

Fractured Sovereignty, Fractured Citizenship: the paradoxical consequences of efforts to defend Westphalian principles in the face of globalisation from below¹

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Thanks to rapid improvements in communication and transport technology, the current phase of globalisation has precipitated a radical shrinkage in our everyday experience of both space and time, as well equally expansion of global connectedness, most particularly in material terms; but although we all now participate in a global economy, such that jurisdictional boundaries are steadily being shredded in the face of the exponential growth in the passage of goods, services, funds, information and personnel across them, there is no sign whatsoever of any movement towards the emergence of global citizenship. Rather the competitive – and above all the transgressive – consequences of these developments have precipitated vigorous efforts to restrict the passage of social and culturally unwelcome competitors across established jurisdictional borders, and to ensure that all those who have nevertheless managed to establish themselves as denizens within them are excluded from access to rights of citizenship.

The twentieth century witnessed a series of intense arguments, played out no less vigorously at in ideological than in empirical terms, as between the pragmatists who took the view that there was no alternative to competitive nationalism as the foundation of the global socio-political order, and those who argued, once again on empirical grounds, that competitive nationalism had been shown itself to have immensely destructive consequences, such that internationalism was the only basis on which humanity could hope to construct a more stable and equitable global socio-political order. In the aftermath of the lengthy period of military conflict which broke out in 1914 and which only drew to close in 1945, and into which all the nation-states of Europe (and in due course their Imperial possessions) were drawn, the idealists took centre stage. In the light of the immensely destructive consequences of the global war, which amongst other things spelled the death-knell of all of Europe's imperial projects, cooperative and at least nominally egalitarian internationalism, made manifest through the United Nations and all it works, became the normative ideology of the day.

During the second half of the twentieth century the triumphant advance of the material benefits which the booming liberal economies of Euro-America brought to those fortunate

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enough to live within those jurisdictions, which stood in sharp contrast to the disappointing condition of economic sclerosis by which the inhabitants of centrally planned economies in jurisdictions running from the Soviet Union through to China, India and beyond, the premises of the normative ideology established after the close of hostilities in 1945 was further reinforced. Hence by the closing decades of the twentieth century, by when the processes which have subsequently begun to identify as globalisation had begun to take off with a vengeance, it was even more confidently assumed that the rationally grounded premises of economic liberalism which underpinned the dramatic advance of Euro-American social, political and economic achievements would steadily erode all remaining parochially oriented jurisdictional borders, so yet further facilitating the free movement of information, ideas, capital, goods and labour on a global scale.

However now that the first decade of the twenty-first century is under our belt, several key aspects of this ideological vision of universalism have begun to look alarmingly threadbare, not just in spite of, but rather as an active result of, cross-currents in the contemporary dynamics of globalisation. The principal source of these counter-currents is not hard to detect.

Borders beyond control?

To the extent that contemporary processes of globalisation has both ‘shrunk’ and ‘flattened’ the world in which we live, so much so that everywhere is much more closely entwined with everywhere else in a manner which is wholly unprecedented in human history, these self-same developments have also had a corrosive impact on the autonomy – and ultimately the sovereignty – of more parochially ordered local and national jurisdictions. Such constraints on sovereignty are not a novel phenomenon: processes of Euro-American colonial expansion from the sixteenth century onwards seriously compromised the sovereignty of the colonists’ new-found non-European subjects. By contrast globalisation in its current format has not only been subject to a massive speed-up as a result of recent technological advances; it has also changed in character as a result of the emergence of a third phase of globalisation, in which the inhabitants of jurisdictions which were temporarily subjected to Euro-American hegemony have turned the tables on the former colonial masters, with the result that the former masters of the universe now find themselves ever more exposed to the chilly impact of transgressive initiatives from the global South – and hence in historical terms ‘from below’.

The result is plain to see. Whilst Imperial jurisdictions were only too keen to promote ‘free trade’ on a global scale since they had little to fear from the forces of competition from their non-European subjects, and multi-national corporations were equally keen to pursue just the same policies in the immediate post-colonial period, that game is now largely up. With the advent of the twenty-first century people and institutions of non-European origin have gained the capacity to out-compete their former hegemon in an ever widening range of arenas; and as is only to be expected in such circumstances, those who find their interests challenged by these unprecedent initiatives ‘from below’ are taking ever more systematic steps to contain these transgressive developments, and hence to protect what they have come to regard as unacceptable threat to national integrity, and hence to their expected condition of national sovereignty.

Nowhere are these concerns more acute than with respect to the issue of immigration. Besides being regarded as a source of unwelcome competition for scarce resources, in the sense that the newcomers and their offspring are widely regarded as having deprived indigenes by crowding them out of opportunities of which they would otherwise have taken advantage, migrants of non-European origin are equally vigorously criticised for gathering together within their own ethnic colonies, thereby diluting the integrity of the established socio-cultural order; and as a result of the rapid growth of popular movements demanding that these developments should be brought to a halt, and better still that they should be reversed, ever more intense border controls aimed at the exclusion of unwanted newcomers have been introduced in almost every Euro-American jurisdiction – and have since been emulated in most parts of the globe.

Yet just how successful have these efforts to manage the inflow of persons across the borders of these nominally sovereign jurisdictions actually proved to be? And just as significantly, just what sorts of knock-on consequences are migration managers’ efforts to police such inflows having on the internal character of the socio-political order around which these defensive barriers are being constructed?

In an article entitled ‘Borders Beyond Control’ published some years ago in *Foreign Affairs*, Jagdish Bhagwati argued that as a result of the onrush of globalisation

International migration has opened a door which will not close. It follows that in the world in which we now live no matter how much nationalist ideologues may seek to wage irredentist wars to regain ‘lost territory’, may seek to split up plural units into their ‘essential’ components, or plan vicious campaigns of ethnic cleansing in order to achieve their dreamed ideal comprehensive homogeneity – as they are currently doing in virtually every part of the

globe – the forces of globalisation are now entirely against them. In the midst of a world on the move, no less of goods and ideas than people, such modernistic dreams (for the conditions of homogeneity of which dream are unprecedented) have become quite untenable. They cannot and will not be achieved.

The best part of a decade has passed since Bhagwati made these observations, there is little sign that his remarks have lost any of their force. Despite increasingly intense efforts by migration managers to devise strategies by means of which to close the doors to alien and unwanted newcomers, the best they have been able to do is to restrict, but not to halt the inflow, partly because such migrants their skills, and rather more often their raw labour power, is still in demand on the far side of the jurisdictional boundary, partly because of the ingenuity of those determined to scale the exclusionary obstacles come what may, but above all because existing migrants' extended networks of kinship reciprocity systematically transcend these parochially constructed boundaries, with the result that they still support escalators which continue to provide an effective means transjurisdictional mobility than they did in the earliest days of chain migration, despite a massive intensification in the scope of border controls. But even if all current efforts to bring the self-powered inflow of settlers of non-European origins into Euro-American jurisdictions to a halt have so far failed, the policies which have been introduced in by efforts to achieve that objective have had a profound effect on the structure and character of jurisdictional boundaries, and in doing so have also led to the introduction an increasingly complex series of status-differentials as between various categories of denizen on the one hand, and fully-fledged citizens on the other.

Walls or Sieves?

In her recent penetrating analysis of the ways in which policy makers in an ever wider range of jurisdictions have responded to perceived threats to their sovereignty precipitated by the dynamics of contemporary processes of globalisation by quite literally walling themselves in behind steadily reinforced boundaries, Wendy Brown graphically highlights just how extensively these developments contradict the premises of rational universalism to which they are otherwise nominally committed. As she puts it:

Contemporary walls, especially those around democracies, often undo or invert the contrasts they are meant to inscribe. Officially aimed at protecting putatively free, open, lawful, and secular societies from trespass, exploitation, or attack, the walls are built of suspended law, and inadvertently produce a collective ethos and subjectivity that is defensive, parochial, nationalistic, and militarized. They generate an increasingly closed and policed collective identity in place of the open society they

would defend. (Brown 2010:40)

However a further salient feature of all these exercises in boundary construction is that they are all markedly *porous* in character. Their objective is not so much to comprehensively hamper the free flow of goods, financial assets and persons across these artificial disjunctions in the global terrain, but rather to sieve out, and hence to preclude the passage of unwelcome and unwanted categories of goods (typically drugs), financial assets (typically funds to finance terrorism and/or the process of crime) above all unwanted *persons* across them. This points to a central paradox in contemporary policies of boundary construction, for in no way is their objective to secure such jurisdictions in position akin to that of North Korean autarchy. Hence even when nation-states construct surround themselves with walls and fences running across deserts and mountain ranges, reinforced by maritime patrols offshore, these structures are best understood as sieves: their purpose is not so much to halt the passage of physical stuff – whether in the form of goods or persons across the border, but rather to channel those flows through a restricted range of crossing points at which the inflow (and to a much lesser outflow) can be carefully monitored in search of illegitimate and undeclared contraband.

Just as the imposition of tariffs – or in other words of customs duties – on goods being transferred across jurisdictional boundaries has a significant source income for local rulers ever since state-like entities came into being, smugglers have also to circumvent them. But whilst the exercise of financial and trading sovereignty in this sense has become steadily more problematic in the context of contemporary process of globalisation, so much so that most jurisdictions have virtually given up the ghost on this front, the monitoring of human movements across frontiers has dramatically intensified in recent years, as is only too obvious to any whose has waited impatiently in international airports is well aware, even when their papers are entirely in order; holders of passports of the wrong kind or colour, and/or those whose appearance causes any kind of suspicion can expect to find themselves detained for very much longer.

The driving forces behind these contrapuntal developments are clear enough. As the cost of transporting goods on intercontinental basis plummeted in the course of the past few decades, whilst the internet has facilitated the instantaneous transfer of value on a global scale, the level of economic interconnectedness, and hence of interdependence, between jurisdictions has so become so intense that the capacity of individual jurisdictions to exercise financial sovereignty has almost completely disappeared. In the face of these developments their

capacity to impose tariffs on cross-border transactions has virtually evaporated: they are simply far too easy to evade. But just the plummeting cost of long-distance travel has facilitated an explosive growth in long-distance trade, so it has also facilitated an equally explosive growth in long distance travel, such that labour-power has also become steadily more mobile on an equally global scale.

At one level this has proved to be a godsend for the inhabitants of every prosperous jurisdiction, all of whom can expect to benefit, sometimes personally and always institutionally, from being able to tap into a vast reservoir labour power from below (or in other words from their former colonial territories), to recruit additional hands to perform all manner of menial tasks which the indigenes would much prefer to avoid, and/or to execute more complex task for which there is an insufficient supply of suitably qualified local applicants. However as Euro-America's industrial base has shrunk dramatically (as a further consequence of the current phase of globalisation), and as the scale of the new minority presence has become steadily more salient, 'immigration' in this sense has become an ever-intensifying source of popular alarm amongst members of the indigenous majority. Although further conditioned by all manner of local variations, these feelings of alarm are everywhere articulated along two complementary vectors: on the one hand that the alien newcomers recruited 'from below' emerged as unwelcome competitors for increasingly scarce resources; and on the other that their propensity maintain a strong sense of their own ethno-religious distinctiveness, and their consequent tendency to cluster together in ethnic colonies represents an unacceptable threat to the integrity of the indigenous socio-cultural order.

The irresolvable contradictions of migration management

Migration managers find themselves under all sorts of contradictory pressures as they simultaneously seek to respond to the multi-faceted demands of their political masters, whilst devising regulations worded in such a way which increasingly assertive Supreme Courts will not reject as *ultra vires* on the grounds that they run contrary to overarching frameworks of Human Rights and Asylum Law. Worse still, they have to do so in such a way that the sieves they construct offer minimal interference to the vast majority those travelling across borders, whilst closely regulating – and in some cases preventing – the entry of a yet more diverse, but much less welcome, minority. Moreover popular demands insist that they fulfil both these objectives with equal effectiveness. The problem here is how best to separate the legitimate sheep from the less legitimate goats. Whilst overlong delays in processing the former would

precipitate all manner or hostile complaints, no less from airlines as from travellers themselves, failure to accurately identify the latter, or to adequately monitor whether or not those allowed to enter have complied with the terms of their visa, and above all failure to identify those with no rights of entry who have nevertheless crossed the border undetected, generates levels of popular hostility of such intensity that it can readily determine the outcome of parliamentary elections.

These contradictions arise for a very obvious reason: it is not just that globalisation has generated unprecedented levels of transjurisdictional mobility, whether in the form of tourists, students, traders, businessmen, those seeking professional advancement, au pairs, retirees and last but not least relatively unskilled migrant workers who have been drawn in to fill labour shortages in the local economy, but also that there has always been a significant prospect that those who arrived on any of these grounds might stay on for much longer than they originally intended, and in due course put down roots such that they in due course became established members of the jurisdiction which they originally entered on a temporary basis.

In earlier phases of globalisation such developments caused much less alarm than they do today, and in many jurisdictions, including the United Kingdom, naturalisation was once such a straightforward process as to be readily available. Moreover once they had done so the early pioneers – the great majority of whom were young men – could readily call their wives and children to join them in their new location; moreover as their families matured their children – whether locally or overseas born – could readily seek spouses in their parents' countries of origin, and then bring them to join them in the diaspora – thereby yet further reinforcing the population base of their ethnic colony. These developments soon began to precipitate all manner of headaches for migration managers, who found themselves subjected to ever increasing pressure to halt these inflows, especially when it became apparent that a large proportion of those taking advantage of citizens' long-established right to marry whomsoever they chose were drawn from one or other component of the rapidly growing, but increasingly unwelcome, immigrant minority.

But despite the ever increasing intensity of politically driven demands that such 'loopholes' should be closed forthwith, migration managers soon found themselves confronted with all sorts of dilemmas when it came to satisfying these demands. On the one hand they were under pressure to introduce a border control regime which would accurately and effectively facilitate the implementation of a manifestly discriminatory objective, since there would be a

huge uproar if the new rules significantly interfered with the rights of indigenous sheep to travel and marry whenever and wherever they chose, but which would nevertheless place insurmountable barriers in the way of goats seeking to implement the same choices – and do so in such a way that measures introduced to achieve this goal would survive legal challenges alleging that the premises underlying those measures were inherently discriminatory.

In the UK efforts to square this particular circle precipitated the introduction of an escalating stream Immigration, Nationality, Borders and Citizenship Acts, so much so that new legislative initiatives have been launched on close to annual basis during the course of the past decade. Moreover as ever more drastic steps were taken in endless efforts to square the circle, the legal terrain in this sphere has been comprehensively transformed, and nowhere more so than with respect to the increasingly troubled issues of subjecthood and citizenship. As a result it is becoming increasingly apparent that the construction of defensive (and hence intrinsically discriminatory) border controls in response to developments precipitated by the current phase of globalisation are having far reaching constitutional consequences, no less in the UK than in all other contemporary Euro-American jurisdictions.

However closer inspection of this process reveals yet further levels of complexity, for it is soon apparent that those classed as admissible sheep fall into several quite distinct species, including

Plurality and the Elusive Search for Homogeneity

Given the Westphalian premises around which the contemporary international order is constructed, the capacity to construct and maintain a clear-cut territorial boundary around itself is a key prerequisite which every national jurisdiction must by definition meet if its condition of sovereignty is to achieve global legal recognition. A further corollary of this premise is that each such territory is entitled to maintain both its socio-cultural and its territorial integrity by means of border controls. But to the extent to which these premises were initially established in an effort to bring more a century of bitter sectarian warfare between a multiplicity of states and statelets spread across central and western Europe to an end in 1648, the advance of globalisation has steadily undermined the integrity of many of the premises around which the treaty was constructed.

Even in the middle of the seventeenth century the sovereign states of Europe were by no means so autonomous – or indeed as homogeneous – as Westphalian ideology presumed, not least as a result of the extent of the commercial ties between them. However in the

contemporary world the equivalent ties not only many orders of magnitude greater than they were two and a half century ago, but are also global in extent; moreover the level of interdependence between contemporary jurisdictions in economic terms has become so great that any suggestion that individual jurisdictions enjoy a condition of financial autonomy is manifestly fictive: globalisation has long since rendered claims of absolute financial sovereignty by any given jurisdiction anachronistic. But that is not all. A further plank of the Westphalian settlement – namely the expectation that every sovereign jurisdiction should by definition encapsulate the interests of an intrinsically homogeneous citizenry – has suffered a similar fate.

Boiled down to its essentials, the central objective of the Westphalian settlement was to find a remedy for the divisive consequences of religious plurality: the conflicts which it aimed to resolve were largely, although by no means wholly, precipitated by sectarian tensions between Catholics and Protestants. After a century of polarising warfare, a settlement was reached not by building bridges between the two sides, but rather by partition. Boundaries were re-drawn to render jurisdictions as homogeneous as possible, with the expectation that those who found themselves on the wrong side could either adopt the majority sect, or if that was more than they could bear, they could simply move across the border into a jurisdiction in which they felt more comfortable. Further reinforced during the course of the European enlightenment, and exported globally during the subsequent process of European imperial expansion, the treaty gave rise to normative assumption that properly constituted sovereign nation-states should be constituted on homogenous (as opposed to pluralistic) ethno-religious foundations.

However neat this response to the challenge of squaring the circle may have seemed to the signatories of the treaty of Westphalia, the underlying contradictions associated with their solution are plain to see – and remain as valid today as they were two and a half centuries ago. In the first place patterns of human diversity rarely, if ever, have neat spatial boundaries: no matter how carefully drawn, the 1648 objectives could only be fully achieved if a significant number of those on the wrong side of the border either relocated elsewhere, changed their ethno-religious affiliation – or kept their heads down and hoped for the best. Moreover even if the desired condition of homogeneity was achieved – which was rarely, if ever, the case – that condition could only be sustained in the longer run in the absence of migration across jurisdictional boundaries; and if neither of those objectives could be fully

achieved in the seventeenth century, the same is true in spades in the context of the contemporary world order.

Constitutional Responses to Plurality: Citizens, Denizens and Aliens

Jurisdictional plurality, whether precipitated by internal diversity or by the arrival of ‘aliens’ from elsewhere, was in no sense a novelty in the seventeenth century. At that stage England was still very much a monarchy, so much so that the commentary which Blackstone (1765) sets out in chapter headed “Of People, Whether Aliens, Denizens or Natives”, written just before the American and French revolutions rendered Republican constitutions *de rigueur*, provides an illuminating summary of the established Common Law perspective on such matters; and in doing so it is striking that his discussion of variations in the legal status of the inhabitants of the realm is not set in terms of the rights and obligations accruing to republican citizens, but rather in terms of those arising from a condition of natural subjecthood by birth. With this in mind he begins by drawing a clear division between natural born subjects and aliens:

Natural-born subjects are such as are born within the dominions of the crown of England, that is, within the allegiance of the king; and aliens, such as are born out of it. Allegiance is the tie, or ligament, which binds the subject to the king, in return for that protection which the king affords the subject. *Natural* allegiance is such as is due from all men born within the king's dominions immediately upon their birth. For, immediately upon their birth, they are under the king's protection; at a time too, when (during their infancy) they are incapable of protecting themselves. Natural allegiance is therefore a debt of gratitude; which cannot be forfeited, canceled, or altered, by any change of time, place, or circumstance, nor by anything but the united concurrence of the legislature. Natural-born subjects have a great variety of rights, which they acquire by being born within the king's liegeance, and can never forfeit by any distance of place or time, but only by their own misbehaviour.

In other words subjecthood (in other words the mediaeval equivalent of citizenship) was being grounded in an inescapable duty of allegiance to the monarch which was acquired as a result of birth on territory which was subject to his jurisdiction, in fulfillment of which all his subjects gained access to royal protection. Within that framework it followed that persons born in other jurisdictions were excluded from such a status, and were therefore classed as aliens. But just what did that status entail? As Blackstone goes on to explain:

Local allegiance is such as is due from an alien, or stranger born, for so long time as he continues within the king's dominion and protection: and it ceases, the instant such stranger transfers himself from this kingdom to another. Natural allegiance is perpetual and local temporary only. Allegiance is a debt due from the subject, upon an implied contract with the prince, that so long as the one affords protection, so long the other will demean himself

faithfully. The same is also in some degree the case of aliens; though their rights are much more circumscribed, being acquired only by residence here, and lost whenever they remove.

An alien born may purchase lands, or other estates: but not for his own use; for the king is thereupon entitled to them. If an alien could acquire a permanent property in lands, he must own an allegiance, equally permanent with that property, to the king of England; which would probably be inconsistent with that, which he owes the his own natural liege lord: besides that thereby the nation might in time be subject to foreign influence, and feel many other inconveniences. Yet an alien may acquire a property in goods, money, and other personal estate, or may hire a house for his habitation: for personal estate is of a transitory and movable nature; and besides, this indulgence to strangers is necessary for the advancement of trade. Aliens also may trade as freely as other people; only they are subject to certain higher duties at the custom-house.

The implications of this formulation suggests that aliens can characteristically be expected to be either merchants or artisans, who are entitled to do business within the jurisdiction in which they have taken up residence, always provided that they subjugate themselves to royal authority. But what they may not do is purchase property, as opposed to renting it, since rights in land can only be acquired by fully-fledged subjects of the king. Likewise they cannot take advantage of tax-breaks available to the monarch's subjects at the customs-house: instead they have to pay the higher rates charged to all alien merchants. Last but not least Blackstone goes third of legal status, lying mid-way between the two so far identified:

A *denizen* is an alien born, but who has obtained by royal gift letters patent to make him an English subject: a high and incommunicable branch of the royal prerogative. A denizen is in a kind of middle state between an alien, and natural-born subject, and partakes of both of them. He may take lands by purchase or devise, which an alien may not. But a denizen is not excused from paying the alien's duty, and some other mercantile burdens; and no denizen can be of the Privy Council, or either House of Parliament, or have any office of trust, civil or military, or be capable of any grant from the crown.

Much has changed since Blackstone wrote his *Commentary*, no less in the United Kingdom than elsewhere. As Parliament has steadily eclipsed the sovereignty of the Crown, the feudal basis in terms of which the status of British subjects was once defined has very largely fallen into abeyance, and redefined in such a way to be much congruent with that of republican citizens. Nevertheless with only a few definitional tweaks, the three broad population categories he identifies in the English Common Law tradition still remain as valid as ever, not least because they still provide an illuminating analytical lens through which to explore two key issues in this field: variations in the right of various categories of persons to cross the boundary of any given jurisdiction on the one hand, and parallel variations in the legal status of those resident within it on the other. Returning to my earlier reference to the challenge of differentiating sheep from goats, we are now in a position identify three relatively clear-cut

socio-legal categories into which those persons resident within the boundaries of most contemporary jurisdictions can in principle readily be classified:

- i. *Fully fledged citizens*: those who have an absolute right both to reside in and to participate in the affairs of their native jurisdiction, together with an absolute right to cross its boundaries as and when they choose.
- ii. *Denizens*: those who have been granted an extended, but nevertheless a *conditional* right of residence within the jurisdiction in question, and to participate in its affairs on much the same basis as fully fledged citizens; however their leave to abode can be unilaterally terminated on any grounds which the authorities deem to be lawful.
- iii. *Alien visitors*: those who have been given leave to enter the jurisdiction either for business or pleasure on a short-term basis, after which they are expected to depart.

Whilst it is self-evident that these distinctions are in no sense novel, recent processes of globalisation not only precipitated radical expansion in the throughput of as it were ‘harmless’ short-term visitors in virtually all contemporary jurisdictions: almost everywhere these flows have also been accompanied by an equally radical expansion in the scale of the non-citizen denizen presence within the jurisdiction – a development which has its roots in varied and endlessly changing policies of migration management, but one which has become a central source of the challenges with which contemporary migration managers find themselves confronted.

Subjecthood, Citizenship and Subjecthood in a post-Imperial World

Two dialectically interconnected driving forces, both of which are a product of recent developments in the process of globalisation, have largely been responsible for this radical expansion in the scale of denizenship. On the one acute the emergence of acute shortages of labour, largely although not exclusively at the menial and unskilled end of the market, in almost all of the world’s most prosperous jurisdictions; and on the other the entrepreneurial initiatives deployed by those resident in more impoverished jurisdictions in what was once described as the ‘third world’ to take advantage of the resultant opportunities, no less for themselves than their offspring.

The opportunity to do so became seriously available during the course of the Euro-American economic boom which took off in the aftermath of the Second World War. From the recipients’ perspective, this appeared to be a win-win situation for all concerned. Immigration ‘from below’ provided a means whereby gaps in the labour market could be filled quickly and cheaply; and however poorly such *gastarbeiter* might have been paid within the context

of the labour market in which they were employed, long hours of work enabled them to fill their pockets with gold, at least in terms of their prior experience back home. However remarkably little attention was paid to the long-term implications of these initiatives, whose structural implications in due course proved to be closely akin to those which emerged in the South African system of *apartheid*.

In sharp contrast to the parallel process of mass labour migration which had taken place during the course of the nineteenth century, such that millions European emigrants set off across the Atlantic to advantage of the opportunities which were opening up in the rapidly expanding industrial economy of North America, little or no thought was initially given to the prospect that post-war migrants from below might similarly wish to take up permanent residence in their new environment, and/or that they might wish to become fully fledged citizens of the jurisdictions in which they had begun to establish a foothold. Instead it was routinely assumed that this set of aliens would respect the rules of Euro-American hegemony, and hence return in due course to their homelands having made their fortunes during the course of a brief sojourn in the Imperial heartlands. That was, indeed, the objective of many of the early pioneers; however it was not long before many of them changed their minds, such that they began to view themselves more or less permanent settlers rather than mere sojourners. Nor were their employers in any way perturbed by this change of mind: the capacity to attract a cheap and largely docile labour force suited their interests down to the ground. Slowly but surely, the *gastarbeiter* were becoming a permanent fixture in the local economic order; but just what was their legal status?

Settlers from Britain's former imperial possessions who arrived during the nineteen fifties and sixties found themselves in a remarkably privileged position, at least as far as their legal status was concerned. Given that the ideological assumptions of Empire were then still firmly entrenched in English constitutional law, their formal status as subjects (or at least former subjects) of the Crown not only gave them unrestricted rights of entry into the UK, but also entitled them to almost identical civil rights as those enjoyed by native-born British subjects. The consequences of being allocated such a status were far reaching: besides having an unrestricted right to bring their wives and children to join them in the UK, the route to naturalisation – and hence to fully fledged British citizenship rather than mere subjecthood – was straightforward. As a result the settlers' ethnic colonies in Britain began to grow with great rapidity.

However the open door for Commonwealth citizens did not last long. In an effort to appease ever rising levels of popular hostility amongst indigenous majority, Parliament has placed over twenty ever more restrictive Immigration, Nationality, Citizenship and Border Control Acts on the statute book, further reinforced by innumerable statutory instruments. Fearful of the electoral consequences of legislative inaction in the face of popular hostility, and in the absence of any significant constitutional restraints, UK legislators have in doing so been able to make mincemeat of the premises of Common Law, as well of those established on statutory basis when Britain's condition of Imperial hubris was at its height. Perhaps the most dramatic example of such practices can be found in the British Nationality Act of 1981, which gave legal foundations to concept of British citizenship for the first time. However it would it be a great mistake to assume that the Act was anything akin to a Bill of Rights. Rather it reformulated the by now embarrassing status of British subjecthood into no less than six separate categories of 'citizenship', only one of which gave those so identified automatic rights of entry into the UK: all others were made subject to varying degrees of immigration control. Likewise the long established principle of *jus soli*, such that all children born within the UK automatically gained British nationality regardless of the legal status of their parents, was also swept way with hardly a murmur.

Looked at overall, the principal objective of this Act was to establish the legal foundations of an exclusionary sieve which would not only serve curb the entry of unwanted goats into the UK, but also ensure that in those circumstances where it was either difficult or inappropriate to allow such persons entry, establish provisions which would enable the authorities to do so in such a way that their status would be restricted to that of denizens, rather than that of citizens. Most of the legislative measures which have been introduced since 1981 have aimed to build further on those foundations. But in doing so, the British authorities were not doing anything particularly exceptional. The German policy of allocating the migrant workers from the Balkans and Turkey as *gastarbeiter*, as well as the South African system of ordering the urban labour force by means of the system of *apartheid* relied on much the same strategy of placing their goats in a more or less tightly restricted position of denizenship.

Yet despite the all the legislative initiatives which have been set in train, and indeed continue to be elaborated, as politicians seek to appease majoritarian demands that their sovereign interests should be protected, the scale of the minority presence in all contemporary Euro-American jurisdictions continues to follow an upward trajectory; and however attractive a strategy their diversion into a status of denizenship may have seemed at first sight, it has

neither stemmed the inflow, nor promoted the condition of ‘community cohesion’ that the advocates of this strategy insisted that it would serve to achieve. Instead it has precipitated a host of new battles about the prerequisites of citizenship.

The use of alterity as a vehicle for the legitimization of exclusion

Popular hostility towards the minority presence runs along two main vectors. In the first place it is widely held that as migrants and their offspring became steadily more numerous, they have begun to place an unacceptable strain on scarce resources, especially in terms of jobs, housing and public services, to the detriment of the interests, and indeed of the rights, of the indigenous majority. Secondly, and just importantly, the steady growth of ethnic colonies has precipitated further waves of hostility to the minority presence. Although that hostility was initially directed at their physiological alterity, as the years have passed it has begun refocus ever more firmly on the new minorities’ determination to maintain a sense of their own social, religious and cultural distinctiveness, with the consequence – or so it is argued – that the integrity of the whole established socio-cultural order is being put seriously at risk. To put the matter plainly, it is the additional dimensions of *plurality* which the alien newcomers – and most especially those of Muslim origin – have introduced into the fabric of Euro-America’s established Christian and post-Christian social order which has precipitated a major tectonic fault line whose presence is becoming increasingly salient in virtually every contemporary Euro-American jurisdiction. But rather than seeking actively to bridge this widening disjunction, for which a necessary prerequisite would be recognition a recognition by the indigenous majority of the irreversible presence of an additional dimension of plurality within the their jurisdictional order, regardless of majoritarian reservations with respect to these *de facto* developments, the most recent trend has been has been to turn what is frequently termed ‘failed policy of multiculturalism’ on its head. With such considerations in mind the favoured means of tackling the problem has now switched right to the other end of the spectrum in the form of policies of ‘community cohesion’, which insist that the only basis on which denizens can hope to gain access to fully fledged citizenship is by leaving their alien religious, linguistic and cultural conventions behind them, in favour of cultural and behavioural conventions much more closely congruent with those currently followed by members of the indigenous majority. This newfound initiative has had many dimensions, including

- Efforts by the authorities to educate members of the minorities in such a way that they will be persuaded to abandon those aspects of their religio-cultural traditions which

the indigenous majority regard as particularly egregious in favour of more ‘progressive’ practices.

- The criminalisation of an ever widening range of ‘unacceptable’ minority cultural practices, including forced marriage, honour killings, cousin-marriages, out-door cremations, people-smuggling and the use of informal networks of mutual trust as a means of implementing interpersonal value transfers.
- The construction of ever more stringent tests of assimilative achievements – including language tests, demonstration of a knowledge of, as well as an acceptance of the premises of, the jurisdiction’s history and its associated cultural practices, topped off by evidence of involvement in majoritarian civic institutions – as a prerequisite for converting one’s legal status from that of a denizen to that of a fully fledged citizen.
- The use of similar strategies to ‘update’ immigration rules in such a way as to place additional obstacles in the path of potential migrants of goatish origins, and entrap those who are granted a right of entry into ever longer periods of enforced denizenship.

Whether or not this assortment of sticks and carrots will eventually precipitate the results which the authors of these initiatives have in mind remains to be seen – even if all historical and social scientific experience suggests that this is most unlikely. However in the light of the current concatenation of socio-political pressures, there appears to be every prospect that these objectives will continue to provide the foundations of social policy in most Euro-American jurisdictions for at least the immediate future. If so, just what outcomes can be expected to develop in the next few years? To what extent can majoritarian expectations be expected to determine on-going developments? To what extent can the minorities be expected to develop strategies with which to resist those objectives? And perhaps most significantly of all, how far can Euro-American jurisdictions’ commitment to the universal applicability of an overarching framework of Human Rights be expected to condition the dialectics of these contradictions?

The dynamics of ethnic colonisation ‘from below’

One of the most egregious characteristics of the justificatory ideology generated during Euro-America’s relatively brief period of global dominance was the representation of non-European cultural traditions as being inherently inferior to those found in more ‘progressive’ European contexts. The compulsive power of this trope was not only deployed to legitimate the Imperial powers’ of a position of Imperial dominance on a global hegemony, but also fostered a taken-for-granted expectation that the more closely those who had long been mired in the benighted and sclerotic coils of oriental despotism encountered the progressive social,

cultural and organisational premises of European civilization, the more swiftly they would abandon their archaic traditions in favour of those of progressive (Euro-American) modernity.

That many sections of the non-European world, and most especially its Asiatic components, have significantly ‘upped their game’ in the course of the past half century is now self-evident: to a very substantial degree that it is what the current phase of globalisation is all about. But in doing so there is little sign that they have done so by slavishly implementing their former hegemon’s self-satisfied prescriptions. To be sure Asian entrepreneurs have borrowed large chunks of Euro-American technological practice (much of whose foundations had likewise been borrowed from Asiatic resources several centuries beforehand) to foster a highly successful rival process of competitive industrialisation; but what is equally significant – but all too often overlooked by their occidental rivals – is that the qualitative and organisational foundations of these initiatives were anything but ‘western’ in character: rather they continued to draw heavily on the resources of their own indigenous social, cultural and organisational traditions, and to which they owe a large part of their contemporary success.

Against this background much of the current discussion of the dynamics of long distance migration is remarkably myopic in character. Still trapped by deeply entrenched assumptions about the inherent superiority of their own established conventions, policy makers and social theorists all too often overlook the capacity of migrants to act as agents in their own cause, and especially their capacity to tap into the resources embedded in their (widely varying) cultural traditions as a source of entrepreneurial inspiration. Hence whilst ‘pull’ and ‘push’ factors are still the most potent driving forces behind the overall dynamics of long-distance migration, in any given diasporic context those basic parameters are powerfully conditioned by self-generated entrepreneurial initiatives developed and deployed by the members of each diasporic network.

The issue of *networks* in this context is crucial. As ethnographically grounded studies of contemporary processes of migration from South Asia have repeatedly shown, only a tiny minority of migrants set off into the blue on a wholly individualistic basis. Instead the vast majority follow in the footsteps of a known predecessor who has established himself at known destination; and having successfully established themselves overseas, news of their success stimulates others to follow their example. In other words long-distance migration both creates and facilitates the operation of transjurisdictional networks of communication, largely, although by no means exclusively, articulated through extended kinship networks.

Chain migration has many consequences. In the first place it leads to the construction of what can best be described as transjurisdictional ‘escalators’: networks of mutual reciprocity grounded in ties of kinship or quasi-kinship running from local take-up points (villages, castes, descent groups and so forth) which facilitate the swift and efficient delivery of ‘passengers’ to equally specific destinations overseas. Such self-constructed delivery systems actively facilitate the growth of ethnic colonies, in which settlers of similar backgrounds invariably begin to make strenuous efforts to reconstruct all the most significant social, cultural, religious and familial institutions of the homelands. It is a great mistake to assume that they engage in such processes of colony construction solely for reasons of backward-looking nostalgia. An equally important driving force behind these developments is the need to develop strategies by means of which to facilitate survival in their new, alien, and often far from welcoming environment. But whilst the settlers’ adoption of colony-construction strategies had an obvious downside, in the sense that it eventually attracted the ire of the surrounding population, it was also one with a much more positive upside: besides enabling them to assist one another systematically within the colony itself, the settlers regenerated networks of reciprocity also enabled them make the most of the resources of their cultural heritage as they set about exploiting every available niche in their new environment on entrepreneurial basis. It was precisely on this basis that South Asian settlers have been able to press their way upwards and outwards from the bottom of the pile with such a remarkable speed.

Moreover however narrowly parochial the settlers’ kinship-based entrepreneurial strategies may have appeared to outsiders, closer inspection soon reveals that they are nothing of the kind: rather they are intrinsically trans-local and indeed transjurisdictional in character. Whilst the migrants’ escalators were initially configured as one-way delivery systems, it did not take long before they became circular in character, not least because settlers used those self-same networks to keep in touch with their kinsfolk back home. Nor was that all: riding on the back of the revolution in communications technology, these transjurisdictional networks provided an ideal foundation on the basis of which to facilitate further entrepreneurial initiatives ‘from below’ on a global scale, for by using strategies closely akin to those routinely deployed by multi-national corporations, their diasporic networks provided them with a ready means of circulating of information, assets and ultimately personnel on a strategic basis as between all the many localities in which the members of any given network had established a physical presence.

Their capacity to do so has had far-reaching consequences. Just like their more formally constituted multi-national counterparts operating ‘from above’, diasporic networks provide their members with all manner of opportunities to develop entrepreneurial strategies on a global basis, regardless of any constraints which localised and nominally sovereign jurisdictions may seek to impose on such initiatives. It follows that in the contemporary world the capacity to act ‘translegally’ (Beck 2006:72) is by no means restricted to multi-national corporations operating hegemonically from above; their capacity to build similar networks across transjurisdictional space provides members of diasporic networks with similar opportunities to evade, and hence to subvert, efforts of parochially oriented national jurisdictions to constrain their transjurisdictional activities.

Nevertheless one must be careful not to press this analogy too far. Multinational corporations have access to a great deal of political and financial clout; moreover they conduct their business on a contractual basis, have their accounts audited by one or other of the four remaining global accountancy firms, and they routinely hire teams of expensive lawyers to ensure that their operations, no matter how arcane, can be represented as lawful. By contrast diasporic networks emanating from below enjoy no such privileges – unless they happen to have been constructed by a Mittal, an Ambani or a Tata. Moreover to the extent that diasporic networks are characteristically constructed around informal reciprocities of mutual trust, rather than on the basis of written – and hence formally grounded – relationships of contract, those who utilise such networks to facilitate the circulation of persons and financial assets on a transjurisdictional basis are finding themselves ever more vulnerable to criminal prosecution, on the grounds that their non-compliance with regulatory requirements are no more than a conspiratorial cover-up behind which to conceal their involvement in money-laundering and people-smuggling.

Migration management in the context of the current phase of globalisation

Power, rather than justice, has always conditioned strategies of border control, and continues to do so in the midst of the increasingly integrated, but simultaneously increasingly fragmented, character of the contemporary global order. To take an obvious example, no contemporary jurisdiction, no matter how powerful, has much in the way of capacity to the wings of multi-national corporations. Threats to do so are met by open blackmail: namely that substantial parts of the operation, up to and including their head office, will be floated off to more welcoming overseas jurisdiction if taxation and regulatory regimes are not structured

in a way which suits their interests. But whilst members of the diasporic networks which have recently emerged from below have deployed much the same strategies to advance their interests on both a transjurisdictional basis, they have enjoyed no such privileges. Instead their entrepreneurial initiatives have been met by ever more extensive counter-measures, particularly – although by no means exclusively – in the form of ever stricter, as well increasingly tightly focussed border controls. But despite migration managers' ever more desperate efforts of to beef up the selective power of their exclusionary sieves, all manner of 'goats' are still managing to find a way past these carefully constructed defence mechanisms. Just how is this being achieved?

As we saw earlier, the agenda which migration managers have been tasked to address is riddled with manner of contradictions, largely as a result of an increasingly salient feature of the labour market in virtually every prosperous jurisdiction: namely that there are a steadily widening range of occupational niches, largely although by no means exclusively concentrated at the bottom of the market, which the indigenes are either unwilling or insufficiently qualified to fill. As is only to be expected in such circumstances, the resultant gaps in the labour market have regularly been filled by recruits from overseas: those were precisely the circumstances in which diasporic initiatives took off in the first place. But whilst it was once the case that those who arrived to fill those slots could readily gain access to an unlimited right of abode, especially if they were Commonwealth citizens, as the years have passed an ever more restrictive system of work-permits has been introduced, such those who enter the UK on this access to rights of denizenship, now often on a time-limited basis, and/or subject to their remaining employed. Similar restrictions have also been placed on those enter the UK on student visas: their denizenship rights are promptly terminated once they complete (or drop out of) their courses.

At least at first sight it would seem reasonable to assume that initiatives of this kind would establish a barrier which would serve to keep goatish interlopers seeking to gain permanent rights of residence in the UK. However in this context migration managers found themselves confronting a further difficulty. Unlike their counterparts managing the passage of goods and chattels across jurisdictional boundaries, the object of their attention was human beings. They were consequently required to confront an inescapable dimension of the human condition: that the migrants whose activities they were seeking to constrain were not lone, free-standing individuals, but were also caught up in, and indeed entitled as human beings to be caught up in, complex familial relationships of one kind or another. So were those allocated the status

of denizen to be allowed to exercise those rights? By no means all jurisdictions do so: hence, for example, the great majority of the oil-rich jurisdictions in the Gulf offer no such rights to the non-professional components of their huge denizen population. Moreover in historical terms most Euro-American jurisdictions have to be proud history on this score, given their extensive involvement in slavery and the trade. However the key issue in this context has this context is that all contemporary European jurisdictions have signed up to Article 8 of the European Convention of Human Rights, which at least on the face of things *requires* them to respect the institution of family life, since its opening clause roundly declares that

- (i). Everyone has the right to respect for his private and family life, his home and his correspondence.

Moreover caselaw has established that such a right to family life is by no means restricted to solely to fully-fledged citizens; it is also applicable to most categories of denizen as well – a state of affairs which rendered the task of migration managers much more complex, since it serves to open up a large potential loophole in their carefully constructed sieves. However much to their relief this brave declaration of rights is immediately followed by a qualifying clause to the effect that

- (ii). There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

As the authors of the Convention doubtless intended, these weasel words which provide migration managers with a substantial window of opportunity through which to set about devising strategies with which to restore the effectiveness integrity of their exclusionary sieves.

The search for justifiable strategies of systematic exclusion

From a narrow economic perspective, anything which provides labour migrants with a means of stabilising their condition of denizenship is inherently counter-productive, since it compromises their status as mobile, and hence readily disposable, units of labour. From this perspective an immigration regime which requires all such persons leave their familial dependants back home in their countries of origin, and facilitates their return as soon as they are no longer able to functional contribution at their temporary destination is the ideal goal of

strict migration management. No less than current regimes in the Gulf, the *apartheid* regime in South Africa was a classic exemplar of just such an initiative. By erecting a complex series of internal jurisdictional boundaries by means of the Group Areas Act, African workers could be turned into virtually rightless denizens who could be returned to their Bantustans once their on-going presence ceased to be advantageous to the white economy. Euro-America's migration managers currently find themselves under intense popular pressure to precipitate just such an outcome, but on a more legitimate basis: namely one which enables arguments to the effect that that they are merely seeking to construct yet another *apartheid* regime can readily be repudiated.

A hoped-for solution to this problem is gradually coming into focus. Whilst the disjunctions around which the *apartheid* regime was constructed were explicitly racial in character, they were also accompanied, and indeed by a parallel ethno-cultural subtext: that these measures would serve to ensure that the civilised world of white South Africa would not be undermined by the primitive force of African barbarism. Moreover the whole edifice was further underpinned by a third, but usually unspoken, strategic premise: that the *apartheid* served to protect of members of a civilized elite from the transgressive threat posed by unwelcome competitors from below. Against that background, the favour strategies of migration management currently emerging in Europe simply reverse the order of the first two principles, such that their exclusionary sieves are formally tuned to operate on an ethno-cultural, rather than an explicitly racial, basis. In the course of so doing issues of family and kinship have emerged as a key battleground for four inter-connected reasons:

- i. Kinship reciprocities, ordered in terms of marriage no less than descent, were the principal grounds for recruitment into diasporic escalators.
- ii. In jurisdictions in which those accepted for settlement could readily gain access to rights of family reunion, such kinship relationships – whether grounded in ties of consanguineal descent, or strategically constructed ties of marriage – could readily be utilised to extend the capacity of diasporic escalators to transcend the exclusionary filters which migration managers had begun to construct at jurisdictional boundaries.
- iii. In the face of these transgressive initiatives migration managers rapidly began to explore counter-strategies, typically by developing grounds on which claims for entry on family reunion grounds could be rejected, either by dismissing applications for entry on the grounds that those claiming to be consanguines had not demonstrated that they were

related as claimed, or that their marriages were bogus or in some way illegitimate in character, and when all these measures failed to stem the flow, by the simple expedient of redefining ‘family life’, as well as the way in which family members could reasonably be enjoy such relationships, in such narrow terms that it gave those applying for entry on these grounds next to no room to manoeuvre.

- iv. But although the UK has by now passed through all of these phases (in common with, and in at least some respects in advance of, most other European distinctions), the formal inclusion of the provisions of the European Convention of Human Rights in English Law has gradually begun to have a far reaching effect on the provisions of Immigration Law, and no-where more so than with respect to the way in which the concept of ‘family life’ should be interpreted, so much so that this issue now stands at the cutting edge of contemporary political and legal battles in the field of migration management.

The provisions, and the interpretation, of Article 8 ECHR

Although the United Kingdom famously lacks an explicit Constitution, let alone a proper Bill of Rights, the conjunction of still conservative but nevertheless an increasingly activist judiciary, and the formal insertion of the provisions ECHR into the statute book has allowed the courts, and especially the recently reconstituted Supreme Court, to have a steadily widening impact on the interpretation of statutory provisions; and nowhere has that impact been greater than in the sphere of Immigration Law, and hence with the provisions set out in Article 8, and above all the way in which its provisions should be interpreted. But judicial intervention in this sphere has not precipitated an overnight revolution: rather it has been a slow burn phenomenon, partly as a result of judicial caution, and partly as a result of the fact that Articles 8 to 11 of the convention in all include a second conditional clause, whose provisions which provide ‘public authorities’ with grounds on which they can legitimately seek to over-ride the rights so roundly promulgated in the opening clause. And given that the grounds on which this could be done on grounds which the authorities considered to be “necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”, it should come as no surprise that migration managers made extensive use of arguments formulated in these terms in an effort to close the loopholes potentially opened by the impact of Article 8.

However as the appellate courts were quick to observe, the provisions of clause (ii) did not automatically override the provisions of clause (i); rather, as the House of Lords (the predecessor of the more recently created Supreme Court observed in **(Razgar) [2004] UKHL 27**, decision with respect to such matters “must always involve the striking of a fair balance between the rights of the individual and the interests of the community which is inherent in the whole of the Convention.” However Lord Bingham was careful to qualify his remarks by indicating that in his opinion “Decisions taken pursuant the lawful operation of immigration control will be proportionate in all save a small minority of exceptional cases, identified only on a case by case basis”; in other words he was taking care not to establish any kind of precedent by allowing the appeal in question. Nevertheless he had opened a door, and it was not long before it was pushed steadily further open. Hence when the House of Lords went on to consider the appeal of **Huang and Kashmiri [2007] UKHL 11** three years later, their Lordships (one of whom was the said Lord Bingham) took a much more adventurous position, at least in terms of the increasingly embattled perspective of migration managers:

The core value which article 8 exists to protect ... is not hard to recognise. Human beings are social animals. They depend on others. Their family, or extended family, is the group on which many people most heavily depend, socially, emotionally and often financially. There comes a point at which, for some, prolonged and unavoidable separation from this group seriously inhibits their ability to live full and fulfilling lives. Matters such as the age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant's dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors may all be relevant.

In most cases where the applicants complain of a violation of their article 8 rights, and where the impugned decision is authorised by law for a legitimate object and the interference (or lack of respect) is of sufficient seriousness to engage the operation of article 8, the crucial question is likely to be whether the interference (or lack of respect) complained of is proportionate to the legitimate end sought to be achieved.

Where this question is reached, the ultimate question for the appellate immigration authority is whether the refusal of leave to enter or remain, in circumstances where the life of the family cannot reasonably be expected to be enjoyed elsewhere, taking full account of all considerations weighing in favour of the refusal, prejudices the family life of the applicant in a manner sufficiently serious to amount to a breach of the fundamental right protected by article 8.

If the answer to this question is affirmative, the refusal is unlawful and the authority must so decide. It is not necessary that the appellate immigration authority ... need ask in addition whether the case meets a test of exceptionality. The suggestion that it should is based on an observation of Lord Bingham in *Razgar* ... but he was not purporting to lay down a legal test.

This precedent-setting judgement was by no means the end of the matter. Since then successive judgements in both the Court of Appeal and the House of Lords have steadily expanded the scope of arguments of this kind. Moreover the challenges continue apace. A quick check of the eighty nine judgements so far handed down by the Supreme Court reveals that ten addressed immigration and asylum issues, and of these four yet further extended the applicability of the positive dimensions of Article 8.

However in sharp contrast to the progressive stance of the upper echelons of the English judiciary, powerful counter-currents were simultaneously emerging elsewhere. In a remarkable turnaround, driven by steadily rising populist demands for the effectiveness of exclusionary sieves to be reinforced rather than diluted, migration managers identified a radical means of going for the jugular: hence rather than seeking to override the applicability of the discourse of human rights in the process of sieve construction, they began to make the most of opportunities to harness that very discourse in such a way that they were able to legitimate their addition of further exclusionary dimensions to the immigration rules on the grounds they would serve to promote and extend the human rights of vulnerable minorities. Hence the opening decade of the twenty-first century strategies has seen a huge upsurge in efforts to legitimate exclusionary strategies on a *positive* basis, in the form of new measures ostensibly introduced to protect members of goatish communities who might otherwise have found themselves helpless victims of patriarchy, forced marriages, female genital mutilation, honour killings and other such backward and exploitative traditional human wrongs.

Squaring the circle: the role of Unni Wikan and her allies

Whilst arguments of this kind have attracted powerful currents of support amongst members of indigenous majorities across the length and breadth of Europe, their initial focus was not so much on border controls *per se*, but rather the outcome of a parallel debate about the negative impact which the lifestyles of non-European settlers who had already managed to establish themselves within their jurisdiction's borders were alleged to be having on the integrity of its established socio-cultural order. In the UK Enoch Powell had sought to raise this issue way back in the late 1960s, but his efforts to do so were howled down on the

grounds that his concerns were ‘racist’; but a generation later arguments of this kind fell on much more fertile ground.

The first serious stone thrown into the pond from this direction was launched by Unni Wikan, in the shape of her much quoted book *Generous Betrayal: the Politics of Culture in the New Europe*. On the basis of a series of small number of narrowly focussed case studies of young Muslim women whose parents or husbands had settled in Norway, but who subsequently found themselves in severe difficulties in domestic contexts, Wikan developed an elaborate series of arguments in which she argued that the human rights of these young women had been let down by, and indeed had been comprehensively betrayed as a result of, the Norway’s ultra-liberal response to the growing salience of ethnic plurality..

Having approvingly quoted a comment by Finkelkraut to the effect that

Attempting to minimize the brutal experience of leaving home, we turn immigrants over, bound hand and foot, to other members of their collective community living abroad. In so doing we end up limiting the application of the right of man only to societies identified with the West, believing all the time that we have expanded these rights by giving peoples of other traditions the chance to live by the laws of their own cultures.

On this basis Wikan goes on to argue that

Multiculturalism is the position that all cultures are of equal value and should be granted equal respect; hence all should have an equal place within the colorful community. But if people are presumed to prefer their own kind and to take pride in their own distinctive roots, how can they be expected to grant each other equal respect? Multiculturalists try to resolve their conundrum by preaching cultural relativism. People must be taught to respect other cultures and see the value of their traditions and products. And the place to begin is in school: teach children that all cultures are equally deserving of respect. As we have seen, this position has informed Norwegian immigration policy; and it is one for which Aisha, among others, paid the price. Equally worthy of respect – or you are a racist! The deadly word has been used to make people subservient to cultural relativism in many cases where culture was not worthy of respect. (Wikan 2002: 145-6)

For Wikan, and many for others who have followed in her ultra-feminist footsteps, religion in general, and Islam in particular, is not just committed to the suppression of freedom of thought and personal liberty; rather it all too often displays an unacceptable commitment to unconstrained patriarchy, which she argued had served to precipitate the personal disasters which she highlighted in her largely uncontextualised case studies. That the personal disasters of the kind she describes deserve our careful attention is incontestable. Indeed I have many encountered such incidents in the course of my own ethnographic fieldwork in the UK, and my insights into their precipitating causes have been further illuminated in the course of

preparing expert reports for use in the criminal proceedings which were precipitated by more than thirty incidents of homicide involving members of South Asian families settled in the UK. In the lights of those experience Wikan's conclusions are in my opinion grossly simplistic (Ballard 2011).

By contrast Wikan's monograph has no time for contextual nuances: instead she allocates the blame for such incidents with absolute certainty. In doing so she has two interlinked targets: on the one hand the oppressive, authoritarian, patriarchal and honour-driven traditions which Muslim settlers have brought with them to Norway, and on the other their lily-livered betrayers: the libertarian anti-racists who could not bring themselves to condemn the inhumane and oppressive religious and cultural practices which the settlers had cold-heartedly reconstructed under their very noses in their new environment. However shallow her analysis of these developments may have been, Wikan's arguments touched a sensitive spot. Her monograph soon became a much-publicised best seller.

It did so by attracting the enthusiastic attention of two hitherto quite separate audiences: firstly amongst those of a more or less radical feminist persuasion, who took the view that in those socio-cultural traditions in which gender divisions are much more strongly marked than is the case in contemporary Euro-American contexts, all women who are trapped by those constraints are by definition subjected to a particularly egregious, and hence intrinsically intolerable, form of patriarchy. Secondly, and in many ways even more significantly, her work also attracted the attention members of that section of the population whose members were deeply hostile to the very presence of settlers of non-European origin on the grounds discussed earlier: namely that they represented a threat to the integrity of the established socio-cultural order. This otherwise unlikely alliance proved to have explosive consequences.

Once populist xenophobia has been both reinforced and legitimated on progressive/feminist grounds, subterranean feelings of hostility towards the new minorities which had hitherto been suppressed for fear that they would be read as signs of irrational prejudice could at long last be publicly articulated. Riding the resultant wave of populist enthusiasm, Wikan, together with a small number of radical feminists who followed in her footsteps, rapidly opened up a powerful set of arguments on the basis of which the new n minorities could be marginalised: that if left untamed, the oppressive features of their barbarous religio-cultural traditions would become an ever more serious threat to the progressive, egalitarian and liberal premises of Europe established Christian (or possibly post-Christian) socio-cultural order. Along with this events of 9/11 and subsequent paranoia about the capabilities of Al Qaida added a further

powerful dimension to the brew, and as this occurred three otherwise largely unconnected features of the Muslim minority presence – the construction of minarets, the adoption of the *hijab* and the phenomenon of ‘honour killing’ – came to be regarded as aggressive manifestations of alterity, since they were manifestly an aberration from, and indeed a threat to, the civilised standards of which all European jurisdictions were justly proud. With such considerations in mind, Wikan moves on in the final chapter of her book, to consider the obligations to which she considers citizenship gives rise in contemporary democracies.

The rights and obligations of citizenship

In the eyes of an ever-widening range of critics of current developments, the behavioural and ideological commitments displayed by the majority of Europe’s new-found ethnic colonists ‘from below’, and most especially those who are followers of Islam, stand in such sharp contradiction to those of the established socio-cultural order that they have demonstrably failed to respect, let alone fulfil, the obligations which they identify necessary attributes of citizenship. Nor is that all: in much the same vein they also go on argue those who tolerate the resultant condition of plurality, and worse still those who actively celebrate what are ever more widely held to be the ‘failed policies of multi-culturalism’ are likewise held to have failed in their duty to preserve the integrity of the established order.

This is precisely the argument which Wikan develops in the final chapter of *Generous Betrayal*. Utilising her routine tactic of citing the opinions of others, she begins by quoting the verdict in a case in which she herself had acted as an expert witness:

The case arises from culture conflicts. But it is the parents who have chosen to live in Norway. After many years of residence here, they are fully aware of how Norwegian society functions, for better or for worse. That they wish to maintain the customs of their country of birth is unobjectionable, as long as these customs do not come into conflict with Norwegian law. Children can develop in ways that are different from what the parents hope for. But that is the risk in having children, and – not least – in letting them grow up in a different culture. The parents have made a choice as to which country their children will be moulded by. That circumstance may have such consequences as resulting in the case currently before the court. Using violence and forcible deprivation of freedom of movement as an answer is unacceptable.

The court also notes that the family continues to live in Norway and that they have two children below school age who will grow up here. Therefore, there must be aspects of Norwegian society that they, in sum, perceive as more positive than the negative ones.

On this basis she goes on to conclude:

The verdict was a clear statement of what the Norwegian state demands of its citizens, according to the law. And it was historic. It was the first time that the Norwegian courts declared – and in blunt language – what citizenship entails. (Wikan 2002: 191-2)

What citizenship entails, in other words, is the adoption of, and conformity to, the normative ideals and cultural premises of one's fellow-citizens.

However there is no sign that either Wikan or the judge wished or intended that proposition to be taken too far: given the priority which Scandinavians give to personal freedom, there is no support for the view that Norway should aim for a condition of comprehensive homogeneity. Rather the essence of current thinking – not just in Norway, but throughout the Euro-American world – is that diversity should be accommodated as a matter of course, but nevertheless within careful limits. Hence the issue in this context is not so much the existence of diversity *per se*, but rather the *degree* of diversity the citizens of any given jurisdictions are be prepared to accommodate. Hence the substantive issue in question in Nadia's case was whether or not Nadia's parents efforts to take their daughter to Morocco to arrange her marriage against her wishes could be accommodated within the scope of Norwegian law. The court decided that they were not.

Moreover as Wikan is at pains to emphasise, this case was not a one-off issue. All the cases she highlights are concerned with familial issues, and all raise the issue as to whether the premises of hierarchically organised relationships of mutual reciprocity in terms of which South Asian, Middle Eastern and North African families are routinely constructed can legitimately be allowed out-trump the commitment to individual liberty and personal freedom which underpin the Norwegian socio-cultural order. In doing so Wikan makes no effort to discuss the merits and demerits of the differing forms of family organisation to which each set of premises give rise (see Shaw 2000, Ballard 2008 and many others); instead she simply takes it for granted that the quality of life within families constructed around post-enlightenment premises of individualism and personal freedom are intrinsically superior to those grounded in what she dismissively identifies as the subjugation of women. She is no sense alone in taking that position: rather her arguments proved to be a precursor of, and to contribute significantly to the legitimacy of, a mounting wave of hostility towards the presence of Muslim minorities which began to gather force during the closing decades of the twentieth century, and which burst forth like a tsunami in the aftermath of 9/11, so much that political movements promoting anti-Islamic sentiments have gained considerable electoral weight throughout the length and breadth of Western Europe.

Humanitarian intervention on behalf of the oppressed

From this perspective the onset of the twenty-first century has precipitated a remarkable turnaround in Euro-American ideological assumptions. In a defensive reaction to the prospective loss of the privileges they derived from the position of global hegemony which they have enjoyed for the past two centuries, many of its inhabitants have fallen prey what appears at first sight to be a fit of concern about the benighted socio-cultural conditions in which currently find themselves, not so much as a result of two centuries of imperial exploitation, but rather as a result of the oppressive and exploitative character of the politico-cultural regimes in which they are entrapped. Hence ‘humanitarian intervention’ has suddenly become the order of the day – especially, although by no means exclusively, with respect to jurisdictions which are predominantly Muslim in character. Nor is this just a matter of foreign policy. Similar initiatives are currently being ever more widely replicated within most Euro-American jurisdictions. How can these developments best be explained?

Thanks to the evangelistic character of libertarian vision around which the enlightenment was constructed, its premises have in many respects always been a double-edged sword (Gray 2000). In addition to seeking to bring to bring liberty and freedom to its exponents – although invariably on a parochial basis, for such initiatives which were almost always profoundly nationalist in character – those self-same values have also been utilised as a means of legitimating efforts to liberate the victims of what its proponents of Empire identified as unjustifiably egregious forms of oppression elsewhere.

To the extent that this is so, the efforts which Wikan (along with all those who have developed arguments of a similar kind) are currently making to rescue Muslim women from what they perceive as a condition of untrammelled religiously sanctioned subordination are far from unprecedented: on the contrary they comprehensively replicate those articulated by the Christian missionaries – and especially those of Protestant persuasion – who provided the ideological cutting edge in the process of Euro-American imperial expansion. It is also worth noting that the roots of this perspective lay not so much in Christianity *per se*, but rather in the Protestant reformation, together with and it’s even more influential by-product, the European enlightenment. Yet more significantly still, this line of argument has become so deeply entrenched that in Euro-American contexts another core strand of libertarian thinking – namely an acknowledgement that every human cultural tradition (including one’s own) is grounded in its own distinctive set of premises and practices, each of which has to be understood in its own terms – has been swept to one side in the midst of the current dash for

‘modernity’. Instead, Gray argues, an alternative strand of argument embedded in the Janus-faced structure of the enlightenment program has, for the moment at least, swept it’s equally libertarian counterpart firmly to one side. As a result contemporary Euro-American ideological assumptions insist that the chips are down the pursuit of individual liberty trumps all other considerations: hence all constraints on individual freedom and personal liberty are *ipso facto* oppressive, and deserve to be swept away by the unilateral flow of history towards a better and inherently singular future (Ballard 2009b).

These are precisely the grounds on which those who argue that ‘multi-culturalism has failed’ insist that a policy of respect for alterity necessarily constitutes a mistaken course of what Wikan identifies as a ‘generous betrayal’. In other words no matter how generous is an outlook which accepts, and indeed respects, cultural plurality may seem at first sight, it is nevertheless one which must simultaneously be viewed as a betrayal on two complementary grounds. On the one hand the adoption of such an outlook threatens the ideological integrity of every local jurisdiction within which any such initiative is deployed; and on the other that it overlooks, and indeed fails to recognise, the human rights of those subjected to a huge range of Harmful Traditional Practices to which women entrapped in less enlightened (or in other words non-European) cultural traditions are held so regularly to find themselves exposed.² From a xenophobic perspective, nothing was more welcome than these developments. Once this trope – which was firmly grounded in ‘culturalist’ rather than ‘racist’ premises – was firmly established, those disturbed by the pluralising consequences of globalisation, together with Euro-America’s manifest loss of influence in the world at large, could at long last latch onto to progressive and indeed enlightened arguments as a means of legitimate their feelings xenophobia. As this occurred migration managers not only found themselves subjected to even more pressure to reinforce the effectiveness of their exclusionary strategies, but also that they had access to a powerful new means of justifying their initiatives: namely the pressing need to protect the human rights of women and children in danger of being transferred across jurisdictional borders against their will as a result of the oppressive consequences of unbridled patriarchy (Hagelund 2008).

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For critique of this whole argument which is as incisive as it is illuminating, see Winter, Bronwyn, Thompson, Denise and Jeffreys, Sheila (2002) ‘The UN Approach to Harmful Traditional Practices’, *International Feminist Journal of Politics*, 4: 1, 72 — 94

Citizenship, denizenship, and the marginalisation of alterity in defence of 'civilisation'

As Bosniak (2008) observes, academic analyses of the concept of citizenship fall for the most part into two distinct camps. On one hand stand those who can best be described as constitutionalists, whose principle concern is with the rights and duties which the citizens of any given jurisdiction owe each other, and most importantly of all the state, within any given jurisdiction; and on the other those whose principal concern is the nature and significance of the border which defines the external limits of each such jurisdiction. Moreover as Bosniak also emphasises, the current debate about the meaning of citizenship is taking place in the midst of specific historical juncture. Hence it is not just that monarchical structures have by now been universally swept away by jurisdictions which are at least notionally democratic in character, such that subjecthood has almost everywhere been replaced by republican (and invariably intensely nationalistic) notions of citizenship. Rather that development has also intersected with one of the most salient features of the current phase of globalisation: an explosion of migratory initiatives from below, which have introduced substantial additional dimensions of ethno-cultural plurality into almost all contemporary jurisdictions – thereby compromising their carefully cultivated, but often imagined, condition of homogeneity.

In the face of these developments established constitutionalist theories come unstuck, for they regularly took the view, as did Rawls, that in doing so it was safe to assume that “the basic structure of society [could be] conceived for the time being as a closed system isolated from other societies” (Rawls 1971:8). Such a premise is manifestly unsustainable in twenty-first century contexts. To be sure the jural condition of citizenship is still ascribed on a hereditary basis to members of the indigenous majority, but in the case of a rapidly growing minority of denizens access to that status is being rendered steadily more distant, as well as an intrinsically conditional prospect. As Bosniak observes, when border regulations play a salient role in defining the constitutional condition of immigrants who are physically present within the jurisdiction

... membership for new immigrants is understood as a continuum, or as a series of concentric circles, with citizenship the ultimate prize at the core. Along the way, the individual's treatment is structured by the receiving society's border-driven, membership related interests, until such time as the individual graduates to full membership in the innermost circle.

The adoption of such policies has clear structural consequences: such a negative recognition of the *de facto* existence of plurality leads to the construction of a jural hierarchy in which denizens are initially allocated civil rights which are significantly inferior to those enjoyed by fully-fledged citizens, and it only by demonstrating their fully-fledged commitment to socio-

cultural premises of the indigenous majority that they can begin to climb up the ladder of denizenship to reach the otherwise exclusive condition of citizenship. But as she promptly goes on to point out, this state of affairs stands in sharp contrast to those who argue that the deliberate erection of such hierarchical structures is the antithesis of democratic egalitarianism, such that

Once the alien is present and participating in the national society, she ought to be subject, for the most part, to the rules and norms governing community residents, regardless of immigration status. Whether the motivating concern for this norm is protecting the rights of the immigrants themselves or ensuring against the development or perpetuation of caste relationships within a society ostensibly committed to norms of equal and democratic citizenship, the view, in essence, is that border norms ought to be confined to the border. (Bosniak 2008:122-3).

With this distinction in mind, one of the most salient features of the current phase of globalisation is the speed with which so many jurisdictions moving away from the latter vision of citizenship, and are instead ever more enthusiastically adopting the premises of the former. One of the central consequence of all this is that the competitive dialectics of the current phases of globalisation is precipitating a steady move away from the assumption that the condition of fully-fledged citizenship is essentially an ascribed status available to all permanent residents within a given jurisdiction, regardless of their ancestry, but rather an *achieved* condition, ultimately dependent on of loyalty to the socio-cultural premises around which the jurisdiction in question identifies itself as being constructed.

Premises of this latter kind are in no sense a novelty, at least if they are understood in a broad sense. When feudalism was still the order of the day, subjecthood was regarded as a product of the fulfilment of one's obligations of allegiance to a specific monarch, understood 'as a debt of gratitude which could not be forfeited, cancelled, or altered, by any change of time, place, or circumstance' – with the sole exception of treason. But whilst the achieved condition of allegiance in this sense has since been swept away by the premises of democratic republicanism, post-feudal jurisdiction remain as spatially delimited, and hence as parochially bounded, as their predecessors. Hence citizenship remained as parochial in character as was subjecthood, but in the aftermath of revolutionary developments the fealty of citizens – now redefined as loyalty – was directed towards an abstraction, the Republic, rather than towards the person of the monarch. But just how were the social and democratic limits of the republic to be defined, given that the concept of personal allegiance to monarch had been abandoned? The roots of the answer which swiftly emerged can be traced backed to the premises of the Treaty of Westphalia: that the most appropriate foundation for stable, clearly-bounded

sovereign jurisdiction was a religio-culturally homogeneous nation-state. Since then this vision has become the global norm.

But however popular this vision has proved to be, the presumption of homogeneity by which it was underpinned has nevertheless caused all manner of problems, not least because it inevitably led to identification of any significant degree of religio-cultural plurality within the boundaries of any given jurisdiction as a profoundly dangerous threat to its integrity. As a result nationalism became the order of the day, such that virtually all jurisdictions – no less in the non-European world – began to make increasingly strenuous efforts to persuade members of the ‘deviant’ portions of their often *ipso facto* plural population to bring their behaviour into ever greater conformity with a single nationalistically defined ideal norm. Those who resisted those pressures in favour of sub-national agendas were consequently routinely given a hard time.

Had such nationalistically ordered sovereign jurisdictions not been exposed to the ever expanding forces of globalisation, there might just have been a prospect of every such jurisdiction finding a means of eliminating the historically generated patterns religio-cultural plurality present within their boundaries, so enabling them all to reach the ideal goal of nation religio-cultural homogeneity. But even if that was indeed a realistic possibility, it has manifestly been swept away by the massive transjurisdictional migratory movements which have been unleashed in the current phase of globalisation. As a result religio-cultural plurality remains a salient *de facto* feature of the local socio-cultural order in virtually every contemporary jurisdiction, non-European no less than European; and in almost all of them these disjunctions are becoming the locus of steadily more salient socio-political contradictions.

Nowhere have the contradictions come to a head in a more illuminating manner than in Western Europe, not least because the foundations of large part of the current phase of globalisation can be traced not just to the material consequences of two hundred years of Imperial activities, but also to the distinctive character of the ideas and the ideologies deployed by those involved to legitimate their activities, and which they consequently distributed on a global basis. To the extent that the Empires of the ancient world were constructed around notions of fealty, patterns of religio-cultural posed little challenge to their jurisdictional integrity: so long as Imperial subjects paid their taxes and acknowledged the sovereignty of the Emperor, the basis on which they chose to order their personal and domestic lives was of little or significance as far the Imperial authorities were concerned. By

contrast those which emerged during the period Euro-American Imperial expansion were grounded in, and legitimated in terms of, a radically different set of ideological assumptions, initially rooted in the premises of Christian mission, and subsequently complemented by the values of the enlightenment and neo-Darwinism, which brought with them a much more unilateral, and hence strongly anti-pluralistic vision of just what it was that ‘civilization’ entailed. Against that background it should come as no surprise that those self-same tropes are currently being wheeled out once again, this clothed in the vocabulary of Human Rights, as means of constraining what its increasingly embattled inhabitants regard as the unwelcome and aggressive presence of large numbers of the former subjects who have taken up residence in their midst.

The biter gets bitten: Empire strikes back

Alterity – the capacity to outwit to outwit hegemony by playing key aspects of the game according to an alternative set of rules – has always been the one of the most effective weapons of the weak (Scott 1987). Once upon a time it was western Europeans who found themselves in that position in the global arena. But thanks having built their ships to survive the stormy seas of the north Atlantic, such they were able to bear both the weight and the recoil of heavy cannon, together their willingness to use their firepower with ruthless efficiency to tame the barbarians and their fortuitous access to ‘free money’ in the silver mines of Potosí they eventually managed to establish an initially precarious series footholds around the periphery Asia’s then much more prosperous jurisdictions. But they did not stop there: thanks to their latter day technical inventiveness, they also developed the capability mechanise the long established spinning, weaving, metallurgical and ceramic technologies of India and China, so much so that by the early years of nineteenth century they had establish themselves as ‘top dogs’ in the global economy, and hence to convince themselves that theirs was the world’s only serious form of civilization.

But although most of the indigenous inhabitants of Euro-America still cling desperately to that comforting trope, their condition of unchallenged global hegemony began to crumble during the course of the twentieth century, and is unlikely to be sustained for very much longer as we move into the twenty-first, largely as a result of the their entrepreneurial energy of their former imperial subjects; and whilst largely driven by the emergence of state-of-the-art manufacturing initiatives in South and East Asia, together with their careful avoidance of the arcane forms of financial engineering which precipitated the recent credit crunch, it has also been accompanied by the construction of innumerable diasporic escalators which have

delivered millions of equally entrepreneurially minded settlers into the heartlands of Euro-America. Taken together, these developments are generating ever more loudly articulated popular demand that instant action should be taken, not least by raising the drawbridge to keep the barbarians at bay.

Nevertheless history suggests that drawbridge-raising is most unlikely to precipitate the desired outcome. As occidental economies have steadily collapsed, such that their cities have turned into rust-belts, the centre of gravity of the global economy has swung steadily back in an Asiatic direction. But given Euro-America's unassuageable appetite for goods manufactured in China, together ever-increasing proportion of the sharpest minds in Euro-America's Universities are students of oriental ancestry, hauling up the drawbridge is unlikely offer any more of a protective measure than it was when both China and Japan to deployed similar tactics during the course of the sixteenth and seventeenth centuries. However bitter the medicine may be, Euro-Americans can no longer afford to take the view that the moral and conceptual foundations of their own civilization are intrinsically superior to all others. In a steadily more globalised world order, many aspects of contemporary interpretations of the premises of the enlightenment have begun to look seriously moth-eaten.

Conclusion

One of the most salient features of the human condition is our capacity to create the terms of our own existence, and to do so around and almost infinitely diverse set of premises. We have always lived in a plural world, and there is little evidence that globalisation is significantly diminishing the patterns of diversity which give rise to that condition. Indeed if the boundary transgressing and sovereignty-trashing consequences of current processes of globalisation have anything to teach us, it is that the capacity to navigate ones way competently through a wide variety of differentially ordered arenas is a vital survival strategy, given that religio-cultural plurality, no less than cooperation and competition, is, and is set to remain, an inescapable component of social reality. If so it follows that no amount of wall building, of maritime surveillance, of biometric scrutiny and of tests of linguistic competence and educational tests will enable migration managers to construct sieves which will comprehensive filter out all potential goats, or at least ensure that all such persons are safely consigned to the restricted status of denizenship. There are at least three reasons why this is so. Firstly, and perhaps most importantly because the pass has already been sold, since numerous well established ethnic colonies of goatish origin, and whose members religio-

cultural characteristics are often identical with those whom migrations managers are seeking to exclude, have already established themselves as citizens within the bounds walls of virtually all such jurisdictions; hence marginalized denizens (including those who have surreptitiously evaded the attention of migration managers) can not only expect to receive a sympathetic reception from such well-established 'Trojan Horses', most especially when they are linked by prior ties of kinship; and yet more significantly still, they can and do regularly utilise the legal rights accruing from the existence of these ties to yet further reinforce their status inside the walls, thereby opening up a further route to citizenship.

Set against this a series of additional obstacles are currently being created by migration managers in an effort close off these loopholes. But given that other strategies have fallen by the wayside for one reason or another, the last-ditch strategy which has now emerged: a series of ever more searching 'loyalty tests' which all those seeking to step their way up from the status of alien to that of denizen, and subsequently the even more substantial passage to the of status citizen are required to pass. In the contemporary context these are no longer tests of fealty, or indeed of 'race': rather they have begun to focus ever more closely on the character of the applicant's moral and ideological commitments in personal and domestic contexts. Hence the more closely the applicant can present her of himself as adhering to the individualistic, egalitarian and agnostic premises of contemporary European liberalism, and the further they can consequently demonstrate that they distance themselves from harmful traditional practices of their ancestral heritage, the more positive the rating they can expect to achieve. But all this also comes with a further sub-text: although those who already enjoy the benefits of citizenship are not required to take, let alone to pass, these tests, the behaviour of the most members of Euro-America's established ethnic colonies is of a kind which still stands in more or less serious contradiction to these premises – some much so that many members of the indigenous majority all to readily treat them as *de facto* denizens at best, and as wholly unwelcome aliens at worst.

Just when and how these ever sharpening contradictions will be resolved remains unclear. Nevertheless there is one prerequisite for progress which is plain as a pikestaff. So long as the indigenous population of Euro-America, and especially its opinion formers, doggedly refuse to step beyond the limitations of the parochial, and hence anti-pluralistic, premises to which they are currently committed, they remain trapped behind a conceptual barrier of their own construction which renders it impossible for them to appreciate that plurality is not just a normal feature of human experience, which can readily be accommodated within, and is also

a necessary prerequisite for, the construction of an equitable social order. Unfortunately the weight of popular opinion in Euro-America is currently backing off in the reverse direction in the face of the current dynamics of globalisation. So long as this parochial stance remains unchallenged, we can only expect to look forward to an ever more troublesome future.

Bibliography

- Ballard, Roger (2011) "Honour Killing? Or just plain homicide?" in Holden, Livia (ed) *Cultural Expertise and Litigation: Patterns, Conflicts, Narratives* London: Routledge
- Ballard, Roger (2010) "Three Phases of Globalisation: the significance of Dubai's emergence as a trading hub" in Pieterse, Jan (ed) *21st Century Globalisation: Perspectives from the Gulf* Dubai: Sheikh Zaidi University
- Ballard, Roger (2009a) "The Dynamics of Translocal and Transjurisdictional Networks: A Diasporic Perspective" in *South Asian Diaspora* Vol1, (2) 141 -166
- Ballard, Roger (2009b) "Human Rights in Contexts of Ethnic Plurality: Always a Vehicle for Liberation?" in Grillo, Ballard, Ferrari, Hoekema, and Shah (eds) *Legal Practice and Cultural Diversity* Aldgate.
- Ballard, Roger (2008) "Inside and Outside" in *The Family in Question: Immigrant and Ethnic Minorities in Multicultural Europe*, edited by R.D. Grillo. Amsterdam: Amsterdam University Press
- Ballard, Roger (2007) "Living with difference: a forgotten art in urgent need of revival?" in Hinnells, J (ed) *Religious Reconstruction in the South Asian Diasporas: From one generation to another* London: Palgrave Macmillan
- Ballard, Roger (1977) "The Sikhs" in *Between Two Cultures: migrants and minorities in Britain* Oxford: Blackwell.
- Beck, Ulrich (2006) *Power in the global age: a new global political economy*. Cambridge: Polity Press.
- Blackstone, William (1765) *Commentaries on the Laws of England*,
- Bosniak, Linda (2008) *The Citizen and the Alien: Dilemmas of Contemporary Membership* Princeton University Press
- Brown, Wendy (2010) *Walled States, Waning Sovereignty* New York: Zone Books
- Gray, John (2000) *Two Faces of Liberalism* Cambridge: Polity Press
- Hagelund, A. (2008) "For women and children!" The Family and Immigration Politics in Scandinavia, in *The Family in Question: Immigrant and Ethnic Minorities in Multicultural Europe*, edited by R.D. Grillo. Amsterdam: Amsterdam University Press
- Rawls, John (1971) *A Theory of Justice* Harvard University Press
- Scott, James (1987) *Weapons of the Weak: Everyday Forms of Peasant Resistance* Yale University Press
- Shaw, Alison (2000) *Kinship and Continuity: Pakistan Families in Britain* London: Routledge

- Sachdeva, Sanjiv (1993) *The Primary Purpose Rule in British Immigration Law* Stoke on Trent: Trentham Books
- Wikkan, Unni (2002) *Generous Betrayal: Politics of Culture in the New Europe* Chicago: University of Chicago Press
- Winter, Bronwyn, Thompson, Denise and Jeffreys, Sheila (2002) 'The UN Approach to Harmful Traditional Practices', *International Feminist Journal of Politics*, 4: 1, 72 - 94