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A Dickson Poon Transnational Law Institute, King's College London Research Paper Series

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Forthcoming in the Theoretical Criminology Journal, 2018

TLI *Think!* Paper 8/2018

KING'S College LONDON

Abstract: This article examines institutional practices designed to control criminalized migrants in the UK and advances three arguments. First, these practices have evolved, since the early 1970s, into a bespoke 'crimmigration control system' distinct from the domestic criminal justice system. Second, this system is directed exclusively at efficient exclusion and control; through a process of adiaphorization, moral objections to the creation of a 'really hostile environment' have been disabled. Third, the pursuit of the criminalized immigrant—a globally recognized 'folk devil'—provides a vital link between domestic and global systems of policing, punishment and exclusion. The UK crimmigration control system is an example of wider processes that are taking place in institutions concerned with the control of suspect populations across the globe.

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'A really hostile environment': Adiaphorization, global policing and the crimmigration control system

Ben Bowling and Sophie Westenra[†]

I.   Introduction

It is well established that in recent years new methods of social control have emerged that are specifically targeted at the detection, capture, punishment, detention and banishment of criminalized migrants (Aas and Bosworth, 2012; Bosworth et al. 2017). A new literature has documented and theorized the emergence of new legal tools at the confluence of criminal and immigration law and the evolving surveillant, investigative, punitive and exclusionary practices it has authorized (Stumpf 2006; Bosworth et al., 2018). These practices can be observed in a range of institutional sites familiar to criminologists, including police, courts, and prisons, as well as in less familiar ones, such as ports and airports, secret intelligence agencies, the military and private security firms. They also reach deep into areas of social policy including housing, employment, road traffic and marriage. While many authors in this field note the general apparatus of control before delving into a specific area, in this article we examine, in turn, each element in the UK context—legal foundations, police, intelligence, courts and prisons—to identify some of the themes and issues that characterize the system as an increasingly integrated whole.

We seek to advance three arguments. First, we contend that the institutional practices geared towards controlling criminalized migrants, which began developing in the United Kingdom in the early 1970s, have evolved into a bespoke 'crimmigration control system'. This emerging system has clear connections to, and works in parallel with, the UK

domestic criminal justice system but is becoming increasingly distinct from it. Although the crimmigration control system lacks, as yet, the organizational coherence of the criminal justice system, it has its own tailored institutions, organized schema, working methods and underlying principles. Second, we argue that the crimmigration control system focuses on the goals of exclusion, control and efficiency at the expense of justice. Through a process of bureaucratization and social distancing—what Bauman (1989) calls adiaphorization—moral objections to the creation of a 'really hostile environment' for illegal migrants are silenced.[1] Third, we argue that the crimmigration control system is a key link between domestic and global systems of policing, punishment and exclusion (Bowling et al., 2012; Bowling and Sheptycki, 2012). The pursuit of the criminalized immigrant—a globally recognized 'folk devil'—encourages communication, collaboration and coordination across a range of surveillant, coercive, punitive and carceral institutions in many countries. We submit that it is useful to examine UK crimmigration control as an example of wider processes that are taking place transnationally in institutions concerned with the control of suspect populations.

II.   Context: a world in motion

Mobility and fluidity are notable features of contemporary global society. Mass border crossing is an essential feature of this society, accelerated by neoliberal globalization and the global capitalist economy, which require people to be free to move with transnational flows of money. Instead of a space of places, we increasingly exist in a space of flows (Castells, 1996). But the world's poor and disadvantaged, particularly those born in the global south, experience the space of flows very differently. While the network society brings some states together in shared sovereignty, populations that fail to add value to the network are excluded (Aas, 2007). Western states actively immobilize sectors of global society they see as less desirable in a flawed and harmful attempt at global social mobility control (Weber and Bowling, 2008).

Seeking to control mobility serves to delineate membership of the space of flows; the outsider—the undesirable migrant—becomes the natural means to consolidate this ideology, becoming not only a target for harsh displays of state power but also a scapegoat for those members of the public who feel abandoned, powerless and fearful in the neoliberal globalized world (Bromley, 2015: 57). According to this view, anxieties brought about by social changes, such as the decline of the welfare state or long-term unemployment, are projected onto a manufactured anxiety about undesirable migrants

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[1] In a BBC Radio 4 interview on 10 October 2013, then Home Secretary Theresa May explained that the Immigration Bill was intended to 'create a really hostile environment for illegal migrants… we don't want… a situation where people think that they can come here and overstay because they're able to access everything they need'.

(Bromley, 2015: 47; Weber and Bowling, 2008). As a global 'folk devil', the illegal immigrant provides a powerful legitimating device for the construction of systems to segregate and control the 'usual suspects' (Bowling et al., 2012: 47–53; Bowling and Sheptycki, 2012: 102–4, 113–17). The attempt to control suspect populations has a long history, but what is interesting and important about the present situation is the development of locally implemented but transnationally linked systems to police, punish and control the 'global vagabonds' (Weber and Bowling, 2008).

We have sought elsewhere to explain the role of 'race' and racism in shaping immigration policing (Bowling and Westenra, 2018), but limited space prevents us from developing this line of inquiry in this article (but see Bosworth et al., 2018). It seems clear that the pursuit of security commonly relies upon the identification of suspect populations and intentionally partial and exclusionary strategies (Zedner, 2003: 167). It is equally clear that identifying 'suspiciousness' is tied up with visible difference and that people of colour tend to be targets for surveillance and control (Bowling and Westenra, 2018). Fekete (2001) makes a direct link between the resurgence of xeno-racist politics and diminishing governmental capacity to provide security. The resulting rhetoric about the 'threat to security' posed by illegal migration have entwined with the putative goals and ideals of the criminal justice system. An emerging 'new penology' emphasizes risk-based crime control methods or actuarial justice, identifying, classifying and managing groups according to their presumed level of dangerousness (Feeley and Simon, 1992; Weber and Bowling, 2008). The individual's humanity and suffering disappears from view in order that marginal populations may be managed, contained, or excluded efficiently (Zedner, 2003: 168). Where such processes have hitherto been nationally circumscribed they are now networked transnationally (Bowling and Sheptycki, 2012). This shift forms the backdrop to the emergence of crimmigration law in the UK and the concomitant control system, to which we now turn.

III.   Crimmigration law

The epistemological foundations of the emerging arrangements for the control of criminalized migrants lie in 'crimmigration law', an umbrella term for the interweaving of two spheres of law: administrative immigration law and criminal law (Stumpf, 2006, 2012, 2013). This hybridization began as 'a trend toward criminalizing violations of immigration law and broadly imposing immigration consequences for criminal acts' (Stumpf, 2012: 48–9). Four relatively new legal phenomena merit closer examination in the UK context: (1) the creation of specific immigration-crime offences, (2) deportation as an adjunct to criminal penalty, (3) accessorial liability, and (4) creative civil exclusions.

1) *Immigration-crime offences*

The first step towards this hybridization was the gradual introduction of immigration-crime offences. Over the past four decades, administrative breaches of UK immigration law—such as unlawful entry, arriving without documents, breaching visa conditions or overstaying—have been redefined as specific immigration crimes. The UK government now proudly asserts that there is a corresponding criminal offence for almost every breach of immigration law (Home Office, 2010: 26). Immigration-crime offences were introduced to provide enforcement officers with new tools to enforce compliance, enhance the role of immigration officers and tackle evidentiary problems (Aliverti, 2013: 129). The criminalization of immigration violates JS Mill's harm principle, in which 'the only purpose for which power can rightfully be exercised over any member of a civilized community, against his will, is to prevent harm to others' (Zedner, 2013: 51; citing Mill 1859/1979: 68; see also Bowling, 2010a). The various categories of immigration-derived criminal offences do not protect individuals from harm or the risk of harm (Aliverti, 2012b: 426); but they do animate and strengthen the crimmigration control system. Immigration offences cannot be said to impose a wrongfulness criterion, either, as most offences are crimes of strict liability (Zedner, 2013: 51).

Although immigration crimes have a low prosecution rate in the UK, the exercise of prosecutorial discretion, and substantive criminalization, disproportionately target the most vulnerable. The most common prosecution is for the strict liability offence of arriving in the UK without documents or with false documents (Aliverti, 2012a: 103), an act that many asylum seekers are compelled to commit in order to reach the UK because of pre-embarkation checks and visa requirements. This offence can be utilized to imprison asylum seekers, overcoming legal obstacles to administrative detention while their claims are assessed (Aliverti, 2013: 70, 87). The prospect of arrest and punishment exerts pressure on people to return to the country of their inbound flight's origin (Vine, 2014a: 4.59).

The most serious offence of facilitation is, in the majority of cases, used against individuals, often family members, who may merely have assisted by booking a flight ticket. The protection of vulnerable individuals is absent. The Immigration Act 2016 takes this further, creating new imprisonable offences of illegal working and driving a motor vehicle while unlawfully in the UK, along with the power to confiscate wages as 'proceeds of crime' and seize motor vehicles (Home Office, 2015a). The rhetoric of targeting large-scale organized crime, and the Home Office's actuarial 'harm matrix' policy of identifying the most harmful immigration offenders, serve as a smokescreen, creating the impression of a 'perfectly designed system of controls' (Aliverti, 2013: 145).

2) *Deportation of non-citizens as an adjunct to a criminal sentence*

The power to deport following a criminal conviction is a second key feature of crimmigration law. Deportation is the process whereby a non-citizen can be compulsorily removed from a jurisdiction and prevented from returning unless the deportation order is revoked. As a means of tightening social control over immigrants and 'cleansing' society of its least desirable members, its instrumental success has been secured through the introduction of automatic deportation (Kanstroom, 2000: 1891–2). Removing judicial discretion and any consideration of individualized mitigating factors, the UK Borders Act 2007 prescribes automatic deportation for all non-European Economic Area (EEA) offenders sentenced to 12 months' custody or more and EEA offenders sentenced to 24 months' custody or more. Unsurprisingly, the number of foreign national offenders deported each year doubled within two years of the Act's introduction.

Deportation parallels the use of imprisonment for criminal citizens but is a more far-reaching method of social exclusion and incapacitation. Sending a person away from a country or place for the official purpose of punishment constitutes the age-old practice of banishment (Becket and Herbert, 2010). Nonetheless, in law, the sanction is classified as an administrative decision rather than a punishment, a categorization that has been supported by the courts. In AT (Pakistan) v Secretary of State for the Home Department [2010], the Court of Appeal rejected the argument that deportation amounted to a penalty and held that it was a measure taken in pursuance of the law of aliens, not the criminal law; it was preventive rather than punitive. As Zedner (2015: 5) reasons, however, the prevailing justifications for punishment today are hybrid, i.e. embrace different purposes simultaneously, which 'means that the borders between penal and non-penal measures cannot be set by reference to purpose alone; so the claim that a measure is primarily preventive does not necessarily take it outside the realm of punishment' (our emphasis). Indeed, even if deportation is primarily preventive, it serves 'an incapacitating function to the deported and a deterrent function to others', and may 'also, of course, be understood as a form of retribution' (Kanstroom, 2000: 1893, our emphasis).

Post-conviction deportation is, therefore, underpinned by traditionally accepted justifications for criminal punishment rather than administrative decision-making. Moreover, plenty of evidence suggests that deportation is experienced as punishment, especially when community, work and family ties are broken (MacDonald and Toal, 2010: 1280). But because deportation is classified as an administrative decision, it is shielded from the scrutiny that is applied when punishments are imposed through the due process of criminal law. The principles of proportionality and that no one should be punished twice for the same offence do not come into play. This disingenuous categorization also allows for a direct departure from the evaluative approach to sentencing in the criminal courts (MacDonald and Toal, 2010: 1280).

Sentencing is a sophisticated exercise, balancing factors such as the nature of the crime, the impact on victims, and the risk that the accused person poses to the public. Not only does automatic deportation remove all discretion from the judges, it is the nationality and citizenship (or lack thereof) of the individual in the dock that determines the sentence. The process is a technical and bureaucratic one that creates a distance between the decision-maker and the person whose life is affected by the decision. The result is a loss of sensitivity on the part of the decision-maker and a neutralization of their moral responsibility for the care of others (Baumann, 1989: 184; Barker, 2010: 279). The process of deportation is also an inherently transnational one, since it requires the physical removal of the deportee by domestic authorities to a foreign jurisdiction usually under the supervision of the sending country or a private contractor working under their authority.

3) Accessorial liability using administrative and criminal sanctions

A third element of UK crimmigration law criminalizes people who provide help to migrants who themselves have been criminalized. In addition to criminal sanctions for facilitation, there are civil penalty regimes for employers, carriers and private landlords who offer jobs, flights or housing to an undocumented migrant or over-stayer. This area of law is expanding as a result of the UK Immigration Acts of 2014 and 2016, which widened the scope of its subjects. Employers of undocumented migrants, for example, are subject to a civil penalty of up to £10,000 per employee under the Immigration, Asylum and Nationality Act 2006. This exists in tandem with the narrower criminal offence of employing knowingly, or with reasonable cause to believe, an individual who lacks permission to work. This offence requires a significant degree of culpability, in contrast to the strict liability offence of failure to produce documents, and the civil penalty scheme is leniently applied, due to the desire to appease employers who are willing to cooperate (ICIUKBA, 2010). Here, the prosecutorial discretion that typifies the application of crimmigration law is guided less by pragmatic considerations than by the political desire to criminalize migrants, not citizens. The vast majority of businesses subjected to administrative fines have names that indicate ethnic minority ownership (Home Office, 2015c). A civil penalty for landlords who offer rented accommodation to irregular migrants under the UK Immigration Act 2014 was extended to criminal sanctions under the Immigration Act 2016. It seems likely that the effect will be felt most strongly by all migrants and 'foreign-looking' citizens. As Yeo (2015b) notes, even the Home Office can make mistakes about a person's immigration status, so the effect on landlords will be a reluctance to rent to people who look foreign.

4) Creative civil exclusions

Creative civil exclusions were introduced by the 2014 and 2016 Immigration Acts to cement the 'really hostile environment' for migrants who are not entitled to be in the UK.

Such people cannot open banks accounts in UK and banks must check the immigration status of account holders, closing any accounts held by disqualified persons (Yeo, 2016). Driving licences can be revoked for those without leave to remain. A National Health Service annual surcharge of £200 is now levied on new migrants other than asylum seekers or those applying for humanitarian protection (Yeo, 2015a: 94). These measures require individuals to establish their immigration status in a variety of contexts: banks and building societies, the Driver and Vehicle Licensing Agency, and NHS bodies. As Yeo (2015b) notes, it is a 'papers please' approach, but without any actual papers that may easily be produced to prove one's status. Meanwhile, marriages and civil partnerships involving non-citizens are subject to burdensome scrutiny. Under the Immigration Act 2014, the Home Office may investigate a proposed marriage or civil partnership on 'reasonable grounds for suspecting that [it] is a sham'. The Home Office may then impose a 70-day period to 'decide the compliance question', without regard for the families involved and the plans they have made. As a result of the Immigration Act 2016, many civil exclusions will carry criminal penalties, for instance a six-month prison sentence for those convicted of driving while unlawfully in the UK. Crimmigration law continues to be a site of legal creativity, expansion and exploitation.

IV.   Policing and crimmigration enforcement

A specialist form of policing has emerged to enforce crimmigration law. Capitalizing on contemporary global policing trends, the UK crimmigration control system embraces a multi-nodal security network with different sites of governance (Weber and Bowling, 2004; Weber, 2013: 9; Bowling and Sheptycki, 2012). Accessorial liability harnesses third parties—airline check-in officers, bank clerks, universities, landlords and employers—as private enforcers of border control and mobilizes the community in risk-based policies and practices of immigration enforcement (Weber, 2013: 11), and the 'Immigration Enforcement Hotline' encourages public engagement (Home Office, 2015b). Nor is crimmigration policing confined to the border. Offshore controls, such as pre-boarding checks at overseas ports and increasingly restrictive visa regimes, seek to stem flows at source, preventing many migrants from ever reaching the border, while internal controls reach deep into UK society to uncover those the UK wants to remove (Weber and Bowling, 2004: 201). In this way, crimmigration policing displaces and delocalizes borders to respond more effectively to criminalized migrants in the global system.

Ian MacDonald QC (2010) describes the UK Border Force as a true immigration police force. Established in 2008, it is responsible for immigration and customs controls at 138 ports in the UK, France and Belgium, and it has a significant domestic policing capacity. As of 2013–14 the Border Force had a full-time staff of 7,600 and a budget of £604m. Its personnel consist of 'flexible, multi-skilled officers' for an 'integrated, rapid response'.

The officers have a wide range of hybrid immigration-criminal powers and police-like uniforms, insignia and vehicles. Their fulfilment of their public protection mandate (Rhodes, 2008), is assessed by the UK Home Office according to performance and efficiency criteria. The British government's desire for selective control of the space of flows is reflected in its main objective of 'preventing harmful individuals […] entering the UK, and facilitating the legitimate movement of individuals'.

Most importantly, the Border Force has acquired powers that mark its independence and separation from domestic policing. Legislation since the Immigration and Asylum Act 1999 has substantially extended its powers of arrest. One such power, administrative arrests (without a warrant) for the purpose of detention and removal of persons including illegal entrants, overstayers and persons in breach of conditions, or persons suspected of being in those categories, has brought foreign-looking individuals within the ambit of crimmigration police powers. Border Force officers also have powers that were hitherto the preserve of domestic police constables, such as search, entry, seizure, and the use of reasonable force. In parallel to the offence of obstructing or assaulting a police officer, it is also a criminal offence to obstruct immigration officers in carrying out their functions. With the Immigration Act 2016, these police-like powers continue to be extended, yet 'with none of the expertise, experience…or complaints procedures that protect the public from police powers' (Yeo, 2015b; 2016).

There are legitimate concerns about this development. In a 2014 inspection report on the use of warrants to enter business premises, former chief constable John Vine, as Independent Chief Inspector of Borders and Immigration, disagreed with decisions made by an Assistant Director to authorize the use of this power in almost two-thirds of the cases examined (Vine, 2014b). Nevertheless, UK Border Force officials exercise their power at home and abroad, demonstrating the transnational nature of this policing system. Juxtaposed controls, first established in the 1991 Sangatte Protocol, permit Britain and France, and Britain and Belgium, to operate full immigration controls on each other's territory. Immigration officials operating within these 'control zones' may refuse a person leave to enter, cancel prior entry clearance, and enforce immigration offences, including by arrest, detention and the bringing of persons to their own territory (Reynolds and Muggeridge, 2008). Avenues for legal challenges are limited, and asylum claims cannot be made. Similarly, many countries host UK immigration officials in an advisory capacity, creating a UK immigration network covering at least 126 countries. UK immigration officers' advice helps to frustrate irregular migration but also hinders refugees seeking a safe country even when in possession of valid travel documentation (Reynolds and Muggeridge, 2008). The UK government recently announced a British law enforcement taskforce to tackle organized immigration crime in the Mediterranean region (Travis, 2015). According to a Number 10 spokesman, 'around 90 officers will be deployed in the UK, the Mediterranean and Africa to pursue and disrupt these organised crime groups profiting from the people-smuggling trade.' Based with Europol in Sicily

and The Hague, and working with the Border Force, GCHQ and MI6, it is far from an administrative enterprise; this is a powerful crimmigration taskforce.

V.   Intelligence and surveillance

While fortifying conventional borders plays a key role in the crimmigration control system, providing citizens with a comforting simulacrum of security, the system's instrumental value is enhanced by its intelligence and surveillance capacities (Sheptycki, 2002). In parallel with contemporary developments in the criminal justice system, the pursuit of pre-emptive, actuarial crimmigration control demands the latest intelligence technologies. States also recognize the need to control global networks as well as physical, territorial space, further driving the demand for 'smart borders'. The crimmigration control system has accordingly developed a sophisticated transnational system of surveillance, acquiring intelligence from public and private data sources across borders and institutions (Bigo, 2002).

The UK e-Borders scheme, created in 2003 and now merged into the Border System Programme, is 'a risk-based system that deploys processes of data mining and analytics in order to derive a risk score or flag for individuals entering or exiting the UK' (Amoore, 2011: 25). Raw data is collected from Passenger Name Records (PNR) and Advanced Passenger Information (API) submitted by carriers; from visa applications and voluntary 'trusted-traveller' schemes; and from criminal and terrorist watch-lists, in which immigration offenders are now included (Broeders and Hampshire, 2013: 1207–8). The categories and codes emanating from these databases are then subjected to social sorting, classifying passengers for differential treatment (Weber and Bowling, 2008: 363; Dijstelbloem and Broeders, 2015: 26). Intelligence systems and processes of this kind are the appendages necessary for embed global policing practices in the local domestic jurisdiction (Bowling and Sheptycki, 2012).

Broeders and Hampshire (2013) identified three distinct classification categories: black, grey and green. Black has the harshest outcome: exclusion, refusal of entry and detention. Suspected terrorists, criminals, visa overstayers, those who have previously worked illegally and 'failed asylum seekers' find themselves included on criminal and terrorist watch lists and blacklisted. This intervention is largely automated, and it is very difficult to challenge or correct information held in these databases (2013: 1210). Due to pre-embarkation checks, private carriers are central to the practice of blacklisting; with heavy carrier sanctions, the explanations of travellers flagged in a watch-list check prior to departure will fall on deaf ears. Yet with the growing volume of data, combined with an increased use of watch-lists, errors are bound to occur. It seems the individuals affected will be mere collateral damage in pursuit of exclusion and control.

At the other end of the spectrum, green-listing facilitates inclusion. Green-listed travellers are registered, low-risk, third-country nationals—the desirable tourists and business people—who can pass unsupervised through e-Borders after an initial check and screening at time of registration. They are at home in the space of flows. Despite being outsiders in terms of membership of the nation-state, these travellers are perceived to add value to the network and are politically and culturally—or, more bluntly, racially—acceptable members of an emerging transnational space (Aas, 2007: 295). Expedited entry for this emerging global elite serves economic imperatives, reducing queues while freeing up resources to exercise tighter controls on riskier flows (Weber and Bowling, 2008: 369; Broeders and Hampshire, 2013: 1211; Bowling, Phillips and Sheptycki, 2012).

Grey-listing involves risk profiling of passenger data drawn principally from API and PNR data. Differential treatment thus relies on computer-automated analysis against rule-based profiles. Nationality is of course one key factor in sifting out unwanted travellers. Subsequent manual assessment will occur before the National Border Targeting Centre issues an alert to the Border Force, but the small amount of human agency that remains in the decision-making is 'increasingly located with those who design the algorithms and check the matches that risk-profiling generates' and is thus distanced from the site of execution (Broeders and Hampshire, 2013: 1213). This progressive removal of face-to-face interaction with the passenger risks even more systemic racial and ethnic discrimination (Bowling and Westenra, 2018). Surveillance is the most successful aspect of the UK crimmigration control system for preventing the movement of undesirables, funnelling bodies through the transnational space of flows in a gradated demarcation of membership—with pernicious consequences for many and the promise of unfettered global mobility for the few.

VI.   Crimmigration legal process: courts, tribunals and appeals

The crimmigration control system includes a well-established tribunal system, albeit one that serves Home Office ambitions more than a judicial system should. Although criminal cases are dealt with in the criminal courts, appeals on administrative decisions, including such measures as detention and deportation, operate within a two-tier independent tribunal with an immigration and asylum chamber, pursuant to the Tribunals Courts and Enforcement Act 2007. Despite the principle of equality before the law, and the formal appearance of consistent treatment between immigration crimes and other crimes, Aas (2014) shows how immigrants facing charges in the criminal courts are afforded an abnormally low standard of justice. Immigration status—the marker for lack of membership—is a 'pervasively important factor in almost every aspect of a criminal proceeding' (Aliverti, 2013: 107). Immigrants are typically refused bail and are thus at

greater risk of conviction due to the inherent difficulties involved in fighting cases from prison (Aliverti, 2013: 101). Hearings are characterized by a lack of participation from the accused, with questions generally directed to the lawyer rather than the defendant (Aliverti 2013: 101). The overwhelming majority of immigration-offence cases are settled through guilty pleas (Aliverti 2013: 99), while the sanction for an immigration offence is almost always imprisonment; courts systematically rule out non-custodial sentences for undocumented immigration convicts and those who have weak ties to the country (Aliverti 2013: 114). To make decision-making less complex, magistrates and judges also distinguish the immigration case from the criminal case, expeditiously administering punishment through the repetition of similar formulas. The chances of mercy are slim.

This bureaucratic exercise of the judicial function also characterizes the tribunal system (Aliverti, 2013: 115). Demands for efficiency drive the system ever closer to a managerial process for disposing of appeals. Indeed, its entire organization is geared towards achieving performance targets. The clearest manifestation of this was the Detained Fast Track appeal system under the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 SI 2014 No. 2604. This required individuals to prepare and present their appeals within seven days of the decisions they sought to challenge, despite being detained for administrative convenience. This was recently found to be ultra vires, which the Court of Appeal case *The Lord Chancellor v Detention Action* [2015] EWCA Civ 840 confirmed. As Lord Dyson at [49] stated, 'justice and fairness should not be sacrificed on the altar of speed and efficiency'. But the tide of efficiency is hard to stem. One of the changes made by the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 is to allow a hearing to proceed in a party's absence if the tribunal is satisfied reasonable steps have been taken to notify the party of the hearing and it is in the interests of justice to continue (Rule 28). This greatly expands the old Rule 19 and gives little guidance on what interests of justice might merit the continuation of an appeal when there is no indication of what has happened to the missing party.

The remit of the Tribunal is tightly confined. The Immigration Act 2014 drastically reduced appeal rights for immigrants, installing a system that only permits an appeal if a claim is made, followed by a decision by the Secretary of State regarding international protection or human rights or if protection status is revoked. Permissible grounds of appeal were also pared back. The ground of 'otherwise not in accordance with law', which had brought about the development of a public law jurisdiction in the Tribunal, has been removed, as has the race discrimination ground of appeal pursuant to the Race Relations Act 1976. Whether human rights grounds may preserve such arguments remains to be seen (Yeo, 2015a: 47). A sharp reduction in the number of appeals is anticipated. The success rate for appeals is around 40% overall. Many people who would once have won their appeals will now lose even the right of appeal (Yeo, 2015b).

At the same time, the system of Administrative Review under the Immigration Rules has been expanded. Under this review mechanism, the Home Office can review its own decisions, albeit these reviews are carried out by caseworkers who took no part in making the original decisions. Only 'case working errors' may be reviewed, as set out exhaustively in Appendix AR. The scope of a case working error appears reasonably broad, but as Yeo notes, 'it is hard to believe that one civil servant at the Home Office will seriously consider overturning the decision of another where the refusal was a matter of judgment rather than a simple mistake or error' (Yeo, 2015a: 53).

Taking curtailment of appeals to another level, the government has endeavoured to exert carte blanche control over foreign criminals at the expense of justice. The Immigration Act 2014 introduced the 'deport first, appeal later' rule, under s94B of the Nationality, Immigration and Asylum Act 2002. This gave the Home Office the power to certify human rights claims made by those liable to deportation, the effect of which was to require appellants to bring their appeals from outside the UK. Although, pursuant to subsections (2) and (3), the overarching criterion for certification was that removal pending appeal would not breach the claimant's human rights, Home Office guidance, misleadingly or simply through 'lack of clarity', reduced this to a concession for appellants who could prove that removal would result in 'serious irreversible harm'.

The drive towards out-of-country appeals continued apace with the introduction of an amendment to s94B under the Immigration Act 2016. With effect from 1 December 2016, the Home Secretary's power to certify under the section was extended to any human rights claim irrespective of whether the claimant was liable to deportation; in other words, irrespective of whether they were a 'foreign criminal'. Given that the only grounds on which normal immigration decisions can now be appealed are human rights grounds, this change targeted a wide spectrum of ordinary migrants (Yeo, 2016). The initial appeal to the public interest in preventing, in the Prime Minister's words, 'suspected terrorists playing the system' (D'Ancona, 2013) was revealed as a mere stepping stone in the erosion of human rights. The logistical and financial barriers to conducting an appeal from outside the UK are obvious; while a video-link-enabled court may be offered to appellants who wish to participate in their appeal, all costs, including security and 'tech support', have to be covered by the appellant (Light, 2015). As Sedley LJ stated in BA (Nigeria) v Secretary of State for the Home Department [2009] EWCA Civ 119, 'The reason why the Home Office is insistent on removal pending appeal...is that in the great majority of cases it is the end of the appeal'.

In a damning indictment of the Home Office, the UK Supreme Court struck down 'deport first, appeal later' certificates for two foreign criminals in R (Kiarie and Byndloss) v Secretary of State for the Home Department [2017] UKSC 42, overturning the Court of Appeal's endorsement of the practice. The barriers to giving evidence on screen were found to be almost insurmountable, and thus in breach of the procedural requirements

of Article 8 of the Human Rights Act. Lord Wilson strongly criticised the Home Secretary for 'routinely exercis[ing] her power under section 94B to certify claims of foreign criminals under article 8 [...] in the absence of a Convention-compliant system for the conduct of an appeal from abroad'. The repercussions of the decision for the lawful exercise of the newly amended s94B was acknowledged by the Court, bringing at least a temporary end to the certification of immigration appeals.

It is worthwhile pausing to examine the use of s94B before it came under the scrutiny of the Supreme Court. Of the 1,175 foreign criminals deported in advance of their appeals between July 2014 and December 2016, only 72 filed notice of appeal from abroad. None of the appeals succeeded. While the Supreme Court's judgment represents a powerful check on executive power, it is safe to assume that the Home Office will continue to find workarounds. We can only hope that legal teams representing appellants in immigration appeals can build on Kiarie to defend and strengthen migrants' appeal rights in the face of what will be continuing opposition.

VII.   'Immcarceration': detention and imprisonment

The crimmigration control system parallels the criminal justice system in that it controls a 'secure estate' of prison-like detention centres; except of course that the crimmigration control system's secure facilities are geared towards the incapacitation and removal of undesirables. The UK currently has eight Immigration Removal Centres (IRCs). There are around 3,000 bed spaces in a system that has an annual turnover of 30,000 (Bosworth, 2016: 147).

Immigration detention has conventionally been categorized as a bureaucratic function regulated by administrative law. However, the inclusion of asylum seekers, pursuant to the Immigration and Asylum Act 1999, instigated the renaming of detention centres as Immigration Removal Centres in 2001 to signify their purpose more clearly. IRCs are meant to assist the removal process of people without a legal right to be in the country. Non-citizens may be detained to facilitate an identity check, test the basis of their claims, or prevent absconding (Bosworth and Turnbull, 2014). Yet IRCs finesse the fact that they are places of detention to prevent closer scrutiny. Accepting that immigration imprisonment constitutes a punishment measure would require greater normative justification, but renaming allows the crimmigration secure estate to decouple itself from the domestic prison system and promote an image of legitimacy. Despite this rebranding, IRCs and STHFs look like prisons, operate like prisons, and are experienced by detainees as prisons. 'The locked doors, roll counts, room searches, pat-downs, bars on windows, high fences topped with razor wire, and ubiquitous CCTV cameras are constant

reminders to detainees of the denial of their liberty' (Bosworth and Turnbull, 2014). The legal definition of the crimmigration secure estate as administrative rather than punitive is at best disingenuous; at worst, it is exploitative.

While domestic imprisonment retains its historical links with the emergence of liberal democratic government, immigration detention or 'immcarceration' operates without such limits. Thus there is no automatic judicial oversight of the decision to detain and no statutory limit on the length of time a person can be held (Bosworth, 2013: 150). The only positive development is the new obligation on the Secretary of State, under the Immigration Act 2016, to arrange a referral to the tribunal within four months of the commencement of immigration detention for the purpose of considering whether to grant bail; the obligation does not, however, extend to a requirement on the tribunal to conduct a hearing within a certain time nor indeed to conduct a hearing at all (Yeo, 2016: 69). These features of immigration detention intensify the punitive experience. They also provide the Home Office with practical reasons to maintain the distinction.

The crimmigration secure estate is beset by contradictions in its justifications and purpose. It borrows legitimacy from the criminal justice system while eschewing its normative underpinnings. In consequence, IRC staff and detainees alike struggle to understand the nature of this custodial institution (Bosworth, 2016). For IRC staff, this struggle leads to some uncertainty over the ethical and legal grounding of their work. Reservations surface when confronted with particularly sympathetic cases. In interviews, IRC staff expressed a high degree of compassion with detainees, finding their personal situation and stories heartbreaking (Bosworth 2015: 220–221). As one Detainee Custody Officer noted, however, 'It just like erases your senses… I think it just sickens you up, this job' (Bosworth, 2016). Bosworth (2016) adds, 'No officer interviewed ever reported refusing to follow orders. … Moral concerns can, indeed, be silenced by task-focused bureaucracy and by an authoritarian and complex power structure.'

In managing these complex institutions, the Home Office governs at a distance through private companies contracted to carry out the day-to-day responsibilities of IRCs, and bifurcates internal and off-site immigration agents. Decisions about immigration matters are made off-site by 'case owners', while onsite immigration agents who come face-to-face with detainees play no role in decision-making and are mere conduits of information (Bosworth, 2013: 159). Through creating such distance between a decision and its consequences, the government effectively places its own decisions beyond the reach of moral impulse; it also prevents the detainee from confronting the actor face-to-face (Bauman, 1989: 215). We return to the role of bureaucratization and social distancing in neutralizing the impact of moral impulses in the discussion.

The Home Office routinely ignores the impact of its decisions on detainees. Detainees may be moved to different centres around the country without warning simply for administrative convenience. Not only is such enforced internal mobility distressing for the detainee; it causes problems with access to legal representation and exacerbates the issue of short timescales for appeals. The erosion of proximity between detainees and decision-makers does not always serve efficiency, but the greater concern is that morality is effectively disabled. The people working in this archipelago of pain are aware of their disempowerment. They do not perceive it as their job to understand immigration politics, policy or morality; they carry out orders even when they are 'potentially forcing somebody into a situation where they're going to be taken back and tortured, killed, whatever' (Bosworth, 2016: 160). Ultimately, most rationalize their actions by laying the blame elsewhere. The crimmigration control system itself remains free from challenge.

VIII.   Discussion: crimmigration, adiaphorization and globalization

A bespoke system for controlling, policing, judging, punishing, detaining and banishing criminalized migrants first emerged in the early 1970s, but it is only in the twenty-first century that this system has achieved its fullest expression in law and practice. The UK crimmigration control system parallels the institutional structure of the criminal justice system, from surveillance and policing to courtroom trial, punishment and imprisonment. Like it too, this institutional assemblage is used for the purpose of social, moral and spatial exclusion. Questions about 'who belongs and what kinds of rights they deserve' are embedded in the system's imposition of criminal sanctions and in its decisions to expel and deny entry (Aas, 2013: 23); these questions are suspended indefinitely, left to hand, like the sword of Damocles, over its subjects. The precariousness of membership becomes a key feature of the space of flows in the globally networked society. Even lawful permanent residence remains a kind of probationary membership of the nation-state (Stumpf, 2006: 401). The emerging system delimits profound differences between citizens and non-citizens, reifying the contingency of belonging and associated rights. The consequences of this are much wider than advertised.

A specialized appendage has grown out of the domestic criminal justice system in the UK to deal specifically with immigrants suspected of criminal offending, including a raft of newly created immigration crimes. This evolving system is, in some respects, embedded within existing police, judicial and prison systems. However, in other respects, the crimmigration control system is becoming independent of the conventional justice system. The power to control, coerce, punish and imprison certain categories of suspect population is devolving from the criminal justice systemto a new tailor-made arrangement that is authorized by hybrid crimmigration law. Having fused criminal law with administrative immigration law, it combines, within new agencies and institutions

(e.g. Border Force and Immigration Removal Centres), the surveillant and coercive power of the police, the punitive powers of the courts and the carceral powers of the prison together with border control powers that can be exercised far from the physical border. In our view, this shift, observed by numerous others in this field within the UK and elsewhere, is worthy of further empirical study. We need to know more about its system-like qualities and the linkages that are being forged within and between domestic and international agencies; the sharing of information, tactics and techniques; as well as the impact on the lives of the people who are suspected, arrested, detained and deported.

While exploiting the penal aspects of the criminal justice system and its logic of exclusion, crimmigration discards the constraining norms of criminal justice, which, as Aas (2013: 33) explains, 'operates according to the basic premise and ambition of eventual *inclusion*'. The narrative of reform and rehabilitation to which this gives rise—and which humanizes the system, acknowledging its subjects' individuality and humanity—is absent from crimmigration control, which pursues a sub-variety of exclusion: expulsion (Aas, 2013: 25; Weber and Bowling, 2008; Bosworth, et al, 2017). And it is the crimmigration control system's independence from the criminal justice system that is key to facilitating this goal, freeing it to pursue its secondary goal: efficiency. The government presents immigration control as 'above all a question of good management' (Home Office, 2002) whilst implementing its mission of creating a really hostile environment. Contradictions in Home Office rhetoric and justifications for crimmigration control raise troubling questions about the protection of human rights in a global system of policing, punishment and exclusion.

Thinking in terms of Herbert Packer's classic models of the criminal justice system, crimmigration control favours the 'crime control' or 'efficiency' model over the 'due process' or 'freedom' model. Requirements of legitimacy were deeply concerning to criminal justice scholars in Packer's time, but the emergent crimmigration control system exhibits no such concern. Where the criminal justice system arguably seeks to secure both crime control and criminal justice through institutional due process arrangements and normative moral principles, crimmigration control seeks efficiency and effectiveness in terms of migrant population management. The imperative of efficient control supports the social and economic interests of a select few while immobilizing others on the grounds that they 'are the waste of the world which has dedicated itself to tourist services' (Bauman, 1998: 92; Weber and Bowling, 2008; Bowling and Sheptycki, 2012). It is no surprise that there is no counterweight of moral concerns about social justice in crimmigration control. The failure of crimmigration law to satisfy basic principles of social justice undercuts any attempt to justify the crimmigration control system in relation to due process rules. This is clearly no crimmigration *justice* system.

The instrumental logic of crimmigration control is supported by a process through which individuals and their humanity, pain and suffering are obscured from view. This obscurity is facilitated by what Bauman terms adiaphorization, the disabling of morality through

strong emphasis on the pursuit of efficiency (Bauman, 1989: 184; Barker, 2010: 279). The concept originates from the word 'adiaphoron,' a thing decreed by the Church to be morally neutral and about which religion is indifferent. Adiaphoric action is thus understood to be neither good nor evil, but measurable against technical, purpose-oriented or procedural norms and decidedly *not* by moral values (Bauman, 1989: 215). By refusing to regard immigrants as moral subjects, only as units and collectivities to be managed, the concern with institutional moral behaviour is neutralized in favour of instrumental and procedural rationalities (Bauman, 1989: 215). Adiaphorization permeates all aspects of crimmigration control, removing the disruptive influence of morality and diminishing the moral status of migrants, transforming them into criminal threats: undesirables, who must be controlled, evacuated and excluded. Notwithstanding any claims to efficiency and effectiveness attributed to the evolving transnational system of policing and punishment, concerns about social justice or ensuring safety and wellbeing of migrants are not the focus. The result of the growth of technological and bureaucratic techniques and rationalities is that we lose sensitivity to, and responsibility for, each other (Barker, 2015). This process of distancing enables what Bauman (1989) refers to as the 'social production of immorality' (see also Erickson, 2015). The challenge is to recover a sense of the moral duty of care (Barker, 2015: 279)

The emerging crimmigration control system provides a vital link between domestic and global systems of policing, punishment and control. Looking inward into domestic space, a tailor-made system authorized by hybrid criminal-administrative law serves to link agencies concerned with the management of criminalized migrants. This has the effect of widening the net of social control with thinner mesh and thicker strands of surveillance and punishment. Looking outward, the criminal immigrant is a universally recognized 'folk devil', the 'usual suspect' *par excellence* in the pursuit of global collaboration in law enforcement and crime control. This tendency is best documented in the policing field, where an extensive network of overseas liaison officers is focused on the surveillance of suspect populations (Bowling, 2010b; Bowling and Sheptycki, 2012). The police officers who are the interface between domestic and overseas agencies tend to be geographically mobile and transnational in outlook. They often have close links with their counterparts in other countries through overseas placements, networks, conferences and training courses. Similar processes are evident in other fields, such as international networks of immigration officers and the wide range of public and private agencies involved the processes of deportation, administrative removal and prisoner transfer (Bosworth et al., 2017: 37–40).

A key feature of the criminalized migrant is that these people are supposed to be from *elsewhere*. The operating environment is framed by the sense that these people do not belong, should be met with a hostile environment and must constantly be threatened with the possibility of removal to another jurisdiction. The intention of the state is 'directed outwards, beyond state territory, rather than inwards, back into the social' (Bosworth et al., 2017: 43). The infrastructure required to achieve the purposes of banishment and

territorial exclusion includes information-sharing linkages across police, courts and detention centres with databases shared domestically and internationally. This infrastructure—assembled from police, immigration, customs, airport security, and secret intelligence with access to physical spaces including airport holding cells and immigration removal centres—enables personnel to connect globally to exert control within the transnational space of flows. The pursuit of the criminalized immigrant is stimulating the growth of a global system of policing, punishment and control.

IX.   Conclusion

This article has set out the evolving system of crimmigration control, using the UK as a case study to illustrate what we think is a broad trend in the development of global social control.2 As we have shown, the state's effort to control criminalized immigrants has led to the emergence of a custom-made system of crimmigration control, built at the confluence of criminal law and administrative immigration law with its own specialized institutions and processes. At the same time, the emphasis on the efficient control of the criminalized migrant has disabled the discussion of justice and morality in this context. This process of adiaphorization is so powerful that the UK government can speak of creating a 'really hostile environment' for illegal immigrants simply as an aspect of the good management of migration. Finally, the crimmigration control system can be understood as a particular domestic instantiation of global mobility control and as a key mechanism that links domestic and global systems of policing, punishment and exclusion. These developments raise urgent new questions about the nature of law, policing, punishment, justice and control under transnational conditions. This is fertile ground for further research and activism among those concerned with the pursuit of global justice.

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2 This contention is supported by indications pointing broadly in the same direction in the USA (e.g. Miller, 2010; Stumpf, 2013), Canada (Pratt, 2005), Australia (e.g. Pickering and Weber, 2013; Weber, 2013) and northern Europe (e.g. De Giorgi, 2010; Aas, 2014; Pakes and Holt, 2017; Van der Woude et al., 2017).

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