. 4 (2002): pp. 697-712; Giovanni Capoccia and R. Daniel Kelemen, 'The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism', *World Politics* 59, no. 3 (2007): pp. 341-369.

widespread concern with the ethnic composition of migration among government officials. On the other hand, the approaches cannot account for attempts to reinstate a pre-war open border regime in the late 1920s either. In my rival model of racial-political orders, I assign a key role to social democrats who, after favouring migration liberalism in the early 1920s, turned to supporting ethnic exclusion following an electoral logic which drove them into the hands of migration restrictionists over the course of the interwar period. When abstracted from this specific empirical context, I argue, the racial-political order mechanism can act as a general explanation for the origins of modern migration control.

1.2.3 Assessing Generative Mechanisms of the Emerging Migration State: Critical Realism and Bayesian Analysis in Historical Political Science

In the third essay, I turn to a fundamental challenge of all qualitative social science and especially of historical political science: How can we ensure the reliability of the results of empirical qualitative research? How can we test whether our hypothesised causal narrative is indeed ‘more convincing’ than a previously hypothesised process? These questions are of particular importance for critical realist research in which uncovering and isolating unobservable generative mechanisms of complex social events and structures is the primary goal of social science. Even though numerous articles and book-length studies have considered different critical realist research models in great detail, a crucial step in the research process has so far been mostly neglected; namely, that of isolating a theorised generative mechanism or assessing it against rival explanatory accounts. While the importance of this step has been unanimously confirmed by critical realist scholars, no adequate assessment method or tool has been established.³¹ To turn rational theory choice (or judgment rationality) from a theoretical possibility into a routine part of critical realist research

³¹ K. Robert Isaksen, 'Reclaiming Rational Theory Choice as Central: A Critique of Methodological Applications of Critical Realism', *Journal of Critical Realism* 15, no. 3 (2016): pp. 245-262.

practice, I propose the adoption of Explicit Bayesian Analysis (EBA) into CR. EBA is a novel method of Bayesian inference developed by Tasha Fairfield and Andrew Charman ‘to represent the rational degree of belief we should hold in propositions given the information we possess, independently of subjective opinions, predilections, or aspirations,’³² or, in other words, for inference to the best explanation relative to rival accounts. In this essay, I show that EBA is the ideal practical solution to fill that theoretical gap in CR. To demonstrate the power and practicability of EBA as part of a critical realist research model, I assess the explanatory power of the racial-political orders mechanism theorised in the previous essay against its closest competitors: Freeman’s hypothesis of economic cycles and the capture of the state by powerful employer interests and Lucassen’s thesis of the power of the politically integrated organised labour movement. I then turn to one of the core questions raised as part of the first essay: Is Internal Mobility Control mainly a means of economic elites to exert control over groups that could threaten their vested interests or a tool to sort between desired and undesired groups and to marginalise those deemed to rank lower on various moral and racial hierarchies? By means of EBA, I show that the racial-political order and cultural hierarchy hypotheses hold more power than their rival material hypotheses. But I also go beyond the intended use-case of EBA by showing that the analysis of IMC under the economic elites and cultural hierarchy hypotheses highlights episodes that could be better explained through a joint mechanism. I conclude by proposing that EBA can also act as an incentive to formulate the results of critical realist research in a language that makes them readily available for further investigation.

³² Fairfield and Charman, *Social Inquiry and Bayesian Inference*, p. 13.

2 Literature Review

2.1 Reframing Migration and the Nation-State

In this thesis, I adopt and adapt Hollifield's concept of the migration state. In pitching his theoretical concept, Hollifield follows a narrative widely established in the traditional literature on state development and its relationship to migration control: States' efforts to regulate the movements of people is a result of gradual and logical state expansion. After Westphalia, Hollifield sums up this view, states were primarily 'garrison states' which assumed more and more economic functions following the industrial revolution. '[This] rise of the trading state necessarily entails the rise of the migration state'¹ and while 'the nineteenth and twentieth centuries saw the rise of [...] the trading state. The latter half of the twentieth century has given rise to the migration state.'² For Hollifield, migration is both 'a cause and a consequence of political and economic change. International migration, like trade, is a fundamental feature of the postwar liberal order',³ especially in the so-called Western liberal democracies which are ostensibly open states by definition.

While states' economic interests certainly propelled the institutionalisation of a deregulated international migration regime in the second half of the 19th century, this view does not explain the general exclusionary mode of state engagement in migration control across Western liberal states in the era following World War I. This observation leads Hollifield and his associates to identify a dilemma of immigration control: 'economic pressures push for openness to migration while

¹ Hollifield, 'Migration State', p. 888.

² Hollifield, 'Migration State', p. 903.

³ Hollifield, 'Migration State', p. 905.

political, legal, and security concerns argue for greater control'.⁴ Further, to explain the ebb and flow of admission numbers in advanced industrial democracies, they formulate a 'liberal paradox' in which economic interests for openness are replaced by liberal rights based pressures in times of economic downturn.⁵ This, according to Hollifield, explains why states seem to be unable to control migration numbers despite political leaders frequently stating that they would want to do so.⁶ Taken together, these approaches to migration politics in modern states, and especially the liberal democracies of the West, fall into the same vein as Gary Freeman's insistence that the 'the normal politics of immigration in liberal democracies [would be] expansive and inclusive'⁷ due to the outsized influence of employer interests in open borders in liberal democracies which, moreover, are defined by a basic commitment to liberal rights and freedoms. These, Freeman argues, outweigh the restrictionist impulses from the wider public. Their contributions to the understanding of state action in the field of migration control cannot be overstated, yet aside from recent empirical challenges to the liberal paradox,⁸ Hollifield and Freeman's approaches lack a key theoretical component: where does the restrictionist bent, that is the political, legal, and security concerns pushing for immigration restrictionism, come from?

⁴ James F. Hollifield, Philip L. Martin, and Pia M. Orrenius, 'The Dilemmas of Immigration Control'. In *Controlling Immigration: A Global Perspective*, ed. James F. Hollifield, Philip L. Martin, and Pia M. Orrenius (Stanford, CA: Stanford University Press, 2014), pp. 3-34 here p. 3.

⁵ James F. Hollifield, Valerie F. Hunt, and Daniel J. Tichenor, 'The Liberal Paradox: Immigrants, Markets and Rights in the United States', *SMU Law Review* 61, no. 1 (2008): pp. 67.

⁶ Hollifield, 'Migration State'; Hollifield, Hunt, and Tichenor, 'Liberal Paradox'.

⁷ Gary P Freeman, 'Modes of Immigration Politics in Liberal Democratic States', *International Migration Review* 29, no. 4 (1995): pp. 881-902. For a mutual critique of the two approaches see Christina Boswell, 'Theorizing Migration Policy: Is There a Third Way?', *International Migration Review* 41, no. 1 (2007): pp. 75-100.

⁸ Livia Johannesson, 'Exploring the "Liberal Paradox" from the Inside: Evidence from the Swedish Migration Courts', *International Migration Review* 52, no. 4 (2018): pp. 1162-1185; Diego Acosta Arcarazo and Luisa Feline Freier, 'Turning the Immigration Policy Paradox Upside Down? Populist Liberalism and Discursive Gaps in South America', *International Migration Review* 49, no. 3 (2015): pp. 659-696.

A similar theoretical gap opens up in works by scholars explicitly focusing on the relationship between states and migration control. Anthony Messina, Christian Joppke, or Emma Haddad, for example, all focus on states' reactions to post-World War II migrations as 'a single, coherent phenomenon' linked in a 'path-dependent fashion'.⁹ In their analyses, they present convincing theoretical descriptions of the modern state. Joppke points to 'the principle of sedentariness underlying the modern state system' as 'administratively convenient, dividing up international state responsibility for certain categories of people (such as the migrant poor)' partly springing from 'their nationness'.¹⁰ He describes this 'nationness' as being 'constrained by moral obligations to those who can claim a right of place and to refugees, decisions over new membership are discretionary and not subject to considerations of justice. Inclusionary and democratic to the inside, nation-states are necessarily exclusionary and undemocratic to the outside, rocks of facticity that defy universal justice and human rights.'¹¹ What emerges here is a relatively fixed model of the state that closely resembles the ideal-type Weberian nation-state. A single state horizontally expanded its power across a territory and acts as an internally inclusive and externally exclusive entity. By solely focusing on this idealised version of the post-World War II nation-state and its responses to migration, these authors miss out on continuities bridging the Second World War. States, as discussed in the introduction, have always engaged in migration control. But the mode of their engagement has changed. Moreover, nation-state 'nationness' not only possesses a horizontal dimension. The view of the nation-state as only concerned with shutting

⁹ Anthony M. Messina, *The Logics and Politics of Post-Wwii Migration to Western Europe* (Cambridge: Cambridge University Press, 2007), p. 20.

¹⁰ Christian Joppke, *Immigration and the Nation-State: The United States, Germany, and Great Britain* (Oxford: Oxford University Press, 1999), p. 2.

¹¹ Joppke, *Immigration and the Nation-State*, p. 2.

out populations on the outside, ignores the internal and vertical dimensions of migration control and state power.

The task is thus to unsettle the state – to move away from a strict methodological nationalism in which a fixed state is taken for granted and used as the basis of our epistemology.¹² One way of doing so is brought forward by Yasemin Soysal and Saskia Sassen in their studies of the alleged waning of the nation-state in the late 20th century.¹³ Instead of focusing on the ways in which individual nation-states engage in migration control, they suggest that increased globalisation and migration movements were undermining the states hold on control institutions and thus moving the state system away from the nation-states of the 19th and 20th centuries. In Soysal and Sassen’s research, the mode of state behaviour becomes the observed outcome the explanation for which can be found in its interaction with migration.¹⁴ Empirically, Soysal and Sassen’s claims and predictions of the fall of the nation-state were premature. As Randall Hansen shows, the nation-state, not international organisations, supranational polities, or intergovernmental treaties on individual-level rights, remains the primary actor in the field of migration control today.¹⁵ Moreover, the COVID-19 pandemic, border closures, and lockdowns have shown that states have amassed more power than ever to restrict and control movement.¹⁶ That being said, Soysal and Sassen’s approach provides a powerful blueprint to question the modern migration state: By applying the same method to

¹² Andreas Wimmer and Nina Glick Schiller, 'Methodological Nationalism, the Social Sciences, and the Study of Migration: An Essay in Historical Epistemology', *International Migration Review* 37, no. 3 (2003): pp. 576-610.

¹³ Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization* (New York: Columbia University Press, 1996); Yasemin Nuhoğlu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago,IL; London: University of Chicago Press, 1994).

¹⁴ Joppke describes this as 'shifting the nation-state from independent to dependent variable'. Joppke, *Immigration and the Nation-State*, p. 3.

¹⁵ Randall Hansen, 'The Poverty of Postnationalism: Citizenship, Immigration, and the New Europe', *Theory and Society* 38, no. 1 (2009): pp. 1-24.

¹⁶ Anna Boucher et al., 'Covid-19: A Crisis of Borders', *PS: Political Science and Politics* 54, no. 4 (2021): pp. 617-622.

the beginnings of the modern state, researchers can understand why the state remains powerful and why post-state migration regimes, as predicted by Soysal, Sassen, and others, have failed to materialise.¹⁷

Vigneswaran and Quirk's 'mobility makes states'¹⁸ is a first step towards an approach that explains states as an outcome of migration and the control responses of state elites to those migration movements. In their view, 'states have consistently sought to augment their power and resources by promoting and channeling human mobility.'¹⁹ Secondly, 'the movement of people has consistently shaped how and why state power has come to be distributed and concentrated across space'.²⁰ In other words, states not only react to the movements of people but use them to their advantages. But states cannot genuinely control where those movements appear, and the varied interests of state actors in the places where migration occurs creates different layers of state reaction. Therefore, migration is not just something that interferes with a uniform state entity but is a phenomenon that shapes that entity. Seen from this point of view, the different reactions of nation-states to globalisation as described by Soysal and Sassen is not an aberration but more of the same: Modern states attempt to capitalise on some migrations while restricting others. To do so, states need to expand their power over certain populations while easing off from others. States thus display a dynamic engagement with migration with changing interests and responses. The changing reactions, in turn, have created layers of

¹⁷ Jagdish Bhagwati, 'Borders Beyond Control', *Foreign Affairs* 82, no. 1 (2003): pp. 98-104; Rey Koslowski, 'Global Mobility Regimes: A Conceptual Framework'. In *Global Mobility Regimes*, ed. Jagdish Bhagwati, 'Borders Beyond Control', *Foreign Affairs* 82, no. 1 (2003): pp. 98-104; Rey Koslowski, 'Global Mobility Regimes: A Conceptual Framework'. In *Global Mobility Regimes*, ed. Rey Koslowski (New York, NY; Basingstoke: Palgrave Macmillan, 2011), pp. 1-25; Alexander Betts, ed., *Global Migration Governance* (Oxford: Oxford University Press, 2011).

¹⁸ Vigneswaran and Quirk, *Mobility Makes States*.

¹⁹ Vigneswaran and Quirk, *Mobility Makes States*, p. 7.

²⁰ Vigneswaran and Quirk, *Mobility Makes States*, p. 7.

institutions whose logics condition actors to engage with future migrations in varying ways.

With Vigneswaran and Quirk on one end of the spectrum, arguing against the existence of fixed states and their innate interest to restrict migration movement, and scholars like Joppke on the other end, arguing that a particular type of state, nation-states, are fixed and powerful entities naturally interested in restricting migration today, a theory of the state and migration control is needed that accounts for both: The restrictive exclusionary migration control that many Western states display today despite counteracting forces pushing it to open up as well as the dynamic nature of their engagement so well described by Vigneswaran and Quirk. The solution, I argue, is in treating the nation-state not as the fixed outcome of unifying a nation and a territory but as an ongoing process of negotiating belonging.

Rogers Brubaker, in an analytical critique of the established fixed concept of the nation-state introduces the concept of the internal and external politics of belonging.²¹ Brubaker argues that nation-states do not engage with migration as an aberration. While large-scale movements may introduce disturbance, ‘that disturbance [...] has been part of the system of nation-states from the beginning. Only in an atemporal, logical sense, not in an historical sense, can migration be said to disturb the congruencies that constitute the ideal conceptual model of the nation-state.’²² Instead, migration triggers a renegotiation of belonging. This applies internally as well as externally: The absence of any internal migration control equals full access to the idealised ‘fluid’ internal space of the nation-state and thus full compatibility with the idealised nation. Meanwhile the absence of any external migration control indicates full access to that same idealised nation as well. But who is considered a full member of society, or as having the potential to become one, is

²¹ Brubaker, 'Migration, Membership, and the Modern Nation-State'.

²² Brubaker, 'Migration, Membership, and the Modern Nation-State', p. 72.

not fixed and instead depends on the interests of state elites as well as on the shared narratives of peoplehood that are used to define those on the 'inside'.²³ This is summed up by Brubaker as:

The internal politics of belonging apply to populations that are durably situated within the territorial ambit of a state but are not - or not fully - members of that state. The external politics of belonging pertain to the membership status of populations that are durably situated outside the territorial ambit and jurisdiction of a state but claim - or are claimed - to belong, in some sense, to that state or to "its" nation. They may or may not be citizens or otherwise formal members of the state in question; in either case, their membership status, actual or claimed, is the focus of contestation.²⁴

An idealised, and tentative, mechanism that explains the mode of internal and external migration control in nation-states could thus be described as follows: In nation-states where the postulated unity of state, territory, and nation is the main legitimising force for the execution of state power, narratives of peoplehood, of inclusion and exclusion in society, create demands for states to expand their horizontal and vertical state power to enforce the boundaries of belonging defined by those narratives. But over time, these narratives change, for example, in response to changing beliefs of moral virtue of particular groups of persons or the rise and fall of belief about racial hierarchies. These beliefs can also change in response to migrations as the integration of various previously discriminated against groups of immigrants to the US shows.²⁵ Political actors can also influence these beliefs and push exclusion as well as for inclusion by engaging in critical ideational developments.²⁶ However, as

²³ Rogers M. Smith, *Political Peoplehood: The Roles of Values, Interests, and Identities* (Chicago, IL: The University of Chicago Press, 2015); Rogers M. Smith, *Stories of Peoplehood: The Politics and Morals of Political Membership* (Cambridge: Cambridge University Press, 2003).

²⁴ Brubaker, 'Migration, Membership, and the Modern Nation-State', p. 66.

²⁵ Lee, *America for Americans*; Leo Lucassen, *The Immigrant Threat: The Integration of Old and New Migrants in Western Europe since 1850* (Urbana, IL: University of Illinois Press, 2005).

²⁶ Desmond King and Rogers M. Smith, "'Without Regard to Race': Critical Ideational Development in Modern American Politics', *The Journal of Politics* 76, no. 4 (2014): pp. 958-971.

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previous beliefs had been institutionalised and enforced through state power, these changes are conditioned by the structure and logic of the existing state and counteracted by those wanting to hold on to the past arrangements. Changing the patterns of exclusion and inclusion in the nation-state The outcome of the politics of belonging thus depends on the dynamic interaction of ideas and institutions as well as on previous outcomes of those interactions.

This thesis will attempt to flesh out some aspects of this highly abstracted and idealised mechanism through concrete empirical analysis. To do so, it becomes necessary to inverse classic assumptions of migration and nation-states: States do not naturally behave according to expansive economic and restrictionist political interests. Rather, those logics were implanted into the modern state by efforts to reshape social order at key moments in state development.²⁷ To foreshadow my argument in the first paper of this thesis, migration control became a tool for states to react to demands for societal membership without having to fundamentally transform and expand social policies. Therefore, by co-opting racial and moral hierarchies into the logic of movement control, states created their own restrictionist bent as an unintended consequence of prior movement control policies. The modern state emerged as the racial state,²⁸ using state power to advance racial – and moral – projects, at least partially, through the use of migration control. States remain the primary actors due to an international system operating according to the logic of the state. But the expressions of those logics can change by changing the underlying hierarchies and restarting the politics of belonging.

²⁷ Vigneswaran and Quirk, *Mobility Makes States*, p. 17.

²⁸ David Theo Goldberg, *The Racial State* (Malden, MA; Oxford: Blackwell Publishers, 2002).

2.2 Conceptual Overview

There are several related concepts that are foundational to the theoretical and empirical discussions in this thesis. Most of which have already been introduced, albeit without clear definitions. The full implications of the terms and definitions chosen become apparent in the respective essays; however, to locate my work within broader literatures on migration control and state theory and to delimit my discussion they require brief introductory remarks. These remarks are necessarily abstract and the concepts will be fleshed out empirically in the individual essays. The concepts are: *migration, mobility, and control; states and state power; logic; modernity; racial and moral hierarchies; Critical Realism; and eventful temporality.*

2.2.1 Migration, Mobility, and Control

In this thesis I am taking a broad perspective on migration including both forced and voluntary forms of border crossings aimed at temporary or permanent change of primary residence, unless treated differently in the historical source material.²⁹ Separate migration and refugee policy regimes only started to emerge during the interwar period and became entrenched after World War II.³⁰ Categories of migration are politically constructed and, empirically, the boundaries between ‘involuntary refugees’ and ‘voluntary migrants’ are often blurred.³¹ Mobility

²⁹ See Satvinder Juss, 'Sovereignty, Culture, and Community: Refugee Policy and Human Rights in Europe. Reconsidering Immigration in an Integrating World', *UCLA Journal of International Law and Foreign Affairs* 3, no. 2 (1998): pp. 463-496.

³⁰ For an overview of the emergence of migration control regimes, see Claudena M. Skran, *Refugees in Inter-War Europe: The Emergence of a Regime* (Oxford: Clarendon Press, 1995); Rieko Karatani, 'How History Separated Refugee and Migrant Regimes: In Search of Their Institutional Origins', *International Journal of Refugee Law* 17, no. 3 (2005): pp. 517-541; Katy Long, 'When Refugees Stopped Being Migrants: Movement, Labour and Humanitarian Protection', *Migration Studies* 1, no. 1 (2013): pp. 4-26.

³¹ For the political and societal construction of the different concepts, see Nicholas P. De Genova, 'Migrant "Illegality" and Deportability in Everyday Life', *Annual Review of Anthropology* 31, no. 1 (2002): pp. 419-447; Khalid Koser and Susan F. Martin, 'The Migration-Displacement Nexus'. In *The*

encompasses an even wider range of human movement: in addition to choices of residency that may or may not involve the crossing of local, regional, or national jurisdictional boundaries or international borders, it also includes short term sojourn and the general access and enjoyment of public space. States' control of migration and mobility refers to institutions and practices that limit, restrict, or ban any form of migration or mobility, respectively. However, control also includes the opposite – promotion: encouragement, incentivisation, or legalisation of previously hindered forms of migration or mobility. Control can therefore mean both: forced movement or forced non-movement.³²

2.2.2 *States and State Power*

As discussed above, the three papers in this thesis are united by the theoretical ambition to place migration control at the centre of state development. What is the state and, relatedly, state power? First, my discussions are limited to the development of the modern state in particular. The *modern* state shows two tendencies, centralisation and exclusion, which differentiates it from pre-modern states – or emerging state-like polities such as the EU. My definition of the modern state follows that of statisticians such as Theda Skocpol and the organisational materialism of Michael Mann: *The state tends to be an autonomous set of layered administrative, policing, and military organisations which are headed by a centralising and monopolising executive authority operating according to its own logic and exerting some level of binding rule making over a territorially delimited area*

Migration-Displacement Nexus: Patterns, Processes, and Policies, ed. Khalid Koser and Susan F. Martin (New York, NY: Berghahn Books, 2011), pp. 1-13; Theodoros Iosifides, 'Against 'Migration': Using Critical Realism as a Framework for Conducting Mixed-Method, Migrantization Research', *Journal of Critical Realism* 16, no. 2 (2017): pp. 128-142; Heaven Crawley and Dimitris Skleparis, 'Refugees, Migrants, Neither, Both: Categorical Fetishism and the Politics of Bounding in Europe's 'Migration Crisis'', *Journal of Ethnic and Migration Studies* 44, no. 1 (2018): pp. 48-64; Alyosxa Tudor, 'Ascriptions of Migration: Racism, Migratism and Brexit', *European Journal of Cultural Studies* 26, no. 2 (2022): pp. 230-248.

³² Vigneswaran and Quirk, *Mobility Makes States*, p. 7.

*enforced by physical force.*³³ This definition departs in several regards from Max Weber's prominent conceptualisations of the state and the modern state. Most importantly, it loosens up the attributes that relate to the successful penetration and extension of state power. On the one hand, states, as I will show in this thesis, are not unitary actors or arenas for political decision making, but consist of several layers of state institutions that do not necessarily act in a coordinated fashion. In their definition of the state, Vigneswaran and Quirk describe 'the state less as a unitary container of populations and more as a more variegated, incomplete, and dispersed network of order and control'³⁴ But moreover, these networks of order and control are themselves not unitary, creating disorder and friction out of multiple layers of ordered networks.³⁵ In the words of Mann, 'states are portrayed as chaotic, irrational, with multiple departmental authorities, pressured erratically and intermittently by capitalists but also by other interest groups.'³⁶ On the other hand, states, even though they alone are 'centralized over a delimited territory over which [they have] binding powers',³⁷ need to draw on resources outside their original purview, such as ideological, economic, and military capabilities, to uphold their extension over a territory. State power, then, is the capacity of states to maintain and extend the vertical (depth) or horizontal (geographical) reach of state institutions despite their inherent fragmentation. States can expand their power in these two dimensions through despotic and infrastructural power³⁸ In this model, state power is not reduced to the classic Weberian aspects of bureaucracy or military capabilities. In their

³³ Theda Skocpol, *States and Social Revolutions: A Comparative Analysis of France, Russia, and China* (Cambridge: Cambridge University Press, 1979), pp. 27-30; Michael Mann, *The Sources of Social Power: The Rise of Classes and Nation-States, 1760-1914*, 2nd ed., vol. 2 (Cambridge: Cambridge University Press, 2012), pp. 44-91.

³⁴ Vigneswaran and Quirk, *Mobility Makes States*, p. 7.

³⁵ Lieberman, 'Ideas, Institutions, and Political Order'.

³⁶ Mann, *Sources of Social Power*, 2, p. 53. See also

³⁷ Mann, *Sources of Social Power*, 2, p. 56.

³⁸ Cf Mann's despotic and infrastructural dimensions of state power for an alternative but complementary conceptualisation. Mann, 'Autonomous Power of the State'.

analyses of the curious case of the American state, Desmond King and Robert C Lieberman as well as Paul Frymer show how state authorities can extend state power through functions other than the expansion of a Weberian bureaucracy or the monopolisation of physical force: standard-setting, associational, and fiscal activities lead to the presence of the state in its despotic and infrastructural forms in various aspects of citizens' everyday lives.³⁹

The relative autonomy of the state does not mean it is free from actors – on the contrary: Various individual and organisational actors continuously fight over access to the different layers of the state and its centralised authority in order to use state power to their ends. They are conditioned by the logics of the state but are also able to change the very structure of the state at critical junctures.⁴⁰ To explain state behaviour, it is crucial to not just explain the logics of state institutions but also the ideas that drive the actors who take charge of them at various points in time and how their conflict propels state development.⁴¹

2.2.3 Logic

A common conviction in statist accounts of politics is that states are not just places for or arrangements by civil society and their interests, but that they can operate semi-autonomously. The degree of autonomy differs between accounts that

³⁹ Desmond King and Robert C. Lieberman, "'The Latter-Day General Grant': Forceful Federal Power and Civil Rights', *The Journal of Race, Ethnicity, and Politics* 6, no. 3 (2021); Desmond King and Robert C. Lieberman, 'Ironies of State Building: A Comparative Perspective on the American State', *World Politics* 61(2009): pp. 547-588; Paul Frymer, "'A Rush and a Push and the Land Is Ours': Territorial Expansion, Land Policy, and U.S. State Formation', *Perspectives on Politics* 12, no. 1 (2014): pp. 119-144; Frymer, *Building an American Empire*.

⁴⁰ Lieberman, 'Ideas, Institutions, and Political Order'; Capoccia and Kelemen, 'Study of Critical Junctures'.

⁴¹ Desmond King and Marc Stears, 'How the U.S. State Works: A Theory of Standardization', *Perspectives on Politics* 9, no. 3 (2011): pp. 505-518. For a more foundational discussion of structure and agency within social order and the state, see Margaret S Archer, *Generative Mechanisms Transforming the Social Order* (Cham: Springer, 2015); Margaret S Archer, *Realist Social Theory: The Morphogenetic Approach* (Cambridge: Cambridge University Press, 1995).

assign core explanatory power to elite groups that take control of the state and use its power capabilities to advance its own interests, and accounts that see the state as an institutional arrangement exerting independent influence over the interests and actions of state elites. Mann calls this latter approach ‘institutional statism’ suggesting that ‘state autonomy might reside less in elite autonomy at all than in the autonomous logic of definite political institutions, arisen in the course of previous power struggles, then institutionalized and constraining present struggles.’⁴² Institutional statism, here, follows the familiar neo-institutionalist argument of behaviour-constraining political institutions.⁴³ With the concept of a logic, I go a step further: A political logic is the institutional equivalent to the epistemology of an individual political actor. In their explanatory analysis of the British position to German re-unification, Jarrod Hayes and Patrick James employ analytical eclecticism to overcome gaps in individual IR theories.⁴⁴ Instead of using a theory to explain actors’ behaviour, they treat ‘theories as thought’ meaning they show that at key moments various actors saw the world through the lenses of particular theoretical models and then acted accordingly. For the actors involved, these theories were not strongly held convictions or ideologies but rather modes of analysis prescribing certain actions. A political logic is thus a pattern of institutionalised beliefs about the logical and rational way to respond to a political problem or challenge. Moreover, it does not only constrain behaviours or redefine cost-benefit analyses but also defines macro-level political goals and institutional functions and thus which phenomena are to be considered political problems to begin with. In this case, migration control did

⁴² Mann, *Sources of Social Power*, 2, p. 52.

⁴³ Ian Shapiro, Stephen Skowronek, and Daniel Galvin, *Rethinking Political Institutions: The Art of the State* (New York: New York University Press, 2006).

⁴⁴ Jarrod Hayes and Patrick James, 'Theory as Thought: Britain and German Unification', *Security Studies* 23, no. 2 (2014): pp. 399-429; Rudra Sil and Peter J. Katzenstein, *Beyond Paradigms: Analytic Eclecticism in the Study of World Politics* (Basingstoke; New York, NY: Palgrave Macmillan, 2010).

not only make the modern state, but also impressed an exclusionary and thus migration restrictionist logic on the core of the modern state.

2.2.4 *Modernity*

The modernity of the modern states analysed here is not the same conceptual modernity criticised by postcolonial scholars as a label of superiority advancement in the vein of dependency theory.⁴⁵ The modern state is modern due to its incorporation of a modern mode of inclusion and exclusion.⁴⁶ In his analysis of the Holocaust as a possibility rather than a deviation from modernity, Zygmunt Bauman describes modernity as an era in which seemingly rational thinking rooted in enlightenment philosophy is pushed to the extreme to create social order. Yet creating social order always involves drawing boundaries of those that belong and those that stand outside of society.⁴⁷ Here, the state becomes the allegedly rational and expert arbiter of who belongs and who must be cast out based on the dominant hierarchies held by a ‘mainstream’ society. States, in other words, become gardeners who ‘split the population into useful plants to be encouraged and tenderly propagated, and weeds – to be removed or rooted out. They put a premium on the needs of the useful plants (as determined by the gardener's design) and disendowed the needs of those declared to be weeds. They cast both categories as objects of action and denied to both the rights of self-determining agents.’⁴⁸ The gardening state analogy does not explain state behaviour directly, nor should be it taken as the unavoidable end-point of

⁴⁵ Darshan Vigneswaran, 'Europe Has Never Been Modern: Recasting Historical Narratives of Migration Control', *International Political Sociology* 14, no. 1 (2020): pp. 2-21; Vigneswaran and Quirk, *Mobility Makes States*.

⁴⁶ Michel Foucault, *"Society Must Be Defended"*, trans. David Macey (New York, NY: Picador, 2003 [1976]); Foucault, *Discipline and Punish*.

⁴⁷ Bauman, *Wasted Lives*; Bauman, *Modernity and the Holocaust*. See also Bridget Anderson, *Us and Them? The Dangerous Politics of Immigration Control* (Oxford: Oxford University Press, 2013).

⁴⁸ Zygmunt Bauman, *Modernity and Ambivalence* (Cambridge: Polity, 1991), p. 20.

political development. But it helps to understand the particular mode of *modern* migration control as opposed to, say, a purely mercantilist *laissez-faire* regime.

Modern nation-states draw legitimacy for state power and incursion into the liberties and freedoms of individuals not just from the promise of protection from a hostile Hobbesian state of nature but from the promise to promote a rational order of inclusion and exclusion. The particular shape and contours of that order depends on the outcome of the internal and external politics of belonging. These outcomes '[demark] who is and who is not a full member of society based on ideological constructions of the societal in- and out-groups'.⁴⁹ In the Western states analysed here, these ideological constructions are often racial and moral hierarchies which find their way into the state through measures of internal and external migration control.

2.2.5 *Racial and Moral Hierarchies*

To operationalise Bauman's system of exclusion I am drawing from the concepts of racial and, what I call, moral hierarchies. Racial and moral hierarchies are hierarchies of differential humanity, that is, they attempt to classify and rank human beings according to a belief in differing levels of human worthiness.⁵⁰ The various specific expressions of those hierarchies are manifestations of a mechanism described by social dominance theory through which a dominant group in society categorises outgroups as inferior, establishing 'group-based social [hierarchies]' driven by processes of 'aggregated individual discrimination, aggregated institutional discrimination, and behavioral asymmetry.'⁵¹ For these to emerge, Jim Sidanius and

⁴⁹ Kauth and King, 'Illiberalism'.

⁵⁰ Mayblin, *Asylum after Empire*.

⁵¹ Jim Sidanius and Felicia Pratto, *Social Dominance: An Intergroup Theory of Social Hierarchy and Oppression* (Cambridge: Cambridge University Press, 1999), p. 39. There has been considerable debate over different aspects of Sidanius's Social Dominance Theory and how it measures up against other group and conflict theories in social psychology, especially in regard to the individual-level psychological drive to define in- and outgroups. See, e.g., Mark Rubin and Miles Hewstone, 'Social Identity, System Justification, and Social Dominance: Commentary on Reicher, Jost Et Al., and

Felicia Pratto propose the concept of ‘legitimizing myths [which] consist of attitudes, values, beliefs, stereotypes, and ideologies that provide moral and intellectual justification for the social practices that distribute social value within the social system.’⁵² Whereas the content of the resulting hierarchies may vary, exclusionary legitimising myths share the notion that each individual occupies that position along the social status continuum that he or she has earned and therefore deserves.⁵³ To ‘produce and maintain’⁵⁴ hierarchies’ societies overtly and covertly institutionalise discrimination which keep subordinate groups ‘in “their place”’.⁵⁵

The cases that I discuss in this thesis here are examples of institutionalised discrimination based on the legitimising myths of racism and poverty-as-immorality, but, as mentioned throughout this study, practices of internal and external mobility control have been based on various other exclusionary hierarchies as well, such as sexism (in the restriction of movement of single women) or the moral hierarchy homophobia (criminalisation of homosexuality). Racial hierarchies are a much-used and much-debated concept in the social sciences with considerable disagreement over the precise make-up of the hierarchical system of a given racialised society across time and space.⁵⁶ The concept is used here in general terms as a way of describing the stratified societies that emerge from beliefs in the myth of biological inferiority

Sidanius Et Al.', *Political psychology* 25, no. 6 (2004): pp. 823-844. But this debate and the considerable doubts over individual-level personality traits and their role in explaining variations in ethnocentric orientations and sociopolitical attitudes do not diminish the value of Social Dominance Theory's concept of social hierarchies for explaining societal and political discrimination, oppression, and inequality on the aggregated level of the political.

⁵² Sidanius and Pratto, *Social Dominance*, p. 45.

⁵³ Sidanius and Pratto, *Social Dominance*, p. 46.

⁵⁴ Sidanius and Pratto, *Social Dominance*, p. 127.

⁵⁵ Sidanius and Pratto, *Social Dominance*, pp. 131, 127-224.

⁵⁶ Miri Song, 'Introduction: Who's at the Bottom? Examining Claims About Racial Hierarchy', *Ethnic and Racial Studies* 27, no. 6 (2004): pp. 859-877; Vilna Bashi, 'Racial Categories Matter Because Racial Hierarchies Matter: A Commentary', *Ethnic and Racial Studies* 21, no. 5 (1998): pp. 959-968.

of socially constructed ‘races’ vis-à-vis white supremacy. Racial hierarchies are institutionalised by the racial state which

govern populations identified in explicitly racial terms. The identification legally and administratively of groups as inherently inferior or historically immature, as native or indigenous to colonized spaces, is taken invariably to entail – to require – their management and oversight. Such regulation commands not just what the racially regulated can do but where they can and cannot go, what educational institutions they can access, with whom they can fraternize, and where they can reside. But it commands also under what conditions the racially marginalized are profiled and criminalized – which is to say, subjected to surveillance and suspicion, punished, imprisoned, placed on probation, and paroled.⁵⁷

Racial hierarchies stood at the foundations of individual practices of internal mobility control in all three cases discussed here: the control of movement of African Americans in the US, the persecution of racialised immigrant communities in the UK, and the control of Sinti and Roma in Germany.⁵⁸

Moral hierarchies establish stratified societies through myths of differing moral worth due to a person’s status.⁵⁹ In the poverty-as-immorality myth, the poor are categorised as either involuntarily poor due to physical or mental ailments or as a homogenously immoral societal group undeserving of full societal membership and

⁵⁷ Goldberg, *Racial State*, p. 110.

⁵⁸ On racial attitudes towards Sinti and Roma, see Judith Okely, 'Recycled (Mis)Representations: Gypsies, Travellers or Roma Treated as Objects, Rarely Subjects', *People, Place & Policy* 8, no. 1 (2014): pp. 65-85. Marlene Sway, 'Gypsies as a Perpetual Minority: A Case Study', *Humboldt Journal of Social Relations* 3, no. 1 (1975): pp. 48-25; Simon Goodman and Lottie Rowe, '‘Maybe It Is Prejudice ... but It Is Not Racism’: Negotiating Racism in Discussion Forums About Gypsies', *Discourse & Society* 25, no. 1 (2014): pp. 32-46; Jacqueline Giere, ed., *Die Gesellschaftliche Konstruktion Des Zigeuners: Zur Genese Eines Vorurteils* (Frankfurt aM; New York, NY: Campus Verlag, 1996); Jennifer Illuzzi, 'Continuities and Discontinuities: Antiziganism in Germany and Italy (1900-1938)', *Sociología Histórica*, no. 10 (2020): pp. 51-80.

⁵⁹ Márton Hadarics and Anna Kende, 'Moral Foundations of Positive and Negative Intergroup Behavior: Moral Exclusion Fills the Gap', *International Journal of Intercultural Relations* 64(2018): pp. 67-76.

hardship assistance due to being physically able to provide for themselves in theory.⁶⁰ In this myth, poverty is constructed as a ‘problem of persons’⁶¹ based on personal inadequacy rather than a societal or economic issue. As Michael B Katz powerfully shows, the 18th- and 19th-century ‘transmutation of pauperism into a moral category tarnished all the poor.’⁶² According to this myth, the desperate condition of the poor was to be pinned not to poverty but perversity, making poor relief not just unnecessary but counter-productive as it would encourage further immorality, that is withholding ones labour, being lazy, living in degrading circumstances, not conforming to protestant values of industriousness etc.⁶³ ‘They have violated mainstream norms and ideals that govern work, family, and personal responsibility. Their life choices fall under public scrutiny, and blemishes are then used to justify withholding resources and subjecting them to punitive and surveillance-based mechanisms designed to control behavior.’⁶⁴ Crucially, it is the condition of poverty and being in need of societal assistance that becomes the marker of purported immoral behaviour, not any specific proven immoral behaviour. The moral hierarchy of poverty-as-immorality excludes the poor from assistance from those who behave morally but also introduces punishment for their moral failings and control to prevent the spread of the vices that allegedly caused their current condition. Moral hierarchies

⁶⁰ Elyse Kovalsky and Celeste Watkins-Hayes, 'The Discourse of Deservingness: Morality and the Dilemmas of Poverty Relief in Debate and Practice'. In *The Oxford Handbook of the Social Science of Poverty*, ed. David Brady and Linda M. Burton (Oxford: Oxford University Press, 2016), pp. 193-220.

⁶¹ Michael B. Katz, *The Undeserving Poor: America's Enduring Confrontation with Poverty*, Second edition, fully updated and revised ed. (New York, NY: Oxford University Press, 2013), p. 2.

⁶² Katz, *Undeserving Poor*, p. 6.

⁶³ Margaret R. Somers and Fred Block, 'From Poverty to Perversity: Ideas, Markets, and Institutions over 200 Years of Welfare Debate', *American Sociological Review* 70, no. 2 (2005): pp. 260-287; Kovalsky and Watkins-Hayes, 'Discourse of Deservingness'.

⁶⁴ Kovalsky and Watkins-Hayes, 'Discourse of Deservingness', pp. 194-195.

are closely connected to the societal constructions of moral behaviour often rooted in religious or philosophical principles which can vary from society to society.⁶⁵

Racial and moral hierarchies can exist simultaneously and sutured, creating intersections of inequalities. As Lieberman describes in his examination of racialised welfare legislation in the US:

So defined, welfare is frequently the object of racially focused antagonism and resentment, directed particularly at the apparent conditions of life in our decaying inner cities—idleness, immorality, family decay, and crime. Welfare, it seems to many, generates a whole set of undesirable and threatening consequences. The popular image of welfare is of a program that pays young, unmarried black women in decrepit, violent, drug-infested neighborhoods to have many children by different men, none of whom they marry. Despite being mostly false, this picture of an apparent urban “underclass” has a tremendous hold on the popular imagination and political sentiments of white Americans.⁶⁶

In the case of Sinti and Roma a combination of racial and moral hierarchies can also be identified as evidenced by two German sources from the early 20th century. In an official meeting between leading civil servants from all states of the German *Reich* on ‘combating the gypsy plague’ in 1911, the political secretary of the Munich police department presented the official view of the German government on ‘racial gypsies’ (*Rassenzigeuner*)⁶⁷ as follows:

They appeared in Germany for the first time in the 15th century.
Since then, they have been unwelcome guests who beg, commit fraud

⁶⁵ Joel F. Handler and Yeheskel Hasenfeld, *The Moral Construction of Poverty: Welfare Reform in America* (Newbury Park, CA: Sage, 1991); Serena Romano, *Moralising Poverty: The ‘Undeserving’ Poor in the Public Gaze* (Abingdon: Routledge, 2017); James A. Morone, *Hellfire Nation* (New Haven, CT: Yale University Press, 2003).

⁶⁶ Robert C. Lieberman, *Shifting the Color Line* (Cambridge, MA; London: Harvard University Press, 2001), p. 4.

⁶⁷ The term ‘gypsy’ is used here as an equivalent to the racist German term of *Zigeuner* prevalent in the original sources.

and theft wherever possible. To this day they have kept their compulsion to travel, their aversion to all culture, their urge to illegally appropriate property. Despite frequent mixing, their descendants have become gypsies once again with the same unpleasant characteristics which their ancestors already possessed.⁶⁸

A year prior, Wilhelm Frank, a catholic priest and member of the German parliament for the catholic centre party (*Zentrum*), had demanded to ban traditional practice of Sinti and Roma to travel in groups and work as travelling salesmen, artisans, or artists and portrayed such a discriminatory ban as a treatment of their allegedly immoral and criminal condition:

Oh, I could not imagine to see a thief or murderer in every gypsy. I know quite a few here in Berlin who are providing for themselves in an honest way, namely those who have a regular job and it is the same for those who are settled [...] this life as nomads is not good for the affected themselves. The *dolce far niente*, the pleasant idleness, causes all sorts of ideas. If gypsies appear in gangs, it is certainly no joy either for the audience which suddenly finds itself facing such company. Last year I spoke not just of thefts – that would have been trivial relative to what else they committed –; but I have also brought up cases of robbery and murder, and this year, too, I can list a whole series of such cases.⁶⁹

⁶⁸ Programm für die Verhandlungen über die Bekämpfung der Zigeunerplage vom 1. Juni 1911, BayHStA MInn 72575, printed in Simon Rau, Eve Rosenhaft, and Eva Schöck-Quinteros, 'Dokumente: Deutsches Reich'. In *Und Wohin Jetzt? Die "Zigeunerpolitik" Im Deutschen Kaiserreich Und Im United Kingdom*, ed. Simon Rau, Eve Rosenhaft, and Eva Schöck-Quinteros (Bremen: Institut für Geschichtswissenschaft, Universität Bremen, 2021), pp. 133-184 here p. 171.

⁶⁹ Auszüge aus dem Protokoll der 46. Sitzung des Reichstags am 2. März 1910, Verhandlungen des Reichstags, Band 260, Stenographische Berichte, S. 1611–1643, printed in Simon Rau, 'Antiziganismus Im Deutschen Reichstag (1905-1912)'. In *Und Wohin Jetzt? Die "Zigeunerpolitik" Im Deutschen Kaiserreich Und Im United Kingdom*, ed. Simon Rau, Eve Rosenhaft, and Eva Schöck-Quinteros (Bremen: Institut für Geschichtswissenschaft, Universität Bremen, 2021), pp. 185-218 here p. 199.

2.2.6 *Critical Realism*⁷⁰

In the following essays, I link the concepts discussed above within an overarching critical realist metatheoretical framework.⁷¹ While Critical Realism (CR) rejects the postmodern idealism which holds that reality can only exist within the mind of its beholder, it also diverges from a positivist understanding of reality in which the constant conjuncture of events is the main indicator to discover covering causal laws that are, moreover, constant across time and space.⁷² For critical realists, the open system of social reality, as opposed to the closed system of a laboratory experiment, is the product of various interacting and counteracting generative mechanisms. And it is the task of social scientists to entangle those interactions to find the generalisable mechanisms that produce the empirical events. Generalisation, here, is not meant in the positivist term of empirical generalisation but in terms of theoretical generalisation.⁷³ The goal, as already mentioned above, is to find mechanisms that can meaningfully illuminate new empirical contexts to better explain complex social phenomena. While these goals and assumptions are mostly implicit in the first two essays of this thesis, they are being made explicit in third in which I discuss some of the implications of CR for the practice of social science research.

2.2.7 *Eventful History*

Social scientists working in migration studies have long treated history as if ‘the past [was] mainly a strange and highly irrelevant country that [had] little in

⁷⁰ For a detailed discussion of Critical Realism, see the third essay of this thesis.

⁷¹ Roy Bhaskar, *The Possibility of Naturalism: A Philosophical Critique of the Contemporary Human Sciences*, 3rd ed. (London: Routledge, 1998 [1979]); Roy Bhaskar, *A Realist Theory of Science*, 2nd ed. (London: Harvester Wheatsheaf, 1978 [1975]); Andrew R Sayer, *Realism and Social Science* (London: SAGE, 2000); Philip S. Gorski, 'What Is Critical Realism? And Why Should You Care?', *Contemporary Sociology* 42, no. 5 (2013): pp. 658-670.

⁷² Steinmetz, 'Critical Realism and Historical Sociology'.

⁷³ Eric W. K. Tsang, 'Case Studies and Generalization in Information Systems Research: A Critical Realist Perspective', *The Journal of Strategic Information Systems* 23, no. 2 (2014): pp. 174-186.

common with the present.⁷⁴ Over the past decade, this has been changing with influential studies re-emphasising the importance of historical accounts, especially when analysing the state of contemporary migration regulation. The roles of history in social science research on migration vary and range from using historical events as illustrating vignettes, to drawing illuminating parallels with present issues, to using historical cases as additional observations. In this thesis, history takes up a dominant explanatory function in that a specific historical event – or developmental chain of episodes – explains a contemporary observation. In other words, we are dealing with a situation of ‘distal historical causation.’⁷⁵ There are three types of such distal historical causations which, according to William H Sewell Jr, are based on different conceptualisations of history and temporality: In the first, *teleological temporality*, history follows a set developmental path. This is the Marxian and Whig model of history.⁷⁶ In the second, and much more common one, termed *experimental temporality*,⁷⁷ an observed contemporary outcome is linked to a generalisable cause or sequence of causes which just happen to have taken place in the (distant) past. As they follow a uniform set of causal laws, they could take place again in the present or future. In the third, an observed contemporary outcome is linked to a specific and unique historical event or chain of episodes. These events are characterised by unique configurations of mechanisms which are constitutively and contingently causal of the observed outcome. This is what Sewell terms *eventful temporality* – a conceptualisation of history in which the events and how they unfold matter; not just for the immediate outcome but also for subsequent developments.

⁷⁴ Lucassen, *Immigrant Threat*, p. 17. A similar observation was made by Clifford D. Rosenberg, *Policing Paris: The Origins of Modern Immigration Control between the Wars* (Ithaca, NY; London: Cornell University Press, 2006), p. 6.

⁷⁵ Giovanni Capoccia, 'Critical Junctures'. In *The Oxford Handbook of Historical Institutionalism*, ed. Orfeo Fioretos, Tulia G. Falletti, and Adam Sheingate (Oxford: Oxford University Press, 2016), pp. 89-106 here p. 89.

⁷⁶ Sewell, *Logics of History*, pp. 83-91.

⁷⁷ Sewell, *Logics of History*, pp. 91-100.

Despite their uniqueness and the role of contingency, events are not beyond explanation. By closely studying these events' thick historical narratives, researchers can uncover and theoretically reconstruct underlying generative mechanisms which possess causal powers that have the potential of bringing about specific outcomes depending on their context and other inter- and counteracting mechanisms.⁷⁸ Once activated, and whenever not outweighed or conditioned by other mechanisms, they generate 'observable phenomenal regularities.'⁷⁹ These regularities can be understood as behavioural or institutional logics which prescribe certain actions in certain situations. From the point of view of contemporaries, predictions about the outcome of a situation remain impossible, yet they are open to retrospective explanations. Even in these retrospective explanations, it remains crucial to keep in mind the openness of eventful temporality. Due to the multitude of interacting mechanisms and contingent factors at work during any given historical event, there are normally multiple potential outcomes available. By taking up a prospective perspective, that is by analysing a historical process from its beginning rather than from its outcome,⁸⁰ it becomes possible to identify alternative outcomes and explain the various potential and actualised causal chains.

By showing that the outcomes of historical processes were not predetermined and that past and present events are incommensurable, historical analyses contribute to the denaturalisation of the present:⁸¹ Current structures, while the product of past events, are not without alternatives. The range of alternatives is conditioned by the

⁷⁸ Steinmetz, 'Odious Comparisons', p. 394; Porpora, *Reconstructing Sociology*, pp. 59-62; Philip S. Gorski, 'Social "Mechanisms" and Comparative-Historical Sociology: A Critical Realist Proposal'. In *Frontiers of Sociology*, ed. Peter Hedström and Björn Wittrock (Leiden; Boston, MA: Brill, 2009), pp. 147-194.

⁷⁹ Gorski, 'Social Mechanisms', p. 182.

⁸⁰ Charles Tilly, 'Reflections on the History of European State-Making'. In *The Formation of National States in Western Europe*, ed. Charles Tilly and Gabriel Ardant (Princeton, NJ: Princeton University Press, 1975), pp. 3-83 here pp. 14-15.

⁸¹ George Steinmetz, 'Logics of History as a Framework for an Integrated Social Science', *Social Science History* 32, no. 4 (2008): pp. 535-553 here p. 537.

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outcomes of previous events, as discussed regarding the politics of belonging, but they are not beyond reach. This is especially important in a field like migration in which the contemporary exclusionary regime is often presented as the only viable option by politicians and pundits. In order to denaturalise the present, it is first necessary to show that the origins of a specific outcome during a historical event were not precluded from the outset, but the result of contingent and conjunctural agency and mechanisms; yet, that once concluded they produced a structure that has continued to exert influence. Secondly, by explaining the process that the event followed through uncovering its underlying generative and sustaining mechanism researchers can advance their understanding of the contemporary outcome: Was it the material interests of specific actors that drove the changes? Or their ideational beliefs in a particular system of inclusion and exclusion?

Together with the concepts discussed above, this mode of historical explanation is the guiding principle for the analyses conducted in the following three essays.

3 Controlling the Marginalised: Internal Mobility Control and State Development in the UK, the British Empire, the US, and Germany¹

3.1 Introduction.

On 14 August 1919, the Ministry of the Interior of the small southwestern German state of Baden issued an expulsion order against Wilhelm Glück, a 21-year-old man who had moved to Baden two years prior. Glück had worked as a mill inspector for two years before joining a new trade business that summer. But shortly after, in August, Glück was arrested and issued a penalty notice for aiding in the small-scale smuggle of cigarettes across the German-Swiss border, a common offence in the months after the war. In court, Glück had been eager to cooperate with the authorities to show that his ‘misstep’ was a one-off. Nonetheless, Baden’s public prosecutors had remained suspicious and while they had no evidence of any other past or planned misdeeds, they requested for him to be ‘removed.’ The county council of Waldshut, where Glück resided, spelled things out: ‘of special note is Glück’s momentarily uncertain financial situation which means a risk of future

¹ I am particularly indebted to the jurist Helmut Erlanger (1908–1982) whose 1932 dissertation highlighted the key issues of internal mobility control in Weimar Germany. Erlanger was a relentless defender of the democratic and egalitarian visions of Weimar republicanism against anti-democratic forces and Nazi tyranny. This chapter is dedicated to his memory. Thank you to the participants of the 2020-21 Graduate Workshop Series at the Andrea Mitchell Center for Democracy, University of Pennsylvania, the 2021 Oxford History & Social Science Workshop, University of Oxford, and the 2021-22 Global Migration Lab, University of Toronto, and of panels at the 2021 Social Science History Association Annual Meeting, Philadelphia, PA, and the 2022 American Political Science Association Annual Meeting, Montréal, QC. for their invaluable input.

misdemeanours.’ Glück’s official protest against his expulsion was formally dismissed in October 1919. He was ordered to leave the state.²

A key feature of the case above was only mentioned in passing in Glück’s file: Glück was German, born in the then-German city of Breslau, and a veteran of the German army in World War I. And despite living and working in Baden for the past two years, he did not count as a full citizen of the state. Listed as a Prussian citizen, he was subject to the same expulsion and deportation laws as all other non-Baden citizens, regardless of whether they also held German citizenship or that of another country. On the day of Glück’s expulsion order, the constitution of Germany’s first democracy had come into effect following the German post-war revolution. The *Weimarer Reichsverfassung* rested on principles of liberty, equality, and liberalism and Baden counted as a strong supporter of the new democracy. The new constitution stated that all German citizens had to be treated equally in all areas of Germany and explicitly affirmed their right to take up residence anywhere in the country. And yet, internal expulsions such as the one of Glück took place across the *Reich*.

In 1926, Bavaria adapted this widely established and practice to first legalise and then directly target German Sinti and Roma for detention in forced-labour camps and removal from Bavarian soil. Unlike in the case of Glück, no misdemeanours or criminal background were necessary for local police forces to detain and deport anyone present in a public space who was deemed to be a ‘gypsy’ in their eyes. In a ministerial decree accompanying the new antiziganist law which was meant to counter the alleged racial and moral threat posed by the small ethnic minority, Bavaria’s Minister of the Interior stated that ‘the term gypsy is widely known [...]’. Race science can provide information about who is to be taken as a gypsy.³

² Schreiben vom Badischen Innenministerium an das Staatsministerium, 9 October 1919, in GLAK 233 23872.

³ Ministerialentschließung zur Ausführung des Zigeuner- und Arbeitsscheuen-Gesetzes vom 16. Juli 1926 des Staatsministeriums des Innern, 16.7.1926, in GVBl Bayern 17/1926, pp. 361-372.

This article analyses the role of such practices of Internal Mobility Control (IMC) through which states limit the freedom of movement and access to public space of their own citizens in the development of modern nation-states and state power. IMC practices can range from internal expulsions and deportations of citizens, as highlighted above, to vagrancy acts used to police and restrict the presence of marginalised groups in public spaces, to forced settlements or the restrictions of travel for select groups. While the monopoly over the control of migration movements crossing international borders has seemingly become an unquestioned characteristic of the modern state, the freedom of citizens to move about and freely choose their place of temporary or permanent residence and to enjoy access to public space rarely feature in public debate. The accessibility of public space and internal freedom of movement are generally assumed baselines and have virtually (if not explicitly) become core rights of citizens in liberal democracies.⁴ Article 13(1) of the United Nation's Universal Declaration of Human Rights states: 'Everyone has the right to freedom of movement and residence within the borders of each state.'⁵

Routine, extreme, and unequal restrictions on internal mobility are seemingly confined to autocratic states. The military junta in Burma/Myanmar has made it near impossible for the persecuted group of Rohingya in Rakhine State to move freely across the country (or even from one village to another within the same township) by implementing a system of temporary travel permits and other restrictions placed on persons belonging to the junta's discriminatory category of 'Bengali races', according to the UN Human Rights Council.⁶ The Chinese *hukou* system of household

⁴ Willem Maas, *Creating European Citizens* (Lanham, MD; Plymouth: Rowman & Littlefield, 2007), p. 117.

⁵ United Nations, 'Universal Declaration of Human Rights,' (1948). <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

⁶ United Nations, General Assembly, Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, A/HRC/39/CRP.2 (17 September 2018), available from undocs.org/A/HRC/39/64, pp. 121-128.

registrations means that ‘some 800 million rural residents are treated as inferior second-class citizens deprived of the right to settle in cities and to most of the basic welfare and government-provided services enjoyed by urban residents’⁷ which researchers have called an ‘apartheid system.’⁸ Tsarist and Soviet Russia practised systems of internal mass deportations, mainly to Siberia, targeting political opponents, ethnic and religious minorities, and convicts.⁹

In the academic literatures investigating the politics of migration, the regulation of intra-territorial movement is often cast aside in favour of studying the political causes and consequences of inter-territorial cross-border movements.¹⁰ This focus is closely related to a classically shared orthodoxy about the link of nation-state formation and the control of movement, according to which nationhood and territory had turned into an inseparable unit over the course of the 18th and 19th centuries. This development, it is suggested, had led to a successive closure of borders and of access to membership for outsiders while increasing the freedoms and liberties for those on the inside – especially in regard to movement.¹¹ While this classic view has been challenged, the ideal-type nation-state model of internal homogeneity and

⁷ Kam Wing Chan and Will Buckingham, 'Is China Abolishing the Hukou System?', *The China Quarterly* 195, no. 195 (2008): pp. 582-606 here pp. 582-583.

⁸ See, e.g., Peter Alexander and Anita Chan, 'Does China Have an Apartheid Pass System?', *Journal of Ethnic and Migration Studies* 30, no. 4 (2004): pp. 609-629.

⁹ Terry Martin, 'The Origins of Soviet Ethnic Cleansing', *The Journal of Modern History* 70, no. 4 (1998): pp. 813-861; Lynne Viola, *The Unknown Gulag: The Lost World of Stalin's Special Settlements* (New York, NY: Oxford University Press, 2007); Matthew A Light, 'What Does It Mean to Control Migration? Soviet Mobility Policies in Comparative Perspective', *Law & Social Inquiry* 37, no. 2 (2012): pp. 395-429.

¹⁰ Notable exceptions include David Feldman, 'Global Movements, Internal Migration, and the Importance of Institutions', *International Review of Social History* 52, no. 1 (2007): pp. 105-109; David Feldman, 'Migrants, Immigrants and Welfare from the Old Poor Law to the Welfare State', *Transactions of the Royal Historical Society* 13(2003): pp. 79-104.

¹¹ This can be seen in the classic view of nation-state citizenship from the perspective of T. H. Marshall, *Citizenship and Social Class* (London: Pluto, 1992); Ernest Gellner, *Nations and Nationalism* (Oxford: Basil Blackwell, 1983); John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge: Cambridge University Press, 2000). Recently and most explicitly, e.g., Jesper Gulddal and Charlton Payne, 'Passports: On the Politics and Cultural Impact of Modern Movement Control', *symplokē* 25, no. 1 (2017): pp. 9-23 here p. 12.

external exclusion is still pervasive,¹² and it has been so widely shared that some migration scholars go as far as suggesting that internal control on movement do not exist at all. In his influential essay *Aliens and Citizens*, Joseph Carens writes ‘No liberal state restricts internal mobility. Those states that do restrict internal mobility are criticized for denying basic human freedoms. If freedom of movement within the state is so important that it overrides the claims of local political communities, on what grounds can we restrict freedom of movement across states?’¹³

But, as I discuss in this paper, throughout their histories, and well into the 20th century, today’s Western liberal democracies have routinely interfered with the movement of the people living in their territories. For a long time, controls on internal mobility have far exceeded those on international migration and entry to a state’s territory.¹⁴ And while the majority of the most egregious restrictions have since been abandoned – there are no more labour camps for Sinti and Roma in Germany – practices of internal mobility control are not a matter of centuries past. In the UK, the Vagrancy Act of 1824, originally introduced in reaction to the perceived increase in the movement of poor persons and specifically to remove veterans of the Napoleonic Wars from London streets, was used to police racial minorities and immigrant groups until 1981 and to criminalise begging and rough sleeping until 2022.¹⁵ A new law to criminalise the presence of desperately poor persons in public

¹² Brubaker, 'Migration, Membership, and the Modern Nation-State'; Andreas Wimmer, *Nationalist Exclusion and Ethnic Conflict: Shadows of Modernity* (Cambridge: Cambridge University Press, 2002); Brendan O'Leary, 'Ernest Gellner's Diagnoses of Nationalism: A Critical Overview, or, What Is Living and What Is Dead in Ernest Gellner's Philosophy of Nationalism?'. In *The State of the Nation: Ernest Gellner and the Theory of Nationalism*, ed. John A. Hall (Cambridge: Cambridge University Press, 1998), pp. 40-88.

¹³ Joseph H. Carens, 'Aliens and Citizens: The Case for Open Borders', *Review of Politics* 49, no. 2 (1987): pp. 251-273 here p. 267.

¹⁴ Rosenberg, *Policing Paris*.

¹⁵ Matt Downie, 'The Vagrancy Act Criminalises Homeless People, but Sadly Its Harm Goes Even Deeper Than That', *Crisis* (London), 27 June 2019, <https://www.crisis.org.uk/about-us/the-crisis-blog/the-vagrancy-act-criminalises-homeless-people-but-sadly-its-harm-goes-even-deeper-than-that>;

spaces by re-introducing similar provisions is being drafted at the time of writing.¹⁶ And currently discussions about the restriction and criminalisation of the free movement of citizens have resurfaced in the United States and threaten to undermine the rights of millions of women: After the US Supreme Court ruled that there was no constitutional abortion right in its 2022 decision of *Dobbs v. Jackson Women's Health Organization*, overturning its 1973 landmark affirmation of previability abortion as a right in *Roe v. Wade*, constitutional scholars David Cohen, Greer Donley, and Rachel Rebouché warned that anti-abortion states could attempt to criminalise out-of-state abortions and even interstate travel.¹⁷ US President Joe Biden reacted to the ruling by issuing a statement affirming his administration's support of interstate travel: 'A person has the right to travel between states for whatever reason they want – it is no one else's business – especially the government's. If a woman lives in a state that restricts abortion, the Supreme Court's decision does not prevent her from traveling from her home to a state that allows it. If any state or local official tries to interfere with women exercising this basic right, the Biden Administration will fight that deeply un-American attack.'¹⁸ But as Cohen, Donley, and Rebouché warn in their review of the constitutional right to travel, experts are divided over whether the US Constitution protects internal mobility.¹⁹

These examples highlight that various practices of internal mobility control are widespread. As I show in this paper, focusing exclusively on the alien-citizen

Ben Sander and Albanese Francesca, *An Examination of the Scale and Impact of Enforcement Interventions on Street Homeless People in England and Wales*, Crisis (London, 2017).

¹⁶ Matt Downie, 'New Homelessness Bill Should Not Be More Punitive Than 19th-Century One', *Financial Times*, 12 December 2023, <https://www.ft.com/content/26d35ae2-c4a5-4a7b-824e-691e8af8c724>.

¹⁷ David S. Cohen, Greer Donley, and Rachel Rebouché, 'The New Abortion Battleground', *Columbia Law Review* 123, no. 1 (2023): pp. 1-100.

¹⁸ The White House, 'President Biden Announces Actions in Light of Today's Supreme Court Decision on *Dobbs v. Jackson Women's Health Organization*', *Statements and Releases*, 24 June 2022, <https://perma.cc/S9FM-25S4>.

¹⁹ Cohen, Donley, and Rebouché, 'New Abortion Battleground'.

divide has led scholars of nation-states and migration to underestimate substantial within citizen variations in attained freedoms of mobility throughout the histories of today's liberal democracies. Mobility is conditioned by various politically engineered inequalities and exclusions. And the right to unrestricted internal mobility, like other rights in liberal democracies, is the contingent and context-dependent outcome of political processes. State authorities can and will assume a monopoly over the legitimate movement of people to exert state power, controlling and restricting not only the movements across international borders but also those internal to its territory. I argue that analysing the extent to which individuals in modern states can exercise their internal freedom of movement, and the ways in which these variations were constructed, can provide insights into the political development of modern states. This leads to the core questions of this paper: Why do states control the internal movement of their people? How can we account for the recurrence of internal mobility control practices across different polities and at various stages of their state development? And what are the effects and consequences of such practices?

To answer these questions, I present three claims about Internal Mobility Control: First, IMC measures are used by local, sub-state, and national governments in moments of societal and political transformation and crisis to limit emerging claims to societal membership by marginalised groups and thus create layered citizenship. Secondly, measures controlling movement, therefore, target specific groups considered to stand outside – or on the margins of – ‘normal’ society and thus bar them from full access to societal membership. Internal mobility control measures are, therefore, examples of ideological illiberalism.²⁰ In this vein, controlling the movement of select groups are the workings of the modern ‘gardening state’,²¹ that is of a

²⁰ Kauth and King, 'Illiberalism'.

²¹ Bauman, *Modernity and the Holocaust*; Bauman, *Modernity and Ambivalence*.

‘ordered system of exclusion and disciplinary regulation’²² to create homogenous nation-states which operate according to a logic of cemented hierarchies of citizenship dividing desired and undesired members of society. Thirdly, by drawing jurisdictional boundaries of belonging through restricting internal mobility, IMC measures were part of the process of national integration and des-integration of sub-state units.²³ In this context, I argue that the analysis of IMC across different states reveals a Weberian bias in the current literature on migration control and the development of modern nation-states. Instead of movement control being the product of a singular state claiming the monopoly over the legitimate use of violence within an uniform territory, I argue that practices of internal mobility control reveal the competition of several levels of authority for the definitional, or standardising, power of fragmented states.²⁴ This supports what Darshan Vigneswaran and Joel Quirk have found for migration control and state development in Africa where they urge scholars to ‘think about the state less as a unitary container of populations and more as a more variegated, incomplete, and dispersed network of order and control. [...] Uniform territorial control is not an empirical reality, but an aspiration that has only ever been partially, unevenly, and episodically realized in practice.’²⁵ This paper thus advances a generative mechanism of state development that links states’ engagement in controlling internal mobility to the expansion of state power. IMC creates demands for central states to act as adjudicators over the tensions between sub-state units’

²² Véronique Mottier, 'Eugenics, Politics and the State: Social Democracy and the Swiss 'Gardening State'', *Studies in History and Philosophy of Biological and Biomedical Sciences* 39, no. 2 (2008): pp. 263-269 here p. 264.

²³ Radhika Viyas Mongia, *Indian Migration and Empire: A Colonial Genealogy of the Modern State* (Durham, NC; London: Duke University Press, 2018); Julia Wambach and Jasper Theodor Kauth, 'Abgeschoben Aus Dem Eigenen Land. Innerdeutsche Ausweisungen in Der Weimarer Republik', *Zeithistorische Forschungen–Studies in Contemporary History* 20, no. 1 (2023): pp. 29-50.

²⁴ King and Lieberman, 'Ironies of State Building'; Willem Maas, *Democratic Citizenship and the Free Movement of People* (Leiden: Martinus Nijhoff Publishers, 2013); Mann, *Sources of Social Power*, 2; Wambach and Kauth, 'Innerdeutsche Ausweisungen'.

²⁵ Vigneswaran and Quirk, *Mobility Makes States*, pp. 23-24.

individual attempts to control mobility and between state authorities and citizens. Central states are required to assume the role of standard setters by which they either expand their state power laterally and vertically or, if they refuse, retract their control over certain areas of ‘their’ territory.²⁶

IMC measures overlap with wider immigration and integration policies by drawing lines between outsiders and insiders;²⁷ between those for whom the nation-state offers a unified territory in which they enjoy freedom of movement and access and those for whom it resembles a fragmented patchwork of hostile sub-state territories. But they follow separate logics: Citizenship, as a category of practice and rights, matters.²⁸ What is characteristic of the state practices discussed here is that they create layers within citizenship: Despite recognising rights to move about freely within a state’s territory on paper, they create novel institutions to restrict that freedom for particular groups of people that stand outside the model of a homogenised society at a given time. This is where my intervention differs from recent works such as Kunal Parker’s foundational *Making Foreigners*.²⁹ What I discuss here are instead the efforts of states to create new institutions of exclusion and stratification precisely because they were unable to remove the category of citizenship, and the associated rights of residence, altogether. While today’s liberal democracies apply various forms of illiberal internal mobility control against migrants and asylum seekers, including using camps and internment, to draw exclusionary boundaries based on racial and moral hierarchies, the discussion here is, for now,

²⁶ King and Lieberman, 'Ironies of State Building'.

²⁷ See also Bauman, *Modernity and Ambivalence*, p. 24; Anderson, *Us and Them?*

²⁸ For a discussion, see Randall Hansen, 'State Controls: Borders, Refugees, and Citizenship'. In *The Oxford Handbook of Refugee and Forced Migration Studies*, ed. Elena Fiddian-Qasmiyeh et al. (Oxford: Oxford University Press, 2014), pp. 253-264; Hansen, 'Poverty of Postnationalism'.

²⁹ Kunal Madhukar Parker, *Making Foreigners: Immigration and Citizenship Law in America, 1600-2000* (New York, NY: Cambridge University Press, 2015).

limited to the expansion of state power involving controls put on the movements of specific groups of citizens; thus, I treat IMC as a form of internal boundary-drawing.³⁰

Empirically, my focus is on official practices of internal mobility control by state actors, ranging from local and regional expulsions and deportations to the selective banning or directing of movement to the power to police the mere presence of individuals in a certain locale. I analyse internal mobility control practices in three modern-day liberal democracies that have traditionally been ascribed widely different paths of state formation: Germany, the United States, and the United Kingdom with its Empire. All three polities engaged in Internal Mobility Control to define the boundaries of nation and state at crucial points of their development: In Germany, IMC was part of nation-state formation in the early 19th century, after the foundation of the *Reich* in 1871 and following World War I to control marginalised groups such as the poor, Jews, and Sinti and Roma as well the labour movement. In the United States, IMC was widely deployed by states in the early republic against poor persons, and racial and gender minorities. During Reconstruction, the federal government intervened in Southern states to abolish various practices of internal mobility control which targeted formerly enslaved persons. But after Reconstruction, IMC returned and became part of the entrenched system of racial segregation until the Civil Rights era of the 1960s. In the United Kingdom, IMC was used to control the poor, especially from the 19th century onwards, and racialised communities moving to the UK from other parts of the empire and is still being used to restrict the movement of the poor and homeless. IMC was also employed throughout British colonies and, following the abolition of slavery, used by white settler colonies to exclude formerly enslaved persons and to prevent the migration of non-white imperial subjects.

³⁰ Brubaker, 'Migration, Membership, and the Modern Nation-State'. This also includes the COVID-19 lockdowns in many states as they applied to all citizens regardless of their group membership.

I first review the disjointed literature on IMC, pointing to the need of a cross-case analysis of mobility control and nation-state development. I then present my generative, causal model of IMC and state development.³¹ Following this, I will discuss the individual steps of the model's generative chain, providing evidence from the three cases to substantiate the practical workings of the mechanism. Individual practices of internal mobility control in the US and in the UK with the British Empire have already been researched extensively by historians, albeit without linking these practices or explicitly discussing their implications for state development. Germany has barely been analysed in international scholarly literature, but key sources have been made available through the works of German historians in German. I build upon existing historical analyses for the former two while drawing from my own archival research in German regional and state archives and published sources in German for the latter. In addition, I supplement the analysis of the British case with newly uncovered evidence from the UK National Archives.

³¹ This follows the goals of critical realist research. For a detailed discussion of Critical Realism, see the third essay in this thesis. See also Bhaskar, *Realist Theory of Science*; Steinmetz, 'Critical Realism and Historical Sociology'; Gorski, 'What Is Critical Realism?'

3.2 Controlling Movements and Morality

3.2.1 *Vagrancy and Poor Laws*

Internal Mobility Control has thus far not been treated as a general concept. A number of scholars, in the fields of history, sociology, and law, have examined the emergence and use of specific types of internal mobility control practices in specific contexts. Most of these studies focus on so-called vagrancy and poor laws in the UK and the US. Scholars have stopped short of linking them to other measures of movement control or broader developments in other countries or historical contexts, such as internal expulsions in Germany. This existing literature has powerfully shown that the use of vagrancy and poor laws changed over time: From a tool to constrain the mobility of labourers in feudal England, the aim of vagrancy laws shifted to the policing of poverty as immoral behaviour and, later, to the criminalisation of the status of being an ascribed member of a marginalised group.³² But due to their focus on poverty control in the Anglosphere, two key gaps remain. First, as Kristin O'Brassill-Kulfan states at the end of her recent investigation of *Vagrants and Vagabonds: Poverty and Mobility in the Early American Republic*, 'how does the United States' management of indigent transiency compare with other nations that lack strong roots in British jurisprudence?'³³ Secondly, analyses of the long history of vagrancy laws in the United Kingdom have indicated that, in the words of Bridget Anderson, 'although mobility in the contemporary world is often regarded as a challenge to states, the control of mobility was a factor that facilitated the emergence

³² Stephen Rushin and Jenny Carroll, 'Bathroom Laws as Status Crimes', *Fordham Law Review* 86, no. 1 (2017): pp. 1-46; Hannah Kieschnick, 'A Cruel and Unusual Way to Regulate the Homeless: Extending the Status Crimes Doctrine to Anti-Homeless Ordinances', *Stanford Law Review* 70(2018): pp. 1569-1621.

³³ Kristin O'Brassill-Kulfan, *Vagrants and Vagabonds: Poverty and Mobility in the Early American Republic* (New York, NY: New York University Press, 2019), p. 158.

of certain types of (nation) states.³⁴ How so? And in which states? This research contributes to closing these gaps.

William Chambliss's sociological analysis of vagrancy laws in the UK and US from the 14th to the mid-20th centuries was the first to present a general theory of movement control laws as means to control workers and protect economic interests:³⁵ According to Chambliss, changes in vagrancy law statutes can be attributed to changes in economic activity and the varying political importance of socio-economic groups.³⁶ By the mid-1300s, England was undergoing significant societal changes undermining the feudal serfdom system. After the Black Death had decimated England's population, landowners struggled to uphold their economic system, which had relied on the exploitation of unfree labour from 'serfs'.³⁷ The newly introduced anti-vagrancy statutes prohibited able-bodied persons from seeking employment outside their home regions or to negotiate their own wages. Those who were found to travel outside their own county without being able to provide evidence of significant wealth, permissions from their employers, or caught begging or asking for alms or sleeping rough were subject to harsh prison sentences and forced labour.³⁸ From the beginning, vagrancy laws criminalised the act of travelling and the presence of a person in public space, taken as a proxy for undesired behaviour. Vagrancy laws were thus not *prima facie* about the control of movement but rather a way to police the alleged and allegedly immoral self-extraction of workers from the workforce during a shortage of labour. This can also be seen from the 1349 Ordinance of Laborers which threatened forced labour to those not working: 'because that many

³⁴ Anderson, *Us and Them?*, p. 28.

³⁵ William J. Chambliss, 'A Sociological Analysis of the Law of Vagrancy', *Social Problems* 12, no. 1 (1964): pp. 67-77.

³⁶ Chambliss, 'Sociological Analysis of Vagrancy', p. 76.

³⁷ Chambliss, 'Sociological Analysis of Vagrancy', p. 69.

³⁸ Chambliss, 'Sociological Analysis of Vagrancy', p. 70.

valiant beggars, as long as they may live of begging, do refuse to labor, giving themselves to idleness and vice, and sometime to theft and other abominations.³⁹

In the vagrancy statutes of the 16th century, movement was not only linked to presumed 'idleness', poverty, or anti-feudal activities but also to criminal activities. Following, this was because vagrants posed a threat to travelling merchants and thus had to be punished more severely, going as far as branding and death.⁴⁰ By the 17th century, vagrancy laws had fully shifted to a flexible control instrument against the poor and homeless, those suspected to be 'idle', and, according to Chambliss, those suspected to be engaged in criminal activities against property. For Chambliss, thus, vagrancy laws were instances of "vested interest" groups' influencing 'the emergence and/or alteration of laws' to protect the economic elites of the day.⁴¹

But Chambliss's class-conflict thesis does not hold up to historical scrutiny. As historian Jeffrey Adler points out, the vagrancy codes were not merely tools to regulate the fallout from economic changes.⁴² Based on a direct analysis of historical records of vagrancy laws in the UK and US, he shows that 'the driving force behind the enactment and the application of Elizabethan vagrancy statutes was a fear of those who "begge boldly at every dore," not a crusade to control highwaymen.'⁴³ The obsession with controlling the 'desperately poor'⁴⁴ with expulsion, forced labour, and prison was due to three separate concerns, reflected in sources documenting the drafting, negotiating, and enforcement of the legal statutes: First, that a large population of paupers, especially in cities, could overwhelm local institutions;

³⁹ Ordinance of Laborers, 1349, printed in: Albert Beebe White and Wallace Notestein, *Source Problems in English History* (New York, NY: Harper & Brothers, 1915), pp. 141-145.

⁴⁰ Chambliss, 'Sociological Analysis of Vagrancy', p. 73.

⁴¹ Chambliss, 'Sociological Analysis of Vagrancy', p. 77.

⁴² Jeffrey S. Adler, 'A Historical Analysis of the Law of Vagrancy', *Criminology* 27, no. 2 (1989): pp. 209-229.

⁴³ Adler, 'Historical Analysis of Vagrancy', p. 213.

⁴⁴ Rosenberg, *Policing Paris*, p. 6.

secondly that the presence and visibility of the poor was societally opposed, could lead to a spread of diseases, or cause disorder; and, thirdly, that the poor could introduce and inspire disorder directly through their alleged own immorality.⁴⁵ Rather than targeting criminal behaviour by vagrants against merchants, British authorities criminalised poverty and the poor's living conditions because they were considered 'undesirable'. As Adler puts it: 'rogues and thieves were apprehended under the broad scope of vagrancy statutes, but so too were gypsies, Irishmen, fortune tellers, university scholars found begging without permission, and peddlers.'⁴⁶

In the late 16th and early 17th centuries, suspected vagrants were rounded up throughout the country in multiple raids.⁴⁷ 13,000 were arrested in the first one alone and, as Anderson describes, exceeded the penal capacities of the early British state, thus 'the punishments were summary and severe: scourging, branding, being held in the stocks, expulsion even death.'⁴⁸ As in the case of Glück in the introduction, expulsion became a key element of control. Unlike in the post-plague era when vagrancy statutes were meant to arrest the mobile and force them take up labour in their present locales, vagrancy, as a moral threat, had to be removed. First, from village to village and later to places overseas. Suggestions included Newfoundland, the West and East Indies, and various European countries.⁴⁹ Vagrancy laws became tools to civilize society, without making distinctions between citizens and foreigners.⁵⁰

Michael Braddick in his investigation of *State Formation in Early Modern England* provides the most comprehensive example of this by showing the parallel constructions of the criminal categories of vagrancy and witchcraft: 'An almost

⁴⁵ Adler, 'Historical Analysis of Vagrancy', p. 214.

⁴⁶ Adler, 'Historical Analysis of Vagrancy', p. 213.

⁴⁷ A. L. Beier, *Masterless Men: The Vagrancy Problem in England, 1560-1640* (London: Methuen, 1985).

⁴⁸ Anderson, *Us and Them?*, p. 21.

⁴⁹ Anderson, *Us and Them?*, p. 21.

⁵⁰ Anderson, *Us and Them?*, p. 21; Beier, *Masterless Men*, p. 150.

parallel case might be made in relation to poverty. Here an exaggerated perception of threat led to the creation of a new crime of status – that of vagrant. [...] The offence was, therefore, normative and in this sense similar to witchcraft beliefs. [...] Once again, then, respectable fears are inscribed with considerable clarity since these measures are more or less an unfiltered expression of normative fears rather than a response to an objective social reality.⁵¹ As with witchcraft, the immorality of vagrancy was based on Christian constructions of evil.⁵² Once pushed to the margins due to their perceived immorality, the status as a member of a marginalised group became the justification for further persecution.⁵³

Chambliss's story, as well as those of Braddick and others concerned with early modern vagrancy laws in the UK,⁵⁴ ends in the late 1700s when vagrancy statutes 'had apparently been sufficiently reconstructed by the shifts of concern so as to be once more a useful instrument in the creation of social solidarity. This function has apparently continued down to the present day in England'.⁵⁵ But anti-vagrancy statutes continued to play a more pernicious role in modern England and Wales. The Vagrancy Act of 1824, introduced specifically to remove from public view the Napoleonic Wars veterans, who had ended up on the streets of large cities due to a lack of government support, was used to criminalise begging and rough sleeping until 2022.⁵⁶ Moreover, the vague 1824 statute also criminalised idleness, ill-defined disorderly conduct and indecent behaviour, meaning it could serve as a catch-all authorisation to police all unwanted behaviour, not only alleged criminal activities.

⁵¹ Michael J. Braddick, *State Formation in Early Modern England, C. 1550–1700* (Cambridge: Cambridge University Press, 2000), p. 150.

⁵² Braddick, *State Formation in Early Modern England*; Beier, *Masterless Men*, p. 12.

⁵³ Braddick, *State Formation in Early Modern England*, p. 151.

⁵⁴ Chambliss, 'Sociological Analysis of Vagrancy'; Beier, *Masterless Men*; Braddick, *State Formation in Early Modern England*; Anderson, *Us and Them?*

⁵⁵ Chambliss, 'Sociological Analysis of Vagrancy', p. 74.

⁵⁶ Downie, 'Vagrancy Act'; Sander and Francesca, *Impact of Enforcement Interventions on Street Homeless*.

Over the course of the almost two centuries since this most recent iteration of British vagrancy laws, the law was not only used to punish extreme poverty but also to criminalise activities such as palm reading and sex work and to persecute women and the LGBTQ+ community – and the racialised communities of ‘immigrants’ from British colonies.⁵⁷

The provisions were so wide-ranging that even in 1966, the British-Cypriot artist Stassinou ‘Stass’ Paraskos (1933-2014) was charged and convicted for crimes under the Vagrancy Act of 1824. He had been approached by two officers of the Leeds City Police while tending to an exhibition of his paintings together with two colleagues from the Leeds College of Arts. An oil painting and a drawing with mild nudes were taken from the walls and seized. The charge: Publication and display of obscenity contrary to ‘the public good as necessary or advantageous to art’. Despite the opposition of incredulous expert witnesses, including a star child psychiatrist, a Leeds criminal court found the three artists guilty and fined them for obscenity in December of the same year.⁵⁸

In his analysis of the American context, Adler finds similar developments: Here, too, he argues, did vagrancy laws take on a catch-all nature to respond to all kinds of ‘moral threats’.⁵⁹ Adler observes a shift in the use of vagrancy laws during the 19th century as a tool to control the access to poor relief by ‘ensuring that the “unworthy poor” did not consume the food and occupy the shelter reserved for the “worthy poor.”’⁶⁰ And with his detailed examination of vagrancy statutes in St Louis, MO, he also links the changes of laws and their enforcement to local concerns about

⁵⁷ Downie, 'Vagrancy Act'; John Solomos, *Black Youth, Racism and the State: The Politics of Ideology and Policy* (Cambridge: Cambridge University Press, 1988); Richard J. Terrill, 'Margaret Thatcher's Law and Order Agenda', *The American Journal of Comparative Law* 37, no. 3 (1989): pp. 429-456; Adler, 'Historical Analysis of Vagrancy'.

⁵⁸ See documents in TNA DPP 2/4193.

⁵⁹ Adler, 'Historical Analysis of Vagrancy', p. 214.

⁶⁰ Adler, 'Historical Analysis of Vagrancy', p. 216.

morality rather than crime and economic status. Adler contends that Chambliss was right in saying that in the US, the ‘main purpose, however, is clearly no longer the control of laborers but rather the control of the undesirable, the criminal and the “nuisance”’⁶¹, but shows that these dynamics ‘are deeply embedded in the context of culture and cannot be understood solely in terms of economic categories.’⁶² Lastly, Adler claims that 20th century vagrancy laws did not have a particular purpose and that any focus had been ‘obliterated by conflicting pressures to use these codes to protect the besieged modern metropolis.’⁶³

However, this flexibility of vagrancy laws is precisely what enabled state authorities to use them in connection with multiple but case-specific moral and racial hierarchies of various ideological contexts while also sustaining the unequal economic systems built on top of those hierarchies. Rather than having one particular target, IMC could cement several moral and racial hierarchies simultaneously.⁶⁴ And this does not mean they were without focus:

3.2.2 Controlling the Marginalised.

Cornelia Dayton and Sharon Salinger as well as Kristin O’Brassill-Kulfan show how vagrancy-type laws were consistently used in the late-colonial as well as early republican periods of American state development to police poor and marginalised groups, including those living on the streets, mobile labourers, women,

⁶¹ Chambliss, 'Sociological Analysis of Vagrancy', p. 76. Adler rightly rejects Chambliss’s concern with *actual* criminal behaviour and can show instead that the definitions of criminal behaviour were frequently re-defined to fit moral categories of behaviour.

⁶² Adler, 'Historical Analysis of Vagrancy', p. 222. For a discussion of this conflict see the third essay in this thesis.

⁶³ Adler, 'Historical Analysis of Vagrancy', p. 216.

⁶⁴ In his recent work, Adler provides strong historical evidence for vagrancy laws’ usage to uphold racist Jim Crow laws in the southern US following Reconstruction. This is discussed in more detail below. See Jeffrey S. Adler, *Murder in New Orleans: The Creation of Jim Crow Policing* (University of Chicago Press, 2019).

and, crucially, ethnic minorities.⁶⁵ The states of New England especially made ample use of laws imported from the UK to expel and deport those who would either require public assistance or were deemed undesirable.⁶⁶ In the American context, the most widely known instance of IMC, even if rarely classified as such,⁶⁷ is the limitation of the movement of African Americans from the 18th through the 20th century. Before the Civil War, slavery and the practices of exclusion, expulsion, and possible re-enslavement of formerly enslaved, free African Americans in the South exhibit the characteristics of IMC.⁶⁸ Localised so-called Black Codes were laws enacted to restrict the public presence of formerly enslaved Black Americans and based on vagrancy statutes.⁶⁹ Following the Civil War, removing these codes and replacing them with mobility enhancing statutes became a central focus of Reconstruction. This, it was hoped, would undermine the structures of the slave economy in the US South, prevent the emergence of an indentured labour system and provide protections for formerly enslaved persons. But within just a few years, racialised vagrancy and labour laws returned, curtailing the mobility of black Americans significantly.⁷⁰ During the Jim Crow era, vagrancy-type laws were widely used by US authorities, especially in

⁶⁵ O'Brassill-Kulfan, *Vagrants and Vagabonds*; Cornelia H. Dayton and Sharon V. Salinger, *Robert Love's Warnings: Searching for Strangers in Colonial Boston* (Philadelphia, PA: University of Pennsylvania Press, 2014).

⁶⁶ Hidetaka Hirota, *Expelling the Poor: Atlantic Seaboard States and the Nineteenth-Century Origins of American Immigration Policy* (New York, NY: Oxford University Press, 2017).

⁶⁷ See the only brief remark in Chambliss, 'Sociological Analysis of Vagrancy', p. 75.

⁶⁸ See e.g. Emily West, 'Between Slavery and Freedom': The Expulsion and Enslavement of Free Women of Colour in the US South before the Civil War', *Women's History Review* 22, no. 3 (2013): pp. 460-477.

⁶⁹ Peter Wallenstein, *Blue Laws and Black Codes: Conflict, Courts, and Change in Twentieth-Century Virginia* (Charlottesville, VA: University of Virginia Press, 2004).

⁷⁰ William Cohen, *At Freedom's Edge: Black Mobility and the Southern White Quest for Racial Control, 1861-1915* (Baton Rouge, LA; London: Louisiana State University Press, 1991); William Cohen, 'Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis', *The Journal of Southern History* 42, no. 1 (1976): pp. 31-60.

the South, to police the presence of African Americans in public. Practices ranged from arrests and bans to the creation of Sundown Towns.⁷¹

During the 1960s, vagrancy-type laws were expanded beyond the oppression of African Americans and the repression of the Civil Rights movement and used against political protesters, members of the student movement, women, and the LGBTQ+ community. Risa Goluboff's socio-legal study of 20th century vagrancy-type laws in the US and their abolition by the Supreme Court in the early 1970s focuses on this exact usage and how the challenge of the 'vagrancy regime' united all these separate struggles for equality:⁷² 'Vagrancy law made an enormous legal bulls-eye in the center of the sixties dartboard. It provided a unifying target, forum, language, and set of institutional arrangements and personnel against which the movement of movements fought. It was not only that so many people of the era came up against these laws and tried to challenge them. It was also that in doing so, they did not treat themselves as insular movements with insular legal claims.'⁷³

3.2.3 *Restricting movements in Germany.*

For continental Europe, and thus countries outside the anglosphere, Internal Mobility Control, even though it has been just as pervasive, has barely featured in scholarly research. Jan Ziekow's legal history of the development of laws regulating movement in Germany makes a claim similar Chambliss's, albeit without making an obvious connection to vagrancy laws.⁷⁴ According to Ziekow, internal mobility control

⁷¹ See e.g. James W. Loewen, 'Sundown Towns and Counties: Racial Exclusion in the South', *Southern Cultures* 15, no. 1 (2009): pp. 22-47; Adler, *Creation of Jim Crow Policing*; Risa Lauren Goluboff, *Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s* (New York, NY: Oxford University Press, 2016); Christopher Lowen Agee, 'From the Vagrancy Law Regime to the Carceral State', *Law & Social Inquiry* 43, no. 4 (2018): pp. 1658-1668.

⁷² Goluboff, *Vagrant Nation*.

⁷³ Goluboff, *Vagrant Nation*, p. 335.

⁷⁴ Jan Ziekow, *Über Freizügigkeit Und Aufenthalt: Paradigmatische Überlegungen Zum Grundrechtlichen Freiheitsschutz in Historischer Und Verfassungsrechtlicher Perspektive* (Tübingen: Mohr Siebeck, 1997); Chambliss, 'Sociological Analysis of Vagrancy'.

measures in the German lands, pre-1871, and, post-1871, the German *Reich*, were merely direct responses to economic pressures, without any ulterior motives. Hedging in political labour movements or urbanisation trends, for example were just attempts to manage the transition from one economic system to another: ‘the absolutely dominating parameter in the [legal] development of the freedom of movement was the socio-economic factor [...]. In comparison, the political determinant stepped back and confined itself to merely defining the boundaries of movement-regulating measures.’⁷⁵ Ziekow’s conclusions is foremost based on his selection of historical sources which leave out the unequal impact of control laws on marginalised groups.⁷⁶ For Weimar, for example, he argues that the constitutional right of freedom of movement completely ‘protected internal freedom of movement as an absolute liberty against all restrictions.’⁷⁷ But this essay shows, Sinti and Roma faced heavy restrictions on their mobility. Secondly, Ziekow operates from a functionalist perspective of Politics which treats all reactions to economic pressures as a-political necessities. But just because movement control laws were often used as flexible tools to react to acute socio-economic crises caused by structural changes, this does not mean they stood outside the realm of the political, as can well be seen from the discussion of the British case above and my analysis below.⁷⁸ That being said Ziekow provides helpful evidence of a link between the organisation of poor relief and Internal Mobility Control in 19th century German states and the federal German Reich. Throughout the 19th and early 20th centuries, poor relief, unlike the insurance-based welfare state system, was based on a geographical principle of belonging that developed alongside formal citizenship and provided the legal basis for the internal expulsions seen later.⁷⁹ This offers parallels to the system of localised poor relief

⁷⁵ Ziekow, *Freizügigkeit Und Aufenthalt*, pp. 331-332.

⁷⁶ For a discussion on this point see the third essay in this thesis.

⁷⁷ Ziekow, *Freizügigkeit Und Aufenthalt*, p. 336.

⁷⁸ Ziekow, *Freizügigkeit Und Aufenthalt*, p. 246.

⁷⁹ See e.g. the discussion in Ziekow, *Freizügigkeit Und Aufenthalt*, pp. 256-257.

established by the Elizabethan Poor Law of 1601 by which a local poor tax was levied to provide support to 'settled' paupers but not to those from other parishes.⁸⁰

The steps of racial or moral exclusion, marginalisation, and mobility control can also be found in research on antiziganism and the centuries-long legal persecution of Sinti and Roma in Europe. Even though Leo Lucassen initially considers a thesis similar to Chambliss's, he quickly shifts his investigation to the organisation of poor laws and the labelling of different itinerant groups as threats to society.⁸¹ Lucassen differentiates three categories within those classed as potentially dangerous: First, travelling groups with 'alibis', that is with accepted occupations that demanded an itinerant lifestyle such as showmen and merchants; secondly, poor day laborers who were a necessary element of the early modern economy and yet were still heavily policed as likely paupers or criminals and whose movement was considered a grave problem as it undermined effective surveillance; and, thirdly, a group of 'people denounced, rightfully or not, as beggars and vagrants, who were often equated with the Egyptians. This category was regarded as the most dangerous and the legislation in Western Europe was mainly aimed at repressing their movement. Being the *ultimate alien*, Gypsies were the symbol of the unwanted itinerant. Their way of living, travelling with their families, seemed to indicate a permanent wandering'.⁸² In addition to the United Kingdom, where travelling groups have been persecuted and prosecuted using vagrancy laws since the 16th century, a country with particularly harsh antiziganist policies was Germany.⁸³

⁸⁰ Anderson, *Us and Them?*, p. 22.

⁸¹ Leo Lucassen, 'Eternal Vagrants? State Formation, Migration and Travelling Groups in Western Europe, 1350-1914'. In *Gypsies and Other Itinerant Groups: A Socio-Historical Approach*, ed. Leo Lucassen, Wim Willems, and Annemarie Cottaar (Basingstoke: Macmillan, 1998), pp. 55-73.

⁸² Lucassen, 'Eternal Vagrants', p. 60.

⁸³ For a detailed examination, see e.g. Rainer Hehemann, *Die "Bekämpfung Des Zigeunerwesens" Im Wilhelminischen Deutschland Und in Der Weimarer Republik, 1871-1933* (Frankfurt aM: Haag + Herchen, 1987); Michael Zimmermann, 'Ausgrenzung, Ermordung, Ausgrenzung: Normalität Und Exzeß in Der Polizeilichen Zigeunerverfolgung in Deutschland (1870-1980)'. In *"Sicherheit" Und*

3.3 Linking Internal Mobility Control and State Development.

Several key elements of my generative model of Internal Mobility Control and modern state development are already visible in the above discussion. First, analysts of British and American vagrancy and poor laws have consistently found them to be based on variations of racial and moral hierarchies. Whereas they were originally conceived to arrest the movement of labourers, they quickly shifted to control – either by restricting or enforcing – the movement of undesired groups whose marginalised status became only more entrenched through this control of their mobility. Secondly, the localised control of mobility, whether tied to punishment or poor relief, shows that IMC connected several layers of the state and occasionally required a central authority to set the standards of control – as can be seen from the standardisation of localised poor relief in the Elizabethan Poor Law of 1601.

Rather than a necessary element of a benevolent welfare system, however, the separation of individuals into categories of ‘worthiness’ created internal hierarchies of citizens, some of which were considered less deserving of full societal membership than others. Drawing internal boundaries of belonging also created internal competitions between jurisdictions in how best to avoid dealing with ‘less deserving’ citizens. On the other hand, vagrancy-type laws were repressive tools, punishing and removing those affected by these crises from public view. Rather than being perceived as individuals deserving of public assistance, they were cast as moral threats to society and generally suspected to be engaged in dangerous activities. Their existence and condition were increasingly criminalised. Over time, this latter dimension

"Wohlfahrt": Polizei, Gesellschaft Und Herrschaft Im 19. Und 20. Jahrhundert, ed. Alf Lüdtke (Frankfurt aM: Suhrkamp, 1992), pp. 344-370; Leo Lucassen, *Zigeuner: Die Geschichte Eines Polizeilichen Ordnungsbegriffes in Deutschland 1700-1945* (Köln: Böhlau, 1996); Lucassen, 'Harmful Tramps': Police Professionalization and Gypsies in Germany, 1700-1945'; Jennifer Illuzzi, 'Negotiating the 'State of Exception': Gypsies' Encounter with the Judiciary in Germany and Italy, 1860-1914', *Social History* 35, no. 4 (2010): pp. 418-438; Illuzzi, 'Continuities and Discontinuities'.

expanded to include more and more groups deemed undesirable. Instead of a loss of focus, as claimed by Adler, this expansion is a core feature of *modern* Internal Mobility Control of the 20th century, rooted deeply in the dual treatment of poverty. As I pointed out above, the story of IMC might have begun in the late medieval and early modern periods. The story certainly did not end in the 18th century but only intensified afterwards. IMC acted as a tool for defining and policing status crimes.⁸⁴ Here, the character of internal mobility control laws was explicitly exclusionary and discriminatory.

As policies aimed at ‘demarking who is and who is not a full member of society based on ideological constructions of the societal in- and out-groups’,⁸⁵ they follow the logics of ideological illiberalism emerging, in this case, from the construction of immoral existences that could threaten society if left unchecked. This further fits the logic of the modern nation-state as a ‘gardening state’; a general concept of the modern character of the nation-state developed by Zygmunt Bauman in response to the Shoah but with the ambition to describe broader, essential aspects of state behaviour.⁸⁶ Bauman’s metaphor of the gardening state is limited in its direct explanatory power for specific state actions and does not constitute a historical or causal mechanism in itself. But it is a useful analogy for highlighting and distinguishing the ways modern nation-states employ state power compared to pre-modern personalist or territorial states.⁸⁷ Vagrancy-type laws, in this analogy, provided seemingly rational criteria to ‘split the population into useful plants to be encouraged and tenderly propagated, and weeds – to be removed or rooted out. They put a premium on the needs of the useful plants (as determined by the gardener’s

⁸⁴ Kieschnick, 'Regulate the Homeless'; Rushin and Carroll, 'Status Crimes'.

⁸⁵ Kauth and King, 'Illiberalism'.

⁸⁶ Bauman, *Modernity and Ambivalence*; Bauman, *Modernity and the Holocaust*.

⁸⁷ Bauman, 'Soil, Blood and Identity'. For a critical review, see Michael Hviid Jacobsen and Poul Poder, *The Sociology of Zygmunt Bauman: Challenges and Critique* (Aldershot: Ashgate, 2008).

design) and disendowed the needs of those declared to be weeds. They cast both categories as objects of action and denied to both the rights of self-determining agents.⁸⁸ This is especially the case as vagrancy-type laws provided police forces with far-reaching authorisations to remove unwanted individuals from public space, either through arrest and incarceration or through expulsion and deportation. Not only their potentially immoral or criminal behaviour but their mere presence alone was threatening enough to justify punishment. In general terms, vagrancy-type laws were used to manifest powerful hierarchies of differential humanity which often overlapped to create intersecting exclusions.⁸⁹ These hierarchies rested on what scholars of Social Dominance Theory call a ‘legitimising myth’ consisting of ‘consist of attitudes, values, beliefs, stereotypes, and ideologies that provide moral and intellectual justification for the social practices that distribute social value within the social system.’⁹⁰ It does not surprise, therefore, that such statutes were soon used against all kinds of discriminated against groups and those at the margins of society, be it ethnic, racial, religious, or sexual and gender minorities, as described by Goluboff. These practices correspond to ‘that of making the boundary of the “organic structure” [i.e. the modern nation-state] sharp and clearly marked, which means “excluding the middle”, suppressing or exterminating everything ambiguous, everything that sits astride the barricade and thus compromises the vital distinction between inside and outside.’⁹¹

3.3.1 *The IMC Mechanism of State Development*

What I am proposing as an answer to the second question posed above, is a generative mechanism which is set in motion by a socio-political transformation that challenges the existing social order by introducing new demands for societal inclusion

⁸⁸ Bauman, *Modernity and Ambivalence*, p. 20.

⁸⁹ For a discussion of the concept of differential humanity, see Mayblin, *Asylum after Empire*.

⁹⁰ Sidanius and Pratto, *Social Dominance*, p. 45.

⁹¹ Bauman, *Modernity and Ambivalence*, p. 24.

of previously excluded groups – or the exclusion of previously included ones – and a linked racial or moral hierarchy that casts specific groups as unworthy of said full membership in society. Rather than integrating a new societal group or supporting those that suffered under economical transformation, states chose to exclude and marginalise ‘undesired’ members of society. One of the ways they did so was by controlling their mobility. This, however, led to conflicts between the affected sub-state units or between the sub-state units and the central state by challenging the uniformity of the nation-state in terms of a population’s uniform membership as well as in terms of the uniform reach of its authority across its territory. IMC, therefore, challenged the essential aspiration of nation-states to create internal fluidity vis-à-vis external boundedness.⁹² The conflict between sub-state and national-level jurisdictions ‘uploaded’ the challenge to central state authorities which were now forced to decide the Baumannian question of ‘who belongs?’. Central states had several options of responding: (1) enforcing equality and removing sub-state mobility controls, thus deciding that the affected group was to be seen as residing inside the boundaries of normal society; (2) entrenching inequality and thus mobility controls, casting the affected group as standing on the outside of those boundaries, lending support for enforcement, and appeasing quarrelling sub-states over the presence of groups deemed undesirable; and (3) not engaging, thus deciding that the issue is not relevant enough for central state involvement which might risk disintegration; or being unable to engage due to a lack of resources. In short, the state, in its centralised form, is asked to assume the role of what King and Lieberman call the ‘standardizing state’ which defines standards of treatment across its entire territory.⁹³ According to Desmond King and Marc Stear’s definition, a standard is ‘a publicly-stated

⁹² This is discussed in more detail below. See Brubaker, ‘Migration, Membership, and the Modern Nation-State’, pp. 63-64.

⁹³ King and Lieberman, ‘Ironies of State Building’, pp. 571-573; King and Stears, ‘A Theory of Standardization’.

expectation of uniform and equal experience that is blind to the contingencies and particularities of individual cases, and that both private citizens and public officials seek to guarantee in all cases.’ Key in the IMC case is the nationalising component of the standardizing state. As King and Lieberman explain: ‘Actions taken by the federal government create standards and uniform expectations for behavior and establish common national benchmarks for the conduct of public affairs.’⁹⁴ If the central state is unwilling or unable to engage sufficiently to quell the sub-state conflict, new demands for standardisation will be expressed or, alternatively, the central states reach will be diminished creating pockets of diverging membership. The result of the IMC mechanism is thus state development in the sense of a centralised authority expanding its reach and control across a claimed territory in terms of Michael Mann’s concepts of infrastructural and despotic power (in outcome (1) and (2)) or a lack thereof and thus a weakening of the state (in outcome (3)).⁹⁵

Figure 1 is a graphic representation of this mechanism.

⁹⁴ King and Lieberman, 'Forceful Federal Power', p. 537.

⁹⁵ Mann, 'Autonomous Power of the State'; Mann, *Sources of Social Power*, 2.

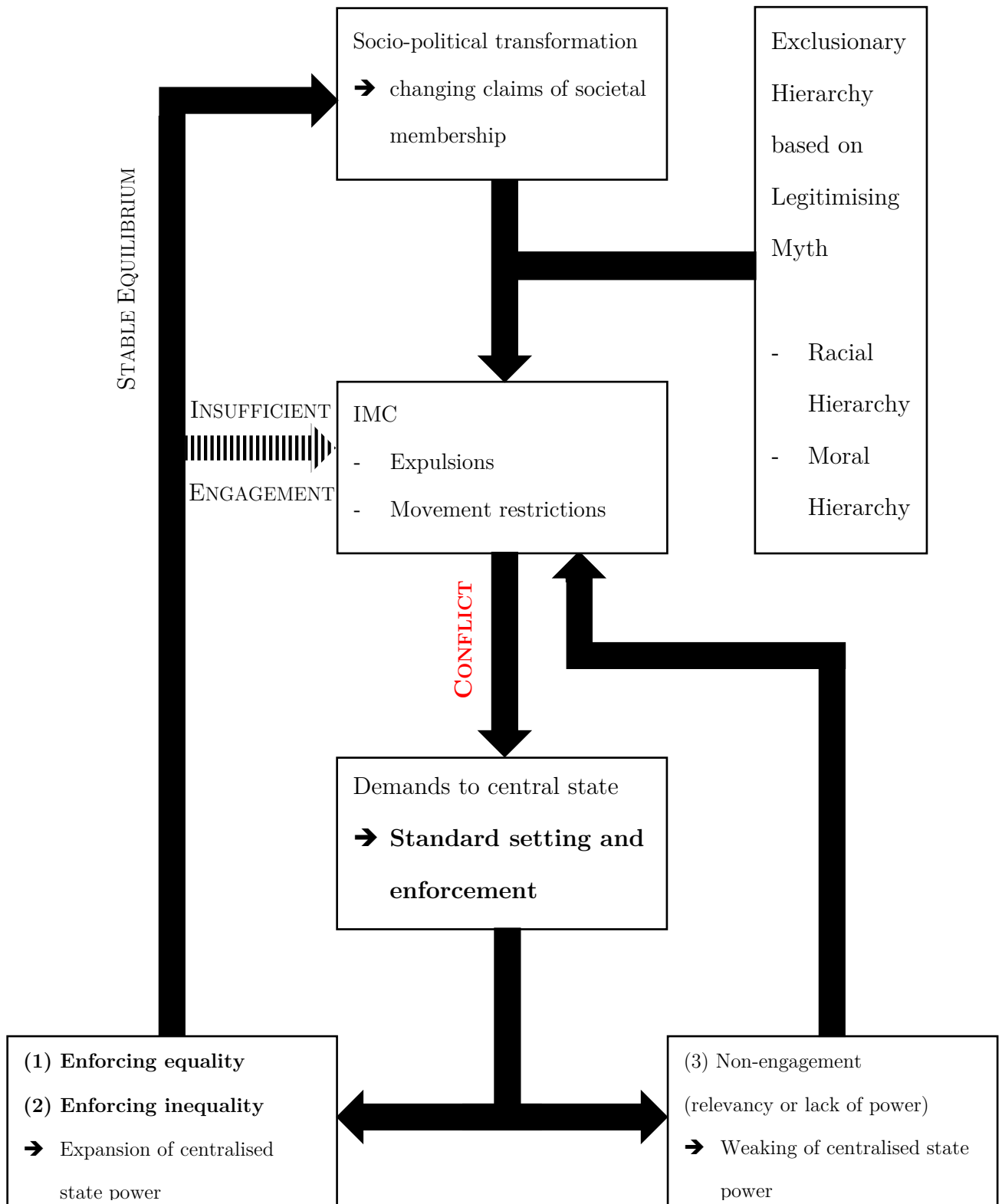


Figure 1: Schematic overview of the IMC mechanism of state development.

While already visible in its beginnings in the 17th and 18th centuries, this mechanism hinges on the centralised decision over societal belonging, characteristic of the modern state emerging in the 19th and 20th centuries. What this generative mechanism highlights is one aspect of this process of exclusionary centralisation described by Bauman. Rather than leaving these decisions up to local communities and sub-state units, the central state steps in to set the standards of full membership for its entire territory. And to enforce these standards, the state has to employ and expand centralised state power. What this engagement thus also shows is the ‘aspiration’ of modern states to exert uniform control over their entire territory, as theorised by Vigneswaran and Quirk.⁹⁶ Due to this aspiration, it is unlikely for states to choose to not engage at all, even though that option exists. Not engaging with sub-state conflict would mean retracting centralisation which would make state disintegration more likely. I thus argue that non-engagement is more often a result of a failure to amass the necessary power resources to engage.⁹⁷

In this proposed mechanism it is not the mere presence of mobility and the wish to manage it that provokes states to expand their powers. Rather it is the conflicting presence of internal mobility control among sub-state units, or sub-state units and the central state, that forces a reaction by the central state. And it is within these conflicts over IMC where the causal potential of this generative mechanism is located: The control of the mobility of a group defined as standing outside mainstream society through, for example, expulsion to another part of the same polity necessarily forces a reaction by the receiving locality and ultimately a

⁹⁶ Vigneswaran and Quirk, *Mobility Makes States*, pp. 23-24.

⁹⁷ Brendan O’Leary argues similarly in the context of *right-sizing the state* in that state elites might choose to give up control over a seceding part of their territory as a means to free up resources of upholding the integrity of the rest of their state’s territory more tightly. Brendan O’Leary, ‘Introduction’. In *Right-Sizing the State: The Politics of Moving Borders*, ed. Brendan O’Leary, Ian S. Lustick, and Thomas Callaghy (Oxford: Oxford: Oxford University Press, 2001), pp. 1-14; O’Leary, ‘The Elements of Right-Sizing and Right-Peopling the State’.

centralised arbitration or standardisation. It is in this sense, I argue, that ‘internal mobility control makes the state’ instead of Vigneswaran and Quirk’s ‘mobility makes the state’.⁹⁸ This is not to say that this mechanism is the only one that ‘makes the state’ or that Vigneswaran and Quirk were wrong, or, for that matter, Tilly with his ‘war makes states and states make war’⁹⁹ mechanism. The mechanism proposed here stands side-by-side with the others as part of a mutually constitutive causation of modern states, explaining the phenomenal regularity of modern states engaging in IMC and creating layered citizenship across cases and time periods.¹⁰⁰

3.3.2 Internal Mobility Control in Dynamic States

The state that we can observe here is thus not a static Weberian state with clear lateral and vertical boundaries. IMC reveals that dynamic states not only exert power differently vis-à-vis different groups but also differently across the extent of its territory. Nor is the mechanism linking IMC and state development a one-off process. As I will show below, it has been repeated over time as one of the measures available in the tool box of states to exclude those defined as undesirable and to form homogenous nation-states. The definitional struggle of the nation, the struggle over recognition and acceptance as full members of society, is continuous and ongoing in modern nation-states, even in the most liberal of democracies.¹⁰¹ As scholars of liberal democracy in the US and UK, in which the equal treatment of citizens is supposed to be paramount, have emphasised, even in these polities, the state creates hierarchies of membership by defining and re-defining the boundaries and conditions of membership through unequally allocating the rights and duties associated with it:¹⁰² ‘these concerns can be thought of as raising two broad questions about citizenship.

⁹⁸ Vigneswaran and Quirk, *Mobility Makes States*.

⁹⁹ Tilly, *Coercion, Capital, States*; Tilly, ‘Reflections on State-Making’.

¹⁰⁰ Gorski, ‘Social Mechanisms’.

¹⁰¹ Brubaker, ‘Migration, Membership, and the Modern Nation-State’.

¹⁰² Kauth and King, ‘Illiberalism’, p. 367.

First, who should be a member of the polity? And, second, once accorded citizenship what obligations are incurred (if only as a corollary of the rights acquired)?¹⁰³

According to King, two types of policies emerge from these questions that contain the potential for illiberalism. First, policies of intended ‘social amelioration’ which are supposed to alter the attitudes and behaviours of citizens ‘in a way which often results in special treatment for some members of the polity’ and, secondly, policies altering the obligations that come with citizenship, including the ‘loss of rights’.¹⁰⁴ IMC, as an overarching concept, relates to the second set of policies, employed in moments in which the existing answers to the two questions above are challenged.

Seen in this light, this proposed IMC mechanism calls into question the established story of internal mobility control as just a precursor to international migration control. Without a doubt, there was an ideational and an institutional link between internal and external mobility control. Hidetaka Hirota establishes these links for the early United States, especially regarding the expulsion of the poor.¹⁰⁵ This was confirmed more recently by O’Brassill-Kulfan.¹⁰⁶ The connection between internal, state-level migration control and the development of federal-level immigration control in America is also the topic of a range of legal histories.¹⁰⁷ Anna O Law, for example, shows how a similar conflict between sub-nation-state units,

¹⁰³ Desmond King, *In the Name of Liberalism: Illiberal Social Policy in the USA and Britain* (Oxford: Oxford University Press, 1999), p. 291.

¹⁰⁴ King, *In the Name of Liberalism*, pp. 295, 303.

¹⁰⁵ Hirota, *Expelling the Poor*.

¹⁰⁶ O’Brassill-Kulfan, *Vagrants and Vagabonds*, p. 60.

¹⁰⁷ Kate Masur, ‘State Sovereignty and Migration before Reconstruction’, *Journal of the Civil War Era* 9, no. 4 (2019): pp. 588-611; Benjamin J. Klebaner, ‘State and Local Immigration Regulation in the United States before 1882’, *International Review of Social History* 3, no. 2 (1958): pp. 269-295; Neuman, ‘The Lost Century of Immigration Law’; Anna O. Law, ‘Lunatics, Idiots, Paupers, and Negro Seamen—Immigration Federalism and the Early American State’, *Studies in American Political Development* 28, no. 2 (2014): pp. 107-128; Llana Barber, ‘Anti-Black Racism and the Nativist State’, *Journal of American Ethnic History* 42, no. 4 (2023): pp. 5-59.

here various states of the US, shifted pre-Civil War state-level immigration control to the federal level in 1882 in a parallel development to IMC: ‘Ultimately the zeal among states to recruit the desirable immigrants and the jealousies between states led to the unraveling of state control altogether.’¹⁰⁸ This shift meant an increase of ‘national power at the expense of the states even though it did not wipe out state sovereignty altogether.’¹⁰⁹ Indeed, as I show below, states kept significant internal control powers, even after the Civil War.

For the UK, Anderson makes this relationship the basis of a book focusing on the dangers of exclusionary immigration politics.¹¹⁰ But this link is not one of evolution from internal to external control, as suggested by a traditional Weberian ideal-type view of the nation, state, and nation-state, first popularised by the works of T. H. Marshall and Ernest Gellner.¹¹¹ Steffen Mau and his co-authors, for example, introduce their historical discussion of *Liberal States and Freedom of Movement* with an historical overview of borders and border controls that presents states as Weberian ideal-types that produce internal homogeneity and external heterogeneity. Crucially, states, in this view, are exclusive: ‘There can be no other state on the same territory.’¹¹² In their historical analysis Mau et al. include IMC of ‘lower classes and those from the margins of society’¹¹³ as an exception to an ‘overall trend was a liberalization of internal travel’¹¹⁴ due to economic pressures, similar to Ziekow’s argument above, as well as ethnic exclusion. But the end point of this trend is the full nation-state after World War II. Based on Gellner’s concept of fluidity, Rogers Brubaker describes this classic view of nation-states as follows: ‘The nation-state is

¹⁰⁸ Law, ‘Immigration Federalism and the Early American State’, p. 125.

¹⁰⁹ Law, ‘Immigration Federalism and the Early American State’, p. 127.

¹¹⁰ Anderson, *Us and Them?*

¹¹¹ Marshall, *Citizenship and Social Class*; Gellner, *Nations and Nationalism*.

¹¹² Steffen Mau et al., *Liberal States and the Freedom of Movement: Selective Borders, Unequal Mobility* (Basingstoke: Palgrave Macmillan, 2012), p. 15.

¹¹³ Mau et al., *Liberal States and Freedom of Movement*, p. 19.

¹¹⁴ Mau et al., *Liberal States and Freedom of Movement*, p. 18.

understood as an internally fluid but externally bounded space [...]. There is free mobility within but not between nation-states, [...]. The internal mobility of persons is both cause and consequence of internal cultural homogeneity, and the external barriers to mobility are likewise both cause and consequence of cultural differences between nation-states.¹¹⁵ Jesper Gulddal and Charlton Payne follow this model explicitly in their analysis of the passport and the modern state based on John Torpey's history of the passport.¹¹⁶ They rightly mention 'medieval and early modern' measures which 'were primarily a matter of social policy, the overall aim being the control of socially undesirable or "suspicious" travelers within the state territory.' From the mid-19th century onwards, this system, they claim, was replaced by 'the modern passport regime increasingly [which] becomes a matter of state security and international borders; its role is to police the distinction, not between suspicious and unsuspecting people defined in terms of social utility, but between the citizen and the alien' – a 'transition, which represents a crucial step in the formation of the modern nation-state'.¹¹⁷

I argue that the IMC mechanism proposed here runs in parallel to that of external exclusion through international migration control. Brubaker, in his critical discussion of the idealized nation-state model,¹¹⁸ views nation-states as the consequence of two analytically distinct political processes: the *internal* and *external* politics of belonging. IMC is part of the former, '[applying] to populations that are durably situated within the territorial ambit of a state but are not - or not fully - members of that state.'¹¹⁹ If IMC and external mobility control have different

¹¹⁵ Brubaker, 'Migration, Membership, and the Modern Nation-State', pp. 63-64.

¹¹⁶ Torpey, *Invention of the Passport*.

¹¹⁷ Gulddal and Payne, 'Passports', p. 12.

¹¹⁸ In criticising the traditional view of citizenship and nationalism as proposed by Marshall and Gellner, Brubaker calls the existence of barriers to internal mobility 'a major anomaly from the perspective of the ideal conceptual model of the nation-state as a fluid and egalitarian social space'. Brubaker, 'Migration, Membership, and the Modern Nation-State', p. 70.

¹¹⁹ Brubaker, 'Migration, Membership, and the Modern Nation-State', p. 66.

functions in the repeatable politics of belonging of dynamic nation-states, it would be surprising to see IMC fully transition into external mobility control. It might periodically rest or be working conflict-less in the background of everyday political life in polities in which a central state has fully integrated sub-state units. But IMC should be expected to re-emerge if triggered by a new socio-political transformation challenging a previously negotiated equilibrium of the internal politics of belonging and the balance of state and sub-states – either by thus far excluded groups demanding full membership or by reactionaries demanding the exclusion of those previously seen as part of society. As a process of state integration, however, the IMC process can lead to (momentarily) fully integrated sub-state units and transition to a new mechanism of the politics of internal belonging.¹²⁰ In the following empirical discussion, I draw from developments in the US and the British Empire, the US, and Germany; three modern-day liberal democracies that are traditionally being ascribed very different paths of state development. Despite the differences of the oft-purported decentralised and weak American state, the highly centralised and strong German state, and the British imperial state, all three exhibit remarkably similar processes of central state development through the IMC mechanism. This points to its generalisability as a process of state development. How does the IMC mechanism work in practice?

¹²⁰ This is being discussed in the thesis conclusion. See also Agee, 'Vagrancy Law Regime to Carceral State'.

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Table 1: A non-exhaustive list of incidents of the IMC mechanism at work.

Transformation	Legitimising Myth	IMC practice	Conflict	Central state reaction
UK and British Empire				
End of Black Death (1350s)		Vagrancy laws to arrest movement	Economic competition	
End of feudalism (1550s)	Undeserving poor (moral hierarchy); Antiziganism (racial hierarchy)	Expulsions	Conflict over expulsions	Elizabethan Poor Law ties poor relief to parishes Anti-travelling and vagrancy laws
End of Napoleonic Wars/Industrialisation	Undeserving poor (moral hierarchy); Antiziganism (racial hierarchy)	Expulsions	Conflict over expulsions and poor relief provisions	Vagrancy Act of 1824, New poor laws Anti-travelling and vagrancy laws
Abolition of Slavery (1833 onwards)	Racism (racial hierarchy)	Apprenticeships, indentured labour	Fear of mobility of minorities, resistance to abolition	Accommodation: vagrancy laws
Imperial mobility	Racism (racial hierarchy)	Border closures, preventing intra-imperial migration	Conflict over migration	Accommodation: Passports, visas, disintegration of Empire
Post-WWII challenge to IMC	Anti-racism, welfare	Vagrancy laws	Popular challenge	Abolition of sus-law in 1981, enforcement of inequality (homelessness)
USA:				

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Early republican poor laws	Undeserving poor (moral hierarchy)	Expulsions	Conflict over expulsions	Poorhouses, lingering conflict until Great Depression
Post-Civil War, Reconstruction	Racism (racial hierarchy)	Black Codes, vagrancy laws, indentured labour	Conflict over Reconstruction	Freedmen's Bureau, Prohibition of Black Codes, military occupation
Post-Reconstruction, Jim Crow segregation	Racism (racial hierarchy)	Vagrancy laws, segregation, prison labour	Conflict over segregation	Accommodation: segregation
Great Depression	Undeserving poor (moral hierarchy)	Vagrancy laws, border closures	Conflict over free mobility	Enforcement of mobility, Social Security
1960s/Civil rights era challenge to IMC	Anti-racism, welfare	Vagrancy laws, segregation	Popular challenge	Enforcement of equality
Germany:				
Post-Napoleon/end of Holy Roman Empire	Undeserving poor (moral hierarchy)	Expulsions	Conflict over expulsions	<i>Heimatprinzip</i>
Foundation German Reich, 1871	Undeserving poor (moral hierarchy)	Expulsions	Conflict over expulsions	State-level citizenship
Weimar Republic	Undeserving poor (moral hierarchy); Antiziganism (racial hierarchy)	Expulsions, forced labour camps	Conflict over citizenship rights	Accommodation: no reaction by the central state
Post-WWII, FRG	Anti-racism, welfare		De-nazification	Enforcement of equality

3.4 Empirical Analysis of Internal Mobility Control

3.4.1 *The United Kingdom and British Empire*

As discussed above, in the classic literature on vagrancy and poor laws a first critical moment is taken to be the end of the Black Death in the 14th century which spurred the labour controlling laws in England which were to transition into flexible tools of oppression at later moments of transformation. Local rulers tried to combat the widespread labour shortages and related incentives for labourers to move to the areas paying the best wages by introducing movement-arresting laws at the end of the Second Plague.²³⁴ The IMC mechanism came into full force during the second process of transformation at the end of feudalism which coincided with a rise in population and the dissolution of monasteries in the UK (which had thus far handled poor relief). Anderson writes: ‘People were “unsettled”, physically mobile, endlessly changing jobs, and in occupations which were often dangerous, dishonourable, and criminalized.’²³⁵ Meanwhile, natural resources which had been previously reserved for the poor, that is, the commons, were appropriated by commercial elites. This led to increased urbanisation and a large population of mobile paupers. But instead of reacting to this change by returning resources to the poor, the 1500s saw localities reforming vagrancy laws to expel them, justified with a purported concern with ‘social disorder’ emanating from the allegedly immoral poor who had dared to be ‘out of place’ and threatened infecting the community with their idleness.²³⁶ The transportation of the poor from village to village without secured relief caused conflicts between the affected sub-state units while circular transportation also did not respond to the issue of poverty and homelessness. The ‘Old’ Elizabethan Poor

²³⁴ Chambliss, 'Sociological Analysis of Vagrancy'.

²³⁵ Anderson, *Us and Them?*, p. 16.

²³⁶ Anderson, *Us and Them?*, p. 17; Braddick, *State Formation in Early Modern England*; Caleb Foote, 'Vagrancy-Type Law and Its Administration', *University of Pennsylvania Law Review* 104, no. 5 (1956): pp. 603-650 here p. 626.

Law of 1601 was a first act of standard setting by the central state, similar to the German *Heimat* principle discussed in detail below: It established a system of local taxation to fund poor relief which was to be organised and administered locally within parishes. But this alone did not solve the problem of circular transportation: Parishes refused to take care of ‘strangers’. The second key component of the Old Poor Law was settlement – parishes were only required to provide relief to ‘their’ paupers. As Anderson asks, ‘but who counts as ‘settled poor’ in a society that is ever more mobile?’²³⁷

The renewed conflicts led to the settlement laws in the second half of the 17th century which defined who would count as settled and where. In David Feldman’s analysis the expansion of the state through the settlement laws becomes clear as it set general standards of when, how, and where someone would change status from ‘stranger’ to community member and required new institutions and personnel, overseers of the poor and justices of the peace, to administer those requirements. ‘The intention [...] was to sanction removal of the unsettled poor and to place an obstacle in the way of poor people acquiring a settlement in the parishes to which they migrated.’²³⁸ One obstacle was the perceived morality of the newcomers. Overseers and justices of the peace were not just required to test the means of a person, but also their reputational ‘credit’: ‘These men privileged values such as diligence, economic independence and discipline. Unwed mothers, idle and tippling incomers, itinerant labourers of all sorts, were not only a potential charge on the parish but also stood condemned by their habits in the eyes of the parochial elite.’²³⁹ The system kept the mobile poor in a constant state of insecurity and at risk of removal due to the refusal of granting settlement. Throughout the 16th century, British authorities also became increasingly concerned with travelling groups such as

²³⁷ Anderson, *Us and Them?*, p. 22.

²³⁸ Feldman, 'Migrants, Immigrants and Welfare', p. 84.

²³⁹ Feldman, 'Migrants, Immigrants and Welfare', p. 87.

Sinti and Roma who were subjected to harsh mobility control laws and punishments based on a racial hierarchy. The negative treatment of Sinti and Roma will be discussed in more detail in the section on Germany.²⁴⁰

Increased mobility over the next ca 200 years pushed the Old Poor Law system to its limits. Urbanisation and industrialisation changed the balance of paupers between the parishes and increased the cost of removal. Moreover, the return of veterans of the Napoleonic Wars meant a sudden increase in the population of the 'unsettled' poor and homeless on the streets of large cities, especially London. Poor relief costs for cities rose dramatically and so did expulsions. In 1815, the Committee on Mendicity, tasked with finding a solution, was told that the poor were 'shifted about from post to pillar for two or three days before they can obtain relief.'²⁴¹ This circular transportation due to refusal of any one parish to receive the unsettled poor from another parish meant that more and more poor persons were treated as criminal vagrants, subject to further expulsion or transportation to colonies overseas. Yet, there were no capacities to deal with the increase of this manufactured illegality.²⁴² Meanwhile, conflict between parishes over paying for and maintaining more permanent, forced labour institutions for the poor and the concurrent demand from more and more underprivileged sections of society for welfare and support, as evidenced, for example, by the 18th century food riots and protests by deported Scots and Irish paupers, provided a further push for centralised reform.²⁴³ The resulting reform, the 1824 Vagrancy Act and 1834 New Poor Law fundamentally changed not

²⁴⁰ For a comparison see, e.g. Simon Rau, Eve Rosenhaft, and Eva Schöck-Quinteros, eds., *Und Wohin Jetzt? Die "Zigeunerpolitik" Im Deutschen Kaiserreich Und Im United Kingdom* (Bremen: Institut für Geschichtswissenschaft, Universität Bremen, 2021); Sal Nicolazzo, *Vagrant Figures: Law, Literature, and the Origins of the Police* (New Haven, CT: Yale University Press, 2021).

²⁴¹ Cited in Nicholas Rogers, 'Policing the Poor in Eighteenth-Century London: The Vagrancy Laws and Their Administration', *Histoire Sociale* 24, no. 47 (1991): pp. 127-147 here p. 142.

²⁴² Rogers, 'Policing the Poor', p. 142.

²⁴³ Rogers, 'Policing the Poor'; Feldman, 'Migrants, Immigrants and Welfare'; E. P. Thompson, 'The Moral Economy of the English Crowd in the Eighteenth Century', *Past & Present*, no. 50 (1971): pp. 76-136.

just mobility control and poor relief provision but also the involvement of the central state.²⁴⁴

The laws acted in lock-step to redraw the lines of societal belonging and control of those on the margins. First, they implemented a new moral hierarchy of deservingness by which most paupers were not eligible to receive assistance. Whereas previously assessing one's morality was mainly a question of settlement and thus of whether one would be eligible for poor relief in the current place of residence rather than in one's home parish, it now became the basis of general relief eligibility. Through the reform movement of the early 19th century which perceived poverty as a wider societal issue in need of 'objective' treatment,²⁴⁵ most able-bodied poor were now labelled as voluntarily idle and thus undeserving of public assistance.²⁴⁶ This shift was accompanied with a concern of pre-emptive engagement to cure the alleged societal ills that produced idleness as well as a range of other behaviours considered immoral, disorderly, or potentially criminal. The Vagrancy Act of 1824 expanded the scope of the charge of vagrancy to myriad of offences that were treated as symptoms of immoral disruption of social order. Due to the catch-all type of vagrancy offences and pre-emptive nature of the Vagrancy Act, these laws developed into a flexible tool to police various groups and behaviours beyond the criminalisation of begging and rough sleeping.²⁴⁷ The Vagrancy Act provided police authorities with the ability to apprehend and punish persons suspected of prostitution, telling fortunes, displaying obscene imagery or exposing themselves, or gambling; moreover, anyone who was suspected of breaking and entering or simply any suspicious person with 'intent' to

²⁴⁴ Feldman, 'Migrants, Immigrants and Welfare', p. 91; Rogers, 'Policing the Poor'; Anderson, *Us and Them?*

²⁴⁵ See also James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, CT: Yale University Press, 2020); King, *In the Name of Liberalism*.

²⁴⁶ Rogers, 'Policing the Poor', pp. 144-146; Katz, *Undeserving Poor*, pp. 3-8.

²⁴⁷ Paul Lawrence, 'The Vagrancy Act (1824) and the Persistence of Pre-Emptive Policing in England since 1750', *British Journal of Criminology* 57, no. 3 (2017): pp. 513-531.

commit a crime.²⁴⁸ The vague and ambiguous clauses of the Vagrancy Act made it the ideal tool for authorities to control and punish a wide range of marginalised populations according to the various hierarchies at play.²⁴⁹ Paul Lawrence reports a 1825 case from Exeter in which a young boy was apprehended by police while ‘lurking suspiciously about’. And even though no evidence of any malicious actions or plans could be found, the magistrate had no doubts about his ‘bad intentions’ and sentenced him to two months of hard labour on the basis of being ‘wickedly inclined and [a] disorderly person.’²⁵⁰ Over the course of the 19th and 20th centuries, vagrancy provisions were widely used by police forces with annual proceedings against ‘suspected’ persons alone reaching an average of 4349 cases per year between the 1850s and 1980.²⁵¹

The Vagrancy Act of 1824 was combined with the New Poor Law in 1834 to further entrench the new culture of penalisation. The New Poor Law established hundreds of workhouses across the country overseen by the centralised bureaucracy of the Poor Law Commission (later Poor Law Board) which was tasked with standardising standards and practices for the whole workhouse system.²⁵² The conditions in workhouses were deliberately harsh not just in terms of labour to offset costs but to ‘treat’ the purported condition of immoral voluntary pauperdom. Poor ‘relief’ in workhouses was to be worse than the condition of the working poor to

²⁴⁸ Vagrancy Act 1824, 1824 chapter 83, accessible online under <https://www.legislation.gov.uk/ukpga/Geo4/5/83/enacted>.

²⁴⁹ Lawrence, 'Persistence of Pre-Emptive Policing'; Christopher Roberts, 'Discretion and the Rule of Law: The Significance and Endurance of Vagrancy and Vagrancy-Type Laws in England, the British Empire, and the British Colonial World', *Duke Journal of Comparative and International Law* 33(2022): pp. 181.

²⁵⁰ Lawrence, 'Persistence of Pre-Emptive Policing', pp. 517-518.

²⁵¹ Lawrence, 'Persistence of Pre-Emptive Policing', p. 527.

²⁵² Feldman, 'Migrants, Immigrants and Welfare'; Charlotte Newman, 'To Punish or Protect: The New Poor Law and the English Workhouse', *International Journal of Historical Archaeology* 18, no. 1 (2014): pp. 122-145.

discourage idleness.²⁵³ Stays in workhouses were not only punishment for immoral behaviour but, crucially, seen as a form of charitable treatment that was necessary for the betterment of the affected person. Workhouses, therefore, were at once a deterrent and treatment device.²⁵⁴ Yet, the effectiveness of workhouses and vagrancy laws were incomplete as long as parishes continued to also expel the poor from their jurisdictions and transport them to neighbouring parishes. The continued expulsion practice created renewed sub-state conflicts while it also undermined the construction of deserving and undeserving poor. By threatening and subjecting the poor to removal, they became less likely to establish stable lives. This was especially the case with those who had moved to England and Wales from Scotland and Ireland.

Whereas expelled persons in England and Wales would be deported to neighbouring or their home parishes, those who had originally come from Scotland and Ireland would be simply transported across the Scottish-English border or the Irish sea and left there to fend for themselves, creating higher burdens for those parishes. The Vagrancy Act even expanded expulsion practices as especially Irish poor were subjected to the suspicion of local authorities due to the wide-spread anti-Irish hierarchy. As Feldman shows, between 1824 and 1831 English and Welsh parishes deported roughly 15% of the total Irish population in England Wales through the ports of Liverpool and Bristol alone.²⁵⁵ Over the course of the second half of the 19th century, Westminster abolished the sub-state expulsion practices, a 'bulwark of parochial selfishness' according to the Poor Law Commission,²⁵⁶ starting with the Poor Removal Act of 1846. Abolishing the removal practices did marginally improve the lives of the poor but it was not done out of charity or even as a sign of

²⁵³ David R Green, 'Pauper Protests: Power and Resistance in Early Nineteenth-Century London Workhouses', *Social History* 31, no. 2 (2006): pp. 137-159.

²⁵⁴ Green, 'Pauper Protests'; Somers and Block, 'Poverty to Perversity'.

²⁵⁵ Feldman, 'Migrants, Immigrants and Welfare'.

²⁵⁶ Cited in Feldman, 'Migrants, Immigrants and Welfare', p. 92.

inclusion of marginalised Irish and Scottish populations. Rather, as Feldman shows, 'fiscal, legal and administrative conditions made it both possible and financially beneficial.'²⁵⁷ The 'vast and novel exercise of power by central government'²⁵⁸ with its new bureaucracies, physical infrastructure, and executive powers replaced the localised control provisions which, as Katz argues, had caused the greatest confusion and litigation within previous poor relief systems.²⁵⁹ The move of IMC from expulsion and deportation to arrest and incarceration, however, did not fully solve the problem of sub-state conflict. As long as workhouses and prisons had to be funded locally, disagreements over sub-state belonging of groups deemed undesirable continued. This only changed once the New Poor Law was replaced with the centralised welfare state of the post-World War II era.²⁶⁰

The UK exported their vagrancy statutes and codes to the colonies to expand control over colonised populations and especially following the abolition of slavery and the apprenticeship system of unfree labour which followed slavery. The British government extended this practice far beyond 1833 and 1838, respectively, and used vagrancy laws to oppress and restrict the mobilities of racialised minorities and formerly enslaved persons until the end of the British Empire.²⁶¹ In addition to the much-researched cases of the Caribbean colonies,²⁶² an example for this is the British

²⁵⁷ Feldman, 'Migrants, Immigrants and Welfare', p. 95.

²⁵⁸ Feldman, 'Migrants, Immigrants and Welfare'.

²⁵⁹ Katz, *Undeserving Poor*, p. 4.

²⁶⁰ Feldman, 'Migrants, Immigrants and Welfare', p. 96.

²⁶¹ See: Tracy Robinson, 'Sticky Colonial Criminal Laws', *University of Miami Law Review* 75, no. 1 (2020): pp. 58; Lauren Benton, 'Law and Empire in Global Perspective: Introduction', *The American Historical Review* 117, no. 4 (2012): pp. 1092-1100; Martin J. Wiener, *An Empire on Trial: Race, Murder, and Justice under British Rule, 1870-1935* (Cambridge: Cambridge University Press, 2009); Roberts, 'Discretion and the Rule of Law'.

²⁶² Bonham C Richardson, 'Caribbean Migrations, 1838-1985'. In *The Modern Caribbean*, ed. Franklin W. Knight and Colin A. Palmer (Chapel Hill, NC: University of North Carolina Press, 1989), pp. 203-228; Janeille Matthews and Tracy Robinson, 'Modern Vagrancy in the Anglophone Caribbean', *Caribbean Journal of Criminology* 1, no. 4 (2019): pp. 123-154; Roberts, 'Discretion and the Rule of Law'.

insistence on including vagrancy provisions in the 1897 decree to abolish slavery on the islands of Zanzibar and Pemba where the slave trade had reached its peak only after the abolition of slavery in the British Empire.²⁶³ The British government had continuously pressured the Omani rulers of Zanzibar and Pemba to abolish slavery throughout the 19th century but had only accomplished an end to the slave trade by 1876. After taking control of the islands as a protectorate in 1890 and the death of the ruling sultan in 1896, the new British-supported sultan Hamoud bin Mohammed decreed the end of slavery in 1897. The decree was hailed as the long-overdue abolition of slavery but it contained three key provisions that limited the reach of the promised freedom: First, it excluded concubines due to, as historians argue, ‘British fears that they would turn to sex work if freed.’²⁶⁴ Secondly, enslaved persons had to go through an arduous process to petition courts and administrators previously tasked with upholding slavery to grant legal freedom. And, thirdly, a vagrancy provision instituted a system of forced labour that could keep formerly enslaved persons in a system of bondage.

In February 1898, a parliamentary debate ensued in Westminster, sparked by a report by British bishop Alfred Tucker writing from Zanzibar and Pemba. Tucker described the effects of the 1897 decree in stark and pessimistic terms: ‘I am bound to say that in the minds of many [...] there is a feeling of very deep anxiety [...]. The more that measure is studied and the more its results are seen, the deeper becomes the conviction that by that decree a cruel wrong was done to the servile population of the islands. That decree, although nominally abolishing the legal *status* of slavery, was one of enslavement rather than of emancipation.’²⁶⁵ The Liberal MP for

²⁶³ Michelle Liebst, 'Urban East African Slavery'. In *The Palgrave Handbook of Global Slavery Throughout History*, ed. Damian A. Pargas and Juliane Schiel (Cham: Springer International Publishing, 2023), pp. 497-515.

²⁶⁴ Liebst, 'Urban East African Slavery'.

²⁶⁵ Alfred Tucker, 'Slavery in East Africa', *The Times*, 26 January 1898; Charles H Allen, 'The Abolition of Slavery in Zanzibar', *The Times*, 17 May 1897.

Northumberland, Tyneside, Jack Albert Pease, led the debate with a demand for British authorities to step in and enforce the abolition of slavery:

It will be in the recollection of the House that last year a Decree was passed, upon which the Government relied to secure the abolition of slavery on the islands of Zanzibar and Pemba, and when the House reflects that that Decree was not the production of English officials, and that it was left to be carried out by the very officials at Zanzibar who had constantly reported against the abolition of slavery, it will not be surprised to find that the Decree has become practically a dead letter, in so far as the abolition of slaves on these two islands is concerned. [...] But the fact remains that the majority of the labouring population on these islands and under our British flag remain in bondage. [...] I hold that it is a disgrace to the British race, that it should be necessary thus to present a slave with papers of freedom. His liberty ought to be his inalienable right. [...] It will be no credit to the Foreign Office if it proposes to shelter itself under the excuse that the administration of the law is under the Sultan's Government, and not under the British Government, for every Member of the House knows that any influence brought to bear by our Government, or any advice given, has to be accepted by the Sultan of Zanzibar.²⁶⁶

What Pease could not have been aware of, but perhaps surmised, was that the 1897 decree had in fact been, at least in parts, the production of English officials. Confidential documents from December 1896, uncovered here for the first time, show that the British Foreign Office 'suggested' several of the provisions later found in the sultan's decree. 'AS [sic!] soon as possible after the issue of the Decree relating to slavery the Zanzibar Government shall issue a Vagrancy Act', the Foreign Office instructed. This act was to be applied only to 'all native Africans in the Islands of Zanzibar and Pemba who have no established home or ostensible means of subsistence, and shall be administered by the District Courts, which shall decide all

²⁶⁶ Jack Albert Pease, Northumberland, Tyneside, House of Commons, Debate, 10 February 1898, vol 53, cols 293-295.

points arising out of it.’ The punishment for the so-defined crime of vagrancy was forced labour ‘for fixed periods either for the State or for private employers on such terms and in such occupation as the Court may decide.’ Crucially, the act was supposed to apply to formerly enslaved persons: ‘In allotting the labour of slaves who have obtained their freedom under the Decree, and are liable to the Act, preference should be given to a request of their late owner for it.’ Payment was to be given either at an equivalent rate to that of free labour or in food and accommodation. Release was only possible once affected persons could prove to the sentencing court their ability to earn their own income at a level which was fully discretionary to the court. British authorities made ample use of this system, according to historians who find that ‘individuals in the town who the British officials identified as “vagrants” were rounded up and taken to work on plantations.’²⁶⁷ Here, central imperial authorities expanded centralised state powers to set uniform standards of exclusion across the British Empire.

Imperial authorities also went at great lengths to devise measures that would curb intra-imperial movements without openly treating them as inter-territorial movements as this would have undermined narratives of an undivided Empire based on the uniformity of imperial subjecthood.²⁶⁸ Radhika Mongia’s analysis on Indian migration throughout the British Empire does not refer to any IMC measures explicitly and yet her examinations of British practices limiting the ability of Indians to move about freely within the Empire still show familiar patterns of sub-state conflict and central state response. In this case however, the central state ceded

²⁶⁷ Liebst, ‘Urban East African Slavery’.

²⁶⁸ Daniel C. Turack, ‘Freedom of Movement within the British Commonwealth’, *The Comparative and International Law Journal of Southern Africa* 1, no. 3 (1968): pp. 476-484; Marjory Harper and Stephen Constantine, *Migration and Empire* (New York, NY: Oxford University Press, 2014); Randall Hansen, ‘The Politics of Citizenship in 1940s Britain: The British Nationality Act’, *Twentieth Century British History* 10, no. 1 (1999): pp. 67-95.

power to another sub-state unit to control its own borders and to reject migration from other parts of the Empire:

In the first years of the 20th century, the colonial Canadian government became anxious about a slow uptake in immigration from India. According to Mongia, this anxiety was rooted in racial constructions of differential humanity and the fear of political upheaval and Indian independence. Publicly, the attempts to limit Indian migration were justified by pointing to the, factually incorrect, heightened risk of poverty and homelessness as well as alleged cultural incompatibility to guise the overt racism found in internal documents.²⁶⁹ Since Indians were members of the British Empire, Canada could not restrict their entrance outright. The goal thus became to ‘vigorously cling to inscribing the letter of the law as universal, while ensuring that, in practice, this universality would function differentially.’²⁷⁰ The Canadian and British governments agreed on the urgings of the Canadians to establish other forms of movement control such as the demand that journeys from one location in the Empire to another would have to be made in one continuous leg or the introduction of monetary requirements to undertake journeys. When these practices proved to be insufficient to stop Indian migration, central imperial authorities eventually submitted to Canadian demands and against the objections of the imperial Indian authorities and introduced new forms of passports and visas, regulating not only international migration but also limiting movement within the Empire. For Mongia, this development reflects the development of modern nation-states out of anxieties over movement and race. She argues, ‘that the idea and materiality of the “national frontier,” premised on the notion of a nation as a territorially and demographically circumscribed entity, takes shape not prior to but

²⁶⁹ Radhika Viyas Mongia, 'Race, Nationality, Mobility: A History of the Passport', *Public Culture* 11, no. 3 (1999): pp. 527-555 here p. 534.

²⁷⁰ Mongia, 'Race, Nationality, Mobility', p. 552.

within the context of “raced-migration.”²⁷¹ In quoting Partha Chatterjee, Mongia points to the same patterns I identified for the development of Internal Mobility Control: ‘modes of governance premised on the rule of colonial difference should be thought of not as aberrations from the universal and universally valid principles of the modern state but, rather, as “part of the common strategy for the deployment of the modern forms of disciplinary power.”’²⁷² Ceding the power to control the movement between different parts of the empire further institutionalised imperial-racial hierarchies while also marking the transition from centralised British imperial power to individual nation-states.²⁷³

3.4.2 *The United States*

The poor and vagrancy laws of the early United States, imported from the UK, mirrored those of 18th century Britain discussed above. And they led to similar sub-state conflicts. Article 4 of the Articles of Confederation explicitly exempted ‘paupers, vagabonds, and fugitives’ from the freedom to travel between states. The provision had not found its way into the US Constitution, but states continued to use ‘vagrancy statutes and settlement laws to uphold this ban on indigent transiency. [...] Vagrancy statutes functioned as forms of antimigratory policing that contravened the rights of free ingress and regress afforded to residents of the United States.’²⁷⁴ Especially the Atlantic seaboard states were engaging in the regular and frequent expulsion and deportation of poor persons on their territory if they were suspected to be ‘settled’ in another state.²⁷⁵ Moreover, states also moved poor persons within states according to their actual or purported home districts. Similar to what had

²⁷¹ Mongia, 'Race, Nationality, Mobility', p. 528.

²⁷² Mongia, 'Race, Nationality, Mobility', p. 531; Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton, NJ: Princeton University Press, 1993).

²⁷³ Vigneswaran, 'Europe Has Never Been Modern'.

²⁷⁴ O'Brassill-Kulfan, *Vagrants and Vagabonds*, p. 15.

²⁷⁵ Dayton and Salinger, *Robert Love's Warnings*; O'Brassill-Kulfan, *Vagrants and Vagabonds*; Hirota, *Expelling the Poor*.

happened in the UK, removals led to chain-expulsions as there existed no established way of determining the settlement status of residents. In 1824, the state of New York heavily restricted within state removal practices and instead implemented a system of incarceration and alms-houses to act as deterrents and assistance in the place where a poor person was located. As O'Brassill-Kulfan shows, however, this policy shift, similar to that in the UK, was unique to New York.²⁷⁶ Lacking a central standardising authority, removal was seen as a long-term solution to upholding exclusionary standards of community membership, even though a system without removal would have often been cheaper.²⁷⁷ Calls for cooperation and centralisation grew louder and in 1835 the states of New Jersey, Pennsylvania, and New York unsuccessfully considered introducing a regulating bill that would standardise processes of removal between them.²⁷⁸ In 1837, the Supreme Court in *City of New York vs Miln* decided that the states possessed the power to 'provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts, as it is to guard against physical pestilence.'²⁷⁹ Unlike the British case where the central state expanded its power over the course of the 19th century to abolish poor removals, the conflicts between sub-states thus continued in the USA until the Great Depression and the 1960s.²⁸⁰ When 27 states instituted bans on the in-movement of poor persons which included armed border guards during the Great Depression, this conflict came to a head and in 1941 the Supreme Court decided against such bans in *Edwards v California*, stating that 'Whatever may have been the notion then prevailing, we do not think that it will be seriously contended that because a person is without employment and without funds he constitutes a "moral pestilence."²⁸¹

²⁷⁶ O'Brassill-Kulfan, *Vagrants and Vagabonds*, p. 60.

²⁷⁷ O'Brassill-Kulfan, *Vagrants and Vagabonds*, p. 61.

²⁷⁸ O'Brassill-Kulfan, *Vagrants and Vagabonds*, p. 75.

²⁷⁹ Foote, 'Vagrancy Law and Administration', p. 623.

²⁸⁰ O'Brassill-Kulfan, *Vagrants and Vagabonds*, pp. 15-16, 60; Foote, 'Vagrancy Law and Administration', p. 616.

²⁸¹ Cited in Foote, 'Vagrancy Law and Administration', p. 624.

While poor relief remained a pejorative stain in the eyes of many Americans,²⁸² due to the widespread unemployment during the Great Depression, claims of membership changed, ‘poverty lost much of its moral censure’ as Katz argues.²⁸³ At the same time, the New Deal ushered in a more nationalised American state.²⁸⁴

The second key case of IMC in the USA was the control of the mobility of African Americans. Before the Civil War, this included the obvious restriction of movement of enslaved persons through slavery but also that of free African Americans.²⁸⁵ The infamous Supreme Court decision of *Dred Scott v Sandford* (1857), which established the exclusion of African Americans from citizenship, was formally decided over the claims of mobility between states. Dred Scott and his family had been moved across state lines by their enslaver and it were these movements that formed the basis of his claim for freedom.²⁸⁶ But, in the view of Chief Justice Roger Taney, ‘the notion of free blacks traveling to slave states and perhaps having the rights to criticize slavery and, even more ominously, to keep and bear arms, was [...] simply unthinkable. Because these rights came with citizenship, Taney argued, blacks could never be citizens.’²⁸⁷ The restrictions placed on the lives and internal mobility of African Americans are too many to discuss in full here.²⁸⁸ But the IMC mechanism and the control of black lives came into plain view following the Civil War and the

²⁸² See, e.g., Lieberman, *Shifting the Color Line*.

²⁸³ Katz, *Undeserving Poor*, p. 8.

²⁸⁴ Theda Skocpol, ‘Political Response to Capitalist Crisis: Neo-Marxist Theories of the State and the Case of the New Deal’, *Politics & Society* 10, no. 2 (1980): pp. 155-201; Theda Skocpol and Kenneth Finegold, ‘State Capacity and Economic Intervention in the Early New Deal’, *Political Science Quarterly* 97, no. 2 (1982): pp. 255-278.

²⁸⁵ O’Brassill-Kulfan, *Vagrants and Vagabonds*; Chambliss, ‘Sociological Analysis of Vagrancy’, p. 75.

²⁸⁶ Jack M Balkin and Sanford Levinson, ‘Thirteen Ways of Looking at Dred Scott’, *Chicago-Kent Law Review* 82, no. 1 (2007): pp. 49-95; Euan Hague, ‘The Right to Enter Every Other State’ – the Supreme Court and African American Mobility in the United States’, *Mobilities* 5, no. 3 (2010): pp. 331-347.

²⁸⁷ Balkin and Levinson, ‘Looking at Dred Scott’, p. 57.

²⁸⁸ See, e.g., Barber, ‘Nativist State’; Hague, ‘African American Mobility in the Us’; Neuman, ‘The Lost Century of Immigration Law’; Law, ‘Immigration Federalism and the Early American State’.

resistance to and retraction of forceful federal power during and after Reconstruction.²⁸⁹

Following the Civil War (1861-1865) and the abolition of slavery, Reconstruction attempted to integrate formerly enslaved African Americans and the former Confederate states into an egalitarian and democratic American state. Military occupation and forceful federalism ushered in a brief era in which the federal American state directly set and enforced standards of race-egalitarian membership.²⁹⁰ But within a few years, Reconstruction ended with a return of Northern troops and the reconstitution of Southern state governments and with them returned racial segregation and oppression to the southern United States. The mechanism of IMC can be viewed in two ways during this time.

The central state engaged powerfully not only through military occupation but also through setting and enforcing standards of free mobility for African Americans. Enhancing the ability to freely move and engage in a free labour market, it was hoped, would not just re-start the southern economy but, crucially, prevent a return of slavery in all but the name.²⁹¹ As William Cohen powerfully shows 'Almost from the moment slavery ended, whites who employed black labor sought to re-create a main element in the old system by preventing blacks from moving about freely.'²⁹² But laws that would have made it impossible for African Americans to engage in a free labour market were blocked and forcefully repealed through pressure from the occupying federal government. Mississippi's black codes from 1865 serve as an example strikingly similar to Britain's use of vagrancy laws in Zanzibar discussed above: First, the law required African Americans to prove employment on an annual

²⁸⁹ Desmond King, 'Forceful Federalism against American Racial Inequality', *Government and Opposition* 52, no. 2 (2017): pp. 356-382; King and Lieberman, 'Forceful Federal Power'.

²⁹⁰ King and Lieberman, 'Forceful Federal Power'.

²⁹¹ Cohen, *Freedom's Edge*.

²⁹² Cohen, *Freedom's Edge*, p. 4.

basis each January. At the same time, however, ‘enticement’, that is hiring African Americans already under contract, became a crime. So did ‘abandoning’ a contract during the year. African Americans apprehended in public with ‘no lawful business or occupation’ were to be declared vagrants and punished with fines and imprisonment. Crucially, ‘those who could not pay their fines within five days were to be hired out by the sheriff “to any person who will, for the shortest period of service, pay said fine or forfeiture and all costs”’.²⁹³ As in Zanzibar’s case above, preference was to be given to former enslavers. The public in Northern states reacted with ‘furore’ but among the Southern states, legislation quickly spread, only halted by ‘northern public opinion and the events of Military Reconstruction’.²⁹⁴ South Carolina’s black code was abolished by the military in 1866, and the Freedmen’s Bureau declared to disregard the Texan equivalent in 1867. By 1868 most black codes had been repealed.²⁹⁵

The Freedmen’s Bureau was at once evidence of the central state’s active intervention in promoting the mobility of formerly enslaved persons as well as the limits of this intervention. The assessments by scholars of the Bureau’s effectiveness have been mixed, not just regarding its mobility-enhancing activities. In Lieberman’s words: ‘The bureau was either virtuous or vicious, honest or corrupt, effective or counterproductive, according to the author’s view of the entire historical episode.’²⁹⁶ The Bureau was charged with assisting formerly enslaved *freedmen* to become full members of society. On a larger scale, it became ‘the first federal antipoverty program, the first attempt to impose broad federal authority over individual citizens through bureaucratic means.’²⁹⁷ As part of its task to ensure long term economic

²⁹³ Cited in Cohen, *Freedom’s Edge*, p. 29.

²⁹⁴ Cohen, *Freedom’s Edge*, p. 34.

²⁹⁵ Cohen, *Freedom’s Edge*, p. 34.

²⁹⁶ Robert C. Lieberman, ‘The Freedmen’s Bureau and the Politics of Institutional Structure’, *Social Science History* 18, no. 3 (1994): pp. 405-437 here p. 407.

²⁹⁷ Lieberman, ‘Freedmen’s Bureau’, p. 406.

independence of the *freedmen*, the Bureau had to ensure their integration in the free labour market. But in this it was faced with the opposition of Southern planters who, as seen above, attempted to entrench a new system of slavery.²⁹⁸ At the same time, the Southern economy was spatially highly imbalanced. But the now freed African Americans neither had the knowledge nor the means to travel the vast distances across states to fill vacant positions in a different area. Instead, they were at risk of falling prey to plantation owners paying low wages in areas with an over-supply in labour. 'Quickly, [the Bureau] began to see that their efforts to get blacks back to work and reduce dependence on government rations were linked to their ability to bring labor to where it was needed.'²⁹⁹ Despite its beleaguered status in the South and limited resources provided by the federal government, the Bureau was able to transport over 29,000 formerly enslaved African Americans between May 1865 and September 1868.³⁰⁰ But with the end of Reconstruction in 1877 also came the end of the Freedmen's Bureau and the services the Bureau had provided in the previous year had neither succeeded in '[protecting] the freedmen's political and economic independence'³⁰¹ nor their freedom of movement.

Once the federal government retracted its direct enforcement of standards of mobility, Southern states returned to their immediate post-war plans by issuing a series of laws which aimed to re-instate bonded labour and exclude African Americans from societal membership in line with a white supremacist racial hierarchy.³⁰² A first target of post-Reconstruction Southern lawmakers was the privatised system of transportation agents which emerged after the Bureau stopped its services. The activities of so called emigrant agents were banned across Southern states over the

²⁹⁸ C Vann Woodward, *Reunion and Reaction: The Compromise of 1877 and the End of Reconstruction* (Oxford: Oxford University Press, 1991).

²⁹⁹ Cohen, *Freedom's Edge*, pp. 46-47.

³⁰⁰ Lieberman, 'Freedmen's Bureau', pp. 419-420.

³⁰¹ Lieberman, 'Freedmen's Bureau', p. 406.

³⁰² Woodward, *Reunion and Reaction*; Cohen, *Freedom's Edge*.

course of the 1870s and 1880s, in an effort to ‘[limit] black movement.’³⁰³ Ironically, these bans led to conflicts between white supremacist lawmakers, many of whom were in favour of the expulsion of African Americans rather than continued bondage. Cohen cites the example of Georgia state senator Thomas P Gibbs who ‘spoke in favor of repealing the state’s emigrant-agent law, on the grounds that it would be good public policy to facilitate black emigration from the state. The blacks in their emancipated condition were unfit for laboring, he said. They had lapsed into barbarism, and there existed a large number of vagabond blacks who were a “continual menace to property, to peace, and to virtue.” Gibbs predicted that “the time would come before long, when the white people would rise as one man and demand emigration or extermination.”’³⁰⁴ But in the ensuing votes, supremacist legislators favouring continued bonded labour succeeded and the emigrant-agent bans were complemented by updated versions of the black codes blocked by federal intervention in the immediate post-Civil War years. The laws that established a ‘repressive system of tenancy and crop liens that differed little from slavery except in name’³⁰⁵ did not fully succeed in arresting black mobility, according to Cohen.³⁰⁶ Viciously more successful in upholding white supremacy in the US South were measures designed to keep African Americans from engaging politically, such as laws aimed at black disenfranchisement, and societally, many of which were based on the now familiar mobility control laws.

Especially around the turn of the 20th century onwards, Southern states used vagrancy laws to criminalise black lives through the restriction of movements and access to public spaces. Between 1903 and 1906, eight Southern states enacted strict vagrancy laws tied to harsh sentences including large fines and six month jail terms.

³⁰³ Cohen, *Freedom's Edge*, p. 232.

³⁰⁴ Cited in Cohen, *Freedom's Edge*, p. 236.

³⁰⁵ Lieberman, 'Freedmen's Bureau', p. 406.

³⁰⁶ Cohen, *Freedom's Edge*, pp. 248-273.

The new vagrancy laws came with frequent police round-ups, targeting African Americans present in public spaces or accused of having broken labour contracts.³⁰⁷ Prison sentences and fines came with hard labour – either by being ‘hired out’ through prison labour or by having plantation owners pay for fines and court fees in exchange for forced labour.³⁰⁸ Vagrancy laws were also used to police spaces deemed to be reserved for white Americans. African Americans perceived to ‘loiter’ in such spaces or use transportation were frequently arrested and incarcerated.³⁰⁹ Jim Crow laws established the legal basis for segregation which was enforced through vagrancy laws.³¹⁰

An extreme but common example for white-only spaces established through violent expulsions of minorities at the hands of white supremacists rather than vagrancy laws were so-called Sundown Towns: White only settlements in which the white population forced out minorities, primarily African Americans but also Latinos, Native Americans, and Jews, by violence, municipal zoning, housing market discrimination, and policing. Sundown Towns existed all across the United States but were more of a Midwestern phenomenon rather than of the deep South were dependence on African Americans as labourers made the implementation of Sundown Towns more difficult. Most of those racially exclusive communities emerged between 1890 and 1940 marking, according to James Loewen, ‘the nationwide tide of rising white supremacy’.³¹¹

Being unable and/or unwilling to uphold the standards of racial equality across the South and its entire territory was a distinct failure of the federal state and

³⁰⁷ Cohen, *Freedom's Edge*, pp. 239-244.

³⁰⁸ Cohen, *Freedom's Edge*, p. 244; Cohen, 'Involuntary Servitude in the South'; Roberts, 'Discretion and the Rule of Law', pp. 211-213.

³⁰⁹ Goluboff, *Vagrant Nation*, p. 113; Hague, 'African American Mobility in the US'.

³¹⁰ Ruth Thompson-Miller, Joe R Feagin, and Leslie H Picca, *Jim Crow's Legacy: The Lasting Impact of Segregation* (Lanham, MD; Boulder, CO; New York, NY; London: Rowman & Littlefield, 2014), p. 6; Goluboff, *Vagrant Nation*; Adler, *Creation of Jim Crow Policing*.

³¹¹ Loewen, 'Sundown Towns', pp. 25-28, 32. See also Goluboff, *Vagrant Nation*, p. 115.

its standardising power. As King and Lieberman argue, ‘this federal-state policy divergence, among other effects, helped cement the segregationist racial order’.³¹² Practices of internal mobility control were a key part in this racial order. And openly resisting them played a key part in overcoming the racial order: In the Civil Rights era, the Civil Rights movement urged the federal government to desegregate interstate travel. The Freedom Riders’ campaign to bring the federal government to enforce the decisions of the Supreme Court in *Morgan v Virginia* (1946) and *Boynton v Virginia* (1961) to desegregate transportation required further federal state expansion.³¹³ Goluboff describes how vagrancy laws were used across the US to criminalise the civil rights movement and how civil rights leaders publicised arrests to highlight the extent of the racist regime: ‘Revelations of this repressive use of vagrancy laws made undeniable what many African Americans had known for at least a century: that toppling Jim Crow required challenging not only segregation and inequality but also the laws that police used to defend and maintain the system.’³¹⁴ In the end, the civil rights movement’s public protest led the charge to abolish not just racist mobility control laws but Jim Crow segregation as a whole by forcing the return of forceful federalism.³¹⁵

3.4.3 Germany³¹⁶

Germany’s unification process had been notoriously difficult with states demanding strong sovereign powers during the negotiations leading up to the

³¹² King and Lieberman, 'Ironies of State Building', p. 571.

³¹³ King, 'Forceful Federalism against Racial Inequality'; Raymond Arsenault, *Freedom Riders: 1961 and the Struggle for Racial Justice* (New York, NY; Oxford: Oxford University Press, 2006).

³¹⁴ Goluboff, *Vagrant Nation*, p. 114.

³¹⁵ King, 'Forceful Federalism against Racial Inequality'.

³¹⁶ Parts of this historical analysis of German IMC has been published in Wambach and Kauth, 'Innerdeutsche Ausweisungen'.

constitution of 1871.³¹⁷ One of these reserved powers was to keep matters of movement in the hands of the states. This meant that rather than being citizens of Germany directly, Germans were citizens of a German state first and only through that received a secondary membership of the German Reich.³¹⁸ One of the roots of this citizenship duality is to be found in the provision of poor relief at the beginning of the 19th century. Previously, town, county, village, and state authorities had simply expelled poor and homeless people from their territories without any regulation or negotiation with neighbouring jurisdictions, leading to episodes of recurring transportations of the same individuals from one jurisdiction to another and back again.³¹⁹ This back and forth caused conflicts between neighbours and eventually to the convention that each jurisdiction had to provide assistance to 'their' paupers.³²⁰ By the early 19th century, this *Heimat* principle of geographical belonging turned into a right of residence within a person's home jurisdiction, usually their place of birth, that came with a minimum level of poor relief guarantee. Even as poor relief became more centralised over the course of the 19th century, the *Heimat* principle provided authorities with a powerful tool to restrict the movement of, and therefore control the presence of, undesired groups of people within their territories.³²¹

³¹⁷ Dieter Grimm, 'War Das Deutsche Kaiserreich Ein Souveräner Staat?'. In *Das Deutsche Kaiserreich in Der Kontroverse*, ed. Sven O Müller and Cornelius Torp (Göttingen: Vandenhoeck & Ruprecht, 2009), pp. 86-101.

³¹⁸ Hans H Friederichsen, 'Die Stellung Des Fremden in Deutschen Gesetzen Und Völkerrechtlichen Verträgen Seit Dem Zeitalter Der Französischen Revolution' (Ph.D. Thesis University of Göttingen, 1967), 47-49; Dieter Gosewinkel, *Einbürgern Und Ausschliessen: Die Nationalisierung Der Staatsangehörigkeit Vom Deutschen Bund Bis Zur Bundesrepublik Deutschland* (Göttingen: Vandenhoeck & Ruprecht, 2001), pp. 162-176.

³¹⁹ Kauth, 'Ein Stück Polizeistaat'. *Fremdenrecht Und Ausweisungen in Der Ersten Deutschen Demokratie*'.

³²⁰ Richard Heinze, 'Die Grundrechte Der Ausländer Nach Der Deutschen Reichsverfassung Vom 11. August 1919' (Ph.D. Thesis University of Marburg, 1929), 10-11; Andreas Fahrmeir, *Citizens and Aliens: Foreigners and the Law in Britain and the German States, 1789-1870* (New York, NY; Oxford: Berghahn Books, 2000), pp. 21-22.

³²¹ Lucassen, 'Eternal Vagrants', p. 59.

In his detailed historical analysis of German citizenship law, Dietrich Gosewinkel presents the cases of Saxony and Prussia which can serve as ideal examples of this process of IMC and state development: As one of the last major German states, the Kingdom of Saxony was forced to formalise its *Heimat* principle to conform with the formalisations of other German states in a time of heightened mobility and movement between the German states.³²² In its *Heimaths-Gesetz vom 26. November 1834*, it defined a system of *Heimat* counties and assigns them according to birth and property. *Heimat* counties were required to provide collective assistance and welfare to anyone who belonged to them, others in need were to be expelled. The law also established a system for those who did not have a *Heimat*, i.e. were stateless, which assigned them a *Heimat* county in Saxony based on past residence or marriage.³²³ The issue with the *Heimat* principle during rapid industrialisation was that the German states did not want to provide welfare to those who had left their territory and permanently migrated to another German state and thus set limits to the validity of their citizenship or subjecthood post-emigration. States negotiated to issue *Heimat* passes which guaranteed welfare support in their *Heimat* county for a specified period. But this led states to essentially close their border for any permanent migration, misusing *Heimat* passes to safely expel anyone suspected to be a ‘vagrant’.³²⁴

In 1850 Saxony and Prussia had already re-negotiated their *Heimat* pass system to guarantee each other the permanence of their citizens’ citizenship, meaning that they would facilitate expulsions in cases of future poverty and need. In 1851, this proposal was put to all German states. Only the state of Hannover’s Ministry of

³²² Gosewinkel, *Einbürgern Und Ausschliessen*, pp. 136-137.

³²³ Albert Berger, *Das Königl. Sächs. Heimathgesetz: Nach Den Neuesten Auf Dem Landtage 1839/40 Genehmigten Bestimmungen, Nach Praktischen Erfahrungen Und Speciellen Entscheidungen Der Hohen Behörden Bei Zweifelhaften Und Schwierigen Fällen* (Grimma: Verlags-Comptoir, c. 1841).

³²⁴ Gosewinkel, *Einbürgern Und Ausschliessen*, p. 151.

Foreign Affairs objected in a letter to the Prussian Ministry of the Interior: ‘Especially the “proletariat” would be harmed by these new regulations. [...] If these persons were to be sent back to their home countries in case of need, this would cause a double disadvantage. On the one hand, these persons in need would be allocated to resisting communities. On the other hand, it was much more possible they could count on “charity” in the communities in which they had resided for several years.’³²⁵ This notwithstanding, the Gotha convention of 1851 followed the Prussian and Saxon suggestions. By 1861 all German states had joined the convention which should form the basis of 1867 Law on Freedom of Movement and of *Reich* citizenship ten years later.³²⁶

Qua the federal constitution, *Reich* membership enabled Germans to conduct their everyday lives in the entire territory of the Reich, regardless of their individual state citizenships. Reich authorities had established equal treatment clauses and uniform categories for citizenship acquisition but had to grant each state the right to veto any naturalisation request made in any other state.³²⁷ Despite this formal levelling of citizenship and the explicit inclusion of internal movement as a citizenship right, the constitution of 1871 still allowed for states to keep in place discriminatory policies levied against citizens of other states. Through the state-federal citizenship duality, individual states had retained the right to expel persons from their territory just like in pre-unification times. The only requirement was that the formal procedures of these expulsions followed pre-1871 inter-state agreements honouring the *Heimat* principle.³²⁸ In Baden, these had been channelled into the Law on the

³²⁵ Cited in Gosewinkel, *Einbürgern Und Ausschliessen*, p. 153.

³²⁶ Gesetz über die Freizügigkeit vom 1. November 1867, Bundes-Gesetzblatt des Norddeutschen Bundes 1867, pp. 55-58. See also Ziekow, *Freizügigkeit Und Aufenthalt*, pp. 214-270; Gosewinkel, *Einbürgern Und Ausschliessen*.

³²⁷ Laura Moser, 'Der Versuch Zu Bleiben – Einbürgerungsanträge in Der Republik Baden'. In *Geflüchtet, Unerwünscht, Abgeschoben. Osteuropäische Juden in Der Republik Baden (1918–1923)*, ed. Nils Steffen and Cord Arendes (Heidelberg: Universitätsbibliothek Heidelberg, 2017), pp. 155-176.

³²⁸ Kauth, 'Polizeistaat'.

Freedom of Movement from 1870.³²⁹ Just like similar laws in other states, Baden's law allowed local authorities to expel any poor, begging, or 'disorderly' non-Baden citizens as well as those who were suspected of criminal activities or had already been convicted in court. Expulsions could apply to the entire territory of the state, one or several districts, or even just to individual cities and villages. Returns were mostly prohibited, either for a set amount of time or indefinitely. They could be enforced by deportation.³³⁰

In practice, these vague regulations resulted in a broad authorisation for local authorities to police movement. Expulsion orders counted as administrative decisions, not as legal punishments and could not be challenged in court.³³¹ It was easy for state governments to use expulsion orders not only in response to socio-economic crises but also to combat criminalised political groups. In the second half of the 19th century, this primarily affected the social-democratic labour movement, considered direct political threats to the (protestant) monarchy. By restricting their movement through expulsions, the police forces tasked with controlling these groups attempted to curb political organising.³³² It took until 1913 for the German Reich to formalise its citizenship structure. The landmark law on Reich and State Citizenship seemed to strengthen the brittle equal treatment clause of the constitution by stating, for the first time, that 'German is whoever holds the citizenship of a member state'.³³³ Yet once again, expulsion practices were exempt from any new provisions.

³²⁹ Badisches Gesetz das Aufenthaltsrecht betreffend vom 5. Mai 1870, in Gesetzes- und Verordnungs-Blatt des Grossherzogthum Baden 1870, pp. 396-398.

³³⁰ Kauth, 'Polizeistaat'; Ernst Isay, *Das Deutsche Fremdenrecht: Ausländer Und Die Polizei* (Berlin: Georg Stilke, 1923).

³³¹ Kauth, 'Polizeistaat'; Isay, *Fremdenrecht*.

³³² Ziekow, *Freizügigkeit Und Aufenthalt*, pp. 245-247, 332.

³³³ Reichs- und Staatsangehörigkeitsgesetz vom 22. Juli 1913, in Reichs-Gesetzblatt 1913, pp. 583-593. See Friederichsen, 'Stellung Des Fremden'; Gosewinkel, *Einbürgern Und Ausschliessen*.

Equal treatment and civil rights were core tenets of the democratic Weimar constitution:³³⁴ After World War I and the German revolution of 1918-19, attempts were made by the writers of Germany's first democratic constitution to include free movement as a guaranteed right for all citizens, going far beyond the compromise of the monarchic constitutions of the 19th century. Social-democrats, who had been targeted by movement control measures by imperial authorities throughout the 19th and early 20th centuries, were now members of the big tent democratic ruling coalition. Equal treatment of all citizens and an explicit right to internal movement received their own articles in the Weimar constitution.³³⁵ This notwithstanding, states continued their expulsion practices and even expanded their scope: In June of 1919, Baden's freshly installed social-democratic Minister of the Interior issued a decree that allowed local authorities to expel all non-Baden citizens, regardless of their national citizenship, if it was deemed necessary to uphold 'public security and order'.³³⁶ The decree was initially meant as a temporary measure allowing authorities to quell post-war unrests but was quickly adopted by Baden's local authorities as a permanent part of policing, as can be seen by the recurrent references of the decree in expulsion files all throughout the interwar period.³³⁷ When Wilhelm Glück complained to Baden's Ministry of the Interior about his expulsion, the orders were justified by pointing to their respective criminal records, even though the Ministry admitted that there were no direct indications that Glück was about to commit any further crimes or posed a direct threat to the population, it was assumed that it

³³⁴ Ziekow, *Freizügigkeit Und Aufenthalt*, p. 291; Grimm, 'Das Deutsche Kaiserreich Ein Souveräner Staat', p. 100.

³³⁵ Articles 110 and 111 of the Verfassung des Deutschen Reiches vom 11. August 1919, Reichsgesetzblatt 1919, p. 1383 (Weimarer Reichsverfassung, WRV).

³³⁶ Verordnung die Beschränkung des Aufenthaltsrechts betreffend vom 12. Juni 1919, in Badisches Gesetz- und Ordnungsblatt 1919, p. 363.

³³⁷ See documents in GLAK 233 23872.

would be best to keep them away from Baden's border regions as possible. Their complaints were denied.³³⁸

The continued use of pre-war expulsion practices did not go unnoticed in the legal community. After the revolutionary and economic upheavals of the early 1920s had settled, more and more jurists started to point out the inherent conflicts between constitutionally protected legal equality and freedom of movement, on the one hand, and the idea that local and state authorities could infringe upon these rights and liberties without any judicial oversight, on the other. Initially, government lawyers still pointed to Article 178 of the Weimar constitution which stipulated that all previous laws not directly opposed to the federal constitution would stay in effect.³³⁹

Over the course of the interwar period, more and more younger, democratically trained scholars started to voice their concerns. In his 1932 dissertation on the issue of Internal Mobility Control under the Weimar constitution, the jurist Helmut Erlanger made the first and most convincing case against the widespread expulsion practices:³⁴⁰ If all Germans had to be treated equally under the law in all regions of the German Reich, as stated in Article 110 of the constitution,³⁴¹ and if the right to free movement was explicitly protected in Article 111,³⁴² then there must not be any discrimination between citizens and non-citizens of a particular state.³⁴³ Either, expulsions were to be allowed for all citizens, or the practice had to be banned completely. The first option would have run counter to the conviction of

³³⁸ Schreiben vom Badischen Innenministerium an das Staatsministerium, 9 October 1919, and Schreiben vom Badischen Innenministerium an das Staatsministerium, 2 June 1922, in GLAK 233 23872.

³³⁹ Art. 178 WRV and Anton Dyroff, 'Ausweisungsfragen', *Bayerische Gemeinde- und Verwaltungszeitung* 31(1921): pp. 265-268 (columns); Walter Gelhausen, 'Die Bedeutung Der Landesangehörigkeit' (Ph.D. Thesis University of Kiel, 1925).

³⁴⁰ Helmut Erlanger, *Interterritoriale Ausweisungen Und Weimarer Reichsverfassung* (Stuttgart: Enke, 1932).

³⁴¹ Art. 110 WRV.

³⁴² Art. 111 WRV.

³⁴³ Erlanger, *Interterritoriale Ausweisungen*, pp. 43-56.

virtually all contemporary legal thought and the provisions of Article 111, namely that citizens of a state could not be expelled from that state's territory.³⁴⁴ Erlanger's conclusion that the Weimar constitution had 'finally and definitely' rendered all discriminatory internal mobility control practices illegal was undoubtedly correct. In the last years of the Weimar Republic, his vehement call for an end of all internal expulsions had even become the majority view among constitutional scholars.³⁴⁵ Nevertheless, most state governments and their often deeply anti-democratic administrative bodies refused to give up their expulsion powers:³⁴⁶

For his doctoral research, Erlanger had contacted all German states, inquired about their expulsion practices, and confronted them with his findings. Only the state of Hesse agreed with Erlanger's concerns and stated that they had already started to phase out the practice.³⁴⁷ The federal *Reich* government, dominated by the centre-left social democrats, was not capable of enforcing the principles of equality and treatment, and, as can be seen from the example of Baden above, even governments dominated by social democrats had expanded their expulsion powers. When Bavaria mounted an antisemitic mass expulsion of, mostly Polish, Jews in

³⁴⁴ Erlanger, *Interterritoriale Ausweisungen*, pp. 52-53.

³⁴⁵ See e.g. previously Richard Thoma, 'Grundrechte Und Polizeigewalt'. In *Festgabe Zur Feier Des Fünfzigjährigen Bestehens Des Preußischen Oberverwaltungsgerichts*, ed. Heinrich Triepel (Berlin: Carl Heymanns Verlag, 1925), pp. 183-223 here pp. 189, fn 185. And in reaction to Erlanger: Gerhard Anschütz, *Die Verfassung Des Deutschen Reichs Vom 11. August 1919: Ein Kommentar Für Wissenschaft Und Praxis*, 14 ed. (Berlin: Stilke, 1933 [1921]), pp. 536-538; Karl-Heinz Schlottner, 'Das Grundrecht Der Freizügigkeit: Eine Juristische Untersuchung' (Ph.D. Thesis University of Bonn, 1933). For a discussion on what constituted the majority opinion, see: Kathrin Groh, *Demokratische Staatsrechtslehrer in Der Weimarer Republik: Von Der Konstitutionellen Staatslehre Zur Theorie Des Modernen Demokratischen Verfassungsstaats* (Tübingen: Mohr Siebeck, 2010); Uwe Wesel, *Recht, Unrecht Und Gerechtigkeit: Von Der Weimarer Republik Bis Heute* (München: Verlag C.H. Beck, 2003).

³⁴⁶ There only existed a scant judicial review process in the Weimar Republic. The State Court – Weimar's constitutional review body – only decided cases pertaining to formal, not material, federal-state conflicts. There was no realistic option for individual citizens to ask for a review of the constitutionality of a law or practice. See Helge Wedenburg, *Die Debatte Um Die Verfassungsgerichtsbarkeit Und Der Methodenstreit Der Staatsrechtslehre in Der Weimarer Republik* (Göttingen: Schwartz, 1984).

³⁴⁷ Erlanger, *Interterritoriale Ausweisungen*, pp. 45-48.

1923, several states pleaded with the *Reich* government to step in so they would not have to accommodate those expelled from Bavaria. As part of the federal government, the SPD threatened to leave the coalition if *Reich* authorities would not force Bavaria to revoke to expulsion orders; if need be, SPD ministers were even ready to order the military to enforce the Weimar constitution. Yet, it quickly transpired that the *Reich* government did not have the backing among the civil service nor the military to force the Bavarian government to comply.³⁴⁸ The Bavarian government only later stepped down in November 1923, following the successful thwarting of the Hitler-putsch in Munich.

Emboldened, a new conservative Bavarian government introduced a movement control law targeting travelling groups and those accused to refuse to do work in 1926.³⁴⁹ The most affected groups were Sinti and Roma, long persecuted by governments throughout Europe. Even though the 1926 Law to Combat Gypsies, Vagrants, and the Work-Shy had been contested by legal experts from the beginning, the Bavarian government insisted on pushing through its antiziganist policies, not shying away from thinly guised illiberal pseudo-legality and the open perversion of justice:³⁵⁰ The law enabled local authorities to police any travelling group and directly expel them from Bavarian territory. Moreover, those suspected to be Sinti or Roma, homeless, or out of work could be punished with internment in forced labour camps the cost of which fell onto the interned persons. Following the tradition of the catch-all definitions in the laws regulating internal expulsions, the Bavarian lawmakers left it up to local police officers to interpret and enforce the law as they saw fit, practically creating a legal no man's land and handing over the entire population of Bavarian

³⁴⁸ Reiner Pommerin, 'Die Ausweisung Von "Ostjuden" Aus Bayern 1923: Ein Beitrag Zum Krisenjahr Der Weimarer Republik', *Vierteljahrshefte für Zeitgeschichte* 34, no. 3 (1986): pp. 311-340.

³⁴⁹ Bayerisches Gesetz zur Bekämpfung von Zigeunern, Landfahrern und Arbeitsscheuen vom 16.7.1926, 22 July 1926, in GVBl Bayern 17/1926.

³⁵⁰ Bayerisches Gesetz zur Bekämpfung von Zigeunern, Landfahrern und Arbeitsscheuen vom 16.7.1926, 22 July 1926 and Hehemann, *Bekämpfung Des Zigeunerwesens*, pp. 315-316.

Sinti and Roma to the arbitrariness and violent despotism of hostile police officers.³⁵¹ In an accompanying ministerial decree, Bavaria's Minister of the Interior stated that 'the term gypsy is widely known [...]. Race science can provide information about who is to be taken as a gypsy.'³⁵²

The Bavarian law stood in a long tradition of antiziganist movement control laws in the territory of the German *Reich*. As Lucassen shows, travelling groups such as Sinti and Roma were considered by German authorities to be without a legal home which meant that the *Heimat* principle, and therefore the right to reside somewhere within Germany, did not apply to them.³⁵³ Sinti and Roma had thus already been under a constant threat of persecution and expulsion before the 1926 law, even if they had not been mentioned as an explicit target group in 19th century movement control laws such as the one from Baden. Since the middle ages and all the way through early modern and modern times, the travelling way of life of Sinti and Roma had been labelled as standing outside 'normal' society and as a threat to the nation.³⁵⁴ Since the 16th century, the German term 'Zigeuner' for Sinti and Roma, which, like the English equivalent 'Gypsy', had always had discriminatory and racist connotations, was falsely linked to the heterograph 'Ziehgauner' ('moving crook').³⁵⁵ In reality, most Sinti and Roma followed regular trades, e.g. as travelling salesmen, but with registered residences by the 19th century.³⁵⁶ In popular imagination, however, travellers stood for the prototype of a group of mobile paupers who were said to

³⁵¹ Hehemann, *Bekämpfung Des Zigeunerwesens*, pp. 315-316.

³⁵² Ministerialentschließung zur Ausführung des Zigeuner- und Arbeitsscheuen-Gesetzes vom 16. Juli 1926 des Staatsministeriums des Innern, 16.7.1926

³⁵³ Lucassen, 'Eternal Vagrants', p. 59.

³⁵⁴ Lucassen, 'Eternal Vagrants', p. 70.

³⁵⁵ Zentralrat Deutscher Sinti und Roma, 'Erläuterungen Zum Begriff „Zigeuner“', *Stellungnahmen*, 9 October 2015, 2015, <https://zentralrat.sintiundroma.de/sinti-und-roma-zigeuner/>.

³⁵⁶ Barbara Colberg, 'Wandergewerbescheine: Mittel Der Systematischen Ausgrenzung'. In *Und Wohin Jetzt? Die "Zigeunerpolitik" Im Deutschen Kaiserreich Und Im United Kingdom*, ed. Simon Rau, Eve Rosenhaft, and Eva Schöck-Quinteros (Bremen: Institut für Geschichtswissenschaft, Universität Bremen, 2021), pp. 237-282 here p. 238.

refuse a civilised lifestyle and thus were suspected to be ‘pathological nomads, who did not want to work and would live by theft and begging alone.’³⁵⁷

As described above, conservative politicians from the German states had called for a united, centralised exclusion of Sinti and Roma following the foundation of the *Reich* all the way until World War I. A key reason was that the previously negotiated state-level expulsion powers now prevented those states to form a federal-level policy of oppression. In 1905, the well-known Prussian member of parliament Max Liebermann von Sonneberg, a radical and outspoken antisemite who had been the leader of the German-Social Antisemitic Party in the 1890s, demanded that the *Reich* would step up and enforce strong antiziganist policies. A major problem, according Liebermann von Sonneberg, was the ability of German states to implement their own mobility control: ‘It is currently impossible [to effectively oppose the gypsy nuisance] because individual states execute their police powers without coordination. They push the gypsies over the border into another state and this one then deports them again, either back to where they came from, or to a third state, and so it continuous in a *circulus vitiosus*. This condition is downright unworthy for the German *Reich*.’³⁵⁸

The federal *Reich* government had already responded to calls from the German states in the 1870s by introducing a complex and discriminatory system of legitimisation passes for German Sinti and Roma working as travelling salesmen and artisans which attempted to force them to give up their traditional trades. This system had been tightened over the decades and in 1906, the ministry of the interior in Prussia issued a guidance for civil servants to restrict issuing passes even further, in line with tightening *Reich* legislation. This led to protests from Sinti and Roma.

³⁵⁷ Lucassen, 'Eternal Vagrants', p. 67. See also Giere, *Gesellschaftliche Konstruktion Des Zigeuners*.

³⁵⁸ Excerpts from the transcript of the 10th session of the *Reichstag* on 12 December, Stenographische Berichte über die Verhandlungen des Reichstags, Erster Band, pp. 229–262, printed in Rau, 'Antiziganismus Im Deutschen Reichstag', p. 192.

In a heartfelt and defiant letter to the Prussian Minister of the Interior, the registered travelling circus artist Peter Kreuz reported how he and other Sinti and Roma were constantly harassed on a racial basis despite following the registration and pass laws:

We have to serve the *Kaiser* and *Reich* just as any other German and do so with joy and love for the fatherland. [...] Many of us wanted and still want to become sedentary, but we are not being received anywhere and the authorities put barriers in our way, so that we will not be received. We were transported from place to place even though we never did anything untoward and we have to fend for ourselves and our families during the transports, we cannot earn anything while being transported and are thus forced into poverty, the end of this is that we are being declared vagrants and become a burden to the state. It is incomprehensible that we, as born Prussians, are being treated as foreigners and are being transported to other regions of the German *Reich* as well as abroad. [...] it would be nothing more than humane to give us a grace period so we can become sedentary and help ourselves to earn a living in a different way.³⁵⁹

In line with the poverty-crime link introduced in the previous section, the labelling of Sinti and Roma as criminals stemmed from a wide-spread rejection and exclusion of their existence rather than a pre-existing concern with crime prevention. By criminalising their travelling lives as illegal vagrancy, of course, Sinti and Roma did indeed appear in statistics as criminal groups, providing a circular justification for their continued persecution police surveillance, and expulsions.³⁶⁰ The officially stated goal of antiziganist legislation on a federal level was the integration of travellers into the majority society by coercing them to give up their traditional lifestyle and become sedentary. Yet by using internal mobility control laws as the primary coercive tool, this had become virtually impossible for Sinti and Roma by

³⁵⁹ Schreiben des Artisten Peter Kreuz an den Minister des Innern, 16 June 1906, in GSTA PK I. HA Rep. 77, Ministerium des Innern, Tit. 423 Nr. 53 Adh. 2 Bd. 4, printed in Colberg, 'Wandergewerbescheine', p. 274.

³⁶⁰ Lucassen, 'Harmful Tramps', p. 86; Lucassen, 'Eternal Vagrants', p. 61.

the time of the Weimar Republic:³⁶¹ instead of providing them with living space or a way out of the imposed illegality, the standard response to the arrival of Sinti and Roma, or of any person falling into the pseudo-scientific racist criteria firmly established by the interwar period, was expulsion and deportation. The immensely time and cost intensive effort by local police forces to constantly arrest, prosecute, and coerce travelling groups into leaving their jurisdiction drove Sinti and Roma into an even more criminalised existence. As there were no areas in Germany in which Sinti and Roma were allowed to settle down, the state authorities of the Weimar Republic, just like those of the imperial *Reich* government before, had essentially created the exact behaviour that was considered immoral and threatening and which had been used as the justification for their persecution in the first place.³⁶² In this light, the openly antiziganist Bavarian law was the logical continuation of the century old myth of a 'gypsy plague',³⁶³ underpinned by including them in the labels used for the poor and homeless, for accused vagrants suspected of criminal behaviour as well as by racial constructions justifying the abandonment of any attempt of integration. In Lucassen's words, police forces of the Weimar Republic believed that 'gypsies [were] by definition parasites and their occupations [served] as a cloak for begging, vagrancy and crime.'³⁶⁴

³⁶¹ Zimmermann, 'Ausgrenzung, Ermordung, Ausgrenzung'.

³⁶² Zimmermann, 'Ausgrenzung, Ermordung, Ausgrenzung'.

³⁶³ Zimmermann, 'Ausgrenzung, Ermordung, Ausgrenzung', p. 344.

³⁶⁴ Lucassen, 'Harmful Tramps', p. 87.

3.5 Internal Mobility Control, Modernity, and State Power.

At the outset of this essay, I asked three questions: Why do states control the internal movement of their people? How can we account for the recurrence of internal mobility control practices across different polities and at various stages of their state development? And what are the effects and consequences of such practices? Based on the preceding analyses, practices of Internal Mobility Control can be linked to three developments that respond to those questions: First, the territorial and national integration of modern states. Secondly, the reaction of governments to societal transformation and to the demands of excluded groups for membership. And, thirdly, the workings of the modern state as a gardening state, establishing a system of exclusion and coercion based on ideologically constructed racial and moral hierarchies disguised in the language of rationality and reasonableness – in liberal democracies this is often done by pointing to the alleged criminal or immoral behaviour of previously criminalised groups and often to protect an exclusionary political status quo.³⁶⁵ Vagrancy-type laws turned into a catch-all tool to prevent the presence of marginalised groups in public space, replacing expulsions and deportations. At this point, vagrancy-type laws had fully shifted from being aimed at preventing specific behaviours, such as choosing a different employer, to policing the status and identities of ascribed members of groups that were cast as outsiders.³⁶⁶ As Darshan Vigneswaran and Joel Quirk argue, mobility control was used to organise and shape society and social order.³⁶⁷ The three polities analysed here historically underwent widely different processes of state development. But the preceding analyses have shown that their engagement in internal mobility control followed similar patterns which can be used

³⁶⁵ See also King, *In the Name of Liberalism*; Kauth and King, 'Illiberalism'.

³⁶⁶ Rushin and Carroll, 'Status Crimes'; Bauman, *Wasted Lives*.

³⁶⁷ Vigneswaran and Quirk, *Mobility Makes States*, pp. 17-18.

to better understand the developments of modern nation-states and their contemporary behaviours.

The empirical cases drawn from the history of the UK and the British Empire show the IMC mechanism in practice. The development of vagrancy and poor laws leading up to the 1824 and 1834 laws and the abolition of removal practices in the second half of the 19th century show the central state vastly expanding its power vis-à-vis sub-state units (here, the parishes) following regular and frequent conflicts over previously localised mobility controls placed on groups constructed as standing on lower ranks of moral and racial hierarchies. By formalising the rules of vagrancy criminalisation and the deservingness of the poor for relief, the central government stepped into the role of the standardising state, requiring new bureaucracies and infrastructure. However, it took until after World War II that sub-state conflicts could be fully resolved as the cost of enforcement of vagrancy and poor laws were not nationalised until the establishment of the post-war welfare state.

The export of the penal and carceral system of vagrancy laws to all reaches of the British Empire shows further expansion of the standardising state to enforce predominantly racial hierarchies. This notwithstanding, when racialised groups of imperial subjects (here, Indians) claimed their rights as imperial subjects to move to other parts of the British Empire, the white settler colonies (here, Canada) refused to accept their imperial freedom of movement. The introduction of differential citizenship by the British government by means of movement requirements once again relates to the claims I raised above: First, they touch on questions of territory and belonging and are part of the process of territorial national integration and exclusion. Secondly, the universal principle of the modern state, even though not mentioned by either Mongia or Chatterjee, can be taken as the illiberal workings of Bauman's gardening state. By introducing movement limitations, the imperial governments of the UK, Canada, and India worked in concert to exclude and remove

Indians from spaces reserved for what was considered the desirable public consisting of White Europeans. However, by allowing for internal mobility control and thus the retraction of the centralised standard of free imperial movement, the Westminster government unwittingly accelerated the disintegration of the Empire and pushed for the development of separate white settler nation-states.

The US case shows at first a similar trajectory of the IMC mechanism as in the UK but, crucially, no central state intervention to arbitrate sub-state conflicts on mobility took place until the Civil War. Reconstruction was a forceful expansion of the federal government's power to integrate formerly enslaved persons and set and enforce standards of membership and democracy in the South. This included mobility enhancing measures through, for example, the Freedmen's Bureau. But there was strong resistance by white supremacists in the South. After the withdrawal of Northern troops and the end of Reconstruction in the 1870s, internal mobility control returned in full force. It took until the Civil Rights era before the central state would become active again and enforced standards of racial equality after public protest and resistance of the Civil Rights movement to various practices of IMC. The engagement of the (centralised) American state in IMC is thus two-faced.

In their recent appraisal of the American state as a 'multidimensional state', King and Lieberman contrast their analysis of the US state consisting of multiple dimensions of state power (standard-setting, coercive, associational, and fiscal) with Weber's classic view of a strong, centralised coercive and bureaucratic state – like the 'German state that Weber had in mind when he wrote the phrase in 1919'.³⁶⁸ As the discussion on Germany has shown, however, the actual German state of Weber's time was much closer to King and Lieberman's American state, at least in terms of mobility control, than to his imagination of the German state in 1919.

³⁶⁸ King and Lieberman, 'Forceful Federal Power', p. 535.

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The development of citizenship duality and the related practices of internal mobility control in Germany show the trappings of the IMC mechanism at work as well. German states were concerned over mobility of groups deemed undesirable, especially poor persons and Sinti and Roma. The questions of belonging were frequently ‘uploaded’ to the central state authorities – or, in the case of the emerging German nation-state in the first half of the 19th century, the very questions over mobility and citizenship led to the conclusion of treaties and formed the blueprints for the formalised duality of state and *Reich* citizenship post-1871. Conflicts between states over the racist expulsions of German Sinti and Roma led to calls for the *Reich* government to first introduce and later tighten restrictive legitimisation systems which imposed unsurmountable problems for Sinti and Roma to escape illegality. The new post-war democratic German state promised equality in the Weimar constitution. But conflicts over mobility control persevered. Unable to enforce the constitutional promises of equality and rights, state government continued their practices and even expanded them to control, persecute, and exclude those deemed as racially alien and morally inferior.

4 Origins of Modern Migration Control: Racial-Political Orders in Interwar Germany¹

4.1 Introduction

Many of the 185 negotiators, secretaries, and expert witnesses who congregated in Paris in November 1929 for the International Conference on the Treatment of Foreigners were hopeful that the conference would mark a decisive step towards a global freedom of movement regime. Such an outcome would have been considered a key achievement for the League of Nations, only ten years after its birth out of the ruins of the Great War, and would have constituted the historic codification of a ‘positive law,’² enabling individuals to freely move and trade across borders.³ 42 member states and seven observers had sent delegations. Three high-profile bodies of experts had been invited to attend as advisors. On its first day, the Dutch delegate Johan Alexander Nederbragt (1880–1953) linked the proceedings to the prospects of world peace:

The question of the treatment of foreigners [is] not only a question of civilisation [...], but a question which [is], at all points, bound up with the problem of international law and of world peace [...] The Holy Scripture contain[s] some moving passages on the treatment

¹ My sincerest thanks to the participants of the 2022 Early Career Migration Scholars Circle at the Institute for Migration & Ethnic Studies, University of Amsterdam, and of a panel at the 2023 American Political Science Association Annual Meeting, Los Angeles, CA for their invaluable input.

² Daniel Serruys, 'L'oeuvre Économique De La S.D.N.', *La Revue des Vivants* 3, no. 2 (1929): pp. 1206-1217 here p. 1213. Madeleine Dungy, 'Writing Multilateral Trade Rules in the League of Nations', *Contemporary European History* 30, no. 1 (2021): pp. 60-75 here p. 68.

³ For a detailed analysis of the conference proceedings and the positions of individual countries see Dungy, 'Writing Multilateral Trade Rules'; Kauth, 'Fremdenrecht Und Völkerbund'.

of foreigners [...]: 'Deal with the stranger within thy gates as with one of thine own people,' might serve as a motto for the draft Convention.⁴

The primary aim of the conference organisers, led by Daniel Serruys (1875–1950) of the League's economic committee and Richard Riedl (1865–1944) of the International Chamber of Commerce, was to abolish migration and trade barriers which had been erected during and after World War I and return to a system of relative freedom of movement and establishment.⁵ There were good reasons to hope that at least most European states would sign up to the proposed return to pre-war trends: Prior to the war, free migration and establishments agreements had been a core feature of a bilateral treaty network spanning the North Atlantic world.⁶ And this multilateral convention was seen as a logical next step by its liberal proponents with prominent economic bodies agreeing that freedom of movement would be of vital importance to boost the only slowly recovering post-war world economy.⁷ Consequently, most governments had replied favourably to the draft and suggested only minor amendments ahead of the conference.

⁴ *J A Nederbragt*, quoted in League of Nations: Proceedings of the International Conference on the Treatment of Foreigners. First Session; Paris, November 5th–December 5th, 1929 (Series of League of Nations Publications, II. Economic and Financial 1930. II. 5.), Geneva 1930, p. 37.

⁵ Separate migration and refugee policy regimes only started to emerge during the interwar period and became entrenched after World War II. The terms 'migrant' and 'migration' are used here in a decidedly broad manner to include all (international) border crossings by people with the purpose of a long-term stay in a country other than the country of origin; thus including both 'voluntary' and 'involuntary' movements, unless treated differently in the historical source material. For an overview of the emergence of migration control regimes, see Skran, *Refugees in Inter-War Europe*; Karatani, 'Refugee and Migrant Regimes'; Long, 'Refugees Stopped Being Migrants'.

⁶ Kauth, 'Fremdenrecht Und Völkerbund'.

⁷ Statement by the Economic Committee communicated to governments from 16 May 1928, in League of Nations: International Conference on the Treatment of Foreigners. Preparatory Documents. Geneva, November 5th, 1929 (Series of League of Nations Publications, II. Economic and Financial 1929. II. 5.), UNOG: C. 36. M. 21. 1929. II., p.19. See also League of Nations: International Economic Conference. Documentation. Final Report of the Trade Barriers Committee (...). Geneva, May 1927 (Series of League of Nations Publications, II. Economic and Financial 1926. II. 62.). Also Dungy, 'Writing Multilateral Trade Rules', pp. 67-69; Madeleine Dungy, *Order and Rivalry: Rewriting the Rules of International Trade after the First World War* (Cambridge: Cambridge University Press, 2023), pp. 245-258.

However, a month of protracted debates would go by without any tangible results. Delegates could neither agree on reinstating a visa-free freedom of movement regime for 'economic migrants',⁸ nor on installing automatic work and residency permits or guaranteeing foreigners any sort of legal protections including limits to internment and deportation or the right to due process.⁹ In contrast to the pre-war course of migration politics, states were unwilling to compromise on their newly introduced restrictive national migration policies, despite agreeing that it would bring economic benefits. A disappointed Nederbragt would later conclude in his memoirs that the conference had revealed a general fear of a migratory 'invasion' which came with an 'obligatory hatred against the foreigner.'¹⁰ How can this shift from pre-war immigration liberalism to post-war restrictionism be explained?

The changes that led most Western states to start building 'global walls'¹¹ against migration, especially between the 1880s and 1925, with the 1920s marking the end of a period of relative liberalism in migration politics in the North Atlantic world,¹² have been variously attributed to economic crises, the rise of the labour movement, and nativism.¹³ However, existing explanations leave two explanatory gaps: First, they raise the question of *how* these factors may have led to the

⁸ Madeleine Dungy, 'Economic Migration in the Early League of Nations'. In *New Europe College Yearbook: 2017-2018/2018-2019*, ed. Irina Vainovski-Mihai (Bucharest: New Europe College, 2023), pp. 145-176.

⁹ Dungy, 'Writing Multilateral Trade Rules'; Kauth, 'Fremdenrecht Und Völkerbund'.

¹⁰ J. A. Nederbragt, *Herinneringen: Oud En Nieuw Uit Het Boek Mijner Gedachtenis* (Den Haag: Voorhoeve, 1950), p. 90.

¹¹ Zolberg, 'Global Movements, Global Walls'; Zolberg, 'Great Wall against China'.

¹² See also, e.g., Alan Dowty, *Closed Borders: The Contemporary Assault on Freedom of Movement* (New Haven, CT; London: Yale University Press, 1987); Lucassen, 'Origins of Migration Control'; Torpey, *Invention of the Passport*; Andreas Fahrmeir, 'Politischer Liberalismus Und 'Liberale' Migrationspolitik Im Späten 19. Jahrhundert: Kausaler Zusammenhang Oder Koinzidenz?', *Jahrbuch zur Liberalismus-Forschung* 13(2001): pp. 131-149; Fahrmeir, Faron, and Weil, *Migration Control in the North Atlantic World*; Rosenberg, *Policing Paris*; Radomska, 'Political Origins of the Social Protection'; Julia Young, 'Making America 1920 Again? Nativism and Us Immigration, Past and Present', *Journal on Migration and Human Security* 5, no. 1 (2017): pp. 217-235; Kauth, 'Fremdenrecht Und Völkerbund'.

¹³ See the overview in Lucassen, 'Origins of Migration Control'.

emergence of modern migration control. Simply pointing to ‘the economy and [...] variations in ideology’¹⁴ is insufficient to explain such a significant and widespread institutional change at a specific moment in time.¹⁵ Secondly, explanations that lay out detailed causal mechanisms focus mainly on material causes, namely the political influence of economic elites and economic cycles or labour market competition, and thus struggle with accounting for ideational factors. This essay introduces a racial-political orders account to the field of migration politics and combines it with a critical juncture model that accounts for and explains the shifts in migration politics towards modern, exclusionary migration control in the interwar period.¹⁶

A crucial case in this regard is interwar Germany: *Prima-facie*, Weimar Germany serves as a test case for the two material explanations – economic cycles had an outsized influence on interwar Germany’s economy and the organised labour movement was highly integrated. As I argue below, however, migration politics in the Weimar Republic (1918-1933) mirrored the conflicts at the 1929 conference. Restrictionist policies, underpinned by ethnic-exclusionary variants of German nationalism,¹⁷ were opposed by attempts to liberalise migration regulations, motivated by expansive understandings of Germany, its international reputation,

¹⁴ Didier Fassin, 'Policing Borders, Producing Boundaries. The Governmentality of Immigration in Dark Times', *Annual Review of Anthropology* 40, no. 1 (2011): pp. 213-226 here p. 217.

¹⁵ See also Lucassen, 'Origins of Migration Control', p. 60.

¹⁶ For racial and political orders, see Lieberman, 'Ideas, Institutions, and Political Order'; King and Smith, 'Racial Orders'; Rogers M. Smith and Desmond King, 'White Protectionism in America', *Perspectives on Politics* 19, no. 2 (2020): pp. 460-478; Rogers M. Smith and Desmond King, *America's New Racial Battle Lines: Protect Versus Repair* (Chicago, IL: University of Chicago Press, 2024). For critical junctures, see Giovanni Capoccia, 'Critical Junctures and Institutional Change'. In *Advances in Compartive-Historical Analysis*, ed. James Mahoney and Kathleen Ann Thelen (Cambridge: Cambridge University Press, 2015), pp. 147-179; Capoccia, 'Critical Junctures'; Capoccia and Kelemen, 'Study of Critical Junctures'.

¹⁷ For hierarchies in migration politics, see Mayblin, *Asylum after Empire*. For a discussion of different types of nationalism, refer to Maya Tudor and Dan Slater, 'Nationalism, Authoritarianism, and Democracy: Historical Lessons from South and Southeast Asia', *Perspectives on Politics* 19, no. 3 (2021): pp. 706-722; Harris Mylonas and Maya Tudor, *Varieties of Nationalism: Communities, Narratives, Identities* (Cambridge: Cambridge University Press, 2023).

and hopes to boost the post-war economy. Drawing on original archival research in German government and League of Nations archives, I show that Germany veered from a general pre-war path of a *laissez-faire* mode of migration politics,¹⁸ which had allowed the German *Kaiserreich* to tap into, and exploit, cheap, often temporary foreign labour as an economic resource and turn it into the second largest labour importing country in the world after the United States.¹⁹ This mode was replaced with one driven by racial hierarchies and exclusion as the newly constituted, democratic German state found its footing. Early attempts to uphold a liberal migration regime failed when key actors began to support restrictionism to gain electoral support.

The historical narrative I am presenting here is not a story about the rise of the Nazi party or the origins of the Shoah in so far as the NSDAP was not a key actor in the direct political decision-making of the 1920s. Rather, what this research shows is that beliefs of racial exclusionary nationalism became wide spread even among the chief defenders of the democratic Weimar Republic. The Nazi party certainly played a role in spreading ethno-nationalist antisemitic racism and agitating the public. For the racial-political order account presented here it is of much bigger importance how decision-makers reacted to these developments. A key role is thus assigned to the position of social democrats in state and *Reich* governments who, over the course of the 1920s, switched from the inclusionary ideals of the Weimar constitution towards exclusionary migration restrictionism.

¹⁸ Leo Lucassen, 'The Rise of the European Migration Regime and Its Paradoxes (1945-2020)', *International Review of Social History* 64, no. 3 (2019): pp. 515-531; Lucassen, 'Origins of Migration Control'.

¹⁹ As Germany has long had high hurdles for those wishing to be naturalised, Bade suggests the term 'labour importing country' rather than the more common 'immigration country' label. See Klaus J. Bade, 'German Emigration to the United States and Continental Immigration to Germany in the Late Nineteenth and Early Twentieth Centuries', *Central European History* 13, no. 4 (1980): pp. 348-377.

These findings have wider implications for the study of migration politics, and especially for examining the origins of modern migration control. The German case makes visible the underlying generative mechanism producing the change from modest regulation based on a mercantilist understanding of politics to an ethnic-exclusionary, restrictionist mode of migration control.²⁰ This mechanism can be applied to other cases, where World War I was not their crucial critical juncture, but rather, say, the end of the British Empire.²¹ This ethnic-exclusionary mode, through which ‘the migrant,’ if deemed undesirable, is cast as a racialised alien other and is thus ‘invented’²² as a problem and threat to the alleged homogenous nation, constitutes the *modern* character of those migration controls that emerged or underwent ‘dramatic expansion’²³ between the late 19th and the mid-20th centuries in the West and globally.²⁴ The result: a critical ideational development entrenching a ‘restrictionist bent’²⁵ against non-Western, racialised migrants that still characterises ‘our decidedly unequal global migration regime’²⁶ today.²⁷

In what follows, I first discuss the existing explanations of shifts towards modern migration control. I then introduce the concepts of critical junctures, racial-political orders, and critical ideational development which, together, form the proposed generative mechanism explaining the shift towards exclusionary, racialised migration control in interwar Germany. This leads to an empirical analysis of

²⁰ The search for generative mechanisms is motivated by a critical realist understanding of the social sciences. For a detailed discussion of Critical Realism, see the third essay in this thesis. See also Bhaskar, *Realist Theory of Science*; Steinmetz, ‘Critical Realism and Historical Sociology’; Gorski, ‘What Is Critical Realism?’.

²¹ Vigneswaran, ‘Europe Has Never Been Modern’; Barber, ‘Nativist State’, pp. 17-18.

²² Benton-Cohen, *Inventing the Immigration Problem*.

²³ Barber, ‘Nativist State’, p. 20.

²⁴ Bauman, *Modernity and the Holocaust*; Bauman, *Wasted Lives*; Bauman, ‘Soil, Blood and Identity’; Brendan O’Leary, Ian S. Lustick, and Thomas Callaghy, eds., *Right-Sizing the State: The Politics of Moving Borders* (Oxford: Oxford University Press, 2001).

²⁵ Boswell, ‘Theorizing Migration Policy’.

²⁶ Vigneswaran, ‘Europe Has Never Been Modern’, p. 18.

²⁷ King and Smith, ‘Critical Ideational Development’.

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migration politics in the Weimar Republic based on original archival research through which I show the workings of the racial-political orders mechanism.

4.2 Existing Explanations of the Global Walls Against Migration

Although migration historians have been emphasising that responses to past and current migration movements must not be seen in isolation, their works have often stopped short of establishing theoretical patterns that would support such ‘threads of continuity.’²⁸ Overcoming this disjunction was the declared goal of Aristide Zolberg who first hypothesised a mixture of material and ideational factors which could account for the observed changes in how most states responded to migration during the first decades of the 20th century. Zolberg argues that a plethora of conjoining developments led governments to devise increasingly restrictive migration control.²⁹ Technological advances facilitated movements across larger distances. Concurrently, rapid industrialisation in countries with slowing population growth, that is Western European countries and the USA, created new demands for cheap labour which could be provided by increased immigration. Yet, political nationalism, colonialism, and a turn to ‘scientific racism’ in the same countries led to an expansion of racialised migration policies at the hands of so called restrictionists. Even though these developments were initiated by domestic factors, Zolberg argues, all those countries followed similar patterns. The politically volatile 1920s are significant as, ‘although the new policy orientation was clearly visible as early as the 1880s, it took nearly a quarter of a century for the restrictionists to achieve their objectives’.³⁰ The interwar period, in this causal narrative, provided the opening for new, restrictionist migration control institutions to emerge and consolidate. For Zolberg, this presents an empirical puzzle as the restrictionist bent

²⁸ See Lucassen, *Immigrant Threat*, p. 16. On the policy level, one of the consistent observations in the literature on migration politics and policy is the repetition of the same type of ineffective restrictionist responses in Western democracies, that is mounting new policies of exclusion justified by the alleged ‘newness’ of the situation, whenever they face an increase in ‘unwanted’ immigration. For ‘threads of continuity’, see Mayblin, *Asylum after Empire*.

²⁹ Zolberg, ‘Global Movements, Global Walls’; Zolberg, ‘Great Wall against China’.

³⁰ Zolberg, ‘Global Movements, Global Walls’, p. 293.

emerged despite the fact that the ‘vast expansion of international migrations [...] was largely rooted in the affluent states’ soaring demand for labor, at home or in their colonies, as well as in the worldwide impact of the market forces they unleashed’.³¹ Subsequent works have tried to explain this apparent paradox by pointing either to material or ideational factors.

4.2.1 *Material Explanations*

The migration literature at the time of Zolberg’s writing was dominated by models based on economic interests, business cycles, and demographics as explanatory variables and in which the politics and policy making of migration were only assigned marginal roles.³² While this literature was mostly concerned with explaining the dynamics of migration rather than focusing specifically on the dynamics of migration politics, their explaining-away of the political process espouses a distinct model of politics which is of interest to the present discussion. Exemplified by Gary Freeman’s early work on the modes of immigration in liberal democracies, such pull-push accounts either assume a uniform state that is ‘captured by powerful pro-immigration lobbies’ and thus only ‘rubber-stamps labor-market demands’ or one that is simply unable to ‘defy the key economic forces.’³³ For Freeman, for example, the mode of migration politics becomes ‘mostly a function of which fragments of the public have the incentives and resources to organize around immigration issues.’³⁴ These, according to Freeman, are almost exclusively employers in need of (cheap) labour who are uniquely placed to capture the state’s policy makers and institutions

³¹ Zolberg, 'Global Movements, Global Walls', p. 293.

³² See overviews in James F. Hollifield, 'The Politics of International Migration. How Can We "Bring the State Back In"?'. In *Migration Theory. Talking across Disciplines*, ed. James F. Hollifield and Caroline B. Brettell (New York, NY; London: Routledge, 2008), pp. 183-237; James F. Hollifield and Carole J. Wilson, 'Rights-Based Politics, Immigration, and the Business Cycle, 1890-2008'. In *High-Skilled Immigration in a Global Labor Market*, ed. Barry R. Chiswick (Washington, DC: AEI Press, 2010), pp. 50-80.

³³ Hollifield and Wilson, 'Rights-Based Politics, Immigration, and the Business Cycle', p. 52.

³⁴ Freeman, 'Modes of Immigration Politics', p. 885.

and are uniquely motivated to do so due to the concentrated benefits of increased migration. In times of economic expansion, migration politics, therefore, will be more permissive to balance out shortages of manpower and human capital following clientelist employers. In this model, business cycles act as near perfect proxies for employer demands which act as pull factors for potential migrants and penetrate all state institutions. Once these interests subside, i.e. when there is sufficient labour supply in times of unemployment and economic contraction, the mode of policy making shifts to interest-group or even majoritarian politics: ‘In this view, which can hardly be denied, there is a “good times/bad times” dynamic in which migration is tolerated or even encouraged during expansionary phases, but becomes the focus of anxieties when unemployment rises.’³⁵

The explanatory power of models such as Freeman’s has been challenged. Subsequent research has shown that groups other than just employers influence government policy and that policy does have an impact on migration flows – not just on pure numbers but on the racial and ethnic composition of migrant groups. Economic models are unable to address this due to their focus on material factors.³⁶ Even when directly testing the implications of business-cycle-type models on migration numbers only, James Hollifield and Carole Wilson find a clear temporal break in their scope: For the United States, they are able to show that immigration numbers stopped following business cycles by the beginning of World War II, highlighting the importance of the interwar period once more.³⁷

For Lucassen, the explanation for the ‘major watershed’³⁸ in migration politics of the interwar period is to be found in precisely the type of labour demand discussed

³⁵ Freeman, 'Modes of Immigration Politics', p. 886.

³⁶ On the comparison with economic models, see King and Smith, 'Racial Orders', p. 77. On migrant selection, see King, *Making Americans*; Steffen Mau, *Sorting Machines: The Reinvention of the Border in the 21st Century* (Cambridge: Polity, 2023).

³⁷ Hollifield and Wilson, 'Rights-Based Politics, Immigration, and the Business Cycle'.

³⁸ Lucassen, 'Origins of Migration Control', p. 45.

by Zolberg. Within a comparative framework, Lucassen singles out the role of the labour movement in forming migration policy. Variations of immigration control and in the recruitment of foreign labour are treated as indicators for the restrictiveness of migration control and are linked, according to Lucassen, to the expansiveness of the welfare states and the integration of a labour movement concerned with labour market competition. Lucassen argues that ‘these general and structural processes are more insightful than obvious but ultimately unsatisfactory explanations that focus on events, be they war, [economic] crisis, or nativist reactions.’³⁹ He reaffirms this in later studies, stating that ‘the ingrowth of the state in society and the emergence of national welfare systems’ was the main reason for the end of a pre-World War I free migration regime:⁴⁰ States began to close off national labour markets ‘in the interest of national workers.’ States introduced welfare systems in response to demands from labour movements which created incentives to exclude foreign workers from state support while prioritising the employment of a state’s ‘own’ workers. At the same time, the organised labour movement became a crucial electoral base, meaning that, in cases of integrated labour movements, ‘states became more sensitive to protests of organized labour against what they saw as unfair competition by foreign workers.’ The economic crisis of 1929, then, triggered the full effect of these ‘structural processes:’ ‘democracy and national welfare systems had wrought a permanent regime change.’⁴¹

4.2.2 Ideational Explanations

Whereas scholars of American Political Development as well as those studying the politics of British settler-colonial states have long emphasised the lasting impact and legacies of slavery on their respective states, racial segregation, and racial

³⁹ Lucassen, 'Origins of Migration Control', p. 61.

⁴⁰ Lucassen, 'European Migration Regime and Its Paradoxes', p. 518.

⁴¹ Lucassen, 'European Migration Regime and Its Paradoxes', p. 518.

politics, a recent focus on the *longue durée* of racism,⁴² xenophobia, and nativism in migration politics specifically have revealed even deeper racial roots of restrictionist migration politics in the US and the British metropole.⁴³

Erika Lee looks at how the political debates around immigration unfolded and led to political action in the USA. She argues that ‘Americans’ embrace of immigrants and their fear and hatred of them have coexisted as equally strong forces shaping the United States.’⁴⁴ Through her study of a wide array of historical records from the past 350 years, Lee shows that ‘political xenophobia’, a ‘set of beliefs and ideas based on the premise that foreigners are threats to nation and its people’,⁴⁵ has had a sustained impact on US politics regardless of the immediate political circumstances or the geographical origins of the most visible migrant groups of the time. The historical contextualisation of contemporary anti-immigration debates in America highlights that ‘race is the single most important factor in determining which foreigners are targeted for xenophobic discrimination.’⁴⁶ Time and again, these debates linked crude racial stereotypes, nativist creations of ‘deficient’⁴⁷ races of immigrants, ‘downtrodden, atavistic, and stagnant’, who were said to undermine the ‘historically free, energetic, and progressive’⁴⁸ stock of ‘native Americans’ of Anglo-Saxon descent,⁴⁹ with alleged threats to national security. In her 2023 article, Llana Barber builds on Lee’s findings but emphasises that anti-Black racism specifically

⁴² Lucassen, 'European Migration Regime and Its Paradoxes', p. 530.

⁴³ See, e.g. King, *Making Americans*; Hollifield and Wilson, 'Rights-Based Politics, Immigration, and the Business Cycle'; 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); Young, 'Making America 1920 Again'; Barber, 'Nativist State'.

⁴⁴ Lee, *America for Americans*, p. 324.

⁴⁵ Lee, *America for Americans*, p. 8.

⁴⁶ Lee, *America for Americans*, p. 9.

⁴⁷ Lee, *America for Americans*, p. 133.

⁴⁸ Eugenicist author Prescott Farnsworth Hall as quoted in Lee, *America for Americans*, p. 120.

⁴⁹ On the creation of the narrative of native White Anglo-Saxon Protestant (WASP) Americans of European descent who deserved special privileges and were the true natives to the Americas, see Lee, *America for Americans*, p. 65.

has not received due attention in the creation of what she terms the US ‘nativist state.’⁵⁰ Barber shows that ‘from the colonial era to the present, policies and practices to exclude, detain, and repatriate immigrants have often been pioneered against Black people, and constraints on Black mobility have been central to denying African Americans citizenship rights and rendering Black people foreign, even when born in the United States.’⁵¹ Efforts to control migration to America had thus long been part of general efforts to establish a state resting firmly on racial hierarchies. While scholarly accounts of the ‘dramatic expansion’ of migration restrictionism in the early 20th century and the interwar period, during which an ‘invented immigration problem’⁵² was countered with ‘legislating exclusion,’⁵³ often focus on immigration from Eastern, Southeastern, and Asian countries, they also targeted migrants from Africa and from British colonies, mostly affecting Black persons, for example by denying US visas to most Black Caribbean immigrants within the quota for the UK and its empire.⁵⁴

Turning to the United Kingdom and British Empire, Lucy Mayblin, in her sociological study of imperial legacies in UK asylum politics, shows that ‘the logics of excludability not only *result in* dehumanisation, but also *emerge from* long-standing modes of thinking about the world, and the various people in it, in colonial/modern hierarchical terms.’⁵⁵ Mayblin models British asylum politics as a struggle between a transformative and an anti-transformative political order over the course of 200 years by means of a diachronic ‘snapshot’ analysis of important moments of conflict. These orders either attempted to cement a vision of ‘differential humanity,’ undergirding the British Empire through creating a hierarchical ordering

⁵⁰ Barber, 'Nativist State', p. 20.

⁵¹ Barber, 'Nativist State', p. 8.

⁵² Benton-Cohen, *Inventing the Immigration Problem*.

⁵³ Barber, 'Nativist State', p. 20.

⁵⁴ Barber, 'Nativist State', pp. 20-25.

⁵⁵ Mayblin, *Asylum after Empire*, p. 175.

of human being, or working towards overcoming these hierarchies. Her discussion of the historical cases clearly shows the continuity of ideational patterns and the continued struggle of the same political orders. Rather than viewing those hierarchies through the analytical category of race, however, Mayblin adopts the wider concept of differential humanity based within a colonial/modernity framework of othering, ‘[facilitating] a broader analysis of human hierarchy historically and in the present,’⁵⁶ even if some of these hierarchies are indeed based on racial exclusion. Her examination of the historical record shows how the post-World War I order, despite espousing a new liberal regime, entrenched a colonial world order marked by differential humanity based on ‘race science and ideas of racial difference, hierarchy, and competition and relative “civilisation.”’⁵⁷

Ideational approaches of political change run the risk of losing sight of institutional contexts. These, however, are necessary as they provide the resources and opportunities for ideas to rise and for their proponents to gain the governing power to subsequently entrench those ideas.⁵⁸ To account for institutional components, Mayblin draws from Rogers Smith and Desmond King’s institutional order approach,⁵⁹ first developed in the context of US racial politics. She uses this to model the recurrence of transformative vs anti-transformative struggles as well as the continuity of the hierarchies of differential humanity in British asylum politics. Adopting and adapting this theoretical foundation to the British case allows Mayblin to formulate a generative mechanism that explains decisions not based on material rationality, gives rise to long-term behavioural logics only disrupted by short

⁵⁶ Mayblin, *Asylum after Empire*, p. 46.

⁵⁷ Mayblin, *Asylum after Empire*, p. 89.

⁵⁸ Lieberman, 'Ideas, Institutions, and Political Order'.

⁵⁹ King and Smith, 'Racial Orders'.

moments of change, or critical junctures, and unifies the actions of actors with incentives of institutions, even if they seem to point in opposite directions.⁶⁰

A recent study by Darshan Vigneswaran uses critical juncture analysis to explain the development of international migration control norms and timing of racialised exclusion in the UK.⁶¹ Through his critical empirical investigation, he shows that various accepted beliefs about Europe as the ‘inventor or precocious adopter of global migration control norms,’ as suggested by Zolberg and others, do not fit the historical record. In focusing on the United Kingdom, Vigneswaran argues that instead of European states ‘[creating] a territorial sovereignty norm and then [forging] the world’s first international migration regime,’⁶² Britain’s extra-European settler colonial states ‘were far “in advance” of the metropole. Around the turn of the century, these governments passed eugenicist immigration laws to maintain the health, strength, and character of the domestic population by denying entry to unfit, ill, destitute, and ostensibly racially inferior people.’⁶³ Vigneswaran thus suggests that it was a critical juncture in the late 1950s, rather than the Peace of Westphalia (1647) or the interwar period as previously argued, during which the United Kingdom began ‘to manage its internal racial tensions through territorial immigration control.’⁶⁴

[T]he United Kingdom was not different from its colonies in being immune from racism or the use of sovereign prerogatives to respond to prejudicial tensions. Its distinction was in having an empire worth maintaining a nonracial immigration policy for. It seems plausible to suggest that once this no longer appeared to be a future worth fighting for, the will to maintain the free movement regime dissolved—or at least lost hold in Parliament—and the power of racial

⁶⁰ Mayblin, *Asylum after Empire*, p. 46.

⁶¹ Vigneswaran, ‘Europe Has Never Been Modern’.

⁶² Vigneswaran, ‘Europe Has Never Been Modern’, p. 2.

⁶³ Vigneswaran, ‘Europe Has Never Been Modern’, p. 10.

⁶⁴ Vigneswaran, ‘Europe Has Never Been Modern’, p. 15.

prejudices was permitted to more fully shape national migration policy.⁶⁵

Even though Vigneswaran is primarily concerned with the relationship of sovereignty and mobility norms and the role of extra-European developments and actors in the global and European changes in migration policy, his study provides key insights for the present search for generative mechanisms: First, Vigneswaran's analysis of critical junctures and assessment of historical evidence provide powerful templates investigations in other countries. Secondly, Vigneswaran highlights the importance of investigating the actual historical record when analysing the politics during candidate critical junctures. As a side-effect to his investigation of territorial sovereignty norms, Vigneswaran empirical research evinces relatively little concern with labour market competition in the discussions surrounding key pieces of migration legislation. Nor do economic cycles and employer interests play a heightened role. Instead, Vigneswaran finds tensions between Britain's settler-colonial states pushing for laws that would establish racial hierarchies and discrimination and the metropole's hesitation due to commitments to 'a racially nondiscriminatory tradition of common rights for British subjects and the continued movement of British subjects within the empire.'⁶⁶

In addition to Freeman's employer-centred and Lucassen's labour movement competition mechanism, Mayblin's racial orders account of ideational continuity in asylum politics hints at a third potential explanation. Together with Vigneswaran's critical juncture analysis, Mayblin's mechanism serves as the theoretical backbone of my generative mechanism for the interwar shift. How can the two be combined?

⁶⁵ Vigneswaran, 'Europe Has Never Been Modern', p. 15.

⁶⁶ Vigneswaran, 'Europe Has Never Been Modern', p. 11; Hansen, 'Politics of Citizenship'. For a discussion of these developments, see the first essay in this thesis.

4.3 Critical Juncture Analysis and Racial-Political Orders

4.3.1 *Critical Juncture Analysis*

Critical Juncture Analysis (CJA) is an established ‘[tool] for studying the political origins and reform of important institutional arrangements that exert a long-lasting influence on their social and political environment’⁶⁷ within the general field of historical institutionalism. At the heart of critical juncture models lies the idea that institutions are generally stable as they produce forms of lock-in, due ‘to their influence on the resources and incentives of actors and to the development of institution-specific assets such as skills, privileges, knowledge of procedures, and networks with other actors’,⁶⁸ leading to long periods of ‘path dependency’ which are only rarely interrupted by critical junctures – relatively short instances of fluidity often induced by exogenous shocks.⁶⁹ Whereas most of the time, the logics of the institution lay out the course of political action, critical junctures during which ‘the range of choices available to decision makers expands significantly and so does the impact of their decisions’ are different.⁷⁰ The outcomes of such episodes of fluidity, the new institutional design, are marked by actor agency and contingency.⁷¹ For CJA to be successful, Giovanni Capoccia and Daniel Ziblatt raise the importance of prospective analysis and inhabiting the world of the candidate critical juncture: It is necessary to ‘[read] history forward [...] to reconstruct what actors were actually fighting about and assess the respective causal force of structural and conjunctural

⁶⁷ Capoccia, 'Critical Junctures', p. 147.

⁶⁸ Giovanni Capoccia, 'When Do Institutions “Bite”? Historical Institutionalism and the Politics of Institutional Change', *Comparative Political Studies* 49, no. 8 (2016): pp. 1095-1127 here p. 1098.

⁶⁹ James Mahoney, 'Path Dependence in Historical Sociology', *Renewal and Critique in Social Theory* 29, no. 4 (2000): pp. 507-548 here p. 510; Paul Pierson, 'Increasing Returns, Path Dependence, and the Study of Politics', *American Political Science Review* 94, no. 2 (2000): pp. 251-267.

⁷⁰ Giovanni Capoccia and Daniel Ziblatt, 'The Historical Turn in Democratization Studies: A New Research Agenda for Europe and Beyond', *Comparative Political Studies* 43, no. 8-9 (2010): pp. 931-968 here p. 942.

⁷¹ For overviews of CJA, see Mahoney, 'Path Dependence'; Capoccia and Kelemen, 'Study of Critical Junctures'; Capoccia, 'Critical Junctures'; Pierson, 'Increasing Returns'.

factors.⁷² What happens during events (critical junctures) matters, not just for the immediate outcome, but for the long-term course of history due to the lock-in mechanisms described above. CJA provides a powerful theoretical framework to simultaneously explain short-term institutional change and long-term institutional stability. Moreover, it highlights the key importance of ‘historically grounded’⁷³ research that reveals ‘the dynamics that in most cases influence the selection of one institutional solution over others that were available during the critical juncture.’⁷⁴

Due to their academic origins in institutional economics,⁷⁵ CJA and path dependency have long been mostly applied to formal institutions with increasing returns rather than political ‘world views.’⁷⁶ Furthermore, the classic CJA framework focuses on explaining sudden changes caused by external ruptures rather than modelling sudden or slowly simmering conflicts emerging from within the political system or even endogenous change. It thus struggles to fully theorise the relationship between ideas and institutions as causes and outcomes of political change.⁷⁷ To explain the politicisation and racialisation of migration, it becomes necessary to more closely link theories of institutional change with the rise and fall of ideas and their lasting impact on politics.

4.3.2 *Political Orders*

This struggle of material-institutional approaches to explain the emergence of ideational factors such as racial hierarchies they mostly assume as given, e.g. ‘actors’ beliefs, preferences, knowledge, understandings and expectations,⁷⁸ and, therefore,

⁷² Capoccia and Ziblatt, 'Historical Turn in Democratization Studies', p. 943.

⁷³ Vigneswaran, 'Europe Has Never Been Modern', p. 7.

⁷⁴ Capoccia, 'Critical Junctures', p. 150.

⁷⁵ Pierson, 'Increasing Returns'; B. Guy Peters, Jon Pierre, and Desmond S. King, 'The Politics of Path Dependency: Political Conflict in Historical Institutionalism', *The Journal of Politics* 67, no. 4 (2005): pp. 1275-1300.

⁷⁶ Capoccia, 'Critical Junctures'.

⁷⁷ Peters, Pierre, and King, 'Politics of Path Dependency'.

⁷⁸ Lieberman, 'Ideas, Institutions, and Political Order', p. 697.

‘the appearance at any given moment of any particular menu of substantive choices’⁷⁹ is a key concern of Robert Lieberman’s work on political orders. Lieberman’s approach is fully compatible with CJA but takes external shock to be just one of multiple avenues of institutional change.⁸⁰ Crucially for the present analysis, it provides a deeper understanding of the processes and conflicts taking place during the moments of institutional imbalance. Lieberman’s solution to the problem of theoretically combining ideas and institutions is to model politics as consisting of multiple political orders ‘each with its own origins and history and each with its own logic and pace.’⁸¹ Political orders are internally coherent and stable structures of political power consisting of several institutional and ideational patterns. These patterns ‘structure and delimit political interests, understandings, and behavior independently of other factors’.⁸² In other words, they condition actors to subscribe to the logic of politics favoured by the dominant political order.

At any given time, however, there are several such orders competing for dominance in the political system. As no order is likely to be able to fully replace previous institutional arrangements when they gain political power, dominant orders are forced to compromise with the existing institutions and other actors, leading to a layered institutional landscape. This way, underlying ideational patterns can sustain institutions that ‘outlast the conditions that led to their creation and may persist despite being dysfunctional.’⁸³ These layered orders of compromise can increase the potential for internal friction between incompatible ideas and/or institutions. For example, the ideas and incentives dominating an international

⁷⁹ Lieberman, 'Ideas, Institutions, and Political Order', p. 697.

⁸⁰ Lieberman’s work thus broadly fits with a broader turn towards endogenous institutional change in the early 2000s, however with the distinct difference that he assigns a central role to ideas instead of just institutions and actors. For an overview and analytical discussion, see Capoccia, 'Historical Institutionalism and Institutional Change'.

⁸¹ Lieberman, 'Ideas, Institutions, and Political Order', p. 701.

⁸² Lieberman, 'Ideas, Institutions, and Political Order', p. 701.

⁸³ Lieberman, 'Ideas, Institutions, and Political Order', p. 702.

organisation might differ from those within the institutions of government, parties, or 'ideological and cultural repertoires that organize and legitimate political discourse.'⁸⁴ If the behavioural logics of these orders become incongruent, if they metaphorically pull actors in different directions, the resulting friction will incentivise actors to try to find ways to reorder the existing institutional environment (whereas, if they are congruent, institutions become further entrenched). According to Lieberman, a political idea will come to fruition if and when it is adopted by those actors whose institutional context 'gives them both the motive and the opportunity to translate it into policy.'⁸⁵ Linked back to CJA and the task at hand, Lieberman's political order approach suggests that a critical juncture might emerge when multiple ideas can be said to have the potential to come to fruition at the beginning of a historical episode, one of which will ultimately give rise to a new dominant order layered on top of previous ones. I argue below that, in Germany, this moment arrived in the years following World War I during which an order based on the political idea of racialised exclusionary migration control replaced that based on the idea of migration as an economic resource. Operating within this theoretical framework, however, still requires explicating how this happened, that is, first, which configuration of factors created the motives and opportunities for the involved actors to adopt which idea and, second, which factors and decisions led to the change of dominant orders.

4.3.3 Racial Orders and Critical Ideational Development

King and Smith's Racial Order model draws on Lieberman's theory of political change.⁸⁶ But these two authors put an even stronger emphasis on the role of ideas

⁸⁴ Lieberman, 'Ideas, Institutions, and Political Order', p. 703.

⁸⁵ Lieberman, 'Ideas, Institutions, and Political Order', p. 709.

⁸⁶ King and Smith, 'Racial Orders'; Rogers M. Smith, 'Which Comes First, the Ideas or the Institutions?'. In *Rethinking Political Institutions*, ed. Ian Shapiro, Stephen Skowronek, and Daniel Galvin (New York, NY; London: New York University Press, 2006), pp. 91-113.

within the formation of orders as the glue that binds together various involved actors, pointing to an answer for the second research challenge. According to King and Smith, orders should be conceived of as loose political coalitions uniting actors with differing goals and motivations behind a common idea in order to exercise governing power.⁸⁷ Opposing orders are engaged in long-term struggles over the ideas that might propel them to power. In the case of racial orders this is either a belief in a legitimising myth of white supremacy, on the one hand, and an opposition of racial egalitarianism.⁸⁸ Once in a dominant position, members of a coalition will attempt to re-structure the entire political system to sustain power. Going beyond Lieberman's order model, King and Smith thus suggest that Racial Orders can influence seemingly unrelated policy fields, further politicising disputed ideas.⁸⁹ Meaningful change can occur due to sudden shocks (similar to CJA) or when orders interact with each other and give birth to new ideas. The core members of a racial-political order, those 'true believers' that wish to construct a racial/anti-racial polity, will also attempt to convince other influential actors that joining their order will help them reach their policy goals if they reframe it in their terms. A further avenue of political change is thus the shift of allegiances of key actors during a critical juncture, i.e. if an actor is convinced the rival order offers better prospects of reaching their political aims and starts to adopt the language of 'true believers.'⁹⁰

Within racial orders in particular, 'political actors have adopted (and often adapted) racial concepts, commitments, and aims in order to help bind together their coalitions.'⁹¹ While the motivations and goals of the individual actors that join such

⁸⁷ King and Smith, 'Racial Orders', p. 75.

⁸⁸ For legitimising myths, see Sidanius and Pratto, *Social Dominance*.

⁸⁹ King and Smith, 'Racial Orders', pp. 84-89.

⁹⁰ A final avenue for change emerges when combining the Lieberman and the King and Smith understandings of orders: over time, successive layering of incompatible institutions may heighten the institutional friction to such a level that the affected institutions experience internal erosion and eventual break-down.

⁹¹ King and Smith, 'Racial Orders', p. 75. 75

a coalition can differ, they are united by a common subscription to a racially exclusionist view of politics, on the one hand, and a racially egalitarian view on the other – and the framing of the most important political issues facing their respective nations in the terms of these competing views. In line with the layering of orders, those views are often adapted from previously existing themes that sustained governing coalitions in the past or are imported from myths prevalent outside the purview of the state at a given moment. Migration becomes a crucial battleground in the struggle of these opposing racial orders as immigration policy decides over the admittance of potential new ‘racial outsiders’ to the allegedly racially homogenised nation, or over the realisation of an egalitarian and multicultural society, respectively. The outcome of these struggles, and thus the course of migration politics, is decided by the relative ability of the two orders to gain and exercise governing power through their framing of political issues.

How can these racial-political orders be built in practice? King and Smith’s concept of critical ideational developments – describing a ‘politically orchestrated enduring shift in how policy issues are predominantly conceived that advantages one political coalition over its rivals’⁹² – specifies the ‘means used to formulate new ideas and to employ them in building support’.⁹³ King and Smith argue that ideational shifts are normally based on pre-existing ideas that are being re-purposed, often according to ‘positive and negative cultural images associated with established identities and cultural images’,⁹⁴ and subsequently established via two discourses aimed at (a) coordinating a supportive coalition of political actors and at (b) communicating the ideas to the public. If successful, such an ideational shift can lead

⁹² King and Smith, ‘Critical Ideational Development’, p. 958.

⁹³ King and Smith, ‘Critical Ideational Development’, p. 960.

⁹⁴ King and Smith, ‘Critical Ideational Development’, p. 960.

to a path-dependent lock-in of the institutions and policies built on the newly established ideas.

The racialisation of migration politics villainised migrants and linked them to already existent narratives of coloniality and differential humanity in the various countries. By re-purposing ideas of racial inferiority in their historical contexts, and importing legitimising myths from areas like eugenics, resulting anti-migration policies found widespread support among political actors from across the political spectrum while the politicisation of migration politics ensured public support for parties pushing for restrictionist policies.

4.4 A Racial-Political Orders Account of Modern Migration Control

To explain the emergence of modern migration control in its racialised and exclusionary form, two elements are required: First, a critical juncture that dislodges the previously dominant political order which had supported *laissez-faire* migration liberalism and opens up the potential for political and institutional change. And, second, a mechanism that explains the outcome of that juncture, that is, the turn towards an *exclusionary, racialised, and politicised* mode of migration politics involving restrictionist controls on the cross-border movements of people. In the following empirical analysis I present evidence in support of a racial-political orders explanation of that turn.

The revolution and regime change in Germany following World War I opened up the potential for a critical juncture, disrupting the previous mode of migration politics. Two racial-political orders sought to take advantage of this policy vacuum and thus to establish their vision of the new post-imperial Germany. On the one hand, conservative elites of the former *Kaiserreich* and German-nationalist parties adopted and adapted beliefs of an exclusionary and homogenous German nation already present before the war. On the other hand, social democrats and, later, liberals in the Foreign Office, the main supporters of the newly established republic, sought to re-integrate Germany into a peaceful and inclusionary European order and form Germany according to the liberal-egalitarian ideals of the Weimar constitution. Over the course of the interwar period, however, social democratic decision makers, first in the states and later also on the level of the *Reich*, changed allegiances and began to support exclusionary policies. Justifications for some of these policies, like the public reduction of permits for foreign workers, followed the patterns of a communicative discourse were principally aimed at gaining popular support. The discourses around other policies, such as internally debating the recruitment of

foreign workers ‘with German roots’ to replace foreign workers deemed as racially alien, show the patterns of a coordinative discourse within the racial order. Actors within the migration restrictionist order, conservative elites and social democrats from the early 1920s onwards, adopted ideas of racializing and excluding foreigners at a time when the institutional context of the early Weimar Republic provided the motives (creating a racially homogenous nation and gaining governing power) and the opportunities (majorities in state and *Reich* parliaments) to implement them.

To be sure, the social democratic party never became the central figure or a ‘true believer’ of the violent exclusionary and antisemitic nationalism of the 1930s and of the era of Nazi totalitarianism and the Shoah. The developments described here were ideologically driven by the same right-wing nationalist actors that had first pushed for the ethnic-exclusionary visions of a German nation during the *Kaiserreich*. And the political developments discussed do not reduce the heroic struggle against Nazi tyranny and steadfast support of democracy and liberal-socialist values of many social democrats and liberal politicians who often paid for their principled resistance with exile, torture, and, frequently, their lives. However, what can be seen from this switch is how, as King and Smith explain, ‘individuals positioned on the margins of racial orders, in relation either to the aims or to the power structures of those orders, have sometimes switched their dominant allegiances at critical junctures’⁹⁵ and thus caused a change in the dominant political order.

⁹⁵ King and Smith, 'Racial Orders', p. 76.

4.5 Laissez-Faire and Anti-Polish Migration Policies in the *Kaiserreich*

Unlike the US and the UK, Germany's interwar migration politics have rarely been analysed from the explicit perspective of racial hierarchies. This is despite the fact that historians of German migration politics have shown that the 1920s featured ethnic exclusionary debates and policies, targeting, in particular, Eastern European and Jewish migrants.⁹⁶ And despite covering ethnic nationalism and various policies and policy debates in his authoritative study of migration politics in the Weimar Republic, Jochen Oltmer, the foremost historian of immigration to Germany, points to material explanations as the predominant drivers of Weimar restrictionism.⁹⁷ For Lucassen, while acknowledging a 'racist-nationalist ideological mix'⁹⁸ within right wing of the social democratic party, Germany is the prime example for his labour integration thesis of migration control.⁹⁹ Before turning to examining the historical

⁹⁶ See, for example, Nils Steffen and Cord Arendes, eds., *Geflüchtet - Unerwünscht - Abgeschoben: Osteuropäische Juden in Der Republik Baden (1918-1923)* (Heidelberg: Universitätsbibliothek Heidelberg, 2017); Karen Schönwälder, 'Invited but Unwanted? Migrants from the East in Germany, 1890-1990'. In *The German Lands and Eastern Europe: Essays on the History of Their Social, Cultural and Political Relations*, ed. Roger P. Bartlett and Karen Schönwälder (London: Macmillan, 1999), pp. 198-216; Karen Schönwälder, 'Assigning the State Its Rightful Place? Migration, Integration, and the State in Germany'. In *Paths of Integration. Migrants in Western Europe (1880-2004)*, ed. Leo Lucassen, David Feldman, and Jochen Oltmer (Amsterdam: Amsterdam University Press, 2006), pp. 78-97; Christiane Reinecke, *Grenzen Der Freizügigkeit: Migrationskontrolle in Grossbritannien Und Deutschland, 1880-1930* (München: R. Oldenbourg, 2010); Anne-Christin Saß, *Berliner Luftmenschen: Osteuropäisch-Jüdische Migranten in Der Weimarer Republik* (Göttingen: Wallstein Verlag, 2012); Annemarie Sammartino, *The Impossible Border: Germany and the East, 1914-1922* (Ithaca, NY: Cornell University Press, 2010).

⁹⁷ Jochen Oltmer, 'Migration and Public Policy in Germany, 1918-1939'. In *Crossing Boundaries. The Exclusion and Inclusion of Minorities in Germany and the United States*, ed. Larry Eugene Jones (New York, NY; Oxford: Berghahn Books, 2001), pp. 50-69; Jochen Oltmer, *Migration Und Politik in Der Weimarer Republik* (Göttingen: Vandenhoeck & Ruprecht, 2005); Jochen Oltmer, 'Schutz Des National Arbeitsmarkts': Grenzüberschreitende Arbeitsmigration Und Protektionismus in Der Weimarer Republik'. In *Handbuch Staat Und Migration in Deutschland Seit Dem Siebzehnten Jahrhundert*, ed. Jochen Oltmer (Berlin: De Gruyter Oldenbourg, 2016), pp. 503-535.

⁹⁸ Lucassen, 'Origins of Migration Control', p. 51.

⁹⁹ Lucassen, 'Origins of Migration Control'.

record and to what extent it lends support to either of these theses, we need to briefly set the scene:

Over the course of the 19th century, Germany had transformed from a country of emigration into an important destination for migrants.¹⁰⁰ By 1914, official records counted 1.2 to 1.5 million foreigners living in the imperial German *Kaiserreich* (1871-1918) making the monarchy the world's second largest 'labour importing country' after the United States.¹⁰¹ The continuous supply of labour from neighbouring countries had been one of the forces behind Germany's economic boom around the turn of the century and its rise to Europe's largest economy by the time World War I broke out.¹⁰²

As I show in my previous work, the trend towards a late-19th century freedom of movement order in the West can be observed not only in the development of legal theory, but also in changes of national legislation as well as in bilateral treaties on trade and establishment.¹⁰³ Frank Caestecker points out that 'migration regulation was not considered a political matter' and Rosenberg observes that states were mainly concerned with the 'floating poor' and that government officials and police

¹⁰⁰ See Bade, 'German Emigration and Immigration'.

¹⁰¹ This amounted to about 2.3% of the total population of 65 million. The official numbers recorded in the pre-war national censuses and reported by local authorities are not entirely reliable and neglect the increase in immigration between 1910 and 1914. They are supplemented by historical estimates, see Oltmer, *Migration Und Politik*, pp. 310-319; Schönwälder, 'Invited but Unwanted'; Ulrich Herbert, *A History of Foreign Labor in Germany, 1880-1980: Seasonal Workers/Forced Laborers/Guest Workers*, trans. William Templer (Ann Arbor, MI: University of Michigan Press, 1990); Bade, 'German Emigration and Immigration'; Klaus J. Bade, 'Politik Und Ökonomie Der Ausländerbeschäftigung Im Preußischen Osten 1885-1914. Die Internationalisierung Des Arbeitsmarkts Im "Rahmen Der Preußischen Abwehrpolitik"', *Geschichte und Gesellschaft. Sonderheft* 6(1980): pp. 273-299.

¹⁰² Herbert, *Foreign Labor in Germany*; Klaus J. Bade, '"Preußengänger" Und "Abwehrpolitik": Ausländerbeschäftigung, Ausländerpolitik Und Ausländerkontrolle Auf Dem Arbeitsmarkt In Preußen Vor Dem Ersten Weltkrieg', *Archiv für Sozialgeschichte* 24(1984): pp. 91-162.

¹⁰³ Kauth, 'Fremdenrecht Und Völkerbund'.

forces rarely distinguished between foreign- and native-born paupers.¹⁰⁴ Borders remained generally open and barely controlled with visas having been abolished across the continent. In administrative practice, actions against foreigners were based on individual decisions by local actors and aimed against individual persons and the internal mobility of groups deemed undesirable rather than against international migrants as a group.¹⁰⁵ *Laissez-faire* liberalism in this context meant that people could cross borders largely unhindered but their status in receiving countries was still uncertain as expulsion powers were only constrained by bilateral trade treaties.¹⁰⁶ *De facto*, mid- to late 19th century Europe and the United States constituted ‘the closest approximation to an open world in modern times’.¹⁰⁷

The federal German *Kaiserreich* followed this general *laissez-faire* strategy with the key exception of Prussia’s anti-Polish ‘defensive policy’.¹⁰⁸ Based on an ethno-national ideology and out of fear of conjured subversive national movements, Prussian authorities targeted ethnic-Polish and Jewish minorities and migrant workers with surveillance programmes, expulsion orders and deportations. The continued labour migrations were not evidence of an expansive understanding of

¹⁰⁴ See the discussion in the first essay of this thesis. Rosenberg, *Policing Paris*, pp. 2-3; Frank Caestecker, ‘The Transformation of Nineteenth-Century West European Expulsion Policy, 1880-1914’. In *Migration Control in the North Atlantic World: The Evolution of State Practices in Europe and the United States from the French Revolution to the Inter-War Period*, ed. Andreas Fahrmeir, Olivier Faron, and Patrick Weil (New York, NY; Oxford: Berghahn Books, 2003), pp. 120-137.

¹⁰⁵ See the first essay in this thesis.

¹⁰⁶ Kauth, ‘Fremdenrecht Und Völkerbund’; Kauth, ‘Polizeistaat’.

¹⁰⁷ Fahrmeir, ‘Politischer Liberalismus Und ‘Liberale’ Migrationspolitik’, p. 149. For similar positions, see Dowty, *Closed Borders*, pp. 53-54; Torpey, *Invention of the Passport*; Mau et al., *Liberal States and Freedom of Movement*. On the different status of non-Europeans, see e.g. Mayblin, *Asylum after Empire*, pp. 291-315; Zolberg, ‘Great Wall against China’.

¹⁰⁸ Bade, ‘Preußengänger Und Abwehrpolitik’; Peter Kriedte, ‘Wirtschaftliche Not, Massiver Druck Und Physische Gewalt. Wanderungen in Der Deutsch-Polnischen Beziehungsgeschichte Des 19. Und 20. Jahrhunderts’. In *Spółeczeństwo W Dobie Modernizacji: Polacy I Niemcy W Xix I Xx Wieku: Studia Ofiarowane Profesorowi Kazimierzowi Wajdzie W Siedemdziesiątą Rocznicę Urodzin*, ed. Roman Bäcker et al. (Toruń: Wyd. UMK, 2000), pp. 25-56; Hans-Erich Volkmann, *Die Polenpolitik Des Kaiserreichs: Prolog Zum Zeitalter Der Weltkriege* (Paderborn: Brill Schöningh, 2016); Schönwälder, ‘Assigning the State Its Rightful Place’.

Germany, as shown by restrictive citizenship legislation throughout the period, but rather a means to an end of industrialisation and economic exploitation.¹⁰⁹ Ideological drivers were ethno-nationalist societies such as the *Ostmarkenverein* ('German Eastern Marches Society') and the *Alldeutscher Verband* ('Pan-German League') but also Max Weber's academic *Verein für Socialpolitik* ('Club for Social Policy', today 'German Economic Association') which supported either antisemitic claims and/or ideas of a superior Germanic race.¹¹⁰

Meanwhile, the industrial centres in Western Germany acted as strong pull-factors for internal migration leaving the agriculture-heavy Eastern provinces destitute of people and in need of sustained immigration.¹¹¹ As part of a 'compromise between political interests and economic demands',¹¹² Prussia eventually introduced a seasonal rotation scheme for Polish agricultural workers which was meant to discourage settlement but allowed for continued labour migration.¹¹³ The restrictive Prussian policies were aimed at Polish agricultural workers specifically rather than at the phenomenon of transnational migration in general and many Poles moved to and eventually settled in Germany's booming industrial centres.¹¹⁴ Indeed, as John Torpey argues, from the perspective of contemporaries, the German government did not see the 'Polish question' as being part of a larger migration issue.¹¹⁵

¹⁰⁹ Lucassen, *Immigrant Threat*; Gosewinkel, *Einbürgern Und Ausschliessen*; Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge, MA; London: Harvard University Press, 1992).

¹¹⁰ Lucassen, *Immigrant Threat*, pp. 50-73; Zolberg, 'Global Movements, Global Walls'.

¹¹¹ See also Zolberg, 'Global Movements, Global Walls', pp. 105-126; Leslie Page Moch, *Moving Europeans: Migration in Western Europe since 1650*, 2nd ed. (Bloomington, IN; Indianapolis, IN: Indiana University Press, 2003). More generally on the "great transformation", see Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time*, 2nd edition ed. (Boston, MA: Beacon Press, 2001 [1944]).

¹¹² Schönwälder, 'Invited but Unwanted', p. 201.

¹¹³ Imre Ferenczi, *Kontinentale Wanderungen Und Die Annäherung Der Völker: Ein Geschichtlicher Überblick* (Jena: Fischer, 1930); Bade, 'German Emigration and Immigration'.

¹¹⁴ Schönwälder, 'Invited but Unwanted', pp. 201-202; Lucassen, *Immigrant Threat*, pp. 50-73.

¹¹⁵ Torpey, *Invention of the Passport*, p. 111.

For the above-mentioned conservative elites, the anti-Polish policies did not go far enough in preventing migration movements from the East. Weber, who had been undecided of whether racial differences between the German and Slavic ‘races’ were down to innate biology or millennia of Darwinian cultural ‘breeding’,¹¹⁶ argued in a public report on behalf of the *Verein für Socialpolitik* that the immigration of Eastern European workers into the German *Reich* constituted a crisis for the German nation-state risking colonisation from mobile Russian workers which ‘will question the very existence of German culture in the East. Capitalism will thwart the victory of Germanness over Slavic propaganda.’¹¹⁷ Three years later, Weber’s views of racial hierarchies became even more explicit: ‘The history of humanity knows the victory of less developed types of humankind and the withering of high blossoms of intellectual life and disposition, if the human community who had produced [the blossoms] lost the ability to adapt to their living conditions, may it be due to their social organisation or racial qualities.’ Not having fully closed the borders was, according to Weber, a sign of the ‘steering wheel of the state [falling] from a strong hand into a weaker one.’¹¹⁸ For Weber, the national economy had to step back in favour of the interests of the German nation-state, which, according to him, would

¹¹⁶ Max Weber, *Der Nationalstaat Und Die Volkswirtschaftspolitik: Akademische Antrittsrede* (Freiburg iB; Leipzig: Akademische Verlagsanstalt von J.C.B. Mohr (Paul Siebeck), 1895), pp. 10-11.

¹¹⁷ Max Weber, *Die Verhältnisse Der Landarbeiter Im Ostelbischen Deutschland (Preussische Provinzen Ost- Und Westpreussen, Pommern, Posen, Schlesien, Brandenburg, GrossherzogtüMer Mecklenburg, Kreis Herzogtum Lauenburg)* (Leipzig: Duncker & Humblot, 1892), p. 803.

¹¹⁸ Weber, *Nationalstaat Und Die Volkswirtschaftspolitik*, p. 13. Weber’s view of ethnicities and race changed in his later life, especially during the early 1920s but his publications during the 1890s were particularly influential for the debate on migration control in the *Kaiserreich*. For discussions on Weber’s work and his position on race, empire, and nation-states, see Gurminder K. Bhambra and John Holmwood, *Colonialism and Modern Social Theory* (Cambridge: Polity Press, 2021), pp. 112-140; John Stone, ‘Race, Ethnicity, and the Weberian Legacy’, *American Behavioral Scientist* 38, no. 3 (1995): pp. 391-406; Manuela Boatcă, ‘“From the Standpoint of Germanism”: A Postcolonial Critique of Weber’s Theory of Race and Ethnicity’. In *Postcolonial Sociology*, ed. Julian Go (Bingley: Emerald, 2013), pp. 55-80; Ernst Moritz Manasse, ‘Max Weber on Race’, *Social Research* 14, no. 1 (1947): pp. 191-221.

be served by excluding Eastern European immigrants and support re-migration by ethnic Germans.¹¹⁹

The small but influential nationalist, colonialist, and antisemitic Pan-German League was more outspoken in their criticism of Germany's lack of migration restrictionism in the East.¹²⁰ In 1913, the Pan-German League and German Eastern Marches Society decided to lobby the Prussian state, and especially conservative parties, to prevent the 'expected extraordinarily strong immigration of Polish Jews due to conditions there obviously pushing for emigration [due to antisemitic pogroms, JTK]. The Prussian state must not admit this mass of Jews and must prepare in time.'¹²¹ In 1916, at the height of the war, the Pan-German League sent a report to the *Reich* chancellor and the entire cabinet urging them to close all borders after the war, at least temporarily while enacting restrictive migration controls. Migration after the war, according to the report, could bring benefits to the German 'ethnic body politic' if and when Germans decided to return to the victorious nation-state. But there were also 'very significant threats' posed by 'different kinds of strangers who are looking for a new host people [*Wirtsvolk*, used here in the sense of parasitism, JTK].' Continued immigration would necessarily lead to the 'lowering of the average value [...] of the entire ethnic body politic in all aspects.' The report strongly criticised the *laissez-faire* policies of the previous decades which had established free entry and open borders: 'It is in fact an unsustainable condition to first leave the doors of the house of the *Reich* open for everyone without any scrutiny facing the sure danger of

¹¹⁹ Weber, *Nationalstaat Und Die Volkswirtschaftspolitik*.

¹²⁰ For studies on the influence of the Pan-German League, see Reiner Hering, *Konstruierte Nation: Der Alldeutsche Verband 1890 Bis 1939* (Hamburg: Christians, 2003); Volkmann, *Polenpolitik Des Kaiserreichs*; Shelley Baranowski, *Nazi Empire: German Colonialism and Imperialism from Bismarck to Hitler* (Cambridge: Cambridge University Press, 2011).

¹²¹ Sitzung des Geschäftsführenden Ausschuss, 19 April 1913, in Bundesarchiv (BArch) R 8048/88, p. 20.

later having to remove all kinds of guests with all kinds of efforts, yes, potentially even under the exercise of true hardship.’¹²²

The leadership of the social democratic party SPD (*Sozialdemokratische Partei Deutschlands*), on the other hand, was a staunch defender of internationalism and proponent of a global free movement regime and supported a declaration by the Second International in 1907 that rejected calls for migration restrictions and especially denounced any racial or ethnic considerations in the politics of migration.¹²³ Recent research has shown that this view was not universally shared within the movement as parts of the right-wing of the SPD and some conservative labour unions advocated against free migration drawing from arguments of racial hierarchies similar to those described above and warning of mass migration from Asia or Africa as a threat to the German worker and German nation: From this point of view, ‘while other immigrants might have been “uncivilized” for the time being, “coolies” were regarded as a more “essential” threat.’¹²⁴ As I argue below, while the internationalist views of the SPD leadership prevailed into the early Weimar Republic, the dominant position changed towards the latter in the mid- to late 1920s.

¹²² Schließung der Reichsgrenzen gegen unerwünschte Einwanderung. - Eingabe an den Reichskanzler und die Bundesregierungen, in BArch R 8048/596.

¹²³ Claudia Weill, 'Die Frage Der Migrationen Im Internationalen Sozialismus: Stuttgart (1907)-London (1926)', *Moving the Social* 26(2001): pp. 55-64.

¹²⁴ Daan Musters, 'Internationalism, Protectionism, Xenophobia: The Second International's Migration Debate (1889–1914)', *International Review of Social History* 68, no. 1 (2023): pp. 75-105 here p. 95.

4.6 Modern Migration Control in Weimar Germany

Compared with the *Kaiserreich*, the Weimar Republic, despite its democratic and egalitarian social democratic foundations, took a radically more active role in controlling its borders.¹²⁵ The sporadic and fragmented restrictions which had emerged during the two pre-war decades were now turned into the ‘walls’ against migration.¹²⁶ During the war, borders were closed, and foreigners already on German territory were put under police surveillance or deported. Restrictions on entry and internal mobility now applied to all foreigners and to the entirety of Germany’s territory. Jews and Poles continued to be primary targets of the new policies. The extensive treaty network that had established freedom of movement and establishment broke down. This even allowed the formal and factual exclusion of foreigners from national legal systems,¹²⁷ However, as soon as the war ended, economists and liberal politicians, believing that the economic boom of the pre-war years was spurred on by large scale labour migration, expected a return to the pre-war *laissez-faire* order.¹²⁸ Yet, it quickly transpired that Prussia’s anti-Polish policies, not the liberal *laissez-faire* tradition became the model for Weimar migration politics.

The Weimar Republic thus appeared as a far less welcoming place for foreigners. In 1925, the first official nation-wide census recorded an overall drop in the population of foreign citizens compared to the estimated pre-war numbers: Of the 62.5 million total residents, only 920,000 were of foreign citizenship or stateless – a drop from 2.3% to 1.5% of the total population translating into a 36% decrease compared to the pre-war era. Furthermore, 670,000 of the 920,000 were recorded as

¹²⁵ Oltmer, 'Migration and Public Policy'.

¹²⁶ Zolberg, 'Global Movements, Global Walls'.

¹²⁷ Kauth, 'Fremdenrecht Und Völkerbund'.

¹²⁸ Lucassen, 'Origins of Migration Control'; Torpey, *Invention of the Passport*, pp. 111-112; Kauth, 'Fremdenrecht Und Völkerbund', p. 212; Lucassen, 'European Migration Regime and Its Paradoxes'; Torpey, *Invention of the Passport*.

having German as their first language which indicates increased ethno-national homogeneity compared to 4.2 million non-German speakers in 1900.¹²⁹ Whereas the official numbers of resident aliens during the *Kaiserreich* must already be considered unreliable, government surveys during the early 1920s often resembled mere guesswork. Historians of the inter-war refugee movements are therefore forced to estimate numbers based on primary documents. These estimates show fluctuating numbers reaching a maximum of about half a million foreign refugees residing in Germany at the same time in either 1920 or 1922 but much larger numbers transiting the country.¹³⁰

By the same token, historical estimates of labour migration in inter-war Germany speak a univocal message of a strongly reduced foreign workforce even when considering Germany's reduced territory after the Treaty of Versailles: Ulrich Herbert estimates a reduction of the number of legal foreign workers from two million in 1918 to about 175,000 in 1924.¹³¹ Jochen Oltmer counts 880,000 foreign workers in 1907 compared to 279,000 in 1919 and 211,000 in 1924. Even though Germany's industrial production had fully recovered to pre-war levels by 1927, the numbers of foreign workers kept hovering around 230,000 until the Depression.¹³² The change from one of the world's leading migration destinations before World War I to a country of closed borders after 1918 put Germany at the fore of a discussion of the path leading to a substantially restrictive migration governance.

¹²⁹ Gosewinkel, *Einbürgern Und Ausschliessen*, pp. 339-340..

¹³⁰ Hans-Erich Volkmann, *Die Russische Emigration in Deutschland 1919-1929* (Würzburg: Holzner, 1966); Skran, *Refugees in Inter-War Europe*; Sammartino, *Impossible Border*; Philipp Ther, *Die Aussenseiter: Flucht, Flüchtlinge Und Integration Im Modernen Europa* (Berlin: Suhrkamp Verlag, 2017). For a discussion of the historical estimates and official records, see Annemarie Sammartino, 'Deportation and the Failure of Foreigner Control in the Weimar Republic'. In *The Social, Political and Historical Contours of Deportation*, ed. Bridget Anderson, Matthew J. Gibney, and Emanuela Paoletti (New York, NY; Heidelberg; Dordrecht; London: Springer, 2013), pp. 25-41.

¹³¹ Herbert, *Foreign Labor in Germany*, p. 121.

¹³² Oltmer, *Migration Und Politik*.

However, Germany's location in the heart of Europe meant that it acted as the central hub for East-West movements.¹³³ The Weimar Republic was thus particularly affected by the inter-war migrations of the early 1920s, caused by the breakdown and emergence of new states following World War I, the Russian Revolution and ensuing civil war, and myriad antisemitic pogroms in Eastern and Southeastern Europe. The Weimar Republic presents itself at crucial crossroads, with a new political system following the German revolution and a closely avoided civil war. Interwar Germany espoused all characteristics of a critical juncture in migration politics – but what drove these changes? Was it waning employer interests? Concerns over labour market competition? Or exclusionary nationalism in combination with a racial hierarchy?

4.6.1 *The Migration Restrictionist Order*

The years following the Russian Revolution and Civil War and the end of the Great War were marked by an unprecedented refugee movement. Throughout Eastern Europe, over seven million people were on the move, fleeing from political and economic upheavals. Many Jews fled antisemitic pogroms in the wake of revolution and war. Most of these migrants made their way westwards, hoping to reach the United States but often remaining in the politically and economically unstable transit land of Germany.¹³⁴ In the face of these challenges, many blamed foreigners and especially Eastern European Jews not only for the defeat in World War I, as 'devious Bolshevik spies' or members of a Jewish conspiracy,¹³⁵ but also for Germany's post-war economic, unemployment, and food supply crises. While some politicians from left and centre parties hoped to free up jobs for returning veterans

¹³³ Oltmer, *Migration Und Politik*, pp. 256, 495; Sammartino, *Impossible Border*, p. 122.

¹³⁴ Oltmer, *Migration Und Politik*, pp. 256, 495; Steffen and Arendes, *Geflüchtet - Unerwünscht - Abgeschoben*; Tara Zahra, *The Great Departure: Mass Migration from Eastern Europe and the Making of the Free World* (New York, NY; London: WW Norton & Company, 2016).

¹³⁵ Kauth, 'Isaak Nouhim'.

and housing for displaced families, right-wing parties aimed to firmly establish the antisemitic and anti-Slavonic sentiments of the pre-war anti-Polish policies. Most foreigners that had been recruited or forced to work in German industries and agriculture during the war left Germany in the winter of 1918 or spring 1919. But when over-zealous local police forces began to deport foreign workers to free up jobs for Germans, it quickly transpired that this was detrimental to the German post-war economy. The newly established office for demobilisation, formed by the socialist provisional government out of civil servants endorsed by labour movement and union representatives as well as representatives of employers, put a halt to 'premature deportations'. These were to be avoided as foreigners would have to be employed in Germany again in the long term.¹³⁶ At the same time, farmers began to actively demand and recruit foreign workers, mostly from Poland.

Agriculture in Germany had already been dependent on foreign workers before the war and soldiers returning to the cities and industrial centres did not fill those vacancies. Moreover, the restrictive policies 'tested' during the war, such as passports, visas, border controls and closures, state surveillance of foreigners, were not lifted after the ceasefire.¹³⁷ Agricultural associations and the office responsible for recruiting and distributing foreign workers approached the government in January 1919. But many of the high-ranking civil servants in the ministries, still dominated by those educated during and loyal to the *Kaiserreich*,¹³⁸ were sceptical or even resistant to lifting war time measures. Many had been influenced by Weber's theses of Polish immigration and some repeated the warnings of the Pan-German League

¹³⁶ Oltmer, *Migration Und Politik*, pp. 330-331.

¹³⁷ Zolberg, 'Global Movements, Global Walls'; Torpey, *Invention of the Passport*; Oltmer, *Migration Und Politik*, pp. 236-237, 329-336.

¹³⁸ Eberhard Pikart, 'Preußische Beamtenpolitik 1918-1933', *Vierteljahrshefte für Zeitgeschichte* 6, no. 2 (1958): pp. 119-137; Hans Mommsen, 'Die Stellung Der Beamtenschaft in Reich, Ländern Und Gemeinden in Der Ära Brüning', *Vierteljahrshefte für Zeitgeschichte* 21, no. 2 (1973): pp. 151-165.

almost verbatim as shown by a letter from Germany's *Reich* Ministry of the Interior to the *Reich* Ministry of Labour from February 1919:¹³⁹

Considering the neighbouring locations of Germany to the Eastern States with their racially alien and culturally inferior Slavic populations, waiving the possibility of immigration restrictions could have fateful consequences for the composition of the German people.¹⁴⁰

The first government of the Weimar Republic, largely consisting of social democrats from the SPD and liberals from the DDP, wanted to return to migration liberalism and overruled these concerns by restoring foreign workers' freedom to cross the Eastern border in March 1919.¹⁴¹

But anxieties over migration did not abate. At a closed emergency meeting of regional, state, and *Reich* civil servants in December 1919, many participants urged for stricter measures in response to the purported risks from migrants, including the spread of dangerous diseases, a Europe-wide black market, and political subversion. The meeting had been called to assess the general response of different state agencies to increased migration movements across all German borders. A key concern for the government were widespread newspaper articles complaining about grievances connected to immigration. Even though the meeting had been opened with questions about issues concerning other borders of the *Reich*, the discussion quickly turned to the immigration from the East, in particular of Eastern European Jews to whom the many ills of post-war and post-revolution Germany were pinned:¹⁴²

The responsibility for the extraordinary damage that had been caused in an ever increasing level to our currency rates during the war

¹³⁹ On the influence of Weber's theses, see Oltmer, *Migration Und Politik*, p. 334.

¹⁴⁰ Schreiben des Reichsministerium des Innern an das Reichsarbeitsministerium, 14 February 1919, in BArch R 3901/30006.

¹⁴¹ Oltmer, *Migration Und Politik*, pp. 335-336.

¹⁴² For the context, see Bericht der Badischen Gesandtschaft in Berlin für Badens Außenministerium bezüglich einer Besprechung betreffend der Flüchtlingsfürsorge und Fremdenpolizei am 10. Dezember 1919, 13 December 1919, in GLAK 233 12660.

and are still being caused today must mainly be attributed to foreigners, namely to Galician and Polish Jews. [...] The immigration of foreigners of foreign descent [as opposed to those from areas Germany had to give up after the war, JTK] from the East also bears political risks. It is to be assumed that above mentioned foreigners have not been unaffected by the Bolshevism dominating their home [...]. The procedures in Chemnitz to clarify the question of guilt [for losing the war, JTK] have shown that apparently a large number of Russian Jews had been involved.¹⁴³

Most of the 36-page-long report focused on various stereotypes of Jewish immigrants and the alleged political and criminal threat to the German people as well as their purported ‘wickedness’ which made them difficult to find or apprehend. Only two sentences were spent on foreigners being a potential burden on the German welfare state, but the representative from the Ministry of Finance received no reply to his ‘point of addition’, showing the comparatively low importance of welfare state and labour market competition. Several restrictionist measures were considered, such as visa stops, border controls, complete border closures, hefty fines for illegal border crossings, expulsions, deportations, and even forced hunger campaigns. The representative from Bavaria and the *Reich* Ministry of Defence, who had been particularly harsh towards Eastern European Jews,¹⁴⁴ declared that Bavaria had found a solution: internment of ‘undesired foreigners’ in prisons.

But the meeting also shows fault lines between the arguments by migration restrictionists above and protests from migration liberals: The representative of the Prussian Ministry of the Interior explained that he acted on instructions of his minister, Wolfgang Heine (SPD), to explain Heine’s recent ministerial decree to

¹⁴³ Niederschrift ueber das Ergebnis der am 10. Dezember 1919 auf Einladung des Reichsministeriums des Innern (...) abgehaltene Beratung, betreffend fremdenpolizeiliche Maßnahmen zur Eindämmung der Zuwanderung von Ausländern, 27 December 1919, in GLAK 233 12660.

¹⁴⁴ Bericht der Badischen Gesandtschaft in Berlin für Badens Außenministerium bezüglich einer Besprechung betreffend der Flüchtlingsfürsorge und Fremdenpolizei am 10. Dezember 1919, 13 December 1919, in GLAK 233 12660

protect Eastern European Jews. In collaboration with Jewish welfare agencies and support from the SPD newspapers and magazines, Heine had ordered a halt to deportations in May 1919 and a protective order for Jews in November, arguing that they had fled violent pogroms and expulsions and the fact that their former home countries did not exist anymore meant that nobody else could provide protection. Humanitarian and considerations of international law would make it impossible for him to not provide help and expel Eastern European Jews who would otherwise face death.¹⁴⁵ The Foreign Office representative agreed and added that restrictionist policies would hurt Germany's international standing.¹⁴⁶

In response to these objections restrictionists accused Eastern European Jews of lying and inventing antisemitic pogroms. One of the attendees argued that this would only work because 'there are numerous Jews in the ministries, agencies, and in private institutions. The presence of American-Jewish, French-Jewish, and English-Jewish members of the entente commission was cause enough for domestic Jews to address every actual or purported assault in public, so that government and people should be careful to avoid everything that could attract the entente commission's attention.' One refrain of the objecting attendees was that the alleged pogroms were actually mainly personal quarrels or legitimate 'military, police, or judicial measures against criminal Jewish elements.'¹⁴⁷ As research shows, the

¹⁴⁵ Kristina Heizmann, 'Fremd in Der Fremde: Die Geschichte Des Flüchtlings in Großbritannien Und Deutschland, 1880-1925' (Ph.D. Thesis University of Konstanz, 2011), 105-106.

¹⁴⁶ Niederschrift ueber das Ergebnis der am 10. Dezember 1919 auf Einladung des Reichsministeriums des Innern (...) abgehaltene Beratung, betreffend fremdenpolizeiliche Maßnahmen zur Eindämmung der Zuwanderung von Ausländern, 27 December 1919, in GLAK 233 12660.

¹⁴⁷ Niederschrift ueber das Ergebnis der am 10. Dezember 1919 auf Einladung des Reichsministeriums des Innern (...) abgehaltene Beratung, betreffend fremdenpolizeiliche Maßnahmen zur Eindämmung der Zuwanderung von Ausländern, 27 December 1919, in GLAK 233 12660.

contemporary reports of antisemitic violence in Eastern Europe had never been overstated.¹⁴⁸

As public xenophobic sentiments against Eastern European Jews supposedly rose in the early 1920s, more state governments of the Weimar Republic decided to create ‘concentration camps’ (sic) to detain immigrants, following the Bavarian example.¹⁴⁹ In May 2020, the *Reich* Minister of the Interior, Erich Koch-Weser from the German Democratic Party (DDP), called on Heine to abandon his protective policies as they had established preferential treatment for a class for ‘foreigners of foreign descent’ (as opposed to ethnic Germans) that was ‘not at all completely faultless’ and reiterated the claims of invented pogroms from the meeting. Supporting Eastern European Jews was draining resources for migrants of ethnic-German ‘stock’, Koch-Weser argued. While Heine did not fully change his protective policy and continued to resist the concentration camp proposals, he was subsequently forced to end the ban on deportations.¹⁵⁰

Heine’s resistance to the establishment of camps and openness to migration had the support of the wider labour movement. The SPD’s main publication *Vorwärts* ran more than ten articles attacking the antisemitic proposals and

¹⁴⁸ Jonathan Dekel-Chen et al., eds., *Anti-Jewish Violence: Rethinking the Pogrom in East European History* (Bloomington, IN: Indiana University Press, 2010); Piotr Wróbel, 'The Seeds of Violence. The Brutalization of an East European Region, 1917–1921', *Journal of Modern European History* 1, no. 1 (2003): pp. 125-149.

¹⁴⁹ For an overview, see Sabrina Axster, 'Targeting Jewish Migrants and Unwanted Foreigners in the 1920s: The History of Germany’s First Immigration Detention Sites', *Oxford Border Criminologies Blog*, 8 March 2023, <https://blogs.law.ox.ac.uk/border-criminologies-blog/blog-post/2023/03/targeting-jewish-migrants-and-unwanted-foreigners-1920s>; Wolfgang Wippermann, '1920: Wie Gehabt', *der Freitag*, 26 August, <https://www.freitag.de/autoren/der-freitag/1920-wie-gehabt>; Fabian Promutico, 'Eine Alternative Zur Abschiebung? Die Einrichtung Der Ersten Konzentrationslager'. In *Geflüchtet, Unerwünscht, Abgeschoben. Osteuropäische Juden in Der Republik Baden (1918–1923)*, ed. Nils Steffen and Cord Arendes (Heidelberg: Universitätsbibliothek Heidelberg, 2017), pp. 215-236.

¹⁵⁰ Heizmann, 'Fremd in Der Fremde', 108-110.

deportation raids between April and November 1920.¹⁵¹ An article in April 1920 heavily criticised a military-led raid on Eastern European Jews in Berlin during which the military had interned 250 Jews who had been ‘randomly picked up from the streets.’ The article demanded ‘an immediate end to this whole maliciousness. The dismissal and punishment of the mentioned soldiers and officers is a matter of course.’¹⁵² In October 1920, the *Vorwärts* ran a multi-page article that tried to dispel propaganda from the ‘right-wing press’: The number of immigrating Ostjuden had been overstated and only reached 50-80,000.¹⁵³ The article went on to describe the harrowing scenes in Eastern Europe where hundreds of thousands of Jews had been ‘slaughtered’ as well as the appalling conditions under which they had to live in Germany. At the end of the article stood a renewed call for solidarity and a stop to deportations.¹⁵⁴ Heine’s successor as Prussian Minister of the Interior after Heine’s failure to anticipate the Kapp putsch, Carl Severing (SPD), espoused similar views in an impassionate speech in a parliamentary debate in July 1920 in which he criticised right-wing antisemitism as well as his own social democratic colleagues who had supported restrictionist measures, printed in the *Vorwärts* in full including reactions:

We [the German state, JTK] have already taken various measures against the unlimited immigration of Eastern European Jews, **but the Eastern European Jews are also human and Europeans.** (Noise from the right.) We must not treat them any differently to Germans, according to the peace treaty. (Big turmoil on the right.) Until today, most newspaper stories and rallies on the tremendous immigration of Eastern European Jews are enormously

¹⁵¹ See issues of the *Vorwärts* from 1 April, 29 April, 8 July, 9 July, 29 July, 30 July, 4 August, 5 August, 27 August, 3 October, 8 October, 23 November 2020. The digital archive of the *Vorwärts* can be accessed online under: <https://fes.imageware.de/fes/web/>.

¹⁵² 'Die Juden-Razzia: Ein Militärischer Missgriff', *Vorwärts* 1 April 1920.

¹⁵³ A number broadly supported by historians. See Trude Maurer, *Ostjuden in Deutschland, 1918-1933* (Hamburg: H. Christians, 1986); Saß, *Berliner Luftmenschen*.

¹⁵⁴ 'Das Ostjudenproblem', *Vorwärts*, 8 October 1920.

exaggerated. (Noise from the right.) My party friend Dr August Mueller [...] suffers from the mistake that he can only see the splinter in a stranger's eye but not the entire beam in his own. [...] [The new *Reich* government] can only be sustained as long as it has the **support of social democracy**. (Quite right! Among the social democrats.) My colleagues and I are not glued to mandates or cabinet chairs. [...] As long as the current party constellation in the state parliament remains, as long as the government can rest on the support of three big parties, the state government will continue its current policies. (Applause on the left. Noise from the right.)'¹⁵⁵

But despite this defence, it was Severing who ended Heine's protective policy just a few months after his speech. Over the course of year, lobby organisations akin to the pre-war nationalist clubs had pressured the Prussian and *Reich* governments to move against Eastern European Jews. And in November 1920, Severing abandoned his principled stance from the summer: Even though he personally did not think Eastern European Jews were a threat to Germanness and the German nation, and despite high costs to tax payers,¹⁵⁶ he issued an order for the general internment of foreigners in camps due to the 'changing circumstances', that is the lobbying efforts, as well as the 'public opinion'.¹⁵⁷ The first fixed, as opposed to temporary concentration camps for immigrants opened in Prussia and Bavaria in the winter of 1920/1921. The government hoped simultaneously to present them as 'welfare institutions' internationally to avoid the charge of antisemitism while simultaneously preparing group deportations, deterring future migrants from attempting to reach Germany, and 'encouraging' immigrants already in Germany to leave the country. They were punitive and repressive institutions which almost exclusively incarcerated

¹⁵⁵ 'Abrechnung Mit Der Reaktion: Preussische Landesversammlung', *Vorwärts*, 8 July 1920. Emphasis in the original.

¹⁵⁶ Severing rejected the plans for concentration camps in Juli 1920 as he 'could not be responsible for tax payers having to pay for the accommodation of Eastern European Jews in barracks.' Heizmann, 'Fremd in Der Fremde', 112.

¹⁵⁷ Pommerin, 'Ausweisung Von "Ostjuden" Aus Bayern', p. 321.

Jews, despite warnings from the Foreign Office to avoid antisemitic actions.¹⁵⁸ The role of the Foreign Office was divided as it repeatedly urged restraint while also explicitly proposing internment camps as a solution in the spring of 1920.¹⁵⁹

In the summer of 1921, a Prussian parliamentary delegation under the left-wing representative Mathilde Wurm (Independent Social Democratic Party, USPD) protested against the inhumane living conditions and clear antisemitic coercions by camp guards (including the lack of sanitary facilities, meagre food provisions, frequent antisemitic slurs and physical abuse, and intentionally locked doors during a fire), calling the camps a 'disgrace for German culture'.¹⁶⁰ The political protest fell on deaf ears and it was only when the camps became too expensive for the strained inter-war state budget in 1923 were they closed.¹⁶¹ Severing's decision to bow to the pressure of lobbying and the 'public opinion' and thus abandon the principled defence of Eastern European Jews in favour of collaborating with the right-wing, in socialist parlance 'opportunist-revisionist',¹⁶² forces was a critical turning point in the social democratic position on migration politics in the interwar period. Prioritising an electoral logic of gaining and preserving governing power weakened the migration liberal coalition and strengthened those arguing for exclusionary and restrictive policies. In 1923, the SPD leadership in the *Reich* government took a last principled stance, but overall the SPD changed its dominant allegiance and began to support restrictionism.

¹⁵⁸ Heizmann, 'Fremd in Der Fremde', 113.

¹⁵⁹ Pommerin, 'Ausweisung Von "Ostjuden" Aus Bayern', pp. 319-320.

¹⁶⁰ Mathilde Wurm, 'Kulturschande', *Jüdische Arbeiterstimme*, 15 July 1921.

¹⁶¹ Kauth and King, 'Illiberalism'. For excerpts from primary sources and analytical overviews, see Heizmann, 'Fremd in Der Fremde', 110-117; Promutico, 'Alternative Zur Abschiebung'. For a journalistic historical overview of early German detention camps, see Wippermann, '1920: Wie Gehabt'.

¹⁶² Lothar Elsner, 'The Attitude of the Working-Class Movement to the Inter-State Migration and the Employment of Foreigners in the Twentieth Century with Special Reference to Germany and the Federal Republic of Germany', *Migracijske i etničke teme* 4, no. 1-2 (1988): pp. 13-20.

In a year marked by hyper-inflation and political instability, the Bavarian state government appointed the previous conservative minister-president Gustav Ritter von Kahr as *Generalstaatskommissar* (general commissioner of the state), an emergency position that came with dictatorial powers,¹⁶³ in part as a protest against the internationalist positions taken by chancellor Gustav Stresemann.¹⁶⁴ One of Kahr's major policies in late October 1923 consisted of the mass expulsion and deportation of ca. 70 Eastern European Jewish families from Bavaria. The deportations were legally baseless: Most families had already lived in Bavaria for decades, were involved in successful businesses, and without prior convictions. In response to international protest, Bavarian authorities denied that they were only deporting Jewish migrants. However, investigators sent secretly to Bavaria by the German Foreign Office reported of direct racial targeting:

So far, only one Czech has been expelled, named Czihak. Cz is not a Jew. It is alleged that it can be proven that he has committed severe tax evasion for years (the Bavarian government insists that it is not just Jews who are being expelled. However, Cz is the only non-Jewish case and in contrast to the Jewish cases it is the only case with legal misconduct.) [...] The expulsion against Cz has been revoked in the meantime. [...] Against German Jews, one has established a system of terror. In the last few days there have been several attacks on Jewish citizens of high repute at the hands of uniformed gangs who beat and stabbed them [...].¹⁶⁵

The informant added that official protests by industry and business associations, who had warned of harms to the economy and labour market if the deportations were to go ahead, had fallen upon deaf ears, clearly showing the limits

¹⁶³ Roy G. Koepp, 'Gustav Von Kahr and the Emergence of the Radical Right in Bavaria', *The Historian* 77, no. 4 (2015): pp. 740-763.

¹⁶⁴ Conan Fischer, *A Vision of Europe: Franco-German Relations During the Great Depression, 1929-1932* (Oxford: Oxford University Press, 2017).

¹⁶⁵ Bericht eines Augenzeugen, sent to the *Reich* Chancellery from the Foreign Office, 31 October 1923, in BArch R 43-I/2193, Bl. 77-84.

of Freeman's employer hypothesis. In response to the mass deportations of Eastern European Jews, on 2 November 1923, SPD leaders in government urged the centrist liberal chancellor to act immediately, if need be he should order the *Reich* military to force the Bavarian government to comply: Bavaria had already breached too many federal laws and was threatening to overthrow the new democratic order. But these deportations had been the last straw. If Stresemann were unable or unwilling to help the victims of Kahr's policy, SPD representatives threatened to leave the governing coalition: 'The social democratic movement demanded a statement against the medieval expulsion of Jews.'¹⁶⁶

But it quickly transpired that the SPD-position vis-à-vis Bavaria did not have the necessary backing; the general tasked with mounting military pressure on Bavaria deserted and was swiftly appointed by Kahr as the commander of the state troops.¹⁶⁷ The Foreign Office, which, under Stresemann, had become more liberal and followed a policy of internationalism and European integration,¹⁶⁸ supported the SPD and attempted to pressure Bavaria into taking back the orders due to risks to negotiations for international migration treaties, such as with Poland, and the threat of revenge policies hurting Germans abroad.¹⁶⁹ Other German state governments, however, feared that the Jews who had been expelled from Bavaria could now settle in their territories. Prussia's social democratic minister-president Otto Braun confirmed he would not 'deny asylum' but insisted that the migration was undesired as it would 'strengthen the already abundant dose of the Eastern European Jewish element' and impact public opinion. A key warning was that supporting Eastern European Jews could mean further support for antisemitic political forces.¹⁷⁰ For Braun, thus, as for

¹⁶⁶ Protokoll des Ministertreffens, 2 November 1923, in BArch R 43-I/1389, Bl. 11-14.

¹⁶⁷ Pommerin, 'Ausweisung Von "Ostjuden" Aus Bayern', p. 323.

¹⁶⁸ Fischer, *Vision of Europe*.

¹⁶⁹ Pommerin, 'Ausweisung Von "Ostjuden" Aus Bayern', pp. 322-326.

¹⁷⁰ Pommerin, 'Ausweisung Von "Ostjuden" Aus Bayern', pp. 326-327.

Severing before, support for migrants might have translated into providing ‘fodder’¹⁷¹ for those political actors that attempted to undermine the republic. Yet by supporting their ideas of exclusionary nationalism, they inadvertently supported their racialised visions of Germany. The SPD ministers, including Gustav Radbruch, left the government in protest and the party would only return after their election victory in 1928. Shortly after Kahr’s mass expulsion, Adolf Hitler attempted to putch in Munich but was stopped by the state military and police forces. Hitler blamed Kahr who subsequently lost the support of the radical right and stepped down.¹⁷²

In the mid-1920s, representatives of agricultural lobby groups demanded the increase of migration due to a positive economic development and a desperate need for workers. With this demand for migration liberalism, the debates of the immediate post-war year returned and renewed Weber’s as well as the Pan-German League’s pre-war claims. The Prussian state government, led by social democrats, in cooperation with the newly founded federal *Reich* Employment Agency and the *Reich* Ministry of Labour refused to increase the number of working permits and instead attempted to further lower the presence of immigrants in Germany. In 1925, the right-wing national-conservative *Reich* Minister of the Interior (DNVP) Martin Schiele went a step further. After repeatedly calling for the protection of the ‘physical and moral health of our people’ against the ‘new immigration of elements of foreign descent’ in parliamentary speeches, he responded directly to lobby groups by freely admitting the economic risks of not admitting more foreign workers. Instead of allowing for increased migration, he appealed to the German farmers’ ‘happiness to make sacrifices for the national interest’ – which he saw as the protection of Germans

¹⁷¹ Pommerin, 'Ausweisung Von "Ostjuden" Aus Bayern', p. 326.

¹⁷² For an overview, see Koepp, 'Gustav Von Kahr'.

from the allegedly racially inferior workers.¹⁷³ In 1926, Severing, in his role as Prussian Minister of the Interior, too, called for even stricter reductions in the number of foreign workers due to demands from ‘newspapers and parliaments’, according to Oltmer.¹⁷⁴

The conservative-led *Reich* Ministry of Labour suggested a compromise: A secret increase in foreign workers could satisfy the agricultural sector while preserving the government’s image of a heavy-handed approach against immigrants. This position was adopted by Schiele in 1927.¹⁷⁵ Meanwhile, it was hoped that a steady decrease in the number of working permits issued would force the agricultural sector to ‘cure’ its structural dependence on foreigners.¹⁷⁶ In line with this, conservative and right-wing politicians argued in favour of moderate overall reductions or even an increase of working permits. But social democrats in Prussia demanded even more radical restrictions, even if they would lead to economic problems, as this could be beneficial to economic, cultural and population policy goals.¹⁷⁷ In this context, the Prussian government first brought up an official separation of immigrants of German and foreign descent. In line with the complaints raised by Schiele, the social democratic led Prussian Ministry of the Interior complained that the *Reich* Employment Agency had been too generous in their policies towards Polish workers who were exempted from the work permit requirements too often. Work permits for Polish agricultural workers had mostly been issued on a seasonal rotation scheme, whereas exemptions were *de facto* indistinguishable from permanent residency. These complaints were rejected from the conservative-centrist *Reich* government which

¹⁷³ Schreiben des Reichsminister des Innern, Martin Schiele, an den Deutsche Landwirtschaftsrat, Reichslandbund und Reichsverband der deutschen land- und forstwirtschaftlichen Arbeitgeberverbände, 28 August 1925, BAArch R 3901/776. See also Schönwälder, 'Assigning the State Its Rightful Place'.

¹⁷⁴ Oltmer, *Migration Und Politik*, pp. 370-371.

¹⁷⁵ Oltmer, *Migration Und Politik*, p. 380.

¹⁷⁶ Oltmer, *Migration Und Politik*, pp. 365-424.

¹⁷⁷ Oltmer, *Migration Und Politik*, p. 383.

argued that they were following economic need. But in 1928, the conservative and centrist *Reich* government relented under right-wing and social democratic pressure and allowed Prussia to begin with targeted recruitments of ethnic German foreigners to replace those from Slavic countries already in the country – a clear shift away from economic of labour market arguments towards racialised controls on immigration.¹⁷⁸

When the SPD returned to government in 1928, including Severing, now *Reich* Minister of the Interior, these policies of permit reductions and recruiting ethnic-German foreigners only intensified. They now included negotiations for secret recruitment treaties with various countries of South-Eastern Europe which allowed the government to satisfy the needs of employers while also responding to racial anxieties over immigrants from Eastern Europe.¹⁷⁹ At the German borders to the East, potential ethnic-German migrants were separated from potential Slavic migrants and treated preferentially.¹⁸⁰ What had started with purported electoral concerns had, by the mid-1920s, developed into a fully racialised anti-immigration discourse among key SPD politicians, continuing the ethno-nationalist ideas introduced to mainstream politics by the influential pre-war right-wing societies and joining forces with restrictionists on the right.

4.6.2 *The Migration Liberal Order*

When the political situation had stabilised and Germany entered an economic boom in the mid-1920s a coalition of migration liberals, loosely made up of left-wing political media outlets, humanitarian organisations, liberal academics and politicians, economists, and diplomats, attempted to return and go beyond the general *laissez-*

¹⁷⁸ Oltmer, *Migration Und Politik*, pp. 386-389.

¹⁷⁹ Oltmer, *Migration Und Politik*, pp. 423, 479-480.

¹⁸⁰ Oltmer, *Migration Und Politik*, p. 480.

faire order of the late 19th century once again.¹⁸¹ However, this time, unlike during the immediate post-war years, migration liberals lacked the support of SPD leaders in *Reich* and state governments. Employers calling for increased immigration were joined by those that firmly believed in the liberal internationalist order and its liberalising effects on national politics which new institutions like the League of Nations, the International Chamber of Commerce, or the International Labour Organisation seemed to promise. The story of a 1927 memorandum from the desks of the German Foreign Office shows how a second discourse made its way through the ranks in one of Germany's most influential ministries. The paper on the importance of dropping migration restrictions concluded by stating that 'the promotion of the world economy requires that the free movement of goods goes hand in hand with the free movement of people.'¹⁸²

The statement was a response to a questionnaire sent out by the ICC as part of the preparations for a major international treaty that was meant to abolish the national migration restrictions erected during and after the war. By channelling negotiations through the League of Nations and by drawing on the assumed support within expert communities and the foreign offices of Europe's nation states, the League's experts hoped to be able to overcome the restrictionists. The League's International Conference on the Treatment of Foreigners, held in Paris in 1929, was supposed to be a decisive step in this direction.¹⁸³ Daniel Serruys, the representative of the League's Economic and Financial Organisation at the conference, worryingly stated at the outset of the conference that 'since the end of the war the world had

¹⁸¹ See also Fischer, *Vision of Europe*; Dungy, 'Economic Migration'; Dungy, *Order and Rivalry*.

¹⁸² Response to the Questionnaire of Subcommittee I on Alien and Establishment Law, copy attached to the Schreiben des deutschen Industrie- und Handelskammerversands an Georg Martius, Auswärtiges Amt, 24 February 1927, in PA AA RZ 403, R 54262, p. 6. The questionnaire had been sent to the Foreign Office by the German Group of the International Chamber of Commerce a month earlier (see Schreiben der deutschen Gruppe bei der Internationalen Handelskammer an Georg Martius, Auswärtiges Amt, 29 January 1927, in PA AA RZ 403, R 54262).

¹⁸³ Kauth, 'Fremdenrecht Und Völkerbund'; Dungy, 'Writing Multilateral Trade Rules'.

gone backwards and not forwards in the matter of the establishment of foreigners.¹⁸⁴ Representatives from countries like the Netherlands and Germany agreed that the fair and egalitarian treatment of migrants was not only a matter of economic prosperity but also a matter of fairness, Christian values, and world peace. Drawing on the liberal theories of the pre-war era, migration liberals feared that continued restrictions against free migration would heighten the risks of future violent conflicts as it undermined ideals of equal treatment and would abet distrust and suspicion between former belligerents, allies, and new states.¹⁸⁵

Verbatim and similar statements can be found throughout the thousands of pages of documents collected at the Political Archive of the Foreign Office archives in Berlin.¹⁸⁶ The files at the Political Archives relate to the work of Georg Martius, a high-ranking German diplomat and Germany's chief delegate at the conference of 1929. Martius took the lead in negotiating an inner-German position between federal and state ministries as early as 1924 when the League of Nations first started exploring the possibility of a collective treaty on alien and migration regulations. The Foreign Office was particularly interested in overriding treaty provisions concluded with Austria, Switzerland, and the Netherlands from 1925 onwards. To much dismay among liberals in the Foreign Office, these had still included provisions on the employment of foreigners restricting the access of immigrants to the domestic labour market.¹⁸⁷ That the treaty suggested by the League of Nations would have

¹⁸⁴ Statement by Daniel Serruys, representative of the EFO, during the third plenary meeting of the International Conference on the Treatment of Foreigners, 6 November 1929, in League of Nations: International Conference on the Treatment of Foreigners. Proceedings. First Session. Paris, November 5th–December 5th, 1929 (Series of League of Nations Publications, II. Economic and Financial 1930. II. 5.), UNOG: C. 97. M. 23. 1930. II., p.41.

¹⁸⁵ League of Nations: International Conference on the Treatment of Foreigners. Proceedings. First Session. Paris, November 5th–December 5th, 1929 (Series of League of Nations Publications, II. Economic and Financial 1930. II. 5.), UNOG: C. 97. M. 23. 1930. II. See also Kauth, 'Fremdenrecht Und Völkerbund'.

¹⁸⁶ See documents in PA AA RZ 403, R 54262-54280.

¹⁸⁷ Oltmer, *Migration Und Politik*, pp. 427-433.

undermined these restrictions did not go unnoticed. The strongest resistance to liberalisations came from Bavaria which was concerned about the question of admission of foreigners. Even though the League of Nations, in anticipation of objections from migration restrictionists, had already excluded the key issue of admission from its draft convention, Bavaria – correctly – anticipated that the treaty could act as a floodgate to further liberalisations.¹⁸⁸ It was feared that more liberal German states could force more restrictionist states to tolerate immigrants on their territory: ‘A regulation that would turn a residence permit, issued at some place [in Germany] at some point in time, into an “admission” with the consequence that the foreigner would have to be treated like a citizen in regard to choice of residence and establishment, could not be accepted.’¹⁸⁹ Indeed more liberal states were in clear support of the draft and argued against the statement from Bavaria: Adam Remmele, Baden’s social democratic Minister of the Interior, stated: ‘as the large country in the middle of Europe, [Germany] acts as the natural link between the European states not only regarding the West-East- but also the North-South-traffic. It is thus interested in an explicitly latitudinarian answer to the question of the treatment of foreigners.’¹⁹⁰

At a meeting shortly after receiving the letter from Bavaria, Martius opined that Germany should even risk further pushing for provisions that would abolish visas, allow for free entry for temporary stay in all treaty countries, and limit the sovereign powers to expel and deport ‘undesirable’ immigrants. Otherwise, the phrasing of the draft, including the term ‘admission’, would have been ‘almost

¹⁸⁸ See League of Nations: International Conference on the Treatment of Foreigners. Preparatory Documents. Geneva, November 5th, 1929 (Series of League of Nations Publications, II. Economic and Financial 1929. II. 5.), UNOG: C. 36. M. 21. 1929. II., p.16.

¹⁸⁹ Schreiben des Bayerischen Staatsministeriums für Auswärtige Angelegenheiten an das Auswärtige Amt zum Vertrag über die Behandlung der Ausländer, 7 August 1929, in GLAK 234 7020, p. 5. Copy also found in PA AA RZ 403, R 54265.

¹⁹⁰ Schreiben des Badischen Innenministers, Adam Remmele, an das Badische Staatsministerium, 9 August 1929, in GLAK 234 7020, p. 1.

completely without substance as it would only apply to already admitted foreigners but would not concern the question of admission.¹⁹¹ Contrary to the expectations raised by the Bavarian letter, several *Reich* ministers agreed with Martius that the current draft was not liberal enough and joined him in repudiating the restrictionists' arguments. An interesting position in this discussion is taken up by the representatives from the *Prussian* and *Reich* Ministry of the Interior who argued that a more liberal position would be advantageous for concurrent trade negotiations with Poland.¹⁹² This position was later clarified in a letter from Severing who explained the reasons behind supporting a liberal position despite little hopes for success: The current draft, which did not include any explicit language that would force states to admit citizens of other signatories to their territory or protect their settlement status, would do nothing to protect Germans abroad. Taking up a liberal position at a public conference would help Germans abroad and specifically support Germany's position in negotiations with Poland in which the status of the German minority on Polish territory had been a point of contention.¹⁹³ Were Germany to follow Bavaria's position in these multilateral negotiations, it would be impossible to later insist on more rights for Germans in Poland, such as protections from expulsions, during bilateral negotiations.¹⁹⁴

In a further response, Martius emphasised the advantages of strongly supporting a more liberal regulation on the admission of foreigners, dropping even

¹⁹¹ Protokoll des Treffens im Auswärtigen Amt am 23 August 1929 bezüglich der Vorbereitung für die diplomatische Konferenz zur Verabschiedung eines Abkommens zum Fremdenrecht (...) 23 August 1929, in PA AA RZ 403, R 54266, p. 10.

¹⁹² Protokoll des Treffens im Auswärtigen Amt am 23 August 1929 bezüglich der Vorbereitung für die diplomatische Konferenz zur Verabschiedung eines Abkommens zum Fremdenrecht (...) 23 August 1929, in PA AA RZ 403, R 54266, pp. 2-3.

¹⁹³ Radomska, 'Political Origins of the Social Protection'.

¹⁹⁴ Schreiben des Reichsminister des Innern, Carl Severing, an das Auwärtige Amt zum Entwurf für ein internationales Abkommen über die Behandlung der Ausländer, 22 October 1929, in PA AA RZ 403, R 54266.

any differentiation between contracted workers and other potential migrants,¹⁹⁵ regardless of its prospects at the conference and other negotiations: ‘it could have positive effects for Germany if she would express a liberal position in this regard while asking like-minded states to conclude a special accord to regulate these questions [...]. The conditions have never been better for such a push.’¹⁹⁶

In the end, the push was unsuccessful. The treaty failed to get enough support at the conference in 1929. None of the liberal regulations gained a majority. This did not, however, discourage Martius. Over the coming years, the files continue to document his efforts to conclude a European freedom of movement treaty among Germany, Belgium, the Netherlands, France, Italy, Switzerland, and the United Kingdom.¹⁹⁷ Negotiations came to a halt in 1932 when first Italy, which had been suspected of sabotaging the negotiations from the beginning,¹⁹⁸ and later the United Kingdom dropped out, purportedly due to the Great Depression. Throughout the negotiations before, during, and after the conference of 1929, Martius’s liberal stance on migration only increased and he continued to argue in support of far-reaching deregulation despite a sharp downturn of the world economy.¹⁹⁹ In the years following the conference, Martius, on behalf of the Foreign Office, had attempted to gain further support for these policies, arguing it was necessary to limit protective labour market policies and abolish restrictions on foreigners as soon as possible. Moreover, he suggested re-instating the pre-war open border regime and sent draft articles to

¹⁹⁵ Protokoll des Treffens im Auswärtigen Amt am 23 August 1929 bezüglich der Vorbereitung für die diplomatische Konferenz zur Verabschiedung eines Abkommens zum Fremdenrecht (...) 23 August 1929, in PA AA RZ 403, R 54265, pp. 3-4.

¹⁹⁶ Protokoll des Treffens im Auswärtigen Amt am 23 August 1929 bezüglich der Vorbereitung für die diplomatische Konferenz zur Verabschiedung eines Abkommens zum Fremdenrecht (...) 23 August 1929, in PA AA RZ 403, R 54266, p. 12.

¹⁹⁷ Often in the spirit of early plans to create a “European Union”, see Fischer, *Vision of Europe*.

¹⁹⁸ Dugy, 'Writing Multilateral Trade Rules', p. 70; Nederbragt, *Herinneringen*, p. 90.

¹⁹⁹ See, for example, the Finaler Entwurf eines Schreibens von Georg Martius im Auftrag des Auswärtigen Amts an die deutschen Botschaften in Rom und Den Haag, 29 April 1932, in PA AA RZ 403, R 54280, p. 4.

the League of Nations.²⁰⁰ While other ministries lost interest in migration liberalisations once the Great Depression took effect in Germany, the Foreign Office as a whole kept insisting on further cooperation.²⁰¹ These attempts were directly opposed to simultaneous efforts by social democratic and right-wing nationalist ministers in *Reich* and state governments whose reductions in the numbers of foreign workers were duly celebrated in the left-wing press: According to the *Vorwärts* in 1930/1931, 'it was only due to the SPD and the labour unions that the number of foreign workers had been reduced since the late 1920s.' In 1932, a social democratic newspaper in Prussia titled 'No more Polacks in the agricultural sector'.²⁰²

²⁰⁰ See, e.g., documents in BArch R 3101/13865.

²⁰¹ See also Fischer, *Vision of Europe*.

²⁰² Both cited in Oltmer, *Migration Und Politik*, pp. 397-398. For the only complete empirical analysis, see Volker Steinbeck, 'Die Haltung Der Deutschen Arbeiterbewegung Zur Deutschen Auslaenderbeschäftigung in Den Jahren Der Weimarer Republic (1919-1932)' (PhD University of Rostock, 1985).

4.7 Explaining the Origins of Modern Migration Control

So assessed, the varied history of German interwar migration politics maps well onto the concepts of racial and political orders but the historical record does not fit either Freeman's economic-employer nor Lucassen's labour competition hypotheses. To be sure, economic cycles, employer interests, and the labour movement played roles, but the main concern of restrictionist interwar actors appears to have been with the ethnic composition of migrants. Interwar German migration restrictionists adapted anti-Slavic and antisemitic concepts from a long history of ideas of Germanic racial superiority, in particular from the increasingly powerful ethno-nationalistic pan-German societies founded around the turn of the century. These concepts bounded together unlikely members of a restrictionist coalition.

Leaders of the social democratic party, strictly opposed to racial restrictionism in the pre-war and early post-war years, joined forces with centrists and right-wing politicians and introduced repressive measures against immigrants in the mid- to late 1920s to gain electoral support and preserve governing power, even though they otherwise remained steadfast in their opposition to right-wing attacks on the democratic state and German society. Over the course of the 1920s, economic motivations mattered less and less and racial hierarchies based on an exclusionary notion of the German nation moved to the centre. As can be seen from the early 1920s onwards, social democratic politicians abandoned their principled resistance to restrictionist policies mainly to satisfy a not fully specified 'public opinion' in Prussia and, in the late 1920s, in the *Reich*. It was this electoral logic that caused the ultimate political switch from a race-egalitarian liberal position on migration ('Eastern European Jews are human and Europeans' who need help) to a racially-exclusionary restrictionist position on migration (concentration camps and recruitment of ethnic German workers to replace Slavic immigrants). Even if some SPD leaders had only hesitantly supported antisemitic policies as a necessary evil in the early 1920s, later,

as can be seen from the secret recruitment of foreign workers in response to employers' demands for labour and the special recruitment of ethnic German foreigners (or 'foreigners of foreign descent'), the concern of the SPD leadership in pushing for reductions in working permits was not with unemployment or the welfare state but with the ethnic composition of workers. Migration restrictionism, and thus '[shaping] people's statuses, resources, and opportunities by their place in "racial" categories',²⁰³ was seen by the SPD leadership as a way to gain and retain governing power, supporting the same policies, and sometimes even going further than, proposals from nationalists such as Schiele or the Bavarian internment camp programme. Severing's support for a liberal position at the International Conference on the Treatment of Foreigners shows this marginal position. Despite being one of the most prominent supporters of ethnic and racially exclusionary migration policies in the mid- to late 1920s within SPD, he was ready to drop this position behind closed doors if strategically advantageous for other high-profile negotiations.

On the other hand, migration liberals align with the American 'egalitarian transformative' order. As King and Smith argue: 'This order had its governmental institutionalization in legal guarantees of equal rights that were sometimes implemented in judicial rulings and legislative statutes, often under the pressure of religious groups, black and white.'²⁰⁴ In the case presented here, social democrats in the immediate post-war years and liberals in the Foreign Office adapted legal, economic and philosophical ideas from the pre-war *laissez-faire* era and linked them to internationalist dreams of a free, interconnected, and egalitarian world order. While these ideas were able to draw in considerable elite and international support in the mid-1920s, it was only the Foreign Office that held on to them and attempted to coordinate a common position once the Great Depression hit the world economy.

²⁰³ King and Smith, 'Racial Orders', p. 78.

²⁰⁴ King and Smith, 'Racial Orders', p. 77.

These attempts went directly against the efforts of restrictionists to limit immigration and select immigrants based on ethnic compatibility. While the initial push of the liberal order took place concurrently to demands from employers for increased worker immigration, the Foreign Office activities continued far into the Great Depression.

A crucial difference between the two orders is the way in which they saw themselves as part of a wider coalition of elites and the general public. Whereas the restrictionists engaged with (actual or imagined) public concerns, debates and negotiations among liberal groups got barely noticed in the wider public sphere. The lack of lasting coalition building and communication with the public point at the second part of the hypothesised mechanism: The use of a critical ideational development and its coordinative and communicative discourses.²⁰⁵ The migration restrictionist order successfully coordinated and communicated their policies through discourses that painted sustained immigration of ethnically different groups as a threat to the German nation and German workers. This was electorally advantageous and even convinced social democrats. On the other hand, the migration liberal order only engaged in these discourses in the early interwar years. Once the SPD switched their dominant allegiance, there was no broad engagement with pro-migration views in the media or attempts to build broad coalitions outside the Foreign Office. Martius and his fellow diplomats at International Conference on the Treatment of Foreigners were highly skilled at building coalitions across international borders among actors sharing the same internationalist outlook. But they did not engage in any broad coalition building. Nederbragt's resigned comments criticising the 'obligatory hatred against the foreigner'²⁰⁶ among the rival racial-political order were not just a reflection of the now wide-spread restrictionist discourse and the disadvantageous economic situation but also of the failure to attempt their own critical ideational development.

²⁰⁵ King and Smith, 'Critical Ideational Development'.

²⁰⁶ Nederbragt, *Herinneringen*, p. 90.

The idea of a freedom of movement order might have been ‘compelling on its own terms’, but for it to emerge as part of the dominant order, it would have required the ‘opportune political circumstances to favor it’. In the words of Lieberman, it did not ‘[find] persuasive expression among actors whose *institutional position gives them both the motive and the opportunity to translate it into policy.*’²⁰⁷

The advantage of reinterpreting the clashes over migration politics as the more abstract struggle between two opposing political orders is the causal element. The political order approach, as first suggested by Lieberman, was a response to a theoretical debate over the role of ideas and institutions in causing political change. If politics is a constant struggle of multiple political orders over influence and governing power, political outcomes are shaped according to the preferences of the prevailing order. Orders are bound together by sets of ideas which can be applied to different contexts, such as Vigneswaran’s analysis of the UK. Even if the ultimate motivations behind joining an order can vary from actor to actor, there remains an underlying commitment to an ideology. Orders will attempt to manifest these ideas in institutions and link different level of politics (regional, national, international) to reduce frictions within a political order. These institutions, in turn, provide them with advantages in future political struggles by providing a mainstream interpretation of a political issue and allocating power to members of the dominant order. Political change occurs if there is a shift in the relative balance of power due to either external or internal frictions. This is what happened in the interwar period in Germany: World War I, as a critical juncture, and the large migrations in the immediate years following it provided a window of opportunity for restrictionists to manifest their ideas in restrictive anti-migration institutions – an institutional field much more marked by friction between the *laissez-faire* and ethno-nationalism of the *Kaiserreich* than other state institutions, such as citizenship or the distribution of

²⁰⁷ Lieberman, 'Ideas, Institutions, and Political Order', p. 709. Emphasis by JTK.

state power – and employ a narrative that would make it difficult to paint immigration as a positive force for peace and prosperity as attempted by the liberals. Migration liberals, on the other hand, attempted to use the logics of the new international organisations to their advantage; which – if the ‘liberal push’ had been successful – would have introduced friction, potentially leading to national political change down the road. But the failure paved the path for the entrenchment of the restrictionist order’s racialised migration controls.

The mechanism of opposing orders constitutes the origins of modern migration control: The years following World War I constituted a critical juncture in which political actors with the political opportunity, standing at the heart of the German state, decided that exclusionary migration control was opportune, either for gaining and maintaining political power or for establishing their views of a racially homogenous nation. But political orders also provide an explanation for the continuity of transformative orders due to the continued impact of ideas through institutions and the constricting power of institutions over ideas. Orders do not disappear when a single power shift occurs. They continue to adapt ideas and use contextual factors in order to emerge again at a later stage. After World War II, migration liberals channelled their ideas into new international projects such as the European Union.²⁰⁸ The vision of race egalitarianism, inclusion, and migration liberalist, which had already been present in the 1929 negotiations, was carried through the war and Nazi tyranny, often by social democrats and liberals in exile. After 1945, these visions returned as a hopeful future following the catastrophes of World War II and the Shoah. But for them to come to fruition and be sustained, it required new communicative and coordinative discourses by supporting coalitions of political actors.

²⁰⁸ For this perspective, see Fischer, *Vision of Europe*.

5 Assessing Generative Mechanisms of the Emerging Migration State: Critical Realism and Explicit Bayesian Analysis¹

5.1 Introduction

Science meta-theories form the bases of all scientific endeavours. They consist of ontological and epistemological assumptions and recommendations for scientific practice, thus determining the objects and goals of enquiry and clarifying how to undertake and what should be considered *good* science. Critical Realism (CR) is such a meta-theory, or philosophy of science, first developed by Roy Bhaskar in the 1970s and 1980s and later advanced by the likes of Andrew Sayer and Margaret Archer.² While Bhaskar initially set out to develop a theory of the world that would explain why science was possible, CR found an especially receptive audience in the social sciences where, over the course of the 1990s, it established itself as an alternative to both positivist empiricism and postmodern idealism. In opposition to idealism, CR, like other realisms, posits that there exists a reality which operates objectively and independently of human consciousness. However, unlike the realism of mainstream ‘positivism’,³ which is based on observing regular patterns of empirical events and deriving covering laws which explain those regularities, CR holds reality to consist of three layers: a layer of observed *empirical* events, a layer of all events that *actually*

¹ My sincerest thanks to the members of the Qualitative Bayesian Reasoning Working Group and to participants of a panel at the 2023 American Political Science Association Annual Meeting, Los Angeles, CA, for their invaluable input.

² Bhaskar, *Realist Theory of Science*; Bhaskar, *Possibility of Naturalism*; Andrew R Sayer, *Method in Social Science: A Realist Approach*, 2nd ed. (London: Routledge, 1992 [1984]); Archer, *Morphogenetic Approach*.

³ The term ‘positivism’, here, is not used to denote the pure positivism that was especially pronounced in the middle of the 20th century, but rather positivism as a general tradition in the social sciences characterised by an empiricist ontology, positivist epistemology, and scientific naturalism. See Steinmetz, ‘Odious Comparisons’, pp. 373-381.

happen, and a layer of unobservable generative mechanisms and social structures which cause observable events – the *real*. For critical realists, ‘the real task of social science [...], is to discover, describe and inventory the relevant mechanisms’.⁴ These mechanisms, when activated and interacting with each other, generate the observable events that make up the social world. Critical realist social science is thus predominantly an explanatory endeavour.

With this focus on explanations of complex events, CR is of particular importance to those social scientists focusing on historical events and processes and their impact on the structures of society. Historically oriented social scientists have long occupied an uncomfortable place wedged in between the, conversely, nomothetic and explanatory social and the ideographic and descriptive historical sciences. CR provides the necessary ontological foundation to break out of this tension. In the words of George Steinmetz, ‘critical realism allows us to safely steer between the Scylla of constricting definitions of science and the Charybdis of solipsistic relativism.’⁵

All that being said, the literature on CR, so far, overwhelmingly focuses on the philosophical nature of generative mechanisms and thus with what *allows for* the safe steering. The literature on *how to* safely steer is far less developed. While influential textbooks and articles have successfully translated Bhaskar’s writings into general instructions and templates for critical realist research,⁶ these instructions provide only little guidance on how to use methods while ensuring the reliability of results. In a world in which the interaction of mechanisms produce unique events, relying on statistical methods and their established reliability measures for causal

⁴ Gorski, 'Social Mechanisms', p. 182.

⁵ Steinmetz, 'Critical Realism and Historical Sociology', p. 184.

⁶ Danermark et al., *Explaining Society*; Hubert Buch-Hansen and Peter Nielsen, *Critical Realism: Basics and Beyond* (London: Red Globe Press, 2020).

analysis is not possible. How can scholars judge the relative explanatory power of one proposed generative mechanism over another?

Even though the CR literature unanimously affirms the theoretical possibility of such judgement rationality, that is, that researchers can rationally choose between rival theories,⁷ and the importance of assessing theorised mechanisms against competitors,⁸ there currently exist no adequate tools for determining the relative reliability of research outcomes. Finding such tools is, as K Robert Isaksen powerfully argues, crucial for ‘the ontological categories of critical realist philosophy by themselves are not sufficient to claim greater knowledge of any regional domain.’⁹ For research that operates within a framework that puts unobservable generative mechanisms at its centre, a tool that systematically compares the explanatory power of such mechanisms is required. In this essay, I propose such a tool: Explicit Bayesian Analysis (EBA).

EBA is the quantifiable extension of Bayesian ‘probability as extended logic’,¹⁰ as developed by Tasha Fairfield and Andrew Charman.¹¹ It provides researchers with the tools ‘to represent the rational degree of belief we should hold in propositions given the information we possess, independently of subjective opinions, predilections, or aspirations,’¹² or, in other words, for inference to the best explanation relative to

⁷ See, e.g., Buch-Hansen and Nielsen, *Basics and Beyond*, p. 40; Porpora, *Reconstructing Sociology*, p. 73.

⁸ See, e.g., Danermark et al., *Explaining Society*, pp. 73, 110; Donald Wynn and Clay Williams, 'Principles for Conducting Critical Realist Case Study Research in Information Systems', *MIS Quarterly* 36, no. 3 (2012): pp. 787-810 here p. 796; Tsang, 'Case Studies and Generalization', p. 181.

⁹ Isaksen, 'Reclaiming Rational Theory Choice', p. 248.

¹⁰ Tasha Fairfield and Andrew E. Charman, 'Explicit Bayesian Analysis for Process Tracing: Guidelines, Opportunities, and Caveats', *Political Analysis* 25, no. 3 (2017): pp. 363-380 here p. 364.

¹¹ Fairfield and Charman, 'Explicit Bayesian Analysis'; Tasha Fairfield and Andrew E. Charman, 'A Dialogue with the Data: The Bayesian Foundations of Iterative Research in Qualitative Social Science', *Perspectives on Politics* 17, no. 1 (2019): pp. 154-167; Andrew Bennett, Andrew E. Charman, and Tasha Fairfield, 'Understanding Bayesianism: Fundamentals for Process Tracers', *Political Analysis* 30, no. 2 (2022): pp. 298-305; Fairfield and Charman, *Social Inquiry and Bayesian Inference*.

¹² Fairfield and Charman, *Social Inquiry and Bayesian Inference*, p. 13.

rival accounts. Fairfield and Charman first developed their approach for process tracing but quickly extended their logical Bayesianism to allow for the combination of all types of empirical data and research methods under the same roof of Bayesian inference with the goal of assessing ‘causal hypotheses for explaining known outcomes of given cases.’¹³ While the primary methodological contribution of this essay is linking EBA to CR, Bayesian inference, be it in its explicit quantified form or as logical Bayesianism, it has the potential of improving all qualitative explanatory research and especially research using historical evidence.

In what follows I first discuss the basic principles of critical realist research and why CR matters. I then highlight the issues that come with the current lack of an assessment strategy before turning to Bayesianism and its potential to improve qualitative explanatory research and, in particular, research following CR. I subsequently introduce Bayesian inference and EBA as the ideal tools for critical realist judgement rationality as defined by Isaksen.¹⁴

To demonstrate the effectiveness of EBA in critical realist research, I apply this novel method to my own empirical research on the historical emergence of the ‘migration state’¹⁵ between the late 19th and mid-20th centuries. The linked literatures on state development, transformation, and migration control are as complex and multi-faceted as the mechanisms that have been proposed for the emergence of the migration state. Aristide Zolberg, in a seminal essay on the ‘global walls against migration’ hypothesised a multitude of potential mechanisms and discussed their various interactions between the 1880s and 1920s, ranging from demographic changes, new transportation technology, industrialisation, political nationalism, and

¹³ Fairfield and Charman, *Social Inquiry and Bayesian Inference*, p. 10. See also Fairfield and Charman, ‘Explicit Bayesian Analysis’.

¹⁴ Isaksen, ‘Reclaiming Rational Theory Choice’.

¹⁵ Hollifield, ‘Migration State’.

‘scientific racism’.¹⁶ Due to the long-lasting effects of exclusionary migration politics in times of sustained large-scale migrations, understanding the actual rather than contingent causes of their historical emergence is crucial. Bayesian inference provides a tool for researchers to assess the relative explanatory powers of these proposed mechanisms.

For this, I first assess the relative power of an employer capture,¹⁷ labour integration, and my own racial-political order hypotheses in explaining Weimar Germany’s turn towards exclusionary modern migration control in the interwar period. My EBA shows that the racial-political order mechanism holds more explanatory power relative to the other two candidate explanations. I then turn to analysing two proposed explanations for the persistence of vagrancy-type laws to control internal mobility in the UK, US, and Germany: First, an economic elite hypothesis based on research by William Chambliss and Jan Ziekow and, second, a cultural hypothesis as proposed by Jeffrey Adler.¹⁸ Here, by analysing four pieces of empirical evidence, I show that Bayesian inference can assist critical realist research not just by assessing the relative explanatory power of theorised mechanisms but also by highlighting phenomena in need of multiple explanatory mechanisms. In my conclusion, I show that EBA can also help critical realists to tackle the challenge of theory abstraction by formulating mechanisms as hypotheses that can be readily applied to new contexts.

¹⁶ Zolberg, 'Global Movements, Global Walls'. See also Zolberg, 'Great Wall against China'.

¹⁷ Freeman, 'Modes of Immigration Politics'; Lucassen, 'Origins of Migration Control'.

¹⁸ Chambliss, 'Sociological Analysis of Vagrancy'; Ziekow, *Freizügigkeit Und Aufenthalt*; Adler, 'Historical Analysis of Vagrancy'.

5.2 Divisions in Social Science Research

The social sciences are marked by several foundational divisions which have sparked broad and intense debates over the past decades: qualitative vs quantitative methods, positivism vs interpretivism or postmodern idealism, ideographic vs nomothetic research, IR realism vs liberalism vs constructivism and so on. These debates are more than just niche philosophical disagreements. They come with sets of different understandings about the nature and goals of various social science disciplines and thus heavily influence which research questions a scholar attempts to answer and how. Answering the question of ‘what explains the introduction of migration internment camps on the US-Mexican border during the Trump administration’ requires a fundamentally different engagement with empirical material to answering a question such as ‘What is the effect of labour market competition on anti-migration sentiments?’ The two questions also indicate the researchers’ differing goals in terms of which types of knowledge they try to acquire.¹⁹ As Gary Goertz and James Mahoney emphasise in their work on the different ‘cultures’ of qualitative and quantitative research: ‘[These] differences are systematically and coherently related to one another such that it is meaningful to speak of distinct quantitative and qualitative research paradigms.’²⁰

Goertz and Mahoney introduced their concept of research cultures in response to efforts to unify the various divisions discussed above under the banner of positivism in the 1990s. Gary King, Robert Keohane, and Sidney Verba’s (widely known as KKV) attempt to do so in 1994 led to one of the most influential methodological programmes in the social sciences to date. In order to design ‘research

¹⁹ Gerring, ‘Single-Outcome Studies’.

²⁰ Gary Goertz and James Mahoney, *A Tale of Two Cultures: Qualitative and Quantitative Research in the Social Sciences* (Princeton, NJ; Oxford: Princeton University Press, 2012), p. 1.

that will produce valid inferences about social and political life',²¹ KKV argued that quantitative and qualitative research followed the same logic of inference and that any differences between the two were merely ones of style rather than of methodology or the substance of acquired knowledge.²² At its core, KKV's advice to qualitative researchers is to become more like quantitative researchers by designing their research in ways that makes it possible to 'estimate the effect of the independent variable(s) of interest'²³ on the outcome that researchers try to explain. But, as critics argue, despite insisting that their approach would improve the role of qualitative research, applying the frequentist logic of causal inference, ultimately, leads to devaluing qualitative methods as a 'last resort when statistical analysis is not possible'.²⁴ This is because the logic of frequentism cannot be applied to nonstochastic data produced by qualitative research; and any attempts to adopt recommendations of research design from quantitative research must ultimately hit the wall of frequentist probability theory, best summed up by the mathematician Richard von Mises: '[I]n order apply the [frequentist] theory of probability we must have a practically unlimited sequence of uniform observations.'²⁵ The frequentist tenets upon which most social science quantitative methods rest mean that 'there simply is no principled rationalization for small-N qualitative research'.²⁶ But moreover, using frequentist logic in qualitative research may not even be desirable due to researchers asking different types of questions. Scholars use qualitative research not just because they do not have access to stochastic data but because inference to population-level

²¹ Gary King, Robert O. Keohane, and Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research* (Princeton, NJ: Princeton University Press, 1994), p. 3.

²² King, Keohane, and Verba, *Designing Social Inquiry*, p. 4.

²³ James Mahoney, 'After Kkv: The New Methodology of Qualitative Research', *World Pol* 62, no. 1 (2010): pp. 120-147 here p. 124.

²⁴ Goertz and Mahoney, *Tale of Two Cultures*, p. 3. See also Steinmetz, 'Odious Comparisons'.

²⁵ Richard Von Mises, *Probability, Statistics and Truth*, 2nd rev English / prepared by Hilda Geiringer. ed. (London: Allen and Unwin, 1957), p. 11; Bruce Western and Simon Jackman, 'Bayesian Inference for Comparative Research', *American Political Science Review* 88, no. 2 (1994): pp. 412-423.

²⁶ Fairfield and Charman, *Social Inquiry and Bayesian Inference*, p. 8.

statistics might not be of interest;²⁷ such as during the search for generative mechanisms.

The way that qualitative and quantitative methods are applied thus depends on a researcher's broader convictions about the nature of reality and the role assigned to human actors in society. Whereas for positivists, there exists an empirical reality, independent of the human mind and generally ordered and relatively constant across time and space which can be observed and manipulated, idealists believe in a world that is socially constructed and holds subjective meanings that cannot be objectively extracted. Being transparent about one's broad philosophical perspective on the world is crucial for social scientists as it determines the standards that are applied to one's research. In the words of Hubert Buch-Hansen and Peter Nielsen, 'all research questions, social scientific theories, methods and empirical analyses are loaded with philosophical assumptions [...] Practitioners in the social sciences can thus use the philosophy of science to develop coherent research designs.'²⁸

In addition to today's two dominant streams of positivism and postmodern idealism, CR proposes a third philosophical perspective which sits in between the other two when it comes to its view of reality (ontology), its epistemology, and its research goals. This *via media* makes CR particularly promising for historically oriented social scientists who want to 'liberate' themselves from the limiting constraints of positivism without giving up on empirical reality in favour of the social constructivism of postmodern idealism.²⁹ Due to CR's primary goal of cataloguing the various theoretical mechanisms that 'generate' social reality, explanatory single outcome or small-N comparative case studies are two of the default research designs for critical realists.³⁰

²⁷ Western and Jackman, 'Bayesian Inference', p. 413.

²⁸ Buch-Hansen and Nielsen, *Basics and Beyond*, p. 11.

²⁹ Steinmetz, 'Critical Realism and Historical Sociology'.

³⁰ Steinmetz, 'Odious Comparisons'.

5.2.1 *Critical Realism and Positivism*

Positivism and CR share a realist understanding of reality, in contrast to pure idealism. But unlike the empirical realism of positivism which ‘consists of that which can be observed or in other ways experienced through the human senses’,³¹ CR instead proposes a stratified and emergent depth realist reality, the experience of which is mediated through context dependent concepts. For Roy Bhaskar, the philosophical founder of CR, reality consists of three domains: the real, the actual, and the empirical.³² The empirical is everything that is being experienced, that is, everything which is being observed directly, the actual is everything that happens, that is, all phenomena that actually occur regardless of whether they are being observed, and the real includes everything that exists, including unobservable entities.³³ The existence of unobservable entities is justified with the *causal criterion of reality* which claims that if the effects of something can be measured, it must really – and not just theoretically – exist.³⁴ The domain of the real is where generative mechanisms are situated; and for critical realists, generative mechanisms are what counts.

In the empirical realism of positivists, causation means the regular co-occurrence of events following the logic of Hume. Causation in terms of Humean constant conjunction of events (‘if A then B’) combined with Hempel’s covering laws (‘if A then always B’) necessitates, even if most modern positivists make probabilistic rather than absolute causal claims (‘if more of A then more likely B’), a relatively

³¹ Buch-Hansen and Nielsen, *Basics and Beyond*, p. 14.

³² Bhaskar, *Possibility of Naturalism*; Sayer, *Realism and Social Science*, pp. 11-12.

³³ James Mahoney, 'Review Essay: Beyond Correlational Analysis: Recent Innovations in Theory and Method', *Official Journal of the Eastern Sociological Society* 16, no. 3 (2001): pp. 575-593 here pp. 580-581; Steinmetz, 'Critical Realism and Historical Sociology', pp. 176-179.

³⁴ A clarification of this point can be found in Bhaskar, *Possibility of Naturalism*, pp. 58-59; Porpora, *Reconstructing Sociology*. At its basis, this claim is justified by the famous ‘miracle argument’ which states that for the success of science not to be miraculous, we must infer a realist ontology. See Alan Musgrave, 'The 'Miracle Argument' for Scientific Realism', *The Rutherford Journal* 2(2006).

ordered empirical reality.³⁵ This means that, within stated boundaries, the relationships between events are stable across space and time.³⁶ History, in this conception of reality, becomes just another country in which people do things not all too differently; at least, they behave according to the same basic sociological principles. Historical events can thus act as additional observations to establish patterned regularity.³⁷ If establishing the map and the laws of a patterned and regular social world is the goal of social science, statistical analysis of large-N samples becomes the preferred method of inference. Alternatively, in line with KKV's advice, small-N comparative studies or single case studies can be used to establish the nature of the patterned regularity ('how is A linked to B?') or, when following the same logic of inference as large-N statistical techniques, as an inferior replacement to large-N comparisons using Mill's Method of Difference and Agreement.³⁸

Bhaskar argues that this empiricist ontology mistakenly treats social reality as a closed and static system. Only in closed systems, like scientific experiments, is it possible to observe the kind of event regularity that is foundational to most quantitative methods in the social sciences. As George Steinmetz points out, even for the natural world, 'constant conjunctions of events' are 'extremely rare' and thus 'have to be produced artificially' in laboratories.³⁹ Natural scientists conduct

³⁵ Bhaskar, *Possibility of Naturalism*; Sayer, *Realism and Social Science*, pp. 13-17; Steinmetz, 'Critical Realism and Historical Sociology'; Philip S. Gorski, 'The Poverty of Deductivism: A Constructive Realist Model of Sociological Explanation', *Sociological Methodology* 34(2004): pp. 1-33.

³⁶ Steinmetz, 'Critical Realism and Historical Sociology', pp. 380-383; Buch-Hansen and Nielsen, *Basics and Beyond*, pp. 14, 16-17.

³⁷ Sewell, *Logics of History*, pp. 91-100. This is not to say that all positivists treat all of history, or all countries, as commensurable with the present or each other. Defining the boundaries of populations within stable patterns can be assumed is a crucial step in any research design. Moreover, fundamental transformations in the past may have altered the causal relationships between variables. The introduction of capitalism, for example, may have altered the basic calculation of rationality that people may follow. The Peace of Westphalia changed how states behave in international relations etc. But on the whole, the basic relationships between variables will have to be assumed as stable for the logic of constant conjuncture to apply.

³⁸ Steinmetz, 'Critical Realism and Historical Sociology', pp. 382-383.

³⁹ Steinmetz, 'Critical Realism and Historical Sociology', p. 176.

experiments in which certain aspects of reality can be isolated precisely because the outside world is unsuitable.⁴⁰ Furthermore, Bhaskar argues that what natural scientists observe is not event A, for example releasing a ball at great height, causing event B, the ball falling to the ground, but the empirical effects of an underlying mechanism, that is, gravity, which can only be observed through its effects. It is then up to theorists to reconstruct those mechanisms based on the empirical findings.

The so-called *epistemic fallacy* posits that ‘the world should not be conflated with our experience of it’ and thus that we should not restrict our investigation to what we can (currently) observe.⁴¹ This lines up with Bhaskar’s understanding of a stratified reality: There exist various unobservable generative mechanisms on the level of the real. Scientists isolate one of those mechanisms in an experiment and activate it on the level of the actual. This produces an observable outcome on the level of the empirical. Scientists, through theorising, then give an answer to the question of ‘what would a mechanism that produces these (new) empirical outcomes have to look like’.⁴² Over time, as more and more effects can be made visible, transitive knowledge about those mechanisms changes.⁴³ New discoveries lead to clarifications or even complete overhauls of older theories. This is why modern theories of gravity would be completely unrecognisable to a time-travelling Aristotle.

In this way, the social sciences are no different: There are indeed intransitive social mechanisms at work, generating the social world. And as knowledge about society changes, social scientists’ reconstructions of those mechanisms change as well. But whereas natural scientists can isolate the effects of individual mechanisms, social

⁴⁰ With the exception of astronomy which deals with the naturally closed system of the universe.

⁴¹ Sayer, *Realism and Social Science*, p. 11. For critical realists, ontology is more important than epistemology. For a CR argument for the ultimate impossibility of transitive, or ‘true’, knowledge, see Bob Carter and Caroline New, ‘Introduction: Realist Social Theory and Empirical Research’. In *Making Realism Work: Realist Social Theory and Empirical Research*, ed. Bob Carter and Caroline New (London: Routledge, 2004), pp. 1-20.

⁴² Bhaskar, *Possibility of Naturalism*; Gorski, ‘What Is Critical Realism?’.

⁴³ Sayer, *Realism and Social Science*, p. 2; Gorski, ‘What Is Critical Realism?’.

scientists cannot. The social world is an open system in which every event is overdetermined and influenced by a whole range of mechanisms which, moreover, engage with complex, self-reflective actors with individual agency who, overtime, have built social structures based on ‘their own conceptions of what they are doing in their activity’.⁴⁴ The conclusion is a contingent, constitutive, and conjunctural causality whose outcomes are context-dependent.⁴⁵

For critical realists, this means that the basic positivist assumption of regular patterns of co-occurring events cannot apply to the social world. The task for social scientists, consequently, is to instead uncover the various mechanisms that give rise to social phenomena.⁴⁶ This does not mean CR denies the existence of any regularities. Tony Lawson introduces the concept of a ‘demi-regularity’ which describes situations in which a mechanism ‘may come to dominate others and/or shine through’ in restricted regions of time-space, leading to ‘rough and ready generalities or partial generalities’, indicating the ‘occasional, but less than universal, actualization of a mechanism or tendency’.⁴⁷ Therefore, some mechanisms are more pervasive and widespread than others or exert long-term influence, such as class, race, or gender hierarchies. Once activated, and whenever not outweighed or conditioned by counter-acting mechanisms, mechanisms generate ‘observable phenomenal regularities’.⁴⁸ In this way, quantitative methods which can evince regularities are helpful for critical realist research as they can highlight the effects of

⁴⁴ Bhaskar, *Possibility of Naturalism*, p. 48; Steinmetz, 'Critical Realism and Historical Sociology', p. 181; Daniel Little, *New Directions in the Philosophy of Social Science* (London; New York, NY: Rowman & Littlefield International, 2016), pp. 2-3; Gorski, 'Social Mechanisms', p. 150; Gorski, 'What Is Critical Realism?', p. 666.

⁴⁵ Steinmetz, 'Critical Realism and Historical Sociology', p. 181.

⁴⁶ Gorski, 'Social Mechanisms', p. 182.

⁴⁷ Tony Lawson, *Economics and Reality* (London: Routledge, 1997), p. 204. See also Tony Lawson, 'Feminism, Realism, and Universalism', *Feminist Economics* 5, no. 2 (1999): pp. 25-59 here p. 71; Danermark et al., *Explaining Society*, pp. 166-167; Tsang, 'Case Studies and Generalization', p. 179; Buch-Hansen and Nielsen, *Basics and Beyond*.

⁴⁸ Gorski, 'Social Mechanisms', p. 182.

particularly important mechanisms.⁴⁹ But, for critical realists, these regularities are neither necessary nor sufficient to indicate causation. The absence of a particular outcome in a specific case does not invalidate the explanation for a different case as the generative mechanism may have been outweighed or counteracted (or not activated).⁵⁰ To uncover mechanisms in a world of contingent, constitutive, and conjunctural causation, the primary choice for explanatory research is thus intensive case-study research based on thick empirical description.⁵¹

5.2.2 *Generative Mechanisms*

Generative mechanisms are real but unobservable phenomena that ‘have the potential to contribute to causing empirical phenomena and events’.⁵² They consist of the emergent causal powers of related entities within a system.⁵³ Causal powers of mechanisms are only ever *potentials* or *tendencies* as their effects could be conditioned by other mechanisms.⁵⁴ Causal powers are emergent from the relationship between different entities which make up a system. This means that the potential to bring about empirical effects cannot be reduced to the individual elements but emerges from the combination of elements.

An example for a generative mechanism in this sense is Robert C Lieberman’s multiple political order model of political change. Lieberman rejects both purely ideational and purely institutional explanations for substantive political change, such as various civil rights policies in 1950s and 1960s America. On the one hand, he argues, institutional approaches fail to ‘account for the substantive content of civil

⁴⁹ Danermark et al., *Explaining Society*, pp. 161-167.

⁵⁰ Steinmetz, 'Critical Realism and Historical Sociology', p. 181; Danermark et al., *Explaining Society*, p. 200.

⁵¹ Steinmetz, 'Critical Realism and Historical Sociology'; Ivan Ermakoff, 'Causality and History: Modes of Causal Investigation in Historical Social Sciences', *Annual Review of Sociology* 45, no. 1 (2019): pp. 581-606.

⁵² Buch-Hansen and Nielsen, *Basics and Beyond*, p. 32.

⁵³ Gorski, 'Social Mechanisms'.

⁵⁴ Bhaskar, *Realist Theory of Science*, p. 14.

rights demands, or of the beliefs and understandings that led actors to connect these demands with a particular set of policy solutions.⁵⁵ Ideational approaches alone, on the other hand, do not account for ‘the incentives or opportunities for action, and not all holders of alternative political ideas act on them.’⁵⁶ Meanwhile, both sets of approaches share a ‘common emphasis on ordered, patterned regularity’,⁵⁷ a bias which makes it difficult for them to explain change through which ‘relationships among explanatory factors themselves change’⁵⁸ rather than just varying degrees of their outcomes. In other words, neither ideas nor institutions alone can explain when and how substantive, qualitative change takes place, such as the emergence of an American civil rights state with specific policies,⁵⁹ the changing use of vagrancy laws in various countries, or the emergence of modern migration control. Lieberman’s solution has strong synergies with CR: Instead of a single ordered reality, there are multiple orders exerting influence on reality at the same time: ‘[Any] political moment or episode or outcome is situated within a *variety* of ordered institutional and ideological patterns, each with its own origins and history and each with its own logic and pace.’⁶⁰ In other words, the precise outcome of any process of political change is influenced by multiple mechanisms. But this does not make it impossible to identify individual mechanisms through historical analysis. Lieberman identifies three related entities which, together, have the potential of producing policy outcomes if they are not counteracted by opposing orders: Substantive change may

⁵⁵ Lieberman, 'Ideas, Institutions, and Political Order', p. 697.

⁵⁶ Lieberman, 'Ideas, Institutions, and Political Order', p. 698.

⁵⁷ Lieberman, 'Ideas, Institutions, and Political Order', p. 701.

⁵⁸ Lieberman, 'Ideas, Institutions, and Political Order', p. 701.

⁵⁹ Desmond King and Robert C. Lieberman, 'The Civil Rights State: How the American State Develops Itself'. In *The Many Hands of the State: Theorizing Political Authority and Social Control*, ed. Kimberly J. Morgan and Ann Shola Orloff (Cambridge: Cambridge University Press, 2017), pp. 178-202; Lieberman, 'Ideas, Institutions, and Political Order'.

⁶⁰ Lieberman, 'Ideas, Institutions, and Political Order', p. 701.

take place when those *actors* adopt a *political idea* whose *institutional setting* provides motives and opportunities to translate the idea into policy.⁶¹

5.2.3 *Theoretical Generalisation*

In his research, Lieberman is committed to ‘the search for general patterns of behavior and interaction’⁶² as the goal of social science. This commitment as well as that of other influential pieces of (historical) social science, for example Theda Skocpol’s investigation of social revolutions,⁶³ is best captured by the critical realist aim of theoretical generalisation rather than the positivist empirical generalisation.⁶⁴ Despite the insistence on outcomes being ultimately unique products of various mechanisms, critical realists still hold that inference from known to unknown information and thus a degree of generalisation is at the core of any scientific endeavour.⁶⁵ But rather than drawing conclusions from the observed co-occurrence of events, it is the mechanism itself that is generalised. CR’s ultimate goal is to abstract from the empirical description of a process and reach the level of the real, that is, an understanding of the underlying structure of the social world. In this way, CR unifies the nomothetic and ideographic goals that are often said to divide social scientists and historians.⁶⁶ The resulting generalised mechanism can subsequently be used to illuminate and, hopefully explain, new empirical contexts, but only after a renewed case analysis. This leads to what William H Sewell Jr has called historical comparison which is used ‘not to establish causal laws that hold across a variety of

⁶¹ Lieberman, 'Ideas, Institutions, and Political Order', p. 709.

⁶² Lieberman, 'Ideas, Institutions, and Political Order', p. 700.

⁶³ Skocpol, *States and Social Revolutions*; Gorski, 'Poverty of Deductivism'.

⁶⁴ Tsang, 'Case Studies and Generalization'; Danermark et al., *Explaining Society*, pp. 76-78.

⁶⁵ Danermark et al., *Explaining Society*, p. 73.

⁶⁶ Victoria E. Bonnell, 'The Uses of Theory, Concepts and Comparison in Historical Sociology', *Comparative Studies in Society and History* 22, no. 2 (1980): pp. 156-173.

supposedly equivalent cases, but to find analogies that help [...] to better theorize and explain the historical developments in each case.’⁶⁷

In order to generalise mechanisms, critical realists must make inferential leaps from the particular to the abstract, rather than from the particular to the universal. This involves two modes of inference which are closely intertwined in practical research but follow separate logics:⁶⁸ First, *abstraction* by which a particular phenomenon is classified as an instance of a more abstract class of phenomena; for example, (re)classifying the struggle over migration policy making in interwar Germany as the clash of opposing racial-political orders. The key challenge of abstraction is to identify the essential, instance independent, definitional properties of an empirical event and, subsequently, of its generative mechanism and their relations to each other. What makes event/mechanism X to the event/mechanism it is? The search for essential characteristics of an event and its causes is not unique to CR. In his work on qualitative methods, Ezequiel González Ocantos, for example, suggests that theories should specify the characteristics of a field in which political outcomes are being generated.⁶⁹ In political analyses these characteristics specifically include the class of actors, the spaces of action, and the type of interactions that ‘permit the flow of causal energy’.⁷⁰ In CR, essential characteristics can also include ideational and interpretive elements such as the intentions and reasoning processes of actors or the meanings of an event for its contemporaries. The second mode is

⁶⁷ Sewell, *Logics of History*, p. 121. Marc Bloch distinguishes between Type I or *universal comparison* (i.e. the comparative method usually employed in positivist political science) and Type II or *historical comparison*; see Alette Hill and Boyd Hill, ‘Marc Bloch and Comparative History’, *The American Historical Review* 85, no. 4 (1980): pp. 828-846.

⁶⁸ Danermark et al., *Explaining Society*, pp. 88-106; Buch-Hansen and Nielsen, *Basics and Beyond*, pp. 68-72.

⁶⁹ Ezequiel González Ocantos, ‘Designing Qualitative Research Projects: Notes on Theory Building, Case Selection and Field Research’. In *The Sage Handbook of Research Methods in Political Science and International Relations*, ed. Luigi Curini and Robert J Franzese (London; Thousand Oaks, CA: SAGE, 2020), pp. 104-120.

⁷⁰ González Ocantos, ‘Designing Qualitative Research’, p. 105.

called retroduction by which researchers start out with an empirical outcome and then consider ‘what mechanisms must *in all likelihood* exist for the phenomenon/outcome to be what it is’.⁷¹ This is the key theorising exercise of critical realist research. Retroduction demands keeping a close eye on the empirical details of the cases that are being analysed but also a degree of creativity and imagination as well as knowledge of existing theories that pertain to a particular context.⁷²

5.2.4 *Judgement Rationality and Empirical Assessment*

Abstraction and retroduction do not follow the formal logic of deductive reasoning. The conclusions are thus uncertain and incomplete, in line with the fallibility, or transitive nature, of knowledge. Any given mechanism – or explanation of an event consisting of multiple mechanisms – will have to be iteratively refined according to new empirical results. This is especially true for historical phenomena. Even though the past is a ‘closed’ and intransitive object as it cannot be changed anymore, our knowledge of the past is constantly growing as new sources are uncovered and existing source material is re-interpreted. As Bhaskar argues, ‘the reality of the conjectured mechanism must be empirically ascertained’.⁷³ Empirical testing has so far been barely explored in the critical realist literature,⁷⁴ even though it is universally accepted as a crucial research step.⁷⁵

Within a critical realist research paradigm, four meanings of empirical testing can be distinguished, all four of which ultimately involve ‘showing that the generative mechanism that the theory describes produces the actual events that constitute the

⁷¹ Buch-Hansen and Nielsen, *Basics and Beyond*, p. 69.

⁷² Wynn and Williams, ‘Conducting Critical Realist Case Study Research’; Tsang, ‘Case Studies and Generalization’; Danermark et al., *Explaining Society*, pp. 88-106.

⁷³ Roy Bhaskar, *Scientific Realism and Human Emancipation* (London: Verso, 1986), p. 61. See also Steinmetz, ‘Critical Realism and Historical Sociology’, p. 183.

⁷⁴ Tsang, ‘Case Studies and Generalization’, p. 182; Isaksen, ‘Reclaiming Rational Theory Choice’.

⁷⁵ See below as well as review by Isaksen, ‘Reclaiming Rational Theory Choice’.

research domain to which the theory applies.⁷⁶ First, CR requires researchers to assess the accuracy of one's own mechanism following the process of retrodution. This is a natural step of any research process and simply involves checking one's results against the data and appropriately amending one's theory as necessary. Secondly, empirical testing can mean replicating someone else's results, preferably using the same data and methods.⁷⁷ Here, what is already important for quantitative positivist research,⁷⁸ is even more important for the thick descriptions and interpretations common to critical realist and historical research. The motivation of replication is not distrust or the suspicion of malicious intent on behalf of colleagues but checking for errors and diverging interpretations of empirical data. Accurate descriptions are crucial for abstraction and retrodution to lead to accurate results. Especially in cases with large and complex historical records, historians regularly and frequently reach different results, even when using the same source material.⁷⁹ This does not so much apply to the mere existence or sequence of events but often to which aspects of a particular event are assigned particular importance.⁸⁰ Thirdly, scholars can test a generative mechanism in a new context to assess its scope conditions, establish the need for revision, strengthen a theoretical claim, or highlight an explanatory gap in need of a new mechanism.⁸¹ Lastly, empirical testing can mean assessing the explanatory power of one generative mechanism against the explanatory power of another.

⁷⁶ R Johnston and Stephen P Smith, 'How Critical Realism Clarifies Validity Issues in Theory-Testing Research', *Scandinavian Journal of Information Systems* 26, no. 1 (2014): pp. 5-28.

⁷⁷ Tsang, 'Case Studies and Generalization'.

⁷⁸ Gary King, 'Replication, Replication', *PS: Political Science & Politics* 28, no. 3 (1995): pp. 444-452; David D. Laitin and Rob Reich, 'Trust, Transparency, and Replication in Political Science', *PS: Political Science & Politics* 50, no. 1 (2017): pp. 172-175.

⁷⁹ Ian S. Lustick, 'History, Historiography, and Political Science: Multiple Historical Records and the Problem of Selection Bias', *American Political Science Review* 90, no. 3 (1996): pp. 605-618.

⁸⁰ Lustick, 'History, Historiography, and Political Science'.

⁸¹ Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, MA; London: MIT Press, 2005), pp. 111-117.

Bhaskar and various other critical realists affirm that a theorised mechanism needs to be compared to competing explanations for a given event, ‘since in general a plurality of possible explanations will be consistent with the phenomena [... The] variety of plausible alternative explanations [must be] sorted, elaborated and eliminated until the explanatory mechanism at work has been, in the fallible judgment of the scientists concerned, successfully identified and adequately described.’⁸² Danermark et al. propose a critical realist research model which includes ‘an evaluation of the explanatory power of these mechanisms, compared with those postulated by other theories’.⁸³ And Buch-Hansen and Nielsen argue that ‘according to critical realists, theories are to be assessed not on their ability to accurately predict outcomes but on the *explanatory power*’.⁸⁴ In CR, the ability of being able to rationally choose between theories is called *judgemental rationality*.⁸⁵ But, as Isaksen shows, most applied critical realists do not give any indication of how they arrived at the conclusion that their generative mechanism holds the most explanatory power.⁸⁶ And besides advising that researchers should ‘select the most plausible [mechanism] given the specific context in which their cases are located’⁸⁷ or that ‘[theory] A is better than theory B if it can provide a more accurate account of the causes of phenomenon X’⁸⁸ or that a mechanism that can establish necessary conditions for a particular outcome holds more explanatory power than one which

⁸² Bhaskar, *Realism and Emancipation*, p. 61. Also Steinmetz, ‘Critical Realism and Historical Sociology’, p. 183.

⁸³ Danermark et al., *Explaining Society*, p. 193.

⁸⁴ Buch-Hansen and Nielsen, *Basics and Beyond*, p. 71.

⁸⁵ Isaksen, ‘Reclaiming Rational Theory Choice’, p. 246.

⁸⁶ Isaksen, ‘Reclaiming Rational Theory Choice’, pp. 251-253.

⁸⁷ Tsang, ‘Case Studies and Generalization’, p. 181.

⁸⁸ Buch-Hansen and Nielsen, *Basics and Beyond*, p. 71.

does not,⁸⁹ the theoretical CR literature does not make any recommendations on *how to* assess the relative explanatory power of a theorised mechanism.⁹⁰

Isaksen highlights this critical research gap by stating that ‘I can critique the theories and worldviews of others, but how can I know, even provisionally, that mine are true?’⁹¹ Empirically assessing a mechanism is a necessary research step, for if the goal of social science, as established above, is to approach really existing intransitive entities, that is generative mechanisms, through theoretical reconstruction, a newly proposed mechanism needs to hold more explanatory power than its competitors *for the same outcome* and on the same level of abstraction to be considered a more accurate representation of reality.⁹² Based on the logic of CR, Isaksen develops three criteria for such an assessment: First, *immanent critique* requires judging relative explanatory power from the premises of the rival generative mechanisms. As established above, criticising a mechanism for not accounting for a phenomenon outside its scope conditions only clarifies its scope conditions without invalidating its conclusions for a case that would fall within its scope conditions.⁹³ For immanent critique to be possible, secondly, researchers need to be fluent in the languages of multiple theories.⁹⁴ Thirdly, researchers establish *explanatory power* on a continuum

⁸⁹ Danermark et al., *Explaining Society*, p. 110.

⁹⁰ It should be noted that maximising explanatory power is not the only valid goal of critical realist research. Identifying new mechanisms or explaining deeper levels of reality through better abstraction, among other, can also be valid objectives. Bhaskar, *Realism and Emancipation*, p. 82; Isaksen, 'Reclaiming Rational Theory Choice', p. 251.

⁹¹ Isaksen, 'Reclaiming Rational Theory Choice', p. 245.

⁹² Of course, different mechanisms can describe different aspects of the same phenomenon and thus indicate that an explanation that combines multiple mechanisms ultimately holds more power than any one individually. Isaksen also considers the case in which a new theory is able to explain some deeper layer of reality, but I am limiting the present discussion to theories explaining the same type of outcome. Isaksen, 'Reclaiming Rational Theory Choice', p. 251.

⁹³ Isaksen, 'Reclaiming Rational Theory Choice', pp. 247-248. Alexander George and Andrew Bennett thus warn against the ‘creation of an easily discounted “straw man” version of the [competing] theory’. George and Bennett, *Case Studies and Theory Development*, p. 112. I am grateful to Craig Parsons for highlighting this key point.

⁹⁴ Bhaskar calls this being *multitheoretic-lingual*. Bhaskar, *Realism and Emancipation*; Isaksen, 'Reclaiming Rational Theory Choice', pp. 253-254.

relative to competitors by assessing whether one theory can explain ‘almost all the phenomena’⁹⁵ that another theory can explain plus a significant additional phenomenon from within the boundaries of the respective theories.⁹⁶ Highlighting this gap in the CR literature and establishing the criteria for judgemental rationality has moved the conversation forward. But the literature is still missing an adequate technique that establishes relative explanatory power under these criteria.

⁹⁵ Bhaskar, *Realism and Emancipation*, p. 73.

⁹⁶ Isaksen, 'Reclaiming Rational Theory Choice', pp. 250-251.

5.3 Critical Realism and Bayesian Inference

The need for testing proposed causal connections goes beyond critical realist research. A common critique of all qualitative research and especially causal historical – or process tracing – research in the social sciences is the above discussed uncertainty over the reliability of the proposed processes.⁹⁷ As Fairfield and Charman show, the answer lies within a unified Bayesian methodological framework.⁹⁸

The basic logic of Bayesianism matches well with CR and the criteria stated by Isaksen. Following Fairfield and Charman, Logical Bayesianism is directly derived from probability theory as the only valid basis of ‘plausible reasoning’, that is logical inference under conditions of uncertainty.⁹⁹ Whereas frequentist probability is based on the frequency of an event occurring in a large number of trials, and is therefore derived from the assumed fixed, objective conditions that produce the event, Bayesian probability refers to the degree of belief in the occurrence of an event after considering all available information. Therefore, while the confidence in a statement can increase (or decrease) with additional information, Bayesian probability treats the knowledge about a social phenomenon as fallible rather than as directly derived from the known properties of an intransitive entity. Bayesian inference can be applied to any type of proposition, be it a repeatable event or a hypothesised generative mechanism of a unique event, and any type of evidence, be it quantitative data, primary documents, or the results of historical analyses by historians.¹⁰⁰

If used to assess causal statements, Bayesian inference requires comparison with alternative explanations and thus treats probability as relative. Using the language of CR, an explanation, that is a theorised generative mechanism, becomes

⁹⁷ Fairfield and Charman, 'Dialogue with Data'; Gorski, 'Poverty of Deductivism'.

⁹⁸ Fairfield and Charman, *Social Inquiry and Bayesian Inference*.

⁹⁹ Fairfield and Charman, *Social Inquiry and Bayesian Inference*, p. 31. Fairfield and Charman provide a detailed discussion of how the rules of Bayesianism are logically derived.

¹⁰⁰ Fairfield and Charman, *Social Inquiry and Bayesian Inference*, pp. 101-105.

more probable when it is able to explain more of the observed empirical effects. But any explanation derived from retroduction will be more probable than no explanation at all. As Fairfield and Charman explain: ‘Scientific inquiry always involves provisional inference to the best existing explanation. Accordingly, there is little sense in rejecting a hypothesis unless we have an alternative to consider. Stated differently, inference to best explanation is trivial if we have only one hypothesis – by definition, that hypothesis is then the best explanation available, and there is nothing more to do!’¹⁰¹ Whether an explanation is said to have a lot or very little explanatory power is dependent on its alternatives and thus operates on a continuum. Linked to the fallibility requirement of CR, Bayesianism only ever involves tentative inference to the best *currently existing* explanation for a phenomenon. When new mechanisms are proposed, the assessment of probability needs to be repeated under inclusion of the new hypotheses.¹⁰²

To be able to assess the relative explanatory power of a proposed mechanism, Bayesianism requires a set of mutually exclusive and jointly exhaustive hypothesised mechanisms. As stated above, this does not mean that any set of mechanisms must include all imaginable or possible mechanisms. In order to logically assess the *relative* explanatory power of a proposed mechanism, however, it is necessary to compare it against a finite number of alternatives.¹⁰³ Furthermore, if hypotheses mechanisms overlap, it would be impossible to clearly assign probabilities. Stating mutually exclusive hypotheses only superficially conflicts with CR’s emphasis on interacting mechanisms. Bayesian inference is iterative. That means it is possible to propose and assess a new, combined generative mechanisms if, following an empirical assessment of the explanatory power of one mechanism, it transpires that a particular

¹⁰¹ Fairfield and Charman, *Social Inquiry and Bayesian Inference*, p. 81.

¹⁰² Fairfield and Charman, *Social Inquiry and Bayesian Inference*, pp. 84-86.

¹⁰³ Fairfield and Charman, *Social Inquiry and Bayesian Inference*, pp. 84-86.

combination of mechanisms would lead to an even better explanation.¹⁰⁴ As I show below in practice, Bayesian inference can even help with identifying phenomena in need of several explanatory mechanisms. If multiple pieces of evidence relating to the same development point in the directions of different hypothesised mechanisms, it is likely that a combination of mechanisms is required. Of course, combining more and more mechanisms will eventually approach an explanation of a phenomenon that is identical to a complete description. Here, it is important to remember that CR's goal is to abstract from a phenomenon and describe the individual mechanisms that lead to its *essential* characteristics. In other words, not all aspects of a phenomenon are of interest for generalisation but only those that, once abstracted, can be used to illuminate other phenomena.¹⁰⁵

5.3.1 Bayesian Inference

This basic Bayesian process follows four steps which can be repeated as required by the research process:¹⁰⁶ First, scholars must come up with sets of mutually-exclusive, exhaustive and well-specified rival hypotheses they want to compare. These are one's own theorised generative mechanism and a number of competing accounts, drawn either from the existing literature or from general background knowledge. Following this, scholars assess their prior odds – that is, their pre-analysis beliefs in the relative plausibility of the rival hypotheses informed by their individual pre-existing knowledge of the scenario under investigation. For this, it is necessary to be fluent in the language of the rival accounts – another one of Isaksen's criteria. In the third step, researchers turn to the evidence itself. Through

¹⁰⁴ Fairfield and Charman, 'Dialogue with Data'.

¹⁰⁵ Gorski differentiates between *systematic* and *contingent* causal powers of a mechanism with the former being those that can be attributed to a mechanism's essential characteristics. In his example, an analogue alarm clock has the *systematic* effect of waking people up at a given time but the *contingent* effect causing someone to be late to their job if the alarm clock malfunctions. Clarifying systematic effects can thus help choosing the level of abstraction.

¹⁰⁶ Fairfield and Charman, 'Dialogue with Data'.

‘mentally inhabiting the worlds’¹⁰⁷ of each of the mechanisms, researchers assess the *likelihood* of the evidence by asking: ‘How expected (or unexpected) is each individual piece of evidence in a world in which a given hypothesis is assumed to be true?’ Or, in critical realist terms, they engage in *immanent critique*. The result is the likelihood ratio of a piece of evidence. Relative to its rivals, the hypothesis that makes the piece of evidence more expected demands a higher level of confidence. With these likelihood ratios in hand, scholars are able to update their prior odds and receive the posterior odds. Basic Bayesian inference, that is, the process of updating the probability of a hypothesis H on the basis evidence E , with I being the available background information, is represented by Bayes’s rule:

$$P(H|EI) = P(H|I) \cdot \frac{P(E|HI)}{P(E|I)}$$

in which $P(E|HI)$ is the likelihood of E while assuming hypothesis H is true (and given background information I). When comparing pairs of hypotheses, Bayes rule is restated as

$$\frac{P(H_i|EI)}{P(H_j|EI)} = \frac{P(H_i|I)}{P(H_j|I)} \cdot \frac{P(E|H_iI)}{P(E|H_jI)}$$

in which $\frac{P(E|H_iI)}{P(E|H_jI)}$ is the key inferential step of assessing E ’s likelihood ratio.¹⁰⁸

5.3.2 *Explicit Bayesian Analysis*

To make this kind of analysis even more transparent, reliable, and systematic, Fairfield and Charman recommend turning to the explicit and quantifiable process appropriately termed Explicit Bayesian Analysis.¹⁰⁹ By using a logarithmic scale to quantify the inferential weight of evidence, scholars can easily sum up the likelihood

¹⁰⁷ Douglas E. Hunter, *Political/Military Applications of Bayesian Analysis : Methodological Issues* (Boulder, CO: Westview Press, 1984); Fairfield and Charman, 'Dialogue with Data', p. 159; Fairfield and Charman, *Social Inquiry and Bayesian Inference*, pp. 105-109.

¹⁰⁸ Fairfield and Charman, 'Dialogue with Data'; Fairfield and Charman, 'Explicit Bayesian Analysis'.

¹⁰⁹ Fairfield and Charman, *Social Inquiry and Bayesian Inference*, pp. 124-170.

ratios of multiple pieces of evidence to reach conclusions under the impression of complex empirical scenarios in which different pieces of evidence may speak in favour of different hypotheses. Following human experience, a helpful logarithmic scale to use is sound. Instead of merely comparing the likelihood of the observed evidence under various hypotheses, scholars can ask how loudly one piece of evidence ‘sounds’ or ‘speaks’ in favour of one hypothesis over another and use *decibels* (dB) to communicate their results.¹¹⁰ **Table 2** provides helpful categories of explanatory strength in dB and corresponding descriptors as proposed by Fairfield and Charman:

Table 2: Quantitative and qualitative categories of explanatory power.

dB	Acoustic Perception	Plain Language Description	Equivalent Odds or Likelihood Ratio
3	smallest meaningful difference	very weak	2:1
6	clearly noticeable difference	weak	4:1
10	twice as loud	moderate	10:1
20	four times louder	strong	100:1
30	eight times louder	very strong	1000:1

Table adapted from Fairfield and Charman, *Social Inquiry and Bayesian Inference*, p. 133 (Table 4.1 Qualitative to quantitative correspondences (dB)). Reproduced with permission of Cambridge University Press through PLSclear. © Tasha Fairfield and Andrew Charman.

Quantification, in this case, does not mean an elimination of interpretation or the complete removal of subjectivity from the qualitative analysis. This is not possible.¹¹¹ However, using a standardised framework of evidentiary weight not only

¹¹⁰ Fairfield and Charman, *Social Inquiry and Bayesian Inference*, pp. 129-137.

¹¹¹ James O. Berger and Donald A. Berry, 'Statistical Analysis and the Illusion of Objectivity', *American Scientist* 76, no. 2 (1988): pp. 159-165.

allows scholars to exactly pinpoint where interpretations and conclusions diverge but also to transparently and intersubjectively communicate their interpretations of the empirical record and their degrees of confidence in the hypotheses under consideration.¹¹² Making the assessment of likelihood ratios explicit through quantification also focuses researchers' attention on a common pitfall in qualitative and especially process tracing based works. As Fairfield and Charman point out, merely being consistent with a given hypothesis alone does not mean a piece of evidence supports that hypothesis relative to competing accounts 'because the evidence might be equally or even more plausible in the world of a rival hypothesis. Likewise, evidence that seems inconsistent with a given explanation does not necessarily undermine it, because the evidence could be even less plausible under a rival.'¹¹³ While this is true for any type of Bayesian inference, being compelled to assign explicit, numerical weights to pieces of evidence helps to clarify these situations and makes obvious why certain pieces of evidence may not add additional weight on a metaphorical Bayesian scale. Finally, using a logarithmic scale also has the advantage of easily summing up the *weights of evidence* on that same metaphorical scale. The odds-ratio form of Bayes's rule from above thus turns into

$$\log\left(\frac{P(H_i|EI)}{P(H_j|EI)}\right) = \log\left(\frac{P(H_i|I)}{P(H_j|I)}\right) + \log\left(\frac{P(E|H_iI)}{P(E|H_jI)}\right)$$

with $\log\left(\frac{P(E|H_iI)}{P(E|H_jI)}\right)$ being the weight of evidence E . Due to its log-form, the

weight of each new piece of evidence can simply be added to that equation.¹¹⁴

¹¹² Fairfield and Charman, 'Explicit Bayesian Analysis'.

¹¹³ Fairfield and Charman, *Social Inquiry and Bayesian Inference*, p. 22.

¹¹⁴ Fairfield and Charman, *Social Inquiry and Bayesian Inference*, pp. 126-129.

5.4 Empirical Assessment of Generative Mechanisms

To demonstrate EBA in critical realist practice, I assess my own proposed mechanisms of the emergence of the migration state and the historical link of migration control and state power. In my previous work, I identified two areas in which modern nation-states have expanded their power through institutions of migration control. First, through measures of Internal Mobility Control (IMC), nation-states established layered hierarchies of citizenship and expanded state power to enforce them.¹¹⁵ Secondly, political elites introduced exclusionary and racialised measures of international migration control as parts of efforts to establish homogenised nation-states.¹¹⁶ For both of these developments, I proposed new generative mechanisms. For the purpose of this essay, I highlight the process of EBA using candidate mechanisms from these two areas and four pieces of evidence drawn from the examined historical cases. I first empirically assess the explanatory power of three proposed mechanisms of interwar Germany's turn to modern migration control. I then show how EBA can also be used to identify phenomena in need of multiple explanatory mechanisms as well as to test the scope conditions of hypotheses using evidence from my research on IMC.¹¹⁷

5.4.1 *Modern Migration Control*¹¹⁸

Numerous scholars have observed the emergence of restrictive exclusionary and racialised forms of migration control across Western states between the late 19th and mid-20th centuries, compared to a period of relative freedom of movement across

¹¹⁵ See the first essay in this thesis.

¹¹⁶ See the second essay in this thesis.

¹¹⁷ On the need for multi-theory explanations, see Bob Jessop, *State Theory: Putting the Capitalist State in Its Place* (Cambridge: Polity, 1990), p. 12; George Steinmetz, *The Devil's Handwriting: Precoloniality and the German Colonial State in Qingdao, Samoa, and Southwest Africa* (Chicago ; London: University of Chicago Press, 2007).

¹¹⁸ For a detailed discussion of Germany's turn towards modern migration control, see the second essay in this thesis.

international borders throughout the 19th century.¹¹⁹ According to Zolberg, the politically volatile 1920s are of particular significance as, ‘although the new policy orientation was clearly visible as early as the 1880s, it took nearly a quarter of a century for the restrictionists to achieve their objectives’.¹²⁰ The interwar period, in this causal narrative, provided the opening for new, restrictionist migration control institutions to emerge and consolidate. For Zolberg, this presents an empirical puzzle as the restrictionist bent emerged despite the fact that the ‘vast expansion of international migrations [...] was largely rooted in the affluent states’ soaring demand for labor, at home or in their colonies, as well as in the worldwide impact of the market forces they unleashed’.¹²¹

Three general approaches to explaining these interwar changes can be identified: First, a mechanism developed by Gary Freeman to explain the modes of migration politics in liberal democracies. Freeman’s mechanism focuses on economic business cycles and the unique ability of economic elites, represented by major employers or business associations, to capture the key policymakers of (liberal) democracies.¹²² Secondly, a mechanism specified by Leo Lucassen specifically for interwar Europe and the Weimar Republic. Lucassen’s mechanism focuses on the integration of the organised labour movement and its interest in restrictive policies due to labour market and welfare competition.¹²³ Thirdly, recent studies have focused on the role of racial hierarchies, nativism, or xenophobia, but have yet to specify a precise generative mechanism.¹²⁴

¹¹⁹ See, e.g., Fahrmeir, 'Politischer Liberalismus Und 'Liberale' Migrationspolitik'; Dowty, *Closed Borders*; Mau et al., *Liberal States and Freedom of Movement*; Torpey, *Invention of the Passport*.

¹²⁰ Zolberg, 'Global Movements, Global Walls', p. 293. See also Zolberg, 'Great Wall against China'.

¹²¹ Zolberg, 'Global Movements, Global Walls', p. 293.

¹²² Freeman, 'Modes of Immigration Politics'.

¹²³ Lucassen, 'European Migration Regime and Its Paradoxes'; Lucassen, 'Origins of Migration Control'.

¹²⁴ See, e.g., Vigneswaran, 'Europe Has Never Been Modern'; Barber, 'Nativist State'.

Weimar Germany is a particularly interesting case for an investigation into interwar migration politics. Prior to World War I, the imperial German *Kaiserreich* had become the second largest labour-importing country in the world after the United States.¹²⁵ Foreign labour had fuelled the German economic boom of the early 20th century due to a *laissez-faire* mode of migration politics. That being said, the *Kaiserreich* was also marked by racialised anti-Polish policies and several influential societies lobbied the imperial government to put tougher restrictions on migration, drawing from arguments of German racial supremacy.¹²⁶ Following the war and the German revolution, the Weimar Republic became the first democracy on German soil, featuring a constitution based on liberal values and individual rights. The most powerful supporter of the new republic was the social democratic labour movement which had called for global freedom of movement before the war. However, in the crisis-shaken years following the war, successive federal *Reich* and state governments of the Weimar Republic adopted restrictive and racialised exclusionary migration policies. The number of foreigners in Germany dropped dramatically.¹²⁷

In my research on the origins of modern migration control in interwar Germany, I build a generative mechanism consisting of a critical juncture,¹²⁸ World War I, and the subsequent clash of two racial-political orders.¹²⁹ The underlying theories that make up the proposed mechanism are adopted and adapted from the political struggle over racial equality in the US. Racial-political orders, I argue, are a promising explanation for migration politics in other democracies as migration control firmly falls into the field of population politics and includes policies that

¹²⁵ See Bade, 'German Emigration and Immigration'.

¹²⁶ Bade, 'Preußengänger Und Abwehrpolitik'; Kriedte, 'Not, Druck, Gewalt'; Volkmann, *Polenpolitik Des Kaiserreichs*; Schönwälder, 'Assigning the State Its Rightful Place'.

¹²⁷ Volkmann, *Russische Emigration*; Skran, *Refugees in Inter-War Europe*; Sammartino, *Impossible Border*; Ther, *Aussenseiter*. For a discussion of the historical estimates and official records, see Sammartino, 'Deportation and Foreigner Control'.

¹²⁸ Capoccia and Kelemen, 'Study of Critical Junctures'.

¹²⁹ King and Smith, 'Racial Orders'; Lieberman, 'Ideas, Institutions, and Political Order'.

define the ascribed compatibility of migrants with society. This leads to three rival explanations for Germany's interwar shift to migration restrictionism:

The **Racial-Political Order Hypothesis** (H_{RO}) claims that changes in migration politics are outcomes of clashes of racial-political orders which seek to advance either racially exclusionary or racially inclusionary views of society through restrictionist or liberal migration policies. The motivations of actors for joining either order can vary from being 'true believers' to seeking electoral gains, but regardless of these motivations, the orders employ ideas of racial hierarchies or egalitarianism to gain and exercise governing power. The new mode of migration politics following a shift in power, due to, for example, changes in composition, ideational shift, or new institutional settings, will be determined by the resulting dominant order.

According to the **Employer Capture Hypothesis** (H_{EC}), changes in migration politics becomes 'mostly a function of which fragments of the public have the incentives and resources to organize around immigration issues.'¹³⁰ These are almost exclusively employers whose interests follow economic cycles. In times of economic expansion, migration politics, therefore, will be more permissive to balance out shortages of manpower and human capital. In times of economic contraction and during the ensuing political malaise, states are expected to restrict migration as the voices of a public already hostile towards migrants supplants the retreating clientelist employers as their demand for labour decreases.

The **Labour Integration Hypothesis** (H_{LI}) states that shifts in migration politics predominantly come down to the rise and political integration of the organised labour movement. Workers perceive migrants as competitors on the labour market. In states with a politically integrated labour movement, policy makers will react to this perceived competition by closing off the domestic labour market thus

¹³⁰ Gary P Freeman, 'Modes of Immigration Politics in Liberal Democratic States', *International Migration Review* 29, no. 4 (1995): pp. 881-902 here p. 885.

enacting more restrictionist immigration policies. This is especially the case when migrants are seen as competing with domestic workers for state resources such as welfare provisions.

Prior to the analysis of empirical evidence, researchers need to specify the prior likelihood odds under given background information. Scholars can either base them on their own background knowledge, the general literature consensus, or start the analysis from equal odds in order to prioritise the empirical evidence.¹³¹ For the present analysis, I start with equal prior odds to demonstrate the importance of empirical evaluation.

E1: Government meeting in 1919

At a closed emergency meeting of regional, state, and *Reich* civil servants in December 1919, many participants urged for stricter measures in response to the purported risks from migrants:

The responsibility for the extraordinary damage that had been caused in an ever increasing level to our currency rates during the war and are still being caused today must mainly be attributed to foreigners, namely to Galician and Polish Jews. [...] The immigration of foreigners of foreign descent [as opposed to those from areas Germany had to give up after the war, JTK] from the East also bears political risks. It is to be assumed that above mentioned foreigners have not been unaffected by the Bolshevism dominating their home [...]. The procedures in Chemnitz to clarify the question of guilt [for losing the war, JTK] have shown that apparently a large number of Russian Jews had been involved.¹³²

Most of the 36-page-long protocol focuses on various stereotypes of Jewish immigrants, their alleged political and criminal threat to the German people, and

¹³¹ Fairfield and Charman, *Social Inquiry and Bayesian Inference*, pp. 96-101.

¹³² Niederschrift ueber das Ergebnis der am 10. Dezember 1919 auf Einladung des Reichsministeriums des Innern (...) abgehaltene Beratung, betreffend fremdenpolizeiliche Maßnahmen zur Eindämmung der Zuwanderung von Ausländern, 27 December 1919, in GLAK 233 12660.

their purported ‘wickedness’ which made them difficult to find or apprehend. Only two sentences were spent on foreigners being a potential burden on the German welfare state and the representative from the Ministry of Finance received no reply to his ‘point of addition’. Several restrictionist measures were considered, such as visa stops, border controls, complete border closures, hefty fines for illegal border crossings, expulsions, deportations, and even forced hunger campaigns. But representatives from the Foreign Office and the social democratic led Prussian ministries were opposed. Prussia’s social democratic Minister of the Interior had issued a halt on deportations in May 1919, specifically for Eastern European Jews to protect those fleeing from violent pogroms. Despite antisemitic claims by other civil servants that these pogroms had been invented, the representative stood by his minister’s decision which had been supported by the wider labour movement and Jewish organisations.

In the world of H_{RO} , this piece of evidence is highly expected. There is strong evidence for antisemitism as the source for proposed migration restrictions. There is also some evidence for the formation of racial-political orders in that there are clear dividing lines between those arguing for strict migration control measures and those arguing against by rejecting antisemitic claims.

In the world of H_{EC} , this piece of evidence is moderately expected. No employer interests are represented at the meeting and there is no evidence at this point that employers were calling for an increase in migration. In absence of employer lobbying, growing calls for restrictions are to be expected. However, H_{EC} can neither account for the opposition by social democrats despite the absence of employer lobbying nor for the specific target of the restrictions.

In the world of H_{LI} , this piece of evidence is highly surprising. Labour market competition and welfare state resources only play a minor role in the

discussions. Moreover, it is the representative from the organised labour movement, the social democratic party, that calls for less restrictions.

$$\log\left(\frac{P(E_1|H_{ROI})}{P(E_1|H_{ECI})}\right) = 10dB$$

$$\log\left(\frac{P(E_1|H_{ROI})}{P(E_1|H_{LI})}\right) = 30dB$$

E2: Prussian concentration camps in 1920

After previously publicly resisting and denouncing the use of concentration camps (sic!) to intern ‘undesired’ foreigners and especially Eastern European Jews, the social democrat Carl Severing, in his role as the new Prussian Minister of the Interior, decided to open such camps in November 1920. Even though he personally did not think Eastern European Jews were a threat to Germanness and the German nation, and despite high costs to tax payers,¹³³ he issued an order for the general internment of foreigners in camps due to the ‘changing circumstances’, that is, likely the lobbying efforts by migration restrictionists, as well as the ‘public opinion’.¹³⁴ The government hoped simultaneously to present camps as ‘welfare institutions’ internationally to avoid the charge of antisemitism while simultaneously preparing group deportations, deterring future migrants from attempting to reach Germany, and ‘encouraging’ immigrants already in Germany to leave the country. They were punitive and repressive institutions which almost exclusively incarcerated Jews, despite warnings from the Foreign Office to avoid antisemitic actions.¹³⁵

In the world of H_{RO} , this piece of evidence is highly expected. Severing decided to change his position due to pressure from restrictionists and the public

¹³³ Severing rejected the plans for concentration camps in Juli 1920 as he ‘could not be responsible for tax payers having to pay for the accommodation of Eastern European Jews in barracks.’ Heizmann, ‘Fremd in Der Fremde’, 112.

¹³⁴ Pommerin, ‘Ausweisung Von “Ostjuden” Aus Bayern’, p. 321.

¹³⁵ Heizmann, ‘Fremd in Der Fremde’, 113.

opinion to preserve governing power. This resulted in restrictionist policies targeting Jews in particular.

In the world of H_{EC} , this piece of evidence is moderately expected. As above, no employer interests are represented in these decisions and there is no evidence at this point that employers were calling for an increase in migration. In absence of employer lobbying, growing calls for restrictions are to be expected. However, H_{EC} cannot account for the success of other lobbying efforts nor the specific target of restrictions.

In the world of H_{LI} , this piece of evidence is moderately expected. Severing's decision indicates a change in public opinion. This could well be on the side of workers who were calling for restrictions due to labour market competition. However, concentration camps came at a high cost for tax payers which goes against the expectation of resource competition.

$$\log\left(\frac{P(E_2|H_{ROI})}{P(E_2|H_{ECI})}\right) = 10dB$$

$$\log\left(\frac{P(E_2|H_{ROI})}{P(E_2|H_{LII})}\right) = 10dB$$

E3: Recruitment of ethnic-German foreigners

In the mid-1920s, representatives of agricultural lobby groups demanded the increase of migration due to a positive economic development and a desperate need for workers. But social democrats in Prussia demanded radical restrictions, even if they would lead to economic problems, as this could be beneficial to economic, cultural, and population policy goals.¹³⁶ Severing pointed to public discontent with foreigners and argued that the *Reich* government had to respond to these anxieties by cutting immigration.¹³⁷ In this context, the Prussian government first brought up

¹³⁶ Oltmer, *Migration Und Politik*, p. 383.

¹³⁷ Cited in Oltmer, *Migration Und Politik*, pp. 370-371.

an official separation of immigrants of German and foreign descent. In 1928, the conservative and centrist *Reich* government relented under right-wing and social democratic pressure and allowed Prussia to begin with targeted recruitments of ethnic German foreigners to replace those from Slavic countries already in the country. Once the social democrats returned to the governing coalition in the *Reich* in 1928, they supported efforts to conclude targeted recruitment treaties to increase the immigration of ethnic Germans.¹³⁸ The policies were celebrated by labour movement publications, thanking the social democrats for reducing the number of foreign workers.

In the world of H_{RO} , this piece of evidence is highly expected. The policy changes are driven by racial anxieties and attempts to promote the immigration of ethnic Germans while excluding those from Slavic descent. Social democrats are pushing for these changes due to perceived public anxieties over immigration from non-Germans.

In the world of H_{EC} , this piece of evidence is moderately expected. Employer associations call for increases in migration due to a positive economic development. On the other hand, these are being resisted by representatives of the labour movement. Ultimately, the government agrees to recruit foreign workers. However, H_{EC} cannot account for the call for ethnic German migration.

In the world of H_{LL} , this piece of evidence is surprising. Severing's initial decision to reject employers' demands follows public calls for restrictions. And the seemingly reduced number of foreign workers is celebrated in the media. However, social democrats simultaneously pushed for the an increase in migration from specifically ethnic Germans foreigners rather than restricting migration outright.

¹³⁸ Oltmer, *Migration Und Politik*, pp. 423, 479-480.

$$\log\left(\frac{P(E_3|H_{ROI})}{P(E_3|H_{ECI})}\right) = 10dB$$

$$\log\left(\frac{P(E_3|H_{ROI})}{P(E_3|H_{LI})}\right) = 20dB$$

E4: International Conference on the Treatment of Foreigners

In the mid-1920s, an international coalition including the International Chamber of Commerce and the Economic Organisation of the League of Nations pushed for a re-instatement of liberal pre-World War I migration policies through the conclusion of international treaties. The organisers of the International Conference on the Treatment of Foreigners held in Paris in 1929 under the auspices of the League of Nations hoped to conclude a multilateral treatment guaranteeing freedom of movement and establishment to citizens of all treaty parties. Despite some resistance from restrictionist state governments within Germany, which issued general warnings against admitting foreigners, the German representative at the conference pushed for the most liberal policies with the backing of the German government and even some social democrats. A leading German diplomat in 1927 argued that ‘the promotion of the world economy requires that the free movement of goods goes hand in hand with the free movement of people.’¹³⁹ The conference failed and no treaty was signed. Some participants stated that this was due to an ‘obligatory hatred against the foreigner.’¹⁴⁰ But German diplomats, supported by the Foreign Office, continued to lobby foreign and domestic governments to adopt the proposed policies. Even after the Great Depression took hold in Germany and other

¹³⁹ Response to the Questionnaire of Subcommittee I on Alien and Establishment Law, copy attached to the Schreiben des deutschen Industrie- und Handelskammerversands an Georg Martius, Auswärtiges Amt, 24 February 1927, in PA AA RZ 403, R 54262, p. 6. The questionnaire had been sent to the Foreign Office by the German Group of the International Chamber of Commerce a month earlier (see Schreiben der deutschen Gruppe bei der Internationalen Handelskammer an Georg Martius, Auswärtiges Amt, 29 January 1927, in PA AA RZ 403, R 54262).

¹⁴⁰ Nederbragt, *Herinneringen*, p. 90.

countries and further negotiations failed, the leading diplomat urged the German government and the League of Nations to support a freedom of movement regime.

In the world of H_{RO} , this piece of evidence is highly expected. The efforts to conclude international treaties is supported by a coalition pushing for migration liberalisations as a matter of principle, even during an economic downturn. This is opposed by restrictionist governments and ultimately fails.

In the world of H_{EC} , this piece of evidence is moderately expected. International employer associations were part of the organisers of the 1929 treaty and pushed for liberalisations. Once the world economy faltered, further negotiations failed. However, H_{EC} cannot account for the continued negotiations despite the economic downturn or the perception of xenophobia as the reason for the conference's failure.

In the world of H_{LI} , this piece of evidence is surprising. The German government, including some social democrats, supported the push for international liberalisations despite a high degree of labour movement integration. Labour market and welfare competition did not play any roles in the internal discussions within the German government.

$$\log\left(\frac{P(E_4|H_{RO}I)}{P(E_4|H_{EC}I)}\right) = 10dB$$

$$\log\left(\frac{P(E_4|H_{RO}I)}{P(E_4|H_{LI}I)}\right) = 20dB$$

Following this analysis, the racial-political order mechanism appears to hold the most power in explaining Weimar Germany's shift from pre-World War I migration liberalism to interwar modern migration control, compared to the Economic Capture, by 40dB, and Labour Integration Hypotheses, by 80dB. This selection of evidence uniformly points towards the Racial-Political Order Hypothesis and thus increases its relative probability. From the analysis, one can see that the

labour movement and employers (or their absence) both played roles in the shift from *laissez-faire* migration liberalism to restrictive and racial-exclusionary modern migration control in interwar Germany. This is despite Lucassen having established an empirical pattern of high labour movement integration and migration restrictionism which should have made Weimar Germany a prime example for the workings of the labour integration mechanism. But a close analysis of the evidence shows that *the way in which* labour movement and employers mattered is instead better explained by a hypothesis focusing on racial-political orders.

5.4.2 *Internal Mobility Control*¹⁴¹

As discussed above, the empirical assessment of hypothesised mechanisms is not only necessary when testing its explanatory power in an individual case but can also be helpful for (1) assessing its ‘travel’, that is, its power to explain other suspected instances of the same mechanism, (2) whether it needs refinement or combination with other mechanisms for those instances, and, more broadly, (3) to define its scope conditions in time and space. The analysis of various states’ efforts to control the internal movement of their own populations shows that critical realists can make use of EBA to reach those goals as well.

In my research on Internal Mobility Control (IMC), I investigate why states control the internal movement of their people; account for the recurrence of IMC practices across different polities and at various stages of their state development; and identify the effects and consequences of IMC practices. These questions are particularly puzzling for the histories of today’s liberal democracies where the internal freedom of movement is said to be a core right of citizens. At the heart of my work on IMC stands a mechanism that links localised IMC to the expansion of centralised state power. For the present exercise, I instead focus on my proposed

¹⁴¹ For a detailed discussion of Internal Mobility Control, see the first essay of this thesis.

answer to the first question of why states control the internal movement of their people. In general terms, I argue that states, or sub-state units, introduce new IMC measures in response to societal or political transformations that generate claims of societal membership by groups cast as standing outside of ‘normal’ society by dominant hierarchies of differential humanity, backed by widespread legitimising myths about their relative worthiness of societal inclusion. In my research I focus on racial and moral hierarchies that affect racialised minorities and the poor and homeless but the mechanism can include other exclusionary hierarchies as well. From this perspective, IMC is used to control marginalised groups.

One particularly pervasive practice of IMC are so-called vagrancy-type laws and statutes which criminalise the mobility of various groups of persons as well as their behaviour and presence in public spaces. Over the centuries, they had been exported to various British colonies, including those that would later form the United States. And over time vagrancy statutes underwent changes in terms of the targeted groups, criminalised behaviours, and punishments. Several historians, sociologists, legal scholars, and political scientists focusing on the US and UK have attempted to explain the persistence of vagrancy-type laws as well as their substantive changes. While research into vagrancy-type laws in continental European countries has been much rarer, Jan Ziekow’s and my own work show that various comparable practices have been pervasive in Germany as well. Preliminary analyses of France and Spain show similar results.¹⁴² Two dominant explanations have emerged from these studies:

William Chambliss proposed an economic-elite mechanism of vagrancy laws. According to this mechanism, criminal laws generally follow changing social conditions and thus the needs of society to police specific behaviours. For vagrancy laws in particular, these conditions were mostly economic transformations in response

¹⁴² See the conclusion of this thesis.

to which new economic elites created mobility constraining laws to protect their ‘vested interests’. Once vagrancy laws were no longer needed for the protection of those groups, the laws would fall dormant again and would no longer be applied with any focus. This is well captured by the following paragraph from Chambliss’s conclusion:

The vagrancy laws emerged in order to provide the powerful landowners with a ready supply of cheap labor. When this was no longer seen as necessary and particularly when the landowners were no longer dependent upon cheap labor nor were they a powerful interest group in the society the laws became dormant. Finally a new interest group emerged and was seen as being of great importance to the society and the laws were then altered so as to afford some protection to this group.¹⁴³

The **Economic-Elite Hypothesis (H_{EE})** to explain the development and use of vagrancy-type restrictions on internal mobility can be stated as: State authorities use vagrancy-type laws primarily to protect the economic interests of elite groups. Once vagrancy-type laws are no longer useful due to changing economic conditions, they are going to fall dormant, lose focus, and will ultimately be replaced.

Jan Ziekow argues similarly when explaining the development of legal restrictions placed on the freedom of movement within and between German states from the Middle Ages to the end of the Weimar Republic. He does not provide a precise mechanism for these developments. But, following a historical analysis of legal statutes, Ziekow argues that ‘the absolutely dominating parameter in the [legal] development of the freedom of movement was the socio-economic factor [...]. In comparison, the political determinant stepped back and confined itself to merely defining the boundaries of movement-regulating measures.’¹⁴⁴

¹⁴³ Chambliss, 'Sociological Analysis of Vagrancy', p. 77.

¹⁴⁴ Ziekow, *Freizügigkeit Und Aufenthalt*, pp. 331-332.

Jeffrey Adler critically engages with Chambliss's claims based on his research on the use of vagrancy laws in St Louis.¹⁴⁵ He begins by stating the then-dominant hypothesis as proposed by Chambliss suggesting that 'if Marxist criminologists are correct, changes in the structure of the marketplace should explain shifts in the focus of vagrancy law. Conversely, if vagrancy statutes change independently of market forces, the Marxist view would appear to be flawed.'¹⁴⁶ To see whether Chambliss's thesis holds up to scrutiny, Adler provides an empirical test to see if changes in local vagrancy-type statutes met the expectations raised by H_{EE}. Adler argues that vagrancy-type laws neither followed the interests of economic elites nor had fallen dormant after reaching their purported final stage of legal development in the late 18th century. Instead, they were amended frequently to police alleged moral failings: 'Elite fears about the character of society and the fragility of middle-class culture have affected public policy as have working-class concerns about an invasion of diseased, deviant outsiders. These dynamics, however, are deeply embedded in the context of culture and cannot be understood solely in terms of economic categories.'¹⁴⁷ Economic concerns played a role, but it was mainly cultural attitudes towards moral behaviour that shaped modern vagrancy-type laws.

This **Cultural-Hierarchy Hypothesis (H_{CH})** to explain the development and use of vagrancy-type restrictions on internal mobility can be stated as: State authorities use vagrancy-type laws primarily to institutionalise and police human hierarchies which are based on legitimising myths of differential humanity that are widespread in society at a given time.

¹⁴⁵ Jeffrey S. Adler, 'Vagging the Demons and Scoundrels: Vagrancy and the Growth of St. Louis, 1830-1861', *Journal of Urban History* 13, no. 1 (1986): pp. 3-30; Adler, 'Historical Analysis of Vagrancy'.

¹⁴⁶ Adler, 'Historical Analysis of Vagrancy', p. 210.

¹⁴⁷ Adler, 'Historical Analysis of Vagrancy', p. 222.

For the selection of evidence below, one key piece of background information I is necessary: Vagrancy laws were first introduced in medieval England to control the movement of free labourers as a response to labour shortages after the second Plague. The emergence of vagrancy-type laws is thus closely tied to H_{EE} and only weakly related to H_{CH} in so far as feudal society was hierarchically stratified. This background information means that H_{EE} has stronger prior odds than H_{CH} . For the prior log-odds, I thus assign

$$\log\left(\frac{P(H_{CH}|I)}{P(H_{EE}|I)}\right) = -20dB$$

Below, I analyse four pieces of evidence drawn from my own research on IMC in the UK, US, and Germany. These evaluated under in turn under each of the two hypotheses H_{CH} and H_{EE} .

E1: Vagrancy-type laws in the late 18th early 19th century England

According to historians of 18th and 19th century England, the social reform movement of the early 19th century perceived poverty as a wider societal issue that required a society-wide treatment. Despite widespread unemployment following the demobilisation at the end of the Napoleonic Wars, able-bodied paupers were now deemed to be voluntarily idle and thus an immoral threat to society. From the late 18th century onwards, vagrancy laws were primarily used to apprehend those suspected of immoral behaviour and administer punishments. From 1834 onwards, this was combined with the novel institution of Poor Houses.¹⁴⁸

In the world of H_{CH} , this development is highly expected. It follows the hypothesis to the letter in that British authorities used vagrancy laws to police a societal hierarchy based on a widespread legitimising myth of the immoral poor.

¹⁴⁸ Lawrence, 'Persistence of Pre-Emptive Policing'; Rogers, 'Policing the Poor'; Feldman, 'Migrants, Immigrants and Welfare'.

In the world of H_{EE} , this development is surprising. It was not economic elites that implemented or pushed for reforms, but societal reformers who sought to implement a new poor relief system. The main concern of these elites was moral behaviour and the alleged immorality of able-bodied paupers. Of course, a system in which the poor and homeless have to live in fear of criminal prosecution also helps employers to keep wages low. Therefore, E_1 does not go directly against the interests of economic elites.

$$\text{Log} \left(\frac{P(E_1|H_{CH}I)}{P(E_1|H_{EE}I)} \right) = 20dB$$

E2: Vagrancy laws in post-Civil War USA

E2a: Debates over expulsions of African Americans from the American South

Following the US Civil War, several Southern state legislatures issued new vagrancy laws. As historian William Cohen powerfully shows, ‘almost from the moment slavery ended, whites who employed black labor sought to re-create a main element in the old system by preventing blacks from moving about freely.’¹⁴⁹ African Americans apprehended in public with ‘no lawful business or occupation’ were to be declared vagrants and punished with fines and imprisonment. Crucially, ‘those who could not pay their fines within five days were to be hired out by the sheriff “to any person who will, for the shortest period of service, pay said fine or forfeiture and all costs”’.¹⁵⁰ Such bonded labour laws led to conflicts between white supremacists. Cohen cites the example of Georgia state senator Thomas P Gibbs who advocated for repealing parts of this system ‘on the grounds that it would be good public policy to facilitate black emigration from the state. The blacks in their emancipated condition were unfit for laboring, he said. They had lapsed into barbarism, and there existed a large number of vagabond blacks who were a “continual menace to property,

¹⁴⁹ Cohen, *Freedom's Edge*, p. 4.

¹⁵⁰ Cited in Cohen, *Freedom's Edge*, p. 29.

to peace, and to virtue.” Gibbs predicted that “the time would come before long, when the white people would rise as one man and demand emigration or extermination.”¹⁵¹ But in this and other ensuing votes, supremacist legislators favouring continued bonded labour over a white-only society succeeded despite many white voters calling for expulsion. Cohen attributes this to economic interests: ‘It appears that in such contests self-interest generally won out.’¹⁵²

In the world of H_{CH} , this development is surprising. Slavery was rooted in white supremacy and so was the bonded labour system implemented by white supremacist following Reconstruction. But seen in isolation, the expulsion of African Americans would have underpinned racial hierarchies and creating a white-only society more than preventing emigration.

In the world of H_{EE} , this development is highly expected. Southern economic elites favoured a system of bonded labour and wanted to preserve slavery in all but the name. Expelling African Americans from Southern states would have hurt white supremacists’ economic interests.

$$\log\left(\frac{P(E_{2b}|H_{CHI})}{P(E_{2b}|H_{EEI})}\right) = -20dB$$

E2b: Vagrancy Laws and Jim Crow segregation

Beginning in the 1900s, vagrancy laws were increasingly used throughout the US to police spaces deemed to be reserved for white Americans. African Americans were often targeted by police and charged with ‘loitering’ in such spaces. Police arrested and courts sentenced African Americans simply for being in public spaces. Jim Crow laws established the legal basis for white supremacist segregation in the South and were enforced through vagrancy laws. Vagrancy-type laws were also to

¹⁵¹ Cited in Cohen, *Freedom's Edge*, p. 236.

¹⁵² Cohen, *Freedom's Edge*, p. 237.

establish and enforce white-only so-called Sundown Towns.¹⁵³ Sundown Towns were particularly prevalent in areas that were not dependent on African American labour. As the historian James W Loewen explains, ‘between 1890 and 1940, hundreds of towns flaunted sundown signs at their corporate limits or train stations – but seldom in the plantation South [...] This area, with its social and economic dependence on cheap black labor, rarely created sundown towns.’¹⁵⁴

In the world of H_{CH} , this development is highly expected. Vagrancy laws were specifically used to uphold a white supremacist racial hierarchy across the US.

In the world of H_{EE} , this development is highly surprising. The use of vagrancy laws to uphold racist segregation across the US did not follow the demands of economic elites. Local vagrancy-type statutes did not fall dormant in the absence of economic elite interest in upholding them. Sundown Towns were more widespread in areas with little African American labour precisely due to the absence of such ‘vested interests’.

$$\log\left(\frac{P(E_{2b}|H_{CH}I)}{P(E_{2b}|H_{EE}I)}\right) = 30dB$$

E3: Antiziganist laws in interwar Germany

Following a long tradition of racial persecution of Sinti and Roma, the German state of Bavaria passed the Law to Combat Gypsies, Vagrants, and the Work-Shy in 1926.¹⁵⁵ The law enabled local authorities to police any travelling group and directly expel travellers from Bavarian territory, even if they held German citizenship. Moreover, those suspected to be Sinti or Roma, homeless, or out of work could be punished with internment in state-run forced labour camps, the cost of

¹⁵³ Goluboff, *Vagrant Nation*; Margalynne J. Armstrong, 'Are We Nearing the End of Impunity for Taking Black Lives?', *Santa Clara Law Review* 56, no. 4 (2016): pp. 721.

¹⁵⁴ Loewen, 'Sundown Towns', pp. 26-27.

¹⁵⁵ Bayerisches Gesetz zur Bekämpfung von Zigeunern, Landfahrern und Arbeitsscheuen vom 16.7.1926, 22 July 1926 and Hehemann, *Bekämpfung Des Zigeunerwesens*, pp. 315-316.

which fell onto the interned persons. The law had broad provisions and targeted several societal groups due to their status and presence in public space, not because of any specific criminal behaviour. In this, they followed the pattern of vagrancy-type laws.¹⁵⁶ In an accompanying ministerial decree, Bavaria's Minister of the Interior informed local police forces that 'the term gypsy is widely known [...]. Race science can provide information about who is to be taken as a gypsy.'¹⁵⁷

In the world of H_{EE} , this development is surprising. It was not economic elites that implemented or pushed for these laws, but antiziganist politicians. The main concern of these elites was persecuting Sinti and Roma and policing allegedly immoral behaviour. Economic elites did not benefit from this law.

In the world of H_{CH} , on the other hand, this development is highly expected. It follows the hypothesis to the letter in that Bavarian authorities used a vagrancy-type law to institutionalise a racial hierarchy based on a widespread antiziganist legitimising myth.

$$\log\left(\frac{P(E_3|H_{CH}I)}{P(E_3|H_{EE}I)}\right) = 30dB$$

Based on the assessed evidence, H_{CH} has more explanatory power for the development of vagrancy laws in the three cases than H_{EE} . This limited selection of evidence speaks in favour of H_{CH} by 40dB. More importantly, from a critical realist perspective, there are two methodological insights that this Bayesian assessment provides.

First, using the case of interwar Germany in this specific analysis demonstrates how EBA can be used to probe the scope conditions of a proposed generative mechanism. In their initial projects, Chambliss and Adler developed their

¹⁵⁶ Rushin and Carroll, 'Status Crimes'; Kieschnick, 'Regulate the Homeless'.

¹⁵⁷ Ministerialentschließung zur Ausführung des Zigeuner- und Arbeitsscheuen-Gesetzes vom 16. Juli 1926 des Staatsministeriums des Innern, 16.7.1926. See also Hehemann, *Bekämpfung Des Zigeunerwesens*, pp. 315-316.

hypotheses to explain the development of vagrancy-type laws in the US and UK. Both authors suggest that the developments they described could be of a more general nature but do not specify exact scope conditions. Most of the literature on IMC focuses on the US and UK, with the exception of Ziekow who proposed an equivalent hypothesis to Chambliss's for the development of freedom of movement regulations in Germany. The generalised statements by Adler and Chambliss and Ziekow's extension of the economic hypothesis to Germany, motivated me to apply their hypotheses to all three cases to see whether Adler's mechanism in particular would hold explanatory power on this level of abstraction. The positive empirical assessment indicates that Adler's Cultural-Hierarchy Hypothesis could also be used to explain similar mobility constraining laws in Germany. In line with the immanent critique requirement, this specific test would not have decreased confidence in Adler's original empirical findings but only in the generalisability of the proposed mechanism. Bayesian inference requires to clearly specify the scope conditions of any hypothesis under examination. But the iterative nature of Bayesian inference makes it possible to adjust hypotheses prior to a new assessment of the whole range of evidence.¹⁵⁸

Secondly, the discrepancy between pieces of evidence relating to the use of vagrancy laws in post-Civil War America also suggest that a combination of the two generative mechanisms could provide a stronger explanation for particular events, such as the use of vagrancy laws to establish a system of bonded labour following the abolition of slavery. The goal of CR, as discussed above, is to catalogue abstracted mechanisms which can be used to illuminate other empirical instances and EBA is a powerful tool for doing so. The present analysis shows that seeing vagrancy laws only as tools in the hands of economic elites to protect their vested interests does not hold as much explanatory power as seeing it from the perspective of culture and related

¹⁵⁸ Fairfield and Charman, *Social Inquiry and Bayesian Inference*, pp. 79-81; Fairfield and Charman, 'Dialogue with Data'.

human hierarchies. Slavery in the US South was not just another economic system which economic elites attempted to uphold with, among other measures, vagrancy laws. White supremacy was one of its essential characteristics. As Adler writes in the context of vagrancy laws: they ‘cannot be understood solely in terms of economic categories’.¹⁵⁹ But economic elites and their interests in upholding oppressive and exploitative systems are still an important part of the causal process. To explain this connection of mechanisms in generalisable terms, a researcher could subsequently devise a new hypothesis, drawing, for example, from literatures on racial capitalism or from theories on deeper racist undercurrents of Western society.¹⁶⁰ Therefore, as I posit in my work on IMC, the ‘flexibility of vagrancy laws is precisely what enabled state authorities to use them in connection with multiple but case-specific moral and racial hierarchies of various ideological contexts while also sustaining the unequal economic systems built on top of those hierarchies. Rather than having one particular target, IMC could cement several moral and racial hierarchies simultaneously.’¹⁶¹

¹⁵⁹ Adler, 'Historical Analysis of Vagrancy', p. 222.

¹⁶⁰ Michael George Hanchard, *The Spectre of Race: How Discrimination Haunts Western Democracy* (Princeton, NJ: Princeton University Press, 2018); Cedric J. Robinson, *Black Marxism: The Making of the Black Radical Tradition* (London: Zed, 1983).

¹⁶¹ See the first essay in this thesis.

5.5 A Common Language of Mechanisms

Bayesian inference and especially Explicit Bayesian Analysis are powerful tools for qualitative researchers and especially historical social scientists to provide a measure of confidence to their explanatory research. While this measure is not objective, it adds an inter-subjective standard to qualitative research that makes results more reliable, transparent, and replicable. By including EBA in their research practice, qualitative researchers can improve the quality of their inference without having to opt for the standards of frequentist statistics which cannot be accurately applied to non-stochastic data. For critical realists, EBA is of distinct importance. Critical Realism requires scholars to empirically assess the explanatory power of their proposed generative mechanisms against competing explanations. But so far, no appropriate tools, techniques, or recommendations exist. EBA, as proposed by Fairfield and Charman, fits this methodological gap in the CR literature.

But the benefits of EBA go beyond just the assessment of explanatory power. As I have shown in the preceding discussions, EBA can also assist in identifying the scope conditions and potential combinations of generative mechanisms. Even if one mechanism holds significantly more explanatory power than another overall, the assessment of individual pieces of evidence can still help in determining whether a phenomenon would not be better explained by a combination of mechanisms.

Another advantage of EBA lies in the side-effects of having to clearly specify mechanisms as mutually exclusive and exhaustive hypotheses. A prevalent issue in qualitative explanatory, historical, and, in particular, critical realist research is the challenge of double interpretation. In addition to interpreting the qualitative record, critical realist researchers must also ascertain the exact specifications of other researcher's explanatory mechanisms.¹⁶² As Danermark et al. argue: '[The] social

¹⁶² Isaksen, 'Reclaiming Rational Theory Choice', p. 254.

scientist's task is to "interpret other people's interpretations", since other people's notions and understandings are an inseparable part of the object of study.¹⁶³ While there is never just one true reading of a text, critical realists can help other researchers to build on their results by clearly stating their proposed generative mechanisms in an abstracted and case-independent language to prepare them to be assessed in new contexts. In this way, the practice of EBA assists in CR's goal of theoretical generalisation and thus becomes an even more valuable critical realist research. Through EBA, qualitative researchers gain a common language to communicate their mechanisms across theoretical and empirical divides. This is of special importance to scholars working on explaining complex, long-term and macro-social developments in which mechanisms are likely to be abstract and multi-faceted, such as in the fields of migration control and state development.

¹⁶³ Danermark et al., *Explaining Society*, p. 32.

6 Conclusion

The results of the three preceding essays have implications for further research in their individual fields. But jointly, they also have broader impacts on the study of migration control and state power as a whole. In these concluding remarks I first discuss the implications of the three individual essays before turning to the wider field of migration control and state power.

6.1 Controlling the Marginalised

6.1.1 Summary of Results

In the first essay of this thesis, I posed three questions relating to IMC: (1) Why do states control the internal movement of their people? (2) How can we account for the recurrence of internal mobility control practices across different polities and at various stages of their state development? And (3) what are the effects and consequences of such practices? Through a historical comparison of IMC practices in the UK and British Empire, the US, and Germany throughout the 19th and early 20th centuries, I highlight three common patterns which reveal the essential characteristics of practices falling under the abstracted category of IMC:

First, states use IMC in response to societal or political transformations, or crises, that involve or lead to changes in membership claims by previously marginalised groups. IMC creates, or affirms, layered citizenship which matches dominant hierarchies of differential humanity. This means that, secondly, IMC targets specific groups which are ascribed a life on the margins of ‘normal’ society by the legitimising myths underpinning those hierarchies. Rather than being used completely arbitrarily or to prevent concrete crimes, state authorities employ IMC practices to police and cement, among others, moral and racial hierarchies. Therefore, IMC can be seen as an instance of ideological illiberalism.¹ In this way, IMC is part of an ‘ordered system of exclusion and disciplinary regulation’² to create homogenous nation-states. Thirdly, IMC practices are inherently spatial and thus challenge the central state’s uniform control over its territory and the model of uniform belonging of a population to a single nation-state. IMC practices draw jurisdictional boundaries of belonging by limiting access to or enforcing the presence of individuals in specific

¹ Kauth and King, 'Illiberalism'.

² Mottier, 'Eugenics, Politics and the State', p. 264.

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areas of a state's territory. This produces a duality of belonging and overlapping claims of control leading to tensions between sub-state units and between sub-state units and the central state. Because these tensions question the uniformity of territorial control and membership, they touch on the very foundations of the modern nation-state and thus create the need for central-state response. Based on these observations, I propose a generative mechanism linking IMC and the expansion of centralised state power:

Conflicts between sub-state units – or sub-state units and the central state – over the control of the internal movements of marginalised groups led to demands for the central state to step into the role of a standard setter and enforcer. Overruling local and regional interests by setting and enforcing standards of belonging and control across their entire territory required central states to expand and centralise state power. This could involve either enforcing equality by integrating formerly marginalised groups or creating institutions of enforced inequality and further marginalisation. Should central-state authorities be unable or unwilling to intervene, IMC can lead to the partial loss of control of the central state over its constituent sub-state units and thus contribute to its disintegration.

By abstracting this mechanism from any one of the examined empirical contexts, it is possible to describe and explain historical processes in multiple cases and reveal developments that could be commonly shared among modern nation-states in general. As shown in *Controlling the Marginalised*, the workings of the IMC mechanism can be found in the British state's power expansion and centralisation over the course of the 19th century. The mechanism explains processes of racial segregation and forceful federalism in the US following the Civil War and Reconstruction. It also provides insights into the emergence of citizenship duality rather than a uniform national citizenship over the course of 19th century German

nation-state formation. Citizenship duality enabled German states to exclude marginalised groups such as Sinti and Roma based on an antiziganist racial hierarchy.

The goal of critical realist theoretical generalisation is to uncover generative mechanisms that can be applied to developments in contexts that fall outside its initial empirical scope. Analysing the case of movement restrictions following the abolition of slavery in Zanzibar and the failure to uphold freedom of mobility for all British subjects across the British Empire shows that the IMC mechanism also contributed to the expansion and contraction of centralised imperial power and thus the transition of empire states to nation-states.³

6.1.2 *Internal Mobility Control in Integrated States*

Preliminary analysis, therefore, suggests that the link of IMC and state power might constitute a general mechanism of state development. In addition to cross-case generalisability, the analyses in the first essay also raise questions regarding the developmental boundaries of the proposed IMC mechanism of state development. The mechanism suggests a trajectory towards an increase in the centralisation of state power but as one of the empirical manifestations of the internal politics of belonging, it is unlikely to ever vanish. Contemporary nation-states are highly integrated, both horizontally, that is, regarding its spatial integration, and vertically, that is, regarding its population. And the examples raised in the introduction of *Controlling the Marginalised* as well as research on illiberalism and layered citizenship show that practices of exclusion and internal mobility control are widespread in modern-day liberal democracies.⁴ What does internal mobility control look like in

³ Frederick Cooper, *Citizenship between Empire and Nation: Remaking France and French Africa, 1945-1960* (Princeton, NJ: Princeton University Press, 2014); Frederick Cooper, *Colonialism in Question: Theory, Knowledge, History* (Berkeley, CA; London: University of California Press, 2005).

⁴ Kauth and King, 'Illiberalism'; Elizabeth F. Cohen, *Semi-Citizenship in Democratic Politics* (Cambridge; New York, NY: Cambridge University Press, 2009).

these highly integrated states? Three categories of contemporary IMC can be identified:

First, albeit less pervasive than in the 19th and first half of the 20th centuries, the classic IMC mechanism of sub-state conflict and demands for standardisation and enforcement can still be identified in the cotemporary politics of exclusion, especially in the American federal system. As Goluboff shows, internal freedom of movement, as an implied constitutional right, is only a recent development in the US largely due to Supreme Court decisions during the 1960s.⁵ But as recent debates on the criminalisation of abortion and warnings by constitutional scholars show, it is not held as an inalienable right for those attempting to exclude vulnerable groups.⁶ In this situation, the White House under President Joe Biden has already promised federal standardisation and enforcement if required.⁷

The movement of the poor and homeless is still severely enforced and restricted in modern day America. Semi-voluntary policies of homeless bussing and the redistribution of the poor stand in the tradition of controlling the mobility of the desperately poor.⁸ The contemporary practice of compelling homeless people in the US to accept free bus tickets to travel from one jurisdiction to another, often under false promises of more state assistance in the destination jurisdiction, has the potential of starting a new IMC process. Turning to exclusionary policies aimed at non-citizens, in the summer of 2022 the Republican governor of Florida, Ron DeSantis, proposed a \$12m programme to transport asylum seekers out of the state

⁵ Goluboff, *Vagrant Nation*.

⁶ Cohen, Donley, and Rebouché, 'New Abortion Battleground'.

⁷ The White House, 'President Biden Announces Actions in Light of Today's Supreme Court Decision'.

⁸ See e.g. Todd DePastino, *Citizen Hobo: How a Century of Homelessness Shaped America* (Chicago, IL; London: University of Chicago Press, 2003); Outside in America, 'Bussed Out: How America Moves Its Homeless', *The Guardian*, 20 December 2017, <https://www.theguardian.com/us-news/ng-interactive/2017/dec/20/bussed-out-america-moves-homeless-people-country-study>; Kenneth L Kusmer, *Down & out, on the Road: The Homeless in American History* (Oxford: Oxford University Press, 2002).

as part of wider escalation of anti-migration policies in Republican-led states. In what can only be described as a political manoeuvre, 48 migrants were compelled under false pretences to board a private plane in October 2022 and flown to the island of Martha's Vineyard in Democratic-led Massachusetts a similar relocation took place in 2023 to Democratic-led California, sparking national and international protests but also praise from right-wing voters and migration restrictionists within the Republican party.⁹

At the time of writing, US politics have entered a period marked by high polarisation and the rise and return of exclusionary and illiberal policies. With political allegiances being highly spatially polarised, expulsion practices targeted at marginalised groups, such as the one demonstrated by DeSantis, could soon become more widespread and demand a clear intervention from the federal government to uphold standards of treatment.

Secondly, highly integrated central state authorities continue to use IMC to control marginalised groups. This development from sub-state level internal expulsion towards national-level arrest, in the sense of arresting movement, and incarceration can already be seen in the historical cases. Various modern-day policing and incarceration practices historically emerged from the IMC measures analysed in the first essay. This can be a consequence of the 'enforcing inequality' pathway of the IMC mechanism when central states respond to the question of 'who belongs?' with *de-jure* or *de-facto* national-level exclusions.

⁹ Edgar Sandoval et al., 'The Story Behind Desantis's Migrant Flights to Martha's Vineyard', *New York Times*, 2 October 2022, <https://www.nytimes.com/2022/10/02/us/migrants-marthas-vineyard-desantis-texas.html>; Nicholas Nehamas and Shawn Hubler, 'Florida Confirms Arranging Migrant Flights to California', *New York Times*, 6 June 2023, <https://www.nytimes.com/2023/06/06/us/politics/desantis-florida-migrant-flights.html>.

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In its latest form, prior to its abolition by the British government in 2022, the Vagrancy Act's primary purpose was to criminalise homelessness and begging.¹⁰ Rather than supporting those living in the direst of circumstances, the law allowed local police forces to remove rough sleepers from public view, fine them, and, if they were unable to pay, hand out a prison sentence – and therewith a criminal record making it unlikely that they would find employment. The repeal of the statute, achieved by years of campaigning by social advocacy groups, was celebrated by victims and campaigners across the country. On the blog of Britain's national homelessness charity Crisis, a formerly homeless man named Karl who had been convicted for begging in the streets of Liverpool wrote: '[The repeal] gives people a chance to get the services that they need or get the help that they need. It stops them being criminalised, so that when they do finally get back to life they'll have the chance of a job. Because a criminal record – it doesn't matter what it's for - follows you through life and stops you progressing.'¹¹ But the celebrations did not last long.

In early November 2023, then-Home Secretary Suella Braverman announced that she would introduce new policies to target the homeless. In a much criticised statement with thinly-guised anti-migration undertones, she resurrected the separation of the poor into categories of morality promising to criminalise the voluntarily idle, to use the 19th century terminology, while supporting the 'genuinely homeless': 'But we cannot allow our streets to be taken over by rows of tents occupied by people, many of them from abroad, living on the streets as a lifestyle choice.'¹²

¹⁰ This only applied to England and Wales as Scotland had already abolished its vagrancy statutes in 1980.

¹¹ 'Vagrancy Act Repeal: 'It Gives People a Chance'', *Crisis*, 12 April 2022, <https://www.crisis.org.uk/about-us/the-crisis-blog/vagrancy-act-repeal-it-gives-people-a-chance/>.

¹² Jake Levison, 'Suella Braverman Sacked: What Exactly Did the Former Home Secretary Say About Homeless People Using Tents?', *Sky News*, 13 November 2023, <https://news.sky.com/story/what-were-suella-bravermans-comments-about-homeless-people-and-rough-sleepers-13001869>.

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Braverman's statements provoked public outrage. On 14 November 2023, a day after Braverman's forced resignation over a number of controversial public statements, it emerged that the Conservative government was drafting even more punitive provisions to replace the 1824 Act as part of a new criminal justice bill. The draft bill included criminalising rough sleeping but also the appearance of a person's intent to sleep rough if suspected to be causing a 'nuisance', including noise or smells. Proposed punishments included imprisonment and hefty fines.¹³

The proposed measures not only follow the tradition of the vagrancy-type laws. Their focus on intentionality also constitutes pre-emptive policing, first introduced in the UK with the 18th century vagrancy acts.¹⁴ In this context, vagrancy-type laws reveal parallels to modern-day racial profiling.¹⁵ The 1824 Act's suspicious person provision, already discussed in the first essay, provides a direct link. The 19th century clause allowed police to arrest and charge anyone merely suspected of having an intent to commit a crime. In practice, this clause was particularly applied to the control of marginalised groups.¹⁶ In the 1960s through 1980s decades marked by racist agitation and violence in across Britain and exemplified by Enoch Powell's infamous 'rivers of blood' speech in 1968,¹⁷ the 'sus law' provision of the Vagrancy Act became notorious due to its widespread usage to police racialised communities

¹³ Criminal Justice Bill (2023). Parliament: House of Commons. Bill 010 2023-24 (as introduced), available at <https://bills.parliament.uk/bills/3511>. See also Downie, 'New Homelessness Bill'.

¹⁴ Lawrence, 'Persistence of Pre-Emptive Policing'.

¹⁵ Samantha Kennedy McCluskey, 'The Crime of Being Suspicious: British Counter-Terrorism Legislation and the History of Discriminatory Preventative Laws in the United Kingdom', *Rutgers Race & L. Rev.* 17(2016): pp. 131.

¹⁶ Simon Peplow, 'Cause for Concern'? Policing Black Migrants in Post-War Britain (1945-68)', *Immigrants & Minorities* 40, no. 1-2 (2022): pp. 177-209.

¹⁷ Kevin Hickson, 'Enoch Powell's 'Rivers of Blood' Speech: Fifty Years On', *The Political Quarterly* 89, no. 3 (2018): pp. 352-357; Amy Whipple, 'Revisiting the "Rivers of Blood" Controversy: Letters to Enoch Powell', *Journal of British Studies* 48, no. 3 (2009): pp. 717-735; Simon Peplow, 'Why We Still Need to Talk About Enoch', *Soundings: A Journal of Politics and Culture* 72(2019): pp. 160-162.

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of black and ethnic minorities in large British cities.¹⁸ Despite warnings from experts and protests by the affected communities, concerns over racial profiling were repeatedly dismissed by police.

Recently opened archives on the internal debates on the 'sus' law provisions show how many within the police forces and government leadership believed that pre-emptive policing was necessary to keep up law and order, even if it led to the unequal application against black and ethnic minority groups.¹⁹ The racially targeted use of the Vagrancy Act only intensified when Margaret Thatcher's new Conservative government entered office in 1979 after having include promises to tighten immigration restrictions and restrict access to citizenship.²⁰ In the following years, police forces, especially in London, continued to target racialised communities to much criticism by the broader community and legal and scientific experts. The 'sus' clause of the 1824 Act was repealed in the summer of 1981, after resistance to policing practices erupted in the inner-city riots of the early 1980s and especially the 1981 Brixton riot.²¹

This trajectory from IMC through vagrancy-type laws and expulsions towards broader policing and incarceration measures relates to questions of arresting movement that go far beyond the vagrancy-type laws primarily discussed here.

¹⁸ Solomos, *Politics of Ideology and Policy*; Lawrence, 'Persistence of Pre-Emptive Policing'; Terrill, 'Thatcher's Law and Order Agenda'; Nicole M Jackson, 'A Nigger in the New England': 'Sus', the Brixton Riot, and Citizenship', *African and Black Diaspora: An International Journal* 8, no. 2 (2015): pp. 158-170; Nicole M Jackson, 'Imperial Suspect: Policing Colonies within "Post"-Imperial England', *Callaloo* 39, no. 1 (2016): pp. 203-215; Peplow, 'Policing Black Migrants'.

¹⁹ TNA HO 287/2727. See also Simon Peplow, *Race and Riots in Thatcher's Britain* (Manchester: Manchester University Press, 2019); Peplow, 'Policing Black Migrants'.

²⁰ Terrill, 'Thatcher's Law and Order Agenda'; Zig Layton-Henry, 'Race and the Thatcher Government'. In *Race, Government and Politics in Britain*, ed. Zig Layton-Henry and Paul B. Rich (London: Palgrave Macmillan, 1986), pp. 73-99; Jenny Bourne, 'May We Bring Harmony'? Thatcher's Legacy on Race', *Race & Class* 55, no. 1 (2013): pp. 87-91; Robert Saunders, *The Many Lives of Margaret Thatcher* (Oxford: Oxford University Press, 2017); Peplow, *Race and Riots*.

²¹ Peplow, *Race and Riots*; Richard Phillips, Diane Frost, and Alex Singleton, 'Researching the Riots', *The Geographical Journal* 179, no. 1 (2013): pp. 3-10; Jackson, 'Sus', the Brixton Riot, and Citizenship'; Jackson, 'Imperial Suspect'; Terrill, 'Thatcher's Law and Order Agenda'.

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Historical and contemporary restrictions of the mobility of marginalised groups range from the use of camps in migration control,²² the illiberal internments of suspected ‘enemy alien citizens’,²³ directed settlement policies,²⁴ to forced resettlements and reservation systems for Native and Indigenous Peoples.²⁵

Large-scale imprisonment is the starkest restriction of the freedom of movement.²⁶ Christopher Agee suggests to interpret the end of the US vagrancy-regime in the 1960s as the beginning of a new carceral state.²⁷ As a measure of population control, it has reached new extremes in today’s United States, displaying deeply institutionalised racial and moral hierarchies infamously termed ‘The New Jim Crow’.²⁸ This trajectory towards a carceral state, often financed through leasing out convicts for work, can already be identified in the use of vagrancy laws in conjunction with prison labour in the post-Civil War US South.²⁹ As Cohen describes, prison labour laws, together with vagrancy laws, became ‘an integral part of the effort to create a new legal structure to deal with emancipation on white terms’,³⁰ that is by delivering ‘a maximum punishment at a minimum of cost to the taxpayers’

²² See e.g. Kauth and King, 'Illiberalism'.

²³ Adam Hodges, ‘“Enemy Aliens” and “Silk Stocking Girls”: The Class Politics of Internment in the Drive for Urban Order During World War I’, *Journal of the Gilded Age and Progressive Era* 6, no. 4 (2007): pp. 431-458; Linda L. Ivey and Kevin W. Kaatz, *Citizen Internees: A Second Look at Race and Citizenship in Japanese American Internment Camps* (Santa Barbara, CA: Praeger, an Imprint of ABC-CLIO, 2017).

²⁴ See e.g. Frymer, 'Territorial Expansion, Land Policy, U.S. State Formation'; Frymer, *Building an American Empire*.

²⁵ See e.g. Jodi A. Byrd, *The Transit of Empire: Indigenous Critiques of Colonialism* (Minneapolis, MN; London: University of Minnesota Press, 2011); Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, MA: Belknap Press of Harvard University Press, 2005).

²⁶ See also Foucault, *Discipline and Punish*.

²⁷ Agee, 'Vagrancy Law Regime to Carceral State'.

²⁸ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, NY: New Press, 2010); Jonathan Simon, *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York, NY; Oxford: Oxford University Press, 2007); Jonathan Simon, *Poor Discipline: Parole and the Social Control of the Underclass, 1890-1990* (Chicago ; London: University of Chicago Press, 1993).

²⁹ Robert Perkinson, *Texas Tough: The Rise of America's Prison Empire* (New York, NY: Picador/Henry Hold and Company, 2010); Alexander, *New Jim Crow*.

³⁰ Cohen, *Freedom's Edge*, p. 221.

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while rooted in the racist belief that African Americans ‘were innately criminal and that whites were entitled to appropriate their labor for the common good.’³¹

As Kelly Hernandez shows, at the turn to the 20th century the majority of prisoners across the US had been arrested on public order charges, such as vagrancy.³² Charges such as vagrancy and the linked convict labour had become an established way to deny racially and morally marginalised groups ‘any right of belonging’.³³ In the 1850s and 1860s, vagrancy laws in the Western US particularly targeted California Indians and Mexican Americans to create a predominantly white society.³⁴ Between the turn of the century until the 1910s, the vagrancy law-carceral state nexus was then predominantly employed to wage a ‘war on tramps’.³⁵ Today, the patterns of incarceration in places like Los Angeles exhibit clear racial hierarchies with African Americans and Latinos making up the vast majority of the prison population.³⁶

This form of ‘governing through crime’³⁷ can be seen as the extension and escalation of the IMC mechanism linking the spatial control of marginalised groups and the expansion of state power in highly integrated states. More research on the transformation of vagrancy-type laws into practices of the carceral state is needed, especially as the late 20th and early 21st centuries have also seen the return of incarceration practices against immigrants and asylum seekers as part of a wider ‘war on illegal immigrants’.³⁸

³¹ Cohen, *Freedom's Edge*, p. 227.

³² Kelly Lytle Hernandez, 'Hobos in Heaven: Race, Incarceration, and the Rise of Los Angeles, 1880-1910', *Pacific Historical Review* 83, no. 3 (2014): pp. 410-447 here p. 423.

³³ Hernandez, 'Hobos in Heaven', p. 438.

³⁴ Hernandez, 'Hobos in Heaven', p. 433.

³⁵ Hernandez, 'Hobos in Heaven', p. 445.

³⁶ Hernandez, 'Hobos in Heaven', p. 447.

³⁷ Simon, *Governing through Crime*.

³⁸ Kauth and King, 'Illiberalism'; King and Valdez, 'Workers to Enemies'.

Third, the IMC mechanism of sub-state conflict and power centralisation has recently re-emerged in the context of European Union freedom of movement rights and member state claims over sovereign territorial control. Here, it is the EU which takes up the role of a ‘central state’ tasked with setting and enforcing standards of equal treatment and inclusion while the EU’s nation-state members conflict over the freedom of movement of marginalised groups. Sinti and Roma are heavily affected by this renewed process of marginalisation.³⁹ From 2009 through 2011, France under President Nicolas Sarkozy was accused of infringing on the rights of thousands of Romanian and Bulgarian citizens labelled as Sinti and Roma travellers when it implemented a mass-deportation programme in direct opposition to EU freedom of movement rights.⁴⁰ After intense altercations between EU officials and the representatives of various member-states, France ostensibly accepted an ultimatum set by the EU commission to stop deportations at the end of 2010. But in reality, deportations continued in 2011 and 2012 and even increased in the first months of socialist President Francois Hollande.⁴¹ Estimates of the total number of those deported from France based on their ascribed ethnic background as Sinti and Roma since 2011 rose to significantly over 10,000 by 2013. Following the initial equality-enforcing response by the Commission, the EU’s policy on Sinti and Roma integration reverted to a *de-facto* exclusionary policy of integration and reintegration in their

³⁹ Melanie H Ram, 'European Integration, Migration and Representation: The Case of Roma in France', *Ethnopolitics* 13, no. 3 (2014): pp. 203-224; Andrew M Korando, 'Roma Go Home: The Plight of European Roma', *Minnesota Journal of Law and Inequality* 30, no. 1 (2012): pp. 125-147; Horia Bărbulescu, 'Constructing the Roma People as a Societal Threat. The Roma Expulsions from France', *European Journal of Science and Theology* 8, no. 1 (2012): pp. 279-289.

⁴⁰ Ian Treynor, 'Roma Deportations by France a Disgrace, Says Eu', *The Guardian*, 14 September 2010, <https://www.theguardian.com/world/2010/sep/14/roma-deportations-france-eu-disgrace>; Caitlin T Gunther, 'France's Repatriation of Roma: Violation of Fundamental Freedoms', *Cornell International Law Journal* 45, no. 1 (2013): pp. 205-225; Bărbulescu, 'Roma Expulsions from France'; Owen Parker, 'Roma and the Politics of Eu Citizenship in France: Everyday Security and Resistance', *Journal of Common Market Studies* 50, no. 3 (2012): pp. 475-491.

⁴¹ Sergio Carrera, 'The Framing of the Roma as Abnormal Eu Citizens: Assessing European Politics on Roma Evictions and Expulsions in France'. In *The Reconceptualization of European Union Citizenship* (Brill Nijhoff, 2014), pp. 33-63.

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alleged countries of origin through a new EU initiative in 2011.⁴² Sergio Carrera calls this process ‘the framing of abnormal EU citizens’ and points to the layering of EU citizenship: ‘The imagined ‘ethnicity’ and ‘nomadic lifestyle’ of Roma seems to have taken precedence over their actual nationality and EU citizenship.’⁴³ What can be seen here in plain view is how practices of IMC are used to control groups which have been pushed to the margins based on widespread moral and racial hierarchies:

Integration and reintegration have been framed as the solution to prevent “mobile Roma” from exercising their European citizenship freedoms and being treated as unwanted foreigners and undeserving beggars ‘abusing’ EU rights and citizenship freedoms. The result has been that the onus of responsibility has ended up on the Roma themselves via the prioritization and promotion of Roma integration and reintegration national policies calling for them ‘to be included’ in Member States societies.⁴⁴

The case of deportation programmes targeting European Sinti and Roma is reminiscent of antiziganist policies in Germany of the 19th and early 20th centuries. These are noteworthy parallels, as the same abstracted IMC mechanism of exclusion is at work in both cases. In 2021, the EU adopted a new recommendation on how member-states should ensure the equality of treatment of Sinti and Roma and mitigate the fallout of the COVID-19 pandemic.⁴⁵ Agencies such as the EU Fundamental Rights Agency were tasked with promoting and protecting the standards set by the EU.⁴⁶ Thus, while the initial response in 2011 pointed in the

⁴² Ram, 'European Integration, Migration and Representation'; Carrera, 'Assessing European Politics on Roma Evictions'.

⁴³ Carrera, 'Assessing European Politics on Roma Evictions', p. 34.

⁴⁴ Carrera, 'Assessing European Politics on Roma Evictions', p. 34.

⁴⁵ Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation 2021/C 93/01, ST/6070/2021/INIT.

⁴⁶ See the website of the EU’s Fundamental Rights Agency online under <https://fra.europa.eu/en>.

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direction of enforced inequality, new policies have the opportunity to change course and enforce the standards of equal treatment and rights promised by EU citizenship.⁴⁷

These contemporary developments show that forms of IMC are recurring in modern nation-states even when previous forms have been abolished. The 1972 Supreme Court decision of *Papachristou v. City of Jacksonville* might have declared vague vagrancy statutes as unconstitutional in the US,⁴⁸ but this did not mean the end of restrictions on the internal mobility of marginalised and discriminated against groups. The abolition of the 1824 Vagrancy Act in England and Wales in 2022 did not mean a decriminalisation of homelessness. EU Freedom of Movement rights are not fully applied to Sinti and Roma. The process of the internal politics of belonging are ongoing in integrated states and closely intertwined with nation-state development. It is important to remember that the process of inclusion is never irreversible, even in purportedly liberal democracies.⁴⁹ In the end, civil society must overcome hierarchies of differential humanity to stop the cycle of exclusion.

⁴⁷ Márton Rövid, 'One-Size-Fits-All Roma? On the Normative Dilemmas of the Emerging European Roma Policy', *Romani Studies* 21, no. 1 (2011): pp. 1-22.

⁴⁸ Goluboff, *Vagrant Nation*.

⁴⁹ Kauth and King, 'Illiberalism'.

6.2 Origins of Modern Migration Control

6.2.1 Summary of Findings

Turning to the external politics of belonging, I analysed the *Origins of Modern Migration Control* in the second essay of this thesis. I sought an explanation for a shift in migration politics from 19th century *laissez-faire* liberalism and international cooperation before World War I to restrictive and exclusionary policies in the interwar period. Previous explanations had mainly focused on material factors, such as those pointing to economic cycles, as proposed by Gary Freeman,⁵⁰ or those claiming that the political integration of the labour movement would explain the turn towards migration restrictionism, as argued by Leo Lucassen.⁵¹ Both of these hypotheses put the material interests of powerful political groups at the centre of the observed changes: Either the interest of employers in cheap labour that followed economic cycles or the interest of the labour movement in reduced labour market and welfare state competition. Over the past years, a third strand of explanatory research emerged that instead points to ideas of racial hierarchies and their institutionalisation in exclusionary migration policies as the cause for the ‘global walls against migration’ built during the interwar period. But so far, these approaches had struggled to build a clear generative mechanism that would link racial hierarchies to migration policy making at a specific moment in time.

I contributed to this third strand by building a generative mechanism that put these ideational factors in conversation with institutional theories of political change by drawing from critical juncture, political and racial order models, and critical ideational development approaches. The resulting racial-political order mechanism can be summed up as follows:

⁵⁰ Freeman, 'Modes of Immigration Politics'.

⁵¹ Lucassen, 'Origins of Migration Control'.

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Changes in migration politics are outcomes of clashes of racial-political orders which seek to advance either racially exclusionary or racially inclusionary views of society through restrictionist or liberal migration policies. The motivations of actors for joining either order can vary from being ‘true believers’ to seeking electoral gains, but regardless of these motivations, the orders employ ideas of racial hierarchies or egalitarianism to gain and exercise governing power. The new mode of migration politics following a shift in power, due to, for example, changes in composition, ideational shift, or new institutional settings, will be determined by the resulting dominant order.

A crucial case to exhibit the explanatory power of these three proposed explanations is Germany’s interwar Weimar Republic. Despite its anti-Polish policies, the imperial German *Kaiserreich* had become the second largest labour importing country after the USA by the time the war broke out due to a general *laissez-faire* liberalism in migration matters. But following the war, Weimar Germany passed migration restrictions and the number of foreigners in Germany heavily decreased. This was despite a new democratic government and a constitution based on liberal freedoms. The high political integration of the labour movement during the Weimar Republic pointed to Lucassen’s hypothesis whereas the economic crises in the early and late 1920s highlighted the potential applicability of Freeman’s mechanism. But these two theses struggle to account for newly uncovered empirical evidence that points to the concern of various political actors with the ethnic composition of the German nation.

My empirical analysis of primary sources showed that it is indeed the racial-political order hypothesis that best explains the interwar shifts in Germany. I assigned a crucial role to social democrats in German state and *Reich* governments. Despite pre-war and early post-war commitments to migration liberalism, social democrats shifted towards racialised migration restrictionism following an electoral

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logic to preserve governing power. First, Prussia's social democratic-led government supported opening concentration camps for 'undesired' foreigners and especially Eastern European Jews. And by the late 1920s, the social democratic leadership were only outwardly concerned with immigration while simultaneously pushing for an increase of ethnic German immigration, specifically to replace foreigners of Slavic descent. In the construction of concentration camps as well as in the recruitment of ethnic German workers, social democrats loosely cooperated with the 'true believers' of the migration restrictionist order who had long voiced a commitment to a racially exclusionary view of the German nation. Therefore, while the organised labour movement took up a key role in bringing about modern migration control as suggested by Lucassen, the way in which it did diverged strongly from Lucassen's hypothesis. Rather than responding to material anxieties over labour market and resource competition, it was the ethnic composition of immigrants which became a fixation.

The role of employers, too, diverged from the expectations raised of Freeman's employer capture hypothesis. In interwar Germany, agricultural associations were indeed pushing for migration liberalisations to satisfy their demand for (cheap) labour. In the early 1920s, the social democratic-led transition government responded positively to these demands. But with the shift towards restrictionism, employers were less and less able to influence the decision-making process and had to compromise on the number of working permits issued to foreigners. On the other hand, international employer associations such as the ICC were instrumental in the preparations for internal freedom of movement and establishment treaties which would have re-instated the pre-war *laissez-faire* mode of migration politics, such as the planned multilateral Convention on the Treatment of Foreigners. But despite the convention's failure at the International Conference on the Treatment of Foreigners in 1929 and the subsequent effects of the Great Depression, diplomats in the German

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Foreign Office kept advocating for migration liberalisations out of a strong belief that freedom of movement was important for the future of Germany and world peace. But during the interwar period, this migration liberal order failed to stem the tide of migration restrictionism.

Interpreting the origins of modern migration control not as a specific moment but as a generalised mechanism of competing racial-political orders enables scholars of migration control and state power to explain the common patterns exhibited by various nation-states in the first half of the 20th century without having to jettison the variations in timing nor the variations in targeted groups. Once supplemented with an investigation of the case-specific power shifts, the racial-political order mechanism can, for example, explain the emergence of modern migration control in interwar Germany as well as the changes in the migration politics of 1950s and 1960s Britain. In this way, linking the insights of racial and political order models first developed in the context of US politics and racial inequalities to the context of European migration politics demonstrates the power of what Sewell termed *historical comparison*.

6.2.2 Historical Comparison of the Origins of Modern Migration Control.

Using the generalised concept of critical ideational development to describe and explain the way that migration was framed by the opposing racial-political orders in interwar Germany reveals strong parallels to the American interwar ‘invention of the immigration problem’ and the use of targeted migration restrictions and encouragements to ‘make’ or ‘design’ a nation.⁵² Efforts to recruit ethnic-German workers to replace those of Slavic descent is equivalent to defining who was or was

⁵² Benton-Cohen, *Inventing the Immigration Problem*; Katherine Benton-Cohen, 'The Rude Birth of Immigration Reform', *The Wilson Quarterly* 34, no. 3 (2010): pp. 16-22; King, *Making Americans*; Aristide R Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge, MA; London: Harvard University Press, 2006); Vigneswaran and Quirk, *Mobility Makes States*; Mau, *Reinvention of the Border*.

not compatible with the German nation. The use of Weber's theories on the German nation-state and Eastern European migration gave these decisions the same pseudo-scientific veneer that the Dillingham Commission's assessments of different immigrant groups' compatibility with the 'American standard of living'⁵³ and their 'suitability for citizenship'⁵⁴ according to an American identity shaped by a 'white Anglo-American inheritance'⁵⁵ gave the US migration restrictionists' efforts in the interwar period. The Eastern border thus turned into a 'sorting machine'⁵⁶ of ethnic-nationalist design. Economically, the Weimar Republic was still in need of the same labour migration movements as before World War I, but a powerful restrictionist order sought to reinterpret these migrants from the East, the exploitation of whom the imperial *Kaiserreich* had long benefitted, as a racial threat to the German nation and not just a temporary strain on resources in the early years of economic crisis or the late 1920s Great Depression. Thus they 'invented' an immigration problem.

This theoretical generalisation of Weimar Germany's interwar shift towards racialised, politicised, exclusionary, and thus modern,⁵⁷ migration control in terms of racial-political orders, therefore, makes the analysis of the second essay compatible with other recent findings. Vigneswaran's powerful discussion of migration control in the UK and the British Empire criticises the linear model of history common to many explanations of modern migration control and most famously employed by John Torpey.⁵⁸ Instead of this linear story of emerging institutions that enabled the nation-state to monopolise the means of legitimate movement and introduce passports and

⁵³ Benton-Cohen, 'Birth of Immigration Reform', p. 18.

⁵⁴ King, *Making Americans*, p. 51.

⁵⁵ King, *Making Americans*, p. 14.

⁵⁶ Mau, *Reinvention of the Border*.

⁵⁷ Bauman, *Modernity and the Holocaust*; Bauman, *Wasted Lives*; Bauman, 'Soil, Blood and Identity'.

⁵⁸ John Torpey, 'Coming and Going: On the State Monopolization of the Legitimate "Means of Movement"', *Sociological Theory* 16, no. 3 (1998): pp. 239-259; Torpey, *Invention of the Passport*; Vigneswaran, 'Europe Has Never Been Modern'.

borders to execute that monopoly, he puts the dynamic development of transnational mobility norms in the centre:

[It] does not appear to make much sense to think about contemporary norms of sovereign territoriality as the product of a long-term trend generated by dramatic shifts occurring in Europe. When we look at the moments when Europe was supposed to have created contemporary migration norms, we do not find compelling evidence of a shift toward sovereign territoriality but rather a repeated and evolving tension between this evolving norm and various transnational mobility norms. [...] Racial discourses within and beyond Europe and the agency of actors outside of Europe played significant roles in determining the course of this transition, explaining why the imperial norm of mobility promotion lasted so long and the geographical extent of the European free-movement norm.⁵⁹

In his analysis of three potential critical junctures for the UK's shift from an expansive imperial to a restrictive regional mobility norm, Vigneswaran argues that it was neither the Peace of Westphalia nor the interwar years that brought about this important political change as it is often suggested in the existing literature on migration control. Instead, the changes coincided with the disintegration of the British Empire in the late 1950s, suggesting a shift of interests from upholding universal imperial subjecthood to nationally exclusive citizenship. Vigneswaran's findings for the UK are only seemingly incompatible with my findings for Germany once the essential characteristics of the described phenomena are abstracted in a critical realist fashion.

Germany, and the German Empire, never had a comparable imperial mobility norm applying to colonised peoples. However, when the repeating and evolving tensions of mobility norms are modelled as the conflict between their supporting racial-political orders, it becomes possible to model the two countries' changes in

⁵⁹ Vigneswaran, 'Europe Has Never Been Modern', pp. 17-18.

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mobility norms as part of the same mechanism: Britain's sustained interest in free mobility within the Empire is replaced with Germany's interest in rapid industrialisation and the resulting need for labour migration during the *Kaiserreich*. This interest was combined with liberal ideas of internationalism and free movement and the social democratic rejection of nation-state restrictions on labour mobility as one supporting order of unlikely allies opposed only by conservative and right-wing elites lobbying for a racially exclusionary nation. Following the war and the breakdown of the old institutional order, only internationalist liberals and their support for global mobility norms remained when social democrats realised they could gain public support from supporting an ethnic and national mobility norm over global freedom of movement.

The interwar period has been treated as a general critical juncture within a linear development for many or even most Western nation-states because World War I acted as a quasi-exogenous shock to many political systems or at least fundamentally changed many countries' relationships with their immediate neighbours. These disruptions facilitated changes in dominant orders while also providing new institutional contexts for the prevailing orders to implement more fundamental institutional changes that could exert long-term political influence, often through cross-border cooperation and influence. In comparative terms, the UK underwent many more fundamental political changes at the end of the British Empire than it did following World War I.

Regardless of when these changes took place, however, the shift to racially exclusionary migration control is not irreversible and mobility norms can expand once again – within Europe or more globally – depending on the relative power of their supporting racial-political orders at the next critical juncture. This confirms and extends Vigneswaran's key finding of the dynamic rather than linear development of mobility (control) norms.

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Treating the development of modern migration control as a dynamic clash of racial-political orders also offers potential insights into the emergence of a European internal freedom of movement and external restrictionist migration regime. The second essay in this thesis ends with highlighting the need for racial-political orders to engage in coordinative and communicative discourses to help bring about a critical ideational development and to eventually emerge as dominant. Following World War II, this is what migration liberals attempted in many European states by pushing for European integration. As in the interwar period, the international level appeared as a more promising institutional context for actors holding expansive visions of open-borders and cooperation between nation-states than the national level where restrictionists were already firmly established. Following the trauma of World War II, those actors were much more successful in presenting European integration, and especially Franco-German cooperation, as a necessary condition for lasting peace and prosperity than after World War I. In this context, the internal freedom of movement as the essential if not defining characteristic of the emerging model European citizenship appears less of a puzzle but as a potential but logical outcome of, to borrow Lieberman's phrasing, a political context that provided actors who adopted the idea of European integration with the resources and motives to push for freedom of movement as an individual right.⁶⁰ But it is important to remember that this process, too, is dynamic. As Willem Maas argues in regard to European citizenship: 'Like rights, however, the meaning and content of citizenship are never fixed, and supranational citizenship such as that now found within the EU can be undone in the same way that it was constructed.'⁶¹

In addition to internal freedom of movement, which, as discussed above, already displays familiar layered exclusions due to institutionalised racial hierarchies,

⁶⁰ See also Maas, *Democratic Citizenship and Free Movement*; Maas, *Creating European Citizens*.

⁶¹ Maas, *Creating European Citizens*, p. 116.

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the EU also has a highly restrictive and deadly external border regime. This is despite being based on emancipatory ideals of liberalism and human rights. Sandra Lavenex calls these apparent contradictions of EU migration politics an ‘organised hypocrisy’.⁶² In this way, European integration did not much change the inherently exclusionary, and racialised, logic of modern migration control. European freedom of movement did not transform the nation-states politics of belonging; it only changed the spatial boundaries of their internal and external dimensions.⁶³

⁶² Sandra Lavenex, ‘Failing Forward’ Towards Which Europe? Organized Hypocrisy in the Common European Asylum System’, *Journal of Common Market Studies* 56, no. 5 (2018): pp. 1195-1212.

⁶³ See also Vigneswaran, ‘Europe Has Never Been Modern’.

6.3 Assessing Generative Mechanisms of the Emerging Migration State

Theorised generative mechanisms need to hold up to the empirical record to have explanatory power. The third essay of this thesis, *Assessing Generative Mechanisms of the Emerging Migration State*, introduced the methods of Bayesian inference and especially Explicit Bayesian Analysis (EBA) to the qualitative and explanatory research practice in the philosophical tradition of Critical Realism (CR). The previous two essays were such explanatory endeavours, firmly rooted in CR. The goal was to derive generalisable mechanisms of the relationship of internal and external migration control to the power of the nation-state from a detailed analysis of the empirical record of individual cases. From a positivist perspective, individual or small-N case studies, of which the first two essays are examples, have relatively little inferential value for generalisation. For critical realists, on the other hand, only the detailed analysis of individual cases can lead to causal hypotheses and generalisation. This, as discussed in the third essay of this thesis, does not only come down to different interpretations of the meaning of *generalisation* but, more fundamentally, to different views of what the social world looks like.

Positivism is grounded in an empiricist ontology in which regular patterns of empirical phenomena imply the existence of covering laws that determine the constant conjunction of events. The identification of such patterns through large-N quantitative studies becomes the hallmark of causal inference. CR, on the other hand, is based on a stratified model of reality in which unobservable, transitive mechanisms generate, when actualised, the empirical effects we can observe. But any given phenomenon in the open and overdetermined social world is simultaneously influenced by various interacting and counteracting mechanisms. In order to uncover and intransitively describe the generative mechanisms that explain specific phenomena, it becomes necessary investigate its individual empirical instances.

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Rather than drawing a fixed map of society through the empirical generalisation of regular patterns, the goal of critical realist research becomes theoretical generalisation: This means abstracting retroductive explanations from their immediate empirical context in order to apply them to new contexts. The key inferential step in CR is thus from the particular to the abstract rather than from the particular to the universal.

A key criticism of this kind of inference is that any explanation of a phenomenon derived by retroductively asking ‘what would a mechanism have to look like to produce this event?’ is better than having no explanation at all. But for any complex social event, there are likely to be multiple possible explanations that are each better than no explanation at all. While those researchers who are looking for patterns and regularities have established statistical techniques and conventions to communicate the reliability of their results, the critical realist literature does not have an equivalent for hypothesised generative mechanisms. In the third essay of this thesis, I showed that Bayesian inference, as developed by Tasha Fairfield and Andrew Charman, fills this methodological gap by allowing critical realists to systematically assess the relative explanatory power of several candidate mechanisms by assessing the degree of expectedness of each piece of evidence while inhabiting the world of each candidate mechanism.

Doing so for the three dominant explanation of the interwar shift towards migration restrictionism showed that the racial-political order mechanism indeed holds the most explanatory power relative to its two competitors. As discussed above, this detailed analysis also revealed that, seen from the perspectives of the individual explanations, Freeman’s employer capture and Lucassen’s labour movement integration hypotheses were good at explaining general outcomes but not the way in which they came about. Despite their ability to explain certain regular patterns of events, they were unable to capture the precise explanatory mechanism – a strong

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endorsement for critical realists' insistence on analysing individual instances of phenomena to uncover generative mechanisms.

In its explicit and quantifiable form of EBA, Bayesian inference is especially powerful for the analysis of complex and macro-social developments that unfold over long periods of time. Here, the interaction of several pervasive generative mechanisms will likely produce a large amount of sometimes contradictory pieces of evidence. I demonstrated the effectiveness of EBA for this aspect of critical realist research by testing some of the findings from the previous two essays. In the literature on vagrancy-type laws, two dominant hypotheses have been used to explain why states make us of these wide ranging and often vague statutes: The first, proposed by William Chambliss,⁶⁴ proposes a mechanism focused on the vested interests of powerful economic elites. The second one, proposed by Jeffrey Adler in response to Chambliss,⁶⁵ highlights the cultural-ideational reasons to use vagrancy-type laws as socially exclusionary measures. Both mechanisms, on their own, provided powerful explanations and logical reasoning. But when directly compared, Adler's hypothesis emerges as the one holding more explanatory power. That being said, the sample of evidence analysed here also revealed that Chambliss's explanation, seen in isolation, is still able to explain better specific aspects of the use of vagrancy-type laws to uphold oppressive systems of unfree labour following the abolition of slavery. This divergence could only be made visible through the use of EBA and indicates that a generative mechanism that draws from both material interests and racial hierarchies might be even better placed to explain patterns of control and exploitation. In addition to constituting the much needed and requested assessment technique for individual theorised generative mechanisms, EBA can thus also help pinpoint phenomena in need of explanations consisting of multiple or joint mechanisms.

⁶⁴ Chambliss, 'Sociological Analysis of Vagrancy'.

⁶⁵ Adler, 'Historical Analysis of Vagrancy'.

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The use-cases of EBA go beyond critical realist research. Fairfield and Charman's initial application was process-tracing. And as they show in their methodological work, EBA can integrate all types of evidence and can be used to assess the relative probability of all types of propositions. But as I suggest in the conclusion of the third essay, EBA has even broader implications for the practice of explanatory research. As the explicit assessment of mechanisms against empirical evidence requires stating hypotheses in generalised and comparable terms, it encourages researchers to formulate their research results in ways that can be readily used in subsequent scholarship. EBA thus introduces not just a common assessment tool but a common language to the 'culture' of qualitative research often seen as fragmented and incommensurable.

The genesis of modern states is a complex and dynamic process that cannot be understood through just one generative mechanism alone, such as war and taxes or migration control and state power. But not everything states do 'make' them states. Research on state development within a critical realist framework seeks to identify and explain the essential and characteristic aspects of modern states and thus involves abstraction and theoretical generalisation. In the end, however, the goal of theorising must always be to explain concrete empirical phenomena. EBA, as discussed above, helps with both theorising and empirical assessment and thus has the potential of becoming an integrative part of CR – and a cornerstone of subsequent research into the contemporary link of migration control and state power.

6.4 Migration Control and State Power

Migration control, in its internal and external dimensions, is not just one of many activities that modern nation-states, engage in.⁶⁶ The modes of internal and external migration control are the results of the internal and external politics of belonging through which nation-states define the boundaries and consequences of membership. There is thus a two-way relationship between migration control and state power. On the one hand, states are required to expand their despotic and infrastructural power, in Michael Mann's terminology, to enforce these boundaries of belonging. This enforcement, on the other hand, further entrenches the hierarchies of differential humanity that defined those boundaries to begin with. From within the logic of the nation-state, migration control is not just about controlling access to territory but about controlling who is seen as compatible with the nation.

In addition to the internal and external dimensions of migration control and state power, the preceding essays also revealed a horizontal and vertical dimension of this two-way relationship. Migration control expands the vertical power, that is, their power over populations, as well as the horizontal power of the state, that is, their power over territory. As migration control is inherently tied to the politics of belonging, this process is a dynamic one. The study of migration control and state power thus reveals modern states not to be approaching the fixed and unitary Weberian ideal-state which fully and uniformly extends its power over a fixed territory and its population. Instead, in the words of Vigneswaran and Quirk, states are 'variegated, incomplete, and dispersed network of order and control'⁶⁷ in which the horizontal and vertical reach of state power varies according to the inclusionary and exclusionary politics of belonging as well as due to the competing claims of other actors embodying forms of state power, sub-state units or supranational

⁶⁶ Vigneswaran and Quirk, *Mobility Makes States*.

⁶⁷ Vigneswaran and Quirk, *Mobility Makes States*, p. 23.

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organisations, for example. Moreover, the extent of horizontal and vertical state power also varies by what scholars of the American state have called the multiple dimensions of the state consisting of an administrative, standardising, fragmented, associational, and segregational dimension.⁶⁸

As the discussions of migration control and state power in the preceding essays have shown, these dimensions can be applied not just to the American state, but to states more broadly. The traditional opposition of ‘modern’ strong Weberian states in Europe and the ‘weak’ American state, or weak states across the ‘developing’ world, can be resolved by showing how Weber’s account of European states reflected more of an aspiration of powerful political elites rather than contemporary historical reality.⁶⁹ The preceding analyses thus suggest that ‘the’ state, whether in America, Europe, or the rest of the world, can be better understood as the result of a range of actors attempting to combine the multiple dimensions of the state to horizontally and vertically realise their visions of political community.⁷⁰ These visions rest on powerful hierarchies of differential humanity, often expressed in moral and racial terms, that delineate the boundaries of belonging. The substantive expressions of those boundaries as well as the relative distribution of state power in the individual dimensions vary across empirical cases as well as temporally and spatially. The modern-day expression of these visions is the nation-state.

In order to understand and explain the current state of the modern nation-state in its individual expressions, it is key to uncover its generative mechanisms and the individual interactions and combinations of mechanisms that led to the varying expressions of stateness across cases. This leads to three contentions raised in the introduction and which the preceding essays have highlighted: First, ideas and

⁶⁸ King and Lieberman, 'Ironies of State Building'.

⁶⁹ See Vigneswaran and Quirk, *Mobility Makes States*, p. 24.

⁷⁰ See also O'Leary, 'Elements of Right-Sizing and Right-Peopling'; Wambach and Kauth, 'Innerdeutsche Ausweisungen'.

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institutions go hand in hand. Powerful ideas about hierarchies of differential humanity are deeply embedded within the structures of the modern nation-state, due to the dominant racial-political orders successfully implementing them at previous critical junctures. And those institutions, in turn, influence the range of political ideas treated as viable paths for future development. Second, therefore, history, as eventful history, matters. The current social world is the result of past events. And the outcomes of those past events, the result of clashes of racial-political orders at critical junctures, condition present-day development. And, third, modern states and their use of state-power is dynamic. There is nothing natural about the current system of inclusion and exclusion. Even if institutions, and therefore the ideas embedded within them, are ‘sticky’ due to their ability to shape incentives and resources, this does not mean that they cannot be changed. History is not teleological: If the decisions of past actors brought about the changes that formed the present, decisions of present actors can shape the future.

This is a hopeful note. Present-day exclusions are backed by powerful state actors and fall harshly on the most vulnerable members of society and on those wishing to join, frequently fleeing from life-threatening situations or escaping destitute conditions often brought about by the powers of the very states of which they now hope to become a part. Turning state power into a force for inclusion through the enforcement of equality is possible. It requires changing ideas about human hierarchies and communicating these inclusionary ideas in ways that can form and coordinate alliances capable of overcoming rival racial-political orders. Uncovering the past mechanisms of migration control and state power makes it possible to see alternative futures. But it is equally a warning: Present-day inclusions, even in liberal democracies, are never beyond attack and require continuous engagement to fully realise and protect emancipatory promises of freedom, inclusion, and equal treatment.

7 Bibliography

NB: All links are up to date as of 12 January 2024. Wherever original sources were in languages other than English, direct quotes were translated into English by Jasper Theodor Kauth.

7.1 Primary

7.1.1 Archives

(1) Germany:

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