How does the historical meaning and significance of the language used in the 2014 UK Immigration Bill inform our understanding of the text?

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Introduction

This research paper focuses on and builds upon five words/phrases that all appear in the 2014 UK Immigration Bill (HC Bill 110). The version of the bill that is referred to by all the authors is that from the 10th October 2013, which is the version in which it was originally introduced.[1] The bill was presented by Secretary Theresa May, who declared that "the provisions of the Immigration Bill are compatible with the convention rights" in reference to section 19(1)(a) of the Human Rights Act 1998.

The words/phrases under analysis are, in this order: nationality, public interest, sham marriages, eligibility and biometric information. While this is not the order they appear in in the bill, we believe that structuring the five texts this way enables a reading of the entire paper where new ideas tie in with previously established concepts.

The specific uses of these phrases will be more closely elaborated on in each part. At this point we would like to acknowledge the fact that the bill is 113 pages long and the following texts should by no means be viewed as a full analysis of the language used in the bill. Rather, this analysis of these five terms should be viewed as an example by which we aim to illustrate how the study of the history of our words can inform our understanding of their use in the present.

The main aim of this research is to provide a comprehensive discourse analysis for the five words we have chosen. In analysing the history and meaning of single terms, we want to explore how they can inform our reading of the bill. We aim to intricately analyse how words are used in the bill and to extract how these uses are "designed to serve human affairs"[2]. We view it as undeniable that language in its communicative function powerfully impacts and shapes the areas it is used in. Our analysis therein is based on the assumption and our shared belief that language is used to establish and maintain social relationships and plays an essential role in the reproduction of power.[3] Our understanding of discourse is substantially informed by Michel Foucault and his "The Archaeology of Knowledge"[4] and his characterization of discourse as a place to acknowledge dispersion and discontinuity.

Due to the fact that the document under analysis is a government bill, all of the individual essays link the results of their analysis back to their respective impacts within the context of a bill. These impacts are written about in the belief that government bills have the power to popularize ideas and therefore also provide insight into which ideas the sponsoring government wants to popularize. Sadia Waheed, in the very first section of this paper, outlines how 'nationality' has racist influences in the history of the term and further elaborates on how it is used today in ways that reproduce the racial imagination of Britain as white and furthers racial discrimination carried out by the state. In the following part on 'public interest', Demetrou Christofi outlines some of the key discourses surrounding the concept of 'public interest', e.g. how within the bill there seems to be a conflict

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[1] European Convention on Human Rights, Immigration Bill (HC Bill 110) (UK, The Home Office: 2014) p 1-113. Available under: https://publications.parliament.uk/pa/bills/cbill/2013-2014/0110/14110.pdf
Further references to this text will be provided after quotations in the main text.

[2] Gillian Brown and George Yule, *Discourse Analysis* (London: Cambridge University Press, 1983), p. 1.
[3] Brown and Yule, *Discourse Analysis,* p. 3.
[4] Michel Foucault, *The Archaeology of Knowledge* (Routledge, 2013).

between representing the public as a collective and the reality that the bill in itself is essentially a singular authority that is understood to represent the interest of a majority. Yang Chan, in her part on the concept of 'sham marriages', outlines how marriage is controlled not only by political, but also by social and economic concerns.

Within this research paper there is particular attention paid to the dichotomies spanned and reproduced by the use of language in the Immigration Bill. Nelly Gypkens in her part of this paper on 'eligibility' writes on the implications of dichotomies of access and exclusion and the fact that 'eligibility' has to be understood as reproducing state sponsored categories of identity. In close connection to these ideas, Zixuan Wang in writing about 'biometric information' describes how the characterization of 'biometric information' within the bill aids a binary universe made up of acceptance and denial.

In exploring the etymology and historical uses and connotations of these five concepts we hope to encourage a more critical reading of the 2014 UK Immigration Bill. Our application of discourse analysis is aimed at indicating the interests of the UK government in utilizing the five terms we have chosen as an example for our analysis, as well as highlighting the effects of this utilization.

'Nationality'

By Sadia Waheed

Should the ideological foundations of 'nationality' be challenged when used in the 2014 Immigration Bill?

The importance of power relations

The 2014 Immigration Bill uses the terminology, such as *nationality* and 'foreign national', throughout the document[5]. This terminology is applied to the Bill as a way of perpetuating differences between individuals who are regarded as 'English', and those who are not. This is by defining *nationality* as a characteristic or trait that an individual obtains, which carries notions of the individual 'belonging' to a certain nation. Meaning there is a difference between individuals born in the country, individuals who are granted a Visa, and individuals from other regions of the world. These differences hold great significance when evaluating how terminology can shape the way ideas are shared in a society as the connotations these ideas build surround the acceptance of individuals in the country. Indeed, the fact that the 2014 Immigration Bill outlines the ideological beliefs of not only the government, but a large section of the population it governs, signifies the importance of language in the construction of social perceptions and power.

There is no doubt that government policies assert different power relations between 'white' and 'foreign' individuals. A recent body of literature illustrates how white superiority is reproduced by political elites reproducing racialised and discriminatory legislations, which in consequence, replicate nationalistic sentiment. These power relations are most noticeable in immigration and nationality laws which are supposedly designed to ensure the 'safety' of the nation. According to Garner, increased nationalistic sentiment promotes racialised and discriminatory practices[6]. The ideological foundations of nationalism have often been scrutinised by academics, however much less attention has been given to how racism shapes ideas of *nationality* and *national* belonging. Only contemporary research, like Devyani Prabhat[7] and Roda Madziva[8], have outlined the relationship between *nationality* laws and racial discrimination. The main body of research in this topic often explores the relationship between 'Western' states with Asian, African, and Muslim regions. However, as Fox, Morşanu, and Szilassy explain, in recent years, Eastern Europeans have been racialised in the UK which reinforces the idea that 'white superiority' surrounds Britishness[9]. This implies that language plays a role in reproducing racial discrimination[10].

According to Fox et al., the meaning of nationalism and *nationality* have remained constant since 1914[11]. This section aims to outline why this statement is significant by critiquing the term

[5] *2014 Immigration Bill*, p. 11.

[6] Steve Garner, *Racism* (Sage Publications, 2009) pp 120.

[7] Devyani Prabhat, *Britishness, Belonging and Citizenship: Experiencing Nationality Law*, (Bristol: Bristol University Press, 2018) pp 124.

[8] Roda Madziva, '" Your Name Does Not Tick the Box": The Intertwining of Names, Bodies, Religion and Nationality in the Construction of Identity within the UK Asylum System', *Ethnic and Racial Studies* 41:5 (2018) pp 938.

[9] Jon E Fox, Laura Moroşanu, Eszter Szilassy, 'The Racialization of the New European Migration to the UK', *Sociology* 46:4 (2012) pp 680.

[10] Anthony D. Smith, 'Ethnic Election and National Identity: Some Religious Origins of Nationalistic Ideals', *Nations and Nationalism* 5:3 (1999) p. 3.

[11] Fox, Moroşanu, Szilassy, 'New European Migration UK', pp 680- 684.

nationality, and the way it has been applied to the 2014 Immigration Bill[12]. This will be achieved by applying a critical discourse analysis, because, as Brown and Yule have stated, this model of analysis allows shifting definitions of words and phrases over a set period to be assessed[13]. As *nationality* is often followed by the discussion on nationalism, this method will apply different contexts of why and how nationalism and nationality have been questioned in British society. This will aid the explanation of why language in political policies must be evaluated when considering human rights and the legacies of racism. Overall, I aim to argue that because the terms nationalism and *nationality* were forged during the 'enlightenment' era, racism cannot be separated from nationalistic ideologies as this was also the peak of social and political phenomenon like colonialism. The discussion will end by sketching how migrants are based upon economic 'values'.

Why the study is important

According to Foucault, the meanings of words and phrases can be 'distorted' over a period to fit the needs of a society[14]. 'Distorting' meanings, rather than changing them, is a political strategy designed to limit social unrest, as complete shifts in meanings would perpetuate direct realignment of social meanings which, in return, would limit the public's trust towards the government. Therefore, 'meanings' are social constructs designed to create, and homogenise ideologies across a society. Taking this argument further, it is quite easy to see how shared ideologies are inherently political. Indeed, according to Cudjoe, language and conversations reproduce what Bourdieu refers to 'habitus'[15]. Habitus is essentially the different cultural practices of social classes. This involves job occupation, language, and political, and social struggles. Therefore, the fact that ideas and ideologies are popularised through shared conversations in different mediums illustrates how an individual or groups, like the working class, can popularise ideas to assert or build awareness of different social struggles. This explains why language plays a crucial role in reproducing political and social constructs. However, political language must be evaluated as different social groups often hold different political beliefs, which in consequence shapes power relations in society.

The origins of Nationality

Patrick Weil explains that 'Nationality rests with territory at the heart of the definition of nation-state. If territory determines the geographical limits of state sovereignty, nationality determines its population. Beyond these limits one finds foreign land, foreign sovereignty, and foreigners.[16]' To take this statement further, *nationality* is the outcome of nationalism as *nationality* is based on feelings of 'belonging' to a region. Nationalism reaffirms geographic borders which asserts the idea that people belong within certain boundaries. Indeed, according to the Oxford English Dictionary, although 'nationality' was first used by the philosopher Sir W. Petty in 1691, in 1797 it was used as a noun to describe a certain trait or characteristic that belongs to a nation[17], and by 1914, 'nationality' and 'nationalism' were used interchangeably to describe an attachment towards a nation. This definition has remained constant and has been applied in all academic and political studies to date. Similarly, Hobsbawm and Ranger rightfully state in their discussion about the origins of nationalism, that 'nationalism' and '*nationality*' are political constructs designed to aid

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[12] *Immigration Bill,* p. 1.

[13] Gillian Brown, George Yule, *Discourse Analysis* (London: Cambridge University Press, 1983) pp. 1-10.

[14] Michele Foucault, *The Archaeology of Knowledge,* (London: Routledge, 1972 [1969]), pp 7.

[15] Selwyn R. Cudjoe, 'Eric Williams and the Politics of Language', *John Hopkins University Press* 20: 4 (1997) pp 757.

[16] Patrick Weil, 'A Comparison of Twenty-Five Nationality Laws', ed. in Alexander Aleinikoff and Douglas Klusmeyer, *Citizenship Today: Global Perspectives and Practices* (Washington: Carnegie Endowment for International Peace, 2001) pp 17.

[17] Oxford English Dictionary, 'Nationality', Accessed 8 May 2020, https://www.oed.com/view/Entry/177381?rskey=KGflCm&result=1#eid

nation building[18]. According to this account, the attachment an individual builds towards a state or country is based on 'invented traditions' which were produced by political elites attempting to homogenise the interest of all individuals in Britain to justify imperial domination. Additionally, a nation state is a political structure which homogenises groups of people for the purpose of political order[19]. Garner also highlights how 'race' and religion characterise a nation state[20], and therefore constructs an individual's *nationality*. As *Nationality* laws also fall under the gaze of enlightenment, the use of 'scientific' terminology in the 2014 immigration Bill should be assessed to outline the role of enlightenment in justifying racial discrimination in the construction of *nationality* laws.

Nationals and the 'other'

The 2014 Immigration Bill[21] uses scientific terminology, such as 'foreign nationals', as a way of differentiating between 'us' and 'the other'. The terms are 'scientific' as they were developed by social scientists attempting to unionise ideological frameworks surrounding the construction of 'race'. This illustrates how 'science' and 'reason' act to justify and conceal racial discrimination as way of promoting the greater good. Indeed, the difference between *nationals* and the 'other' has remained prevalent in all nationalistic studies[22]. Academics have been analysing the role of nationalism since early 18th century with the introduction of enlightenment. Sociologists relate growths in nationalistic sentiment towards modernity. Modernity outlines how science has replaced mysticism in constructing nationalistic beliefs[23]. However, as Saler highlights, to remove 'mysticism' from the discussion of nationalism is to limit the historical understandings and developments in nationalistic discourse[24]. Nonetheless, there is a degree of accuracy with the sociological approach- 'scientific' studies peaked in late nineteenth century. Therefore, increased nationalistic sentiment is rooted at the peak of Imperial rule. With the normalisation of Social Darwinism and racial Eugenics in late nineteenth century[25], 'markers', or specific traits, began to be associated with people from specific countries. Although the idea that individuals of different races do not share the same biological makeup has been replaced with the belief that 'race' is a social construct, these markers have continued to dominate the imagination of individuals through the form of stereotypes. Indeed, these characteristics were created by 'Western' elites to justify imperialism, consequently labelling Asian and African regions as 'degenerates'. Meaning nationalism embodies racialised power structures implemented by Europeans. This, in return, perpetuates the idea that people with different *nationalities* hold certain traits that are incompatible with others. Thus, illustrating how *nationality* laws are based on discriminatory ideologies and illuminating how the racial imagination of Britain is white.

Border controls

According to Foucault, it is the Governments interest to address the 'welfare of the population, the improvements of its condition, the increase of its wealth, longevity, health etc'[26]. Meaning, the government acts to address public concerns. The 2014 Immigration Bill states that border controls and new measures of 'identifying persons liable of detention' will be implemented in the UK[27]. The

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[18] Eric Hobsbawm, Terrence Ranger, *The Invention of Tradition* (Cambridge: Cambridge University Press, 2012) pp 18.

[19] Steve Garner, *Racism* (Sage Publications, 2009) pp 120.

[20] Garner, *Racism*, pp 135.

[21] European Convention of Human Rights, *2014 Immigration Bill,* (Britain: The Home Office, 2014) pp 1.

[22] Steve Garner, *Racism* (Sage Publications, 2009) pp 120

[23] Michael Saler, 'Modernity and Enchantment: A Historiographic Review', *American Historical Review* 11.3 (2006) pp 692.

[24] Saler, 'Modernity', pp 692.

[25] Edward Said, *Culture and Imperialism*, (London: Vintage, 1993) pp5.

[26] Michele Foucault, "Governmentality" in Graham Burchell, Collin Gordon, Peter Muller, ed. *The Foucault Effect: Studies in Governmentality* (Chicago: Chicago University Press, 1991) pp 100.

[27] European Convention of Human Rights, *2014 Immigration Bill,* (Britain: The Home Office, 2014) pp 4.

language used indicates that there is a difference between 'foreign nationals' and people characterised as a threat. As Madziva addresses, after the September 11 bombings, 'western governments' support social cohesion and stronger border controls to protect the nation from national threats of terrorism[28]. Although the 2014 Immigration paper uses language that suggests all policies and regulations implemented for border controls are designed for anyone entering the country, individuals with Muslim names are often rejected from crossing British borders[29]. Research indicates a string bias against individuals with Muslim and African sounding names. Individuals deemed as a 'threat' are often referred to 'migrants' in the Bill[30]. This is an illustration of how 'compatibility' with the moral codes of an individual are assessed based on race and religion. As the media deems Islam as incompatible with 'British values', political elites challenge the cohesion of Muslim groups in British society. Meaning that the British states favours *nationalities* which they perceive to be compatible with the nation state. Therefore, they favour Europeans.

The value of migrants

Of course, Britain do accept 'foreign nationals' to enter the country which after several years, grants international migrants British *nationality*. As 'western' markets function on capitalist structures, there has been a promotion if migrant workers being situated in the UK. Therefore, migration is only accepted in the UK as governments are fixated on cheap labour, meaning migrants 'value' is assessed on their contribution to the economy. The New Labour Government in 2000 allowed 13,000 European workers into the UK to work, which by 2011 had increased to 1.5 million East Europeans[31]. According to Fox et al., the influx of East Europeans migrants into the UK were caused by ideas surrounding their ability to merge into the British culture. Meaning Eastern Europeans are white until the British government declare otherwise. However, recent media illustrates how the white-working-class fear that new migrants are taking 'their' jobs[32], illustrating how migration laws provoke anxiety within the British community. Whipple explains that these fears in the job market have increased nationalistic sentiment since early 1960[33]. Meaning, the UK's migration policies favour Easter Europeans, however, also use language to discriminate against them to appeal to the nation. This is despite their open confessions that Eastern Europeans are valuable to the British economy.

Final thoughts on *nationality*

In conclusion, there is no doubt that language plays an intricate role in concealing discriminatory practices in political discourse. As enlightenment surged European intellect, ideas of *nationality,* and national belonging, fixated on racial imaginations. Indeed, the racial imagination of Britain is white. Yet, due to capitalist structures, British governments are dependent on migrants to meet the demands of expanding labour markets. This is because migrants 'values' are based on their influence on the economy. However, Asian, African, and Caribbean, and individuals with Muslims names, often face greater prejudice when attempting to acquire a British Visa[34]. Governments often justify greater regulations on these groups by falsely popularising the idea that these groups are more prone to

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[28] Madziva, 'Constructing Identity in UK Asylum System', pp 938.

[29] *2014 Immigration Bill,* p 11.

[30] E*2014 Immigration Bill,* p 12.

[31] Fox et al. 'Eastern Europeans', pp 682.

[32] Wendy Bottero, 'Class in the 21st Century', in Sveinsson KP ed. *Who Cares About the White Working Class?* (London, Runnymede Trust, 2009) pp 7.

[33] Amy Whipple, 'Revisiting the "Rivers of Blood" Controversy: Letters to Enoch Powell', *Journal of British Studies* 48: 3 (2009) pp 717.

[34] Madziva, 'Construction of Identity within the UK Asylum System', pp 938.

terrorism. Nationalism is therefore based on universalising a set of ideas that shapes the way the consciousness acts and reacts towards 'national threats'[35].

Migrants are demonised by political groups and the public. Indeed, the white-working-class have generated a resentment towards migrants[36], which in consequence challenges their *nationality* in the UK. This also reproduces ideas of national pride, and reaffirms Hobsbawm's and Ranger's argument that nationalism is generated by shared experience, as migrants are forced to accept the idea that they lack 'British-ness' due to them not sharing the same history and culture[37]. Thus, government policies are inherently discriminatory as they illustrate how power relations that began during colonial domination are still prevalent in society, however, in more discreet and 'scientifically' proven ways.

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[35] Craig Calhoun, 'Nationalism and the Public Sphere'. Ed. (1997) In Krishan Kumar, *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy*, (New York, University of Chicago Press, 1997) pp 78.
[36] Bottero, 'Class in the 21st Century', pp 7.
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'Public Interest'

By Demetrou Christofi

The term *'public interest'* is used in the UK Immigration Bill most frequently in its section titled 'Public Interest considerations' (Part 2, 14, pp 12-14) but appears numerous times throughout the rest of the bill. How we come to understand the concept, as it is applied to the bill, is greatly influenced by the meaning and significance of the term throughout history. The definition of the term has been a complex issue within academic and political discourse for centuries and as such the reverberations of these debates transform how we come to understand the term in its modern use. In this way, it is imperative that we consider the use of *'public interest'* in the text in line with its history to produce a more comprehensive reading of the language in the bill.

Analysis of the etymological history of 'Public Interest'

The term 'public interest' was first recognised as a complete phrase in R. Cosin's 1591 publication *'An apologie for sundrie proceedings'* and is defined as 'the benefit or advantage of the community as a whole; the public good' in the Oxford English Dictionary.[38] However, it is important to consider each component of the phrase as their individual meanings contribute to the overall sense of the concept. For example, the OED defines *'public'* and *'interest'* as the following:

Public

The early significance of *'public'* towards the end of the 13th century was as such: 'of or relating to the people as a whole [...] authorized by, serving, or representing the community [...] open or available to all members of the community generally [...] open to general observation or view, carried out without concealment'. In 1559, the term was first connected with the broader scope of 'state, nation'. Further definitions are as follows: '1.

> a. open to general observation, view, or knowledge; existing, performed, or carried out without concealment, so that all may see or hear. Of a person: that acts or performs in public. [...]

2.

> a. of or relating to the people as a whole; that belongs to, affects, or concerns the community or the nation. [...]

3.

> a. authorised by, serving, or representing, the community; carried out or made on behalf of the community by the government or State.'[39]

Interest

The first recorded use of the word *'interest'* is considered to be in the 1450 'Rolls of Parliament (Rotuli parliamentorum)', wherein 'interest' is applied in the sense of a legal right. It came into use in Middle English following the adoption of the Latin *'interest'* as a noun, yet the history of the word is

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[38] '*Public Interest*' in "Oxford English Dictionary." (Oxford University Press, 2000)

[39] '*Public*' in "Oxford English Dictionary."

obscured as it is unclear as to the extent to which the Old French sense of *interest* meaning 'damage, loss' impacted its meaning in English. We can determine, however, that its meaning from the late 16th century diverged from the early influence of Old French and came to be defined as follows:

'1. The relation of being objectively concerned in something, by having a right or title to, a claim upon, or a share in.

>   a. The fact or relation of being legally concerned; legal concern *in* a thing; esp. right or title to property, or to some of the uses or benefits pertaining to property [...]
>   b. Right or title to spiritual privileges [...]
>   c. Right or title to a share in something; share, part. [...]

2.

> a. The relation of being concerned or affected in respect of advantage or detriment; esp. as advantageous relation of this kind. [...]

> b. That which is to or for the advantage of any one; good, benefit, profit, advantage. [...]

> c. *in the interest (interests) of*: on the side of what is advantageous or beneficial to.'[40]

Equally, the concept of *public interest* is often thought of as synonymous with other phrases such as the *common good, common interest or public good,* amongst other variations of the phrase and in this way the significance of such concepts again impacts how we interpret *public interest.* Such phrases, particularly the 'common good', are considered, by many academic scholars such as Maximillian Jaede and Kadri Simm, to be interchangeable with *public interest.* However, in the same way that the similarities between these terms impact their respective meanings, their differences likewise further specify their meaning. For example, the 'concept of the common good', according to Jaede, has progressively become disconnected from our modern understanding of *public interest* in the sense that *common good* implies a commonality amongst individuals in a more moral sense, 'whereas the word ''public'' usually refers to matters that are subject to collective action.'[41]

Whilst it is important to remember that the Oxford English Dictionary provides a plethora of diverse definitions for the term that in themselves are connected to their respective revisions of the dictionary, the above definitions outline the substantial meanings of the term overtime. Also, it is important to reflect on the etymological significance of the term in its totality as well as through a detailed consideration of its constituent parts, as the term is composed of the respective meanings of *public* and *interest*. Thus, considering the etymological significance of *public interest* and the history of its related terms enables a more thorough reflection of how it is used in the 2014 UK immigration bill.

The significance of 'Public interest' in discourse and political science

Public interest has been a key area of research and debate in both academic discourse and political science and as a consequence such historical debates concerning its meaning and significance in society affect how the term is used and interpreted in modern works: here, in political works.

The appearance of *public interest* in discourse can be traced as far back in history as Ancient Greece and Rome with many leading philosophical figures of the time, such as Aristotle and Plato, discussing

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[40] '*Interest'* in "Oxford English Dictionary."

[41] Jaede, Maximillian, ''The concept of the common good'' (Edinburgh: The British academy, University of Edinburgh Press, 2017) pp. 5-9

the importance of the separation between the public and private space as well as the reach of governing authorities in the enactment of laws that affected a *public*. As Roy understands, Classical Athens saw the emergence of 'a distinction between public and private'[42]; between the public sphere of the 'polis' and the private space of the 'oikos'. Such debates then focused on who comprised the public sphere, as, for example, full citizenship in Athens could only be gained by those with Athenian parents and thus the 'polis' could only be accessed and served by those of fully Athenian ancestry. The same sense of the 'polis' or *public* as a body of people or citizens prevails today and thus the questions of antiquity remain key concerns within modern discourse.

As with the aforementioned transition from a sense of the *public interest* as alike to an idea of the *common good,* representing moral virtue and obligation in society, the term over time has become associated with the more material interests of individuals. Jaede views this progression in its historical meaning as a key shift that impacts our modern understanding of the term as *public interest* changed from 'concerns with moral virtue and an ideal political community towards more pragmatic considerations of the material wellbeing of individuals'.[43]

In academic discourse, the term came into greater use with the prevalence of 'public interest law' following the social revolution in 1960s America. This came in reaction to the civil rights movement in which people protested the unjust racial disparity and mistreatment present in society, amongst other key events. Efforts to represent the *public interest* became increasingly important in politics and law. Louis Brandeis, a lawyer within the U.S Supreme Court at the time, became a central figure in heightening the term's significance as his work centred around the representation of the interests of the general *public*. Alike to Brandeis, many legal and political individuals and entities began to associate the *public interest* with issues of a collective social significance, as many turned their efforts from representing central economic authorities to instead considering underrepresented groups and individuals.

More recently, academic research into the significance of *public interest* has become more connected with economics and also the representation of individuals within a *public.* Lok Sang Ho in his 2012 publication 'public policy and public interest' outlines the economic significance of *public interest* and equally presents the way in which the term may come to function in society through an ''ex ante'' approach that bases the *interest(s)* of its respective society on forecasts as opposed to actual results. He contends that *public interest* is most effectively obtained and maintained in this way when a society or governing body can evaluate a bill, for example, before knowing with all certainty of its impacts: beneficial or harmful. He asserts the need for governments to be impartial in the making of such laws, with his model of the 'representative individual'[44]. Thus, the discursive conversation surrounding *public interest* is one that is changing and has become progressively concerned with the interests of the individual within a collective *public.*

Understanding 'Public interest' in the 2014 UK immigration bill

With respect to the aforementioned significance of 'public interest' in discourse, as understood through various scholarly perspectives, it is important to consider how the term is applied in the text

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[42] Roy, J, ''Polis' and 'Oikos' in Classical Athens' in *Greece & Rome*, Vol. 46, No. 1 (Cambridge university press, 1999), p. 4

[43] Jaede, Maximillian, ''The concept of the common good'' p. 4

[44] Ho, Lok Sang, *'Chapter 1'* in 'Public Policy and the Public Interest' (Routledge, 2012) p. 13

and the extent to which the history of the term interacts with and affects our interpretation of the bill.

It is first important to determine the sense of the 'public' as it is represented in the text, as in its name the *public interest* is tied to a *public* and thus exactly what comprises said *public* becomes central in our analysis of the term. Throughout academic discourse surrounding the concept of *public interest,* it is clear a key point that continues to problematise the application of the concept in law and politics, for example, is the inclusivity of the *public* that such documents (be it a bill or speech, etc) represent.

The text presents a notably economic sense of a *public* and here we are again reminded of the historical shift in the term's meaning from the collective moral good of a society to the more materialistic, and often economic, good of a collective as a state or nation: as Kadri asserts 'public interest has replaced the idea of the ''common good''.[45] In its section concerning 'public interest considerations', the bill specifies its efforts to meet the interests of the public, 'in particular' signalling the importance of 'the economic well-being of the United Kingdom' in such efforts. Those that 'seek to enter or remain' in the UK are in turn deemed more in keeping with such interests if they:

    (a) 'Are less of a burden on taxpayers, and
    (b) Are better able to integrate into society.' (Part 2, 14, 117B p.12)

The above places a distinctly economic value on migrants and thus constructs the *public interest* to be determined by the economic benefits of immigration on the UK *public*, aligning the sense of *public interest* in the text with that of the economic interests of the *public.*

Furthermore, defining the *public* is again complicated in the bill with its descriptions of the people that make up the *public* that it speaks to and for. Lok Sang Ho proposes that for the interests of a *public* to be fully met they need to be made on behalf of an imagined ''representative individual'' – an imaginary person who forgot his identity and who imagined he had equal chance of being anyone in society'.[46] The *public* in this way should ideally be described as without any specific identity. Yet, this identifies another key debate with *public interest* as there are many contradicting perspectives within academic discourse on the matter of representing the *public;* certain scholars, alike to Lok Sang Ho, advocate for the representation of a collective, aside from racial and gendered descriptions, whilst others assert the need to recognise the individuality of specific identities within the collective *public* group.

These conflicting perspectives come to light in the text as the bill represents an unspecified collective as, for example, 'person(s)' is repeated 513 times throughout the bill and is not qualified by any racial or gendered descriptors. Yet, 'person(s)' is often shortened to 'P'. In itself, shortening the word makes the bill concise and perhaps easier to read, and in turn more accessible, but it has an equally dehumanising effect as people are reduced to a single letter, drawing away from the individuality of a 'person'.

In this way defining the identity of the *public* is complex in the text as the inclusivity of the term is at times undermined by the exclusive or specific language through which it is described, with the

[45] Simm, Kadri, 'The Concepts of Common Good and Public Interest: From Plato to Biobanking' in '*Cambridge Quarterly of Healthcare Ethics'* Vol 20, No. 4, (Cambridge University Press, 2011) pp. 554

[46] Ho, Lok Sang, 'Chapter 1' p. 13

specification of the economic interests of the *public* and contradictory presentation of the *public* itself.

Moreover, the distinction between the public and private space and interests is important in our consideration of *public interest,* in regard to the limits of the public space and the intended enforcement of the bill, as outlined in the text.

Returning to the division of the 'polis' and 'oikos' in Ancient Greece, it is clear that the meaning of *public interest*, in terms of the limits of the public and private space, has changed significantly. Despite having a definite authority over the private space and interests of the 'oikos', Roy notes the 'polis', for the most part, 'very seldom passed effective legislation either to protect the oikos or to force the oikos to serve the interests of the polis'[47]. In our modern society, we understand and largely accept the increasing involvement of governments in our private lives as laws are passed that impact people as a collective *public*. For example, we see the extensive reach of authorities within the private space as there is a marked physical encroachment on the lives of the *public* in an enforcement of the bill it terms 'power of entry' (Schedule 6, 8 p.88). 'Power' here at once signals the just authority of law enforcement to enter within a private space to intervene in criminal activity, for example, but the striking physicality of the language here frames such a 'power' in a seemingly violent manner, as it connotes a physical force or strength that may be exerted on the *public*.

The limits of the *public* space again come into question with the racialised discourse present in the text concerning criminality as the phrase 'foreign criminals' is mentioned 12 times throughout the bill. The proximity of foreign identity and criminality here in the repeated phrase interminably connects criminal activity with anyone that is foreign to the UK, excluding that which is 'other' from the *public*. This therefore presents a clear contradiction in the bill as it perhaps betrays its efforts to protect and serve the interests of legal migrants by generalising all 'foreign' identities and in turn aligning those who are 'other' with something criminal, portraying migrants as a group to be opposed.

In addition, the Oxford English Dictionary refers to a definition of *public* to mean 'without concealment' and yet we are presented with certain parts of the bill in which its Immigration Law lacks specificity, complicating how such a *public* can interpret the *interest(s)* it represents. As the majority of the bill is clear and concise, a lack of specificity in itself does not entail that the *interest(s)* of the *public* are being consciously concealed in the document; yet it is also important to note that the wording of certain provisions and schedules in such a way that allows for multiple interpretations attenuates the clarity of these *interest(s)*. For example, in the provision concerning 'discrimination' (Part 3, 28 p.24) it states the 'Secretary of State must from time to time review the code and may revise and re-issue it following a review.', referring to the 'code of practice' outlined on discrimination. Here, the vague time scale of 'time to time' leaves room for interpretation in how the law will be enforced, although such a review is not left to the sole authority of the Secretary of State as they 'must lay the code, and any revision of the code, before parliament.' (ii) Another example of this can be found in its 'public interest considerations' (Part 2, 14 p. 12-14) section wherein the bill states 'little weight should be given to' the private lives or relationships of migrants at 'a time when the person's immigration status is precarious.' (13) Here, again we see a lack of specificity as it is undetermined exactly how much consideration should be given to such details. In this way, the intermittently vague language of the bill prompts concerns over its practical application as Jaede believes the *public interest* is often outlined through vague terms in such texts, allowing for

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[47] Roy, J, ''Polis' and 'Oikos' in Classical Athens' p. 12

confusion in its interpretation, as we perhaps see in the bill or, at its most extreme, leaves such texts 'open to political manipulation'.[48]

Finally, the issue of representation is imperative in understanding *public interest* in the bill as there is an apparent conflict between the comprehensive representation of the interests of the *public* as a collective against the reality of a singular authority that represents the interests of a majority. Throughout academic discourse, *public interest* has been identified as a complicated term in the representation of the singular interests of a *public*, whose often diverse opinions conflict with a view of the *public interest* as unanimous: making the almost exclusive use of the term 'public interest' in the singular particularly pertinent. In the bill, it is clear that the ultimate control is shared by a select group, as there is a limited division of authority, with the role of 'Immigration advisors' (Schedule 6 p.84) and 'designated persons' (Schedule 7, p. 89). 'Secretary of State' is repeated 249 times throughout the bill and it is thus evident that the control of overseeing and instating the Immigration Law lies with a limited minority, with the 'Secretary of State' having the final say over the enforcement of the bill, such as revoking an appeal. The 'Commonwealth Immigrants Act' in 1962 has a similar bearing on a seemingly singular authority as 'Secretary of State' is likewise repeated frequently throughout chapter 21[49]. In both texts, the *public interest* is established by a localised authority, as power is centralised with a minority within the government. Here, the text goes against Lok Sang Ho's model of the 'representative individual' as he asserts the need for deliberation in order for a bill to stand for a substantive democracy[50].

Public interest is often paired with the words 'question' (Part 2, 14, 117A, p. 12) or 'consideration' (ii) in the bill and thus frames the term as a problem or complication to be solved, in turn making such a concept appear intangible and difficult to be realised. In this way, an adequate representation of the *public interest* in the text is called into question as the democratic ambition of representing a broad *public* that encompasses a range of interests seems far from the reality.

Ultimately, understanding *public interest* in the UK Immigration bill becomes an 'epistemic'[51] issue as it remains a complication in such political texts, and indeed in discourse, as to whether governing authorities can ever truly satisfy all those it seeks to represent in its consideration of the *public interest.* The term is thus complex, as we have seen in the definition of the *public*, the proposed impacts of the bill on the *public* and finally in the issue of representation of the *public* in the text. Equally, *Public interest* is not an ahistorical term as it is clear its contextual history is influential in how we come to appreciate its normative contemporary meaning, as its etymological history and significance throughout discourse develops our understanding of its application in the text.

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[48] Jaede, Maximillian, ''The concept of the common good'' p. 2
[49] Chapter 12 in 'Commonwealth immigration act' (No Place: The Home Office, 1962) pp. 1-24
[50] Lok, Sang ho, *'Chapter 1'* pp 4-13

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'Sham Marriages'

By Yang Chen

Marriage derived from French word 'mariage' and its English form was thought of as a derivative of 'marry'. Marriage was originally defined as "the legally or formally recognized union of two people as partners in a personal relationship (historically and in some jurisdictions specifically a union between a man and a woman), the condition of being married and the relation between two people married to each other, matrimony."[52] As can be seen from this definition, the central denotation of the word marriage is the union of two people. Whether marriage should be the union between people of opposite sexes, whether it should be based on something like love and what purposes of marriage are acceptable are not mentioned. Therefore, there is no inherent standard of judging the acceptability and genuineness of marriage in the original definition. The word phrase marriage of convenience, whose early appearance could be traced back to 1711, is defined as marriage "arranged or contracted from motives of convenience, mutual advantage, or expediency" as opposed to love or sexual attraction.1 This definition mentions several purposes of marriage and reveals that marriage of convenience did not specifically refer to marriage for immigration purposes in its early uses.

The origin of the word sham is obscure. It first appeared in a slang with the relevant verb in 1677. A common explanation of its origin is that sham derived from northern dialect form of shame n. and shame v. Sham n. is defined as "a trick, hoax, fraud, imposture; something devised to impose upon, delude, or disappoint expectation; a 'sell.'"[53]

Sham adj. is defined as a property of immaterial things: "pretended, feigned, false, counterfeit; not genuine or true."2 In sham marriage, sham denotes the property of being not genuine that characterizes certain types of marriage especially marriage for immigration purposes.

In EU law, sham marriage is defined as "marriage entered with the sole aim of circumventing the rules on entry and residence," which indicates the emergence of the standard of judging the genuineness of marriage and reveals that in EU law sham marriage specifically refers to marriage for immigration purposes.[54] Legal definitions of sham marriage in S.24 Immigration Act 1999 and S.55 Immigration Act 2014 include both reasons for the marriage and its current characteristic. In S.24 Immigration Act 1999, although sham marriage still mainly refers to marriage for immigration purpose, it is not limited to marriages for immigration purpose and broadens its application. Besides, the two characteristics (a) "genuine and subsisting" and (b) two parties involved intend to live together permanently in the UK become inherent standards of judging whether a marriage is sham or not.3 Similarly, the definition of sham marriage in S.55 Immigration Act 2014 encompasses both the purpose of the marriage and the essence of the relationship. Therefore it does not specifically refer to marriage for immigration purposes.3 In S. 49 Immigration Bill 2014, the definition of sham

[52] Oxford English Dictionary Online, (Oxford: Oxford University Press, 2020), <https://www.oed.com/view/Entry/114320?redirectedFrom=marriage#eid> [accessed 7 June 2020] s.v. marriage, n.

[53] Oxford English Dictionary Online, (Oxford: Oxford University Press, 2020), <https://www.oed.com/view/Entry/177381?rskey=DvGx3o&result=1#eid> [accessed 7 June 2020] s.v. sham, n. & adj.

[54] Helena Wray, The 'pure' relationship, sham marriages and immigration control, in Marriage Rites and Rights, ed. by Miles, J., Probert, R. and Mody, P. eds. (Oxford: Hart Publishing, 2015), pp. 141-66.

marriage entails a marriage (a) at least one of the parties involved is not a British citizen, a national of an EEA state other than Britain or a national of Switzerland (b) devoid of genuine relationship between the two parties (c) at least one of the parties involved enters into the marriage for the purpose of circumventing provisions of the immigration laws or obtaining the right of residence in the United Kingdom.[55]

In the context of 2014 Immigration Bill sham marriage specifically refers to marriage for immigration purposes, which reveals that UK government endeavors to control marriage for sole immigration purposes so as to prevent marital relations from the taint of immigration incentive and protect "pure" marriage ideal. The sociological definition of marriage could facilitate the understanding of the reasons why UK government endeavors to control sham marriage. In most societies, marriage is defined not only as "a permanent social and legal contract and relationship between two people that is based on mutual rights and obligations among the spouses" but also as a social institution in legal, economic, social and spiritual/religious ways."[56] Therefore, UK government's control of sham marriage has its social, political and economic concerns.

The UK government intends to protect the security of the nation by safeguarding the sense of belonging through the control of sham marriage. Bell and Binnie propose that romantically bonded couple is the basic unit for the society.[57] Western romantic love, which is essential to setting up families based on romantically bonded couple, becomes a standard of distinguishing sham marriage from genuine marriage. It also becomes central to the governmentality of marriage migration because it prompts loyalty to family and nation and cultivates emotional attachment to Britishness. Because marriage migration inevitably brings different cultural values into the family, the basic unit of the society, which may undermine the sense of belonging and the emotional attachment to Britishness, the UK government has to guarantee the existence of romantic love between the two parties involved in marriage migration so as to prompt integration. Just as the Home Office once declared that the "use of sham marriage by foreign nationals to gain leave to remain or freedom of movement in the UK" is one of the biggest threats to the immigration control and the national security, sham marriage enables different cultural values to penetrate into the basic unit of the society and may undermine the cohesion of the British society from within.[58] Therefore, the governmentality of marriage migration is intended to prevent immigrants from gaining the citizenship through sham marriage and safeguard the sense of belonging, as proved by Theresa May's words that "their spouse or partner must have a genuine attachment to the UK, be able to speak English, and integrate into our society."[59]

The control of sham marriage serves the social function of maintaining the racial order of British society, which has to be understood with Western romantic love underlying "pure" marriage ideal. According to McGrath, romantic love has been deemed as a racialized emotion ever since the 18th century. It was believed that the experience of romantic love was limited to white people and the marriage of non-white were based on things like material interests instead of romantic love.[60]

[55] The United Kingdom, 2014 Immigration Bill, S. 49.

[56] Ashley Crossman, The Definition of Marriage in Sociology (2019) <https://www.thoughtco.com/marriage-3026396> [accessed 7 June 2020].

[57] David Bell and Jon Binnie, Geographies of sexual citizenship, Political Geography, 25. 8 (2006), 869-873 <doi: 10.1016/j.polgeo.2006.09.002>

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[59] Anne-Marie D'Aoust, A moral economy of suspicion: Love and marriage migration management practices in the United Kingdom, 36. 1 (2017), 40-59 <doi: : 10.1177/0263775817716674> (p. 48).

[60] Maïté Maskens, Bordering Intimacy: The Fight against Marriages of Convenience in Brussels, The Cambridge Journal of Anthropology 33. 2: 42-58, (P. 54).

Because the racial order of the family which is basic unit of the society, needs to reflect the racial order of the society, sham marriage which is devoid of romantic love should be controlled. In 2014 Immigration Bill, marriage for immigration purposes is specifically defined as sham marriage, which reveals that it is treated as a social deviant that threatens the racial order of the society. This indicates that the British government controls sham marriage so as to maintain the racial order of British society.

The marriage migration management centering on the control of sham marriage suggests British government's concern about the socio-economic consequences of marriage migration. Because of the lack of skills and qualification requirements for family migrant visas except the language tests, immigrants who have relatively low levels of education and may even be primary targets of refusal prefer to choose marriage as a means of migration, which gave rise to the stereotypical link between low levels of education and low value on the labor market and those that migrate through marriage. The UK government which believes in this stereotypical link is concerned about the socio-economic consequences of marriage migration, as proved by Theresa May's remark that "[marriage immigrants] must not be a burden on the taxpayer." This concern motivated them to control sham marriage to avoid the negative impacts, which corresponds with a series of measures like introducing pre-entry English language testing for spouses in 2010, increasing income requirements and raising the English proficiency level.[61]

There are some problems underlying the concept of sham marriage. First, it assumes that the immigration advantage of circumventing the rules on entry and residence can be clearly distinguished from other advantages of marriage migration and treats immigration advantage as a distinct type of advantage that corrupts "pure" marriage ideal and deprives the marriage of value and genuineness. Second, it deems marriage migration as a problem while ignoring the fact that marriage migration is only a manifestation of the continuous phenomenon of global movement of population. Third, it assumes marriage and purposes of marriage, which is indeterminable, to be determinable, thus giving rise to terminologies for different types of marriage based on problematic categorization based on problematic categorization.

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'Eligibility'

By Nelly Gypkens

Eligibility in the 2014 UK Immigration Bill

The term _eligibility_ is used exclusively in the third part of the 2014 Immigration Bill. In this third part of the Bill "access to services etc" the word is used 12 times. The first mention of eligibility is in the context of "Penalty Notices" (Part 3, 17, p. 16); in this subsection the term _eligibility period_ is used to shape the conditions of residential tenancy for what is referred to as a "limited right occupier".

The only mention of eligibility outside of chapter 1, is in chapter 2 of part 3, here it is used in a context that differs from its previous usage, as in Point 33 regarding "Immigration health charge" (Part 3, Chapter 2, 33, 2c, p. 27) there is mention of "clearance which may be taken as evidence of a person's eligibility for entry into the United Kingdom for a limited period"(Part 3, Chapter 2, 33, 2c, p. 27) . Whereas before eligibility was used in the context of access to services provided in the UK, this latter use of _eligibility_ is used to describe the status due to which someone is allowed to enter the UK in the first place.

The adjective _eligible_ is used eight times throughout the bill. Six out of those eight times it appears by mention of a person or persons being "eligible for a grant of humanitarian protection" and the consequences of implications of this eligibility. In another instance, under "Disclosure of information etc for prevention of crime etc" (Part 3, Schedule 5, p. 82) the phrase _eligible person_ is used to describe a number of UK officials to which a registration official may disclose documents or information. The latter is the only context in which _eligibility_ as a standard is applied to the United Kingdom and the existing structures dealing with immigration. It is also the only instance in which the specific conditions for _eligibility_ are defined immediately and set out clearly. Every other utilization of the concept in the 2014 UK Immigration Bill is aimed at defining the eligibility of immigrants to access certain services or the UK as a country.

Eligibility – Origins and Meaning

Eligibility, as defined by the Oxford English Dictionary, is understood as "the fitness to be chosen or preferred".[62] The term is used to ascribe desirability and suitability.[63] It is also frequently characterized as "the condition of being eligible for an office or position, entitlement to be considered or chosen for a position, award, or other benefit, usually through the fulfilment of specified criteria"[64]. Both, a "fitness", as well as an "entitlement" can be delineated by _eligibility_. These understandings can neither be seen as mutually exclusive nor should they be blended into a singular definition, instead, they can help to grasp the connotations of eligibility in different contexts.

The word e_ligibility_ is derived from the Latin _ēligere_ to choose and the post-classical Latin _eligibilis_ meaning worthy to be chosen. Historically _eligibility_ has been used as an indication of multiple categories of requirements being met and an object or person being eligible as a consequence of this

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[62] 'Eligibility' in "Oxford English Dictionary." (Oxford University Press, 2018).
[63] 'Eligibility' in "Oxford English Dictionary".
[64] 'Eligibility' in "Oxford English Dictionary".

meeting of requirements. The concept is not perceived as a quality per se, but rather a product of met requirements that distinctly qualify the object or person it is attributed to. A common context in which *eligibility* has been applied since the second half of the 17th century, and is still associated with, is the determination of suitable or qualified partners in marriage.[65] The use of the term to ascribe suitability of partners also exposes the subjectivity of the term and how highly dependent the actual meaning is on the actor it is determined from. While it is also applied in other contexts the persistence of the term in this specific field throughout multiple centuries during which the conventions surrounding the idea of marriage changed rather profoundly, can help understand the simple fact that *eligibility* is by no means clearly defined, does not have an inherent meaning and can, depending on context, be used to indicate or demand vastly different sets of requirements.

The use of the concept of *eligibility* and the word *eligible* in any bill of law has to be understood as the state-sponsored understanding of eligibility.[66]

State Sponsored Categories of Identity

All commonly encountered understandings of *eligibility* engender a very basic dichotomy - one is either *eligible* or not. *Eligibility*, due to this dichotomy, has to be understood as a category. This section of the text aims at exploring the implications of eligibility as a category and linking these implications back to the way the term is used in the 2014 Immigration Bill.

Since the 1970s there is a recognizable trend towards what Alessandro De Giorgi calls "re-bordering of late-capitalist societies against global migrations"[67]. As many European countries developed into more pronounced "national" welfare states offering benefits to their citizens the idea of citizenship came to be more closely connected to being eligible for these benefits. In their writing about "Documenting Individual Identity: the Development of State Practices in the Modern World"[68] Jane Caplan and John Torpey outline identification as "the touchstone of eligibility for a host of activities to which access is restricted"[69]. Both, the focus on access to services and the importance of identification and its connection to eligibility are clearly visible in the structure of the bill. Part 1 "Removal and other Powers" (Part 1, 1, p. 1) has an entire subsection on "Biometrics" (Part 1, 4-10, pp. 4-8) and the provision of biometric data when applying for UK citizenship, in Part 3 Chapter 2 "Other Services etc" there is a subsection on driving licences (Part 3, Chapter 2, 41, p. 31), which are a means of identification and at the same time the licenses being issued is considered a service for which eligibility of access has to be determined.

The use of *eligibility* in this bill creates different levels of access to services and wider societal and political participation. The basis of this limitation of access has to be understood as built on the states' own definition of what qualifies individuals as eligible. So it is imperative that the category of eligibility as it is used in this bill, is not understood as substantiation of the measures put into place, instead, it has to be stood as a measure in of itself. Relating this knowledge back to the dichotomous character of eligibility, we also have to acknowledge that by creating the category of eligibility, the bill also creates the category of ineligibility and exclusion, without defining it or justifying it. Because

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[65] 'Eligibility' in "Oxford English Dictionary".

[66] Jane Caplan and John Torpey, *Documenting Individual Identity* (Princeton University Press: 2018), p.11.

[67] Alessandro De Giorgi, „Immigration control, post-Fordism, and less eligibility", *Punishment & Society* Vol. 12(2), 2010, pp.147-167 (p.147).

[68] Jane Caplan and John Torpey, *Documenting Individual Identity.*

[69] Jane Caplan and John Torpey, *Documenting Individual Identity,* p.12.

these categories are established on the basis of immigration law and in connection with different immigration statuses the bill produces and intensifies the notion of eligibility based on citizenship.

Limited Eligibility

The bill, by its own phrasing, sets out "to make provision about Immigration law; to limit, or otherwise make provision about, access to services, facilities and employment by reference to immigration status"[70]. Immigration status is clearly given as one of the primary indicators of eligibility to access services, but more importantly the primary aim of the bill is to limit "access to services" based on this eligibility.

If we understand the use of the concept of *eligibility*, and thereby putting a specific definition of the term forward that is by no means inherent to it, as a formative part of the political implications of the 2014 Bill, we thereby acknowledge that the UK government is producing conditions for entry to the UK and access to services in the UK, not merely describing them.

Generally, *eligibility* in the 2014 Immigration Bill is mainly utilized to reassert the idea that the eligibility of migrants in the UK is limited. There is quite an extensive body of work dedicated to the key role of migrant communities play in late-capitalist societies and the economic value being placed on migrants in the 2014 bill in connection to 'public interest' has already been elaborated on in the second part of this paper on 'public interest'.

The effect of "subordinate economic inclusion through legal exclusion" is the reproduction of "otherness". Kitty Calavita argues that states have an interest in reproducing "otherness", because it is only due to the oppressive nature of being "marked by illegality, poverty, and exclusion" that makes them to work under conditions and for wages that are no longer viewed by the locals.[71]

Less Eligibility – Eligibility in discourse and political sciences

While the concept of eligibility has not been subject to noteworthy academic discourse on its own, it is quite regularly applied in the social sciences, where eligibility to access services under varied circumstances and the eligibility of decisions is discussed in fields such as education[72] and medicine and health care[73]. Eligibility as a word is so widely applicable that it has to applied to a specific context and understood in the circumstances it is applied to. When assessing the epistemic issues surrounding the concept, this necessity of application and definition is of utmost importance.

One area of discourse worth noticing, especially because it has actively been related to immigration policy is the concept of *less eligibility*. The logic of *less eligibility* was first developed and introduced to British public discourse in the 19th century and was used as the primary reasoning behind the 1834 Poor Laws. Less eligibility, as defined by De Giorgi, holds that "public assistance should never improve conditions of the destitute above the standards of life available to the poorest among the working poor; otherwise public relief would become 'more eligible" (more desirable) than waged worked". He rightfully points out that this logic serves as a way to ensure that "the most

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[70] European Convention on Human Rights, *Immigration Bill* (UK Home Office: 2014), p.1-113 (p.1).

[71] Kitty Calavita, *Immigration at the margins: Law, race, and exclusion in Southern Europe.* (Cambridge: Cambridge University Press, 2015), pp.11-12.

[72] Amanda L. Sullivan, Shanna Sadeh and Alaa K. Houri, "Are school psychologists' special education decisions reliable and unbiased?: A multi-study experimental investigation", *Journal of School Psychology,* Vol. 77, 2019, pp. 90-109.

[73] Sana Loue and Jonathan Foerstel, "Assessing Immigration Status and Eligibility for Publicly Funded Medical Care: A Questionnaire for Public Health Professionals", *American Journal of Public Health,* Vol.86(11), p.1623.

marginalized fractions of the proletarian class will accept any level of exploitation in the capitalist labor market, as this will in most cases be preferable to being punished for refusing to work at the given conditions"[74]. We have to face the harsh reality that state-sponsored categories of access and eligibility and exclusion and ineligibility powerfully reproduce migrants as those marginalized fractions.

Understanding the use of the concept of *Eligibility* in the context of Immigration Policy

It is very necessary to establish the fact that the 2014 Immigration Bill, powerfully influences the life of a big number of people. For that reason alone it is is necessary to critically analyse the categories of identity it utilizes and reproduces. Eligibility has been applied throughout history as an expression of appropriateness and suitability, but also as a synonym for an entitlement and as the expression of a rather subjective notion of someone being a reasonable choice of partner in marriage. This historical use informs our understanding of the word in the bill to be one that is fully based on the state's definition of eligibility. While the term in the context of the bill might be indicated to be self evident in its specificity and while this might deter from the realization that this specificity in itself can be questioned and disagreed upon, we have to acknowledge the dangers and problems implied by this indication. The other, though remaining unmentioned, category established by the use of *eligibility* in immigration law is that of exclusion. Both, *limited eligibility* and *exclusion* contribute to the reproduction of "otherness" of migrants and recognizing the state's interest in this reproduction has to inform our reading of the 2014 UK Immigration Bill and encourage criticism of the way *eligibility* is used in the bill.

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[74] De Giorgi, "Immigration control", pp.147-167.

'Biometric Information'

By Zixuan Wang

***Biometric Information* in the 2014 UK Immigration Bill**

Unlike other terms, "biometric information" is clearly defined in the 2014 UK Immigration Bill:

(a) Information about a person's external physical characteristics (including in particular fingerprints and features of the iris), and
(b) any other information about a person's physical characteristics specified in an order made by the Secretary of State[75]

The bill also emphasizes that biometric information

(a) may only specify information that can be obtained or recorded by an external examination of a person
(b) must not specify information about a person's DNA

The definition in the Bill clearly makes a distinction between biometric information, which is mostly obtained through "external examination", and DNA, which delves deeper into the internal features (i.e. genome) of human beings.

Analysis of the etymological history of *Biometric Information*

The definition of "biometric information" in the 2014 UK Immigration Bill greatly correlates with the definition of OED in which "biometrics"[76] means "the use of unique physical characteristics (fingerprints, iris pattern, etc.) to identify individuals, typically for the purposes of security.", and "biometric"[77] means "designating or relating to physical characteristics that are unique identifiers of individuals (fingerprints, iris pattern, etc.); (of an identification document, security system, etc.) employing such characteristics.

Both the Immigration Bill and OED have tried to authorize the use of biometric information when offering definitions. The Bill mentions "an order made by the Secretary of State" justifying certain retrieval of biometric information, while OED similarly emphasizes that it is used for the "purposes of security" in both of the relevant entries of "biometric" and "biometric". It reveals most part of the logic of collecting biometric information: a top-down policy deployed for homeland and border security.

Understanding *Biometric Information* in the 2014 UK immigration bill

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[75] European Convention on Human Rights, Immigration Bill (UK Home Office: 2014), p.1-113 (p.31).
[76] 'Biometrics' in "Oxford English Dictionary." (Oxford University Press: 2000)
[77] 'Biometric' in "Oxford English Dictionary." (Oxford University Press: 2000)

This logic might seem rather convincing for people being protected within the borders. However, as biometric information solely focuses on the "external examination of a person", individuals who are "whole persons" with a coherent, situated self and a biography are reduced to "bare life"[78] which is simply judged on the bases of singular signs[79], and thus external physical characteristics are enough to decide their likelihood of being of high risk.

From OED, "biometrics" and "biometric" share the etymology of "biometry"[80] — "the branch of science that deals with the statistical analysis of numerical data relating to living organisms". The morphology of "biometry" which combines "bio" and "metry (action, process or art of measuring)" also indicates that "biometry" represents the measurement of parts of the body. As its lexical meaning indicates, the discourse further reduces identity to code, or the body to a password (Kloppenburg & van der Ploeg, 2018). Unlike Foucault's disciplinary power, the latest technologies no longer see the body as something that needs to be trained and disciplined, but rather as a source of unprecedented accuracy and precision[81]. Individuals silently disappear, replaced by figures, and categories.

The way that the biometric information is obtained also denotes that it is not knowledge based on mutual communication, but rather knowledge based on one-way observation. In essence, the concept of biometric information is built upon the feature of individuals being passive information providers, while authorities actively require and interpret relevant statistics. It is clearly knowledge marked by a power relation. The Bill specifies the biometric registration regulation, as well as effect and penalty of non-compliance, which altogether frames a power gap between authorities who receive the information and the individuals who provide the information. Consequently, the body turns into a product of certain power/knowledge relations. Authorities have been empowered to decide upon how the biometric signals speak for individuals, and thus make bodies become marked by "biopolitical tattoos", which easily distinguish the good and the bad. As a result, when crossing borders, rather than determining any preexisting identity, practices may be instead used to establish identity[82]. Immigrants have lost their control on the narrative they could possibly present. Rather, the process becomes non-verbal with the biometric information speaks for itself. Douglas views body control as an expression of social control as "the social body constrains the way the physical body is perceived[83]. Biometric information, under this circumstance, can be also seen as an image of the changing mechanisms of social exclusion[84].

However, although biometric technologies are known as infallible and unchallengeable verifiers of the truth about a person, the identity of the subject can never be entirely secured, and the labels of

[78] Aas, K. F. (2006) 'The body does not lie': Identity, risk and trust in technoculture, Crime, Media, Culture, 2(2), pp. 143–158.

[79] Amoore, L. (2006) Biometric borders: Governing mobilities in the war on terror, Political Geography, 25(3), pp. 336–351.

[80] 'Biometry' in "Oxford English Dictionary." (Oxford University Press: 2000)

[81] Aas, K. F. (2006) 'The body does not lie': Identity, risk and trust in technoculture, Crime, Media, Culture, 2(2), pp. 143–158.

[82] van der Ploeg, Irma (1999a) 'The Illegal Body: "Eurodac" and the Politics of Biometric Identification', Ethics and Information Technology 1: 295–302.

[83] Douglas, Mary (2005) 'The Two Bodies', in M. Fraser and M. Greco (eds) The Body: A Reader, pp. 73–7. London: Routledge.

[84] Young, Jock (1999) The Exclusive Society: Social Exclusion, Crime and Difference in Late Modernity. London: Sage Publications.

"terrorist", "immigrant", "asylum seeker" and "drug dealer" can never tell the whole story. As the need for verbal communication is minimalized, profound questions of human nature, character evaluation, danger and trustworthiness are turned into simple, empirical questions of false and positive that can be answered by technology[85]. Therefore, the possibilities for doubt and negotiation is almost eliminated.

Consequently, when the ambivalence and uncertainty are believed to be controlled by biometric information to the fullest extent, a binary universe of acceptance or denial, positive or negative, right or false is established. It implicitly draws a clear, clean and unambiguous line between legitimate/low risk and illegitimate/high risk mobilities[86]. Another clear line is drawn with an independent section called "identifying persons liable to detention" included in the Bill. It mirrors the argument that surveillance technologies tend to be first introduced over populations with suspicious or disreputable social status[87]. Through the use of biometric information, the implicit distinction of the "us" and the "other" will be built into an automated system. As a result, the experience of being checked as an outsider is no longer reserved only for border crossings, rather, 'the border is everywhere' (Lyon, 2005, as cited in Aas, 2006).

Understanding how the retrieval of biometric information is rationalized through governmental policy texts offer a means to falsify the idea that certain surveillance technologies and their application are always neutral regarding categories of determination, as technologies are looked for with specific purposes in mind[88]. Examining biometric practices and surveillance in this way is instructive and it invites us to understand the social relations and dominating discourses that are part of the enabling conditions of certain technologies.

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[85] Aas, K. F. (2006) 'The body does not lie': Identity, risk and trust in technoculture, Crime, Media, Culture, 2(2), pp. 143–158.

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Conclusion

The words used in the 2014 UK Immigration Bill do not have inherent meanings and should, in their implications and connotations, not be taken for granted. Tracing their history can substantially inform our understanding of the document they are used in and help to more clearly identify the intention behind the compilation of the bill.

Understanding the heritage of the word nationality, and gaining an awareness that it stems from the period of enlightenment and was in its origins very much informed by european intellectuals and therefore originally strongly associated with white individuals, encourages us to critically view and even question the way 'nationality' is used and the effects of this use.

The knowledge that it is very much a contested idea that governments are capable of representing 'public interest' helps us to realize where that very concept is used as a legitimization for certain laws and can animate us to more consciously recognize that the utilization of the term is a claim that can be contested.

'Sham marriages', as a term, communicates a specific understanding of 'legitimate' marriages. 'Eligibility' and 'Biometric Information' establish dichotomies within the bill that through law become reproduced in society and should therefore by no means be taken as self-evident or categorically legitimized by the context they are used in.

The phrases analyzed in this document are just five words, chosen and written about as examples. Through these examples we hope to, if anything, have proven that single words can include and communicate complex ideas and ideological connotations that powerfully affect the documents that they are used in. The history of our words, an 'Archaeology of Knowledge'[89] can and should inform our critical reading of the 2014 UK Immigration Bill, because of its capacity to reproduce power and social relations, that so directly and incredibly influence people's lives.

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[89] Michel Foucault, *The Archaeology of Knowledge* (Routledge, 2013).