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# There and Back Again: On the Diffusion of Immigration Detention

Michael Flynn[1]
*Global Detention Project*

## Executive Summary

From Mexico to the Bahamas, Mauritania to Lebanon, Turkey to Saudi Arabia, South Africa to Indonesia, Malaysia to Thailand, immigration-related detention has become an established policy apparatus that counts on dedicated facilities and burgeoning institutional bureaucracies. Until relatively recently, however, detention appears to have been largely an *ad hoc* tool, employed mainly by wealthy states in exigent circumstances. This paper uses concepts from diffusion theory to detail the history of key policy events in several important immigration destination countries that led to the spreading of detention practices during the last 30 years and assesses some of the motives that appear to have encouraged this phenomenon. The paper also endeavors to place the United States at the center of this story because its policy decisions appear to have played an important role in encouraging the process of policy innovation, imitation, and imposition that has helped give rise to today's global immigration detention phenomenon. Nevertheless, many US offshore practices have not received nearly the same attention as those of other important destination countries. More broadly, in telling this story, this paper seeks to flesh out some of the larger policy implications of the externalization of immigration control regimes. Just as offshore interdiction and detention schemes raise important questions about custody, accountability, and sovereignty, they should also spur questions over where responsibility for the wellbeing of migrants begins and ends.

## Introduction

In October 2004, the *U.S.S. Curts*—a guided-missile frigate armed with antisubmarine warfare systems, torpedoes, and twin 76-millimeter cannons—was patrolling coastal areas off Latin America's Pacific Rim when it spotted a suspicious-looking vessel some 240 kilometers northeast of the Galapagos Islands and went to intercept (Ríos 2004). In the mid-1980s, the object of such pursuit would likely have been a Soviet nuclear submarine.

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After the end of the Cold War, however, the *Curts*' role in US security underwent a dramatic metamorphosis. Instead of tracking deadly nuclear submarines, the frigate began chasing down smuggling vessels. In this case, the vessel the *Curts* had in its sights was an Ecuadorian fishing boat that doubled as a migrant smuggling vessel. Packed into the ship's cargo hold were some 80 unauthorized migrants who were on the first leg of a harrowing journey north that included a long ocean passage in a rickety smuggling boat, a perilous border crossing in the region straddling Mexico and Guatemala, and uncertain treatment at the hands of "coyotes" working the US-Mexico border (Ríos 2004; Flynn 2005b).

The *Curts'* operational transformation is part of a broader, global phenomenon involving efforts by the world's major industrialized democracies to block—or "manage"—migrants long before they reach their intended destinations. Sometimes referred to as "remote control" by migration scholars,[2] this process of expanding interdiction efforts has been a key policy apparatus for a host of immigration destination countries for decades. Among the more notable cases has been Australia, whose notorious and recently-revived "Pacific Solution" has involved interdicting migrant smuggling vessels on the high seas and confining asylum seekers in "offshore" facilities located in nearby countries. The European Union (EU) has stepped-up maritime interdiction patrols through the mechanism of its Frontex agency. This has been accompanied by on-again-off-again plans to establish "processing" centers for asylum seekers outside the borders of Europe, as well as multiple efforts by individual European countries to fund and support detention practices in neighboring non-EU countries.

While these European and Australian endeavors have been the focus of heated debates in scholarly and policy circles, the United States has been one of the world's pioneers in offshore interdiction and detention. However, many of its activities have not received nearly the same scrutiny. The United States has: used military bases located in host countries as staging grounds for migrant interdiction efforts (the *Curts* routinely used the now-closed US military base in Manta, Ecuador); funded detention centers that lacked basic living conditions in places like Guatemala City; used offshore detention facilities in the Caribbean long before Australia began implementing the Pacific Solution; and teamed up with law enforcement officials from other countries to carry out multi-lateral operations aimed at apprehending migrant smugglers and shutting down clandestine migrant routes.

A shared quality of these extraterritorial efforts is their emphasis on detention, including the establishment of offshore detention sites as well encouraging the emergence of new detention institutions in neighboring countries. During a three-decade period of outwardly-expanding immigration controls, immigration-related detention—defined by the Global Detention Project as "the deprivation of liberty of non-citizens for reasons related to their immigration status"[3]—has truly gone global.

From Mexico to the Bahamas, Mauritania to Lebanon, Turkey to Saudi Arabia, South Africa to Indonesia, Malaysia to Thailand, immigration-related detention has become an

2 Aristide Zolberg initially developed the concept of "remote control" to characterize the emergence of visa regimes, which enable states to regulate entrance to their territory before a person's arrival. See Zolberg 1999 and 2001.

3 Global Detention Project, http://www.globaldetentionproject.org/. For an explanation of this definition, see Flynn 2012.

established *modus operandi* that counts on dedicated facilities and burgeoning institutional bureaucracies. Before the decade of the 1980s, however, detention appears to have been largely an *ad hoc* tool, employed mainly by wealthy states in exigent circumstances and typically made use of prisons, warehouses, hotel rooms, or other "off-the-shelf" facilities. While there has been no comprehensive study that documents immigration detention regimes globally to date,[4] the reasons detention policies and practices matured and grew in major detaining countries like France, the United Kingdom, and the United States have been widely discussed and researched.[5] Less well known, however, is how this tool of immigration control grew to have the worldwide dimensions it has today.

This paper seeks to address this gap. It details the history of key policy events that led to the spread of detention practices during the last three decades in three far-flung yet interconnected geographic regions of the world—the Asia-Pacific, the Americas, and Europe—and assesses some of the factors that appear to have encouraged this outcome. The paper makes use of a range of source material, including evidence developed by the author as a result of on-the-ground reporting in various countries, official histories, diplomatic correspondence, parliamentary records, and previous studies. Using concepts developed in the literature on policy diffusion, it shows how industrialized democracies learned from each other the purported utility of detaining migrants and asylum seekers outside territorial boundaries, and how this process eventually led to the emergence of new detention regimes in a host of countries on their peripheries.

Another objective of this paper is to focus attention on the role of the United States in this process because its policy decisions (particularly during the 1980s and 1990s) appear to have been instrumental in encouraging the process of policy innovation, imitation, and—in some cases—imposition that has helped give rise to today's global immigration detention phenomenon. Ultimately, these policies have, in some form or another, traversed the planet and appear to be influencing the practices of some of the United States' closest neighbors, thus the title of this paper.

More broadly, in telling this story, this paper seeks to underscore how the extraterritorial immigration control efforts of the world's major liberal democracies have severely impacted the ability of migrants and asylum seekers to enjoy basic human rights, and the variety of motives that have helped spur these developments.

## The Diffusion Framework

In detailing the history of the spread of immigration detention, this paper employs concepts that have been developed in the literature on diffusion, a theoretical framework used in international studies to describe how policies transfer between countries.

Scholars have advanced a number of models to capture different types of diffusion phenomena. According to one definition, policy diffusion is "a process through which communication regarding a policy in place in one country results in that policy's adoption

4 The Global Detention Project has published detention profiles on dozens of countries, which are available on its website. However, a comprehensive account of the global spread of this practice has yet to be undertaken.
5 See, for instance, Silverman 2012, Fischer 2011, and Welch 2002.

in another" (Wipfli 2007, 42). Drawing from Everett Rogers' classic work on diffusion of innovations, Wipfli states that there are five main aspects of this definition: (1) a policy innovation; (2) a communication process enabling states to share innovations; (3) channels of communication, including global issue-networks and interstate meetings; (4) differing periods of time for innovations (citing Rogers' distinction between innovators, early adopters, early majority, late majority, and laggards); and (5) social systems—such as states or any collection of interrelated units—where diffusion occurs.

This conceptualization of diffusion is intended to refer to a process of policy convergence that is distinct from either harmonization—like in the case of the EU directives—or coercion resulting from power imbalances between states. Instead, it aims to capture the "spontaneous unplanned spread of new ideas," which "occurs in the absence of formal or contractual obligation, or external pressure" (Wipfli 2007, 20).

As illustrated repeatedly in this paper, this narrowly defined concept has only limited application to global immigration detention. While it can assist in explaining certain elements that are part of the spread of immigration control practices, in particular its emphasis on innovation and divergences in the timing of policy adoption, Rogers' framework is unable to capture the variety of ways in which immigration detention practices have diffused. For instance, while there are some notable cases of policy imitation and spontaneous adoption of detention practices, many instances of detention diffusion occur in a situation of power imbalance or as a result of more formal policy harmonization processes.

Other scholars have proposed a more detailed set of diffusion mechanisms. Weyland (2005), for instance, explores four mechanisms: (1) rational learning; (2) symbolic or normative imitation; (3) cognitive heuristics; and (4) external pressure. Rational learning models contend that policymakers adopt policies by searching for rational solutions to perceived problems through comprehensive cost-benefit analysis of available policy models, leading to policy convergence.

In contrast to rational actor models, states also enact policies for symbolic and normative reasons by imitating their neighbors and trying to emulate perceived best practices in their pursuit of international legitimacy, often times "window-dressing" their efforts instead of making substantive changes. Guiraudon and Lahav (2000) argue that states often seek to "circumvent normative constraints" by seeking out burden-sharing arrangements and other strategies that enable them to evade adhering to norms. Others have pointed to the ability of states to selectively apply human rights, like incorporating norms related to the security of migrants—such as ensuring proper conditions of confinement—while resisting arguments regarding the need to employ detention only as a last resort (Flynn 2013).

Cognitive heuristics emphasizes that policymakers know their interests and wholeheartedly embrace policies not just for "window dressing." However, according to this concept, such actions do not necessarily coincide with the rational actor model whereby costs and benefits are weighed based on comprehensive knowledge of possible solutions to social problems.

Diffusion through external pressure can occur as a result of interstate relations and advocacy from international organizations. As discussed later in this paper, external pressure is an obvious and well-trodden path by which immigration control policies have spread in recent

years, though there are a number of ways this notion can be refined to account for differing experiences of diffusion.

Weyland ultimately advances a cognitive-psychological framework, arguing that rational-choice approaches simplify decision-making whereas cognitive approaches are more empirically grounded and are better equipped to explain decision-making in the absence of an exhaustive cost-benefit analysis. Operating in a context of bounded rationality, decision-makers endeavor to find policy solutions in the absence of a comprehensive assessment of either the problem or all its possible solutions.

Weyland developed some of his arguments as part of an assessment of policy diffusion in Latin America, with a particular focus on the spread of pension schemes in that region. However, a number of scholars have adapted similar concepts to explain the multitudinous nature of the spreading of immigration control policies, particularly in the European sphere where the evolution of internal freedom of movement in the EU has been accompanied by increasing efforts to control the external borders of the region and to externalize control efforts to third countries (Karakayali and Rigo 2010). Others have underscored that as part of the process of expanding migration controls, states have employed a host of private entities and international organizations, in effect diffusing certain aspects of migration control to non-state actors (Guiraudon and Lahav 2000).

According to Lahav and Guiraudon, these various strategies can be arranged on a "playing field" that runs along two intersecting axes: public-private and domestic-international (Lahav and Guiraudon 2000, 58). Thus, for example, in the domestic sphere, we find some states delegating responsibility for apprehending migrants to local police forces (public) and increasingly using for-profit companies (private) to run detention centers. In the international sphere, for instance, states pressure airlines (private) to verify whether travelers have proper travel documentation and arrange with third-countries (public) to manage migration movements (e.g., by establishing readmission agreements).

It is in the last quadrant—public international—that we observe the phenomenon of policy diffusion relevant to the case of immigration detention. In a study of the external dimension of EU immigration policy, Lavenex and Uçarer (2004) contend that there are various avenues by which the EU effects external policy changes. These include "the unintended externalities of EU policies on third countries, the purposeful export of common policies through bilateral and/or multilateral agreements, and the extension of European policies to third countries through institutionalized forms of cooperation" (Lavenex and Uçarer 2004, 418).

Lavenex and Uçarer propose a conceptual model for explaining how immigration policies diffuse internationally, which they term the "policy transfer framework." According to this framework, there are four principal forms of policy adaptation and transfer: (1) *unilateral emulation*, in which countries are "cognitively motivated" to adopt a policy they learned or observed from another without any external pressure or coercion; (2) *adaptation through externality*, which is a mix of voluntary and involuntary adaptation that occurs when a state elects to adopt a specific policy in response to the impact of policies adopted by a neighboring country; and (3 and 4) two types of *policy transfer through conditionality*, which in the case of Europe is a policy transfer that occurs at "the insistence of the EU"

and "where cooperation on a certain aspect of asylum and immigration policy is regulated by a bilateral agreement between the EU and the third country." One version of this form of policy transfer, (3) *opportune conditionality*, occurs when one country insists that another adopt a policy, but such adoption is viewed by the adopting country as a welcome development. The other version, (4) *inopportune conditionality*, indicates transfers that "occur in a more authoritative manner, which usually implies significant costs to the third country" (Lavenex and Uçarer 2004, 421). According to Lavenex and Uçarer, "The broad network of EU external agreements provides a powerful tool for binding third countries to common EU policies, thereby extending the scope of the latter" (ibid.).

While Weyland's cognitive-psychological framework provides a valuable critique of the shortcomings of rational-choice, the objective in this paper is not to advance a particular theoretical framework. Rather, it aims to use basic explanatory models for underscoring the diverse contexts in which the diffusion of immigration detention practices occur. Because it is broadly conceptualized and particularly geared to explaining diffusion in the migration context, Lavenex and Uçarer's framework is well equipped to achieve this task.

## The Origins of Guantánamo

An internal history of the US Immigration and Naturalization Service (INS) recounts how passage of the Chinese Exclusion Act and other restrictionist measures in the 1880s created "a new federal function," immigration control, which led to the development of the country's first national immigration policy. As the history illustrates, since its earliest days, US immigration control has employed detention as a key tool:

> Operations began in New York Harbor at a new Federal immigration station on Ellis Island, which opened January 2, 1892. The largest and busiest station for decades, Ellis Island housed inspection facilities, hearing and detention rooms, hospitals, cafeterias, administrative offices, railroad ticket offices, and representatives of many immigrant aid societies. Ellis Island station also employed 119 of the Immigration Service's entire staff of 180 in 1893. The Service continued building additional immigrant stations at other principal ports of entry through the early twentieth century. (Smith, n.d.)

Thus was born what appears to be one of the world's first immigration detention estates.[6]

Between then and now, the United States has experienced numerous periods during which the issue of immigration has reached a fever pitch in public discourse, most recently in the early 1980s, mid-1990s, and in the aftermath of the 9/11 attacks. These successive periods of collective societal alarm—often encouraged by elected officials—helped spur not only stepped-up internal detention and deportation practices but also efforts to control migration beyond US borders, resulting in the adoption of stepped-up detention practices in neighboring countries.

The modern US immigration detention estate first emerged in the early 1980s, when

6 It is worth noting that another facility from roughly the same era, the Angel Island "Immigration Station" in the San Francisco Bay, acted more like a detention center than Ellis Island, where most people were detained for only brief periods of time. In contrast, Angel Island, which opened in 1910, detained numerous Chinese and other Asian migrants for long periods of time.

the Reagan-era Immigration and Naturalization Service (INS) began systematically apprehending unauthorized migrants from certain countries in response to growing migration pressures from the Caribbean. The INS opened a number of new detention centers in Puerto Rico and the US mainland to cope with the resulting surge in detainees (Frenzen 2010, 377). According to Welch, "Prior to the 1980s, the INS enforced a policy of detaining only those individuals deemed likely to abscond or who posed a security risk" (2002, 107).

In a 1985 US Supreme Court case, *Jean v. Nelson*, the court overturned a mandatory detention policy put in place in 1981 that strictly targeted Haitian nationals. According to one migration scholar, "To a large extent once the *Jean v. Nelson* decision came down and the Reagan administration did not have the authority to detain only Haitians, the current detention system was born, i.e. detain all nationalities."[7]

A year after this court ruling, in 1986, the government passed the Immigration Control and Reform Act (IRCA), which combined the legalization of certain unauthorized immigrants with stepped-up internal enforcement and control measures (Dixon and Gelatt 2005). IRCA marked a significant moment in the US approach to immigration by cementing enforcement of immigration restrictions as a cornerstone of US policy. According to a 2005 assessment,

> Overall spending on enforcement activities has ballooned from pre-IRCA levels, with appropriations growing from $1 billion to $4.9 billion between fiscal years 1985 and 2002 and staffing levels increasing greatly. Resources have been concentrated heavily on border enforcement, particularly the Border Patrol. Spending for detention and removal/intelligence activities multiplied most rapidly over this period, with an increase in appropriations of over 750 percent. (Dixon and Gelatt 2005)

The increased pressure on internal enforcement measures helped lead to a number of innovations in US policy. In particular, the need to quickly ramp up detention capacity was exploited by prison privatization entrepreneurs and their supporters in Congress to pressure the INS to allocate funds in the mid-1980s for establishing the country's first privately-run immigration detention center.[8] Since then, numerous other countries, particularly in the Anglophone world, have invited private prison companies to manage their immigration detention facilities, raising important questions about everything from legal accountability at detention centers to the social forces that may be involved in promoting growth in this practice (Flynn and Cannon 2009).[9]

This period also saw early efforts by the United States to extend enforcement measures

7 Niels Frenzen, E-mail correspondence with the author, March 26, 2014.

8 T. Don Hutto co-founded with Tom Beasley and Robert Crants the Corrections Corporation of America (CCA) in 1983. In 1984, CCA opened the country's first privately-run detention center using a former hotel called the Olympic Motel. This temporary facility, which according to CCA was opened at the behest of the INS, was replaced soon thereafter by the Houston Processing Center, "CCA's first design, build and manage contract from the US Department of Justice for the Bureau of Immigration and Customs Enforcement (formerly the INS) in Texas" (CCA, "A Quarter Century of Service to America," http://cca.com/our-history).

9 It is important to note that the United States was not the first case of privatization in the field of immigration detention. In the 1970s, the United Kingdom delegated responsibilities to private contractors in detention facilities based on the logic that "the use of prison or police officers would be seen as too oppressive for non-prisoners" (Bacon 2005, 6).

beyond its physical borders in order to deter asylum seekers and prevent "alien smuggling." This process eventually led to the establishment of one of the world's first offshore immigration detention facilities—which is now privately-operated and called the "Migrant Operations Center"—at the US naval base in Guantánamo Bay, Cuba. The base's central role in the history of immigration detention is of course today overshadowed by its more notorious role as the detention site for alleged "unlawful combatants" apprehended as part of the US "war on terror."[10]

Helping spur these various developments in US immigration policies and practices were large-scale migration events involving people from Cuba and Haiti starting in 1980. In April of that year, Fidel Castro announced that Cuban Americans could pick up friends and relatives at the Cuban port of Mariel, which led to the creation of a "freedom flotilla" that transported some 125,000 Cubans to the United States within the first several months of what later became known as the "Mariel Boatlift." In an effort to discredit the emigrants, the Castro government obliged boats to transport numerous convicted criminals, mental health patients, and provocateurs. This large migration of people was soon augmented by one from Haiti, which in 1980 saw its emigration rate shoot up 25 times the rate of the 1970s (Welch 2002, 86).

The size of this migration phenomenon was not the only element that generated public reaction. The social characteristics of the people also seem to have played a role. Many of the Cubans who had fled to the United States after the revolution were white, educated elites, whose emigration was encouraged by the United States. In contrast, the Mariels were poorer and had been labeled criminals by both the Cuban government and some US officials. These differences, together with significant increases in asylum seekers, provided fertile terrain for immigration opponents.

At the same time that immigration authorities were busy rounding up Haitians and "excludable" Cubans on US territory, the Reagan administration began a policy of interdicting migrant boats in international waters. In 1981, President Ronald Reagan issued a presidential proclamation in which he "suspended" the "entry of undocumented aliens from the high seas" because it had become "detrimental to the interests of the United States."[11] He subsequently ordered the Coast Guard to board foreign vessels in international waters to determine whether passengers had documentation to enter the country (Frenzen 2010).

While the United States officially acknowledged that the 1951 Convention relating to the Status of Refugee's prohibition against *non-refoulement* applied to people interdicted during these operations, Haitians were given summary asylum hearings on board Coast Guard vessels that lasted only minutes. The vast majority were then sent back to Haiti

10 This effort to externalize immigration enforcement was grounded in a core aspect of US immigration law that has become well-established through US case law, the "plenary power" doctrine. This doctrine provides Congress full and plenary power over immigration enforcement. The first US Supreme Court case to discuss the forced detention of a non-citizen was *Chae Chan Ping*, which concerned the detention of a Chinese laborer by a steam-ship captain who was trying to comply with the Chinese Exclusion Act of 1882, which provided an absolute moratorium on Chinese labor immigration (*Chae Chan Ping v. United States*, 130 U.S. 581 (1889)).

11 Proclamation No. 4865, 46 Fed. Reg. 48107 (September 29, 1981.

under an agreement the United States had established with the Duvalier regime. Of the estimated 23,000 Haitians interdicted by the Coast Guard during this program, only eight were judged to have *bona fide* asylum claims (estimate from Cheryl Little, cited in Frenzen 2010, 380). As one scholar writes, "Washington wished to deal with Haitian migrants outside US territory, since if they reached US shores they could often delay deportation through a series of claims within the US administrative and courts systems" (Mitchell 2000, 87).[12]

Throughout their history, offshore interdiction and detention programs consistently provoke thorny questions regarding jurisdiction, custody and, ultimately, sovereignty (see also Adler-Nissen and Gammeltoft-Hansen 2008). These practices have also led to numerous accusations that the United States and other wealthy destination countries are abetting the mistreatment of migrants by supporting their detention in squalid and sometimes inhuman conditions, and undermining obligations provided in treaties like the United Nations (UN) Refugee Convention.

In the case of the 1980s US "Caribbean Solution," a key issue raised by advocacy groups was whether the summary asylum hearings on Coast Guard boats were adequate and non-discriminatory. The government responded arguing that US courts did not have "jurisdiction to review the adequacy of the shipboard screening procedures … because the interdiction and screening took place in international waters" (Frenzen 2010, 380). In the 1985 case *Haitian Refugee Center v. Gracey*, a lower court ruled against the advocates, concluding that the relevant laws "only establish procedures guaranteed to aliens within the United States. Because the interdicted Haitians never reach the United States, these [laws] can provide no relief to plaintiffs." This judgement would be repeated in subsequent cases involving Caribbean interdiction operations, including the 1993 Supreme Court case *Sale v. Haitian Centers Council*. In 1992, President George H.W. Bush issued a presidential order that officially ended the previous policy of applying the Refugee Convention's Article 33 *non-refoulement* norm in cases of people apprehended in international waters, thereby freeing US authorities to summarily return migrants (Frenzen 2010, 385).

In the early 1990s, a political and humanitarian crisis in Haiti spurred by the overthrow of President Jean-Bertrand Aristide prompted a new large-scale migration to the United States, which was followed in 1994 by a significant upsurge in Cuban *balseros*. This time, however, the United States faced political challenges in returning the interdicted migrants because of the brutality of the Cédras junta that had ousted President Aristide. While the United States sought out third countries to send Haitians fleeing the violence—including Jamaica, the Bahamas, the Dominican Republic, Belize, Venezuela, Honduras, and Suriname (Frenzen 2010)—"those intercepted were kept on the decks of Coast Guard cutters, under jury-rigged tarpaulins to ward off sun and rain," writes Mitchell (2000, 88).

> Conditions on the vessels quickly became unmanageable … and camps for the migrants were hurriedly constructed at the nearest offshore US facility: The Guantánamo Bay Naval Base in eastern Cuba. At other times, detained refugees were held on US bases in Panama, and on a hospital ship anchored in the harbor at Kingston, Jamaica. (ibid.)

According to the Congressional Research Service, the administration of George H.W.

12 For a summary of US policies toward Haitian refugees, see Kerwin 2012, 20.

Bush began using the Guantánamo naval airbase to detain Haitians in 1991. It reports that Immigration and Customs Enforcement (ICE) uses this "Migrant Operations Center" to hold no more than 20-40 people at a time (Wasem 2009).

Throughout the 1990s, Guantánamo was a key element of the US response to boat migration events. In July 1994, for instance, as the US prepared to overthrow the military junta then in power at Port-au-Prince, it began sending all interdicted Haitians to Guantánamo as part of a new safe haven policy, ultimately detaining some 16,000 people there. After the overthrow of the junta, the United States gave the detainees that remained at the facility the option of voluntarily returning and receiving $80 dollars or being forcibly repatriated without payment (Frenzen 2010, 384).

In addition to Guantánamo, by the early 1990s, the United States had access to a network of offshore "processing" facilities that extended from the Bahamas to Panama. As one scholar writes, these sites presented a "range of logistical constraints" for detainees, and, importantly, the camps made it challenging for asylum seekers to access US asylum procedures (Magner 2004).

## "Operation Global Reach"

Running parallel to the situation in the Caribbean were a number of other developments and events in the early 1990s, which according to observers conspired to generate renewed public alarm about immigration. These included a stagnating economy, the 1993 bombing of the World Trade Center, the 1995 bombing of the Federal Building in Oklahoma City, and several widely publicized immigration-related incidents. One important event at the time was the 1993 drowning of several undocumented migrants when the Chinese smuggling vessel transporting them, the *Golden Venture*, ran aground off Queens, New York, spurring widespread fears about growing Chinese smuggling rings in the United States.

According to a New York Times account,

> The nightmarish, four-month journey of the *Golden Venture* began off the coast of Thailand and wound through the Indian and Atlantic Oceans. It ended on June 6, 1993, when the freighter was ordered to run aground on the Rockaway peninsula in Queens and the nearly 300 immigrants aboard were told to swim ashore in the early morning darkness. Ten of the passengers drowned or died of hypothermia from the effort, which required a long swim through rough waters because the ship ended up on a sandbar 200 yards offshore. The immigrants, who had made various down payments to get aboard, were to pay the rest of the $30,000 fee after their illegal arrivals in the United States. Nearly all of those who made it to shore were quickly rounded up and many spent up to three and a half years in American jails after their voyage. (Fried 1998)

Public officials and political candidates capitalizing on, and sometimes instigating, a resurgent fear over immigration, competed over who could develop the most stringent measures. In states like California, public pressure to get tough on unauthorized immigration from Mexico eventually led to passage of anti-immigrant measures that denied public services to the unauthorized. At the same time, the federal government began laying the groundwork for a massive overhaul of its immigration policies and practices (Nevins 2000).

Helping to increase tensions were the negotiations between Canada, Mexico, and the United States over the North American Free Trade Agreement (NAFTA). NAFTA presented the US government with a seemingly intractable dilemma: How could the country open its borders to the free transit of goods and services—and yet keep out unwanted migrants?

In 1993, the Clinton administration proposed a one-size-fits-all solution to the problem—the country would build bigger and better walls. The first target was El Paso, Texas, where in 1993 the INS implemented "Operation Hold the Line," one of a series of border blockade efforts that involved building walls along selected sections of the border, multiplying the number of border guards, and deploying a fleet of jeeps, boats, and helicopters armed with high-tech sensor equipment. No longer would the country wait to detain migrants after they crossed the border; instead, it would employ what the INS called "territorial denial" and "prevention thorough deterrence" strategies meant to keep aliens from reaching US territory (Spencer 2000; Nevins 2000).

In 1996, the Clinton administration bolstered these border protection measures with two laws that dramatically expanded the detention and deportation mandates of immigration authorities—including a dramatic expansion of mandatory detention for certain groups of non-citizens—the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA). According to most accounts, these two laws more than any other intervening event—the 9/11 attacks included—have been instrumental in the ballooning of the US detention estate. By 2009, the country's budgeted immigration-related detention capacity was 33,400, up from 27,500 in 2006 and 6,785 in 1994 (Roberts 2009).[13]

While these high-profile endeavors were drawing media and public attention, below the radar the Clinton administration was busy formulating a set of policies aimed at projecting its "prevention through deterrence" strategy beyond the border. In June 1993, President William J. Clinton issued Presidential Decision Directive-9 (PDD-9). Prompted in part by the rise of Asian migrant-smuggling syndicates—in particular, the "snakeheads," a notorious Chinese smuggling outfit whose activities gained headlines in the aftermath of the *Golden Venture* tragedy—PDD-9 directed a passel of government agencies to "take the necessary measures to preempt, interdict, and deter alien smuggling in the US. … We will deal with the problem at its source, in transit, at our borders, and within the United States. We will attempt to interdict and hold smuggled aliens as far as possible from the US border and to repatriate them when appropriate."[14]

The president outlined the responsibilities each government agency would shoulder:

> Justice and INS will be responsible for criminal enforcement and all US prosecutions and for conducting law enforcement operations and investigations outside the US. … State will be responsible for international policy and relations with foreign

13 A 2013 report published by the Migration Policy Institute indicates that spending on immigration enforcement has continued to skyrocket. By 2012, the total budgets of Immigration and Customs Enforcement (ICE) and the Customs and Border Protection (CBP) was nearly $18 billion, more than the combined budgets of all the other principal law enforcements agencies combined (Meissner, et. al 2013, 21).

14 Clinton Adminstration Presidential Decision Directive PDD/NSC 9, Alien Smuggling (June 18, 1993). http://fas.org/irp/offdocs/pdd/pdd-9.pdf.

> governments and international organizations. Transportation and Coast Guard will be responsible for interdiction at sea with appropriate support by Defense. … The Director of Central Intelligence will be responsible for foreign intelligence in support of interdiction efforts. … The Border Security Working Group will be responsible for coordinating the interagency effort overall. Efforts at the Source State will approach source nations whose nationals, businesses, and/or infrastructure provide assistance to alien smuggling and to develop common policies to prevent the departure of criminal-sponsored, non-refugee, and undocumented aliens.[15]

Various elements of this directive would later be crystallized in an INS-led initiative called "Operation Global Reach." Global Reach, launched in 1997, entailed an unprecedented expansion of US anti-smuggling and migrant interception activities. According to a 2001 Justice Department fact sheet, Global Reach was a "strategy of combating illegal immigration through emphasis on overseas deterrence." The INS established "40 overseas offices with 150 US positions to provide a permanent presence of immigration officers overseas," "trained more than 45,000 host-country officials and airline personnel in fraudulent document detection," and completed "special operations to test various illegal migrant deterrence methods in source and transit countries" (DOJ 2001a).

During a 1997 news conference announcing the initiative, then–INS Commissioner Doris Meissner argued that Global Reach was a necessary response to the growing problem of alien smuggling:

> Let me be clear about the problem. Migrant trafficking is ruthless, and it has become global. … These smuggling organizations will use any means whatsoever to produce profits. We have seen instances of mistreatment as well as cases of murder, rape, torture, forgery, and extortion. All too often, unwitting customers are forced into prostitution, virtual bondage, or criminal activities. (Meissner et al 1997)

Although Global Reach, about which there is little or no official information available after 2003, was an international program—various US agencies collaborated with officials in Greece, Spain, India, Turkey, Thailand, China, Vietnam, as well as dozens of other countries—its greatest impact seems to have been in Latin America. As the primary sources of unauthorized migration to the United States, as well as the principal regions through which traffickers and migrants from across globe are funneled before reaching the country, Mexico and Central America have long been a central focus of US cross-border interdiction, even before Global Reach was initiated.

In 1996, the INS District Office in Mexico City began a series of intelligence and anti-smuggling operations called "Operation Disrupt," which targeted migration and smuggling activities in the Dominican Republic, Costa Rica, Ecuador, Honduras, and Canada. In a 1997 testimony before the House Subcommittee on Immigration and Claims, George Regan, then-INS Acting Associate Commissioner, claimed that as part of Disrupt, INS had undertaken joint operations with foreign counterparts to break up several Latin American and Chinese smuggling organizations.[16]

15 Ibid.

16 Testimony of George Regan, Acting Associate Commissioner, Enforcement, Immigration and Naturalization Service, in US Congress, House Committee on the Judiciary, Subcommittee on Immigration

In 1997, after Disrupt activities became a part of the overall Global Reach initiative, the INS significantly broadened the scope of its Latin American activities, undertaking annual multilateral interception operations with law enforcement personnel from dozens of Latin American countries. According to rights advocates in these countries, during the operations, US immigration authorities served as advisors and provided funding to detain and deport those apprehended (USCCB 2000).

In a series of yearly press statements in the late 1990s and early 2000s, the agency proudly announced the results of each operation. In 2000, for example, the INS declared that year's Disrupt operation, "Forerunner," to be the "largest anti-smuggling operation ever conducted in the Western Hemisphere." Involving agents from six Latin America countries, the operation nabbed 3,500 migrants and 38 smugglers (DOJ 2000).

Forerunner was followed in 2001 by "Crossroads International," which the INS again described as the "largest multinational anti-smuggling operation ever conducted in the Western Hemisphere," this one resulting in the arrest of 75 smugglers and the interdiction of some 8,000 migrants from 39 countries. According to a press statement, "The wide-ranging anti-smuggling operation was directed by the INS Mexico City District Office and involved . . . law enforcement officers in Columbia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Panama, and Peru" (DOJ 2001b).

Officials in countries participating in the US-led anti-smuggling operations often received US budgetary assistance to help detain and deport migrants. In 2000, for example, the US Catholic Conference of Bishops (USCCB), which had sent a delegation to Central America to study regional migration issues, issued a scathing press release decrying US interdiction activities in the region (USCCB 2000). As part of the trip, the Conference representatives visited a prison in Tegucigalpa, Honduras, that was filled with migrants who had been detained during Operation Forerunner. The press release noted that while operations were purportedly targeted at smugglers, they resulted in thousands of migrants being placed "in substandard prisons in the region without representation or the opportunity to apply for asylum." It added that the US officials were "intimately involved in these interdiction efforts, offering teams of 'advisors' to the Central American governments and paying for the return of extra-regional migrants to their homes." One US official told the Conference representatives, "It is less expensive to take care of the problem here than when they reach the United States" (ibid.).

In another case from 2001, Kanu Patel, a migrant from India who had paid thousands of dollars to be smuggled halfway across the globe to the United States, was arrested in Mexico along with dozens of his compatriots as they approached the US border (*Miami Herald* 2001). Under pressure from the United States to toughen its stance on illegal migration, Mexico deported the migrants to Guatemala, where they were placed in a squalid detention center that received funding through the US Embassy. After spending eight months in detention and being repeatedly denied medical attention for cardiac pains, Patel committed suicide (*Miami Herald* 2001; Flynn 2002).

An investigative report published by this author at the time established that the facility at

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and Claims, Combating Illegal Immigration: Progress Report, 105th Cong.,1st sess., Apr. 23, 1997.

which Patel had been detained was one of two facilities that had received funding through the US Embassy in Guatemala City in direct response to a request from Guatemalan authorities, who complained that anti-smuggling operations were overwhelming their capacities (Flynn 2002). In an interview, a Guatemalan immigrant-rights advocate described the two US-funded detention centers, which were closed shortly after Patel's suicide, stating that after Operation Disrupt in 2001, "the centers were filled with people from everywhere—from Ecuador, India, Peru, Syria, Cuba. In one space there were 40 people. Everything was being destroyed, there was no light, no air. They were worse than our jails" (Flynn 2002). In response to inquiries about whether US officials had bothered to check on the facilities they were funding, a US Embassy spokesperson claimed she did not know and referred questions to the INS regional office in Mexico City. The director of this office said that US officials did eventually visit, and they "determined that the facilities Guatemala was using were not acceptable. Guatemala is now looking at another location to build a new detention center, which will be almost like a model for Central America. . . . I sent my deputy director to check it out because we are greatly concerned" (Flynn 2002).

This evolution of Guatemalan detention efforts appears to reflect two of the diffusion models advanced by Lavenex and Uçarer. On the one hand, we can observe *policy transfer through conditionality* insofar as the multi-lateral anti-smuggling operation in which Guatemala participated appears to have been undertaken at the instigation of the United States. At the same time, however, US efforts to effectively push out its border controls resulted in a situation—a dramatic increase in the numbers of third-country nationals in custody—that forced Guatemalan authorities to adopt new detention strategies, including using hastily prepared *ad hoc* facilities and requesting funds to operate them. Such a situation appears to track closely with the notion of *adaptation through externality*, or a mix of voluntary and involuntary adjustments that occur when a state elects to pursue a policy in response to the impact of policies adopted by another country.

In other cases of US offshore interdiction from this period, the overriding issues are less concerned with diffusion processes than they are about the deployment of innovative—and at times apparently misleading—tactics to overcome the constraints of custody and sovereignty that arise when operating outside national boundaries. One notable case occurred in 2002, when the US Navy interdicted an Ecuadorian vessel, the *San Jacinto*, off the coast of Guatemala and towed it to southern Mexico, where the 270 migrants on board were briefly questioned and then repatriated. Although nominally in the custody of Mexican officials, the five alleged smugglers, identified by passengers as "the crew," were questioned by INS officials, who, somewhat remarkably given their location at the time, advised them of their rights under the US Constitution. Although the crew had little or no understanding of US laws, the INS officials asked them if they would waive their Miranda rights, which they did (Flynn 2003 and 2005b).

According to court documents filed in federal court in Washington, DC, INS officials then contacted the Justice Department about the case, and the decision was made to file an arrest warrant against the crew. According to one document from the US Attorney's office, "After being expelled from Mexico, the defendants were arrested in Houston, where their flight landed, and taken into custody by federal authorities" (Flynn 2005b).

The documents fail to explain how the crew ended up on that flight, or whether they had

any idea they were heading to the United States. According to an attorney who represented the crewmembers, when they boarded their flight in Mexico, "Their understanding was that they were going to Ecuador" (Flynn 2005b). In an interview with this author, a US immigration official in Ecuador solved the mystery, explaining that "Mexico would be the country that deported [the crew], and if they choose to deport them by way of the United States, where the plane has a layover, what can we do about it?" (Flynn 2005b).

While the Coast Guard, with support from the US Navy, has long been a key player in the Caribbean, its "national security" mandate was expanded in the early 1990s as the result of a succession of presidential decrees. In testimony before Congress in 1999, Coast Guard Captain Anthony S. Tangemon described the orders:

> President [George H.W.] Bush issued [Executive Order] 12807 in 1992, directing the Secretary of Transportation to issue appropriate instructions to the Coast Guard to enforce the suspension of the entry of undocumented aliens into the US by sea and to interdict the vessels carrying them. President [Bill] Clinton issued PDD-9 [Presidential Decision Directive-9] in June 1993, directing the Coast Guard and other Federal law enforcement agencies to cooperate in the suppression of alien smuggling.[17]

One outcome of these orders was stepped-up enforcement efforts in the Pacific Ocean. In the late 1990s, the United States apprehended thousands of Chinese migrants during interdiction patrols in the Western Pacific. The migrants were subsequently sent to Guam, Midway Island, and the Northern Mariana Islands for processing (Frenzen 2010).

As the *San Jacinto* case illustrates, the US Coast Guard also extended its interdiction efforts to the Southern Pacific coast of the Americas at this time, which was experiencing significant upsurges in the number of Chinese and Ecuadorian smuggling vessels. Although the principal mission of the patrols has been to search for illegal narcotics trafficking, the Coast Guard (sometimes with the support of the US Navy or its counterparts in Mexico) regularly intercepts migrant smuggling boats, often for legitimate humanitarian purposes. Most of the vessels do not have the proper conditions to transport migrants and lack emergency equipment (Thompson and Ochoa 2004). Interdicted migrants have been sent to detention facilities in the southern Mexican city of Tapachula and to Guatemala City to await deportation (Flynn 2002).

For several years, the Coast Guard's efforts in the Pacific were bolstered by the operation of surveillance planes flying out of a now-shuddered US military base in Manta, Ecuador. The base, which became a lightning rod for criticism of US actions and intentions in Latin America, is widely believed to have played a key role in efforts to detain unwanted migration at its source (Finley 2004). US ships operating out of Manta detained thousands of unauthorized migrants heading north and destroyed suspected smuggling vessels in Ecuadorian waters, a practice that was loudly decried in that country and was the subject of an Ecuadorian congressional investigation (Flynn 2005b).

Furor over US interdiction efforts in the region erupted in October 2004 after the *U.S.S Curts* intercepted an Ecuadorian fishing vessel carrying some 80 migrants 240 miles

17 Testimony of Anthony S. Tangemon before the Subcommittee on Immigration and Claims, US House of Representatives, May 18, 1999.

northeast of the Galapagos Islands. When the migrants arrived in Manta, they immediately denounced the abuses they had suffered at the hands of US sailors who, they said, had mistreated several detainees in an effort to identify the crew. One of the detainees told reporters that sailors had beaten a polio victim with an iron bar "because he didn't get up fast enough" (Ríos 2004).

US Coast Guard interdiction efforts peaked in the mid-2000s, with detention numbers reaching some 10,000 per year during 2004-2005. The numbers tailed off during the final years of the Bush presidency, a trend that continued after the election of President Barack Obama. In 2011, the Coast Guard reported interdicting 2,474 migrants, followed by 2,955 in 2012, and 2,094 in 2013 (USCG 2014).

Although the Manta base was shuttered in 2009 and interdiction numbers have tapered off in recent years, the Obama administration has continued to pursue extraterritorial strategies, including providing support for detention practices in neighboring countries. In September 2010, for example, the US Embassy in the Bahamas reported that United States Northern Command co-sponsored a tour with the Embassy of the Krome Service Processing and Detention Center in Florida by members of the Royal Bahamas Defence Force Commando Squadron in order "to discuss best practices in immigration facility detention management." According to the Embassy press release, the Krome visit was "the second in a series of exchanges on detainee operations funded by USNORTHCOM" (US Embassy Nassau 2010).

More recently, in December 2011, Panamanian officials announced that the United States, Columbia, and Panama were jointly opening a new training center in the Central American country that would have as one of its objectives training security personnel on how to combat the smuggling of unauthorized migrants in the region (*Prensa Latina* 2011). The announcement followed the opening in Panama earlier that year of a Central American Center of Regional Security Information (SICA), which receives logistical support from US Southern Command's Joint Inter Agency Task Force-South. The Center, which includes personnel from the militaries and police forces of all countries in Central America, is located at the former US Howard Air Base. Among its primary goals, alongside fighting narco-trafficking, is to combat human smuggling in the region (*El Nuevo Diario* 2011).

## The "Pacific Solution" and Beyond

Although many US externalization efforts have remained largely off the media and scholarly radars, the country's activities in the Caribbean, including the use of Guantánamo as an offshore detention site, have served as important exemplars for other countries seeking ways to export their border controls.

In particular, in the early 2000s, Australian parliamentary records reveal that officials in that country specifically cited US detention operations at Guantánamo, as well as at the Mariana Islands and Midway, when proposing the Pacific Solution aimed at interdicting vessels before they reached national waters and detaining asylum seekers and unauthorized migrants in offshore facilities located in Nauru and Papua New Guinea.

The seeds of this policy appear to have been sown in the early 1990s, when a Labor-led

government introduced the policy of "mandatory detention" of unlawful immigrants with passage of the 1992 Migration Amendment Act. The policy was spurred by public concern about mounting numbers of unauthorized boat arrivals, which the government argued were undermining the country's ability to protect its borders (Stevens 2002). The amendment made detention mandatory for all unauthorized boat arrivals. The maximum length of detention was increased to nine months, but could be prolonged indefinitely due to legal procedures and appeals (Stevens 2002). The law also established that detainees could only be freed if they were removed from the country or granted a visa, leaving no room for alternative arrangements such as bail (Amnesty International 2005). To accommodate the resulting increases in the detainee population, additional immigration detention centers were established in remote areas of Australia, with heightened security (Stevens 2002).

The real impact of this policy was not felt—except, of course, amongst the detainees themselves—until the late 1990s, when Australia began experiencing new increases in the number of asylum seekers and unauthorized migrants from the Middle East and Central Asia being smuggled into the country through Indonesia. Although the total numbers of people remained relatively small—less than 4,000 annually—the situation became politically charged as the government ran into a number of well publicized difficulties trying to process and remove the migrants, which resulted in entire families being held for years in highly restrictive detention conditions (Amnesty International 2005).

As the Australian government came under increasing international criticism for its mandatory and indefinite detention policies, officials began looking for alternative strategies to limit the country's exposure to boat people. On August 26, 2001, authorities were presented with an ideal case to deploy these strategies when surveillance flights detected a suspicious fishing vessel off the coast of Christmas Island. A "Bills Digest" from a September 2001 Australian Parliament debate recounts the ensuing events:

> The vessel was carrying 433 potential asylum seekers [from Afghanistan] en route to Australia before it broke down. The following day Australian Search and Rescue (AusSAR) broadcast a call to any merchant ships in the vicinity to render assistance to the stricken vessel. A Norwegian freighter, the *Tampa*, responded to the call, intercepting the vessel and bringing its passengers aboard. The master of the *Tampa*, Captain Arne Rinnan, had intended to take the rescuees to a port in Indonesia but was requested by the passengers to proceed to Christmas Island. Before the *Tampa* reached Australia's territorial waters it was instructed to remain in the contiguous zone. On 28 August the *Tampa* issued a distress signal based on the fact that assistance had not been provided within 48 hours. On 29 August it proceeded into the territorial waters surrounding Christmas Island and was interdicted by 45 SAS members. The same day the Government introduced border protection legislation into Parliament. [18]

The legislation tabled by the government proposed allowing Australian officers to detain—using "reasonable force" if necessary—any ship in the territorial sea and to force the ship to be taken outside the territory. The legislation also proposed making such actions not reviewable by the courts because of concerns, as the digest states, that "the rescuees might

18 Bills Digest No. 62 2001-02: Border Protection (Validation and Enforcement Powers) Bill 2001. Parliamentary Library, Parliament of Australia. http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd0102/02bd062.

have access to protection visas and the judicial review system" (ibid.). The initial bill was rejected by the Senate. Additionally, the decision to force the detention of the asylum seekers on board the *Tampa*, where they had remained after the SAS took control of the *Tampa*, was found to be unlawful by a federal court.

One month after the incident, in September 2001, the Australian government successfully introduced the Pacific Solution, a set of legislative changes that allowed for the detention of unauthorized migrants on the island nations of Papua New Guinea and Nauru. The 1958 Migration Act was revised to exclude Ashmore Reef, Cartier Island, Christmas Island, Cocos (Keeling) Islands, and other territories external to Australia, creating excised offshore places. Thereafter, people who entered these territories were taken to detention and processing centers in Nauru or Papua New Guinea's Manus Island. As the migrants had not officially entered Australia, they were denied access to Australian legal protection (Bailliet 2003).

The parliamentary digest describing these proposals makes clear the source of inspiration for this Australian "solution." In a section titled "United States Analogy," the digest recounts various policies pursued by successive US administrations to combat "people smuggling," highlighting in particular directives to interdict suspected smuggling vessels in the high seas, including President Clinton's directive "providing for the offshore processing of illegal immigrants." The digest then states how in the United States,

> [T]here is a distinction between illegal immigrants who are interdicted offshore and those who apply within the territory of the United States. The distinction is between immigrants who are 'seeking admission' and those who are 'in and admitted to the United States'. … Illegal immigrants who are interdicted offshore are taken to a third country or a United States 'trust territory' for processing. These places include Guantánamo in Cuba, the Mariana Islands and Midway, but not Guam or the Virgin Islands which form part of the United States. As of 1998, the United States was negotiating with Mexico to reach an agreement allowing assessment within Mexican waters and repatriation via Mexico. It is difficult to get accurate information on agreements between the United States and processing countries or countries of origin. However, it is understood that in several cases, 'jurisdiction' over foreign ships in international waters has been exercised under the *Safety of Life at Sea* (SOLAS) regulations established by the International Maritime Organisation. Otherwise, jurisdiction has been obtained by consent in individual cases.[19]

The process of policy emulation that we observe in the Australian case appears to reflect numerous diffusion concepts described earlier in this paper, including Wipfi's "spontaneous unplanned spread of new ideas," which "occurs in the absence of formal or contractual obligation, or external pressure;" Weyland's *cognitive-psychological framework*, in which policymakers, operating in a context of bounded rationality, seek policy solutions in the absence of a comprehensive cost-benefit analysis of all possible solutions to a rapidly evolving situation; and Lavenex and Uçarer's *unilateral emulation*, in which states are "cognitively motivated" to adopt a policy they learned or observed from another absent any external pressure.

19 Ibid.

Nevertheless, while the Pacific Solution became the focus of national and international human rights campaigns—Amnesty International, for instance, filed complaints against Australia with the UN High Commissioner for Refugees (UNHCR) and the UN Committee against Torture, claiming that refugees' rights were being jeopardized—the US practices that Australia sought to emulate never received similar attention internationally. The Australian public largely supported the new policies, re-electing the Conservative Howard government, which proclaimed victory over a "foreign invasion" (Baillet 2003).

Although a Labor-led administration decided to close the country's offshore facilities in Nauru and Papua New Guinea in 2008 (*BBC News* 2008; UNHCR 2008), the policy was revived in 2012 with multi-party backing. The revival of the Pacific Solution came after years of pursuing related offshore schemes in other nearby countries. For example, since the early 2000s, Australia has worked with the International Organization for Migration (IOM) and the Indonesian government to "accommodate" migrants interdicted by Indonesia en route to Australia. This program, which has been funded by Australia, reportedly conforms to the Indonesian practice of generally allowing asylum seekers to be housed in non-secure facilities (Taylor 2010).

However, in 2007, the IOM launched a complementary Australian-funded initiative called "Management and Care of Irregular Migrants Project," which has had three core aims: boosting the capacity of Indonesia's main detention centers; developing a manual of "standard operating procedures" for detention operations; and providing training to officials involved in overseeing the "voluntary" return of detainees to their countries of origin (Taylor 2010). According to one Australian scholar who has investigated the situation in Indonesia, "The Australian funded increase in Indonesian immigration detention capacity has been matched by an increased tendency on the part of the Indonesian government to detain asylum seekers" (Taylor 2010).

A 2009 investigation by an Australian lawyer-journalist team reported similar concerns, stating:

> There is growing concern about the volume of asylum seekers flowing into Indonesia from Afghanistan, Iraq, Sri Lanka and Burma (in particular). Until recently, there had been an almost total media blackout on the subject, but information has seeped through, confirming that Australia is involved in the practice of warehousing asylum seekers (including children and babies) in Indonesia, and that taxpayers' money is being used to facilitate this practice. (Taylor 2009)

Australia's efforts to boost the detention capacities of countries on its periphery, particularly in Indonesia, are strikingly similar to US efforts in Central America and the Caribbean. In effect, we see a core destination country adopting policies that ultimately impact the situations of upstream countries, which respond by deploying practices promoted by the destination country. In this instance of *adaptation through externality*, however, we can observe another important aspect of the diffusion phenomenon described by scholars, notably Weyland's and Guiraudon and Lahav's emphasis on the role that international actors (in this case IOM) play in promoting policy objectives.

Australia's offshore practices have paralleled those of the United States in another important

way as well. As its policies of offshore interdiction and mandatory detention failed to provide the desired deterrent impact, Canberra deployed a series of innovative strategies beginning in 2010-2011, when a Labor-led government endeavored to make agreements with East Timor and Malaysia for establishing asylum seeker processing facilities that would confine migrants apprehended by Australia while their claims were processed by UNHCR. While the East Timor proposal was quickly abandoned, the so-called Malaysian Solution—which involved swapping several hundred unauthorized arrivals in Australia for several thousand refugees in Malaysia who had already received status—became the subject of heated debate, both nationally and internationally. It was ultimately rejected by Australia's High Court in the 2011 case *Plaintiff M70/2011 v. Minister for Immigration and Citizenship*.

The M70 decision was an important "catalyst," as one scholar puts in, for the revival of the Pacific Solution (Constand 2013). The High Court in effect found that the agreement with Malaysia was contrary to domestic law because the Australian government could not guarantee that asylum seekers sent to Malaysia would be afforded effective protection, which undermined Australia's offshore processing efforts. The Australian Parliament responded by adopting the Migration Amendment Act 2012, an objective of which "is to ensure that the government retains its ability to implement certain offshore processing arrangements, which it is currently pursuing with Nauru and Papua New Guinea" (Constand 2013). The amendment removed the requirement provided under previous law that a state must provide basic refugee protections to be designated a "regional processing country." Instead, it empowered the Australian government to make such designation whenever the country's immigration minister "thinks that it is in the national interest" to do so (Constand 2013).

As it encountered with previous offshore processing efforts, Australia's revived Pacific Solution has raised a number of unsettling questions not only about the country's commitment to the 1951 Refugee Convention, but also about jurisdictional authority at offshore detention sites, legal accountability, and national sovereignty. According to one observer, writing in the *Sunday Morning Herald*, "Successive governments have struggled to explain what responsibility Australia bears for asylum seekers detained in camps run and paid for by Australia but operating in the legal jurisdiction of other nations" (Flitton 2014).

These questions came to a head in February 2014 when asylum seekers held at Papua New Guinea's Manus Island offshore detention center rioted against their confinement. The ensuing violence between detainees and security personnel resulted in the death of an Iranian asylum seeker who was allegedly beaten to death by locals. Severely complicating matters was the fact that the killing purportedly occurred in the presence of private guards from G4S, the company hired by Australia to provide security at the facility. One expert quipped that if it were government officials that had been involved in the incident instead of a private contractor, "there would be a much easier case of legal responsibility. … The fact that [the Manus Island facility] is simultaneously located offshore and subject to this unclear memorandum of understanding [with the Papua New Guinea government], means that the legal assessment is much more complicated" (Gammeltoft-Hansen quoted in Siegfriend 2014).

## "Fortress Europe"

Transit states and other developing nations on the periphery of Australia's geographical sphere of influence are not the only countries that have been impacted by the detention and interdiction policies pursued by Canberra. Canadian officials, for instance, have cited Australia's response to unauthorized boat arrivals in their discussions on how to handle such arrivals at their ports, and there are reports of Canadian officials touring Australian detention centers (Bradimore and Bauder 2011; CIC 2010).[20] Likewise, in a clear demonstration of how detention and interdiction practices diffuse between peer countries, New Zealand officials subsequently cited both Canadian and Australian responses to unauthorized boat arrivals to press for harsher detention policies, including the use of offshore processing facilities for "mass boat arrivals." Said New Zealand Prime Minister John Key in 2010, "If they can get to Canada they can get to New Zealand so we are looking at our own legislation and our response to this issue" (Vance 2010).

Despite the fact that it has never had such a boat arrival in its modern history, New Zealand amended its immigration legislation in 2013 to allow for mandatory, indefinite detention of people apprehended as part of mass arrivals and finalized an agreement with Canberra that includes the possibility of using Australia's offshore facilities for processing these maritime arrivals (see GDP 2014c).

However, it is in Europe where Australian "solutions" appear to have made their greatest impact outside the Asia Pacific region. While the borders within Europe have become more open, European governments have agreed to a number of external border control policies aimed at stopping migrants and asylum seekers before they enter the European Union, leading to the creation of what some observers call "Fortress Europe."

The phenomenon of the externalization of detention in the EU sphere contrasts with the "remote control" practices we have seen in the United States and Australia, in particular because the process of shifting practices and pressures to the exterior involves negotiations with governments from both in and outside the Union. Broadly, one can characterize the externalization of detention in the European region as an interlocking chain of diffusion processes whereby detention pressures and practices are exported from main migration destination countries to the periphery of the EU and beyond. Policy developments at the

20 Canada in fact has a long history of involvement in controversial extraterritorial interdiction and refoulement practices, although there appears to be little documentation of such cases. Writes Aiken (2001): "One of the rare, documented cases of such *refoulement* occurred in 1998. Canadian government officials participated in the interception of a boat in the territorial waters of Senegal which was carrying one hundred and ninety two Tamil asylum seekers from Sri Lanka. One of the young men on the vessel, Thambirasa Kamalathasan, describes being detained on the boat and told that he would not be given food or water until he signed a document stating that he agreed to voluntarily return to Sri Lanka. None of the authorities involved in the interception, including representatives of the Canadian and American governments as well as staff with the International Organization for Migration, afforded Kamalathasan an opportunity to explain that he had been arrested by Sri Lankan police on several occasions in the past few years, mistreated in detention, but always released without charge. No one gave him an opportunity to explain his fears concerning the prospect of return to Sri Lanka. Upon return to Sri Lanka, the Tamils were arrested and held in detention for up to five weeks. Several weeks after his release, Kamalathasan was re-arrested by the police on the pretext of a terrorism investigation and subjected to severe torture. In the only public acknowledgement of this interdiction almost a full year later, a Canadian government spokesman described the action as a success in safeguarding the country from 'illegal economic migrants.'"

regional level and among major destination countries place pressures on EU border states to serve as gatekeepers for Europe and bolster their detention activities. In turn, these border countries and their EU partners (often working with international organizations like the IOM) diffuse detention pressures outward to their non-European neighbors. This occurs both directly, by funding detention efforts and negotiating agreements that include or imply stepped-up detention activities (*policy transfer through conditionality*); and indirectly, by hardening their borders and leaving neighboring countries the task of accommodating increasing numbers of unauthorized migrants and asylum seekers (*adaptation through externality*).

Agreements reached at the EU level have served as key vehicles for diffusing detention pressures and practices to border countries within Europe. One notable policy in this regard is the Dublin II Regulation (recently modestly modified and redubbed Dublin III), which establishes a process for determining the member state responsible for examining an asylum application. This policy has resulted in many asylum seekers being deported, or "transferred," to periphery EU states. As detention burdens have shifted to border states, the EU has stepped in to help boost some of these countries' detention capacities, particularly in Greece (see, GDP 2014a).

Externalization to non-EU countries includes both direct and indirect processes. Indirectly, EU countries have used a number of mechanisms that shift migratory burdens to neighboring countries, which spur these countries to boost their own controls. One approach has been to negotiate readmission agreements with non-EU countries, which oblige these countries to accept not only their own nationals but also third-country nationals in exchange for "compensatory measures" like visa facilitation programs. In December 2013, for example, the EU finalized such an agreement with Turkey, according to which Ankara will have to readmit its own citizens as well as third-country nationals who enter the EU directly from Turkey. During 2011 alone, the EU reported that nearly 56,000 third-country nationals entered or attempted to enter the EU by way of Turkey (Güder 2013). If Turkey follows established practice in other countries that have readmission agreements with the EU, like Ukraine, many of the readmitted people will be placed in detention. This is particularly significant in the case of Turkey as it retains a "geographical limitation" clause that restricts the country's refugee protection regime to asylum seekers and refugees from Europe (see GDP 2014b).

Another key indirect mechanism has been to harden the external borders of Europe, which has forced countries that border Europe to develop new responses, like increased detention activities, to confront changing migration patterns. Intensified policing of the EU border began in earnest during the lead-up to the EU's expansion to 25 member states in 2004, which extended its borders farther east. EU governments spent lavishly on training programs aimed at increasing the border policing capacities of the newest member states, in the hope of addressing criminal activity there and clamping down on unauthorized migration (Flynn 2006). To coordinate a joint response, the European Commission created a new border security agency called Frontex, which went into operation in May 2005 on the strength of a 9 million euro budget. During the agency's June 2005 inauguration event, Franco Frattini, then European Commissioner for Justice, Freedom, and Security, said that cooperation on border policing was necessary to address an array of security problems, including "the

specter of international terrorism, the human tragedies of victims of trafficking, and the equally sad and grave consequences of illegal immigration into the EU" (Frattini 2005).

With Frontex serving as coordinator, European maritime forces participate in joint patrols along the Mediterranean and West African coasts, and undertake targeted operations, like deploying Rapid Border Intervention Teams (RABITs) to perceived vulnerable border areas, including most notoriously the 2010 RABIT deployment to Greece's land border with Turkey, which rights groups claim led to serious violations of human rights (Guild and Carrera 2010; Human Rights Watch 2010). Describing the operation, Human Rights Watch reported:

> In early November, Frontex, the EU's border agency, deployed a 175-member Rapid Border Intervention Team (RABIT) for the first time in its five-year history. Equipped with high-tech detection equipment, a helicopter, dogs, and vehicles, RABIT has assisted Greek authorities in trying to stop the migrant flow into Greece. (HRW 2010)

As migratory patterns have changed in response to hardening EU borders, so too have detention practices, often with unpredictable consequences. In some instances, countries that had previously not experienced significant migratory events have found themselves forced to cope with large numbers of migrants. They have also found themselves under pressure from Europe to interdict migrants and asylum seekers (*adaption through externality*)—a phenomenon that occurred in various West African countries when the route through Morocco was shut down in the early 2000s.

This chain reaction eventually led to Spain's involvement in establishing a detention center in the West African nation of Mauritania in 2006 as part of a larger effort to stem the flow of migrants to the Canary Islands (Flynn 2006). Mauritania's first dedicated detention center for unauthorized migrants, sometimes referred to as "El Guantanamito," was established inside a former school located in the port city of Nouadhibou with assistance provided by the Spanish Agency for International Development Cooperation. Before 2006, in the rare instances migrants were arrested by the police, they were typically held at police stations (Amnesty International 2008).

Spain's involvement in establishing the detention center has led to questions over who controls the facility and guarantees the rights of the detainees, similar questions to those seen in cases involving the United States and Australia. While the Mauritanian National Security Service appears to have managed the facility, Mauritanian officials "clearly and emphatically" stated to a Spanish human rights organization in October 2008 that Mauritanian authorities performed their jobs at the express request of the Spanish government (European Social Watch 2009).

Jurisdictional questions regarding Spain's activities in Mauritania were addressed in the Marine I Case,[21] which involved a different *ad hoc* detention facility—this one located in an abandoned fish-processing facility in Nouadhibou—used by Spain after it aided passengers aboard a smuggling boat that had lost power in international waters off the coast of West Africa in 2007. While the UN Committee against Torture ultimately ruled that the case itself was inadmissible because the complainant, a Spanish citizen working

21 *Committee against Torture, J.H.A. v. Spain*, 21 Nov. 2008, no. 323/2007

for a human rights NGO, did not have standing, it nevertheless rejected claims by Spain that the incidents covered in the case occurred outside Spanish territory. Citing its general comment No. 2, which provides that a state's jurisdiction includes any territory where it exercises effective control, the Committee found that Spain

> [M]aintained control over the persons on board the *Marine I* from the time the vessel was rescued and throughout the identification and repatriation process that took place at Nouadhibou. In particular, the State party exercised, by virtue of a diplomatic agreement concluded with Mauritania, constant *de facto* control over the alleged victims during their detention in Nouadhibou. Consequently, the Committee considers that the alleged victims are subject to Spanish jurisdiction insofar as the complaint that forms the subject of the present communication is concerned.[22]

The Mauritania situation reflects a broader trend—previously observed with Australia and the United States—of core countries attempting to deflect migratory pressures by externalizing immigration controls to states that are not considered main destinations of migrants and where the rule of law is often weak. This raises questions about the culpability of liberal democracies in the abuses detainees suffer when they are interdicted before reaching their destinations.

The Mauritania case is representative of what could be termed "direct diffusion," or the direct involvement of one country in promoting and financing detention practices and policies in another. This contrasts with "indirect diffusion," the emulation of (or learning from) another country's policies (e.g., Australia copying US programs, or Europe using Australia's offshore detention as a model). The EU and its member states have repeatedly pressured and supported ramped-up detention practices in neighboring countries. They have also worked through international organizations, like the IOM, to prop up overseas detention efforts. Such a case is the Ukraine, where the European Commission provided funds to the IOM to work on boosting and reforming detention efforts, including by funding non-governmental organizations (NGOs) to monitor detention centers.[23] According to one Ukraine expert, NGOs that work with the IOM on the European Commission-funded project have been under pressure not to criticize state practices because doing so could ultimately jeopardize their funding (Flynn and Cannon 2010).

Arguably Europe's best known effort to become directly involved in detention beyond its borders have been the on-again-off-again proposals by the EU to establish offshore processing procedures in neighboring countries aimed at forcing migrants to submit asylum claims before reaching European soil. The origins of these proposals are rooted in European policy discussions that cited the policies of the United States and Australia as examples to follow.

Although European officials first began suggesting the offshoring of asylum procedures in the 1980s (Afeef 2006), it was not until 2003, two years after Australia proposed its Pacific Solution, that the idea gained widespread traction in Europe. That year, the government of British Prime Minister Tony Blair suggested establishing "transit processing centers" on

22 Ibid., para. 8.2.

23 Dasney, James (International Organisation for Migration, Kyiv), interview by Alex MacKinnon (Global Detention Project),September 30, 2009.

the non-EU side of Europe's borders.

Policy documents from an important and secretive series of intergovernmental meetings at the time (called the "Intergovernmental Consultation on Asylum, Refugees and Migration Policies," or IGC) reveal the central role that the Australian policies, as well as US Caribbean policies, played in influencing European leaders. Describing these documents, Noll writes:

> The Spring 2003 debate reveals that the 'Pacific Solution' constituted a source of inspiration for the British and Danish governments. On the 23 April meeting of the mini-IGC … the Australian model as well as the Haiti and Cuban interdiction programs implemented by the US were discussed. (2003, 313)

The UK proposal, however, was quickly abandoned after it met strong resistance from a number of European governments, including Germany, which referred to the proposed centers as "concentration camps." The idea, or variations of it, has been revived numerous times since then, though with little success to date because of the apparent reluctance of EU countries to be viewed as disavowing altogether the 1951 Refugee Convention.

This failure to establish an EU-wide offshore processing policy has been described by Levy as a consequence of the "self-constructed normative image of the EU, the embedded liberalism of European political culture" (Levy 2010, 96). However, as both the cases of the Ukraine and Mauritania demonstrate, the EU itself, in addition to individual member states, have developed other methods for diffusing detention policies and practices. Some of these efforts predate the Pacific Solution. For instance, in 1998, Italy and Tunisia finalized an agreement that set conditions for the readmission of Tunisian and third-country nationals. As part this agreement, Italy agreed to provide 500 million liras (260,000 euros) expressly for the creation of migrant detention facilities (centri di permanenza).[24]

Similarly, the EU as well as individual member states have provided financial assistance for the detention practices of third countries within the framework of the Twinning, or "Jumelage," Programme, an initiative of the European Commission in which EU states partner with new members, candidate, or potential candidate states, to assist in developing their administrative and bureaucratic structures and processes. Turkey has been a key benefactor. Under a 2007 Twinning project, titled "Support to Turkey's Capacity in Combating Illegal Migration and Establishment of Removal Centers for Illegal Migrants," the EU agreed to provide 15,000,000 euros towards the establishment of two removal centers and development of standards for their management. This project aimed to "provide a better capacity to cope with illegal migration" and create centers devoted to "the purpose of controlling the illegal migrants to be removed" that will serve as models for future facilities (EC 2007, 4,5; CHR 2009, 30).

## Conclusion: Diffusion and Responsibility

This paper has endeavored to describe various cases of the diffusion of immigration detention practices and policies to demonstrate how this tool of immigration control has

24 Scambio di Note tra l'Italia e la Tunisia concernente l'ingresso e la riammissione delle persone in posizione irregolare, Roma, 6 agosto 1998.

become a global phenomenon. It has shown how receiving countries from Australia to the United States to the member states of the EU have successfully diffused detention practices to a large number of states on their peripheries, helping to establish an archipelago of emerging detention regimes that literally spans the globe. We have also observed how, prior to these direct diffusion efforts, important destination countries "learned" from each other the purported utility of offshore practices.

The paper's characterizations of these various diffusion pathways reflect work done by numerous scholars who have developed policy transfer frameworks for understanding how policies spread. Thus, for example, following the work of Lavenex and Uçarer (2004), we could argue that the diffusion and eventual institutionalization of immigration detention regimes in periphery countries have involved a combination of both *adaptation through externality*—that is, a mix of voluntary and involuntary adaptation in response to the impact of policies adopted by another country—and *policy transfer through conditionality* involving a level of coercion by another country.

Arguably, there are two overarching categories of diffusion, direct and indirect, each of which contains nuanced subcategories. On the one hand, we can observe from the cases described in this paper the transfer through imitation (or indirect diffusion) of offshore detention strategies from the United States to Australia to Europe, with the United States serving as an early innovator (what Lavenex and Uçarer term *unilateral emulation*). Among the motives that have spurred these states to adopt such strategies are political decisions aimed at allaying growing public fears—which are often instigated or encouraged by political actors—by demonstrating that authorities are taking all measures possible to confront the "specter" of unauthorized migration, as Franco Frattini put it in his speech inaugurating Frontex. Similarly, such decisions can be based on the belief that interdicting boats on the high seas and transferring apprehended migrants to third countries will deter others.

In the case of periphery states, direct and indirect diffusion processes often combine, leading to the adoption of detention measures. For instance, periphery states often imitate more powerful neighbors—or each other—when migratory pressures force their hand, creating a domino effect we have seen in Europe with respect to the gradual externalization of asylum and migration pressures from the center of the continent to its external borders. Adding to these pressures is the EU's transparent effort to use membership as a coercive tool for advancing interdiction objectives, in particular through the Twinning process. Similar forces are at play in the cases of Mauritania and Guatemala, two countries which found themselves having to adapt to new realities that emerged as a result of the interdiction policies adopted by regional powers, which may help explain why both were receptive to external involvement in establishing new detention capabilities. However, because of the opacity of the decision-making and discussions involved in these cases, it is difficult to determine whether they reflect *adaptation through externality* or *policy transfer through conditionality*.

Also driving diffusion—particularly direct diffusion—may be the realization that detaining someone abroad is less expensive than doing so at home. US anti-smuggling operations in Honduras and elsewhere in the Americas would appear to support such a theory. Additionally, authorities may be spurred to develop innovative measures when policies

fail to deliver expected results, like in the case of Australia, whose policy of mandatory detention failed to deter increasing numbers of unauthorized boat arrivals.

Another recurring motif in this history has been the response of core countries to normative pressure stemming from international human rights obligations (like the right to asylum) by seeking ways to circumvent, co-opt, or otherwise counteract this pressure through the diffusion of detention to upstream countries. It seems that a desire to prevent migrants from accessing asylum procedures and other legal protections has been an important contributing factor in many of the offshore detention schemes described above. This is observed in the US decision to detain Haitians on board Navy vessels in the early 1990s, which immediately preceded the decision to establish Guantánamo as a "Migrant Operations Center." It is also observed in the parliamentary deliberations that preceded the establishment of Australia's Pacific Solution, as well as among the motives that have driven EU discussions on whether to create offshore asylum processing centers. What one observer said of Australia's policies applies equally to all these cases: "By locating asylum seekers offshore, Australia successfully diluted its human rights obligations towards these people and hindered public scrutiny of their living conditions" (Afeef 2006). Thus, this paper supports the argument advanced by numerous scholars, including Guiraudon and Lahav (2000), that states often seek to "circumvent normative constraints" by employing avoidance mechanisms.

However, these reflections come with a number of caveats. For instance, at the same time that human rights norms appear to have helped motivate states to externalize detention efforts, they may have also worked to limit the extent to which states pursue such efforts, as Levy (2010) argues has been the case with the EU and its failure to agree on a community-wide offshore processing policy. Insofar as this is the case, it underscores a broader argument that has been described in other writings by this author—that normative pressure has generated a schizophrenic response by liberal democracies with respect to their immigration detention regimes (see Flynn 2013).

Also, the normative argument presumes a unidirectional process, leading from the core to the periphery. But as seen with the history of US-Cuban relations, it is not always the hegemonic country that sets the conditions of migration arrangements. In Europe, the most notorious case of a non-EU country attempting to drive the process is that of Libya. In mid-2010, just a few months before the North Atlantic Treaty Organization (NATO) began bombing that country in support of rebels, Muammar Gaddafi took advantage of a diplomatic trip to Italy to warn that without his support "Europe might no longer be European and even black as there are millions who want to come in" (Squires 2010).

Because of the predominance of discourses of fear regarding impending "invasions" of migrants in main destination countries, these countries make themselves vulnerable to blackmail by their neighbors. The degree to which transit states have been able to exploit this fear to establish favorable quid-pro-quo arrangements as part of diffusion processes is beyond the scope of this paper. However, it is an important and generally overlooked issue that should be kept in mind when considering the various elements that have contributed to the overall phenomenon of the spreading of immigration detention.

Ultimately, regardless of the particular channel by which detention practices and policies spread, a key lesson should be that in an interconnected world, the policies pursued by one

country can have an enormous impact on how people are treated on the other side of the globe. Through the forces of example, learning, coercion, and persuasion, immigration detention has attained global dimensions. The role that the United States and other wealthy countries have played in this process should be better acknowledged, especially when we see that this process has at times been driven by efforts to evade fundamental rights and with the result that thousands of people are confined in paltry and inhuman conditions without proper legal guarantees. Just as offshore interdiction and detention schemes raise important questions about custody, accountability, and sovereignty, they should also spur questions over where responsibility for the wellbeing of migrants begins and ends.

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