



How and Why Immigration Detention Crossed the Globe

By Michael Flynn

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The Global Detention Project (GDP) is a research initiative based in Geneva, Switzerland, that tracks the use of detention in response to global migration. The GDP's aims include: (1) providing researchers, advocates, and journalists with a measurable and regularly updated baseline for analysing the growth and evolution of detention practices and policies; (2) encouraging scholarship in this field of immigration studies; and (3) facilitating accountability and transparency in the treatment of detainees.

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Summary: Today in countries across the globe, immigration-related detention has become an established policy apparatus that counts on dedicated facilities and burgeoning institutional bureaucracies. Before the decade of the 1980s, however, detention appears to have been largely an ad hoc tool, employed mainly by wealthy states in exigent circumstances. This paper details the history of key policy events that led to the diffusion of detention practices during the last 30 years and assesses some of the motives that appear to have encouraged this phenomenon. The paper also endeavors to place the United States at the centre of this story because its policy decisions were instrumental in initiating the process of policy innovation, imitation, and—in many cases—imposition that has helped give rise to today's global immigration detention phenomenon. More broadly, in telling this story, this paper seeks to flesh out some of the larger policy implications of beyond-the-borders immigration control regimes. Just as offshore interdiction and detention schemes raise important questions about custody, accountability, and sovereignty, they should also spur questions over where responsibility for the wellbeing of migrants begins and ends. As this paper demonstrates, when it comes to immigration detention, all the answers cannot be found just at home.

Introduction: A Global Phenomenon

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

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

The *Curts*’ operational transformation is part of a broader, global phenomenon involving efforts by the world’s major industrialized democracies to block—or “manage”—migrants long before they reach their intended destinations. Sometimes referred to as “remote control” by migration scholars,¹ this process of expanding interdiction efforts has been a key policy apparatus for a host of destination countries for decades. Among the more notable cases have been Australia, whose notorious and recently revived “Pacific Solution” has involved interdicting migrant smuggling vessels in the high seas and confining asylum seekers in “offshore” facilities located in nearby countries; and the European Union, whose stepped up maritime interdiction patrols through the mechanism of the EU’s Frontex agency have been accompanied by on-again-off-again plans to establish “processing” centres for asylum seekers outside the borders of Europe, as well as multiple efforts by individual European countries to fund and support detention practices in neighboring non-EU countries.

While these European and Australian practices and proposals have been the focus of heated debates in scholarly and policy circles, it is the United States that has been the world’s pioneer in offshore interdiction and detention. However, many of its activities have not received nearly the same scrutiny. The country has used military bases located in host countries as staging grounds for migrant interdiction efforts (the *Curts* routinely used the now-closed U.S. military base in Manta, Ecuador); funded detention centres that lacked basic living conditions in places like Guatemala City; used offshore detention facilities in the Caribbean long before Australia began implementing the Pacific Solution; and teamed up with law enforcement officials from other countries to carry out multi-

¹ Aristide Zolberg initially developed the concept of “remote control” to characterize the emergence of visa regimes, which enable states to regulate entrance onto their territory before a person’s arrival. See Zolberg, “Matters of State: Theorizing Immigration Policy,” in *The Handbook of International Migration: The American Experience*, New York: Russell Sage: 1999. See also, Zolberg, “Guarding the Gates in a World on the Move,” Social Science Research Council 2001.

lateral operations aimed at apprehending migrant smugglers and shutting down clandestine migrant routes.

A shared quality of these extraterritorial control efforts is their emphasis on detention. During this three-decade period of outwardly expanding immigration restraints, immigration-related detention—or, as it is defined by the Global Detention Project, “the deprivation of liberty of non-citizens for reasons related to their immigration status”²—has truly gone global.

From Mexico to the Bahamas, Mauritania to Lebanon, Turkey to Saudi Arabia, South Africa to Indonesia, Malaysia to Thailand, detention has become an established modus operandi that counts on dedicated facilities and burgeoning institutional bureaucracies. Before the decade of the 1980s, on the other hand, detention appears to have been largely an ad hoc tool, employed mainly by wealthy states in exigent circumstances and typically making use of prisons, warehouses, hotel rooms, or other “off-the-shelf” facilities. The reasons detention policies and practices matured and grew in major detaining countries like France, the United Kingdom, and the United States have been widely discussed and researched.³ Less well known, however, is how this tool of immigration control grew to have the worldwide dimensions it has today.

This paper seeks to fill this gap. Making use of a range of source material—including evidence developed by the author as a result of on-the-ground reporting in various countries, official histories, diplomatic correspondence, parliamentary records, and previous studies—the paper details the history of key policy events that led to the diffusion of detention practices during the last three decades and assesses some of the factors that appear to have encouraged this outcome. A key objective of this paper is to place the United States at the centre of this story because its policy decisions (particularly during the 1980s and 1990s) appear to have been instrumental in initiating the process of policy innovation, imitation, and—in some cases—imposition that has helped give rise to today’s global immigration detention phenomenon. Ultimately, these policies have, in some form or another, traversed the planet and today appear to be influencing the practices of some of the United States’ closest neighbors. More broadly, in telling this story, this paper seeks to flesh out the larger policy implications of beyond-the-borders immigration control regimes and, in the process, explore the variety of mechanisms at work that have encouraged the expansion of detention.

² Global Detention Project, <http://www.globaldetentionproject.org/>. For a detailed discussion of this definition, see Flynn, “[Who Must Be Detained? Proportionality as a Tool for Critiquing Immigration Detention Policy](#),” *Refugee Survey Quarterly*, 2012.

³ See, for instance, Silverman (2013), Flynn (2013), Fischer (2011), and Welch (2002).

On the Origins of Guantanamo

An in-house history of the U.S. Immigration and Naturalization Service (INS) recounts how passage of the Chinese Exclusion Act and other restrictionist measures in the 1880s created “a new federal function,” immigration control, which led to the development of the country’s first national immigration policy. As the history makes clear, since its earliest days, U.S. immigration control has employed detention as a key tool:

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

Thus was born what appears to be one of the world’s first immigration detention estates.

Between then and now, the United States has experienced numerous “moral panics” regarding immigration, most recently in the early 1980s, mid-1990s, and in the aftermath of the 9/11 attacks. These successive periods of collective societal alarm—which were often stoked by elected officials for short-term political gain—helped spur not only stepped up internal detention and deportation efforts but also efforts to control migration beyond U.S. borders.

The modern U.S. immigration detention estate first began to take shape in the early 1980s, when the Reagan-era INS began systematically apprehending undocumented migrants from certain countries in response to growing migration pressures from the Caribbean and opened a number of new detention centres in Puerto Rico and the U.S. mainland to cope with the resulting surge in detainees (Frenzen 2010, p. 377). According to Welch (2002, p. 107), “Prior to the 1980s, the INS enforced a policy of detaining only those individuals deemed likely to abscond or who posed a security risk.”

In a key U.S. Supreme Court case from the time, *Jean v Nelson* (1985), the court overturned a mandatory detention policy put in place in 1981 that strictly targeted Haitian nationals. According to one migration scholar, “To a large extent once the *Jean v Nelson* decision came down and the Reagan administration did not have the authority to detain only Haitians, the current detention system was born, i.e. detain all nationalities” (Frenzen 2014).

A year after this court ruling, in 1986, the government passed the Immigration Control and Reform Act (IRCA), which combined the legalization of certain undocumented immigrants with stepped up internal enforcement and control measures (MPI 2005). IRCA marked a significant moment in the U.S. approach to immigration by cementing enforcement of immigration restrictions as a cornerstone of U.S. policy. According to a 2005 assessment, “Overall spending on enforcement activities has ballooned from pre-

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

The increased pressure on internal enforcement measures helped lead to a number of innovations in U.S. policy. In particular, the need to quickly ramp up detention capacity was exploited by prison privatization entrepreneurs and their supporters in Congress to pressure the INS to allocate funds in the mid-1980s for establishing the country’s first privately-run immigration detention centre.⁴ Since then, numerous other countries, particularly in the Anglophone world, have invited private prison companies to manage their immigration detention facilities, raising important questions about legal accountability at detention centres and the social forces that may be involved in promoting increased growth in this practice (Flynn and Cannon 2009).⁵

This period also saw early efforts by the United States to extend enforcement measures beyond its physical borders in order to deter asylum seekers and prevent “alien smuggling,” a process that eventually led to the establishment of one of the world’s first offshore immigration detention facilities—which is now privately-operated and called the “Migrant Operations Center”—at the U.S. naval base in Guantanamo Bay, Cuba. (The bases’s central role in the history of immigration detention is of course today overshadowed by its more notorious role as the detention site for alleged “unlawful combatants” apprehended as part of the U.S. “war on terror.”)

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

⁴ T. Don Hutto cofounded with Tom Beasley and Robert Crants the Corrections Corporation of America (CCA) in 1983. In 1984, CCA opened the country’s first privately-run detention center using a former hotel called the Olympic Motel. This temporary facility, which according to CCA was opened at the behest of INS, was replaced soon thereafter by the Houston Processing Center, “CCA’s first design, build and manage contract from the U.S. Department of Justice for the Bureau of Immigration and Customs Enforcement (formerly the Immigration and Naturalization Service) in Texas” (CCA website, “A Quarter Century of Service to America”).

⁵ It is important to note that this was not the first case of privatization in the field of immigration detention. In the 1970s, the United Kingdom delegated responsibilities to private contractors in detention facilities based on the logic that “the use of prison or police officers would be seen as too oppressive for non-prisoners” (Bacon 2005, p. 6).

The size of this migration phenomenon was not the only element that generated public reaction. The physical appearance of the people also seems to have played a role. Many of the Cubans who had fled to the United States after the revolution were white, educated elites, whose emigration was encouraged by the United States. In contrast, the Mariels—as well as their Haitian counterparts—were perceived to have darker complexions, were poorer, and had been labeled criminals and deviants by both the Cuban government and some U.S. officials. These differences together with significant increases in asylum seekers provided fertile terrain for immigration opponents, who helped foment a moral panic in the United States (Welch 2002, pp. 10-11).

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

While the United States officially acknowledged that the Refugee Convention’s prohibition against non-refoulement applied to people interdicted during these operations, the Haitians were given summary asylum hearings on board Coast Guard vessels that lasted only minutes and the vast majority were then sent back to Haiti under an agreement the United States had established with the Duvalier regime. Of the estimated 23,000 Haitians interdicted by the Coast Guard during this program, only eight were judged to have *bona fide* asylum claims (estimate from Cheryl Little, cited in Frenzen 2010, page 380). As one scholar writes, “Washington wished to deal with Haitian migrants outside U.S. territory, since if they reached U.S. shores they could often delay deportation through a series of claims within the U.S. administrative and courts systems” (Mitchell 2000, p. 87).

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

In the case of the 1980s U.S. “Caribbean Solution,” a key issue raised by advocacy groups was whether the summary asylum hearings on Coast Guard boats were adequate and non-discriminatory. The government responded arguing that U.S. courts did not have “jurisdiction to review the adequacy of the shipboard screening procedures ... because the interdiction and screening took place in international waters” (Frenzen 2010, p. 380). In *Haitian Refugee Center v. Gracey* (1985), a lower court ruled against the advocates, concluding that the relevant laws “only establish procedures guaranteed to aliens within the United States. Because the interdicted Haitians never reach the

United States, these [laws] can provide no relief to plaintiffs.” Similar judgements would be handed down in subsequent cases involving Caribbean interdiction operations, including the 1993 Supreme Court case *Sale v Haitian Centers Council*. In 1992, President George H.W. Bush issued a presidential order that officially ended the previous policy of applying the Refugee Convention’s Article 33 non-refoulement norm in cases of people apprehended in international waters, thereby freeing U.S. authorities to summarily return them.

In the early 1990s, a political and humanitarian crisis in Haiti spurred by the overthrow of President Jean-Bertrand Aristide prompted a new large-scale migration to the United States, which was followed in 1994 by a significant upsurge in Cuban “balseros.” This time, however, the United States faced political challenges in returning interdicted Haitians because of the brutality of the Cédra junta that had ousted President Aristide. While the United States sought out third countries to send Haitians fleeing the violence—including Jamaica, the Bahamas, the Dominican Republic, Belize, Venezuela, Honduras, and Suriname—“those intercepted were kept on the decks of Coast Guard cutters, under jury-rigged tarpaulins to ward off sun and rain,” writes Mitchell (2000, p. 88). “Conditions on the vessels quickly became unmanageable ... and camps for the migrants were hurriedly constructed at the nearest offshore U.S. facility: The Guantanamo Bay Naval Base in eastern Cuba. At other times, detained refugees were held on U.S. bases in Panama, and on a hospital ship anchored in the harbor at Kingston, Jamaica.”

According to the Congressional Research Service (2009), “President George H.W. Bush began using facilities at the U.S. Naval Air Station in Guantanamo, Cuba, to detain Haitians who tried to flee to the United States in 1991 as a result of the military coup in Haiti. DHS’s Immigration and Customs Enforcement (ICE) continues to operate the Migrant Operations Center at Guantanamo. There are reportedly no more than 20-40 interdicted migrants detained at Guantanamo at any one time.”

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

In addition to Guantanamo, by the early 1990s, the United States had access to a network of offshore “processing” facilities that extended from the Bahamas to Panama. As one scholar writes, these sites presented a “range of logistical constraints” for detainees, and importantly the camps ensured that asylum seekers “were cut off from access to the U.S. asylum program” (Magner 2004).

“Operation Global Reach”

Running parallel to the situation in the Caribbean were a number of other developments and events in the early 1990s, which according to observers helped conspire to produce a new moral panic in the country regarding immigrants and foreigners (Welch 2002). These included a stagnating economy, the 1993 bombing of the World Trade Center, the 1995 bombing of the Federal Building in Oklahoma City, and several widely publicized immigration-related incidents. One important event at the time was the 1993 drowning of several undocumented migrants when the Chinese smuggling vessel transporting them, the *Golden Venture*, ran aground off Queens, spurring widespread fears about growing Chinese smuggling rings in the United States.

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

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

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

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

In 1996, the Clinton administration bolstered these border protection measures with two laws that dramatically expanded the detention and deportation mandates of immigration authorities, the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA). According to most accounts, these two laws more than any other intervening event—including the 9/11 attacks—have been instrumental in the ballooning of the U.S. detention estate. By 2009, the country’s budgeted immigration-related detention capacity was 33,400, up from 27,500 in 2006 and 6,785 in 1994 (Roberts 2009). “Increased funding for the fight against illegal immigration [authorized by these Acts] made the INS the largest federal law enforcement agency; more significantly, both Acts granted the agency unprecedented authority to seek out and deport immigrants deemed a threat to national security” (Welch 2002, p. 65).

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

The president outlined the responsibilities each government agency would shoulder: “Justice and INS will be responsible for criminal enforcement and all U.S. prosecutions and for conducting law enforcement operations and investigations outside the U.S. ... State will be responsible for international policy and relations with foreign governments and international organizations. Transportation and Coast Guard will be responsible for interdiction at sea with appropriate support by Defense. ... The Director of Central Intelligence will be responsible for foreign intelligence in support of interdiction efforts. ... The Border Security Working Group will be responsible for coordinating the interagency effort overall. Efforts at the Source State will approach source nations whose nationals, businesses, and/or infrastructure provide assistance to alien smuggling and to develop common policies to prevent the departure of criminal-sponsored, non-refugee, and undocumented aliens.”

Various elements of this directive would later be crystallized in an INS-led initiative called “Operation Global Reach.” Global Reach, launched in 1997, entailed an unprecedented expansion of U.S. antismuggling and migrant interception activities. According to a 2001 Justice Department fact sheet, Global Reach was a “strategy of combating illegal immigration through emphasis on overseas deterrence.” The INS established “40 overseas offices with 150 U.S. positions to provide a permanent presence of immigration officers overseas,” “trained more than 45,000 host-country officials and airline personnel in fraudulent document detection,” and completed “special

operations to test various illegal migrant deterrence methods in source and transit countries” (DOJ 2001a).

During a 1997 news conference announcing the initiative, then-INS Commissioner Doris Meissner argued that Global Reach was a necessary response to the growing problem of alien smuggling: “Let me be clear about the problem. Migrant trafficking is ruthless, and it has become global. . . . These smuggling organizations will use any means whatsoever to produce profits. We have seen instances of mistreatment as well as cases of murder, rape, torture, forgery, and extortion. All too often, unwitting customers are forced into prostitution, virtual bondage, or criminal activities” (Meissner et al 1997).

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

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

In 1997, after Disrupt activities became a part of the overall Global Reach initiative, the INS significantly broadened the scope of its Latin American activities, undertaking annual multilateral interception operations with law enforcement personnel from dozens of Latin American countries. According to activists in these countries, during the operations, INS (and now DHS) agents accompanied local authorities to restaurants, hotels, border crossings, checkpoints, and airports to help identify and apprehend suspicious travelers.

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

Forerunner was followed in 2001 by “Crossroads International,” which the INS again described as the “largest multinational anti-smuggling operation ever conducted in the Western Hemisphere,” this one resulting in the arrest of 75 smugglers and the interdiction of some 8,000 migrants from 39 countries. “The wide-ranging anti-smuggling operation was directed by the INS Mexico City District Office and involved . . . law

enforcement officers in Columbia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Panama, and Peru,” said a press statement (DOJ 2001b).

Officials in countries participating in the U.S.-led anti-smuggling operations often received U.S. budgetary assistance to help detain and deport migrants. In 2000, for example, the U.S. Catholic Conference of Bishops (USCCB), which had sent a delegation to Central America to study regional migration issues, issued a scathing press release decrying U.S. interdiction activities in the region (USCCB 2000). As part of the trip, the conference representatives visited a prison in Tegucigalpa, Honduras, that was filled with migrants who had been detained during Operation Forerunner. Said the press release:

“We are gravely concerned with the human impact of Operation Forerunner, a multilateral regional effort purportedly designed to apprehend and prosecute human smugglers, or ‘coyotes,’ who provide transport to migrants through the region and on their journey north. We strongly agree that these smugglers, who charge migrants as much as \$5,000 to shepherd their trip, should be captured and brought to justice. However, Operation Forerunner has had the effect of targeting migrants more than the persons who smuggle them, resulting in many migrants being placed in substandard prisons in the region without representation or the opportunity to apply for asylum. ... The results of Operation Forerunner give us pause as to the real objectives of the initiative. In each of the countries visited, the governments apprehended only a handful of ‘coyotes’ while capturing several thousand migrants, jailing many of them, and returning them to their countries. The U.S. government has been intimately involved in these interdiction efforts, offering teams of ‘advisors’ to the Central American governments and paying for the return of extra-regional migrants to their homes. As one U.S. embassy official informed us, *‘It is less expensive to take care of the problem here than when they reach the United States’*” [emphasis added].

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

An investigative report published by this author at the time established that the facility Patel had been detained at was one of two facilities that had received funding through the U.S. Embassy in Guatemala City in direct response to a request from Guatemalan authorities, who complained that anti-smuggling operations were overwhelming their capacities (Flynn 2002). In an interview, a Guatemalan immigrant-rights advocate described the two U.S.-funded detention centres, which were closed shortly after Patel's suicide, stating that after Operation Disrupt in 2001 "the centres were filled with people

from everywhere—from Ecuador, India, Peru, Syria, Cuba. In one space there were 40 people. Everything was being destroyed, there was no light, no air. They were worse than our jails" (Flynn 2002).

In response to inquiries about whether U.S. officials had bothered to check on the facilities they were funding, a U.S. Embassy spokesperson claimed she did not know and referred questions to the INS regional office in Mexico City. The director of this office said that U.S. officials did eventually visit, and they "determined that the facilities Guatemala was using were not acceptable. Guatemala is now looking at another location to build a new detention centre, which will be almost like a model for Central America. . . . I sent my deputy director to check it out because we are greatly concerned" (Flynn 2002).

In other cases of U.S. offshore interdiction, questions of custody and sovereignty have been more acute. One notable case occurred in 2002, when the U.S. Navy interdicted an Ecuadorian vessel, the *San Jacinto*, off the coast of Guatemala and towed it to southern Mexico, where the 270 migrants on board were briefly questioned and then repatriated. Although nominally in the custody of Mexican officials, the five alleged smugglers—identified by passengers as the crew—were questioned by U.S. Immigration and Naturalization Service officials, who—somewhat remarkably, given their location at the time—advised them of their rights under the U.S. Constitution. Although the crew had little or no understanding of U.S. laws, the INS officials asked them if they would waive their Miranda rights, which they did (Flynn 2003a and 2005c).

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

The documents fail to explain how the crew ended up on that flight, or whether they had any idea they were heading to the United States. According to an attorney who represented the crewmembers, when they boarded their flight in Mexico, "Their understanding was that they were going to Ecuador" (Flynn 2005b). Speaking on background, a U.S. immigration official in Ecuador solved the mystery, explaining during in an interview with this author: "Mexico would be the country that deported [the crew], and if they choose to deport them by way of the United States, where the plane has a layover, what can we do about it?" (Flynn 2005b).

While the Coast Guard—with support from the U.S. Navy—has long been a key player in the Caribbean, its "national security" mandate was expanded in the early 1990s by a succession of presidential decrees. In testimony before Congress in 1999, Coast Guard Captain Anthony S. Tangemon described the orders: "President [George H.W.] Bush issued [Executive Order] 12807 in 1992, directing the Secretary of Transportation to issue appropriate instructions to the Coast Guard to enforce the suspension of the entry of undocumented aliens into the U.S. by sea and to interdict the vessels carrying them.

President [Bill] Clinton issued PDD-9 [Presidential Decision Directive-9] in June 1993, directing the Coast Guard and other Federal law enforcement agencies to cooperate in the suppression of alien smuggling” (Tangemon 1999).

Much of the Coast Guard’s efforts have focused on the Pacific coast of the Americas, which in the mid-2000s experienced an important spike in the number of Chinese and Ecuadorean smuggling vessels. Although its principal mission is to search for illegal narcotics trafficking, the Coast Guard (sometimes with the support of the U.S. Navy or its counterparts in Mexico) regularly intercepts migrant smuggling boats, often for legitimate humanitarian purposes. Most of the vessels do not have the proper conditions to transport migrants and lack emergency equipment (Thompson and Ochoa 2004). Interdicted migrants have been sent to detention facilities in the southern Mexican city of Tapachula or Guatemala City to await deportation (Flynn 2002).

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

Furor over U.S. interdiction efforts in the region erupted in October 2004 after the *U.S.S. Curts* intercepted an Ecuadorian fishing vessel carrying some 80 migrants 240 miles northeast of the Galapagos Islands. When the migrants arrived in Manta, they immediately denounced the abuses they had suffered at the hands of U.S. sailors who, they said, had mistreated several detainees in an effort to identify the crew. One of the detainees told reporters that sailors had beaten a polio victim with an iron bar “because he didn't get up fast enough” (Ríos 2004).

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

Although the Manta base was shuttered in 2009 and interdiction numbers have tapered off in recent years, the Obama administration has continued to pursue extraterritorial strategies, including diffusing detention practices to its neighbors. In September 2010, for example, the U.S. Embassy in the Bahamas reported that United States Northern Command co-sponsored with the embassy a tour of the Krome immigration detention centre in Florida by members of the Royal Bahamas Defence Force Commando Squadron in order “to discuss best practices in immigration facility detention management.” According to the embassy press release, the Krome visit was “the

second in a series of exchanges on detainee operations funded by USNORTHCOM” (U.S. Embassy Nassau 2010).

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

The “Pacific Solution”

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

In particular, in the early 2000s, Australian parliamentary records reveal that officials in that country specifically cited the case of Guantanamo when proposing the “Pacific Solution” aimed at interdicting vessels before they reached national waters and detaining asylum seekers and irregular migrants in offshore facilities located in Nauru and Papua New Guinea.

The seeds of this policy appear to have been sown in the early 1990s, when a Labor-led government introduced the policy of “mandatory detention” of unlawful immigrants with passage of the 1992 Migration Amendment Act. The policy was spurred by public concern about mounting numbers of unauthorized boat arrivals, which the government argued were undermining the country’s ability to protect its borders (Stevens 2002). The amendment made detention mandatory for all unauthorized boat arrivals. The maximum length of detention was increased to nine months, but could be prolonged indefinitely due to legal procedures and appeals (Stevens 2002). The law also established that detainees could only be freed if they were removed from the country or granted a visa, leaving no room for alternative arrangements such as bail (AI 2005). To accommodate the resulting increases in the detainee population, additional immigration detention centres were established in remote areas of Australia, with heightened security (Stevens 2002).

The real impact of this policy was not felt—excepting, of course, amongst the detainees themselves—until the late 1990s, when Australia began experiencing new increases in the number of asylum seekers and irregular migrants from the Middle East and Central

Asia being smuggled via Indonesia into the country. Although the total numbers of people remained relatively small—less than 4,000 annually—the situation became politically charged as the government ran into a number of well publicized difficulties trying to process and remove the migrants, which resulted in entire families being held for years in highly restrictive detention conditions (AI 2005).

As the Australian government came under increasing international criticism for its mandatory and indefinite detention policies, officials began looking for alternative strategies to limit the country's exposure to boat people. On 26 August 2001, authorities were presented with an ideal case to deploy these strategies when surveillance flights detected a suspicious fishing vessel off the coast of Christmas Island. A "Bills Digest" from a September 2001 Australian Parliament debate recounts the ensuing events: "The vessel was carrying 433 potential asylum seekers [from Afghanistan] en route to Australia before it broke down. The following day Australian Search and Rescue (AusSAR) broadcast a call to any merchant ships in the vicinity to render assistance to the stricken vessel. A Norwegian freighter, the *Tampa*, responded to the call, intercepting the vessel and bringing its passengers aboard. The master of the *Tampa*, Captain Arne Rinnan, had intended to take the rescuees to a port in Indonesia but was requested by the passengers to proceed to Christmas Island. Before the *Tampa* reached Australia's territorial waters it was instructed to remain in the contiguous zone. On 28 August the *Tampa* issued a distress signal based on the fact that assistance had not been provided within 48 hours. On 29 August it proceeded into the territorial waters surrounding Christmas Island and was interdicted by 45 SAS members. The same day the Government introduced border protection legislation into Parliament" (Australian Parliament 2001).

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

The initial bill was rejected by the Senate. Additionally, the decision to force the detention of the asylum seekers on board the *Tampa*, where they had remained after the SAS took control of the *Tampa*, was found to be unlawful by a federal court.

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

The parliamentary digest describing these proposals makes clear the source of inspiration for this Australian “solution.” In a section titled “United States Analogy,” the digest recounts various policies pursued by successive U.S. administrations to combat “people smuggling,” highlighting in particular directives to interdict suspected smuggling vessels in the high seas, including President Clinton’s directive “providing for the offshore processing of illegal immigrants.” The digest then states how in the United States “there is a distinction between illegal immigrants who are interdicted offshore and those who apply within the territory of the United States. The distinction is between immigrants who are 'seeking admission' and those who are 'in and admitted to the United States'. ... Illegal immigrants who are interdicted offshore are taken to a third country or a United States 'trust territory' for processing. These places include Guantanamo in Cuba, the Mariana Islands and Midway, but not Guam or the Virgin Islands which form part of the United States. As at 1998, the United States was negotiating with Mexico to reach an agreement allowing assessment within Mexican waters and repatriation via Mexico. It is difficult to get accurate information on agreements between the United States and processing countries or countries of origin. However, it is understood that in several cases, 'jurisdiction' over foreign ships in international waters has been exercised under the *Safety of Life at Sea (SOLAS)* regulations established by the International Maritime Organisation. Otherwise, jurisdiction has been obtained by consent in individual cases” (Australian Parliament 2001).

Unlike the U.S. policies it emulated, the Pacific Solution became the focus of national and international human rights campaigns. Amnesty International filed complaints against Australia with UNHCR and the UN Committee against Torture, claiming that refugee’s rights to freedom and security were being jeopardized. The Australian public, meanwhile, largely supported the changes, re-electing the Conservative Howard government, which proclaimed victory over a foreign invasion (Baillet 2003).

Although a Labor-led administration decided to close the country’s offshore facilities in Nauru and Papua New Guinea in 2008 (BBC 2008; UNHCR 2008), the policy was revived in 2012 with multi-party backing.

The revival of the Pacific Solution came after years of pursuing related offshore schemes in other nearby countries. For example, since the early 2000s, Australia has worked with the International Organization for Migration (IOM) and the Indonesian government to “accommodate” migrants interdicted by Indonesia en route to Australia. This program, which has been funded by Australia, reportedly conforms to the Indonesian practice of generally allowing asylum seekers to be housed in non-secure facilities (Taylor 2010).

However, in 2007, the IOM launched a complementary Australian-funded initiative called “Management and Care of Irregular Migrants Project,” which has had three core aims: boosting the capacity of Indonesia’s main detention centres; developing a manual of “standard operating procedures” for detention operations; and providing training to officials involved in overseeing the “voluntary” return of detainees to their countries of origin (Taylor 2010). According to one Australian scholar who has investigated the

situation in Indonesia, “The Australian funded increase in Indonesian immigration detention capacity has been matched by an increased tendency on the part of the Indonesian government to detain asylum seekers” (Taylor 2010).

A 2009 investigation by an Australian lawyer-journalist team reported similar concerns, stating: “There is growing concern about the volume of asylum seekers flowing into Indonesia from Afghanistan, Iraq, Sri Lanka and Burma (in particular). Until recently, there had been an almost total media blackout on the subject, but information has seeped through, confirming that Australia is involved in the practice of warehousing asylum seekers (including children and babies) in Indonesia, and that taxpayers’ money is being used to facilitate this practice” (Taylor 2009).

Additionally, in 2010-2011, the Labor government endeavored to make agreements with East Timor and Malaysia for establishing asylum seeker processing facilities that would confine migrants apprehended by Australia while their claims were processed by UNHCR. While the East Timor proposal was quickly abandoned, the so-called Malaysian Solution—which involved swapping several hundred illegal arrivals in Australia for several thousand refugees in Malaysia who had already received status—became the subject of heated debate, both nationally and internationally, before finally being rejected by Australia’s High Court in the case *Plaintiff M70/2011 v. Minister for Immigration and Citizenship* (2011).

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

As it encountered with previous offshore processing efforts, Australia’s revived Pacific Solution has raised a number of unsettling questions not only about the country’s commitment to the Refugee Convention, but also about jurisdictional authority at offshore detention sites, legal accountability, and national sovereignty.⁶ According to one observer, writing in the Sunday Morning Herald, “Successive governments have

⁶ Wrote one blogger on Australian politics, “The very features of the agreement behind the [Papua New Guinea] solution, such as an upfront role for Australian police on the streets of Port Moresby announced by [Prime Minister] Rudd [in mid-2013], would only be considered by an unstable state with a weak sovereignty. This does not make the ideal partner for a government that wishes to show how much control it has.” The Piping Shrike, 24 February 2014, <http://www.pipingshrike.com/2014/02/sovereignty.html>

struggled to explain what responsibility Australia bears for asylum seekers detained in camps run and paid for by Australia but operating in the legal jurisdiction of other nations” (Flitton 2014).

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

“Fortress Europe”

“Transit states” and other developing nations on the periphery of Australia’s geographical sphere of influence are not the only countries that have been impacted by the detention and interdiction policies pursued by Canberra. Canadian officials, for instance, have cited Australia’s response to unauthorized boat arrivals in their discussions on how to handle such arrivals at their ports, and there are reports of Canadian officials touring Australian detention centres (Bradimore and Bauder 2011; CIC 2010).⁷ Likewise, in a clear demonstration of how detention and interdiction practices diffuse between peer countries, New Zealand officials subsequently cited both Canadian and Australian responses to unauthorized boat arrivals to press for harsher detention policies, including the use of offshore processing facilities for “mass boat

⁷ Canada in fact has a long history of involvement in controversial extraterritorial interdiction and *refoulement* practices, although there appears to be little documentation of such cases. Writes Aiken (2001): “One of the rare, documented cases of such *refoulement* occurred in 1998. Canadian government officials participated in the interception of a boat in the territorial waters of Senegal which was carrying one hundred and ninety two Tamil asylum seekers from Sri Lanka. One of the young men on the vessel, Thambirasa Kamalathanan, describes being detained on the boat and told that he would not be given food or water until he signed a document stating that he agreed to voluntarily return to Sri Lanka. None of the authorities involved in the interception, including representatives of the Canadian and American governments as well as staff with the International Organization for Migration, afforded Kamalathanan an opportunity to explain that he had been arrested by Sri Lankan police on several occasions in the past few years, mistreated in detention, but always released without charge. No one gave him an opportunity to explain his fears concerning the prospect of return to Sri Lanka. Upon return to Sri Lanka, the Tamils were arrested and held in detention for up to five weeks. Several weeks after his release, Kamalathanan was re-arrested by the police on the pretext of a terrorism investigation and subjected to severe torture. In the only public acknowledgement of this interdiction almost a full year later, a Canadian government spokesman described the action as a success in safeguarding the country from ‘illegal economic migrants.’”

arrivals.” Said New Zealand Prime Minister John Key in 2010: “If they can get to Canada they can get to New Zealand so we are looking at our own legislation and our response to this issue” (Vance 2010).

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

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

The phenomenon of the externalization of detention in the EU sphere contrasts with the “remote control” practices we have seen in the United States and Australia, in particular because the process of shifting practices and pressures to the exterior involves negotiations with governments from both in and outside the union. Broadly, one can characterize the externalization of detention in the European region as an interlocking chain of diffusion processes whereby detention pressures and practices are exported from main migration destination countries to the periphery of the EU and beyond. Policy developments at the regional level and among major destination countries place pressures on EU border states to serve as gatekeepers for Europe and bolster their detention activities. In turn, these border countries, working with EU partners (and sometimes international organizations like the IOM), diffuse detention pressures outward to their non-European neighbors—both directly, by funding detention efforts in non-EU countries; and indirectly, by hardening their borders and leaving neighboring countries the task of accommodating increasing numbers of irregular migrants and asylum seekers (Flynn and Cannon 2011).

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

Externalization to non-EU countries includes both direct and indirect processes. Indirectly, EU countries have used a number of mechanisms that shift migratory burdens to neighboring countries, which spur these countries to boost their own controls. One approach has been to negotiate readmission agreements with non-EU countries, which

oblige these countries to accept not only their own nationals but also third-country nationals in exchange for “compensatory measures” like visa facilitation programs. In December 2013, for example, the EU finalized such an agreement with Turkey, according to which Ankara will have to readmit its own citizens as well as third-country nationals who enter the EU directly from Turkey. During 2011 alone, the EU reported that nearly 56,000 third-country nationals entered or attempted to enter the EU by way of Turkey (Güder 2013). If Turkey follows established practice in other countries that have readmission agreements with the EU—like Ukraine—many of the readmitted people will be placed in detention. This is particularly significant in the case of Turkey as it retains a “geographical limitation” clause that restricts the country’s refugee protection regime to asylum seekers and refugees from Europe (see GDP, “[Immigration Detention in Turkey](#),” April 2014).

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

With Frontex serving as coordinator, European maritime forces participate in joint patrols along the Mediterranean and West African coasts, and undertake targeted operations, like deploying Rapid Border Intervention Teams (RABITs) to perceived vulnerable border areas, including most notoriously the 2010 RABIT deployment to Greece’s land border with Turkey, which rights groups claim led to serious violations of human rights (Guild and Carrera 2010; HRW 2010). Describing the operation, Human Rights Watch reported: “In early November, Frontex, the EU’s border agency, deployed a 175-member Rapid Border Intervention Team (RABIT) for the first time in its five-year history. Equipped with high-tech detection equipment, a helicopter, dogs, and vehicles, RABIT has assisted Greek authorities in trying to stop the migrant flow into Greece” (HRW 2010).

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

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

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

Jurisdictional questions regarding Spain's activities in Mauritania were addressed in the "Marine I Case" (Committee against Torture, *J.H.A. v. Spain*, 21 Nov. 2008, no. 323/2007), which involved a different ad hoc detention facility—this one located in an abandoned fish-processing facility in Nouadhibou—used by Spain after it aided passengers aboard a smuggling boat that had lost power in international waters off the coast of West Africa in 2007. While the UN Committee against Torture (CAT) ultimately ruled that the case itself was inadmissible because the complainant—a Spanish citizen working for a human rights NGO—did not have standing, it nevertheless rejected claims by Spain that the incidents covered in the case occurred outside Spanish territory. Citing its general comment No. 2, which provides that a state's jurisdiction includes any territory where it exercises effective control, the Committee found that Spain "maintained control over the persons on board the *Marine I* from the time the vessel was rescued and throughout the identification and repatriation process that took place at Nouadhibou. In particular, the State party exercised, by virtue of a diplomatic agreement concluded with Mauritania, constant de facto control over the alleged victims during their detention in Nouadhibou. Consequently, the Committee considers that the alleged victims are subject to Spanish jurisdiction insofar as the complaint that forms the subject of the present communication is concerned" (para 8.2).

The Mauritania situation arguably reflects a broader trend of core countries attempting to deflect migratory pressures by externalizing immigration controls to states that are not considered main destinations of migrants and where the rule of law is often weak. This raises questions about the culpability of liberal democracies in the abuses detainees suffer when they are interdicted before reaching their destinations. Observers have expressed similar concerns with respect to the numerous efforts to thwart the arrival of asylum seekers, such as EU discussions on extraterritorial processing centres, Australia's "Pacific Solution," and U.S. Caribbean interdiction policies.

The Mauritania case is representative of what could be termed “direct diffusion”—or the direct involvement of one country in promoting and financing detention practices and policies in another, which contrasts with “indirect diffusion,” the emulation of (or learning from) another country’s policies (i.e. Australia copying U.S. programs, or Europe using Australia’s offshore detention as a model). As we have seen, the EU and its member states have repeatedly pressured and supported ramped up detention practices in neighboring countries. They have also worked through international organizations, like the International Organization for Migration, to prop up overseas detention efforts. Such a case is the Ukraine, where the European Commission provided funds to the IOM to work on boosting and reforming detention efforts, including by funding NGOs to monitor detention centres (Dasney 2009). According to one Ukraine expert, NGOs that work with the IOM on the EC-funded project have been under pressure not to criticize state practices because doing so could ultimately jeopardize their funding (Flynn and Cannon 2010).

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

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

Policy documents from an important—and secretive—series of intergovernmental meetings at the time (called the “Intergovernmental Consultation on Asylum, Refugees and Migration Policies,” or IGC) reveal the central role that the Australian policies—as well as U.S. Caribbean policies—played in influencing European leaders. Describing these documents Noll (2003, p. 313) writes: “The Spring 2003 debate reveals that the ‘Pacific solution’ constituted a source of inspiration for the British and Danish governments. On the 23 April meeting of the mini-IGC ... the Australian model as well as the Haiti and Cuban interdiction programmes implemented by the U.S. were discussed.”

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

This failure to establish an EU-wide offshore processing policy has been described by Levy as a consequence of the “self-constructed normative image of the EU, the embedded liberalism of European political culture” (Levy 2010, p. 96). However, as both

the cases of the Ukraine and Mauritania demonstrate, the EU itself as well as individual EU countries have developed other methods for diffusing detention policies and practices. Some of these efforts predate the Pacific Solution. For instance, in 1998, Italy and Tunisia finalized an agreement that set conditions for the readmission of Tunisian and third-country nationals. As part of this agreement, Italy agreed to provide 500 million liras (260,000 €) expressly for the creation of migrant detention facilities (centri di permanenza) (Scambio di Note tra l'Italia e la Tunisia concernente l'ingresso e la riammissione delle persone in posizione irregolare, Roma, 6 agosto 1998).

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

Conclusion: Diffusion and Responsibility

This paper has endeavoured to describe various cases of the diffusion of immigration detention to demonstrate how this tool of immigration control has become a global phenomenon. We have seen how receiving countries from Australia to the United States to the member states of the EU have successfully transferred detention practices and pressures to a large number of states on their periphery, helping lead to the establishment of an archipelago of emerging detention regimes that literally spans the globe. We have also observed how, prior to these direct diffusion efforts, core destination countries “learned” from each other the purported utility of offshore practices.

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

Arguably, there are two overarching categories of diffusion, direct and indirect, each of which contains nuanced subcategories. On the one hand, we can clearly observe from the cases described in this paper the transfer through *unilateral emulation* (or indirect

diffusion) of offshore detention strategies from the United States to Australia to Europe, with the United States serving as an early innovator. Among the motives that have spurred these states to adopt such strategies are political decisions aimed at allaying growing public fears (or “moral panics”) by demonstrating that authorities are taking all measures possible to confront the “spectre” of irregular migration, as Franco Frattini put it in his speech inaugurating Frontex. Similarly, such decisions can be based on arguably flawed though perhaps at times genuine beliefs that interdicting boats on the high seas and transferring apprehended migrants to third countries will deter others.

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

Also driving diffusion—particularly direct diffusion—may be the realization that detaining someone abroad is less expensive than doing so at home. U.S. anti-smuggling operations in Honduras and elsewhere in the Americas would appear to support such a theory. Additionally, authorities may be driven to take extra measures when internal policies fail to deliver expected results, like in the case of Australia, whose policy of mandatory detention failed to deter increasing numbers of unauthorized boat arrivals.

Another recurring motif in this history has been the response of core countries to normative pressure stemming from international human rights obligations (like the right to asylum) by seeking ways to circumvent, co-opt, or otherwise counteract this pressure through the diffusion of detention to upstream countries. It seems clear that a desire to prevent migrants from accessing asylum procedures and other legal protections has been an important contributing factor in many of the offshore detention schemes described above. We have seen it at work in the U.S. decision to detain Haitians on board Navy vessels in the early 1990s, which immediately preceded the decision to establish Guantanamo as a “Migrant Operations Center”; in the parliamentary deliberations that preceded the establishment of Australia’s Pacific Solution; as well as among the motives that have driven EU discussions on whether to create offshore asylum processing centres. What one observer said of Australia’s policies applies equally to all these cases: “By locating asylum seekers offshore, Australia successfully diluted its human rights obligations towards these people and hindered public scrutiny of their living conditions” (Afeef 2006). Thus, this paper seems to provide persuasive

support for the argument advanced by numerous scholars, including Guiraudon and Lahav (2000), that states often seek to “circumvent normative constraints” by employing avoidance mechanisms.

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

Also, the normative argument presumes that diffusion is a uni-directional process, leading from the core to the periphery. But as we can see with the history of U.S.-Cuban relations, it is not always the hegemonic country that sets the conditions of migration arrangements or serves as the main engine of diffusion. In Europe, the most notorious case of a non-EU country attempting to drive the process is that of Libya. In mid-2010, just a few months before NATO began bombing that country in support of rebels, Muammar Gaddafi took advantage of a diplomatic trip to Italy to warn that without his support “Europe might no longer be European and even black as there are millions who want to come in” (Squires 2010).

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

Ultimately, regardless of the particular channel by which detention practices and policies transfer, the underlying lesson should be that in an interconnected world, the policies pursued by one country can have an enormous impact on how people are treated on the other side of the globe. Through the forces of example, learning, coercion, and persuasion, immigration detention has attained global dimensions. The role that the United States and other wealthy countries have played in this process should be better acknowledged, especially when we see that this process has at times been driven by efforts to evade fundamental rights and with the result that thousands of people are confined in paltry and inhuman conditions without proper legal guarantees. Just as offshore interdiction and detention schemes raise important questions about custody, accountability, and sovereignty, they should also spur questions over where responsibility for the wellbeing of migrants begins and ends. Clearly, with immigration detention, all the answers cannot be found just at home.

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