



*Tough as old boots'?*

**Asylum, immigration  
and the paradox of  
New Labour policy**

Don Flynn

A Discussion Paper



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Mr Blunkett said the new asylum legislation, to be detailed on Monday, would encourage people to come to Britain to work legally while being "as tough as old boots" on those who abused the system.

*The Guardian*, 25 October 2003

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## **Asylum, immigration and the paradox of New Labour policy**

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## **About the author**

Don Flynn has been working in the field of immigration law and policy for over 25 years, firstly in a community law centre in London, and latterly as a policy officer for JCWI. The views expressed in this IRP paper are his own and are not necessarily endorsed by JCWI.

## Introduction

# The great divide

During the past six years the British government has attempted a radical change of direction in immigration policy. This has involved splitting the system of controls into at least two distinct parts and simultaneously moving them in polar opposite directions.

On one side of this opposition there is policy concerned with the migration of workers and professionals – so-called ‘economic’ migration. Many aspects of this policy have been extensively liberalised, with the admission of potentially large numbers of new migrants being facilitated by the new procedures.

On the other side, the government has taken draconian action to restrict access for people coming to the UK as asylum seekers. For most practical purposes there are now no legal routes to Britain for people fleeing persecution in their own countries. Those who manage to clear the obstacles placed in the way of entry to claim rights provided for in the Geneva Convention on the Status of Refugees or the European Convention on Human Rights are then subject to procedures which effectively classify them as criminals, liable to be detained or subject to serious penalties for any further infraction of the rules until such time as their applications for asylum are finally resolved.

In the face of these developments over the period since the election of the New Labour government in 1997 it has appeared to many that immigration policy has acquired two separate souls – one harshly repressive, the other liberal and progressive. The perversity of this situation is compounded by the fact that, as it seems to many liberal commentators, the real need for generosity lies in the opposite direction to the one taken by the government: it is asylum seekers who should be receiving the benefits of the helping hand, with economic migrants facing the burden of restrictions.

In this paper we wish to argue that in fact the government, guided by its own distinct analysis of migration in the modern world, has adopted an approach to its

management which, far from being internally divided, is actually entirely consistent. Informed by a larger view of modernity and the meaning and potential of the processes of globalisation, the government is pushing for a system of managed migration which is based almost exclusively on utilitarian principles – in particular that the movement of people across the globe should be guided at every point by the economic objectives of growth and modernisation. From this standpoint, the old world of universal rights in the migration field, exemplified by the right to asylum for those with a well-founded fear of persecution, is obsolete. In the new world of globalised reality, the concept of 'rights', if it is applicable at all, should be reserved for those who have made themselves useful to the needs of a growing and dynamic world economy, and who are actively contributing to its further development.

Understood from this perspective, we will argue that much of what now seems contradictory and perplexing about current immigration policy becomes clear and understandable. Further, it also suggests the lines along which further developments in policy are likely to take place, extending beyond the realm of traditional immigration concerns about the admission and settlement of new immigrants, into integration and race equality policies and government projects for 'active citizenship', community cohesion, and 'civil renewal'.

# The government's record

The New Labour government came into office in 1997 with a strong sense of what was wrong with British immigration policy. In terms of their political and social base, Labour MPs since the 1970s had been in a good position to witness the problems created by a system which had grown bureaucratic and unwieldy. Most importantly, they understood the capacity which the system of controls had for inflicting injustice on large numbers of people. In their multicultural, urban constituencies, Labour parliamentarians were likely to be familiar with the problems of divided families from the Indian subcontinent and Caribbean, and the frustrations of people whose plans for UK-based social events had been thwarted by decisions to refuse the admission of relatives and friends as visitors. Its years in opposition had inclined the Labour Party towards plans for reform of the immigration policy, and some of these proposals for change were actually rolled out during the early months of the new government.

Amongst New Labour's earliest actions was the repeal of the widely criticised 'primary purpose rule', which had been responsible for the long-term separation of tens of thousands of couples because of suspicions on the part of immigration officials that decisions to marry had been influenced by the immigration benefits that might accrue as a consequence. The scrapping of this rule in the summer of 1997 was welcomed by many people who were aware of the damage it was doing to claims for fairness in the administration of immigration control policy.

The ending of primary purpose was followed with the introduction of new procedures allowing for the admission and settlement of same-sex partners in long-term gay and lesbian relationships with British residents. The absence of any legal means for homosexual couples to live together in the UK had been a long-standing grievance and had given rise to campaigning and lobbying on the part of the gay community. But in themselves these changes were piecemeal measures which left in place a larger machinery of immigration control which remained focused on the operation of strict controls primarily directed against the citizens of

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African and Asian countries. Inefficient and cumbersome, the system was seen by many as failing even in its own minimal terms, of managing the movement of people across the UK's international frontiers. It also continued to promote a sense of grievance and injustice on the part of those communities who were the object of its key activities. Acknowledging these severe failings at the onset, the new government promised a more fundamental review of policy to deal with these issues.

### **Fairer, Faster, Firmer**

The first New Labour white paper on immigration policy, *Fairer, Faster, and Firmer – A Modern Approach to Immigration and Asylum*, was published in July 1998. It was primarily concerned with what it saw as the crisis in the procedures for administering asylum rights, with escalating backlogs of applications awaiting decisions and larger numbers of people entering the system. The white paper argued that the gross inefficiency of asylum determination procedures was leading to the policy of refugee protection itself being discredited, which in turn facilitated large-scale abuse of the system. People with no entitlement to protection were entering the country in large numbers in order to enjoy the advantages of employment or access to welfare benefits during the prolonged period when their applications were under consideration. The reform of policy in this area therefore required a vast speeding up of determination procedures, strict and consistent interpretation of the relevant law, and the reduction of liberties hitherto available to applicants whose claims were being processed.

The white paper tackled these issues by firstly advocating a backlog clearance exercise to quickly resolve the claims of people who had been awaiting decisions for three years or more. The claims of new applicants would be expedited through a procedure which committed itself to a first decision within two months of the date of it being lodged, and a final decision through the appeals procedure within a further four months. Further, during the six months in which applications were expected to be dealt with, the applicant would be subject to strict direction as to where they would be allowed to live, access to employment would be refused, and subsistence provided for by way of food and essential items only vouchers. The white paper also envisaged more extensive use of detention facilities, with the capacity for quadrupling the numbers held at any time to 4,000 people, and for changes to the appeal system to reduce the opportunity for multiple hearings of a claim.

At this time the government still saw its actions as being broadly consistent with



its international legal obligations to protect human rights. It described its policies as a 'covenant' with asylum seekers, designed to protect the rights of the genuine refugee, and to deter the bogus. The commitment to a strong human rights perspective appeared to be reinforced by the passage of the Human Rights Act 1998, which was, amongst other things, expected to reinforce rights by incorporating the European Convention for the Protection of Human Rights and Fundamental Freedoms, (better known as the European Convention on Human Rights), fully into UK law. As far as the government was concerned, the only people who would lose out by this system were those who should never have benefited from it; namely the so-called bogus applicants who were really economic migrants seeking a better life in the UK, rather than fleeing persecution.

The white paper and the legislation which followed on from it, the Immigration and Asylum Act 1999, encountered a wide range of difficulties. Foremost amongst these was the widespread revulsion on the part of many within the labour movement to the draconian policies aimed at dispersing asylum seekers across the country and depriving them of access to cash. Government commitments to take into account the broader welfare needs of asylum seekers in dispersal procedures were never developed and the system in practice restricted itself to sending people to parts of the country where there was an available stock of unused housing. The reasons for this surplus were invariably connected with the economic decline of the district concerned, and therefore came with the associated problems of urban poverty, isolation, and high levels of community crime and violence. The vulnerable position of asylum seekers frequently meant that they were exposed to the worst of these environments, with several incidents of violence being directed against them, including murder. Extremist anti-immigrant organisations emerged with a foothold in local and national debates as a consequence of these measures, with the most notable gains accruing to the neo-fascist British National Party.

A campaign against the worst aspects of these policies emerged in the Labour Party itself, led by the veteran trade union leader Bill Morris. The resulting crisis of policy led to a new Home Secretary, David Blunkett, giving a commitment to scrap the voucher scheme and re-think basic aspects of policy at the Party's national conference in October 2001.

## **A new turn**

A new context was provided for the re-thinking of New Labour's policies by the events of September 11 in the United States. The terrorist attacks, on this

occasion perpetrated by foreign nationals, made politicians in the US and Europe determined to build a 'war on terror' dimension into immigration policies. The British government had actually enacted such measures prior to the September 11 attacks in the Terrorism Act 2000. Further legislation followed with the Anti-terrorism, Crime and Security Act 2001 which had the effect of framing an important part of the immigration debate within a new discourse.

Important though the September 11 developments were, they do not provide a comprehensive reason for new immigration policy developments. The intensified moods of apprehension have, however, contributed a great deal to the political climate which has made the further erosion of migration rights possible.

The main substance of New Labour's thinking on migration was not, however, adversely affected by the events of September 11. A year prior to that date, the then immigration minister, Barbara Roche, had begun to sketch out the basis of a new approach in a speech given to a conference organised by the Institute for Public Policy Research (IPPR). She argued that, hitherto, successive UK governments had been obsessed with counting the numbers of immigrants entering the country each year. The hallmark of policy became the reduction of this flow of people to the smallest volume possible. No justification was offered up for taking this approach; it was assumed to be self-evident that immigration was not the sort of thing any sensible government would want to encourage.

Roche explained that New Labour had departed from this approach. The 'evidence-based research' which the government now favoured was discovering that whole sectors of the economy were dependent for their competitiveness on having ready and immediate access to the new global markets for skilled labour. Looked at on a sector-by-sector basis the importance of labour migration could be readily seen in the IT, health, engineering, hotel and catering, education, and financial services. Across the whole economy the benefits brought by migrant labour was more dilute, but still worth in the region of £2.4 billion each year to public revenues. For New Labour, the case had been made for a migration policy based on the promotion of forms of movement which closely related the admission of workers and professionals to the needs of UK-based employers.

This thinking was responsible for an evolution of policies which had been underway for some months even before the date of Roche's speech, and could be seen in the reorganisation of the work of the overseas labour department (soon to be re-branded as 'Work Permits UK' (WPUK)) which was then located in the Department for Education and Employment and with its Secretary of State, David Blunkett. During this time the nascent WPUK was busily revising its procedures to

ensure that it provided a more efficient and friendly service to employers wishing to engage migrant workers. Negotiations with employers' representatives were institutionalised into a series of sector panels which were seen as capable of assessing the extent of demand for specific skills and relative shortages in the domestic labour markets. The turn-around time for dealing with work permit applications was reduced from weeks to days, and in the case of the officially-recognised shortage industries, hours.

By early 2001 ministers were reporting on an increase in the admission of work permit workers from numbers typically in the order of 40,000 per annum in the mid-1990s, to in excess of 100,000 people. Studies commissioned by the Home Office reported that this migration contributed to economic growth and thereby created new jobs and increased the tax base supporting public services. They advised that there was little evidence of direct competition between members of the resident workforce and new immigrants for jobs or other scarce resources because newly arrived workers tended to orient themselves to employment either for which they were uniquely skilled, or where the locals showed no inclination to work anyway. Though admitting that further research needed to be undertaken to assess the validity of these findings over time, the initial evidence suggested that economic migration was a positive benefit to the UK economy and further efforts should be made to facilitate the admission of overseas workers.

Other developments around this time had provoked critical scrutiny on the relationship between economic migration and asylum seekers. One such incident took place in June 2000 when a refrigerated lorry disembarking from a ferry at Dover was found to contain the bodies of 58 Chinese people who had died during an attempt at being smuggled into the country. It was assumed that the intention of the deceased had been to claim asylum and then to join the irregular workforce in the UK seeking employment opportunities in the shadowy casual sector of the economy. The government drew two lessons from this experience. The first of these was, it believed, the need to draw a tight ring around asylum seekers and enact regulations to ensure that they were kept out of the labour market. Home Office ministers took the view that this would reduce the attractiveness of asylum routes of entry as a means to secure entry into the UK labour market.

The second lesson concerned the consequences of maintaining strict controls on the admission of less skilled migrants in the face of mounting evidence that, in some regions of the country, there was a large demand from employers for their labour. Ministers were inclined to accept the argument that, if legal channels for the admission of unskilled workers were closed, the demand which undoubtedly

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existed would be met through irregular and clandestine means such as that attempted by the victims of the Dover tragedy.

These, and other problems, were forcing their way onto the policy agenda during the course of 2001 just as the controversy raging from the *Fairer, Faster and Firmer* reforms was moving towards its height. A new bout of bold thinking was called for.

In June 2001 a cabinet reshuffle brought the education and employment minister into the post of Home Secretary. Blunkett arranged for his former charge in the employment services, the department responsible for the issue of work permits, to be transferred with him to the Home Office. He was clearly keen to maintain the momentum of the reforms commenced in this area of work and to use it as a paradigm for the whole of the work of the Immigration and Nationality Directorate (IND).

The Blunkett scheme for further reforms of immigration control policy have brought together a range of strands of New Labour thinking, including a reflection on the important issue of human rights several years after the enactment of the Human Rights Act. It extends beyond the traditional concerns of immigration policy (the conditions under which non-British nationals are to be admitted and allowed to reside in the UK), and addresses the difficult issues of social cohesion and citizenship. Its core elements might be described as, firstly, a utilitarian approach to economic migration; secondly, animosity to the notion of 'rights' existing as an outgrowth of a purely political settlement without reference to a specific context and definable interests; and thirdly, adherence to the broadly communitarian approach to social cohesion, which sees concerns about the ethics and values of a community as an expression of its functional operation. During the three years since assuming the post of Home Secretary, these ideas have been greatly firmed up. Little happens now in the realm of immigration, social cohesion, citizenship and security policy without reference to the New Labour road map as developed by Blunkett and his advisers.

### **The next step – *Secure Borders, Safe Haven***

The white paper, *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*, published in February 2002, moved beyond what had been attempted by its predecessor. No longer dealing with a policy agenda centred on 'clearing up the mess' bequeathed by the Conservative government, the new white paper contained within it the beginnings of a distinct New Labour approach,

for which the idea of 'managed migration' was central. 'Managed migration' was potentially a radical concept, in that it fully accepts the progressive character of migration in the context of a global economy. As the white paper suggested:

If managed properly, migration can bring considerable benefits to the UK, including improvements in economic growth and productivity, as well as cultural enrichment and diversity. 'Managing' migration means having an orderly, organised and enforceable system of entry. It also means managing post-entry integration and inclusion in the economy and society, helping migrants to find their feet, and enabling members of the existing population to welcome them into their communities. (Paragraph 1.3, *Secure Borders*).

The groundwork for achieving this acceptance had been laid in the mid-1990s by modernising Labour think-tanks, most notably IPPR, which had published a series of studies on the theme of migration as an economic asset. The basic argument was that, at the macro-economic level, immigration tended to boost investment and growth in national economies by providing inflows of trained, flexible, human capital. In conditions of economic upturn, modern economies appeared to be able to absorb these new workers with little evidence of disruption to the domestic labour market. Whilst the figures suggested that, across the whole of the economy the net benefit was modest, in the key sectors on which international competitiveness is dependent, access to the skills available in global labour markets is much more crucial. There was therefore a vital role for government policy in actively facilitating the movement of labour across international frontiers.

By the time of the second white paper's publication, this was already a familiar argument. It had provided the impetus for not only the reform of the work permit scheme discussed above, but also new innovations such as the highly skilled migrants programme. A further step was taken with the acknowledgement of the importance of less skilled migrant workers in maintaining the infrastructure of public and private sector services, and the white paper promised measures to address this in the form of a scheme for unskilled casual workers for specified sectors, and the complete overhaul of the working holidaymakers scheme to transform this into a channel of economic migration.

But the conception behind *Secure Borders*, *Safe Haven* operated on a much grander scale. This was that in order for migration to be truly managed, the reach of policy had to extend well beyond the business of admitting or refusing would-be migrants, to embrace the totality of the civic life of immigrant populations in the UK, and the social and political cultures which provided the broader stability

for such policies to operate. The sort of things which interested the authors of this white paper was the ways in which different migrant communities might be stratified in civic society, according to their positions in the job market and their nationality, through such mechanisms as labour market rights, permitted length of residence, prospects for long-term settlement and integration, access to public services and benefits, and rights to family reunification.

The central role for management migration policy was envisaged as remaining long after the early years of conditional residence on a work permit of some description, through into the years of settlement and eventual citizenship. A chapter on naturalisation procedures was extraordinary for its promotion of a discussion which problematised an aspect of policy which had previously been considered a relative success story, particularly in comparison to the far greater difficulties experienced in other EU states in achieving the integration of migrants into citizenship. Issues of training in English (or Welsh or Scottish Gaelic), hitherto considered a problem only in that the demand on the part of newly arrived immigrants for classes considerably outstripped supply, was now raised as though it were a matter of immigrants being resistant to learning the language.

A concern about the adequacy of knowledge about British society and culture was also flagged as an issue, paralleled by remarks made at this time by the Home Secretary outside the context of the white paper which reflected negatively on the marriage and family traditions of many immigrant and minority ethnic communities. The net effect of all these interventions has been to mark out the terrain for the legitimacy of a new interest on the part of government in the detail of the lives of immigrant communities, and to strengthen the claim of the authorities to a supervisory role over an extensive range of community life.

The ideological staking out of the ground for these new rights of supervision has been accompanied by a discussion about the practical means for achieving this end. Centred on the use of new technology, the Home Office is now responsible for a plethora of innovations in the form of biometric devices to establish identity and to check movement at borders, in employment, and in the use of public services. The best known example of its proposals to render large areas of private life more transparent to the authorities, that of the introduction of compulsory identity cards, is justified almost exclusively on the role it would play in facilitating the supervision of individuals within the immigrant communities. For some, the intended measures are even more extreme, with certain types of immigrant considered most problematic, namely asylum seekers, being electronically tagged on a twenty-four hour basis.

## The fate of asylum rights

Asylum fared badly in the second white paper. Though it committed the government to replacing the much-criticised asylum support voucher with cash payments, it also declined to affirm the earlier white paper's commitment to a covenant with asylum seekers, which had contained the important commitment to ensuring that all applicants received some form of support whilst their claim was being processed. *Secure Borders, Safe Havens* sets out a description of refugee procedures which involves seamless management of every aspect of the asylum seeker's life, with 'asylum registration cards' (ARCs) providing the technological tool for supervision, and a beefed-up capacity for punitive measures taken against those resisting the discipline of the system. The withdrawal of the liberty permitted to the majority of those seeking asylum would follow from any infraction of asylum conditions, such as absence without reason from a specified accommodation, taking any form of employment, and failure to report to the authorities when required. The immigration detention estate was to continue with its expansion to a capacity of 4,000 detainees, including children who were members of the family of an asylum seeker.

Other measures followed from the white paper built upon these promises of greater restrictions. In July 2002 the long-standing concession which allowed asylum seekers whose applications had not been decided after six months to take employment was withdrawn. The bill which passed through Parliament contained measures to restrict effective appeal rights against refusal of refugee status, and to withhold all forms of support from people who were considered not to have lodged their applications at the earliest opportunity. Despite the threat implicit in these measures, asylum numbers continued to rise throughout 2002, mainly due to the increase in numbers of people arriving from chronically de-stabilised countries such as Afghanistan, Iraq and Zimbabwe. Public discussion on refugee policy was dominated in the second half of the year by televised images of the Sangatte refugee camp in Calais, which had emerged from the spontaneous concentration of would-be asylum seekers wishing to cross the Channel. A negotiated agreement with the French authorities to dismantle the Red Cross centre in the region by the early part of 2003 was used as an opportunity by the prime minister to promise a halving of asylum figures by the following September. At the same time, a bold attempt by Tony Blair to take the policy high ground in the debate was launched with an initiative promoting the idea of 'regional protection zones' and 'transit processing centres' to replace the right to in-country processing of applications. Requiring the support of other EU states to be viable, this measure would mean the removal of the majority of asylum seekers

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from member state territory to camps located adjacent to countries of origin for their applications for protection to be determined there.

The task of political assessment of these initiatives has proven difficult for many organisations concerned with refugee policy. They appear to conflict with commitments given by the government back in 1997 to promote a 'culture of human rights' as a defining feature of its work. The Human Rights Act of 1998, which had come into effect in October 2000, was hailed as a way to expand the range of opportunities for refugees to receive protection under a wider set of international humanitarian instruments. The balance sheet for such developments has in fact shown the effects to be much more ambiguous. Whilst at the level of individual casework, there are signs of a judicial system which is open to considering a wider range of issues and arguments in support of protection, the government itself has legislated with apparent disregard for any intuitive sense of what would constitute the core of a human rights culture. Vigorous enforcement actions to close down opportunities for refugees to enter the country, threats of their removal to areas adjacent to conflict countries for the processing of claims, the ending of all forms of welfare support for thousands of vulnerable people, and the commonplace detention of whole families of refugees whilst their cases are still being argued, seem to conflict with a commonsense approach to the issue of human rights. Can it therefore be said that the government has reneged on its commitments to respect human rights given back in 1997?

## **The nature of rights**

The complexities of the issue are placed in some perspective by acknowledgement of the fact that, right from the onset, the debate about the application of human rights law in the UK has polarised around two separate conceptions of what they are and how they should operate. The public expression of this discussion took the form of arguments about whether the Human Rights Act would allow Acts of Parliament to be struck down by the judiciary on a ruling that they conflicted with a fundamental provision of international law; or alternatively, whether such rulings would have the effect of indicating a problematic area, with the responsibility for resolving the matter reverting to government. Proponents of the first viewpoint argued that breaches of human rights were manifest in clear and transparent terms and, when identified as such by the courts, required immediate and unequivocal action to bring about redress. For supporters of the second, things could not be that simple. Human rights acquired meaning only because they were embedded in the structures of an actually existing society,



and they could not be maintained unless the integrity of that society was itself acknowledged. In the context of British society this is an old argument which goes back to the disputes which raged over the meaning of the French and American Revolutions by such thinkers as Edmund Burke and Thomas Paine.

During the years of the current government, this old dispute has been transformed by an approach to the issue of rights which derives directly from the ideological innovations of New Labour. The crucial issue from this standpoint has been the re-siting of the context for judging the merit of rights from the needs of a specific national society, to the utilitarian standard of what is needed for the economy to function efficiently. For New Labour, this principle applies across the board, and as much to the provision of education, health, pensions and other welfare services as it does to the distribution of rights to both economic and forced migrants. The modern, global economy is projected in numerous government statements as an egalitarian sphere in which barriers to achievement are no longer fixed by the classic obstacles of class, gender or racial group. Even the hurdle of access to capital is seen as being greatly reduced, both by the existence of competitive finance markets actively seeking opportunities to invest in 'good ideas', and also in the claim that entrepreneurial activity in the modern 'weightless' economy is often more about mobilising 'social capital' (i.e. being able to 'network' in an effective way) than raising money.

This viewpoint has major implications for the view of rights which has argued from a different starting point; namely that markets cannot be relied upon to produce justice or equity, and that a specifically political role remains for the state to provide the means and structures by which its citizens can be effective as autonomous individuals capable of self-determination. By these standards, the ultimate guarantor of liberty, equality and effective citizenship has to be a state governed by a political constitution which might, according to political preference, be aristocratic, republican, High Tory, liberal, or social democratic. The radicalism of New Labour lies in the fact that it has broken with – or at least 'modernised' – these older ideologies to propound a view of rights which is no longer about the situation of the individual in relation to the structures of power in society, but their effectiveness as participants in the new economy.

Looked at from this point of view, assumptions about the existence of human rights of refugees and asylum seekers seems distinctly pre-modern. It has its roots in an international convention drawn up in a period suffering from the trauma of world conflict caused by the failure of national capitalisms to secure the conditions for universal liberty, equality and solidarity in their own territories. The intervention

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of the United Nations into this area was a supremely political action, entirely unrelated to the proper functioning of economies, and even predicated on the pessimistic view that they could not, as a matter of principle, be expected to function as the final guarantors of liberty. The collective political will of the community of national states, acting in accordance with the principles of law, had to be enrolled to achieve this end.

In the seventh year of a pioneering New Labour government, this looks as old hat as the promise of universal welfare benefits and the protection of education and health services from the self-interested claims of the commercial private sector. Indeed, arguments against the UN Convention on the Status of Refugees are paralleled by those raised against the provision of universal welfare benefits. The rights it propounds encourage dependency in that, as a condition of receipt, the beneficiaries are no longer involved in the struggle to overcome the conditions which led to instability in their own countries, and instead accept long-term reliance on the generosity of the host state. Further, the struggle to maximise the benefits of refugee protection, by moving from the overcrowded camps in poor countries in the periphery of conflict zones, encourages profligacy, with the cost of providing for relatively small numbers of asylees in the developed countries consuming a disproportionately vast share of available budgets. With arguments such as these the case is made for the total overhaul of refugee protection measures across the globe, with new emphasis placed on direct intervention on the part of the dominant world alliances, upgraded financial and strategic support for countries in conflict zones which accommodate refugee populations in a manner which conforms with the priorities of these alliances, and as a safety valve, a system of selection of appropriately qualified refugees from protection zone camps, as a useful mechanism for ensuring a degree of discipline and the hope of reward for conformity with the regulations of camp life.

In this scheme, rights which are claimed to be analogous to the standard of the UN Convention are distributed throughout the system of refugee management in a way which ensures that the greater goals of conflict management and integration into the governance of the global economy are more effectively achieved. The confidence to embark on this route, and to encounter the type of often harsh criticism inflicted on Tony Blair and his ministers for setting out its visions for regional protection zones, derives from the sincere belief that ultimately, the rights and interests of refugees and other vulnerable people will be better provided for by their relocation as useful citizens in a dynamic global economy than it ever would be by the pious universal commitments of UN charters.

The point is that the immigration reform programme advocated by New Labour is not one which is motivated by a fundamental rejection of the rights of refugees. Rather, the proposals are motivated by a desire to shift the basis for such rights from the political sphere and into the economic. It is an approach which is entirely consistent with the opening up of channels for economic migration and plans to facilitate the admission of such workers in a greatly increased volume. It also lines up alongside mainstream programmes for the reform of welfare state services. The provision of education, for example, is envisaged in government schemes as being perfectly aligned with the needs of the economy for a flexible, multi-skilled workforce which can range across the complex array of niches in search of employment and business opportunities. The seekers of security in old age are similarly required to make use of alleged opportunities in a diverse market for financial services commensurate with their life plans and projects. We could go on, with examples from the health services and arrangements for local government, to demonstrate this close alignment, definitive of New Labour, of rights, equality and welfare support with the direct functioning of the economy. Given this impetus, it is not surprising to find immigration and refugee policy so firmly embedded within the same perspective.

# But will it work?

The New Labour agenda sets out a radical programme for the reform of immigration policy which coheres around the grand themes of modernisation, the integration of new technology innovations, the central role of competitive markets, and the task of generating community cohesion. The goals it is aiming at are proclaimed in imaginative and positive terms, such as the ending of mass public anxiety over immigration and putting in place a system of management which closely aligns admission and settlement policy with the real needs of the British economy. In this it resembles many aspects of the policies advocated in earlier decades by such groups as JCWI and AGIN (Action Group on Immigration and Nationality).

This re-focusing of the immigration debate on these issues therefore deserves close scrutiny of the government's proposals and careful evaluation of its implications for the managed migration scheme which it is intending to put in place. A whole programme of research will be required to examine the impact of policy on public opinion, issues concerning the character of modern multicultural communities and what makes them cohere, the economic interests bound up in migration, and the implications of policy for race and gender equality, and civil and human rights. But even in advance of this examination, is it possible at this time to make a tentative stab at any of these issues at this early stage of the discussion? We would suggest that the following points can be usefully made as an attempt to mark out the sort of issues which will dominate discussion in the future.

## **The question of public anxiety**

The public statements of ministers and other public commentators on immigration policy are replete with references to the existence of a 'legitimate public concern' over the volume and the implications of immigration. The

existence of this concern is taken as an inevitable and natural consequence of immigration itself; that an action will always prompt a reaction, and public anxiety is a proper object of concern on the part of policy makers.

In our view, this is naive. We think it more fruitful to operate with the presumption that public anxiety emerges not so much from a direct engagement with the practical issues of living with or alongside immigrant communities, but from the character of the public discourse promoted by politicians, policy-makers and the media forum in which their ideas are re-cycled.

Some sense of what is meant by this assertion is conveyed in the report of public opinion surveys conducted by MORI for IPPR in 2003. This records the fact that, throughout the 1990s, public concern about immigration as expressed in a succession of surveys remained low, with around or just under 5% of respondents recording it as one of the 'most important issues in Britain today'. The pattern of response changed after 1997 with the beginning of a jagged series of up and down swings on the graph, but with an underlining upward trend, rising to the point that, when polled in 2003, around 25% of respondents said that they believed that immigration policy was an issue of pressing importance.

The MORI research plots this rise in public anxiety against a graph indicating an increase in enforcement actions by the Home Office which were, ostensibly, intended to allay fears. The chosen index of the rate of asylum decisions taken by IND officials shows that, just as the publicly-heralded policy of faster resolution of applications kicked in around 1997/8, the trend of anxiety moved upwards rather than declined. This suggests the existence of a link *between the intensity of government action and public anxiety*, rather than a straightforward engagement of the public with allegedly unpalatable facts about immigration.

Other findings in the MORI research bear this out. The greatest level of expressed anxiety was to be found in towns and districts of cities where immigrant penetration of local communities was low or non-existent. Areas which had experienced significant levels of immigration appeared to harbour least misgivings about its various outcomes. Further, when questions were framed in a manner intended to elicit more detailed and concrete responses about the perception of local community issues, concerns about immigration vanished from the scale and were replaced by unhappiness about the absence of facilities for young people, 'low-level crime', and road and pavement repairs.

Caution should always be exercised in attempting to interpret public opinion research, but there is sufficient evidence in this research to suggest that public

'Tough as old boots'?

anxiety over immigration is largely 'legitimised' by the character of the national political discourse rather than practical experience of problems. If this is the case, then politicians and policy-makers cannot plead innocence when entering the realm of engagement with public opinion.

## **The consequences of enforcement policy**

The claim that rigorous enforcement is central to maintaining public confidence in the effectiveness of immigration policy was made in both New Labour white papers and has been reiterated in ministerial statements on many occasions. Enforcement in this context is taken to mean removing immigrants who are believed by the authorities to be residing unlawfully in the country. It has shown itself to be a vexed issue for a long time because modern urban societies provide a relatively amenable landscape for all sorts of individuals who wish to avoid the constant scrutiny of the public authorities. This capacity increases precisely the closer a society is to the ideal of being a liberal democracy. It is almost axiomatic to say that movement in the direction of effective close scrutiny of the personal and private lives of residents will involve the inevitable violation of liberal democratic principles.

Violations of this sort are bound to have implications which extend beyond mere concern over civil liberties in capitalist societies whose capacity for innovation and competitiveness are largely dependent on the exercise of individual choice. The demarcation of a strict line between public and private spheres of life, the disinterested rule of law, and the reification of the principle of human rights, are all developments strongly associated with the emergence of liberal economic and political systems. The difficulty for New Labour, as with other governments advocating strict enforcement, is that the instruments which would allow this to happen appear to require constant violation of these liberal democratic principles. The simplistic line between the individual who is lawfully resident in the country and the one who is not, cannot easily be drawn without the accumulation of large amounts of information concerning the private lives of both.

Defenders of the intrusive state will argue that this issue is tackled all the time as public authorities struggle to combat major criminal activities. The problem for such arguments is that there is no clear consensus that the type of rule infringements associated with irregular migration actually do constitute 'major criminal activities'. Issues of proportionality intervene to require law makers and enforcers to weigh the cost of rigorous application of the regulations against respect for fundamental rights and freedoms and civil harmony. The absence of a

consensus on the proposition that irregular migration is one of the types of serious crime which merit a severe response will mean that punitive action against migrants and asylum seekers will lack the moral and ethical force of legitimacy. In order to make out a case justifying the sort of intrusive measures which will be needed to combat irregular migration the government will need to do precisely what it has failed in doing to date, which is to make out a case for the intrinsic and serious mischief which such infringement of the law inflicts on society.

Without this case being made, draconian enforcement action will entail a cost firstly in terms of the perception of the legitimacy of state actions against immigration, which will in turn translate into a financial cost as immigrants living in or at the margins of irregularity set out arguments about perceived injustice and the violation of fundamental human rights. The political cost will arise finally when sections of the regularly settled population come down on the side of the immigrants and support their protests against injustice.

Our argument here is that the slogan of 'strict enforcement' offers few solutions to the task of achieving seamlessly managed migration because it operates across a terrain where there is no easy agreement to be reached about the criminal character of irregularly resident immigrants. Issues of justice, fairness and human rights intervene at every stage of assessment of the individual's case, and confront the highly political character of the public anxiety about immigration, which strict enforcement is intended to abate. As long as western European and other developed societies retain their basic identity as liberal democratic entities, the demand for strict enforcement is likely to generate as many problems as it offers solutions.

## **Permanent upheaval**

In choosing the global market and Britain's pragmatic interests within it as the pivotal issue determining the shape and direction of immigration, New Labour has made itself a hostage to fortune. Globalisation has shown itself to be a process fraught with tension and difficulty and it is not easy to accept the view that the new economy will provide a framework for the calm, evolutionary development of control procedures to the point of perfect managed migration. On the contrary, international capitalism provides a vista of almost permanent turbulence in which competing interests are continually required, in the jargon of modern management-speak, to re-think, re-invent, re-model, re-found and re-constitute themselves in order to retain a competitive edge over their rivals. The price for

failure in this permanent race for the new is dire, within even the most august and long-lived institutions in constant danger of floundering and going under. In the New Labour world, everybody and everything is potentially just one decision away from disaster, as companies, hospitals, charities, public services, sports clubs and ways of doing politics are balanced on the edge of an abyss.

According to advocates of the 'third way', this is a good thing. The constant demand for renewal means that entrenched privilege is permanently challenged. The 'forces of conservatism' can be taken on in the name of a brighter, modernised future. The playing field of life is levelled, since established power and wealth are likely to be encumbrances in the modern world rather than assets, since entrenchment means slowness and lack of manoeuvrability, and therefore an obstacle to change and reform. Against this, the entrepreneurs of the future will mobilise social capital (networking skills, etc) as much as financial clout to make their way in the world, and the new age of meritocracy will have finally dawned.

Furthermore, all of these points refer to the comparatively calm and regulated world of competition between theoretically evenly-matched national economies. In practice, the permanent revolution demanded as a condition for the daily functioning of capitalism opens up opportunities for more than just new meritocratic entrepreneurs. The consequences of economic turbulence for many poor countries and regions in the world is at least as likely to be political and social instability as it is structural reform. In global conditions of extensive inequality the permanent demand for change and renewal will provide opportunities for the promoters of coups, shady dealers on the fringes of legality, and out-and-out gangsters. If a single decision in the global economy can mark the success or failure of a great firm, so other people's, or other governments' single decisions will mark out the scope or otherwise for the entry into the market of often quite unsavoury characters.

It has been argued that the failure of national governments to sufficiently modernise their immigration policies back in the late 1980s and 1990s, when the state structures of eastern and central Europe were being overthrown and reorganised, created opportunities for the emergence of immigrant and refugee smugglers and traffickers as the new big players in global migration. The struggle to deal with this phenomenon is now a major issue for developed countries, requiring innovation in the form of unparalleled cooperation and integration of national police and intelligence services, and a constant investment in their modernisation and overhaul through the introduction of ever-newer information



technology and security systems. Yet this is a battle which few think will ever produce a final result. More likely the criminal gangs will innovate as fast as their state opponents, and so move the game always onwards to a new and higher phase.

The point being made here is that the hitching of immigration policy to the interests and functioning of the global economy is, in itself, most unlikely to enable the construction of a calm and stable point from which to manage migration. It is more likely that we will see instead the conditions of the 1990s and the early new century being reproduced indefinitely into the future, with constant campaigns to address the latest crisis in the system of control, resulting in more administrative changes, fresh primary legislation every second or third year, and the ratcheting up of public apprehension as politicians and groupings use the issue to jostle for power and preferment. Over time the sense of crisis itself will become a permanent feature of the system producing demoralisation amongst those expected to administer it and a loss of faith in its effectiveness and legitimacy amongst the wider public. This in turn will produce further bouts of system failure, creating opportunities for the entrepreneurial activities of new generations of criminal gangs and other opponents of government policy.

# Can we hope for anything better?

The purpose of this analysis of trends and prospects for immigration control policy is the very practical one of offering up a map of the ideological forces which are driving developments at this point in time in an attempt to suggest what the terrain will look like in the years immediately ahead. It puts forward a pessimistic view in that it sees no prospect in the immediate future for the emergence of a settled and well-ordered system capable of dealing with the multiplicity of interests which now intersect across the field of migration. If its conclusions can be easily summarised, it would be to say that New Labour's reforms will fail because, although they attempt to admit new principles into the business of immigration management (the benefits of migration, its inevitability in a competitive global economy, its potential for progressive modernisation, etc) *it still proposes that the reform dynamic be set by a narrow band of legitimate interests*. These are overwhelmingly confined to the elite interests of leading sectors of the British economy. Almost wholly excluded are the interests of the immigrants themselves, of particular regions whose inward immigration needs are not immediately expressed in economic terms, of the countries sending immigrants, and of the political need to build a strong sense of equity and justice into the operation of control policies.

These interests will not go away in the years ahead, even if they are not admitted as legitimate stakeholders in the management of migration by the government. They will insert themselves as points of contention and dispute raised by disaffected groups who will seek to amplify their voice by building alliances and challenging official policy by a variety of direct and indirect means. Some will articulate their complaints as a part of the discourse on human rights, justice, citizenship and social cohesion. Their accounts of the injustice of arbitrary immigration restrictions will resonate with the recent experience of marginalisation and exploitation experienced by black and ethnic minority citizens, of poverty-ridden working class communities, or women, and others. In short, the

argument for the reform of immigration policy will be part of the single argument for the renewal of democracy as a meaningful component of the social and economic life of national communities, but itself raised by the theme of modernisation favoured by New Labour itself, to the realm of international governance and equality and solidarity between all the people of the world.