

Will Brexit Impact on Borders and the Control of Immigration?

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[C]learly the point that is being made here is that should we leave the EU then some of these other arrangements that we may have with other countries ... could be called into question ... [if] those controls cease to exist, then you have potentially thousands of asylum seekers camped out in Northern France who could be here almost overnight...if we leave the EU the Jungle camp in Calais will move to Folkestone. That is not something people want. David Cameron, Prime Minister, Anti-Brexit

[We] have no idea whether these people are genuine refugees or asylum seekers, or economic migrants, or terrorists operating under the cover of either ... [if Britain remains in EU, these people] will have an absolute right to come to the UK - and we won't know who they are either... they might be crossing the borders both to work, or coming to do us harm. Liam Fox, Former Defence Secretary, Pro-Brexit

The campaign to leave and remain in the EU are broad in their scope, involving various parties from across the political spectrum, highlighting a wide range of issues¹ and approaching each of these issues in a different manner. Despite such nuances, it is the strong anti-immigration wings of both campaigns that have remained dominant and gained publicity. The pro-Brexit camp has argued that, leaving the EU will result in a tightening of 'porous' borders, a drastic reduction in immigrant numbers and a consequent decline in crime. Whereas, the Prime Minister's anti-Brexit camp has warned that, leaving the safety and protection of the EU will result in a weakening of borders, a huge influx of 'illegal' immigrants coming into Britain, and consequently a rise in crime. Both discourses on anti-immigration have attempted to outmanoeuvre each other by presenting extreme, ideologically biased, misleading, and faulty scenarios - lacking robust research, evidence and substance. What is perhaps most striking is the pejorative portrayal of asylum seekers and undocumented migrants who are constructed as a larger army of 'illegal' people waiting to invade resource rich Britain, whose entry will threaten the social fabric, prosperity, stability and peace of the country. The campaigns have used the so-called 'illegality' of migrants (for example: 'failed' asylum seekers, those living with irregular status and people in Calais jungle camp) to misrepresent the 'risks' they pose, and have emphasized the need for stronger enforcements. The age-old divisive politics of insecurity and fear are constantly played out in these debates; constructing the immigrant 'other' as

¹ For instance, Scottish National Party and Jeremy Corbyn's campaign to remain in the EU have taken a different approach when compared to Prime Minister's campaign (which has repeatedly highlighted the harms of migration).

'bogus', 'criminal' and a 'foreign enemy', who needs to be controlled and excluded (also see Bosworth, 2008).

Over three decades ago, Steven Box (1983) argued that the depictions of 'crime' and 'criminals' are grossly manipulated and shaped by those in power, creating distortions and "mystifications". For quite some time, migrants and criminals, two entirely different categories, have become inextricably connected in public minds, contributing to the processes of mystification that Box demonstrates. As a result, there are high levels of opposition to immigration and consistent calls for tougher restrictions, which is captured in various opinion polls and social attitudes surveys (see: Ipsos Mori webpage and Migrant Observatory Report²). Regardless of whether Britain leaves the EU or remains a part of it – such opposition will stay intact due to the reasons mentioned above, and the current government will continue to gain legitimacy to systematically expand policing measures and implement further criminalizing, punitive and exclusionary policies and procedures against asylum seekers and undocumented migrants. Therefore, in this piece, I will discuss more broadly these measures and most importantly answer the question – is Brexit going to have any impact on borders and the control of migration?

The policing of migrants has now spread to numerous "sites of enforcement", other than the ever-expanding physical borders (Bowling and Weber, 2004). Over the past decade, there has been a dramatic proliferation of measures (carrier sanctions, visas, biometrics etc.) and cooperation between various domestic, national and European crime control bodies such as, various regional police forces, Border Force, National Crime Agency and European Police Office (Europol), all created to deal with 'illegal' migration, terrorism and organized crime. Certain countries like Switzerland and Norway, who are not part of the EU, have an agreement with Europol to cooperate in the fight against 'crime'³. In the event that Britain exits the EU, it is more than likely that its cooperation agreement with Europol will continue to exist, taking into account the mutual interest of developed nations in keeping out the 'dangerous' classes (also see Morris, 2002).

Britain has remained consistent in its attempts to block safe and 'legal' channels for migrants to travel. Those who make perilous journeys and arrive without proper documentation are viewed with suspicion and considered 'dangerous'. Similarly, those who live without documents and have irregular status, are subsumed under a discourse on the harms of 'illegal' migration, and treated with political contempt. The current government has embarked on an overzealous drive at a national level to 'crackdown' on 'illegal' migration, which is evident the recent Policing and Crime Bill (currently awaiting conversion into an Act of Parliament or law). Under this Bill, law enforcement officers are to be granted "maritime enforcement powers", inspired by Australian border control policies (See Grewcock, 2009), and they will be able to intercept vessels, and send them to a port in England and Wales or anywhere else in the world and detain them there⁴.

² See: <http://www.migrationobservatory.ox.ac.uk/briefings/uk-public-opinion-toward-immigration-overall-attitudes-and-level-concern>

³ See: <https://www.europol.europa.eu/content/page/external-cooperation-31>

⁴ The maritime powers are also granted to the immigration officials under the Immigration Act 2016.

These powers could be used against vessels suspected of containing asylum seekers and those in need of international protection; thereby, risking violation of the Geneva Convention and obligation to protect vulnerable groups, including minors and those fleeing war, torture, persecution and other threats to life. Taking into account the Conservative Party's anti-immigration stance and lack of will to accept the refugee quota set by EU or help relocate people in Calais, such measures should not come as a surprise.

The stop and search powers are already used disproportionately and aggressively against Black, Asian and Minority Ethnic communities and individuals who look 'foreign'. However, the Policing and Crime Bill proposes to introduce a new set of measures, requiring individuals to prove their nationality upon arrest. This is somewhat a replication of the infamous xeno-racist laws of Arizona (See Provine and Sanchez, 2011), granting police and immigration officers powers to order people who have been arrested to state their nationality and produce identification documents (for example, a passport) – possibly justified by an individual's appearance, colour of skin and accent. The failure to produce documents within 72 hours will become a criminal offence, with a penalty of up to one-year of imprisonment for lack of compliance. A lack of documents and/or 'illegal' status would inevitably result in detention and/or deportation.

The Home Secretary (Theresa May) has made her ambition clear on creating a "hostile environment" for so-called 'illegal' migrants. This hostility is very well demonstrated in the recent Immigration Act, 2016 passed by parliament, which significantly expands the internal border controls, making ordinary citizens into border guards. For instance, the act has intensified the existing measures to restrict access of irregular migrants to bank accounts, driving licenses and rental accommodation. New powers have been granted to landlords and agents, and they can evict tenants who lack immigration status. However, landlords and letting agents who rent out properties to migrants with irregular status can be imprisoned for up to 5 years and/or heavily fined. Also, there is an obligation imposed on banks to carry out immigration status checks on their current account holders, and immigration authorities can close/freeze bank accounts. Further, immigration officers are granted enhanced police like enforcement powers, including to search for, seize and retain evidence of 'illegal working' or 'illegal renting', and search for and seize nationality documents. There is a new offence of 'illegal' working created under the act: those found guilty can receive a custodial sentence of up to 51 weeks and/or a fine, and their paid wages (now considered as proceeds of 'crime') can be seized under the Proceeds of Crime Act 2002. Similarly, those convicted of driving offences while living 'illegally' face up to 51 weeks' imprisonment and/or a fine. Once again, detention and deportation will become a looming spectre for migrants, and this trend will continue irrespective of the Brexit.

Needless to say, there is a rapid and irrevocable merger of immigration and criminal laws taking place, expanding the category of *immigration crimes*. The violation of immigration laws was previously considered as an administrative matter and dealt with in civil courts; however, increasingly such infringements are considered as a criminal offence, giving a strong indication of the hyper-exclusion and marginalisation of migrants (also see Stumpf,

2006). Over the past decade, eighty-four immigration offences have been created (excluding the ones mentioned above), which include deception intended to circumvent immigration enforcement measures, false representation by asylum claimants, and a failure to produce a passport or cooperate with deportation/removal procedures (Aliverti, 2012). Offences such as, possessing fake identity documents (passport, ID card or any other documents), are also used against those who break immigration laws and are prosecuted in criminal courts. Such laws have serious repercussions for migrants and ways in which they are treated by the system. In my recent article (Bhatia, 2015) I explored how asylum seekers and irregular migrants who committed 'crimes' by breaching immigration laws were consequently labelled and treated as 'dangerous criminals' by various state authorities. This article narrated their experiences of and on-going suffering inflicted by the British immigration and criminal justice systems. I noted that, in many cases, destitution/homelessness was one of the key factors behind committing such 'crimes', and restrictive immigration policies and procedures were increasing their vulnerability, and pushing them to commit (what are now constructed as) offences.

This takes me to the final point on destitution, detention and deportation. Over the past few years, drastic restrictions have been imposed on asylum support, due to the prevailing rhetoric that 'bogus' migrants are attracted to Britain because of generous welfare provisions and need to be deterred from coming here. Consequently, the hostile Immigration Act 2016 has implemented further measures to restrict support, and use destitution as a policy lever to compel 'bogus' migrants to depart from the country. This has and will continue to drive vulnerable asylum seekers, especially those whose claims have been turned down, to work 'illegally' in the underground economies, where they could be subjected to further harms and violence (Burnett and Whyte, 2010). It is widely noted that a lack of documentation, an 'illegal' status and the threat of deportation, are used as a coercive tool by employers to degrade, abuse, and exploit migrants (for instance, see Dwyer, Hodgkinson, Lewis and Waite, 2016). Such ill-informed policies will continue to victimise those who are already victimised, prolonging their suffering and trauma. Further, the Act has also extended the "deport first appeal later" policy to all immigration cases. According to the government: "*The main benefits of these clauses [in the new Immigration Act] would be dealing with those who should not be here, by rooting out illegal immigrants and boosting removals and deportations.*" Migrants are constantly portrayed as a 'threat' to 'security', and one that needs to be banished from the community, as opposed to those who desperately need protection and security. Lastly, the time limit on detention for *all* is rejected, making Britain the only country in the Europe who still maintains the unjust practice of indefinite detention (see Bhatia and Canning, 2016).

The referendum will have certain implications for borders and the control of immigration. For example, Britain currently takes part in the Dublin Regulation⁵, and is able to deport (more) asylum seekers to the appropriate Member State (as opposed to receive)⁶. Leaving the EU would ultimately result in not being able to use this system and taking responsibility for asylum cases. However, it has recently been reported that the “first country rule” in Dublin Regulations could be scrapped and subsequently linked to the new system based on refugee relocation scheme⁷. If Britain remains in the EU, it is very unlikely that it will consider remaining as part of the Dublin system and/or accept a refugee quota. In either scenario, such changes won't significantly alter the current political trajectory of criminalisation, expansion of policing and surveillance powers, the intertwining of immigration and the criminal justice systems, enforced poverty and the proliferation of punitive and harmful policies which will continue to remain and/or grow over the coming years. This trajectory is an outcome of a strong and deep-seated antipathy towards the racialised ‘other’. There is now an ever growing need for immigration and border criminologists to focus on the harms inflicted by racist state policies and practices; draw upon the narratives and testimonies of vulnerable groups, to uncover the suffering and injustice meted out to vulnerable people and contribute/develop strategies of *resistance from below* to challenge the harms of the powerful and de-mystify ‘crime’.

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⁵ The purpose of Dublin Regulations is to determine which Member State is responsible for examining an asylum application – normally the State where the asylum seeker first entered the EU – and return asylum applicant back to that State.

⁶ For more information on Dublin Regulation statistics, see: http://ec.europa.eu/eurostat/statistics-explained/index.php/Dublin_statistics_on_countries_responsible_for_asylum_application

⁷ <http://www.ft.com/cms/s/2/d08dc262-bed1-11e5-9fdb-87b8d15baec2.html#axzz40B50JsgE>

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