Deportation, detention and foreign-national prisoners in England and Wales

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PLEASE SCROLL DOWN FOR ARTICLE
This article examines the detention and deportation of time-served foreign-national prisoners in England and Wales. Drawing on penal policy and interviews with staff and detainees in prisons and immigration removal centres, it critically assesses the growing interdependence of the UK Border Agency and HM Prison Service. While the removal of failed asylum seekers has generated widespread concern and activism, the deportation of foreign ex-prisoners is rarely noted. The foreign offender, it seems, has few advocates. For anyone interested in immigration control, however, the treatment of foreign-national prisoners, both during and after their sentence, is compelling. On the one hand, they reveal a wider and deeper border, one that includes penal institutions located within the nation-state. Along these lines, the absence of citizenship enables harsher and longer punishments, as ex-prisoners may be held for considerable periods of time post-sentence due to their complex immigration cases. On the other hand, however, the treatment of foreign ex-prisoners is not uncontested – prison employees and staff within the immigration estate express concern at their treatment under Immigration Act powers. In short, this article suggests that the detention and deportation of foreign ex-prisoners raise a number of troubling questions about both the nature of governance and the limits of the liberal project of inclusion in late-modern Britain.

Keywords: deportation; prison; foreign-national prisoner; immigration detention
terms the outcome that each person in detention is facing is the same – expulsion – only those considered an individual social threat, usually because of their criminal offences but potentially for other reasons (e.g. national security), are ‘deported’. The rest – the overstayers, failed asylum seekers, etc., face ‘administrative removal’. Following the passage of the 2007 UK Borders Act, all non-EEA citizens sentenced to 12 months custody or more now face mandatory deportation unless their removal breaches international obligations, while EEA citizens will be deported if they are sentenced to 24 months custody. All non-UK citizens sentenced to prison should now automatically be considered for deportation with plans afoot to extend this policy to those sentenced to community penalties as well.

While, in the past, the immigration status of an individual was reported to the authorities somewhat haphazardly, since 2009, the HM Prison Service and private prison companies have been asked to determine and record each inmate’s citizenship upon arrival. These regulations are further supported by the computer system, introduced across the penal estate in the summer of 2009, called P-NOMIS in which, for the first time, there is specific prompt in the population database for nationality. The prison service and private contractors must fax the details of those who are not British citizens to the UK Border Agency (UKBA) so that they can be entered into the UKBA database, CIDs and considered for deportation.

Although, in bureaucratic terms, non-citizens subject to deportation orders ideally would vanish seamlessly at the end of their criminal sentence, or indeed during their prison term under Repatriation Agreements or through projects like the Facilitated Returns Scheme and the Early Returns Scheme, this does not always happen (De Wree et al. 2009). Instead, due to unresolved immigration issues or asylum claims, many are moved to facilities in the immigration removal estate where recent estimates put them at 50% of the population (NAO 2009). In addition to those former foreign-national prisoners housed in immigration removal centres (IRCs), at any one time, around 500 individuals remain in prison post-sentence, detained under Immigration Act powers.

Predictably, ‘foreign’ in prison terms, as elsewhere, often refers to ethnic minorities, with many non-UK nationals drawn from Africa, the Caribbean and the Indian subcontinent. The UK, like most countries, has a long and undistinguished history of criminalising black and ethnic minorities; their populations figure disproportionately in all stages of the criminal justice system and, in particular, in prison (Phillips and Bowling 2007). Given the history of immigration and colonialism, it is not all that surprising to find that foreigners fit into familiar pathways (Gilroy 1987, 1992).

So, too, the experiences of foreigners in prison are gendered. While there are, inevitably, far more foreign-born men behind bars overall, non-citizens are particularly disproportionately represented in women’s prisons, making up around one in five of the total population. Such women often face separation from their children who, themselves, may have an uncertain immigration status in the UK. Given the gendered nature of the international drug trade, which continues to use women as low-level drug couriers, a disproportionate number (58%) of foreign-national women are serving drug-related sentences, the seriousness of which keeps them in prison for a number of years (Joseph 2006, Prison Reform Trust 2010).

While I cannot hope to do justice to all these issues in one article, I raise them as part of an ongoing framework of empirical and theoretical study exploring the implications of border control for penal politics and practice (Bosworth 2008, 2011, Bosworth and Guild 2008, Bosworth and Kaufman 2011). In this article, I draw on interviews with prison staff I conducted in 2009 as part of a project for the Association of Visitors to Detention, to help
them create new visitor groups to prison. I also use some material from my current research project into life in immigration detention, in which I interview staff and detainees. In my research and in this article, I am interested in how the prison and IRCs have increasingly been put to use to secure the border and, in so doing, have become implicated in a particular vision of national identity and a special discourse on citizenship. Specifically, what does the deportation and detention of foreign-national ex-prisoners convey about the nature of and limits to the liberal project of inclusion in late-modern Britain, and how do those subject to this regime, whether working or detained in prison or removal centres, make sense of it?

Statistics and policy background

As the prison population has grown dramatically over the last decade, so too have the numbers of foreign-national prisoners escalated (Hammond 2007). At mid 2010, just over 85,000 men, women and young offenders were held in prisons in England and Wales. Most of them (95%) were male (Ministry of Justice 2010b). Approximately, 11,500 (13%) were not British. In 2009, which is the year for which the most detailed statistics are available on this matter, with the exception of drug offences, for which 27% of foreign-national male prisoners were sentenced as compared to 14% of British male prisoners, there does not seem to be a huge difference in the crimes the two groups commit. For example, that same year, 23% of the male foreign prisoners had been convicted of violence against the person, as compared to 30% of the British male prisoner population. Approximately, 12–13% of both groups of men were convicted of sexual offences (Ministry of Justice 2010a, Table 7.23, p. 117). Differences were much greater that year among the female prisoners. For example, while 30% of British female prisoners were serving sentences for violence against the person, only 8.6% of the foreign women had been convicted of violent crimes. In contrast, nearly half (48%) of the foreign female population were imprisoned for drug offences, compared to 22% of the British women (Ministry of Justice 2010a, Table 7.23, p. 118).

In June 2010, the largest individual groups within the foreign population were Jamaican nationals with a tally of 940 followed by those from Nigeria (730), Republic of Ireland (680), Poland (640), Vietnam (600), Pakistan (440) and Somalia (430) (Ministry of Justice 2010b, p. 2). Evidently, people’s national origin will have some bearing on their experience of incarceration and on the likelihood they will be deported. EEA nationals, for instance, are far less likely than those from further afield to face deportation. So, too, given historical patterns of immigration, those from Jamaica are more likely to have longstanding ties with the UK than those from Vietnam (Gilroy 1987). They are, as a result, more likely to receive domestic visits from UK-based family and friends. Depending on where they are from, as well as how long they have lived in Britain, foreign-nationals display a range of language ability, with some groups (most commonly Chinese and Vietnamese nationals) possessing very limited English language skills while others (such as those from Jamaica) are native English speakers in their own right.

Despite such variety among the foreign born, the limited evidence we have suggests that, as a group, they have some shared needs and characteristics that differentiate them from British prisoners. Specifically, they are more likely to report a general lack of information about their situation; immigration-related problems; language barriers; isolation; lack of preparation for release, and racist and disrespectful staff attitudes (Bhui 2004, HMIP 2006, 2007). While the prison service has responded to some of these problems in recent years by introducing a new senior management role in prisons of ‘Foreign-National Coordinator’ (FNC) and by creating senior posts within the National
Offender Management Service (NOMS) that focus on foreign offenders, the difficulties faced by foreign nationals are, in most cases, likely to be exacerbated by the tougher immigration policies that have evolved since 2006. They are particularly likely to be affected by the new emphasis on deportation.

At present, non-citizens are distributed unevenly throughout the penal estate. While two prisons, HMP Canterbury and HMP Bullwood Hall, were designated in 2006 as ‘foreign-national prisons’, meaning that their entire population are non-British nationals, others hold anywhere from 1 (HMP Thorn Cross) to 447 (HMP Wormwood Scrubs) (Ministry of Justice 2010b, p. 14). Among those establishments with a high number of serving foreign-national prisoners, there is a high concentration in the London prisons and, more generally, in the South East.

In early 2009, HM Prison Service announced a new plan to distribute foreign nationals based on ‘hubs’ and ‘spokes’. This arrangement designated six ‘hub’ prisons, HMP The Verne (Dorset), HMP The Mount (Hemel Hempstead), HMP Wormwood Scrubs (London), HMP Risley (Cheshire), HMP Hewell (Worcestershire) and, for women, HMP Morton Hall (Lincoln). In the original policy, hubs were attached to ‘spoke’ prisons in their geographical areas. Each of the hub prisons has on-site UKBA personnel and services tailored to the foreign population (like English as a second language classes), while the spoke establishments were expected to direct their foreign-national population to them where possible.

As is often the case in penal policy, hubs and spokes furthered two competing goals: to speed up the deportation process and to provide greater, culturally specific support to the foreign population. While the latter may facilitate HM Prison Service’s (2010) broader commitment to helping prisoners ‘lead law-abiding and useful lives in custody’ neither addresses the Prison service’s other primary aim to address prisoners’ lives ‘after release’. The consequences of imprisonment, particularly any rehabilitative goals, are simply not applied to foreigners. Imprisonment for this section of the population instead, aims at something quite different: deportation.

Deportation and detention

Since April 2006, when it became apparent that a number of foreigners had been released from prison without being considered for deportation, the British Government has explicitly advocated the expulsion of a greater number of foreign offenders (Bhui 2007). Deportation had historically been discretionary and unrelated to the length of time served in prison. Instead, according to the terms of the Immigration Act 1971, the Secretary of State could determine it was in the public interest to deport someone. In 2006, however, media and public outrage over the failure to consider foreign-national prisoners for deportation was such that it forced the Home Secretary Charles Clark, who had broken the news, to resign, even though many of the release decisions predated his term in office. He was replaced by John Reid who promptly declared the Home Office to be ‘unfit for purpose’, in response to which the government splits it into two parts – the Ministry of Justice, which oversees prisons, probation and the courts, and the Home Office, which retains oversight of immigration matters and the police. This arrangement, in which there are two arms of government dealing with overlapping populations, makes research and policy implementation rather complicated as the departments operate separate information systems and employ different staff. Although, increasingly, there are many attempts made to bridge the gaps between these organisations, difficulties remain, both in the communication between the different departments and, as I shall indicate in more detail below, in their institutional culture and goals.
In addition to reorganising the Home Office and the immigration services, the government passed fresh legislation in the form of the UK Border Act, 2007, which considerably expanded the power to detain and deport (Bosworth 2008). The subsequent passage of the Borders, Citizenship and Immigration Act of 2009 further ‘weakens the legal status of immigrants’ (Zedner 2010, p. 384), making it more difficult to obtain full British citizenship (and thus immunity from deportation) by considerably lengthening the process of its acquisition and also by denying access to full citizenship for convicted offenders until their criminal sentence is spent. In addition to creating intersections within the legal framework of criminal and immigration law New Labour championed a rhetorical convergence between crime and immigration; a move evident in then Home Secretary Jacqui Smith’s assertion made in August 2007 that ‘public protection’, previously the remit of the criminal justice system, had become the ‘primary concern’ of ‘the Home Office and our immigration policy’ (Smith 2007).

As a number of critical commentators have identified, the criminalisation of immigration, in particular, immigration detention and its corollary – deportation – have become key aspects of both border control and the governance of late-modern liberal democracies (Stumpf 2006, 2009, Bosworth and Guild 2008, Dauvergne 2009, di Giorgi 2010, Zedner 2010). Within the UK, the deportation of foreign-national prisoners has played a particularly salient role in both aspects as the government has created and then raised annual targets publicising and promoting their intent. In a widely reported statement in December 2007, Home Secretary Smith confidently asserted, ‘We promised to remove 4,000 foreign national prisoners this year and we meant it’ (BBC 2007). The following year this number rose to 5,395. By February 2009, the ‘target’ was re-designated by Smith as one of 10 ‘milestones’ that she urged ‘the UK Border Agency to meet this year’. Rather than a specific figure, at this point she merely directed UKBA to ‘deport a record number of foreign prisoners’ (2009 cited in UKBA 2009b; emphasis added).

In practical terms, deportation orders can be recommended at the point of sentence by a magistrate or judge and thus have become part of the criminal justice process. Even prisoners who do not have a recommendation for deportation as part of their sentence, however, may subsequently be placed under a deportation order once their case file has been considered by a case worker at UKBA. In whichever way an order is brought to bear, a deportation order requires an individual to leave the UK while authorising his or her detention until he or she is removed. A deportation order also prohibits the person from re-entering the country for as long as it is in force and invalidates any leave to enter or remain in the UK given before the order is made or while it is in force. According to the Immigration Rules (UKBA 2009a), a person is liable to deportation:

(i) where the Secretary of State deems the person’s deportation to be conducive to the public good;
(ii) where the person is the spouse or civil partner or child under 18 of a person ordered to be deported; and
(iii) where a court recommends deportation in the case of a person over the age of 17 who has been convicted of an offence punishable with imprisonment.

Restraining these points, the rules also state unequivocally that:

- A deportation order will not be made against any person if his removal in pursuance of the order would be contrary to the United Kingdom’s obligations under the Convention and Protocol relating to the Status of Refugees or the Human Rights Convention. (Para 380)
While not everyone under a deportation order will, or must be detained, those who have served prison sentences are more likely to be held than those who have not. Thus, since 2006, the UK has witnessed a growing number of convicted foreign nationals held post-sentence in prison as well as in the numbers detained post-sentence in removal centres. The government responded to these numbers by committing itself to an expansion of the removal estate by 60% by 2012.

The criteria that determine where detainees are housed after the expiry of their custodial sentence are set out in paragraph 5.1 of Prison Service Order (PSO) 4630 (HM Prison Service 2009). In general terms, immigration detainees will only normally be held in prison accommodation in the following circumstances:

- National security – where there is specific (verified) information that a person is a member of a terrorist group or has been engaged in terrorist activities.
- Criminality – those detainees who have been involved in the importation of Class A drugs, committed serious offences involving violence or committed a serious sexual offence requiring registration on the sex offenders’ register.
- Security – where the detainee has escaped prison or immigration custody, or planned or assisted others to do so.
- Control – engagement in serious disorder, arson, violence or damage, or planning or assisting others to so engage.

Such categories, however, are only a guide, the PSO makes clear, and there may be occasions where individuals, convicted of quite serious offences, are deemed suitable for an IRC. Specifically, the PSO (HM Prison Service 2009) states:

It must be recognised that the behaviour of ex-FNP detainees will be the key factor as some who would be excluded by the above criteria may be sufficiently well behaved to merit transfer.

So, too,

It must be assumed that regardless of the guidelines any ex-prisoner who had been deemed suitable as a Cat. D will be acceptable for the IRC estate.

Somewhat unusually in a system that routinely produces detailed statistical analysis of its population, it is difficult to be sure how many people at any given moment are held beyond the terms of their sentence in prison. Nor is any specific information available either about the precise reason for their detention or their socio-demographic make-up. Instead, with some searching of parliamentary debates, a range of numbers can be identified from 550 in December 2008 to 411 in February 2009. By the summer of 2009, it appeared that such figures had been deemed too high – although no reason was given – when a leaked service-level agreement between the NOMS and UKBA established a target figure of no more than 250 post-sentence prisoners to be detained in prison on any given day. By November 2010, however, the numbers were up to 580.

For those who do remain in prison post-sentence the PSO is, at least, initially, unequivocal: detainees must be treated as though they are unconvicted prisoners (HM Prison Service 2009, para. 3.9). As such, they fall under Prison Rule 7(2) (HM Prison Service 2010), according to which, unconvicted prisoners:

(a) shall be kept out of contact with convicted prisoners as far as the governor considers it can reasonably be done, unless and to the extent that they have consented to share residential accommodation or participate in any activity with convicted prisoners; and

(b) shall under no circumstances be required to share a cell with a convicted prisoner.
In practical terms, this regulation should mean that they are housed in local prisons since training prisons (Category C) and high-security (Category A) establishments do not typically hold individuals on remand.\(^7\) There are, of course, exceptions, with some prisons housing men on remand as well as high-security prisoners, and other places operating as both training and local prisons. Such places are likely to have a steady, albeit small, population of time-served prisoners detained under Immigration Act Powers. ‘If they fit into a “normal” category’, such ex-prisoners usually stay on in detention for ‘1–2 weeks’, according to an FNC at a large local men’s prison, ‘But when you go into special cases [i.e. serious offenders], you’re talking about months or even years’.

Being treated as an unconvicted prisoner brings some benefits: they are entitled to more visits – as many as one per day – greater telephone contact and more time out of cell. They can wear their own clothes. Yet, there are also many drawbacks: unconvicted prisoners are less likely to find paid employment in a prison, or to be enrolled in education and drug treatment. Similarly, remand prisoners are usually housed in wings that can be more chaotic due to the rapid turnover of inmates. Remand wings usually house a higher proportion of individuals undergoing drug and alcohol withdrawal as people dry out on arrival. They also contain disproportionate numbers of inmates with mental health problems (Birmingham \textit{et al.} 1996). In any case, prisons may simply not be able to offer ex-foreign nationals the additional time out of cell or telephone privileges, due to staffing and housing constraints. In those circumstances, detainees are asked to sign a form stating they understand that they ‘cannot be held in unconvicted conditions’ (Annex C, HM Prison Service 2009).

Although it seems from the policy documents and discursive framework that considerable effort is spent in trying to siphon off as many foreign nationals as possible during their sentence and in deporting others, not everyone is removed or, indeed is easily removable. Many non-British nationals have longstanding ties to the UK. Some may have been previously granted indefinite leave to remain; many do not want to leave. Others do not possess travel documents. They may be from countries with governments that refuse to issue travel documents, or simply take a very long time to do so. India, for example, frequently takes a full year to provide a passport for a foreign national in prison while China is not much quicker. Unless the request for the passport is made early in a person’s sentence, this slow response from the individual’s birth nation can result in significant delay post-sentence in the UK, with individuals held for purely administrative, organisational reasons. Some non-citizens may be citizens of states that have no functioning government and/or human rights abuses that prevent their removal. Still others have asylum claims pending or may have been previously given refugee status. In any case, non-EEA nationals serving sentences of less than 12 months, or those whose previous convictions over the past 5 years do not add up to this figure, are not subject to mandatory deportation, even though they can be considered for it. EEA nationals fall under a separate legal regime based on the 2004 Citizens Directive, making them much harder to deport.

At the same time, and somewhat confounding this representation of a rather impotent or unrealised power to deport, foreign-national prisoners have limited access to legal aid and advice leaving many without sufficient tools with which to assert their Convention rights. They are vulnerable. Not only it is more difficult to claim asylum successfully from prison, due to limited access to legal aid and immigration advice, but also other rights, for example, to privacy, family life and freedom of religion, are more restricted in prison than without (Lazarus 2004, Bosworth 2011).
While PSO 4630 suggests that former foreign-national prisoners held in prison have been judged as unsuitable for IRCs on the basis of the risk they pose to themselves or to others, in practical terms individuals can remain in prison for more mundane reasons, either because of incomplete paperwork from UKBA or, due to space issues in the immigration estate. Quite simply, as one FNC rather bitterly pointed out, ‘prisons can’t insist that the population is moved to Immigration Removal Centres’. Instead, once an individual is detained under Immigration Act powers, the decision to move them is made within the Home Office, by staff in the Criminal Case Directorate and the Detainee Escorting and Population Management Unit (DEPMU).

Most IRCs are thought to be cautious about accepting ex-foreign-national prisoners, perceiving them as potentially disruptive to their more limited regimes and less developed security systems; ‘if a removal centre is offered 10 non-criminals, they will take them over ten former prisoners’ (FNC, Male Local Prison). Yet, for some working in removal centres, ex-prisoners are ‘not the ones to worry about; we know about them. It’s the other ones, who come off the street that we don’t know anything about’ (Detention Custody Manager, IRC Campsfield House). For still others, explanations of the distribution of ex-prisoners within the IRC estate are more banal: ‘It’s just a numbers game, someone somewhere decides we need more of this group or that’ (Detention Custody Officer, IRC Campsfield House).

Whatever the actual process, in interviews, both sides of the IRC/Prison divide appear somewhat ambivalent about the distribution of ex-prisoners and others in the immigration estate. On the IRC side of things, it is not just detainees who complain about being ‘snatched up and put in here’ (Detainee, IRC Campsfield House) while reporting regularly to the police and causing no trouble in the community, but staff as well who expressed concern at the process, claiming that ‘I don’t understand why we get who we get sometimes’ (Detention Custody Officer, IRC Campsfield House). This lack of clarity over the justification of the selection of the population is a key difference between prisons and IRCs.

Any transfer of an ex-prisoner to an IRC must be agreed by DEPMU – an office within the UKBA that also monitors the location of asylum seekers and other irregular migrants not in detention. The FNCs and immigration clerks in prison with whom I spoke told me of spending considerable time on the telephone intervening personally, trying to ensure that foreign-national prisoners approaching the end of their sentence would not linger in their establishment. Such negotiations tend to centre on differences in security and control strategies within prisons and removal centres, revealing distinct institutional culture and goals. IRCs, for instance – unlike prisons – have no formal adjudication process. Disruptive detainees may be removed from association, but usually only for 24 hours at most, and there is no formal hearing process. Detention Custody Officers frequently mention their lack of formal disciplinary powers in comparison to prison staff, a situation that forces them to ‘rely on our interpersonal skills training’ (Detention Custody Officer, IRC Campsfield House). Perhaps for this reason, one FNC complained that whenever she tried to place a post-sentence foreign national in an IRC, the ‘first thing an IRC asks is “has he got any adjudications?”’ While the removal centre may have been trying to minimise its own risk in accepting an ex-offender, this seasoned prison employee pointed out rather cynically that in her establishment at any rate, this measure of disciplinary action was unreliable since ‘you can have an adjudication for having three pairs of socks instead of two’.

Although the staff members I interviewed in prison and detention rarely questioned the logic and justice of the government’s commitment to the policy of deportation, many were critical of detention post-sentence. Prison employees were particularly concerned. ‘I do not like anyone to be held here after their sentence date’ one FNC told me, ‘because I do..."
not think it is right. They should be housed in a detention centre, not in a prison.’ On the one hand, such critique may well have been no more than self-interest, moving prisoners post-sentence frees up beds and divests prisons of a group of individuals who often have complex needs and can be hard to manage. On the other hand, however, for some the problem was more profound, and could be characterised as one of institutional legitimacy. Indeed, concerns over and frustrations with this practice are fairly widespread even within UKBA. Removal centre staff too are often not keen on post-sentence detention either, asserting that if ‘someone is meant to be deported, they should be taken straight from prison to the airport’ (Detention Custody Officer, IRC Campsfield House).

Post-sentence detention in prison, one particularly critical FNC claimed, runs counter to the prison service’s commitment to the ‘decency agenda’: ‘it is not decent, and it’s not right.’ Under the terms of the ‘decency agenda’, prison service employees are expected to balance care and custody; the prison service aims, however ineffectively, to punish and reform. In contrast, for UKBA, citizenship status is all and questions of behaviour, rehabilitation or remorse seemingly irrelevant. For those foreign ex-prisoners who fall under the joint management of these two arms of government, the diverging aims and objectives can be hard to fathom and are a source of considerable anxiety and dissatisfaction. It is common to hear in detention claims that ‘I’d rather be in prison’ from ex-prisoners frustrated at the lack of services and education in detention; ‘there I was doing all sorts of courses, here there is nothing’ (Detainee, IRC Colnbrook).

Notwithstanding a tendency in government discourse, critical scholarship and activism, and among detainees, to refer to detention centres as ‘prisons’, the figure of the foreign ex-prisoner reminds us of the distinctive nature of removal centres. Unlike imprisonment, for instance, immigration detention serves no rehabilitative goals. At most it incapacitates a classic aim of punishment to be sure, but one that the prison service has explicitly rejected as wholly sufficient on its own. On this basis then, it follows, as we saw earlier in the hubs and spokes system of managing foreign-national prisoners, that the justification or legitimacy of detention rests on what it may facilitate, namely, deportation.

**Securing the nation-state through deportation**

Although previously, deportation was ‘considered by democratic countries as a secondary instrument of migration control, one resorted to relatively rarely and with a degree of trepidation’ (Gibney 2008, p. 2), over the past decade it has become increasingly normalised in the UK and in other liberal, democratic states. When applied to asylum seekers, who have moral and ethical claims to ‘sanctuary’, however, contested that it can be a risky strategy, since such individuals often have quite vocal supporters and, in any case, can appeal to a collective sense of compassion (Gibney 2004). As Gibney (2004) points out, deportation raises questions about the commitment of a liberal state to human rights and to values like respect, the right to family life and security. It also disrupts social relationships, since non-citizens have often become part of British communities, whatever their immigration status.

Few such qualms exist, however, when the state deals with those convicted of criminal offences. Foreign offenders have limited numbers of supporters either in prison or in the community outside their immediate family. Even though some prisoners seek asylum while in prison or once their sentence is over, their legal status as ex-offenders creates an additional and significant hurdle to overcome in their bid to avoid deportation. Now legally a barrier to citizenship as well, a criminal conviction for non-citizens has a far greater and
more deleterious ramification for non-nationals than ever before, creating a kind of double
jeopardy, wherein purely on the basis of citizenship, punishment will effectively vary.

To be sure, not all ex-prisoners are ultimately deported. Forced (e)migration is
complicated. Here, as elsewhere in the immigration system, a ‘gap’ inevitably arises
‘between those foreigners that are eligible to be deported and those that the state actually
deports’ (Gibney 2008, p. 9). Not all individuals awaiting removal help expedite their case,
some actively resist, destroying paperwork, refusing transportation and, at the most
extreme, self-harming or even taking their own lives. Detained asylum seekers in the UK
and elsewhere sometimes sew together their lips in protest at their treatment and planned
deporation; in 2007, detainees at IRC Campsfield House took to the roof and burned some
of the facility damaging the centre’s kitchen and other parts. The previous year, half of
IRC Harmondsworth was reduced to rubble. At Campsfield, the disorder was blamed
explicitly on the high proportion of former foreign-national prisoners and their numbers
have now been limited to no more than 30% of the total population. Finally, research
suggests that serving foreign-national prisoners are also disproportionately likely to
self-harm and commit suicide (Borril and Taylor 2009). The UKBA is in the process of
commissioning a large-scale national study into self-harm in the removal estate.

Compounding their frustrations in detention, ex-offenders may be particularly
vulnerable to delay, since their countries of origin may be loath to take them back
(Brotherton and Barrios 2009). Under such circumstances, foreign embassies sometimes
‘lose’ paperwork, refusing to recognise individuals as their citizens. Other ex-foreign
prisoners may be able to fly, but refuse to leave once they are placed in detention, lodging
bail applications or asylum claims. Even if they have broken the law in Britain, some
foreign nationals are unreturnable under the terms of the European Convention of Human
Rights and other international instruments.

Finally, as UKBA discovered in October 2009 when they failed in their bid to return a
group of Iraqi nationals to Baghdad, and were forced to bring most of them back to IRC
Colnbrook, irrespective of policy decisions in London or of international arrangements,
the situation in the country of origin may simply be too dangerous for deportation to
succeed. As Gibney (2008) reminds us, deportation is an inherently international act and
one based on transnational consensus; it requires the agreement of another state since
deportation needs a destination. As one employee of the Ministry of Justice put it rather
regretfully, ‘you can’t just boot them off Land’s End.’

Conclusion

That deportation orders continue to be given to individuals even when there is little
likelihood that their removal can occur any time soon can be interpreted in a variety of
ways. For some, this practice undermines the UK Government’s commitment to human
rights and social justice (Phelps 2009, BID 2009). For others, it illuminates the contested
ethical terrain of border control (Gibney 2008). For criminologists, such matters seem to
resonate with familiar arguments about the ‘limits’ of the sovereign state (Garland 1996).
In this last view, the forces of globalisation restrict the capacity of the state to police and
enforce its borders in a manner analogous to its equally impotent capacity to enforce crime
control measures (Aas 2007, Bosworth 2008).

Yet, while the inability to deport may be represented in the (tabloid) press as evidence
of state impotence, the right of the state to detain someone indefinitely, or to subject them
to the reporting and employment restrictions inherent in temporary visas, reveals instead a
virile, absolutist state, wielding great power over non-citizens. Since 2006, such control,
which in practical terms is more often deployed against ‘economic migrants’ than anyone else, has been increasingly justified through the figure of the ex-prisoner. This shadowy person, of whom we know little empirical information, brings with him all the rhetoric of crime control and responsibilisation that, in the criminal justice arena has been so productive in expanding state power in the face of neo-liberalism (Garland 2001, Wacquant 2009), while amplifying late modern, particularly post-9/11 concerns over cultural and social integration. In so doing, the foreign national prisoner acts as a lynchpin in the justification of detention and deportation, overcoming, in most cases, the lingering squeamishness of liberal society to a politics of exclusion.

More and more, the success or failure of removal, factors that are often out of the government’s hands, is no longer perceived to be pertinent; as grounds of critique, they are fairly ineffective. Even the temporary release of a detainee, judged either to be currently undeportable due to the human rights situation in his/her country of origin, or awaiting a decision on an appeal, does not threaten the legitimacy and justification of border control. Once detained, an individual has been identified, and will remain always and forever, deportable. For those who are not removed, and also not released, the implications of IRCs (and sometimes prisons) are even more extreme. For these individuals, such places have become key destinations in their own right. In their cases, the actual process of deportation has become unnecessary; the border is no longer located at the periphery, but rather passes through every non-citizen, irrespective of their immigration status.

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Notes
1. The EEA includes all 27 member-states of the European Union plus Norway, Iceland and Lichtenstein. In UK Immigration Law it includes Switzerland.
2. Proportionally, foreigners are rather more over-represented in the remand population, where they make up almost one in five (18%) of the population awaiting their trial or sentence (PRT 2010).
3. In January 2011, the Prison Service announced the closure of Morton Hall and its re-rolling into an immigration removal centre for men, suggesting at least a partial reconsideration of the hubs and spokes arrangement.
4. John Reid himself resigned just after 1 year in post, allegedly as the result of an internecine battle within Labour; he was identified as a Blairite and possible challenger to Prime Minister Gordon Brown, who replaced him with the first female Home Secretary, the Rt. Hon. Jacqui Smith. She did not last much longer than Reid.
5. Over the course of this period the Immigration Services changed their name twice from the Immigration and Nationality Directorate to the Border and Immigration Agency, until finally, in 2007, the government settled on the UKBA.
6. In addition to those post-sentence detainees who remain in prison, a smaller number of immigration detainees may be placed in prisons if their behaviour in detention is deemed too problematic.

7. Men’s prisons in England and Wales are accorded security classifications from low security (Category D) to high security (Category A). A few of the ‘Cat. A’ prisons contain within them higher-security ‘control units’, designed to hold the most disruptive or dangerous offenders. Women’s prisons, by contrast, are classified as open, semi-open or closed.

8. There are some exceptions; Hibiscus has, for some time, worked with and supported foreign national women in prison, while in 2010 AVID began to offer social visits to male foreigners in some prisons. Both also offer some services to those in detention, with Hibiscus, in particular, following the women from prison to removal if needed.

9. Land’s End is the most Westerly point of mainland UK, and often mistakenly assumed to be also the most Southerly point (a label which, in fact, belongs to the nearby Lizard Peninsular).

References


