

## **Criminalisation, race, and citizenship in UK border control**

Mary Bosworth, University of Oxford and Monash University, Australia.

### **Abstract**

In this article, I draw on ongoing qualitative research on immigration detention and deportation in the UK, to explore the contribution of criminology to debates over citizenship. I pay particular attention to the interdependence of the state and the private sector in enforcing border control, examining how public-private collaboration both legitimates but also depends on a shifting, racialised criminalisation of foreigners. In so doing, I show how the criminal justice system has been put to work in defining and restricting the membership of the community of value within the UK.

### **Key words**

Border criminology; immigration detention; deportation; criminalisation

Ten years ago, in a special issue of this journal on deportation, political theorists Bridget Anderson, Matthew Gibney and Emanuela Paoletti (2011: 548) argued that deportation “shows the citizenry not simply as a community of law, but also as a community of value.” More recently, also in this journal, anthropologist Luke de Noronha (2019) identified how any such ‘community of value’ shapes and is shaped by race and gender.

While criminologists rarely considered such matters a decade ago, these days there is a vibrant subfield of the discipline known as ‘border criminology’ in which questions of citizenship and belonging are central. Here, scholars document the criminalisation of migration and the reorientation of criminal justice around matters of citizenship and immigration. In the UK and in a growing number of countries elsewhere, they show, a number of new criminal offences relating to immigration have been introduced, and courts increasingly ask defendants for proof of their citizenship. Police check immigration status upon arrest, and prison officers require new arrivals to disclose their citizenship status for the purpose of sharing it with the immigration authorities to arrange their deportation at the end of their sentence.

Criminologists also study the punitive form and effects of border control practices and their reliance on criminal justice policy, rhetoric, and practice. These days those who commit immigration offences are often managed in ways that look distinctly penal, even if they are not processed through the criminal justice system. Not only are immigration detention centres built like prisons and staffed by officers from the same companies who operate criminal justice institutions, but foreign offenders make up an increasingly large proportion of those held under Immigration Act powers. Since the Covid-19 pandemic in the UK, these same people form the sum of most of those deported. In all these ways, criminologists argue, border control, particularly deportation, and the immigration detention that usually precedes it, blur the boundaries between non-citizens and criminals.

While the impact of these policies and rhetoric are felt most strongly by the foreign nationals they target, all citizens are potentially affected. Successive Immigration Acts, for

example, have placed a duty on everyone to operate as a border guard, whether in schools, universities, hospitals, or as landlords, and employers, with widespread requirements to check immigration status across a range of everyday activities. If the current Nationality and Borders Bill passes into law, anyone helping people fleeing persecution will face a prison sentence, while the grounds on which people may have their British citizenship stripped are widening. Given the racialised nature of criminalisation and border control, such policies have specific, collateral consequence for Black and minority ethnic communities. Increasingly they also target people from Eastern Europe. Together, such matters are having an indelible impact on the nature and value of British citizenship.

### **Border criminology and the criminalisation of migration**

As critical scholars have long observed, crime is a social construct. Causing death may, in the field of war, be entirely legal, whereas in other circumstances it is a serious criminal offence that is subject to our strongest penalties. The policing of crime reflects other social arrangements; marijuana use may remain, *prima facie*, illegal in the UK, but the police are unlikely to search the pockets of (white) students attending a university event, whereas they may very well stop and search those of young (black) people in town centres. As with the police, punishment helps identify and define who is criminal, while also responding to and legitimating public sentiment and moral beliefs.

In all these ways, Amy Lerman and Vesla Weaver have argued, the criminal justice system offers a form of 'civic learning' through which (racialised) membership and democracy are made concrete (Lerman and Weaver, 2014). This, inherently political nature of criminal justice, is both a source of its influence, and, possibly, grounds through which its uneven or unjust effects can be challenged. As members of the polity, we are all party to the civics lesson of racial inequality; Lerman and Weaver invite all of us to challenge that. In marking out who belongs and who is unwelcome, border control similarly communicates important 'civics lessons' about membership. In liberal democracies like the UK, such policies fit uneasily within the constitutive principles of these states, given their explicitly illiberal aim and nature.

The criminalisation of migration is changing the nature and justification of the criminal justice system. For example, as states around the world have criminalised actions that were previously considered to be administrative matters, including overstaying a visa, or entering with false documents, the constructed nature of crime is made evident in new ways. So, too, as police have acquired new responsibilities around checking for citizenship and as immigration officers in many places have been given limited powers of arrest, the traditional policing roles and duties of security and crime control have expanded and changed. While prisons have always held foreign national citizens, these days, the lack of citizenship of these people ensures and justifies their differential treatment within penal institutions and post-sentence in immigration removal centres or on deportation flights.

This so-called 'abnormal' form of justice (Aas, 2014), in which foreign national offenders are treated differently from citizens, which has sprung up alongside and intersects with 'regular' criminal justice draws much of its legitimacy from discussions of and responses to crime, risk, and security. It is no accident, in other words, that immigration removal centres in the

UK resemble prisons. Both are built securely, to prison architectural design and are ringed by razor wire-topped fences. In both people are placed in a shared cell and within both they are managed, helped, and restrained by uniformed officers carrying keys. Their shared architecture, confined population, staffing practices and uniforms symbolically justify the deprivation of liberty of people who might otherwise expect to live freely in the community, while awaiting the outcome of an immigration process. Similar conclusions have been drawn about immigration detention systems elsewhere.

Other similarities abound, not least of which is evident in the racialised and gendered nature of the populations of those in prison and in detention; both forms of custody hold disproportionate numbers of people of colour, revealing the enduring impact of the British empire. The numbers of Eastern Europeans in both are also high.

Indeed, whereas in the past, the top five nationalities of people in detention were dominated by members of former British colonies, these days, there is a much higher proportion of men (and some women) from Eastern European countries like Romania, Poland and Lithuania. A recent report from the Migration Observatory at the University of Oxford documents similar matters in deportation. In 2014, for example, which was the high tide of the detention estate, the report finds that citizens from the EU and 'Europe non-EU', together constituted 14% of those recorded as returned from the UK. By contrast 'South Asian' citizens accounted by 43% of those returned. Just three years later, in 2017, the year after Brexit, the balance between these populations began to equalize, with EU and 'Europe non-EU' up to 27% and South Asian down to 29%. Three years later still, in 2020, EU and 'Europe non-EU' accounted for 31% while South Asian had dropped to 19% (Walsh, 2021).

As these figures demonstrate, well before the pandemic, the target of border control in the UK has been shifting. Explanations include political fall-out from the 'Windrush Scandal,' when it was discovered that numerous people from Jamaica who had been entitled to British citizenship had been unlawfully detained and threatened with or actually deported, to Brexit. In contrast to the extensive criticism of the detention and deportation of Jamaican nationals, no matter when they arrived, there has been little activism around the treatment of Eastern European citizens. While matters may change in that regard following the war in Ukraine, for now, the connection this population forges between the criminal justice and immigration control system over-rides any concerns people may have about their treatment. Their numbers in prison are high, and the human rights barriers to their removal are low, even though many will, inevitably, have forged a life in the UK before their incarceration and leave behind family members and friends.

In a supposedly 'post-racial' world, in which individuals and institutions eschew and deny the impact of race, and in light of current commitments following the international impact of Black Lives Matter movements, the new attention to Eastern European citizens remind us of the inherent flexibility of racialisation. They also remind us that understanding the mechanics through which certain people are (always already) cast out, is as much an empirical task as a conceptual one. In that work, which I have been conducting now for many years in IRCs, on transportation vans and in planes, the specific role of the private sector in demarcating the boundaries of membership comes into view. It is to that aspect of the system that I now turn.

## **Detention and deportation: capacity and control**

Notwithstanding the political commitment to harsh border control in the UK, the numbers of people detained and deported have been falling for many years. Legal challenges continue to constrain the capacity of the state to deport people, while pressure placed on airlines by members of the public and by campaigning organisations has raised the profile of this otherwise hidden form of border control. Such matters were compounded during the pandemic, as border closures and public health concerns made it even more difficult to remove anyone. By December 2020, the entire detention estate held only 700 men; at times during that year there were no women detained at all (Home Office, 2020).

The immigration detention and deportation system in the UK is wholly contracted out to the private sector who act on behalf of the Home Office. At the time of writing, there are just two providers of custody: Serco and Mitie. Between them, these two security companies operate 7 immigration removal centres. Other companies like GEO and G4S, which were fundamental to the creation of the contemporary British detention system, have recently withdrawn from the immigration sector along with the prison service who currently operate no sites. Additional companies, like Clearsprings Ready Homes, operate other, related forms of custody like Napier Barracks and the variety of hotels which hold asylum seekers, some of which are also staffed by employees of private sector security firms; however, those have not (yet) received much attention from criminologists, and so, are not included in this piece.

Mitie, which runs four of the seven immigration removal centres, is a relative newcomer to the immigration control field, having won its first contract at Campsfield House immigration removal centre outside Oxford in 2011. In 2017 it was awarded the 'escorting' contract, which includes thirty-five sites of short-term detention, the internal transportation of detained people within the UK and their overseas removal. Serco has been operating detention centres in the UK and overseas for much longer, since at least 2001. It also operates private prisons in England, Australia, and New Zealand.

Before COVID, the UK government detained people for a variety of immigration matters and for varying periods of time. Each centre held a mix of individuals, many of whom had lived in the UK for a number of years. Some had overstayed their visas, others were women and men whose asylum claims had been rejected, still others had violated the terms of their visa, or perhaps had never had one as they had entered the country in the back of a lorry. Mixed in with them all, were people who had served a prison term. Since March 2020, however, the population in IRCs has narrowed to just two groups: ex-prisoners and asylum seekers who have travelled to the UK on small boats from the shores of Northern France and how have been picked up by Home Office Border Force agents in Dover and on the nearby coastline.

As the pandemic took hold and following the completion of the Brexit transition period, the Home Office and the private sector worked together to keep their employees busy despite the small numbers in detention. In detention, for example, SERCO converted Tinsley House, a low security centre that had previously predominantly been used to hold visa people without criminal convictions, into a bail hostel. Similarly, during the first lock-down, in early

2020, Mitie staffed several repatriation flights for foreign citizens who wished to return to their country of birth and had no other way of getting there. Later that year, Mitie expanded the number of countries for chartered (and scheduled) deportation flights, going to some destinations that had previously lapsed, including Jamaica and Vietnam.

In these arrangements the Home Office and Mitie had to negotiate not just with one another, but also with other nation states, as countries took different approaches to the impact of COVID on returning citizens. Whereas some (e.g. Lithuania) insisted on negative PCR tests, and subsequently lateral flow tests for staff and those being deported, others, (e.g. Poland and Albania), did not. Negotiations at the diplomatic level also occurred about the status of escort officers, as most countries limited the entrance of non-citizens. Some places, like China, insisted on quarantining them upon arrival, effectively rendering deportations there impossible.

Many of these developments serve as a stark reminder of the interconnected global nature of border control. Others, particularly in the resolutions found to them, illuminate the flexibility of the state and the entrepreneurial nature of its private security partners. Above all the pandemic, made clear the significance role played by the contract to border control and, by extension, to the community of value that citizenship reflects and affirms. For it was the contract that prevented the border closures and their concomitant impact on the numbers detained and deported from financially ruining Mitie, and thus bringing the entire border control system down. Unlike Reliance and Capita, which in previous years had lost money when deportation rates fell, Mitie's contract with the Home Office includes a 'collar' to limit the upper and lower range of financial returns. This strategy which is used by companies to hedge against possible losses, meant the Home Office maintained a basic rate of pay throughout the pandemic which enabled the company to keep operating even when numbers of deportations were low. It also consolidated the working relationship between the public and private sector, encouraging them to work together to innovate and assist.

Together such matters meant that the potential 'civics lesson' of the pandemic: that border control does not need to take a carceral form, was neither taught nor learned. Instead, although numbers remain low at the time of writing, the system is slowly filling back up.

## **Conclusion**

As border control becomes increasingly linked to criminal justice practices and logics, those without citizenship become recast as security threats, unwelcome and dangerous to the rest of us. The role of the private sector in managing and administering this system in the UK further compounds the situation, as the state governs its borders at distance. As a result, those who are detained or deported find it harder and harder to make claims on the rest of us.

While at first glance it may appear that as states like the UK increasingly use the criminal justice system in pursuit of these goals, they sharpen the boundaries between citizens and noncitizens, in fact these developments have the opposite effect. The implications of such matters, that citizenship for some at least, is precarious, have been made particularly clear in the Nationality and Borders Bill which, at the time of writing, is currently under debate.

Ostensibly a response to problems within the asylum and immigration system, this law radically expands the British government's power to strip citizenship while also criminalising a wide array of humanitarian aid. It also sets out powers to detain people offshore for asylum processing.

Already an outlier in its enthusiasm for stripping citizenship from people in cases of suspected or actual terrorist activity, and in its ability to render people stateless by so doing, the British government now seeks to wield this power over dual nationals in a far wider array of cases of people deemed not to be 'conducive to the public good'; the same legal category as that used to justify deportation. In this extreme example, the impact of the criminalisation of border control on citizenship is made concrete, as the state draws into question not just the affective nature of belonging of a significant number of British citizens, but their legal standing as well.

The Bill is not passing without critique. It may not end up in law. However, over the past twenty years, the direction of travel in the UK has been uniform across governments. Starting with New Labour's concerns about 'bogus asylum seekers' and 'terrorists', to the Conservative Party's alarm over foreign criminals and smugglers, the United Kingdom has increasingly relied on criminal justice rhetoric and practice first in its treatment of non-citizens and now in its management of (some) citizens. Criminology has an important role to play not just in illuminating these developments, but in trying to resist them.

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