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ARTICLE

Discovering 'Immigration Control' in England, c. 1540 – c. 1640

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Abstract

Migration history is a growing field – yet the legal status of migrants in early modern England has not yet been investigated in detail. Reconstructing the legal system that governed migrants in early modern England does not just add significant depth and nuance to histories of migration and migrants, but also provides fresh insight into the status of English subjects. Furthermore, it enables historians to trace longer histories of the exclusion of migrants from rights in England and Britain. This article reconstructs the common law governance of migrants between c. 1540 and c. 1640, showing how common law principles and practices excluded migrants from the rights-bearing status of English subjects. Rather than being governed by the law, migrants were substantively governed under prerogative, a form of governance repeatedly resisted by English subjects. Although some migrants could access (unstable) liberties granted under prerogative, for the most part migrants were also subject to discriminatory local byelaws and licences and commissions granted by the crown for their exploitation. The repeated 'molestation' of migrants by informers for working contrary to statute, and petitions against this harassment from migrants suggest this early modern system of immigration control was relatively well understood by both subjects and migrants.

Hannah Arendt argued in the mid-twentieth century that early modern migrants were the 'happier predecessors' of modern refugees, who are faced with the 'severest restrictions'.[1] Certainly, today's regimes of immigration governance are defined not just by rigorous controls at the border, but through systems of 'internal bordering'.[2] Internal bordering comprises systems that regulate, surveil, and govern migrants once they are resident in a state: restrictions on working, welfare benefits, access to housing, and so on. Although it is well documented that early modern immigration control at external borders was not as rigorous as today's regimes,[3] whether forms

[1]Hannah Arendt, *The origins of totalitarianism* (New York, NY, 1968; repr. London, 2017), pp. 349, 384–5.

[2]Nira Yuval-Davis, Georgie Wemyss, and Kathryn Cassidy, 'Everyday bordering, belonging and the reorientation of British immigration legislation', *Sociology*, 52 (2018), pp. 228–44.

[3]Luca Scholz, *Borders and freedom of movement in the Holy Roman Empire* (Oxford, 2020), passim; Raingard Esser and Steven G. Ellis, eds., *Frontier and border regions in early modern Europe* (Hanover, 2013), passim; Lucy Mayblin, *Asylum after empire: colonial legacies in the politics of asylum seeking* (Lanham, MD, 2017), pp. 15–17; Caroline Shaw, *Britannia's embrace: modern humanitarianism and the imperial origins of refugee relief*

of internal bordering existed as a system of immigration control in early modern England has not yet been explored in detail.

Although some studies have argued that pre-modern polities were fundamentally open, with limited differentiation between subject/citizen and foreigner/migrant,[4] most histories of immigration to early modern England have documented restrictions on migrants, primarily on the local level.[5] However, these studies, for the most part, have not conceptualized such restrictions as a regime of immigration control. By documenting and analysing local restrictions, mainly over the shorter term, without connecting them to the common law framework governing both subjects and migrants nationally, these studies miss important connections between such restrictions and common law principles and practices that granted subjects rights while maintaining migrants' rightslessness.[6]

In England between 1540 and 1640, as the population of immigrants rapidly increased,[7] the state did in fact experiment with immigration control. Migrants were governed through national commissions, surveilled through 'Returns of Aliens',[8] and settled in dispersed communities as the state sought to balance the economic benefits of increasing immigration, the Christian duty to welcome persecuted migrants, and subjects' rights. Migrants themselves recognized that they were subject to restrictions, particularly relating to access to work, which affected their ability to meaningfully settle.[9] In 1560, for example, the Elders of the London Dutch Church

(New York, NY, 2015), pp. 15–40; I am also drawing on the as yet unpublished work of Juliet Atkinson, a Ph.D. researcher at the University of Leeds.

[4]Arendt, *The origins of totalitarianism*, pp. 349, 384–5; see also J. C. Torpey, *The invention of the passport: surveillance, citizenship and the state* (Cambridge, 2018), pp. 6–18; Nevzat Soguk, *States and strangers: refugees and the displacements of statecraft* (Minneapolis, MN, 1999), pp. 62–74; Ann Dummett and Andrew Nicol, *Subjects, citizens, aliens and others: nationality and immigration law* (Evanston, IL, 1990), pp. 11–12; Simon Behrman, *Law and asylum: space, subject, resistance* (Abingdon, 2018), pp. 160–1.

[5]Jacob Selwood, *Diversity and difference in early modern London* (Abingdon, 2016); Laura Hunt, Yungblut, *Strangers settled here amongst us: policies, perceptions and the presence of aliens in Elizabethan England* (Abingdon, 1996); Andrew Pettegree, *Foreign Protestant communities in sixteenth-century London* (Oxford, 1986); Scott Oldenburg, *Alien Albion: literature and immigration in early modern England* (Toronto, 2014); Ole Peter Grell, *Calvinist exiles in Tudor and Stuart England* (Abingdon, 2017); Nigel Goose and Lien Bich Luu, eds., *Immigrants in Tudor and early Stuart England* (Eastbourne, 2003); Christopher Joby, 'Flemish and Walloon exile communities in sixteenth-century Norwich: a case study of local and national responses to large-scale migration from the Low Countries', *Immigrants & Minorities*, 43 (2025), pp. 385–423.

[6]A notable exception is Lien Bich Luu, 'Natural-born versus stranger-born subjects', in Goose and Luu, eds., *Immigrants in Tudor and early Stuart England*, pp. 57–75. Keechang Kim, *Aliens in medieval law: the origins of modern citizenship* (Cambridge, 2000), provides a comprehensive overview of the common law governing migrants but does not consider restrictions in practice. Yungblut, *Strangers settled here amongst us*, considers royal policy but does not connect this substantively to common law.

[7]W. Mark Ormrod, Bart Lambert, and Jonathan Mackman, *Immigrant England, 1300–1550* (Manchester, 2018), pp. 148–50.

[8]Yungblut, *Strangers settled here amongst us*, pp. 13–34.

[9]Migrants were generally known as 'aliens' or 'strangers', and sometimes as 'foreigners' in early modern England. Although several histories refer to migrants in early modern England as 'refugees', given that many of them fled persecution, I have chosen to use the term 'migrant' throughout this article. The term 'refugee' was not in use in England until the end of the seventeenth century, and systems of 'refugee protection' did not exist. Using the term migrants is not just more accurate, but more inclusive in that it acknowledges the multifarious reasons why migrants might leave their natal country and settle elsewhere.

complained to Elizabeth I that '[We]...cannot believe that you wish those who, for the sake of the true religion...have come hither...as to a free and safe place, to be precluded from the very first from your dominion...[had] no liberty to reside and to exercise their trade.'[10]

These experiments are only comprehensible when analysed in the context of a common law framework that rendered migrants rightsless – and granted subjects a rights-bearing status. The legal distinction between subjects and migrants was as important in early modern England as it is in today's more established regimes of immigration control. Subject status was conferred through birth in England, which generated allegiance. In turn, birth 'in allegiance' gave subjects access to rights, and the benefit of the law. Those born 'out of allegiance' – migrants – were functionally rightsless. It was possible for migrants to secure the status of English subjects through naturalization, but this was an expensive and complicated process, requiring a private act of parliament.[11] The most important consequence of migrants' exclusion from the benefit of the law was that migrants were governed primarily through prerogative – that is, the powers that the monarch could exercise without reference to parliament. As we shall see, although both subjects and migrants were subject to prerogative, migrants, unlike subjects, were without right or remedy to challenge its reach.

Although the question of when subjects became citizens has been an important concern of historians of early modern England,[12] histories of subjects' rights in England have broadly ignored migrants.[13] In the same way, with the exception of Keechang Kim, historians of early modern migration have paid scant attention to subjects' legal status.[14] Moreover, citizenship as a legal status, rather than participatory practice, is underexplored in the context of early modern England.[15] This is despite the well-documented 'law-mindedness' of subjects at that time.[16] However, recent work on migrants and subjects/citizens in early modern France, Spain, and America has shown the importance of exploring emerging citizenship as a legal status through the lens of migrants' experiences.[17]

The experimental nature of early modern immigration control is significant. This was no static regime: rather, the statuses of subject and migrant were continuously (re)constructed and (re)enforced with reference to each other, a process

[10]J. H. Hessels, ed., *Ecclesiae londino-batavae archivum: tomus secundus* (Cambridge, 1889), pp. 124–7.

[11]Stephanie DeGooyer, *Before borders: a legal and literary history of naturalization* (Baltimore, MD, 2022), p. 43.

[12]See, inter alia, Patrick Collinson, *Elizabethan essays* (London, 1994), passim; Quentin Skinner, *Liberty before liberalism* (Cambridge, 2012), pp. 11–35; Phil Withington, *The politics of commonwealth: citizens and freemen in early modern England* (Cambridge, 2005), passim.

[13]A brief exception is John Baker, 'Status and legal personality', in John Baker, *The Oxford history of the laws of England*, VI: *1483–1558* (Oxford, 2003), pp. 597–627.

[14]Kim, *Aliens in medieval law*, passim.

[15]An exception is Rachel Foxley, 'John Lilburne and the citizenship of "free-born Englishmen"', *Historical Journal*, 47 (2004), pp. 849–74.

[16]Christopher W. Brooks, *Law, politics and society in early modern England* (Cambridge, 2008), passim.

[17]Peter Sahlins, *Unnaturally French: foreign citizens in the old regime and after* (Ithaca, NY, 2004); Kunal Parker, *Making foreigners: immigration and citizenship law in America, 1600–2000* (New York, NY, 2015); Tamar Herzog, *Defining nations: immigrants and citizens in early modern Spain and Spanish America* (New Haven, CT, 2003).

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in which both national and local authorities, and subjects and migrants, participated. This instability contributed to migrants' and subjects' capacity to negotiate and resist restrictions particularly where they related to employment, and where the employment of migrants benefited (some) subjects.[18] In London, some migrants were able to evade local forms of immigration control by moving to areas outside the City's jurisdiction,[19] and guilds sometimes colluded with migrants to enable access to employment.[20] Some subjects may even have resisted informers' harassment of migrants for working illegally.[21] On the other hand, the experimental nature of early modern immigration control, and the instability it created, had significant negative effects for migrants in early modern England. For example, although the law around birth in allegiance – and therefore access to subject status – was relatively clear, in practice the status of second-generation migrants was profoundly unstable.

Experimentation is also central to the interaction between common law and local regimes of internal bordering. Of particular importance is the system of local governance wherein local citizenship, conferring enfranchisement and access to trades, was granted by some chartered boroughs.[22] This complicated, but did not negate, early modern internal bordering. Although migrants and subjects negotiated with prerogative byelaws governing access to work in London in diverse ways, migrants' legal rightslessness always placed them at a significant disadvantage. In migrant communities settled in Norwich, Sandwich, and elsewhere, precarious privileges were extended to communities of economically useful migrants.[23] However, these liberties did not remove the fundamental rightslessness of migrants: in fact, these unstable privileges were indicative of internal bordering, as they went hand in hand with exclusion from local citizenship and binding regulations on trade and housing.[24]

Reconstructing early modern England's immigration system does not just provide depth to studies of early modern migrants and their experiences. It also provides crucial context for the status of English subjects – shedding light, for example, on why debates over subjects' rights in the civil wars, interregnum, restoration, and glorious revolution so often referenced migrants.[25] Moreover, understanding the

[18]Joseph P. Ward, '"[I]mployment for all handes which will worke": immigrants, guilds and the labour market in early seventeenth-century London', in Goose and Luu, eds., *Immigrants in Tudor and early Stuart England*, pp. 76–90.

[19]Luu, 'Natural-born versus stranger-born subjects', p. 62.

[20]Ward, '"[I]mployment for all handes which will worke"', p. 82.

[21]Mark S. R. Jenner and Lena Liapi, 'Cheap print, crime and information in early modern London: the life and death of Griffin Flood', *The Seventeenth Century*, 38 (2022), pp. 185–213.

[22]Withington, *The politics of commonwealth*, passim; David Harris Sacks, 'Freedom to, freedom from, freedom of: urban life and political participation in early modern England', *Citizenship Studies*, 11 (2007), pp. 134–50.

[23]B. A. Holderness, 'The reception and distribution of the new draperies in England', in N. B. Harte, ed., *The new draperies in the Low Countries and England, 1400–1800* (Oxford, 1991), pp. 217–43; Joby, 'Flemish and Walloon exile communities, pp. 385–423.

[24]Holderness, 'The reception and distribution of the new draperies in England', pp. 218–26.

[25]See, inter alia, Lewis du Moulin, *The povver of the Christian magistrate in sacred things. delivered in some positions, sent to a friend, upon which, a returne of his opinion was desired* (London, 1650), pp. 27–35; Hugh Peters, *Good work for a good magistrate. or, a short cut to great quiet. by honest, homely plain English hints given from scripture, reason, and experience, for the regulating of most cases in this common-wealth. concerning religion;*

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framework that was established for the governance of migrants between c. 1540 and c. 1640 enables us to trace longer-term histories of the exclusion and management of migrants in England and Britain – and in contexts worldwide where England's common law remains the basis for the legal system.[26]

I

From the fourteenth century, English legal texts articulated the notion that the benefit of the laws adhered to those 'in allegiance' to the monarch.[27] Allegiance was the basis of 'belonging' as a subject, much as, today, *ius soli*, that is, birth in the country, or *ius sanguinis*, descent from citizen parents, is the basis of citizenship (although allegiance remains important).[28] Fifteenth- and sixteenth-century legal texts increasingly insisted that those born overseas were excluded from the 'benefit of the law', an important transition from earlier notions that the benefit of the law adhered differently to different groups, such as villeins and freemen, whether 'in allegiance' or not.[29] So, while Thomas de Littleton, in his *Treatise on tenures* (c. 1480), noted that an 'aliene doone [sic] out of the alegaunce of our soverayn lorde the kyng' was, along with outlaws and some villeins, out of 'the kynges protection', and therefore 'out of helpe & protect by the kynges lawe or by the kynges writ',[30] John Rastell's *Statutes*, a 1527 legal dictionary, stated that allegiance, and therefore access to the benefit of the law, was constituted through birth in England alone. Any persons born overseas were 'owt of the legeaunce of the king',[31] with the exception of children born abroad where both parents were 'of the feyth and legeaunce of the king of englōd', an exception granted by the statute De Natis Ultra Mare (1351).[32] William Lambarde's *Eirenarcha* (1581), a handbook for justices of the peace, stated that JPs were authorized only to provide for the queen's people, 'of whiche number no A[li]en séemeth to be',[33] although Lambarde noted that some people thought 'there ought to be a difference betwéene suche an A[li]en, as is of the Enmitie of the Queene and him that is of hir Amity'.[34]

mercie; justice. by H. P. (London, 1651), pp. 53, 90–1; James Tyrrell, *Bibliotheca politica: or an enquiry into the ancient constitution of the English government* (London, 1694), pp. 899–900; Gilbert Burnet, *Six papers by Gilbert Burnet* (n.p., 1687), p. 59.

[26]Benjamin Keener, 'Calvin's Case and birthright citizenship', *University of Pennsylvania Law Review*, 174 (2025), pp. 17–38.

[27]Kim, *Aliens in medieval law*, pp. 147–51.

[28]Hans Lauterpacht, 'Allegiance, diplomatic protection and criminal jurisdiction over aliens', *Cambridge Law Journal*, 9 (1947), pp. 330–48, at pp. 334–5; Lord Goldsmith QC, 'Citizenship: our common bond' (London, 2007), p. 5.

[29]John Baker, 'Personal liberty under the common law, 1200–1600', in John Baker, *Collected papers on English legal history* (Cambridge, 2013), pp. 871–900.

[30]Sir Thomas Littleton, *Littleton tenures in Englishe* (London, 1556), fos. 41r–41v. See also Kim, *Aliens in medieval law*, p. 149.

[31]John Rastell, *The statutes prohemium Iohannis Rastell* (London, 1527), fos. lxixv–lxxr. See also Kim, *Aliens in medieval law*, pp. 155–7.

[32]Rastell, *The statutes*, fos. lxixv–lxxr.

[33]William Lambarde, *Eirenarcha: or of the office of the iustices of peace, in two bookes: gathered. 1579. and now reuised, and firste published, in the. 24. yeare of the peaceable reigne of our gratious queene Elizabeth* (London, 1581), p. 89.

[34]Ibid.

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What did access to the benefit of the law confer? That there was no charter of subjects' rights in early modern England does not mean rights did not adhere to subjects: there is no charter of rights for British citizens today, yet they hold rights under both domestic common law and international human rights instruments.[35] Legal historians such as Christopher W. Brooks,[36] John Baker,[37] and James S. Hart[38] agree that English common law conferred an enforceable body of rights on English subjects in early modernity. These rights were not static, but were contested and negotiated in the context of political and social change.[39]

Yet, the word 'rights' was rarely used in early modern England: rather, English subjects claimed liberties, privileges, freedoms. This presents a problem. As Baker puts it, 'liberties were merely allowed, but rights were entitlements to be vindicated'.[40] Moreover, liberties, privileges, and freedoms might be understood to adhere to particular privileged groups – for example, the citizens of a chartered borough – rather than the population at large.[41] However, in early modern England, liberties, privileges, and freedoms were oftentimes claimed, enforced, and advanced in much the same way as rights are. Rights regimes generally, as Samuel Moyn has argued, are simply systems that enable individuals to conceptualize, and access, specific claims against a body.[42] In sixteenth-century England, liberties were increasingly understood to adhere to all English subjects, rather than to specific groups.[43] That these liberties operated in effect as rights was due to their stability, in terms of being a generally accepted body of rights contained in the law, and in their enforceability, including against the monarch.[44]

The rights-like 'liberties' that adhered to all English subjects comprised those established in common law,[45] as well as statutes, or statute-like instruments.[46] In the sixteenth century, Magna Carta Chapter 29, the provision that guaranteed liberty of the person and a right to a fair trial,[47] grew in importance as a basis for English subjects' rights. The judges in *Anderson* v. *Warde* (1554) stated that as Magna

[35]José Harris, 'Nationality, rights, and virtue: some approaches to citizenship in Great Britain', in Richard Bellamy, Dario Castiglione, and Emilio Santoro, eds., *Lineages of European citizenship: rights, belonging, and participation in eleven nation states* (Basingstoke, 2004), pp. 73–91, at pp. 75–6, 82; Lord Goldsmith QC, 'Citizenship: our common bond', passim.

[36]Brooks, *Law, politics and society*, passim.

[37]John Baker, 'Human rights and the rule of law in Renaissance England', in Baker, *Collected papers*, pp. 923–44.

[38]James S. Hart, *The rule of law, 1603–1660: crowns, courts, and judges* (Harlow, 2003), passim.

[39]Alan Cromartie, *The constitutionalist revolution: an essay on the history of England, 1450–1642* (Cambridge, 2006), pp. 80–114; J. P. Sommerville, *Politics and ideology in England, 1603–1640* (2nd edn, London, 1999), pp. 134–63. See also John Baker, *The reinvention of Magna Carta, 1216–1616* (Cambridge, 2017), pp. 276–334.

[40]Baker, 'Human rights and the rule of law in Renaissance England', p. 924.

[41]Sacks, 'Freedom to, freedom from, freedom of', pp. 138–40.

[42]Samuel Moyn, *The last utopia: human rights in history* (Cambridge, MA, 2010), pp. 17–37.

[43]Sacks, 'Freedom to, freedom from, freedom of', p. 142.

[44]Baker, 'Human rights and the rule of law in Renaissance England'; Glenn Burgess, *Absolute monarchy and the Stuart constitution* (Yale, NJ, 1996), p. 206.

[45]Baker, 'Human rights and the rule of law in Renaissance England'.

[46]Baker, *The reinvention of Magna Carta*, pp. 252–3.

[47]Magna Carta Project, 'Chapter 29', trans. H. Summerson, *The Magna Carta Project* (2015), https://magnacarta.cmp.uea.ac.uk/read/articles_of_barons/Article_29.

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Carta applied to all freemen, then 'every subject of this realm...may sue to the king, and against any subject, be he bond or free, woman or infant, religious, outlawed, excommunicated, or otherwise, without any exception'.[48] Christopher St Germain used Magna Carta Chapter 29 to enumerate the key rights of the English subject,[49] as did Rastell.[50] Lambarde cited Chapter 29 of Magna Carta as the basis for free trials, the 'auntient libertie of the Lande, wherevato every frée borne man thinketh him selfe inheritable'.[51] Sir Edward Coke, in an unpublished 1604 memorandum, noted that Chapter 29 was 'beneficial for liberty of the subject'.[52] Coke made clear the link between allegiance and rights-bearing when he noted that such rights adhered to subjects because of 'the benefit of the law to which he is inheritable, or his native country in which he was born'.[53]

Fewer texts explicitly addressed the migrants' rightslessness, but Rastell's *Statutes* included a section on the limited legal capacities of migrants, including limited standing in law[54] as well as noting that being in allegiance conferred property rights.[55] St Germain noted that migrants could not inherit land.[56]

As well as being excluded from the benefit of the law, migrants experienced statutory restrictions that imposed regimes of internal bordering, particularly in relation to the right to work. Of particular importance is the 1540 'Act concerning Strangers'. The statute's preamble placed migrants in opposition to subjects: the government wished to halt 'the great Detriment, Hindrance, Loss and Impoverishment of his Grace's natural true Lieges and Subjects of this his Realm'.[57] The act gathered together and enforced provisions of previous statutes: that no migrant artificer or handicraftsman, unless a denizen or in the service of an Englishman, could rent a house or take up a trade, nor sell at retail (1 Ric. III c. 9); they were restricted in taking apprentices (14 & 15 Hen. VIII c. 2); and subject to additional taxation (32 Hen. VIII c. 16). The act also limited the number of migrant servants in both migrants' and subjects' households. Migrants were also habitually taxed at double the rate of subjects in early modern England,[58] and poll taxes targeting migrants also secured payment from those who, if English, would not have been taxed due to low income or lack of property.[59] Although the provisions of such statutes were not always enforced, or enforceable,[60] as we shall see they were regularly cited in efforts to impose restrictions on migrants.

[48]Max A. Robertson and Geoffrey Ellis, eds., *The English reports*, LXXIII: *King's Bench division II* (Edinburgh, 1907), pp. 227–8; Baker, *The reinvention of Magna Carta*, p. 428.

[49]Christopher St Germain, *The doctor and student: or, dialogues between a doctor of divinity and a student in the laws of England, containing the grounds of those laws*, ed. William Muchall (Cincinnati, OH, 1874), p. 19.

[50]Rastell, *The statutes*, fos. iiv–iiir, viiv, xiiiv, clviiir, cxxxir, xcr, ccixv,

[51]Lambarde, *Eirenarcha*, p. 436.

[52]Edward Coke, 'Coke's memorandum on Chapter 29 (1604)', in Baker, *The reinvention of Magna Carta*, pp. 500–10, at p. 500.

[53]Ibid., p. 500.

[54]Rastell, *The statutes*, fos. vir–viir.

[55]Ibid., fos. lxixv–lxxr.

[56]St Germain, *The doctor and student*, p. 20.

[57]John Raithby, ed., *Statutes of the realm*, III: *1509–1547* (n.p., 1819), pp. 765–6.

[58]John Raithby, ed., *Statutes of the realm*, IV: *Part 1, 1547–1584* (n.p., 1819), pp. 464–78.

[59]Ibid., pp. 122–4.

[60]Ormrod, Lambert, and Mackman, *Immigrant England, 1300–1550*, pp. 148–50.

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That migrants were disadvantaged by both statute and common law is further indicated by the fact that options existed to enable migrants – for a price – to secure forms of allegiance. Denizen status could be acquired through a prerogative grant. As a lesser form of allegiance, it granted a limited set of rights for the duration of a migrant's life,[61] but, as John Cowell, the civil lawyer, wrote in 1607, denizen status 'abridgeth him of that full benefite, which naturall subiects doe inioy'.[62] These rights were explicitly differentiated from those of subjects: the 'Acte concerning Strangers' noted that recent grants 'obtayned by the craftie…inventions' of migrants had erroneously conferred the full rights of English subjects on denizens.[63] What exactly denizen status meant was not always clear. A Marian statute, seeking the expulsion of French denizens, noted that they 'doo enjoye the Liberties and Priviledges of this Realme' but contrary to the 'true meaning' of their letters patent, 'remaine French'.[64] Nonetheless, it did confer some (precarious) security. For example, when Henry VIII went to war with France in May 1544, only non-endenized French were expelled.[65] Migrants could also be naturalized through a private act of parliament granting the full status of an English subject: the process for this was formalized in a 1608 statute (7 Jac. I c. 2).[66] Naturalization was a permanent change of status that granted migrants the full rights-bearing status of an English subject, and was more stable than denizenship,[67] as confirmed in *Godfrey* v. *Dixon* (1619) which, in settling the chain of inheritance in a family where some members were naturalized subjects, noted that endenization was only 'by patent, and may be *pro tempore*; as for years, life, &c.'[68]

The rather scattered basis of sixteenth-century immigration control was gathered together and reaffirmed by *Calvin's Case* (1608) which concerned the status of James I's Scottish subjects in England, legally migrants, after he ascended the English throne.[69] The case was a collusive action concerning whether Robert Calvin, or Colville, a child born in Scotland after the accession of James I, had the right to inherit property in England, something that would be impossible if he were a migrant. Two cases were lodged for the plaintiff: one in the King's Bench on the matter of the freehold and one in the Exchequer.[70] A demurrer was added to the effect that, since Scots, as migrants, could not plead the freehold in either court, the question of standing also needed to be resolved.[71] The case was adjourned to the Exchequer and heard before twelve judges from civil and common law jurisdictions,

[61]Yungblut, *Strangers settled here amongst us*, pp. 73–4.
[62]John Cowell, *The interpreter* (Cambridge, 1607), fo. Y3r.
[63]Raithby, ed., *Statutes*, III, pp. 765–6.
[64]Raithby ed., *Statutes*, IV, *Part I*, pp. 326–8.
[65]*Tudor and Stuart proclamations: vol. I* (n.d.), pp. 326–7.
[66]Raithby, ed., *Statutes*, IV, *Part 1*, p. 1157.
[67]DeGooyer, *Before borders*, p. 43.
[68]Max A. Robertson and Geoffrey Ellis, eds., *The English reports*, LXXIX: *King's Bench division VIII* (Edinburgh, 1907), pp. 462–3.
[69]Polly J. Price, 'Natural law and birthright citizenship in Calvin's Case (1608)', *Yale Journal of Law and the Humanities*, 73 (1997), pp. 73–145.
[70]Edward Coke, *The seventh part of the reports of Sir Edward Coke, Kt, chief justice of the Common Pleas* (London, 1738), fo. 1r.
[71]Hart, *The rule of law*, pp. 87–8.

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including the lord chancellor, Thomas Egerton, and Sir Edward Coke, then chief justice of the Common Pleas.

James turned to the courts after unsuccessfully attempting to secure the naturalization of his Scottish subjects first through proclamation, then through statute. The spirited opposition to the naturalization of James's Scottish subjects in the House of Commons shed some light on how some MPs understood subject status and its relationship to rights-bearing.[72] Although James argued that 'Since I am Sovereign over both you, as Subiects to one King',[73] MPs repeatedly rejected the notion that allegiance to the monarch alone was sufficient to grant subjecthood. Rather, subjecthood was a legal status that granted legal rights: as one unnamed MP argued in March 1607, 'Protection divided, relative to Law, and not to Allegiance.'[74] Although allegiance played an important role, it was not comprised of allegiance to the monarch alone: as William Holt argued, 'Persons, Goods, Lands, Liberties, and Lives, [are] subject to the King's politick Capacity.'[75] Sir Richard Spencer argued that 'The Subject cannot look for Protection, but where the Protection [is]...Where the Sovereignty is tied to the Laws, there must the Subject be guided by those Laws, and no other.'[76] Scots, legally migrants, were, as Thomas Wentworth MP argued in February 1607, 'Subject to him that is King of England; but not subject to the King of England.'[77]

The majority of judges in *Calvin's Case* found that English subjecthood was created through irrevocable 'natural' allegiance, acquired at birth in the domains of the monarch.[78] However, natural allegiance could not be found in common law, as MPs opposing Scottish naturalization had pointed out,[79] and Coke and his fellow justices had to work backwards from the separation of subjects and migrants that we have seen in sixteenth-century legal texts to justify their decision.[80] Although only natural allegiance granted the full rights of subjecthood, Coke's *Report* outlined other, lesser forms: allegiance might be 'acquired', through naturalization, or 'local', as in the temporary protection of a migrant under a monarch. Legal allegiance was the form of allegiance expressed in oaths of allegiance.[81]

[72]Markku Peltonen, *Rhetoric, politics and popularity in pre-revolutionary England* (Cambridge, 2012), pp. 150–63; J. H. Burns, *The true law of kingship: concepts of monarchy in early modern Scotland* (Oxford, 1996), p. 266; Bruce R. Galloway, *The union of England and Scotland, 1603–1608* (Edinburgh, 1986), pp. 103–20.

[73]James I and VI, 'A speach to both the hovses of parliament, delivered in the great chamber at White-Hall, the last day of March 1607', in J. P. Sommerville, ed., *King James VI and I political writings* (Cambridge, 2004), pp. 159–78.

[74]*Journal of the House of Commons*, I: *1547–1629* (London, 1802), pp. 345–6.

[75]Ibid., pp. 337–8.

[76]Ibid., pp. 338–9.

[77]Ibid., pp. 336–7.

[78]Coke, *Seventh report*, fo. 10r.

[79]Brooks, *Law, politics and society*, pp. 133–5; David Martin Jones, 'Sir Edward Coke and the interpretation of lawful allegiance in seventeenth-century England', *History of Political Thought*, 7 (1986), pp. 321–40; Glenn Burgess, 'The divine right of kings reconsidered', *English Historical Review*, 107 (1992), pp. 837–61; Price, 'Natural law and birthright citizenship in Calvin's Case (1608)', pp. 84, 116–20; Kim, *Aliens in medieval law*, pp. 181–2; Hart, *The rule of law*, pp. 88–9.

[80]Coke, *Seventh report*, fo. 4v.

[81]Ibid., fo. 5v. For acquired allegiance, see DeGooyer, *Before borders*, p. 40; Hannah Weiss Muller, *Subjects and sovereign: bonds of belonging in the eighteenth-century British empire* (Oxford, 2017), p. 27.

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Allegiance, despite being natural, conferred enforceable rights because it generated a 'duplex and reciprocal'[82] relationship between monarch and subject,[83] creating what Kim has described as a 'strange marriage' between subjection (through allegiance) and personal liberty.[84] As Sir Thomas Fleming, a judge of the King's Bench noted, the 'bonde of allegeaunce is not a bonde of seruitude but of Freedome: come liber homo [the same term used in Magna Carta Chapter 29]'.[85] That allegiance generated rights, rather than simply monarchical protection, is further underlined by the fact that Coke argued subjects could access both legal and natural protection as a result of their natural allegiance. The king possessed both a natural person and a 'Politick Body or Capacity': while a subject may place himself outside the monarch's legal protection through, for example, being a traitor, he nonetheless may rely on the natural protection that is the corollary of natural allegiance.[86]

The judges explicitly stated that such rights did not adhere to migrants. This rightlessness was framed as a protective factor against migrants' lack of allegiance to England's monarch: if they were, for example, able to hold land, they might act as a 'Trojan horse' for foreign rulers.[87] Although they could not access subjects' rights, migrants from countries 'in amity' were permitted recourse to the law of nations and guarantees under treaties. Migrants from countries 'in enmity', however, were without rights or recourse to protection. Coke and Christopher Yelverton, a King's Bench judge, agreed that 'infidels' had no capacity to secure allegiance as they were '*perpetui inimici*'.[88]

The exclusion of migrants, due to their lack of allegiance, from the 'duplex and reciprocal' relationship between monarch and subject was not an innovation. Rather, it articulated and reaffirmed legal principles and practices that had been in place from at least the mid-sixteenth century. Its most important consequence was that migrants were excluded from the 'benefit of the law' but subject to its rigours, something confirmed by *Courteen's Case* (1619).[89] Excluded from the legal protection that adhered to subjects, migrants were governed wholly through prerogative – and it was prerogative governance that enabled the experiments in local and national immigration control through internal bordering.

[82]Coke, *Seventh report*, fo. 5r.

[83]Ibid., fo. 5r.

[84]Kim, *Aliens in medieval law*, pp. 185–6, 192–3. See also Muller, *Subjects and sovereign*, pp. 18, 26; Price, 'Natural law and birthright citizenship in Calvin's Case (1608)', pp. 87–9.

[85]John Hawarde, *Les reports del cases in camera stellata, 1593–1609*, ed. William Paley Baildon (London, 1894), p. 362.

[86]Coke, *Seventh report*, fos. 13v–14r.

[87]Ibid., fo. 18v.

[88]Coke, *Seventh report*, fos. 17r–17v; The National Archives (TNA), SP 14/34, fo. 16r. See also Daragh Grant, 'Sir Edward Coke's infidel: imperial anxiety and the colonial origins of a "strange extrajudicial opinion"', *Journal of Modern History*, 95 (2023), pp. 771–807; Edward Cavanagh, 'Infidels in English legal thought: conquest, commerce and slavery in the common law from Coke to Mansfield, 1603–1793', *Modern Intellectual History*, 16 (2019), pp. 375–409.

[89]Henry Hobart, *The reports of that learned judge Sir Henry Hobart knight* (London, 1641), pp. 379–80.

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II

The 'great happiness' of English subjects, according to the 1610 Petition of Temporal Grievances, rested in their being governed according to the rule of law which 'of right belongeth to them'.[90] The common law, at least in theory, guaranteed some subjects' rights through the limitation of a monarch's power to interfere in the exercise of those rights.[91] This did not mean that the crown was content to exercise its powers subject to restriction, and the reach of prerogative was fiercely contested in early modern England. Under Henry VIII, statutes were promulgated to enable the enforcement of some proclamations in the same way as statute in 1539 (31 Hen. VIII c. 8)[92] and 1542/3 (33 & 34 Hen. VIII c. 26).[93] However, the enforcement of the act was limited, including through provisions in the act itself which restricted prosecution for contravening proclamations,[94] and it was repealed shortly after Henry's death.[95] Moreover, safeguards in the act limited its impact on subjects' rights: proclamations could not prejudice the property, liberty, or lives of the 'Kinges leage people', be contrary to common law, or repeal statute.

In 1604, shortly after the accession of James I, MPs complained about the potential overuse of prerogative in the *Form of Apologie and Satisfaction*, although it is not clear if the document was ever presented to the king.[96] Although the focus of the document was the protection of parliamentary privilege,[97] the *Apologie* noted with some consternation that 'the prerogatives of princes may easily and do daily grow; the privileges of the subject are for the most part at an everlasting stand'.[98] The first item in the 1610 Commons Petition of Temporal Grievances was 'Proclamations in prejudice of your subjects' right and liberty'.[99] The petitioners differentiated between governance under the law and governance under prerogative, stating that there was a 'general fear conceived...that proclamations will by degrees grow and increase to the strength and nature of lawes'.[100]

Some legal writers, like Rastell, argued that subjects' right to be ruled by law, rather than prerogative, was guaranteed by the coronation oath. The oath bound the monarch to 'hold the lawes and customes of the realme & to his power kepe them and affyrme them whiche the folke & people haue made and chosyn'.[101] Others argued that this right was found in the common law. Lambarde's *Archeoin* (c. 1590s,

[90]Elizabeth Read Foster, ed., *Proceedings in parliament, 1610*, II (New Haven, CT, 1966), pp. 257–71.

[91]Burgess, *Absolute monarchy*, pp. 170–1.

[92]Raithby, ed., *Statutes*, III, pp. 726–8.

[93]Ibid., p. 923. See also G. R. Elton, 'Henry VIII's Act of Proclamations', *English Historical Review*, 75 (1960), pp. 208–22.

[94]Rudolph.W. Heinze, 'The enforcement of royal proclamations under the provisions of the Statute of Proclamations, 1539–1547', in Joseph Slavin, ed., *Tudor men and institutions: studies in English law and government* (Baton Rouge, LA, 1972), pp. 205–31; Elton, 'Henry VIII's Act of Proclamations', pp. 213, 220–1.

[95]Raithby, ed., *Statutes*, IV, *Part I*, pp. 18–22.

[96]Cromartie, *The constitutionalist revolution*, p. 166.

[97]Andrew Thrush, 'Commons v. Chancery: the 1604 Buckinghamshire election dispute revisited', *Parliamentary History*, 26 (2007), pp. 301–9.

[98]J. R. Tanner, ed., *Constitutional documents of the reign of James I, A.D. 1603–1625, with an historical commentary* (Cambridge, 1930), pp. 217–30.

[99]Foster, ed., *Proceedings in parliament, 1610*, II, pp. 257–71.

[100]Ibid., pp. 258–9.

[101]Rastell, *The statutes*, fos. clxiir–clxiiv.

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printed 1635),[102] stated that Chapter 29 of Magna Carta freed 'the common Subject' from 'irregular Power which the former Kings and their Councell of Estate had exercised upon him'.[103] Thomas Powell's 1623 legal procedural guide[104] referenced the consensus in 'diuers Treaties' that proclamations were only legitimate when they supplemented or declared statute.[105] Powell noted that prerogative byelaws restricting, for example, the rights of subjects to trade were an 'intrusion vppon the Birth-right of a Free-borne Subiect'.[106]

Protests against prerogative rested on English subjects' rights-bearing status – their access to legal, as well as natural, protection. The prerogative governance of migrants did not operate straightforwardly: it could provide (unstable) protection as well as operating as the basis of restrictions. However, protection, where it is conditional, is as much a form of internal bordering as straightforward exclusion. Moreover, when subjects' rights and migrants' privileges came into conflict, the rights of subjects almost invariably won out. The experimental nature of this immigration control was a symptom of the relative instability of prerogative: regimes of control differed over time and place, and key questions about migrants' status and rightslessness were repeatedly revisited but ultimately unresolved.

III

One of the best-known prerogative privileges granted to migrants in early modern England was Edward VI's 1550 grant of a church in London to foreign Protestants, the 'Strangers' Church', where they could worship outside the regulations for conformity.[107] However, this was a revocable dispensation from conformity statutes, granted in recognition of congregants having fled persecution.[108] Indeed, the church experienced significant instability: closed by Mary I, it only reopened under Elizabeth I after protracted negotiations.[109] In 1636, then-archbishop of Canterbury William Laud appears to have successfully forced the London Stranger Churches to use the English liturgy and expel third-generation migrants ('natives of the second descent') from the church.[110] Moreover, as the Elders of the Dutch Church complained in 1560, although the privilege granted (Protestant) migrants rights

[102]Janelle Greenberg, *The radical face of the ancient constitution: St Edward's 'laws' in early modern political thought* (Cambridge, 2001), p. 113.

[103]William Lambarde, *Archeion, or, a discourse vpon the high courts of iustice in England* (London, 1635), pp. 108–9.

[104]David John Harvey, *The law emprynted and englysshed: the printing press as an agent of change in law and legal culture, 1475–1642* (Oxford, 2015), pp. 210–12.

[105]Thomas Powell, *The attourneys academy, or, the manner and forme of proceeding practically vpon any suite, plaint or action whatsoever, in any court of record whatsoever, within this kingdome* (London, 1623), p. 225.

[106]Ibid., pp. 60–1.

[107]Full translated text in G. B. Beeman, 'The early history of the Strangers' Church 1550 to 1561', *Proceedings of the Huguenot Society of London*, 15 (1934–5), pp. 261–82.

[108]Bernard Cottret, *The Huguenots in England: Immigration and settlement, c. 1550–1700*, trans. Peregrine Stevenson (Cambridge, 1992), pp. 36–3.

[109]Pettegree, *Foreign Protestant communities*, pp. 135–7.

[110]J. H. Hessels, ed., *Ecclesiae londino-batavae archivum: tomi tertii pars secunda* (Cambridge 1897), pp. 1745–6.

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to worship outside conformity, they had 'no liberty to reside and to exercise their trade'.[111]

A broader set of privileges was granted to the migrant communities settled under letters patent in Norwich, Sandwich, and other communities in the late sixteenth century. Although some historians have understood these patents as 'invalidating' the statutory restrictions on migrants on the ground that they had arrived fleeing persecution,[112] the letters themselves are in fact clear examples of internal bordering, offering limited prerogative protection to specific groups of migrants on the basis of their perceived economic usefulness, without mention of their experiences of persecution.[113] Migrants' permission to settle was tied to living in specific places, in specific numbers, and rights of trade and manufacture were limited to specific goods.[114] For example, although the 1567 letters patent for the Norwich migrant community granted them the ability to lease houses, open shops, and so on, they specified that this was not a right but an exemption from some provisions of the 1540 Act Concerning Strangers and other relevant statutes, for a set number of migrants operating in specific trades and tied to the local Stranger Church.[115]

The instability these prerogative privileges engendered in migrant communities is clear in the flurry of correspondence prompted by the death of Elizabeth I, as the churches sought to renew their letters patent, worried that their privileges might have expired on her death. The Norwich church was concerned that more strangers were resident than allowed under their initial agreement.[116] Yarmouth, a poor church, asked to be included with others' negotiations as they could not afford to lobby alone.[117] The churches banded together, worried about the costs of gifts to the monarch:[118] the recourse to gift-giving further clarifies that the churches sought to secure favour, not rights.

James's 1603 response to these addresses was conditional and lukewarm: he promised to extend protection to these communities despite the fact they were not his subjects, in view of their experiences of persecution, and the fact that migrants had not 'meddled' in the kingdom's affairs.[119] His son's response to similar appeals likewise highlighted the dependence of migrant communities on prerogative alone: migrants and their children were to enjoy 'such Privileges and Immunities as have

[111]Hessels, ed., *Tomus secundus*, pp. 124–7.

[112]Yungblut, *Strangers settled here amongst us*, pp. 45–8. See also Corinne Comstock Weston and Janelle Renfrow Greenberg, *Subjects and sovereigns: the grand controversy over legal sovereignty in Stuart England* (Cambridge, 2003), pp. 27–8.

[113]See, for example, the Sandwich letters patent reprinted in Thomas Dorman, 'Notes on the Dutch, Walloons, and Huguenots at Sandwich in the sixteenth and seventeenth centuries', *Proceedings of the Huguenot Society of London*, 2 (1887–8), pp. 205–40; and the Norwich letters patent in William Charles John Moens, *The Walloons and the church at Norwich: their history and registers 1565–1832* (Lymington, 1887–8), pp. 244–5.

[114]Holderness, 'The reception and distribution of the new draperies in England', pp. 218–19.

[115]Moens, *The Walloons and the church at Norwich*, pp. 244–5.

[116]J. H. Hessels, ed., *Ecclesiae londino-batavae archivum: tomi tertii pars prima* (Cambridge, 1897), pp. 1095–6.

[117]Ibid., pp. 1132–4.

[118]Ibid., pp. 1131–2.

[119]Hessels, ed., *Tomus secundus*, pp. 922–3.

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been formerly granted unto them...untill our pleasure be further signified to the contrary'.[120]

These precarious privileges were of little use if they conflicted with subjects' rights. In 1613, shortly after James reissued letters patent to the Norwich migrant communities,[121] the burghers of that town complained of the 'insupportable increase' of the congregation, and that migrants were working outside the terms of the letters patent.[122] The privy council asked Edward Coke, Henry Hobart, chief justice of the Common Pleas and MP for Norwich,[123] and Robert Houghton, a King's Bench judge and the other Norwich MP,[124] to investigate.[125] The judges concluded that James's patent was 'voyde in lawe for divers respectes' in comparison to the Elizabethan letters patent, and was the cause of the 'excessive liberty which the sayd Dutch men have assumed unto them'.[126] They proposed that the letters patent be redrawn in order to avoid inconvenience to 'his Majestie's naturall subjectes', although they did not wish migrants, having fled persecution, to be left 'voyde of all protection'.[127] After further consideration, Coke, Hobart, and Houghton concluded that the Elizabethan letters patent had been sought by Norwich 'principally for the benifite and inriching of the cittie it self' and only secondly 'for the reliefe of the straingers'.[128] The Jacobean letters patent should be recalled, and the Dutch community commanded to restrict their trade to the terms of the original letters patent. They suggested that this solution would suit the 'naturall subiectes' of Norwich who were 'cheifely and principally to be respected'.[129]

IV

Internal bordering worked differently in London, where around 5,000 migrants lived by the end of the sixteenth century.[130] Subjection to prerogative rule in London came without the mitigation of the privileges held by migrant communities in Norwich and similar settlements. In enforcing these regimes of internal bordering, subjects relied not just on their own rights-bearing status, but on the prerogative privileges they themselves held through their membership of guilds and the City. They did so through the 'delegated jurisdiction' of prerogative charters that enabled guilds and boroughs to enact and enforce byelaws restricting access to work.[131] In the case of London, this was strengthened by the fact that the City's privileges had been confirmed in Magna Carta and repeatedly by parliament.[132] As we have seen, the reach of

[120]Reprinted in Francis W. Cross, *History of the Walloon and Huguenot Church at Canterbury* (Canterbury, 1898), p. 223.
[121]Moens, *The Walloons and the church at Norwich*, p. 270.
[122]TNA, PC 2/27, pp. 107v–108r.
[123]Stuart Handley, 'Hobart, Sir Henry (c. 1554–1625)', *ODNB.*
[124]Christopher Brooks, 'Houghton, Sir Robert (1548–1624)', *ODNB.*
[125]TNA, PC 2/27, pp. 107v–108r.
[126]Ibid.
[127]Ibid.
[128]Ibid.
[129]Ibid.
[130]Selwood, *Diversity and difference*, pp. 25–34; Yungblut, *Strangers settled here amongst us*, pp. 25–31.
[131]Mary Sarah Bilder, 'The corporate origins of judicial review', *Yale Law Journal*, 116 (2006), pp. 502–66.
[132]Brooks, *Law, politics and society*, p. 386.

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prerogative where it infringed subjects' rights was contested. However, where prerogative could be used to protect subjects' capacity to, for example, work, it was often utilized in addition to rights – subjects were, as *Calvin's Case* put it, accessing both the legal and the natural protection that adhered to them.

Restrictions on working outside guilds in London were imposed on both subjects and migrants.[133] However, subjects could remedy this. In the first place, throughout the sixteenth century, a number of subjects challenged this delegated jurisdiction in the courts, relying on their rights as English subjects. For example, judges limited the powers of towns to imprison in cases including *Bradshawe* v. *Brooke* (1579), *Simmons* v. *Sweete* (1587),[134] and *Clark* v. *Gape* (1596),[135] and limited the capacity of guilds and boroughs to regulate work in *Dr Bonham's Case* (1610) and the *Taylors of Ipswich* (1615) and *Day* v. *Savadge* (1615).[136] However, where judges understood the byelaws were beneficial to subjects, they tended to find for the guild or borough,[137] as in the *Chamberlain of London's Case* (1590). The defendants in this case, who were challenging their imprisonment for non-payment of a fine for breaking a London byelaw,[138] had nonetheless seemed to understand that they had a right to challenge the powers of the chamberlain due to their rights as subjects, arguing that their imprisonment was 'against the Law and the freedom and liberty of the Subject'.[139]

There was no barrier to subjects born outside London joining a guild and acquiring local citizenship within London; in fact, English-born people born outside London constituted a majority of new guild members each year.[140] Migrants – and their children – faced significant restrictions to joining guilds, or being employed by guild members.[141] These restrictions were regularly refreshed: a 1606 byelaw, for example, forbade migrants from keeping shops or exercising trades, justifying this with reference to both the powers of the City to regulate work and the 1540 Act Concerning Strangers.[142] The byelaw stated that it was unfair to extend English subjects' rights to migrants who did not bear the related responsibilities, particularly taxation.[143]

These restrictions not only deprived migrants of the protection that guilds extended to members,[144] but left them, unlike subjects, unable to challenge guild

[133]Ian Archer, *The pursuit of stability: social relations in Elizabethan London* (Cambridge, 1991), pp. 61–2.

[134]Baker, 'Personal liberty under the common law, 1200–1600', p. 891. See also Baker, 'Freedom, the state, and the individual', in Baker, *The Oxford history of the laws of England*, VI, pp. 87–100.

[135]Edward Coke, *The fifth part of the reports of Sir Edward Coke, Kt, chief justice of the Common Pleas* (London, 1738), fo. 64r.

[136]See, inter alia, Harold J. Cook, 'Against common right and reason: the College of Physicians versus Dr. Thomas Bonham', *American Journal of Legal History*, 29 (1985), pp. 301–22; Barbara Malament, 'The economic liberalism of Sir Edward Coke', *Yale Law Journal*, 76 (1967), pp. 1321–59; David Chan Smith, *Sir Edward Coke and the reformation of the laws: religion, politics and jurisprudence, 1578–1616* (Cambridge, 2014), p. 172.

[137]Brooks, *Law, politics and society*, pp. 386–9.

[138]Coke, *Fifth report*, fos. 62v–63v.

[139]Ibid., fo. 62v. See also Bilder, 'The corporate origins of judicial review', p. 526.

[140]Maarten Prak, *Citizens without nations: urban citizenship in Europe and the world, c. 1000–1789* (Cambridge, 2018), pp. 115–20.

[141]Hessels, ed., *Tomi tertii pars prima*, pp. 270–2; Archer, *The pursuit of stability*, p. 133.

[142]Hessels, ed., *Tomi tertii pars prima*, pp. 1182–5.

[143]Ibid., pp. 1182–3.

[144]Archer, *The pursuit of stability*, pp. 28–30, 61–2, 100.

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regulations they perceived as unfair from within the guild.[145] Informers were used by guilds to bring prosecutions against individual migrants,[146] and copious petitions from migrants in sixteenth- and seventeenth-century London attest to regular harassment, with very real consequences.[147] A 1599 petition from Dutch candlemakers in London, for example, noted that informers had 'caused some of them to bee committed to Newgate'.[148] Such complaints were sometimes encouraged by the City: in 1615 London's common council established a committee to solicit guilds for information about 'greevances, hindrances and inconveniencies' arising from migrants' economic activities.[149]

Migrants, restricted both from joining guilds and from challenging such restrictions in the courts, regularly appealed to the crown for extra-legal relief. However, against the rights and prerogative privileges of subjects, such appeals were rarely successful. In 1616, for example, James asked for a halt to the prosecutions of members of Stranger Churches after Noel Caron, ambassador of the United Provinces, had complained that migrants were 'daylye and grevouslye molested and debarred from there said worke'. James noted that the Stranger Churches had been 'verry dutifull vnto vs'.[150] Shortly after James's intervention, Sir Henry Mountague, Recorder of London, complained that the stay on prosecutions of migrants was to the 'greate damage and discontent of the naturall Subiecte freemen' of London and prejudiced the liberties granted to the City 'confirmed by divers Actes [sic] of parliament'. The privy council promptly rescinded the stay on prosecutions and stated that henceforth there 'shalbe no restrainte or prohibicion of proceedinge against straingers, but that the citty may use such due meanes for mayntenance of their priviledges and liberties'. Moreover, London could be assured of 'further assistance and releife for the avoydinge of that prejudice which now it sustayneth by straingers'.[151]

That migrants were being prosecuted does point to the fact that migrants were in fact working. Here, the complex patchwork of jurisdictions that made up the City of London and its suburbs sometimes worked in migrants' favour. Some migrants moved to the suburbs or into new trades, therefore placing themselves outside guild control.[152] However, guilds for new trades were often established with specific regulations that excluded migrants.[153] Some wealthier migrants secured denizen status and then bought the freedom of the City of London, a status otherwise acquired through guild membership.[154] As the Dutch and French Churches noted in a 1606 petition though, it was all but impossible 'to attaine to the freedome of the Cittie, other then by extraordinary fauor and meanes'.[155]

[145]Ibid., pp. 102, 127–8, 136.

[146]Ibid., pp. 124–39.

[147]Luu, 'Natural-born versus stranger-born subjects', p. 68; Ward, '"[I]mployment for all handes which will worke"', pp. 78–9.

[148]Hessels, ed., *Tomi tertii pars prima*, pp. 1034–5.

[149]TNA, SP 14/81, fo. 10r.

[150]Hessels, ed., *Tomi tertii pars prima*, p. 1263.

[151]TNA, PC 2/28, pp. 417r–417v. See also TNA, SP 14/88, fos. 180r–180v.

[152]Luu, 'Natural-born versus stranger-born subjects', pp. 60–2.

[153]Ward, '"[I]mployment for all handes which will worke"', p. 80.

[154]Luu, 'Natural-born versus stranger-born subjects', pp. 60–4.

[155]Hessels, ed., *Tomi tertii pars prima*, pp. 1185–6.

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At the same time, subjects, seeking economic advantage, sometimes sought to secure migrant labour. Such attempts, however, were often stymied due to the internal borders that were already in place. In some cases, this was due to confusion around the interplay of statute law and London byelaws: in 1576, for instance, a Richard Platt, when sued for employing more migrant shoemakers than was permissible under the 1540 'Acte concerning Strangers', argued (unsuccessfully) that these provisions were superseded by the 1563 Statute of Artificers.[156] At other times, these attempts relied on the guilds' own powers – however, they were contested and unstable. For example, migrants were admitted to the Weavers' Guild in the 1550s.[157] However, members of the Weavers' Guild regularly protested against the inclusion of migrant craftsmen,[158] and by 1615, the guild itself was complaining to the common council about migrants working 'in dispight of owr lawes'; as a result, migrants had 'deprived the native subiect of his trade'.[159]

Navigating the overlapping jurisdictions of national common law and statute, City ordinances and guild regulations sometimes bore fruit for migrants. However, access to employment was contingent and unstable, dependent on how and where subjects chose to enforce both their rights and their prerogative privileges. The specificity of the experiences of migrants in London compared to communities settled under letters patent does not negate the existence of a national regime of internal bordering, but rather highlights the ways in which the deployment of this regime was mediated by local governance structures. In both cases, however, the rightslessness of migrants was key.

V

Experiments in immigration control also took place at the national level. As was the case with local forms of internal bordering, these experiments were contested, both by migrants and, less frequently, by subjects with an economic interest in supporting migrants. Nonetheless, that they took place at all shows that there was an interest in attempting to control immigration – and that the legal framework that rendered migrants rightsless provided the right conditions to explore the enforcement of internal borders.

Even as the crown was granting (precarious) privileges to migrants through letters patent, it was granting patents to facilitate their exploitation. In 1578, for example, William Tipper received letters patent for the office of 'Hostager'.[160] The justification for this office was a 1439 statute which ordered that foreign merchants should be subject to 'hosts' or 'surveyors' who would ensure migrants were abiding by relevant laws limiting their capacity to merchandise; for this 'service' hosts

[156]Archer, *The pursuit of stability*, pp. 134–5.

[157]Pettegree, *Foreign Protestant communities*, pp. 96–101.

[158]Archer, *The pursuit of stability*, p. 133.

[159]TNA, SP 14/81, fos. 89r–89v.

[160]Luu, 'Natural-born versus stranger-born subjects', p. 67; Cottret, *The Huguenots in England*, pp. 63–4; Moens, *The Walloons and the church at Norwich*, pp. 39–42; Raingard Esser, '"They obey all magistrates and all good lawes...and we thinke our cittie happie to enjoye them": migrants and urban stability in early modern English towns', *Urban History*, 34 (2007), pp. 64–75; Kate Hotblack, 'The Dutch and Walloons at Norwich', *History*, 6 (1922), pp. 234–9.

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would be granted two pence of every twenty shillings of goods sold. The penalty for not abiding by these regulations was imprisonment for foreign merchants; town authorities who did not allow the hosts to operate were also at risk of prosecution.[161] Tipper's patent emphasized the restrictions governing migrants and noted that foreign merchants were causing 'great hurtts and inconveniences' by evading such laws. The grant gave Tipper powers to establish hosting for migrants, with the exception of Italian and Hanseatic merchants, in every town and city in England for twenty-one years. For this, Tipper had to pay forty shillings a year.[162]

The burgesses of Antwerp protested on behalf of some Dutch migrants, noting that the institution of this office meant that migrants must 'paye (above the excessive gabells and tolles which they are compelled to paye) yet moreover a certeine newe ymposition'. They argued that subjecting Dutch migrants to a Hostager risked the livelihoods of English merchants in Antwerp, given that foreign migrants in both cities were protected by reciprocal treaties.[163] Spanish and Italian merchants appear to have tried to call on English merchants trading with their companies to forestall Tipper.[164] Norwich acted to buy the patent from Tipper to enable Dutch residents to continue to trade in the city.[165] Tipper found the grant difficult to enforce, and asked the privy council for assistance in 1578.[166] This was forthcoming: the privy council advised the mayor of London that he was required 'to shewe the said Tipper such favour and assistance' to enable him to exercise the grant, particularly given that hostaging was 'verie beneficiall for the whole realme and that Citie especiallie'.[167] Despite this, the scheme does not seem to have become well established.

The Commission for Strangers (sometimes known as the Commission for Aliens), established in 1621, operated for longer, and with more success. Despite the fact that this was the first body established nationally to oversee migrants in England, it has been curiously under-investigated by historians.[168] Like Tipper's letters patent, the establishment of a commission was a function of prerogative: early Stuart monarchs utilized them as investigatory and advisory bodies.[169]

The idea of a commission for migrants appears to have been first mooted around 1613 when Sir Walter Chute petitioned James I to develop a register of all resident migrants, prompting the privy council to ask Sir Edward Coke to 'consider what the lawe is in that behalf, and how it may stand with conveniency and pollicy of State'.[170] There appears to have been no further progress until a 1621 paper outlining what might be done to protect the monarch against the 'greate inconveniences that either

[161]John Raithby, ed., *Statutes of the realm*, II: *1377–1509* (n.p., 1819), pp. 303–5. See also Ormrod, Lambert, and Mackman, *Immigrant England, 1300–1550*, pp. 27–9.

[162]Moens, *The Walloons and the church at Norwich*, pp. 283–4.

[163]Ibid., p. 284.

[164]TNA, PC 2/12, p. 298.

[165]Moens, *The Walloons and the church at Norwich*, p. 41.

[166]TNA, PC 2/12, p. 224.

[167]Ibid., p. 318.

[168]The only references in the literature are Irene Scouloudi, *Returns of Strangers in the metropolis 1593, 1627, 1635, 1639: a study of an active minority* (London, 1985), pp. 51–3; and Selwood, *Diversity and difference*, p. 71 fn. 77.

[169]G. E. Aylmer, *The king's servants: the civil service of Charles I, 1625–1642* (London, 1961), pp. 338–9.

[170]TNA, PC 2/27, p. 98r.

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doth or may arise unto his dominions by the Extraordinary Cominge and planting of Straingers therein'.[171] The paper, which bears no signature or endorsement, suggested that, to both counter possible disloyalty and to better enforce economic restrictions on migrants, an annual survey be taken, and all migrants over the age of fifteen take an oath of loyalty to the king.[172] That same year, an unsigned and unendorsed paper also held in the state papers summarized the existing statutory, primarily economic, restrictions on migrants,[173] and the City of London petitioned the king to institute a commission to inquire into the laws governing migrants and to suggest regulations for future governance.[174] The papers relating to the establishment of the commission suggest a strong awareness that migrants were governed under prerogative and, as a result, subject to internal bordering. Another 1621 note recommending a commission – again, unsigned and unendorsed – stated that migrants were acting outside the 'libertye the lawe alloweth them'.[175]

Directions for the commissioners were produced shortly thereafter. The commission was to take an annual survey of migrants and permit wholesale merchants to continue their trade but restrict retailers. Migrant retailers had to abide by statutory restrictions on taking on apprentices and pay quarterage, a levy paid by English guild members. Foreign-born servants faced fewer restrictions, but had to pay to be registered. All migrants had to give bond to keep these orders or depart the realm.[176]

Responding to the establishment of the commission, the Dutch and French Churches petitioned the privy council in 1623, complaining that 'divers of the great lords and officers of England...and sundrie other persons of lower rank' had been authorized to 'laye sundrie injunctions and annuall payments upon the persons of the said strangers using any trades or handicrafts in this kingdome and their servants, by meanes whereof they should be disabled to live and exercise their vocations within this realme'.[177] However, migrants' subjection to prerogative governance left them essentially remedyless. James responded that he could not support migrants to the detriment of 'naturall borne subiectes'; moreover, migrants' 'liberties' 'owr lawes allowe not'.[178] The work of the commission continued under Charles: it received directions in June 1625 that noted migrants 'enjoye divers liberties forbidden unto them by the lawes not of right but of grace', a further reiteration of migrant rightslessness.[179]

The majority of the commission's work was dealing with complaints about migrants.[180] As we have seen, subjects were often actively involved in enforcing internal borders, particularly to protect their own economic position. In fact, the patterns of these complaints followed the patterns that we have seen above. Complaints to the commission from London came primarily from guilds, and

[171]TNA, SP 14/121, fo. 266r.
[172]Ibid.
[173]Ibid., fo. 268r.
[174]Ibid., fo. 269r.
[175]Ibid., fo. 270r.
[176]TNA, SP 14/122, fos. 64r–64v.
[177]TNA, PC 2/31, p. 628. See also Moens, *The Walloons and the church at Norwich*, pp. 267–8.
[178]TNA, SP 14/131, fo. 14r.
[179]TNA, SP 16/3, fo. 180r.
[180]Scouloudi, *Returns of Strangers in the metropolis*, p. 52.

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reflected the fact that migrants were sometimes able to evade controls on employment, whether this was due to the collusion of subjects, or the loopholes created by geography or competing jurisdictions.[181] Complaints did, however, prompt action: a 1622 complaint by the Dyers' Company included a draft table of charges for foreigners not abiding by laws governing trade,[182] which was used by the commission in developing restrictions and a scale of additional rates payable for migrant dyers, including denizens and second-generation migrants.[183] In towns where migrants lived under letters patent, complaints focused on whether migrants were abiding by these conditions, as in the case of the complaints submitted by Colchester's English weavers in 1622[184] and again in 1637, where they noted that the commission had been authorized to 'take care of the complaint of his [the king's] naturall borne Subiects and of the meanes to reforme the abuses they shall finde' in London.[185]

The Commission for Strangers operated for almost twenty years, providing a national framework of immigration control that could resolve issues of internal bordering at a local level. The justification for their work was that migrants were rightsless, and only able to 'enjoye divers liberties forbidden unto them by the lawes not of right but of grace'.[186] This instability, however, did not just affect first-generation migrants. In a context of experimental immigration control, second-generation migrants, legally English subjects, often got caught up in internal bordering.

VI

In the 1613 ruling of Coke, Hobart, and Houghton on the dispute between the Norwich migrant communities and town authorities, they stated that 'a greate parte both of the Dutch and Wallowne congregations are naturall subjectes borne in England' and so should have 'all such liberties of trading and marchandizing within the said cittie as any Englishman'.[187] This reflected both the findings of *Calvin's Case* in 1608, and the assertions of earlier legal writers, such as Rastell. In practice, however, the governance of communities living under letters patent blurred this distinction. The anonymous authors of *A shorte and true relation off the state off the Netherlanders in England*, published in Norwich in 1616, noted that 'Those that are thus molested, are nott only meere Strangers...[but] such as are borne in this Realme and Citye from parents Strangers, who (by an Act off this honorable Citye) cannott now obtaine their freedom, neither by Service, nor favor.'[188]

A significant motive for tying second-generation migrants to migrant communities was another form of internal bordering: the exclusion of migrants from poor relief. Migrant community leaders, the privy council, and local authorities all acted to stop legally English second-generation migrants from leaving migrant communities to ensure they paid dues to the Stranger Churches to maintain their poor.

[181]See, for example, TNA, SP 14/127, fo. 30r; 14/127, fo. 24r; 16/529, fo. 141r.
[182]TNA, SP 14/133, fos. 6r–7r.
[183]Ibid., fos. 8r, 9r, 10r–10v.
[184]TNA, SP 14/129, fos. 115r–116v.
[185]TNA, SP 16/377, fo. 65r.
[186]TNA, SP 16/3, fo. 180r.
[187]Ibid.
[188]Moens, *The Walloons and the church at Norwich*, pp. 306–9.

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For example, in Norwich in 1621 the privy council responded to an appeal from the local Walloon Church and stopped Joel Desormeaux and Samuel Camby, born in England, from leaving.[189] Later, when Laud attempted to expel second-generation migrants from Kent Stranger Churches in the 1630s as part of his drive to bring them into conformity with the Church of England, the magistracy of Canterbury petitioned Laud, noting that 'a greate number of poore will fall vpon our parishes keepinge'.[190] Although Laud did push through many of his reforms, he did, eventually, concede that second-generation migrants ('natives of the first descent') should continue as members of the churches – indeed, third-generation migrants should also 'contribute to the maintenance of the Ministers and poore'.[191]

In London, second-generation migrants found themselves subject to internal bordering, as a result of the prerogative powers of the City to regulate work. In a 1574 ordinance, the common council excluded second-generation migrants from guild membership. The ordinance acknowledged that second-generation migrants were English in law, but went on to state that 'children borne of such strangers, haue, and doe retaine an inclination and kindely affection to the Countreyes of their parents'.[192] This ordinance specifically targeted the children of migrants, including a specific saving for 'children and childrens children, of euery such English borne father' born overseas.[193] Second-generation migrants protested, collectively and individually, but apparently to little effect.[194] An undated draft in the records of the London Dutch Church 'in the behalf of the Denizens' Children' argued that such children's parents 'haue vtterlie abandoned their native soyle, governors, and countrey and...subiected them selfes, to be trewe and liege subiectes to her Maiestie'.[195] These restrictions were enforced: in 1611, Lewis Sohere, a second-generation migrant, was accepted into the Goldsmiths' Company, but the common council objected, and stated that his enrolment into the guild and acquisition of citizenship were 'absolutely void'.[196]

In these circumstances, it is no wonder that second-generation migrants themselves were confused about their status. The 1618 survey of migrants commissioned by the privy council asked migrants 'under what Prince or State he was borne, and of what soueraignety he doth depend'.[197] A number of second-generation migrants, legally English, were counted as migrants.[198] Some respondents challenged this: Peter Bultell, Peter Debois, and John Soond stated they owed allegiance to James, being his 'subiect borne'.[199] Others, however, understood themselves to be 'out of

[189]TNA, PC 2/31, pp. 156–7. See also Ole Peter Grell, *Dutch Calvinists in early Stuart London: the Dutch church in Austin Friars, 1603–1642* (Leiden, 1989), pp. 93–105.

[190]Hessels, ed., *Tomi tertii pars secunda*, pp. 1703–4.

[191]Ibid., pp. 1715–16; Grell, *Calvinist exiles*, pp. 82–3.

[192]Hessels, ed., *Tomi tertii pars prima*, pp. 270–2. See also Yungblut, *Strangers settled here amongst us*, pp. 96–7.

[193]Hessels, ed., *Tomi tertii pars prima*, p. 272.

[194]Ibid., pp. 120–1.

[195]Ibid., p. 928.

[196]Selwood, *Diversity and difference*, pp. 100–4.

[197]TNA, PC 2/29, pp. 506–7.

[198]Scouloudi, *Returns of Strangers in the metropolis*, pp. 183, 194–5.

[199]Ibid., p. 197.

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allegiance': John Pollard, born in Colchester of a Dutch father, asserted that he was under the sovereignty of the archduke.[200]

This slippage between migrant and subject status for second-generation migrants was not simply an issue in local contexts. From the 1620s onwards, the privy council – and the Commission for Strangers – sometimes folded second-generation migrants into the category of migrant, notably where the protection of subjects' economic rights was at issue. In the 1621 directions issued to the Commission for Strangers, it was specified that the regulations pertained to second-generation migrants who had not served apprenticeships – which, as we have seen, was theoretically impossible in London – enabling the commission to levy additional charges on people who were legally English subjects.[201]

However, the most striking example of the crown utilizing the ambiguous status of second-generation migrants was the imposition on this group of the double customs charges laid on migrants. This occurred at the time that the crown, desperate for money, was seeking innovative ways to secure additional income from subjects[202] – however, although the Forced Loan and other measures were of dubious legality, in this case, the crown acted to strip subject status from an entire group on the basis of their parents' birth out of allegiance. In 1626, the privy council sought legal advice on this matter. Thomas Walmesley, the lawyer who responded, cited *Calvin's Case* when he stated that as a second-generation migrant 'oweth his allegiance to the Kinge of England' he was in receipt of all the 'freedome of a Subiecte'.[203] Nonetheless, by October 1627, this change had been implemented. John Grett, a second-generation migrant, came before the Exchequer to challenge a charge of double custom. Grett stated he had 'paid all customes and duties due from an Englishman'; however, the court decided that he was liable for the double custom due to the 'custome of this Courte, and of the Custome House'. The Exchequer referred this to the privy council who ratified the decision that 'all strangers' sonns till the second descent are to pay strangers' customes'.[204]

VII

In sixteenth- and seventeenth-century England, then, the law did not just differentiate between subjects and migrants: it was used to support a system of internal bordering restricting migrants from access to the rights held by English subjects. In part, this was due to statutes that explicitly restricted migrants' access to housing and employment. More important, however, were the common law principles, affirmed in *Calvin's Case*, which placed migrants, born 'out of allegiance', firmly outside the 'benefit of the law'. This meant that migrants were substantively governed under prerogative, a form of governance repeatedly, and often successfully, resisted by English subjects – apart from where they utilized their own prerogative privileges to shore up internal bordering. Although some migrants could access (unstable)

[200]Ibid., p. 216.
[201]TNA, SP 14/122, fos. 64r–64v.
[202]Richard Cust, *The Forced Loan and English politics, 1626–1628* (Oxford, 1987), passim.
[203]TNA, SP 16/43, fo. 52r.
[204]TNA, PC 2/36, fos. 183v–184r.

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liberties granted under prerogative, for the most part prerogative governance meant that in addition to statutory restrictions, migrants were also subject to discriminatory local byelaws and licences and commissions granted by the crown for their exploitation. The repeated 'molestation' of migrants by informers for working contrary to statute, and petitions against this harassment from migrants, suggest this early modern system of internal bordering was relatively well understood by both subjects and migrants. Better understanding this complex system of early modern immigration control does not just provide more depth to histories of migration, but enables historians to begin to trace longer-term histories of the exclusion of migrants from the rights of subjects and citizens.

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