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## The Effectiveness of Restrictive Migration Policies: Evidence from Liberal Democracies



**Abstract** *There has been an increased quest for more restrictive policies to control migration in liberal democracies. As migrants are perceived to pose security threats as well as grab job opportunities from locals, this has resulted in developing a nativist stance. However, the effectiveness of these policies has always been a question of debate in academic circles. Despite the erection of restrictive migration policies, migration has kept on going up. This article tries to explore those reasons. In the first place, liberal traditions in democracies where fundamental rights are never compromised and where the judiciary plays the role of the watchman on executive authorities have not allowed the governments to enforce these policies in their entirety. On many occasion, even these policies have been declared void by the judges. The role of civil society and NGOs in these countries has also worked to the advantage of migrants against the government.*

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### Introduction

International migration and border control have been at the centre of policy discourse of many political parties, grounded in right-wing narrow nationalistic political ideals, in some liberal democracies (Alonso & da Fonseca, 2009). The election of radical-right populist parties to power whose nativist stance and preference for exclusivist migration policies has resulted in the introduction of more and more restrictive migration policies (Lutz, 2019). But the question is, what derives the restrictiveness of immigration policies? (Natter, Czaika, & Haas, 2020). As immigrants are considered to be a 'putative threat to the national socio-cultural and political fabric' (Nevins, 2010, p. 08) by a significant minority of native people in the receiving countries, today, the success or

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failure of the elected government is gauged primarily by its ability to manage and control its borders effectively. This is perhaps the reason that immigration policy initiatives have been characterized by more restrictive characteristics, both legislative and administrative, in the West since the end of the Cold War. However, Bhagwati (2003) argues that the capability of the states to restrict migration has decreased as the quest to do so has intensified. ‘The reality is that territorial borders are beyond control, and little can be done really to cut down on immigration (Bhagwati, 2003, p. 99). The reason is that states often fail to address the root causes of what encourage people to migrate. The ultimate outcome of which is that there is no decrease in the number of unwanted irregular migrants.

This essay will argue that states’ restrictive migration policies have failed. The reasons, this essay highlights, are that there are structural pull factors such as the provision of constitutional rights to aliens in democracies, checks from an independent judiciary, wage differentials and a vigilant civil society, pressures from interest groups, smugglers and human traffickers and family and social networks which lie beyond the constitutional, administrative and political capacity of the receiving states and so, attract people to migrate. The reason for focusing more on pull factors is that historically, democratic governments, by their very nature, are more vulnerable to internal dynamics and pressures exerted by state institutions and other non-state actors, which hamper a state’s capacity to enforce a migration policy effectively. Resultantly, states have not been able to manage or control migration in line with stated policy objectives. This essay has been divided into two sections. The first part will discuss in detail what do I mean by migration policies and migration policy failure here. Section two will analyze in greater detail the structural pull factors that constrain states’ capacity to control migration inflows effectively.

The scope of this essay is limited to restrictive migration policies in liberal democracies. By restrictive policies is meant rules, regulations, orders, acts and initiatives by a state aimed at controlling and managing the magnitude and composition of unwanted and irregular migrants in the receiving country (Czaika & Haas, 2013). Control policies are chiefly designed to restrict unwanted low skilled migrants who may not be considered as beneficial economically as high skilled labor. While by liberal democracy, we mean a political system where there is the rule of law and constitutional supremacy, provisions for fundamental human rights and core institutions to ensure the enforcement of civil liberties and legal and political rights and a strong and vigilant civil society not to allow the government to overstep its constitutional limitations (Becker & Raveloson, 2008).

What is meant by migration policy failure and how do we measure it is a hard question to answer. A policy is considered to have failed if it doesn’t accomplish its stated objectives (Castles, *Why migration policies fail*, 2004). Though this essay agrees in principle with Stephan Castle, it recognizes the inherent problems involved in this definition. First, it is very difficult to attribute an increase or decrease in the volume of migration and a change in the timing or composition of migrants to a specific policy. There are more factors than a migration policy that influences the trends in migration in a given era. This essay argues that a migration policy sometimes proves ineffective, for it fails to address other inter-linked factors that influence the level and direction of migration. Moreover, democracies have the additional problem of how to measure the intended effects of a policy (Czaika & Haas, 2013). There often exists a significant gap

between publicly stated objectives and actual objectives of a migration policy for political reasons, resulting in more complications and confusions. However, a migration policy is considered to have failed if it doesn't produce any effect altogether or is counter-productive with effects in the opposite direction [\(Czaika & Haas, 2013\)](#).

Since the fall of communism in the early 1990s and growing fears of terrorism at the dawn of the 21<sup>st</sup> century, countries, especially those where migrants prefer to plan their future for certain reasons, have resorted to more restrictive migration policies [\(Düvell, 2006\)](#). However, despite the erection of multiple restrictive policies, tight visa regulations and stricter border management and surveillance in order to control inflows of immigrants, there still has been an immense increase in the number of international migrants in recent years. It is evident from the fact that earlier in 2003, it had been projected that the number of international migrants would reach somewhat 230 million by the year 2030. However, that number has already been surpassed as the United Nations Department of Economics and Social Affairs Population Division's latest reports show that the number of international migrants counted for 258 million in 2017, representing 3.4 percent of the total world population, as against 170 million in 2010 [\(UN Population Division, 2017\)](#). According to International Organization for Migration (IOM)'s updated reports, it is estimated that if the number continues to grow at the same pace, the number of international immigrants will reach 405 million by the year 2050 [\(IOM, 2017\)](#). This is a figure certainly high enough that the world may find it difficult to deal with. What may be more interesting to know is that the number of international migrants is growing faster than the world's population [\(UN Population Division, 2017\)](#). Moreover, it has been observed in recent years that the migration trends have changed more towards developed states after the 1990s as six out of every ten international migrants live in developed regions [\(UN-DESA, 2013\)](#). The question is why migration figures have kept climbing, despite the enforcement of strict migration control policies. The following section will try to answer this question.

The recognition and expansion of rights for both citizens and non-citizens in liberal democracies have been one of the major reasons for migration control policy failures [\(ANDERSON, 2010\)](#). This essay argues that in liberal democracies, many civil and political rights are extended beyond national citizens based on universal personhood. This universalistic approach results in the expansion and inclusion of immigrants in liberal democracies [\(Hampshire, 2013\)](#). This concept has significantly restricted states' sovereign rights to act with discretion. Importantly, the sovereignty of liberal states is self-limited by a number of moral and legal obligations, internally, to keep its borders open to accept unwanted immigrants. According to [Joppke \(1998: 292\)](#), 'it is possible that the capacity of the states to control migration may not have decreased, but the inherent liberalness of liberal states has internally impaired democracies to control unwanted immigrants'.

In the 'liberal state thesis' Hollifield throws light on the importance of rights that limit the state's ability to control or restrict migration, including both legal and illegal. In the same vein, Hammer (2004) discusses how the acquisition of rights by the immigrants in the receiving states has resulted in what the writer calls 'denizenship'. In this regards, back in 1970, the repatriation policies failed in Europe primarily because of protection guaranteed by the constitutional provisions and subsequently enforced by the courts. Similarly, the European Convention on Human Rights is frequently invoked

by the immigrants in the European Court of Justice when they experience unfavorable against themselves in the national courts.

In the case of the US, the major reason for their failure to control illegal migration from Mexico is the former's self-portrayal of being a universal nation of immigrants and its adherence to fundamental human rights based on non-discrimination ([Joppke, 1998](#)). This is the reason that it is primarily liberal democracies that are plagued with the influx of unwanted undocumented migrants because a substantial majority of immigrants can see protection mechanisms for themselves in the constitutions of these states.

In an era of rights, the effectiveness of restrictive migration policies has been checked by legal advocacy in the judicial system ([Joppke, 1999](#)). This essay argues that independent courts, on various occasions, have set aside states' policies to control migration inflows to extend constitutional protection to aliens in liberal democracies. History is witness to instances where courts have blocked the executive orders to ban migrants by declaring them unconstitutional and discriminatory ([Longo, 2011](#)). For example, when the French government passed a law to suspend the family unification of immigrants in 1977 for the next three years, the Council of States declared the act to be void to give way to continued migration. In another case, The German Federal Constitutional Court in 1973, in the famous 'the Arab Case' recognized the existence of a constitutional restriction on the state's discretion to deport immigrants ([Schain, 2009](#)). In a nutshell, courts, being the guardian of the constitution and guarantor of fundamental rights, have been instrumental in constraining states' actions that attempt to restrict migration.

Neo-classical economists argue that wage differentials along the developing and developed world cause the workers to migrate from low wage countries to high wage countries ([Massey, et al., 1993](#)). An immigrant, being a rational actor, chooses to migrate if he sees greater returns for his labor. This essay argues that states' efforts to control and bring down migration to a desirable level may not bear fruits so long as the North-South wage gap persists.

Empirical research indicates that wage differentials are one of the chief determinants of illegal migration from Mexico and the US ([Haas, 2006](#)). This is reflected by figures on migration inflows and economic indicators between the US and Mexico. Between 1970 and 2010, 'the US government resorted to restrictive immigration laws and regulations (restrictive issuance of visa and residence permits), strict border surveillance, carrier sanctions, deterrent policies and return migration policies' ([Haas, 2006, p. 09](#)). These policies have generally failed most of their stated objectives ([Haas, 2006](#)) 'as the number of migrants increased from 'less than 120 thousand a year in 1970 to more than half-million migrants a year in 2010' ([Télliez & Acharya, 2013](#)). What is more interesting is the fact that migration came down in times when the wage gap narrowed down between the two countries, as happened in the 1970s and 2000s. But when the gap widened, such as in the 1980s and 1990s, migration inflows increased. My argument is that wage differentials between the sending and receiving countries often outperform other independent variables as a reason for migration, with people resorting to various legal and illegal channels to cross borders.

Much of this rise in illegal migrants can be attributed to the criminal activities of human traffickers and smugglers ([Castles & Miller, 1998](#)). These organized networks, whose business is to transport people across transnational borders illegally, are even

effectively operating against the most vigilant border patrolling authorities. To avoid capture from state authorities and border police, illegal and undocumented migrants, hire the services of smugglers. These smugglers offer a range of services, with some offering simple guiding services to cross the border while others provide more complete packages, which may include transporting these migrants from the point of origin to their destination. According to Orrenius (2001), between 1978 and 1996, 69 percent of migrants who crossed the border between the US and Mexico hired the services of smugglers for the purpose [\\_\(Orrenius, 2001\)](#). Often, ironically, when states tighten migration control policies, migration inflows don't reduce, but the cost of border crossing through illegal means goes up. This trend was witnessed in the case of the illegal border crossing between the US and Mexico. Between 1978 and 1996, the average prices paid to smugglers for their services to cross the international border between the two countries varied between \$385 and \$715. But since 2001, when border control and management became more vigilant, the average cost of smugglers went up from \$1180 in 1996-98 to \$1680 in 2002-04, reflecting a total rise of 37 percent [\\_\(Orrenius, 2001\)](#).

Data suggests that migrants are put to more exploitation once the smuggling operations have been carried out. Evidence suggests that these migrants are forced to work under critical working conditions and are poorly paid for being undocumented and illegal. It has also been seen that often, these illegal migrants smuggled through different routes come under heavy debts [\\_\(Paus, 2018\)](#). All these forces migrants to work in informal sectors of the economy that gradually leads to the structural dependence of these economies on illegal and undocumented migrants. This interdependence of migrants and receiving states help challenge the very effectiveness of restrictive migration policies even in countries from the EU and the US. For example, in the 1970s, the EU found it difficult to repatriate the undocumented migrants, despite the existence of increased unemployment. The reason was that the illegal migrants were concentrated in job markets that the local was either unwilling or unable to undertake. Similarly, the US agricultural sector is filled more with undocumented smuggled Mexican migrants because that helps keep the production cost low [\\_\(Castles, 2004\)](#).

The existence of Non-Governmental Organizations and civil society associations in democracies have been instrumental in restraining states' efforts to restrict and control migration [\\_\(Bhagwati, 2003\)](#). These associations are at the forefront to oppose and resist any measure that can damage immigrants' fundamental human rights through protestations and legal actions. 'A notable example, in this regard, of both ineffectual policy and successful civil resistance is the 1986 Sanctuary Movement' (2003). As the US government was returning asylum seekers from Salvador and Guatemala where war was in full swing, members of the Movement, in cooperation with other voluntary organizations, in gross violation of the country's law, organized an 'underground train' to transport them to safe places [\\_\(Bhagwati, 2003\)](#). In another case in 2008, when the Italian government, as part of internal control, directed the medical doctors and nurses to report illegal immigrants who visited them for treatment, a protest movement was started by civil society in cooperation with doctors and migrants' organizations that spread gradually to the whole country. Under pressure from these actors, the government revoked its decision in March 2009 [\\_\(Ambrosini, 2013\)](#). This essay argues that civil society actors significantly influence migration policies and have skillfully and effectively counterbalanced the government's actions against immigrants in democracies.

Pro and anti-immigration interest groups play a statistically significant and economically relevant role in making or unmaking restrictive migration policies (Facchini, Mayda, & Mishra, 2010). Many interest groups like businessmen, trade unions and human rights organization work for often conflicting and contrasting objectives, thus making it quite difficult for the government to find common grounds to accommodate these divergent interests. Typically, business interests and human rights watchdog favor open borders and free movements across borders, while trade unions have traditionally forced governments to close borders to protect natives from the competition in job markets. For example, the US administration introduced a quota system for a range of immigrants entering through different visas at the dawn of the 21<sup>st</sup> century. But the universities, in collaboration with research laboratories, through extensive lobbying, had been able to get an exemption for one of the categories vital to their industrial interests. ‘This competition among competitive stakeholders results in a policy that is typically a mixed bag of regulations and measures’ (Czaika & Haas, 2013, p. 22).

The rhetoric of migration control is more for symbolic domestic political objectives (Massey, 2013), but realistically, immigration has become integral to capitalist economies that fill skill gaps and address the shortage in labor markets (Hampshire, 2013). Importantly, unregistered migrants are concentrated in labour-intensive industries and low productivity jobs accompanied by an indecent working environment. As natives do not prefer to return to these low paid jobs even during times of high unemployment, these jobs are filled mainly by immigrants. The resultant structural dependence of some sectors of the economy in ‘capitalist economies creates a permanent low skill, low-pay secondary tier that requires migrant labor’ (Hampshire, 2013). Moreover, the ageing population of some industrialized nations like Italy, Japan and Spain is one other reason to hire and recruit low skilled unregistered migrants (Cornelius & Rosenblum, 2004). This further intensifies demand for illegal and undocumented immigrants that can only be met through the uninterrupted supply of a migratory labor force.

In the US, The Immigration Reform and Control Act of 1986 failed primarily because of the agriculture sector dependence on illegal Mexican workers. Though the act legalized 1.1 million farmworkers, the illegal inflow of unauthorized workers didn’t decrease because of the persistent demand despite the erection of tight border control policies (Martin & Smith, 2013). This is one of the reasons that many countries appear to tolerate the presence of a substantial number of irregular labor migrants, despite the introduction of legal and administrative barriers to the admission of immigrants.

‘The emergence of a migration industry with a strong interest in the continuation of migration has often confounded government efforts to control or stop migration movements’ (Castles & Miller, *The Age of Migration International Population Movements in the Modern World*, 1998). Employers and businessmen are the most powerful of these interest groups. Given their lower wages, immigrants allow business owners to maintain higher profits. This higher profit margin is the chief reason that employers do not cooperate with authorities to ensure the enforcement of control policies in letter and spirit (Pécoud & Guchteneire, 2006). Instead, they apply various tactics, both legal and illegal, to make sure that the supply of illegal immigrants continues uninterrupted.

Migrants' networks in the receiving countries reduce the cost and risks of potential immigrants, giving rise to the probability of more and more migration. These immigrants 'act as a bridgehead for networks and encourages further immigrants to come; this is typically called chain migration or family reunification' (Düvell, 2006). It has been noticed that people resort to a family reunion and ethnic affiliation to enter a country to undercut the effectiveness of control efforts. A study indicates (2006) that fourteen out of sixteen migrants entered Germany through family and social networks, causing the government policy of closed doors to fail. Moreover, communal and racial links are helpful to provide protective covers to illegal migrants and disappear to escape government arrest and deportation (Bhagwati, 2003). This essay argues that once immigration starts and reaches a critical threshold, migration as a process becomes self-sustaining by paving the way for more and more migration inflows, making the enforcement of control policies less effective.

## **Conclusion**

Though liberal developed states have turned over to more restrictive migratory policies in the recent past, structural pull factors have restrained states' power and capacity to control or restrict migration. These factors include codified constitutional human rights, the power of judicial review, constraints imposed by civil society movements, organized interest groups and business community, dynamics of labor market forces, wage differentials between the sending and receiving countries and social networks that help immigrants in their migration process. On many occasions, even powerful countries like the US, Germany and France have been found helpless to control migration in the face of these factors. In a nutshell, what I conclude is that policies that fail to address the root causes of migration are almost certain not to bear fruits.

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