

Punishment, exclusion and the transformation of justice¹

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‘States have been quick to claim that if a coercive measure or detention regime is *for* prevention or regulation or administrative convenience it is not, by definition, punishment. Yet this privileging of purpose does not mitigate the pains imposed by coercive measures, so to re-label measures as non-punitive is often nothing less than a cynical subversion of the criminal process and its human rights protections.’
(Zedner, 2015: 4)

Introduction

Over the past two decades, the UK, in common with other governments around the world, has increasingly blurred the line between criminal justice and the administrative system of migration by criminalizing migration violations, and by deploying police and prisons in the service of border control. They have opened a series of immigration detention centres built like prisons while devising additional consequences for foreigners who break the law. Such developments, which reach their apex in the mandatory deportation orders that now face many offenders born abroad, have significantly reshaped the punishment of foreigners, unhinging it from its criminal justice, territorial and temporal base (Aas and Bosworth, 2013). When individuals are given deportation orders as part of their criminal sentence, decisions made in local courts affect places and people far from where the crime was committed (Aliverti, 2016). In these cases, punishment reaches back into people’s lives and forward into their futures, as their past successes, children, hopes or aspirations are all disregarded in the name of border control (Bosworth, 2017a).

Despite some novel powers, much of the treatment of foreigners remains familiar. Many of those subject to the most intrusive state interventions carried out in the name of border control are not white. Most of those in detention or who are deported are men. So, too, the agents providing immigration control services, whether at the border, in detention or enforcing removal, are also present in the criminal justice system, working in prisons, police custody suites and the courts. Over the course of their career, individual staff members may move between the two systems, while many of the overarching structures and policies encompass the two fields (Bosworth, 2007). In the UK and the US, immigration detention is operated under a contracting out model, with many custodial services provided by private custodial companies or the prison service. Elsewhere, the police do a lot of this work.

As scholars in the nascent field of border criminology² have argued, the powers unleashed by the integration of immigration and criminal law are painful

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² Also sometimes referred to as the ‘criminology of mobility’ (Pickering, Bosworth and Aas, 2015), this subfield of criminology focuses specifically on the intersections of migration and

and often feel deliberately punitive to those subject to them (Warr, 2016; Turnbull and Hasselberg, 2016; Kaufman and Bosworth, 2013). Detainees find many similarities between the two systems, asserting passionately over and over again that, 'I feel like I'm in prison' (Bosworth, 2014). For these people, and their family and friends, however difficult the state sometimes finds it to enforce detention or removal, living in the shadow of this form of coercion hurts. Yet, because border control is an administrative matter, its nature and effects continue to be overlooked in much of the literature on punishment (although see *inter alia*, Stumpf, 2007; de Giorgi 2010; Barker, forthcoming, Aas and Bosworth, 2013; Aas, 2014; Zedner, 2016; Spena, 2014; García Hernández, 2014).

In this article, drawing on research I have been conducting since 2009³ in British Immigration Removal Centres (IRCs), I will argue that border control practices should indeed be recognized as punishment as porous boundaries between administrative penalties and criminal penalties have made the two systems co-constitutive. It is not just that expanding our definition of punishment to include these civil penalties would, as US legal scholar César García Hernández has argued (2014), offer greater legal protections to those subject to them, but also that considering border control strategies as punishment unlocks a long tradition of scholarship across a range of disciplines to understand and, hopefully, critique them. While these are distinct institutional practices in their own right, immigration detention and deportation reflect a broader trend towards exclusion that is transforming societies and economies (Sassen, 2014; Brown, 2009), as well as criminal justice and penal practice (Beckett and Herbert, 2009). Under these circumstances, examining them in light of the wider body of literature on punishment identifies key commonalities with other practices that may assist in developing a means of and vocabulary for holding these forms of coercive state power to account.

Criminal Justice in an Era of Mass Mobility

The scale of mobility has accelerated in recent years in response to an enduring period of global financial insecurity, a series of on going bloody conflicts, and, increasingly, as a result of climate change (IOM, 2014). In addition to these factors, many people move for less dramatic reasons, to take up economic opportunities, family reunification, and education. According to the United Nations Refugee Agency (UNHRC) and the international organisation of migration (IOM), there are now 60 million refugees and internally displaced, alongside over 230 million migrants living outside their country of birth (UNHCR, 2015; IOM, 2015).

Most refugees do not travel far. People often want to stay close to home, and, given their vulnerabilities to persecution, many have limited resources to do otherwise. In any case, visa restrictions make it very difficult for them to relocate; states in the global north rarely issue visas to citizens of states in

criminal justice (Bosworth, 2017). Its legal corollary is the field of 'crimmigration' law (Stumpf, 2006).

³Since this date I have been the only UK academic with permission to enter sites of detention freely in this country. Working with a variety of researchers I have conducted a series of studies on everyday life in detention, using mixed methods. The research is ongoing (see, for example, Bosworth, 2014).

conflict, effectively blocking their legal entry (Bigo and Guild, 2005; Aas, 2013; 2014; Costello, 2015).

In contrast to those fleeing war or persecution, nearly half of the far larger sum of migrants reside in just ten countries: Australia, Canada, the United States, France, Germany, Spain, the United Kingdom, the Russian Federation, Saudi Arabia, and the United Arab Emirates. (IOM, 2015: 2). There, they contribute to the formal and informal economies, constituting varying proportions of the resident community (see, for example, Light, 2016). They tend to concentrate in certain urban areas, creating a network of 'global cities' (Sassen, 2000; 2005).

As the number of people on the move has grown, even though most have remained in their home region, politics in the global north concerning immigration has hardened. Across Europe, the US and Australia, right-wing nationalist parties have flourished, while left and centrist ones have been unsure how to respond. From Donald Trump's (2015) racist rhetoric about Mexican rapists and his promise to build a wall to block their entry, both of which were made on June 15, 2015, as part of his announcement of his successful bid to become US President, to the British referendum one year later, on membership of the European Union, immigration and the figure of the 'migrant' has galvanised an outpouring of suspicion and hate.

It is not surprising that the criminal justice system has been affected by these circumstances. Yet, outside the subfield of border criminology (Bosworth, 2017b; 2016), criminological and legal analysis of police, courts and prisons, for the most part, still proceed with scant attention to migration or citizenship (although see Pakes and Holt, 2017; Lynch, 2017). Such silence is confounding. Although reliable statistics on nationality for the whole criminal justice system are hard to come by, figures for many of its constitutive parts are available. All of them reveal that foreigners make up a considerable part of those in the system. In the UK, for instance, the Association of Chief Police Officers (ACPO) reported in 2015 that 1 out of 7 of those arrested in Britain was born elsewhere (ACRO, 2016). In London, reflecting its diverse population, estimates are as high as 1 in 3 (Ward, 2016).⁴

While the courts in England and Wales do not disaggregate their statistics by citizenship, legal scholar Ana Aliverti has demonstrated in a series of publications how foreigners may receive differential treatment by sentencers due to racialised assumptions (Aliverti, 2017), inadequate access to interpretation services (Aliverti and Seoigh, 2017) and new legal regimes concerning immigration matters (Aliverti, 2013). In her view, the relevance of citizenship for understanding court processes is such that we might more accurately consider these local courts as 'global' ones where complex issues of membership play out alongside narrower legal concerns (Aliverti, 2016).

Once we turn to judicial outcome, the citizenship of offenders comes back into view, at least for those who receive a custodial sentence. HM Prison Service in England and Wales has been publishing statistics on the sum of foreign national prisoners for many years. Currently, they account for around 13% of the total population, with women born overseas making up a higher proportion of the female estate (Ministry of Justice, 2015: 70).

⁴ Although national statistics on nationality and arrest rate are hard to locate, individual police forces gather these figures routinely, and release them upon request.

In addition to these familiar parts of the criminal justice system, other, parallel forms of policing, courts and incarceration exist for foreigners within the immigration system. Rather than being wholly separate sites of governance, those agencies intersect with and often work alongside criminal justice partners (Eagly, 2013). Some are even physically located within criminal justice institutions. Thus, police forces, courts and prisons in England and Wales all host immigration officers or work in partnership to varying degrees with the Home Office in a bid to identify the nationality of those brought in for criminal justice processing (Kaufman, 2015; Parmar, 2017; ICIBI, 2016). Meanwhile, immigration officers have acquired limited policing powers, and are permitted to arrest at ports and other designated sites, and detain foreign nationals for a specific period of time (see, for example, ICIBI, 2011).

So, too, immigration matters can form part of a criminal trial. Not only have a raft of immigration violations been criminalised (Aliverti, 2013), but since the passage of the UK Borders Act 2007 non-EU nationals sentenced to over 12 months, or whose sentences over the past five years add up to the same, face a mandatory deportation order, while EU nationals face a slightly higher threshold of 'a serious' offence, or a 2-year sentence. As has been the case for many years, foreigners guilty of any crime may have a deportation order added to their sentence by a judge or magistrate. At the end of their criminal process, foreign nationals may be detained in immigration removal centres (IRCs), alongside other non-British citizens awaiting administrative removal (Bosworth, 2014; Turnbull and Hasselberg, 2016).

Such matters are not limited to England and Wales. Rather, over the past 20 years, most industrialised countries in the global north have pursued similar policies. In the US, for instance, border policing makes up the majority of work conducted by the Department of Homeland Security (Vazquez, 2017), while state police increasingly check the immigration status of those they consider to be foreign. Suspects, research indicates, are overwhelmingly likely to be Latino/a (Armenta, 2017). Most dramatically, US immigration prosecutions now exceed prosecutions in the federal system for all other crimes. As a result, foreigners make up 22% of the federal prison population, far outstripping their proportion in the community (BOP, 2016; Chacón, 2012; Light et al, 2014).⁵ State and local prisons not only hold foreign offenders, but also house the majority of immigration detainees (Kaufman and Weiss, 2015; Kalhan, 2010). In the US federal prison system, a growing number of prisons are filled with non-citizens (Kaufman, forthcoming).

Across Europe, things are much the same. The police are increasingly employed directly in border control, tasked not only with stopping and searching suspected irregular migrants, but also with detaining and deporting them (Mutsears, 2014; van der Woude and Brouwer, 2017; Bosworth and Vannier, 2016). On average, one in five people in prison across Europe have been born abroad. In certain countries, like Switzerland, they make up the majority, in other places, like Belgium, they account for nearly half (Ugelvik, 2015). Such disproportionate treatment not only draws into question some of the key

⁵ Of whom, according to figures on the Federal Bureau of Prisons website that were updated on 26 November 2016, 14.5% are from Mexico. Colombia and the Dominican Republic account for .9% each and Cuban nationals make up .6%. The remaining 5.1% who are listed as foreign are 'other/unknown'.

assumptions about European penal moderation (Snacken, 2010), but also, more fundamentally, demands answers about the purpose and nature of punishment (Kaufman, 2015; 2017; Warr, 2016). In Europe, as elsewhere, they reveal enduring relations between race and punishment, since most of the foreign populations belong to racial and ethnic minorities (Alexander, 2010; Barker, 2011; 2013, 2016; Kaufman, 2013; García Hernández, 2012; Bhui, 2016).

In the section below, I narrow my focus to examine immigration detention in light of different definitions of punishment. The aim is not to lever administrative penalties into a pre-existing model, but rather to suggest that close analysis of the commonalities and disjunctures between these two systems may illuminate new ways of thinking about penal power more broadly. As crime control and migration control align, punishment becomes increasingly a means to exclude rather than reintegrate, with wider implications for citizens as well as foreigners living among us (Barker, 2013; Aas, 2014).

Punishment and immigration detention

The study of punishment forms a central plank of criminological and legal analysis. Explanations and accounts take various forms, from a focus on its moral and philosophical roots and justifications, to sociological explorations of the nature and effect of penal practices. First hand accounts, policy documents, quantitative measures and qualitative analyses exist alongside, intersect and to varying degrees inform such normative and conceptual literature. Considerable attention has been paid to the prison (Liebling, 2005).

At the risk of oversimplifying a complex, wide-ranging, and interdisciplinary field of study, it is possible to identify a number of common definitions of punishment. Firstly, and most fundamentally, punishment refers to a legal sanction meted out by the courts in response to a criminal act (Walker, 1990; Hart, 1959). Other similar acts, performed outside the criminal process, in this view, are not punishment; nor are sanctions that occur outside the criminal system. Penalties for actions that are not criminal should also not be considered punishment.

On this definition, immigration detention, does not, at first glance, appear to be punishment (García Hernández, 2014). IRCs are neither part of the criminal justice system, nor is a period of confinement within them a sanction handed down by a court in response to a criminal act. However, when a deportation order is added onto a criminal sentence, it makes possible a period of immigration detention at the end of the sentence. So, too, immigration detention can occur within the criminal justice system. In the UK, former prisoners may be held post-sentence, under immigration action powers, in prison, while in the US, many of the beds used for immigration detainees are located in state and federal prisons and local jails. In more symbolic ways too, immigration detention centres are drawn into the criminal justice system through the criminalisation of migration. Although legally distinct, as Alison Mountz and her colleagues observe, “Criminalizing migrants invokes a circular rationale that legitimizes detention: migrants *might* be criminals, necessitating detention; migrants *must* be criminals, because they are detained.” (Mountz, et al, 2013: 527)

Under these conditions, it is not surprising to find that many staff and detainees are unsure about the distinction between the two systems. Bina, who

had served seven months in a prison, before being transferred to IRC Yarl's Wood was quite clear: "I am in prison," she cried out despairingly; "my life is ruined" (Algeria, IRC Yarl's Wood). Jamil was more succinct. When asked to describe Brook House, a high security immigration removal centre adjacent to the runway at Gatwick airport, London, he shrugged, and said: "It's the same as prison" (Uganda, IRC Brook House). Indeed, like most IRCs built in Britain since the turn of the century, Brook House has been constructed according to Category B prison security design. Men detained there are held in cells, on housing units that are overseen by officers in uniform. There is no natural light in the building; the windows do not open. Movement within the centre is strictly regulated according to a daily timetable. Under these circumstances, it is hard to view it as anything other than a prison.

Despite such symbolic and material similarities, and notwithstanding their punitive effect on those subject to them, the philosophical literature on punishment would nonetheless distinguish between immigration detention and criminal punishment, on the basis of their purpose. Punishment, for legal scholars and philosophers, must be justified by a range of retributivist and utilitarian theories. It is neither random, nor unprincipled, but rather it should be deserved or transformative. It should reform, deter, or incapacitate (von Hirsch, 1976; Zimring and Hawkins, 1997; Duff and Green, 2011). Criminal punishment, Antony Duff (2003) has argued, is a 'mode of moral communication' that asks offenders to reform, repair or repent.

While legal scholars tend to be most interested in excavating the meaning and limits of punishment's normative justification(s) and legal frame, those of a more sociological bent have focused on its concrete and symbolic purposes (Simon and Sparks, 2012). For these authors, punishment disciplines the poor (Foucault, 1979); it is a means of condemnation that reasserts shared values (Durkheim, 1969; Garland, 1990); it underpins racial, economic and gender inequalities (Alexander, 2010; Gilmore, 2007; De Giorgi, 2009; Beckett and Murakawa, 2012). Its justifications and effects are considered separate and apart from its formal justifications in law and may serve a range of purposes, not all of which can be reconciled, or are explicit.

From a sociological perspective, there are clear resonances between the goals of punishment, immigration detention and deportation. Used for those who have violated the terms of their visa or failed to obtain one, immigration detention and deportation also disciplines labour and the poor (Calavita, 1984; Barker, 2017; Golash-Boza, 2015). IRCs are filled with people who came in search of economic opportunities. Many supported family members in their home country, sending remittances from their work in restaurants, building sites and in care homes. Their detention and expulsion, while not always unexpected, often feels unfair and punitive. "I was working and paying tax for four and a half years, in the UK," Nia explained. "The police stopped me for speeding and asked for my UK license ID and immigration status.... I was held in a police station for 5 days with no shower. There were no towels to wash. It wasn't until I got here to reception that I had a shower. In the police cell all they gave me was a blanket and a plastic mattress. As a foreigner you get minimum treatment from the police because not 'under them'. You're an immigration matter. You can't make a complaint because it makes everything more difficult... England has human rights, but not for me." (IRC Yarl's Wood, Malawi)

Like punishment, the threat of or actual confinement and the expulsion of foreigners has a powerful symbolic effect, (re)asserting a shared (national) identity (Motomura, 2006). In targeting men from the global South, like the prison (Anderson, 2010), it encourages racial and gender stratification (Barker, forthcoming; Bosworth 2017c). Immigration detention and deportation, in short, map out symbolically and in more prosaic ways, those who belong and those who do not (Anderson, 2013).

Although the purpose of immigration is notoriously contested and its effect weak in terms of crime control, in a world where politicians speak of deliberately constructing a 'hostile environment' to immigration, IRCs are held up as a means of deterrence (Leerkes and Brodeurs, 2010). Similarly, crime control goals underpin a deportation system that balances the human rights claims of ex-offenders against the risks they pose to the community.

For those who have been in prison, detention and deportation hollows out the rationale of their criminal punishment, raising questions about its legitimacy. "What does [the Home Office] know about me?" Vance demanded indignantly, "Nothing. Those people who know me," he went on, were "the people in prison, the people who stayed with me for two and a half years." (Pakistan, IRC Brook House). While imprisoned, he explained, he had earned the right to home visits, having proven through a range of prison courses that he was low-risk and, in his terms, 'rehabilitated'. Now incarcerated again, and facing deportation, that logic no longer applied, a situation that he believed undermined the purpose of his original punishment. "If you're spending that much money to rehabilitate me," he asked, "why don't you give me the chance to go and prove that actually the system works, and the rehabilitation ... works?" (Pakistan, IRC Brook House).

In liberal democracies, punishment is restrained by due process. It must be predictable and transparent in order to be defensible and legitimate. Those who are punished have rights. People are equal before the law. On all these grounds, critics find immigration detention and deportation to be lacking (Thwaites, 2014; Wilsher, 2010).

First and most obviously, people do not encounter the same levels of due process. Not only are decisions in their immigration cases typically applied without a face-to-face hearing, but, increasingly, those subject to a deportation order, are unable to contest them, either at all, or in country. Although some foreigners appear before an immigration judge at a tribunal, much of the immigration control system operates through paper, or, one step removed, via videolink (Bosworth, forthcoming; Eagly, 2015; Wilsher, 2010). Cases are handled at a distance by civil servants with whom detainees have direct interaction. All information about a person's immigration case is communicated to them in English, via paperwork that is handed to them by onsite immigration officers. These staff, who play no role in the decision-making, call the women and men to their office to hand over removal directions, monthly reports, or to demand more information or documentation.

As Ingrid Eagly (2015) explains, such procedural differences raise normative legal distinctions. They also generate differential, and more burdensome, outcomes, drawing fundamental principles of equality into question. In her detailed study of videolink hearings of immigration detainees held in California prisons, for example, she found that litigants who do not appear in traditional court room settings were more likely to disengage from the

judicial process. They were less likely to retain counsel, apply to remain lawfully or seek alternative judicial remedies (Eagly, 2015).

The lack of face-to-face contact is painful. Men like Sylas worried that the distance from their caseworkers placed them at considerable disadvantage. 'Everybody should have a moral and common sense because they see with their eyes,' he stated, 'Them out there is just pen and paper...' (Jamaica, IRC Campsfield House). The fact that his caseworker had not met him and never would, Sylas appreciated, made it easier to overlook his claim.

Onsite immigration officers take a similar view. From their perspective too, a lack of contact allows more punitive behaviour. "They [case workers] only see them on paper, they don't come here, so it's easy for them to say, 'oh well he committed a crime, we can't let him out'" one senior staff member explained (Immigration Officer, Brook House). Custody officers are also often critical of the Home Office and what they perceive to be an obscure and impenetrable immigration process, that is not only painful for detainees, but strips DCOs of their agency and influence with those they lock up. 'We are forever trying to explain our limitations [to the detainees]', Ingrid complained, 'Or trying to negotiate, you know, trying to negotiate with [with the Home Office] a better deal for somebody.'" (Detainee Custody Manager, IRC Morton Hall)

The system is not just unequal -- it is also unpredictable. Notwithstanding attempts to integrate the Home Office into prisons through foreign national prisoner groups and some onsite immigration officers, foreign prisoners are often taken by surprise to discover they are not being released into the community like their British peers, but transferred to an immigration removal centre. "I finished my sentence on 6th February," John said, "and I thought I was going to go home. But unfortunately they told me "Oh no, you're going to detention centre"" (Zimbabwe, IRC Morton Hall). Lee compared his treatment to his British cellmate. "I was in jail with this geezer [who had] fifty-seven convictions," he said bitterly. "And all they did was the day before the end of his sentence they gave him a letter "Don't do it again." That's it, he goes away. Fifty-seven convictions. And me I'm sitting here, my first conviction. "Oh we're going to give you IS90... is it 97? Whatever⁶... We're going to detain you." (China, IRC Morton Hall).

Inequities are compounded by the uncertainty of the administrative penalties. In the UK, at least, there is no statutory time limit on the period of confinement, for all but those who are pregnant or under 18.⁷ 'In prison, you have a date,' Tyson explained. 'You have a release date. You don't have none here... you don't go to court, the judge say, 'I'll give you ten months.' In prison, you'll know that you're counting down that ten months, down to that release day. You don't count down here. You don't count down here.' (Jamaica, IRC Brook House)

Punishment, Exclusion and Control

In all of these examples, foreigners face a fundamental inequality within the law, and in its justification and effect. It is not only that criminal convictions for those born elsewhere have far more burdensome consequences than they do for

⁶ Here John is referring to the form ISI91 must be served by an immigration officer to give the state the power to detain.

⁷ Who may be held for up to 72 hours, or, only with ministerial oversight, for up to one week.

citizens, but also that because these burdens occur outside the criminal justice system, in a period of detention in an immigration removal centre and deportation, they extend the reach of penal power, enveloping those who have not been convicted of a criminal offence. In so doing, they not only alter our expectations of the limits to and justifications of punishment, they also change our view of those subject to it. As practices are increasingly oriented towards exclusion, growing numbers of people are rendered unwelcome and expendable.

Such matters are evident throughout the criminal justice system. As sentences lengthen, for example, and as prison populations continue to expand, criminal justice systems around the world increasingly punish through exclusion (Dolovich, 2009; 2011; Hulley et al, 2016). These practices have a moral inflection, as “people judged as criminals come to be regarded as less than human and thus eligible for treatment that might otherwise seem illegitimate” (Dolovich, 2011: 265). Similar logic is evident in the treatment of the homeless and of those who use drugs, both of whom are targeted in a number of jurisdictions by civil ordinances that exclude them from public space (Beckett and Herbert, 2009). Outside criminology altogether the mentally ill and the long-term unemployed are also cast aside (Tyler, 2013).

Binding together these populations, who might once have been subject to the disciplinary gaze of the state that sought to reform and reintegrate (Foucault, 1979; Donzelot, 1981), we see a widespread denial of our shared moral status as human beings. It is this final step that is so corrosive for liberal ideals that have justified modern penal practices (Garland, 1985).

In short, as states turn increasingly to administrative practices to manage a growing range of populations, punishment is changing in its justification and effect. Operating without the restrictions of due process, and with lower evidentiary requirements radically expands the reach of penal power. At the same time, the familiarity of those targeted by these new methods reminds us of the longevity of racialised forms of control. Class and privilege protect some, at least most of the time, while race and gender mark out those who are to be pushed out. In this view, immigration detention and the treatment of foreign offenders are a fundamental part of the two-tiered approach to punishment increasingly favoured in the global north which is altering the process and our expectations of justice for all.

Conclusion

Ten years ago, Katja Franko challenged criminologists to “turn our attention to the underlying social transformations, caused by the emerging, deeply stratifying global ordering” (Aas, 2007: 284). As she pointed out mass mobility was altering fundamental aspects of contemporary life and there was no reason to assume that crime and punishment were unaffected. Since that article was published, the scale of mobility has increased in response to a range of factors from greater economic opportunities in the global north, growing civil unrest and military conflict throughout the global south and climate change. Yet, because immigration detention and deportation are technically administrative sanctions, much criminology continues to overlook them.

As I have argued in this article and elsewhere, this division between administrative penalties and criminal punishment is unhelpful. When the two

systems converge their effects and rationales mingle. Whether we conceive of them as part of what Katherine Beckett and Naomi Murakawa (2012) label the 'shadow carceral state', Katja Aas (2014) calls 'bordered penalty' or 'abnormal justice', and Ingrid Eagly (2013) refers to as 'non-citizen justice', it is clear that immigration detention and deportation are part of a contemporary trend in many juridical systems.

As we witnessed post-9/11, the loosening of legal restraints in the name of security affected us all. These days, in many parts of the criminal justice system, no criminal act needs to have occurred, or been sanctioned, for the criminal justice agents to intervene. Examples run the gamut from the fairly benign official warnings by police, to actions preparatory to an act (Ashworth and Zedner, 2014; Zedner, 2015; Husak, 2011).

In each case, we see a further distancing from the philosophical foundations of punishment and justice. While in the past, scholars (see, for example, Zedner, 2013; Duff, 2010) have warned against too capacious a definition of punishment, immigration detention suggests that the opposite may also be true. Insisting that actions, which draw on penal rationales and criminal justice agents and logic are not punishment, not only denies the lived experience of many of these forms of state coercive power, but fails to grasp the normative power of critique.

As I write, Donald Trump has recently commenced his term in office by signing a series of Executive Orders, setting in train harsher penalties for irregular migrants and foreign offenders (Trump, 2017). In the UK, the Conservative government of Theresa May continues to justify leaving the EU in terms of controlling immigration. Thus we see, too, the elision of terrorist, 'illegals', refugees and migrants in much political rhetoric and even legislation, while border control practices have generated limited outcry or litigation.⁸ Notwithstanding resistance from within (Spena, 2016) and critique from without (AAPG, 2015, Shaw, 2016), punitive border controls and concomitant anti-immigrant sentiment continue to expand.

While non-citizens currently bear the burden of most of these changes, they are not limited to them. Not only may citizens be married to or friends with those who are detained or deported, but we are all part of the same community. Administrative sanctions oriented towards exclusion affect all of us, even those with full membership. It is time to include them in our accounts of punishment.

⁸ In contrast to the legal challenge to the 42-day detention of terror suspects, for instance, indefinite detention for immigration matters has proven hard to eradicate (Thwaites, 2014; Bosworth and Vannier, 2016; Costello, 2015). (Bosworth and Guild, 2008).

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