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## PROTECTION OF IMMIGRANT AND RACIAL MINORITIES: A SURVEY IN BRITISH LEGAL HISTORY

RICHARD PLENDER\*

The American lawyer, aware of the great volume of state and federal legislation which governs racial discrimination in the United States and aware of the growth of racial friction in Britain during the last two decades, is apt to be surprised by the relative paucity of anti-discriminatory legislation in the United Kingdom. The main corpus of British law on racial discrimination is now contained in the Race Relations Act 1968 and the few remaining sections of the Race Relations Act 1965. The scarcity of anti-discriminatory legislation in Britain is popularly attributed to the novelty of racial discrimination in that country<sup>1</sup> In the same way, the supposed novelty of Britain's so-called race problem is often thought to explain the great interest in the subject shown by members of the academic community in the last 20 years.

During that time, the nature of racial discrimination in the United Kingdom has been examined,<sup>2</sup> compared,<sup>3</sup> and explained in terms of accommodation between immigrant and host<sup>4</sup> and in terms of multiple conflicts and relationships between numerous interrelated social and economic groups.<sup>5</sup> The accompanying legislation has been the source of considerable discussion in periodicals<sup>6</sup> and books.<sup>7</sup>

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1. See, e.g., the remarks made by Mrs. S. Williams, M.P., during the Parliamentary debate on the Race Relations Bill of 1965. 711 PARL. DEB., H.C. (5th ser.) 1018 (1965).

2. For an exhaustive survey of discrimination in the fields of employment, provision of services, and housing, see the POLITICAL AND ECONOMIC PLANNING REPORT, RACIAL DISCRIMINATION IN BRITAIN (1967) [hereinafter cited as P.E.P. REPORT].

3. The STREET REPORT of 1967 compared the problems of anti-discrimination laws in Canada and the United States, and made recommendations for reform of English law on the subject.

4. S. PATTERSON, DARK STRANGERS (1963).

5. J. REX & R. MOORE, RACE, COMMUNITY AND CONFLICT 12-13 (1967).

6. Aldridge, *The Race Relations Act, 1965*, 109 SOL. J. II 947 (1965); Hepple, *The Race Relations Act, 1965*, 29 MOD. L. REV. 306 (1966); Jowell, *The Administrative Enforcement of Laws Against Discrimination*, 1965 PUB. L. 119; Lasok, *Some Legal Aspects of Race Relations in the U.K. and the U.S.A.*, 16 J. PUB. L. 326 (1967); Partington, *The*

The object of this article is not to repeat the efforts of those who have produced this volume of published work, nor specifically to compare the experiences of the United Kingdom and the United States. Instead, the purpose of this article is to examine the history of the judicial and legislative antecedents of the Race Relations Acts and to explain and compare the various forms of resentment which immigrants to the United Kingdom have attracted. It is thought that one elementary lesson will appear from the following pages, namely that the Race Relations Acts 1965 and 1968 did not constitute radical departures from an ancient policy of maintaining unqualified freedoms of speech, contract, and association. Although it is true that the social problems, discriminatory practices, and protective legislation which have accompanied the current migration of non-white Commonwealth citizens to Britain are not mere repetitions of previous occurrences, it is no less true that immigrants to the United Kingdom have very frequently encountered resentment, and that the British Government has very frequently felt constrained to adopt measures designed, directly or indirectly, to protect immigrant minorities from various forms of discriminatory treatment. That lesson, though not profound, may provide the basis for further conclusions.

In the first place, it tends to add credence to the writer's personal conviction that the tensions which now mar the relations between the white and non-white communities in the United Kingdom consist of something more than racial friction. In the writer's assessment, to regard these tensions as "racial discrimination pure and simple" is to adopt a dangerously simplified approach which may divert attention from the complex structure of cultural, linguistic, economic, and social interreactions which imbricate with the racial conflicts between Britain's various ethnic groups.

Secondly, once we have learned the elementary lesson that immigrants

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*Race Relations Act, 1965—A Too Restricted View?*, 1967 CRIM. L. REV. 497 (Eng.); Thornberry, *Law, Opinion and the Immigrant*, 25 MOD. L. REV. 654 (1962); Thornberry, *Committal or Withdrawal*, VII RACE 73 (1965); Williams, *Racial Incitement and Public Order*, 1966 CRIM. L. REV. 320 (Eng.) See also 1967 CRIM. L. REV. 179 (Eng.); 22 J. CRIM. L. 244 (1958) (Eng.); 23 J. CRIM. L. 54 (1959) (Eng.); 27 J. CRIM. L. 145 (1963) (Eng.); 28 J. CRIM. L. 136 (1964) (Eng.); 31 J. CRIM. L. 103, 253 (1967) (Eng.); 111 SOL. J. I 341 (1967); 111 SOL. J. II 625, 652, 699, 721, 857 (1967).

7. J. GRIFFITH, *LEGAL ASPECTS OF IMMIGRATION*, in *COLOURED IMMIGRANTS IN BRITAIN* (1960); B. HEPPLER, *RACE, JOBS AND THE LAW IN BRITAIN* (1968); I. MACDONALD, *RACE RELATIONS AND IMMIGRATION LAW* (1968). The term "coloured" is a British idiom used to denominate all non-white people in general. E.g., an Indian, a Pakistani, an African, and a Jamaican are all "coloured" people.

to the United Kingdom have often suffered resentment, it becomes possible for us to concentrate our attentions not on the obvious similarities between the treatments received by Francigenae, Huguenots, and Pakistanis, but on the numerous subtle differences between the treatments meted out to members of successive waves of immigration. One of the objectives of this article is to distinguish between the various forms of reception which immigrants have tended to attract.

Thirdly, our elementary lesson will constitute a caveat against premature comparisons of the American and British experiences. Both in the United States and in the United Kingdom, there may be seen patterns of reaction and interaction, rejection and accommodation, between a substantially white majority and a substantially non-white minority. Both in the United States and in the United Kingdom the non-white minority tends to be economically and educationally subordinate. Both in the United States and in the United Kingdom the symptoms of reaction or interaction between the majority and the minority can be seen in such phenomena as the increasing geographical concentration of the non-white communities within visible urban ghettos.

However, it is not insignificant that the presence of a substantial "coloured" population in the United Kingdom is a recent phenomenon. The coloured persons now living in the United Kingdom are mainly those, or the descendants of those, who have immigrated into the country since 1953. The immigration has consisted mainly of British subjects—that is, citizens of any Commonwealth country—for such subjects were free from immigration control prior to the passage of the Commonwealth Immigrants Act 1962 (amended in 1968 and 1969, and currently under revision) <sup>8</sup>

From 1953 until about 1964 the main group of British subjects (Commonwealth citizens) immigrating into the United Kingdom consisted of persons from the present or former British territories in the Caribbean (the West Indies). Since then, the main influx of such subjects has been from Northwest India and Pakistan. The new immigrants thus tend to be brown whereas the earlier immigrants tended to be black, but it should be remembered that a considerable amount of migration of British subjects to the United Kingdom has, for two decades, consisted of people from the Commonwealth territories in Africa and the far east (mainly Ghana, Nigeria, and Hong Kong). Furthermore, a small but not insig-

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8. Commonwealth Immigrants Act of 1968; Immigration Appeals Act of 1969; Immigration Bill of 1971.

nificant minority of the Commonwealth immigrants to the United Kingdom are white, predominantly repatriates from newly-independent territories and from Australasia.

Alien immigration into the United Kingdom has not, since 1949, exceeded 25,000 per annum. The most numerous alien immigrants to the United Kingdom at present are Italians, although persons of Polish descent continue to outnumber all other groups of persons of foreign origin now resident in the United Kingdom. Hardly any of the aliens currently entering or residing in the United Kingdom are coloured. Nevertheless, although it is clear that the chief victims of adverse discrimination in the United Kingdom are non-white, it is equally clear that white alien immigrants also suffer from discriminatory practises.<sup>9</sup> In view of these facts, we may learn to be most reluctant to assume that there is more than a superficial similarity between the American pattern of discrimination against blacks, and the British pattern of discrimination against coloureds. Instead, we may learn to distinguish between various patterns of American discrimination and to compare the British experience with discrimination against Puerto Ricans in New York, against Chicanos in California, or against Cubans in Florida or Puerto Rico.

#### EARLY ENGLAND

##### *Francigenae*

The British Isles have been subjected to so many waves of settlement that it is arbitrary to select one date and designate earlier settlers as "indigenous" and later arrivals as "foreign." For the sake of convenience this survey begins with the Norman Conquest. This is the traditional starting point for surveys of this kind,<sup>10</sup> and may be justified on the grounds that the settlers who entered England immediately prior to that date, the Danes, were culturally connected with the Angles and Saxons, as well as on the grounds that it was in the tenth and eleventh centuries that the population of England came to be welded into a recognizable unit. Thus, the Normans and their followers, the *Francigenae*, were regarded as a race separate from the "English." The separateness of the

9. The relative rates of incidence of certain forms of discrimination against white and non-white immigrants in relation to letting of rented housing accommodation, provision of employment, terms of employment, and provision of goods, facilities, and services were examined in the P.E.P. REPORT, *supra* note 2.

10. See W. CUNNINGHAM, *ALIEN IMMIGRANTS TO ENGLAND* 3 (1897); T. ROCHE, *THE KEY IN THE LOCK* 13 (1969).

racas was recognized in the laws of William I, one of which recalled that castles and boroughs had been established for the protection of the *racas* and peoples of the realm (*ad tuitionem gentium et populorum regni*)<sup>11</sup> Indeed, it was characteristic of the statutes of the period to state whether or not they were binding on all the King's subjects "both English and Norman."<sup>12</sup>

Normans and English occupied distinct positions in the social hierarchy Although one early law of William I refers to "*omnibus baronibus, Francis et Anglis, de Wirecestrica*,"<sup>13</sup> it is clear that the English occupied a small minority of the tenants-in-chief.<sup>14</sup> For two centuries after the Conquest the English language was not used in the royal court, although some statutes, at least, were translated into English.<sup>15</sup> Each of the races lived according to its own legal system, and many of the most illuminating of William's laws dealt with the conflict of laws which arose when a member of one race had dealings with a member of the other. For example, if a Norman summoned an Englishman for perjury, murder, theft, homicide, or "ran,"<sup>16</sup> then the Englishman could choose to defend himself by the Norman method of trial by combat or by the English method of ordeal by iron.<sup>17</sup>

The resentment of the Normans by the English is now proverbial. It was manifested not only in the rebellion of 1069 but in innumerable less organized acts of violence. Indeed, the frequency of assaults on the Francigenae appears to have been one of the chief causes of the introduction of the Norman system of communal responsibility for crime.<sup>18</sup>

### *Mercenaries, Courtiers, and Clerics*

The Flemish mercenaries, the Provençal courtiers, and the Italian clerics, whose immigrations into England followed that of the Normans,

11. *Willelm Articuli Retracti* 11 (1); A. ROBERTSON, *THE LAWS OF THE KINGS OF ENGLAND FROM EDMUND TO HENRY I* 248 (Robertson transl. 1925)

12. A. ROBERTSON, *supra* note 11, at 230, 232, 238, 244, 276, 284, 288.

13. Decree concerning the Coinage, *reviewed in* A. ROBERTSON, *supra* note 11, at 284.

14. CAMBRIDGE MEDIEVAL HISTORY 17-18 (1936)

15. Episcopal Laws, *reviewed in* A. ROBERTSON, *supra* note 11, at 236.

16. *I.e.*, overt robbery

17. Ten Articles of William I, Article 6; A. ROBERTSON, *supra* note 11, at 240-41.

18. If a man was found murdered, and the hundred in which the body was discovered could not prove, by "presentment of Englishry," that the deceased was English, he was presumed Norman, and the hundred was obliged to pay the murdrum. See D. MATTHEW, *THE NORMAN CONQUEST* (1966); G. RADCLIFFE & G. CROSS, *THE ENGLISH LEGAL SYSTEM* 19 (1964).

attracted hostilities scarcely less intense than those aroused by their Norman predecessors. It is, however, clear that the insular resentment of these aliens bore little relation to the number of settlers. Rather, its character was primarily political.

The Flemish troops were originally resented by those nobles who objected to the strengthening of royal power through foreign agency. Later, when Flemings were employed against the King, they were resented as enemies. When Jordan Fantosme came to write his chronicle of the war of 1173 he castigated the Flemish mercenaries under Hugh Bigod. The chronicle contains the lines of a song supposed to have been sung by the mercenaries:

We have not come into this country to dwell  
But to destroy King Henry, the old warrior,  
And to have his wool which we desire.

Then the chronicler added his own comments:

Lords, that is the truth, the most were weavers,  
They did not know how to bear arms like knights.<sup>19</sup>

Now, the chronicle is inconsistent when it states, on the one hand, that the troops were not professional soldiers but weavers, and on the other that they had come to fight and not to settle. It is clear from the Pipe Rolls<sup>20</sup> that many of the mercenaries who escaped the Battle of Bury did not return to Flanders, but settled in the northern and eastern counties, where they formed the nucleus of a Flemish community which was to expand during the reign of Edward III.

As for the clerics and courtiers, they too were resented for political reasons. Among the chief opponents of the influx of foreign clerics and courtiers were Simon de Montfort and the Archbishop of Canterbury, who were both of alien extraction. Misconceptions about the effects of this immigrant wave were rife. In 1245, the magnates stated that Italian clerics exported from the country 60,000 marks every year.<sup>21</sup> This was clearly a gross exaggeration, because the sum of 60,000 marks exceeded the total annual revenue of the King. Moreover, F.M. Powicke has

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19. J. FANTOSME, *CHRONICLE OF THE WAR BETWEEN THE ENGLISH AND THE SCOTS IN 1173 AND 1174*, at 46-47, lines 999-1005 (F. Nicholas transl. 1848).

20. E.g., the Pipe Rolls of 22 Henry II, at 140, contain references to the mercenaries in Northumberland.

21. See H. MCKENZIE, *THE ANTI-FOREIGN MOVEMENT IN ENGLAND, reviewed in HASKINS ANNIVERSARY ESSAYS* ch. 9 (C. Taylor ed. 1929); *MEDIEVAL STUDIES IN HISTORY PRESENTED TO F.M. POWICKE* (R. Hunt ed. 1948).

drawn attention to the fact that some of the arguments used against the immigrants were inconsistent:

If the foreigners resided, their presence intensified objections to aliens as such, especially to the Provençal, Savoyard and Poitevin pensioners of the royal court. If they did not reside, their absence gave force to the charge that the Kingdom was being drained of its wealth.<sup>22</sup>

Since the resentment of mercenaries, clerics, and courtiers arose largely from the fact that these groups were powerful, there was no need for statutes to protect them from discrimination.<sup>23</sup> Opposition to the mercenaries was intense, and one of the most remarkable events in the history of this opposition was the murder of Walcher of Lorraine, who fell victim to the indignation aroused by the turbulence of his followers.<sup>24</sup> But this murder was not the cue for the passage of a protective statute, and eventually the efforts of the Crown were primarily directed at the eradication of the mercenaries' presence. Moreover, violence was rarely employed against the royal and ecclesiastic favourites, other than in the Civil War, when the King protected his entourage in order to protect himself. Rather, statutes make it clear that the clamor of the King's "faithfully liege people" took the form of protests and "divers petitions."<sup>25</sup>

### *Jews*

The growth of the Jewish community in England during the Norman and Angevin period produced widespread antagonism and frequent outbreaks of violence. Under the Norman Kings the Jews were specially protected as royal agents and tax-collectors. Their privileges became a source of resentment, and their wealth and revenue functions increased their unpopularity. In 1130, the Jews were accused of killing a sick man who had probably gone to them for healing, and riots ensued. The King responded by fining the Jews of London £2,000. This immense sum, equal to one-tenth of the annual royal revenue, considerably reduced

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22. I F POWICKE, *KING HENRY AND LORD EDWARD* 277 (1947). See also II F POWICKE, *KING HENRY AND LORD EDWARD* 452, 540-41 (1947).

23. Indeed, in the late fourteenth century, Parliament, expressly giving way to popular demands, imposed certain disabilities on aliens in respect of tenure of benefices. 3 Rich. 2, c. 3 (1379); 7 Rich. 2, c. 12 (1383).

24. Simeon Dunelm, R.S., I, at 113.

25. *Prologue* to 3 Rich. 2, c. 3 (1379).



the King's debts to his Jewish creditors.<sup>26</sup> The year 1144 witnessed the first recorded accusation of ritual murder, supposed to have been committed by the Jewish community upon a small boy.<sup>27</sup> Numerous similar accusations—frequently involving charges that the Jews had crucified their victim upside-down—were made in subsequent years, and there is evidence that these accusations were widely credited as late as 1744.<sup>28</sup>

Anti-Semitism was rife not only in England but throughout Western Europe. This sentiment was fostered by the crusades. Indeed, one of the causes of the Jewish immigration into England in the late eleventh century was persecution engendered by the crusading spirit, involving not only the exclusion of Jews from profitable activities, but also occasional massacres. In 1146, Bernard of Clairvaux thought it necessary to give his famous appeal against the molestation of Jews. The growth of crusading fervor in England late in the reign of Henry II, and throughout that of Richard I, produced an increase in anti-Semitism in England. The anti-Judaist legislation of the Third Lateran Council and the Assize of Arms left the Jewish community particularly vulnerable to violent attack. In 1189 a Jewish deputation arrived at the coronation of Richard I to present gifts—probably to secure renewed guarantees of royal protection. It seems that some of the Jews slipped through the military cordon to gain a better view; they were removed with excessive force, and a riot broke out. A story that the King had ordered the extermination of the Jews spread throughout Westminster: Jewry was set ablaze. The King's justiciar failed to make any impression on the riots, and at least 30 Jews were killed. In the following year there were even more serious disturbances in Kings Lynn, where the greater part of the Jewish community was slaughtered. In Norwich, Lincoln, Colchester, and York similar episodes took place.

During King John's reign political opposition to the Jews overlapped with religious, ethnic, and social resentment. The nobles objected to the strengthening of the King's powers by Jewish money no less than to its strengthening by foreign mercenaries. It is clear that the Jews of the period were not immediately recognizable as distinct from the gentile population, because in 1215, when the Fourth Lateran Council attempted to prevent sexual intercourse between Jews and Christians, it recommended that all Jews be obliged to wear a badge in order that they

26. A. ROTH, *A HISTORY OF THE JEWS IN ENGLAND* 8 (1964).

27. *Id.* at 9.

28. C. MOLLOY, *DE JURE MARITIMO* (1744).

might be easily distinguished. In 1218, a royal decree implemented the Council's recommendation, and specified the form of the badge in detail.<sup>29</sup> However, the rule was not properly enforced until 1253.<sup>30</sup>

Miscegenation was a serious offence. In 1222 a deacon at Canterbury, who had embraced Judaism and a Jewess, was degraded and handed over to the sheriff of Oxford, on whose instructions he was burned. Resentment against the Jewish community continued—and increased—throughout the thirteenth century. In 1244, Oxford students rioted against the Jews. Not until the expulsion of the Jewish community in 1290 did the riots and persecutions cease.

It seems that Henry I was the first monarch to issue a charter specifically designed to protect the Jewish community. By this, the King guaranteed to the Jews freedom of movement, exemption from ordinary taxation, and protection from misuse. The terms of the Charter were generally observed by Henry and Stephen; Henry II extended his grandfather's charter, "granting the Jews of England the privilege of internal jurisdiction in accordance with Talmudic law,"<sup>31</sup> except in the case of offences against public order. In accordance with the spirit of these charters, the Jews were permitted to seek the protection of royal soldiers when their safety was threatened. In particular, they were allowed to take refuge in the King's forts.

The charters of protection for the Jews applied not only to protection against riots, but also to the regulation of commercial transactions between Jewish and Gentile groups. The *Magna Carta Judaeorum* of 1190 dealt with some of the problems of conflict of laws which arose when such transactions took place. It provided that in the case of a trial involving a Jew on the one side and a Christian on the other, each contestant should produce two witnesses, including one Christian and one Jew. Further, a Christian who sued a Jew should appear before a peer of the Jew. In cases involving disagreements arising from loans by Jews to Christians, the *Magna Carta Judaeorum* provided that the Jew should prove the capital and the Christian should prove the interest.<sup>32</sup> Moreover, during the minority of the heir of a debtor the Jew was not to be disturbed of the debt. Finally, it was significant that the *Magna Carta*

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29. Close Rolls 378b (1218).

30. H. RICHARDSON, *ENGLISH JEWRY UNDER THE ANGEVIN KINGS 178-80* (1960).

31. A. ROTH, *supra* note 26, at 10.

32. Pipe Rolls, 31 Hen. 1, c. 53, §§ 146-49 (1130). The Pipe Rolls are replete with references to Jewish creditors even as early as 1130.

*Judaeorum* of 1190 reiterated that most prosecutions of Jews were to be determined according to Jewish criminal law

Ecclesiastical practise, if not ecclesiastical law, protected the Jews further. The Jewish community of London transacted business within the precincts of St. Paul's, despite a canon law prohibition on such trade. By the *Magna Carta Judaeorum* of 1190 Jews were forbidden to deal in bloodstained garments; but it is known that the Bishop of Ely pledged sacred relics with the Jewish moneylenders of Cambridge.<sup>33</sup> Canon law forbade Jews to build synagogues, and provided that if they did so the building was to be forfeited to the Crown.<sup>34</sup> However, even in early times, there was nothing to prevent Jews from rebuilding old or damaged synagogues,<sup>35</sup> and during the reign of King John the Jews were allowed to build synagogues and other places of worship.<sup>36</sup>

Of course, the laws designed for the protection of the Jews were soon balanced, and later outweighed, by laws which discriminated against them. Successive monarchs took measures to ensure that on the death of a wealthy Jew, the latter's property would escheat to the Crown. The most notable of these claims to Jewish property was the seizure of the goods of Aaron of Lincoln. To collect Aaron's property a special branch of the exchequer, the *Scaccarium Aaron*, was created. The establishment of Justices of the Jews under Richard, and the development of this body into the *Scaccarium Judaeorum* resulted in massive sapping of Jewish wealth. Indeed, it has been suggested that the Star Chambers may have originated in the *Scaccarium Judaeorum*.<sup>37</sup>

Tallages were levied at specially high rates on Jews, notably in 1159, 1188 (when Christians paid one tenth of their wealth and Jews one quarter), 1210, 1275, 1276, 1277, 1278, and 1289. The Statute of Jewry 1253 required Jews to obtain licences to engage in financial transactions, imposed tallies to secure loans, prohibited the use of penalty clauses, and barred compound interest. Another statute in 1258 required Jews to transact business only in approved places and to register all debts. The Statute of Jewry 1275 prohibited Jews from engaging in usury

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33. I WHARTON, *ANGLIA SACRA* 645-46.

34. *Decret. Gratian, lib. V, Surnus Concil., tom. III*, at 726. In 1231 a synagogue was seized in accordance with this law.

35. C. MOLLOY, *supra* note 28, at 470.

36. *Rot. Reg. Johannis*, Part I, at 28.

37. The name "star chamber" may be derived from the Hebrew word "shetar," or from the star of David.

Jews were forbidden to reside in some districts. One statute<sup>38</sup> forbade them to live in Newcastle during the reign of Henry III and his heirs, and another in 1245 required them to live only in areas where Jewries already existed. Moreover, the policy consistently operated by Edward, and generally adopted by his forbears, was that the Jews were permitted to reside in England only so long as they were of benefit to the Crown.<sup>39</sup> The Crown afforded certain rights and privileges to the Jews until the expulsion—and increasingly, these guarantees were testimonies of the economic and social disabilities under which the community labored. The *Magna Carta Judaeorum* of 1196 guaranteed to Isaac, fil. Rabbi Josce and his “men” freedom from molestation, just as if these Jews were “the King’s chattels.”<sup>40</sup> In 1203 John reiterated to the Lord Mayor of London his guarantee of protection to the Jews, and added: “If I give my protection even to a dog, it must be kept inviolate.”<sup>41</sup> Even when the Jews were expelled, Edward issued a special edict which provided that they should not be harmed or hindered in transit.<sup>42</sup>

### *Flemings*

The exodus of the Jews from England was contemporaneous with, and facilitated by, an influx of French and Flemish tradesmen, financiers, and craftsmen. Edward I had scarcely approved the expulsion of the Jews when he found it necessary to order his subjects in market towns not to molest foreign immigrants. Indeed, he gave special protection to some foreigners by decreeing that merchants from Gasgony and Guienne who were under his obedience should be treated as denizens.<sup>43</sup> Edward’s receptive policy towards aliens brought him into conflict with the towns which had obtained charters of self-government and had used these powers to impose restrictions on aliens. In the first year of his reign, Edward had granted to London the *Liber Costumarum* which impliedly confirmed that the citizens of London possessed the power of compelling foreign merchants to lodge with officially-appointed hosts.

38. 16 Hen. 3, c. 18 (1231); cf. 18 Hen. 3 (1233)

39. “Nullius Judeus remeneat in regno nostro nisi talis sit quod regi possit servire, et bonos plegios inveniat de fidelitate. Alii vero Judei, qui nihil habent unde regi serviant, exeant de regno infra instans festum sancti Michaelis.”

40. Jews were occasionally treated as the King’s chattels—Henry pledged a Jew for 500 marks to Richard of Cornwall.

41. A. ROTH, *supra* note 26, at 33.

42. II ROTULORUM ORIGINALIUM IN SCACCARIJ ABBREVIATIO 40, 103 (1805).

43. HISTORICAL MANUSCRIPTS COMMISSION REPORT XIV, App. VII (1904).

On the other hand, Edward I and Henry III frequently granted special licences to foreign merchants, giving them the right to choose their own lodgings, and even to rent houses. In 1285 Edward deprived London of its charter. When Edward restored the charter in 1298 the city council at once tried to compel aliens to live with appointed hosts. However, the King replied by issuing to merchant aliens his *Carta Mercatoria*—letters patent, which have been aptly described as “the real Magna Carta of the alien merchant.”<sup>44</sup> The charter provided that aliens should be relatively free to choose their own dwellings and remain in England for an indefinite period.

The official opposition to alien immigration, which took the form of protests from the powerful cities, was paralleled by unofficial opposition, which took the form of disturbances in which aggrieved artisans and other unruly elements participated. Even by 1290 there had been a considerable history of anti-Flemish sentiment in England. In 1270 Henry III had expelled all Flemings other than those who had his permission to enter the Kingdom for cloth manufacture and those who had married and established domiciles there.<sup>45</sup> However, Edward actively encouraged Flemish weavers to enter and settle in England and succeeded in attracting considerable numbers of them to Norfolk and Lancashire, areas which had been the scenes of the most violent anti-Jewish disturbances.<sup>46</sup> Depredations were inflicted on the Flemings during the Peasants’ Revolt as a consequence of rivalry between them and indigenous artificers. During the fourteenth century there was a series of anti-Flemish riots, and although special letters of protection were granted to the foreigners of London, animosities could not be suppressed.<sup>47</sup>

In response to pressures of this kind, Edward II revoked the *Carta Mercatoria*, but Edward III reinstated the charter and, aided by landed interests in the Commons, persuaded Parliament to pass a series of Acts to protect foreigners against the towns.<sup>48</sup> In particular, the Statute of York 1335 began by asserting that merchant aliens might buy and sell certain commodities freely, despite the restrictions contained in some of the towns’ franchises,<sup>49</sup> and continued by providing that if such a merchant were disturbed in any town in which a franchise operated,

44. Churchill, *The Crown and the Alien*, 30 L.Q. REV. 402, 404 (1920).

45. W. CUNNINGHAM, *supra* note 10, at 102-03.

46. A. ROTH, *supra* note 26, at 53.

47. See W. CUNNINGHAM, *supra* note 10, at 154.

48. Churchill, *supra* note 44, at 405.

49. 9 Edw. 3, c. 1, § 1 (1335).

the person who had disturbed the alien should pay to him damages equal to twice the loss suffered. Furthermore, the Statute provided that if the mayor or bailiff failed to provide the alien with his remedy, the town would lose its franchise. If the town had no franchise, the recalcitrant mayor or bailiff would be obliged to pay the double damages. In addition, the person who had disturbed the merchant might be imprisoned for one year or ransomed at the King's will.<sup>50</sup> In 1350 and 1353 Parliament reaffirmed the Act of 1335 and ordered that it be kept in all respects.<sup>51</sup> The only restriction which these statutes imposed on aliens was that they might not export wine from the Kingdom.

In 1337 a more serious limitation was imposed on merchant foreigners: wool might be exported only under licence.<sup>52</sup> However, this restriction applied to the King's subjects as well as to aliens. One statute of 1353 specifically provided that the merchants were to be taken into the King's protection.<sup>53</sup> Another provided that two merchant aliens should be chosen to associate in judgment with the mayor and constable of market towns when cases involving other aliens were tried.<sup>54</sup> Yet another provided for an inquest *de medietate lingue* in such cases.<sup>55</sup> The right of an alien to leave the kingdom if he wished to do so was also guaranteed in 1353.<sup>56</sup> Provision was made for the granting of letters of credit to alien merchants.<sup>57</sup>

Edward was scarcely less receptive in his attitude toward Flemish weavers than in his policy towards merchants, despite the fact that his control over the export of wool from 1337 would have made it easy for him to discriminate against foreign weavers. His leniency in this respect was rewarded by a growth in domestic production and external distribution of wool, particularly after the establishment of the Staple at Calais.<sup>58</sup>

During the early years of his reign Richard II pursued an equally receptive policy towards alien merchants and immigrants, but it is clear

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50. *Id.* at §§ 2-6.

51. 11 Edw. 3, c. 2 (1350) [*cf.* 9 Edw. 3, c. 30 (1335) and 14 Edw. 3, c. 3 (1340)]; 27 Edw. 3, c. 2 (1352).

52. 11 Edw. 3, c. 1 (1337) [This is one of the earliest examples of delegated legislation in history: see W. CRAIG, A TREATISE ON STATUTE LAW 509 (C. Edgar ed. 1963)].

53. 27 Edw. 3, c. 19 (1353).

54. 27 Edw. 3, c. 7 (1353).

55. 28 Edw. 3, c. 13 (1354), *confirmed in* 8 Hen. 5, c. 29 (1429).

56. 28 Edw. 3, c. 13 (1354), *confirmed in* 20 Rich. 2, c. 4 (1396).

57. 28 Edw. 3, c. 26 (1356).

58. Statute of Staple, 12 Rich. 2, c. 16 (1388) ordered the Sheriff of Kent to move the Middlesborough staple to Calais; 14 Rich. 2, c. 1 (1389) Cf. 2 Hen. 6, c. 4 (1423).

from the statutes of the period that Parliament was well aware of the resentments which were raised by the immigration of foreigners and by the extension of special privileges to them. The prologue to the Statute of Gloucester 1378<sup>59</sup> recited that citizens, burgesses, and others were not allowing aliens to trade, and pointed out that this was damaging to the economy. The statute reaffirmed that aliens had the right to deal in all commodities, subject to a few exceptions. It also provided for the abolition of "hostage" throughout the Kingdom, but later in the same year Richard sold to the City of London the right to supervise the lodging of strangers. In 1382 the King and Parliament found it necessary to record again that:

All manner of merchant strangers, of whatsoever nation or country they be, being of the amity of the King and of his Realm, shall be welcome, and may freely come within the realm of England, and elsewhere within the King's power, as well within franchise as without, and there to be conversant to merchandise and tarry as long as them liketh.

Then the statute added:

the King willeth and commandeth that they every of them be well, friendly and merchant-like intreated and demeaned in all parts of the said realm and power without disturbance or impeachment of any <sup>60</sup>

The promulgation of this statute was followed by widespread attacks on foreigners in the Kingdom. A series of subsequent statutes reaffirmed the freedom of aliens to enter the country, and abjured the King's subjects not to discriminate against aliens, on pain of incurring the penalty of the King's displeasure.<sup>61</sup>

From 1390 the anti-foreign pressures became irresistible. Parliament began to approve a series of protective measures to ensure that foreign merchants spent half of the produce of their trade in England,<sup>62</sup> to ban wholesale trade in England between one alien or denizen and another,<sup>63</sup>

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59. 2 Rich. 2, c. 1 (1378).

60. 5 Rich. 2, c. 1 (1382).

61. 6 Rich. 2, c. 8 (1382), allowing friendly aliens to export victuals, was repealed by 7 Rich. 2, c. 11 (1383). Cf. 1 Hen. 4, c. 17 (1399), *confirming* 6 Rich. 2, c. 10 (1382); 11 Rich. 2, c. 7 (1387) (confirmed trading rights); 14 Rich. 2, c. 9 (1390) (ordered subjects to treat aliens well).

62. 14 Rich. 2, c. 2 (1390).

63. 16 Rich. 2, c. 1 (1392); cf. 18 Hen. 4, c. 4 (1449).

and to ensure that wine be carried in only English ships. Aliens still retained some special privileges; for example, only aliens could transport merchandise of the staple out of the Kingdom—denizens did not share this concession<sup>64</sup>—and the King's subjects were forbidden to freight goods other than in English ships.<sup>65</sup> These privileges were gradually eroded. First, it was enacted that aliens, like the King's subjects, must transport wine only in English ships.<sup>66</sup> Then a series of coinage laws, originally designed to prevent an efflux of English currency,<sup>67</sup> led to a ban on giving credit to aliens and on paying aliens in gold rather than silver.<sup>68</sup>

Under Henry IV the regime affecting alien merchants in England became more severe. In order to enforce the laws which required alien merchants to spend in England the proceeds of their sales,<sup>69</sup> Parliament provided that alien merchants must be assigned to live with hosts appointed by mayors to supervise aliens' business.<sup>70</sup> Aliens were rated to ordinary taxes<sup>71</sup> and had to pay special customs duties on cloth.<sup>72</sup> Henry's Parliament continued to protect aliens from molestation, but instead of providing that they must be treated in the same way as subjects it stipulated that foreign merchants in England must be treated in the same way as the King's denizens were treated in the countries from which the foreigners came.<sup>73</sup>

Moreover, statutes which protected foreign communities in this period seem, in general, to have been phrased for the interests of the English economy rather than out of charity to aliens. One statute of 1435 provided that any person who disturbed an alien bringing victuals into the country should be liable to pay a fine, of which half would be paid to the alien and half to the King.<sup>74</sup> Another was passed in 1440 as a direct

64. 14 Rich. 2, c. 5 (1390).

65. 14 Rich. 2, c. 6 (1390), *confirming* 5 Rich. 2, c. 3 (1381)

66. 5 Rich. 2, c. 3 (1381); 6 Rich. 2, c. 8 (1382) provided that foreign ships might be used where no British ship was available.

67. 5 Rich. 2, c. 2 (1381) (*cf.* 2 Hen. 4, c. 5; 2 Hen. 6, c. 6; 4 Hen. 4, c. 15; 4 Hen. 4, c. 16; 5 Hen. 4, c. 9; 27 Hen. 6, c. 3; 17 Edw. 4, c. 1; 3 Hen. 7, c. 8; 19 Hen. 7, c. 5; 7 Edw. 6, c. 6; 15 Car. 2, c. 7; 10 Ann. c. 26; 6 Geo. 1, c. 11; 12 Geo. 2, c. 26)

68. 8 Hen. 6, c. 24 (1429). The ban on credit was partially relaxed by 9 Hen. 6, c. 2 (1430).

69. 4 Hen. 4, c. 15 (1402); *cf.* 27 Hen. 6, c. 3 (1448).

70. 5 Hen. 4, c. 9 (1403). Exception was made for Hanse and Italian merchants who held special charters. For the enforcement of this Act see Churchill, *supra* note 44, at 406.

71. 9 Hen. 4, c. 7 (1407).

72. 11 Hen. 4, c. 7 (1409).

73. 5 Hen. 4, c. 7 (1403).

74. 14 Hen. 6, c. 6 (1435).



concession to the opposition of Parliament to the presence of aliens. This statute attempted to ensure that the provisions of the 1407 Act relating to hostages were put into effect. It provided for fines and even imprisonment to be imposed on those who failed to comply with the hostage laws.<sup>75</sup>

There are numerous records of violent manifestations of animosities between the indigenous and alien communities in England throughout the fifteenth century. Not infrequently, Parliament blamed the immigrants for those outbursts. In 1422 Parliament approved a statute, the prologue of which recorded that various homicides, murders, rapes, robberies, and other felonies had been committed in various counties of England by Irish immigrants, particularly by the Irish living in Oxford. The statute provided for the expulsion of all persons born in Ireland, other than graduates and a few others.<sup>76</sup> Another Act in 1455, designed to remedy the anomaly whereby a foreigner who committed a murder in the County Palatine could be punished only by forfeiture of his goods, recorded that aliens were responsible for much of the violent crime of that area.<sup>77</sup> In view of these animosities it is hardly surprising that Richard III pacified his Parliament by assenting to a statute which provided that no alien might establish himself as a master immediately on his arrival in England, and that alien craftsmen who were already resident in the Kingdom should be permitted to employ only their own children or the King's natural subjects.<sup>78</sup>

#### THE TUDOR PERIOD

In the first year of his reign Henry VII assented to an Act which provided that denizens and aliens should pay double customs, as in the past.<sup>79</sup> Ten years later this Act was repealed,<sup>80</sup> but in 1512 Parliament was recording that alien cordwaners habitually cheated the King's sub-

75. 18 Hen. 6, c. 4 (1439).

76. 1 Hen. 6, c. 3 (1422); *cf.* The Expulsion of 1409; 1 Hen. 5, c. 7 (1413); 2 Hen. 5, c. 8 (1414).

77. 33 Hen. 6, c. 2 (1455); the anomaly was created by 31 Hen. 6, c. 6 (1453). A later statute [32 Hen. 8, c. 16 (1540)] referred to "the infinite number of strangers and aliens of foreign countries and nations, which do daily increase and multiply within his Grace's realm and dominions, in excessive numbers, to the great detriment, hindrance, loss and impoverishment of his Grace's natural true lieges and subjects of this realm and to the great decay of the same."

78. 1 Rich. 3, c. 9 (1483).

79. 1 Hen. 7, c. 2 (1485).

80. 11 Hen. 7, c. 14 (1495).

jects.<sup>81</sup> On Evil May Day, 1517, apprentices and journeymen organized attacks on their foreign rivals. The riots were barely resisted by the King's officers and the ringleaders were punished, but in 1524 there were more riots of this kind.<sup>82</sup> The status of aliens had been severely prejudiced by restrictions imposed in the previous century in respect to their dwellings and supervision.<sup>83</sup> After the riots of 1517 and 1524 the aliens' position was further prejudiced by the passage of a series of statutes which were designed to protect the English from foreign competition.<sup>84</sup> Moreover, aliens were required to swear allegiance to the King and were specially charged to obey the laws of the realm.<sup>85</sup>

The voyage to America of Cabot—who, incidentally, was probably descended from a Genoese immigrant—stimulated the English metals industries in general, and encouraged Bretons to enter England to work tin in Cornwall where, by the end of the sixteenth century, Germans were employed in the smelting and refining industries, including the mint.<sup>86</sup> Armorers and ordnance-workers were deliberately encouraged to immigrate.

Predictably, the new immigration attracted renewed resentment.<sup>87</sup> Edward and Mary generally followed their father's policy of protecting domestic workers at the expense of immigrants. For example, the Weavers' Act 1555 provided that only qualified cloth-workers might engage in dying or weaving.<sup>88</sup> Combined with Henry's laws against the apprenticing of one alien by another, this Act gave English-trained artisans considerable advantages over foreigners. Aid and protection was, however, extended to some immigrants by local authorities. For example, the city of Barnstaple gave assistance to a group of Flemings who claimed to have been robbed.<sup>89</sup>

81. 3 Hen. 8, c. 14 (1511).

82. The 1517 riots are described in Dr. Beale's sermon, printed in C. WILLIAMS, *ENGLAND UNDER THE EARLY TUDORS* 242 (1925).

83. W. CUNNINGHAM, *supra* note 10, at 123.

84. 14 & 15 Hen. 8, c. 2 (1523); 21 Hen. 8, c. 16, § 4 (1533); 22 Hen. 8, c. 13 (1530); 25 Hen. 8, c. 15, §§ 1-3 (1533); 32 Hen. 8, c. 16, § 7 (1540); 33 Hen. 8, c. 9, § 9 (1541).

85. 21 Hen. 8, c. 16 (1529); 32 Hen. 8, c. 16 (1540).

86. G. TREVELYAN, *ENGLISH SOCIAL HISTORY* 157 (1946).

87. See E. SMITH, *FOREIGN VISITORS TO ENGLAND* 29 (1889). Cf. the report on England given by Giacomo Soranzo, late ambassador to Edward VI and Mary, to the Venetian Senate in *CALENDAR OF STATE PAPERS (VENETIAN)* 1534-1554, at 544 (1856), where the reporter says that the common people of England treat foreigners "with very great arrogance and enmity . . . it seeming to them that the profit derived by the merchants from their country is so much taken from them."

88. 2 & 3 Phil. & M., c. 11, §§ 1, 8 (1555).

89. W. CUNNINGHAM, *supra* note 10, at 154.

Not until the reign of Elizabeth did alien immigrants receive privileges in excess of those which had been extended to them by her father. As early as 1565 the Queen granted to the Walloons of Norwich a dispensation from the Statute of Apprentices 1563 and ordered the Mayor and citizens of Norwich to admit strangers and allow them to practise their trades without interference.<sup>90</sup>

The overall increase in the rate of immigration into England during the second half of the sixteenth century is frequently ascribed to religious factors alone.<sup>91</sup> That interpretation is predominantly, but not wholly, correct because although the wars of religion in Europe were the greatest single cause of immigration into England in this period, there were other elements at work. In the early 1530's Protestant craftsmen in France frequently found that their trade was hampered by the political instability and religious discrimination which prevailed in their homeland. Thus, religious and economic forces combined to encourage them to migrate to the relative security of England. In 1535 and 1536 naturalization papers were granted to 45 Huguenots.<sup>92</sup> Moreover, during the reign of Elizabeth, as during the reign of Henry VIII, economic aspects of the alien influx probably had more significance than religious aspects in determining the nature and extent of anti-alien sentiment. Finally, it is important to remember that political factors also helped to determine the rate of immigration and the way in which certain groups of foreigners were received by the English community. This final observation is particularly pertinent in the case of the treatment of Spaniards living in England in the period preceding and following the battles with the Armada in 1588.

During the early years of her reign, Elizabeth generally adopted a receptive attitude toward foreign craftsmen as such. In the fifth year of her reign, Parliament passed an ambiguous statute which is generally considered to have repealed many of those laws which had been passed during the reign of Henry VIII to restrict opportunities for aliens to work as craftsmen or artisans in England.<sup>93</sup> This relaxation of the disabilities imposed on aliens must have contributed substantially to the increase in alien immigration which occurred in the 1560's. There is

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90. Churchill, *supra* note 44, at 417 quoting W. MOENS, *THE WALLONS AND THEIR CHURCH AT NORWICH* (1888).

91. See P. FOOT, *IMMIGRATION AND RACE IN BRITISH POLITICS* 80 (1965); T. ROCHE, *supra* note 10, at 33 (where religious factors alone are discussed).

92. T. ROCHE, *supra* note 10, at 33.

93. 5 Eliz. 1, c. 7 (1562).

no doubt that many of those foreigners who migrated to England in the 1560's were motivated primarily by the attractions of relative economic freedom. The Council took this fact into account when it formulated its policy towards foreigners in London in 1573.

When aliens, claiming to be refugees, asked for permission to enter the Kingdom they usually included in their petition the request that they might also be allowed to pursue their occupations. Thus, a petition sent from the Low Countries and received on May 16, 1567, asked that the foreigners "be allowed to settle *and carry on their occupations* in various towns in England."<sup>94</sup> (Emphasis supplied) In the same year another typical, but more specific, petition asked that the applicant might be allowed to establish a glass factory<sup>95</sup>

Predictably, the favors extended to immigrants in the economic sphere produced a hostile reaction on the part of English artisans. In response to this reaction, Elizabeth's Parliament imposed a few restrictions on alien tradesmen and craftsmen. For example, in 1562 Parliament forbade the importation for sale of foreign-made girdles, rapiers, daggers, and the like.<sup>96</sup> However, these restrictions were the exception, not the rule: even the ban on imports of girdles, etc. was a temporary measure.<sup>97</sup>

As the political situation in France and the Low Countries deteriorated, the influx of genuine refugees increased. The Royal Decree of 1562, which guaranteed certain religious freedoms to Protestants in France, was openly set aside. After the massacre of Vassy and the outbreak of civil war the rate of immigration of Huguenot refugees into England grew to substantial proportions. This influx seems to have abated after the signature of the Treaty of St. Germans, but the respite was short, ending when Catherine de Medici joined the Guise faction. After the Massacre of St. Bartholemew's the Huguenot immigration again increased, the stream of refugees from Catherine's followers flowing into a single confluence with the stream of refugees from Alva's army in the Low Countries. These streams converged in defined areas in England. The Mayor of Norwich certified in 1583 that there were 4,679 "strangers" in his town alone. There were numerous complaints about dirt, disease, and overcrowding among the refugees ("their Lordships were informed that much infection grew by reason that many families

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94. CALENDAR OF STATE PAPERS (DOMESTIC) 1547-1580, at 296 (Lemon ed. 1856).

95. *Id.* at 297

96. 5 Eliz. 1, c. 7, § 1 (1562).

97. However, it was later continued by 2 Jac. 1, c. 25 (1604); 3 Car. 1, c. 4 (1627); 16 Car. 1, c. 4 (1640); 13 & 14 Car. 2, c. 13 (1662).

of the said strangers dwelt and pestered up in one place"),<sup>98</sup> but the most frequent complaints were those connected with trading competition.

The Privy Council eventually resolved that the immigrants had "been extraordinarily favoured;" they had reduced the wages of the English, who were "supplanted by the stranger, and had [their] living (in a manner) taken from [them]," as for the refugees, "divers of them are grown to great wealth, and the subjects of this land being artificers are greatly impoverished and decayed." The Council concluded that the immigrants were prone to committing crime, especially by evading customs, and that many had entered under the mere pretence of being religious refugees. Accordingly, the Council ordered enquiries to be made into the rate and nature of the influx; but the Council, aware that resentment was rife, ordered "that the inquisition . . . be made with as much secrecy as conveniently it may be, whereby neither the English artisans and apprentices may take any comfort or boldness to condemn the strangers, or the poor strangers amazed."<sup>99</sup> As a result of the enquiry, some of the aliens were deported.

However, the Council was unusually tolerant toward those genuine refugees who had lost their possessions in order to preserve their faith; indeed, this tolerance became the source of envy by English zealots. The Act of Uniformity 1559<sup>100</sup> circumscribed the freedoms of religion enjoyed by most of the inhabitants of England, but allowed the authorities to tolerate some foreign churches whose theology and organization failed to comply with the normal criteria. Thus, Calvinist communities were tolerated, although Calvinism was anathema to Elizabeth personally. Thomas Earl complained that foreigners had religious liberties which were denied to natural subjects of the Queen:

It seemeth rightfull that subjects natural receive so much favour as the churches of national strangers have here with us, but we cannot once be heard so to obtain. This with them: they an eldership; we none. They freely elect the doctor and pastor; we may not. They their deacons and church servants with discipline, and we not.<sup>101</sup>

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98. Acts of the Privy Council 189 (1593).

99. Acts of the Privy Council 314 (1593).

100. 1 Eliz. 1, c. 2, § 3 (1558).

101. C. CROSS, *THE ROYAL SUPREMACY IN THE ELIZABETHAN CHURCH* 49 (1969); originally quoted from R. COLINSON, *PROCEEDINGS OF HUGUENOT SOCIETY OF LONDON* V 523, 539 (1964).

Despite this envy, there was no widespread opposition to the religious practices of the immigrants, except that some of the smaller sects, such as the Anabaptists,<sup>102</sup> were neither popularly nor officially tolerated.<sup>103</sup>

Elizabeth's Government was not only lenient in its policy toward the religious practices of the less eccentric foreign churches; it was also generous in its provision for the social welfare of many immigrants. Central and local authorities made numerous grants toward the upkeep of those who arrived in England destitute. In 1591 the Privy Council issued "a warrant to Sir Thomas Heneage, kt., to pay or cause to be paid to John Watson, bailiff of St. Catherine's to buy and provide some necessary apparel for one Andreas Martinyngo, a stranger, the sum of £6."<sup>104</sup>

Moreover, the immigrants were protected by the ordinary law of the land when their safety was threatened by xenophobic mobs. In a series of proclamations Queen Elizabeth reiterated that the immigrants were entitled to this protection. Early in her reign she issued a proclamation to order the citizens in some ports to "do their utmost" to protect the ports against enemies—in particular, the French. This proclamation was abused. The Queen wrote that

sundry light and lewd persons about our city of London, and suburbs of the same, have by colour and pretence of the said proclamation, being neither proclaimed there at all, nor yet so intended, as by the manifest words of the same proclamation appeareth, have entered and seized the persons and goods, not only of divers French men and women, living quietly and without offence of any of our subjects: but also of such as are denizens, and so accounted in a manner our subjects, and besides that (which is not to be suffered unpunished) of sundry others, being indeed English-born, pretending them maliciously to be French, and others being born under the obedience of other princes and states out of the French King's obedience.

She ordered that those who had been arrested by the mob be released, and that those who had molested foreigners and others in this way be arrested and "compelled to answer for their violences and misdemea-

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102. C. CROSS, *supra* note 101, at 102; W. JORDAN, *THE DEVELOPMENT OF RELIGIOUS TOLERATION IN ENGLAND 73-75* (1932).

103. The Anabaptists were banished in 1560. See Proclamation for banishing Anabaptists, Sept. 22, 1560, British Museum Reading Room Collection, G. 6463 (24).

104. Acts of the Privy Council 398 (1591-1599)

nours, *as breakers of our peace and trespassers*, according to the order of our laws, either at the suit of the parties damaged, or at the suit of . . . our mayor.”<sup>105</sup> It is interesting that members of the mob who had molested foreigners and others were to be charged with breach of the peace. Under a later proclamation<sup>106</sup> the Queen ordered that similar charges should be brought against shippers who, without authority, armed their vessels, and against port authorities who failed to enforce this and other laws for the suppression of piracy. The charge of breach of the peace was a useful weapon against those whose unruly activities disturbed alien immigrants or threatened in any of several ways to damage foreign relations.

It was also within the Queen's power to grant protection to the immigrants simply by issuing a proclamation. In 1569 Alva issued some orders in the Low Countries, as a result of which some of the English merchants in Antwerp were arrested. The Queen replied to this by ordering her own subjects to forbear to trade in any of the King of Spain's dominions until Phillip might make his attitude clear and explain Alva's action. The Queen added to this proclamation some remarks about religious refugees from the Low Countries, expressing sympathy with the refugees and ordering that “the same shall not be molested either in their persons or goods, otherwise than where to the officers of the place shall so seem needful.”<sup>107</sup>

Thus, the religious refugees received from Elizabethan governments financial aid, religious toleration, the protection of the ordinary laws—in particular, the law on breach of the peace—and the protection of special proclamations. In return they suffered a few disabilities. Generally, they were liable to pay special taxes,<sup>108</sup> they could not become members

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105. Proclamation of August 2, 1563, in Humfrey Dyson's collection of Elizabethan proclamations, printed by Bonham Norton and John Bill, 1618, British Museum Reading Room Collection, G. 6463 (61).

106. Proclamation of 31 July, 1564, in Humfrey Dyson's collection, British Museum Reading Room Collection, G. 6463 (75).

107. Proclamation of 6 January, 1569, in Humfrey Dyson's collection, British Museum Reading Room Collection, G. 6463 (107). A full description of this proclamation is given in *CALENDAR OF STATE PAPERS (ROME) 1558-71*, at 297-98 (1856), and in the letter of Guerau de Spes, May 9, 1579 in *CALENDAR OF STATE PAPERS (SPANISH) 1568-79*, at 108 (1856).

108. *CALENDAR OF STATE PAPERS (DOMESTIC) 1547-80*, at 285 (1566). Item 60 records a certificate by the Lord Mayor of London on the assessment of foreigners to the first subsidy granted to the Queen; item 61 contains evidence that the Government was seeking to revive ancient customs, scavage, and other duties payable by aliens. The

of Parliament,<sup>109</sup> and they were subject to special regulations in time of war.<sup>110</sup> In 1576 Elizabeth imposed a further disability on them. She revived the obsolete laws relating to hostage, by granting to William Tipper a monopoly of hostage in the Kingdom. However, the City of Norwich paid Tipper 100 marks to relinquish his monopoly, and thereafter hostage was never revived.<sup>111</sup>

Among those migrants who were attracted to England chiefly by economic factors were the Irish. There was a tradition of hostility between these migrants and the indigenous community, and this hostility was manifested in a series of riots in the early 1590's. In 1593 the Queen, announcing that the Irish had entered England "secretly, and with full purpose and procurement of the Devil and his Ministers," ordered the expulsion from the Kingdom of everyone who was born in Ireland and did not belong to one of those groups—such as householders and university students—whose members were presumed to be less likely to act provocatively.<sup>112</sup>

Members of the Spanish community in England in the 1560's also tended to be victims of attack, for obvious reasons. On February 14, 1569, Ambassador Guerau de Spes wrote to Phillip of Spain informing him that Spaniards had been subjected to indescribable maltreatment in English ports.<sup>113</sup> Ostensibly, the motive for the misuse of the Spaniards was religious, and indeed some English zealots attempted to convert Spanish Catholics with inquisitorial enthusiasm.<sup>114</sup> However, it was quite clear that the causes of the maltreatment of Spaniards were political and economic as well as religious.

Spanish merchants in particular suffered maltreatment.<sup>115</sup> At first the Queen defended Spanish merchants by issuing special proclamations instructing her officers to allow Spaniards to trade freely, and to protect Spanish merchants from French pirates.<sup>116</sup> She extended to the mer-

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liability of aliens to pay double customs was confirmed as early as 1485 (1 Hen. 7, c. 2), but rarely enforced.

109. IV COKE'S INSTITUTES 47 (1671).

110. *Id.* at 152.

111. Churchill, *supra* note 44, at 408-09.

112. N. BRETT-JAMES, *THE GROWTH OF STUART LONDON* 481 (1935)

113. *CALENDAR OF STATE PAPERS (SPANISH) 1568-79*, at 108 (1856)

114. *Id.* at 111, 113.

115. See letter to Phillip, *id.* at 143, April 28, 1569.

116. Proclamation of 1st September, 1563, in Humfrey Dyson's Collection, British Museum Reading Room Collection G. 6463 (62).



chants the protection of her constables<sup>117</sup> and even permitted the Spanish to celebrate Mass in their embassy, but the degree of protection given by the Queen to the Spaniards declined in proportion to Anglo-Spanish relations. When war broke out between England and Spain the Spanish community became particularly vulnerable. In 1596 the Privy Council authorized the imprisonment of all Spaniards within the realm, a move which was probably dictated more by the need to preserve national security than by the desire to take the Spaniards into protective custody<sup>118</sup>

The war with Spain produced a small influx of Negroes into England. Many of these Negroes had been mercenaries, or even slaves. They originated from the Spanish-dominated settlements in North Africa, and were Moorish. In 1596 the Privy Council ordered that the Negroes be expelled. Although one writer has interpreted the text of the Privy Council's order as evidence that the Council was influenced by religious considerations,<sup>119</sup> all commentators agree that the main reasons for the expulsion were economic. Indeed, the Council specifically justified its action on the ground that there was insufficient work for the Negroes,<sup>120</sup> and there is no evidence of widespread antagonism toward them. Rather, the Elizabethan public seems to have been preoccupied with the immigration of the French and Dutch Protestants, whose numerical superiority over other groups diverted attention from those other migrants in much the same way as present English public opinion tends to be preoccupied with Commonwealth immigrants to the exclusion of aliens.

#### THE STUART PERIOD

After the promulgation of the Edict of Nantes in 1598, it became possible to discern a gradual decline in the rate of immigration of French and Dutch Protestants. James I received numerous complaints from English artisans about the size and practices of the immigrant communities, but most of the complaints were based on economic foundations.

117. See the letter written by Guerau de Spes, January 8, 1569, *CALENDAR OF STATE PAPERS (SPANISH)* 1568-79, at 95 (1856).

118. Acts of the Privy Council 11 (1597).

119. B. HEPPLE, *supra* note 7, at 38.

120. Acts of the Privy Council 16, 17, 20 (1596-97). The entry at page 20 is quoted by Mr. Hepple, and contains the word "Christian," but it should be remembered that this word is frequently employed by Elizabethans without having the necessary connotation of the Christian religion, in opposition to any other religion; "Christian" often meant little more than "God-fearing" or "good." The entry on pages 16-17, to which Mr. Hepple makes no reference, does not mention religion at all.

On July 22, 1605 it was alleged that English merchants were injured because foreigners were allowed to export some woollen goods without paying double customs.<sup>121</sup> English craftsmen and merchants complained that the foreigners were failing to comply with the statutes which forbade aliens to employ alien apprentices, and that they were using machinery which enabled one alien to do as much work as seven Englishmen. In this way aliens were becoming rich, paying high prices for tenements, thus making English artificers homeless, and causing unemployment and inflation. It is difficult to believe that many such complaints were well-founded, because the majority of the immigrants were engaged in trades which were not mechanized.<sup>122</sup>

Despite this opposition, the Crown gave encouragement to the establishment of some foreign manufacturers in England. In particular, it licensed the East India Company to admit foreign merchants to membership with the same status as that enjoyed by the English, and encouraged the planting of mulberry trees for silk production. Nevertheless, casual discrimination against strangers was common. For many years the close corporations and city guilds had looked suspiciously on applications for membership by newcomers. Consequently, foreigners were often unable to participate in organized crafts. Their disadvantages in the field of employment forced them to settle in unregulated suburbs, where rules were less strict and living was cheaper. This tended to increase, rather than diminish, anti-foreign sentiment, because the unregulated employment of foreigners became a separate source of antagonism.<sup>123</sup> However, it is important to notice that the xenophobic attitudes of the guilds were not directed at aliens alone, since at this time the terms "foreigner" and "stranger" equally embraced Englishmen from neighbouring towns and immigrants from foreign states. Many guilds discriminated against all foreigners without distinguishing between the King's subjects and aliens. Trevelyan attributes York's loss of supremacy in the northern cloth trade to that city's refusal to admit foreigners of any kind.<sup>124</sup>

Elizabeth had given directions that foreigners were not to be debarred from carrying on their trades except when the law forbade them to

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121. See *LISTS OF FOREIGN PROTESTANTS AND ALIENS RESIDENT IN ENGLAND, 1618-1688*, at V (W Cooper ed. 1862) [hereinafter cited as W COOPER].

122. *Id.* at V-VII.

123. N. BRETT-JAMES, *supra* note 112, at 474-76.

124. G. TREVELYAN, *ENGLAND UNDER THE STUARTS* 42 (1965)

engage in defined businesses,<sup>125</sup> but it is clear that the Queen's directions were frequently disregarded in the Jacobean period.<sup>126</sup> Naturally, aliens attracted more resentment than other foreigners. On July 26, 1611, the Lord Mayor and Alderman of London petitioned the Lords of the Council, informed the Council of their grievances about Dutch and French workers, and asked that the laws against aliens be put into effect.<sup>127</sup> Denizens fared little better than aliens. Indeed, some denizens even complained that they were being denied opportunities which were open to their alien competitors.

In 1615 King James ordered that an enquiry be made into the complaints of the Lord Mayor and the city companies. The next year a committee was established, consisting of the Lord Chancellor and the Lord Chief Justice, to deal with the alien question and to ensure that proper effect was given to those laws which had been passed during the reigns of Richard II and Henry IV to restrict opportunities for engaging in crafts other than through guilds.<sup>128</sup> It was even suggested that the aliens should be repatriated now that the persecutions from which they had fled had ceased.<sup>129</sup>

Shortly afterward the King's attention was drawn to the fact that Spaniards in England were still being insulted and denied opportunities to carry on their business in the normal way. The Privy Council wrote to the Lord Mayor of London, informing him that the King was determined not to tolerate this kind of discrimination: "His Majesty will not have any difference made in matter of favour or courtesy betwixt his own subjects and them, no more than he will in point of justice."<sup>130</sup>

Meanwhile, more complaints about foreigners were being received by the King and his Privy Council.<sup>131</sup> On September 6, 1618, the Council

125. Some disabilities continued to be imposed on aliens in the business sphere even in the reign of James. For example, see 7 Jac. 1, c. 14 (1610). In 1624 aliens were forbidden to hold property in English ships; this was confirmed in February, 1626. *CALENDAR OF STATE PAPERS (DOMESTIC)* 103 (1856).

126. In 1611 Sir Noel de Caron wrote to Winwood recalling these directives and drawing attention to actions brought against foreigners in the Mayor's Court. III *Remembrancia* 258.

127. See Paul Timmerman's complaints in Acts of the Privy Council 234, 305, 579 (1615-1616).

128. Acts of the Privy Council 97 (1616-1617).

129. W. COOPER, *supra* note 121, at VIII.

130. Acts of the Privy Council 128 (1618-1619).

131. For some graphic examples of the anti-foreign sentiment of the period, see *Bibl. di S. Marco Venice*, *CALENDAR OF STATE PAPERS (VENETIAN)* 1617-1619, at 60-61 (A. Hinds ed. 1919); Senate Secrets, *Relazioni Inghilterra*, Venetian Archives, *id.* at 387

ordered a return to be made of strangers living in London.<sup>132</sup> On July 30, 1621, it established a commission to investigate the laws governing aliens.<sup>133</sup> On the same day the King directed the commissioners to keep an annual register containing the names, addresses, and occupations of all aliens in the Kingdom, and required the commissioners to impose certain disabilities on alien retailers. Any alien who failed to comply with the new regulations was to be deported. In 1622 the commissioners ordered that whenever one stranger sold English-made goods to another stranger in England, the seller should pay duty equal to one-half of the tax he would have paid if he had exported the goods.

The general economic depression which engulfed Europe in the final years of James' reign made the presence of an alien community in England less tolerable. The harmful effects of this depression were exacerbated when Alderman Cockayne's project for the sale of wool collapsed around the year 1621.<sup>134</sup> Innumerable complaints about the foreigners were made at this time.<sup>135</sup> The Recorder and Alderman of the City of London complained that the imposition of special taxes on the immigrants augmented the hardships which the immigration had caused. They called for another enquiry into the nature and size of the immigrant community.<sup>136</sup> Although Charles I responded to this situation by a series of restrictive measures adopted from 1621 to 1626, the problem shortly solved itself. From 1626 until 1660 the rate of Protestant immigration was very low. The relative security of the Protestants abroad, the Dutch war, and the political instability of England combined to discourage immigration, and domestic politics diverted attention from the social problems which involved aliens. Moreover, those who were concerned with immigrant problems were now concerned primarily by the influx of Irishmen.

The Irish community aroused concern largely because the extreme poverty of Irish immigrants gave rise to fears that plague might be introduced to England from Ireland. In 1629 the Council wrote to the Lord Mayor of London about "the multitude of poor Irish and other vagabond persons with which all parts of the city [were] pestered," and

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132. Acts of the Privy Council 128 (1618-1619).

133. The commission consisted of the Lord Keeper, the Lord Treasurer, the Attorney-General, the Solicitor-General, and others.

134. See generally B. SUPPLE, *COMMERCIAL CRISIS AND CHANGE IN ENGLAND* (1600-1642), at 32-51, 228-43 (1964).

135. These are catalogued in W. COOPER, *supra* note 121, at IX-X.

136. Act of the Privy Council 458 (1621-1623).

required the Mayor to ensure that the Irish were removed.<sup>137</sup> Despite several attempts to repatriate the Irish, however, they remained in London and continued to attract hostility

#### THE INTERREGNUM AND RESTORATION

The position of the Irish community deteriorated when the Civil War aroused religious hostilities to a fanatical pitch. Cromwell's expedition to Ireland aroused further antagonisms. It is scarcely surprising that no special legislation was passed for the protection of the Irish, and although some protection appears to have been afforded by certain local authorities, other local authorities were loth to exercise their discretionary powers in favor of the Irish unless the latter humiliated themselves before the mayor and pleaded for his grace.<sup>138</sup>

It was in 1655 that the next major wave of immigrants arrived in Britain, consisting mainly of Jews.<sup>139</sup> In theory Jewish immigration had been prohibited since 1290, but in fact numerous Jews had entered the Kingdom. Despite the existence of some evidence that a colony of Jews in Elizabethan England openly confessed to practising the Jewish religion,<sup>140</sup> it seems that most of those Jews who entered England during the Stuart and early Protectorate periods practised their religion surreptitiously, attempting to disguise their faith and ethnic origins.

The early years of the Protectorate witnessed a small immigration of Marranos.<sup>141</sup> When Cromwell formally rescinded the old prohibition in 1655 there was a sudden and relatively large influx of Jews. To a large extent this influx consisted of the relatively wealthy followers of Manasseh Ben Israel.<sup>142</sup> These immigrants were mainly Spaniards and Portuguese driven to England by the Inquisition. They were followed by another wave of Jewish immigrants consisting of relatively poor Jews from Holland and Poland.

Although the merchants of London initially objected to the readmis-

137. N. BRETT-JAMES, *supra* note 112, at 482.

138. I A. GREEN, *TOWN LIFE IN THE FIFTEENTH CENTURY* 42, 173 (1895).

139. Shortly before the Civil War, London became the haven for Hungarians (fleeing from the Turks) and Bohemians (after Frederick's expedition to Prague). In addition, substantial numbers of Dutch prisoners of war were brought to Britain, and many such prisoners were engaged under Vermuyden in the draining of the Fens. However, none of these groups was sufficiently large to demand legal protection.

140. See C. Sisson, *A COLONY OF JEWS IN SHAKESPEARE'S LONDON* 38-51 (1937).

141. Jews outwardly behaving as Roman Catholics.

142. Manasseh had personally negotiated with Cromwell for the readmission of the Jews.

sion of the Jews in 1655, Cromwell quickly overcame their resistance. Manasseh Ben Israel was able to offer Cromwell loans at the extraordinarily low rate of five percent per annum. Moreover, the Jews, like the Puritans, were victims of the Roman Church, and there were thus both practical and emotional reasons for readmitting them. "Great is my sympathy," said Cromwell, "with these poor people." The Protector's firm opposition to discrimination against the Jews and his specific permission for them to build synagogues prevented serious outbreaks of anti-Semitism. Indeed, in 1657 the bell of St. Catherine's Church in London was tolled for the funeral of a Jewess, and the church even loaned its bier for use in the Hebrew ceremony<sup>143</sup>

After the Restoration a petition was presented to the King by the Lord Mayor and Alderman of London "complaining of the great increase of the Jews in the City, their interference with the trade of Christians and their correspondence with their countrymen in other states upon the affairs of this Kingdom." The petitioners asked the King to revise trading charters "in such a way as would conclude any but native subjects from the freedom of regulated trade" and to expel the Jews from the Kingdom,<sup>144</sup> but the King failed to comply with this request.<sup>145</sup> Thereafter there was little overt manifestation of anti-Semitism for 100 years. It is significant that when the fire of London occurred there were rumors that the French had been responsible, but there is no recorded accusation of the Jews for complicity in the alleged arson.<sup>146</sup>

### *The New Huguenots*

Renewed persecution of French Protestants in the late seventeenth century led to a further exodus of Huguenots from France. Despite the religious affiliations between the Huguenots and the Anglicans, considerable antagonism was directed against these new refugees during the reign of Charles II. According to Sobrière, hundreds of foreigners were killed by xenophobic mobs in London and the main ports. In 1676 the British ambassador in Paris, Sir Henry Savill, advised the Government to instigate measures to facilitate the naturalization of French Protes-

143. X TRANSACTIONS OF THE JEWISH HISTORICAL SOCIETY OF ENGLAND 225-54 (1657).

144. N. BRETT-JAMES, *supra* note 112, at 486.

145. In 1674 the Jews received freedom of worship. This was formally confirmed in 1685.

146. See, e.g., the account of Jorevin's experiences at Stowmarket. E. SMITH, *supra* note 87

tants.<sup>147</sup> He believed that such a move would have a comforting effect on the refugees and a sobering effect on the more Francophobic elements in the population. A Bill to this effect was introduced in the Commons, but it met with fierce opposition from the City of London members, who feared that it would tend to increase the rate of alien immigration; the Bill was defeated.

Nevertheless, as the plight of French Protestants grew more grave the Government's attitude became more receptive. In 1675 Parliament approved an Act to give rights of citizenship to foreigners engaged in the manufacture of linen cloth and tapestry.<sup>148</sup> In 1677 the House of Lords approved "a Bill for the empowering and licensing of Protestant Foreigners." Representatives of the City of London persuaded the Lords' committee to amend the Bill, but not to withdraw it.<sup>149</sup> On July 22, 1681, Savill again pressed the matter of naturalization of Protestant foreigners on the Home Secretary.<sup>150</sup> In particular, he pointed out the economic advantages which would result from a receptive attitude toward French Protestants: lenient treatment of the Protestants would encourage more wealthy Protestants to immigrate; in particular, French sailmakers would bring their industry to England and thus put an end to Britain's traditional reliance on Brittany and Normandy for the manufacture of this commercially and militarily important product. On July 28 the King received confirmation of Savill's advice in a report from the House of Lords Committee on Trade and Plantations. Later the same day the King announced that he was prepared to grant free letters of denization to Protestant refugees.<sup>151</sup> In addition, he guaranteed to extend to these refugees all the privileges and immunities contained in extant law, liberty to practise trades and handicrafts, equal rights with British subjects in relation to schooling and further education, and equal duties with British subjects in relation to taxation. The King promised to recommend to Parliament an act for the general naturalization of Protestant refugees<sup>152</sup> and extension of their rights and privileges. He ordered his officers to give a kind reception to the refugees, to give them free passports, and to assist

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147. Savill's correspondence is published by the CAMDEN SOCIETY, *LETTERS TO AND FROM HENRY SAVILL* (W COOPER ed. 1858).

148. 15 Car. 2, c. 15 (1675).

149. XIII H.L. JOUR. 103, 105 (Mar. 29, 1677). See also XIII H.L. JOUR. 90-91.

150. W COOPER, *supra* note 121, at XVIII.

151. The text of this decree, to which the Privy Council gave its assent, is printed in W COOPER, *supra* note 121, at XVIII-XIX.

152. Parliament repeatedly refused to accede to this request.

them in their travel to any part of the Kingdom. He exempted refugees from all customs dues on the import of tools and materials, and established a committee, under the chairmanship of the Archbishop of Canterbury, to receive and consider petitions from refugees, to hear their complaints, and to collect and distribute money for their relief.

The revocation of the Edict of Nantes, although accompanied by a ban on the egress of Protestants from France, increased the rate of migration of refugees to England. Professor Poole's celebrated examination of the reception which these refugees received helps to explain "how, by the impulse they gave to trade, they served to develop those Whiggish principles that consolidated the Hanovarian succession."<sup>153</sup> A committee (whose staff included Samuel Pepys) was set up to examine the position of the Huguenot refugees. It reported that 20,000 of them "are now reduced to the utmost misery, and must infallibly perish and starve unless assisted by this House." On April 25, 1689, the King announced the apportioning of an annual grant of £17,000 to help in the rehabilitation of the refugees. Seven years later a further annual grant of £12,000 was approved, in addition to one of £3,000 to finance French ministers of religion in England.

Another of the measures taken to protect the refugees was the introduction of a concept of naturalization *eo nomine*. Hitherto, an alien who had sought to transfer his political allegiance to the King of England might have done so by endenization or, in rare cases, by Act of Parliament, but this system was cumbersome, time-consuming, and expensive. The merchant companies of the great cities objected to the introduction of measures designed to enable foreign refugees to become British subjects with greater ease. Such measures threatened the exclusivity of many companies and guilds, membership of which was frequently barred to aliens and denizens. However, the initial resistance of the companies was overcome. In 1703 the judges were ordered to frame a Bill for naturalizing Protestants from the Principality of Orange. The Act of Anne 1708 threw open the door to British nationality to many refugees who had previously been unable to afford denization and had failed to obtain free denization in accordance with the Royal Decree of July 28;

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153. R. POOLE, A HISTORY OF THE HUGUENOTS OF THE DISPERSION AT THE RECALL OF THE EDICT OF NANTES 106 (1880). The writer adds at 107: "The truth is that the English have never taken kindly to foreigners; our corporations, ever jealous of their immunities, would seldom waive their immunities even in favour of exiles suffering for religion."



1681.<sup>154</sup> Another statute of the same period clarified and improved upon the succession rights of children of alien parents.<sup>155</sup>

Assisted by these measures, the second wave of Huguenot refugees settled into the English community with remarkably little difficulty. There was indeed resentment, manifested in the action of those who moved for the repeal of the Naturalization Act in 1711<sup>156</sup> and resisted the introduction of further naturalization laws in 1748 and 1751. In Scotland, where many of the Huguenots settled,<sup>157</sup> rumors and false representations disturbed the refugees until the middle of the eighteenth century, but on the whole the immigrants were favorably received.<sup>158</sup> Thus, apart from the Royal Decree of July 28, 1681, no special measures had to be taken to protect the immigrants from mob violence.

### *Roman Catholics and Palatines*

As the rate of immigration of Protestant refugees increased, the King in Council took measures against Roman Catholics. A Royal Proclamation of October 30, 1678, required actual or suspected Catholics and their families to retire by November 7 from all points within 10 miles of the palace of Whitehall, Somerset House, the palace of St. James, and the cities of Westminster and London. On November 19, 1678, the King in Council issued a further decree which stressed that the earlier one was not intended to apply to alien merchants and visitors. The latter were exempted from the disabilities imposed by the proclamation of October

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154. 7 Anne, c. 5 (1708).

155. 11 & 12 Will. 3, c. 6 (1700); cf. 25 Geo. 3, c. 39 (1787).

156. 10 Anne, c. 9 (1711), *repealing* 7 Anne, c. 5, §§ 1, 2 (1708). The remainder was repealed by the Status of Aliens Act of 1914, § 28.

157. By 1707 there were more than 400 refugee Huguenot families in Scotland, engaged primarily in weaving linen and worsted.

158. The following reasons may be advanced to explain the tolerant reception which the Huguenots received: (a) the influx coincided with the Glorious Revolution; (b) Huguenot immigrants had arrived before and therefore their customs were not wholly unfamiliar; (c) it was clear that the earlier Huguenot influx had been of long-term benefit to the national economy; (d) immediate economic benefit could be expected from the new settlement; (e) since their chances of returning to France were remote, the Huguenots showed an unusual willingness to be assimilated; this was manifested by their endenization and naturalization; (f) Huguenot skills—especially silk-production and sail-making—were largely different from those of the native population and thus decreased competition; (g) the threat from which the Huguenots fled was immediate, physical, and not dissimilar from that which many Englishmen believed that they might face, or had faced, under James II.

30, provided that they register their names and addresses with one of the Secretaries of State before November 26, 1678.<sup>159</sup>

The Glorious Revolution also stimulated an influx of Palatines, who followed William to England and often sought or occupied positions of authority in his court. The Palatines were resented by English aspirants to office in much the same way as Provencal and Savoyard courtiers had been resented when they followed Eleanor of Savoy to the English court. A certain Sir John Knight complained that they were adulterating the British way of life:

Already one of the most noisesome of the plagues of Egypt was among us. Frogs had made their appearance in the Royal Chambers. Nobody could go to St. James' without being disgusted by hearing the reptiles of the Batavian marshes croaking all round him.<sup>160</sup>

The resentment was sufficiently strong and vociferous to induce Parliament to include in the Act of Settlement the section that:

No person born out of the Kingdoms of England, Scotland or Ireland (except such as are born of English parents) shall be capable to be of the Privy Council, or a member of either House of Parliament, or enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements or hereditaments from the Crown.<sup>161</sup>

It is remarkable that one influx of foreigners produced this reaction while a simultaneous influx of Huguenots produced the Act of Anne.

#### THE MID-EIGHTEENTH CENTURY

The middle of the eighteenth century was characterized by a further outbreak of anti-Semitism and a revival of the medieval legend according to which Jews were supposed to practise sacrificial murder of children.<sup>162</sup> In 1732 an action was instigated against the publisher of a paper entitled "A True and Surprising Relation of a Murder and Cruelty that was Committed by the Jews Lately Arrived From Portugal, Showing How They Burned a Woman and a New-Born Infant the Latter End of Feb-

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159. The text of the proclamation of November 19, 1678 is printed in W. COOPER, *supra* note 121, at XVI-XVII.

160. C. PARRY, NATIONALITY AND CITIZENSHIP LAWS OF THE COMMONWEALTH AND OF THE REPUBLIC OF IRELAND 46 (1956).

161. 12 & 13 Will. 3, c. 2, § 3 (1700).

162. C. MOLLOY, *supra* note 28.

ruary, because the Infant was Begotten by a Christian.”<sup>163</sup> The paper alleged that numerous similar cruelties had been perpetrated by the Jews. The court stressed that the publisher's words were too vague to justify a charge of criminal libel, since the accusation was directed at a broad and indefinite group of immigrants. However, the court concluded that information would lie against the publisher for breach of the peace, since the paper not only incited the mob to attack Jewish immigrants but actually succeeded in achieving that purpose.<sup>164</sup>

The main wave of settlement in England during the second half of the eighteenth century came from Ireland. Resentment of the Irish imbricated with, but did not stem from, religious intolerance towards Catholics. In 1736 there were anti-Irish riots in Spitalfields and Shore-ditch, resulting mainly from underbidding by Irish harvesters. In 1759 the Irish themselves rioted at Wapping, although these disturbances seem largely attributable to working conditions in the coal industry.

Anti-Irish sentiment drew attention to the disadvantages suffered by Catholics in general, and constituted one of the elements that led to the passage of the Catholic Relief Bill, first in England in 1778 and later in Scotland in 1793. In ensuring the passage of these Acts the Government clearly hoped to lead the nation in the direction of greater tolerance, but the Acts heralded the outbreak of the Gordon Riots—riots which, although ostensibly anti-Catholic, were simultaneously anti-Irish. In Scotland the riots were on a very serious scale, and numerous Irishmen were killed.<sup>165</sup> However, anti-Irish sentiment abated when the French Revolution and the Napoleonic Wars diverted attention from social conditions at home. It is significant that during the course of the Commons debate on the Bill of Union with Ireland 1801 the question of Irish immigration was not mentioned. Instead, there was frequent reference to the question of protection of Irish Catholics.

#### THE LATE EIGHTEENTH CENTURY

The late eighteenth century witnessed a further migration of Negroes into England. For a short while it was fashionable for the rich in England to own black slaves or employ black servants. In 1770 there were about 15,000 such Negroes in London alone. Lord Mansfield's celebrated

163. *Rex v. Osborne*, 25 Eng. Rep. 584 (Kel. W 1732).

164. A different interpretation of this case is given by I. MacDONALD, *supra* note 7, at 59.

165. J. HANDLEY, *THE IRISH IN MODERN SCOTLAND* 240 (1947).

judgment in *Somerset's Case* in 1772 is sometimes interpreted as a declaration that slavery was contrary to English public policy and that English courts would never recognise the status of slavery.<sup>166</sup> Such interpretations are misconceived: far from resulting in the immediate emancipation of all slaves within English jurisdiction, Lord Mansfield's judgment merely provided that the master of a slave could not, by virtue of his mastery, uphold any lawful right to detain the slave in England.<sup>167</sup> Although early in the nineteenth century the scope of the judgment in *Somerset's Case* was expanded,<sup>168</sup> the immediate social effect of Lord Mansfield's judgment was not drastic, and most of those former slaves who were enfranchised after the decision continued to work for their previous masters or set up in small businesses. In 1786 the Government attempted to reduce poverty among the Negroes in England by transporting them to the new colony at Freetown.<sup>169</sup>

### *The Irish*

With the end of the Napoleonic Wars,<sup>170</sup> public attention was focused again on the immigration of the Irish. The trouble was not that the Irish were causing overcrowding, for although the population of England and Wales rose from between six and six and a half million in 1750<sup>171</sup> to nine million in 1801,<sup>172</sup> England probably maintained a balance of migration during this period.<sup>173</sup> Rather, the trouble was that the Irish were conspicuously poor. There was no poor relief in Ireland, but in 1817 19 out of every 20 persons receiving poor relief in England were estimated to be Irish.<sup>174</sup> Southey feared that the Irish would "reduce the labouring classes to a uniform state of degradation and misery"<sup>175</sup>

166. See II C. LUCAS, *HISTORICAL GEOGRAPHY OF THE BRITISH COLONIES* 67 (1910).

167. 98 Eng. Rep. — (Lofft 1772) ("the only question before us is whether the cause on the return is sufficient"); cf. *Butts v. Penny*, 83 Eng. Rep. 518 (1677).

168. *The Slave Grace of 1827*, 2 St. Tr. (N.S.) 273; *Forbes v. Cochrane*, 107 Eng. Rep. 450; 47 Geo. 3, c. 36 (1807).

169. *Somerset* (the slave freed in 1772) went to this colony and became wharf-master. See Fiddes, 50 L.Q. Rev. I, 449 (1934).

170. For examples of anti-French sentiment prior to the wars, see W. CORBETT, *PARLIAMENT HISTORY OF ENGLAND* 156-58, 160 (1817).

171. J. WATSON & J. SISSONS, *THE BRITISH ISLES: A SYSTEMATIC GEOGRAPHY* 331 (1964).

172. G. TREVELYAN, *supra* note 124, at 341.

173. *Id.*

174. J. PIXLEY, *THE CLOSED QUESTION* 3 (1968); Mr. Buxton's speech in the Poor Removal Bill, 35 HANSARD'S PARLIAMENTARY HISTORY 202 (1800).

175. II *ESSAYS MORAL AND POLITICAL* 275 (1832), quoted in J. JACKSON, *THE IRISH IN BRITAIN*, ROUTLEDGE AND KEGAN PAUL 183 (1963).

*The Times* expressed apprehension that the Irish would spread disease in 1847 as they had in 1802 and 1817 "Liverpool will then be reduced to the deplorable condition of another Skibbedan."<sup>176</sup>

Undoubtedly the worst slums in England were the Irish urban areas.<sup>177</sup> The Irish immigrants were said to be slothful, unscrupulous, and disloyal. In 1847 *The Times* published a "characteristic anecdote strongly illustrating the slothful indifference which characterizes the poorer classes of the Irish people" by reporting the case of a man who preferred to take four shillings weekly in poor relief rather than accept employment for one shilling daily, even though the work consisted of cleaning his own room.<sup>178</sup> The impression that Irish employers provided their compatriots with atrocious working conditions at home was widely—and not altogether inaccurately—believed.<sup>179</sup> Textile employers in England frankly admitted that the Irish had been introduced to keep wages low;<sup>180</sup> this resulted in riots in Manchester in 1834, Stockport in 1842, and Bradford in 1847. The impression that the Irish were disloyal was widespread, but this, more than any other prejudice, was based on religious grounds. In 1853 *The Times* very much doubted "whether in England, or indeed in any free Protestant country, a true Papist can be a good subject."<sup>181</sup>

### *Political Refugees*

The political turbulence of Europe in the mid-nineteenth century encouraged refugees of various nationalities to flee to the relative security of England. They tended to congregate in London and the other great ports.<sup>182</sup>

The Government did not consider the possibility of introducing legislation to protect these aliens from arbitrary discrimination in England, but it did reconsider the disabilities which aliens continued to suffer under English law. It established a Select Committee to enquire into the state of the law on treatment of aliens in the Kingdom, and to enquire

176. *The Times* (London), April 21, 1847, at 8, col. e.

177. G. TREVELYAN, *supra* note 86, at 476.

178. *The Times* (London), June 23, 1847, at 8, col. c.

179. However, the famous defamation case of *Le Fanu v. Malcolmson*, [1848] 1 H.L. Cas. 637 arose out of an allegation that gross cruelties were perpetrated by Irishmen against Irishmen in a Waterford factory.

180. J. JACKSON, *supra* note 175, at 117.

181. *Id.* at 155.

182. See FOLLETT, in *THE DESTITUTE ALIEN* (A. White ed. 1892) [hereinafter cited as A. WHITE].

"whether it may be expedient to make any, and if so what alterations therein for the purpose of facilitating the admission of foreigners into the rights and privileges of British subjects, excepting the disabilities as limited by the Act 12 and 13 Will. III, c.2" [the Act of Settlement]. The Committee reported that "it seems doubtful whether the disabilities imposed on persons of foreign birth, residing in Great Britain, are not more rigorous than those imposed on the same class of persons in foreign countries," and added that "this state of affairs cannot be justified now on any grounds of special expediency." Drawing attention to the fact that the expense of naturalization discouraged all but about eight foreigners every year from seeking to acquire British subjecthood by this means and pointing out that endenization was almost equally expensive, the Committee reported that "it is highly desirable to augment the privileges to be conferred on foreigners by naturalization."<sup>183</sup> It recommended that the Government should introduce a Bill similar to one which had been passed in Ireland to confer further privileges on aliens in the country

#### THE LATE NINETEENTH CENTURY

During the early 1880's a new wave of immigration began to reach British shores. Violent but intermittent persecution of Jews in Russia, Poland, and Hungary encouraged many Jews from these countries to move westward. These Jews frequently entered England as quasi-migrants, intending to make their way to North America. Many, however, remained and formed communities, notably in the East End of London. In 1889 H. Llewellyn Smith wrote:<sup>184</sup>

Let, then, the alarmist sleep easy on his bed, untroubled by visions of Oriental hordes of barbarians, streaming in like Huns and Vandals, and snatching the bread from the mouths of the much-enduring Londoner. Whatever may have been the cause for the alarm presented by the immigration of the Jew, it is all over now—at least for the present.

He estimated that the Jewish population of England in 1889 numbered between 60,000 and 70,000, and put the rate of Jewish immigration at

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183. REPORT OF THE SELECT COMMITTEE OF THE HOUSE OF COMMONS ON THE TREATMENT OF ALIENS at iii, iv (June 2, 1843).

184. I. C. BOOTH, *LIFE AND LABOUR OF THE PEOPLE* 553 (1889).

8,000 per annum. He predicted that the rate would decline in a short time.

In the same year a Select Committee of the House of Commons produced a less comforting report. The Committee pointed out that the year 1888 showed a very large increase in foreign immigration, concluded that alien immigration was a growing evil, and contemplated the possibility that in the future Britain might be obliged to introduce legislation similar to that operating in the United States to prevent pauper immigration.<sup>185</sup> The greatest social evil to which the Committee referred was the growth and nature of the sweating system, especially in East London. This topic was further examined by a specialist committee of the House of Lords, whose report drew attention to the extreme hardship suffered by those engaged in sweated labor. The Lords' committee was reluctant to encroach on the sphere of the Commons' Committee, and accordingly took no oral evidence.<sup>186</sup>

However, there was no lack of private research on the Jewish immigration,<sup>187</sup> and some of this showed that there was little likelihood of an early end to the influx. Nor was there any shortage of anti-immigrant propaganda.<sup>188</sup> The Jewish immigration was contemporaneous with a smaller immigration of Italians, whose arrival also produced widespread dissatisfaction and anti-immigrant propaganda.<sup>189</sup>

The Jewish and Italian influxes occasioned more restrictive than protective legislation. The Government established a royal commission on alien immigration<sup>190</sup> in 1903. This commission produced a report which drew attention to the poor working conditions of the immigrants and rejected the argument that alien labor was displacing domestic labor. The commission made no recommendation on the subject of working conditions, but suggested action against overcrowding and recommended the introduction of immigration control. This report was largely responsible for the introduction of the Aliens Act 1905.<sup>191</sup> However, it was also instrumental in the introduction of a number of pieces of legis-

185. See REPORT OF THE SELECT COMMITTEE OF THE HOUSE OF COMMONS at vi, vii, x, xi (Aug. 8, 1889). The committee consistently stressed the paucity of information.

186. SPECIALIST COMMITTEE OF THE HOUSE OF LORDS no. 361 (2), no. 448 (21) (1888); no. 165 (13), no. 331 (14, part 1), no. 331, Vol. I (14, part 2), no. 331, Vol. II (14, part 2), no. 331, Vol. III (14, part 3) (1889).

187. Cf. A. WHITE, *supra* note 182; C. BOOTH, *supra* note 184.

188. E.g., A. LANE, *THE ALIEN MENACE* (1929).

189. W. WILKINS, in *THE DESTITUTE ALIEN* 147 (A. White ed. 1892).

190. ROYAL COMMISSION ON ALIEN IMMIGRATION REPORT, Cd. No. 1741 (1903).

191. Aliens Act of 1905, 5 Edw. 7, c. 13.

lation designed to rectify some of the hardships from which immigrants suffered. The Employment of Children Act 1903 protected children by providing for the punishment of parents or guardians who contravened certain of the requirements of that Act or of local authority by-laws relating to employment of the young; in particular, it became a punishable offense to employ a child under the age of 11 in street trading.<sup>192</sup> Moreover, the Aliens Act itself contained special provisions for the admission of refugees, even when they were impecunious.<sup>193</sup> These relatively meager attempts to ameliorate the hardship of refugees proved inadequate. As Jewish immigration continued to rise, so anti-Semitic sentiment increased. In 1910 the Sidney Street Riots occurred.

#### THE AFTERMATH OF THE FIRST WORLD WAR

Although the First World War initially reduced the volume of transnational migration in Western Europe and prompted Parliament to approve the Aliens Restriction Act 1914, the conclusion of that War resulted in an efflux of displaced persons from Germany and the areas of battle. Anti-German sentiment in Britain was widespread during the decade after the signature of the Treaty of Versailles. The courts had occasion to protect some persons of German origin from the manifestations of this sentiment.

In *Mills v. Cannon Brewery*<sup>194</sup> Mills was the underlessee of a public house of which the Cannon Brewery Company was underlessor. Mills had covenanted not to assign the underlease without obtaining the permission of the brewery company, and the company had covenanted not to refuse their permission arbitrarily. Mills wanted to assign the public house to a responsible and respectable naturalized British subject of German origin. The brewery company purported to refuse permission for this assignment on the grounds, among others, that the prospective assignee was of German origin, and that his origin and name would tend to reduce the profitability of the house. It was held that Mills was entitled to assign the public house because the brewery company's objection based on the purchaser's name and origin was wholly unreasonable.

In another case,<sup>195</sup> decided in 1919, a man of German origin but of undoubted loyalty to Britain claimed that the General Purposes Com-

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192. The Employment Children Act of 1903, §§ 3(2). See also Children Act of 1908; Factory and Workshop Acts, 1901, 1903, and 1907.

193. Aliens Act of 1905, 5 Edw. 7, c. 13, § 1(3).

194. [1920] 2 Ch. 38, 46.

195. *Weinberger v. English*, [1919] A.C. 606.



mittee of the Stock Exchange had prevailed upon him not to renew his membership because of his "enemy" origin. Although six of the nine judges were convinced that the Committee had taken the member's national origins into account, only four of the judges were persuaded that this was the only factor which the Committee considered. Thus the action failed on the evidence; but it is legitimate to infer that if a majority had found that the Committee's action was based entirely on the member's origin, the House of Lords would have declared the Committee's action void for arbitrariness. In 1918 a Scottish court declared that a hotel was not entitled to refuse accommodation to a traveller on the sole ground of German origin.<sup>196</sup>

Partly as a result of the First World War, substantial numbers of Lascar seamen entered and settled in English ports. These Lascars had since 1823 been subjects of discriminatory treatment in relation to pay and working conditions.<sup>197</sup> The resentment which these immigrants attracted was sufficiently great to encourage the Secretary of State to introduce the Special Restrictions (Coloured Alien Seamen) Order 1925.<sup>198</sup> However, some protection was given to the Lascars, since a Lascar Welfare Council was established for their benefit.<sup>199</sup>

The Easter Rising and the Partition of Ireland resulted in a further influx of Irish to England and in increased Irish migration to the United States. When the United States Congress introduced its immigration controls of 1924 and 1929, imposing quotas, and of 1930, imposing the requirement that the immigrant must provide capital or a guarantor, the British Isles received a backwash of immigration. Increasingly, this backwash consisted of Jewish refugees from Eastern Europe. These immigrants tended to be poor, and thus to become engaged in sweated labour in London, particularly the East End. Moreover, to an increasing extent the Jewish backwash from America consisted of migrants from Germany. Because of their German origin many of the Jews were subjects of national as well as racial discrimination.<sup>200</sup>

196. *Rothfield v. North British Railway Co.*, [1920] Sess. Cas. 805.

197. Lascars Act of 1923, *repealed by* Statute Law Revision Act of 1963.

198. This Order compelled all coloured seamen to register as aliens unless they could produce proof that they were British subjects or British protected persons. Once registered the seamen were liable to be deported, and lost preference in employment to those who continued to be treated as British subjects, see *British Shipping (Assistance) Act of 1935*, § 1. Clearly, many coloured seamen who were British subjects lost their privileges by their inability to prove British subjecthood.

199. *The Times* (London), June 28, 1925, at 20, col. c.

200. See 180 *PARL. DEB.*, H.C. (5th ser.) 286 (1925).

## THE SECOND WORLD WAR AND ITS AFTERMATH

*Jewish Refugees*

A further increase in the immigration of Jews from Nazi Germany helped to inflame anti-Jewish sentiment in England. On July 25, 1933, the Home Office, in response to a question raised by Lord Cecil, indicated that in three months 14,310 German nationals had been permitted to land in England.<sup>201</sup> Violent opposition to the Jews was led by the Fascist party. Feeling impelled to counteract this opposition, the Government introduced the Public Order Bill 1936, which came into force on January 1, 1937.<sup>202</sup> This Act prohibited the unauthorized wearing of political uniforms in public, and banned the maintenance by private persons of quasi-military organizations.<sup>203</sup> It empowered chief officers of police to give directions to organizers of public processions, compelling the organizers to abide by such conditions as appear to the chiefs of police to be necessary for the preservation of public order.<sup>204</sup> In particular, chiefs of police may prescribe the routes to be taken by processions, and may even apply to borough or district councils to prohibit the holding of any or all public processions for a period of three months. The councils, with the consent of the Home Secretary, may accede to such requests.<sup>205</sup>

The Act further prohibits possession of offensive weapons at public processions<sup>206</sup> and the use of insulting behaviour conducive to breaches of the peace. In 1936 the key section read:

Any person who in any public place or at any public meeting uses threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence.<sup>207</sup>

A person who acts in violation of this section may be arrested by a policeman without warrant. On summary conviction he may be sentenced to imprisonment for up to three months, to a fine of up to £100,

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201. Written answers, 88 PARL. DEB., H.C. (5th ser.) 1098 (1933)

202. Public Order Act of 1936, § 10(3).

203. *Id.* §§ 1, 2.

204. *Id.* § 3(1).

205. *Id.* § 3(2); Commissioners of the City of London police or the Metropolitan police apply to the Home Secretary directly. *Id.* § 3(3).

206. *Id.* § 4.

207. *Id.* § 5.

or both, and on conviction on indictment he may be imprisoned for up to one year, or fined £500, or both.<sup>208</sup> The 1936 Act also modified some previous legislation<sup>209</sup> to give greater powers to the police and to chairmen of lawful public meetings; so as to enable them to deal with disorderly individuals attempting to break up public assemblies.<sup>210</sup>

It should be observed that the Public Order Act was not devised strictly and solely for the protection of the Jewish minority. The immediate objective of the Act was to suppress those political organizations which were attempting to usurp the functions of Government.<sup>211</sup> Nevertheless, the debates on the Public Order Bill make it abundantly clear that in commending the legislation to Parliament the Government was consciously acting not only in the interests of "law and order" but also in the interests of minority groups—in particular, the Jews. Drawing attention to the need for the Bill, one Jewish member of Parliament spoke of the very real danger of a Nazi-like regime in Britain.<sup>212</sup>

There is no doubt that the Act was successful, at least in the sense that it drove the Fascists underground.<sup>213</sup> Like the Race Relations Act, the Public Order Act 1936 was originally criticised as an incursion on freedoms of expression and assembly,<sup>214</sup> but it is important to note that the 1936 Act was based on the common law doctrines of trespass and nuisance<sup>215</sup> and depended on the ancient notion of breach of the peace. In this sense it may be said that the Act was less of an innovation than it is sometimes supposed to have been.

It is also important to note that the Public Order Act operated in addition to, and not in substitution of, the common law rules relating to sedition, mischief, libel, and riot. In 1936 Mr. Justice Graves-Lord heard an action in the Old Bailey arising out of a prosecution of Mr.

208. *Id.* §§ 7(2), (3), *amended*, Public Order Act of 1963, § 1(1).

209. Public Meeting Act of 1908, § 1.

210. Public Order Act of 1936, § 6.

211. E. WADE & G. PHILLIPS, *CONSTITUTIONAL LAW* 511 (E. Wade & A. Bradley ed. 1970).

212. Mr. D. Frankel in 317 *PARL. DEB.*, H.C. (5th ser.) 161-65 (1936). *See also* speeches of Mr. A. Dalton, 317 *PARL. DEB.*, H.C. (5th ser.) 285-97 (1936); Mr. D. Chaten, 317 *PARL. DEB.*, H.C. (5th ser.) 1334-87 (1936).

213. E. WADE & G. PHILLIPS, *supra* note 211.

214. 317 *PARL. DEB.*, H.C. (5th ser.) 1349 (admission by Sir John Simon), 1390 (Mr. R.H. Bernays), 1406 (reluctance of Mr. Kingsley Griffith). The Communist Party (through Mr. Ballacher) attacked the Act, at 1419, as "new action against the working class." The argument was raised without success by Colin Jordan when he sought legal aid to apply for a writ of *Habeas Corpus*. *Rex v. Jordan*, [1967] 9 J.P. Supp. 48.

215. E. WADE & G. PHILLIPS, *supra* note 211, at 74.

Leese, proprietor of the magazine *Fascist*, and Mr. Whitehead, printer of the same magazine.<sup>216</sup> The two men were charged with:

publishing and printing a seditious libel concerning people of the Jewish faith and H.M. subjects of the Jewish faith and publishing and printing divers scandalous statements regarding H.M. Jewish subjects with intent to create ill-will between H.M. subjects of the Jewish faith, so as to create a public mischief.

Although Leese and Whitehead were acquitted on several counts, they were both convicted of conspiracy to effect a public mischief and of effecting a public mischief. Eleven years later the famous *Cawnt Case*<sup>217</sup> was decided. In this case Lord Birkett instructed the jury that it is a serious misdemeanor, punishable with imprisonment, to seek to promote violence or ill-will between classes of Her Majesty's subjects with intent to stir up disorder.

This statement of the common law relating to sedition comes remarkably close to the new statutory offense of incitement to race hatred.<sup>218</sup> Indeed, when Sir Frank Soskice commended the first Race Relations Bill to Parliament, he argued that the introduction of criminal law to deal with race hatred was a relatively modest development—the substitution of intent to cause disorder by intent to cause hatred. It need hardly be added that immigrant groups were and are protected by the ordinary laws of the land relating to assault, wounding,<sup>219</sup> causing affrays,<sup>220</sup> and related offenses.

### *European Volunteer Workers*

The Second World War and its aftermath not only displaced many thousands of Central and Eastern Europeans, but also produced severe labor shortages in the United Kingdom. In order to combat these two problems the Government encouraged various groups of immigrants to settle in the Kingdom. These settlers, notably the European Volunteer Workers, totaled about 200,000. About half of the new immigrants were former members of the Polish armed forces. The Polish Resettlement Act 1947 made provision for the Assistance Board to provide accommo-

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216. *Rex v. Leese and Whitehead*, — T.L.R. 11 (1936).

217. *See AN EDITOR ON TRIAL* (1948); 64 L.Q. REV. 203 (1948).

218. Race Relations Act of 1965, § 6(1).

219. *Regina v. Hunt*, — T.L.R. — (1958)

220. *Regina v. Taylor*, — T.L.R. — (1965).

dation for members of the Polish armed forces and various other groups of Polish refugees.<sup>221</sup> It dealt with the extension of health, social security, and educational services to the new immigrants from Poland, the provision of funds to assist Polish immigration from the Kingdom,<sup>222</sup> and the modification of the status of Polish armed forces in the Kingdom.

Several trade unions pressed for the formation of collective agreements to impose restrictions on the employment of the new immigrants. For example, on October 14, 1947, the Amalgamated Society of Textile Workers and Kindred Trades entered into an agreement with the Joint Industrial Council of the Silk Industry whereby employers agreed to recruit European Volunteer Workers only when no suitable British labour was available, and to declare E.V.W.'s redundant before taking similar action in respect of British workers.<sup>223</sup> However, this discrimination was not sufficiently severe to encourage the Government to countenance the introduction of legislation to protect the immigrant minority. Indeed, the Home Office itself imposed on European Volunteer Workers conditions of entry comparable with those which are imposed on alien workers under present English law. This policy was condemned in the United Nations General Assembly as discriminatory, and was revised.

### *Commonwealth Immigrants*

The first great development in the common law which grew out of the racial antagonisms of the mid-twentieth century was the rule in *Constantine's Case*.<sup>224</sup> In this case the late Learie Constantine claimed that the management of the Imperial Hotel, Russel Square, had refused accommodation to him on the grounds that he was black. The defendants had allowed Learie Constantine to stay at another hotel nearby, which they owned. The court accepted that the management of the Imperial Hotel had in fact refused to accommodate Learie Constantine.<sup>225</sup> The question to which the court addressed itself was whether this refusal amounted to a breach of the defendants' common law duty as innkeepers not to refuse unreasonably to offer accommodation to travellers. The defendants argued that they had not acted in breach of their common law duty because they had offered Constantine accommodation at

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221. Polish Resettlement Act, §§ 2(2), 3 (1947).

222. *Id.* § 3.

223. B. HEPPLÉ, *supra* note 7, at 218.

224. *Constantine v. Imperial Hotels, Ltd.*, [1944] 1 K.B. 693.

225. H. HYDE, NORMAN BIRKETT 488 (1964), *cited by* B. HEPPLÉ, *supra* note 7, at 102.

another hotel. This argument was rejected on the ground that the common law allows the traveller to select his own hotel.<sup>226</sup> Finally, the defendants argued that Constantine had suffered no special damage as a result of the refusal. Mr. Justice Birkett held that Constantine did not need to prove special damage, for "his right is founded on the common law. That right was violated. The law affords him a remedy and the injury which he has suffered imports damage."<sup>227</sup> Accordingly, Mr. Justice Birkett awarded nominal damages of five guineas against the hotel.

Three years later the court of Chancery had to deal with a question involving another form of racial discrimination.<sup>228</sup> This case involved the Dominion Students' Hall Trust, a company limited by guarantee, which maintained a hotel in London for male students of the overseas dominions of the British Empire. The memorandum of association of the company provided that the company's benefits should be available only to students of European origin from the British Empire. The company sought permission to operate a scheme for the benefit of all Commonwealth students, regardless of their race. The company also asked the court to alter the memorandum of association by deleting the words "of European origin" and thus putting an end to the color-bar. Acceding to these requests, the court based its decision on the grounds that the primary intention of the charity was to promote community of citizenship, culture, and tradition among all members of the British Commonwealth, and that it was impossible<sup>229</sup> to carry out this intention without deleting the offensive words.

In a series of subsequent cases the courts have struck down "color-bar" clauses on the grounds that they were too uncertain to be put into operation. For example, in *Re Mere's Trusts*<sup>230</sup> the courts struck out a clause which stipulated that a gift to medical research might not be applied to the benefit of any Jew or Negro. In *Clayton v. Ramsden*<sup>231</sup> the House of Lords adopted similar reasoning. In that case the Lords deleted a clause which provided that the beneficiary of a legacy would forfeit

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226. *Rothfield v. North British Railway Co.*, [1920] Sess. Cas. 805, 812, cited by Birkett, J. in *Constantine v. Imperial Hotels, Ltd.*, [1944] 1 K.B. 693, 697.

227. *Constantine v. Imperial Hotels, Ltd.*, [1944] 1 K.B. 693, 708.

228. *In re Dominion Students' Hall Trust*, [1947] 1 Ch. 183.

229. Within the meaning of Kennedy, L.J.'s judgment in *In re Weir Hospital*, [1910] 2 Ch. 124, 145.

230. — T.L.R. — (1957).

231. [1943] A.C. 320.

her portion of the legacy if she married someone who was not of Jewish parentage or Jewish faith. Although the beneficiary's husband was admittedly Gentile by birth and by faith, the Lords declared that the clause was too uncertain to be put into operation.

Thus, the common law has been adapted to deal with various forms of racial discrimination, but the protection which the common law gives to minority groups is frequently oblique. Those common law offenses which have been invoked to punish instigators of race riots were mainly devised for the protection of the community as a whole rather than for the protection of one of its constituent parts.<sup>232</sup> Therefore, at common law it was seditious to use insulting words calculated to incite hatred between various groups of the monarch's subjects so as to provoke violent disorder; but it was not seditious to use such words without provoking or intending to provoke violence.<sup>233</sup> There was no individual common law remedy for the public use of abusive language directed against a whole racial group and intended to cause the group to be despised.

The adaptation of the common law in fields other than criminal law has been equally imperfect. It is true that in a series of cases the courts declared racially discriminatory clauses to be void on the grounds that these clauses could not be put into operation, or were too uncertain to be interpreted, but the courts refrained from making a frontal attack on clauses of this kind by declaring them contrary to public policy. In one recent case a testatrix left a gift to the Royal College of Surgeons to found a scholarship fund, from which Jews and Roman Catholics would be ineligible to benefit. The College stated that it could not accept this gift because of the religious discrimination clause. While finding other grounds for deleting the offensive words the court of Chancery held that the words in the will "and not of the Jewish or Roman Catholic faith" were not void for uncertainty nor void as being contrary to public policy.<sup>234</sup>

It was largely because Parliament became convinced that the common law was inadequate in these respects that it proceeded to pass legislation to deal with racial discrimination. In 1949 Mr. Piratin asked the Attorney-General whether he proposed to introduce legislation to outlaw

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232. *Regina v. Hunt*, — T.L.R. — (1958); *Regina v. Taylor*, — T.L.R. — (1965).

233. See note 217 *supra*.

234. *Re Lysacht, Hill v. Royal College of Surgeons*, 2 Eng. Rep. 889, 895, 897 (1965) (per Buckley, J.).

"color-bar" clauses in leases. The Attorney-General replied that such clauses "may well be void under the existing law as being contrary to the rules of public policy upheld by the English Courts."<sup>235</sup> It is impossible to say whether this opinion, expressed two decades ago, is correct, for no case seems to have arisen on the point. It is clear, however, that Parliament was sufficiently uncertain about the adequacy of the common law in this respect to introduce legislation dealing with "color-bar" clauses in 1965.<sup>236</sup>

### THE FUTURE OF BRITISH RACE RELATIONS LEGISLATION

In the present survey, space does not permit even a summary analysis of the full contents of the Race Relations Acts 1965 and 1968. The contents, geneses, and development of those Acts have been documented in several other sources, to which the reader is respectfully referred.<sup>237</sup> Nonetheless, it is considered appropriate, in the present context, to deal with the future of British race relations legislation, since amendment of the Acts of 1965 and 1968 now appears both necessary and feasible.<sup>238</sup>

In accordance with the spirit of the Race Relations Acts, the bodies entrusted with the function of securing compliance with those Acts have hitherto sought to resolve racial disputes without recourse to the courts of law. Nevertheless, the Acts envisage a few situations in which court proceedings may be instigated, and such proceedings may be criminal or civil.

Under the Act of 1965 criminal proceedings may be brought for the new offense of incitement to racial hatred.<sup>239</sup> This offense is committed when a person, with intent to stir up hatred against any section of the public in Great Britain distinguished by color, race, or ethnic or national origins,<sup>240</sup> publishes or distributes threatening, abusive, or insulting writ-

235. 470 PARL. DEB., H.C. (5th ser.) 2, 3 (1949).

236. Race Relations Act of 1965, § 5.

237. See K. Hindell, *The Genesis of the Race Relations Bill*, 36 POL. Q. 390 (1965); C. Thornberry, *Committal or Withdrawal?*, VII RACE 73 (1965).

238. In its most recent report, the Race Relations Board promised to provide the Government with its views on amendment of the Race Relations Acts: RACE RELATIONS BOARD REPORT, CMND. NO. 448, at 23-24 (1970-71).

239. Race Relations Act of 1965, § 6. The author ignores, for present purposes, § 7 of the Race Relations Act of 1965. That section purports to extend § 5 of the Public Order Act of 1936, to written matter. However, it is quite possible that the purported extension was otiose, since a court, sitting before 1965, might well have held that § 5 of the 1936 Act applied to written matter as well as spoken matter.

240. The phraseology is drawn from Article 1 of the International Convention of



ten matter or uses threatening, abusive, or insulting words in any public place or at any public meeting. It is to be noted that the mens rea of this offense consists in the mere intention to stir up *hatred* against a defined section of the public; if the accused intended to stir up *violence*, then he is guilty of the more serious offense of sedition.<sup>241</sup> It may be doubted whether the public at large, or the coloured minority, derives any appreciable advantage from the maintenance of such a restriction on the freedom of speech, which is imposed for objectives other than the immediate prevention of violence or the individual's protection from defamation. Successful proceedings for the offense have been brought against prominent extremists, both black and white. While such prosecutions are rare, they tend to be well-publicised. Moreover, they may actually damage harmonious relations between indigenous and immigrant communities, both by attracting sympathy for extremists convicted of the novel offense and by leading to a false impression of the nature of race relations legislation as a whole. It is hoped that Parliament will be encouraged to abolish the offense of incitement to racial hatred, so as to place the race relations law of Britain on a civil basis.<sup>242</sup>

It should be observed, however, that civil proceedings under the Race Relations Acts differ from most<sup>243</sup> other forms of civil proceedings under English law, in that they may be brought only by a specially-constituted<sup>244</sup> authority—the Race Relations Board. The individual has no independent right of action under the Acts—a point which was criticised by the Board itself in its report for the year 1967-68.<sup>245</sup>

There seems to be little reason to suppose that the creation of independent rights of action for individuals would give rise to an intolerable volume of spurious litigation. Financial considerations may be expected to deter most of those complainants who will be unable to receive legal aid, although it is probable that on matters giving rise to widespread

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the Elimination of All Forms of Racial Discrimination, which imposes on the parties the duty to "prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any person, group or organization."

241. See note 217 *supra*.

242. A call for the repeal of these provisions was made by Mr. Ronald Bell, Q.C. in 799 PARL. DEB., H.C. (5th ser.) 1746-83 (1970). A similar call was made by E. Rose *et al.*, COLOUR AND CITIZENSHIP 687-88 (1970).

243. However, in this respect it is not quite unique. See the Restrictive Practices Court (Resale Prices) Rules, 4-7 (1965).

244. Originally, the Board was constituted under § 2(1) of the Race Relations Act of 1965. It was reconstituted under § 14 of the Race Relations Act of 1968.

245. See note 238 *supra*.

concern within immigrant communities legal aid funds would be made available, after the fashion of the NAACP's program. In any case, the courts have their own well tried means for dealing with frivolous and vexatious actions. Furthermore, a cautious Parliament might insist that no action be instigated under the Race Relations Acts unless the Board had first investigated the complaint. While the author would be inclined to reject this suggestion, in defense of the individual's right to protect his own legitimate interests he concedes that the suggestion would have one great merit, in that it would constantly act as a spur to encourage the Board to take vigorous action whenever a complaint is lodged.

Although the Board now enjoys the power to decide whether to instigate legal proceedings, it does not enjoy a discretion to decide whether to investigate any particular complaint. Rather, it is the duty of the Board to receive and investigate any complaint made in accordance with the Race Relations Acts.<sup>246</sup> The Board has argued that this duty should be converted into a discretion so as to prevent recurrences of the "Scots Porridge Affair."<sup>247</sup> The latter involved a Scottish doctor living in England who advertised for a "Scottish" cook to prepare plain Scottish food. A member of the public complained to the Race Relations Board, which was then obliged to receive and investigate the complaint and inform the doctor that the form of words used in the advertisement contravened the Act. The widespread press-coverage given to this complaint served to bring the Race Relations Board and Acts into some disrepute,<sup>248</sup> and, indeed, no great ingenuity would be required to envisage a situation in which the Board might be equally embarrassed by a similar complaint about unlawful advertising. However, it is thought that the appropriate remedy for this defect in the Act would consist of an amendment to section 6, which deals with unlawful advertisements, rather than an amendment to section 15, which deals with investigation of complaints.

The foregoing remarks do not imply that it would be improper to countenance any extension of the Board's discretionary powers. On the contrary, there are some important areas in which an extension of the Board's powers would be appropriate. Under section 17 of the Act of 1968, the Race Relations Board has limited powers to take the initiative in investigating racially discriminatory actions even though it might have received no formal complaint. However, the Board may take this

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246. Race Relations Act of 1968, § 15(2).

247. RACE RELATIONS BOARD REPORT, CMND. No. 262, at 7, 22 (1968).

248. The affair prompted a Parliamentary question and debate: 793 PARL. DEB., H.C. (5th ser.) 1539-40 (1969); 795 PARL. DEB., H.C. (5th ser.) 769-851 (1970)

initiative only when it has reason to suspect that "an act has been done which is unlawful by virtue of any [of the provisions in Part I of the 1968 Act]." The Board has no power to commence investigations under section 17 when it has reason to suspect that a person or group of persons has pursued a discriminatory policy unless the Board can point to a specific act which was, or might have been, committed in contravention of Part I of the Act. The Board is thus prevented from carrying the investigation of discriminatory patterns to the point where it has only suspicions of specific discriminatory acts.<sup>249</sup>

This discussion of possible amendments to the Race Relations Acts presupposes that the legislation will continue to have force of law for the foreseeable future. That presupposition appears to be sound, notwithstanding the fact that a vociferous minority in Parliament continues to call for the repeal of the Race Relations Acts in their entirety.<sup>250</sup> The author is of the opinion that the Race Relations Board, at least, has amply justified its existence not only by providing a means "for the peaceful and orderly adjustment of grievances and the release of tensions,"<sup>251</sup> but also by securing several significant changes in policies which, by design or accident, discriminated against thousands of members of the immigrant minority.<sup>252</sup> Nevertheless, it is unfortunate that any confidence in the maintenance of the Race Relations Acts is ultimately based on the premise that the last quinquennium has not witnessed a radical improvement in the relations between the immigrant and indigenous communities in Britain.

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249. The situation might be remedied by amendments to §§ 1(1) and 17 of the Race Relations Act of 1968.

250. Late in 1969 Mr. Ronald Bell, Q.C., introduced in Parliament the Race Relations Acts Repeal Bill, but the measure was defeated without a vote: 792 *PARL. DEB.*, H.C. (5th ser.) 195 (1969); 799 *PARL. DEB.*, H.C. (5th ser.) 1746-83 (1970).

251. See S. PATTERSON, *supra* note 4, at 95-96.

252. Note in particular the Board's actions with regard to motor insurance and tests designed to determine whether children are mentally-retarded: *RACE RELATIONS BOARD REPORT*, CMND. No. 448, at 7, ¶ 18 (1970-71).