Law and the construction of highly skilled migrant identity in the United Kingdom

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Abstract

This thesis examines how contemporary immigration law contributes to shaping highly skilled migrants' self- and social identities in the United Kingdom at a time when migration has become the subject of much political and public concern. Applying a socio-legal and interdisciplinary approach, the study combines legal analysis with empirical research and draws on literature on high-skilled migration, legal history, media analysis, racialisation and law and identity. Qualitative interviews were conducted with Australian and Indian nationals living in south-east England who held or had previously held highly skilled migrant immigration status in the United Kingdom. A media analysis based on news stories on high-skilled and skilled migration in the British national press in 2010 was also undertaken. The thesis reaches the following key conclusions. First, it finds that the highly skilled migrant is an unstable social identity. Although the media construction of the highly skilled migrant is distinct from the public depiction of other migrant groups, it is a thin social identity, predicated on highly skilled migrants' perceived economic value. Second, the highly skilled migrant is a racialised social identity with negative media portrayals reserved for non-white migrants. The third finding is that law is an integral part of highly skilled migrants' day-to-day experiences and plays a significant role in their self-identity formation. Not only does law, in the form of visa conditions, shape their everyday social relations, highly skilled migrants also strongly identify as economic contributors and perceive their relationship with the British state as largely transactional. This economic framing of their self-identity aligns with the figure of the highly skilled migrant constructed by policymakers and the media. Fourth, highly skilled migrants tend to regard their immigration status (and therefore their ability to continue living in the United Kingdom) as insecure which manifests in an ambivalence towards their immigration status. This uncertainty stems in large part from their encounters with immigration law in action, that is, their experiences of the mutable complexities of the visa process.

Introduction

> *'Old England is an imaginary place, a landscape built from words, woodcuts, films, paintings, picturesque engravings. It is a place imagined by people, and people do not live very long or look very hard. We are very bad at scale. ... We are bad at time, too. We cannot remember what lived here before we did; we cannot live what is not. ... We live out our three score and ten, and tie our knots and lines only to our selves. We take solace in pictures, and we wipe the hills of history.'*
>
> Macdonald 2014, 265

This research considers the role of immigration law in constructing the identity of individuals who came to live in the United Kingdom (UK) via the high-skilled visa route in the 2000s.[1]

Before embarking upon the research project, I had spent the previous decade or so working in a London law firm as a solicitor specialising in immigration law.[2] My experiences of legal practice spanned the launch in 2002 of the UK's high-skilled immigration initiative, the Highly Skilled Migrant Programme (HSMP) through to the effective demise of its successor, Tier 1 General (T1G) of the Points Based System (PBS), in 2011. To qualify for the high-skilled visa, individuals had to score a certain number of points for their personal attributes, such as qualifications and prior earnings. Once issued the visa, highly skilled migrants enjoyed largely unfettered access to the UK labour market, a privilege denied to most skilled migrants who were (and are) tied to a specific job with a specific employer. In contrast, highly skilled migrants were free to take employment and/or become self-employed and, subject to satisfying visa requirements, could settle indefinitely in the UK.

I made my first HSMP application in early 2002 on behalf of an Indian banker who I recall was young, smart and confident. At our initial meeting, while handing me a bundle of documents in support of his application, my client told me that he met the visa's criteria easily, had prepared the requisite paperwork and just wanted my input to ensure the application would be granted. I recall that we negotiated a fixed fee for my work and, having

[1] This thesis was submitted in March 2018. References to current affairs and immigration policy are, unless noted otherwise, made from the perspective of early 2018. In a few cases, relevant policy and political developments that occurred between the submission and finalisation of this thesis in January 2019 are noted briefly in footnotes.

[2] In the hope of side stepping allegations of self-importance or pomposity, the first person is adopted when reflecting on personal experiences that informed this research project. Personal work-related anecdotes dotted throughout the thesis are also written in the first person for similar reasons.

checked through my client's paperwork, I submitted the application to the Home Office that day. The application was processed in about two weeks - quick by Home Office standards - and was successful. However, when my client came to collect his documents, he attempted to renegotiate my firm's invoice. Notwithstanding this rather unpromising introduction to the world of highly skilled migrants, I felt pleased to have been the first person in my firm to have handled a high-skilled visa application. It should be explained that a prevailing view among immigration lawyers was that the more high-powered and/or wealthy the client, the more prestigious the work. Highly skilled migrants fell into this exalted category.[3] Indeed, I remember that a fellow immigration lawyer once asked me for the highest number of points my highly skilled migrant clients had scored. Before I had chance to respond, the lawyer proudly answered the question himself giving a figure well in excess of the minimum points required to qualify for the visa.

This research project was prompted by my experiences of acting for highly skilled migrants. Over the years, I made high-skilled visa applications for a diverse group of people: a Canadian lawyer, a Brazilian professor, a New Zealand fashion designer, a Ukrainian scientist, a Nigerian management consultant, an Australian photographer and so on. Some clients met the visa's criteria without difficulty whereas for others, qualification for the visa required careful planning. Some clients seemed to think they were entitled to the visa whereas others expressed astonishment that they might qualify.

I wondered who my clients and their ilk were and what, if anything, they had in common. How did they experience the visa process? How did they view their visa category? Did they even think about it? Was it for them the prestigious immigration status it was for immigration lawyers? Questions like these were the genesis of this project.

This Introduction is organised as follows. First, consideration is given to the concept of the migrant and how it is understood in this thesis. The second part provides an overview of the research questions followed by a brief discussion of the interdisciplinary approach adopted towards the research. The next part sets out the structure of the thesis before concluding with a note on key terms.

[3] This linking of professional status to one's clients' status is not confined to lawyers (Heinz and Laumann cited in Calavita 2016, 33).

What we talk about when we talk about migrants

To paraphrase the former chief economist at the Cabinet Office, Jonathan Portes, migration is politically contentious for all bar economists (Long 2014, 98). It is not therefore surprising that the language used to describe 'a person who moves permanently to live in a new country, town, etc' - the Oxford English Dictionary's (OED) definition of migrant - is almost as vexed an issue. It is easy to identify language that dehumanises migrants or describes them in derogatory terms. For example, an infamous article by the former *Sun* newspaper columnist, Katie Hopkins (2015), in which migrants are likened to cockroaches, was justifiably widely condemned (Boyle 2015; Plunkett 2015).[4] But what about terms such as alien, expat, émigré, third country national, immigrant and asylum-seeker, all of which are frequently used to describe a person who has moved to a new country? What does it matter if an academic prefers the term undocumented migrant to that of illegal immigrant beloved of the British popular press? Or if an immigration lawyer refers to international transferees when their corporate client talks about expats? After all, they are all describing migrants of one type or another. Yet our choice of words is important, especially in the public arena. How migration and migrants are reported and talked about, that is, the words used by academics, the media, politicians and policymakers, frame our perception and understanding of migrants and migration (Demo 2004).[5] As Taylor (2015) puts it, 'there are a range of terms available to describe human migration ... [n]aming is a choice which reflects not just a process, but a view of that process and the people involved.'

Even when cognisant of the meanings and associations of commonly used migration-related terminology, our choice of words is often only superficially informed. We may, for instance, favour the term migrant over immigrant in rejection of perceived negative connotations of the latter through its association with the attractively alliterative illegal. Yet in choosing the word migrant, we risk binding ourselves unthinkingly to a binary view of a state's population, one made up of citizens and non-citizens and normalised by the modern state system. In the 'ideologically charged' (Dauvernge 2007, 502) migration lexicon, migrant is though much more than the antonym of citizen. Rather, a migrant is a state created juridical subject; a product of the nation state system in which sovereignty is asserted through the regulation of borders to restrict the access of migrants to state territory and in doing so, exclude them

[4] The United Nations High Commissioner for Human Rights denounced the article as 'inflammatory and unacceptable' before observing that such language was typical of 'anti-foreigner abuse, misinformation and distortion' in the British press (Jones 2015).

[5] For discussion of the terms illegal, expat, immigrant and so on, see Freeman 2013; DeWolf 2014; Elliott 2014; Koutonin 2015. See too Edgar 2013 for discussion of the Los Angeles Times' amended style guidelines for the changing meanings of migration-related terms.

from membership of the polity (Ngai 2004). If we unquestioningly accept the taken-for-granted category of migrant, we not only risk adopting a partial view of the world as seen through the lens of the modern western state but also potential complicity in the anti-migrant sentiment prevalent in much political and popular rhetoric (Anderson 2015). As De Genova (2002, 423) observes, '[w]hat at first appeared to be a merely terminological matter, then, upon more careful consideration, is revealed to be a central epistemological and conceptual problem...'

Before I embarked upon this research project, I had given little, if any, thought as to how the conceptualisation of migrants is reflected in language. When working as an immigration lawyer, migrant, highly skilled, Tier 2, even illegal were words I used almost daily. Although when starting this project, I planned to draw on knowledge gained from working as a lawyer, I hadn't considered that my experiences would be relevant other than as insights into how immigration law operated in practice. Indeed, when I first reflected on my working life, I couldn't see past the day to day of the law in action. I was too focused on my experiences of dealing with an increasingly recalcitrant Home Office and the complexities of the ever changing rules and practices which created and maintained visa categories such as that of highly skilled migrant, a term I believed I had understood as a neutral descriptor of an immigration status in law. However, as I reflected further and with the benefit of some reading, I realised that such terms had held meaning for me all along. For example, I recalled that I was surprised to learn that a Bangladeshi client held a working holidaymaker visa. While such visas were ostensibly open to all young Commonwealth citizens, working holidaymakers were typically from Australia, New Zealand or Canada.[6] In other words, my client's immigration category did not match my initial perception of her.

When the Home Office first floated the idea of a high-skilled visa in late 2001, it was seen by many lawyers, myself included, as a new approach to immigration policy. Not only would the policy give eligible non-European nationals unrestricted access to the UK labour market, policymakers sought input from interested parties like immigration lawyers on the content and design of what became the HSMP. I recall awaiting the HSMP's implementation with anticipation. Even before its launch, there was speculation among legal practitioners about its likely requirements, how it would operate and who might benefit. In short, there was a buzz about the HSMP. I raised it with existing and prospective clients to consider how it could help their immigration issues and, in more hushed tones, discussed with colleagues

[6] Citizens of poorer Commonwealth countries were routinely denied working holidaymaker visas as they were unable to satisfy the Home Office that they met two of the visa's requirements: they intended to take work incidental to holiday and intended to leave the UK at the end of their stay. See appendix 7.2.

how best to market our services to maximise our share of what proved to be a significant new income stream. Looking back, it can be said that I envisaged who a highly skilled migrant was before the category came into existence in law. In addition to becoming a visa category, the highly skilled migrant was, for me at least, a nascent social identity from the outset.

Conscious of the meanings and conceptual issues embedded in terms within the migration lexicon, the words migrant and more specifically, highly skilled migrant are used in this thesis. Although the use of a term, such as say, international worker instead of migrant rejects a state-centric conceptualisation of foreign labour and opens up new perspectives, [7] it too is problematic. First, such an approach obscures law's central role in constructing the international worker; second, it is imprecise and third, it reinforces divisions between academic and popular understanding of words in a world inhabited by all. In contrast, the deliberate adoption of legal terminology, as in this thesis, emphasises the extent to which law delineates a migrant's life options: their access to the labour market and welfare, their ability to live with their family and to settle permanently, for example, all flow from their legal status. Such terminology is also precise (Dauvergne 2008, 4). A highly skilled migrant's rights and entitlements (as specified by law) are very different from those of a seasonal agricultural worker, yet both can be described as international workers. Although the popular understanding of migrant may be negatively associated with poverty (Long 2014; Anderson 2015), by insisting on the terms migrant and highly-skilled migrant, we challenge this understanding by linking the comparatively wealthy and educated (the highly skilled) to the wider concept of migrant and in doing so, make visible the internal hierarchy of the immigration regime.

Research questions and aims

The question at the heart of this thesis asks to what extent immigration law plays a role in the identity formation of highly skilled migrants living in the UK in the first decades of the twenty-first century. Grappling with this central question raised the following subsidiary but nevertheless important questions:

[7] Rather than adhering to categories imposed by immigration law, the concept of precarious worker has been used to denote economic migrants. In doing so, scholars have drawn attention to the commonalities among migrants with different legal statuses and highlighted their similarities with citizen workers who also form part of the precariat (Anderson 2010; Fudge 2012-13).

- How does immigration law operate on the people it seeks to control?

- How do individuals' migration experiences, of which immigration law, in the form of visa processes and conditions is an integral part, shape their social relations and their perceptions of their place in British society?

- To what degree, if at all, do historically racialised immigration laws inform highly skilled migrants' perceptions of themselves and their experiences of living and working in the UK?

- To what extent does race inform the construction of highly skilled migrant identities?

- Is there a media narrative for the highly skilled migrant? If so, how is the figure of the highly skilled migrant portrayed? Is it different from or similar to the depiction of other migrant groups?

Underlying these research questions is an understanding of immigration law as a structural force that both constructs social identities and plays a part in shaping individuals' actions, social relations, life opportunities and perceptions. Legal analysis, focusing on the high-skilled immigration category, is therefore undertaken from a series of different perspectives. It begins with an examination of immigration law's instrumental role through the implementation of the high-skilled route in selecting and competing for migrants within an increasingly integrated world economy. The focus of the analysis then shifts back in time to situate the high-skilled category within the historical development of immigration law and policy in the UK to consider the differences and similarities in the themes underpinning the legal construction of migrant identities over time. The high-skilled visa's legal framework is also examined together with the substantive requirements, procedures and processes that combine to implement and operationalise the law. This multi-dimensional approach to legal analysis is complemented by two pieces of empirical research. Interviews were carried out with Indian and Australian highly skilled migrants to explore their experiences of immigration law in action, of living and working in the UK and their sense of their own identity. An analysis of the depiction of highly skilled migrants in the British national press was also undertaken to investigate whether the portrayal of such migrants differed from the public representation of other migrant groups.

Law plays a central role in western states' increasingly complex immigration regimes: law

not only creates legal and illegal migration (Dauvergne 2008; Abraham 2015), it also creates and delineates the numerous categories of migrant, each with their own set of rights, entitlements and obligations (Anderson 2013). Literature on high-skilled migration is generally concerned with economic and policy issues such as brain drain (Boeri et al 2012) or comparative analysis of state policies (Cerna 2016). Although there is a body of human-level qualitative empirical research, law is rarely a central concern (see, for example, Beaverstock 2005; Ho 2011). Studies that combine law and qualitative research of migrants' experiences have tended to focus on unlawful and low-skilled migrants and migration (Coutin 2000; Calavita 2005) or in the British context, on the experiences of east European migrants (Currie 2008; Kubal 2012).

This study is then part of the burgeoning research agenda on high-skilled migration in that it seeks to understand how highly skilled migrants have experienced immigration law and the degree to which they have been shaped by such law in the UK. In combining a focus on law with empirical research, this thesis hopes to contribute to the understanding of how immigration law informs migrants' experiences and identity formation at a time when these issues have and are likely to continue to have enduring currency within academic and popular discourse on migration.

An interdisciplinary approach

That this research concerns law's impact on people's everyday lives and identities marks it as a socio-legal study.[8] More specifically, as the study focuses on immigration law and highly skilled migrants, it also falls within the field of migration studies. It is often noted that both migration and socio-legal studies lend themselves to an interdisciplinary approach: Favell's comment (2008, 260) that migration studies are 'naturally ripe for interdisciplinary thinking' is echoed by Calavita in her observation that not only are the boundaries of law and society scholarship ill-defined, the field welcomes input from other academic disciplines (2016, 1). This study is no exception. Although immigration law takes centre stage and binds the thesis, other disciplines and their literatures, notably those of high-skilled migration, media analysis, legal history, political theory and race are drawn on to illuminate the research questions.

[8] The terms socio-legal and law and society are used interchangeably in this thesis.

This approach may antagonise some in that it is necessarily selective. In other words, there are many areas of interest open to the researcher but not all can be pursued. In the context of this thesis it means, for example, that political theory scholarship on the nation-state is examined to the degree that it exposes immigration law's gatekeeping and nation-building functions. Discussion does not however extend to the ethical or philosophical implications of immigration control found in such scholarship (see for example, Wellman and Cole 2011; Carens 2013; Fine and Ypi 2016) Similarly, although the concept of race is examined in some detail, this thesis is not a study of the significance of race in contemporary British society. Rather, race is understood as one of many bases for identity formation, the importance of which in the construction of highly skilled migrants' self-identity is one of the empirical questions investigated in this thesis. The objective is not then to undertake an exhaustive review of the scholarship in the various 'disciplinary silo[s]' (Favell 2015, 320) but to engage with relevant literatures in a targeted and pragmatic way. In short, the thesis aims to synthesise the insights gained from multiple disciplines and perspectives in order to construct a composite picture of immigration law's role in highly skilled migrants' experiences and identity formation.

Roadmap to the thesis

Chapter 1 sets out the thesis' theoretical framework and chapter 2 details the research methodology. Chapter 3 analyses UK immigration law from a broad historical perspective while chapter 4 focuses on the laws and practices governing the high-skilled route. Chapter 5 provides political and policy context for the discussion of the media representation of highly skilled migrants in chapter 6. Chapters 7 and 8 consider the experiences, views and perceptions of highly skilled migrants themselves and chapter 9 provides the thesis' conclusion.

The thesis' structure has a temporal dimension. It begins in chapter 3 which sets out the historical legal context from 1900 to 2000. The narrative continues in chapter 4 in the analysis of the UK's legal framework regulating high-skilled migration in the first decade of the twenty-first century. Chapter 5 explores much the same period as chapter 4 but from a broader party political and policy perspective. The timeline continues in chapter 6 which focuses on 2010 in the discussion of the media representation of highly skilled migrants. Chapters 7 and 8 consider the experiences of highly skilled migrants looking back from 2014, the year the research participants' interviews took place. Woven throughout the thesis

are the researcher's own experiences of working as an immigration lawyer over the lifespan of the high-skilled visa.

The thesis' structure is considered in more detail below.

Chapter 1 provides the theoretical framework for the empirical investigation of law's impact on the formation of highly skilled migrant identity. It begins by situating the UK's high-skilled initiative within the broad political and economic currents of the late twentieth century. Drawing on socio-legal literature, the chapter then discusses the conceptualisations of skill, immigration law and identity in this thesis and the role of law in the construction of identity.

Chapter 2 discusses this project's methodology. Having set out the overall qualitative or constructivist approach adopted, the chapter then details the methods used to carry out the two empirical investigations - a case study of highly skilled migrants and a study of the media representation of such migrants - that are central to this thesis. Beginning with the media study, the rationale for selecting the timeframe, sources and search terms used to construct the media dataset is considered before going on to discuss the tools employed to analyse the data. The chapter then moves to the case study. It details how, using a grounded theory approach, the interview participants were sourced and selected, how the interviews were planned and conducted and data gathered and analysed. The researcher's experiences of and reflections on the interview process are also discussed, as are the ethical considerations that informed the research design and execution.

Chapter 3 examines how, over the course of the twentieth century, UK immigration law and policy contributed to constructing the figure of the migrant. Drawing on political theory scholarship on the construction of the nation-state and on race and racialisation literature, it is argued that the notion of migrant assimilability informed the development and execution of UK immigration policy. Focusing on key legal and policy initiatives in the regulation of migration - from the 1905 Aliens Act through to the Commonwealth Immigrant Acts of the 1960s - the chapter demonstrates the significance of immigration law in the creation of historically racialised migrant social identities.

Chapter 4 analyses the law governing highly skilled migrants' entry to and stay in the UK from the high-skilled visa's launch in 2002 to its effective demise in 2011. It begins with discussion of the sources of contemporary immigration law, positing that references in recent case law to non-statutory sources and the statutory regulatory framework itself are indicative of the executive's desire to exercise unfettered control over migration, a notion

that both informs and is reflected in popular understanding of the regulation of migration. Building on the previous chapter, it is also argued that notwithstanding the implementation of policies to encourage economic migration in the early 2000s, notions of assimilability predicated on both class and race informed the UK's high-skilled immigration policy.

Chapter 5 sets out the political and policy background to the analysis of the depiction of skilled and highly skilled migrants in the British national press throughout 2010. Focusing on the introduction of numerical quotas for highly skilled and skilled migrants following the 2010 general election, it is suggested that factors such as the economic downturn, increased migration from eastern Europe and public hostility to migration in the latter part of the 2000s conspired to make the reduction of migrant numbers appear both a necessary and inevitable policy development.

Chapter 6 considers the media construction of the figure of the highly skilled migrant against the economic, political and policy background discussed in chapter 5. Beginning with a comparative analysis of commonly used migration-related terms in this and past studies, the chapter finds that although there is a distinct narrative for highly skilled migrants, it is informed by themes underpinning the media portrayal of other migrant groups. Drawing on Hall et al (1978), the chapter then examines the news stories' source materials and finds a significant overlap between immigration policy and the press agenda which it is suggested, is reflected in the unstable and inconsistent representation of highly skilled migrants. The final part of the chapter considers the more negative depiction of highly skilled and skilled migrants, notably those from India, which it is argued, is indicative of the enduring role of race in the media construction of the migrant as a social identity.

Chapter 7 examines how immigration law contributes to participants' sense of self. Beginning with participants' self-descriptions as economic contributors, the chapter considers participants' economic framing of their self-identity with reference to the high-skilled immigration policy. The chapter then considers participants' experiences of the high-skilled visa processes, arguing that participants' imagined transactional relationship with the state is undermined by their experiences of the visa process. Nevertheless, given the highly prescriptive nature of relevant law, participants have little option but to adhere to the imposed normative social identity of the highly skilled migrant.

Chapter 8 shifts the discussion from highly skilled migrants' direct dealings with law through the visa process to their broader experiences of living in the UK. The chapter examines participants' attitudes towards immigration law in their day to day lives and suggests that the

their visa restrictions have both material and symbolic effect. Participants' experiences of difference and acceptance are also considered which, it is argued, suggest that race is an element of both the Australian and Indian participants' identities, although a more significant element for the Australians.

Chapter 9, the concluding chapter, brings together the thesis' key findings. It also considers the implications of the findings from a policy perspective with reference to the current UK government's stated intention to recruit highly skilled citizens of the European Economic Area (EEA) following the UK's departure from the European Union (EU). [9]

A note on terminology: migrant, immigration law, identity, race

Migrant

Throughout this thesis, the term migrant is used inclusively to describe people who live outside their country of origin irrespective of their reasons for doing so or their national origins (Carling 2015; Vonberg 2015).[10] This inclusive definition therefore encompasses people coming to the UK to flee persecution, to work, to study or to join family members, people who are subject to immigration control and EEA citizens who, at the time of writing, continue to enjoy free movement rights in the UK. The use of the word migration has a similarly inclusive meaning. Different types of migrant are referred to by their immigration category in law, for example, working holidaymaker, student or highly skilled migrant. Migrants with no legal immigration status are referred to as unlawful migrants. Although this risks conflating the individual with the act of illegal migration (Lakoff and Ferguson 2006), it nevertheless underlines the significance of law in the construction of migrants' public representation. Following De Genova (2002, 420), the term immigration is used when referring to (immigration) law and/or policy.

[9] The thirty one countries that make up the EEA are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, The Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the UK. Swiss citizens also enjoy free movement rights in the UK.

[10] These inclusive definitions of migrant and migration are broadly in line with the combined definitions of the International Organisation for Migration (2011, 61-62) and the United Nations Department of Economic and Social Affairs (1998). The latter's definition is also used by the Office for National Statistics.

Immigration law

Although the conceptualisation of immigration law is discussed in the following chapter, both its broad definition and how specific elements are referenced in this thesis are noted here. Immigration law is understood to encompass the rules, procedures, practices and processes that regulate migrants' admission to and residence in a given state. Immigration law refers then not only to the rules and practices propagated and enforced by the judiciary and agents of the state but also to enforcement action taken by private actors, such as employers and landlords, who are frequently required to verify migrants' immigration status.

The analysis of immigration law and policy is limited geographically to the UK. As immigration regulation is not a devolved policy area, immigration law is, for the most part, uniformly applicable across the UK.[11] The term UK immigration law is therefore used in preference to British law, which to the ears of a lawyer just sounds wrong.

As noted above, the HSMP was replaced in 2008 by T1G. Although technically different visas, the HSMP and T1G are treated as expressions of the same policy and therefore referred to here as a single high-skilled category, route or visa.

The Immigration Rules (the Rules) are a key element of domestic immigration law. The current set of Rules - the Statement of Changes in Immigration Rules (HC 395) to give the full title - was published in 1994. Amendments to the Rules, published as statements of changes introduce minor changes or bring about major overhauls of one of more immigration categories. As the Rules are constantly updated to incorporate the changes, HC 395 is the consolidated set of Rules in force at a given time. This most up to date set of Rules is available on the Home Office website, as are the one hundred and thirty or so statements of changes that have amended the Rules since 1994. In this thesis, references to HC 395 are to the Rules in force on 9 August 2017 with changes to the Rules identified by the House of Commons (HC) or Command (Cm) paper that introduced the amendment in question.[12]

[11] To use the language of the various devolution Acts, immigration and nationality policy in Scotland is reserved (Scotland Act 1998, sch 5); in Wales it is not a devolved policy area (Government of Wales Act 2006, sch 7) and in Northern Ireland, it is an excepted matter (Northern Ireland Act 1998, sch 2). There is however a separate shortage occupation list for Scotland under the Immigration Rules (HC 395, appendix K).

[12] The cut off date of 9 August 2017 was selected because it was the day before changes to the Rules came into force. Bar the current set of Rules (changes were made in 2018), in January 2018 this was the most recent set of consolidated Rules in 2017 available on the Home Office website. In view of the high-skilled route's effective closure in 2011, most references in this thesis are to law implemented before 2017.

As to case law, in most migration-related legal challenges, the Secretary of State for the Home Department is a party to court proceedings. To avoid repetition of the words Secretary of State for the Home Department, cases are referred to by the name of the main non-state party. Cases are cited in full in the bibliography.

Identity

The 'elusive and ambivalent' nature of identity (Vecchi 2004, 2) is considered in chapter 1. However, it merits noting at the outset that in this thesis, identity is conceptualised as socially produced. The term identity and the more specific, highly skilled migrant identity, encompass the private and public dimensions of identity. However, when necessary to distinguish between the different dimensions, self-identity is used to denote migrants' perceptions of themselves and social identity to refer to a publicly defined identity.

Race

The term race is understood here as a political and social construct commonly defined by reference to a person's physical and/or cultural characteristics (Reeves 1993, 7). In this thesis, migrants are identified generally by reference to their country of origin and/or immigration status. However, when referring to migrants from more than one country, shared characteristics such as religion or migrants' regional origin may also be used as descriptors. In addition, the terms white and non-white are used to delineate people based on certain physical characteristics. It is recognised that such terminology is problematic in that it places white identity at the normative centre and non-white identities at the margins (Roediger 2002, 17; Calavita 2007, 15). These issues notwithstanding, the use of white and non-white is helpful in the context of this research in that it captures perceptions enshrined in UK immigration law of migrants with diverse national origins, some of whom are deemed white - an identity imbued with the notion of a common western European cultural heritage - and others who are designated non-white who historically shared and arguably continue to share an excluded and marginalised status.

Chapter 1

Understanding law's role in the construction of high skilled migrant identity in the United Kingdom in the twenty-first century: a theoretical framework

1.1 Introduction

> *'I found that law did not keep politely to a 'level' but was at every bloody level ... it intruded brusquely within alien categories, reappearing bewigged and gowned in the guise of ideology... it contributed to the definition of the self-identity both of rulers and of ruled...'*
>
> Thompson cited in Gordon 1984, 123

Writing in 2018, the idea and actuality of high-skilled migration and highly skilled migrants have become commonplace. As established topics in migration discourse in both the academic and public arena, it is easy to forget that in the UK at least, there was no high-skilled visa route and therefore no immigration category of highly skilled migrant until 2002. Of course, migrants with university degrees and professional, managerial and/or technical work experience - personal attributes that are generally understood to constitute high-level skills or human capital - came to the UK long before 2002. The visa category of highly skilled migrant did not however exist in the UK until the launch of the HSMP in January 2002. To understand why the high-skilled immigration category was created in law, not only in the UK but also in other western states, we need to situate it within the broad political and economic currents of the late twentieth century. Although consideration of the visa's broader context sheds light on its genesis, it does not explain how the highly skilled migrant grew from being a term of art used by lawyers and policymakers to become a figure or social identity, albeit a sketchier figure than say, that of the asylum seeker, known to the public at large.[13] To try to understand the highly skilled migrant's transition from the legal to the social domain requires a further step, that is, a conceptualisation of immigration law that extends beyond its regulatory function. In other words, to understand law's full power, it must be understood as

[13] There is even a London-based band called Sasha Ilyukevich & The Highly Skilled Migrants. According to the band's website, their song, 'VISA' is the singer's 'satirical reflection on the adversity of living in the post-Soviet dictatorship of his Motherland Belarus, and later his struggle to settle in Britain, having to comply to ever-aggressive immigration rules' (https://thehighlyskilledmigrants.bandcamp.com).

a structural force that contributes to the construction and meaning of social relations and identities in society (Collier et al 1995).

The aim of this chapter then is to advance a theoretical framework for understanding the role of immigration law in shaping how highly skilled migrants perceived themselves and their place in the UK in the first decades of the twenty-first century.[14] The framework draws on research and literature on migration and more specifically, high-skilled migration, as well as law and society and identity scholarship. It should be noted that it is not the intention to present a comprehensive inventory of the diverse theories and studies falling within the vast and somewhat blurry academic fields of migration, law and society and identity but rather, to develop a richer conceptualisation of the research question to frame this thesis' empirical investigation of law's impact on highly skilled migrant identity, that is, how the highly skilled perceive themselves and how they are perceived in the social world.

This chapter focuses on the strands of scholarship noted above that inform the theoretical underpinnings of this study. The first part considers the broad context within which the high-skilled immigration category was created by law, noting that mobility of the highly skilled is part of the processes of globalisation (Castles 2002). It is also noted that while immigration policy initiatives targeting the highly skilled have become commonplace, defining who qualifies as a highly skilled migrant remains contentious due to the significance of context and social processes in the classification of certain attributes as (high-level) skills. The second part discusses how immigration law is conceptualised in this thesis. In the third part of the chapter, the focus shifts to consideration of the concept of identity and immigration law's role in shaping highly skilled migrants' experiences and perceptions of themselves and in constructing the highly skilled migrant as a social identity.

1.2 The global race for talent in the age of migration

If the heading above reads like a pastiche of early or 'hyperglobalist' (Held et al 1999, 3) globalisation literature, some may be disappointed by the absence of references to interconnected nodes, the global power elite or to the death of sovereign statehood in the discussion that follows. Rather, the heading, in its allusions to both Schachar's (2006) overview of states' high-skilled immigration initiatives and Castles et al's (2014, 5) broad-ranging text in which migration is described as of increasing political salience, reflects the

[14] How identity is understood in this thesis is considered later in this chapter.

attempt to locate the introduction of high-skilled immigration policies in a number of western states within the broad economic and political currents in the late twentieth and early twenty-first centuries.

Although widely noted in the literature, it merits restating here that the movement of people across international borders did not and does not happen because of globalisation: people have been on the move for centuries (Held et al 1999; Papastergiadis 2000; Castles 2002; Sassen 2007). Yet processes of globalisation, notably transport and communication technologies and the growing integration of states' economies, have changed the nature of migration. While the level of migration globally has not increased in relative terms, the make-up of migrant populations in many western states has become increasingly diverse (Castles et al 2014, 8-9, 16). Indeed, in the British context, Vertovec characterises recent migrants by their 'super-diversity': not only do such migrants originate from a wide range of countries, they are also differentiated by multiple factors including their age, gender, class and 'immigration statuses and their concomitant entitlements and restrictions of rights' (2007a, 1025). Although super-diversity has been criticised for its ahistorical approach and (unintentional) masking of social inequalities between different groups within a state (Ndhlovu 2016), it is nevertheless a useful concept in that it draws attention to the multiple markers of migrants' identity including their immigration category.

In contrast to the super-diversity or heterogeneity that characterises contemporary migrant populations, the objectives of western states' immigration policies are marked by their homogeneity. This is not to suggest that the content and operationalisation of states' policies are identical (Iredale 2005; Cerna 2016) but rather that they are underpinned by the 'quest' to control migration (Castles et al 2014, 215). While consideration of the efficacy or otherwise of policies designed to regulate migration lies beyond the scope of this thesis, states' ever more rigorous efforts to control their national borders are a defining feature of the global era (Sassen 1996; Goldin et al 2011).[15] However, this intensification of immigration control seeks not only to prevent unwanted migration but also to attract migration deemed desirable (Schachar 2006; Dauvergne 2008; Hansen and Papademetriou 2014; Cerna 2016). In an era when western states' knowledge-based industries are in global competition for workers with specialist and/or high-level professional skills and expertise (de La Fuente and Ciccone 2003; Goldin et al 2011; Hopkins and Levy 2012) it follows that migrants who are considered desirable are very often those who are deemed

[15] For discussion of the effectiveness of immigration policies, see Czaika and de Haas 2013. There is a vast literature of the securitisation of migration. See for example, Bigo and Guild 2005; Huysmans 2006; Andersson 2014.

highly skilled.[16] Immigration policies can therefore be understood as both operational and symbolic statements as to who is wanted and valued and who is not (Anderson 2012). Before considering the significance of such policies implemented through immigration law in both facilitating the movement and shaping the experiences of highly skilled migrants, the use of the term highly skilled in this thesis requires clarification.

1.2.1 [Hu]man capital: defining the highly skilled

Within the confines of economic immigration policy discourse, there is no universal agreement on who qualifies as a highly skilled migrant (Salt 1997; Batalova and Lowell 2007; International Organisation for Migration (IOM) 2011; Ruhs 2013; Boucher and Cerna 2014; Cerna 2016). Similarly, although high-skilled immigration policies, which, as noted earlier, are operated for the most part by individual nation states and are characterised by their heterogeneity (Iredale 2005; Cerna 2016), a distinction is generally made between demand and supply driven initiatives (IOM 2012; Chaloff and Lemaitre 2009; Boucher and Cerna 2014; Ruhs 2013; Cerna 2016; Cerna and Czaika 2016). Broadly speaking, in the former, skills are defined by occupational competencies and therefore have significant employer input whereas in the latter, skills are assessed on the basis of individuals' measurable attributes or human capital (Chaloff and Lemaitre 2009; Boucher and Cerna 2014; Cerna and Czaika 2016). Notwithstanding these different approaches to assessing and defining high-level skills, both employer demand and supply side models tend to define the highly skilled as having a degree level qualification (McLaughlan and Salt 2002, 5), or equivalent work experience (Iredale 2001, 8) and/or reaching a minimum earnings threshold (Chaloff and Lemaitre 2009, 11-12). Whether standing alone or in combination, these attributes, be they job or human focused, are understood to be indicators of high-level skills and particularly in the case of supply side initiatives, as predictors of individual migrants' labour market success (Migration Advisory Committee (MAC) 2009, para 1.12). These various definitions of the highly skilled are not however static: they change over time in response to fluctuating economic, labour market and political conditions (Batalova and Lowell 2007; Boyd 2014). In short, even when the notion of high-level skills is limited to the immigration policy arena and definitions of such skills confined to those prescribed or

[16] It is argued in chapter 3 that historically, UK immigration policy was underpinned by notions of assimilability primarily predicated on race. Given the expansion of skill-based economic migration initiatives, it is arguable that wealth and human capital have become key selection criteria in contemporary immigration policies. Although the changing notions of migrant assimilability are discussed in chapter 4, it merits noting here that it is argued that in the case of the UK's high-skilled policy, economic contribution was not the only measure of migrant desirability.

recognised by (immigration) law, the term highly skilled means different things in different contexts.

A focus on the inconsistencies in and contingent nature of policy definitions of the highly skilled obscures however that the classification and evaluation of skills are fundamentally *social* processes (Anderson and Ruhs 2010; Isaakyan and Triandafyllidou 2016). In other words, though the proxies used to define high-level skills in the policy context are primarily economically driven, they nevertheless reflect and inform ideas and assumptions about skills more generally in the labour market and in the wider social sphere (Kofman and Raghuram 2005; Anderson and Ruhs 2010; Anderson 2012).[17]

The gendered construction of skill in particular has been long been recognised in feminist literature (see, for example, Phillips and Taylor 1980; Steinberg 1990). Such an approach sees women's traditional role as homemakers and their concomitant secondary status in the labour market reflected in the classification of the jobs they do and the skills required to do them as lesser than those generally attributed to men (Phillips and Taylor 1980; Kofman and Raghuram 2005). Indeed, a good number of empirical studies on domestic and social care work, sectors that are predominantly populated by women and more specifically, by migrant women, have repeatedly found that such work is undervalued and poorly paid (Ehrenreich and Hochschild 2003; Cangiano et al 2009; Moriarty 2010; Cuban 2013). That the requisite attributes - caring, cleaning, nurturing skills and so on - are perceived to inhere naturally in women not only justifies their classification as soft skills but also reveals the blurring between skills and ascribed personal characteristics which, it should be noted, also extends along lines of race and class (Moss and Tilly 1996; Anderson 2000; Kofman and Raghuram 2005; Anderson and Ruhs 2010; Anderson 2012; Kofman 2013; van Riemsdijk 2013).

Given the discriminatory construction of skill, it is unsurprising that selection criteria adopted by high-skilled immigration policymakers produce and reinforce unequal outcomes along gender, race and class lines (Boucher 2007; Tannock 2011; Kofman 2014; Cerna and Czaika 2016) and in the case of women, often in combination (Purkayastha 2005). For example, though in recent years the number of highly skilled migrant women in Organisation for Economic Co-operation and Development (OECD) countries has increased significantly (Docquier at el 2009), such women are under represented among migrants admitted via economic routes (IOM and OECD 2014). This under representation may in part be due to institutionalised gender roles and societal and family expectations in both sending and

[17] The notion that laws and policies form part of the social sphere, a fundamental tenet of socio-legal theory, is explored later in this chapter.

receiving countries which mean that women are more likely to migrate as dependants than as primary applicants (Purkayastha 2005; Boucher 2007). However, it is also likely attributable to the gender bias of key criteria - tertiary education, equivalent work experience and earnings - applied in immigration initiatives to identify the highly skilled. Put another way, due to multiple and overlapping forms of disadvantage, such as access to (higher) education, the gender pay gap, disrupted career trajectories (due to children and other family responsibilities) and so on, women generally find it more difficult than men to fall within policy definitions of the highly skilled (Iredale 2005; Kofman 2012 and 2014; IOM and OECD 2014; Boucher 2016).

Much of what may be termed migration and gender scholarship referred to above explicitly seeks to address the imbalance in earlier 'genderless' (Boucher 2007, 383) skilled migration literature in which the voices and stories of skilled migrant women are largely absent (Kofman and Raghuram 2005; Kofman 2014; Boucher 2016). However, though recognising the gendered design and operation of high-skilled immigration policy, this study's focus on the role of law in how highly skilled migrants perceive themselves and the significance of race as an element of their self-perception means that a gender-based analysis of the law regulating the highly skilled falls outside the scope of this thesis. The racially discriminatory implications of the UK's high-skilled policy are however considered in chapter 4 which sets out and analyses the domestic legal framework and argues that notions of assimilability predicated on race continue to inform UK immigration law regulating the highly skilled.

As is clear from the discussion above, skill is an ambiguous and contested concept. In addition to being conceptually problematic, the absence of any universal or stable definition of the highly skilled presents methodological issues. This is perhaps most obvious in cross-national studies of immigration policies (Salt 1997). For example, Cerna's study of the differing degrees of openness of high-skilled policies in OECD countries defines highly skilled migrants restrictively - graduates employed in internationally competitive work sectors who enter via economic migration routes - to produce a more accurate index of national policies (2016, 78-79). Defining the highly skilled is however also problematic in studies focusing on migrants' experiences. In Batalova and Lowell's research in the United States (US) for instance, highly skilled migrants are defined in broad terms as those in professional occupations so as to facilitate the comparison of such migrants' educational backgrounds and career trajectories with those of their US-born counterparts (2007, 26). Purkayashta (2006, 184-5) also adopts a broad definition focusing on highly skilled migrant women who entered the US as family members to both critique the construction of high-level skills in immigration policy and to capture the experiences of women who are routinely excluded

from accounts of highly skilled migrants' experiences. Cuban takes a similarly feminist perspective in her study of migrant women care assistants in the UK whom she classifies as highly skilled based on their qualifications and work experience gained in their home countries. In doing so, Cuban highlights the gendered and racialised construction of skills in the UK labour market and the consequent deskilling of certain professional migrant women (2013, 1-19).

Notwithstanding the conceptual and empirical difficulties surrounding the notion of skills (Anderson and Ruhs 2010), as the examples above demonstrate, it is imperative that scholars define who and/or what constitutes highly skilled migrants and/or high-skilled migration not only to identify and set the parameters of their research subject (Favell et al 2006) but also to pursue their research aims (Batalova and Lowell 2007).[18] This study, in its investigation of law's impact on the construction of highly skilled migrants' identities in the UK, necessitates that the highly skilled be defined as prescribed in domestic immigration law and policy. The taking up of this state sponsored definition should not, however, be understood to represent an endorsement of the proxies that define the highly skilled in UK law or as a negation of the social and political processes that inform economic and societal value of such proxies. Rather, the legal definition is used in this thesis in order to identify a group of people formally categorised and recognised by the state as highly skilled migrants and who are, therefore, subject to the specific legal provisions and policy statements, both symbolic and instrumental, that govern their (immigration) status in the UK. Such an approach not only serves the research aims but also, in highlighting the numerous changes to the criteria enshrined in domestic immigration law used to determine high-level skills (set out in appendices 4.2 and 4.3), draws attention to the constructed nature of the highly skilled migrant.

As noted earlier, attracting the highly skilled as defined in law has become an important immigration policy objective for both developed and developing national economies (Czaika 2018). As a key instrument of immigration policy, immigration law is tasked then to encourage and facilitate the movement of the highly skilled. This function is manifest in the proliferation over recent decades of legal initiatives, predominantly in the form of entry routes or visas adopted by states to target the highly skilled (McLaughlan and Salt 2002; Cerna 2016).[19] It is not proposed to examine the various initiatives here, but simply to note that in

[18] The availability of data may also be a factor in determining the definition of highly skilled adopted (Batalova and Lowell 2007).
[19] Tax incentives may also form part of high-skilled policy. However, such measures are generally long-standing rather than recent introductions (McLaughlan and Salt 2002, 2). In addition to state policies, there are a number of regional policies, for example, EU law initiatives which are noted in chapter 4.

2002, thirty-one initiatives to 'facilitate [the] entry of migrants at the higher end of the skill spectrum' were identified in ten countries (McLaughlan and Salt 2002, 2). In 2015, almost seventy per cent of OECD countries and fifty percent of high-income non-OECD countries operated selective immigration policies designed to attract or retain highly skilled migrants (Czaika 2018, 1).[20] Immigration law, especially when referred to as immigration control, may conjure up images of fences and walls patrolled by uniformed border guards. Yet as the existence of numerous high-skilled channels or visas demonstrate, immigration control is not limited to stymying unwanted migration. In other words, immigration law is as present in the facilitation of migration as it is in its prevention.

1.2.2 The strange absence of law[21]

Although high-skilled migration remains an underdeveloped area of research (Isaakyan and Triandafyllidou 2016, 4), scholarship on such migration has grown significantly over the past decade or so (Cerna 2016, vii). While much of this research has a macro economic and/or policy bias (exemplified by the studies cited in the preceding paragraphs), a body of people oriented qualitative empirical research has emerged on highly skilled migrants (see for example, Robinson and Carey 2000; Nagel 2002; Beaverstock 2002, 2005 and 2011; Bozkurt 2006; Szelényi 2006; Liversage 2009; Ho 2011; Ryan and Mulholland 2014). However, in such studies, the role of immigration law in the research participants' lives is rarely explored; rather, with few exceptions (Chakravartty 2006; Cuban 2013; Moskal 2016), if immigration law is mentioned at all, it is often given short shrift and treated as part of the structural backdrop to participants' lives.[22] Where research combining law and empirical investigation of migrants' experiences has been undertaken, it has tended to focus on unlawful and/or low-skilled migrants (Coutin 2000; Calavita 2005; Menijar 2006; Mendelson 2010) or in the British context, on east European migrants' experiences of transitional provisions in EU law (Anderson et al 2006; Currie 2008; Kubal 2012).[23]

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[20] For a comprehensive comparative study of high-skilled immigration policies in OECD countries, see Cerna 2016.

[21] This title refers to De Genova's (2002, 432) observation on the lack of law in studies of unlawful migration:
'the material force of law, its instrumentality, its historicity, its productivity of some of the most meaningful and salient parameters of sociopolitical life-all of this seems strangely absent, with rather few exceptions.'

[22] It should be noted that Ryan and Mulholland's 2014 study concerns French bankers living in London. The connection between their entry and stay in the UK and immigration status is therefore subsumed within their EU citizenship.

[23] Studies on the representation of migrants in the British media have similarly focused on the depiction of unlawful migrants and asylum seekers (Philo et al 2013) and more recently, on east European migrants (Balch and Balabanova 2016).

Law's fleeting presence in high-skilled migration studies does not of course invalidate or lessen such studies' contribution to knowledge. After all, scholars approach the study of migration from many different and competing theoretical viewpoints (Massey et al cited in Brettell and Hollifield 2008, 2). Nevertheless, the lack of micro-level empirical studies on immigration law's impact on highly-skilled migrants' lives is perhaps surprising given law's direct and visible role in shaping such migration prior to entry and beyond. Mezzadra and Neilson contrast studies of unskilled and skilled migrants and migration in the following terms (2013,137):

> *'Studies of border politics have typically focused on the experiences and struggles of unskilled and often undocumented migrants and asylum seekers who encounter the full force of the border's filtering functions. By contrast, studies that deal with the question of skilled migration tend to evade the question of the border, emphasizing instead issues such as recruitment, remuneration, and even cultural integration. Often it seems as if skilled and unskilled migrants occupy different universes of migration, living in parallel worlds...'*

By focusing on the role of immigration law in the quotidian experiences of highly skilled migrants and its role in identity construction, this thesis hopes to address this lacuna and show that in the British context at least, the unskilled and the highly skilled occupy a similar 'universe of migration'.

It should not be taken from the discussion above that law, as a primary tool of immigration regulation, is all-powerful or as touched upon earlier, causes the movement of people. In the UK, notwithstanding law's wide powers of enforcement operationalised through the Home Office Border Force and the increasing criminalisation of migrants and migration (Weber and Bowling 2008; Bowling 2013), individuals still enter state territory without permission or, to use the terminology of domestic law, without leave to enter.[24] As De Genova puts it (2015, 254):

> *'borders ... are always violated and therefore always inadequate - they are seen as providing enclosure when they operate primarily as zones of permeability and transgression.'*

[24] This refers to s3 of the Immigration Act 1971. The UK's historical and contemporary legal framework is discussed in chapters 3 and 4 respectively.

As to causing migration, while law creates migration in the sense that without national borders, delineated and enforced by law, there would be mobility and not migration (De Genova 2013, 255), it does not cause it. People move from one country to another for many different and often multiple reasons - to escape persecution, poverty or environmental disaster, for economic betterment or to join family - but not *because* of immigration law. Yet law more generally is never absent from migration decisions: law influences a given society's social conditions by, say, defining the scope and content of individuals' political rights or by protecting an uneven distribution of wealth, which contribute to an environment which may or may not encourage inward or outward migration (Schuck 2000). For the wealthy and highly skilled however, who enjoy 'the luxury of calculation and choice' (Schuck 2000, 189), immigration law, in the form of visa options, can be understood as an element of the social conditions shaped by law which contribute to their migration decisions.

1.2.3 A note on methodological nationalism

Before considering how immigration law is conceptualised in this thesis, it seems prudent to mount a defence against any allegations that this research project has succumbed to methodological nationalism (Wimmer and Glick Schiller 2002). In their influential article, Wimmer and Glick Schiller argue that the study of international migration has been shaped and constrained by 'the assumption that the nation/state/society is the natural social and political form of the modern world' (2002, 302).[25] Though this assumption has been shared across the social sciences - evident in studies' conflation of the state and society and in the commonplace use of the state/society as a 'natural' frame for academic enquiry - it is in migration studies that the consequences have arguably had more material effect (Wimmer and Glick Schiller 2002). In migration research, methodological nationalism has mirrored and legitimised the growth in nation-states' power over the course of the twentieth century by fostering the notion of a nationally bounded homogenous society in which migrants are cast as interlopers and outsiders (Wimmer and Glick Schiller 2002). By unthinkingly using a national framework, the migration researcher therefore risks naturalising and tacitly endorsing (or at least leaving unchallenged) the nation-state system in which migrants frequently occupy a subordinate and/or marginalised position (Wimmer and Glick Schiller 2002; De Genova 2013; Garelli and Tazzioli 2013).[26]

[25] Collier et al (1995, 4) make a similar point in respect of academic research more generally:
'the kinds of questions we are called upon to pose both reflect and reproduce broader assumptions of the bourgeois societies in which most of us live.'
[26] Garelli and Tazzioli (2013, 247) also challenge 'methodological Europeanism'.

Although since the 1990s the concept of transnationalism, with its emphasis on migrant communities' border-spanning family, social, political, economic and cultural networks and connections (Glick Schiller 1999; Vertovec 2007), has challenged the unthinking acceptance of methodological nationalism in migration studies,[27] when law is introduced to the field, the nation state remains a pervasive presence (Favell 2015). Indeed, the migration and law studies cited earlier all focus on the role of national law in migrants' lives.[28] This thesis could then be counted as one more study in the law and migration field in which the nation-state is very much present. Yet, as Abraham notes (2015), immigration law is, for the most part, produced and enforced by individual nation states. This remains the case even for EU member states: although such states' domestic laws must comply with EU law in respect of EEA nationals' free movement rights, each state regulates individually the movement of almost all non-EEA nationals through national immigration laws.[29] To paraphrase Abraham, in the arena of immigration law, Westphalian conceptions of sovereignty still prevail (2015).

Given this research project shares Favell's (2008, 272) concern to focus on 'real people moving in real space' in its exploration of immigration law's impact on migrants' experiences, it is difficult to see how anything other than a state-centric frame could be adopted. Nevertheless, this does not mean that it is blindly accepted that a world divided into bounded entities within which individuals are classified as citizens or migrants (who are further sorted into numerous sub-categories) is the only viable or natural order of things. Rather, and as flagged in the discussion of migration-related terminology in this thesis' Introduction, in foregrounding the role of national, in this case UK, immigration law in shaping migrant identities, the constructed nature of the migrant and therefore of the nationally bounded state and its population is exposed (Favell 2008, 2015). In other words, the use of a national legal frame in this study allows for the problematisation of and critical engagement with entrenched ideas about the world we live in that dominate public and political discourses on migration.

1.3 Conceptualising immigration law

From the discussion thus far, one could be forgiven for thinking first, that immigration law serves a purely functional role as gatekeeper to state territory and second, that it is

[27] See, for example, Glick Schiller et al 1995; Papastergiadis 2000; Conradson and Latham 2005.
[28] Although Currie (2008) and Kubal's (2012) studies have an EU law dimension, the empirical element of their research focuses on nationally transposed law.
[29] Third country nationals who are family members of EEA nationals also enjoy free movement rights under EU law (Directive 2004/38/EC). As will be discussed in chapter 4, subject to few exceptions, international law's role in regulating migration has little impact of nation-states' ability to control their borders.

ineffectual in this role as in practice, it fails to command absolute authority over the national border.[30] As will be discussed in chapter 3, although the selection of migrants is one of immigration law's 'front-end functions' (Abraham 2015, 290), its power is neither limited to a gate-keeping role nor is it necessarily diminished by its inability to exercise complete control over the border. Indeed, the question at the heart of this thesis - the extent to which immigration law contributes to the construction of highly skilled migrants' self-identity - necessitates an understanding of law as a force that can and does shape people's actions, social relations and perceptions of themselves and their place in society. While this approach to law locates this study within law and society scholarship, given the field's interdisciplinarity and the diverse theories and methodologies that fall within it (Seron and Silbey 2004; Seron et al 2013; Calavita 2016), some clarification is required. The following part of this chapter therefore seeks to explain the approach to law adopted in this thesis. Though noted earlier, it bears repeating here that the aim is not to undertake a review of the extensive body of law and society literature but rather, to engage with elements that are relevant to the research question.

1.3.1 A constructivist approach

Socio-legal scholarship is often described with reference to the well-known title of Pound's article written in 1910: it concerns the study of 'law in action' as opposed to the study of 'law in books'. Pound's phrase encapsulates the rejection or critique by early socio-legal scholars in the US of a purely doctrinal approach to legal analysis, that is, that law could be explained through a close reading of legal texts, insisting instead that law be understood and explained empirically, as it is experienced in practice (Seron and Silbey 2004, 33). Since then, socio-legal research has investigated diverse subjects across multiple disciplinary boundaries both within and outside the social sciences (Seron et al 2013).[31] Early studies tended to investigate the practices of formal, and often law-related, institutions such as courts, the legal profession and law enforcement agencies with a view to discovering the social effects of law (Seron and Silbey 2004; Feenan 2013). In more recent studies, which are generally underpinned by an understanding of society (the socio) and law (the legal) as mutually

[30] The notion of failure assumes that the porosity of states' borders is unintentional and unwanted. Calavita's study (2000) of what was then the US Immigration and Naturalization Service's (INS) treatment of Mexican labourers demonstrates that unlawful migration is often both tolerated and necessary for the functioning of western economies.

[31] Seron and Silbey (2004, 32) and Banakar and Travers (2005, xi) both distinguish British or European socio-legal studies from US law and society scholarship on the ground that the latter has stronger disciplinary ties with the social sciences. Silbey noted however in 2005 (323) that the use of the term socio-legal had become conventional in the US and used socio-legal and law and society interchangeably as is the case in this thesis. The broad trends in the field noted above are applicable to both sides of the Atlantic.

constitutive, law is often decentred in that the focus of the research lies outside formal legal settings and processes (Seron and Silbey 2004; Feenan 2013; Seron et al 2013). Notwithstanding the variegated nature of law and society scholarship however, Seron and Silbey (2004, 30-31) and Seron et al (2013, 290-291) in their overviews of law and society scholarship, recognise as foundational the notion that the meaning of law is not intrinsic to statute or case law (law in the books) but rather, is dependent on other factors in the social world of which law is part and whose structures it tends to reinforce.

Calavita captures the idea of law as an interdependent and integral part of society in her observation that (2016, 8):

> *'law - far from an autonomous entity residing somewhere above the fray of society - coincides with the shape of society and is part and parcel of its fray.'*

In view of this understanding of law as constitutive of society (and vice versa), the broad definition of immigration law given in the thesis' Introduction requires some elaboration.[32] Though hopefully clear, this thesis does not adopt a positivist account of Law (capital L intended): law, the law and immigration law to which this thesis repeatedly refers do not exist as things. Rather, immigration law refers to a set of interrelated institutions and ideas, and as noted in the Introduction, practices and actors, involved in the regulation of migrants and migration. They are not separate or distinct from society but are, to borrow from Calavita, 'part and parcel' of society. Immigration law is used then, to paraphrase Haney López (2006, 80), as a catchall term to make the discussion of diverse and disparate immigration-related policies and practices more manageable.

Related to the idea of law as imbricated in society is the shift noted earlier in more recent socio-legal studies away from institutions and formal (broadly, state-generated) law to the investigation of legal consciousness, that is, the presence and operation of law in everyday activities and experiences.[33] Studies of legal consciousness eschew a law-first perspective on the grounds that such an approach misses how and with what effect law is produced through routine social interactions (Sarat and Kearns 1995; Ewick and Silbey 1998; Cowan 2004). Indeed, in their well-known essay *Beyond the Great Divide* (1995), Sarat and Kearns called on scholars to abandon the law-first perspective. However, in making such a call, their main concern was to bridge the divide they perceived between the two dominant

[32] The elaboration is indebted to Haney López's clarification of law (2006, 80-86).
[33] Legal consciousness is not defined consistently. See Silbey 2005 for discussion.

perspectives adopted at the time in socio-legal studies of everyday life, namely the instrumental and the constitutive (1995, 21). Following Engel and Munger (1996) and Calavita (2005), and as will be discussed below, the two perspectives are not regarded as distinct or incompatible in this study. Sarat and Kearns' discussion of both instrumental and constitutive theories of law is however relevant to this thesis' conceptualisation of immigration law.

Characterising instrumentalism as conceiving of law as a tool for regulating social life, Sarat and Kearns note that an instrumentalist approach is interested in law's effectiveness and not in its broader social ramifications (1995, 23-24). In contrast, a constitutive perspective suggests that 'law shapes society from the inside out' and is concerned with the ways in which law has shaped the 'beliefs, attitudes and understandings of legal subjects, in the ways they imagine their own capacities and their relations with one another' (1995, 22, 41). Considering the constitutive approach further, Sarat and Kearns state (29):

> *'we have internalized law's meanings and its representations of us, so much so that our own purposes and understandings can no longer be extricated from them. We are not merely the recipients of law's external pressures. Rather, we have imbibed law's images and meanings so that they seem our own. As a consequence, law's demands seem natural and necessary...'*

For Sarat and Kearns then, it is not that studies privileging the legal over the socio ignore or negate law and society's interdependency and/or individuals' (sub)consciousness of law. Rather, in focusing on formal or visible law, such studies miss the invisible and hegemonic power of law in everyday life (51). Though it is recognised here that a focus on society rather than law may better capture law's ubiquity, it is suggested that the choice of framing an investigation as law-first or society-first is ultimately situational. In the present case, the researcher's interests and the study's primary aim - understanding the degree to which highly skilled migrants 'bear the imprint of [immigration] law' (Ewick and Silbey 1998, 20) - point to the adoption of a law-first perspective.

As to the 'great divide' between the instrumental and constitutive views, it would seem that in practice, the distinction dissipates: even Sarat and Kearns conceded that the split between the two 'collapses' to the extent that law modifies both conduct and the ways in which people view themselves and relate to others (1995, 28-29). The empirical studies by Engel and Munger (1996) and Calavita (2005) mentioned earlier reached similar conclusions. Calavita's study concerned the impact of new immigration laws in southern Europe including

regularisation and integration provisions for temporary migrant workers engaged in low-skilled work. Calavita found that the law confined the migrants to poorly paid and low status work, limited their rights and made it difficult for them to maintain or obtain lawful immigration status. Beyond these instrumental effects however, Calavita noted law's symbolic consequences including its contribution to the construction of migrants as marginalised, criminal and different from the resident population, hence the perceived need for the introduction of integration policies (2005, 164-166). From her analysis, Calavita concluded that the instrumental and constitutive perspectives were not distinct but rather, 'recursively related with law's effects injecting meaning into and through daily life' (2005, 165-166). Similarly, in their study of the implementation of a new disability law in the US and its intended beneficiaries, Engel and Munger found that the law became 'active in everyday life in many different ways' even when new rights enshrined in the law were not specifically invoked (1996, 43). In addition to finding that the law had a context-creating effect which empowered individuals and changed their self-perception and relations with others, they noted that law had a more generalised pervasive influence which shaped people's everyday thoughts and actions (45-49). For Engel and Munger, law's effects were 'simultaneously instrumental and constitutive' (1996, 45).

In this thesis, the instrumental and constitutive perspectives are not then understood as mutually exclusive but rather, as an entwined spectrum of effects and influences. Law is instrumental to social ends and at the same time pervasive, in that it informs and shapes our quotidian thoughts and actions. There is then no requirement to choose between the two perspectives as both 'unlock lines of enquiry into the study of law and society' (Galligan 2007, 214).

1.4 Constructing identity in law

The remainder of this chapter considers how highly skilled migrant identities are constructed in and through immigration law. Noting identity's 'slipperiness' (Lawler 2014, 7), an attempt is made to clarify how the linked notions of identity and identity-making are understood in this thesis. Adopting a social constructionist approach, identity is conceived of as a social process with mutually constitutive dimensions: self-identity - a private or self-defining dimension - and social identity - a publicly defined dimension. The discussion then shifts to consider law's role in delineating highly skilled migrants' life trajectories and in constructing the highly skilled migrant as a social identity.

1.4.1 Conceptualising identity

> *'Its very obviousness seems to defy elucidation: identity is what a thing is!'*
>
> Gleason 1983, 910

At first glance, identity may indeed be what 'a thing is'. It is ubiquitous, at home as much in popular culture as in academic debate, used in everyday conversations and in scholarly works (Brubaker and Cooper 2000). Yet on closer inspection, as scholars in diverse disciplines have observed, identity is a broad and elusive concept, one which is hard to pin down and fraught with issues (Erikson 1968; Gleason 1983; Hall 2000; Vecchi 2004; Weedon 2004; Yuval-Davis 2010; Lawler 2014; La Barbera 2015). Notwithstanding or perhaps in light of identity's 'slipperiness', as indicated above, questions of identity have become the focus of much contemporary research, notably in the humanities and social sciences (du Gay et al 2000; Bauman 2004). Given the volume and diversity of such literature - from psychology to political theory; sociology to social psychology; linguistics to literary criticism and so on - it is almost impossible to give an overview of the theoretical contributions and developments in the various fields (Westin 2010; La Barbera 2015). Any reference to 'identity literature' in the singular is arguably a misnomer in that it suggests the existence of a unitary and cohesive body of thought on identity when no such body exists. Indeed, for Brubaker and Cooper (2000), identity's ubiquity and conceptual promiscuity (its 'slipperiness') in both academic and everyday use have rendered it meaningless and in need of replacement by more specific concepts. Yet if we discard identity altogether and replace it with separate individually named concepts, we not only risk obfuscating academic enquiry on issues of identity by divorcing them from everyday identity talk (Sökefeld 2001), we potentially lose the connections between the different elements or dimensions that are commonly understood to constitute identity (Lawler 2014, 9-10).

Conscious of the problems in trying to define identity on the one hand and the need for clarity in respect of terms and concepts employed on the other, the approach in this thesis follows that advocated by Lawler: what identity means depends on how it is thought about (2014, 7). No attempt is made therefore to provide an all-encompassing definition of identity; rather, the notion of identity articulated below is grounded in the exploration of law's role in the construction of highly skilled migrant identities.

In broad terms, there are three aspects to the understanding of identity in this thesis. First, identity is a social process, that is, it is constructed through social relations and social forces

including law. Second, identity is self-defined in that it means the sense highly skilled migrants have of themselves, that is, their self-identity. Third, the highly skilled migrant is a publicly defined identity: it is an immigration or visa category in law and, as will be addressed in the final part of this chapter, it is also a social identity.

Before considering these aspects further, two points should be noted. The first is that when discussing identity, it is difficult to disentangle its various aspects. For example, although identity is split into the private/self and public/social, they are not separate or distinct aspects but are interrelated and constitutive of each other (Woodward 2004). Similarly, as identity is conceived of as a process, consideration of what identity is necessarily includes consideration of how identities are constructed. As Jenkins (2008, 17) notes, '[i]dentities can only be understood as a process of being or becoming'. In the discussion that follows, key properties associated with the social constructionist approach to identity are introduced and then considered further in the second part. The other point to note is that the discussion here does not adhere to a specific theory of identity but instead draws on various complementary sociological interpretations to illuminate how identity is understood in this thesis (Jenkins 2008; Yuval-Davis 2010).

Identity as a social process

In line with much contemporary sociological theorising, identity is understood here as socially constructed, that is, it is 'socially produced, socially embedded and worked out in people's everyday social lives' (Lawler 2014,19). Notwithstanding the widespread rejection of an essentialist self in modern academic conceptualisations of identity (see, for example, Goffman (1990 [1959]); Chambers 1994; Hall 1996; Jenkins 2008), the idea persists, in popular notions of identity at least, that the individual, or their inner core, stands outside society (Elias [1968] 1990).[34] Indeed, it could be said that the ghost of the true or hidden self is present in the notion of identity's private aspect outlined above. For Elias, to move beyond the idea entrenched 'since roughly the Renaissance' that an individual's true self lies inside and is distinct from the social world outside requires both the individual and society to be understood as processes (287-8). Hall echoes Elias in his approach to identity in the following terms:

[34] Within the transgender social movement, gender identity is often expressed in essentialist terms as seen in recent media discussion of Caitlyn Jenner (Lees 2015; Pilkington 2015; Talusan 2015). However, as Bernstein (2005) notes, such an approach to gender could simply be a strategic decision to better achieve the movement's political objectives. The notion of an innate identity or soul is of course also fundamental to many religious belief systems.

> *'...instead of thinking of identity as an already accomplished fact ... we should think instead of identity as a 'production', which is never complete, always in process, and always constituted within, not outside, representation.'*
>
> (1990 cited in Weedon 2004, 5)

In other words, identity is an unfinished, dynamic and fundamentally social process (Jenkins 2008, 17). Once conceived of in this way, it follows that identity is fluid, multi-faceted and contextual. Even in quotidian accounts of how we perceive ourselves, our self-identity or subjectivity, changes.[35] For example, when completing the personal details section of a standard form, the sense we have of our ourselves is likely to differ from how we perceive ourselves when lying on a therapist's couch or researching our family tree. These different interpretations of our self-identity are not however unbounded. To borrow from Gagnier (2000 cited in Lawler 2014, 7), we may feel like members of the British royal family but are unlikely to be treated as such unless our claim is backed up by our genealogy. Our self-identity may then be fluid and adaptive but it is also bound up with the social identities we portray to others and those we encounter in our everyday lives (Bauman and May 2001, 30).

Self- and social identities

A further example drawn from everyday life illustrates the imbricated nature of the self/private and social/public dimensions of identity. Question 15 of the Household Questionnaire for England (the 2011 British Census) asked:

> *'How would you describe your national identity? Tick all that apply: English, Welsh, Scottish, Northern Irish, British, Other'.*
>
> Office for National Statistics (ONS) 2011a

As is clear from the wording of the question, it is assumed that we have a national identity: we are asked to tick the applicable identity box(es). A national identity is therefore an assigned social identity but at the same time is understood to be self-defined: '[h]ow would *you* describe *your* national identity?' [emphasis added].[36] We may tick multiple boxes, reject

[35] The term self-identity is preferred in this thesis as it explicitly maintains the links between the different dimensions that constitute identity.

[36] This was the first time the Census included a question on national identity. Although not defined in the Census questionnaire, current ONS guidance defines national identity as *'a measure of self-identity, reflecting the subjective nature of national identity. A question on national identity allows a person to express a preference as to which country or countries, nation or nations that they feel most affiliated to'* (undated, section 5).

the very idea of having a national identity or a third party may take issue with the box we tick but nevertheless, these private and public aspects of identity exist in relation to and interact with each other. Identity is therefore a bridge between the personal - individuals taking up identities - and the social - the public or social identities they occupy (Hall 1996, 597-8; Woodward 2004, 17).

In seeking to elucidate identity, it is often observed that identity's Latin root, "idem' means 'the same' (Jenkins 2008, 16-17; Lawler 2014, 10; La Barbera 2015, 9). Attention is therefore drawn to identity's comparative nature; it is a process which rests on notions of sameness and difference. To take the Census example, by ticking only the 'Scottish' box, an individual recognises their sameness with a group, the Scottish, and indicates their difference from say, the Welsh group. Similarly, by accepting or rejecting the individual, the Scottish group defines itself collectively through similarity (acceptance) or difference (rejection).[37] The example also demonstrates how identity cannot be understood as distinct from identity-making or to use the sociological term, identification (Jenkins 2008, 14). The multidirectional and open-ended nature of identification is captured in Jenkins' concise definition (2008, 18):

> *"Identification' is the systematic establishment and signification, between individuals, between collectivities, and between individuals and collectivities, of relationships of similarity and difference.'*

Yet not all collective or social identities are available to everyone Material, social and physical constraints including the perceptions of others may prevent an individual from occupying certain identity positions (Woodward 2004, 7-8). As will be discussed in chapter 3, for much of the twentieth century, skin colour was a key marker of difference when determining British identity. Conversely, physical markers such as dress and hairstyle may denote, for example, a shared religious identity (Weedon 2004, 7). Alternatively, exclusion from one social identity may mean the assignment of another or there may be tensions between the multiple self-identities an individual has at any given time (Lawler 2014, 11-12). While we are not simply the passive bearers of identities others ascribe to us - we may reject or reinterpret them - our self-identity is nevertheless partly formed in relation to them (Lewis and Phoenix 2004). As Jenkins puts it (2008, 47):

> *'Your external definition of me is an inexorable part of my internal definition of myself - even if I only reject or resist it - and vice versa.'*

[37] This discussion of the Census question draws on Woodward (2004, 9-10).

Of course, no publicly defined identity is a perfect match for an individual's self-identity or more accurately, self-identities. Given that identities are fluid and contextual, social identities, which are also fluid constructs, inform how we perceive ourselves but can never completely define us. However, some social identities, often referred to in the literature as social structures or social categories, such as gender, nationality/citizenship, race and class, are pervasive. Indeed, these categories structure societies, they define and reflect power relations and are, therefore, powerful dimensions of identity (Woodward 2004). For example, the state ascribes a specific citizenship to us at birth. Throughout our lives, institutions, social practices and our lived experiences repeatedly reinforce our similarity to our ascribed national identity and thus constrain our ability to perceive ourselves differently (Weedon 2004). The citizenship/national identity category is especially pertinent when considering migrant identities. The state's categorisation of individuals as migrants is oppositional to its categorisation of others as citizens. For migrants, even the highly skilled, institutions, social practices and their lived experiences repeatedly reinforce their difference. Indeed, immigration law, in the form of visa requirements and conditions, regulates migrants' life trajectories and serves as a constant reminder of their difference. These issues are considered further below.

1.4.2 The highly skilled migrant: from immigration category to social identity

As discussed earlier in this chapter, although this thesis focuses on the effects of formal immigration law, law is ever present in structuring our thoughts and actions. That drivers stop at a red traffic light when a road is empty (Calavita 2016, 42) or how the placing of chair in a street cleared of snow denotes ownership of a parking space (Ewick and Silbey 1998, 21) are indicative of law's presence in our everyday lives. A further example, noted in this thesis' Introduction, is how in commonplace discussions of migrants and migration we subscribe to a world made up of migrants and citizens, of unlawful and lawful migrants, as if they were the natural order of things. Law then creates conceptual categories that are 'part of our cognitive and linguistic repertoire' (Calavita 2016, 42).

Contemporary immigration law however not only sustains the division of humanity into migrant/citizen and lawful/unlawful migrant, it also creates different categories of lawful migrants: student, highly skilled, refugee, sponsored worker and so on. The law defines the content of each immigration category - who qualifies, the duration of their stay, whether family members can join them and so on - and delineates each category's permitted and

prohibited activities, obligations and entitlements. That Macdonald and Toal refer to an individual's immigration or visa category as an 'immigration identity' (2014, 74) is indicative of the extent to which immigration law prescribes and regulates the conditions of an individual's admission and residence, that is, their life.[38] Indeed, Coutin notes the 'material effects' immigration categories have on individual lives (2000, 10). Vertovec similarly recognises the very real consequences flowing from an individual's immigration categorisation (2007, 4):

> *'Immigration status is not just a crucial factor in determining an individual's relation to the state, its resources and legal system, the labour market and other structures; it is an important catalyst in the formation of social capital...'*

Yet the categorisation of migrants is not simply a 'neutral sorting mechanism' (Anderson 2013, 70). It is not an internally flat structure but rather, a hierarchy. Those at the top, which in the UK context means Tier 1 migrants (those in the Entrepreneur, Investor, Exceptional Talent and T1G categories) enjoy far greater autonomy than those in the lower Tiers such as Tier 4 students and Tier 5 temporary workers, many of whom are tied to their academic institution or employer. Tier 1 migrants like the highly skilled are able to bring their families and become permanently resident in the UK, benefits denied to almost all Tier 4 and Tier 5 migrants.

On an instrumental level then immigration law structures migrants' lives through the promulgation and enforcement of rules that stipulate what is permissible. Although law's power is coercive (non-compliant migrants face the threat of deportation) law also wields symbolic power. As discussed earlier in this chapter, contemporary immigration policies targeting the highly skilled are broad functional and symbolic statements on who is desirable and valued and who is not (Anderson 2012). UK immigration law, through its myriad categorisations of migrant, has similar but more granular effect. It rewards those deemed valuable - the rich and the highly skilled - who are granted greater freedom and the opportunity to become part of the polity through the acquisition of citizenship, and tolerates the others (Anderson 2013, 60-61). Immigration law therefore constructs different categories of migrant and, over time through interactions with other institutional forces and social actors, contributes to constructing the different material and symbolic positions migrants

[38] To avoid confusion, Macdonald and Toal's term 'immigration identity' is not used in this thesis. Instead, immigration category and visa category, of which the highly skilled migrant is but one, are used here interchangeably.

occupy in the social world (Haney López 2006, 86-91). In this way, immigration law contributes to the production of social identities of which the highly skilled migrant is one.

A legal status, such as the highly skilled migrant immigration category, is then foundational in that it determines and provides the initial structure around which a social identity may take shape (Anderson 2013, 91). Yet the social identity of the highly skilled migrant does not stand on its own, nor is its construction static or one directional (Coutin and Chock 1995). Though the immigration category was created in 2002, the social identity of the highly skilled migrant must be considered within the context of other migrant-related social identities, both historical and contemporary, to understand its meaning in a given time and place.

It was noted in this thesis' Introduction that for the author, the highly skilled migrant was since its inception more than an immigration category: at the outset, it was an imagined identity, if not quite a social identity. As discussed earlier in this chapter, the high-skilled route was introduced in the context of an increasingly global labour market and growing competition for skilled and highly skilled workers. When policymakers began to develop the UK's high-skilled policy in the early 2000s, the HSMP was seen as fresh and innovative. For the first time since the voucher scheme under the Commonwealth Immigrants Act 1962, non-EEA citizens could come to live in the UK and then look for work.[39] From the perspective of certain migrants - predominantly but not exclusively skilled labour migrants - and immigration lawyers alike, the early 2000s were an exciting time as the old restrictive immigration regime seemed to give way to a more open and dynamic approach to immigration policy. Indeed, of the various economic immigration initiatives launched in the 2000s, the HSMP was the 'flagship' (HC Deb 7 Nov 2006).[40]

Drawing on experience from working as an immigration lawyer, the HSMP was seen by both lawyers and clients as an aspirational status. We worked with clients to devise strategies akin to personal development plans to enable them to obtain a highly skilled migrant visa. To borrow from Wolfe ([1979] 1991), if not quite needing to possess the right stuff, highly skilled migrants stood at the summit of the immigration ziggurat. In the policy's early years, for policymakers, immigration lawyers, businesspeople and migrants at least, the highly skilled migrant was very much a social identity, if not quite an elite status, it was nevertheless short-hand for a successful and valuable individual.

[39] The UK ancestry immigration category also enabled and continues to enable non-EEA citizens with British grandparents to seek work in the UK (HC 395, para 186).
[40] The high-skilled visa's legal framework is discussed in chapter 4.

Yet the high-skilled immigration category was always unstable. As will be examined in chapter 4, from the implementation of the high-skilled visa in early 2002 to its demise in 2011, there were innumerable changes to its substantive criteria and procedural requirements. Despite policymakers and politicians' initial championing of both the HSMP and its later incarnation, T1G, these frequent changes were symptomatic of policymakers' on-going dissatisfaction with the high-skilled route. Indeed, and as will be discussed in chapters 5 and 6, in 2006 and 2010, this dissatisfaction escalated to outright derision as elements of the national press and the then Home Secretaries, among others, called into question the legitimacy of the high-skilled immigration category and by logical extension, the authenticity of the people who held or had previously held highly skilled migrant visas.

However, notwithstanding the seemingly ever-changing requirements of the high-skilled visa and the fluctuating depictions of highly skilled migrants in the public arena (discussed in chapters 5 and 6), policymakers and politicians' economic framing of highly skilled migrants remained constant. Highly skilled migrants were conceived of as supply side units whose value lay in their productivity rates and their contribution to government revenues and to the wider British economy (Home Office 2005b, 14-15). Furthermore, in contrast to the main sponsored labour immigration routes, the Tier 2 visa and its predecessor, the work permit, both of which focus on the needs of UK-based employers, the sole rationale for the high-skilled visa was the individual migrant's anticipated and actual contribution to the British economy (Home Office 2006a). Despite then the high-skilled visa's numerous permutations (set out in appendices 4.2 and 4.3), the core skills or, more accurately, the key personal attributes demanded of highly skilled migrants - tertiary level qualifications, skilled work experience, prior earnings and from 2006, proficiency in English - remained broadly stable.

Policymakers and politicians' descriptions of highly skilled migrants were not however confined to the dry language of economics: when cast in a positive light, highly skilled migrants were invariably described as 'talented people with exceptional skills' (Home Office 2001) and 'the brightest and best' (Home Office 2007, para 4). As Anderson notes, the use of such terminology suggests that skill is not just a technical term, but is 'bound up with social status and social relations' (2013, 61). From this perspective, the personal attributes required to become a highly skilled migrant were not simply a measure of an individual's likely economic contribution but a proxy for their perceived economic and *social* worth. That the highly skilled migrant was a social identity as well as an immigration category is further revealed in the language used by the press and politicians to denigrate highly skilled migrants discussed in chapter 6. Highly skilled migrants were not expressly characterised as unexceptional or untalented; instead, they were defined with reference to certain jobs - shelf

stackers, security guards, food production operatives and taxi drivers (Byrne 2007; Green 2010; May 2010) - jobs that were and are perceived to be low-skilled and low status. The message, however, was clear: not all highly skilled migrants were genuinely highly skilled.

In short, the highly skilled migrant as a social identity became tarnished. By questioning such migrants' skills, there was little to distinguish the highly skilled migrant as a social identity from that of the economic migrant which is and was routinely characterised as low-skilled and low status.[41] Keith Vaz, a former chair of the parliamentary Home Affairs Committee, disentangled, perhaps inadvertently, the knotted connections between immigration category, social identity and status when commenting on the widespread use of the phrase 'the brightest and best': '[w]ell of course we don't want the worst and most stupid do we, entering the country...' (Westminster Legal Policy Forum 2014, 37). If highly skilled migrants were for the most part imbued with qualities that are valued, then using Vaz's logic (which, as noted earlier, underpins western states' economic immigration policies), it must follow that low-skilled migrants, (the stupid) were and are unwanted and of little or no value (the worst). Though Vaz's comments were made during a speech and could therefore be dismissed as rhetorical flourish, his inversion of the hackneyed phrase 'brightest and best' to 'worst and most stupid' illuminates the values that are associated with and are constitutive of the various immigration categories and corresponding social identities.

In sum, the highly skilled migrant may have started as an exalted social identity but as the discussion above shows, it became a rather ambivalent identity. This fluctuating and inconsistent nature of the highly skilled migrant social identity is further examined in the thesis' empirical chapters. Chapter 6 considers the press' contribution to the construction of the highly skilled migrant social identity and chapters 7 and 8 consider the extent to which this social identity mapped on to highly skilled migrants' perceptions of themselves.

1.5 Conclusion

This chapter has sought to provide a theoretical framework for the examination of immigration law's role in the construction of highly skilled migrants' self- and social identities. It began by considering the broad context in which skill-based immigration initiatives proliferated across the world. The difficulties in defining skills or human capital were also discussed and, in particular, it was noted that high-skilled policies are frequently gendered in

[41] The press' contribution to constructing different migrant groups - economic migrant, refugee and so on - as social identities, generally in negative terms, is discussed in chapter 6.

terms of both design and outcome. The socio-legal approach to the study of law was discussed in the second part of the chapter. Focusing on state-produced or official immigration law, law is understood as constitutive of society and as a force that shapes social relations and informs how we perceive ourselves and our place in the world. In the third part of the chapter the concept of identity was discussed. Although difficult to grasp and resistant to a single overarching definition, identity is understood in this thesis as a relational and contextual process that refers to how individuals perceive themselves in relation to social identities and categories and the perceptions of others. The chapter concluded by considering immigration law's role in constructing the inconsistent and somewhat ambivalent social identity of the highly skilled migrant.

Chapter 2

Methodology: investigating law's contribution to the formation of highly skilled migrant identity in the United Kingdom

2.1 Introduction

The aim of this chapter is to explain the methodology developed to investigate the role of law in shaping highly skilled migrant identity in the UK in the first decades of the twenty-first century. Beginning with an overview of the research question and research framework, the chapter then considers the qualitative approach to the research and more specifically, the theoretical underpinnings of such an approach. There then follows an examination of the methods employed in, and the researcher's experiences of, the collection and analysis of data and the ethical considerations that guided the execution of the research.

2.2 The research question and framework: an overview

Over the course of the twentieth century, the UK's immigration policy became increasingly restrictive. In the 2000s, however, new economic immigration policies were adopted which, inter alia, encouraged highly skilled migrants to come to live and work in the UK through the creation of a new high-skilled visa category. This research considers the impact of immigration law, namely the high-skilled immigration policy initiative - implemented in law initially as the HSMP and then as T1G - on the formation of highly skilled migrant identity in the UK.

The research framework combines sociological empirical enquiry with an external approach to the study of law, that is, immigration law is analysed with reference to the particularities of its context. A qualitative approach is adopted towards the research project which comprises two empirical elements: a case study of highly skilled migrants living or who had lived in the UK and an examination of the portrayal of highly skilled and skilled migrants in the national press. With regard to the case study, semi-structured qualitative interviews were conducted with Australian and Indian nationals who held or had held a high-skilled visa in the UK. These two countries were selected to enable the comparison of data from two national

groups whose members were likely to have different racial identities from one another.[42] As to the media study, a dataset comprising newspaper articles including the terms 'skilled migrants' or 'skilled migration' (and their variants) was compiled to investigate whether the media narrative for skilled and highly skilled migrants differed from the presentations of other migrant groups. The relationship between theory and research in the study is primarily inductive in that theory was developed from the analysis of the empirical data.

2.3 Research strategy

A socio-legal and qualitative approach was adopted towards the research project.

2.3.1 A socio-legal study

As discussed in chapter 1, the topic of this study, namely the effects of law on highly skilled migrants living in the UK, makes sense only if law is understood as a constitutive force that contributes to the construction and meaning of social relations and identities in society (Coutin 2000; Calavita 2005). Furthermore, the role of race in highly skilled migrant identity formation can be understood only with reference to the historical and contemporary contexts in which UK immigration law and policy have evolved and operated. A purely doctrinal approach to the study of immigration law, focusing on its internal reasoning and logic, would reveal little about the political and socio-economic factors that inform its development. As the research question is concerned with the operation and application of law, and its impact on migrants who experience it directly, empirical investigation is an essential element of the project. As Baldwin and Davis note, empirical research 'gives voice' to 'the experience of those on the receiving end of the legal processes' (Baldwin and Davis 2003, 887).

2.3.2 A qualitative approach

The precise meaning or, perhaps more accurately meanings, of the term qualitative are hard to pin down. As noted in the literature, research described as qualitative uses a number of different research methods and employs a range of epistemological approaches (Denzin and

[42] As noted in the Introduction to this thesis, race is understood here as a social and political construct which in popular understanding is often informed by somatic characteristics. The concept of race is discussed in chapter 3.

Lincoln 2011; Bryman 2012). However, the classification of research as qualitative (rather than quantitative) or as Robson helpfully terms it, as 'constructivist' (2002, 24), acts as a useful shorthand to indicate the nature of the central research question and how it is likely to be addressed. Drawing on Robson's summary of features associated with a qualitative approach to research, the following working definition informs the approach taken in this thesis (2002, 25):

> *'Reality is represented through the eyes of participants. The existence ... of an external reality independent of our theoretical beliefs and concepts is denied. The role of language is emphasized ... as a central instrument by which the world is represented and constructed. The importance of viewing the meaning of experience and behavior in context, and in its full complexity, is stressed.'*

This research project focuses on the perspective of highly skilled migrants, how they experience the law, how they see and interpret their social world and the meanings they give to their experiences. The adoption of a qualitative strategy, though necessary to answer the research question, is not however unproblematic. Qualitative researchers generally eschew the positivist epistemological position associated with quantitative social research. Crudely put, a positivist approach applies a natural science model to the study of social phenomena. It emphasises the researcher's neutrality in the gathering of data that can be measured and used to test theories. The quality of the research is judged by the reliability or consistency of the concepts employed and whether the results can be replicated in a different setting and generalised beyond the specific research context. In contrast, qualitative researchers seek to understand the social world from the perspective of those studied, to interpret those perspectives in order to develop concepts and theories.[43] This focus on context and subjectivity makes it difficult to assess the credibility of qualitative research using the criteria described above and leaves such studies open to the charge that they lack rigour.[44]

To counter such allegations in this study, issues of reliability and validity were addressed in three main ways, drawing upon quality assessment criteria advanced by Yardley (2000). First, the research process is described in the thesis with sufficient detail to try to achieve maximum transparency. Similarly, an attempt is made to describe the research environment so that readers can assess the reasonableness of the findings. With this in mind, the steps taken to find participants are described in some detail, as are the interviews themselves,

[43] This too is a rather crude summary. As mentioned earlier, a number of epistemologies fall within the qualitative research rubric. However, they can be characterised as broadly interpretive.
[44] There is considerable debate on the degree to which evaluation criteria associated with quantitative studies can be applied to qualitative studies. For an overview, see Bryman 2012, 389-398.

their location, atmosphere and so on. In addition, individual participants are sketched in short vignettes and biographical information about the researcher is provided.[45] Second, a reflexive approach was adopted whereby difficulties and questions encountered in the project, and the manner in which they were addressed, are acknowledged to enable the reader to evaluate the researcher's approach, strategies and findings. Third, other data, notably empirical research on the media and the analysis of legal and policy documents, were used to explore the validity of provisional findings from the data gathered from the research participants. However, the idea of triangulation as an ultimate verification of findings was approached with caution: that a concept may be supported by different data sources does not mean that a 'truth' has been uncovered.[46] Yet when triangulation is understood as an integral part of data collection and analysis, that is, as an on-going process of identifying, checking and testing nascent findings, it is built into good research practice (Miles et al 2013, 299-300). The aggregation of data therefore not only adds 'breadth, complexity, richness and depth' to the study (Denzin and Lincoln 2011, 5) but also provides multiple perspectives on the subject while recognising the absence of a single unified reality.

2.3.3 Legal analysis

The socio-legal and qualitative research approaches that characterise this project mean that historical, political and socio-economic context was highly relevant to the consideration of legal and policy texts. As Prior observes (2011, 96), when considering documentary resources, an interest in their content is:

> *'rarely sufficient to 'understand what is … 'going on', and that it is always necessary to make some kind of connection between what might be called the 'word' and the 'world'...'*

This approach was adopted when examining domestic law regulating immigration. Both historical and contemporary immigration laws were investigated with reference to the context in which they were produced and applied to identify key factors that contributed to their

[45] As discussed later, participants were given pseudonyms and any identifying information changed to preserve their anonymity. Personal information about the researcher is given in the Introduction to this thesis.
[46] For discussion of these issues, see Silverman 2011, 369-371.

development and to consider how they influenced and continue to influence the construction of migrants' self-identities and migrant social identities in the UK.[47]

Legal analysis was conducted by examining various sources of immigration law including statute, subordinate legislation, case law, rules, orders, regulations and Home Office guidance and by reference to legal commentary, both academic and more practice-oriented. Though the researcher was familiar with the law implementing the high-skilled immigration route from working as an immigration lawyer, tracking the detail of the HSMP and T1G from the visa's inception in 2002 to its effective demise in 2011 proved challenging. As will be discussed in chapter 4, the substantive and procedural law governing the high-skilled route was frequently revised, mainly through changes to the Immigration Rules (HC 395) and to Home Office guidance documents. As noted in this thesis' Introduction, a consolidated up to date version of HC 395 together with individual amendments to the Rules dating back to 1994 is available on the Home Office website (www.gov.uk/government/organisations/uk-visas-and-immigration). Tracing changes to the high-skilled visa implemented by amendments to the Rules was therefore a laborious but relatively straightforward process of tracking and reviewing the various amendments. However, although current Home Office guidance documents are available from the website, past versions of such guidance are routinely deleted. As for much of the high-skilled visa's existence, key provisions, notably eligibility criteria, were detailed in relevant Home Office guidance and *not* in the Rules, the researcher made requests under the Freedom of Information Act 2000 (FOI) to the Home Office for the disclosure of historical guidance documents. Once received, these documents were examined and cross-referenced with the Immigration Rules, the researcher's notes from practice, legal commentary and the Immigration Law Practitioners' Association's (ILPA) archive of Home Office material (which became available in the latter part of this research project) to piece together a full record of the numerous iterations of the HSMP and T1G. [48]

The researcher also subscribed to a number of immigration law advice organisations, primarily ILPA and Free Movement, to keep abreast of legal and policy developments in immigration law.

[47] The historical development of UK immigration law and policy is discussed in chapter 3. Law pertinent to the discussion of the high-skilled immigration route is discussed in chapter 4.
[48] A summary of the changes to the substantive criteria governing eligibility for the HSMP and T1G can be found at appendices 4.2 and 4.3.

2.3.4 Statistical analysis

Notwithstanding the qualitative approach to the research, migration-related statistics produced by the British government are used in the study to place highly skilled migrants' individual experiences within the broader UK migration context. In addition, as the numbers of migrants entering the UK were and remain a dominant theme in political and public debate on migration, the inclusion of such data is necessary to engage with that debate. [49]

However, as the Office for National Statistics (ONS) has noted, 'there is no single, comprehensive statistical data source that captures international migrant flows or numbers of migrants in the UK' (Ker et al 2007, 1). In the 2000-2010 period, the focus of this research, the relevant statistical reports included:

- the Labour Force Survey (LFS), a quarterly sample survey of households living at private addresses in the UK;
- the Annual Population Survey (APS) which provides population estimates at local authority level including information on nationality and country of birth;
- the International Passenger Survey (IPS) which provides information about people entering and leaving the UK;
- Long Term International Migration estimates (LTIM), an annual report on flows of people intending to stay for twelve months or longer in the UK;
- Migration Statistics Quarterly Report (MSQR), a quarterly summary of migration trends; and
- Home Office Immigration Statistics comprising details of migration related administrative data such as the types and numbers of visas issued and to whom they were issued.

While use has been made of these datasets, the different publications cannot be treated as elements of a seamless whole. The datasets cover different information, different time periods and sometimes use different definitions. For example, some of the reports look at the make-up of the population at a point in time (the APS and LFS) while others look at flows to and from the UK (the IPS, LTIM, and MSQR). Importantly, concepts are not employed in the same way across all the reports, notably the definition of a migrant as opposed to say, a visitor. Care was therefore exercised when using the different datasets, especially when seeking to make comparisons between them. As far as possible, a single dataset was used

[49] The quantification of migration is discussed in chapters 5 and 6.

to investigate or support a specific issue. In the thesis, it is clearly noted which dataset was used and why it was selected as the most appropriate. To the degree that more than one source was used, any disparity in the approach of the data sources, as well as steps taken to address such disparities, are noted. Although the reliability of available migration-related data has been widely questioned and called 'seriously inadequate' (House of Lords Select Committee on Economic Affairs 2008, vol 1, para 9), the various reports nevertheless allow for the mapping of broad migration trends.[50]

The focus of this chapter now turns to the methods employed to research the two empirical elements of this study, namely the case study of highly skilled migrants and the press depiction of such migrants. The qualitative approach outlined above necessarily influenced the selection of methods. As Banakar and Travers (2005, 27) put it:

> *'it is impossible to understand the issue of method, without also considering how methods are used by different theoretical traditions.'*

Although the case study and media study seek to illuminate different aspects of the central research question - law's impact of the construction of highly skilled migrant identity - the studies were based on separate data sources. As such, different methods were used to construct two distinct samples or datasets and then to extract and analyse the different data obtained. The research tools (and their epistemological underpinnings) employed in connection with the media research are therefore considered first followed by discussion of those used in respect of the case study.

2.4 Empirical research methods: the press

The reason for undertaking media analysis in this study was to identify and understand how the national news media depicted and constructed the figure of the highly skilled migrant. Before considering the analytical strategy adopted to best address this central substantive question, two related issues require explanation.

First, the analysis of the media's portrayal of the highly skilled migrant includes the media depiction of the skilled migrant. As discussed later in this chapter, in the timeframe selected for the study of media coverage of highly skilled migrants and migration (the calendar year

[50] For discussion of concerns over UK migration data, see UK Statistics Authority 2009.

2010), there were too few news stories on highly skilled migrants/migration alone to generate a productive dataset. The dataset (or corpus as it is termed here) was therefore constructed using the words skilled migrant and their variants as the main search terms. Although the legal category of highly skilled migrant is distinct from that of skilled migrant, a Tier 1 migrant as opposed to a Tier 2 migrant to use the language of the PBS, as will be discussed later, the popular understanding and policy treatment of each was sufficiently close over the relevant time period for the media coverage of both to be considered as one narrative.

The second issue requiring explanation is the selection of national newspapers as the sole source of mediated news data in this study. In view of the declining circulation of national print media from the early 1960s into the 2000s (Hargreaves and Thomas cited in Threadgold 2009, 3; University of Leicester 2010, 9), it is reasonable to ask why television and radio coverage of skilled migrants/migration and/or such news generated by exclusively digital media platforms, for example Facebook and BuzzFeed, do not form at least part of the corpus. If time and resources were unlimited then other media forms could have been usefully studied here. Yet the impracticality of constructing and analysing a dataset comprising multiple news sources, while relevant, was not the sole reason for the focus on the national press.[51] Two other factors are pertinent. First, the focus on the national press as source material allowed for a comparison with the Allen and Blinder study (2013) which drew on similar data sources and overlaps with this study's timeframe. Second, while other news media forms had become prevalent by 2010, national newspapers, both paper and digital editions, remained key influential news sources especially on migration issues where there are 'strong indicators that ... [they] have the greatest impact' on public opinion (Duffy and Rowden 2005, 3). The national press was then the most appropriate and complete resource to investigate the research question.

To investigate the media construction of the skilled migrant, an analytical strategy was adopted combining a focus on language with reference to news stories' economic, political, and social context with and quantitative and qualitative analytical techniques. This approach to data analysis is referred to here as 'content analysis', an ostensibly straightforward term which, however, requires explanation.

[51] Archives such as the BFI National Archive and the British Library Broadcast News Service provide access to a large body of television and radio content. However, the archives do not comprise a full record of all broadcast programmes (the British Library's archive begins in May 2010) nor can they be easily and accurately searched thematically. A search for news coverage of skilled migrants and migration within a given period would therefore be an extremely time consuming task beyond the resources of a single researcher. In contrast, complete digitalised national newspaper databases are widely available and are used by many researchers to construct accurate and comprehensive media datasets.

2.4.1 Content analysis: definitional issues

Content analysis is frequently defined by the nature of the analytical method used, that is, it is either qualitative content analysis (sometimes called ethnographic or thematic content analysis) or quantitative content analysis, also confusingly referred to as simply 'content analysis' (Macnamara 2005; Bryman 2012; Neuendorf 2016). To understand the double-sided quality of content analysis, it is helpful to start with Berelson's classic 1952 definition (cited in Hansen et al 1998, 94):

> *'Content analysis is a research technique for the objective, systematic, and quantitative description of the manifest content of communication.'*

Content analysis as defined by Berelson is clearly a quantitative method. It aims to identify, quantify and describe 'manifest' or explicit characteristics of a text in an objective and systematic manner. Of course, scholars have taken issue with the positivist criterion of objectivity: as Van den Bulck memorably comments, '[t]o claim objectivity is to ignore the entire hegemonic process of meaning production' (2002, 80). More specifically and prosaically, content analysis requires human input with its concomitant subjective values and perspectives throughout the research process: from the construction of the research question, to the selection of the type and scope of data to be examined, the determination of the significance of certain words, images, symbols etc.[52] (Hansen et al 1998, 95). The reference to objectivity in Berelson's early formulation has been subsequently downplayed or interpreted to place emphasis instead on content analysis' 'systematic' quality which provides for the analysis of data in a transparent, consistent, replicable and reliable way (Hansen et al 1998, Van den Bulck 2002; Franzosi 2008; Bryman 2012).

Leaving aside the objectivity issue, content analysis as a purely quantitative analytical method remains problematic which, although recognised in the literature, merits brief discussion here.[53] The two key issues concern first, assumptions underlying the quantification of a text's content and second, the line between description and interpretation.

[52] Notwithstanding Berelson's definition, the application of content analysis is not restricted to media, text or printed material: see Bryman 2012, 290 for examples of the diverse subject matter to which content analysis has been applied. Content analysis is however mainly associated with mass media research (Shoemaker and Reese 1996; Macnamara 2005; Bryman 2012). Given media is the subject matter under examination in this study, 'content' is generally referred to as text and words rather than the more generic 'data'.

[53] For discussion of these issues, see Hansen et al 1998, 94-98; Van den Bulck 2002, 78-84 and Krippendorf 2004,18-25.

Looking at the first issue, the quantification of words or symbols in a text is predicated upon the assumption that the prevalence or otherwise of a given term or combination of terms has meaning. While word frequencies and clusters may hold intrinsic meaning for linguistics experts, they do not, on their own, elucidate or explain a text. Take, for example, Gabrielatos and Baker's (2008) comprehensive study of media depiction of refugees, asylum seekers, migrants and immigrants in the British press. Notwithstanding the researchers' development of sophisticated algorithms to undertake complex linguistic analysis, the study's findings on linguistic choices were also contextualised and extracts of text selected for close critical qualitative analysis (Baker et al 2008). In the case of content analysis, findings of repeated words or phrases may suggest that a particular topic features heavily in a text but as Sumner warns, 'it is not the significance of repetition that is important but rather the repetition of significance' (1979, 69 cited in Hansen et al 1998, 96). Without reference then to at the very least the intratextual framing of the terms under examination, it is difficult to see how content analysis can produce findings that are anything other than descriptive. Of course, a descriptive conclusion may answer the research question posed, say, for example, if the aim of a study is to map trends over time of language used in the media to discuss a given subject. Yet, if the study's objective is to understand how and why a subject is constructed through text and how it is both informed by and informs external factors, such as policy developments and public attitudes, as is the case here, a descriptive 'analysis' would be of little interest to anyone other than perhaps a would-be cryptologist. This leads us to the second issue: to what degree can meaning be inferred from a study's findings if content analysis is defined as purely quantitative?

As Franzosi (2008) notes, later iterations of content analysis moved away from the descriptive quality present in Berelson's definition and instead highlighted its inferential nature. Definitions by both Holsti (14 cited in Bryman 2012, 289) and Krippendorf (2004, 18), though different, describe content analysis as, inter alia, a research technique for making 'inferences' from texts or data. With the notable exception of Neuendorf (2016), much of the literature takes the view that content analysis can and does extend to the interpretation of data. For example, Shoemaker and Reese (1996) categorise approaches to the analysis of media content as 'behavioural' or 'humanist', the former associated with quantitative methods and the latter with qualitative. However, they understand content analysis as encompassing both the quantification and interpretation of mediated text. For Bryman, content analysis is a quantitative method yet one which allows for the thematic categorisation of data, 'to probe beneath the surface' as he puts it, which, he concedes, requires 'a more interpretative approach' (2012, 297). Bryman's view that text can have hidden themes, that is, non-manifest content, which can be discerned through content

analysis, relies upon the notion of 'latent content'. Drawing on Holsti's definition of content analysis, in which reference to 'manifest' content is absent, latent content refers to the unobserved and deeper meanings of language in a given text (Bryman 2012; Neuendorf 2016). Such an approach clearly necessitates an interpretive reading of a text and therefore blurs the lines between the quantitative and qualitative analysis of content.

While this tendency to see the quantitative and qualitative elements of content analysis as separate can be traced back to the fundamental quantitative/qualitative dichotomy in social science research, the lack of detail and transparency in the process of qualitative thematic analysis in many studies (Bryman 2012) is likely a contributing factor. There are, however, a number of comprehensive British studies on the media portrayal of refugees, asylum seekers and migrants undertaken in the 2000s that detail how they operationalised their thematic or content analysis of the data (Buchanan et al 2003; Smart et al 2006 and 2007; Gross et al 2007). Although these studies quantified, interpreted and evaluated their datasets, none of them distinguished between quantitative and qualitative content analysis. As Macnamara (2005, 5) observes, media researchers tend to view quantitative and qualitative content analysis 'as part of a continuum of analysing texts to determine their likely meanings'. This flexible notion of content analysis allows for a more rounded approach to the data with the shortcomings of purely quantitative analytical methods countered by qualitative methods and vice versa. To paraphrase Blinder and Allen (2015, 13), quantitative methods generally require qualitative analysis to give insight into how words are used in context. Conceiving therefore content analysis as a spectrum encompassing both quantitative and qualitative methods enables the researcher to undertake interpretive analysis grounded in a systematic and replicable quantitative analysis of the text in question. This was the approach adopted in this study.

2.4.2 Counting, critiquing and contextualising

Notwithstanding the limitations discussed above of a purely quantitative analysis of text, as Shoemaker and Reese note, repetitive patterns in the media often have significance: 'they make it more likely that content represents some underlying cultural pattern' (1996, 29). As a first step then in this study, in order to ascertain whether any ideas or topics *appeared* to be particularly prevalent within the text, an automated search was made of the entire corpus for the five most frequently used words. The wildcard character was used to capture word variants with terms comprising fewer than three letters excluded so as to eliminate common grammatical terms such as on, and, the etc. The results of this initial research, which

revealed a preoccupation with numbers and thereby echoed previous studies on media coverage of migrants and migration, informed the direction of further word and thematic searches and the development of the coding framework.

When constructing the coding framework (provided at appendix 2.1), the prescriptive deductive approach advocated by Bryman (2012) and Neuendorf (2016), whereby coding categories must be formulated a priori, was eschewed. Instead, a two-pronged approach was taken. Reference was made to the coding system devised by Buchanan et al (2003) and subsequently modified by Gross et al (2007) in their analyses of the media depiction of refugees and asylum seekers.[54] The incorporation of key Buchanan/Gross codes into the framework served a number of linked objectives. First, it enabled language employed to construct the (highly) skilled migrant to be compared with that used in respect of the figure of asylum seeker and refugee. Second, it allowed for the testing of Allen and Blinder's (2013) finding that there were two distinct media narratives, one for asylum seekers and refugees and another for migrants not claiming sanctuary. Third, it allowed for the potential refinement of Allen and Blinder's finding: if the data supported Allen and Blinder's conclusion, is there a skilled migrant narrative, one that is recognisably different from that of the migrant in general? The coding framework was also inductive in that codes were based on specific linguistic formulations and emerging themes identified as present within or absent from the text. While this more subjective approach is susceptible to researcher bias, it allowed the data to speak and in doing so, countered any rigid or unresponsive readings of the text that could be engendered by the imposition of predetermined codes.

By highlighting specific words in the corpus such as flood and illegal, both Buchanan/Gross codes, and codes that emerged from the data, for example, talent and loophole, the approach focused on language. As discussed earlier, it is the patterns in the choices of words that suggest their potential significance which may or may not be confirmed through closer analysis of the words in context. For example, in this study, the repeated use in some newspapers of the term so-called was noted in close proximity to the words highly skilled migrants and skilled migrants. These word combinations were then considered in context, in the narrow intratextual sense and with reference to wider external factors such as the type of newspaper in which the terms featured, the events that triggered the relevant news stories, the news stories' time line, contemporaneous immigration policy developments and/or political speeches etc. The view was then formed that such language signaled a sceptical view of highly skilled and skilled migrants' professional attributes and capabilities and that

[54] The Buchanan 2003 coding framework was also used with modifications in the media and migration studies undertaken by Smart et al (2006 and 2007).

the frequent deployment of so-called challenged the legitimacy of their presence and fed into the dominant popular clamour for more restrictive immigration policies.

In addition to analysing the text or content, key social, economic and political factors and events in 2010 were considered (see chapter 5) not only to understand and contextualize the media coverage of skilled migration but also to identify any potential alternative narratives absent from that coverage. The approach to the analysis of key public events drew on Philo et al's (2013) methodological framework in their study of national broadcast and print media's depiction of refugees and asylum seekers. Underpinning the approach is the assumption that in public and political debate on migration, as in any contested area of popular discourse, a range of voices and perspectives vie for attention. As Philo et al note, these voices frequently reflect different political positions. In the case of migration discourse in the UK however, the scope of arguments deployed is very narrow and not necessarily aligned to a particular political outlook. For example, in their study of the national press in 2006 and 2013, Balch and Balabanova (2016) found what they term the communitarian justification dominated the debate on intra-EU migration across the political spectrum. In view then of the restricted range of perspectives underpinning press coverage of migration issues together with the convergent nature of political parties' immigration policies, when analysing skilled migration news stories, what is absent can be as important as what is present.

2.4.3 Constructing the corpus

The collection of national newspaper articles amassed for this research project, that is, the corpus, comprised one hundred and five items. The corpus was built by searching the Nexis UK national newspaper database which includes on-line editions for press items which mentioned skill! and migr! within five words of each other for the period 1 January to 31 December 2010. The use of an exclamation mark allowed for a search of all skill! and migr! stemmed words, including, for example, combinations such as migrants with skills, skilled migrants and skilled migration. With highly similar articles (as determined by Nexis UK) excluded, the data trawl produced one hundred and thirty-eight items. From this total, a further thirty-three items were manually discarded for duplication and irrelevance, that is, articles on emigration and migration to countries other than the UK. A small number of readers' letters were also excluded on the basis that they were neither news nor editorial comment. This left a corpus of one hundred and five news and editorial articles from national newspapers spanning the mainstream media's political spectrum (listed at appendix 2.2).

The approach to constructing the corpus follows in method, if not in scope, that developed by Gabrielatos and Baker (2008) and replicated by Allen and Blinder (2013) in their examinations of the portrayal of different migrant groups in the British national press from 1996 to 2005 and 2010 to 2012 respectively. For each of these two studies, newspaper data were collated through automated searches for any of the following terms: refugee!, asylum!, immigr!, migrant! (referred to collectively as RASIM - the main focus of the studies) and a number of other terms which yielded datasets of one hundred and seventy-five thousand newspaper items for 1996-2005 (Gabrielatos and Baker 2008, 9) and fifty-eight thousand such items for 2010-12 (Allen undated, para 2.2.1). The studies' aims in building datasets in this way were to try to eliminate bias in the selection of data and to ensure that the data were both comprehensive and representative of the subject under examination (Gabrielatos and Baker 2008; Allen and Blinder 2013), aims shared by this study albeit on a much smaller scale. That said, human input, with its inescapable subjectivity, was required to select the search terms used to construct the corpus and as Balch and Balabanova (2016) note, that choice is important.

When first considering how to build a dataset or corpus to best answer the research questions posed in this study, the time frame of 2010 to 2012 was selected at the outset so as to coincide with the period covered by Allen and Blinder. This was to allow for the media coverage of highly skilled migrants to be considered and analysed with reference to Allen and Blinder's findings on the media depiction of migrants more generally. The time frame was in fact limited to 2010 for reasons discussed later. Looking then first of all at the choice of search terms, various words and variations thereof were explored, including international worker/employee/cadre, internationally (skilled) mobile staff, foreign skilled worker, and even expatriate. However, perhaps with the exception of foreign skilled worker, these terms were insufficiently accurate or insufficiently generic: either they didn't capture both the skilled *and* migratory elements in their description or if they did, they were overly prescriptive, cumbersome and not routinely used in print media.[55] Importantly, none of these terms reflected a person's visa category or immigration status, a detail essential to the examination of the media's contribution to the construction of the social identity of the highly skilled migrant. As it was vital that the data be part of contemporary public discourse on migration, this objective was best achieved through using the search terms migrant and migration. A search of the Nexis UK newspaper database was therefore undertaken initially using the terms high! skill! and migra! within five words of each other. This yielded just seventy-two

[55] The term expatriate is also widely recognised as referring to exclusively white or western (invariably both) migrants. See, for example, DeWolf 2014 and Koutonin 2015.

press items from January 1 2010 to December 31 2012. As the results were deemed too few and too thinly spread for any lexical or thematic patterns to emerge for fruitful analysis, a further search was undertaken using skill! and migra!, terms which also captured references to high-skilled migrants/migration. While the category of skilled migrant is different in law from that of highly skilled migrant, the popular understanding and policy treatment of each is sufficiently close for media coverage of both to be considered together. The search produced in excess of three hundred items over the same three-year period.

There is, of course, no template for a productive media dataset: its size and content depend on the research questions, analytical methods, resources available etc. For example, Philo et al's (2013) comparative study of the construction of refugees and asylum seekers in the British media in 2006 and 2011 was based, inter alia, on two national newspaper datasets comprising one hundred and sixty-one news items in total. The datasets' content was manually chosen for its coverage of specific migration-related events in May 2006 and June 2011.[56] Other studies, such as Greenslade (2005) and Innes (2010), constructed much smaller samples comprising some fifteen or so news stories selected as representative snapshots of British national newspapers' reporting of migrants. In all three studies cited, the print media datasets were subject to detailed qualitative analysis, a labour intensive process and as such, undoubtedly placed limitations on the quantity of data examined. Upon reflection then, it was determined that the three hundred plus news items the skill! and migra! search produced were too many for a single researcher to qualitatively analyse within the framework of a PhD in which the national press is but one source of data. Rather than selecting articles for inclusion in the dataset for reasons such as their apparent representativeness and thereby injecting further subjectivity into the corpus, the timeframe was shortened. To determine the relevant period, reference was made to external factors including the timing of public events, the social, economic and political contexts, and the number of articles falling within each of the three years. The timeframe of January to December 2010 was selected for the reasons set out below.

First, over one third of the three hundred or so articles fell within 2010. The one hundred and five articles seemed a manageable number to analyse qualitatively but large enough to self-identify any thematic and word patterns that emerged over the year. Second, and as will be discussed later, while asylum and then migration were cast as problems throughout the

[56] The 2006 migration-related event was the resignation of Charles Clarke as Home Secretary following reports that foreign nationals had been not been deported from the UK upon completion of their prison sentences. The 2011 event or rather, events, were the announcement of the clearance of the backlog of asylum cases by the Home Office and the opening of a new asylum removal centre, Morton Hall, in Lincolnshire. Data sources for all events included the newspaper datasets mentioned above plus fifteen television news reports within the same periods and interviews with print and television journalists.

2000s and, by the latter half of the decade featured highly in the electorate's concerns, in 2010, skilled migration rose to prominence as a political issue. This was in large part due to the Conservative party's general election manifesto promise to reduce migration though the introduction of an annual limit on the number of non-EU economic migrants admitted to the country (2010, 21). However, the immigration cap, as it became known, could be imposed on skilled and high skilled migration routes to the UK only as low-skilled routes had been broadly closed to non-EU nationals since the beginning of 2008[57] and EU nationals, of course, enjoyed free movement rights. In 2010 then, the media, which had until then largely omitted skilled and highly skilled migrants from its coverage and migration (Gabrielatos and Baker 2008), began to construct highly skilled migrants as a social category. From the perspective of this study, 2010 was a good year to map the media's use of language and its thematic approaches to the depiction of highly skilled migrants and as noted earlier, would also benefit from and build on Allen and Blinder's findings on the media depiction of migrants more generally (2013). Finally, the vast majority of this study's participants were living and working in the UK in 2010 with or having previously held a highly skilled migrant visa. They lived therefore through this period of heightened political and media interest in high-skilled and skilled migration which undoubtedly informed the environment in which they went about their day-to-day lives in this country.

In constructing the corpus in this way, the guiding principles were that the method be transparent and the resulting data viable. With regard to data viability, the aim was for the corpus' scope and content to strike an appropriate balance: compact enough for a single researcher to closely and critically analyse and broad enough to trace the development of themes and arguments. As to transparency, while the steps taken to build the corpus have been explained at some length here, the Nexis UK newspaper database itself is an arguably opaque source: as a commercial service, the criteria and methods Nexis UK uses to select texts for inclusion and to reject texts for duplication are not disclosed (Allen and Blinder 2013, 25). Nexis UK is nevertheless a comprehensive and user-friendly digital archive that has frequently provided source material for migration related media research, not only for the Allen and Blinder and Gabrielatos and Baker studies, but also for other recent studies (Allen and Blinder 2013; Vicol and Allen 2014; Hoops et al 2015; Balch and Balabanova 2016).[58]

[57] The two main short-term temporary work visas, the Sectors Based Scheme (SBS) and the Seasonal Agricultural Workers Scheme (SAWS), were open to Bulgarian and Romanian nationals only from 2007 and 2008 respectively (MAC 2013, 9). Both routes were closed when Bulgarians and Romanians gained full access to the British labour market on 1 January 2014 (Harper 2013).

[58] Note that studies sometimes refer to Nexis UK as LexisNexis, its global brand name.

2.5 Empirical research methods: the participants

Turning now to the individuals who participated in this study, as will be clear from the discussion below, the study's qualitative strategy guided the selection and use of the research methods, namely interviews. Grounded theory also informed the approach to data collection, data analysis and theory generation.

2.5.1 A grounded theory approach

Since the publication of Glaser and Strauss' *The Discovery of Grounded Theory* in 1967, the definition, scope and philosophical orientation of grounded theory have been widely contested. While Glaser's disagreement over Strauss' later revisions of grounded theory may have polarised the debate, the 1967 text itself invites discussion. Conceived as 'a beginning venture' in grounded theory, Glaser and Strauss aimed 'to keep the discussion open-minded, to stimulate rather than freeze thinking about this topic' (1967, 1,9). It is not proposed to rehearse here the various disputes and divergences in grounded theory debate as these are well covered in the literature (Bryman 2012, 567-574; Charmaz 2006; Charmaz and Bryant 2011). However, argument over the epistemological underpinnings of grounded theory and the related question of the extent and timing of the literature review are considered as these issues are directly relevant to this project. The fundamental question in the debate over grounded theory's epistemology is whether, in its early incarnations, it is rooted in positivism.[59] If it is, then modern or 'constructivist' grounded theory with its interpretive orientation is a distinct development of the original version (Charmaz 2006; Charmaz and Bryant 2011). For proponents of this modern interpretation, the emphasis in early grounded theory on discovering theory from data and the passive role of the researcher in that process, are strongly indicative of its positivist leanings. Further, the advice in early texts against reviewing relevant literature until much later in the research process (so that concepts emerging from the data are not 'contaminated' (Glaser and Strauss 1967, 37) is also cited as evidence of grounded theory's positivism (Charmaz 2006, 178).[60] Bryman, however, expresses ambivalence towards grounded theory's underlying philosophy though concedes that in early texts, the researcher is largely absent from the process of generating knowledge or theory (2012,11).

[59] Early grounded theory refers to texts by Glaser and Strauss 1967; Glaser 1978; Strauss and Corbin 1998.
[60] Although a leading exponent of constructivist grounded theory, Charmaz does not regard grounded theory as tied to a single epistemology.

This debate is highly relevant to this study because 'philosophical issues tend to be interwoven with discussions about the nature and capacities of different methods of research' (Bryman 1988,1).[61] While research methods have a large degree of autonomy, they are not simply neutral tools for the collection of data (Devine and Heath 1999; Silverman 2011, 3-12). In respect of this study, an interpretive stance informs not only the research strategy, but also the selection of research method. It follows that if early grounded theory is associated with a positivist methodology, its use would be at odds with the epistemological underpinnings of this study. It is therefore the later, constructivist version of grounded theory that was used in this project. For the purposes of this research then grounded theory is understood as a set of flexible guidelines which underpin the collection and analysis of data from which the researcher constructs theory. The work 'culminates in a 'grounded theory' or an abstract understanding of the studied experience' (Charmaz 2006, 4).

As knowledge is understood as a process of construction, influenced by the research context and the researcher's experiences and perspectives, there appears to be little reason to delay the literature review. However, Charmaz warns that an early engagement with the literature may stifle the development of the researcher's own ideas when analysing empirical data (2006,165-168). On the other hand, without knowledge of the subject area, it is difficult to see how a research proposal could be formulated. In his exploration of the place of the literature review in grounded theory research, Dunne (2011,111-124) concludes that an early review can be beneficial. Not only does it provide 'a cogent rationale for a study' it can also help to operationalise concepts that are of particular significance to the study. In view of the benefits of an early and continuing review of the literature, this project followed Dunne's approach. When formulating the initial research questions, a review of migration literature and recent migration law and policy was conducted to identify how existing research had approached high-skilled migration. An engagement with relevant literature continued prior to data collection as familiarity with concepts such as race were essential to understanding the context in which the research questions were posed. At the data collection and analysis stage, to counter the risks identified by Charmaz of imposing preconceived concepts onto nascent ideas constructed from the data, a reflexive approach was adopted: awareness of the researcher's impact on the research is a key part of the qualitative research process. The role of reflexivity in the specific context of data analysis is discussed later in this chapter.

[61] Bryman provides a detailed overview of the debate about the epistemological associations, or absence of, between research method and strategy. See too Bryman 1984, 75-92.

2.5.2 Collection of empirical data: sampling

A purposive approach was taken to sampling, that is, people were selected with the research goals in mind. The research questions therefore acted as a set of guidelines 'as to what categories of people … need to be the focus of attention and therefore sampled' (Bryman 2012, 416). As noted in this thesis' Introduction, highly skilled migrants are defined as individuals who hold or have held high-skilled visa status in the UK. As explained in the Introduction, using the high-skilled visa criteria to define these migrants not only clearly delineates a specific group of people, but also suggests the creation of an identity, the significance of which is key to the research question. As a dimension of the research question concerns the significance or otherwise of race in the construction of highly skilled migrant identity, the study focused on nationals of two countries, Australia and India. Although the two countries share a Commonwealth history, each has a dominant or majority population which in Australia is identified as white and in India as non-white. A comparison of these two national groups allowed for an exploration of the role of race in shaping their self-identities. Furthermore, as shown in appendix 2.3, Australian and Indian nationals accounted for a substantial proportion of individuals to whom HSMP and T1G entry visas were issued. It seemed therefore likely that there would be a sizeable number of Australian and Indian highly skilled migrants living in the London area (where the researcher is based).[62]

It is acknowledged that this method of sampling is not representative of the highly skilled migrant population as a whole. It follows then that the study's findings are unlikely to be as generalisable to the entire UK-based highly skilled migrant population as they might be if probability sampling were used. However, although a sample population can be and has been clearly defined in this research, the use of probability sampling was not feasible for a number of reasons. First, it would have been extremely difficult to create a sampling frame from which to draw a representative sample. There is no official public register of individuals in the UK with highly skilled migrant status or, indeed, any other migrant status.[63] As discussed earlier, although government agencies provide statistical data on the HSMP and T1G visa categories, they do not include information about the size or make up of the population of highly skilled migrants who have lived or currently live in the UK. Even if it were

[62] New Zealand and Pakistani highly skilled migrants were originally to be included in the sample. Before recruitment started, their inclusion was rejected on the basis that the sample would be overly complicated and it was thought a sufficient number of Australian and Indian participants would be found.

[63] In 2016, the then Home Secretary announced proposals to compel employers to publish the proportion of international staff employed. The proposal was subsequently dropped amid concerns that it would be tantamount to naming and shaming employers and the migrants concerned (Syal 2016).

possible to know how a representative sample could be constituted, it would have been too complex and time consuming for a single researcher to identify and interview a sufficient number of highly skilled migrants for such a sampling technique to be used. Furthermore, as Arber (2001) notes, the best sampling strategy is often purposive when the research aims to generate a greater understanding of social processes (as is the case here) with the representativeness of the sample of lesser importance.

A threefold approach was taken to recruit research participants. First of all, a page was created on SurveyMonkey for the project. The webpage provided information about the research project and asked individuals who were interested in taking part to complete a very short on-line questionnaire designed to check they met the sample criteria. If they did, and expressed an interest in being interviewed, they were asked to provide their contact details. Once the SurveyMonkey webpage was set up, an advertisement was posted in the forums of immigrationboards.com, a leading UK-based migration messageboard. The advertisement targeted Australian and Indian highly skilled migrants and directed interested individuals to the project's SurveyMonkey webpage. Though this initially created traffic to the webpage, no participants were forthcoming. Due to both the poor response and the difficulties in keeping the advertisement prominent in the forums, this recruitment method was abandoned. Immigration lawyers known personally to the researcher and friends were also asked to circulate an email introducing the research project.[64] As with the immigrationboards.com advertisement, the email contained a link to the project's SurveyMonkey page. This approach identified four individuals who, when contacted by the researcher, indicated they were happy to be interviewed. Though only one of the individuals met all the sample criteria, for reasons discussed later, all four were nevertheless interviewed.

Alongside contacting friends and lawyers, the LinkedIn social network was used to solicit potential participants directly. The researcher joined multiple LinkedIn groups relating to specific professional interests such as law, finance, information technology and so on which then made available group members' LinkedIn profiles. Searches were undertaken of each LinkedIn group to identify members who lived in the UK and who had obtained degrees from Indian or Australian universities, the aim being to create a list of LinkedIn profiles of UK-based university-educated Indians and Australians. The selected LinkedIn profiles were then scrutinised and if it appeared that an individual might meet the sample criteria, a brief

[64] These initial contacts, that is, friends and lawyers, played no further part in the recruitment process as responses to the advertisements were made directly to the researcher. In other words, they acted as conduits for publicising the research project rather than as gatekeepers to potential participants.

message was sent via the LinkedIn platform. The message introduced the researcher and provided the link to the project's SurveyMonkey page as outlined above. [65]

Grounded theory principles provide that data collection stops only when new data 'no longer sparks theoretical insights' and theoretical saturation has been reached (Charmaz, 2006, 113). In terms of sample size, ideally, an approach guided by the concept of theoretical saturation would not be bounded by a pre-set lower or upper limit on the number of participants. As Mason notes, in qualitative research, 'the sample size becomes irrelevant as the quality of data is the measurement of its value' (2010, 14). However, two factors moderated this ideal approach from the outset. First, for a comparative analysis of the experiences of Australian and Indian highly skilled migrants to be undertaken required a reasonable number of Australian and Indian nationals within the sample. Second, in view of what is practical within the time and resource constraints of this study, the recruitment of participants could not go on indefinitely. A third unexpected issue also influenced the size of the sample, namely, the difficulty in finding participants.

The entire process (recruitment, interviewing, transcription of interviews and initial analysis) took place over the course of 2014. It had been envisaged that the recruitment of participants would snowball, that is, participants would introduce other individuals willing to participate in the research. This snowballing technique is often associated with empirical migration studies (see, for example, Cornelius 1982; Coutin 2000) due to the importance of nationality-based social networks among some migrant groups. In this study, however, referrals turned out to be rare, in part perhaps because highly skilled migrants possess language skills and social capital and do not therefore generally look to community networks for help and support (Iredale 2001). The majority of the participants were in fact recruited through direct approaches via LinkedIn.

On a personal level, the act of contacting people proved surprisingly challenging. Although as a lawyer, contacting and interviewing strangers had been a normal day-to-day task, lacking the persona of a professional engaged in work, these acts felt different. Stripped of professional armour, the researcher felt vulnerable to judgment and rejection and though the process became easier, it remained an effort of will to search LinkedIn for potential participants and to make first contact. In view of the overall difficulties in recruiting participants, the decision was taken to relax marginal elements of the sample criteria.

[65] Documents and text used in the recruitment process are provided at appendix 2.4. This includes: details of the webpage's wording and that of the on-line screening questionnaire together with sample emails, the advertisement text and sample text in emails sent to friends, lawyers and LinkedIn group members.

Through the SurveyMonkey screening questionnaire, individuals were rejected who originally relocated to the UK with their existing overseas employer and who had lived in the UK with highly skilled migrant status for fewer than two years. The rationale for these criteria was to exclude people whose relocation to the UK was primarily driven by their employer and to ensure that participants had experience of living in the UK. However, when such potential participants presented themselves via direct contact, they were interviewed on the basis that their experiences were both relevant and of value to the research.

As noted above, although representation was not the basis of this study's approach to sampling, attempts were made to secure a degree of heterogeneity among the participants. When recruiting participants through LinkedIn, it became clear that potentially qualified Indian men far outnumbered Indian women. As noted in chapter 1, although the number of highly skilled migrant women has increased in OECD countries over the past two decades or so, women are less likely than men to use high-skilled immigration routes due to institutionalised gender roles and outcomes (Boucher 2007 and 2016; IOM and OECD 2014). To try to ascertain whether the apparent lack of Indian highly skilled migrant women was reflective of the make-up of the group as a whole in the UK, statistical data and reports on migration were considered. Data cited by Kofman (2014, 122) from a 2007 European Migration Network report provide that around twenty-five percent of those granted leave under the HSMP from 2002 to 2007 were women. More up to date data on the gender balance of highly skilled migrants in the UK and in particular, in respect of Indian nationals, could not however be found.[66]

An FOI request was therefore submitted to the Home Office requesting a breakdown of HSMP and T1G visas issued by gender. The request was refused on the grounds that retrieval of the data would exceed the prescribed cost limit. The researcher also contacted the Home Office Migration Statistics team to ascertain the availability of data on the number of visas issued by immigration category and gender but they too were unable to provide the data requested. Indeed, the lack of and need for gender-disaggregated data on the highly skilled is frequently noted in the literature (see, for example, Kofman 2014; Boucher 2016). From the limited data available and in light of the broader picture of the gendered nature of high-skilled immigration routes, it seems likely that far fewer Indian women than men were

[66] For example, Cooper et al 2014 provide a breakdown of visas issued in broad immigration categories - work, family and so on - by gender. The lack of detail does not illuminate the gender composition of the high-skilled category in the UK.

issued high-skilled visas under the HSMP and/or T1G which in turn could account for their comparative scarcity when seeking participants.[67]

Conscious of the absence of Indian women in the sample, every effort was made to contact individuals identified in the LinkedIn groups who looked as if they might be Indian women with previous or current highly skilled migrant status. Notwithstanding these attempts, only one Indian woman responded and indicated that she might be willing to participate in the study. Despite exchanging a number of emails with her, it was not possible to arrange a meeting and so no Indian women were interviewed. In the end, a total of twenty-four individuals were interviewed: nine Australian women, four Australian men and eleven Indian men. The participants' profiles (duly anonymised) are set out in table 2.1 below.

Table 2.1: profile of interview participants

Participant	*Gender*	*Age*	*Citizenship at interview*	*Education*	*Work sector*	*Personal relationships*
Anil	M	31-40	Overseas Citizenship of India (OCI)*/ British	Bachelor's degree: India	Information Technology (IT)	Married
Anjal	M	31-40	OCI/British	Bachelor's degree: India Post-graduate qualification: India and UK	IT	Married 1 child
Anne	F	31-40	Australian	Bachelor's degree: Australia	Engineering	Co-habiting
Bijal	M	21-30	Indian	Bachelor's degree: India	IT	Married
David	M	41-50	Australian	Bachelor's degree: Australia Post-graduate qualification: Australia	Finance	Married 2 children
Deborah	F	41-50	Australian/ British	Bachelor's degree: Australia Post-graduate qualification: Australia	Finance	Married 2 children

[67] This is supported by data on the gender composition of UK work permits issued in the IT sector. From 1995 to 2004, women accounted for around thirteen per cent of such permits (Raghuram cited in Kofman 2012, 68).

Ellie	F	31-40	Australian	Bachelor's degree: Australia	Business management	Single
Gopan	M	41-50	OCI/British	Bachelor's degree: India	Finance	Married
Hari	M	31-40	OCI/British	Bachelor's degree: India Post-graduate qualification: UK	IT	Single
Ian	M	31-40	Australian/ British	Bachelor's degree: Australia Post-graduate qualification: Australia and UK	Finance	Co-habiting
Jenny	F	31-40	Australian	Bachelor's degree: Australia	Arts	Married 1 child
John	M	21-30	Australian	Bachelor's degree: Australia Post-graduate qualification: UK	Finance	Co-habiting
Karan	M	31-40	OCI/ British	Bachelor's degree: India Post-graduate qualification: UK	Business management	Single
Kate	F	31-40	Australian/ New Zealand	Bachelor's degree: Australia Post-graduate qualification: Australia and UK	Law	Single
Louise	F	41-50	Australian	Bachelor's degree: Australia	Business management	Married
Michelle	F	31-40	Australian	Bachelor's degree: Australia Post-graduate qualification: Australia	Law	Single
Rajesh	M	31-40	Indian	Bachelor's degree: India Post-graduate qualification: UK	IT	Single
Ravi	M	31-40	Indian	Bachelor's degree: India Post-graduate qualification: India	IT	Married
Salim	M	31-40	Indian	Bachelor's degree: India Post-graduate	Finance	Married

				qualification: UK		
Sarah	F	31-40	Australian/ British	Bachelor's degree: Australia Post-graduate qualification: Australia	Law	Single
Shiv	M	31-40	OCI/British	Bachelor's degree: India Post-graduate qualification: India	IT	Married 1 child
Tania	F	31-40	Australian	Bachelor's degree: Australia	Engineering	Married 2 children
Thomas	M	31-40	Australian	Bachelor's degree: Australia	Business management	Single
Zain	M	31-40	Indian	Bachelor's degree: India	Engineering	Married 1 child

** Indian citizenship law does not permit dual nationality. Indian citizens who acquire citizenship of another country may apply to register as an OIC Cardholder. OIC Cardholders may live and work in India but have no voting rights nor may they hold senior political or judicial posts (Ministry of Home Affairs).*

As can be seen from table 2.1, many participants had acquired settled status or had become British citizens at the time of their interview. This bias in the sample towards individuals with resident status or who were naturalised British citizens can likely be attributable to the closure of the high-skilled route to most new applicants in December 2010 (HC 698). By 2014, when the interviews took place, it seems probable that the majority of highly skilled migrants still living in the UK would have long since qualified for ILR or British citizenship or would be eligible for one or the other in the near future.

2.5.3 Collection of empirical data: interviews

Data were collected through interviews. More specifically, loosely structured one-to-one interviews were conducted to encourage an in-depth and reflective exploration of individuals' experiences. A topic guide was prepared listing broad interview subject areas.[68] The aim of the guide was not to dictate the content of the interviews but to assist the researcher to direct their flow.

[68] A copy is provided at appendix 2.5.

That said, it was also anticipated that three distinct and sometimes competing objectives would additionally contribute to shaping the interviews' content. First, each participant had a great deal of freedom to decide what was talked about. This interpretive approach was fundamental to the research: it was the individual participant's experiences that were of overriding interest. Second, and in conflict with the approach outlined above, was the need to include certain topics in all interviews. This was to enable comparisons to be drawn between the two national groups. Third, the grounded theory approach meant that data collection and therefore the interview process was iterative, that is, the researcher sought to stress certain topics over others to test and explore ideas emerging from data already collected. As Charmaz observes, grounded theory and interviewing are a good match in that interviews can be 'open-ended yet directed, shaped yet emergent' (Charmaz 2006, 25).

As Kvale and Brinkmann note, there is nothing 'mysterious' about the interview as a research method: '[a]n interview is a conversation that has a structure and purpose' (2009, 3). This structured and purposive form of conversation, however free flowing, cannot be assumed to be a dialogue between equals: power relations are as inherent in interviews as they are in everyday social interactions. For Kvale and Brinkmann, there is a clear power asymmetry between the researcher and the participant: the researcher initiates the interview and poses questions to enable the participant to provide information for the researcher to interpret and report (2009, 33-34).[69] While recognising this propensity for a hierarchical researcher-participant relationship, in this study, the power dynamic was understood as more fluid and contextual. Following Gubrium and Holstein, the view of participants as 'repositories of experiential knowledge' (2011, 151) was rejected in favour of a collaborative approach or 'active interviewing' which recognised the participants' agency in the construction of information based on experience (Gubrium and Holstein 2011, 149-166). As the interview was regarded as a joint enterprise, the researcher-participant relationship aimed to be based on reciprocity.

To foster transparency, at the start of each interview, the researcher talked about her background including her previous work as a lawyer - stressing that she had no connections to any law firm (or the Home Office) - and how her interest in the research topic came about. Though it was made clear to participants that they were free to ask questions of the researcher at any time during the interview, it was also emphasised that it was their experiences and their voice that were of interest. While there were a number of prepared questions, participants were expressly told that they were free to talk about, or not talk

[69] For a feminist critique of the power asymmetry inherent in structured interviews, see Oakley 1981.

about, subjects raised. Indeed, participants were also told they could have copies of the interview recording and/or transcript and could make further comment should they wish to. A number of participants requested and were given the recording of their interview but none wished to change or add anything to what they had said. This collaborative approach, perhaps aided by the fact that the researcher had worked outside academia and was of a similar age to many of the participants, hopefully helped to counter any power imbalance implicit in the researcher-participant relationship.

As noted earlier, contextual factors play a significant role in the construction of power relations in research interviews. Context here refers not only to the specific circumstances of each interview but also to situating the interview in its broader context. In qualitative migration research, this broader context includes racial, linguistic and/or cultural differences between the researcher and participant which are generally regarded as key shapers of researcher-participant relations (Ganga and Scott 2006; Sheridan and Storch 2009). Put another way, it is the intercultural, cross-cultural or cross-national element of the research that characterises (and problematises) the researcher's relationship with the participant. [70] While it is accepted that this research is intercultural, defined as 'face-to-face communication between people from different national cultures' (Gudykunst and Mody 2001, ix) and that there were linguistic, racial and cultural differences between the researcher and the participants, in practice, these factors did not seem to play a significant role in the researcher/participant relationship. This is not to minimise the importance of such differences in social interaction, but rather to acknowledge this project's interpretive perspective and the attributes of the participants.

With regard to the interpretive approach, as discussed above, as the interview process was collaborative, relations between the researcher and participant were not understood as 'preset by culture' but rather, established through on-going interaction (Ryen 2002, 346). As to participants' attributes, on the basis of their nationalities and high-skilled status, it was assumed that they were educated English language speakers, an assumption that proved to be accurate.[71] This is not to suggest that linguistic differences or misunderstandings cannot

[70] Gudykunst and Mody (2001, ix) define intercultural communication as 'face-to-face communication between people from different national cultures' and cross-cultural communication as 'the comparison of face-to-face communication across cultures', that is, comparing communication processes used by nationals of one country with those used by nationals of another country. However, the terms intercultural and cross-cultural are not always used consistently in the literature and difficulties in delineating their scope and meaning is frequently noted. See, for example, Ryen 2002.

[71] English is a language used for official purposes in India (https://www.india.gov.in/india-glance/profile) and is the main language in Australia (http://www.abs.gov.au). Although the specific HSMP/T1G qualifying criteria were adjusted numerous times between 2002 and 2010, they were broadly focused on individuals' education, skilled work experience, earnings and from 2006, English language ability.

occur among Anglophones from different parts of the world: a study conducted in the UK in the 1970s found misinterpretation occurred in communication between British English and Indian English speakers (Gumperz cited in Ryen 2002). In this study, while no major language difficulties were anticipated nor perceived by the researcher, participants' different cultural backgrounds necessarily informed how they communicated. The researcher was therefore alert not only to the nuances of language but also to participants' hesitations, silences and non-verbal communication.

Racial identity was a further contextualising factor in this study. As Dunbar et al imply (2002, 281), the researcher cannot be blind to a person's perceived racial identity:

> *'Race … has traditionally struck so many negative social and historical resonances that interviewers must always be vigilant for the ways it becomes insinuated into all aspects of identity and self-presentation.'*

Participants' race was not however the only or even an over-riding factor in shaping researcher-participant relations. The interview dynamic was not 'preset' by participants' racial identity. However, to ignore it in this study would have been to remove the interview and thus the participants' experiences from the wider context of historically racialised immigration policies in the UK. Although it was neither possible nor practicable to take up Dunbar et al's (2002) suggestion that a white interviewer of non-white people undertake ethnographic fieldwork to understand the participants' lived experiences, the researcher was (and is) familiar with discourse on race and migration. Further, and from a more practical standpoint, from working as an immigration lawyer, the researcher had substantial experience of interviewing people from a range of different national, social and cultural backgrounds. Though conscious that this experience could bring preformed ideas about, for example, an individual's nationality or profession to the interview process, it also meant the researcher was aware of and hopefully sensitive to factors that commonly informed individuals' experiences of migrating to the UK.

Three of the interviews were conducted via Skype. Although the audio delay took some getting used to, the use of Skype seemed to promote a relaxed environment - the three participants all Skyped from home. All other interviews took place in person; in participants' offices or in nearby cafés and on one occasion, sitting on a park bench. But for the park bench, which proved to be a perfect setting for an interview on a warm summer's day, the interview spaces were often a compromise. Though office meeting rooms were quiet and private, participants who were interviewed away from their work place generally seemed

more relaxed and expansive. Indeed, most interviews lasted for about an hour, some were longer, around the two-hour mark, with the few lasting forty minutes or so tending to have taken place in the participant's workplace. Yet a café setting was not without problems. As the interviews were usually at lunchtime or in the early evening, the cafés were invariably crowded and noisy. That said, an empty café is not always quiet - during one interview, the music became so loud that it was necessary to find an alternative venue.

Interview location aside, it was sometimes difficult to balance the competing aims of the interviews noted earlier. In other words, it was not always possible to steer the conversation towards topics the researcher wished to explore and at the same time, prioritise the participant's voice. Looking back, perhaps the researcher could have been more directive but a more researcher-led structure would have risked affecting the interview dynamic. So, though the exact topics discussed varied from interview to interview, they generally included participants' experiences of the immigration process and of living and working in the UK, their perceptions of themselves and other migrants, their professional, social and familial networks, their future plans and so on.

In sum, it is hoped that the transparent and inclusive approach to interviewing described earlier, notwithstanding the sometime rather trying locations, fostered an environment in which the researcher and participant developed a relationship based on trust and equality. The researcher was sensitive to the particular context of each interview but contextual factors were not understood to be determinative of the interview dynamic. Finally on the subject of interviews, Gubrium and Holstein's critique of the interview process is relevant here. They argue that the interview has become so pervasive that, notwithstanding national and linguistic differences, the format produces a standardised account (2002, 29-30). The interview was a familiar form of social interaction to the participants: they had all been interviewed, for example, when applying for jobs in the UK. Rather than a hindrance however, this familiarity with the interview format meant that those participating were relaxed and seemed happy to reflect and talk about their experiences.

2.5.4 Data analysis

A hallmark of grounded theory is the iterative nature of the data collection and analysis process. Early and on-going analysis of data is therefore necessary to enable the researcher to pursue, test and develop ideas when gathering new data. In the present study, this meant that interview recordings were transcribed as soon as possible after the interview. As

transcription is a time consuming process, the recordings were transcribed by a professional transcription agency. Although some researchers prefer to transcribe recordings themselves to gain familiarity with the data, the use of a transcription service in this study enabled the researcher to read transcripts (while listening to the recording) and begin analysis shortly after the interview itself when the experience was still fresh.

Most forms of qualitative analysis involve two main components: sorting or categorising the data, and refining the data categories to create themes and/or concepts. Put another way, the focus shifts from what research participants have said or done (the particular) to an exploration and understanding of the broader themes and meanings (the abstract) (Rapley 2011, 276). Notwithstanding its vocabulary of coding, memo-writing and constant comparison, the basic process of analysis used in grounded theory is similar to that described above. However, grounded theory provides guidelines[72] that assisted the analysis of data in this study. As a first step, using NVivo, the computer assisted data analysis software, the data were broken down into thematic segments. Each segment was coded, that is, they were labeled so as to manage, categorise and identify the themes emerging from the data. The codes were revised, developed and refined through constant comparison. This comparison was both inward looking in that codes were compared with other codes and data, and outward looking: themes and ideas were considered against those found in existing literature and immigration law and policy. Throughout this process, interesting and potentially significant insights and ideas were noted.[73]

Notwithstanding the iterative nature of the analysis outlined above, the researcher nevertheless had to grapple with a mass of material, a point often noted in the literature (see, for example, Devine and Heath 1999). Although the NVivo software was helpful in the early stages of analysis in that it facilitated the sorting and labeling of data, in the latter stages, the researcher found it easier to work with paper copies of the coded data. Perhaps as a non-digital native, the researcher needed the data in a tangible paper form on which annotations, arrows, circles and diagrams could be scribbled.

The aim of the analysis process was to construct theory fully supported by or grounded in the data. From the interpretive perspective adopted in this study, theory 'rests on the theorist's interpretation of the studied phenomenon' (Charmaz 2006,126). As noted, the researcher must be aware of their own biases and influences on the research. When analysing data in this study, the risks of researcher bias seemed most likely to occur in three

[72] The reference here is to constructivist grounded theory guidelines. See Charmaz 2006.
[73] The final coding framework can be found at appendix 2.6.

distinct ways. First, an affinity could develop with all or some of the research participants. As Bryman observes (2012, 39), it can become difficult to separate the researcher's stance from that of certain participants. Conversely, if the researcher develops a negative view of particular participants, this too can affect the interpretation of their data. Second, and as discussed earlier, an acceptance of concepts articulated in existing literature may discourage the researcher from developing new ideas from the empirical data and third, the early championing of one concept may be at the expense of developing other competing and possibly more compelling concepts.

It is of course impossible to eliminate all bias, not least because the intrusion of the researcher's own views and assumptions may not be recognised (Corbin and Strauss 2008, 80). However, by adopting a questioning attitude towards the analysis and a willingness to re-examine and re-evaluate data in this study the researcher sought to counter the type of risks of bias identified above.

2.6 Ethics

The volume of ethical codes, each one adopted and promoted by a different professional association, is testament to the importance of ethical compliance in the conduct of research today.[74] The research framework for this study was drafted with reference to ethics guidelines issued by King's College London (KCL), the Socio-Legal Studies Association (SLSA) and the Economic and Social Research Council (ESRC). KCL's Law Research Ethics Panel granted ethical approval for this study.

While efforts were made to comply with the ethical codes cited above, the qualitative nature of the project militated against an over-reliance on such guidelines when considering potential ethical issues. The ethical standards laid down in the codes are useful but are unlikely by themselves to be able to resolve or anticipate the ethical complexities of the social world. What constitutes an ethical issue when conducting research is not then determined by abstract principles alone: the researcher's own values, those of the research community, and the specific and wider research context are all key factors (Kvale and Brinkmann (2009, 76-79). This 'thick ethical description' Kvale and Brinkmann 2009, 78) does not mean that ethical guidelines should be abandoned, but rather, stresses the constructed nature of ethical dilemmas and the need for a multidimensional approach to

[74] Ryen (2011, 417) notes the proliferation of ethical statements and codes in social science research.

their identification, negotiation and resolution. This contingent approach to ethics informed this study.

Ryen (2011, 418) identifies three broad principles commonly found in western ethical guidelines: consent, confidentiality and trust. Although the three principles overlap, for example, covertly recording an interview without a participant's knowledge would be both a failure to obtain their consent (even if they had consented to being interviewed), and a breach of trust between the researcher and the participant, they each informed the ethical framework of this study.

2.6.1 Consent

The principle of consent is understood in both the ethics codes and within the research community as informed consent (SLSA 2009, principle 7; ESRC core principle). For Bryman, informed consent means that potential research participants 'should be given as much information as might be needed to make an informed decision about whether or not they wish to participate in a study' (2012, 138).

In this study, potential participants were informed about the aims and nature of the research, the person conducting the research and how data provided would be used and stored. It was also clearly stated to potential participants that their participation was entirely voluntary and that they were free to withdraw from the study and stop their information from being used.[75] This information was given prior to completion of the SurveyMonkey screening questionnaire, in email correspondence arranging the interview and again at the start of the interview itself. At the interview, participants were asked to read and complete a consent form confirming their consent to the interview including the use of their data in the study and the recording and subsequent transcription of the interview by a transcription agency.[76]

As noted above, in view of prospective participants' nationalities and visa status, it seemed highly unlikely that they would have difficulties in understanding information provided about

[75] Participants were able to stop further use of their data until the end of the interview phase. Each participant was given a date after which withdrawal would generally no longer be possible. This was to take account of the practical difficulties in having to extract and exclude a participant's data once the writing up phase of the research had begun. A request to withdraw data at a later date would undoubtedly have raised ethical issues about the scope of participants' consent. Rather than refusing to consider such a request, a contingent approach to ethics would have required consideration of the participant's specific circumstances, the context of the request and have sought to balance the research interests against those of the participant. In the event, no participants wished to withdraw their data from the study.

[76] A copy of the consent form can be found at appendix 2.7.

the study, a presumption that informed the design of the tools employed in the research. Nevertheless, the SLSA code provides that it is the researcher's responsibility to explain 'in terms meaningful to participants' what the research is about (para 7.1). With this in mind, rather than assuming that participants had read the project information already provided, at the start of each interview, the nature of the research, use of data etc. was outlined and any queries discussed.

Much of the ethical debate around consent centres on the collection of empirical data through covert participant observation. The debate stated in bald terms is whether covert participant observation can be ethical when it makes people unwitting research participants and thereby fails to adhere to the principle of consent.[77] In this study, as information gathering was confined to what participants said in interview, the issue of consent was not problematic. Participants were informed about the nature of the study and only then, if they wished, consented to take part. The question however posed by Miller and Bell, ''informed' consent – to what?' reveals that even when consent has been obtained to take part in overt research, ethical considerations remain pertinent (2002, 64-65). Consent then was understood as active and contingent and was therefore open to renegotiation throughout the research project (Miller and Bell 2002, 67).

As detailed earlier, the intention was to conduct flexible and relatively unstructured interviews. The participant determined to a large degree the direction of their interview and so it was not possible to give participants precise information as to what would be discussed. Thought was however given as to whether participants would find the interviews an emotional or stressful experience. Discussing experiences of living in the UK, when compared, say, to recalling experiences of living with a chronic illness, may not, on the face of it, be considered a sensitive subject.[78] Nevertheless, the possibility that some participants could find the interview uncomfortable could not be ignored. Although participants were free to terminate their interview (which would effectively revoke their consent), this would not be a satisfactory resolution from the point of view of the participant or the researcher (SLSA para 6.4; ESRC core principle). To minimise the risk of upsetting participants or unintentionally misleading them as to the nature of the interview, the researcher aimed to conduct the interviews in an open and non-judgmental way which was both alert and sensitive to participants' behaviour. For example, although no-one seemed upset or unhappy during their interview, a couple of participants seemed reluctant to discuss their experiences of discrimination and were not pressed to do so.

[77] See for example Bulmer 2001, 55-56.
[78] Charmaz has published extensively on identity issues for the chronically ill. See for example, Charmaz 1993.

2.6.2 Confidentiality

In the context of qualitative social research, the principle of confidentiality is closely allied to ideas of privacy and anonymity. An ethical bargain is struck between the researcher and the participant: in return for giving information, the participant is assured that their data will not be disclosed in a way that could identify them. In other words, the data remain confidential because they are anonymised and so participants' privacy is protected.

That appropriate measures must be taken to protect participants' data is not only an established ethical standard but also, in respect of personal data, a legal requirement under the Data Protection Act 1998 (DPA). However, and as the SLSA's code recognises, 'researchers should not give unrealistic guarantees of confidentiality and anonymity' (para 8.1.2). Despite best efforts, there is always a risk that research data may be misplaced or circumstances may require the disclosure of a participant's data to an external authority to comply with legal obligations (SLSA para 8.1.2). Fortunately, no such issues arose during this research project.

It follows then that the principle of confidentiality requires the proper formatting and storage of data both during the research project and after its completion. In this study, two separate steps were taken to ensure confidentiality, security and anonymisation. Regarding confidentiality and security, all physical data were and continue to be held securely, namely in a locked cabinet on secure premises. Electronic data, including recordings of interviews, transcripts and so on are stored as encrypted files using the AES encryption standard with a 256-bit key. As to anonymity, as far as possible, data were collected in a way to protect participants' identities, for example, participants were encouraged to refrain from mentioning identifying details such as their name or place of work during their interviews. Inevitably some of them did but such details were changed as necessary when material was used in the thesis. Further, all participants' names were changed with original information stored securely as detailed above. The interview recordings were provided to the transcription agency without amendment which meant that the agency had access to non-anonymised data. However, confidentially was assured as the agency is based in the UK and therefore bound by UK data protection laws as well as being under a contractual duty of confidentiality. All file transfers to and from the agency were made using an encrypted service, namely Dropbox.

2.6.3 Trust

The SLSA's code provides that '[w]henever possible, research relationships should be characterised by trust' (para 6.2). Ryen also acknowledges the importance of trust in field relations in terms of a responsibility towards both participants and towards other researchers, that is, a responsibility not to spoil the field (2011, 419-420). In this study, a relationship with participants based on trust was understood to be not only ethically desirable but also instrumentally necessary. The open and transparent approach to participants adopted in this study recognised the interactive nature of the research relationship. As discussed previously, the researcher aimed to create a relaxed interview environment to encourage a dialogical process in which the participant engaged with the researcher to (re)construct their experiences. To achieve this aim required a reciprocal relationship of trust: trust that the participant would reflect on their experiences in a meaningful way and trust that the researcher would understand and interpret those experiences without losing the participant's voice.

2.7 Conclusion

This chapter has detailed the methodology applied to the investigation of the role of law in the construction of highly skilled migrant identity. It has considered the epistemological underpinnings of the research, the methods used and the way in which both the media research and the participant interviews were conducted. It has also addressed the practical and ethical issues that arose while conducting the research. Having then described how the research was carried out, the next three chapters consider the legal and political contexts that frame the empirical data which are presented and considered in chapters 6, 7 and 8 of the thesis.

Chapter 3

The presence of the past: the evolution of immigration law and policy in the United Kingdom 1900-2000

3.1 Introduction

'So we beat on, boats against the current, borne back ceaselessly into the past.'

Fitzgerald [1928] 1964, 188

When considering the role of law in shaping the self-identity of highly skilled migrants, it is not enough to examine recent laws and practices that shape their experiences, thoughts and feelings in the here and now. To do so would be to ignore the significance of historical laws and institutions in constructing categories of people which, though not fixed, hold meaning and give shape to contemporary social relations. To understand fully the construction of the highly skilled migrant as a social identity (and, in turn, its interaction with such migrants' self-perception), we need to trace the development of immigration law in the UK to see how it has categorised and continues to categorise people and in doing so, produces social identities that appear normal and natural today (Collier et al 1995).

On 29 October 2001, David Blunkett, newly appointed as Home Secretary following Labour's second successive election victory, promised to 'fundamentally overhaul our asylum and immigration policy' (HC Deb 29 October 2001). Over the next decade, Parliament engaged in what Spencer calls 'legislative hyperactivity' (2011, 251): the HSMP, launched in early 2002, was one of a series of measures to attract migrant workers to the UK (Home Office 2002). Although for some scholars this 'relatively open' (Finch and Goodhart 2010, 5) approach to economic migration signaled a decisive policy shift (Layton-Henry 2004, 299; Somerville 2007, 29; Goodhart 2013, 20), others have noted the continuity of themes running through domestic immigration law and policy (Clayton 2008, 5-6; Schuster and Solomos 2004). Of course, no policy initiative exists in historic isolation: even on a purely practical level, the implementation of new laws and policies is constrained by the laws, practices and institutions already in place (Spencer 2011, 22; Hansen 2000, 32-34). Yet, even noting such constraints on the one hand and politicians' liking for hyperbole or spin on the other, it is difficult to see how the immigration initiatives implemented in the 2000s can be considered a decisive change and at the same time repeat the themes of previous laws

and policies. Indeed, this apparent paradox is present but largely unexplored in Spencer's account of immigration policy over the same period (2011).[79]

As will be argued in chapter 4, the development of UK immigration law in the 2000s did not constitute a fundamental policy shift. Rather, developments such as the high-skilled route are better understood as a refashioning of previous laws, practices and strategies which were and remain informed by notions of difference and the make-up of the British nation. This chapter then, with its focus on immigration law in the twentieth century, lays the groundwork for the examination of law governing the high-skilled route and its impact on highly skilled migrants in the chapters that follow. Divided into two parts, the chapter first interrogates the concepts of assimilability and racialisation in order to establish a conceptual framework within which to examine how ideas about race and nation have informed UK immigration law and policy over time. In the second part, the development of immigration law in the UK over the twentieth century is considered. The aim here is not to provide a detailed chronology of immigration law over this hundred-year period but to locate laws crucial to the construction of migrant social identities within their historical context in order to make visible the degree to which the notion of assimilability and processes of racialisation were formative principles.

3.2 The race-immigration nexus

> *'There's a long vein of chalk-mysticism buried in English nature-culture ... loving landscapes like this involves a kind of history that concerns itself with purity, a sense of deep time and blood-belonging...'*
>
> Macdonald 2014, 260

In the early twenty-first century, as noted in chapter 1, states' use of comprehensive criteria to select migrants has become commonplace. From Kazakhstan to Kenya, Canada to China, would-be migrants must satisfy ever more detailed criteria enshrined in national laws to gain entry to state territory. [80] Faced with these increasingly complex entry requirements

[79] For example, Spencer observes that themes in historical immigration policies resonate with post-2000 policy (2011, 22-23) but then goes on to describe the economic migration initiatives of the 2000s as fundamental and transforming policy changes (85, 252) and characterises policy on high-skilled migration as a paradigm shift (256).

[80] Details of the various criteria can be found on the states' government websites: http://www.immigration.go.ke/Information.html; http://www.mfa.gov.kz/en/london/content-view/apply-for-visa-in-the-uk; http://www.cic.gc.ca/english/index.asp; http://www.chinese-embassy.org.uk/eng/visa/qzxz/.

and visa processes, referred to collectively by the IOM (2011) as 'orderly migration' and 'migration management', it is easy to lose sight of immigration law's fundamentally separative and nation building functions (Kibria et al 2014). Put more starkly, immigration law enables a state to determine who can and cannot enter its territory and as a consequence, given that residence in state territory is generally required for formal membership of its national community, it is deeply implicated in shaping a state's future demos.[81] Indeed, Dauvergne's memorable phrase that immigration law does the 'dirty work' of citizenship law (2007, 495) recognises the former's significance in shaping the future composition of the state's population or people.

In its function as nation-builder, immigration law does not, however, only look to the future. For the state to operate effectively, in addition to supplementing its population through selective recruitment, it must also bind its people fractured internally along lines of class, gender, age and so on by inculcating a collective identity (Balibar 1991; Wallerstein 1991). In constructing its national identity, the state draws on 'inventions of pastness' (Wallerstein 1991, 78), that is, a fictive history in which its people are represented as if they were descended from common stock, or as Balibar (1991, 96) puts it, '*as if* they formed a natural community, possessing of itself an identity of origins, culture, and interests' [emphasis in the original]. This artifice of common origins is then central to the state's historical and on-going construction of national character and the illusion of a cohesive national population (Goldberg 2002). Given that immigration law is instrumental in nation building, it is not surprising that it should look to both the future and to the past. Immigration law looks forward in that it shapes the future physical make-up of the state's population (King 2002; Haney López 2006) while at the same time looks back to a national identity based on the population's imagined common origins in its formulation of entry criteria. In this way, the state's power to include and exclude, expressed through immigration law, seeks to reproduce a people characterised by a mythical homogeneity (Wimmer and Glick Schiller 2002).[82]

[81] At the time of writing, seven states operate 'citizenship by investment programmes' which enable wealthy individuals to obtain citizenship without completing a period of residence. In such cases, citizenship law simply takes on immigration law's functions. See Long (2014, 47-55) for discussion of the commoditisation of citizenship through such programmes.

[82] British identity has always been a composite identity (Cohen 1994). Similarly, Holmes observes that the British are 'the most ethnically composite of the Europeans' (1988, 3). Recent archeological studies have shown that communities originating from eastern Europe and Scandinavia were well established in the UK in the Middle Ages (Fleming 2015) and recent DNA testing has revealed that early Britons had dark skin (Devlin 2018). The constructed nature of the past is also perfectly illustrated by the erasure of the British royal family's German-sounding names in 1917: the House of Saxe-Coburg-Gotha became the House of Windsor and Battenberg became Mountbatten. As Higgins and Leps observe, '[f]or the sovereign to be "at home," truly representative of his people, King George V had to change his name' (1998,13).

By highlighting immigration law's role in nation building, we begin to see how the idea of assimilability plays a part in the formulation of immigration policy over time. This is not to suggest that race was or is the sole determinant of admission to and potential membership of the state. Other axes of difference such as gender and class, sometimes as distinct divisions and sometimes overlapping with each other and with race to make new formations of difference, also inform the nation building process (Omi and Winant 2014). Indeed, it is arguable that in view of the proliferation of immigration policies such as the HSMP and T1G targeting the highly skilled discussed in chapter 1, class and wealth have become key criteria for admission to (western) states in the twenty-first century. This issue, that is, whether class and/or wealth rather than race have become primary measures of migrants' perceived assimilability and desirability, is considered further in the discussion of the law implementing the UK's high-skilled policy in chapter 4 of this thesis. In the historical development of immigration law and policy in the UK however, the significance of race cannot be ignored (Miles and Phizacklea 1984; Dummett and Nicol 1990; Carter et al 1996; Paul 1997; Spencer 1997). Before considering this legal history, it is necessary to consider how the terms assimilability and racialisation are understood in this thesis.

3.2.1 'Most of us prefer our own kind':[83] *assimilability, race and racialisation*

The notion of assimilability as conceived in this thesis is not to be confused with assimilation. Although the concepts are related, assimilability is not an attempt to explain why some groups are more assimilated than others (see, for example, Portes and Zhou 1993). Drawing however on the IOM's definition of assimilation (2011, 11), the concept of assimilability is understood here as migrants' perceived ability to mix in, fit with or to 'become broadly indistinguishable from' citizens of the destination state. In this definition, the terms 'integrate' and 'integration' are not used in view of their association with policy initiatives taken in the UK in the 2000s.[84] Words similar in meaning to 'fit', such as 'blend' or 'become like' are though used interchangeably and are intentionally loose - migrants' perceived assimilability is not fixed to any particular trait, quality or value system. However, that the ability to mix is *perceived* is crucial to the meaning of assimilability. As we are concerned with immigration laws and policies that regulate admission to the state, that is, they seek to control the entry of would-be migrants who have yet to set foot in state territory, the concept of assimilability

[83] The phrase is taken from Goodhart's (2004) essay in which he asserts that a diverse national population erodes the cultural cohesion of a national community.

[84] Following riots in several cities in Northern England in 2001, the government commissioned an investigation which resulted in the publication of a series of reports, the first in 2001 (Home Office 2001a). The White Paper, *Secure Borders, Safe Haven* (Home Office 2002a), built on earlier findings and set out a more interventionist approach towards integration or 'community cohesion' beginning with more onerous citizenship requirements.

rests on the *perception* of migrants' capacity to blend with the national population (FitzGerald et al 2017). In short, assimilability is effectively a criterion of legal admission.

While helpful as a mooring point, this definition of assimilability in the abstract raises an important question: how is the national population defined with whom migrants must be deemed able to blend? To engage fully with this issue requires an examination of 'assimilability in action', grounded in the specifics of time and space. In other words, the national community's identity, though informed by the myth of common origins, is not fixed but dependent on specific historical, political, socio-economic and cultural conditions (Cohen 1994). This issue is then better addressed with reference to the particular circumstances of legislative and policy developments considered in the second part of this chapter. Before doing so, however, the concept of racialisation is considered below.

Racialisation is a widely used concept in contemporary studies of race-related topics across a number of different disciplines (Murji and Solomos 2005; Rattansi 2007; Song 2014). Although there is no single definition, there is broad consensus that the usefulness of racialisation as a concept lies in its emphasis on the processes that construct ideas about race (Reeves 1983; Miles 1989; Murji and Solomos 2005; Silverstein 2005). Further, in its focus on the making and ascription of racial meanings to different groups, the notion of racialisation necessarily challenges any acceptance or legitimation of race as a scientifically valid method of categorising humanity. For some, however, this rather loose understanding of racialisation, which is nevertheless succinctly defined by Miles as 'a representational process of defining an Other (usually, but not exclusively) somatically' (1989, 75) is problematic. Banton, for example, argues that to claim racialisation, there must be explicit mention of race in a given text otherwise scholars are effectively second guessing the meaning of the language used (2002, 55). In contrast, for Reeves, racialisation (or to use his term, 'asynchronic deracialisation') can occur when political discourse is on the face of it race neutral yet racial inequalities persist and are perceived to do so in a state nominally committed to racial and other forms of equality (1983). Notwithstanding the rather cumbersome terminology, Reeves' broader concept is preferred here and informs the analysis of immigration law in this chapter and of media debate on migration and the representation of highly skilled migrants in chapter 6.

Difficulties over the concept of racialisation however mostly stem from its 'parasitic' relationship with race (Rattansi 2005, 272). Although the idea of race is contested both theoretically and politically (Solomos and Back 1996), the scope of what may fall within the

term race is pertinent to the discussion of racialisation.[85] The issue is essentially a definitional question concerning the degree to which ethnicity and culture are considered distinct from race. Although in the Victorian era, both popular and scientific understandings of race conflated biological and cultural concepts, historically, physical traits and notably skin colour, were regarded as the most important markers of racial difference (Bolt 1971). As will be discussed, the idea of skin pigmentation as racial boundary has both informed and been reinforced by British immigration policy from the nineteenth century onwards although even historically, the construction of racial difference was not always predicated on somatic difference. In more recent formulations of race however, the focus of perceived difference has shifted from physical characteristics to culture (Barker 1981; Balibar 1991a; Song 2014). In this conceptualisation of race, the articulation of difference includes attributes such as dress, cultural practices, language, religion and nationality which have in the past been associated with the concept of ethnicity (Fenton 2010).[86] In contemporary notions of race, which reflect the understanding here, perceived or actual cultural attributes, which in the popular imagination are often signaled by physical traits, are essentialised as innate and immutable qualities that differentiate and categorise people (Reeves 1993; Carter et al 1996).

These shifting ideas about race highlight its constructed nature (Kibria et al 2014, 3): markers of racial difference and the meanings ascribed to them are not fixed but mutable, contingent on historically specific local conditions (Smith 1989; Omi 2001). In other words, racial categories and their imputed meanings are constructed through processes of racialisation in a given space and time. Notwithstanding race's inherent instability, it is important however to recall its salience in structuring western societies and social relations both historically and today (Smith 1989; Omi 2001; Haney López 2006; Kibria et al 2014). As Smith puts it, (1989, 7) 'racial differentiation is not just a theory but also a practice'.

Having then clarified how assimilability and processes of racialisation are understood in this thesis, we return to the earlier question, namely, with what or with whom must migrants be deemed able to blend? As previously noted, though informed by the myth of common origins, the question of national identity is also an empirical question: the answer depends on the particularities of a given context. Nevertheless, and as will be demonstrated in the

[85] Some scholars such as Spencer refuse to use the terms 'race' or 'racially' at all on the basis that their persistent use supports the view that people can be categorised by a biological notion of race (1997, xv). Though conscious of reifying race (Miles 1989, 73), it is difficult to discuss how immigration law contributed to the creation and maintenance of difference in the UK without reference to the term.

[86] Fenton notes the overlap between race and ethnicity in that they both refer to descent and culture communities (2010, 22). For some, the broad meaning given to race and racism render them indistinct. For further discussion, see Kleg 1993; Murji and Solomos 2005.

discussion that follows, notwithstanding the existence of a unified imperial British subjecthood for much of the twentieth century, the imagined British identity during this period was white (Miles and Phizacklea 1984; Bevan 1986; Panayi 1994; Spencer 1997; Paul 1997). In broad terms, but not exclusively, to be categorised as non-white was to be deemed incompatible with members of the national community, that is, unassimilable. This chapter now turns to the analysis of key moments in the development of immigration law and policy central to the historical formation of social migrant identities.

3.3 Hierarchies of assimilability: key developments in immigration law and policy in the UK in the twentieth century

As noted earlier, what follows is not a survey of British immigration policy from 1900 to 2000 but rather, an examination of a number of developments relevant to the historical construction of the social identity of migrant. The discussion of salient policy initiatives here draws on a number of detailed historical accounts of British immigration policy based on primary archival research, notably but not exclusively: Garrard 1971; Bevan 1986; Dummett and Nicol 1990; Spencer 1997 and Paul 1997.

Although this chapter focuses on formal legal initiatives, it should be noted that law was but one form of policy expression during this period. As today, immigration policy was implemented in multiple forms from circulars, instructions, guidance and memoranda issued by government departments and colonial offices to notices posted in consular offices to recruit or discourage potential migrants (Bevan 1986; Dummett and Nicol 1990; Spencer 1997). Of course, it is not possible to capture all dimensions of immigration policy within the confines of this chapter. Select measures are therefore considered with reference to their specific context to reveal how the perceptions of different groups informed their formulation. Although discussed in broad chronological order, it is recognised that such presentation risks fostering an overly schematic reading of policy development. As Bevan notes, far from evolving in a linear and ordered way, the progression of British immigration policy was chaotic and piecemeal (1986, 22).

Before turning to the legislative developments of the twentieth century, a brief note on the position of British subjects and foreign nationals under English common law. Generally speaking, before the Aliens Act 1905, British subjects (which included all those born within the Crown's dominions) *and* foreign nationals of a country at peace with the UK were free

under English common law to enter and remain in the UK.[87] The 1905 Act did not regulate the entry of British subjects: they remained free from immigration control under common law as confirmed in the case of DPP v Bhagwan.

3.3.1 Responding to refugees: the Aliens Act 1905

Although not the first piece of restrictive immigration legislation to be passed in peacetime Britain (Wemyss 2009, 147),[88] the Aliens Act 1905 is of 'symbolic importance' because it established a permanent legal and administrative structure to control foreign nationals' entry to and stay in the UK (Wray 2006, 303). However, although the Act created a framework of powers and a body of immigration personnel to exercise those powers, the scope of the law itself was limited (Dummett and Nicol 1990; Wray 2006). The Act applied to foreign steerage (third class) passengers on board 'immigrant ships', that is, ships carrying more than twenty steerage class passengers (Aliens Act 1905, s8). Ships with fewer than twenty such passengers and foreign nationals traveling as 'cabin passengers' or transiting through the UK fell outside the scope of the legislation. The Act gave immigration officers the power to refuse permission to enter the UK to those deemed 'undesirable immigrants' on three main grounds: their inability or likely inability to support themselves and any family members financially (political or religious refugees were exempt from this ground of refusal); any mental or physical illness likely to render them a drain on the public purse or to cause them become 'otherwise a detriment to the public'; or a previous criminal conviction (s1).[89]

Given the narrow scope of the 1905 Act, it was relatively easy for migrants to escape its application (Bevan 1986; Dummett and Nicol 1990, 104). Even for those migrants who prima facie fell within its ambit, the rate of refusal of entry was low: from 1906 to 1910, approximately five thousand of some one hundred thousand such migrants were refused initial entry to the UK (Garrard 1971, 107). The Act seems then to send a rather confused message: on the one hand, it was a public statement of intent to restrict migration yet on the other, its 'timid' ambit (Wray 2006, 303) suggests ambivalence to the imposition of

[87] The Crown's dominions included British ships and all territories with the British Empire except for protected places (Home Office 2017a). Foreign nationals of a country not at war with the UK were known as 'friendly aliens'. Enemy foreign nationals (enemy aliens) could be excluded and removed from the UK by exercise of the royal prerogative. The scope of prerogative power is discussed in chapter 4.

[88] As discussed by Visram (1986, 34-54) and Wemyss (2009,141-160), from the 1600s onwards, various Navigation Acts and British Merchant Shipping Acts sought to control the entry to and settlement in the UK of 'lascars', that is, unskilled maritime labourers from India. In her account, Wemyss notes the role of law in both creating the racialised subordinate category of 'lascar' and in seeking to exclude Indian seamen from the UK even though they were British subjects.

[89] The Secretary of State retained considerable powers under the Act to control immigration, such as the power to expel foreign nationals (aliens) detailed in ss3 and 4. For a summary of the Act's provisions, see Wray 2006.

immigration control.

From the 1870s, greater numbers of migrants from eastern Europe, predominantly Jewish refugees, began to arrive in the UK (Garrard 1971, 49; Holmes 1988, 25-28). Although the Jewish population had long suffered ill-treatment and discrimination in parts of eastern Europe, the combination of increasing economic hardship and severe persecution forced many to flee westward (Holmes 1988). It is estimated that between 1881 and 1914, some one hundred and fifty thousand Jewish migrants settled in the UK (Winder 2004 cited in Wray 2006, 308). Initially, the migrants' arrival was tolerated due in large part to the charitable activities of the established Jewish community in the UK (Garrard 1971,16-24; Holmes 1988).[90] By the late 1880s however immigration began to attract political and public attention. London's East End in particular (where many new Jewish migrants settled) became a site of anti-migration agitation. Polemical articles appeared in the press and a number of members of Parliament (MPs) pushed for legislation to restrict migration (Garrard 1971; Holmes 1988).[91] Notwithstanding the growing anti-migration sentiment, restrictive legislation in the form of the 1905 Aliens Act was passed on the fifth attempt, having first been proposed some eleven years earlier (Garrard 1971; Pellew 1989). This reluctance to restrict migration, evident in the delay in legislating and in the limited scope and weak enforcement of the Act itself, can be attributed at least in part to politicians' unwillingness to be associated with anti-Semitism which, at the time, was regarded as a European (and unBritish) affliction (Garrard 1971; Pellew 1989; Dummett and Nicol 1990).[92] That said, it should not be concluded from the absence of overt anti-Semitism in mainstream political and public debate that Jewish migrants were deemed assimilable.

Kushner's use of the term 'bifurcated' to describe the image of the Jewish population in the UK is helpful in understanding how elements of the press and anti-migration groups racialised Jewish migrants in the early twentieth century (2005, 211). As Kushner notes (2005, 211), the westernised Jewish community, often constructed in the public imagination as clever and financially shrewd, were commonly accepted as 'one of us' (that is, assimilable) whereas those from eastern Europe were perceived as 'oriental' and other (and therefore unassimilable). The following extract from a leading Jewish newspaper published

[90] During this period, there were a number of Jewish MPs who were 'a source of continual embarrassment to the parliamentary anti-aliens' (Garrard 1971, 15). While many in the Anglo-Jewish community supported the new arrivals materially and politically, there was also concern that the new migrants could affect the position of the settled community, some of whom were wealthy and powerful (Holmes 1988, 67).
[91] See Garrard 1971, 23-51 and Holmes 1988, 65-73 for further discussion.
[92] For Holmes (1988) and Wray (2006, 310) the 'momentous nature' of the introduction of restrictions was also a relevant factor. For Bevan it was 'the watershed for aliens' when 'the liberal tradition of most of the nineteenth century was finally breached…'(1986, 70).

in 1888 shows the settled Jewish community's recognition of the importance of their perceived assimilability:

> *'If poor Jews will persist in … drawing attention to their peculiarities of dress, of language and of manner, the attention they may otherwise escape, can there be any wonder that the vulgar prejudices of which they are the objects should be kept alive and strengthened. What can the untutored, unthinking denizen of the East End believe in the face of such facts but that the Jew is … alien in ideas, in sympathy, and in interests from the rest of the population …'*
>
> *Jewish Chronicle* 28 September 1888 cited in Garrard 1971, 49-50

As noted above, although those against migration were not generally openly anti-Semitic, there is little doubt that east European Jewish migrants were the objects of their invective. Anti-migration campaigners frequently characterised 'immigrants' and 'foreigners' as destitute, morally and physically degraded and disease-ridden (Garrard 1971, 61-65; Kushner 2005). Their dress, religion, cultural practices and significantly, the migrants' poverty, were essentialised to render them undesirable and different from the resident population including the established Jewish community. This differentiation of the new arrivals from the resident Jewish population, who in other circumstances might have been regarded as members of the same group, reveals the contingent nature of social identity construction. In the case of the newly arrived Jewish refugees, their culture *and* poverty were racialised to constitute a social identity different from and inferior to the settled Jewish community. As Kushner observes, racialisation processes are 'complex and rarely all embracing' (2005, 222).

As already noted, while many politicians were reluctant and a good number opposed to the imposition of immigration control, the 1905 Aliens Act nevertheless received royal assent in August 1905. Although the Act is ostensibly race-neutral, given the circumstances in which it was enacted, it was clearly intended to exclude poor Jewish east Europeans (Kushner 2005). Indeed, the Act's definition of an 'undesirable immigrant' is similar to the image of the migrant depicted by the anti-migration lobby: in the Act, migrants' undesirability lies in their impecunity and likelihood of becoming a financial burden owing to 'any disease or infirmity' (s1(3)). The Act then formalised, reinforced and perpetuated the racialised image of the unwanted and unassimilable migrant.

3.3.2 Equal subjects? The British Nationality Act 1948 versus obstructive practices

As noted earlier, under English common law, British subjecthood was shared by millions of people across the British Empire. The British Nationality Act 1948 confirmed this official, universal and equal British subject status (s1(1)).[93] The Act also confirmed that the terms British subject and Commonwealth citizen were interchangeable (s1(2)). Although for many Commonwealth citizens, the 1948 Act had little material effect - as British subjects they were already free to live in the UK under common law - the Act can be seen as an expression of an inclusive immigration policy towards subjects throughout the Empire. Indeed, the 1948 Act was prompted by legislation proposed by Canada to create a separate Canadian citizenship which would have effectively downgraded British subjecthood to a secondary status (Dummett and Nicol 1990,134-142; Paul 1997, 14-24; Hansen 1999). In recognition of former colonies' moves towards independence and the consequent risk of fragmenting the Commonwealth, agreement was reached between the UK and the self-governing Dominions that citizens of a Commonwealth country would also be British subjects.[94] Whereas for Paul (1997, xii) the Act is an instrument of imperial policy designed to re-assert the UK's power over colonies considering independence, Dummett and Nicol take a more benign view seeing it as an administrative measure to preserve the Commonwealth when radical change would have been politically impossible (1990, 140). The two positions are not however incompatible: a combination of political expediency and a desire to demonstrate imperial power in a changing international order were likely key drivers of the Act. What is not disputed, and as will be discussed below, is that the Act's ostensible inclusivity proved to be a façade for racially discriminatory policy in practice (Dummett and Nicol 1990, 177; Spencer 1997, 21).

Immediately after World War II, the UK experienced acute labour shortages (Spencer 1997). Unable to source sufficient labour from the resident population, a government committee was established in 1946 to consider the possibility of recruiting workers from abroad to address the shortages in industries essential to Britain's economic recovery (Paul 1997). Polish war veterans were the first group of foreign nationals to be recruited, many of whom were living in camps in western Europe supported financially by the British government. As Paul notes (1997, 67-68), offering settlement to Polish veterans was a way to both reduce the UK's financial burden and labour shortage. Though by 1949, some one hundred

[93] See Hansen 1999 for further discussion of the Act's provisions.

[94] In 1947, the Dominions were Australia, Canada, India, New Foundland, New Zealand, Pakistan and South Africa. People from the British colonies (which were also part of the Commonwealth) preserved their British subject status and were called citizens of the United Kingdom and Colonies (CUKCs) by s1(1) of the 1948 Act. For further discussion, see Dummett and Nicol 1990,135-137.

thousand Polish nationals had settled in the UK (Paul 1997, 67-68),[95] the UK's labour crisis remained unresolved. In 1947, steps were therefore taken to recruit refugees living in United Nations' (UN) camps in mainland Europe under the European Volunteer Worker scheme (such recruits were referred to as EVWs).[96] The EVWs did not receive the generous resettlement support granted to Polish veterans but were, nevertheless, looked after while in transit to the UK and, on their arrival, allocated work in a specific industry. By mid-1948, there were over two hundred thousand EVWs and work permit holders living in the UK (Paul 1997, 74).

Given the efforts made to recruit European workers, it could almost be forgotten that throughout this period, the UK had access to millions of British subjects across the world who required neither permission nor a permit to live and work in the UK. Shortly after the end of the war, the government had, however, set up a working party to consider the recruitment of Caribbean workers to address the on-going labour shortage. Reporting to the working party shortly after the arrival of Empire Windrush in 1948, the Colonial Office was broadly positive finding that most of the new arrivals were employed (Colonial Office 1948). However, the Ministry of Labour's report to the same working party was rather more negative. For example, the report described Jamaican labourers as 'useless and unwilling' and Caribbean women as illiterate and unfamiliar with the British climate (Colonial Office 1948). It also made repeated references to the difficulties such workers had faced and would likely face in finding accommodation and to some employers, workers and trade unions' hostility to 'foreign' workers including in some cases to EVWs.

Although a snapshot, the working party papers reveal how some government officials perceived non-white British subjects as different and distinct from the British population. The report also suggests that there was considerable opposition to people from the new Commonwealth among the resident population. However, in the report, it is the negative characteristics - unskilled, unsuitable and unwilling - ascribed to Caribbean workers on account of their perceived race that make them unsuitable for work in the UK and so justified their exclusion. (Paul 1997, 133) Put another way, the workers' constructed difference, with skin colour a key marker of such difference, rendered them incompatible with British society; they were unassimilable.

[95] Provisions under the Polish Resettlement Act 1947 gave Polish veterans considerable assistance to settle in the UK.

[96] For discussion of the EWV scheme, see Kay and Miles 1988 who note that by categorising the migrants as workers rather than refugees enabled the government to impose conditions on their entry and stay in the UK.

At the same time the government sought to address severe labour shortages, it also adopted a series of administrative measures - a 'battery of obstructive practice' - to try to restrict migration from India, Pakistan, West Africa and the Caribbean (Spencer 1997, 21-38). For example, the British High Commissions (BHCs) in India and Pakistan generally issued British passports to white subjects only (Spencer 1997, 25). Although British emergency travel certificates were issued on a similarly discriminatory basis, the government subsequently instructed the BHCs to refrain from issuing such documents (Morley cited in Spencer 1997, 30-31):

> *'in view of the present considerable feeling in some sections of the public and among ministers about the number of British subjects not of European race who are at present finding their way into this country'*

Concerns over non-white Commonwealth migration were also raised in Parliament. In 1954, the MP, John Hynd, expressed concern over the '11,000 to 12,000 ... coloured colonial immigrants pouring into the country every year.' Though Hynd framed his calls for immigration regulation as 'social questions which have nothing to do with colour', he repeatedly depicted non-white British subjects as both different from and a threat to the resident British population. For example, Jamaicans were 'virile young men' who 'had quite a lot of trouble' at a local dancehall and were not suited to local work conditions (HC Deb 5 November 1954). In response, the Colonial Office Minister, having acknowledged Hynd's concerns, stated (HC Deb 5 November 1954):

> *'In a world in which restrictions on personal movement and immigration have increased we still take pride in the fact that a man can say Civis Britannicus sum whatever his colour may be, and we take pride in the fact that he wants and can come to the Mother country.'*

The exchange is illustrative of the problematisation of non-white migration - white Commonwealth citizens were not mentioned in the debate. This is not to suggest that all members of Parliament in the early 1950s held the same views on migration or that they used language similar to that employed by Hynd.[97] Nevertheless, there are similarities in the depiction of Jamaican migrants by Hynd and in the Ministry of Labour's report noted above. Indeed, Hynd's characterisation of Jamaican men as sexually threatening, violent and work shy has become an established trope: such associations, notably with violent crime, are

[97] Hansen (2000, 62-79) details the differing approaches to the question of restrictive legislation among government ministers at the time.

prevalent in later depictions of young black men in the media (Hall et al 1978; Cushion et al 2011; Cooper 2012).

The exchange between Hynd and the Colonial Office Minister also shows how the 1948 Act was used to cloak racially discriminatory practices. To paraphrase Spencer (1997, 21), such administrative measures enabled politicians and policy makers to restrict non-white migration while maintaining in public the unified British identity enshrined in the Act. Despite law's assertion of an inclusive imperial status, in practice, subjects were divided along race lines with full British identity reserved for white subjects only. Tabili (1994) makes a similar point in respect of non-white seamen in her account of the openly discriminatory Special Restriction (Coloured Alien Seamen) Order 1925. Drawing on released Cabinet papers, Tabili provides a detailed account of the background to the 1925 Order and its implementation. Briefly, the Order required all 'coloured' seamen (which included seamen of African, Asian, Arabic and Chinese origin) who could not evidence their British subject status to register as foreign nationals. Although British seamen fell outside the scope of the Order, many non-white British seamen were registered as foreigners as they were unable to prove their British subject status to the satisfaction of the authorities (Tabili 1994). Even prior to the migrations of new Commonwealth citizens in the 1940s and 1950s, skin colour was clearly a marker of difference and of non-Britishness.

3.3.3 Unequal subjects: the 1962 and 1968 Commonwealth Immigrants Acts

Notwithstanding the use of restrictive administrative measures discussed above, British subjects from the Caribbean, India and Pakistan continued to migrate to the UK throughout the 1950s.[98] Although migration was repeatedly discussed in Parliament during this period, no legislation was enacted (Spencer 1997, 49-128). Paul identifies two main reasons for successive governments' reluctance to legislate. First, they did not wish to enact overtly discriminatory legislation (see too Hansen 2000, 64) or harm British interests. For example, a Bill proposed in 1955 to restrict the movement of all Commonwealth citizens was opposed on the basis that British subjects' freedom to come to UK was essential to counter the increasing fragmentation of Empire and that British business interests in India and Pakistan could be damaged by retaliatory action (1997, 142-145). Second, governments were concerned that public opinion would not support restrictive legislation: the increase in the

[98] Spencer (1997, 78) cites government research showing 'coloured' migration at the rate of about 30,000 a year by 1955.

UK's non-white population to one hundred thousand had 'aroused little, if any, public expression of race feeling' (Cabinet Committee cited in Paul 1997, 147).

The violent disturbances in Nottingham and London in 1958 are popularly regarded as the catalyst for immigration legislation. While Bevan (1986, 77) suggests a causal link between the disturbances and legislation, the 1962 Act was in fact passed some four years later. Unsurprisingly, public and press interest in migration peaked in 1958. However, a contemporaneous government analysis of press coverage notes that a substantial majority of newspapers did not support the introduction of further immigration controls (summary of editorial comment cited in Spencer 1997, 99). While the government condemned the violence privately and publicly, no immediate legislative action was taken for fear it would undermine the UK's position as leader of the Commonwealth (Spencer 1997, 102). After the 1958 riots, the government did however seek to secure the agreement of India, Pakistan and Jamaica to take steps to restrict emigration to the UK. Jamaica, which had previously refused to adopt the type of restrictive administrative measures discussed earlier, now agreed to do so as did India and Pakistan (Spencer 1997, 98-102). By 1959, the numbers of migrants from the three countries had fallen (Spencer 1997, 107-108).

It should be noted that there is debate within the literature as to policymakers' attitudes towards non-white Commonwealth migration in the 1950s and 1960s (Anderson 2013, 41). The view taken by Dummett and Nicol 1990, Paul 1997 and Spencer 1997 among others that governments were largely responsible for problematising and racialising migration is strongly refuted by Hansen (2000). For Hansen, concerns over migration as a race issue neither dominated nor drove policy. Rather, policymakers were faced with a number of competing issues including increased new Commonwealth migration, public hostility to such migration and a foreign policy aim and commitment to maintaining ties with the old Commonwealth countries expressed in the enactment of the British Nationality Act 1948. Nevertheless, Hansen concedes that within this 'complex mélange of factors… British policy makers were, to be sure, not enthusiastic about non-white migration...' (2000,19).

In 1960, there was a sharp increase in the numbers of people migrating to the UK from South Asia and the Caribbean (Spencer 1997, 118-119). The working party that had been tasked to monitor the position of Commonwealth migrants since the riots in 1958 recommended restrictive legislation based on an ostensibly non-discriminatory approach (Spencer 1997, 117).[99] The Cabinet decided to legislate in October 1961 and the

[99] See Hansen 2000, 100-109 for discussion of the government's debate over the legislation.

Commonwealth Immigrants Act came into force in July 1962. The Act provided that all Commonwealth citizens became subject to immigration control except those born in the UK, and those holding or included in a UK passport issued by the UK government or issued in the UK or the Republic of Ireland (s1). Holders of British passports issued by Commonwealth governments were granted unrestricted entry to the UK provided they met one of a number of requirements stipulated in s2 including that they were or had been in the last two years ordinarily resident in the UK; were the child under sixteen or wife of a UK resident; intended to study; had sufficient funds to support themselves and any dependants without working in the UK; or had been issued a work voucher.[100] Three types of work voucher were available under the Act: type A for those with a UK offer of employment, B for those with a professional qualification or technical skills, and C vouchers for unskilled workers which were subject to a fluctuating quota.

On the face of it, the 1962 Act was race-neutral: it applied to all Commonwealth citizens (excluding those born in the UK or with a British government issued UK passport or a UK passport issued in the UK or Ireland) whatever their background. However, the circumstances in which the Act was formulated reveal its discriminatory objective. Indeed, the 1961 working party report (Ministry of Labour cited in Spencer 1997, 116) stated that the voucher system was designed to minimise non-white Commonwealth migration:

> *'[W]hile it would* [the work voucher system] *apply equally to all parts of the Commonwealth … in practice it would interfere to the minimum extent with the entry of persons from the 'old' Commonwealth countries.'*

After the first year of the Act's operation, the voucher scheme was amended when the number of non-white Commonwealth migrants did not fall as much as anticipated. For example, following a change to the scheme in 1963, no more than twenty-five per cent of unskilled work vouchers could be issued to nationals of a single country. As the largest number of applicants for such vouchers were from India and Pakistan, the limit affected them disproportionately (Paul 1997, 172). In 1965, further changes were made including the abolition of unskilled vouchers and the reduction of the quota size for other vouchers from almost twenty-one thousand to some eight thousand with one thousand reserved for Maltese citizens (Home Office cited in Bevan 1986, 79 and Spencer 1997, 135-140).

[100] For an overview of all the Act's provisions, see Dummett and Nicol 1990, 183-188. The voucher system is not detailed in the Act.

While the 1962 Act marked a fundamental change in the legal position of British subjects seeking entry to the UK, it does not represent a radical change in policy (Bevan 1986, 134).[101] Given the problematisation of non-white Commonwealth migration by policymakers and politicians, migrants' perceived inability to assimilate can clearly be seen as a policy driver. It is acknowledged that other factors, notably, lack of adequate social provision and risk of social unrest, were also relevant to the development of immigration policy at the time. However, for much of the 1950s, labour was in short supply and as Dummett and Nicol note, no steps were taken to restrict immigration from outside the Commonwealth (1990,180).[102] As to the risk of unrest, there was undoubtedly an amount of hostility towards new Commonwealth citizens by some as demonstrated by the 1958 disturbances and the discrimination they encountered when looking for work and accommodation. However, it seems likely that politicians' repeated framing of non-white Commonwealth migration as a political and social issue 'helped shape the popular understanding of colonial [non-white Commonwealth] migration as a problem' (Paul 1997, 135).

Six years after the 1962 Act, the Commonwealth Immigrants Act 1968 was passed by Parliament in just three days. The 1968 Act further restricted the categories of Commonwealth citizens exempt from immigration control: to be exempt, such citizens had to hold a British passport issued by the British government and have at least one parent or grandparent born, naturalised or adopted in the UK (s1).

Although not evident from the language of the Act itself, its intended effects were discriminatory in that non-white Commonwealth citizens were less likely than white citizens to meet the ancestral connection requirement. The circumstances in which the Act was passed are also strongly indicative of its discriminatory intent. In 1968, a good number of British subjects of Indian heritage (known as East African Asians) began to arrive in the UK from Kenya after its introduction of Africanisation policies following independence.[103] Indeed, when Kenya gained independence in 1963, rather than take Kenyan citizenship, many East African Asians elected to remain British subjects. As holders of British government issued passports, they were free to enter the UK under the Commonwealth Immigrants Act 1962 (s1). Following political agitation for more restrictive immigration control in the UK, in February 1968, ten thousand East African Asians arrived in the UK (Spencer 1997, 140-143). The 1968 Act was passed in March that year though as a concession, a

[101] In DPP v Bhagwan, Lord Diplock noted (74): *'Prior to the passing of the Commonwealth Immigrants Act 1962, the Respondent as a British subject had the right at common law to enter the United Kingdom without let or hindrance when and where he pleased and to remain here as long as he liked.'*

[102] Foreign nationals, that is, non-Commonwealth citizens, remained subject to immigration control under the Aliens Restriction (Amendment) Act 1919.

[103] See Shah 2000, 79-84 for further discussion on the position of East African Asians.

voucher scheme was created to enable East African Asians to settle in the UK subject to an annual quota (Spencer 1997, 141).

When considering the 1962 and 1968 Acts, it is hard not to concur with Moore's assertion that '[t]he legislation was concerned mainly with keeping non-white immigrants out of the UK without actually using the language of race' (2000, 2). Both pieces of legislation were enacted when the numbers of non-white Commonwealth citizens arriving in the UK were rising, reflecting the views of policymakers that large numbers of non-white migrants were unassimilable (Spencer 1997, 153-154). As Roy Hattersley famously said in 1965 (cited in Miles and Phizacklea 1984, 57), the year the first Race Relations Act was passed:

> '*I believe that integration without limitation is impossible; equally, I believe that limitation without integration is indefensible'.*

The Immigration Act 1971, which though amended remains in force today, effectively consolidated the provisions of the 1962 and 1968 Acts by building on the ancestral connection requirement through the concept of patriality. Under the 1971 Act, patrials - broadly, Commonwealth citizens who were not subject to immigration control under the 1968 Act - were free to enter the UK without restriction whereas non-patrials were not (ss1(1) and 2). The 1971 Act continued then to ensure easier access to the UK for white Commonwealth citizens while placing the vast majority of Commonwealth citizens on the same footing as foreign nationals (s3(1)). The Act also abolished the voucher scheme (except the East African Asian voucher scheme) and in doing so, sought to end large-scale primary immigration from the Commonwealth and beyond.

3.4 Conclusion

The discussion in this chapter has shown how, over the course of the twentieth century, certain migrant groups, both white and non-white, were constructed as racially different from the UK's resident population. Through these processes of racialisation, in which difference was created through the identification and ascription of meaning to physical and/or cultural attributes, impoverished Jewish refugees in the early twentieth century and new Commonwealth citizens from the late 1940s, were perceived as unassimilable. Having been classified in broad terms as undesirable, steps were then deemed both necessary and justified to restrict their entry to the UK, sometimes through informal measures, but ultimately through legislation. As Clayton notes, 'immigration legislation is passed with a target group

in mind' (2008, 35). The 1905 Aliens Act and 1962 and 1968 Commonwealth Immigrants' Acts were then not only informed by notions of assimilability, but also formalised and perpetuated the racial categorisations of the groups they sought to control.

As noted earlier in this chapter, the UK's more open economic immigration policy initiated at the turn of the twenty-first century has been regarded as a decisive break from the closed immigration policies of previous decades. It was also noted that policy developments such as the high-skilled initiative in the UK and similar initiatives in other western states, which adopt selection criteria predicated on migrants' human capital, could be understood to signal a shift from race to class and/or wealth as bases for differentiating migrants. This suggestion that the logic of class, rather than that of race, has become central to understanding what it is to be assimilable is taken up and considered within the context of the UK's high-skilled policy in the following chapter.

Chapter 4

Law and the art of migration management

4.1 Introduction

> *'... we simply cannot in good faith support a process that could undermine the sovereign right of the United States to enforce our immigration laws and secure our borders.'*
>
> Tillerson 2017

The extract above from the press statement by the then US Secretary of State, Rex Tillerson, announced the Trump administration's withdrawal from the UN's proposal to strengthen global governance of migration. Though reported in somewhat condemnatory terms by elements of the British and US press (see, for example, Gladstone 2017; Mindock 2017; Wintour 2017), Tillerson's justification for the US' withdrawal is an accurate if rather unadorned statement of the thinking underlying most, if not all, states' immigration policies.

Having considered immigration law from both conceptual and historical perspectives in earlier chapters, the focus now turns to the legal framework governing the high-skilled migration route to the UK. Although the high-skilled visa was one of the first UK immigration categories to use points to ascertain eligibility, the route was not free standing. That is to say, the high-skilled route did not stand apart from the UK's existing immigration regime but rather, was inserted into an established legal framework and subject to entrenched institutional practices, procedures and processes. To understand then the operationalisation of the high-skilled initiative through the HSMP and then T1G, it is necessary to examine elements of the UK's wider contemporary immigration regime.

This chapter is divided into three parts. The first part considers the UK's regulatory framework including analysis of the source of the legal power to control migration, that is, whether such power derives from the royal prerogative or from statute. Although the issue of immigration law's origins was largely resolved in 2012 in the Supreme Court case of Munir - the basis of control for most intents and purposes is statutory - it is argued here that enduring judicial references to sovereign power not only reflect and reinforce the myth of nationhood discussed in the preceding chapter but also contribute to the understanding of immigration control in the popular imagination. Consideration then moves to the internal

structure of the Immigration Act 1971 and in particular, the role of the Immigration Rules in creating and delineating different immigration categories. It is suggested that the use of the Rules and other secondary materials such as Home Office concessions and instructions, which have become increasingly complex and afford considerable flexibility to the Secretary of State to make and remake immigration law, is further evidence of the UK executive's desire (in common with many states) to exercise immigration control with scant external oversight or interference.[104]

The third part of the chapter focuses on the high-skilled visa route, namely the HSMP and its successor, T1G. In addition to attempting to chart and explain the numerous changes to the visa's substantive criteria and the convolutions of the visa process over its lifetime, it also revisits the notion of assimilability discussed in chapter 3 in the context of contemporary economic immigration policy. Though judicial challenge (with two notable exceptions) does not form a significant part of the body of law governing specifically high-skilled migration in the UK, case law is examined where relevant throughout the chapter.[105]

Before turning to the UK's legal framework, the role of supranational law in the regulation of high-skilled migration to the UK needs to be briefly addressed. Although the UK has ratified a number of international agreements on migration, such instruments rarely seek to regulate migrants' access to state territory. Although there are exceptions, broadly concerning migrants seeking sanctuary or protection (for example, under the UN Convention Relating to the Status of Refugees 1951 and its 1967 Protocol) and, of course, the free movement rights enjoyed by EEA citizens enshrined in Directive 2004/38/EC and transposed into domestic law, currently the Immigration (European Economic Area) Regulations 2016, such instruments do not regulate specifically high-skilled migration.[106] In other words, the highly skilled may have permission to live and work in the UK by virtue of these instruments but they do so as say, refugees or EEA nationals, not because of their skill set. Free movement rights aside, there is provision within EU law for 'highly-qualified' non-EEA nationals. Directive 2009/50/EC provides limited rights to such migrants to take up 'highly-skilled' employment in different member states. However, due to the UK's opt out from elements of

[104] Sticking with the US, President Trump's 2017 Executive Order, which sought to suspend the admission of refugees and nationals from a number of Muslim-majority countries to the US, clearly demonstrates the executive's wish to control state borders without Congressional oversight.
[105] Speaking from experience as an immigration lawyer, when applications for high-skilled visas were refused, clients were often reluctant to challenge the refusal through court proceedings for three main reasons. First and foremost, for reasons of cost (such individuals would be highly unlikely to qualify for legal aid due to their financial position); second, the outcome of court proceedings is always uncertain and third, because they had other options available to them. For example, a person denied a high-skilled visa could perhaps remain in the UK as a sponsored worker, re-submit a high-skilled visa application at a later date or decide to live elsewhere.
[106] By virtue of the 1994 Agreement on the European Economic Area, much EU law also applies to citizens of the EEA. The phrase EU law is used throughout this thesis and should be understood to encompass EEA law.

EU-wide immigration regulation under the 1997 Treaty of Amsterdam, the Directive does not bind the UK.[107]

While international law (excluding EU free movement provisions) has little bite in regulating or facilitating highly skilled migrants' access to the UK, Dauvernge's statement that there is 'an almost complete absence of international regulation of migration' (2008, 35) is perhaps a little overstated. The UK is party to a good number of global and regional instruments, specific to migrant workers and concerning human rights more generally, which promote universal standards in the treatment of migrants, notably in respect of their labour and social rights.[108] Yet as Macdonald and Toal note, such instruments often play a 'background role' because they have no direct effect in UK law unless explicitly incorporated through the appropriate domestic legal process (2014, 46).[109]

The European Convention on Human Rights (ECHR) has however played a key role in the development of migrants' rights in the UK demonstrated, for example, in the 1985 case of Abdulaziz, Cabales and Balkandali (Abdulaziz).[110] More recently, migrants have successfully challenged Home Office decisions on human rights grounds, notably article 8 rights to private and family life (Clayton 2016, 125-135). That said, following the ECHR's incorporation into UK law by the Human Rights Act 1998 (HRA) and the distinctly British flavour of human rights jurisprudence that has since developed, it is questionable whether the protection of rights enshrined in the ECHR is, for practical purposes, an issue of international law. Indeed, in the Court of Appeal case of Pankina, when considering the bearing of article 8 on the applicants' claims, Sedley LJ noted that the relevant consideration was not the ECHR itself but rather, s6(1) of the HRA which makes it unlawful for a public authority to act in a way incompatible with a Convention right (para 43).

[107] For an overview of the UK's opt-out in the Area of Freedom, Security and Justice, see Miller 2011. For further information on the Blue Card Directive, see http://ec.europa.eu/immigration/bluecard_en. For the sake of completeness, the EU offers Mode 4 access as part of international trade negotiations allowing for the temporary migration of non-EEA nationals in connection with the cross-border supply of services. Discussion of this limited provision of trade law falls beyond the scope of this thesis.

[108] See Ryan and Mantouvalou 2014 for a comprehensive overview of migrants' rights enshrined in international law.

[109] Macdonald and Toal (2014, 45) note by way of example that provision in the Immigration Rules for the grant of settlement to certain migrants on completion of a specified period of continuous residence derives from a 1949 International Labour Organisation Convention.

[110] In brief, the case, brought by three Commonwealth citizens settled in the UK, challenged the Home Office's refusal to allow their husbands to join them. The relevant provisions in force at the time (HC 394 in 1980 replaced by HC66 in 1982) provided for stricter requirements for husbands wishing to join their wives than vice versa. The European Court of Human Rights (ECtHR) unanimously held that the disparate treatment of men and women under the Rules breached article 14 (right to non-discrimination) together with article 8 (rights to family and private life) rejecting the government's claim that public order justified the difference in treatment.

In sum then, setting aside EU free movement rights, international law does not play a significant role in the governance of high-skilled migration to the UK or in the establishment and protection of highly skilled migrants' rights.[111] The remainder of this chapter therefore focuses on the domestic legal arrangements that govern and inform highly skilled migrants' entry to and residence in the UK.

4.2 The UK legal framework: primary sources of power

> *'Immigration control is exercised pursuant to the statute and rules as indeed the rule of law requires. It is not empowered by a mysterious source which somehow lurks behind the rules'*
>
> Clayton 2008, 28

It is perhaps trite to observe that the UK is a constitutional democracy whose system of governance is based on the rule of law. It might therefore be assumed, at least by a non-lawyer, that the powers of the state and of its servants (courts, officials and so on) are clearly and unambiguously stated. In the context of immigration regulation, however, the origins of such powers and their exact nature have not always been so clear-cut. Notwithstanding the comprehensive regulatory framework for immigration control set out in the Immigration Act 1971, it has been repeatedly claimed by both the courts and the Home Office that such control, or elements of it, is an exercise of prerogative and not statutory power. Although the Supreme Court case of Munir determined in 2012 that almost all aspects of immigration control have a statutory footing, namely the 1971 Immigration Act (as Clayton confidently and correctly asserted back in 2008), it is submitted that the issue, characterised here as a battle between prerogative and statutory power, continues to be of more than 'historical interest' as Macdonald and Toal claim (2014, 26). Though acknowledged that post-Munir, discussion of the origins of immigration powers may seem rather otiose and technical, it is argued here that it is fundamental to understanding how the regulation of migration is perceived in British mainstream political and popular discourse, and indeed by migrants themselves. The following part of this chapter therefore examines first of all elements of the 1971 Act pertinent to the prerogative/statute debate. There then follows a brief discussion of the nature of prerogative power before considering the role of

[111] This is not to deny the normative role of global agreements on human and migrant-specific rights. As Ryan and Mantouvalou observe (2014, 211), such agreements, in defining the limits of acceptable practices, may in the long term influence the development of migrants' rights at the national level.

the prerogative in immigration control and the courts and Home Office's understanding of such power through an examination of case law.

4.2.1 The Immigration Act 1971

Although much amended and supplemented by rafts of subsequent primary and secondary legislation, the Immigration Act 1971 remains, as Macdonald and Toal (2010, x) put it, the 'cornerstone' of domestic immigration control. In brief, Part I of the Act sets out general provisions in respect of entry to, residence in and exit from the UK as well as prescribing the apparatus for the administration of control in terms of practice (the Immigration Rules) and personnel (immigration officers and the Home Secretary). What follows is not however intended to be a comprehensive survey of the 1971 Act but rather, highlights the Act's key provisions relevant to the discussion here.

Section 1(1) provides that all those who,

> *'have the right of abode in the United Kingdom shall be free to live in, and to come and go into and from, the United Kingdom without let or hindrance'.*

Those falling outside the scope of s1(1), may, by virtue of s1(2) 'live, work and settle' in the UK,

> *'by permission and subject to such regulation and control of their entry into, stay in and departure from the United Kingdom as is imposed by this Act'.*

Section 1 therefore establishes two classes of person: those with the right of abode, that is, British citizens and a diminishing number of Commonwealth citizens with historical residence rights who may come and go freely, and those without, namely everyone else, who may still live and work in the UK but only with 'permission' and on the basis of 'regulation'. Section 3(1) sets out the provisions for that regulation in the following terms: (a) a person shall not enter the UK unless given leave to do so in accordance with the provisions of or made under the Act; (b) they may be given leave to enter or remain for a limited or indefinite period of time; and (c) specified conditions may be attached to a person's limited leave.

Part I of the Act also provides for the Immigration Rules. In view of the importance of the Rules' status in the discussion both here and later in this chapter, relevant provisions are quoted rather than summarised. Section 1(4) provides:

> *'The rules laid down by the Secretary of State as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons not having the right of abode shall include provision for admitting (in such cases and subject to such restrictions as may be provided by the rules, and subject or not to conditions as to length of stay or otherwise) persons coming for the purpose of taking employment, or for purposes of study, or as visitors, or as dependants of persons lawfully in or entering the United Kingdom.'*

Having made provision for the Rules' content in s1(4), the Act then sets out in s3(2) the procedure in respect of the Rules, notably the requirement for parliamentary scrutiny:

> *'[t]he Secretary of State shall from time to time (and as soon as may be) lay before Parliament statements of the* rules [defined in s33(1) as the Immigration Rules], *or of any changes in the rules, laid down by him as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons required by this Act to have leave to enter...*
>
> *If a statement laid before either House of Parliament under this subsection is disapproved by a resolution of that House passed within the period of forty days beginning with the date of laying ... then the Secretary of State shall as soon as may be make such changes or further changes in the rules as appear to him to be required in the circumstances, so that the statement of those changes be laid before Parliament at latest by the end of the period of forty days beginning with the date of the resolution ...'*

Finally, s33(5) should be noted. It provides that the Act 'shall not be taken to supersede or impair any power exercisable by Her Majesty in relation to aliens by virtue of her prerogative.' Before considering the scope of the reservation clause, which is pertinent to the source of immigration control debate, the nature of prerogative power is outlined below.

4.2.2 The royal prerogative

The royal prerogative is, as de Smith and Brazier note, an 'intrinsically vague' creature of common law; a body of customary authority and privilege vested in the Crown with roots going back to the Middle Ages (1989, 131).[112] Notwithstanding its ancient origins, the scope of prerogative power was a key issue in Miller in which the majority observed (para 47):

> *'[t]he Royal prerogative encompasses the residue of powers which remain vested in the Crown, and they are exercisable by ministers, provided that the exercise is consistent with Parliamentary legislation.'*

It has long been established that prerogative powers are potentially subject to judicial scrutiny (Council of Civil Servants Unions) and importantly for the discussion here that where statute and the prerogative address the same subject, the prerogative is suspended (De Keyser's Royal Hotel; Miller, para 48).

In simple terms then, the prerogative comprises the residual powers of the Crown which, by constitutional convention, are mostly exercised by the executive and are displaced when legislation covers the same subject.[113] However, in immigration law, the position is a little more complicated.

4.2.3 The prerogative versus statute

As discussed in chapter 3, at common law, the world's population was split into two distinct categories: British subjects and aliens. Aliens (referred to in this thesis as foreign nationals) were further categorised as friendly, who, like British subjects, were free to enter and remain in the UK, and enemy, that is nationals of a country against which the UK had made a formal declaration of war (Kuechenmeister). In respect of enemy foreign nationals, the existence and extent of the prerogative is clear. The cases of Liebmann and Kuechenmeister, heard when Britain was at war with Germany, albeit during different wars, held that by virtue of the prerogative, the Crown, acting through the executive, had the right to intern, expel, or otherwise control enemy foreign nationals. There is then no dispute that the prerogative extends to the control of enemy foreign nationals (Vincenzi 1985, 305). However, the source

[112] In addition to de Smith and Brazier 1989 (111-151), see Bradley and Ewing 2011 and Bartlett and Everett 2017 for comprehensive overviews of the prerogative.
[113] British passports, for example, are issued under prerogative power: Everett cited with approval by the Court of Appeal in XH and AI (para 31).

of the power to regulate the movement of friendly foreign nationals was far from clear until the issue was resolved in Munir. Take, for example, the Abdulaziz case noted earlier in which the European Court of Human Rights (ECtHR) asserted at paragraph 19 that:

> *'...the Home Secretary has a discretion, deriving from historic prerogative powers, to authorise in exceptional circumstances the grant of entry clearance or of leave to enter...'*

Lord Brown made a similar claim for prerogative power some twenty years later in the House of Lords case of Odelola (para 35):

> '*The Secretary of State's immigration rules, as and when promulgated, indicate how it is proposed to exercise the prerogative power of immigration control.'*

Whereas in Abdulaziz, the court stated that the Home Secretary's ability *to* exercise discretion originated in the prerogative, in Odelola, Lord Brown claimed that the Immigration Rules themselves were an expression of prerogative power. Older reported cases in which the prerogative is regarded as a continuing source of power include Asif Khan in which the Court of Appeal assumed the Home Secretary had power at common law to consider grounds for entry not covered by the Rules. In Rajinder Kaur, Glidewell LJ acknowledged that the 1971 Act had superseded many of the Crown's powers before stating that residual prerogative power remained when 'necessary for the proper control of immigration' (291-2).[114] In Quaquah, the High Court was conspicuously silent on the source of the Home Secretary's power to grant leave outside the Rules even though it had been argued before it that the power existed by virtue of the prerogative.

In other cases, though recognising the statutory basis of immigration control, it has nonetheless often been assumed that historically, such control was an exercise of prerogative power (see for example, the House of Lords cases of Saadi, Ullah and European Roma Rights Centre paras 31, 6 and 11 respectively). Lord Bingham's observation in the 2008 case, Bapio Action, is a good example of what is termed here the prerogative preface (para 4):

> *'It is one of the oldest powers of a sovereign state to decide whether any, and if so*

[114] As Lord Hope notes in Munir (paras 33, 42-43), such observations are incorrect not only because the basis of the powers in question is statutory but also because any prerogative to control migration was never applicable to Commonwealth citizens who are not, as Bhagwan confirms, aliens to use the language of the common law.

which, non-nationals shall be permitted to enter its territory, and to regulate and enforce the terms on which they may do so. In this country in recent times the power has been exercised, on behalf of the Crown, by the Secretary of State for the Home Department. The governing statute is the Immigration Act 1971.'

Although the extent and application of prerogative powers vary in the judicial statements cited, they all unquestioningly accept that immigration control over (friendly) foreign nationals originated in the prerogative when the very existence of such power is open to question.[115] Briefly, the authority for the existence of prerogative power to control the movement of friendly non-subjects is generally traced back to two Privy Council cases concerning the Crown's powers to exclude (Musgrove) and to expel (Cain) foreign nationals from British territory. Although there are serious shortcomings in the Privy Council's legal reasoning in both cases (examined in detail in Vincenzi's (1985, 1992) comprehensive pre-Munir analyses of prerogative power and immigration law), they are widely accepted as authority for the state's innate or prerogative power to exercise immigration control (Macdonald 2013, 15).[116] Even if such powers exist at common law, given the extensive regulatory provisions in the 1971 Act and in earlier immigration legislation, it seems, prima facie, that the Crown's powers should have been suspended under the principle in De Keyser's Royal Hotel. Yet it was not until 2012 that it was conclusively determined that statute governs the control of friendly foreign nationals or, in the parlance of the 1971 Act, those without the right of abode.

In Munir, the central issue was whether the grant and withdrawal of concessions (established policies) outside the Immigration Rules by the Secretary of State amounted to 'statements of the rules, or of any changes in the rules, laid down by him as to the practice to be followed' within the meaning of s3(2) of the 1971 Act. In other words, if a concession is more properly characterised as a rule, then any changes must be laid before Parliament to comply with s3(2). The Secretary of State argued before the Court that the legal status of the concession in question was irrelevant because (para 22):

'... everything done by the Secretary of State for the purpose of regulating the entry into and stay in the United Kingdom of persons who require leave to enter or remain is done in exercise of the prerogative power.'

[115] Given the facts of the various cases cited, it seems that the statements do not concern prerogative powers in respect of enemy foreign nationals. Indeed, when the cases were determined, there were no enemy foreign nationals: the UK has not been formally at war since the signing of the Treaty of Peace with Japan in 1951.
[116] Constraints of space prevent consideration of the cases here. However, both Vincenzi (1985) and Macdonald (2013) refute the notion that prerogative powers ever existed in respect of friendly foreign nationals.

In other words, according to the Secretary of State, 'everything' concerning immigration control - the grant, variation and refusal of leave to enter or remain, the making and laying of the Rules, the publication of discretionary policies and so on - derived from the prerogative. The Supreme Court unanimously rejected this argument. Delivering the Court's judgment, Lord Dyson, having considered the 1971 Act's legislative history, found that Parliament was alive to the existence of prerogative power in relation to enemy foreign nationals and expressly preserved that power by s33(5) of the 1971 Act (para 33). Though the Court did not consider the scope of the prerogative over foreign nationals more generally (para 23), it held that the 1971 Act and that Act alone was the source of the Secretary of State's powers to make the Immigration Rules and to grant or vary leave within or outside the Rules (paras 33 and 44).[117]

That it took over forty years for the source of immigration control to be clearly stated can in part be attributed to ambiguities in the wording of the 1971 Act and to the complex structure of control it creates. However, the persistence of the prerogative also reflects the entrenched notion that immigration control is an innate power of the nation state. For Macdonald and Toal (2010, 3-24) and Clayton (2008, 26-30; 2016, 27-30) the prerogative preface noted earlier is indicative of the weight accorded to executive discretion in some immigration cases, especially those involving human rights.[118] The argument made here however is that such enduring allusions to the prerogative both inform and reflect a wider popular understanding of immigration law, namely, that there is something special about the control of borders that stands or should stand outside the constraints of law in the books. It is suggested that an understanding of immigration law as a 'mysterious source' as Clayton puts it (2008, 28), is bound up in the idea of nationhood discussed in chapter 3. Although statehood generally precedes nationhood (Wallerstein 1991, 81-82) the myth of the nation demands that the law that binds the national community and protects it from outsiders has its origins in the mists of time, not in the modern state.[119] On a more instrumental level, the idea that a nebulous source of law supplements statute arguably feeds into and reflects a view of immigration law held by highly skilled migrants who participated in this study. Though not expressed in terms of prerogative power or state sovereignty, a good number of

[117] The Court's finding that s33(5) preserves prerogative power over enemy non-nationals reflects the pre-Munir position of Macdonald and Toal (2010, 22-24) and Clayton (2008, 27-28).

[118] A recent example of the prerogative preface is found in Lady Hale and Lord Carnwath's description of the 1971 Act in their joint judgment in MM (para 50): 'the modern embodiment of the powers previously exercised under the Royal prerogative, and now entrusted to the Secretary of State...'

[119] It is suggested that the notion that immigration control derives from the prerogative is also normative. Indeed, the idea that the HRA and court rulings favourable to migrants are interferences in state sovereignty arguably underpins much reporting on migration issues in the right-leaning press. See for example, Littlejohn 2012; Adams 2016. Webber makes a similar point: the entrenched notion of states' absolute right to control borders is invoked by the popular press to justify 'the imposition of any restriction deemed necessary in pursuit of 'the national interest' and entails the freedom to change policy in response to changed conditions' (2012, 103).

participants believed the Home Secretary could refuse them leave to enter or remain in the UK with reference to an unknown body of law. This issue is taken up in further in chapter 7.

Notwithstanding the unanimous judgment in Munir, the 2013 New London College case suggests the executive's reluctance to give up the myth of immigration control's origins. The case concerned the legal standing of the Home Office's guidance regulating the licence required by educational institutions to sponsor foreign students. The Secretary of State argued that incidental powers to administer the sponsorship system derived from neither the 1971 Act nor the prerogative but from the 'general responsibilities of the Secretary of State in this field' (para 34). In giving the majority judgement, Lord Sumption held that the source of such power was statutory; there was therefore no need to determine the issue of any third source of power. Although the sponsorship guidance did not constitute a Rule and therefore fell outside s3(2), Lord Sumption held there was 'a range of ancillary and incidental administrative powers' implied under the Act to administer the sponsorship system (paras 28 and 29). In his separate opinion, Lord Carnwath, uncomfortable with the scope of the powers in the majority judgment, defined the implied ancillary powers more narrowly as an adjunct to the entry provisions for students under s1(4) (para 37).[120] Lord Carnwath also observed that Lord Sumption's broad approach appeared to be a variant on the Secretary of State's argument (para 35). It is posited here that the power's nebulous and untethered nature (it is implied under the 1971 Act's general system of immigration control) is suggestive of the prerogative. While it is not suggested that New London College is an endorsement for the veiled return of prerogative power, it nevertheless perpetuates the popular understanding of immigration law as fuzzy or inscrutable and predominantly within the hands of the executive.

4.3 The UK legal framework: secondary sources

Discussion now turns to the secondary sources of immigration regulation. In addition to the Immigration Rules, there are, as with most areas of law, innumerable statutory instruments, regulations and orders regulating different elements of immigration law such as appeal procedures and so on. However, alongside this secondary legislation is a range of publicly available Home Office documents including concessions (at issue in Munir) and the operational guidance collections - caseworker guidance, modernised guidance, the Immigration Directorates Instructions (IDIs), sponsorship guidance (at issue in New London

[120] As Desai (2013) notes, the decision in New London College means that the legal foundations of the sponsorship system, central to the regulation of student migration and therefore of significant importance to foreign students and British universities alike, are not subject to any parliamentary process or scrutiny.

College), guidance on individual immigration categories to name but a few - which are essentially policy documents.[121] The Home Secretary also has power to exercise discretion in an applicant's favour under the 1971 Act (Munir, para 44). Although secondary legislation makes up a significant part of immigration law, it is the Immigration Rules and guidance that are relevant to the discussion here. The Rules and guidance provide, to borrow from Jennings (1959, 81-2), the flesh that clothes the dry bones of the 1971 Immigration Act and importantly, afford the Secretary of State considerable flexibility to make and remake immigration law with little parliamentary oversight.[122]

4.3.1 The Immigration Rules and Home Office guidance

For Juss (1992, 151), the Immigration Rules are the 'linchpin of the modern system of control'. While not disputing this statement, the importance of the Home Office guidance documents should not be overlooked: it is through both the Rules, and guidance (albeit much less so since the cases of Pankina and Alvi discussed below), rather than the 1971 Act, that the detail of immigration policy is implemented. Indeed, as discussed later in this chapter, in the case of the high-skilled route, the detail of the category's qualifying criteria for initial visa applications was not incorporated into the Rules until the launch of T1G in 2008 (HC 321).

Although the origin of the Rules is obscure, the case of Alvi confirmed that whatever the Rules' history, the 1971 Act regulates the making and changing of the Rules (para 41).[123] The Act is not prescriptive as to the Rules' content, providing only that they include provisions for leave to enter and remain in the UK for employment, study, as visitors and as dependants (s1(4)).[124] The Rules then create and delineate the various categories of migrant, such as domestic worker in a private household (paras 159A-159H), a returning resident (paras 18-20) and so on. To change the Rules, the Home Secretary must place the amendments before both Houses of Parliament. Parliament cannot alter the amendments but if either House disapproves them by resolution within forty days, the Home Secretary 'shall … make such changes as appear to him to be required' within forty days of the resolution (s3(2)). In practice, although Parliament may at times debate or draw attention to

[121] The concessions and various guidance documents can be found on the Home Office website, https://www.gov.uk/topic/immigration-operational-guidance.
[122] The format of the Rules and the referencing system adopted in this thesis are noted in the Introduction.
[123] The history of the Rules, notably that they pre-exist the 1971 Act, is discussed by Lord Neuberger (para 46) in Odelola. See Macdonald and Toal for a discussion of the Rules and Home Office guidance more generally (2014, 29-40).
[124] See earlier in this chapter for the text of ss1(4) and 3(2).

the changes, negative resolutions are very rarely passed.[125] In the 2015 case of Mandalia, Lord Wilson seems to suggest that Parliament could take a more robust approach to scrutinising the Rules (para 2). Yet, as Juss observes (1992, 154), a negative resolution does not nullify the amended Rules: they stand until the Home Secretary makes further changes. Indeed, Lord Brown's statement in Odelola recognises Parliament's rather nugatory role (para 33):

> *'...so far from asking here what Parliament intended, the question is what the Secretary of State intended. The rules are her rules and, although she must lay them before Parliament, if Parliament disapproves of them they are not thereby abrogated: the Secretary of State merely has to devise such fresh rules as appear to her to be required in the circumstances* [emphasis in the original].'

When the 1971 Act was debated in Parliament, the then government justified the negative resolution procedure as necessary to enable the Secretary of State to change the Rules at short notice 'if any unforeseen gap in the immigration control comes to light' (Hansard cited in Munir, para 30). In reality, given the Rules operationalise much of immigration policy, ss1(4) and 3(2) of the Act give the Home Secretary substantial power to make and remake immigration law with minimal input from Parliament.[126] Once again, we see the executive's desire, largely sanctioned by Parliament, to exert sole control over who may enter and remain in the UK.

4.3.2 Increasing complexity under the Points Based System

The PBS, launched in 2008, replaced almost all the former economic and student migration routes. Divided into five broad tiers, all applicants are required to obtain the number of points stipulated in the relevant tier to be issued a visa.[127] Since the PBS was introduced, both the Rules and guidance have become increasingly detailed and prescriptive, summed up Lord

[125] While this may suggest a lack of interest on the part of Parliament, the difficulties in securing time for debates, notably in the House of Commons, and changing parliamentary procedures should also be noted. Since the early 2000s, the House of Lords' Secondary Legislation Scrutiny Committee has examined the policy merits of secondary instruments subject to parliamentary procedure. The Committee draws to the 'special attention of the House' any such instrument which it considers 'interesting, flawed or inadequately explained by the Government' (http://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/role/).

[126] Any amendments to the Rules must however comply with applicable provisions in the HRA 1998 and Equality Act 2010.

[127] The Tiers are: Tier 1 for high skilled workers; Tier 2 for sponsored skilled workers; Tier 3: for low-skilled workers (not implemented); Tier 4 for students and Tier 5 for young and temporary workers (Home Office 2006a, para 9). For discussion, see Wray 2009.

Reed in the following terms (Ikuga, para 7):

> *'Over time, increasing emphasis has been placed on certainty rather than discretion, on predictability rather than flexibility, on detail rather than broad guidance, and on ease and economy of administration. The increased numbers of applications, the increasing complexity of the system, and the increasing use of modern technology for its administration, have necessitated increasingly detailed Rules and instructions.'*

Prior to the PBS, the language of the guidance was more advisory, providing, for example, guidance on the type of documentation needed to make a visa application under the HSMP as seen in the first HSMP guidance (Home Office 2002). However, the introduction of the PBS, with its guiding principles of, inter alia, objectivity (defining applicants' attributes in a factual way and minimising subjectivity) and operability (the ability to assess visa applications 'with little room for human error') (Home Office 2006,11) required a more binary approach to the law. As a result, Home Office guidance shed its flexibility and became hard-edged and rigid as the first T1G guidance demonstrates (Home Office undated).[128]

Following the implementation of the PBS, there has been much judicial discussion on the nature of the Rules and guidance. As discussed above, whereas Parliament's scrutiny of changes to the Rules has been somewhat anaemic, the courts have taken a more robust approach. Noting that the Rules create legal rights, Lord Hope stated, 'I do not think that oversight of the content of the rules can be left entirely to Parliament' (Alvi 2012, para 38). A string of cases, in which the principal issue concerned the legal standing of relevant Home Office guidance, culminated in the cases of Pankina and Alvi. Both cases are briefly discussed below not only to shed light on the legal issue but also to illustrate the rigidity of immigration law post-2008.

In Pankina, the applicant had applied for a Tier 1 post-study work visa. The applicable Rules in force at the time, introduced by HC 607, required the applicant to have funds of £800 to meet the visa's maintenance criterion. The Rules also provided that the applicant supply documents specified in the relevant Home Office guidance which required the applicant to have a minimum of £800 for the three-month period prior to the application. The applicant's

[128] It is interesting to compare the two guidance documents. For example, to evidence academic qualifications, the HSMP guidance suggests 'Academic Certificates; Academic References' (2002, 5) whereas the T1G guidance provides: *'Original Certificate of Award: This document must be original and must clearly show: the name of the applicant; and the title of the award; and the date of the award; and, the name of the awarding institution... In all cases this document must be provided unless (i) the applicant is awaiting graduation or (ii) has a qualification with a significant research bias, in which case the documents will be as specified below...* (Home Office undated, para 65).

visa was refused because her savings had dipped below £800 during the relevant period (paras 2-6). The Court of Appeal allowed the appeal on the basis that the legal maintenance requirement was as stated in the Rules, not in the guidance. In giving judgment, Sedley LJ noted that for the Rules to have the force of law, they had to be 'certain'. Further, while in principle external material could be incorporated by reference into a legal instrument, material affecting an individual's immigration status could not be incorporated into the Rules if it had not been placed before Parliament (as s3(2) of the 1971 Act requires) and could be changed without fresh parliamentary scrutiny (para 33) as was the case with the Home Office guidance in question. In other words, a criterion in the guidance pertinent to the grant of leave to enter or remain could only take on the force of law - a Rule - if it was certain and complied procedurally with s3(2).

Alvi, heard with Munir in the Supreme Court, modified the Rule/guidance (or law/policy) test established in Pankina. In giving one of the two leading judgments, Lord Hope set out the test as follows (para 57):

> *'... any requirement which, if not satisfied, will lead to an application for leave to enter or to remain being refused is a rule within the meaning of section 3(2). A provision which is of that character is a rule within the ordinary meaning of that word.'*[129]

As a result of the judgment in Alvi, almost all the mandatory provisions in multiple guidance documents had no legal effect.[130] Whereas in response to Pankina, the Rules were amended to incorporate the more detailed maintenance stipulations previously set out in guidance (HC 382), following Alvi, the impact on the content and format of the Rules was far greater.[131] The day after the Alvi judgment was promulgated, changes to the Rules were laid before Parliament and took effect the following day (Cm 8423). Almost overnight, the already unwieldy Rules became more voluminous as numerous guidance provisions were clumsily incorporated.

Yeo notes (2018) that when HC 395 was first published in 1994, it comprised eighty pages. At the time of writing, it runs to some one thousand pages. It is not however the Rules' sheer volume that makes them difficult to navigate; it is also their complexity and illogical presentation. Indeed, the complexity of the Rules has become a common trope in judicial

[129] Lord Dyson, who gave the other leading judgment, formulated a similar test at paragraph 94.
[130] Note that some guidance are not in principle deemed to fall within 3(2) primarily because they are not directly linked to the grant of leave to enter or remain: New London College.
[131] HC 382 also incorporated provisions relating to students as a result of the English (UK) case which followed Pankina.

commentary. Jackson LJ's much cited observation that the Rules have achieved 'a degree of complexity which even the Byzantine Emperors would have envied' (Pokhriyal, para 4), is complemented by a raft of similarly critical comments. Lord Carnwath, for example, noted that even the Secretary of State had been unable to maintain a consistent view of the meaning of the law (Mirza, para 30). [132] Yet immigration law is not only complicated, it is also highly prescriptive. As Pankina illustrates, law stipulates the minutiae of the visa process with any failure to comply, for example, by omitting a bank statement (as was at issue in Mandalia), potentially punishable by a refusal of leave. As Beatson LJ put it in Hossain (para 29):

> *'The complexity is in part due to the considerable detail in the rules, and in part the frequency of the changes in them to meet what the Secretary of State considers to be evasion or undesirable avoidance of previous rules.'*

Although post Pankina and Alvi, the Rules include much of what was formerly contained in guidance, this has not constrained the Home Secretary's powers to make sweeping changes to the law by amending the Rules. With parliamentary oversight largely absent, the courts have been increasingly called upon to determine the legality or otherwise of the myriad changes made to the law through the Rules. Given the complexity and stringency of the law, as will be discussed later in this thesis, it is unsurprising that many of the individuals who took part in this study, though educated and fluent in English, found the law not only confusing but also a source of insecurity and anxiety.

4.4 Implementing policy: the Highly Skilled Migrant Programme and Tier 1 (General) of the Points Based System

The first steps to open up economic migration were taken in 2000, starting with the simplification of the Work Permit Scheme followed by the launch of the Innovator Scheme in 2000 and then the HSMP in early 2002. Like the HSMP, the Innovator Scheme used a points scoring system to determine eligibility. However, during its two-year pilot phase, there were just one hundred and twelve successful applicants (Somerville 2007, 32). Though incorporated into the Immigration Rules in March 2003 (HC 538), the Scheme was largely overshadowed by the HSMP. The remainder of this chapter examines the law governing the

[132] Underhill LJ in Singh (para 59) for example, refers to provisions in the Rules as 'rebarbative drafting'. See Yeo 2018 for a compilation of judicial commentary along similar lines. It should be noted that the Law Commission is to review the Immigration Rules with a view to simplifying them (Law Commission 2017).

HSMP and T1G. It begins with an overview of the high-skilled visa and the visa making processes before considering the points scoring criteria under both the HSMP and T1G, the detail of which is set out in appendices 4.2 and 4.3. The chapter then revisits the issue of assimilability and considers the introduction of the English language requirement within the high-skilled selection criteria to argue that racially informed notions of difference remained present in the formulation of the UK's economic immigration policy post-2000. It should be noted that chapters 5 and 6 of this thesis complement the discussion here: chapter 5 considers the UK's political and socio-economic climate and its impact on immigration regulation over the course of the 2000s and chapter 6 analyses the national press' reporting of skilled and high-skilled migration throughout 2010.

4.4.1 Climbing the ziggurat: becoming a highly skilled migrant

> *'A career in flying was like climbing one of those ancient Babylonian pyramids made up of a dizzy progression of steps and ledges, a ziggurat, a pyramid extraordinarily high and steep; and the idea was to prove at every foot of the way up that pyramid that you were one of the elected and anointed ones...'*
>
> Wolfe [1979] 1991, 24

As discussed in chapter 1, the high skilled migration route was and remains an established visa category in many western immigration regimes (Cerna 2016). However, in the UK, it was a short-lived category. Launched with much fanfare in January 2002, the high-skilled route closed in December 2010 to new applicants living abroad and in April 2011 to almost all new applicants living in the UK (HC 698 and HC 863 respectively). From 6 April 2015, no further T1G extension applications could be made (HC 1025). Post-2011, the high-skilled visa has then been a residual immigration category only, kept alive to enable the eligible few to apply for indefinite leave to remain (ILR) before it draws its last breath in April 2018 (HC 1025).[133]

Notwithstanding the high-skilled visa's short life, it is difficult to give an overview of the law that created and maintained it due to the many changes both to the category itself and to immigration law more generally between 2002 and 2011. A broad outline of the visa's

[133] There are other Tier 1 categories but with the exception of the Tier 1 (Exceptional Talent) category (HC 863), they require financial capital. The qualifying criteria for the Exceptional Talent visa are much more onerous than those under the HSMP/T1G and until 2017, visas were limited to an annual quota of one thousand. The current annual limit is two thousand (Home Office 2017). ILR is also referred to as permanent residence and settled status.

mechanics and of highly skilled migrants' entitlements and obligations is however sketched below to assist more detailed consideration of various aspects of the visa later in this chapter.

When first introduced, the HSMP was a twelve-month concession operating outside the Immigration Rules (Home Office 2002). It was incorporated into the Rules in April 2003 (HC 538). Although the use of skills and qualifications as criteria for admission to the UK can be traced back to the 1962 Commonwealth Immigrants Act's work voucher scheme, the HSMP was the first mainstream domestic immigration category to quantify individuals' personal attributes. Under the HSMP and then T1G, eligibility to live and work in the UK was predicated on an individual's ability to score a sufficient number of points for attributes centering on tertiary-level qualifications, work-related skills and prior earnings marked against a sliding scale. In contrast to skilled migrants (broadly speaking, work permit holders who became Tier 2 sponsored workers under the PBS) highly skilled migrants were not only free to look for work in the UK, they could take employment, be self-employed or a combination of both. The initial grant of time-limited leave could be extended subject to meeting specified criteria. On completion of the requisite period of continuous residence (generally comprising the initial period and the extension), individuals were eligible to apply for ILR in the UK. Highly skilled migrants could have family members (spouse/partner and children) live with them in the UK subject to meeting the applicable visa requirements (Home Office 2002).

As with many immigration categories, there were two ways to apply for the initial high-skilled visa: an out of country application submitted in the individual's country of origin or long-term residence and an in-country application if already living in the UK in an eligible immigration category. A flowchart detailing the visa process can be found at appendix 4.1. Briefly, obtaining an HSMP visa comprised a two-stage process for both out and in-country applications. First an application was made to assess whether the HSMP's qualifying criteria were met. If approved, a second application was made either for leave to enter or remain in the UK. When T1G replaced the HSMP, the initial visa application procedure was streamlined into a single application (HC 321). Extension applications under both the HSMP and T1G were also a one-step process, generally submitted in-country. It should also be noted that in addition to meeting the points threshold for attributes, individuals were required

to satisfy the maintenance and accommodation requirement and not to fall foul of the general grounds for refusal, criteria applicable to most immigration categories.[134]

Given the volume of changes, it is almost impossible to track the visa's every mutation, not least because in its earlier incarnation when there was still room for discretion, different visa posts and individual Home Office officials adopted varying degrees of stringency when determining applications.[135] That said, an attempt has been made to catalogue the HSMP and T1G's substantive qualifying criteria from 2002 through to 2011: appendix 4.2 details the attributes required to obtain highly skilled migrant status and appendix 4.3 sets out the extension criteria. Notwithstanding the frequent changes to the visa, three broad phases can be identified: 2002-2006; 2006-2008 and 2008-2011. Table 4.1 provides an overview of the attributes within each phase, which it must be stressed, are set out in broad terms only.

Table 4.1: overview of attributes under the HSMP and T1G

HSMP: phase 1 *28 January 2002 to 7 November 2006*	*HSMP: phase 2* *8 December 2006 to 28 February/31 March/29 June 2008*	*T1G: phase 3* *29 February/1 April/30 June 2008 to 23 December 2010/5 April 2011*
- British bachelor's degree level qualification or above - past earnings - age - prior graduate level work experience - achievement in field of work - skilled partner - initial financial self-sufficiency in the UK** - intention to make main home in the UK**	- British bachelor's degree level qualification or above - past earnings - age - previous work/study in the UK - proficiency in English** - initial financial self-sufficiency in the UK**	- British bachelor's degree level qualification or above - past earnings - age - previous work/study in the UK - proficiency in English* - initial financial self-sufficiency in the UK*
Notes * *mandatory point scoring requirement* ***mandatory non-point scoring requirement*		

Source: own analysis of the Immigration Rules and Home Office guidance documents in respect of the HSMP and T1G 2002 - 2011

Without labouring upon the detail, key developments within each phase are addressed

[134] The grounds of refusal, which include criminal convictions and former breaches of immigration law are set out in part 9 of HC 395. The grounds have expanded over time, notably after the implementation of the PBS (HC 321 and HC 607). See Toal 2008 for discussion.

[135] When working as an immigration lawyer, I maintained a list of 'friendly' Home Office officials who could be contacted for guidance when dealing with complex visa applications. In some cases, the official would agree to handle a particular application personally. As noted earlier, officials' ability to exercise discretion became increasingly restricted following the implementation of the PBS.

below.

Phase 1: January 2002 - November 2006

Speaking at a conference a year or so before the launch of the HSMP, the then Immigration Minister, Barbara Roche observed that '[t]he market for skilled labour is a global market – and not necessarily a buyer's market' (BBC News 2000).[136] This notion of a global competition for talented individuals (discussed in chapter 1) ran through the various incarnations of the HSMP from 2002 to 2006. During this period, the qualifying criteria were flexible: sufficient points could be accrued across any of the scoring areas (Home Office 2002). The qualifying criteria were expanded in 2003 to include points for a skilled partner/spouse, more lenient criteria for those under twenty-eight and maximum points for certain recent MBA graduates (Home Office 2003, 2005 and 2005a). The HSMP extension process was straightforward: in addition to the main home requirement, individuals had be able to support themselves financially and have taken 'all reasonable steps to become lawfully economically active' in the UK (HC 538, para 135D). On completion of four years' continuous residence (increased to five years in April 2006 (HC 1016)), economically active highly skilled migrants were eligible for ILR (HC 538, para 135G).[137]

Phase 2: December 2006 - February/March/June 2008

If phase 1 was informed by the need and/or desire to provide an attractive migration package to the highly skilled, phase 2 is best characterised as the harbinger of the PBS. On 7 November 2006, the HSMP was suspended with effect from the following day (HC 1702). When reinstated on 5 December 2006, much of the previous points scoring criteria had been deleted and 'arguably draconian changes' brought about (Devine 2007, 94). The new qualifying criteria, which included a proficiency in English requirement, became applicable to both new applicants and those seeking to extend their high-skilled visa (HC 1702 and Home Office 2006).[138]

[136] I attended this conference which was sponsored by the law firm I worked for. I remember an air of excitement and anticipation as delegates waited for Barbara Roche to herald a new era of immigration policy.
[137] Of course, such applications could be refused under the general grounds noted earlier. In my experience, highly skilled migrants' applications for ILR during this period were rarely refused.
[138] HC 1702 also provided for the refusal of applications if a third party was unable to verify the authenticity of supporting documentary evidence. The circumstances surrounding these major changes to the HSMP are discussed later in this chapter.

The replacement of the economic activity test with new mandatory qualifying criteria for extensions was however successfully challenged in the 2008 HSMP Forum case.[139] The legal challenge to the increase in the qualifying period from four to five years for ILR was similarly successful in the 2009 HSMP Forum case. As a result of the two cases, the Home Office was required to preserve the pre-December 2006 HSMP for those granted leave as highly skilled migrants prior to 7 November 2006 (Home Office 2008) of whom many were eligible for ILR after four years (Home Office 2009). From 2006 therefore, multiple variants of the HSMP ran in parallel thereby adding further complexity to an already complicated area of law.[140] The reformed HSMP, with its reliance on externally verifiable criteria and an increasingly prescriptive approach to documentation, set the template for the visa's future incarnation under the PBS.

Phase 3: February/April /June 2008 - December 2010/April 2011

T1G of the PBS was rolled out for in-country applications (initial and extension applications) from February 2008; for out of country applications submitted in India from April 2008 and for the rest of the world from June 2008 (HC 321 and HC 607). The new T1G provisions were little different from those of the HSMP with the exception of the abolition of the MBA attribute. The language and maintenance requirements were however brought into the points scoring regime with a specified minimum level of funds needed to meet the latter. Although the qualifying criteria fluctuated, the minimum level of the prior earnings criterion increased over time with very high earners rewarded with maximum points (HC 439).

Though the stated aim of the PBS was to introduce a simplified and more transparent visa system, as discussed earlier, immigration law became ever more complex. In particular, as the Home Office sought to remove all traces of subjectivity from the visa deci process, the evidential requirements for all PBS categories, not just T1G, become increasingly stringent.

[139] The case turned on whether there was a legitimate expectation that the requirements prevailing at the time of highly skilled migrants' first grant of leave continue throughout their stay in the UK. With reference to the HSMP's context and purpose, in particular the Rules' main home requirement and assurances given in various guidance, Sir George Newman held that the terms of the pre-December 2006 HSMP conferred fixed benefits on those who had already held such visas (para 57).

[140] The provisions of the two Home Office policies are also complex. The 2008 policy, for example, covers not only migrants whose extension applications were stayed pending the outcome of the court case, but also those whose applications had been refused, those who had switched to a different immigration category and those who had decided to leave the UK.

4.4.2 Assimilability redux

As discussed in chapter 3, notwithstanding the frenetic pace of immigration policy-making throughout the 2000s, ministers' claims to have brought about 'the biggest shake-up of the immigration system in its history' (Home Office 2007, 3) are refuted in this thesis. Post-2000 policy initiatives were not of course limited to economic migration; a multitude of measures targeting family migration, asylum, appeal and deportation rights and unlawful migration were introduced over the decade.[141] As Somerville observes, there was no single policy but rather a number of interdependent policy layers which did not necessarily coalesce as a whole (2007, 191). Yet even when consideration is confined to the 'jewel' of post-2000 economic immigration policy (Webber 2012, 106), that is the high-skilled visa with its overt human capital-based selection criteria, there are echoes of the past in law's treatment of certain migrants as un- or less-desirable on racial lines. Before discussing the racial implications of the UK's high-skilled visa through an analysis of the English language requirement, the suggestion noted earlier that class has become the key criterion in the selection of migrants is considered below. As this thesis is concerned with law's impact on the highly skilled, the discussion that follows focuses on what it means to be assimilable from a macro perspective in the context of the regulation of economic migration.

In the global labour market of the twenty-first century, the prevailing orthodoxy among policymakers stresses the triumph of economic rationality over selection predicated on race (Boucher 2016, 2). Indeed, Joppke (2005) asserts that migrant selection on the basis of overt racial criteria has broadly disappeared due to both the establishment of non-discrimination as a fundamental norm and the global demand for skilled workers. Immigration policies that select on the basis of human capital can then be seen as a win-win for receiving states: not only do they enable such states to compete for and recruit migrants deemed likely to contribute to national economic growth, they also enable them to signal their adherence to international liberal values. These political benefits extend to the domestic level: high-skilled migration is generally considered more politically acceptable than other forms of migration (Boeri et al 2012; Czaika 2018). As Boeri et al put it, for many receiving states, skill-based immigration initiatives are 'a way out of a policy dilemma': highly skilled migrants are economically advantageous, reduce skills shortages, integrate easily and

[141] There isn't space here to consider all the many changes to immigration law made over the decade or so over which the three Labour governments presided. For discussion, see Schuster and Solomos 2004; McGhee 2006, 2009 and Mulvey 2011. A notable early change to family-related immigration law was the abolition of the primary purpose rule in 1997 (HC 26). The rule was racially discriminatory in that it was applied almost exclusively in the context of arranged marriages, requiring those seeking spousal visas to satisfy relevant visa posts (predominantly in India, Pakistan and Bangladesh) that the primary purpose of the marriage was not to gain entry to the UK. For further discussion see Sachdeva 1993 and Wray 2011.

quickly and are not perceived by the resident population as a fiscal burden (2012, 1-2). Cerna makes a similar point noting that citizens are less likely to associate highly skilled migrants with negative feelings towards societal change (2016, 34).

Preferential treatment on the basis of class is however nothing new. For example, as noted in chapter 3, east European migrants who could afford to travel cabin class were exempt from measures restricting entry to the UK under the 1905 Aliens Act. Similarly, in the US, the Chinese Exclusion Act 1882 barred the entry of Chinese labourers but not that of Chinese merchants (Calavita 2000, 1-2). What is different today is the global scale of the labour market and the intensity of states' efforts to control who crosses their national borders (Goldin et al 2011). These structural features combine to create a world in which people with human capital have the option to migrate legally via invariably national skill-based immigration routes and those without attributes deemed economically valuable are largely excluded (Webber 2005; Bauman 1998 cited in Castles et al 2014, 254; Long 2015).

From this discussion, it would seem that class and wealth, expressed as human capital, have become primary measures of migrant assimilability. Indeed, this is supported at the empirical level: recent statistics show that migrants from India, China and the Philippines accounted for one fifth of all migrants with tertiary level education in OECD countries in 2010/11 (United Nations 2013, 3).[142] The claim that class-based admission criteria have supplanted those of race gains further traction from the establishment of the non-discriminatory norm noted earlier. Immigration policies explicitly excluding nationals of specified countries, such as those in place in the US, Australia and Canada as late as the post-war era, would be widely regarded as politically and morally unacceptable today (Weiner 1996; Joppke 2005; FitzGerald et al 2017).[143]

Yet simply because class-based selection criteria are foregrounded in contemporary economic immigration policy does not mean that racial bias is absent. The explicitly racially discriminatory admission criteria enshrined in the Chinese Exclusion Act cited above did not exclude class from operating as an additional sorting mechanism. Under the Act, migrants' class enabled them to offset, for want of a better word, their racial categorisation and so avoid the entry restrictions imposed on poorer members of their cohort. Notwithstanding

[142] As noted in chapter 1, in view of the difficulties in identifying and defining the highly skilled in cross-national migration studies, highly educated (defined as the completion of tertiary level education), is often used as a proxy for highly skilled.

[143] The Chinese Exclusion Act 1882 is but one example of US immigration laws that established racial inassimilability as grounds for exclusion. Examples of legislation with similar aims are the Immigration 1910 in Canada and the Immigration Restriction Act 1901 in Australia. For further discussion, see Ongley and Pearson 1995 and Kibria et al 2014.

their comparatively privileged position, such migrants were nevertheless subject to racial classification, albeit a more favourable one. The 1882 Act shows then how notions of race and class can combine to create new categories of difference.

Even when economic immigration policies comply with the non-discriminatory norm, they often produce racially disparate outcomes. From a global perspective, states' widespread adoption of skilled-based immigration initiatives is very likely to discriminate against populations from poorer countries - due to the lack access to education and skilled employment - which are predominantly non-white (Johnson 2009; Tannock 2011).[144] The global labour market is then not only stratified by class, but also by race (Castles et al 2014, 254). Some ostensibly non-discriminatory policies, however, may also mask racially biased intent. As discussed in chapter 3, key developments in UK immigration law and policy, including the 1905 Aliens Act mentioned earlier, fall into this category. Though prima facie race-neutral, they nevertheless sought to exclude migrants, who by virtue of their racial categorisation, were deemed unassimilable. Although policies today do not attempt to impose a blanket exclusion of migrants based on their ethnic or racial group (Tannock 2011; Kibria et al 2014), the pre-entry language requirements adopted by many western states arguably introduce racially inflected selection criteria (FitzGerald et al 2017). Indeed, and as will be discussed in the following section, when one considers both the circumstances in which proficiency in English became a requirement for the UK's high-skilled visa and the operationalisation of that requirement, it is difficult to deny that it was motivated, at least in part, by the desire to exclude poorer people from certain countries. After all, and to paraphrase Clayton (2008, 35) once again, laws are made with target groups in mind.

In sum, class and wealth have become primary measures of migrants' perceived ability to assimilate. However, notions of racial assimilability have not disappeared from UK law and policy. This is not to suggest that the economic immigration initiatives implemented in the 2000s construct the same racialised social identities as those shaped by previous policy measures. Rather, they operate more subtly, often in tandem with class, to make new categories of difference which may, nevertheless, echo past categorisations of migrants.

4.4.3 Managed migrants: points and prejudice

When the HSMP was announced in December 2001, no explanation was given as to why applicants' eligibility was to be assessed by a system of points (Home Office 2001), nor was

[144] Skill-based policies' discriminatory impact on women is discussed in chapter 1.

any explanation provided in contemporaneous Home Office guidance on the HSMP (Home Office 2002; IDIs 2002). It was not until the announcement of the PBS that policymakers explained and justified the use of points to determine visa applications in general (Home Office 2006a, para 40):

> *'Benefits will accrue from the new points-based system not just because of who it allows in, but also because of how those people are selected. Particularly important in this context are the principles that the new system should be clear and user-friendly, and based on objective and transparent criteria.'*

As discussed in chapter 1, it is not however the use of points to determine migrants' eligibility for admission that is contentious but rather the selection and conceptualisation of attributes underlying the allocation of points.

As shown in table 4.1 above, the high-skilled visa went through three distinct iterations which saw initial flexibility give way to an increasingly rigid approach. Whereas in the early versions of the HSMP points could be awarded across a range of attributes, by the time T1G was implemented in 2008 there were just four. For much of the post-2006 high-skilled visa, though not stated as mandatory, at least a bachelor's degree was necessary to reach the points threshold (see appendix 4.2).[145] Proficiency in English and initial financial self-sufficiency were however obligatory. Although over the visa's lifetime, policymakers repeatedly rationalised the ever-mutating selection criteria as the best predictors of migrants' economic success,[146] they can also be conceived of as markers of migrants' perceived assimilability (FitzGerald et al 2017).

Language requirements for citizenship are now 'ubiquitous' in most European states (Goodman 2011, 237). In the UK, proficiency in English has been a requirement for naturalisation since the 1914 British Nationality and Status of Aliens Act (s 2(1)(b)).[147] Over the course of the 2000s, however, policymakers in the UK and in other European states

[145] When working as a solicitor, one of the first HSMP applications I made was for a photographer who had neither a degree nor high earnings. He had however considerable experience as a photographer and had won a number of prestigious industry awards. These attributes enabled him to score sufficient points to qualify as a highly skilled migrant. He would not have qualified under post-2006 incarnations of the high-skilled visa.

[146] When policy advisors first floated the idea of a high-skilled visa, suggested attributes were described as 'key determinants of labour market success' (Glover et al 2001, para 6.12). The Home Office white paper announcing the PBS provided that, *'points will be awarded for attributes (which predict a migrant's success in the labour market)'* (Home Office 2006, para 42 [parentheses in the original]).

[147] Women married to British subjects were exempt from the language requirement under the 1914 Act: they were deemed British by virtue of marriage (s10(1)). Under the British Nationality Act 1981 (BNA), those seeking to naturalise are required to have 'sufficient knowledge' of English (or Welsh or Scottish Gaelic) (sch 1, para 1(1)(c)).

increasingly made knowledge of language and, in some cases, culture, of the host state a condition of entry (Orgad 2010; Bonjour 2014; FitzGerald et al 2017). Scholars tend to discuss such measures in terms of integration - Joppke (2007) and Goodman (2011) refer to 'integration from abroad' and Bonjour (2014) to 'pre-departure integration requirements'. However, given their role in determining migrants' ability to enter state territory, they are also, as FitzGerald et al (2017) recognise, signifiers of assimilability.

In the domestic context, knowledge of English has become a condition of entry in many immigration categories.[148] Although it is beyond the scope of this thesis to discuss these initiatives throughout the 2000s, key developments are noted briefly in view of their relevance to the high-skilled visa's changing eligibility criteria. The initiatives, which comprised more rigorous language testing and a requirement to demonstrate knowledge of life in the UK, were first introduced for migrants seeking to naturalise as British. In 2007 they became a stipulation for those seeking ILR (HC 398).[149] As the initiatives targeted migrants already living in the UK, they are perhaps better seen as part of a more muscular integration policy. However, the English language requirement was also extended to the border: first in 2004 when it became an entry condition for ministers of religion (Cm 6297) and then in 2006, when proficiency in English became compulsory for highly skilled migrants (HC 1702). In 2008, the requirement was extended to almost all economic migrants seeking entry under the PBS (HC 607; HC 1113) and in 2010, to those applying for entry as the spouse or partner of a British resident or citizen (Cm 7944).[150]

As noted earlier, policymakers repeatedly framed the high-skilled visa's selection criteria in economic terms: such justification was given again when new the HSMP criteria including the language requirement were implemented in 2006 (HC 1702, para 7.2). In contrast, explanations for the introduction of language requirements in other immigration categories including skilled workers under Tier 2 focused on social integration (Ryan 2010). Given policymakers' express linking of pre-entry language skills to migrants' capacity to integrate, that is, their assimilability, it seems likely that the HSMP language requirement was viewed in similar terms when introduced in 2006. Indeed, the requirement's dual purpose - the promotion of economic *and* social integration - was subsequently confirmed (Home Office 2007, para 11b).

[148] For further discussion, see Ryan 2008 and 2010.
[149] In 2004, the language requirement was extended to spouses of British citizens (BNA sch 1, para 3(e) as amended by the Nationality, Immigration and Asylum Act 2002 (NIA)) and to civil partners in 2005 (s 6(2) BNA as amended by the Civil Partnership Act 2004). In 2005, 'sufficient knowledge about life in the United Kingdom' became an additional naturalisation requirement (sch 1, para 1(1)(ca) as amended by the NIA 2002).
[150] The introduction of the language entry requirement for spouses and partners and the Supreme Court case of Ali and Bibi in which the requirement was challenged are discussed in chapter 5.

Leaving aside concerns over the efficacy or ethics of a pre-entry language requirement, scholars have noted, mainly with reference to family migration, its third and more hidden purpose: the exclusion of certain migrants from the state (Blackledge 2009; Goodman 2011).[151] In the context of high-skilled migration, the requirement clearly favoured migrants from Anglophone countries and hindered those who were not. Yet as Ryan notes, the introduction of the language requirement (as part of the HSMP's 2006 reform) was not even debated in Parliament at the time (2010,11).[152] Examination of the circumstances surrounding the changes to the HSMP's selection criteria in 2006 and the ways in which those changes were implemented, further reveals their exclusionary and discriminatory function.

The UK's focus on economic migration in the 2000s led to the introduction of not only the high-skilled route but also introduced initiatives to encourage short-term low-skilled migration.[153] By the mid-2000s, however, elements of the national press, traditionally hostile to migration and fixated on migrant numbers, had shifted their focus from asylum seekers to east European migrant workers (Berkeley et al 2006; Gabrielatos and Baker 2008). Indeed, as detailed in chapter 5, as early as 2004, the government had implemented measures to reassure the public over increased east European migration in direct response to pressure from the press (Somerville 2007, 135-136). Although high-skilled migration accounted for a fraction of overall migrant numbers, by 2006, overall migration levels were a live political issue. Notwithstanding antipathy towards migrants in the press and among the public (Ipsos MORI 2003 and 2004) it is suggested here that the make-up of the highly skilled migrant cohort was more pertinent to high-skilled policy development than their total number. The breakdown of HSMP entry visas by applicants' nationality in the years 2005 and 2006 provided at appendix 4.4 shows that in both years, Indian nationals accounted for nearly one third of all HSMP entry visas granted. Taken together, nationals of India, Pakistan, Nigeria and China accounted for more than one half of all HSMP entry visas issued in 2005 and 2006.

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[151] In the UK, politicians have rarely explicitly acknowledged this gatekeeping function. In 2010, in a speech outlining immigration policy, the then Home Secretary framed the English language requirement for spouse and partner visas as necessary for integration (May 2010). However, given the overarching theme of the speech - the implementation of the new Conservative government's election promise to reduce net migration - it can be inferred that the measure also served to reduce family migration. This is discussed further in chapter 5.

[152] Brief questions were raised about appeal rights and the number of HSMP applications in the House of Lords (HL Deb 28 November 2006). For Ryan, the lack of debate in either the Commons or Lords on the introduction of the language requirement for most categories of economic migrant suggests a general 'acquiescence' (2010, 11). The lack of debate can also be attributed to the fact that the language requirements were introduced through amendment to the Immigration Rules and as such, did not, as discussed earlier, require parliamentary approval (IA 1971, s 3(2)).

[153] For example, the Sectors Based Scheme was implemented in 2003 to meet low-skilled labour shortages in the food processing and hospitality sectors (Cm 5829).

Against this backdrop of increased public anxiety and press agitation over migration together with high numbers of highly skilled migrants from India, Pakistan and Nigeria, as discussed earlier, the HSMP was suspended with immediate effect. Under the reformed HSMP (phase 2 in table 4.1 above), for both new applicants and those seeking extensions, proficiency in English became mandatory (HC 1702). Liam Byrne, the then Immigration minister, justified the new criteria on the basis that (HC Deb 7 Nov 2006):

> *'[t]hese tests will make it easier to curtail abuse within the scheme... These policies will not disadvantage genuine applicants, but will help to ensure that the scheme is both robust against abuse and targeted towards those who will benefit the UK.'*

Although no evidence of abuse was ever disclosed, in response to questions subsequently raised by the parliamentary Joint Committee on Human Rights (JCHR), Byrne stated that analysis of HSMP extension applications revealed that ten per cent of applicants fell within the bottom quarter of UK earners, twenty per cent earned below the national average and an unspecified number undertook low-skilled work such as taxi driving (2007).

The HSMP's suspension and reform was barely reported in the British national press. Two articles in *The Sun* and *The Guardian* newspapers nevertheless seized upon the numbers of highly skilled migrants and Byrne's repeated allusions to abuse. *The Sun* article's headline, 'Migrants in skill visa con' and byline, 'Scheme stopped...after 46,000 join' (Lea 2006) are indicative of its anti-migration position. *The Guardian* reported that increasing numbers of applications had used 'bogus documents' (Travis 2006). Although neither article mentioned migrants' national origins, their negative depictions linked highly skilled migrants to routine characterisations in much of the media of migrants in general as criminal and deceitful (Berkeley et al 2006). This casting of highly skilled migrants as inauthentic or not genuinely skilled also foreshadowed their treatment by elements of the media (and by some politicians) in the months leading up to the imposition of quotas and the closure of the high-skilled entry route in 2010, issues that are examined in detail in chapter 6.

Turning now to the implementation of the new measures, table 4.2 sets out the detail of the English language requirement.

Table 4.2: Criteria for meeting the English language requirement

HSMP: phase 2 *December 2006 to 2008*	*T1G: phase 3* *2008 to 2011*
Passed a specified language test at level 6.0 on the International English Language Testing System (IELTS).	Passed a designated English language test at level 6.5 on IELTS.
Completed a degree taught in English equivalent to a British bachelors degree. Master's degrees or doctorates taught in English do not meet the requirement.	Completed a degree taught in English equivalent to a UK bachelor's degree or above. This criterion automatically satisfied if degree obtained in: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Dominica; Grenada; Guyana; Ireland; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Trinidad and Tobago; the UK or the USA.
	Language requirement automatically satisfied by nationals of 'majority English speaking' countries as listed above with the addition of Canada and omission of the UK.

Source: Home Office 2008a, annex E and Home Office 2008b, paras 157-187 and annex B

It was observed earlier that the language requirement was discriminatory in itself in that it favoured individuals from Anglophone countries. Under T1G, nationals of select 'majority English speaking' countries (listed in the table) were further privileged in that they automatically met the language requirement (FitzGerald et al 2017). There is, as Wray (2009, 16) politely puts it, 'inconsistency' in the selection of the countries in that Australia, New Zealand and partially Francophone Canada are included whereas India, Pakistan and Nigeria, also Anglophone, are excluded. It is difficult not to see echoes of past racialised policies in the preference given to those from countries historically termed the old Commonwealth and the hurdles to entry placed before those from the top three sending countries which are part of the new Commonwealth.

If in 2006 the press played little part in racialising highly skilled migrants, evidence suggests the same cannot be said of policymakers. When announcing changes to the HSMP, Byrne stated the changes would not disadvantage 'genuine applicants' and that it was 'right' that highly skilled migrants speak English (HC Deb 7 Nov 2006). Byrne's language is noteworthy on two counts. First, one might assume that all applicants are genuine: it is their applications

that are granted or refused through the visa process. Byrne effectively postulates an a priori test, that of genuineness. Second, the use of 'right' hints that a moral value attaches to the possession of English language skills and, conversely, that those without such skills are somehow wrong or not genuine. Given the circumstances in which the new HSMP selection criteria were introduced, it is suggested that for policymakers, the highly skilled migrant archetype was envisaged as a white English-speaking man.[154]

4.5 Conclusion

This chapter has sought to link subjects which, on the face of it, may seem quite disparate. Consideration of the high-skilled visa's legal framework began with a discussion of the source of the power to control immigration. The chapter then considered the convolutions of the operationalisation of the law and the scope of the Secretary of State's powers to make and remake law with scant parliamentary oversight and the negligible effects of such oversight. The focus then shifted to the substance of the HSMP and T1G and associated visa processes, noting the mutable, complex and ever more stringent eligibility criteria. The concept of assimilability was also revisited and while recognising a shift from race to class as the primary measure of assimilability in contemporary economic immigration policy, issues of race nevertheless informed ideas of migrant desirability underpinning the UK's high-skilled policy.

Closer inspection of these subjects reveals however a common theme, that is, the tension between the executive's desire to exert absolute control over state borders and the demand in a global economy to attract a certain type of migrant, in this case, the highly skilled (Wray 2009, 5; Castles et al 2014, 5). Furthermore, this quest for immigration control, understood as an expression of sovereignty, is evident in the persistence of the prerogative and in the internal structure of the 1971 Act (which in turn contributes to immigration law's instability and complexity) and pervades the popular understanding of immigration law as a special force or power that is or should be broadly unfettered.

[154] The gendered nature of high-skilled immigration policies is discussed in chapter 1.

Chapter 5

Contextualising the news

5.1 Introduction

'Our leaders committed a cardinal sin
Open the borders let them all come in
Illegal immigrants in every town
Stand up and be counted Blair and Brown'

The Independents 2014[155]

This chapter considers in some detail the UK's political and socio-economic climate in the latter half of the 2000s in order to contextualise the analysis of the national press' coverage of skilled and high-skilled migration throughout 2010 in chapter 6.

Any attempt to contextualise the construction of news stories concerning skilled migration in 2010 by the British national press risks becoming a top-ten review beloved of the Sunday broadsheet supplements every December; a roll call of public events, one duly following the other, each captured in freeze frame as a discrete and oversimplified slice of history. Of course, in reality, such events are rarely distinct, nor are they ordered. Take, for example, the 2010 parliamentary general election, undeniably a key date in the British political calendar. Although voting in person took place across the entire country on 6 May, candidates' short campaigns began some five weeks before polling day, their long campaigns five months before that while the global and national events, issues and concerns that informed and shaped those campaigns, and the eventual outcome of the election, had begun to take form in the preceding years and decades. In other words, it is impossible to disentangle the beginnings and endings of events or the parameters of matters of public interest and concern. Mindful then of the messy and imbricated nature of public events, issues and concerns, referred to here as 'context', and of the artificiality of confining such context both geographically and temporally, this section discusses the events and issues that dominated British public life from January to December 2010 to situate and

[155] The lyrics are taken from the UKIP Calypso Song released by Mike Read, the former BBC radio personality, under the name The Independents. Read sings the song in a cod Caribbean accent.

understand the news stories in question.[156] The discussion focuses on key political and economic factors as well as on immigration policy developments, these being most relevant to media reporting on high-skilled and skilled migration throughout 2010.

5.2. Economic context: downdraft, dole queues and the deficit

In 2009-10, along with much of the world, the UK was still feeling the effects of the global financial crash and the world economy's 'deepest recession since World War II' that followed (International Monetary Fund (IMF) 2009, 16). Looking at three key national economic indicators, namely productivity, employment and deficit, at the EU level, though some member states fared better than others, from 2008-09, all suffered declining economic activity, rising unemployment and deficit increases (European Commission (EC) 2009). The UK was no exception: following the crash, productivity plummeted and employment rates dropped significantly though not to the levels experienced in some EU states such as Spain and Ireland (EC 2009, 2010). The UK's budget deficit was, however, one of the largest in the EU: in 2009, it reached just over eleven per cent of gross domestic product (GDP), the third highest after Ireland and Greece (Pietras undated).[157]

By early 2010, again in line with many western states, the UK had begun to show signs of economic recovery. Over the year, the UK's GDP grew, albeit sluggishly and somewhat erratically (Chamberlin 2010a, 2010b and 2010c), and in the final months of 2009, the number of unemployed fell for the first time since the crash. In the first quarter of 2010, the headline unemployment rate stood at eight per cent, which although represented a reduction, was still significantly higher than the pre-crash rate of just over five per cent (Chamberlin 2010a, 12). While the headline unemployment rate continued to fall in 2010, the rate for new graduates stood at twenty per cent, almost double what it had been prior to the crash in 2007 (ONS 2011,15). Nevertheless, with an overall unemployment rate hovering around seven and a half per cent for the latter part of 2010, the UK labour market was in a healthier state than that of the eurozone as a whole and was considerably healthier than Ireland and Spain where unemployment levels reached fourteen and twenty per cent respectively (Chamberlin 2010d, 34-37). As to the UK budget deficit, it remained comparatively high: according to the OECD, in 2010 it stood at ten per cent of national GDP,

[156] A summary of the newspaper articles analysed in chapter 6 is provided in appendix 6.2.
[157] The dataset excludes Croatia which did not join the EU until 1 July 2013.

the third highest in the EU, trailing Ireland and Greece as it had in 2009 (2014).[158]

Unsurprisingly then, in the period leading up to the 2010 general election, the state of the British economy was of central concern for both the public and the mainstream political parties. A post-election analysis of voter polls found that management of the economy was the most important issue for voters (Ipsos MORI 2010). This concern is similarly evident in the three major parties' 2010 election manifestos: all led with economic policy proposals which all, significantly, promised to reduce the budget deficit through, inter alia, public spending cuts, or austerity (Conservative party 2010, 7; Labour 2010,1.4; Liberal Democrats 2010, 14).[159] The level of budget deficit is of course one of many factors policymakers consider when planning and implementing economic policy. Yet by 2010, among the advanced economies, many of whose deficits and debt had grown in the aftermath of the financial crisis, the need to reduce deficit in particular had become economic orthodoxy (Krugman 2015). As Krugman put it, 'elites all across the western world were gripped by austerity fever' (2015). Although it is beyond the scope of this thesis to discuss the origins, complexities, necessity, merits or otherwise of the austerity measures adopted, the dominant view that austerity was the only viable policy option was a crucial factor in shaping the public mood in the UK in 2010 (Whiteley et al 2013). Put another way, in the run up to the 2010 general election, the imperative to cut the deficit dominated political and public debate on the economy. As *The Economist* observed, no mainstream political party at the time suggested further economic stimulus (Buttonwood 2015). Rather, and as noted earlier, the three Westminster parties were united in their conviction that austerity was a necessary remedial policy: the differences between them were then matters of degree - the scale and speed of spending cuts - rather than essence. The parties' 2010 election manifestos not only espoused similar policies of austerity, they also used a similar 'rhetoric of solidarity with the people' which recognised the 'tough' economic situation and 'tough' decisions to be made (Breeze 2011, 27). It is suggested that this language of sacrifice and hardship both fostered and reflected a climate of foreboding, a sense that life would be materially harder and public resources scarcer in the immediate future.

[158] The OECD data table provides deficit data for twenty-one EU member states. Although member states in 2010, the table does not include data for Cyprus, Malta, Latvia or Lithuania. As noted earlier, Croatia was not in the EU at the time and Romania and Bulgaria did not become full members until 1 January 2014.
[159] Breeze (2011) notes the similarities in all policy proposals across the three manifestos.

5.3 Political and social context: it's not just the economy, stupid

While the economy was the political issue of most concern to the British electorate in 2010, migration was a clear second (Ipsos MORI 2010a; YouGov 2010).[160] As discussed in chapter 3, although the mainstream political framing of migration as a cause for concern predates 2010 by decades if not centuries, over the course of the noughties, migration, or more accurately, the level of migration, became an increasingly live national political issue (Ford 2006; Page 2009; Duffy 2014). This is illustrated by the government's handling of migrants from the new EU member states (the A8) in 2004 discussed below.[161]

5.3.1 2000 - 2007

The Labour government's hasty implementation in 2004 of the Worker Registration Scheme (WRS) for A8 citizens seeking employment in the UK is best understood as a reactive measure implemented to allay perceived public concern over migration as represented by the national media (Somerville 2007). Although one should be cautious to equate media coverage with public opinion and to make causal leaps between public and/or media hostility to migration and restrictive policy developments, in the case of the WRS, it is difficult to conclude otherwise.[162] As Somerville notes (2007, 135-136), in 2002 the government announced that A8 citizens' access to the British labour market would be unrestricted. However, in the two months leading up to accession, the WRS was created and implemented in an atmosphere redolent with anti-migration sentiment. In addition to the national press' scare stories of the imminent mass migration of east Europeans seeking benefits, the then leader of the Conservative party raised the issue in Parliament (cited in Somerville 2007, 136). In 2003 and 2004, the public placed 'race relations/immigration' among the four most important issues facing Britain (Ipsos MORI 2003 and 2004).[163] At the very least then, the circumstances surrounding the introduction of the WRS demonstrate the

[160] Although opinion polls are generally understood as an expression of the overall public view on migration, that view is not monolithic. There are considerable variations in the public's attitudes towards migration when broken down by gender, age, education, location etc. (Ford and Goodwin 2014, 112; Page 2009, 4; Duffy 2014). Interestingly, Ipsos MORI's 2010 post-election analysis of voter polls found that migration was the fourth most important issue for voters in determining how to vote (2010). It is unclear whether this reflects a change in popular sentiment around the time of the election or is simply due to differences in the wording of the questions put to participants when collecting data.

[161] As noted in chapters 4 and 6, the focus of migration as a political issue shifted from asylum seekers to other migrant groups over the 2000s.

[162] Coutin and Chock found that the media likely influenced the implementation of a migrant amnesty law in the US (1995, 124).

[163] In their monthly Issues Index, Ipsos MORI conflate race relations and migration as one issue. The top five public concerns in 2003 and 2004 were: crime/law and order, defence/foreign affairs, education, the NHS and immigration/race relations (Ipsos MORI 2003, 2004).

existence of a considerable public and political anxiety over migrant numbers some years before the 2010 election.

Perhaps most emblematic of the growing salience of migration on Westminster's agenda was the emergence of the UK Independence Party (UKIP) as a viable national political party. Although founded as an anti-EU pressure group, from almost the outset, UKIP advocated restrictive immigration policies in respect of *all* migrants and not just the curtailment of EU free movement rights through severance of the UK's membership of the EU. Even UKIP's early general election manifestos, though sketchy, stressed the need to limit total migrant numbers and tighten border controls (UKIP 1997 and 2001). By 2005, UKIP's policy proposals had hardened (UKIP 2005, 7):

> '[UKIP] *would aim to approach zero net immigration both by imposing far stricter limits on legal immigrants and by taking control, at last, of the vexed problem of illegal immigration.'*

Such rhetoric would not look out of place in 2010. However, in 1997 and 2001, the three main Westminster parties' election manifestos were either silent on migration (Liberal Democrats 1997; Labour 2001) or simply stated the need for firm immigration control and/or proposed reform of the asylum process (Labour 1997; Conservatives 2001; Liberal Democrats 2001). None of the manifestos proposed to restrict the level of migration. By 2005, however, only the Liberal Democrats' manifesto had little to say on the topic of migration. Labour, while positive about economic migration - 'if you are ready to work hard and there is work for you to do, then you are welcome here' - also stressed the need for 'controls that work and a crackdown on abuse' and proposed restrictive measures including mandatory migrant identity cards (2005, 51-52). The Conservative party manifesto also espoused a far more restrictive approach promising, inter alia, to impose numerical limits on new migrants under the heading 'Its not racist to impose limits on immigration' (2005,18). As to public opinion, evidence from various contemporaneous opinion polls indicates that the public's anxiety over migration increased in 2005. Coombs and Latter's (2010, 13) analysis of Ipsos MORI's Issues Index notes increasing concern over immigration/race relations in the first part of 2005 while British Electoral Studies' data suggest that at the time of the 2005 general election, around thirty per cent of voters considered migration to be the most important issue facing the country (Ford 2006, 4)

On most measures then migration became a key political issue in the first half of the 2000s. Although there are diverse reasons for this growing antipathy to migration, there is

consensus that public concern over migration grew in line with the rise in the numbers of migrants coming to the UK from the early 2000s (Ford 2006; Page 2009; Bale 2014). As Duffy notes (2014, 259-260) in his meta-analysis of opinion polls on the issue of migration:

> *'... the relationship between concern and numbers is far from perfect, and it is not possible from this simple pattern to say that the increase in numbers is directly driving views ... But the relationship is clear enough to conclude that the number of immigrants is important to public attitudes, and particularly to how salient they feel the issue is.'*

Turning to the numbers then, in the five years from 2000, the number of people migrating to the UK each year rose from four hundred and eighty thousand to just over five hundred and eighty thousand in 2004 and five hundred and sixty-five thousand in 2005 (Home Office 2007a, 95), a significant proportion of whom were citizens of the eight new EU member states. Indeed some three hundred thousand A8 citizens registered with the WRS from 1 May 2004 to 31 December 2005 (Home Office et al 2006, 1).[164]

Accepting that public anxiety over migration grew over this period, it is nevertheless hard to know whether this concern was attributable to people's direct exposure to recent migrant communities or to wider structural factors (Ford 2006, 4). However, it is accepted, albeit cautiously, that the media plays a role in both shaping and reflecting public opinion on controversial topics such as migration (Duffy and Rowden 2005; Blinder and Allen 2015). Similarly, political rhetoric may also influence how we think and feel about migration (Information Centre about Asylum and Refugees in the UK (ICAR) 2004; Crawley 2005, 2009), especially as politicians, policy papers and press releases are often the primary and sometimes the only sources of information used in the media's coverage of migration (ICAR 2004).[165]

So, what then of UKIP? Its fortunes as an electable political party and as an object of press interest fluctuated over the 2000s (Ford and Goodwin 2014). Although the party's popularity surged around the 2004 and 2009 European Parliament (EP) elections in which it won just over ten seats, support flat-lined in the 2005 general election in which it won no seats with only around one tenth of its candidates retaining their deposit (Ford and Goodwin 2014, 65).

[164] The registration figure, though indicative, does not reflect the number of new A8 citizens migrating to the UK. From my experience as an immigration lawyer, many A8 citizens were already living in the UK prior to 2004 with self-employed status under the European Union Accession Agreements. Having found employment post May 2004, many then applied under the WRS.

[165] As will be discussed in chapter 6, the government and politicians were the primary sources for most news stories on high-skilled and skilled migration in 2010.

On the face of it, these voting patterns suggest that throughout the 2000s, UKIP was still regarded as a single-issue party of interest to hardcore eurosceptics only.[166] However, studies undertaken around the 2004 and 2009 EP elections found that euroscepticism *and* migration concerns were the strongest attitudinal drivers for UKIP supporters (John and Margetts 2009; Whitaker and Lynch 2011; Ford et al 2012).[167] John and Margetts' study, which analysed polling data taken in 2004, found that for over fifty per cent of UKIP voters, migration was the most important issue facing Britain. The two other studies, both based on a large scale voter survey conducted prior to the 2009 EP election, found that as well as being strongly eurosceptic, UKIP supporters were also very concerned about migration (and for Ford et al, were xenophobic too) and dissatisfied with the mainstream parties. It seems then that in the 2000s, many UKIP supporters saw their party as not only opposed to the EU but also to migration.

Hard euroscepticism and opposition to EU migration are of course interrelated concerns: the increased number and hence greater visibility of EU citizens living in the UK is a tangible manifestation of EU membership. However, that UKIP's opposition to migration was not limited to intra-EU mobility suggests that its supporters' euroscepticism was not simply motivated by rejection of the EU as a political system but rather, was based on 'beliefs that the nation and the 'native' group are under threat' (Ford and Goodwin 2014, 188). While an examination of the myriad reasons underlying this worldview falls beyond the scope of this thesis,[168] for the purpose of understanding the social and political background to the media coverage of high-skilled and skilled migration in 2010, it suffices here to note that the rise of UKIP as a serious political force over the course of the 2000s was both symptomatic of and instrumental to a growing nativism in the UK.

5.3.2 2008 - 2010

In the two years preceding the 2010 general election, migration remained high on the list of public concerns with around one in four people consistently placing it among important issues facing Britain (Ipsos MORI 2008 and 2009). While migration may not have been a determining factor for voters in the election itself (Flynn et al 2010; Ipsos MORI 2010), its

[166] For a discussion of the reasons behind UKIP's quite different performances in the EP and national elections, for example, the difficulties in overcoming the first past the post system, see Whitaker and Lynch 2011 and Ford et al 2012.
[167] The three studies all note the scarcity of data on UKIP supporters' attitudinal drivers in the early 2000s due to their relatively small number among the electorate.
[168] Ford and Goodwin's (2014) comprehensive and in depth account of UKIP situates the party within the EU-wide growth in radical right-wing populist politics.

political salience should not be underestimated. As Flynn et al (2010) put it, 'immigration issues roiled below the surface'. Migration was a particularly difficult issue for the Labour party (Hansen 2014), not only because of the split on the issue among their supporters but also because having been in government for the past decade or so, they had no option but to justify their record.[169] In the summer of 2009, the Labour cabinet acknowledged that migration was a major issue for voters and that the government's rhetoric on migration had to change and accept in public that 'numbers matter' (Cavanagh 2010, 31).

Duffygate - an incident arising from an encounter between Gordon Brown and a lifelong Labour supporter, Gillian Duffy, encapsulated Labour's difficulties over migration. On the campaign trail in 2010, Duffy challenged Brown over migration, asking 'but all these eastern European what are coming in, where are they flocking from?' to which Brown briefly explained the benefits of EU free movement. Back in the privacy of his car, Brown commented that the meeting was 'a disaster' and that Duffy was 'bigoted' (Weaver 2010). Brown's remarks, caught by his lapel microphone, became 'a field day' for the press (Hansen 2014, 211): both the brief exchange between Duffy and Brown and Brown's private remarks were given considerable airtime. However, the story did not end there. Brown's head-in-hands reaction to his comments when played back to him (also caught on camera) and his subsequent apologies all received extensive media coverage. Duffygate was seen as a defining moment in Labour's election campaign: not only did it reveal Labour's vulnerability and the divide between sections of supporters and the parliamentary party over migration (Carey and Geddes 2010; Flynn et al 2010; Wring and Ward 2010), the episode also resonated with the wider public in that Duffy's comments gave voice to what many people were thinking, namely that migration was too high and out of control (Hansen 2014).

Given the febrile atmosphere surrounding public and political debate over migration exemplified by Duffygate, the four main national parties predictably devoted space to their immigration policy plans in their 2010 election manifestos. All advocated measures 'needed' to ensure border security, prevent abuse and to exercise more control over migration (Conservatives 2010, 21; Labour 2010, 5:2-5:6; Liberal Democrats 2010, 75-76; UKIP 2010, 5-6). Although some elements of immigration policy established a line between the parties - for example, UKIP planned to bring back the primary purpose marriage rule[170] and the Liberal Democrats to introduce a regularisation programme for unlawful migrants - the

[169] Though the then Labour government's measures had latterly sought to reduce migration, this was never an explicit policy objective: such measures were generally framed as necessary to prevent abuse or to facilitate integration.
[170] The primary purpose rule is noted in chapter 4.

parties were united on one key aspect of policy; all sought to cut the overall level of migration, some in more explicit terms than others:

> *'UKIP will: · [e]nd mass, uncontrolled immigration. UKIP calls for an immediate five-year freeze on immigration for permanent settlement. We aspire to ensuring any future immigration does not exceed 50,000 people p.a.'*
>
> UKIP 2010, 5

> *'But immigration today is too high and needs to be reduced ... So we will take steps to take net migration back to the levels of the 1990s – tens of thousands a year, not hundreds of thousands ... '*
>
> Conservatives 2010, 21

> *'As growth returns we want to see rising levels of employment and wages, not rising immigration.'*
>
> Labour 2010, 5.6

> *'It would be wrong to try and end immigration completely but we have to manage migration so that it benefits Britain and is fair for everyone.'*
>
> Liberal Democrats 2010, 75

Migration's prominence as a voter issue is further illustrated by the fact that in the series of live leader debates between Gordon Brown, David Cameron and Nick Clegg broadcast ahead of the election, migration was the only topic to generate questions from the public across all three debates (Flynn et al 2010). In each debate, the three leaders restated their respective parties' policy proposals for reducing migration. Further, all the leaders accepted public concern as a natural and logical reaction to the pattern of migration over the past decade: Brown stated, 'I know that people feel there are pressures because of immigration', Clegg, that '[p]eople feel, quite rightly, really strongly about immigration' and Cameron that by imposing a quota, 'we wouldn't hear on the doorstep or on the streets ... people worried about immigration' (BBC News 2010, 2010a and 2010b).

By 2010 then not only had migration become a firmly established mainstream political issue, the need to reduce it had become the prevailing orthodoxy among the Westminster parties. Even the Green party conceded as much in their election manifesto (2010, 45), '[w]here we

are limiting numbers, our priority must be to meet our obligations to refugees ... above the needs of our economy.' Furthermore, in 2010, that public anxiety over migration was entirely justified and to be expected in the circumstances had become an important strand of the dominant political narrative. Indeed, no mainstream party offered an alternative view. Although not responsible for these developments, the shadow of UKIP hung over them, most visibly in the legitimation of public concern over migration.

5.4. Policy developments: two migrants good, four migrants bad

With the parliamentary general election looming over 2010, it is tempting to divide domestic immigration policy into a 'before' and 'after': a period of relative openness rudely interrupted post 6 May by a far more restrictionist turn. In truth however, by 2010, the Labour government had already adopted a number of measures which on the whole made migration to the UK more difficult than it had been earlier in the decade.[171] Though such measures were invariably framed as necessary either to counter abuse or to assist integration, in light of the government's change in immigration strategy in 2009 noted above, it seems reasonable to conclude that the policy changes also sought to curb the numbers of migrants in certain visa categories and reassure the public that steps were being taken to do so. To contextualise therefore how immigration law and policy developed under the Coalition government in 2010, it is useful to consider, albeit briefly, two policy changes advanced in 2009 as emblematic of the Labour government's approach. One change concerned family migration and the other student migration.

Looking first at family immigration policy, as noted in chapter 4, in November 2010, the law was amended to require migrants applying for visas as the spouse, partner or fiancé of a British resident/citizen to demonstrate proficiency in English (Cm 7944). Although the language requirement was implemented under the Coalition government, the genesis of the policy lay with the previous government. The Labour government first proposed and consulted upon the idea in 2007 arguing that it would assist integration (Home Office 2007b). In 2008 however, the policy was demoted to a medium term goal due to the paucity of English language classes abroad and the hardship the immediate introduction of such a policy would cause (Home Office 2008c). Then in July 2009, the medium term goal once again became a firm proposal: the language requirement would be implemented in 2011 to

[171] Although Bale (2014, 296) notes that 'Labour has a long history of adjusting policy in this area [immigration] so as to remain competitive with its main rival, the Conservative party', he dates the party's shift in immigration policy to after the 2010 election whereas it is argued here that the direction of policy had already changed by 2010.

allow a sufficient number of English language centres to be established in the intervening period. While the Labour government continued to frame the measure as an aid to integration (Home Office 2009a, 23), a foreseeable side effect was a reduced level of spousal migration which would most likely impact disproportionately those applying for spouse/partner visas from poorer non-Anglophone countries. The requirement was subject to legal challenge in the case of Ali and Bibi on the basis that it was a discriminatory breach of rights to family life (articles 8 and 14 of the ECHR). Although the Supreme Court found in Ali and Bibi that the requirement itself was compliant with human rights law, Lady Hale noted that in the year following the change in the law in 2010, there was a notable drop in the number of spouse/partner visas issued (para 49).

As to student policy, in November 2009, Gordon Brown launched a review of the Tier 4 student visa citing concerns that the route was being used to gain access to the British labour market rather than to study (BBC News 2009).[172] While the review was on-going, Tier 4 visa applications were temporarily suspended at British visa posts in China (Ramsbotham 2009) and across Northern India, Bangladesh and Nepal to ensure that they were 'genuine' (Oppenheim cited in ILPA 2010, 2). Following the review, changes to the Rules in March 2010 introduced more stringent visa conditions for students on courses below degree level including further restrictions on part-time work, a prohibition on work for their dependent family members and the abolition of the dependant visa itself for families of students on short courses (HC 367). While the prevention of abuse was the official rationale for these changes, like the English language requirement, they can be easily read as measures to discourage and reduce certain streams of student migration to the UK.

These changes to the law not only show that a more restrictive immigration policy was already in train prior to May 6 but also reveal, when set against the Coalition initiatives begun in 2010, the narrow confines of mainstream party political thinking on migration at the time. In other words, for the governments either side of the election, the aspiration to reduce the level of migration was a given. The issues, rather like the differing approaches to the national deficit, were scale and speed. Yet policymakers' powers were constrained, not just by legal obligations such as those arising from membership of the EU and the Council of Europe, but also by more inchoate concerns linked to trade and diplomatic relations. Such factors, together with the fixation on numbers, left policymakers few options: EU nationals' free movement rights could not be unilaterally curtailed, further restrictions on family

[172] The review was announced just seven months after the launch of Tier 4 of the PBS on 31 March 2009 (HC 314) and only three years after the second Prime Minister's Initiative to increase the number of international students (Department for Innovation, Universities and Skills 2006).

migration risked engaging human rights law and limits on non-EU students, while feasible, risked stymying the UK's prestigious and profitable higher education sector. That left the economic routes which, since 2008, had been open to highly skilled and skilled migrants only under Tiers 1 and 2 respectively. While limiting the number of non-EU workers was legally possible, such measures risked alienating the business community, not just powerful multinationals but also smaller enterprises such as veterinary practices and butchers whose businesses required workers with skills officially recognised as in short supply (Home Office 2010a). Aside from seeking to reduce migrant numbers, and importantly, being seen to try to do so, the targeting of migrant workers was an attractive policy option for another reason: it tapped into the growing labour market protectionism noted earlier, crudely summed up by Gordon Brown's call for 'British jobs for British workers' (Brown 2007).

In May 2010, the Coalition adopted as government policy the Conservative party's election manifesto commitment to set 'an annual limit on the number of non-EU economic migrants' (HM Government 2010, 21). When set against the political and economic background discussed above, the introduction of a numerical quota or cap for such migrants has a ring of inevitability. Whereas in political terms the cap was the thing that differentiated the Conservatives from Labour and the Liberal Democrats from a policy perspective, the cap can be understood as the distilled expression of the dominant driver of immigration policy from the late 2000s onwards, namely, the desire to reduce migrant numbers.

The timeline at appendix 5.1 provides an overview of the immigration policy proposals, announcements and changes to the law made over the course of 2010. Although lack of space prevents elaboration on the various initiatives (some policy events are considered in more detail in the context of the media analysis in chapter 6), the following points merit mention. From the formation of the Coalition government on 12 May 2010 to the end of the year, the implementation of the cap was a Home Office priority. Just six weeks after becoming Home Secretary, Theresa May announced the introduction of an interim cap on highly skilled and T2 migrants some three weeks hence in the following terms (HC Deb 28 June 2010):

> *'[i]t is important that today's announcement does not lead to a surge of applications during this interim period, which would lead to an increase in net migration, undermining the purpose of the limit and putting undue strain on the UK Border Agency'*

It is not surprising then that of the changes to immigration law from May to December 2010 (all achieved through amendments to the Rules), few did *not* involve the cap. That one non-cap related Rule change was necessary to comply with a Supreme Court ruling (Cm 7929) and that two others implemented proposals formulated by the previous government (Cm 7944), strongly suggest that law-makers' energies were almost exclusively directed towards devising and implementing the cap.

5.5 Conclusion

By 2010, migration had become a key issue for the British public, second only to the economy. In tandem with the increasing level of economic migration, notably post-2004 from eastern Europe, there was a growing nativist sentiment among certain groups, reflected in and arguably stoked by the rise of UKIP, and encapsulated in the Brown-Duffy exchange. Indeed, by 2010, the dominant political narrative of too many migrants had become the orthodoxy. At the time of the 2010 general election, the question was not whether migration should be reduced but how, who and by how many. It is in this rather febrile atmosphere that the press' construction of the figure of the highly skilled migrant is examined in chapter 6.

Chapter 6

Counters across the void: the media construction of the highly skilled migrant

6.1 Introduction

> *'...while the subjects of immigration debates have ostensibly changed, much of the negative tone and frameworks of discussion have not. The media discussion of immigration is still conducted within the framework of immigration control, assisted by an unrelenting staple of panics about mass influxes, criminal behaviour, welfare state crises and illiberal cultural difference.'*
>
> Berkeley et al 2006, 25

This chapter seeks to understand how the figure of the highly skilled migrant is constructed in the public arena through the analysis of the reporting of skilled and highly skilled migration in the British press over the course of 2010. The socio-economic, political and immigration policy background to the news stories is discussed in chapter 5.

Extensive research into the coverage of refugees and asylum seekers in the British press has consistently found that they are portrayed not only in negative terms but frequently in derogatory terms too (Smart et al 2006 and 2007; Gabrielatos and Baker 2008; KhosraviNik 2009; Innes 2010). Studies have also shown that British television reporting of migration tends to represent refugees and asylum seekers in the UK in a similarly negative light (Philo and Beattie 1999; Buchanan et al 2003; Goodman and Speer 2007; Gross et al 2007). This negative framing is not, however, limited to refugees and asylum seekers as the quotation from Berkeley et al's (2006) longitudinal study of the British media demonstrates. In 2012, Leveson (2012, para 8.51), as part of his inquiry into the press, confirmed that he had seen sufficient evidence of 'discriminatory, sensational or unbalanced' reporting of asylum seekers *and* migrants to conclude that it was endemic in parts of the press.

As the number of studies dating from the 2000s suggest, media interest in migration grew during this period (Gross et al 2007, 21), broadly in tandem with increased political and public concern over migration as discussed in chapters 4 and 5. Media antipathy towards refugees, asylum seekers and migrants is not, however, confined to the British media nor is it a new phenomenon. Research has shown that historical and contemporary media reporting on migration has taken a predominantly negative stance in Canada (Esses et al

2013), Germany (Zambonini 2009), the Netherlands (Roggeband and Vliegenthart 2007) and notably in the US (Mehan 1997; Chavez 2001; Cisneros 2008). In the British context, Greenslade, drawing on both his experience as a journalist and analysis of snapshots of media coverage of migration from the post-war period to the early 2000s, found that the popular press 'has *always* adopted a negative stance towards immigrants and refugees' before concluding that the press as a whole was and remains 'xenophobic' (2005, 7 and 9).

Two questions lie at the heart of this chapter: is there a distinct media narrative for highly skilled migrants and if so, how is the figure or social identity of the highly skilled migrant constructed? To answer these questions, the chapter is structured as follows. First, the presence or otherwise in the corpus of commonly used terms associated with migration is considered. These quantitative findings are then compared with previous empirical studies and serve as a springboard to investigate the existence of a separate highly skilled migrant narrative. Second, the news agenda is examined, including the type of migration-related news events reported and news stories' sources and perspectives, to ascertain how the construction of the news affects the depiction of highly skilled and skilled migrants. Finally, the descriptors and characteristics the media attributes to such migrants, such as references to talent, nationality and profession, are discussed in order to examine in detail the media construction of the highly skilled migrant.

A list of the newspapers included in the corpus together with a summary of the number of articles by newspaper and newspaper type is provided at appendix 6.1. Appendix 6.2 details the corpus articles by newspaper title, date, headline and the news event that prompted each article.

6.2 A distinct narrative for highly skilled and skilled migrants?

As noted above, the British mainstream media, when taken as a whole, has adopted a dim view of refugees, asylum seekers and migrants both historically and in the more recent past. The issue here then is whether in the 2000s, the press treated differently migrants who had been repeatedly described by politicians and policymakers as 'the brightest and best'. To begin to address this question, the linguistic formulations[173] used to label and describe highly skilled and skilled migrants in the UK in the corpus are examined against the findings of

[173] The term 'linguistic formulations' aims to capture the meanings of Gabrielatos and Baker's (2008,14) more esoteric terminology (collocation, prosody and so on).

previous empirical studies, notably Allen and Blinder's research (2013) with which this study shares a partial timeframe.

6.2.1 The migration lexicon: immigrant/migrant; irregular/illegal; refugee/asylum seeker

As discussed in the Introduction, linguistic choices, notably the media's, are important in that they play a significant role in framing the perception and understanding of people who have come to live in the UK from abroad. Language is not however neutral. To paraphrase Gabrielatos and Baker (2008, 14), the media's use of language may create or replicate (or, it is suggested, a combination of both) common linguistic formulations with encoded meanings in respect of refugees, asylum seekers and/or migrants and, even if such linguistic formulations are adopted (as opposed to generated), this does not diminish the strength they gain through their amplification in the media. In other words, through the tone, grammar, emphasis, word choices and word combinations employed, irrespective of their origins, the media, 'make and communicate sociopolitical choices'. Studies investigating the linguistic formulations used to portray asylum seekers, refugees and migrants in the media have tended to focus on two linked aspects of what is often termed 'conflation'. These two aspects, referred to here as direct and indirect conflation, are defined as follows: *direct* conflation is the substitution of words which, in the case of media coverage of migration, is the extent to which terms used to describe a non-UK born individual or group's legal status - refugee, asylum seeker, immigrant, migrant - are used synonymously, whereas *indirect* conflation is the frequency and similarities of specific words and word combinations surrounding each of these terms. The rationale behind this analytical approach is straightforward: a high degree of word conflation or overlap is suggestive of a single encompassing narrative for *all* migrants irrespective of their legal status or reasons for coming to the UK (Gabrielatos and Baker 2008; Blinder and Allen 2014).

In earlier media reporting of immigration issues, there was much confusion over legal status with terms such as refugee, immigrant and illegal immigrant used inaccurately and interchangeably (Philo and Beattie 1999; Buchanan et al 2003; Gross et al 2007). As Philo and Beattie (1999, 185) observe, when such terms are conflated, news stories about specific groups, for example, illegal immigrants, can 'slide very rapidly into a general concern about migrants and migration'. Although research monitoring media coverage of asylum issues in 2006 and 2011 (Gross et all 2007; Philo et al 2013) suggest that the use of key immigration status terms in television reporting became more accurate, Philo et al found that in print

media, even in 2011, direct conflation of terms remained widespread in the reporting of asylum and illegal migration (2013,100-103).

Turning now to this study's data, a search was undertaken to ascertain the prevalence in the corpus of the following terms: illegal, irregular, immigrant, migrant, refugee and asylum. Given the search terms skill! and migr! in close proximity to each other were used to construct the corpus, it is not surprising that just three articles do not include the word migrant. However, few articles contain the terms illegal, irregular, refugee or asylum: under five per cent of articles in the corpus include the words irregular, refugee or asylum and under ten per cent mention the word illegal. As to the term immigrant, it appears in just over one third of the articles in the corpus. At first glance then, these quantitative findings point to two preliminary hypotheses. First, the low incidence of the four terms illegal, irregular, refugee and asylum across the popular, mid-market and quality press articles within the corpus, is indicative of little, if any, direct conflation or confusion in media coverage of terms denoting a person's immigration status. Second, that the substantial majority of news items do not include the word immigrant, suggests that immigrant is not generally synonymous with migrant when used in the corpus articles. If borne out by qualitative analysis of the data, these two tentative findings could be prima facie evidence of a separate media narrative for highly skilled and skilled migrants.

With regard to the conflation of terms denoting immigration status, qualitative consideration of the relevant articles confirmed, for the most part, the preliminary findings. Of the eight articles mentioning asylum and/or refugee, seven appear in *The Guardian* in news reports on broad immigration policy issues and/or statistics. In all seven articles, the status terms are clearly differentiated. The only other mention is a reference to a migrant rights' organisation in the *Daily Mail* (22 December 2010).

Similarly, when the ten articles featuring the term illegal (and its variants) were examined, there was little evidence of confusion in the use of terms. Half of the ten articles reported on the main political parties' immigration policy proposals in the run-up to the general election and the other half covered a range of migration-related topics. For example, an opinion piece in *The Times* makes a clear distinction between those with and those without legal status:

> *'I would suggest charging a fee for entry visas that is high enough to attract the more determined people, but low enough to underbid the sums paid by illegal migrants to people-smugglers-£300, say.'*

The Times 19 April 2010

The distinction is not, however, maintained in *The Sunday Times* article as the following extract demonstrates:

> '*Mrs Nhengu studied as a nurse at Stirling University and has lived in Scotland for eight years under Jack McConnell's Fresh Talent initiative, a scheme designed to increase the number of skilled migrants in Scotland ... Mrs Nhengu's visa finally expired in August.*
> *Her application for an extension has fallen foul of an administrative error and there are reports that she has claimed benefits illegally, an allegation denied by herself and her lawyers who are seeking a judicial review. ...*
> *Real society is all too often swayed by emotion and gut instinct. It can, quite happily, hold two contradictory beliefs at the same time, such as a conviction that immigration is out of control while championing the case of a specific illegal immigrant.'*
>
> *The Sunday Times* 10 October 2010

The Sunday Times uses the story of popular support for Mrs Nhengu's daughter following her appearance on a television talent contest to highlight the difficulties inherent in state promises of greater power to communities. Introduced as a skilled migrant, Mrs Nhengu then becomes an illegal immigrant even though the article notes that the allegations of illegality surrounding her status (claiming benefits and refusal of a visa extension) are denied and subject to legal challenge. Such blatant direct conflation of legal and illegal status is however rare within the corpus. The only article to contain the terms refugee or asylum *and* illegal is the *Daily Mail* article noted earlier in which the word illegal is used to describe a court ruling. Notwithstanding the *Mail's* anti-immigration stance, one should be careful not to read in too much: the term is not used to describe an immigration category and so is not an example of direct conflation.

It should be noted however that although just one article conflates terms directly, some of the other articles employ linguistic formulations that tend to blur indirectly the distinctions between the different legal categories of migrant. These more ambiguous articles are discussed later as they touch on issues surrounding the use of immigrant and migrant and word combinations that comprise part of the common migration lexicon. The following is an example of indirect conflation:

'At a public meeting with voters in Plymouth, he [David Cameron] *was asked about the case of an illegal immigrant who had committed a string of serious crimes in the area ...*

He [Cameron] *said Labour had tried to shut down political discussion of immigration, adding: "When anyone does talk about it they get accused of racism or worse. We need to talk about it in a reasonable and sensible way, which I have always done."*

Under a Conservative government, Mr Cameron pledged net annual immigration would be cut to "tens of thousands" by putting transitional limits on the entry of European Union citizens, and reducing the number of skilled migrants from the rest of the world.'

The Daily Telegraph 9 April 2010

In this article, as with *The Sunday Times* opinion piece discussed above, skilled migration is not its main focus. Both articles show how the inclusion of the term illegal within a text, though ancillary to the main story, may affect the reader's perception of migration issues. *The Telegraph* article, by highlighting a specific question from a member of the public[174] and concluding with a summary of the Conservative party's proposed immigration policy, suggests that not only is the policy proposal a solution to the issue raised by the question but also creates the possibility within the reader's mind of associative links between crime and illegality and skilled and EU migrants. The article does not label such migrants criminals or illegal but there is, nevertheless, at least a hint of a single (negative) narrative for all migrant groups irrespective of their legal status.

Although the term immigrant is used in just over one third of the corpus articles, it appears proportionately more frequently in the mid-market newspapers than in the popular and quality press. As noted earlier, a tentative interpretation of the quantitative findings is that immigrant is not synonymous with migrant: if it were, one would likely expect to see a more even distribution of each word in the corpus. A qualitative reading of the relevant text, however, revealed a more complex picture not captured by the initial analysis. It is worth noting first that when immigrant and migrant are employed on their own, that is, without descriptors, they are generally used interchangeably within an article. For example, a piece in *The Express* on new English language visa requirements refers to both 'immigrants heading to Britain' and 'English tests for migrants' (9 June 2010). However, when the terms are used with descriptors, as they often are as part of common linguistic formulations within

[174] The article uses the rhetorical device of prosopopoeia, which encourages the reader to connect with the argument by communicating as another person. The device was famously used in Enoch Powell's 'rivers of blood' speech in which Powell attributed the fear and threat of racially motivated violence to one of his constituents.

the migration lexicon, they take on different associations. Put another way, when considering the thirty-nine articles featuring the term immigrant, certain words cropped up as frequent descriptors of immigrant but not of migrant and vice versa. This analysis focuses on two such descriptors, illegal and skilled, as notions of illegality and skill are central to determining whether highly skilled and skilled migrants are portrayed in the media as a distinct group.

Looking first at the term illegal (and its variants), as noted earlier, it appears in comparatively few articles in the corpus. Illegal is used as a descriptor immediately preceding the word immigrant (illegal immigrant) in thirteen per cent of mentions of immigrant whereas illegal migrant appears in just three per cent of references to migrant. In their comprehensive study of the depiction of different migrant groups in the national print media from 2010 to 2012 Allen and Blinder found that across all three newspaper types, the most popular descriptor used immediately before the term immigrant was illegal. In their dataset comprising some fifty-eight thousand news articles, the phrase illegal immigrant appeared in almost ten per cent of articles in the mid-market papers, in five percent in the quality newspapers and in just over six percent of articles in the popular press. The study also found that illegal was the second most common descriptor appearing before migrant in the popular and quality papers and was the top descriptor in the mid-markets. However, as Allen and Blinder observe, the phrase illegal immigrant was used far more frequently than illegal migrant notably in the popular press (2013, 9-14).

Given the scope of Allen and Blinder's dataset and the much smaller and narrower focus of this study, it is not possible to make meaningful direct numerical comparisons between the two. However, broader comparisons can be validly made. The finding in both studies that illegal immigrant is used far more frequently in the media than illegal migrant is important. As Lakoff and Ferguson (2006) put it, the 'illegal frame' defines migrants as criminals, 'as if they were inherently bad people' which, in turn, becomes a label for their entire identity. Blinder and Allen reached a similar conclusion: the press' disproportionate focus on illegal immigrants constructs an image of *all* migrants as 'law-violators' (2015, 18). However, the infrequency of articles featuring illegal and/or illegal immigrant in this dataset, which is predicated on references to skilled migrants and migration, suggests that highly skilled and skilled migrants are not routinely associated with illegality.

Skilled rarely appears as a descriptor directly before immigrant in stark contrast to its widespread use before migrant. Although the prevalence of the adjacent words skilled and migrant is to be expected given these terms were used to construct the corpus, this does not of itself explain the scarcity of the term skilled immigrant. However, before drawing any

conclusions from the difference in the frequency in use of skilled as a descriptor, other instances of immigrant in the corpus must be considered. While the descriptor skilled appears immediately before immigrant in only three articles, in a further twelve articles immigrant features in reports on (highly) skilled migration. For example, the *Daily Mail* reports that Vince Cable 'could quit over the Government's cap on immigrants' (17 September 2010) and *The Times* that under the interim cap 'the number of immigrants from outside the EEA will be limited' (18 October 2010).

Two points arise from consideration of the twelve articles from which the examples above are drawn. First, they show the importance of a given term's context. While the association of immigrant and skill remains comparatively rare, it is not as rare in the corpus as initially thought: it appears in fifteen rather than three articles. Second, the focus on sentences, rather than on isolated words, draws attention to the articles' style and word choice. Rather than suggesting indirect conflation of immigrant and migrant in the context of skilled migration, perhaps the use of immigrant simply reflects the journalists' attempts to avoid the ubiquitous phrase skilled migrant. Gabrielatos and Baker's study of one hundred and seventy five thousand newspaper articles from 1996 to 2005 found a high degree of overlap in the terminology surrounding the terms immigrant and migrant. Further examination, however, revealed that migrant shared seventy-nine per cent of common proximate language with immigrant whereas for immigrant, the corresponding overlap was thirty-nine per cent. For Gabrielatos and Baker (2008, 26), this suggested that '*migrant has more specialized uses than immigrant'.*

Allen and Blinder also found that the language surrounding immigrant and migrant overlapped but that migrants were associated with economic and policy terms whereas immigrants were not. Skilled rarely preceded the word migrant in the popular press but was the fifth most common immediate descriptor of migrant in the mid-markets and third most common in the quality newspapers (2013, 2-3, 14). The use of skilled as an adjacent descriptor for immigrant however was too insignificant to register statistically in the popular and mid-market papers but was the tenth most common such descriptor in the quality press appearing in just over one per cent of articles (Allen and Blinder 2013, 11).

With the caveat on direct numerical comparisons still relevant, this study's finding of immigrant and migrant as synonymous terms when used generically echoes the finding of overlap between the terms in the two studies cited above. That skilled immigrant appeared in just three articles in quality newspapers echoes Allen and Blinder's finding that the phrase is rarely used in print media. The scarcity of the phrase in the corpus also supports the

previous studies' conclusions that migrant is a more specialised term associated with economy-related words, of which skilled is one. In sum then, it is suggested that there is a separate narrative for highly skilled and skilled migrants, distinct from the portrayal of immigrants, refugees and asylum seekers.

6.3 Dictating the news agenda

> *'The media do not simply and transparently report events that are 'naturally' newsworthy in themselves.'*
>
> Hall et al (1978, 53)

Writing at a time when references to fake news have become commonplace, the above quotation culled from *Policing the Crisis* serves as a useful reminder that *all* media news stories are manufactured, to a greater or lesser degree. In other words, news is a selective account of a selected event or, to cite Hall et al again, 'news is the end-product of a complex process which begins with a systematic sorting and selecting of events and topics according to a socially constructed set of categories' (1978, 53). This process involves multiple actors including the creators of the raw materials or event, interested groups and institutions, the media in general as well as specific news platforms and individual journalists, each with their own practices and values and each actively engaged in and contributing to the construction of the end product, namely, the news.

To understand how highly skilled and skilled migrants are depicted in the national press, it is necessary then to identify and examine the news-making process, that is, the structures, parties, practices and values that turn skilled migration-related raw materials into news stories. The next part of this chapter unpicks the news agenda that produced the skilled migration articles that make up the corpus beginning with consideration of Hall et al's analytical approach in *Policing the Crisis* followed by an examination of the sources of the news stories in the corpus.

6.3.1 All paths lead to policy: sources of skilled migration stories

In *Policing the Crisis,* Hall et al trace the transformation of street crime into a racially coded national crisis in 1970s Britain. Although analysis of the media is just one part of the book's wider social enquiry, the analytical tools developed by Hall et al to examine the production of

news, though they have shortcomings (Miller 1993), remain pertinent to this study.[175] In Hall et al's analysis, the news-making process is located within the structures, practices and ideologies of media organisations and powerful institutions. While the media is an integral part of this process, its role is subordinate to that of the institutions in the construction of the news agenda. Central to this understanding of news production is the relationship between the concepts of what Hall et al term primary and secondary definers. For Hall et al, media organisations are secondary definers in that they are not the originators of news events. Lacking the ability to generate news, the pressure to produce news stories together with journalism's professional values of balance and objectivity make the media as a whole and journalists individually overly reliant on major institutions to provide news' raw materials. Due to their power and position within society, such institutions are regarded as legitimate and representative sources of news events, which enable media organisations to fulfill their role of objective news providers. Powerful legal, social and political institutions are then primary definers in that they establish and shape the news agenda and the media, as a secondary definer, reproduces the views, interests and values of the dominant groups within society and sidelines those of the less powerful. This relationship between primary and secondary definers is important because it:

> *'permits the institutional definers to establish the initial definition or primary interpretation of the topic in question. This interpretation then 'commands the field' in all subsequent treatment, and sets the terms of reference within which all further coverage or debate takes place.'*
>
> Hall et al (1978, 58)

As mentioned earlier, Miller (1993) identifies a number of shortcomings to Hall et al's analytical approach, of which one is highly relevant to this study. For Miller, Hall et al's distinction between primary and secondary definers fails to take into account the role the media may play in shaping policy, a point also made by Blinder and Allen in respect of public opinion (2015). As discussed in chapter 5, there seems little doubt that in the context of migration, media coverage has fed back into and influenced policy developments. There are also examples in the corpus of the media seeking to influence immigration policy - an article in *The Times* (4 December 2010) takes credit for having done so. Notwithstanding this critique of Hall et al's conceptual tools, they remain both relevant and useful. Indeed, Hall et al's influence is evident in many of the empirical media studies previously cited in the

[175] For a more general critique of *Policing the Crisis*, see Barker 1992.

importance they accord to structural forces and power relations in the news-making process (see, for example, ICAR 2004; Greenslade 2005; Gross et al 2007).

As discussed in chapter 5, the introduction of a fixed numerical quota for highly skilled and skilled non-EU migrants was a dominant feature of political discussion of immigration policy during 2010. The immigration cap was arguably the USP of the Conservative party's immigration policy, a manifesto commitment that differentiated the party from Labour and the Liberal Democrats. In this study, ninety-two articles contained the word cap or a synonymous term: limit, quota or curb (including variants). In view of the political context then, the prevalence of these words suggests that first, immigration policy dominated news coverage of skilled migration in 2010 and second, that if this were the case, political institutions were most likely the news stories' sources.

Drawing on Balch and Balabanova's categorisation of knowledge sources cited in media coverage of migration (2011), the articles in the corpus were analysed qualitatively and coded according to the raw materials or event that prompted and became the news story. If more than one event provided a story's source material, the event forming the article's main focus determined its classification.[176] From this analysis, a typology of news events was constructed comprising nine categories as set out at appendix 6.3. Details of the events and corresponding news stories in the corpus are provided at appendix 6.2

Three things are immediately apparent from the typology. First, the parameters of the source materials are very narrow: all bar three such materials - the media, public events and stakeholder interventions - emanated from state institutions. Second, of those state institutions, over half are political institutions, namely, the government or non-government parliamentarians, policymakers and public bodies. The third point to note is that the media is also an originator of news events which supports the view espoused earlier that it may have a more autonomous role in constructing the news agenda than Hall et al (1978) claim. However, two sources, immigration policy proposals and policy announcements, received significantly greater media coverage across the three newspaper types than any of the other categories of news event. The government was then the major source of skilled migration news stories in the corpus, a finding that chimes with previous studies on media reporting of migration (Philo and Beattie 1999; Buchanan et al 2003; ICAR 2004; Goodman and Speer 2007; Gross et al 2007;). In the present study, however, a more specific finding can also be made: the *Coalition* government (rather than the Labour government) was the main provider

[176] There was an element of subjectivity in this process as it relied upon the author's interpretation of an article's main subject.

of raw materials for the highly skilled and skilled news stories that constitute the corpus.

Having established that elite institutions, notably the Coalition government, were the main suppliers of source materials for the corpus articles, according to Hall et al, these institutions should also be the primary definers of the topics of highly skilled and skilled migration. How then does the dominance of predominantly state institutions as news creators affect the discussion of skilled migration issues in the corpus? In other words, to what degree, if any, do they these institutions set the parameters for and the tone of the depiction of highly skilled and skilled migrants?

6.3.2 Migrant masses: the alignment of policy and media depictions of highly skilled and skilled migrants

The media's preoccupation with quantifying all migrant groups in their coverage of asylum and migration issues is widely noted in the literature (see, for example, Buchanan et al 2003; ICAR 2004; ICAR 2012; Philo et al 2013; Allen and Blinder 2013). Connected to this focus on numbers and also highlighted in the literature is the extensive use of water metaphors to describe the non-UK born (Gabrielatos and Baker 2008; Blinder and Allen 2014; Vicol and Allen 2014). With regard to the current study, the use of common aquatic descriptors - flood, influx and wave - appear relatively infrequently. That water metaphors are uncommon in the corpus, when compared to the findings cited above, suggests that, on the face of it, the depiction of highly skilled and skilled migrants stands apart from the depiction of other migrant groups. However, and as will be discussed below, it does not follow from this finding that the portrayal of highly skilled and skilled migrants is immune from the media's obsession with quantification.

As shown in table 6.1 below, the four most frequently used words in the corpus are all expressions of measurement: caps, years, 000 (as in 1,000, 10,000 etc.) and number.

Table 6.1: The four most frequently used words (and variants) in the corpus

Ranking	*Word*	*Word variants*
1	caps	cap, capped, capping
2	years'	year, years
3	000	000s
4	number	numbered, numbers

So, while water metaphors may be broadly absent, it seems that highly skilled and skilled

migration are nonetheless discussed in terms of numbers. Furthermore, cap as the most frequently used word together with the ubiquity of words of measurement in the corpus could suggest that the government was both the dominant news supplier and the primary definer of the topic of skilled migration. Put in more concrete terms, the Coalition government deemed migrant numbers to be the most pressing immigration policy issue, consulted upon and implemented a numerical quota for highly skilled and skilled migrants and the national press, in its coverage of highly skilled and skilled migration issues, gave prominence to the government's policy initiatives which focused on numbers. In broad terms then it can be said that government institutions dictated the news agenda in that the issue of migrant numbers effectively constituted the news on highly skilled and skilled migration. However, while this analysis holds true, as will be discussed below, it is overly simplistic when one considers journalists' professional values and media coverage of migration throughout the 2000s.

Looking first at journalists' values, unraveling the media's culture and practices that inform and permeate those values falls far beyond the scope of this thesis. It is enough to note that news or current affairs journalists regard it as their professional duty to hold power to account (Thurman et al 2016) which, when scrutinising government, includes checking whether government institutions are meeting their stated policy objectives (Threadgold 2009, 4).[177] Given then news journalists' professional focus on immigration policy initiatives and objectives in 2010, it is to be expected that the issue of migrant numbers dominated national newspaper coverage of skilled migration. Holding government to account demands an analysis of government policy on its own terms.

As to the reporting of immigration issues in the press in the 2000s, it will be recalled from chapter 5 that policy initiatives in the early 2000s sought to reduce the number of asylum seekers but not migrants. Indeed, economic policy in the early years of the Blair governments was predicated on increasing the numbers of economic migrants in the UK, be they highly skilled, skilled or low skilled. As postulated in chapter 5, the direction of policy changed in the late 2000s when the Labour government introduced changes to the law which though framed as necessary to prevent abuse or facilitate integration, also sought to reduce overall migration levels. In short, for most of the 2000s, the numbers of non-refuge seeking migrants were not a government policy concern. However, throughout the noughties, much of the print media fixated on the issue of numbers, focusing initially on asylum seekers (Buchanan et al 2003; Gabrielatos and Baker 2008) before shifting attention

[177] This duty holding of the government to account reflects rule 1 of the National Union of Journalists' Code of Conduct (2013) which states, *'A journalist: [a]t all times upholds and defends the principle of media freedom, the right of freedom of expression and the right of the public to be informed.'*

to other migrant groups as the number of people seeking asylum fell and those coming primarily to work increased (Blinder and Allen 2015).

Blinder and Allen (2015) note that although policy changes made within the period of their study (2010-2012) sought to restrict and reduce family and in particular, student migration, which accounted for a significant proportion of the overall level of migration at the time, these two migrant groups were largely absent from press coverage of migration. From this finding, Blinder and Allen conclude that 'this divergence of media portrayals ... from the content of ongoing policy discussions and policy changes is difficult to reconcile with claims that newspapers merely reflect real-world events or the discourse of political elites and policy makers' (2015, 31). One could similarly claim that there was a disconnect between government policy and press coverage of migration (but not asylum) issues for most of the 2000s: much of the press was concerned with migrant numbers whereas government policy was not. This suggests that not only did the media exercise a degree of autonomy in setting the news agenda, but also, in light of policy developments in 2010, influenced immigration policy. The important point here is that even though there was consensus in much of the media reporting on skilled migration in 2010 and the Coalition government's policy to reduce immigration, evident in both the media and government's preoccupation with numbers, when the wider context is taken into account, one should be hesitant to claim this as evidence of the government's hegemonic control over the media.

With this warning in mind, the following extracts from the corpus articles report the then Home Secretary Theresa May's announcement of the interim cap on T1G and specified T2 migrants (HC Deb 28 June 2010):

> *'Ministers hope the temporary limit - of no more than 19,000 "general skilled workers" - will stop a stampede of migrants before Britain's first annual immigration cap is brought in next April. ...*
> *The number of 'general highly-skilled workers' will stay at 5,400 and there are no limits on other skilled and highly-skilled migrants.'*
>
> *The Sun* 26 June 2010

> *'The coalition's plan for an annual limit on immigration ... will mean that internal transfers of staff by multinational companies - which make up 45% of the total covered - will initially be exempt. ...*
> *The shadow home secretary, Alan Johnson, said the temporary cap was a con trick as it would only affect about one in seven immigrants and there were already*

restrictions on firms recruiting workers from outside the EU under the points-based system introduced by the previous Labour government.'

The Guardian 28 June 2010

'The British Chambers of Commerce said failure to strike the right balance in setting the limit risked "damage to the economy and future economic growth" while the British Medical Association said it might restrict the ability of NHS trusts to recruit sufficient doctors. Shadow Home Secretary Alan Johnson said the cap was a pointless 'gimmick'.'

The Independent 29 June 2010

'The level of net migration - the number of people coming to work and live in the UK over people leaving to live abroad - has been falling sharply, from 220,000 in 2007 to 142,000 in September 2009.
Net migration has continued to fall in the past nine months ... This has been accompanied by a 15% fall in applications by skilled migrants from outside Europe - the group to be covered by the annual immigration cap - in the first three months of this year. It means that the coalition's aim of reducing net migration below 100,000 within five years is likely to be achieved whether or not the cap is in place.'

The Guardian 29 June 2010

'This movement of employees in and out of Britain so called intra--company transfers has allowed 30,000 skilled migrants into the UK since the end of 2008.'

Daily Mail 29 June 2010

With the exception of *The Independent*, the coverage of May's speech in all three types of newspaper refers to highly skilled and skilled migrants, and in *The Guardian* comment piece, migrants generally (29 June 2010), in terms of large numbers. Of course, one could say that the reporting and analysis of a government policy initiative imposing numerical quotas will inevitably involve quantification. As stated earlier, holding government to account requires an interrogation of policy on its own terms. Yet this focus on numbers is not limited to government sourced news stories. Take, for example, the following two extracts from articles on the Institute for Public Policy Research's (IPPR) paper on migration trends and policy changes:

'Since January 2007, workers from the newest EU countries, Bulgaria and Romania, have largely needed to apply for work permits to work in the UK.

That restriction is due to be lifted in December 2011, meaning that thousands more could be tempted to move to take advantage of the relatively healthy British economy.

Around 120,000 Irish people are expected to leave the Republic's crisis-hit economy in 2010 and 2011, with many likely to head to Britain where there is no language barrier or work restrictions. ...

And workers from eastern Europe are continuing to move to Britain in large numbers. Newcomers from Lithuania and Latvia alone increased from 25,000 to 40,000 in the last year'

Daily Mail 30 December 2010

'A new wave of Irish migration with as many as 120,000 leaving the Republic is likely to ensure that a significant drop in immigration to Britain is unlikely in 2011, according to a study published today. ...

Among the factors likely to maintain upward pressure on the immigration figures in 2011 are:

** Increased net inflows from other parts of the EU - which is not covered by the cap...*

** Continued inflows from eastern Europe, with the latest figures showing the numbers from the Baltic states of Lithuania and Latvia increasing from 25,000 to 40,000 a year.*

** Emigration by UK citizens is dropping substantially with net emigration - ie more Britons leaving than coming back - just over 30,000 in the year to March 2010 compared with 130,000 in the year to March 2008 ...*

** The number of overseas students ... is likely to top 300,000 this year with the new curbs unlikely to take full effect in 2011.*

The IPPR says that although the immigration cap will reduce the annual number of economic migrants from outside Europe to 21,700 from this April it only represents about 2% or 3% of overall immigration numbers.'

The Guardian 30 December 2010

As with media coverage of May's speech, that numbers feature heavily in the IPPR's report is not surprising given its engagement with government policy. Nevertheless, both articles quoted above focus on the report's figures. Whereas this is to be expected in the *Daily Mail,* in view of its long-standing anti-migration stance, the left-leaning *Guardian's* coverage is perhaps more surprising and certainly more revealing. First, consider *The Guardian's* use of the word wave to describe possible future Irish migration. As noted in the literature, the

media's routine use of water metaphors such as wave to describe the movement of people conjures up the idea of being overwhelmed, that migrants in general constitute a threat (Gabrielatos and Baker 2008; ICAR 2012). Second, the article's list of factors likely to result in increased immigration levels reads as a *Daily Mail* style scare story on migration in its repetition of inflow (another water metaphor) and references to migrants in multiples of tens and hundreds of thousands. As to *The Guardian's* report and comment on May's speech (28 and 29 June 2010 respectively), they too describe migrants and in the latter article, specifically skilled migrants, in terms of numbers only. Throughout 2010, *The Guardian* and to a lesser degree, *The Independent*, voiced their opposition to the cap.[178] However, while the papers' scepticism towards the policy is evident in the above extracts, what is striking is the absence of any challenge to the assumption underlying the policy initiative, that is, that there are too many migrants in the UK. The above extracts typify *The Guardian* and *The Independent's* opposition to the cap policy. Without questioning the fundamentals of the policy objective to reduce migrant numbers, they confine their criticism to its mechanics (the cap) on two grounds: first, a restriction on skilled migration could damage the national economy as it emerges from recession and second, a limit on the numbers of highly skilled and skilled migrants would, in any event, do little to reduce the overall level of migration.

Looking at the articles in the right-leaning press, the two *Daily Mail* articles quoted above focus on the large numbers of different migrant groups: skilled migrants already in the UK and those who are coming (the Irish and east Europeans) respectively. With regard to this latter group, referred to as workers, it is implied that these migrants do and will compete with the resident population for work, with a suggestion that such competition is unfair as they 'take advantage' of the healthy British economy. The threat the allegedly inordinate numbers pose is then economic. *The Sun's* article on May's speech also describes migrants in terms of volume and in doing so suggests that migration is out of control. This in turn implies that the UK has lost control of something that requires control, namely migrants. In the article, the interim cap is perceived as an attempt to impose control: it is hoped that it will prevent a 'stampede' of migrants. This use of stampede, defined by the OED as 'a sudden or unreasoning rush or flight of persons in a body or mass', not only characterises migrants themselves as being out of control, it also repeats May's use of the word in her announcement before the Commons (HC Deb 28 June 2010) thereby suggesting *The Sun's* full endorsement of the policy.[179]

[178] As will be discussed later, *The Times* was also critical of the cap but focused its concerns on how the cap could affect the UK's standing as a centre for scientific research.

[179] In fact May's use of the word stampede repeats its use by the Labour MP, Keith Vaz following May's announcement in the Commons. Vaz asked whether extra resources would be made available to visa posts

The corpus articles' fixation on migrant numbers is then evidence of its focus on policy which, in turn, further confirms the government's position as the dominant source for skilled migration news in 2010. However, in view of these news stories' political and historical context discussed earlier, it seems facile to perceive the government simply as the primary definer of news and the press as its subordinate. The relationship between the government and the press in 2010 is better understood as a confluence of many factors resulting in a broad consensus on the primacy of immigration control through numbers and quotas. This convergence of interests between government and the media has two major implications for the depiction of skilled migrants. First, with the exception of an opinion piece in *The Times* (19 April 2010), the dominant narrative of too many migrants, which includes highly skilled and skilled migrants, is not challenged in the corpus. As noted earlier, though some elements of the press express opposition to the cap, the need to reduce migrant numbers is not disputed. On the evidence of the corpus articles then, when tasked with holding government to account on immigration policy, journalists rarely venture beyond the established parameters of the immigration debate. To paraphrase Gross et al (2007, 27), this failure to at least unpick and question the assumptions underlying policy developments leaves the language of the powerful 'to do its public and cumulative work'. Second, the focus on immigration policy and migrant numbers means that highly skilled and skilled migrants are invariably depicted as an undifferentiated mass. They are then, as Gabrielatos and Baker observe with reference to all migrants groups, 'constructed [by the media] as a people who merely constitute the topic of political debate, somewhat dehumanized as an "issue" (2008,18). The remaining part of this chapter examines how the narrow confines of the skilled migration narrative together with the press' tendency to talk about highly skilled and skilled migrants en masse and as the object of immigration policy shapes their portrayal in the corpus.

6.4 Chalk outlines, counterfeits and stereotypes: media portrayals of highly skilled and skilled migrants

> *'Tomorrow, I'll travel to Las Vegas and meet with ... a young woman named Astrid Silva. Astrid was brought to America when she was four years old. Her only possessions were a cross, her doll, and the frilly dress she had on. When she started school, she didn't speak any English. She caught up to other kids by reading newspapers and watching PBS, and she became a good student. Her father worked*

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abroad which would be 'overwhelmed by a stampede of applications' (HC Deb 28 June 2010). As noted earlier, differences in immigration policy between the Westminster parties are sometimes hard to identify.

in landscaping. Her mom cleaned other people's homes. ... [T]oday, Astrid Silva is a college student working on her third degree.'

Obama 2014

The extract above, taken from Barack Obama's *Address to the Nation on Immigration* in 2014 shows how a few words can paint a portrait of an individual who appears both real and relatable. While Obama's depiction may be trite in that it conforms to well-worn tropes of the deserving unlawful migrant in American migration discourse (Coutin and Chock 1995), it nevertheless makes Astrid Silva human, someone who has overcome difficulties in the past but who, like us, has hopes and plans for the future. Indeed, we have a clearer picture of Astrid Silva than we do of any of the highly skilled or skilled migrants referred to in the corpus, who, as noted earlier, tend to be depicted as a single indivisible mass. As will be shown below, on the rare occasions when such migrants are individualised, their character remains indistinct, a human-shaped chalk outline encasing a selection of stereotypical and sometimes racially inflected attributes.

6.4.1 Two-dimensional characters

As discussed earlier, the newspapers in the corpus most critical of immigration policy which, in 2010 revolved largely around the imposition of a quota, adopted two lines of argument to justify their position: the cap could damage the British economy by preventing businesses from hiring migrants with much needed skills and/or the cap will be ineffective in reducing overall migrant numbers. Whereas from the first 'corporates against the cap' argument we see a proliferation of news stories referencing businesses and trade associations as experts, the second argument, the cap is illogical, contributes to the dominance of numbers in press coverage of skilled migration. These arguments are not however confined to articles in newspapers explicitly opposed to the cap, such as *The Guardian*. They also feature in other newspapers, notably the more widely used corporates or economic argument, which appears mainly in the quality press to show balanced reporting (see for example, *The Times* 29 June 2010) and in the case of the cap is illogical argument, to push for more restrictive policy measures to further reduce immigration as seen in *The Sunday Times* opinion piece of 21 November 2010. Given their prevalence in the corpus, the two arguments undoubtedly shape, albeit not exclusively, the public depiction of (highly) skilled migrants. As the impact of describing these migrants in terms of large numbers was considered earlier, the following examination focuses on the influence of the economic argument on their depiction.

The corporate justification features in numerous articles in the corpus, and with the exception of *The Mirror*, solely in the quality press and most frequently in *The Guardian*. The articles invariably cite evidence from the business sector to either state or support the position that the cap could damage the domestic economy. For example, *The Times* (29 June 2010) repeats the Office for Budget Responsibility's claim that the cap 'could take billions of pounds out of the economy as companies struggle to fill vital vacancies' while *The Observer (*18 July 2010) quotes both the British Chambers of Commerce - businesses need to be able to hire the 'right people' and the IPPR - the cap could impact public finances if it 'significantly reduces the number of highly paid migrants who pay a large amount in tax'. *The Guardian* (22 August 2010) refers to a report by the Chartered Institute of Personnel and Development and KPMG before concluding that the cap will restrict highly skilled migrants 'who are most obviously economically valuable' and *The Daily Telegraph* (15 November 2010) notes Nobel Prize winners' warnings that the cap could harm scientific research in the UK. In the extracts cited above, which are typical of many quality press articles in the corpus, highly skilled and skilled migrants are cast as economic contributors. This is not surprising given the essence of the corporate argument: highly skilled and skilled migrants' professional abilities are needed by UK-based businesses and are beneficial to the British economy as a whole. However, this purely economic framing of these migrants' value or worth has important implications for their depiction in the corpus.

As stated earlier in this chapter, apart from a *Times* opinion piece (19 April 2010), there is no challenge in the corpus to the dominant narrative that there are too many migrants. However, while businesses provide few source materials for news stories compared with the government, they are, as demonstrated above, extensively cited and quoted as experts in articles in which the business argument features. The articles that reference this argument therefore provide a different perspective on skilled immigration policy from that of the government, namely, the perspective of big business. Put another way, the voice of corporate Britain is both audible and authoritative in the corpus. On the face of it, this corporate voice could constitute a substantive alternative narrative for highly skilled and skilled migrants. Yet it does not because it makes no real attempt to reframe the migration debate (Lakoff and Ferguson 2006). Rather than the numbers problem, if the migration debate were reframed as say, the global innovation issue, then other arguments such as the fostering of cultural and intellectual diversity and hybridity could be included and, while the issue of numbers may not disappear, it might be pushed further down the agenda. The corporate voice then simply argues for the axe to fall on migrants other than the skilled and highly skilled as seen in *The Daily Telegraph* (1 October 2010) article:

'The brunt of reductions should fall elsewhere, the CBI said, recommending that the Government reduce the numbers of people entering who offer "limited" economic benefit... The CBI said its members were not ideologically opposed to a capping policy...'

In failing to contest and, in the case of the CBI, even supporting the notion of too many migrants that underlies the cap, the corporate voice is complicit in government policy (Blommaert and Verschueren 1998).

It could be said that the corporate voice is positive (or at least not negative) about highly skilled and skilled migrants. While this may be so, its audibility arguably silences the voices of those migrants. Although the absence of refugee and migrant voices in news coverage of immigration issues is widely noted in the literature (Goodman and Speer 2007; Leudar et al 2008; Philo et al 2013), one might expect individual highly skilled and skilled migrants to feature more prominently. Given their professional attributes and proficiency in English they are likely to have more effective lobbying opportunities including greater access to journalists than other migrant groups. The absence of the (highly) skilled migrant voice could then suggest that the dominance of the corporate perspective and references to business experts in the press render the stories of the migrants themselves largely irrelevant. In fact, individual migrant voices are heard in just three articles, all published in *The Times*. Between October and December 2010, as part of a campaign for more lenient visa provisions for research scientists, *The Times* published a number of articles focusing on the recruitment needs of leading science laboratories in the UK. In addition to repeating the corporates against the cap line of argument, three articles featured individuals who came to the UK to work as scientists, of whom two had high-skilled or skilled visas.

'Greg Baillie, above, a 39-year-old New Zealander, joined the Sanger Institute a year ago to work on the influenza virus. He secured a Tier 1 visa for highly skilled workers, but were he to apply today, he would be turned down ... "Now the balance between earnings and qualifications has changed, and I wouldn't have been earning enough," said Dr Baillie.'

The Times 18 October 2010

'English is the working language of Professor Caetano Reis e Sousa's immunology laboratory at the London Research Institute, but the thirteen members of his team have ten nationalities between them - and he is Portuguese.

The scientist, who works on developing cancer vaccines, says that the immigration cap is now threatening his prospects of adding an Australian scientist to the mix ... "The institute was given only 12 Tier 2 visas under the interim cap ... one of which it has used to renew the work permit of Eunice Chan, from Hong Kong.

Dr Chan, 32, uses fruit flies to investigate the underlying biological processes that cause cancer. "I am really disappointed as a scientist about this," she said. "If you come to our building, you realise it's an international environment. It's not only European scientists, people here come from all over the world. This will do a lot of damage."

She added that immigration policy made it more likely that she would leave British science when her contract expires next year.

"I would have liked to stay here, but my boyfriend's French and we're planning to go to France together. It makes me more determined to go somewhere else, in Europe or Hong Kong, that appreciates and supports international science."'

The Times 3 November 2010

'Venki Ramakrishnan's own move to Cambridge would have been jeopardised if the policy [the cap] *had been in place 11 years ago.*

The Indian-born American, who won the Nobel Prize for Chemistry last year, told The Times that he would have reconsidered joining the Laboratory of Molecular Biology (LMB) in 1999 if the new visa controls had applied then. ...

This would have been such a severe setback to his work on ribosomes - protein factories inside cells - it would probably have denied him a Nobel prize.

"I had to take a 40 per cent pay cut to come here - a number of people thought I was crazy - and I was in a very tight race to solve the structure of the ribosome, which ultimately led to the Nobel prize," he said.'

The Times 6 November 2010

As demonstrated by these extracts, even when highly skilled and skilled migrants are pulled into greater focus and individualised, they seem to exist only on the economic plane. We are told these individuals' field of expertise, that their skills are in demand both in the UK and elsewhere, and that they are concerned about changes to British immigration policy. However, the references to Dr Chan's French boyfriend and her plans for the future suggest that she alone has a life outside the laboratory. Rather, the individual scientists are depicted as a collection of professional attributes required only to further scientific research and to benefit the British economy.

6.4.2 The 'brightest and best' or 'highly skilled' and 'skilled'?

Given highly skilled and skilled migrants' depiction as economic contributors, one might expect words denoting professional skills to feature strongly in the corpus. Though such words are used to refer to highly skilled and skilled migrants, predominantly in the quality press, their usage is relatively infrequent. For example, words such as top and talent used in this way each appear in about ten per cent of the corpus articles. The term best is used in the context of T1G and Tier 2 migrants and business recruitment needs in around a quarter of the articles, often with the term brightest. For example, *The Guardian* refers to the cap preventing the 'best academics' from coming to the UK (22 October 2010); the *Mail on Sunday* reports David Cameron's statement that the cap would still allow 'the brightest and the best' to come (21 November 2010) and *The Times* cites the CBI on the need to ensure businesses can attract 'the best staff' (24 November 2010).

References to professions, job titles and/or work sectors also feature in the corpus, again as one might assume given skilled and highly skilled migrants' purely economic framing. Unlike the words associated with professional skills, references to skilled jobs and work (set out in table 6.2) feature in just under half of the corpus.

Table 6.2: Skilled professions, job titles and work sectors featured in the corpus with reference to migrants and recruitment[180]

Academic/ academic sector	Engineer/engineering	IT/software/electronics	Scientists/science research
Artist/arts	Executive/business person/manager	NHS/health care	Skilled/senior care staff
Doctor	Finance/banking	Nurse/nursing	

The skilled work sectors that feature most prominently in the articles are information technology (IT) and science. The vast majority of the references appear in the quality press; none appear in the popular papers and with the exception of IT,[181] there are very few such references in the mid-markets. In some cases, (highly) skilled migrants are explicitly identified with certain job sectors. For example, both *The Daily Telegraph* and *The Express* report changes in the law affecting highly skilled migrants 'such as doctors or engineers' and skilled migrants 'including doctors or engineers' (19 March and 20 March 2010

[180] Only articles featuring these terms in reference to the type of work skilled migrants undertake and/or British business' recruitment needs are included and considered in this subsample. For example, mentions of jobs and work sectors solely in the context of the government's plans to introduce the Exceptional Talent visa for 'artists, scientists and researchers' are excluded.

[181] Coverage of skilled migrants and the IT sector in the corpus is examined later in this chapter.

respectively). Similarly, in *The Times'* science laboratory case studies discussed above, highly skilled and skilled migrants are identified as leading or cutting edge young scientists. In other articles, skilled migrants are more indirectly associated with employment sectors: reporting on the cap, *The Times* cites an NHS trade association's warning that it could 'restrict the supply of skilled workers' (19 November 2010) while *The Guardian* refers to care home owners' reliance on 'overseas skilled care staff' (29 June 2010).

However, job titles associated with low or unskilled work also feature in the corpus. All the words listed in table 6.3 below are used in the corpus to either refer to highly skilled and skilled migrants and/or are associated with the need to fill roles in the UK.

Table 6.3: Work status and low or unskilled job titles and work sectors featured in the corpus with reference to highly skilled and skilled migrants and recruitment

Call centre staff	Low skilled/unskilled work	Supermarket cashier/ shelf stacker
Care assistant/care sector	Security guard	Taxi driver
Chef/restaurant worker	Shop assistant/shop work	Unemployed

The vast majority of the articles that associate these words with skilled migrants and migration were published following the release of a Home Office report on highly skilled migrants in late October 2010. From a sample of some one thousand Tier 1 migrants, the report claimed that almost one third were in unskilled jobs 'such as shop assistants, security guards, supermarket cashiers and care assistants'; a quarter in skilled work with the work status of the rest of the sample (almost half) unknown (Home Office 2010, 3). [182]

Of the report's considerable shortcomings, two stand out as most relevant in terms of media coverage. First, when presenting the results, the report fails to distinguish between the four subcategories within Tier 1 (T1G, Investors, Entrepreneurs and Post-Study Work) when differences in the kinds of work undertaken by the Tier 1 sub-groups are highly probable. Second, the use of percentages is misleading. For example, the percentage of those with Tier 1 visa status known to be in skilled work is given as twenty-five per cent: the figure has been calculated as a percentage of the entire sample when the work status of almost half is unknown.

Notwithstanding the poor quality of the research, the Home Office report was seized upon by elements of the press. In the two months following its publication, the words in table 6.3

[182] See Mulley 2010 for a trenchant critique of the study.

were used in a significant proportion of the news articles to describe highly skilled and skilled migrants. Further, and in contrast to the absence of skilled work references in the popular and mid-market press over the calendar year, from October to December 2010, references to skilled migrants in unskilled or low skilled jobs featured in all newspaper types, although not in the left-leaning press. These articles use remarkably similar language: almost all state that only 'one in four' highly skilled migrants are in skilled work and most list at least one of the of low-skilled jobs cited in the report. The following extract is typical of more neutral press coverage of the Home Office report:

> *'The Government is considering the closure of a special immigration scheme for the brightest and best foreigners after it found that just one in four was in a skilled job. Highly skilled migrants ... were found to be working as shop assistants, security guards and supermarket cashiers...'*
>
> *The Times* 28 October 2010

The extract also illustrates how the press adopts the language of the news event source. Not only does it use the over-used term 'brightest and best' to denote highly skilled migrants, thereby echoing the words employed by politicians and policymakers as shorthand for the high skilled routes, it also refers to the same examples of unskilled roles given in the report and in the same order. The *Daily Mail*, *The Daily Telegraph* and *The Times/Sunday Times* cite the report on numerous further occasions and, in the case of the *Daily Mail* and *Telegraph*, in increasingly strident language. Consider the following extract from coverage of the announcement of the cap:

> '[with regard to] *the so-called tiers one and two of Labour's point-based system the number of work permits will be cut by 20 per cent ... Tier one, which was for supposedly highly-skilled migrants, but was being abused by those taking taxi-driving jobs...'*
>
> *Daily Mail* 24 November 2010

In the article, not only are an unspecified number of highly skilled migrants working in low-skilled jobs, the use of scare quotes and 'so-called' and 'supposedly' serve to further undermine their professional attributes and capabilities.[183] It is also of note that the article describes highly skilled migrants as *abusing* the T1G visa route. Previous studies have

[183] The 2010 Home Office report on T1G migrants does not give taxi-driver as an example of a low-skilled job. However, when announcing the level of the permanent cap, Theresa May stated that *'At least 30% of Tier One migrants work in low-skilled occupations such as stacking shelves, driving taxis...'* (May 2010). Once again, the press is seen to adopt and amplify the language of news stories' raw materials.

reported the media's frequent use of terms such as bogus, failed and false to describe asylum seekers and refugees (ICAR 2004; Smart at al 2007; Esses et al 2013; Blinder and Allen 2014) and, in respect of immigrants, the descriptor illegal appears most often (Blinder and Allen 2014). These terms describe a spectrum of migrant (used here inclusively) legitimacy: at best, they imply suspicion and at worst, they signal illegality. In the present study, it was proposed earlier that based on the infrequent use of illegal as a descriptor in the corpus, highly skilled and skilled migrants are not associated with illegality. A similar conclusion, namely that such migrants are not viewed with mistrust, could be drawn from the scant use of terms commonly associated with suspicion: failed and false are not descriptors for any migrant group in the corpus and bogus, which appears in fewer than one in ten articles, is used solely as a descriptor for colleges, students and marriages.

Yet as the above extracts show, the terms supposedly, so-called and abuse are used to describe skilled and highly skilled migrants. Admittedly, the terms used in this way feature in fewer than one in ten of the corpus articles but, importantly, almost all such uses post-date the publication of the Home Office report on Tier 1 migrants. This is not to say that before 28 October 2010 the press universally depicted (highly) skilled migrants in a positive light.[184] Rather, elements of the conservative press that previously referred to such migrants purely in terms of numbers and as objects of policy began, in light of the Home Office report, to attack highly skilled and skilled migrants' professional abilities and economic contribution with the implication that they were somehow fraudulent. This casting of such migrants as inauthentic or counterfeit is also present in contemporaneous political rhetoric. In November 2010, Theresa May outlined plans for a more selective immigration regime that would bring 'more of the genuinely skilled; and those who will make a real difference to our economy... in short, the genuinely highly skilled' (May 2010). Post-27 October, much of the British press (of which the corpus is representative) clearly regarded (highly) skilled migrants with a degree of scepticism. Furthermore, though not labeled in any of the corpus articles as illegal, stripped of their skills and economic contribution, the legitimacy and legality of highly skilled and skilled migrants' immigration status in the UK is implicitly called into question. Put another way, the corporate argument against the cap discussed earlier is effectively turned on its head: if such migrants neither possess skills nor benefit the British economy, how can their continued presence in the UK be justified?

By the end of 2010 then, a good number of corpus articles depict highly skilled and skilled migrants as inauthentic or even fraudulent. The vocabulary may be different from that used

[184] The negative depiction of highly skilled migrants in 2006 is noted in chapter 5.

to describe refugees and asylum seekers but the sentiment is the same. Not only does this depiction denigrate highly skilled and skilled migrants, it also links them to the wider media framing of migrant groups in terms of questionable legitimacy and legality.

6.4.3 The ubiquitous Indian IT professional

As discussed earlier, the British mainstream print media as a whole tends to portray asylum seekers, refugees and (im)migrants in a negative light with elements of the press regarded by some as xenophobic (Cottle 2000; Greenslade 2005). However, in the empirical studies of British media cited thus far, findings of hostility to certain migrant groups on account of their race and/or national or geographical origin are few.[185] Some of the studies are silent on whether migrant groups' race/origins even feature in their datasets (ICAR 2004; Philo et al 2013), whereas others note the frequency of such references but make little or no further comment (Buchanan et al 2003, 15; Gross et al 2007,129; Gabrielatos and Baker 2008, 30; Blinder and Allen 2014,14-19) and others still find no evidence of discrimination against particular migrant groups based on their race or nationality (Smart et al 2006, 52-3; Smart et al 2007,12).

The absence of any racial dimension to the empirical research cited above, all of which dates from the 2000s, is surprising for two reasons. First, and as discussed in chapter 3, for many decades, UK immigration policy explicitly linked immigration control and race relations (Miles and Phizacklea 1984; Berkeley et al 2006), a connection that is also evident in more recent political thinking on migration: for example, the Conservative party's 2005 general election manifesto claimed that 'It's not racist to impose limits on immigration' (18). Second, while consideration of the vast body of literature on what may be bracketed 'race and the media' falls beyond the scope of this thesis, seminal works from the 1970s and early 1990s found that non-white people were often vilified by the media, cast as instigators of racial tension, violence and disorder (Hartmann and Husband 1974; Hall et all 1978; Van Dijk 1991). Cottle summarises the media's depictions during this period as 'impoverished... and sometimes starkly racist' (2000, 9). In view of this historical context then, one might expect to see in the studies cited findings of racially discriminatory treatment by the media of migrant groups or at least the widespread presence of racial and/or national stereotypes.

[185] See chapter 3 for discussion of the conceptualisation of race in this thesis.

A possible explanation for this absence is Statham's claim that from around the mid-1990s there was 'a general overall improvement in the media coverage and of migrants and minorities in Britain' (2002, 395). However, even allowing that media coverage may have 'improved' (whatever that means - Van Dijk (1991, 245) notes that press reports became 'less blatantly racist'), recent studies suggest that race continues to have currency in the portrayal of certain groups by the media. For example, studies of the British mainstream media found that the dominant discourse links young black men to violent crime in 2008-9 (Cushion et al 2011) and again in 2011 (Cooper 2012). Similarly, research focusing on migrants from east European countries has found that their nationality plays a strong part in their depiction by elements of the media (Light and Young 2009; Fox et al 2012; Balch and Balabanova 2016). Equally, it is a finding of this study that certain newspapers in the corpus single out Indian migrants in their reporting.

Before considering these findings, a brief explanation is offered for the lack of any racial dimension in the post-2000 studies referenced above. First, it is suggested that the broad nature of these studies is relevant: they examine the British media's depiction of *all* migrant groups (though predominantly refugees and asylum seekers). It may be then that the presence of any hostility towards these migrant groups on account of their race is lost in the media's antipathy to foreigners in general. To be labeled an asylum seeker, refugee or immigrant may be enough: such terms have in themselves become generalised social identity categories coalescing around frequently negative and sometimes shared characteristics. Put another way, if migrant groups are already Othered simply because they are not born British, sub-divisions of Otherness, such as race, may be deemed superfluous. However, when the media reports on a particular group, for example, skilled migrants or Romanians, a more specific depiction may be required which may then account for race-based explanations for the ascription of certain characteristics. It may also be that empirical research that focuses on the portrayal of a particular migrant group allows for more fine-grained analysis thereby revealing an aspect of media presentation hidden in broader analyses, such as a reliance on racial characterisations in the depiction of the group in question.

Let's now turn to the findings of this study. First of all, it is worth noting that well over half of the corpus articles make no mention of migrants' nationality nor their country or geographical region of origin. Of articles that do, automated searches for references to migrants and migration from Australia, China, India, Nigeria, Pakistan and the USA - the top six sending countries for highly skilled migrants in 2009-10 (MAC 2010, 84) - revealed that for five of the

six nationalities, such references are rare.[186] However, the results for mentions of Indian migrants and migration were quite different: they appear in around one fifth of the corpus, spread reasonably evenly across the mid-market and broadsheet newspapers. Scale could explain this focus on migration from India: as detailed in appendix 6.4, Indian nationals accounted for just over forty per cent of approved T1G applications and almost seventy per cent of approved Tier 2 Intra-Company Transfer (ICT) applications, far higher than for any other nationality.[187] Yet a focus on numbers alone does not explain why Indian migrants should feature is so many articles (when other nationalities do not) and how they are depicted. Although the relevant articles comprise a range of migration news stories (all refer to skilled migrants/migration), two themes emerge in the depiction of Indian migrants: numbers and authenticity. While these themes have already been examined in respect of (highly) skilled migrants in general, their prominence in media coverage of specifically Indian migrants merits further consideration here.

Almost all the articles that refer to Indian migrants in the corpus depict them in terms of vast numbers of which a good proportion also associate Indians with the IT sector which, in turn, is associated with the ICT skilled visa route. By way of background, Indian companies' expertise in electrical engineering and IT is well established and due in large part to the success of the many Indian Institutes of Technology (IITs) set up in the early 1960s. The large number of highly qualified Indian IT and electrical engineering graduates could explain then their strong presence in the British IT sector. While true to a degree, this again provides only a partial explanation in that it fails to take into account structural factors, in particular, the outsourcing business model adopted by many multinational companies in the late twentieth century. In a globalised IT market, India, with its ready supply of English-speaking IT graduates, emerged in the 1990s as the dominant offshore provider of IT services (*The Economist* 2013). Although offshoring means that most IT work is carried out in India, expertise is also often required at client sites which necessitates the transfer of Indian IT professionals to say, the UK via the ICT route (MAC 2016, para 6.46). Whereas many of the corpus articles featuring Indian migrants in the IT sector focus on the actual or potential scale of ICTs, none explains the underlying business model that drives them. This lack of context to migration news stories militates against a full understanding of the subject of the story (Smart et al 2007; Gross et al 2007), namely, contemporary patterns of Indian migration to the UK.

[186] The word searches for the six countries included word variants and in the case of the USA, included references to the US, America and variants thereof.
[187] This continues the popularity of the T1G route among Indian nationals seen in previous years as shown in appendices 2.3 and 4.4.

Associative links between Indians, IT and ICTs are made mainly by *The Daily Telegraph* and the mid-markets in articles reporting on the skilled migration cap and/or negotiations for an EU-India free trade agreement (FTA). Very briefly, both were considered contentious: the ICT visa route because it was excluded from the cap (after much corporate lobbying) and the FTA negotiations because they contained a proposal for a more relaxed visa regime for Indian ICTs.[188] In the articles, not only are Indians always referred to in terms of numbers or scale, for example, '*Britain could be forced to accept a fresh wave of migrant workers from India...'* (*The Express* 8 November 2016) and *'Thousands of Indian workers will be allowed into Britain...'* (*The Daily Telegraph* 9 October 2010), they are also described as competing for and in some cases taking work away from British workers. *The Sunday Telegraph* reports that a British IT worker lost his job at a British bank where *'80 per cent of IT workers were Indian'* (7 July 2010) and the *Daily Mail* that the FTA would lead to *'British jobs for Indian workers'* (26 October 2010). The legitimacy of the ICT is also questioned in the articles, often by way of a direct quote from the anti-migration think-tank, Migration Watch:

> '*there is no need to cap intra-company transfers provided that they are genuinely key senior staff ... That does not include tens of thousands of Indian IT workers on £24,000 a year when British IT workers face 16 per cent unemployment'*
>
> *The Times* 4 November 2010

and in respect of the FTA:

> *'[t]his looks suspiciously like a side-door to Britain for 20,000 Indian IT workers every year.'*
>
> *Daily Mail* 8 November 2010

A small number of articles also link Indian nationals to the family migration route. For example, *The Times*, in a report on newly released official migration statistics, notes that *'38,000 people were allowed in to be reunited with their family, many coming from the Indian sub-continent'* (26 June 2010). More trenchantly, a *Sunday Times* opinion piece advocating the re-introduction of the primary purpose rule to restrict marriage visas observes that the new English language requirement is insufficient to *'discourage arranged marriages from the Indian subcontinent'* (21 November 2010). While the tone of the articles differs - *The Times*

[188] Although the EU and India FTA negotiations had been nominally on-going for the previous eight years with little sign of progress, the articles read as if conclusion of an EU-India FTA were imminent. Writing in 2018, an EU-India FTA has yet to be concluded. For an overview of the negotiations, see Khorana and Perdikis 2010.

is arguably neutral while the *Sunday Times* clearly wishes to exclude new migrants from India (and Bangladesh and Pakistan) - they all associate Indians with family migration.

As discussed above, depicting people in terms of large numbers evokes a sense of threat to the UK (Van Dijk 2000). However, Indian migrants in the ICT articles are explicitly an economic threat: not only are they in direct competition with British workers, they have already deprived British citizens of employment in the IT sector. This suggestion of cheap labour is underlined by the description of Indian IT professionals as 'trainees' and as earning below the UK median earnings level, descriptions that also serve to cast doubt over the authenticity of their skills. As with highly skilled migrants, a challenge to skilled migrants' professional attributes undermines the very basis of their visa status and so questions the legitimacy of their presence in the UK. This issue of legitimacy is further emphasised by references to the ICT as a 'side-door to Britain' or a 'loophole' (*The Sunday Telegraph* 4 July 2010; *Daily Mail* 24 October 2010).

Though these media depictions clearly denigrate skilled Indian migrants, are they racialised? Put another way, do the articles imply characteristics to this group of migrants on the basis of their imputed race? In research on the media portrayal of east Europeans noted earlier, Light and Young (2009) and Fox et al (2012) found repeated associations between Romanians and crime in the popular press. In these depictions, Romanian migrants are 'a source of moral contamination' (Light and Young 2009, 288), and racialised in that they are ascribed the moral values of the criminal simply because of their national origin (Fox et al 2012, 688). In this study, in the reiterated links between Indians and IT, Indian migrants are essentialised as IT workers: IT work is not what they do but who they are. At first glance, this characterisation appears uncontroversial: IT is a respected work sector. However, specifically Indian IT workers are also associated with ICTs and by virtue of being Indian, the suspicion that surrounds the use of this visa route in the IT sector is transferred to Indian migrants. As this questioning of Indian migrants' authenticity and legitimacy purely on account of their nationality does not extend to skilled migrants from elsewhere, 'herein lurks racialization' as Fox et al put it (2012, 688). Indian migrants may not be portrayed as criminals but at times, they are not accepted as skilled professionals *because* they are Indian. In addition, many of the corpus articles featuring Indian nationals link current Indian migration to past Indian migrations to the UK. For example, in articles dated 8 November 2010, both *The Express* and *Mail* report that owing to the extant Indian population in the country, the UK will take the largest share of Indian migrants under the FTA. The same *Express* article also refers to potential Indian migrants as a 'fresh wave' thereby referring to historical Indian migrations. Similarly, the articles featuring Indians in the context of family

migration to the UK suggest a link between current Indian migration and historical patterns of family migration from South Asia which accounted for a significant proportion of all migration to the UK in the 1970s (Spencer 1997). In connecting the present with the past, as Fox et al (2012, 687) note, the articles remind us of historical racialised understandings of migrants and migration and, in the suggestion that nothing really changes, reproduce those racially prejudiced understandings. If any doubts linger as to the racialisation of Indian migrants in the corpus articles, one only has to ask whether such articles would have been written had the negotiations concerned an EU-Australia FTA or had the majority of highly skilled and skilled migrants been Australian nationals. It seems likely the answer would be 'no'.

6.5 Conclusion

The media construction of the highly skilled migrant is simultaneously distinct from and embedded in popular discourse on migrant groups as a whole. On the one hand, highly skilled migrants are depicted almost exclusively en masse and defined as purely economic actors. In literary terms, they are what Forster calls 'flat characters ... little luminous disks of a pre-arranged size, pushed hither and thither like counters across the void...' (1927, 95). However, within this hazy depiction, they are also cast as inauthentic, lacking the skills and economic value associated with their immigration category. Although terms commonly used to describe other migrant groups - illegal, flood and so on - are largely absent, highly skilled migrants are nevertheless viewed with suspicion. Their immigration category is not taken at face value and skilled Indian migrants are singled out as an economic threat. Further, the media and political constructions of the highly skilled migrant are almost indistinguishable: the figure of the highly skilled migrant is not as vilified as that of other migrant groups yet it is nevertheless an unstable and discredited social identity.

Chapter 7

Constructing identity in law

7.1 Introduction

'I am no bird; and no net ensnares me: I am a free human being with an independent will.'
Brontë [1847] 1992, 223

Having considered the media and political constructions of the highly skilled migrant in chapter 6, in this and the following chapter, the focus turns to the role of immigration law in shaping the experiences and identities of highly skilled migrants through the analysis of interview data. The chapter begins with a brief overview of the Australian and Indian individuals who kindly agreed to be interviewed as part of this research project. Brief vignettes of each participant complement the overview and participant profiles provided in chapter 2. The chapter then considers how the immigration category of highly skilled migrant contributes to participants' perceptions of themselves in the UK. This is followed by an examination of participants' experiences of immigration law in terms of its direct application, felt most keenly during the visa process. Although comparisons are drawn between the two national groups in the analysis, participants' experiences of the law in action are, on the whole, marked more by their commonalities than by differences along national lines.

7.2 Meet the migrants: an overview

The twenty-four interviewees all held, or had held, a highly skilled migrant visa under the HSMP and/or under T1G in the UK. Thirteen of the participants were Australian citizens, four men and nine women (one of whom also held New Zealand citizenship), and eleven participants were Indian men. Unless stated otherwise, when participants are identified by their citizenship, it is the citizenship they held before migrating to the UK.[189] The Australians were all of white European heritage and the Indian participants were all of non-white South Asian origin. At the time of the interviews, the participants' ages ranged from early thirties to late forties.

[189] The difficulties in recruiting participants and in particular Indian women are discussed in chapter 2.

7.2.1 Personal and family circumstances

All participants, with the exception of two, lived in the south of England with the majority living in London. Approximately half of the participants were married: the eight married Indian participants all had Indian wives who had either accompanied them to or joined them in the UK as dependants. Of the Australian participants, five were married, three to British men, with a further three participants cohabiting with European partners. About a third of both the Indian and Australian participants had young children born after they came to the UK and who all had either British or dual British/Australian citizenship. None of the cohabiting or single participants had children.

7.2.2 Qualifications and work

Given their visa status, it is not surprising that all participants held a Bachelor's degree. Around half also had at least one post-graduate qualification, with a good number of Indian participants having obtained their post-graduate qualifications in the UK. As to work, the Indian participants were concentrated in the IT sector with just four participants working in other sectors. The number of Indian IT professionals in the sample echoes the large number of Indians employed in the IT sector in the UK noted in chapter 6. None of the Australian participants worked in IT. The majority of Australian men worked in finance whereas the women worked across a number of different sectors.

7.2.3 Migration routes and immigration status

All participants first came to live in the UK between 2002 and 2010 and all bar two lived in the UK at the time of the interviews in 2014. As noted in the participants' migration profiles at appendix 7.1, just under one third of the participants first came to the UK via the high-skilled visa route with most of the other participants coming initially as students and working holidaymakers in roughly equal numbers. The participants who first came to the UK via these latter two visa routes therefore changed to highly skilled migrant status having spent time studying or working in the UK. At the time of the interviews, just three participants had not yet obtained ILR in the UK. In fact, most participants had lived in the UK for well over five years, the minimum period of continuous residence required for eligibility for ILR. Further, by

2014, a third of the participants, five Indians and three Australians, had naturalised as British citizens.

7.3 Transactional relations

The remainder of this chapter examines the extent to which the unstable and state-sponsored immigration category of the highly skilled migrant discussed in chapter 1 contributed to participants' perceptions of themselves in the UK. However, before considering this issue with reference to the interview data, a short explanatory note is necessary as any talk of identity requires a number of caveats to avoid at least two potential pitfalls. First, such talk risks reducing all the participants and indeed all highly skilled migrants to a homogeneous identity predicated on their immigration category and second, it risks the suggestion that dimensions of identity are discrete, distinct and fixed. As to the former, there is no generic migrant experience. Highly skilled migrants are individuals, each with their own story to tell. Indeed, those who participated in this research project expressed a diversity of views and feelings about their individual experiences of migrating to and living in the UK. However, when investigating the impact of law on participants' experiences and self-perception, one is compelled to look for commonalities as well as for differences. As to the latter issue, it is but a further example of the difficulties inherent in discussing identity noted in chapter 1. Hopefully, it suffices here to note Hall's assertion that having de-essentialised the notion of identity, it 'cannot be thought in the old way but without which certain key questions cannot be thought at all' (2000, 16). So, recognising that an individual's identity is multifaceted and fluid, law's influence cannot be examined and discussed without giving the false impression that it is static and fixed.

7.3.1 An economic framing of identity

Although the interviews were loosely structured in that participants were free to talk about topics that were of importance and interest to them, they were encouraged to reflect upon their experiences and perceptions of living in the UK. Participants did not readily identify as highly skilled migrants but both Indian and Australian participants self-identified as 'contributors' to the UK, with contribution understood narrowly as financial contribution to the state through work undertaken and taxes paid. For example, Bijal and Louise referred to themselves in the following almost identical terms:

'I'm working here in a fulltime employment, I'm paying taxes, I'm paying national insurance, I'm not claiming any benefits.'

Bijal

***Bijal**, an easy going Indian engineer in his late twenties, was interviewed in a busy café in London. Bijal was married (his wife is also Indian), and lived in central London. He obtained his highly skilled migrant visa in 2008 but didn't come to the UK until much later as he was worried about finding work given the then economic climate. In fact, he found work in the UK easily and at the time of the interview, had a job he loved and felt valued by his employer. He was undecided about applying for British citizenship in the future; he appreciated that it would enable him to live in Europe but was not sure he would want the upheaval such a move would entail.*

'[I'm] *someone who is paying their taxes, paying their national insurance, working, not taking any money from the government purse ... a net giver to the government.'*

Louise

***Louise** is an Australian woman in her early forties. Although she lived with her European husband in the South-East, she continued to work mainly in London. Outgoing and easy to talk to, Louise shared her frustrating experiences of the highly skilled migrant visa process and was insightful about how migrants are perceived and portrayed by the media in the UK. Louise had a wide social circle and was active in a number of local organisations. She looked forward to obtaining British citizenship and felt that the UK would be her home in the long-term.*

Although Hari used different language, he too perceived himself in purely economic terms:

'If everybody start thinking like me then you will have all working culture people here, no losers. As soon as they [migrants] *lose, they go back.'*

Hari

*Originally from India, **Hari** had naturalised as a British citizen and worked as an engineer in the financial sector in the City. At the interview, Hari presented the archetypal young London professional: confident, ambitious and good fun. That said, Hari gave considered answers, recounting how moving country had not been easy for him and that his becoming British was a milestone in that it not only marked the end of the visa process, it also gave him stability and clarity about his position in the UK. For Hari, becoming British reflected his feelings of belonging in the UK.*

An individual's identity is of course much more than their immigration category. Nevertheless, that participants tended to perceive themselves as economic contributors, suggests, on the face of it, that immigration law played a part in the construction of their self-identity. By emphasising their economic worth, participants arguably adopted the substance of their immigration category and social identity if not all elements of its nomenclature. A brief examination of relevant law (considered in more detail in chapter 4) and Home Office

policy documents demonstrates policymakers' repeated reinforcement of the connection between the high-skilled visa route and individual contribution to the British economy.

At its launch, the HSMP was described as 'a further step ... to maximise the benefits to the UK of highly skilled workers who have the qualifications and skills required by UK businesses to compete in the global marketplace' (Home Office 2001). Later in 2002, the level of highly skilled migrants' economic contribution had escalated: highly skilled migrants would make 'a significant contribution to the UK economy' (Home Office 2002a, para 3.19) and again in 2006 when changes to the HSMP's qualifying criteria were deemed necessary to select 'migrants who will make the greatest economic contribution to the UK' (HC 1702, para 7.5). The extent of highly skilled migrants' expected economic contribution was further increased when the PBS was introduced: highly skilled migrants would 'increase the productivity and growth of the UK economy' (Home Office 2006a, para 73). The highly skilled migrant, as conceived of by policymakers, was then very clearly an autonomous economic actor whose raison d'être was to contribute to the British economy. As noted earlier, it is this understanding of highly skilled migrants' purpose that underpinned the selection of skills and attributes that constituted the human capital required to qualify for a high-skilled visa.[190]

Though the visa's criteria underwent many modifications (detailed in appendices 4.2 and 4.3), prior income from work was an ever present and ever more stringent requirement. To qualify for a high-skilled visa, under both the HSMP and T1G, subject to some exceptions, individuals had to reach the relevant prior earnings threshold (Home Office 2002; HC 538; HC 321). Once issued a high-skilled visa, to extend it, highly skilled migrants were required to have taken steps to become economically active in the UK or, as discussed in chapter 4, post-November 2006 have met the requisite earnings threshold again (HC 1702 and HC 321). From 2011, highly skilled migrants were required to reach the relevant earnings level once more to be granted ILR (HC 863). In the language of both the HSMP and T1G, earned income was a 'points scoring' area which took on increasing importance over the life of the visa. Indeed, individuals applying to qualify under the T1G provisions in force from April 2010 could satisfy the attributes requirements simply by having recent earnings of £150,000 or more (HC 439).

Given law's insistence on highly skilled migrants' actual and potential contribution to the British economy, measured exclusively in terms of individuals' taxable earnings (no points

[190] In addition to class, it is argued in chapter 4 that notions of race-based assimilability informed the selection criteria.

were given for non-quantifiable contributions to society), it is not surprising that a key element of participants' self-identity should align with the substantive legal requirements and the stated policy objectives of the high-skilled visa. Furthermore, participants' emphasis on the value of their economic contribution - they are not losers to borrow Hari's term - reflects the wider perception of highly skilled migrants in the public sphere. As the media analysis found, the press differentiated highly skilled and skilled migrants from other migrant groups on the basis of the benefits they were understood to bring to the national economy. Absent this economic contribution, there is little to distinguish (highly) skilled migrants from migrants in general and the negative traits routinely attributed to them. As noted in chapter 6, once stripped of their skills and economic contribution, the legitimacy and legality of highly skilled (and skilled) migrants' immigration status in the UK is implicitly called into question. It is small wonder then that participants present themselves, in Louise's words, as 'net givers': to do otherwise would be to lose the very thing that gives highly skilled migrants value in the public and political imagination. In this way, participants define themselves, at least in part, in accordance with the dominant social construction of highly skilled migrants.

Participants' economic framing of their self-identity is also evident in their use of transactional language to describe their relationship with the British state. Deborah, for instance, when asked whether she was confident that her and her husband's high-skilled visas would be extended, replied:

> *'Yep. Because we'd been working and paying tax ... the only people I knew who had trouble with anything* [visa extensions] *were people who'd worked as limited companies. And I think that's probably fair enough. They hadn't been paying tax, so the government doesn't necessarily want to give them the right to stay.'*
>
> Deborah

***Deborah** was interviewed in a coffee shop near her home. Deborah came across as focused and resourceful: she and her husband, both Australian, were financial professionals who worked in the City, had two young children and had each established businesses in the UK. During the interview, Deborah was direct and unflinching: she loved London but felt no affinity for the UK; obtaining resident status had no emotional impact and although she and her family had all acquired British citizenship, she felt Australian and perceived her children to be Australian too.*

Likewise, Anil, when discussing his intention to apply for British citizenship, used similarly transactional terms to describe his relations with the state:

> *'Because we cannot be all these five years, six years, we cannot be on benefits. And actually we paid taxes. And also, because we come through this ILR, ... so you*

should be earning this income. So you actually pay a lot of tax also. And also a lot of fees and all these things. Follow a lot of rules and all these things... And then yeah, I don't know. It's kind of like it's earned, actually... We deserve to get it.'

Anil

***Anil**, a thirty-something Indian technology engineer, worked in the financial sector and lived with his European wife in property he owned in London. When interviewed at his workplace, Anil was planning to apply for British citizenship as soon as he was eligible and had no qualms about giving up his Indian citizenship in order to do so. Before relocating to the UK, Anil had considered moving to the US as he felt there were better work opportunities there but opted for the UK as he believed the UK offered a shorter route to citizenship.*

Anne expressed a similar sentiment when discussing her experience of the high-skilled visa process:

'And I thought this being a highly-skilled migrant, and working hard, and paying taxes was actually a good thing for the economy, I was always astounded that it just was an ordeal and the whole thing, the way that you're treated, the way they changed the rules, everything was abominable. Really bad.'

Anne

***Anne's** interview took place in a courtyard café in central London. Anne is an Australian woman in her early thirties who had lived in the UK since 2007 and had permanent residence. Anne was confident, chatty and enthusiastic about living in the UK - she felt she was professionally successful, has a wide network of friends, a busy social life and had recently moved in with her European partner. Although she loved the London lifestyle, she missed her family and notwithstanding her partner's ties to Europe, Anne thought she would ultimately live in Australia.*

Participants also adopted a transactional approach to their family members' relations, both actual and potential, with the British state. Rajesh, whose parents had to obtain a new six-month visitor visa each time they came to the UK, felt that they should be issued visas of longer duration on the basis that those '*who have followed the rules ...* [should be given] *something in return'*.

***Rajesh**, a softly spoken Indian engineer, worked in research and development. Interviewed in his home town outside London, Rajesh was thoughtful and gave considered answers. He initially came to the UK as a student and returned as a highly skilled migrant a few years later. His work took him to the US and he enjoyed the Anglo-American way of working which he felt was much more egalitarian than Indian work practices. He had friends in the UK but had sometimes felt lonely. He would like his parents to be able to spend more time in the UK but understood that that from a visa perspective this would be difficult.*

For Salim, though he had yet to relocate to the UK, any future application for British citizenship, and the consequent loss of his Indian citizenship, would depend on '*the value, what it's* [British citizenship] *going to offer for my future generation'*.

***Salim** was interviewed over Skype. Salim is an Indian citizen who was brought up in the Middle East and had spent very little time in India. Though he had held a UK high-skilled visa for several years and had business contacts in the UK, he and his Indian wife continued to work in the Middle East where they enjoyed a comfortable lifestyle. Aware that he could not settle permanently in the Middle East, Salim was concerned that he would not have a similar standard of living in the UK and as a result, was reluctant to relocate.*

Although an individual's relationship with the state in which they live is pervasive for both migrants and citizens, participants felt it most acutely during the visa, and in some cases, citizenship application process. When discussing such applications, real and imagined, though participants' descriptions of their dealings with the state differed, they clearly perceived their interactions with the Home Office (the tangible manifestation of the state in immigration and citizenship matters) as transactions, or, as the OED defines the term, 'an arrangement, an agreement, a covenant' and 'a piece of business; doings, proceedings, dealings'. For Deborah, the state acted fairly and could be expected to uphold the arrangement whereas for Anne, having kept her side of the agreement, '*working hard, and paying taxes*', the state failed to keep its side. For Rajesh, the state should have offered a better deal given the factual background to the business in question (his parents' migration history and visa situation), and for Salim, no agreement could be reached unless or until the state clarified its side of the deal.

In his investigative account of the City of London's financial sector after the 2008 banking crisis, Luyendijk observed that the City's ruthlessly competitive and relentless pursuit of profit cast all relations as transactions. In such an environment, it was entirely logical that bankers should adopt the same self-serving and rapacious attitude towards their clients as the banks and the banks' shareholders had taken towards them (2015,114). While in no way suggesting that the participants in this study exhibited similarly predatory attitudes, parallels can be drawn between the transactional nature of relations promoted by the City and those fostered by the high-skilled visa overseen by the Home Office. As discussed earlier, the aim of high-skilled immigration policy, operationalised through the HSMP and then T1G, was to maximise economic benefit to the UK. Once admitted to the high-skilled route, highly skilled migrants were required to comply with the visa's conditions including a prohibition on claiming public funds and to extend their leave, had to demonstrate not only compliance with those conditions but also satisfy the visa's criteria. In such an environment, where economic success above all else is valued, why wouldn't participants perceive their

relations with the state or Home Office as transactional? Having followed '*a lot of rules'* as Anil put it, isn't it reasonable for participants to expect the Home Office to uphold its end of the bargain by granting leave to remain, ILR or even British citizenship?[191]

Participants' perceptions of their dealings with the state as transactions seem then to dovetail with the focus on their views of themselves as economic contributors: both indicate that participants see and understand their experiences in the UK through an economic lens which, in turn, suggests an internalisation of the values associated with the immigration category of highly skilled migrant. However, though attractive in its neatness and clarity, such a finding should be approached with caution: it is both a preliminary and partial conclusion in that it fails to take into account participants' actions or their intellectual and emotional responses to living as highly skilled migrants in the UK. The remainder of this chapter therefore examines participants' experiences of immigration law in action through the consideration of their engagement in the high-skilled visa process. When these experiences are added to the mix, the preliminary finding that participants adopted the substance, if not the label of their immigration status, becomes much more nuanced and complex.

7.4 Experiencing the law: the visa process

Before turning to participants' experiences of immigration law in action, a brief note on how the term 'visa process' is understood in this thesis. 'Visa process' is given here a thick meaning: not only does it encompass relevant substantive and procedural law, it also captures the series of actions involved in making a visa application as a potential or actual highly skilled migrant. The process necessarily involves multiple parties - the Home Office, the applicant, their employer or business partners, their bank and frequently, their lawyer, colleagues, family, friends and contacts. From the applicant's perspective it also involves multiple stages: from checking the law, obtaining and preparing supporting documentation, submitting the application through to awaiting its outcome and then notifying relevant parties. For applicants then, the process is time-consuming and lengthy. This is not to suggest that the high-skilled visa process was or is in any way exceptional. Although the use of points to assess eligibility for a visa was novel in UK immigration law when the HSMP was introduced in January 2002, there was nothing new in its operationalisation. As discussed in chapter 4,

[191] Whereas further leave or ILR 'will be granted' to a highly skilled migrant provided the relevant criteria are met (HC 395 para 245CD), the grant of British citizenship through naturalisation is always discretionary: the Secretary of State 'may, if he thinks fit' confer British citizenship (British Nationality Act 1981 s6(1)).

the high-skilled visa as the HSMP and T1G was, in practice, just another visa status and as such, was governed by the established legal framework set out in the 1971 Immigration Act and subject to the entrenched rules and practices of state institutions in their administration of the visa process. Put another way, highly skilled migrants were not subject to extraordinary treatment: like other migrants, when engaging in the visa process, they were required to satisfy and comply with the visa's substantive and procedural requirements in force at the relevant time.

When considering participants' experiences of the visa process, it may be helpful to refer to appendix 4.1 which is a diagrammatic representation of the various stages in the high-skilled visa life cycle from the initial application through to the grant of ILR.

7.4.1 The nuisance of visas[192]

All participants were asked about their experiences of the UK visa processes in which they had participated. As can be seen from the profile of participants' migration patterns at appendix 7.1, most had held a number of different types of visa in the UK and therefore had participated in various visa processes. Although participants' engagement in diverse visa processes informed their experiences of immigration law in action, it is their experiences of the high-skilled visa processes that are of primary interest here.

In view of UK immigration law's historically racialised treatment of migrants discussed in chapter 3 and as argued in chapter 4, the more subtle but nevertheless present racially biased elements of the high-skilled visa, one might expect Indian participants to have found the high-skilled visa process more problematic than the Australians. On first impression, however, the data suggested the opposite. A good number of Australian participants were very critical of the high-skilled visa process. For example, Anne described it as *'horrendous'*, Sarah found it *'soul-destroying'*, John referred to it as a '*stressful pain-in-the-butt experience'* and for Ellie it was *'painful'*.

[192] This quote is from an article by the American writer David Sedaris (2013) in which he recounts his experiences of the UK visa process.

***Ellie**, an Australian woman in her thirties, was articulate and open about her experiences of living in the UK. She came to the UK in 2007 and had established a career in London in business management. She loved the pace of city life and took full advantage of the cultural and social opportunities on offer. Notwithstanding her experiences of the highly skilled migrant visa process, which she found unwelcoming and alienating, Ellie felt very settled in London. She missed friends and family in Australia but had no plans to move back to Australia in the foreseeable future.*

In contrast to this rather colourful language, Indian participants tended to speak of the visa process in more neutral terms. Hari described it as '*not that difficult',* for Zain, it was *'not that bad'* and for Anil, Anjal, Bijal, Karan and Shiv, the process was '*straightforward*'.

***Anjal** first came to the UK from India as a post-graduate student in 2005 and then switched to a highly skilled migrant visa. He had worked for the same multinational company in the UK since he completed his studies and lived in London with his wife, also Indian, and their young child. At the interview, Anjal talked about his experiences as a highly skilled migrant in a matter of fact way explaining that became British because he travelled for work and a British passport made travel much easier. He said he would like to go back to India but because his job was very specialised, he thought it would be difficult to find comparable work there.*

*A naturalised British citizen from India, **Karan's** work as a senior manager with a multinational company took him all over the world. At the time of the interview, Karan had been in Australasia for several months and was travelling on to a different continent that evening. However, Karan felt strongly that London was his base and home and could not imagine living anywhere else in the future. For Karan, it was the combination of having worked in the UK and having a British passport that gave him the confidence and ability to work internationally.*

Yet when the Australian participants explained why they had found the process so onerous, their experiences were not that different from those of the Indian participants who deemed it straightforward. Both Anne and Ellie, for example, felt that the three months or so it took the Home Office to process their initial high-skilled visa applications was a long time whereas it was only when asked directly that Shiv disclosed, without comment, that his initial T1G visa had taken between four and six months to be issued. Similarly, Thomas' description of his attendance at the Home Office to have his T1G visa extended as '*five hours, about eleven different queues*' reveals a frustration over the process.

***Thomas**, a gregarious Australian working in communications, had obtained permanent residence in the UK shortly before the interview and was about to embark upon a career change. Thomas came to the UK in 2008, first as a working holidaymaker and then as a highly skilled migrant. Thomas enjoyed a lively social life and had made many friends in the UK through work, sport and travel, friends of friends and so on. Notwithstanding the strength of these friendships and his intention to apply for British citizenship, Thomas was unsure as to where he would live in the future; he was open to living pretty much anywhere.*

Such frustration is entirely absent from Rajesh's account of his five-six hour wait at the Home Office:

> '[I was] *not really bothered because at the time, you are most concerned on getting the visa processing done. Because it's a long-term thing.'*
>
> Rajesh

Participants' dissatisfaction with the visa process was not limited to perceived delays in the Home Office's determination of applications. Some, again, predominantly Australian participants, found the Home Office's information about the visa process unclear and confusing whereas others found it easy to understand. Compare, for example, Salim and Hari's experiences of preparing their visa applications with those of Michelle and Louise:

> *'Because one thing I like about the UKBA website, it's a very good, self-explanatory website, it explains every situation. So you don't have to ask anybody, its so clear.'*
>
> Salim

> *'So I filled in the forms myself, and I went to the Home Office, and got it done, and they checked the papers, and everything goes fine.'*
>
> Hari

> *'... the guidance that the immigration department here issues is not completely helpful in that sense.'*
>
> Michelle

> 'Oh my God, I hate that [the Home Office] *website. It's not written in clear English... I got so confused, I was printing out all wads of paper, highlighting it, questioning it, trying to ring them* [the Home Office] *up, get on hold, for so long. And you get people on there, you ring up one day you get one answer, ring up the next day you get a different answer. And then they refer you to the website. I find it just disgusting.'*
>
> Louise

Michelle *is an Australian lawyer who lived and worked in central London. She came to the UK with a high-skilled visa in 2009 and had become a permanent resident. At her interview, which took place over a coffee near her work place, Michelle reflected on how she sometimes felt caught between two lives, one in Australia and the other in London, especially since some of her close Australian friends had recently returned home. Mostly though Michelle missed her family and though she enjoyed London life, she thought the pull of her family might ultimately take her back to Australia.*

It should be stressed, however, that not all Australian participants felt the visa process to be a uniformly negative experience nor did all Indian participants experience it as unproblematic. Gopan, for instance, who held senior roles in the financial sector in Germany and Asia before migrating to the UK, described his initial high skilled visa application as *'difficult'* (it was rejected).

Before moving to the UK in 2005, ***Gopan****, a naturalised British citizen from India, had worked abroad in finance for many years. Gopan worked in the City and lived with his wife, also a naturalised British citizen originally from India, in property they owned in London. Gopan had an international outlook and compared his life in London with his experiences of living in other countries. Although comfortable and settled in London, involved in local organisations and a keen supporter of the arts, Gopan said that he felt most at home in a European country in which he had previously lived. Gopan said he would be happy to move again should a career opportunity arise elsewhere.*

Two Australian participants, however, Deborah and Tania, both remembered the process as quick and relatively easy. Even Ellie, who found dealing with the Home Office *'painful'*, admitted she received a *'decent service'* when she applied for ILR. Given how much the high skilled visa process changed, both substantively and procedurally, between 2002 and 2014 (the year the interviews took place), it is perhaps inevitable that participants' experiences should diverge. Furthermore, an individual's personal circumstances - their job, finances, relationships, health and so on - also shape their experiences. That Louise (quoted above) was to be made redundant and was therefore obliged to make her third visa application in as many years to remain in the UK seems likely to have contributed to her exasperation with the Home Office and the visa process. On the other hand, Salim, having completed an MBA in the UK subsequently learned from the Home Office website that he was eligible to apply for a T1G visa under the qualifying MBA provision. Nevertheless, although differences in the high-skilled visa process over time and differences in participants' personal circumstances make direct like-for-like comparison of their experiences difficult, it remains the case that the Australians tended to view the high-skilled visa process more negatively than the Indians. Given that all participants, irrespective of citizenship, were subject to broadly similar substantive criteria and procedural requirements when participating in the high-skilled visa process at a particular time, why should this be so?

In view of the number of participants, it is not proposed that a definitive generalised theory be constructed in response to this question but conscious of this limitation, the following explanations are offered. As can be seen from the data detailed in appendix 7.1, participants first came to live in the UK via one of four immigration routes: high-skilled, work

permit holder, student or working holidaymaker. Most of the Australian participants came initially as working holidaymakers whereas none of the Indians used this visa route even though many were eligible.[193] The working holidaymaker visa process was extremely straightforward: it simply required the submission of a completed application form, visa fee, passport and evidence of financial self-sufficiency to the relevant British visa post. [194] As shown by the statistical data at appendix 7.2, such applications by Australian citizens were very rarely refused whereas in India, between fifty-four and seventy-nine per cent of such applications were refused. Unsurprisingly, none of the Australian participants experienced the working holidaymaker visa process as difficult and none of the Indian participants felt the working holidaymaker visa was a viable option. The majority of those who first came to the UK as working holidaymakers - Anne, Louise, Thomas, Sarah and Ellie - did, however, hold negative views of the high-skilled visa process. This suggests that their unhappiness with the high-skilled visa process was driven, in part, by comparison with the ease of their earlier visa experience.[195] In other words, it could be said that these participants did not expect to be subject to the onerous and time-consuming requirements of the high-skilled visa process. Indeed, Anne said as much:

> *'I thought it would all be very simple, I would just stay in the country, I'd just fill out a form, and then suddenly I'd have a new visa, and I'd just continue my job, and everything'd be fine.'*
>
> Anne

From a broader perspective, in addition to their individual experiences, Australian participants' expectations of the UK visa process were doubtless shaped by their privileged position as citizens of a high-income country. From the twentieth century onwards, the ability to travel to most western European countries through legal channels has become the preserve of the wealthy and/or the educated (Long 2014).[196] This is borne out by the

[193] Briefly, the working holidaymaker visa enabled Commonwealth citizens (and British citizens without the right of abode) aged seventeen-thirty (the upper age limit was increased from twenty-seven in 2003 by Cm 5949) to come to the UK for up to two years, work subject to restrictions and then return home. Apart from a short period when the work restrictions were relaxed (Cm 5949), working holidaymakers were not allowed to work for more than half their stay nor pursue their career, set up in business or work as a professional sportsperson (HC 395, para 95 as at 26 November 2008). In November 2008, Tier 5 Youth Mobility Scheme (T5 YMS) replaced the working holidaymaker visa (HC 1113). Although similar in substance to the working holidaymaker category, T5 YMS was and is only available to citizens of Australia, New Zealand, Canada, Japan, Monaco, South Korea and Taiwan and individuals from Hong Kong (HC 395, Appendix G).

[194] Information on the working holidaymaker visa process is taken from application form VAF1 2004 and my documents drafted when working as an immigration lawyer.

[195] Although Tania and Deborah, who, as noted above, took a rather more neutral view of the high-skilled process, also first came as working holidaymakers, they experienced the high-skilled visa in its earlier and therefore less onerous iterations.

[196] This of course excludes EEA citizens, of whom many from a global perspective are both wealthy and educated.

participants' experiences. Though the Indian participants, as educated individuals, were evidently able to travel to the UK, their family members, also Indian citizens and therefore visa nationals who require a visa to visit the UK (HC 395, para 24, appendix 2 to appendix V), could not always easily do so. For example, Shiv's parents' visits were shorter than they wanted due to their visa conditions, Rajesh felt the frequency of his parents' visits was constrained by the requirement to obtain a fresh visa each time and Zain's parents and his brother were refused visitor and student visas respectively.

***Zain**, an Indian engineer in his thirties, had held a good job with an international company in India. He wanted however to further his career abroad and, as he met the high-skilled visa criteria, chose to come to the UK. During the interview, Zain said that he was nervous about leaving India, especially as he knew no-one in the UK. Having delayed his move by almost a year (he relocated in 2010), he secured an engineering job within a month of his arrival. Zain's wife, also an Indian national, joined him shortly afterwards and at the time of the interview, they lived with their young child outside London.*

None of the Australian participants' family members, who as non-visa nationals did not require a prior visa to visit the UK (HC 395, para 23A), anticipated or experienced such problems.

As discussed in chapter 3, contemporary migrations do not stand in isolation. They are influenced by previous migrations and as such can only be understood by reference to their specific historical and social contexts (Sassen 1998; De Genova 2002). It is suggested here that migrants' experiences and expectations of the visa process, one of the most tangible expressions of law's embeddedness in the act of migrating, are also informed by specific collective historical experiences of migration. In terms of the present study, that tens of thousands of Australians previously obtained working holidaymaker visas without difficulty naturalised the selection of this visa by many of the Australian participants. Yet the working holidaymaker visa was just one element of UK immigration law which, as discussed in chapter 3, though often ostensibly neutral, historically gave preferential treatment to citizens of the old Commonwealth countries (of which Australia was one), both substantively and in its application. In contrast, immigration law historically sought to prevent Indian migration to the UK: from the criminalisation of Indian seamen in the nineteenth century to the restrictions placed on British passport holders of Asian origin in the late 1960s and the impact of the operation of the primary purpose rule on spousal applications through to the late 1990s. Although as seen in chapter 4, in recent times immigration law and policy in the UK has tended to privilege the rich/skilled over the poor/low-skilled, it has continued to favour Australians (among others) over Indians (among others). This is evident, for example, in the

easy availability of the working holidaymaker visa and its replacement, T5 (YMS), or the current distinction between non-visa and visa nationals noted above or the on-going existence of the UK ancestry visa (HC 395, para 186). Against this background, it is reasonable to surmise that Australian participants' perceptions of what the high-skilled visa process *should* entail differed from those of the Indian participants. Put another way, Australian participants expected an easier passage to the UK as highly skilled migrants than their Indian counterparts and in doing so, reveal the threads of historical continuity in migration experiences (Mendelson 2010, 1018).

7.4.2 Papers, Please[197]

> *'The nuisance of visas and having them renewed was something I left to Hugh, who's a whiz at that sort of thing. There was nothing the authorities demanded that he couldn't locate: our original birth certificates, a hank of his grandmother's hair, the shoes I wore when I was twelve.'*
>
> Sedaris 2013

In 2009, the Home Office published the results of an evaluation survey of some one and a half thousand individuals who had made visa applications in one of the four PBS Tier 1 categories over an eight-month period in 2008 (Hanson et al 2009). The report adopts a rather broad-brush approach to data analysis - applicants' satisfaction levels are mostly aggregated across the four Tier 1 visa categories and there is no reference at all to applicants' nationality or country of origin. However, the findings on applicants' dissatisfaction with the visa process echo issues identified in the present study, namely, unclear Home Office information and guidance and long visa processing times (10-16). In addition, the report identifies a third area of dissatisfaction: the difficulties in obtaining supporting documentation in the prescribed format (8). Turning to this study, the participants, Australian and Indian alike, also complained of the high-skilled visa's prescriptive evidential requirements. When discussing the visa process, a significant majority of participants mentioned the difficulties they had experienced in finding and collating the requisite documentation. Of those who didn't - Anil, Deborah, Hari, Karan, Tania and Zain - almost all had made applications under earlier and far less prescriptive incarnations of the high-skilled

[197] *Papers, Please: A Dystopian Document Thriller* (Pope 2013) is an award winning computer game in which the player takes on the role of an immigration officer based at a fictional totalitarian state's border crossing. The player is required to examine people's passports and documents against a list of ever expanding rules and requirements to determine whether they may enter the country. The game has a moral dimension in that the player is punished for granting entry to people on compassionate grounds when they do not present the requisite paperwork.

visa further illustrating the degree to which the visa's substantive and procedural criteria changed over time.

From the outset, as described in chapter 4 and appendices 4.2 and 4.3, the high-skilled visa process required the completion of prescribed application forms and the provision of relevant and adequate documentation. Further, failure to comply with the requirements including the provision of specified documents and the completion of all mandatory sections of the application form risked rendering the application invalid, notably following the implementation of T1G (HC 321). HC 321 provided that if documents specified were not supplied, 'the applicant will not meet the requirement for which the specified documents are required as evidence'. In other words, even if the application were considered and determined substantively (that is, if not deemed invalid), non-compliance with specified evidential requirements would result in its refusal. The high-skilled visa's maintenance condition is briefly reviewed below to both illustrate the complexity of the law and demonstrate the importance of applicants' familiarity with the minutiae of the visa process. Needless to say, this is but one example of the Home Office's ever more uncompromising demands for documentation.

When first launched, the HSMP, in line with most other UK immigration categories (noted in chapter 4) required an applicant to be financially self-sufficient or in the language of the Immigration Rules, to be 'able to maintain and accommodate himself and any dependants adequately without recourse to public funds' (HC 538, para 135A(iii)). To satisfy this requirement, Home Office guidance for in-country applications advised that applicants provide 'formal documents such as bank statements, a building society passbook or wage slips' with the proviso that such documents should cover the last three months. Third party support was also acceptable subject to the same guidance on financial evidence (see application forms FLR(O) 2002, 6-7; FLR(IED) 2004,10 and 2005,11; FLR(HSMP) 2006,14 and 2007,14). This language reflects the more flexible approach to evidence enshrined in the relevant Rules and cited above. When T1G was implemented for in-country applications in February 2008, the first part of the PBS to be activated, evidencing financial self-sufficiency became far more onerous.[198] At first glance, satisfying the then newly formulated maintenance requirement appeared deceptively easy: a T1G applicant would be awarded the requisite ten points if they had the necessary level of funds and provided the 'specified documents' (HC 321, Appendix C). The documentary requirements, were, however, highly prescriptive. With pay slips and third party support no longer acceptable, applicants were

[198] As noted in chapter 4, the prescriptive approach to documentation stretched across all PBS categories.

required to provide original personal financial documentation 'on the official letter-headed paper or stationery of the organization and bearing the official stamp of that organization [and] ... issued by an authorised official of that organization' to evidence funds at the requisite level covering the three-month period preceding the application (Home Office undated para 192).[199] In November 2008, further evidential requirements were introduced: financial documents now had to show funds in the form of cash, the most recent account statement had to be dated within one month of the application and electronic bank statements were permitted only if they complied with the general documentary requirements (quoted above) and were either stamped or supported by a letter from the issuing institution (Home Office 2008d, paras 200-203). In 2010, the specifications were amended again to require financial evidence to cover a consecutive ninety-day period and prescribed the method for converting funds held in foreign currencies to sterling (Home Office 2010b, paras 202 and 204). In 2011, further changes rendered documentation from certain overseas financial institutions unacceptable (Home Office 2011, para 159).

In sum and as detailed in chapter 4, visa applicants' ability to provide acceptable documentation (and thus make a valid application) and the scope for Home Office officials to exercise discretion became increasingly circumscribed, especially following the implementation of the PBS in 2008. Further, not only did visa applicants, including this study's participants, have to produce documentation to increasingly exacting standards - as David put it *'the rules are very strict'* - this was just one element of the 'very complicated [visa] system' (Beatson LJ in Hossain, para 29) they had to contend with. Nevertheless, for a good number of participants, the documentary requirements of the high-skilled visa process caused anxiety and frustration that seeped into their everyday lives. Even Shiv who, as noted earlier, found the visa process '*straightforward*', admitted that he had *'a few problems getting the documents from HR ... getting all these things'*.

***Shiv**, an easy-going Indian engineer working in the financial sector, had lived in the UK for eight years and had become British. His wife had joined him from India and following the birth of their child had bought a property outside London. Shiv and his wife had a large social circle; he enjoyed his job and he and his wife had travelled widely within the UK. Although Shiv had no plans to return to India in the near future, he believed that he would move back eventually.*

Michelle expressed the experiences and views of many participants when she said:

'And I remember it took a lot of coordination to get on top of it. Going forward, since I

[199] As discussed in chapter 4, following the case of Pankina, the maintenance provisions previously contained in Home Office guidance were incorporated into the Immigration Rules.

moved here, it's about keeping your bank statements, keeping your pay slips, I think the requirements are quite out of sync in the sense that people get online statements nowadays. Banks don't have stamps that they use, but the requirements say if it's a print-out or if it's a copied statement it must have the bank's stamp. So I've taken a very cautious approach each time I've renewed, and when I went for residency, gone to the bank managers and asked them to write on letterhead, stamp, anything that they can do. I dictate it to them. So yeah, I think in that sense it's really tricky, and again it's like keeping each and every bank statement, making sure you're quite vigilant in your record-keeping over the years.'

Michelle

Notwithstanding the increasing rigidity of immigration law evident in the high-skilled visa process discussed above, law is not simply a diktat handed down by policymakers and unilaterally imposed on migrants (Calavita 1992; Coutin 2000). Rather, and as discussed in chapter 1, multiple actors, legal and non-legal, institutional as well as individual, migrants, residents and citizens alike all influence and shape the law. Following this notion of immigration law as a productive and interactive force (Sarat and Kearns 1995; Haney López 1996), in the context of high-skilled migration, the (re)shaping of law occurs in formal ways, for example, through contributions to policy consultations or by challenges through the courts as exemplified by the two HSMP Forum cases noted in chapter 4. It also takes place more informally, for instance, by those acting in a regulatory capacity on behalf of employers, schools, universities, banks or property agencies who are required to interpret the law and act on those interpretations when assessing individuals' legal status and concomitant rights. In addition, and importantly here, migrants themselves play a part in defining law as they negotiate the rules, practices and processes that govern their immigration status, both informally in their day to day lives and in more formal or legal spaces. Yet though immigration law is always subject to modifications and to differing interpretations, immigration or visa categories such as those of working holidaymaker, student or highly skilled migrant are ready made in that each visa category is pre-established and pre-delineated by law. To paraphrase Coutin, to qualify for a specific immigration status, an individual must therefore either negotiate and redefine the parameters of the relevant visa or make their life story conform to the applicable prototype (2000, 10-11).[200]

[200] As Coutin acknowledges, Yngvesson (1993) reached a similar conclusion in her study of the handling of social disputes in local courts in New England, USA.

Although individuals are free to define their immigration status as they wish, an official and legally binding determination of that status can be made only in formal legal proceedings (Coutin 2000, 105).[201] As none of the participants in this study brought an immigration appeal, legal proceedings took the form of the visa process with the Home Office the authoritative arbiter of their claim to a highly skilled migrant visa. Given that the ability to lawfully enter or remain in the UK is at stake in the visa process, it is not surprising that participants were concerned to construct a personal narrative that aligned as closely as possible with that of the highly skilled migrant prototype. For example, Anne delayed her high-skilled visa application for several months to ensure she met the maintenance requirement introduced in 2008; David contacted his immigration adviser a year before his leave expired and began preparing his extension application some seven months later and Salim, at the time of our interview, had already begun to collate documents for his extension application several months in the future.

Yet the experiences of Rajesh and Bijal show how easily such preparations can be derailed. When Rajesh attended the Home Office in person to extend his high-skilled visa, he was required to complete a new application form as the form he had prepared was no longer valid, having been updated and replaced two days before. As to Bijal, although he gave his bank account details in his extension application submitted by post, the Home Office rejected it on the basis that they were unable to take payment of the fee. Bijal therefore resubmitted his application with an explanatory letter and a postal order in respect of the fee as, he explained, he '*didn't want to take any chances'*. Fortunately for Rajesh and Bijal, their extension applications were granted. Nevertheless, their experiences demonstrate the very real risks involved in the visa process: even minor and unintended deviations from the highly skilled migrant script could have potentially jeopardised their ability to continue living lawfully in the UK.

Rajesh and Bijal's experiences and indeed those of Gopan, whose initial high-skilled visa application was refused for want of translated pay slips, also highlight the importance of adhering to *all* elements of the highly skilled migrant prototype. It was not enough for Rajesh, Bijal and Gopan, nor any other participant, to satisfy the substantive demands of the high-skilled visa. Regardless of participants' actual attributes - being educated, having undertaken skilled work, having sufficient prior earnings etc. - the visa's demands could only be met through the provision of documentary evidence in the prescribed format. This focus

[201] An example from my experiences in practice: one client identified as a refugee even though their immigration status was that of spouse of a person settled in the UK. Although unable to return to their country of origin for fear of persecution, given the difficulties they would have likely encountered gaining official recognition as a refugee, they applied instead for a spouse visa.

on written proof not only supports the notion of the high-skilled immigration category as a detailed script to which participants must cleave throughout the visa process but also reveals the collation of documents by participants as attempts to construct the normative highly skilled migrant on paper.

The centrality of paperwork to the construction of the highly skilled migrant within the visa process invites comparison with Coutin's study of the strategies adopted by Salvadoran migrants to legalise their status in the US (2000). Coutin notes that the migrants tended to equate official papers such as temporary work authorisations and driving licences with legal status because such documents enabled them to live in the US and to construct a life story that could, over time, form the foundations of a claim to regularise their status through formal legal proceedings (2000, 50-77). The Salvadorans' approach to gaining legal status, that is, some kind of visa, is not then dissimilar to that taken by participants in the present study to maintain their high-skilled visa (see Michelle's description quoted above). Furthermore, although the Salvadorans and this study's participants belong to very different socio-economic spheres, the differences between the two groups fade in the formal legal space as members of each group strive to instantiate the relevant prototype. In other words, within the courtroom and the visa process, individuals' life stories are stripped of context and their idiosyncrasies erased, or perhaps more accurately, held in abeyance, by the prototype (Coutin 2000, 105). Consider, for example, Jenny's situation in the present study. A successful actor and performance coach, Jenny became pregnant in the year before her T1G leave to remain was due to expire:

> *'When you're pregnant you're not really thinking about a visa. And I was working too, so in my mind I thought 'Well, I don't really need to check too much because I'm still working.' And there are no conditions on my work. ... But I didn't take into account that my waters broke early. So he came a lot earlier than he was due. And if that hadn't have happened, I would have got my renewal. Because then I would have had enough payslips.'*
>
> Jenny

*The interview with **Jenny**, an Australian woman in her early forties, took place in a noisy west-end café. Jenny worked in the arts and lived with her European husband and young child in London. Charming and self-deprecating, Jenny was a good storyteller who relived her experiences as she spoke. Perhaps because of her rather unconventional career, Jenny had held a number of different visas, including a high-skilled visa. The uncertainty around her ability to stay in the UK had been a great source of anxiety for her and she was relieved to have recently obtained permanent residence.*

Jenny was fortunate in that she was able to remain in the UK on the basis of her relationship. However, Jenny's experiences show that aspects of an individual's personal circumstances or as referred to here, the visa process' context (which for Jenny included a major life event - the early birth of her first child), is irrelevant to their immigration status if it falls outside the narrow parameters of the visa category's script. Conscious that she could not mould her life story to fit the predefined high-skilled visa narrative, Jenny opted instead for a different visa status with a script to which she could more easily adhere.

That Jenny made a spouse/partner visa application rather than apply to extend her T1G visa, which would have entailed an attempt to modify the highly skilled migrant prototype, could suggest that she and perhaps participants generally passively accepted the immigration category imposed upon them. While the high-skilled visa's narrowly defined and rigid script and the draconian consequences for non-adherence, especially following the HSMP's replacement by T1G, undoubtedly constrained participants' ability and willingness to formally negotiate their visa status, it does not necessarily follow that they did not exercise agency in the face of the law. Nevertheless, as will be considered below, participants tended to see themselves as passive objects of the law during the visa process whereas actions in their everyday lives (discussed in chapter 8) frequently suggested a more agentive approach to their self-identity. For example, having just secured his T1G extension, Thomas decided *not* to inform the Home Office of the error in his date of birth on his newly issued visa. Freed from the yoke of the visa process, Thomas' behaviour hints at a partial acceptance of his legal categorisation. The remainder of this chapter examines the passivity shown by participants when engaged in the high-skilled visa process as revealed by their emotions and attitudes and considers how this lack of agency informs the construction of their self-identity.

7.4.3 Unknowable outcomes

Earlier in this chapter it was observed that many participants found the preparation of the documentation required for their visa applications stressful. David recounted his anxiety in the lead-up to his high-skilled visa extension application in the following terms:

> *'There was still a crazy panic with a week to go as far as getting the bank statements together, and getting them stamped. Luckily, working for a bank that was not... It took*

away some of the angst, but it was still a little bit stressful, with a week to go etcetera.'

David

***David** and his wife came to the UK in 2005 from Australia as with high-skilled visas. Although David's wife was eligible for EU citizenship, they chose the high-skilled visa as they could obtain it more quickly. The couple worked in the financial sector and lived in central London with their two small children. At the time of the interview, the children had dual Australian/British citizenship, David's wife had obtained an EU passport and David permanent residence. Although David had established a professional and social network in the UK, he said he felt his lifestyle was quite transient and was keen to return to Australia in the not too distant future so that his children could benefit from an Australian upbringing.*

A significant number of participants, however, felt nervous and fearful about the *outcome* of their visa applications. Kate, for example, described her feelings as follows:

'I mean, I always feel a bit anxious applying for these things, in case you don't get it, but more so with the extensions in the last few years. ... You know that you've met all the requirements... So it doesn't mean you're just stressed about it the month before you're applying. You're thinking about it the year before.'

Kate

***Kate** is an Australian lawyer in her thirties who came to the UK to move into a different area of law. Politically engaged, Kate said she felt privileged in that her status and citizenship had given her access to countries denied to others. Because of her international upbringing, Kate had a number of passports and residence permits and intended to apply for British citizenship as soon as she could. As Kate was keen to work for an international organisation, she did not know where she would live in the future.*

Ellie described her emotions around the visa process in similar terms: *'it was just that the whole process is so scary because you know you can't get it wrong'* as did Louise: *'well I just felt sick to the stomach thinking 'Will I not get approved?'* Unsurprisingly, participants like Kate, Ellie and Louise who felt anxious about their visa applications also related their experiences of the visa process more generally in negative terms. It seems likely then that the difficulties they perceived and in fact encountered made their engagement in the visa process more stressful, which in turn, exacerbated their negative experiences. However, participants who found the visa process straightforward *and* who reported no difficulties in collating documentation as part of that process, also worried about the outcome of their visa applications. Both Tania and Anil expressed anxiety over their ILR applications:

'You're always worried a little bit whether it's going to be okay, but I wasn't worried about the time out of the country, I was more worried about whether my, because

having the four years of the employment, and pay slips, and dividend vouchers, and a big pile of paper that big... I was probably more worried about that side of things.'

Tania

***Tania**, an Australian engineer, no longer lived in the UK and so the interview was conducted over Skype. Tania was married to a European national she had met when living in the UK and with whom she had two young children. Tania first moved to the UK in 2002, initially on a temporary basis and then obtained a high-skilled visa. Even though she lived in the UK for over ten years, found lucrative work here, travelled extensively and gained permanent residence, it was always her intention to raise her family in Australia. For Tania, it was important that her children grow up with their grandparents and cousins and experience the outdoor lifestyle Tania remembered from her Australian childhood.*

'There were a lot of worries, yes. Until the thing happens, there is always a worry. Because the major challenge I would say is the constant change in laws.'

Anil

Although the visa process was clearly a source of anxiety for many participants, some were quite confident. Anjal, for example, when asked whether he felt nervous when making his visa applications replied *'there was no way I was not going to be able to satisfy that maths within the requirements'.* Ian, after some initial concern, was similarly confident:

'I was getting a little bit nervous, because, after the changes one of the requirements was to have three months' savings, a certain amount, I can't remember off the top of my head what it was, which I didn't have at the time ... But, luckily enough, because I was in that pre-change category, I didn't have to meet that three months saving requirement. So once I found out about that, yeah, I was quite confident that it was just a matter of filling out the form, presenting the information again, and just waiting for it to be authorised.'

Ian

***Ian**, an Australian in his early thirties, came to the UK in 2006 with a high-skilled visa with the specific aim of progressing his career in banking in the City. Focused and friendly, Ian had achieved his original goal but was still very career-oriented. While work dominated his life in the UK, he had travelled widely in Europe, latterly with his European girlfriend with whom he lived in London. A keen supporter of Australia in sporting events, especially when competing against England, Ian strongly identified as Australian even though he had acquired British citizenship.*

Yet even participants who found the visa process worrisome felt confident they satisfied the visa's criteria. Note that Kate quoted above, though anxious, stated she knew she had *'met*

all the requirements'. Likewise, Thomas said of his initial high-skilled visa application: *'I knew I met all of the criteria, but I had in my mind that they weren't going to let me do it, and I don't know why'* and Ellie, who described the visa process as '*scary*', said of her extension application, *'I knew I'd qualify'*. Sarah, Hari and Ravi all expressed a similar mix of confidence and anxiety:

> *'So I think I was confident in that I knew I had met the eligibility criteria but then always worried about if for some unknown reason it might not be approved'*
>
> Sarah

***Sarah**, an Australian lawyer in her thirties, came to the UK in 2006. She had planned to stay for just a year or so, but having found work as a lawyer in London, decided to stay longer. Sarah had subsequently naturalised as British and at the time of the interview was waiting for her British passport - her application was caught up in a backlog and had been pending for weeks. Calm and articulate, Sarah was quite sanguine about her passport application as she was about her highly skilled migrant visa applications which had also been subject to considerable delays.*

> *'You have some sort of worries that they might ask you a few more details. But I didn't have any worry about the papers I submitted. So yeah, for me it was straightforward. But was only worried about if they ask you more details later on.'*
>
> Hari

> *' And so I was a bit nervous ... I knew, I was confident that I did still meet all the requirements. I just did not know whether I'd entered them correctly in the way that it's a sixty-page form, and you have to remember things that you've entered the first time. So you, the fall-back plan would have been to engage a lawyer and say 'I meet all the criteria, I'm not on the borderline. I'm above everything.'*
>
> Ravi

***Ravi**, a young Indian citizen, came to the UK in 2009 on a high-skilled visa. He had recently been granted permanent residence and lived with his wife and baby in London. Ravi was confident, dynamic and open about his experiences in the UK. Although he graduated from a top Indian university, he initially found it difficult to find work in his field in the UK. He conceded that his expectations were high and that his field of engineering was very specialised. He subsequently founded his own company based in central London and employed an international workforce.*

Apprehension about an important event, like awaiting the outcome of a medical test, job interview, exam paper or visa application is a normal human reaction. A degree of anxiety among participants is to be expected. Nevertheless, as discussed above, a good number of participants who were nervous about the outcome of their visa applications were also adamant they met the visa's criteria. This certainty that they satisfied the applicable law on

the one hand and yet feared a refusal on the other suggests that participants believed that they, or at least their visa applications, could be held by the Home Office to a standard above or somehow different from the written law. John expressed as much when discussing the high-skilled visa process:

> *'They were trying to bring in, let me call it failibility, so that pretty much they can fail anyone if they want. But if they're happy enough with you they will pass it... I just feel they've gone into this third stage now which is, 'Right, it gives us the flexibility to fail anyone if we want to, or we can just let them through with passes on one or two conditions.'*
>
> John

***John**, an Australian citizen, lived in London with his European girlfriend. He first came to the UK as a post-graduate student in 2007, obtained sponsored employment, switched to a highly skilled migrant visa and subsequently became a permanent resident. During the interview, John intellectualised his migration experiences and was familiar with broader migration issues. He felt that his life choices had been stymied by his legal status but as he would soon be eligible for British citizenship, he hoped that once naturalised, he would be free to pursue his interests in the UK or elsewhere in Europe.*

Participants' belief that the Home Office could exercise powers additional to those stated could also explain the fatalistic attitude taken by some towards the outcome of their visa applications. As David put it:

> *'You just turn up to the Home Office with a set of information, and it's really a yes or no decision at the end of the day.'*
>
> David

Other participants expressed a similar sentiment with Bijal, Karan and Thomas all using the expression *'not in my hands'* to describe the lack of control they felt over the determination of their visa applications and concomitant legal status.

The attitudes and emotional responses to the visa process expressed by participants point to a belief that the state's power to regulate immigration was not confined to the law as stated in the books. This is not to suggest that participants believed the state was free to act outside the law but rather, when exercising immigration control, it had unknown powers from an unspecified source separate from and in addition to those provided by immigration legislation. In other words, for these participants, the state, in the form of the Home Office, could draw on a nebulous and non-statutory source of power to exercise what John called

failibility. Though participants did not express this view in legal language, not even the lawyers among them, the notion of an amorphous reserve of law available only to the state sounds remarkably similar to prerogative power. As discussed in chapter 4, although immigration control has had a statutory footing for decades - the Immigration Act 1971 - it was not until 2012 that the Supreme Court confirmed in the case of Munir that the power to regulate migration did *not* derive from the prerogative.[202] As suggested in chapter 4, the prerogative casts a long shadow over the popular perception of immigration control. As Calavita (2005) notes, in addition to its instrumental effect, law also has a symbolic and pervasive power.

It is posited that both the pressure to adhere to the tightly worded high-skilled visa script and the pervasive myth of the prerogative encourages individuals to adopt a passive approach to their engagement in the visa process. As noted earlier, all participants preferred to mould their personal narratives to the high-skilled visa script rather than attempt to reinterpret it. Yet notwithstanding such adherence, many felt that their legal status could be determined by 'a mysterious source which somehow lurks behind the rules' (Clayton 2016, 29) thereby promoting a sense of fatalism. It could be argued that such a fatalistic approach counters the coercive nature of the visa script: if one's immigration status is in the lap of the gods, why follow a script? This approach was not however borne out by this study in that none of the participants took a casual or carefree attitude to the preparation of their visa applications. That said, and as touched upon when noting Thomas' reaction to the mistake on his visa, the behaviour of some participants away from the constraints of the visa process suggests a more relaxed and in some cases risky approach to their legal status and social identity of highly skilled migrant. This is discussed in chapter 8.

It is argued that the lack of agency participants felt and exhibited when participating in the visa process challenges the economic framing of their self-identity. As discussed earlier, participants' sense of themselves as economic contributors both informed and is informed by their perception of their relationship with the British state as a transaction. Yet their experiences of dealing directly with the state through participation in the visa process were far from transactional. Although from the participants' perspective the high-skilled visa is an agreement between two parties (the participant and the state), the visa process reveals the negotiations to be one-sided. Furthermore, even when there is compliance with the 'agreed' terms, the outcome of the deal is unpredictable as one party (the state) is able to unilaterally alter its terms. Whereas the broad rationale for the high-skilled visa - leave to enter or

[202] More accurately, and as discussed in chapter 4, Munir confirms that the prerogative is not the source of power to control of *non-enemy* foreign nationals.

remain in the UK in return for economic contribution - fosters a transactional relationship between the highly skilled migrant and the state, the visa's implementation, namely, the visa process, reduces the highly skilled migrant to a passive object of the law. This tension, it is suggested, is then manifest in participants' ambivalence towards the highly skilled migrant social identity.

7.5 Conclusion

Through the visa system, law strongly encourages migrants to adhere to the requirements and conditions of their immigration category: compliance is rewarded with permission to enter and remain in the UK and non-compliance punished with threatened and/or actual physical removal from state territory (De Genova 2002). These very direct and material consequences of compliance or non-compliance instantiate the two sides of immigration law's power, that is, its productive and coercive forces that work together to push for the same outcome: the replication of an assigned social identity. However, such an analysis fails to take into account participants' actions which, it is suggested, are indicative of an ambivalence towards their prescribed highly skilled migrant identity, an identity they neither reject altogether nor embrace in its entirety. With this in mind, it seems reasonable to posit that the requirements and conditions of different visa categories shape at least some elements of migrants' behaviour and self-identity which, in turn, informs and is informed by their lived experiences and perceptions.

Chapter 8

Constructing identity in everyday life

8.1 Introduction

> *'If he were allowed contact with foreigners he would discover that they are creatures similar to himself.'*
>
> Orwell [1949] (1954), 171

The previous chapter examined how participants' categorisation as highly skilled migrants and their experiences of the law in action contributed to the construction of their self-identity in the furnace of the visa process. This chapter migrates to cooler climes to consider participants' day-to-day experiences and perceptions of living in the UK to further illuminate their identity construction, not only in terms of how they see themselves but also in how they are viewed by others. The chapter begins by discussing the extent to which law in the form of participants' visa conditions influenced their quotidian existence including their work and life choices. Consideration is also given to participants' view of themselves as highly skilled. The second part of the chapter moves away from the direct gaze of immigration law to focus on participants' experiences and feelings of difference and acceptance in their daily lives and more specifically, the significance of race as an element of their self-identity. In contrast to the findings discussed in chapter 7, consideration of the data in this chapter revealed greater differences between the Australian and Indian participants which are reflected in the more pronounced comparative element of the analysis.

8.2 Living with(in) the law: the day to day

In 2015, following the screening of *Everyday Borders,* a documentary film about migrants' lives in contemporary Britain, Don Flynn, former director of the Migrants Rights Network, asserted that '[m]igrants expect a tough life' (2015).[203] Without seeking to challenge the

[203] More specifically, *Everyday Borders* considers measures introduced by the Immigration Act 2014 to regulate and restrict migrants' access to housing, healthcare, banking facilities and obtaining a driving licence. As noted in chapter 9, while these measures undoubtedly have a greater impact on the lives of vulnerable and/or unlawful

veracity of this statement or to diminish the experiences of many migrants the world over for whom life is routinely harsh (Human Rights Watch 2010; Ullah and Hossain 2014; IOM 2015),[204] this is not the reality for all migrants. Furthermore, what is deemed a tough or hard life is also contextually contingent. To recast Lord Justice Thesiger's well-known formulation in the law of nuisance, what constitutes a tough life must be determined in reference to its circumstances; what would be considered tough for a professional with a high-skilled visa would not necessarily be so for a student.[205] With regard to the participants in this study, notwithstanding the anxiety many experienced when participating in the visa process discussed in the previous chapter, none perceived their lives as tough. For example, Salim, though his high-skilled visa had been extended, he had yet to relocate to the UK at the time of our interview. It was not however fear of hardship that discouraged his move but rather concern that his standard of living in the UK might not match the comfortable lifestyle he enjoyed in the Middle East. For Hari, who moved to the UK over a decade ago, a return to India was only conceivable if his life in the UK became '*hard*'.

That said, a number of participants felt that their visa conditions constrained their actions and plans in their everyday lives. Ellie, for example, turned down a short-term but well paid job opportunity abroad for fear it could put her UK legal status at risk and Hari waited for months for his high-skilled visa to be extended before looking for new employment. Of course, not all events in life can be managed so easily and some cannot be controlled at all. Rajesh, for instance, was made redundant within days of his arrival in the UK with a high-skilled visa and, as already discussed, Jenny's baby was born earlier than anticipated. Though we are all exposed to the unexpected in life, for migrants, such vagaries, as Jenny's situation demonstrates, can jeopardise their ability to continue living in a given country. If, to borrow from Graeber (2015, 75), law in the form of the visa process reduces an individual to a schema, a two-dimensional person whose life must fit into the pre-determined boxes on an application form, then the everyday law of visa conditions provides scant space for the messiness of life. The following part of this chapter considers the degree to which the decisions and actions taken by participants to manage their day-to-day lives were influenced by and/or (potentially) affected the requirements of their immigration category. Focusing initially on participants' actions in respect of their earnings, the analysis then turns to participants' attitudes to opportunities that presented but which potentially chafed against

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migrants than those in skilled or high value immigration categories, the hostile environment created by law places all migrants under suspicion.

[204] Of course, tens of millions *citizens* also live in extremely difficult conditions - see for example the UN-Habitat 2007 report.

[205] Thesiger LJ's formulation in Sturges v Bridgman is as follows: *'whether anything is a nuisance or not is a question to be determined, not merely by an abstract consideration of the thing itself, but in reference to its circumstances; what would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey...'*

their visa conditions before examining participants' views on the highly skilled element of the highly skilled migrant visa category and social identity.

8.2.1 Another day, another dollar

As discussed in chapter 4, unlike Tier 2 sponsored workers who are tied to a specific job and employer, highly skilled migrants enjoyed free access to the UK labour market. Participants' leave to enter or remain in the UK was not therefore directly dependent on their work status. Although not exposed then to the level of precariousness that is understood to characterise the position of those in sponsored employment (Anderson 2010), their ability to extend their visa was nevertheless predicated on earning enough: enough to reach the high-skilled visa's points threshold, and enough to be financially self-sufficient. With regard to the former, while the level of earnings required varied, when the extension criteria were introduced in 2006, gross annual earnings for the relevant period had to reach a minimum of £16,000 (HC 1702) rising to £25,000 for post-2010 highly skilled migrants (HC 59).[206] As to self-sufficiency, as discussed in chapter 7, highly skilled migrants were required to maintain and accommodate themselves and any dependent family members without recourse to public funds (HC 538). This requirement became far more onerous in 2008 under T1G when highly skilled migrants had to hold a specified level of savings.[207] It also merits restating that receipt of public funds constituted a breach of conditions under the HSMP and T1G (HC 538 and HC 321) and therefore grounds to refuse a visa extension application.

As discussed in the preceding chapter, given participants self-identified as economic contributors together with the pressure exerted by law to earn money, both to satisfy the high-skilled visa points threshold and to be financially self-sufficient, one might expect participants to have prioritised earnings above all else or at least until the grant of ILR.[208] This was the case to a degree: work and earning money were important to participants. At the time of the interviews, all participants (except Tania who had returned to Australia and just had a baby) were or had very recently been engaged in skilled well-paid work and were

[206] As noted in chapter 4 and appendices 4.2 and 4.3, pre-November 2006 highly skilled migrants seeking a visa extension were exempt from the earnings requirement. For post-November 2006 applicants, the level of earnings required depended on an individual's attributes, the timing of their initial high-skilled visa application and the duration of the previous period of leave granted. See appendix 4.3 for details.

[207] Under T1G, the minimum level of savings was £800 (increased to £900 in 2012 and to £945 in 2014) plus an additional £533 for each dependant (rising to £600 in 2012 and from 2014, to £630) held for a continuous period of three months preceding the submission of the visa extension application (HC 321, HC 1888 and HC 1138 respectively).

[208] The grant of ILR frees individuals from all visa restrictions (Immigration Act 1971, s3(3)(a)). For example, those with ILR are not required to work and if financially eligible, may claim public funds.

conscious of the link between earnings and the ability to remain in the UK. Yet, for a significant minority, having a reliable source of income was not always a primary concern.

Kate, for example, who had worked as a corporate lawyer in Australia, came to the UK as a student to complete a Master's degree to help her establish a career as a human rights lawyer.[209] She then obtained a Tier 1 post study work visa, worked in London as a commercial lawyer, changed her visa again to that of highly skilled migrant and subsequently left her secure job and salary to undertake a six-month unpaid internship to gain experience in human rights law. Kate later worked for a number of humanitarian organisations on short-term contracts before securing a permanent position with a UK-based charity which closed down just after she was granted ILR. Ian also came to the UK to change his career. A qualified accountant in Australia, Ian travelled to the UK with a high-skilled visa and joined a global consultancy in London in a role similar to the one he had in Australia. Ian then resigned to take up a more junior and less remunerative job in the banking sector. He left banking in 2014 to begin an MBA having long since obtained British citizenship. John also ceased working in order to study but in contrast to Ian, undertook his year long Master's degree during the currency of his high-skilled visa. On finishing his studies, John took up a permanent position with a consultancy and was subsequently granted ILR on the basis of five years' continuous residence in the UK as a highly skilled migrant. Other Australian participants took a similarly relaxed approach to the high-skilled visa's mandate to earn money. Thomas, Ellie, Tania and Jenny all gave up full-time permanent employment in the UK, choosing instead to work as self-employed contractors. For them and also for Louise who worked on a freelance basis after her redundancy in 2008, the flexibility of self-employment, such as the ability to select interesting projects, work from home, take extended holidays and so on outweighed the benefits of having a secure monthly income.

This rather non-committal attitude towards the requirement to have a specified level of earnings to maintain the high-skilled visa was much less prevalent among the Indian participants, most of whom were employed by large multinational companies in technology-related roles. Rajesh and Ravi, though both IT specialists, had not however taken the corporate route in the UK. Over the total five-year period of his high-skilled visa, Rajesh, who worked for a succession of small start-up companies specialising in satellite research and development, had been made redundant three times. Notwithstanding his highly marketable expertise, Rajesh chose to work in an intellectually challenging but rather high-

[209] A summary of the various visas held by participants in the UK can be found at appendix 7.1.

risk sector. As to Ravi, when he first came to the UK, he rejected a number of IT jobs as insufficiently specialised. Having then found well-remunerated employment in his niche area, Ravi left his job in order to set up his own IT business in London before obtaining ILR in 2014.

The experiences of Rajesh, Ravi and those of the Australians noted above remind us that contrary to their depiction by policymakers and the national press, highly skilled migrants cannot be reduced to economic units; they are individuals with multiple, shifting and diverse interests, needs and desires. As will be discussed below, although participants, notably the Australians, often perceived and experienced immigration law as restrictive, for some it was also experienced (though not always articulated) as positive and enabling. The high-skilled visa facilitated Kate and Ian's career changes, enabled Ravi to set up a successful IT business, Jenny to establish a career as a performance coach and for John, Thomas, Louise, Tania and Ellie, it enabled them to combine their need to work with their chosen lifestyles. Ellie expressed this experience of law as opportunity as follows:

> *'Because for whatever reason, the British government have opened up this scheme, for that period of time, for whatever reasons. I clearly qualify, bit complicated sometimes, but I qualify ...But I've taken the opportunity and it is wonderful...'*
>
> Ellie

There is then a clear difference in the Australian and Indian participants' attitudes towards work and earnings. Before considering the implications of these differences, let us first examine participants' responses to the opportunities and setbacks they encountered and their views on the highly skilled element of their highly skilled migrant visa category and corresponding social identity.

8.2.2 Managing the law

Perhaps unsurprisingly, the comparatively relaxed approach taken to earning money by a good number of Australian participants was indicative of the attitude of some towards their visa conditions more generally in their everyday lives. In other words, the Australian participants were more willing than their Indian counterparts to try to manage the law to their advantage. This is not to suggest that these participants disregarded the law but rather that having assessed the risks, they sometimes acted in ways that could have affected or even jeopardised their legal status. Kate explained her decision to resign from her well-

remunerated permanent job (and thereby risk her ability to extend her high-skilled visa) as follows:

> *'I switched to human rights law, which is, I mean, I love it, but it's not as well-paid, and it's more changeable, just because there aren't so many jobs in it, and NGOs have funding problems. My last NGO shut down after thirty-two years because of funding problems... Yeah, so I think originally you get three years* [leave to remain under T1G]*. So it's a long period of flexibility that you can switch around. It's only in the final year before you're then re-applying for an extension for it that you have to meet all the requirements, so it made sense.'*
>
> Kate

Like Kate, Ian, Tania and John also took a flexible view of their visa conditions. When Ian first came to the UK, he spent a lot of time holidaying in mainland Europe. On his return from one trip, he recalled that an immigration officer queried his high-skilled visa:

> *'I was aware that the purpose of this highly-skilled migrant visa was to work here first and foremost rather than travel, but then I looked into it ... and there was really nothing that actually precluded me from travelling, so I thought 'Well yeah, I'm just going to travel and see what happens.' Again, in hindsight maybe I shouldn't have been as carefree about it as I was. I do remember being stopped in the Euro-, the train between Paris and London, what's it called? The Euro-... Eurostar. And yeah, having to go through customs, and show my passport, and show the visa, and the Home Office person actually queried me on what I was doing because he saw all the stamps, and seen that I'd been out of the UK for probably three months at the time, and really queried me, 'What are you doing? Are you aware that the purpose of the highly-skilled migrant visa is to work first and foremost in the UK?' And I said that, but then I came back to him and actually pointed out that there was nothing precluding me from travelling... And he was really going off on the principle rather than the actual specific criteria. He was going more on the actual purpose of it, which at the end of the day doesn't really matter if you've met the criteria. So, he ended up holding me up as long as he could, but he made sure that I didn't miss that train. Obviously he had his little bee in his bonnet that he wanted to make a point that he didn't like what I was doing, but at the end of the day he couldn't stop me doing it.'*
>
> Ian

Tania too spent a lot of time holidaying abroad when she first came to the UK. Aware that a

safari she had planned could jeopardise her eligibility for ILR in the future, Tania nevertheless decided to travel. Her ILR application was subsequently rejected due to her excess absences from the UK. Tania was however able to extend her high-skilled visa and was eventually granted ILR in 2013 having spent some nine years as a highly skilled migrant. Reflecting on her first ILR application, Tania explained:

> *'I'd had so many friends who'd flouted them* [guidelines on permitted days absent], *and been fine with it, that I didn't think it would be a problem. Yeah, so I was aware of them, but I didn't think nine days would be an issue, because I'd had friends who'd been doing travelling for four, six months, and they'd got away with it.'*
>
> Tania

As to John, as noted above, having been granted leave to remain under T1G, he then decided to study full-time. John described his thoughts and actions in the following terms:

> *'Yeah, so they gave me a two year one* [high-skilled visa], *so that was from the middle of o-ten* [2010], *and I then decided I wanted to do another Masters. So then I had to get careful in how I scheduled things. So then in eleven to twelve academic year I did another Masters at UCL. So because I already had two years under my belt on the work permit, I then had a year-and-a-half under my belt on the Tier 1. So then I applied for my Tier 1 renewal a bit early. So then I got the next three-year one. So that would cover my year studying at UCL and then another year working to be able to meet all the criteria to then get ILR.'*
>
> John

It should be stressed that none of these participants were in breach of the law, or more specifically, their visa conditions. Rather, conscious of those conditions, they sought to manage ambiguities within the law to allow them to carry out their chosen course of action. However, Anne and Jenny were prepared to stretch the rules a little further although not when they held high-skilled visas. Before travelling to the UK, Jenny visited the US where she worked as an unpaid volunteer for a friend's theatre production company. Explaining that she didn't realise at first that volunteering constituted work and was therefore prohibited by her visa conditions, Jenny commented, *'I thought 'Well, if you're not earning money it's fine. What's the problem? You're not taking a job away from someone.'* With regard to Anne, she and her then boyfriend first came to the UK as working holidaymakers. On their return to the UK after a trip abroad, an immigration officer warned Anne's boyfriend that he might not be re-admitted to the UK if he travelled again as his working holidaymaker visa was

close to expiry. He and Anne then made another trip abroad and rather than risk a refusal of entry, her boyfriend re-entered the UK via Ireland to avoid British border control.[210] As Anne put it,

> *'he wasn't working while he was here, I was supporting him. So it felt like, we're not mucking up the economy or anything. He's not working illegally, he's just living in my house and having a grand old time.'*
>
> Anne

As a brief aside, it is interesting to note that in both Anne and Jenny's insistence that no resident workers were displaced by their actions, they justified their behaviour with reference to the nativism that informed the political and media debate on migration discussed in chapters 5 and 6 respectively. In some circumstances, it is clearly better not to be an economic contributor.

The Australian participants discussed above believed that they could, and in most cases were able to, work with or around the law to their advantage. In contrast, none of the Indian participants (with the exception of Salim) viewed the law as sufficiently flexible to enable them to benefit from its ambiguities. As noted earlier, Salim had continued to live and work in the Middle East throughout the currency of his high-skilled visa. His first attempt to extend his visa using the Home Office fast-track service was rejected. The Home Office official advised Salim to resubmit his application by post which would have required him to remain in the UK for several months. Not wishing to do so, Salim resubmitted the application with additional documents to a different Home Office visa centre where it was granted. At the time of the interview, Salim had begun to prepare an application to extend his visa once again, commenting that:

> *'the only fear factor, coming in March for the renewal, are they going to ask me 'Why do you need to do a renewal when you're living outside?' So I need to be prepared with a good answer for that.'*
>
> Salim

Like their Australian counterparts, a number of the Indian participants found their visa conditions restrictive. Yet unlike the Australians, none, apart from Salim, attempted to

[210] For most practical purposes, the Common Travel Area between the UK and Ireland means that there is no immigration control for individuals travelling from Ireland to the UK. For further information, see Ryan 2001 and Green and Shatter 2011.

manage the law's ambiguities to their benefit. Not all the Indian participants adopted this risk-averse approach to the law - in addition to Salim, Rajesh and Ravi's approach to earnings entailed a fair degree of risk - but many did. For example, Bijal hoped to establish his own IT company but felt he couldn't progress his ideas because of the high-skilled visa's earnings requirement and the consequent pressure to earn money. Shiv's approach to travel was similarly cautious: he used to visit his family in India every six months but reduced the frequency and duration of his trips following the introduction of more onerous provisions on absences from the UK when applying for ILR.

In Coutin's study on Salvadoran migrants discussed in chapter 7, the migrants are described as living in a space of 'nonexistence' due to their undocumented status. Living in this space limited their ability to find well paid work, travel, and at times visit certain places for fear of detection (2000, 29-34). In other words, their legal status prevented them doing things that most of us take for granted. Although the participants in this study were lawfully present in the UK, the restrictions imposed by law flowing from their immigration category nevertheless materially affected their everyday lives. That some, predominantly Australian, participants were in certain circumstances able to work around or even, on occasion, overlook these restrictions does not lessen law's intrusion. To paraphrase Mezzadra and Neilson (2013, 141), even when consideration is confined to immigration law's purely instrumental effects, it tends to colonise the lives of migrants irrespective of their legal or visa status. Yet such restrictions also have symbolic effect in that they remind migrants that they are subject to control with the inference that they need to be controlled. The highly skilled may not live in a space of nonexistence but the space they occupy is different from that occupied by citizens.

8.2.3 Lucky or talented?

In chapter 7 it was found that although Indian and Australian participants exhibited a degree of ambivalence towards the highly skilled migrant social identity, they nevertheless perceived themselves as contributors to the British economy and their relationship with the British state as broadly transactional. In view of these findings, it comes as little surprise that none of the participants regarded having a high-skilled visa or obtaining ILR or British citizenship as privileges. Sarah, Karan and Rajesh's views typify those of the participants as a whole:

> *'When I got my permanent residency I was quite happy because it was a fruit of ten years of patience and continuously living in UK since two thousand eight. So it was*

kind of an award for me. Even though I have to buy it, I paid almost four to five thousand pounds to the Home Office for all these activities.'

Rajesh

'I would say I had to earn it [British citizenship], *because from the moment you're studying, you apply for an HSMP or a similar visa, you have to have to prove yourself. And, you have to prove yourself really well to get to that stage.'*

Karan

'I don't get the feeling that I should feel grateful because it's not a system that is set up in any way to…it's not an attractive system, there are so many hurdles and the cost etc. so you kind of feel grateful that you got through it...'[211]

Sarah

Yet though they regarded their visas or citizenship as earned or deserved, many Australian participants also saw themselves as lucky to have been eligible for the high-skilled visa, a view encapsulated by Kate when she said *'I feel very lucky that I got in at the right times'*. Implicit in participants' attribution of their high skilled visa to good fortune is then a denial or downgrading of their skills: they are lucky, not highly skilled. Indeed, a number of participants expressly described their skills as commonplace. When discussing her work permit application, Louise said, '*I knew they had to prove that there was no one else within the EU who could do my job. But, there are definitely people who could do my job, they just didn't apply for it.'* Thomas expressed a similar view of his skills, as did Ellie:

'As an Australian who's highly-skilled, air quotes, who's deemed to be skilled, that I'm here paying my taxes, like anyone else, I don't feel like I'm stealing someone else's job, and I don't feel like no one else can do that job... I could name half a dozen people that could do that job, whether they want to or not's another story, but they could do it.'

Thomas

'I'm not that special.... I'm not somebody who UK employers are all champing at the bit to hire, I simply have a degree, and I'm okay at what I do, and that's evidence that

[211] Earlier in the interview, Sarah described herself as 'privileged' but not in reference to her immigration category: *'I feel privileged that I have thousands of pounds excess to be able to do this but at the same time it does exclude a lot of other people who are as equally qualified.'*

I earn okay money. That's it, that's all it is.'

Ellie

None of the Indian participants described themselves as lucky nor did they refer to their skills as 'not that special' to use Ellie's phrase. This is not to suggest that they cast themselves as masters of the universe à la Tom Wolfe's Sherman McCoy but rather, when talking about their qualifications and work, they were confident they had qualifications and skills that were sought after in the British and international labour markets. Rajesh, for example, mentioned that he studied for his Master's degree at one of *'the most famous telecommunications departments in Europe'* and that his first job in the UK as a highly skilled migrant was with *'one of the best companies in the industry for that sector'*. Ravi, Karan and Anil were similarly confident about their skills and employability:

'I was from the best university in India, if I was looking for a job in India, just to say that, y'know, 'I'm from IIT Bombay. I need a job.' And then people would be chasing you.'

Ravi

'I think the work that I do, it's very specialised. There's always opportunities. It's always there, and I count myself fortunate. I don't have to worry about it.'

Karan

'I'm comfortable, and I say, I went to Japan and worked there, Hong Kong, worked there. Romania, I worked there. So, yeah, I'm comfortable going anywhere new.'

Anil

If following Anderson (2013), immigration law, even in its modern and ostensibly 'raceless' incarnation (specifically here the high-skilled visa), shapes and produces certain types of legal and social subjects, one might expect Indian and Australian participants to exhibit similar views and behaviour towards the imposed highly skilled migrant social identity. Indeed, but for the Australians' more entitled attitude when participating in the high-skilled visa process, the findings discussed in chapter 7 suggest that both Australian and Indian participants were similarly ambivalent towards the high-skilled social identity. However, the examination in this chapter of participants' broader experiences of immigration law in their everyday lives has revealed differences between the two national groups. While the extent of these differences should not be exaggerated, there are clear disparities. The Indians were generally more legally compliant and risk averse than the Australians who, in turn,

tended to ascribe their high-skilled visa to luck whereas the Indians attributed it to their skills and abilities.

There are of course many possible explanations for the differences between the two groups. Though not within the scope of this study, it is recognised that participants' experiences and understanding of law in their country of origin - their legal culture - may influence their behaviour and attitude towards law in the UK as Kubal (2012) found in her study of Polish migrants living in the UK following EU expansion in 2004. Differences in participants' perceptions of their abilities could also be linked to gender. A finding that the Australian participants (mainly women) downplayed their skills and that the Indians (all men) (over)stated theirs would chime with studies that have found that women undervalue their skills when compared with similarly qualified men (Strebler et al 1997; Hargittai and Shafer 2006; Mayo 2016). However, it seems that the Australian participants were generally more resistant to law's attempts to control their intentions and actions than their Indian counterparts. In withstanding the pressure exerted by law to prioritise earnings and in their exploitation of law's ambiguities, the Australians put their high-skilled visa and ability to remain in the UK at risk. In addition, in describing their immigration status in terms of lucky happenstance rather than as the product of a global meritocracy challenges the explicit high-skilled visa policy objective to attract the brightest and best as discussed earlier in this thesis. Such behaviour could then be indicative of resistance on the part of the Australians to their imposed social identity (Coutin 1998; Coutin 2000). However, it is also suggested that the Indian participants' more compliant behaviour reflects a greater insecurity over their legal status and ascribed social identity of highly skilled migrant.

As discussed in chapter 6, the media's depiction of highly skilled migrants was inconsistent and at times sceptical of their economic contribution or value. However, the media analysis in chapter 6 also shows that elements of the press described specifically Indian skilled migrants as not skilled, and therefore inauthentic, and as an economic threat and invasion, often accompanied by allusions to past Indian migrations to the UK. In characterising Indian migrants in this way, the press reflects and amplifies the discriminatory treatment of Indians in historical immigration law as discussed in chapter 3. It is suggested that an environment in which Indian migrants, even the highly skilled, are viewed with suspicion informed participants' self-perception and their articulation of their skills and employability to justify and legitimise their presence in the UK.

8.3 Difference and acceptance

The following part of this chapter focuses on participants' feelings about living in the UK. It begins with discussion of their awareness of the UK's imperial past before examining participants' perceptions of themselves - their self-identity - and their experiences of difference.

8.3.1 Good history, bad history, no history

When participants discussed their experiences of migrating to and living in the UK, very few mentioned the historical connections between the UK and their countries of origin. On the face of it, this suggests an ahistorical experience of migration in line with the political claim that contemporary immigration policies are raceless (Anderson 2013, 41). Of course, that participants did not, on the whole, allude to the past does not mean that history no longer resonates in the present (Yuval-Davis 2010). As discussed below, of the few participants who made reference to their countries' colonial ties to the UK, the meanings ascribed to those ties differed greatly between the Australians and Indians:

> *'The fact that we have a shared, well, obviously Australia used to be one of the colonies, so I think in that respect it's, being an Australian moving overseas, London would be, or the UK is one of the easier countries to move to given that we have the shared language, shared customs.'*
>
> Ian

> *'Because we're whites, because of the history of Australia and Britain. Because we're part of the Commonwealth and she's our Queen. Yeah, and just the close relationship that Australia and the UK have.'*
>
> Ellie

> *'My grandfather ... was actually a freedom fighter when India was a colony, so when I first told him that I'm going to live there* [in the UK] *and study he was not very happy about it. But then he has come to terms, he said 'It's a modern society, it's a changed environment. If you are happy, if you are satisfied, it's okay.' So I said 'Yeah, I'm absolutely fine, I don't see any problem. I know there were difficult times, but it's*

gone.' So in that way he was concerned, but in the later part of his life he was not bothered.'

Rajesh

'Now, I can very well see why, and I see my friends who, for example, felt a lot more comfortable in the UK. Because of the lang-, because of the fact that y'know, everyone speaks English on day one, and so on and so forth, and I suppose to some extent historical connection. A bad history, but still nonetheless between India and the UK.'

Gopan

Gopan returned to this notion of '*bad history'* when talking about the benefits of EU membership:

'*Whatever the British political establishment may say about values and so on, I kind of say 'Well, a generation-and-a-half ago, you were trying to actually subjugate a whole number of populations to your will.' So y'know, really there is, there is no sort of sense of moralising about, people sort of move with the times.'*

Gopan

As the quotations above make clear, the Australians attributed their easy navigation of British society to the shared history between Australia and the UK whereas the Indians characterised India's former colonial relationship with the UK as problematic. Furthermore, for Rajesh and Gopan, it is important that such ties are seen to belong to the past: it is because the '*difficult times'* are gone and people '*move with the times'* and by the inference that India's relations with the UK are now on a more positive footing, that they are happy to live in the UK. Conversely, for the Australians, the historical connection is very much alive and reflected in Australia's cultural proximity to the UK. As Anne put it,

'we're such a similar cultural identity ... Australians kind of blend, with the language, and being white and everything usually. London's a big melting pot so it's silly to say that...'

Anne

Although all the Australian participants lived in London and indeed Anne noted London's diversity, it is clear from Anne and Ellie's comments that their understanding of a shared culture rests in part on a perceived common white identity. Put another way, that the British

and Australian populations are imagined as white underpins the perception of likeness and closeness to the UK and the concomitant feelings of familiarity and comfort. Kate also conflated somatic similarity and cultural familiarity from both her own and the imagined perspective of the British public:

> *'I think it's easier for me because I'm a white Australian woman. Both in terms of public perception and also maybe, yeah, as I said, I don't think I'm a risk category or an issue category ... And I think it would be harder, even if I was an Indian woman coming from Australia, just public perception.'*
>
> Kate

Salim's view of London is strikingly different:

> *'First of all it's multicultural. That's the first thing I like about it. And second thing, it's English-speaking among the European cities. And you're able to relate to the vibe and the crowd. The comfort factor is there. To be honest with you there's a lot of Asians, Arabs, and there's a lot of people from our part of the world, that you feel like 'I'm living in Dubai.' or any other place.'*
>
> Salim

As discussed in chapter 3, notwithstanding a notionally inclusive British identity enshrined in the 1948 British Nationality Act, for much of the twentieth century, to be British was to be white. However, in light of increased post-war migration to the UK from new Commonwealth countries, it became increasingly difficult to maintain a British identity as an exclusively white identity (Cohen 1995). The steps taken by successive British governments to stem non-white migration including legislation in the form of the Commonwealth Immigrants Act 1962 discussed in chapter 3 were, for Cohen, attempts to shore up 'the myth of a racially exclusive British identity' and to fuse a white British identity across the Dominions (1995). For a small number of the Australian participants, it seems then that these historical notions of Britishness continued to resonate and, as will be taken up later in this chapter, race was an element of their self-identity.

8.3.2 Banter and bigotry: encountering difference

Given the discussion above, it is perhaps unsurprising that none of the Australian participants felt any need to adapt to life in the UK. Sarah, for example, found living in

London little different from living in Australia which, however, she attributed to familiarity with city life from growing up in Sydney rather than to any generic cultural affiliation with the UK. More generally, when considering whether their behaviour or attitudes had altered since coming to the UK, the Australians tended to mention minor changes such as their language had become less direct or their accent less pronounced. Unlike the Australian participants, a good number of the Indians observed that they had made an effort to habituate themselves to British life. Shiv, for example, said he had become more profligate in his spending habits (he considered this a British trait) and had perhaps '*changed along the way'* to becoming a British citizen. Ravi had changed the way in which he spoke and Karan and Hari thought they had changed in more holistic ways:

> *'From an immigrant point of view, I think it's more about gelling. The more you gel in, the easier it is to become friends. So I had quite a lot of friendships with people who are born here... You have to adapt, and you have to be open to adapt. I thought that helped me. And probably because I was working in an international context, because I was used to adapting to different cultures.'*
>
> Karan

> '*You have to actually get used to all the culture, adapt, and you need to change yourself in a positive way... It demands a lot of courage... It's like if you go somewhere for yourself, if you go somewhere else to live, then you get so used to the culture.'*
>
> Hari

The Indian participants did not see their adaptation as a negative process. Rather, they articulated how they had changed in neutral terms or in Hari and Karan's case, as something to be proud of: it took '*a lot of courage'* and required one to be '*open to adapt*'. Nevertheless, that these participants felt the need to adapt reveals they perceived themselves as different from the majority population in the UK. Even Salim, who as noted above could *'relate to the vibe and the crowd*' in multicultural London, thought he would need to '*integrate*' as he put it if and when he relocated to the UK. It would seem then that race is also a part of the Indians' self-identity but rather than denoting sameness with the resident British population, it was understood as difference. As almost all the Indian participants worked in an international environment and all lived in the south-east (most lived in London), that they perceived themselves as needing to change is, it is suggested, indicative of the on-going power of the myth of a white British identity.

This imperative to change in order to fit in or 'gel in' to use Karan's words was notably absent from the Australian participants' accounts of their migration experiences. Although as noted earlier, few made explicit reference to any historical or on-going connection between Australia and the UK, the Australians evidently saw themselves as sufficiently similar to the UK's resident population that there was simply no need to adapt. In other words and as discussed in chapter 3, they, like British policymakers from the nineteenth century onwards, perceived themselves as both assimilable and, when in the UK, assimilated.

Australian participants' view of themselves as broadly indistinguishable from the UK's host population was not however shared by all members of that population. Although the majority of the Australians had not experienced any xenophobic or racial abuse, a small number had. At first, Anne was quite certain that there had *'never been any animosity towards me at all as being a migrant'* before correcting herself:

> *'Oh no, once I got called a Vegemite at a train station by a drunk guy. That's the only time I've ever really had any sort of racism or countryism.'*
>
> Anne

For Anne, it was when considering whether she had been treated differently on account of being a migrant that led her to recall the name calling incident which she understood to be provoked by her accent and perceived Australian nationality. While one cannot know the name-caller's motivations, it seems reasonable to assume that he cared little for the distinction between an individual's (perceived) nationality and legal status but rather, sought to target Anne's difference. Other Australian participants suffered similarly pejorative comments highlighting their nationality and/or migrant status both at work and in social situations. For example, when David decided not to tip a taxi driver due to his '*obnoxious*' attitude, the driver complained that he'd '*never had a tip from an Aussie'.* Sarah had to endure supposedly humorous references to '*convicts they let into the country'* and Jenny's colleagues made comments such as *'lock the bread bin'* and joked that she was with her partner *'for the British passport.'*

A number of the Indian participants had also suffered abuse and unpleasant behaviour targeting their nationality and/or migrant status although, it should be added, most had not. Bijal related his experiences in the following terms:

> *'You have to be very emotionally very strong and like not start minding like small things. Like sometimes you get these people on streets calling you names, because*

of your race ... a couple of times I have been called Paki in London, yeah, ... like when you know these are like drunk people just like start looking to, like start a fight or something, but yeah, you need to basically ignore all of that. I also had in York, sometimes in pubs, like people who have lost their jobs because of some Indians taking their job ...'

Bijal

Rajesh recounted how he had been made to feel uncomfortable visiting a village outside London:

'I went there three years back, and I won't say it was racism, but it was 'You're not welcome here' frankly. And it was not only from the people who are originally from here, it was also from Indians and Bangladeshi societies living there as professionals. Because they have been living there for three or four generations, so I went to a Bangladeshi, Indian restaurant, and I was almost unwelcome there. And I felt really bad. I never had that behaviour on the mainland, why I'm getting this kind of behaviour? But then I realised the society is very closed. The people who came to this restaurant are his very premium customers whom he does not want to offend in a way of probably serving me. So I was getting that kind of feeling. We still got our food.'

Rajesh

Ravi also said he had experienced discrimination but was reluctant, quite understandably, to spell out what had happened. He did however add that he no longer had such experiences because he knew how to '*navigate all of these things'*. Hari echoed this idea that one could avoid such abuse through adaptation: when asked whether he had experienced any such hostility, he responded quite emphatically, *'Grace of God I never experienced such a thing. Probably I tried to integrate myself with the society...'*

As noted in chapter 1, the public generally view highly skilled migrants in more positive terms than they do other migrant groups (Boeri et al 2012; Cerna 2016). Similarly, and as discussed in chapter 6, the media narrative for the highly skilled was, in general, less negative than that for other migrant groups. Yet, that a migrant is highly skilled is not an easily discernable marker of identity. As with the depiction of highly skilled migrants by the right-leaning press in the latter part of 2010, stripped of their skills, such migrants become indistinguishable from other migrant groups. In other words, that they hold a high-skilled visa, the top of the ziggurat, does not necessarily protect them from anti-migrant sentiment

or racist abuse in the day to day. For the Indians, the existence of such abuse, whether experienced personally or not, seems to reinforce their perceived need to adapt. This is not the case for the Australians who, notwithstanding their experiences, seem to cleave to the notion that there is little if anything that distinguishes them from the British population.

8.3.3 The role of race in self-identity

As is clear from discussions of the participants' experiences in this chapter and in chapter 7, highly skilled migrants cannot be defined solely as economic agents; they are social and political agents and as such, marked by race, gender, class and so on (Bailey and Mulder 2017, 2691). Indeed, it was posited above that for both the Australian and Indian participants, race was an element of their self-identities, suggested, for example, in the Indians' feelings of difference from and in the Australians perceptions of sameness with the British population. However, as discussed below, racial identity seemed to be a more significant dimension of the Australians' self-identity.

Australians' attitudes towards and experiences of the law discussed in this and the previous chapter can be summarised as follows: the high-skilled visa process was onerous and frustrating, the visa requirements and conditions were restrictive and intrusive and risks over their legal status were worth taking in order to do what they wanted. Taken together, these views and behaviours suggest that the Australians did not identify with their categorisation as migrants by the state because the ascription of a migrant identity, even though a highly skilled migrant social identity, did not easily map on to their self-identification as white.

In sharp contrast to the Australians, race was largely absent from the Indians' self-identity. Their views and experiences of the law also differed from those of the Australians. For the Indians, difficulties in collecting supporting paperwork aside, the visa process was relatively easy, the visa conditions were not problematic and the visa restrictions were bearable and certainly not to be manipulated. It was suggested earlier that the Indians' view of themselves as skilled indicated that they felt insecure about their immigration status, hence the need to justify their presence in the UK. Alternatively, this self-identification as 'the brightest and best' together with the acceptance of their visa requirements could suggest that they identified with their ascribed highly skilled migrant category as a class identity. As discussed in chapter 4, although the high-skilled policy was not entirely race neutral in its design and outcomes, the use of human capital as admission criteria reflected the shift from race to wealth and class as primary measures of migrant desirability in underpinning economic

immigration policy. Given this shift, and law's role in contributing to constructing social identities discussed in chapter 1, it is not surprising that the highly skilled migrant is a classed identity. Indeed this is reflected in both the Australian and Indian participants' self-identification as economic contributors. That said, that the Indians identified more strongly with the highly skilled social category suggests that class was a more prominent dimension of their self-identities. Indeed, this is supported by the Indians' prioritisation of their careers and their self-identified cosmopolitanism evident in their pride in their ability to adapt to living in the UK noted earlier in this chapter.

Finally, although this discussion has focused on two dimensions of the participants self-identities, it must be stressed that these are but one aspect of their identity. In addition to their class and racial identities, the participants are simultaneously partners, parents, dog owners, professionals, arts supporters, runners and so on. As Ruggui notes, an individual's identity can never be reduced to a single thing (2015, 79).

8.4. Conclusion

The chapter finds that immigration law had an instrumental impact on participants in their everyday lives. However, the Indians were more likely to accept the restrictions of the law in the form of the visa conditions placed upon them whereas the Australians sought to circumvent such restrictions and manage any ambiguities in the law to their advantage. It is suggested that law not shaped only their actions in the day to day but also that law's wider and pervasive effects shaped their attitudes and the ways they perceived themselves and their relations with others.

Chapter 9

Conclusion

9.1 Introduction

Reading the 2018 Home Affairs Committee (HAC 2018) report on immigration policy in my local cafe while the Czech barista chatted to her Italian and Australian colleagues, it struck me how much the immigration landscape had changed since I first thought about this research project. Back in late 2011 immigration policy had once again taken a more restrictive turn - the high-skilled route was for most intents and purposes closed, skilled migrants were subject to numerical quotas and English language skills had become a pre-entry requirement for spouses and partners. It would, however, have seemed inconceivable that in 2016, the country would vote to leave the EU, a vote driven in large part by the electorate's desire to further limit migration to the UK (Curtice 2017). Notwithstanding the popular and political imperatives to reduce the number of migrants coming to the UK, the current government has nevertheless acknowledged that a post-Brexit Britain will seek to recruit the highly skilled (Prime Minister's Office 2017, 5). As Amber Rudd, the then Home Secretary, put it, '[w]e must keep attracting the brightest and best migrants from around the world' (2017).[212] It appears therefore that the UK's future immigration policy may come full circle. What began then as a historically tinged research project, in that it focused on individuals' experiences of a broadly defunct immigration category, now seems to look as much to the future as to the past.

9.2 Research questions and methods

The central aim of this thesis was to explore the role of immigration law in shaping the experiences and self-identities of highly skilled migrants who came to live in the UK in the 2000s. In addition to analysing the direct impact of law in the form of visa processes and conditions of stay on highly skilled migrants' everyday experiences which, in turn, inform their self-identity, the thesis has also sought to understand how constructions of migrant social identities, both historical and contemporary, have contributed to highly skilled migrants' perceptions of themselves.

[212] Sajid Javid replaced Amber Rudd as Home Secretary in April 2018.

An interdisciplinary approach was adopted towards the research, cutting across 'disciplinary silos' (Favell 2015, 320) to draw on a range of ideas and literatures. A constructivist perspective has informed the thesis' over-arching theoretical framework: it underpins the understanding of the research project's key concepts of law's role in identity construction and race, discussed in the first half of the thesis (notably in chapters 1 and 3) and informs the approach to the empirical work detailed in the thesis' second half (chapters 6, 7 and 8). In the three empirical chapters, different aspects and elements of highly skilled migrant identity construction have been examined. The first has analysed the depiction of highly skilled migrants in the British press (chapter 6) with the latter two focusing on highly skilled migrants' engagement with and views on the visa process (chapter 7) and their broader experiences and perceptions of living in the UK (chapter 8). This analysis of the instrumental and symbolic effects of immigration law, set against a wider historical, political and social canvas, has, it is hoped, produced a composite and contextualised account of highly skilled migrants' experiences of and engagement with the law and one which provides insight into the significance of immigration law in the construction of (highly skilled) migrant identity.

9.3 Findings

Drawing on socio-legal literature in which law is conceptualised as part of the social fabric that structures our everyday lives (Sarat and Kearns 1995; Coutin 2000; Calavita 2005), it is not surprising that this research finds that immigration law does much more than simply frame highly skilled migrants' lives in the UK. Law, though pervasive, is generally an invisible presence, its influence hard to locate and pin down in the day-to-day. This study, in its focus on highly skilled migrants' lived experiences of their visa status, lays bare the extent to which immigration law is not only incorporated into their life experiences but also how, through those experiences, alongside many other incidents, encounters and exposures, law informs their sense of self.

The highly skilled migrants who participated in this study, Indians and Australians alike, overwhelmingly described themselves as economic contributors to the UK and perceived their relationship with the British state as largely transactional. As chapter 7 suggests, highly skilled migrants' economic framing of their self-identity reflects policymakers' rationale for the high-skilled visa: the selection of individuals predicated on their likely and actual contribution to the national economy. Financial contribution in the form or taxable earnings was also a requirement, notably in the second and third phases of the high-skilled visa, to both become a highly skilled migrant and to retain that status. Furthermore, the evidential

requirements of the high-skilled visa process became increasingly prescriptive leaving highly skilled migrants little option but to cleave to the contours of their immigration category or have their visa refused with the consequent inability to enter or remain in the UK. Previous contributions to socio-legal scholarship have shown how personal narratives are moulded (by the individuals concerned and/or by third parties) to fit with the requirements of the law (Yngvesson 1993; Coutin 2000; Mendelson 2010). Building on this literature, this study finds that immigration law, through the visa system, exhorts highly skilled migrants to take on the characteristics of the normative highly skilled migrant social identity and in doing so, align their self-identity with the express objective of the high-skilled policy.

Although engagement with the law contributed to highly skilled migrants' perception of themselves as economic contributors, conversely, chapter 7 suggests their experiences of the law also tempered or even undermined this element of their self-identity. It is suggested that this ambivalence towards their social identity stems in large part from highly skilled migrants' experiences of the visa process. As chapter 7 shows, though often confident they met the visa's substantive criteria, obtaining and then submitting the paperwork in the exact format stipulated by the visa process was for many a source of great anxiety and stress. Indeed, given that non-compliance with the minutiae of the visa process could lead to a visa refusal, the fear was a very real one. This uncertainty over the ability to remain in the UK flowing from the complexities of the visa process was compounded by a perception among highly skilled migrants that there was an unknown quality to immigration law itself. In other words, there was a perception that a visa application could be judged against a standard different from that outlined in written law which would enable the Home Office to refuse it should it choose to do so. These views and experiences of immigration law are supported by the examination of the legal framework and visa processes governing the high skilled immigration route in chapter 4. Highly skilled migrants' confusion over the law, and the uncertainty it gave rise to, led many to adopt a fatalistic approach towards the visa process. It is suggested that such an approach is at odds with highly skilled migrants' notion of their relationship with the state as transactional, an understanding rooted in their self- and social identities as economic contributors. Although the rationale for the high-skilled visa fosters a transactional approach - the ability to live in the UK in return for economic contribution - in practice, highly skilled migrants experienced the relationship as one-sided. There is then a tension between the normative figure of the highly skilled migrant and the actual experiences of highly skilled migrants. This tension challenges, or at the very least complicates, highly skilled migrants' self-identity as purely economic actors.

Chapter 8 not only suggests highly skilled migrants' ambivalence towards their state- identity category, revealed through their actions outside the visa process, but also that such ambivalence was more pronounced among the Australians than the Indians. Notwithstanding the importance of earnings to their immigration status, a number of Australians took time away from work or decided to work on a freelance basis. Australians were also more likely to perceive the law as a set of restrictions that could be manipulated or even overlooked, and to see themselves as lucky rather than especially talented or highly skilled. On the other hand, the Indians tended to experience the law as inflexible, were generally more risk averse and confident that they had in-demand high-level skills and qualifications. In the day-to-day then, the Australians were more resistant to immigration law's attempts to monitor and control their lives. It is posited that the Australians viewed the highly skilled migrant social identity with a greater degree of scepticism than the Indians. This cynicism reflects the inconsistent constructions of the highly skilled migrant by the media and in the political arena as discussed below.

Although Australians and Indian highly skilled migrants engaged in similar processes when applying for high-skilled visas, the Australians tended to find such processes more onerous. As noted earlier, they were also more likely to manipulate the law and put their immigration status at potential risk. Chapter 7 suggests that this difference between the Indians and Australians can be attributed to the divergent expectations of the high-skilled visa route based on previous visa experiences which, in turn, are rooted in historical and racialised patterns of migration. Many of the Australian highly skilled migrants first entered the UK as working holidaymakers, a route available to all young Commonwealth citizens but mostly used by Australians and others from predominantly white Commonwealth countries. The working holidaymaker visa process was straightforward and the refusal rate for Australians low. Conversely, the refusal rate for Indian nationals was high and none of the Indian highly skilled migrants in this study came to the UK via this route. Chapter 7 suggests that Australian highly skilled migrants, on the basis of their experiences of the working holidaymaker visa process, expected the high-skilled visa process to be similarly straightforward whereas the Indians had no such preconceptions. Migration routes do not then exist in isolation but stand within contemporary and historical contexts in which Australians, in common with other white Commonwealth migrants, have enjoyed easier access to the UK than nationals of non-white Commonwealth countries.

The role of law in constructing and maintaining racialised migrant identities has been widely discussed in the literature (Calavita 2005; Haney López 2006). Chapter 8 suggests that for both Australian and Indian highly skilled migrants, race is an element of their identity in

terms of their perception of themselves and their place in British society. However, for the Australians, race was a more significant dimension of their self-identity than it was for the Indians. Although few in the study alluded to the UK's imperial past, of those who did, the relevance and meaning ascribed to their countries' former colonial ties to the UK differed between the Australians and Indians. For the Australians, the historical relationship gave rise to a cultural affinity between the UK and Australia based primarily on a perceived common white identity. The Indians, however, characterised the colonial history as problematic - they had come to the UK *despite* this history. Following on from this, Australians felt little need to adapt to life in the UK whereas a number of the Indians had made efforts to fit in. Notwithstanding Australians' perception of themselves as broadly indistinguishable from the British population on the basis of their skin colour, a minority was subject to racially motivated abuse as were a small number of the Indian participants. This suggests then a disconnect between the way in which the Australians perceived themselves and the way in which at least some members of the resident population saw them.

Previous empirical research has highlighted the negative depiction of migrants in the British media. Migrants are generally depicted as an undifferentiated mass of people who are often associated with illegality (Gabrielatos and Baker 2008; Philo et al 2013). Building on this literature, this thesis finds that the British press' construction of the highly skilled and skilled migrant, though sharing certain themes with other migrant groups, is also distinct from those groups. However, this public portrayal of the highly skilled migrant is unstable and inconsistent. Chapter 6 shows that unlike other migrant groups, such as east Europeans and asylum seekers, the press did not depict highly skilled migrants as criminal or illegal nor were they (with one exception) described as a threat to British workers. Rather, highly skilled migrants were constructed, almost exclusively, en masse and as the topic of policy debate with economic contribution the sole validation for their presence in the UK. Indeed, the political and media narratives for highly skilled migrants were very closely aligned: both narratives changed following claims that some highly skilled migrants were in low-skilled work. Elements of the press, often taking their cue from the government, questioned highly skilled migrants' skills, implying that they were bogus or fraudulent and in doing so, linked them to common portrayals of other migrant groups. Although the national origins of migrants were rarely mentioned, the right-leaning press singled out skilled Indian workers for special attention. As chapter 6 evidences, not only were the skills of Indian IT professionals called into question, they were also quantified, often with reference to past Indian migrations to the UK. The media construction of the figure of the highly skilled migrant was then not only inconsistent but also racialised. Though not routinely described in the negative and

sometime derogatory terms reserved for other migrant groups, the highly skilled migrant in the media is nevertheless an inconsistent and ambivalent social identity.

The political narrative for highly skilled migrants is similarly inconsistent as chapters 5 and 6 demonstrate. Indeed, the numerous changes to the law delineating the high-skilled immigration category are indicative of a gap between the highly skilled migrant envisaged by policymakers and highly skilled migrants in reality. That highly skilled migrants fell short of the imagined highly skilled migrant is, it is suggested, evident in the fluctuating political construction of the highly skilled migrant which, by the time the high-skilled route closed, had become a devalued social identity.

This thesis has sought to contribute to socio-legal scholarship investigating the many ways in which immigration (and citizenship) law has structured and materially affected migrants' lives. This thesis has argued that although the highly skilled enjoy life options denied to many, when classified as migrants, albeit as highly skilled migrants, historical and current immigration laws play a significant role in shaping their experiences and self- and social identities. Whereas law's construction of migrant identities is always contingent on the particularities of a given historical, social and political context - borrowing from De Genova (2002, 424), there is no single migrant experience or identity - highly skilled migrants' experiences of immigration law's productive and coercive powers appear to be not that different from the experiences of other less privileged migrant groups.

9.4 The future

Although this thesis is rooted in the particularities of time and place, it is hoped that the findings are of relevance in the wider policy arena. With Brexit looming and the publication of the government's White Paper on policy options for EU migration 'forthcoming' (HAC 2018, para 3), this thesis concludes with some thoughts on the implications of the research findings for post-Brexit immigration law and policy and then puts forward a proposal for future research.[213]

If there is one thing to take away from this research, it is that the reach of immigration law is both broad and long. Although highly skilled migrants occupied a privileged position within

[213] The government's post-Brexit immigration White Paper, 'The UK's future skills-based immigration system', was published in December 2018 (HM Government 2018). Although published after the submission of this thesis, policy proposals relevant to this discussion are noted briefly in the thesis' final footnote.

the immigration hierarchy, free to establish a business or look for a job and potentially eligible for permanent residence, they nevertheless felt the impact of law in their day-to-day lives. Furthermore, the instability and complexities of the law, together with the fluctuating public and political constructions of the highly skilled migrant, fostered an ambivalence among such migrants. Indeed, the idea that they were the brightest and best rang rather hollow.

Although the government has yet to publish policy proposals in respect of EU nationals, as noted earlier, ministers have repeatedly expressed both the need and desire to attract the highly skilled post-Brexit. At present, there is no specific visa route for the highly skilled. There are provisions within Tier 1 of the PBS for Investors, Entrepreneurs and for those with Exceptional Talent to live in the UK and Tier 2 enables employers to sponsor skilled migrants to take up specific jobs. To migrate to the UK via an economic route, non-EU nationals must then have substantial funds, an international reputation or a job offer.

Notwithstanding the absence of a specifically high-skilled visa, according to a draft Home Office document leaked in 2017, the government intends to incorporate the regulation of EU migration into the current legal framework (2017b, para 1). According to this document, the rules (Immigration Rules?) governing EU nationals may differ from those applicable to non-EU migrants but proof of employment will likely be a pre-admission requirement for all EU economic migrants including the highly skilled. Though keen to 'promote access for international talent', other forms of work such as self-employment and entrepreneurship must not, the document states, be allowed to undermine 'controls placed on employment' (Home Office 2017b, paras 3.13, 4.26 and 4.33). If the proposals in the leaked document are reiterated in the forthcoming White Paper, the opportunity to bring fresh ideas to UK immigration policy has clearly not been taken.

What can be said with certainty is that the reduction of net migration to the tens of thousands remains a long-term government aim (Goodwill cited in Economic Affairs Committee (EAC) 2017, para 107). Underlying this objective and current immigration policy more generally is the notion that the UK is an attractive destination for migrants of all stripes. Recent evidence however suggests that the UK is not as alluring as it once was, notably for highly skilled migrants. In the year following the EU referendum, net migration fell dramatically, with much of the fall accounted for by EU nationals (ONS 2017). Anecdotal evidence suggests that the

highly skilled are unwilling to relocate to the UK[214] and that a good number of highly skilled EU workers are already leaving (Luyendijk 2017). Research by Deloitte indicates that many more highly skilled workers, EU and non-EU nationals alike, are likely to leave within the next five years (2017). When asked what would make the UK more attractive, 'positive statements from government that non-British workers remain welcome' was the second highest reason given by the highly skilled workers surveyed (Deloitte 2017, 13).

Since 2012, the government has taken steps to create a hostile environment through ad hoc initiatives such as the 'Go home' campaign and through more systematic legal measures. At the time of writing, migrants are required to evidence their lawful immigration status when seeking to rent a home, obtain a driving licence, receive medical treatment, open a bank account and so on.[215] While the targets of such measures are ostensibly unlawful migrants, they nonetheless create an environment in which *all* migrants are viewed with suspicion. Indeed, by its very nature, an environment is pervasive.

While the hostile environment is primarily a creation of law, the press amplifies its impact. As discussed in the thesis, notwithstanding the proliferation of digital news platforms, the national press remains influential in public debate over migration. Although the press is and should be independent, as chapter 6 demonstrates, migration related news stories are overwhelmingly driven by government announcements and policy initiatives. When the dominant political narrative is that of tackling abuse through crackdowns on illegal immigrants, illegal working, illegal driving, illegal renting and so on, the press, in its reporting of such issues, effectively extends the reach of the hostile environment. In such an atmosphere, platitudes celebrating migrants' contributions espoused by politicians and routinely included in policy papers are likely to have little, if any, impact on the public perception of migrants and migration. The 2018 HAC report is critical of the hostile environment policy, arguing that it does little to build public confidence in the immigration system when its scope is unclear and individuals are wrongly targeted (paras 52-57). It is suggested here that this does not go far enough. From a narrow policy perspective, there is a dissonance between the future objective to attract highly skilled EU nationals, individuals who are globally in demand and, evidence suggests may be reluctant to come to or stay in

[214] An HR manager at a leading London-based media company recently told me that they had been unable to fill several senior vacancies because people did not want to move to the UK due to the uncertainty surrounding Brexit.

[215] These measures were introduced pursuant to the 2014 and 2016 Immigration Acts. The extent and draconian effects of the hostile environment were revealed over the course of 2018 following *The Guardian's* investigation into the Home Office's treatment of members of the Windrush generation (Gentleman 2018; Gentleman 2018a; Gentleman 2018b). The Windrush scandal (as it became known) was widely condemned in both the media and in Parliament and contributed to Amber Rudd's resignation. For further discussion, see Home Affairs Committee 2018a; Joint Committee on Human Rights 2018; Nason 2018.

the UK, and the broader material and symbolic implications of the hostile environment policy. From a moral perspective, given the policy's pernicious aims and effects, namely, to raise suspicion and to prevent people from accessing services essential to their everyday lives, most, if not all elements of the hostile environment policy should be abandoned.

For Yeo, the complexities of the Immigration Rules are a further expression of the hostile environment (2017). Though sceptical as to whether the impenetrable nature of the Rules (discussed in chapter 4) is a deliberate tool of policy (incompetence seems a more likely explanation), the complex and unstable visa processes they prescribe were a cause of anxiety for highly skilled migrants and contributed towards the equivocal and sometime cynical view they had of their status in the UK (see chapters 7 and 8). If the regulation of EU nationals is to be inserted into the existing legal framework, then they too will be subject to the Rules and the consequent uncertainties over their status.[216] Again, from a policy standpoint, this seems likely to hinder rather than encourage the recruitment and retention of the highly skilled.

If, however, the Rules and visa processes are simplified in the form of a 'preferential arrangement' for specifically EU nationals, as the leaked document suggests there may be (Home Office 2017b, para 4.26), then this raises other arguably more fundamental concerns. Such an arrangement would result in a two-tier immigration system. Under current immigration law, there are of course different provisions for different nationalities. For example, migrants classified as visa nationals because of their nationality are required to obtain a visa before visiting the UK whereas non-visa nationals are not (the material effects of this policy are discussed in chapter 7). The free movement rights currently enjoyed by EU nationals may also be regarded as a separate immigration regime. Perversely, however, the conspicuous and parallel regulation of EU nationals may make any differences in their treatment more apparent than they are today. Indeed, there would effectively be one regime for predominantly white migrants from the EU and another for the rest of the world, which when taken as a whole, is predominantly non-white. As discussed in this thesis, though processes of racialisation are fluid and complex and though immigration law's constructions of racialised migrant identities are not confined to non-white migrants, such constructions tend to reinforce a white/non-white binary with some migrants perceived as not white enough. Any creation therefore of a two-tier system conceived of or perceived to be split along racial lines seems likely to exacerbate existing racialisations of certain migrant groups. As this research has demonstrated, we may not be able to escape the immigration policies

[216] It should be noted that the Law Commission is to review the Immigration Rules with a view to simplifying them (Law Commission 2017).

of the past but it is imperative that any future regime not hark back to the white/non-white divide of the UK's history.[217]

A possible area for future research is proposed below which could have an academic focus and/or be more policy oriented.

The introduction of a longitudinal element to the research through follow-up interviews with the participants would allow for highly skilled migrants' experiences to be tracked over time. As direct engagement with immigration law through participation in visa processes is likely to have receded into the past, exploration of the participants' more recent experiences and perceptions of living in the UK would likely offer insight into the impact of immigration law on migrants' experiences and identities in the medium to long term. Further research may of course reveal that participants no longer live in the UK. If that were the case then further interviews may provide insight into the factors (including law) that contribute to highly skilled migrants' relocation decisions. Given the UK government's apparent intention to attract highly skilled EU nationals post-Brexit (and potentially highly skilled individuals from elsewhere should EU nationals not be forthcoming) such analysis would likely be relevant to the development of future high-skilled immigration policy.

[217]The 2018 post-Brexit immigration White Paper proposes to create a unified immigration system which will 'apply in the same way to all nationalities': EU free movement rights are to be abolished and '[e]veryone will be required to obtain a permission if they want to come to the UK and to work or study' (8). As the Prime Minister's foreword puts it, '[t]his will be a system where it is workers' skills that matter, not which country they come from' (3). However, this proposed equality of treatment is heavily caveated: future arrangements will be 'flexible and provide for the different treatment for certain migrants, in ways justified on objective grounds such as skill, immigration and security risk, and international or bilateral agreements' (12). Although, and as the White Paper acknowledges, differential treatment exists in the present system (notably the visa/non-visa national divide), repeated references to the potential for preferential treatment for 'low-risk nationalities' (38) suggests that such treatment could amount to a two- or multi-tier system predicated on migrants' national origin. Furthermore, that low-risk nationals are identified in the White Paper as including nationals of Australia, Canada, Japan, New Zealand, Singapore, South Korea and the USA (38), not only suggests the continuing relevance of race in immigration policy, it also echoes previous policy measures in favouring inter alia white Commonwealth citizens.

Appendix 2.1

Media coding framework

Overarching considerations (drawing on Buchanan et al 2003 and Gross et al 2007)

- Main theme
- Main source
- Reference to national/geographical origins
- Reference to numbers
- Language

Coding Scheme

Code	Words (and variants)
Immigration status	Asylum Illegal Immigrant Irregular Migrant Refugee
Socio-economic status	Asset Brightest Burden Best Contribution Outstanding Standing Talent Top World-class
Invalidity	Abuse Bogus Cheat Loophole So-called
Water imagery	Flood Influx Wave

National origin	Australia/Australian China/Chinese India/Indian Nigeria/Nigeria Pakistan/Pakistani US/United States/American
Quantification	000 number
Skilled work	Academic Artist Doctor Engineer Finance Innovator IT worker/IT sector/software/electronics Nurse NHS/health Professional Scientist/researcher Senior Senior executive/businessperson/manager Senior skilled care staff Specialist
Unskilled/low-skilled work	Call centre staff Care assistant Chef Low skilled Restaurant/pub worker Security guard Shop assistant Shelf stacker Supermarket cashier Taxi driver Unemployed Unskilled

Appendix 2.2

National newspapers included in the corpus

Popular	*Mid-market*	*Quality*
Daily Star	Daily Mail	The Daily Telegraph
Daily Star Sunday	Mail on Sunday	The Guardian
The Mirror	The Express	The Independent
Morning Star		The Observer
The Sun		The Sunday Telegraph
		The Sunday Times
		The Times

Appendix 2.3

Number of HSMP and T1G entry visas issued from 2007 to 2011 and as a percentage of all HSMP and T1G entry visas issued during this period

Nationality of applicant	*2007*		*2008*		*2009*		*2010*		*2011*	
	No.	*%*	*No.*	*%*	*No.*	*%*	*No.*	*%*	*No.*	*%*
Australia	9,430	9	14,490	10	15,700	11	6,830	6	1,640	8
Canada	1,770	3	2,320	2	2,740	2	2,010	2	280	1
China	3,290	3	3,240	2	3,040	2	1,870	2	200	1
India	30,380	28	53,280	35	49,130	34	44,190	43	7,910	40
New Zealand	7,310	7	10,980	7	6,300	4	3,470	3	770	4
Nigeria	11,580	11	10,580	7	8,260	6	5,770	6	1,010	5
Pakistan	9,750	9	12,640	8	15,850	11	6,560	6	1,400	7
Russia	2,660	2	3,150	2	2,270	2	2,100	2	470	2
South Africa	6,450	6	11,100	7	6,710	5	3,410	3	810	4
USA	6,520	6	8,720	6	11,090	8	11,250	11	2,000	10

Source: own analysis of (ONS 2014, Table vi_06_q_w)

Note

Table 5.2 excludes the number of in-country HSMP and T1G visas issued. This is for want of an equivalent ONS in-country dataset but also because most applications had to be submitted from outside the UK following the introduction of T1G in 2008. Although the ONS dataset provides clear data in respect of T1G entry visas, the data on HSMP entry visas issued from 2008 onwards are not so clear in that they are included in a category labeled 'Tier 1 & pre-PBS equivalent: Other permit free employment - High value'. Although this category includes non-HSMP entry visas, from the ONS dataset it is clear that their number is small. To be consistent across the period from 2007 to 2011, which spans the change from HSMP to T1G, the information in table 5.2 is an aggregate of the two ONS data categories noted above. The table's data may slightly overstate the number of HSMP entry visas issued but are accurate enough to show general trends given the constraints of the data available. The countries selected for Table 5.2 echo the top ten nationalities issued T1G entry visas during a twelve-month period in 2008-9 (MAC 2009, Table 5.2).

Appendix 2.4

Recruitment of participants

Text of the post on the immigrationboards.com forum

Post by: DoctoralResearcher

Title: Can you help with academic research about highly skilled migrants?

Text:

> Hi
>
> I am a PhD student at King's College London and am looking for people to help me with original research on highly skilled migration to the UK.
>
> If you are from Australia or India, are or have lived in the UK as a highly skilled migrant (HSMP or Tier 1 General) and are willing to help me with some research then I'd be very grateful for your involvement.
>
> If you could be willing to help, and you can spend five minutes to answer a short questionnaire, please click here: https://www.surveymonkey.com/s/JL9RNBH. This will explain what I am doing and will give you more information so you can decide whether or not you want to take part.
>
> If you meet the criteria, I may ask to interview you face-to-face for an hour about your experiences in the UK.
>
> All the best.
>
> Sally

Sample email text to immigration lawyers

Subject: Help with academic research

Text:

> Hi [name]
>
> Thanks for taking the time to talk to me earlier. As we discussed, it would be great if you could pass on details of my research to any of your or your colleagues' clients who might be interested in participating.
>
> I attach an information sheet which gives some more detail about my research.
>
> To be clear, I'm not asking about the quality of immigration advice or anything like that. I'm interested in how law, as a productive force, contributes to the construction of social relations and identity. I'm taking a broad view of immigration law - how individuals experience the legal process (preparing and submitting visa applications) and how on-going visa restrictions and compliance requirements impact on migrants' lives here, the impact, if any, of the wider context and public debate on migration on

migrants' decisions in respect of living here etc. The interviews are though very much participant-led so it's really up to each individual what they want to talk about.

I've set out below some wording you may wish to use in your email to clients.

Let me know if you want to discuss.

Thanks and all the best.

Sally

Suggested text:

Help wanted with academic research

Sally Adams, a PhD student at King's College London and former immigration lawyer, is looking for people to help her with original research on highly skilled migration. Sally's research focuses on the impact of immigration law on highly skilled migrants' experiences of living and working in the UK.

Sally is looking for Australian and Indian nationals who are or have lived in the UK as a highly skilled migrant (HSMP or Tier 1 General), and are willing to help with her research. More information about Sally's research is provided in the attached information sheet.

If you may be willing to help, and can spend five minutes to complete a short on-line questionnaire, please click, https://www.surveymonkey.com/s/JL9RNBH. The questionnaire asks basic questions to ascertain whether or not you meet the research criteria. At the end of the questionnaire, you can say whether or not you would like to participate in the research. If you meet the criteria and indicate that you would like to take part, Sally may ask to interview you face-to-face for about an hour about your experiences in the UK.

Sample email text to friends

Subject: Help with PhD research

Text:

Hi [name]

I write to ask if you know anyone who might be able to help with my PhD research. I've been trawling LinkedIn for participants but it's proving to be quite an arduous task.

In brief, I'm looking to interview Australian and Indian nationals who are or have lived in the UK with highly skilled migrant status (HSMP or Tier 1 General) about their experiences of immigration law and of living and working here. I have set up a brief online questionnaire at https://www.surveymonkey.com/s/JL9RNBH which acts as a filter and explains more about what I'm doing. If people meet the criteria, I may ask to interview them face-to-face for about an hour. People can also contact me directly - 07919 554979/Sally.Adams@kcl.ac.uk.

Would you be able to pass on details of my research to anyone you know might be interested in participating?

Thanks and see you soon?

Sally

Sample message text to individuals via LinkedIn

Message heading: Request for help with academic research

Message text:

> Hi
>
> I hope you don't mind me contacting you out of the blue. We share a group on LinkedIn and, looking at your profile, I am hoping you might be able to help me with my academic research.
>
> I am a PhD student at King's College London looking for people from Australia or India who live or have lived in the UK with a highly skilled migrant visa (HSMP or Tier 1 General), and are willing to help my research. My research is about how immigration law affects highly skilled migrants - I am interested in talking to people about their experiences of the immigration legal process and of living and working in the UK.
>
> If you may be willing to help, and can spend five minutes answering a short questionnaire, please click here: https://www.surveymonkey.com/s/JL9RNBH This explains what I'm doing and provides more information so you can decide if you wish to take part.
>
> Equally, if you know anyone who might be in a position to help me then I would be really grateful if you could pass on this message.
>
> Do let me know if you want to discuss. Thanks and best regards.
>
> Sally Adams

The SurveyMonkey on-line self-completion questionnaire

Information page:

Kings College London's Research Ethics Panel reference number*:* [ ]

TITLE OF STUDY: Law and the construction of a migrant identity? An investigation into how highly skilled migrants construct their identities in the UK in relation to the law in the twenty-first century.

I would like to invite you to participate in an original and independent postgraduate research project. You should only participate if you want to; choosing not to take part will not disadvantage you in any way. Before you decide whether you want to take part, it is important for you to understand why the research is being done and what your participation will involve. Please take time to read the following information before deciding whether or not you want to take part.

What is the study about?

The purpose of this independent study is to explore how highly skilled migrants, that is those who have or have had a Highly Skilled Migrant Programme (HSMP) or Tier 1 General visa, form their identities in the UK. Through this study, I hope to understand the impact, if any, the UK's immigration laws have had on migrant identity.

Who is conducting and funding the study?

This study is part of my self-funded PhD research at King's College London (KCL). The research is being conducted by me, Sally Adams, and is subject to supervision by my academic supervisors in KCL's School of Law. This study has been reviewed and approved by KCL's Research Ethics Panel.

Who is eligible to take part in the study?

I am looking for nationals of Australia or India who have lived in the UK for at least two years whilst holding either Tier 1 General or HSMP immigration status now or in the past, and who did not obtain Tier 1 General or HSMP immigration status in order to work in the UK for their existing international employer.

What happens if I agree to take part?

If you agree to take part, you should read this information page and click below to indicate that you have read it and are happy to proceed. You will then be asked to answer a few questions to ascertain whether or not you meet the criteria for the study. This should take no more than five minutes to complete. You will not be asked for your name or contact details unless, at the end of the questionnaire, you have met the study criteria. If you agree to provide your contact details, I will contact you and may ask you to meet me for up to one hour at a time and place convenient to you so that I can ask you about your experience of coming to live in the UK. You are free to withdraw from the study or withdraw any information you have given me at any time until [ ] without giving any reason.

What about confidentiality?

Your confidentiality is important to me. All the information you give to me will be stored securely in an anonymous format with appropriate levels of protection in accordance with the Data Protection Act 1998 and KCL's data protection policies. I will only use the information you provide in this questionnaire to determine confirm whether or not to contact you to request an interview. No further use will be made of the information you provide.

Contact details:

If this study has harmed you in any way you can contact King's College London using the details below for further advice and information:

Sally Adams
Department of Law, King's College London, The Strand, London WC2R 2LS
Email: Sally.Adams@kcl.ac.uk
Telephone: [ ]

Prof. Ben Bowling (PhD supervisor)
School of Law, King's College London, Strand, London WC2R 2LS
Telephone: +44 (0)20 7836 5454

It is up to you to decide whether or to take part or not.

Question format:

Page 1

Information Sheet (wording above)

I confirm that I have read and understand the above information **YES** ☐ **NO** ☐

I am willing to complete the questionnaire on this basis **YES** ☐ **NO** ☐

****
Page logic

IF both questions are answered 'yes' THEN go to page 2 ELSE go to page 10.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Page 2

What is your country of nationality?

One answer is permitted from the following choices in a dropdown box:

- Australia
- India
- Other

****
Page logic

IF the answer is 'other' THEN go to page 10 ELSE go to page 3.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Page 3

What is your current immigration status in the UK?

One answer is permitted from the following choices contained in a dropdown box:

- European Union citizen
- Student
- Spouse
- PBS Tier 1 General/HSMP
- PBS Tier 2
- Other

****
Page logic

IF the answer is 'PBS Tier 1 General/HSMP' THEN go to page 5 ELSE go to page 4.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Page 4

Have you ever had PBS Tier 1 General/HSMP status in the UK?

One answer is permitted from the following choices contained in a dropdown box:

- Yes
- No

****
Page logic

IF the answer is 'yes' THEN go to page 5 ELSE go to page 10.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Page 5

How long have you lived or did you live in the UK with a PBS Tier 1 General/HSMP visa?

One answer is permitted from the following choices contained in a dropdown box:

- Less than six months
- Six months – two years
- Two years or more

****

Page logic

IF the answer is ‘two years or more’ THEN go to page 6 ELSE go to page 10.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Page 6

Did you obtain PBS Tier 1 General/HSMP status in order to transfer to the UK with your overseas employer?

One answer is permitted from the following choices contained in a dropdown box:

- Yes
- No

****

Page logic

IF the answer is ‘no’ THEN go to page 7 ELSE go to page 10.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Page 7

Great! I may wish to interview you. Are you happy for me to contact you about a possible interview? If so, I will need your name, occupation and telephone and email addresses.

One answer is permitted from the following choices contained in a dropdown box:

- Yes
- No

****

Page logic

IF the answer is ‘yes’ THEN go to page 8 ELSE go to page 10.

Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Page 8

Thank you. Could you please tell me a little more about yourself?

- What is your occupation?
- What is your name?
- What is your phone number?

- What is your email address?

****

Page logic

IF all questions are answered THEN go to page 9 ELSE go to page 10.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Page 9

Thank you for participating in this questionnaire. I will be in touch.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Page 10

Thank you for taking part in this questionnaire. Your participation is complete.

The information sheet

INFORMATION SHEET FOR INTERVIEW PARTICIPANTS 2014-1
King's College London Research Ethics Panel reference number: REPL/11/12-7

YOU WILL BE GIVEN A COPY OF THIS INFORMATION SHEET

TITLE OF STUDY: Law and the construction of a migrant identity: an investigation into how highly skilled migrants construct their identities in the UK in relation to the law in the twenty-first century.

I would like to invite you to participate in this original and independent postgraduate research project. You should only participate if you want to; choosing not to take part will not disadvantage you in any way. Before you decide whether you want to take part, it is important for you to understand why the research is being done and what your participation will involve. Please take time to read the following information carefully and discuss it with others if you wish. Ask me if there is anything that is not clear or if you would like more information.

What is the study about?
The purpose of this independent study is to explore how highly skilled migrants, that is those who have or have had a Highly Skilled Migrant Programme (HSMP) or Tier 1 General visa, experience the law and form their identities in the UK. Through this study, I hope to understand the impact, if any, the UK's immigration laws have had on migrant identity.

Who is conducting and funding the study?
This study is part of my self-funded PhD research at King's College London (KCL). The research is being conducted by me, Sally Adams, and is subject to supervision by my academic supervisors in KCL's School of Law. This study has been reviewed and approved by KCL's Research Ethics Panel.

Who is eligible to take part in the study?
I am looking for nationals of Australia or India who have lived in the UK for a least two years whilst holding either Tier 1 General or Highly Skilled Migrant Programme (HSMP) immigration status now or in the past, and who did not obtain Tier 1 General or HSMP immigration status in order to work in the UK for their existing international employer.

What happens if I agree to take part?
If you agree to take part, you should read this information sheet and sign the consent form. You will be given a copy to keep.

I will arrange to interview you in person at your work place during or outside of your working hours or in a public place, such as a café, convenient for you. The interview will last about one hour. I will ask you about your experience of coming to live in the UK. With your consent, the interview will be recorded and then transcribed by a professional transcription agency. This is to ensure that I have an accurate record of the interview. The recording will be destroyed on completion of the study.

What about confidentiality?
That your data remain confidential is very important to me. If you agree to be interviewed, I would not want you to give me any identifiable information during the interview, that is, you

will not be expected to mention your name, the names of any friends or family, your employer or business details etc. in the interview. None of the information you provide will be included in my study in a way that can be traced back to you.

All the information you give to me will be stored securely in an anonymous format with appropriate levels of protection in accordance with the Data Protection Act 1998 and KCL's data protection policies.

It is up to you to decide whether or to take part or not. If you decide to take part you are still free to withdraw your data by 31 December 2014 without giving a reason. To do this you will simply need to contact me.

Contact details:

If this study has harmed you in any way you can contact King's College London using the details below for further advice and information:

Sally Adams
School of Law, King's College London, Strand, London WC2R 2LS
Email: Sally.Adams@kcl.ac.uk
Telephone: 07548 307801

Prof. Ben Bowling (PhD supervisor)
School of Law, King's College London, Strand, London WC2R 2LS
Telephone: +44 (0)20 7836 5454

Appendix 2.5

Semi-structured interview format

Introduction

- Explain purpose of study
- Explain why participant selected
- Give assurance that data will remain anonymous and treated in strictest confidence
- Explain interview format:
    - Direct questions but primarily an opportunity to put forward your views
    - I'm interested in your perspective and experiences of coming to the UK, living and working here and the legal process around this
    - OK if want to ask me anything, seek clarification
    - Happy for me to record interview? - sign consent form/obtain consent
- Give some background info about me

General information

Name:
Contact details: email phone Preferred contact method?
Gender:
Age:
Nationality:
Marital status: If spouse/partner: • Nationality: • Live in UK? • Do they work? • Occupation:
Any children? If children: • Number? • Nationality: • Age: • Live in UK?
Home address (area only):
Current job/business:
Work sector:

Immigration status and migration history

What is your current immigration status? • HSMP • T1G • ILR • British citizen • Other - specify
How long have you held your current immigration status?
When did you first come to live in the UK (ie, more than visit)?
What UK immigration visas have you held since then? *[specify approximate dates]*
Have you ever had a UK visa application rejected/refused? • When? • Visa type? • Appeal/review undertaken? • Final outcome?

Family migration history

Do you have any family members living in the UK? • Who, ie, what relation to you? • When did they come? • Where do they live?
Do you have any family members living outside Australia/India? • Who? • Where do they live now? • When did they leave?

Interview topics - see guide

Next steps

Would you like a copy of your interview transcript? yes no
Would you like a summary of my research findings? yes no

Conclusion

Explain:

- Interview will be transcribed by a professional transcription agency
- All data will remain anonymous
- I will start to analyse the interviews and will conduct further interviews
- The data will form part of my PhD thesis
- Any questions about interview process/my research, please contact me by email
- Thank you very much for your time

Interview Guide: research themes and interview topics/questions

Purpose of research:

- to better understand and theorise the role law plays in highly skilled migrants' identity formation

Aims of fieldwork:

- to collect empirical data about how Australian and Indian highly skilled migrants typically experience the UK's legal processes in connection with their migrant status
- find out about their wider experiences of living and working in the UK

Theoretical approach:

- law is productive and constitutive - it creates social, economic and political relations as well as reflecting them
- immigration law and policy, implemented through border controls, the visa system and state and private institutions, create a non-neutral typology/hierarchy of migrants (highly skilled, dependant, refugee etc) which is a factor in shaping migrants' and citizens' actions and in determining their relations

Interview questions

Coming to the UK

- When did you come to the UK initially?
- Have you lived elsewhere (apart from UK and India/Aus)?
- Did you consider going to live and work in any other countries? Which ones?
- Did you look into their high skilled immigration criteria?
- Why did you choose the UK instead of country X?

Experiencing the immigration process

- Did you make your HSMP/T1G application(s) overseas? (ie, an entry clearance application)
- Where?
- How did you find the application making process?
- How long did it take?
- Did you think it would be granted?
- Did you encounter any difficulties?
- Did you use a lawyer to help you?

Did you attend a visa processing centre or consulate in person as part of the application?

- When?
- Which one(s)?
- What was it like?

How did you find applying to extend your visa/switch your immigration status (in country application)?

- Did you attend the Home Office in person?
- What was it like? How did you feel about it?
- Did you use a lawyer to help you?
- Have you had your photo and fingerprints taken for a visa/visa extension application?

- How do/did you feel about this?

Were/are there any conditions attached to your HSMP/T1G visa?
- If so, what were/are they?
- How did/do you feel about these?

Work sphere
- How did you find your first job in the UK?
- What kind of work was it?
- How did/do (prospective) employers react to your HSMP/T1G status
- Do you feel your job matched your qualifications and experience?
- How do you feel about your current work?
- Do you work in an international environment?
- Do you socialise with colleagues?
- Do/did your colleagues and social acquaintances know of your immigration status?

Social sphere
- Why do you live in X (area of London/South East)?
- Do have friends/family in the area?
- How do you spend your time outside work?
- Do you belong to any national/local groups or clubs?
- Do any family members?
- Do your children attend local school(s)?
- Spouse/partner - what do they do?

Political sphere
- Do you follow current affairs in the UK?
- Do you regard yourself as politically engaged?
- Explore any political activities - UK oriented or not?
- Support any charities? Where?

How do you feel about your time in the UK?
- Do you feel successful?
- Do you like living here? How do you feel about it?
- Have you had any problems living here?
- What do you think/feel about recent media reporting on migrants?

Permanent residence

- Have you become a UK permanent resident? When?
- Does having permanent residence in the UK mean anything to you?
- How does it make you feel about living in the UK? Is it different from having a time-restricted immigration status?
- Do you think it would have affected your decision to come and live in the UK if the HSMP/ T1G visa had not led to permanent residence in the UK?

Citizenship

- Have you become a British citizen? When?
- Has your family?
- What does having British citizenship mean to you?
- How does it make you feel about living in the UK? Is it different from having permanent residence?

- Are you considering becoming a British citizen? Why/why not?
- Have you retained/will you retain your Indian/Aus citizenship? Why/why not?
- What do you consider yourself in terms of citizenship?

Do you intend to return to live in India/Australia in the future?

Do you think you might live elsewhere, ie, not in India/Australia/the UK in the future? Why?

Appendix 2.6

Interview coding framework

DIFFERENCE

Parent code	*Label c/node*	*Description c/nodes*	*Label sub-c/node*	*Description sub-c/nodes*	*Label sub-sub-node*	*Description sub-sub-nodes*
Difference DIFF	DIFF - ADAPT	Adaptation: feel they have adapted changed to make their life easier in the UK? feel treated differently in UK and at home because of race, immigration status?				
	DIFF-TREAT-UK	Different treatment in UK	-labour-market [lbr-mkt] -work -travel -amenities	Area in which perceived different treatment Lbr-mkt- see too WK code		
	DIFF-TREAT-HM	Perceived or experienced different treatment in home country				
	DIFF-DISCRIM-EXP	Experiences of direct discriminatio n/ detrimentally different treatment	-imm-status -nationality -race -none	Perceived basis for discriminatory/ different treatment		
	DIFF-VIEWS	Views more generally expressed on discriminatio n and difference				

EMOTIONS and VIEWS

Parent code	*Label c/node*	*Description c/nodes*	*Label sub-c/node*	*Description sub-c/nodes*	*Label sub-sub-node*	*Description sub-sub-nodes*
Emotions EMO	EMO-MIG-EXP	Feelings about the migration experience (exp): -everyday exps in the UK -more permanent feelings -exps that given rise to opportunities/ sacrifices/ instilled confidence etc.	-NEG	Negative	-anx -bored -diffi -distant -lnly -painfl sacrifice -torn -trans -unset -vul	Anxious Bored Difficult Distant Lonely Painful Sacrifices Torn Transient Unsettled Vulnerable
			-POS	Positive	-hap -free -lucky -exc -com -confid -lif-ch -est	Happy Free Lucky Excited Comfortable Confident Life-changing Established
			-NEUT	Neutral	-ambiv	Ambivalent
	EMO-STATE	Feelings brought about by interaction with British state, eg, visa process inc prep; border control; app'n outcomes	-NEG	Negative	-annoy -anx -brdn -confu -cross -dis -frus -hless -para -resgn -unapp -uncom -upset	Annoyed Anxiety Burdensome Confused Cross Disappointed Frustration Helpless Paranoid Resignation Unappreciated Uncomfortable Upset
			-POS	Positive	-achiev -confid -est -free -gratfl -hap -lucky -prd -priv -rlf -safe	Achievement Confident Established Free Grateful Happy Lucky Proud Privileged Relief Safe/secure
			-NEUT	Neutral	-neu -strange	Neutral/ ambivalent Strange/odd/ surreal
	EMO-	Feelings/				

	STATE-OTHRS	reactions of others about by interaction with the British state, eg, visa process, visa application outcomes etc.				
	EMO-MEDIA+ POLICY	Feelings stirred by media reporting on migration, UK migration policy	-NEUT -NEG	Neutral Negative	-neu -ang -annoy -anx -unapp -uncom -hurtfl -dislike	Neutral/ ambivalent Angry Annoyed Anxious Unappreciated Uncomfortable Hurtful Dislike
	EMO-HM	Feelings in: -home country -country of origin -country of previous long-term residence	-POS -NEG	Positive Negative	-hap -nostal -diff -irrit -unhap	Happy Nostalgic Difficult Irritating unhappy
Views/ Opinions VIEWS	VIEWS-LAW	General views /comments on UK immig and citship law **not** linked to a partic application/ exp: past, present, changes etc.				
	VIEWS-MIG-STAT	General views /comments on their own high-skilled (hsm) status linked to own experiences and views on status of other migrants more widely.				
	VIEWS-MEDIA+ POLICY+ GEN-PUB	Ps' general views /comments on UK media reporting of migration and on migration policy generally and	-GEN-PUB -MEDIA -POLICY	General public Media reporting Policy		

		view attribute to general public.				

IDENTITY

Parent code	*Label c/node*	*Description c/nodes*	*Label sub-c/node*	*Description sub-c/nodes*	*Label s-sub-c/node*	*Description s-sub-c/nodes*
Identity <u>ID</u> *NB sub-codes and sub-sub-codes applicable to all codes marked **	ID-SELF*	How hsms perceive and describe themselves	-imm-stat	Identity expressed as immigration status	Immigrant Migrant Expat HSM Resident Citizen Visitor	imm mig expat HSM res cit vis
	ID-OTH-UK*	How hsms believe they are perceived by others in the UK	-eth-nat-geo	Identity expressed as cultural, ethnic, regional and/or national	Asian Antipodean Australian Indian Other White UK ancestry Euro ancestry Londoner	Asian Antip Aus Ind Other White UK-anc Euro-anc Lon
	ID- OTH-MIGS*	How hsms perceive other migrants in the UK				
	ID-SELF-HM*	How hsms perceive themselves in home country	-fam	Identity expressed as family member	Moth/father Son/daught Spouse/prtnr Aunt/uncle Cousin	M/F S/D Sp/Ptnr A/U Cuz
	ID-OTH-HM*	How hsms believe they are perceived by others in home country	-socio-ec	Identity expressed in socio-economic terms	Prof'n Job sector/level Skilled/high sk Education Class	prof job-sec sk/h-sk ed class
	ID-UK-POP*	How hsms perceive/ describe people living in UK	-Belong	Identity expressed in terms of [not] belonging, social and political	Insider/ outsider Foreign Political engagemt in home country Political engagemt in UK Notion of home, where view home, how feel re living in UK and home country	in/out forn pol-eng-hm pol-eng-uk hm
			-lang	Language	contact w people in country of origin	hm-con

	ID-CHILDREN	How identify their children	-charac -fam -nat -place	accent, mannerisms, spirit place of birth/ upbringing imp		
	ID-BRIT-CUL	How hsms perceive British culture inc views in terms of UK's geo, culture, characteristics of people and places, locally and nationally, economy etc.				
	ID-NAT-CUL	How hsms perceive their own culture, inc views in terms of country's geo, culture, characteristics of people and places, locally and nationally, economy etc.				

LAW

Parent code	*Label c/node*	*Description - c/nodes*	*Label sub-c/node*	*Description - sub-c/nodes*	*Label Sub-sub-node*	*Description sub-sub-nodes*
Law LAW	LAW-KNOW	How hsms + others understand/ perceive their understanding of law	-non-uk -vot-uk -mig-uk -uk -emp	knowledge/ understanding non-UK mig regimes - issue of choice and why choose UK knowledge/ understanding of UK voting rights UK immigration law Knowledge/understanding of gen UK -access to NHS, schools, driving license Emp'rs/recruitment agencies' knowledge imm law - eligibility, renewal etc.		
	LAW-HELP + SOURCES	Whether help received/given with imm applications inc citizenship + sources of law	-lawyer -frnds -coll -soc-med -HO -stories -wk -uni	Prof legal advice/ass Friends Colleagues Social media eg, immboards HO Stories/rumours - hsm apps/ law from media/colls/frnds Emp'er/work paid for app Uni/college	-L-H-lwyr-all -L-H-lwyr-none -tel-e -web -IO	Legal help w all apps Never used legal help tel/email HO website IO/ECO in person
	LAW-PROC-	Experiences of the legal process, ie, the preparation and making of ec/ltr/ilr and citship applications	-gen-com -hsm -ilr -cit	General comments on visa processes Hsm apps experiences ILR apps exp Brit cit apps exp	 -hsm-neg -hsm-neu -hsm-pos -hsm-crit -ilr-neg -ilr-neu -ilr-pos -cit-neg -cit-neu -cit-pos	Exp of meeting hsm points threshold
	LAW-IMP	how legal status inc the prep and making of apps impacts	-admin -fut -liv	Admin tasks - counting days absent, checking HO webs Impact on future plans Day-day living -opening		

		on day to day lives	-neu	bank a/c, mortgage, ability to travel/ wk pending app Neutral - visa status had little or no impact on ps' actions - find wk, change jobs, travel, plan future etc		

MIGRATION PATTERNS

Parent code	*Label c/node*	*Description c/nodes*	*Label sub-c/node*	*Description sub-c/nodes*	*Label sub-sub-node*	*Description sub-sub-nodes*
MIG-PATTERNS	MIG-PAT-p	Participants' migration patterns				
	MIG-PAT-citship	Brit citship app patterns				
	MIG-PAT-fam	Participants' family's migration patterns				
	MIG-PAT-frnds	Migration patterns of participants' friends and acquaintances				
	MIG-PAT-leisure	How spend spare time in UK				
	MIG-PAT-gen-imp	Impressions/ views of group migration patterns				
	MIG-PAT-PREP-wk	Steps taken/situ when considering migration to UK -whether job secured -job agencies contacted -wk colleagues contacted etc				
	MIG-PAT-PREP-NTWK	Extent of netwk in UK before coming -family -social -wk etc -accom				
See too ID-belong - participation in social life in UK	MIG-PAT-NTWK-uk	Social networks in UK	-Antip -Aus -Ind -leis -mig -mix -wk - uni			
	MIG-PAT-BK-UP	Back-up plans [if any] should LTR be refused	-stay -hm -none			

MOTIVATIONS

Parent code	*Label c/node*	*Description c/nodes*	*Label sub-c/node*	*Description sub-c/nodes*	*Label sub-sub-node*	*Description sub-sub-nodes*
Motiv-ations <u>MOT</u>	MOT-INTENTION	Ps' intentions mainly re anticipated duration of stay in UK	-early -present	On arrival and afterwards in UK Plans at time of I/V. Loose def of intentions - gen focuses on places of future residence. Inc: -possible future options -concrete/semi-formed plans -definite decisions as to where live in future		
	MOT-1ST-VISA-UK	Reasons for first trip to UK by broad imm cat	-hol -study -wk -w-hol	Holiday Study Work Wkg holiday		
	MOT-COME-UK	Reasons for coming to the UK coming from abroad. Mandatory T1G ec apps treated as staying - see MOT-STAY-UK	-car -change -ed -exp -money -lif-sty -trav -job -res -tkt -lang -fam	Career advancement/ career change to have change - lifestyle, situation etc Education experience living (+ working) in UK earn money UK life style inc wk culture Travel Job secured in UK Leads to residence UK Plane ticket route Eng language family here/Europe near family back home e.g. UK closer than US/ escape family Take up job in UK		
	MOT-HSMP-T1G	Reasons for HSMP/T1G visa Reasons for ILR	-easy -auton -to-uk -uk-cit-opp -fam-wk-	Easy visa criteria+process Auton imm status Come to live in UK UK citship opp		

			opp -sec -res-opp -wk	Family wk opps security obtain ILR to take up work in UK inc: -job when in other econ mig status - eg WP/T2 -change in career direction -additional work		
	MOT-STAY-UK	Reasons for staying in UK	-lif-exp -lif-sty -money -trav -wk-opp -fam -imm-stat -job -ed-opp	Life experience Life style Money Travel Work opportunities Family Immigration status -to get ILR/citship Take up job in UK Educational opps		
	MOT-ILR	Reasons for applying for applying/wanting ILR	-sec	security		
	MOT-UK-CIT	Reasons for applying for Brit citship	-chil-opt -easier -est-sec -goal -opt-free -soc-bens -wk	Options for children Makes life easier Already established/to feel more established in UK/security Citship as goal in itself- end of visa process Options/freedom Gain access to social benefits Helpful to work/career		
	MOT-LEAVE-UK	Reasons for leaving UK - future and actual	-job-abrd -fam -childn -money -change -hm-sick -poor-lif-sty -red-tape	Job abroad Family Children Money Change Home sick Poor life style in UK UK bureaucracy		

WORK

Parent code	*Label c/node*	*Description - c/nodes*	*Label sub-c/node*	*Description - sub-c/nodes*	*Label Sub-sub-node*	*Description sub-sub-nodes*
Work WK Work related exps + views in UK and abroad	WK-VIEW	Perceptions/ views on wk inc lbr market wk patterns empmt relations pay etc.	-aus -ind -uk -othr	In Australia In India In UK In other countries		
	WK-EXP see too ID-NAT-CUL	Wk experiences inc attitude of boss/colleagues to visa requirements, staff mix, wk culture	-aus -ind -uk -othr	In Australia In India In UK In other countries		
	WK-LBR-MKT	Exps, pos and neg, in UK and other lbr mkts in UK, inc job offers, quals recogised, perceived employability etc.	-aus -ind -uk -othr	In Australia In India In UK In other countries		

Appendix 2.7

Participants' consent form

[redacted]

Please complete this form after you have read the Information Sheet and/or listened to an explanation about the research.

King's College Research Ethics Panel reference number: REPL/11/12-7

TITLE OF STUDY: Law and the construction of migrant identity: an investigation into how highly skilled migrants construct their identities in the UK in relation to the law in the twenty-first century.

Thank you for considering taking part in this research. I will explain the project to you before you agree to take part. If you have any questions arising from the Information Sheet or explanation already given to you, please ask me before you decide whether to join in. You will be given a copy of this Consent Form to keep and refer to at any time.

	Please tick or initial
• I understand that if I decide at any time during the research that I no longer wish to participate in this project, I can notify Sally Adams and withdraw from it immediately without giving any reason. Furthermore, I understand that I will be able to withdraw my data up to 31 December 2014.	☐
• I consent to the processing of my personal information for the purposes explained to me. I understand that such information will be treated in accordance with the terms of the Data Protection Act 1998.	☐
• I consent to my interview being recorded.	☐
• I consent to a transcript of my interview being prepared by a professional transcription agency based in the European Union.	☐

Participant's Statement:

I _____

agree that the research project named above has been explained to me to my satisfaction and I agree to take part in the study. I have read both the notes written above and the Information Sheet about the project, and understand what the research study involves.

Signed **Date**

Investigator's Statement:

I, Sally Adams, confirm that I have carefully explained the nature, demands and any foreseeable risks (where applicable) of the proposed research to the participant.

Signed **Date**

28 Jan 02 - 30 Sep 04
A has LTE/R[1] in the UK other than as a visitor

01 Oct 04 - 28 Feb 08
A has LTE/R in the UK as a working holidaymaker

01 Oct 04 - 23 Oct 10/05 April 11[2]
A has LTE/R in the UK as a:
- student
- post-graduate doctor/dentist
- work permit holder

25 Oct 04 - 23 Oct 10/05 April 11
A has LTE/R in the UK as:
- an innovator
- under the science and engineering graduate scheme (SEGS)

22 Jun 05 - 23 Oct 10/05 April 11
A has LTE/R in the UK under the fresh talent: Scotland scheme

29 Feb 08 - 23 Oct 10/05 April 11
A has LTE/R in the UK under the:
- HSMP
- international graduate scheme (IGS)

06 Jun 08 - 23 Oct 10/05 April 11
A has LTE/R in the UK as:
- a business person
- a self-employed lawyer
- a writer/composer/artist
- a Tier1 (T1) entrepreneur
- a T1 investor
- under the T1 post-study work scheme (PSW)

27 Nov 08 - 23 Oct 10/05 April 11
A has LTE/R in the UK in Tier 2 (T2)

31 Mar 09 - 23 Oct 10/05 April 11
A has LTE/R in the UK in Tier 4 (T4)

03 Oct 10 - 23 Oct 10/05 April 11
A has LTE/R in the UK as a T4 dependant

06 April 11 - 05 April 15
A has LTE/R in the UK as:
- a highly skilled migrant (HSM)
- self-employed lawyer
- writer/composer/artist

28 Jan 02 - 23 Dec 10
A lives outside the UK

In country
A submits an application in the UK

0A

A submits HSMP approval application to the Home Office[4] (HO) comprising form, fee[5], evidence that points criteria met[6]

Application granted
HSMP approval letter issued

Application refused

Successful review

0B

29 Feb 08 - 5 April 11/15
A submits T1G application to the HO comprising form, fee, passport, evidence that points criteria met

In country
A submits an application in the UK

0C

28 Jan 02 - 31 Mar/29 Jun 08[12]
A submits HSMP approval application to the HO comprising form, fee, evidence that points criteria met

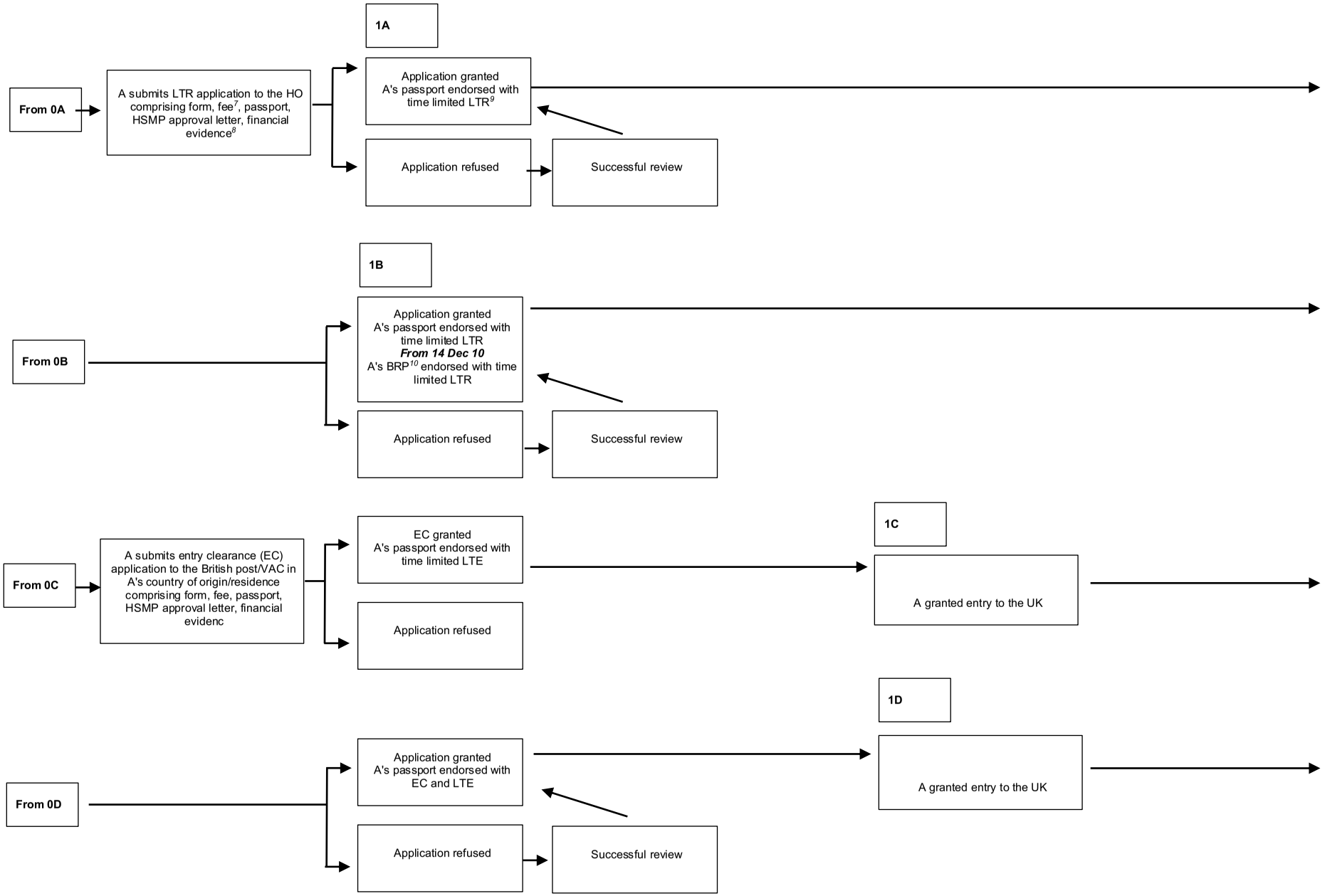
Application granted
HSMP approval letter issued

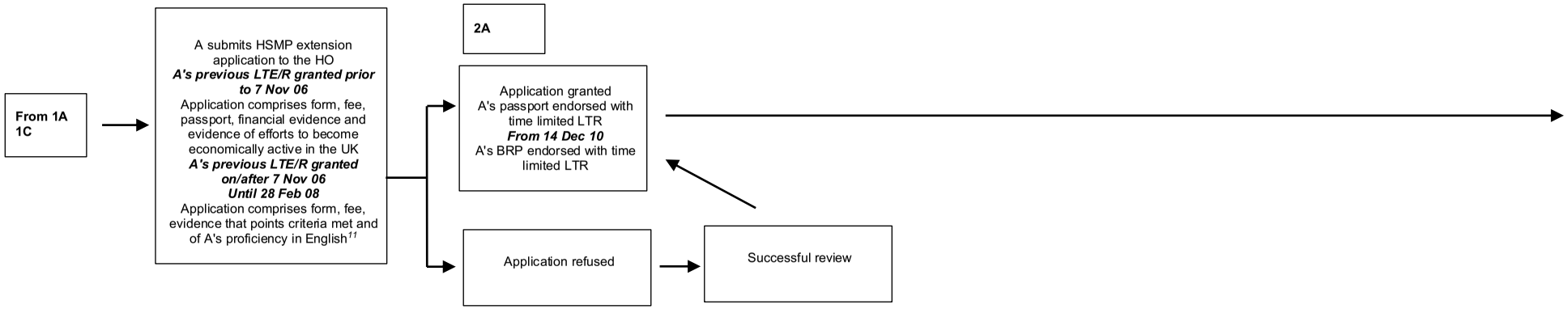
Application refused

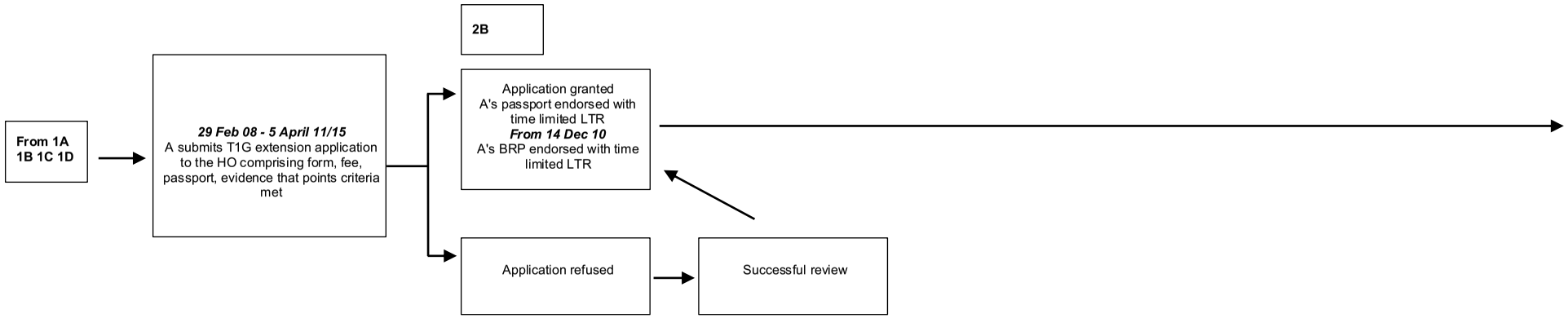
Successful review

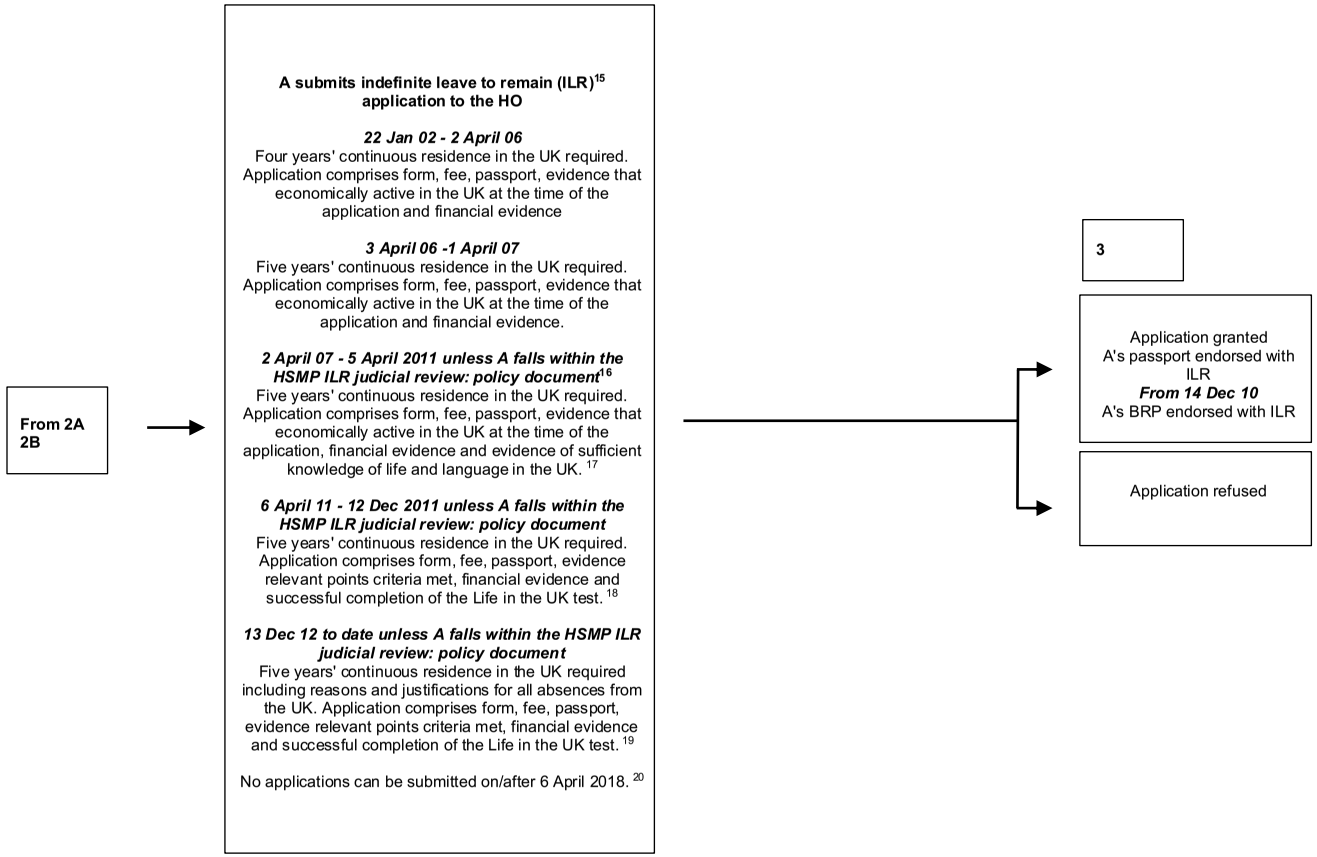
0D

1 April/30 Jun 08 - 22 Dec 10
A submits T1G application to the British post/visa application centre[13] (VAC) in A's country of origin/residence comprising form, fee, passport, evidence that points criteria met[14]


1A
From 0A
A submits LTR application to the HO comprising form, fee[7], passport, HSMP approval letter, financial evidence[8]
Application granted
A's passport endorsed with time limited LTR[9]
Application refused
Successful review
1B
From 0B
Application granted
A's passport endorsed with time limited LTR
From 14 Dec 10
A's BRP[10] endorsed with time limited LTR
Application refused
Successful review
1C
From 0C
A submits entry clearance (EC) application to the British post/VAC in A's country of origin/residence comprising form, fee, passport, HSMP approval letter, financial evidenc
EC granted
A's passport endorsed with time limited LTE
Application refused
A granted entry to the UK
1D
From 0D
Application granted
A's passport endorsed with EC and LTE
Application refused
Successful review
A granted entry to the UK


From 1A
1C
A submits HSMP extension application to the HO
A's previous LTE/R granted prior to 7 Nov 06
Application comprises form, fee, passport, financial evidence and evidence of efforts to become economically active in the UK
A's previous LTE/R granted on/after 7 Nov 06
Until 28 Feb 08
Application comprises form, fee, evidence that points criteria met and of A's proficiency in English[11]
2A
Application granted
A's passport endorsed with time limited LTR
From 14 Dec 10
A's BRP endorsed with time limited LTR
Application refused
Successful review


From 1A
1B 1C 1D
29 Feb 08 - 5 April 11/15
A submits T1G extension application to the HO comprising form, fee, passport, evidence that points criteria met
2B
Application granted
A's passport endorsed with time limited LTR
From 14 Dec 10
A's BRP endorsed with time limited LTR
Application refused
Successful review


From 2A
2B
A submits indefinite leave to remain (ILR)[15] application to the HO
22 Jan 02 - 2 April 06
Four years' continuous residence in the UK required. Application comprises form, fee, passport, evidence that economically active in the UK at the time of the application and financial evidence
3 April 06 -1 April 07
Five years' continuous residence in the UK required. Application comprises form, fee, passport, evidence that economically active in the UK at the time of the application and financial evidence.
2 April 07 - 5 April 2011 unless A falls within the HSMP ILR judicial review: policy document[16]
Five years' continuous residence in the UK required. Application comprises form, fee, passport, evidence that economically active in the UK at the time of the application, financial evidence and evidence of sufficient knowledge of life and language in the UK. [17]
6 April 11 - 12 Dec 2011 unless A falls within the HSMP ILR judicial review: policy document
Five years' continuous residence in the UK required. Application comprises form, fee, passport, evidence relevant points criteria met, financial evidence and successful completion of the Life in the UK test. [18]
13 Dec 12 to date unless A falls within the HSMP ILR judicial review: policy document
Five years' continuous residence in the UK required including reasons and justifications for all absences from the UK. Application comprises form, fee, passport, evidence relevant points criteria met, financial evidence and successful completion of the Life in the UK test. [19]
No applications can be submitted on/after 6 April 2018. [20]
3
Application granted
A's passport endorsed with ILR
From 14 Dec 10
A's BRP endorsed with ILR
Application refused

Notes

1. LTE is an abbreviation for leave to enter the UK and LTR for leave to remain in the UK. LTE/R means that A has either status.

2. The T1G route closed to new out of country applicants on 23 December 2010 and to new in-country applicants, except those with LTE/R in the three categories listed (HSMP, self-employed lawyer or writer/composer/artist), on 5 April 2011 (HC 698 and HC 863 respectively).

3. The HSMP was closed for initial LTR applications on 28 February 2008 (HC 321)

4. Historically, the Immigration and Nationality Directorate (IND), part of the Home Office (HO), was responsible for in country applications and the Foreign and Commonwealth Office (FCO) for out of country applications. However, over the past fifteen years or so, responsibility for all aspects of the visa system has shifted to the HO. A brief overview: in June 2000, the HO and FCO established the Joint Entry Clearance Unit, rebranded as UKvisas in April 2002, to manage out of country applications. In April 2007, the Border and Immigration Agency (BIA), an executive agency of the HO, replaced the IND. In April 2008, the UK Border Agency (UKBA), also an executive agency of the HO, was established by merging, the BIA, UKvisas and parts of HM Custom and Excise. After much criticism and allegations of incompetence, the UKBA was dismantled over 2012 and 2013 and ceased to function on 31 March 2013 when responsibility for all aspects of the visa system was brought back within the HO. This function is now referred to as UK Visas and Immigration (UKVI). The various permutations of the UK-based visa service are referred to as the HO in this flowchart.

5. A fee (£150) was first introduced for HSMP approval applications on 31 October 2003 under the Immigration Employment Document (Fees) (Amendment No.3) Regulations 2003 No. 2626. Citizens of states that had ratified the Council of Europe Charter or the European Social Charter were exempt from the fee.

6. All evidence had to be in the form of original documents. Between 2002 and 2010, the points criteria for both the HSMP and T1G underwent numerous changes. Generally, the applicable number of points given for various attributes such as the applicant's prior earnings, age or qualifications and the qualifying points threshold were those in place at the time the initial HSMP/T1G application was submitted.

7. A fee was first introduced for HSMP LTR applications in April 2004 under the Immigration (Leave to Remain) (Fees) (Amendment) Regulations 2004 No. 580.

8. Financial evidence had to demonstrate the applicant's ability to support and accommodate themselves and any dependants in the UK without recourse to public funds.

9. The duration of LTE/R granted under the HSMP/T1G depended on when an application was made. For example, for the first four years or so of the HSMP, successful applicants were granted LTE/R for an initial twelve-month period, followed by LTR for a further three years upon a successful extension application (HC 538). In April 2006, the initial period was extended to two years (HC 1016) with a possible extension of three years' LTR. LTE/R under T1G was granted in combinations of two plus three years or three plus two years, generally depending on the applicant's prior UK immigration status (HC 321).

10. The Biometric Residence Permit (BRP) is a mandatory migrant identity card which includes the individual's photograph, fingerprints and details of their UK visa or immigration status. It was introduced for in country HSMP/T1G applicants on 14 December 2010 (Immigration (Biometric Registration) (Amendment) Regulations 2010 No 2958/2010) and for all out of country applicants on 31 July 2015 (Immigration (Biometric Registration) (Amendment) (No. 2) Regulations 2015 897/2015).

11. On 7 November 2006, major changes, effective from 5 December 2006, were introduced to the HSMP (HC 1702). Prior to the changes, to secure an extension under the HSMP, applicants had to show that they had taken steps to become economically active and were able to support themselves in the UK. Under the new provisions, such applicants were required to score points across specified categories and demonstrate proficiency in English. However, following a successful legal challenge in the 2008 HSMP Forum case, the HO issued the HSMP Forum Ltd Judicial Review: Policy Document. The terms of the Policy Document enabled all those with HSMP status granted before 7 November 2006 including those whose extension applications under the new criteria had been refused, those who had refrained from making an extension application under the new criteria and who had remained without leave in the UK or had left the UK and those who had changed their immigration status, to extend their HSMP status under the old extension criteria. Individuals granted HSMP status on or after 7 November 2006 were subject to the new December 2006 extension requirements.

12. On 31 March 2008 the HSMP was closed and replaced by T1G for out of country applications submitted in India and from 29 June 2008, the rest of the world (HC 321 and HC 607 respectively) except for those individuals falling within the HSMP Forum Ltd Judicial Review: Policy Document.

13. VACs, operated by commercial third parties in partnership with the HO, were introduced on an ad hoc basis from 2002 to handle (but not determine) out of country applications (rather than British diplomatic posts). Most if not all out of country applications are now handled by VACs. For an overview, see Costelloe Baker 2007, 5-6.

14. As with HSMP applications, all evidence had to be original and, in addition, in a specified format (HC 607). The required format was set out in HO guidance until 2010 when it was incorporated into the immigration Rules (HC 863) following the cases of Pankina and Alvi. The exact format required depended on the guidance/Rules in force at the time the application was made.

15. The terms indefinite leave to remain (ILR), settlement and permanent residence are synonymous in that they all mean that a person's leave is free from conditions and open-ended (although they are likely to lose ILR if they remain outside the UK for two continuous years (HC 395)).

16. Effective from 3 April 2006, the qualifying period for ILR for those with HSMP status was increased from four to five years' continuous residence in the UK (HC 1016). This change was successfully challenged in court in HSMP Forum 2009 resulting in the HO ILR Judicial Review: Policy Document. The Policy Document enables those who submitted an HSMP approval application prior to 3 April 2006 to apply for ILR under the old 2006 provisions. Those who submitted an HSMP approval application between 3 April and 7 November 2006 are also subject to the old ILR criteria but must complete five years' continuous residence to be eligible for ILR.

17. The requirement to demonstrate sufficient knowledge of life and language in the UK was introduced on 2 April 2007 (HC 398). From 6 April 2011 this requirement could be satisfied only by passing the Life in the UK Test (HC 863).

18. The additional requirement to demonstrate that the relevant T1G points threshold was met was introduced on 6 April 2011(HC 863).

19. Although the qualifying residence period always had to be continuous, changes implemented by HC 1039, effective 6 April 2013, made establishing and evidencing continuity of residence more onerous.

20. This provision was introduced by HC 1025.

Appendix 4.2

Overview of Highly Skilled Migrant Programme and Tier 1 (General) qualifying criteria: initial applications 2002 to 2011

Type of application *Dates when specified criteria applicable* *Minimum total points required*[1]	*Non-point scoring mandatory requirements*[2]	*Points for qualifications*[3]	*Points for gross earnings (£000s) in the 12 months prior to the application*[4]	*Points for work experience in chosen field* *Points for UK earnings or qualifications*[5]	*Points for achievement in chosen field*[6]	*Points for spouse/partner qualifications/ work experience*[7]	*Points for age*[8]	*Points for ability to maintenance and accommodation in the UK*[9] *Points for English language proficiency*[10]
HSMP **28.01.2002 - 27.01.2003** **75 points**	Applicants must be able to support themselves financially and any dependants in the UK from savings and/or potential income. Applicants must be able to continue to work in their chosen field in the UK. Applicants must be willing and able to make the UK their main home.	Bachelor's degree 15 Master's degree 25 PhD 30 Qualified GP[11] 75	Category A £40-£100 25 £100-£250 35 £250+ 50 Category B £25-£60 25 £60-£150 35 £150+ 50 Category C £20-£50 25 £50-£125 35 £125+ 50 Category D £15-£35 25 £35-£90 30 £90+ 50	5 years' (or 3 years with PhD) graduate level work experience 15 +2 years' senior level or specialist experience +10	Significant achievement 15 Exceptional achievement 25	N/A	N/A	N/A

HSMP **28.01.2003 - 30.10.2003** ***75 points***	Applicants must be able to support themselves financially and any dependants in the UK from savings and/or potential income. Applicants must be able to continue to work in their chosen field in the UK. Applicants must be willing and able to make the UK their main home.	Bachelor's degree 15 Master's degree 25 PhD 30 Qualified GP 75	<u>Category A</u> £40-£100 25 £100-£250 35 £250+ 50 <u>Category B</u> £17.5-£43.75 25 £43.73-£109.375 35 £109.375 + 50 <u>Category C</u> £12.5-£31.25 25 £31.25–£78.125 35 £78.125+ 50 <u>Category D</u> £7.5-£18.75 25 £18.75-£46.875 35 £46.875+ 50 <u>Category E</u> £3.5-8.75 25 £8.75-£21.875 35 £21.875+ 50	5 years' (or 3 with PhD) graduate level work experience 25 5 years' graduate level work experience including 2 years in a senior level or specialist role 35 10 years' graduate level work experience including 5 years in a senior level or specialist role 50	Significant achievement 15 Exceptional achievement 25	N/A	N/A	N/A
HSMP **31.10.2003 - 11.04.2005** **65 points**	Applicants must be able to support themselves financially and any dependants in the UK from savings and/or potential	Bachelor's degree 15 Master's degree 25 PhD 30	***Aged under 28*** <u>Category A</u> £27-40 25 £40-60 35 £60+ 50 <u>Category B</u> £11.8-£17.5 25 £17.5-£26.25 35	***Aged under 28*** 2 years' graduate level work experience 15 4 years' graduate level work experience 35	Significant achievement 15 Exceptional achievement 25	Bachelor's degree <u>or</u> prior/current graduate level work experience 10	Under 28 5	N/A

	income. Applicants must be able to continue to work in their chosen field in the UK. Applicants must be willing and able to make the UK their main home	Qualified GP 65	£26.25+ 50 <u>Category C</u> £8.45-£12.5 25 £12.5-£18.75 35 £18.75+ 50 <u>Category D</u> £5-£7.5 25 £7.5-£11.25 35 £11.25+ 50 <u>Category E</u> £2.35-£3.5 25 £3.5-£5.25 35 £5.25+ 50 ***28 or above*** <u>Category A</u> £40-100 25 £100-250 35 £250+ 50 <u>Category B</u> £17.5-£43.75 25 £43.75- £109.375 35 £109.375+ 50 <u>Category C</u> £12.5-£31.25 25 £31.25-£78.125 35	4 years' graduate level work experience including 1 year in a senior level or specialist role 50 ***28 or above*** 5 years' (3 if PhD) graduate level work experience 25 5 years' graduate level work experience including 2 years in a senior level or specialist role 35 10 years' graduate level work experience including 5 years in a senior level or specialist role 50				

			£78.125+ 50 <u>Category D</u> £7.5-£18.75 25 £18.75- £46.875 35 £46.875+ 50 <u>Category E</u> £3.5--£8.75 25 £8.75-£21.875 35 £21.875+ 50					
HSMP **12.04.2005 - 07.11.2006** **65 points**	Applicants must be able to support themselves and any dependants financially in the UK from savings and/or potential income. Applicants must be able to continue to work in their chosen field in the UK. Applicants must be willing and able to make the UK their main home.	Bachelor's degree 15 Master's degree 25 PhD 30 Qualified GP 65 MBA[12] 65	***Aged under 28*** <u>Category A</u> £27-40 25 £40-60 35 £60+ 50 <u>Category B</u> £11.8-£17.5 25 £17.5-£26.25 35 £26.25+ 50 <u>Category C</u> £8.45-£12.5 25 £12.5-£18.75 35 £18.75+ 50 <u>Category D</u> £5-£7.5 25 £7.5-£11.25 35 £11.25+ 50 <u>Category E</u> £2.35-£3.5 25 £3.5-£5.25 35	***Aged under 28*** 2 years' graduate level work experience 15 4 years' graduate level work experience 35 4 years' graduate level work experience including 1 year in a senior level or specialist role 50 ***28 or above*** 5 years' (3 if PhD) graduate level work experience 25 5 years' graduate level work experience including 2 years in a	Significant achievement 15 Exceptional achievement 25	Bachelor's degree <u>or</u> prior/current graduate level work experience 10	Under 28 5	N/A

			£5.25+ 50 ***28 or above*** <u>Category A</u> £40-100 25 £100-250 35 £250+ 50 <u>Category B</u> £17.5-£43.75 25 £43.75- £109.375 35 £109.375+ 50 <u>Category C</u> £12.5-£31.25 25 £31.25- £78.125 35 £78.125+ 50 <u>Category D</u> £7.5-££18.75 25 £18.75- £46.875 35 £46.875+ 50 <u>Category E</u> £3.5--£8.75 25 £8.75-£21.875 35 £21.875+ 50	senior level or specialist role 35 10 years' graduate level work experience including 5 years in a senior level or specialist role 50				

HSMP **05.12.2006 - 28.02.2008/ 31.03.2008/ 29.06.2008**[13] **75 points**	Applicants must be able to support themselves financially and any dependants in the UK from savings and/or potential income Applicants must be willing and able to make the UK their main home	Bachelor's degree 30 Master's degree 35 PhD 50 MBA 75	<u>Code A</u> £16-£18 5 £18-£20 10 £20-£23 15 £23-£26 20 £26-£29 25 £29-£32 30 £32-£35 35 £35-£40 40 £40+ 45 <u>Code B</u> £7-£8 5 £8-£9 10 £9-£10 15 £10-£11.5 20 £11.5-£12.5 25 £12.5-£14 30 £14-£15.5 35 £15.5-£17.5 40 £17.5+ 45 <u>Code C</u> £5-£5.6 5 £5.6-£6.3 10 £6.3-£7.2 15 £7.2-£8.1 20 £8.1-£9.1 25 £9.1-£10 30 £10-£11 35 £11-£12.5 40 £12.5+ 45 <u>Code D</u> £3-£3.4 5 £3.4.-£3.8 10 £3.8-£4.3 15 £4.3-£4.9 20 £4.9-£5.5 25 £5.5-£6 30	Previous UK earnings of £16,000+ during the specified period <u>or</u> have obtained a qualification in the UK at Bachelor's degree level or above having studied full-time in the UK for at least one academic year in the past 5 years. 5	N/A	N/A	30-31 5 28-29 10 27 or under 20	Proficiency in English language required. Applicants required to have an IELTS test score 6 or hold a degree that was taught in English, equivalent to a UK Bachelor's degree.

			£6-£6.6 35 £6.6-£7.5 40 £7.5+ 45 <u>Code E</u> £1.4-£1.6 5 £1.6.-£1.8 10 £1.8-£2 15 £2-£2.3 20 £2.3-£2.55 25 £2.55-£2.8 30 £2.8-£3.1 35 £3.1-£3.5 40 £3.5+ 45					
T1G **29.02.2008/ 01.04.2008/ 30.06.2008 - 30.03.2009**[14] **95 points**	N/A	Bachelor's degree 30 Master's degree 35 PhD 50 [MBA][15]	£16-18 5 £18-20 10 £20-23 15 £23-26 20 £26-29 25 £29-32 30 £32-35 35 £35-40 40 £40+[16] 45	Previous UK earnings of £16,000+ during the specified period <u>or</u> have obtained a qualification in the UK at Bachelor's degree level or above having studied full-time in the UK for at least one academic year in the past 5 years 5	N/A	N/A	30-31 5 28-29 10 27 or under 20	A specified minimum level of funds held for previous 3 months plus additional funds for each dependant 10 Proficiency in English: the applicant is a national of a specified country <u>or</u> has an English language qualification equivalent to level C1 of the Council of Europe's

								Common European Framework for Language Learning or has an academic qualification equivalent to a UK Bachelor's/ Master's degree or a PhD obtained in a specified country/taught in English at the requisite level 10
T1G **31.03.2009 - 05.04.2010** **95 points**	N/A	Bachelor's degree 0 Master's degree 35 PhD 50 [MBA]	£20-£23 15 £23-£26 20 £26-£29 25 £29-£32 30 £32-£35 35 £35-£40 40 £40+ 45	Previous UK earnings of £20,000+ during the specified period or has obtained a qualification in the UK at Bachelor's degree level or above having studied full-time in the UK for at least one academic year in the past 5 years 5	N/A	N/A	30-31 5 28-29 10 27 or under 20	A specified minimum level of funds held for previous 3 months plus additional funds for each dependant 10 Proficiency in English: The applicant is a national of a specified country or has an English

								language qualification equivalent to level C1 of the Council of Europe's Common European Framework for Language Learning <u>or</u> has an academic qualification equivalent to a UK Bachelor's/ Master's degree or a PhD obtained in a specified country/ taught in English at the requisite level 10
T1G **06.04.2010 - 18.07.2010** **95 points**	N/A	Bachelor's degree 30 Master's degree 35 PhD 45 [MBA]	£25-£30 5 £30-£35 15 £35-£40 20 £40-£50 25 £50-£55 30 £55-£65 35 £65-£75 40 £75-£150 45 £150+ 75	Previous UK earnings of £25,000+ during the specified period <u>or</u> have obtained a qualification in the UK at Bachelor's degree level or above having studied full-time in the UK for at least	N/A	N/A	35-39 5 30-34 10 Under 20 30	A specified minimum level of funds held for previous 3 months plus additional funds for each dependant 10 Proficiency in

				one academic year in the past 5 years 5				English: the applicant is a national of a specified country or has an English language qualification equivalent to level C1 of the Council of Europe's Common European Framework for Language Learning or has an academic qualification equivalent to a UK Bachelor's/ Master's degree or a PhD obtained in a specified country/taught in English at the required level 10
T1G [17] **19.07.2010 - 23.12.2010/ 06.04.2011**[18]	N/A	Bachelor's degree 30 Master's degree 35	£25-£30 5 £30-£35 15 £35-£40 20 £40-£50 25 £50-£55 30 £55-£65 35	Previous UK earnings of £25,000+ during the specified period or have obtained a qualification in the UK	N/A	N/A	35-39 5 30-34 10 Under 30 20	A specified minimum level of funds held for previous 3 months plus

100 points		PhD 45 [MBA]	£65-£75 40 £75-£150 45 £150+ 80	at Bachelor's degree or above having studied full-time in the UK for at least one academic year in the past 5 years 5				additional funds for each dependant 10 Proficiency in English: the applicant is a national of a specified country or has an English language qualification equivalent to level C1 of the Council of Europe's Common European Framework for Language Learning or has an academic qualification equivalent to a UK Bachelor's/ Master's degree or a PhD obtained in a specified country/taught in English at the required level 10

Source: own analysis of the Immigration Rules and Home Office guidance documents 2002-2011

Notes

1. Under the HSMP and T1G, the requisite number of points could be scored across any of the categories. However, under T1G, in addition to scoring points across the skills categories, points were mandatory in the maintenance and English language categories - see note 9 below.

2. Under the HSMP, applicants had to satisfy mandatory non-points scoring criteria concerning their ability to support themselves in the UK and their intention to make the UK their main home. Under T1G these non-points scoring criteria were abolished.

3. Points were given for a degree awarded by a UK academic institution, recognised degrees awarded abroad and equivalent professional qualifications. Points were awarded for the highest qualification only, for example, an applicant with a Bachelor's and Master's degree would score points for the Master's degree only.

4. From January 2002 until 2008, to reflect differences in income levels across the world, the earnings level required varied depending on the country in which the applicant lived and worked. Countries with similar earnings levels were grouped initially into four categories, A-D, with A comprising countries with the highest income levels such as the UK, Australia, and the US and category D comprising countries with the lowest income levels, for example, India and China. In January 2003, minimum earnings levels were significantly reduced and a list of category E countries added. Following the phased introduction of T1G in 2008, uplift ratios were used to bring overseas earnings in line with their UK equivalents. Countries with similar earnings levels were grouped into five uplift country bands based on the average level of income.

5. Graduate level work experience was described as a role within a company or institution that would normally require a Bachelor's degree level qualification or a first-degree level qualification. Examples of senior level work experience included those running their own businesses and employing staff, a role at board level in a small company, a department head or leader of project management team in a larger business or head of a research team in academia. A specialist position was one that may not be a managerial role but required a very high level of technical or artistic expertise.

6. Significant achievement was defined as applicants who have developed a body of work acknowledged by peers as contributing significantly to the development of their area of work, such as an acknowledged breakthrough in the applicant's field of expertise; a recognised artistic achievement; a lifetime achievement award from an industry body or an invention which is likely to or has provided commercially successful. Exceptional achievement was limited to those at the top of their profession, who are recognised beyond their field of expertise and have obtained international recognition.

7. With regard to qualifications, see note 3 above.

8. An applicant's age was assessed at the date the application was made.

9. Under T1G, points had to be scored for proficiency in English and the applicant's ability to maintain and accommodate themselves and any dependants. The level of funds required was specified. Under both the HSMP and T1G dependants were

defined as spouse, unmarried partner, civil partner (from December 2005) and children under the age of eighteen.

10. Proficiency in English became mandatory for all new HSMP applicants in December 2006.

11. Applications by GPs were given priority consideration. To qualify, applicants had to hold full GMC registration and a vocational training certificate/ certificate of acquired right issued by the UK/another EEA member state or a certificate of equivalent experience issued by the Joint Committee on Postgraduate Training for General Practice.

12. Only MBAs awarded by fifty named eligible institutions in North America, Europe (including ten in the UK) and Australia, earned the maximum points.

13. The HSMP closed for new out of country applications made in India on 31 March 2008 and for all new out of country applications on 28 June 2008. However, the HSMP remained viable for those who already had HSMP status.

14. The replacement of the HSMP with T1G was phased in between 29 February and 29 June 2008. T1G was first opened to new in-country applications, then to out of country applications submitted in India on 1 April 2008 and opened to all new applications submitted abroad from 29 June 2008.

15. A transitional arrangement provided that applicants could claim the maximum points if they had enrolled on an eligible MBA programme before 30 June 2008 and had completed their MBA within the twelve-month period prior to making a T1G application.

16. See note 4 above.

17. The number of out of country T1G applications became subject to an annual quota in July 2010. Although the limit was successfully challenged by way of judicial review, the quota was subsequently incorporated in to the Immigration Rules in December 2010 and so became legally enforceable.

18. On 23 December 2010, T1G was closed to new out of country applications (as the quota for applications had been reached). On 6 April 2011, T1G was closed to new in-country applications with the exception of applicants holding a pre-PBS UK immigration status deemed equivalent to T1G.

Appendix 4.3

Overview of Highly Skilled Migrant Programme and Tier 1 (General) qualifying criteria: extension applications 2002 to 2015

Type of application *Period when specified criteria applicable* *Minimum total points required*[1]	*Non-point scoring mandatory requirements*[2]	*Points for qualifications*[3]	*Points for gross earnings (£000s) in the 12 months prior to the application*	*Points for work experience in chosen field/ UK earnings or qualifications*	*Points for age*[4]	*Points for an applicant's ability to maintain and accommodate themselves in the UK* *Points for English language proficiency*[5]
HSMP **28.01.2002 - 07.11.2006** **No points required**	Applicants must be economically active or have taken reasonable steps to become economically active in the UK. Applicants must be able to support themselves and any dependants financially in the UK. The UK must continue to be the applicants' main home.	N/A	N/A	N/A	N/A	N/A

HSMP **05.12 2006 - 28.02. 2008**[6] **75 points**	N/A Applicants must be able to support themselves and any dependants financially in the UK. The UK must continue to be the applicant's main home.	Bachelor's degree 30 Master's degree 35 PhD 50	£16-£18 5 £18-£20 10 £20-£23 15 £23-£26 20 £26-£29 25 £29-£32 30 £32-£35 35 £35-£40 40 £40+[7] 45	Previous UK earnings of £16,000+ during the specified period[8] 5	32-33 5 30-31 10 29 or under 20	Proficiency in English language required. Applicants must have an IELTS test score 6 or hold a degree that was taught in English, equivalent to a UK Bachelor's degree.
T1G [9] **29.02.2008 - 30.03.2009** **95 points**	N/A	Bachelor's degree 30 Master's degree 35 PhD 50	£16-£18 5 £18-£20 10 £20-£23 15 £23-£26 20 £26-£29 25 £29-£32 30 £32-£35 35 £35-£40 40 £40+[10] 45	Previous UK earnings of £16,000+ during the specified period 5	***Previous leave granted under the HSMP:*** 32-33 5 30-31 10 29 or under 20 ***Previous leave granted under T1G:*** 33-34 5 31-32 10 30 or under 20	10 points for a specified minimum level of funds held for previous 3 months plus additional funds for each dependant. [11] 10 points for proficiency in English automatically awarded if previous leave granted under the HSMP post 7 November 2006 or under T1G. [12]

T1G **31.03.2009 - 05.04.2010** **95 points**	N/A	Bachelor's degree 30 Master's degree 35 PhD 50	£16-£18 5 £18-£20 10 £20-£23 15 £23-£26 20 £26-£29 25 £29-£32 30 £32-£35 35 £35-£40 40 £40+ 45	Previous UK earnings of £16,000+ during the specified period 5	***Previous leave granted under the HSMP:*** 32-33 5 30-31 10 29 or under 20 ***Previous leave granted under T1G:*** 33-34 5 31-32 10 30 or under 20	10 points for a specified minimum level of funds held for previous 3 months plus additional funds for each dependant. 10 points for proficiency in English automatically awarded if previous leave granted under the HSMP post 7 November 2006 or under T1G.
T1G **06.04.2010 - 18.07.2010** **95 points**	N/A N/A N/A	***Previous leave granted under the HSMP / T1G prior to 31 March 2009*** Bachelor's degree 30 Master's degree 35 PhD 50 ***Previous leave granted under T1G from 31 March 2009 to 5 April 2010***	***Previous leave granted under the HSMP / T1G prior to 31 March 2009*** £16-£18 5 £18-£20 10 £20-£23 15 £23-£26 20 £26-£29 25 £29-£32 30 £32-£35 35 £35-£40 40 £40+ 45 ***Previous leave granted under T1G from 31 March 2009 to 5 April 2010***	Previous UK earnings provided points scored for earnings in the earnings section 5	***Previous leave granted under the HSMP:*** 32-33 5 30-31 10 29 or under 20 ***Previous leave granted under T1G prior to 6 April 2010:*** 33-34 5	10 points for a specified minimum level of funds held for previous 3 months plus additional funds for each dependant. 10 points for proficiency in English automatically awarded if previous leave granted under the HSMP post 7 November 2006 or under T1G.

		Bachelor's degree 0 Master's degree 35 PhD 50 ***Previous leave granted under T1G after 5 April 2010*** Bachelor's degree 30 Master's degree 35 PhD 45	£20-£23 15 £23-£26 20 £26-£29 25 £29-£32 30 £32-£35 35 £35-£40 40 £40+ 45 ***Previous leave granted under T1G PBS after 5 April 2010*** £25-£30 5 £30-£35 15 £35-£40 20 £40-£50 25 £50-£55 30 £55-£65 35 £65-£75 40 £75-£150 45 £150+ 75		31-32 10 30 or under 20 ***Previous leave granted under T1G PBS after 5 April 2010*** 37-41 5 32-36 10 31 or under 21	
T1G **19.07.2010 - 05.04.2015**[13] **95 points if granted HSMP/T1G leave before 19.07.2010** **100 points if granted HSMP/T1G leave after 19.07.2010**	N/A N/A N/A	***Previous leave granted under the HSMP / T1G prior to 31 March 2009*** Bachelor's degree 30 Master's degree 35 PhD 50	***Previous leave granted under the HSMP / T1G PBS prior to 31 March 2009*** £16-£18 5 £18-£20 10 £20-£23 15 £23-£26 20 £26-£29 25 £29-£32 30 £32-£35 35 £35-£40 40 £40+ 45	Previous UK earnings provided points scored for earnings in the earnings section 5	***Previous leave granted under the HSMP*** 32-33 5 30-31 10 29 or under 20	10 points for a specified minimum level of funds held for previous 3 months plus additional funds for each dependant. 10 points for proficiency in English automatically awarded if previous leave granted under the HSMP post 7 November 2006 or under T1G.

	Previous leave granted under T1G from 31 March 2009 to 5 April 2010	***Previous leave granted under T1G from 31 March 2009 to 5 April 2010***		***Previous leave granted under T1G prior to 6 April 2010***	
	Bachelor's degree 0	£20-£23 15		33-34 5	
	Master's degree 35	£23-£26 20		31-32 10	
	PhD 50	£26-£29 25		30 or under 20	
		£29-£32 30			
		£32-£35 35			
		£35-£40 40			
		£40+ 45			
	Previous leave granted under T1G after 5 April 2010	***Previous leave granted under T1G after 5 April 2010***		***Previous leave granted under T1G after 5 April 2010***	
	Bachelor's degree 30	£25-£30 5		37-41 5	
	Master's degree 35	£30-£35 15		32-36 10	
	PhD 45	£35-£40 20		31 or under 20	
		£40-£50 25			
		£50-£55 30			
		£55-£65 35			
		£65-£75 40			
		£75-£150 45			
		£150+ 80			

Source: own analysis of the Immigration Rules and Home Office guidance 2002-2015

Notes

1. The requirement to score points for extension applications was introduced on 5 December 2006. Under the post December 2006 HSMP and T1G, the requisite number of points could be scored across any of the categories. However, under T1G, in addition to scoring points across the skills categories, applicants had to score points in the maintenance and English language categories in order to qualify.

2. Under the HSMP, applicants had to satisfy mandatory non-points scoring criteria concerning their ability to support themselves in the UK and their intention to make the UK their main home. Under T1G these non-points scoring criteria were abolished. However, applicants were required to score points for their ability to maintain themselves in the UK.

3. Points were given for a degree awarded by a UK academic institution, recognised degrees awarded abroad and equivalent professional qualifications. Points could be scored for the highest qualification only

4. Age was assessed at the date the initial application was made.

5. Until December 2006, those applying for an extension to their HSMP status were not required to score points for English language proficiency or for their ability to support themselves financially in the UK. They were, however, required to provide evidence of funds available to them. Under both the HSMP and T1G dependants were defined as spouse, unmarried partner, civil partner (after December 2005) and children under the age of eighteen.

6. On 7 November 2006, major changes, effective from 5 December 2006, were made to the HSMP. From 5 December 2006, applicants seeking extend their stay in the UK under the HSMP were required to score sevety-five points across the specified categories and demonstrate proficiency in English. Following a successful legal challenge to the extension criteria changes, applicants who had been granted HSMP status prior to 7 November 2006 could apply to extend their leave under the old, pre-December 2006 criteria. This special provision extended to all those with HSMP status granted before 7 November 2006 including those whose extension applications under the new criteria had been refused and those who had refrained from making an extension application under the new criteria and who had remained without leave in the UK or had left the UK. Applicants granted HSMP status after 7 November 2006 were subject to the new December 2006 extension requirements. With the exception of those falling within the special HSMP provisions, after 28 February 2008, applicants could no longer apply to extend their HSMP status. Instead, to retain a similar immigration status, applicants were required to extend their leave under T1G.

7. The figures are for gross earnings in the UK in twelve consecutive months in the fifteen-month period prior to the extension application. If the initial period of leave was for twelve months, the levels of earnings required were reduced by one third and calculated over a period of eight consecutive months in the twelve months prior to the extension application.

8. If the applicant's last grant of leave under the HSMP was for more than twelve months, UK earnings had to be at least £16,000 to score points in this section. If the applicant's last grant of HSMP leave was for less than twelve months, gross UK earnings must have reached £10,650 to score points.

9. The extension criteria applied to all those with existing leave HSMP or T1G status unless they fell with the special HSMP category (explained above) who could apply to extend their HSMP status. In addition to the special policy for pre-November 2006 highly skilled migrants, there were transitional provisions to enable such individuals to apply for a work permit without the role being advertised or if self-employed, to apply for an extension under T1G without having to meet the attributes criteria - they simply had to demonstrate that their business was active and that they had secured work for the future.

10. Income need not have been earned in the UK. However, no allowance was made for lower income levels in countries outside the UK.

11. If the applicant had been in the UK with HSMP/T1G status for less than twelve months, the level of funds required was lower.

12. Those previously granted HSMP status prior to 7 November 2006, and who applied under T1G (rather then applying to extend their HSMP status under the special provisions) had to score points for proficiency in English in one of the following ways:
    - as a national of a specified country;
    - have an English language qualification equivalent to level C1 of the Council of Europe's Common European Framework for Language Learning; or
    - have an academic qualification equivalent to a UK Bachelor's/Master's degree or a PhD obtained in a specified country/taught in English at the required level.

13. On 23 December 2010, T1G closed to new applications made from outside the UK. However, those with extant leave under T1G could apply to extend their leave under until 5 April 2015. All applications for ILR under T1G must be submitted by 5 April 2018.

Appendix 4.4

HSMP entry visas issued as percentage of total HSMP entry visas issued and in total numbers

Nationality of applicant	*2005*		*2006*	
	No.	*%*	*No.*	*%*
Australia	3,980	5	5,230	6
Canada	950	1	1,300	1
China	2,370	3	3,100	3
India	21,790	29	25,740	29
New Zealand	2,500	3	3,700	4
Nigeria	5,380	7	9,410	11
Pakistan	9,200	12	10,180	11
Russia	1,990	3	2,540	3
South Africa	3,590	5	3,600	4
USA	4,600	6	5,070	6

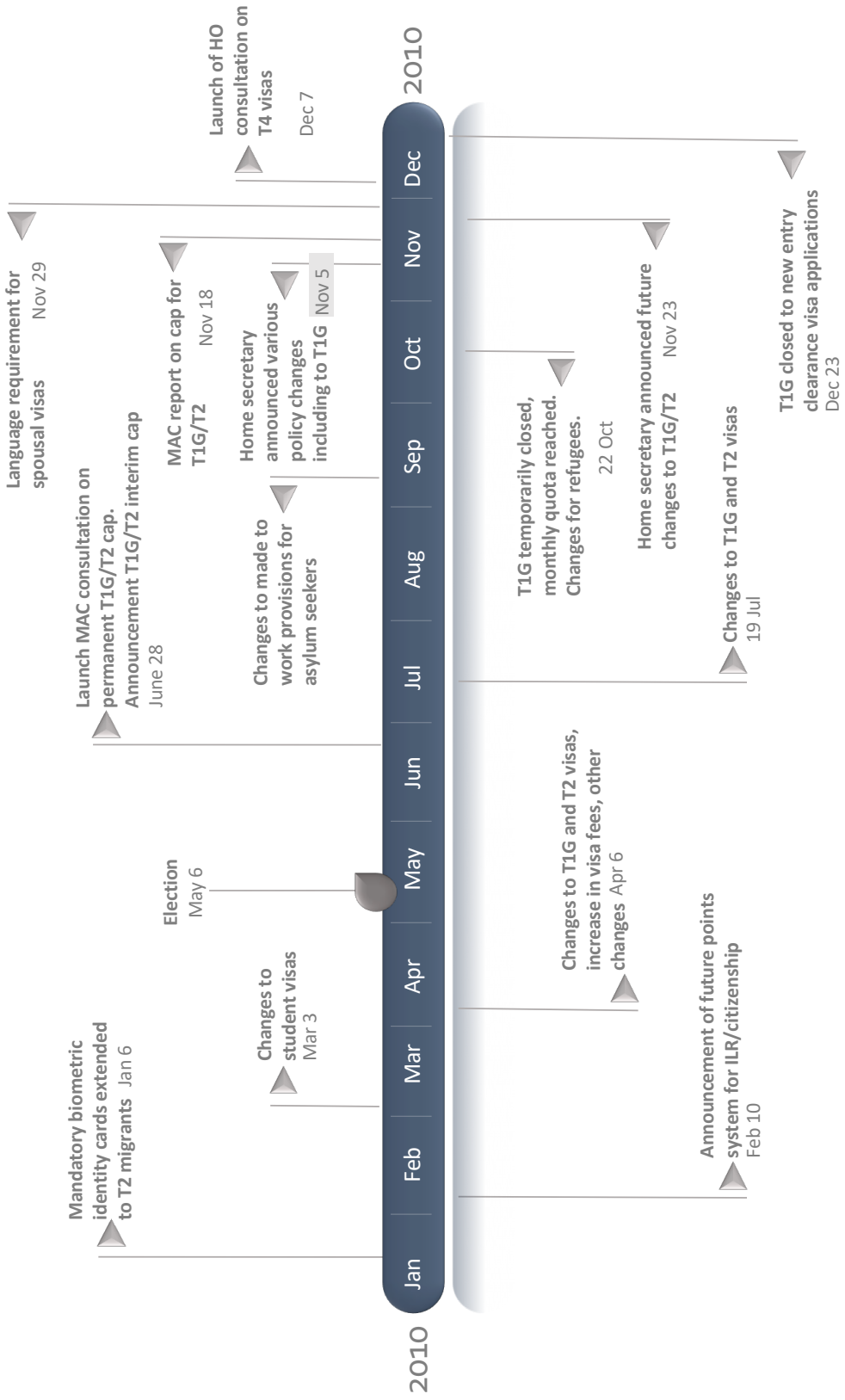
Source: own analysis of ONS (2014, Table vi_06_q_w)

Note

Table 3.2 does not cover all HSMP applications granted in 2005 and 2006. This is because at the time, it was possible to make an in-country application. An equivalent ONS dataset for in-country applications is not available and so HSMP entry data are used as a proxy for total HSMP visas issued. The countries selected in the table echo the top ten nationalities of T1G entry visas issued during a twelve-month period in 2008-9 (MAC 2009, Table 5.2).

Appendix 5.1

2010 UK immigration policy timeline



Notes

Policy announcements and changes affecting T1G and T2 migrants are highlighted in italics

Date	***Policy event***
6 January	*Mandatory biometric identity cards extended to T2 migrants*
10 February	Announcement that from April 2011, a points system to be introduced for economic migrants' eligibility for ILR and British citizenship
3 March	Changes to Tier 4 student visas including: • students on courses below degree level permitted to work for maximum ten hours per week during term-time (previously twenty hours) • dependent family members of students on courses below degree no longer permitted to work • students on short courses no longer able to bring dependent family members
6 April	*Changes to **T1G visas** including:* • *for new T1G visas, initial grant of leave reduced from three to two years* • *qualifying criteria amended for new T1G visa applications:* o *increase in minimum earnings threshold* o *provision for individuals to qualify without a bachelor's degree* o *more generous age thresholds* o *new work restriction prohibiting work as professional sportsperson/coach* *Changes to **T2 visas** including:* • *qualifying criteria amended for new T2 visa applications including:* o *increase in minimum earnings threshold* o *new additional points for T2 migrants with nursing diplomas* o *for T2 intra-company transfers (ICTs), previous employment requirement raised from six to twelve months* • *T2 ICT visas no longer lead to settlement* • *new T2 ICT short-term visas for overseas employees* Increases in visa fees including: • new £50 contribution to immigration impacts fund included in some visa fees • new £15,000 premium visa service Launch of Highly Trusted Sponsors (HTS) category for educational institutions Age requirement lowered to eighteen for marriage/partnership/fiancé visa for serving members of the armed forces

Appendix 6.1

Number of articles by newspaper and newspaper type

Popular	*No. of articles*	*Mid-market*	*No. of articles*	*Quality*	*No. of articles*
Daily Star	2	Daily Mail	13	The Daily Telegraph	14
Daily Star Sunday	1	Mail on Sunday	1	The Guardian	31
The Mirror	3	The Express	8	The Independent	3
Morning Star	1			The Observer	2
The Sun	6			The Sunday Telegraph	3
				The Sunday Times	3
				The Times	14
Total	13		22		70
Total number of articles					105

Appendix 6.2

Table of news events and corresponding newspaper articles

2010 news event date(s)	*Category and brief description of news event*	*Newspaper article date and headline*
6 January	POLICY ANNOUNCEMENT Phil Woolas, then Immigration Minister, announced that from 6 January, Tier 2 migrants would be required to apply for an identity card when extending their leave to remain in the UK. The policy was implemented ahead of schedule.	*The Daily Telegraph* 6 January *Alan Johnson clears the decks for Gordon Brown to call March 25 election* *The Daily Telegraph* 7 January *Footballers must carry ID cards*
10 January	POLITICAL PUBLIC ENGAGEMENT Interview with David Cameron, then leader of the Conservative party, on the BBC1 Andrew Marr Show on 10 January 2010. Cameron outlined the Conservative party policy to reduce the level of migration to the tens of thousands in part through the introduction of a cap on migration.	*The Guardian* 11 January *Cameron's empty immigration promise*
20 January	POLICY ANNOUNCEMENT Phil Woolas laid before Parliament Regulations which introduced from 6 April 2010 an increase of immigration application fees including: • a significant increase in ILR applications • a £50 contribution to the new immigration impacts fund into be included in some visa fees • the introduction of a £15,000 premium service which would enable the Home Office to visit applicants in order to process their visa application on the spot.	*The Guardian* 21 January *£15,000 fast-track visa renewals for super-rich: Woolas raises immigration fees to pay for ID cards Price doubles for bringing in elderly relatives*

January	OFFICIAL DATA RELEASE Publication of Polish migration figures by Poland's Central Statistical Office.	*The Express* 23 January *Exposed: Great lie about fed-up Poles flooding back home*
10 February	POLICY PROPOSAL Then Home Secretary, Alan Johnson, stated that in addition to the implementation of tougher visa criteria for foreign students, from 2011, a points system would be introduced to determine economic migrants' eligibility for ILR and for British citizenship.	*The Daily Telegraph* 10 February *Why Labour rolled away the welcome mat*
18 March	POLICY ANNOUNCEMENT On 18 March, Phil Woolas laid before Parliament statement of changes to the Rules which provided: • previous employment requirement raised from six to 12 months for Tier 2 intra-company transfers (ICTs) • initial grant of leave under T1G reduced from three to two years with an extension of a further three years (previously two) to make up the continuous period of five years' residence required for eligibility for ILR.	*The Daily Telegraph* 19 March *New curbs will cut only 3,000 migrants* *The Express* 20 March *Foreign worker curbs only cut 3,000*
31 March	GOVERNMENT PUBLIC ENGAGEMENT On 31 March, Gordon Brown, then Prime Minister, gave a speech in Shoreditch, east London. The slogan on the lectern read 'Controlling Immigration For a Fairer Britain'.	*The Guardian* 31 March *Brown to pledge new curb on immigration: Unskilled non-EU workers to be barred from UK entry Skills boost will reduce need for migrants, says PM* *The Sun* 1 April *Poll Chancer* *The Guardian* 1 April

		Brown rebuked over use of immigration statistics
9 April	POLITICAL PUBLIC ENGAGEMENT David Cameron gave a speech at a public meeting in Plymouth on 9 April.	*The Daily Telegraph* 9 April *Migration 'not a taboo subject'*
14 April	POLICY PROPOSALS Publication of *'Invitation to join the Government of Britain. The Conservative Manifesto 2010'*	*The Guardian* 14 April *Campaign 2010: Tory manifesto: Home affairs*
15 April	POLITICAL PUBLIC ENGAGEMENT On 15 April, immigration policy was discussed in the first of a series of television debates between the leaders of the three main political parties, Gordon Brown, David Cameron and Nick Clegg.	*The Times* 19 April *Immigration needs a New York state of mind; Bureaucratic controls will only deny Britain the benefits it has reaped from foreign workers over the years* *The Express* 19 April *Campaign 2010: Amnesty for illegal immigrants backed, but possible black hole in tax proposals: Key Lib Dem policies*
18 April	GOVERNMENT PUBLIC ENGAGEMENT On 18 April, Gordon Brown was interviewed on the BBC 1 Andrew Marr Show. Brown defended his government's record on immigration stressing that immigration levels had reduced in recent years and that the PBS worked well and was 'very tough'. For Brown, any cap on migration could restrict skilled people coming to the UK.	*Daily Mail* 19 April *Migrant muddle haunts Labour* *The Guardian* 20 April *Brown dismisses immigration fears*

April	POLICY PROPOSALS Publication of all major parties' 2010 General Election manifestos.	*Daily Star* 23 April *Daily Star of Scotland minifesto*
29 April	POLICY PROPOSALS On 29 April, Chris Huhne MP announced the Liberal Democrats' proposals on immigration policy.	*The Guardian* 29 April *Campaign 2010: Immigration: Outright ban on foreign workers relocating ruled out by Huhne*
3 May	NEWSPAPER INVESTIGATION The Guardian asked candidates representing the major parties in the 2010 General Election to summarise their manifestos.	*The Guardian* 3 May *Cardiff North: One-line Manifesto*
13 May	PUBLIC EVENT Theresa May appointed as Home Secretary in the new Coalition government.	*The Guardian* 13 May
26 May	POLICY PROPOSALS The Queen's speech given at the 2010 state opening of Parliament.	*The Guardian* 26 May *The new government: The cabinet: The coalition's big names: Home secretary: Theresa May* *Queen's speech: The bills: Horse trading by both parties - and still many hurdles to clear*
27 May	OFFICIAL DATA RELEASE Publication of ONS *Migration Statistics Quarterly Report* 27 May 2010	*The Guardian* 28 May *Net migration to UK on course to drop below 100,000 a year: More eastern Europeans leaving than have arrived 203,000 people granted a British passport last year*

9 June	POLICY ANNOUNCEMENT On 9 June, Theresa May announced by way of written ministerial statement that from Autumn 2010, all non-EU migrants applying for a visa to settle in the UK as a spouse, civil partner, unmarried partner, same sex partner, fiancé or proposed civil partners would have to demonstrate a 'basic command of English'.	*The Express* 9 June *Migrants must speak English Spouses face tough exams No visas granted if you are unable to speak English*
28 June	POLICY ANNOUNCEMENT On 28 June, Theresa May laid statement of changes, HC 59, before Parliament. May set out the policy changes as follows: • the Migration Advisory Committee's (MAC) to conduct a consultation and advise on the numerical limit for a permanent cap on skilled migrants and assess the economic and social impact of migration in the UK • an interim cap to be imposed 'to avoid that stampede' on T1G and Tier 2 migrants set at a level equivalent to five per cent reduction on T1G and T2 migration levels • Tier 2 ICTs, ministers of religion, and elite sportspeople would not fall within the interim cap • an increase in the number of points (+five) required to qualify under T1G • changes to take effect on 19 July 2010	*The Times* 26 June *Number of immigrant workers to be capped; Coalition moves swiftly to limit entry to Britain* *The Sun* 26 June *Migrants cap begins next week; May will tackle 'rush' fear* *Daily Star Sunday* 27 June *Blitz on migrant workers* *The Guardian* 28 June *Immigration cap exclusions turn policy into gesture, say critics* *The Independent* 29 June *Immigration cap 'a threat to economic recovery'* *The Guardian* 29 June *May waters down immigration pledge but looks to curb overseas student numbers: Exemptions mean modest cap on skilled migrants Universities fear for £12bn from those studying in UK* *The Guardian* 29 June *Analysis: Recession means goal will be met, but pressure grows*

		for tougher restrictions *The Daily Telegraph* 29 June *Foreign workers could face NHS ban* *Daily Mail* 29 June *James Slack's analysis* *Morning Star* 30 June *Comment - Yet more old style Toryism*
4 July	NEWSPAPER INVESTIGATION Sunday Telegraph investigation into the number of ICTs made by UK-based companies.	*The Sunday Telegraph* 4 July *Loophole lets in migrant workers; Company staff transfers put Britons out of job, say campaigners*
15 July	POLICY ANNOUNCEMENT On 15 July, Damian Green laid statement of changes HC 96 before Parliament which provided for: • an interim limit on the number of new Tier 2 migrants permitted from 19 July 2010 set at level 1,300 below the number of such migrants admitted in the equivalent period a year previously • the exclusion from the Tier 2 cap of ICTs, ministers of religion, elite sportspersons, and dependent family members of Tier 2 migrants	*The Observer* 18 July *Cap on skilled immigrants may hit recovery, businesses warn*
28-30 July	GOVERNMENT PUBLIC ENGAGEMENT Then Prime Minister, David Cameron, led a ministerial and business delegation to India.	*The Guardian* 26 July *Cameron in India: We're open for business, PM tells Delhi as he flies out biggest delegation since Raj: Cameron in India: Immigration limits could hurt*

		British interests MP says investors must be welcomed into country
29 July	JUDICIAL At Lewes Crown Court, the Reverend Alex Brown was convicted of conducting fraudulent marriage ceremonies at the Church of St Peter and St Paul in East Sussex.	*Daily Mail* 30 July *Daily Mail comments*
August	STAKEHOLDER PUBLIC ENGAGEMENT Release of the Summer 2010 *Labour Market Outlook* report by the Chartered Institute of Personnel and Development (CIPD) and KPMG. The report, a quarterly survey, noted that demand for migrant workers had increased in line with improvements in the UK labour market and considered that any cap on skilled migration could 'potentially have a large impact' on some UK-based employers.	*The Guardian* 22 August *Foreign workers: The cap on immigration cannot hold*
26 August	OFFICIAL DATA RELEASE Publication of the ONS' *Migration Statistics Quarterly Report* 26 August 2010	*The Mirror* 27 August *..but cap could be costly; analysis*
26 August	GOVERNMENT PUBLIC ENGAGEMENT Interview with Vince Cable, then Business Secretary, in the *Financial Times* on 26 August 2010 in which Cable was critical of the government's policy to limit skilled migration to the UK through a permanent cap.	*The Guardian* 27 August *Vince Cable warns coalition colleagues over immigration cap* *The Sun* 28 August *Cable in migrants cap blast* *The Express* 28 August *Fear of coalition split as Cable demands no limit on immigration*

16 September	GOVERNMENT PUBLIC ENGAGEMENT At the Konigswinter Conference in London on 16 September 2010, Vince Cable voiced his criticisms of the government's immigration policy to cap skilled migration naming certain employers' needs for skilled migrants.	*Daily Mail* 17 September *Cable hints at quitting over immigrant cap* *The Independent* 18 September *Business leaders back Cable in immigration row*
24 September	JUDICIAL Legal proceedings brought to challenge the imposition of the cap.	*The Guardian* 24 September *Ministers face court battle: Exclusive*
27 September	NEWSPAPER INVESTIGATION *Daily Mail* investigation into the low take-up by some UK-based companies of allocated employer sponsorship certificates.	*Daily Mail* 27 September *Migrant cap 'has not led to a crisis for firms'*
28 September	PUBLIC EVENT The former Home Secretary and then shadow Justice Secretary, Jack Straw, gave his last Labour Party Conference speech.	*The Guardian* 28 September *Labour conference: Jack Straw says middle classes cannot be ignored*
October	STAKEHOLDER PUBLIC ENGAGEMENT The Confederation of British Industry's (CBI) submission to the MAC consultation on setting the level of the cap on T1G and Tier 2 migration.	*Daily Telegraph* 1 October *Migration cap a 'real headache', warns CBI*
7 October	POLICY PROPOSAL On 7 October the European Commission and Indian government resumed free trade negotiations.	*Daily Telegraph* 9 October *EU wants open door to Indian workers*

10 October	PUBLIC EVENT A community in Scotland rallied around Gamu Nhengu, a contestant in the television talent contest, The X Factor, after she and her family faced removal from the UK due to her mother's visa status.	*Sunday Times* 10 October *Cameron did not factor in Nhengu to his Big Society*
October	STAKEHOLDER PUBLIC ENGAGEMENT The higher education trade association, Universities UK, together with a number of academic institutions expressed concern over the impact of a permanent skilled migration cap on their ability to attract international students and undertake research.	*The Guardian* 12 October *Education: Why reject the premier league?: Universities are seeking legal advice to navigate the shifting goalposts of immigration law*
18 October	STAKEHOLDER PUBLIC ENGAGEMENT The Wellcome Trust Sanger Institute, a genetic research laboratory, expressed concern about the skilled migrant cap and its impact on the laboratory's ability to recruit and retain foreign researchers.	*The Times* 18 October *Gene lab struggles to find scientists in visa squeeze*
22 October	POLICY ANNOUNCEMENT The Home Office closed T1G for October 2010 having reached the month's quota of 600 new out of country applications.	*The Times* 22 October *Britain shuts door on skilled migrants for the month* *The Guardian* 22 October *Britain shuts door on skilled migrants from outside EU: No more visas for skilled migrants until next month Critics say cap is unlawful and damaging to industry*

25 October	GOVERNMENT PUBLIC ENGAGEMENT David Cameron gave a speech at the CBI annual conference in which he stated that the government would not 'impede you [businesses] from attracting the best talent from around the world'.	*Daily Mail* 26 October *Is Cameron diluting his pledge to cap immigrants?*
27 October	OFFICIAL DATA RELEASE Publication of a Home Office report which found that one third of migrants with highly skilled/T1G status in the UK were engaged in low or unskilled work.	*The Times* 28 October *Door closing on 'brightest' migrants as most take menial work once they arrive in the UK* *Daily Star* 28 October *'Skilled' in jobs storm* *The Sun* 28 October *Migrants in jobs 'threat'* *Daily Mail* 28 October *Just 1 in 4 'skilled migrants' ends up in a top job* *The Daily Telegraph* 28 October *High-skill migrants 'taking low-skill jobs'*
October	OFFICIAL DATA RELEASE Publication of the ONS' *UK Labour Market statistical bulletin* October 2010	*Daily Mail* 30 October *Migrants took 9 out of 10 jobs created under labour*
3 November	NEWSPAPER INVESTIGATION *The Times'* reported its investigation into the potential impact of the skilled migrant cap on UK-based cancer research laboratories.	*The Times* 3 November *Check on immigrants hits cancer research; New rules curb recruitment of top scientists* *Check on immigrants brings setback for cancer research*

3 November	POLITICAL PUBLIC ENGAGEMENT Publication of Home Affairs Committee's *Immigration Cap First Report of Session 2010–11* HC 361 on 3 November 2010. The report expressed the Home Affairs Committee's concerns that the skilled migration cap could damage the British economy and would do little to reduce overall migration levels to the UK.	*The Guardian* 3 November *Students and families will be hit to cut migration, say MPs: Annual cap to have little effect on numbers - report fears that measure could be harmful to economy*
3 and 4 November	POLICY ANNOUNCEMENTS At Prime Minister's Questions on 3 November 2010, David Cameron stated that ICTs would not be included in the skilled worker Tier 2 cap: *'we really do believe that it will not be difficult to achieve much better immigration control without disadvantaging business. For example, things such as inter-company transfers should not be included in what we are looking at. I do not think we will have a problem. Given the very broken system that we inherited, there should be no problems improving it.'*	*The Times* 4 November *Foreign workers who transfer to Britain will beat migrant cap* *The Times* 4 November *An unlevel playing field; Parallels between scientists and sportsmen are clear. Why aren't the visa rules?*
5 November	POLICY PROPOSALS On 5 November, Theresa May, in a speech to the Policy Exchange, stated: • the Immigration Rules governing T1G would be tightened up in light of a recent Home Office report which found abuse , namely that highly skilled migrants were in low skilled employment • there would be a review of the student visa route in recognition of the '*need to stop abuses'* • migration levels in the UK would be reduced • eligibility for ILR would be	*The Times* 6 November *Migration cap would have kept out my prize-winning team, says Nobel scientist* *The Guardian* 6 November *May to end right to stay for 100,000 workers and students* *The Independent* 6 November *Foreign students 'must benefit the economy'; immigration*

	reviewed	
8 November	POLICY PROPOSAL Resumption in Brussels on 8 November 2010 of negotiations on an EU-India free trade agreement.	*The Express* 8 November *EU plot to force Britain to take more migrants* *Daily Mail* 8 November *EU to let in 50,000 workers from India*
18 November	POLICY PROPOSAL On 18 November 2010, the MAC report, *Limits on Migration: Limits on Tier 1 and Tier 2 for 2011/12 and supporting policies November 2010* was released to the public.	*The Daily Telegraph* 15 November *Cameron will bow to business and relax cap on immigrant workers* *The Express* 16 November *Migrant cap must stay, PM is urged* *The Guardian* 18 November *Foreign students in UK to be hit hard by immigration cuts* *The Times* 19 November *Non-EU students to bear brunt of crackdown on immigration; People joining their families will also be hit* *The Guardian* 19 November *Foreign students to be hard hit by immigration cuts: Home Office advisers warn numbers may drop by 50%: Big reductions also in cases of family reunions* *The Mirror* 19 November *Migrant muddle; ConDem cap on work visas to hit students and families* *The Guardian* 19 November

		Analysis: Skilled workers boost revenue *The Daily Telegraph* 20 November *Firms may sue over migration cap* *The Sunday Times* 21 November *The gaping immigration doors our MPs are too timid to close* *The Sunday Telegraph* 21 November *Cameron faces new attack on immigration cap* *The Sunday Telegraph* 21 November *Immigrants need £40,000 job to be sure of UK entry* *Mail on Sunday* 21 November *New law to end council house queue jumping*
18 November	OFFICIAL DATA RELEASE Publication of ONS' *Migration Statistics Quarterly Report* 25 November 2010	*The Express* 18 November *4M migrants work in UK*
23 November	POLICY ANNOUNCEMENT On 23 November, Theresa May made a speech before Parliament outlining changes to economic migration routes including: • the April 2011-12 combined cap for T1G and Tier 2 migrants to be reduced from the current 28,000 to 21,700 • the closure of T1G (no date set) and its replacement with the Exceptional Talent visa, to be capped at 1000 for the year April 2011-12 • ICTs to remain outside the skilled worker Tier 2 cap. However, for ICTs of more than 12 months' duration, only those migrants with a salary	*The Sun* 23 November *UK to let 43,000 come in* *The Guardian* 23 November *Cap on skilled migrants to be lower than level recommended by migration experts* *The Times* 24 November *Migrant cap could lead to bigger influx; Loophole leaves thousands of workers exempt* *The Sun* 24 November *Border sense*

	of £40,000+ would fall outside the cap • the Tier 2 route to be open to graduate jobs only in light of findings of abuse • the new caps and changes to labour migration routes to take effect in April 2011 • a MAC consultation on and review of student visas to be announced shortly	*Immigration: Main points* *The Guardian* 24 November *Immigration: Colleges warn May over curb on student visas: Entry for degree courses only 'would hit finances' Home secretary sets cap of 21,700 for skilled migrants* *The Guardian* 24 November *Britain's first immigration limit in place, but loopholes remain* *The Daily Telegraph* 24 November *Daily Mail* 24 November *Cap on non-EU migrants, but with a loophole* *The Times* 28 November *Stats of the week* *The Observer* 28 November *Immigration cap: A control tailored to suit hardly anybody: Arbitrary, irrelevant, a political ploy? The hard line on migrants seems full of holes*
4 December	STAKEHOLDER PUBLIC ENGAGEMENT *The Times* had learned from an unnamed source that the permanent skilled migration cap would not apply to the recruitment of researchers by universities and other research institutes.	*The Times* 4 December *Science labs welcome easing of visa squeeze on top academics; Victory for Times campaign over immigration cap*
December	PUBLIC EVENT Lord Peter Mandelson was appointed to lead the Institute for Public Policy Research's (IPPR) Future of Globalisation project.	*The Daily Telegraph* 7 December *Are there any taxpayer-funded bodies NOT funding Left-wing think-tank the IPPR?*

17 December	JUDICIAL On 17 December, the judgment in the JCWI case was published. The Court held that the interim numerical limits imposed on T1G and Tier 2 applications were unlawful as the Secretary of State had failed to follow the procedural requirements for amending the Immigration Rules.	*The Times* 17 December *Hasty curb on migrants was unlawful* *The Guardian* 18 December *May's cap on skilled migrants sidelined parliament, court rules*
18 December	STAKEHOLDER PUBLIC ENGAGEMENT In an interview with *The Times*, Sir Paul Nurse, Nobel laureate scientist and President of the Royal Society, expressed concern over the skilled migrant cap, stating that PhD scientists would not meet the Tier 1 Exceptional Talent visa criteria.	*The Times* 18 December *Visa quotas 'will hit research backed by Cameron'*
21 December	POLICY ANNOUNCEMENT On 21 December 2010, Damian Green laid HC 698 before Parliament which provided for: • the closure of T1G for overseas applicants from 22 December 2010 as the interim quota had already been reached • following the JCWI court case, the incorporation into the Immigration Rules (HC 395) of the Tier 2 interim cap of 10,832 migrants from 21 December 2010 to 5 April 2011.	*The Daily Telegraph* 21 December *Minister to close the door on skilled migrants* *Daily Mail* 22 December *Door closes on 'highly skilled' migrants as quota is filled early*
30 December	STAKEHOLDER PUBLIC ENGAGEMENT Publication of the IPPR report *Migration Review 2010/2011*	*The Mirror* 30 December *PM's cap on immigrants 'won't work'; politics* *The Guardian* 30 December *Irish influx to thwart Tory pledge on migration: No fall expected*

		despite new cap and curbs *Economic recovery could mean more EU arrivals* *Daily Mail* 30 December *Despite cap, numbers will not fall significantly* *Daily Mail* 30 December *Daily Mail comment*

Appendix 6.3

Typology of news events

News event category	Definition
Government public engagement	A public speech, interview, participation in debate or report by a member of government in which UK migration issues are discussed
Judicial	Judicial proceedings and rulings on UK migration-related court cases
Newspaper investigation	Journalist led investigations into migration-related issues
Official data release	The publication of migration-related data by a public body such as the Office for National Statistics, the Home Office etc.
Policy announcement	Government announcement of changes to UK migration policy
Policy proposal	Migration-related policy proposals made by politicians, policy makers and public bodies
Political public engagement	A public speech, interview, participation in debate or report by a politician who is not a member of government in which UK migration issues are discussed
Public event	Public events relevant to the public migration debate, for example, the appointment of a public office holder or a local campaign
Stakeholder public engagement	A public speech, interview, participation in debate or report by a body seeking to influence UK migration policy

Appendix 6.4

Top six T1G and T2-ICT approved applications by nationality Q1 2009-Q1 2010

Country of nationality	*T1G: percentage of total applications*	*T2-ICT: percentage of total applications*
Australia	6	2
Canada	-	2
China	4	1
India	41	68
Japan	-	5
Nigeria	9	-
Pakistan	13	-
USA	4	13

Source: MAC (2010, table 3.6)

Appendix 7.1

Participants' immigration histories in the UK

Participant	Immigration status at interview	Migration routes to and within the UK to date of interview		Years (approx) lived in the UK at date of interview
		Year (approx)	Visa type	
Anil	ILR	06 08 11 13	WP EC T1G EC T1G ex ILR	6 [1+5]
Anjal	British citizen	05 07 09 12	Student EC HSMP switch T1G ex ILR	9
Anne	ILR	07 08 10 13	WHM EC T1G EC T1G ex ILR	7
Bijal	LTR-T1G	10 12	T1G EC T1G ex	4
David	ILR	09 12 13	T1G EC T1G ex ILR	5
Deborah	Dual British/ Australian citizen	05 05 06 09	WHM EC HSMP switch HSMP ex ILR	9
Ellie	ILR	07 09 12 14	WHM EC TIG EC T1G ex ILR	7
Gopan	British citizen	05 06 09	HSMP EC HSMP ex ILR	10
Hari	British citizen	04 06 08 10/11 11/12	Student EC WP switch T1G switch T1G ex ILR	10
Ian	Dual British/ Australian	06 08	HSMP EC T1G ex	8

	citizen	11	ILR	
Jenny	ILR	06 07 09 12 14	WHM EC WP EC T1G switch Spouse switch ILR	8
John	ILR	07 08 10 11 14	Student EC WP EC T1G switch T1G ex ILR	7
Karan	British citizen	03/04 04/05 [unclear] [unclear]	Student EC HSMP switch HSMP ex ILR	10/11
Kate	ILR	06 07 09 12 14	Student EC T1 PSW switch T1G switch T1G ex ILR	8
Louise	ILR	02 05/06 07/08 08/09 12 13	WHM EC WP switch WP ex T1G switch T1G ex ILR	12
Michelle	ILR	09 11 14	T1G EC TiG ex ILR	5
Rajesh	ILR	02 04 08 11 13	Student EC SEGS EC T1G EC T1G ex ILR	8 [1+1+6]
Ravi	ILR	09 11 14	T1G EC T1G ex ILR	5
Salim	LTR-T1G	09 10 12	Student EC T1G EC T1G ex	1 [student] Not relocated to the UK under T1G
Sarah	Dual British/ Australian citizen	06 07 09 12	WHM EC HSMP switch HSMP ex ILR	8
Shiv	British citizen	06 08	WP EC T1G switch	8

		10/11 13	T1G ex ILR	
Tania	ILR - left UK to live in Aus	02 03 04 [unclear] 08 13	WHM EC WP switch HSMP switch HSMP ex HSMP/T1G ex ILR	12
Thomas	ILR	08 09 11 14	WHM EC T1G EC T1G ex ILR	6
Zain	LTR-T1G	10 12	T1G EC T1G ex	4

Key

EC	entry clearance: an out of country visa application
ex	extension of leave to remain in the same immigration category: an in country application
HSMP	Highly Skilled Migrant Programme
ILR	indefinite leave to remain: also referred to as permanent residence and settlement
LTR	leave to remain: permission to stay for a limited period of time
ref	visa application refused
SEGS	Science and Engineering Graduate Scheme: enabled those graduating in the UK in relevant subjects to work in the UK for one year
sw	switch: a change of immigration status through an in-country application
T1G	Tier 1 General of the Points Based System: replaced the HSMP in 2008
T1 PSW	Tier 1 Post Study Work: enabled those graduating in the UK to work in the UK for two years
WHM	Working Holiday Maker: a visa that allowed young Commonwealth citizens to live in the UK for two years and to work for up to half their stay
WP	work permit, ie, sponsored employment: replaced by Tier 2 of the Points Based System in 2009

Appendix 7.2

Number and refusal rates of out of country working holidaymaker visa applications submitted in Australia and India 2001-2009

Year application received	*Working holidaymaker applications submitted at British post(s)*			
	Australia		*India*	
	Number received	*Refusal rate - %*	*Number received*	*Refusal rate - %*
2001-2	21,699	0.1	243	74
2002-3	19,577	0.1	351	79
2003-4	20,879	0.1	7,665	54
2004-5	23,226	0.1	8,230	75
2005-6	20,707	0.1	3,905	60
2006-7	20,330	3	7,340	60
2007-8	15,845	4	10,095	61

Sources: own analysis of UKvisas' Global Statistics Booklets 2001-05; UKvisas' Entry Clearance Statistics 2005-7 and UKBA's Entry Clearance Statistics 2007-09

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