

The 'Crimmigration Control System'

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The concept of 'crimmigration' refers to the intertwinement of crime control and immigration control. It represents the distinct laws and legal processes that states employ as a means of exerting control over a sector of our global society. As US legal scholar Juliet Stumpf (2013: 59) explains, the integration of immigration and criminal spheres 'tends to generate more severe outcomes, limit procedural protections, and encourage enforcement and adjudication processes that segregate non-citizens'. Yet what is emerging is not only differential treatment, but an independent, specialized penal system, what we call, a 'crimmigration control system'. Authorised by an unique panoply of 'crimmigration law', the system harnesses all the elements of the crime control industry: physical defences; mechanisms for intelligence gathering and surveillance; policing and law enforcement; a specialized legal process, courts and tribunals; and a 'secure estate' of detention centres. Recent developments in the UK, such as the Immigration Act 2014 and the Immigration Bill 2015, exemplify what is a global trajectory towards transnational social control. The use of these laws, institutions, and practices, divorced from the criminal justice system, demands our scrutiny.

Crimmigration Law

Crimmigration law lays the foundations for the system. It is an umbrella term for the interweaving of administrative immigration law and criminal law, 'under conditions of interchangeability and mutual reinforcement' (Aas, 2014: 525). This convergence produces an instrumental panoply of laws, geared towards the exclusion of undesirable non-citizens, from which immigration officials may 'cherry-pick' at their wish, depending on their objectives and resources.

There are four different elements to crimmigration law: immigration offences, deportation, accessorial liability, and creative civil exclusions. The creation of immigration offences for what were formerly administrative breaches of immigration law has proliferated in recent years. As the Home Office asserts, there is now a corresponding criminal offence for almost every breach of immigration law. This provides immigration officers with an armoury of powers to enforce compliance, with disregard for basic principles of criminalisation such as the requirements of harm and culpability.

The deportation of a non-citizen as a result of a criminal conviction is a second key element of crimmigration law. Since the UK Borders Act 2007, all non-European Economic Area (non-EEA) offenders sentenced to 12 months' custody or more, and EEA offenders sentenced to 24 months' custody or more, face automatic deportation at the

end of their sentence. The classification of deportation as 'a measure taken in pursuance of 'the law of aliens' not the criminal law' (*AT (Pakistan) v Secretary of State for the Home Department* [2010] EWCA Civ 567) allows for a departure from the evaluative approach to sentencing applied by the criminal courts. Issues relating to the proportionality of the sanction and the principle that no one should be punished twice for the same offence are similarly avoided.

A new kind of 'accessorial liability', utilizing both civil and criminal sanctions, has also developed. There are now criminal sanctions for facilitating a breach of immigration law, and there are civil penalty regimes, supported by criminal sanctions, for employers, airline carriers, and private landlords who offer jobs, flights or housing to an undocumented migrant or overstayer.

Finally, creative civil exclusions have been introduced by the Immigration Act 2014 to further create a 'hostile environment' for migrants who are not entitled to be in the United Kingdom. Banks are not permitted to open a current account for migrants without leave to remain, and driving licences can be revoked. With the introduction of the Immigration Bill 2015, many of these creative civil exclusions will be intertwined with criminal sanctions. Driving without a regular immigration status, for example, is to become an offence carrying up to 51 weeks imprisonment.

Policing and law enforcement

With the development of crimmigration law, an independent form of policing and law enforcement has also emerged. As Ian MacDonald QC observes in *MacDonald's Immigration Law and Practice* (2010: 1192), the UK Border Force is 'a true immigration police force'. The UK Border Force is responsible for immigration and customs controls at 138 ports in the UK, France and Belgium, and has a full-time staff of 7,600. Officers have powers of arrest; search, entry and seizure; and the power to use reasonable force if necessary in carrying out any of their functions. They have dark blue, police-style uniforms to broadcast their authority. And their mandate is 'public protection'.

At a wider level, national border controls are bolstered by multiple agencies, such as the Border Policing Command – a new specialist unit within the National Crime Agency. The recent announcement of a British taskforce to be based with Europol in Sicily and The Hague, which will work with the Border Force, GCHQ and MI6 to disrupt the operations of those attempting to cross the Mediterranean Sea, indicates just how far we have departed from a formerly administrative enterprise.

Physical barriers

The crimmigration control system also parallels the criminal justice system through its physical segregation of the 'undesirables'. Defensive technologies such as fences, with razor wire and electricity, continue to be exploited to their fullest extent, for both instrumental and symbolic reasons. Among recent UK developments, a two-mile long

high-security fence has been sent to France to increase security around the Channel Tunnel.

Intelligence and surveillance

An increasingly sophisticated transnational system of surveillance has developed as a vital aspect of the crimmigration control system. It acquires intelligence from public and private data sources, across borders and institutions. It is characterized by increasingly automated controls through the use of computer systems and databases, biometrics and automated border systems. Notably, it employs digital 'social sorting' mechanisms, which classify passengers as a precursor to differential treatment.

Broeders and Hampshire (2013) have identified three distinct processes of categorisation. 'Black listing' leads to exclusion. Immigration offenders are now included on the criminal and terrorist watch lists, Eurodac being most developed of migration black-listing in the EU. In the case of 'black listed' persons, decision-making comes very close to being automated. Due to pre-embarkation checks, private carriers, such as airlines, play a central role in the practice of 'black listing'. With heavy carrier sanctions, they are unlikely to listen to the explanations of travellers if they are flagged in a watch-list check prior to departure. 'Grey listing' involves risk profiling from Advanced Passenger Information and Passenger Name Records, with little human agency, which will then lead to intervention by the Border Force if the National Border Targeting Centre issues an alert. 'Green listing' equates to facilitated inclusion. These are the 'desirables', the 'registered travellers' who can pass, unsupervised, through E-borders after an initial check and screening at time of registration. By fast-tracking the border passage of wanted passengers, tighter controls can be levied on unwanted passengers.

Crimmigration legal process: courts, tribunals and appeals

The crimmigration control system also has its own system of appeals and tribunals. A two-tier independent tribunal with an immigration and asylum chamber hears appeals on 'administrative' immigration decisions, including deportation and detention. While criminal cases are heard in the criminal courts, immigration status is a 'pervasively important factor in almost every aspect of a criminal proceeding' (Aliverti 2013: 107), from the refusal of bail to the systematic administering of custodial sentences. Both criminal and administrative immigration cases alike are processed in a highly bureaucratic manner. Appeal rights are tightly confined under the Immigration Act 2014. And in an extension of the 'deport first, appeal later' regime, the Immigration Bill 2015 will make all immigration appeals, except asylum cases, exercisable out-of-country only.

Crimmigration detention

Finally, the crimmigration control system includes a large 'secure estate', made up of Immigration Removal Centres, prisons, Short-Term Holding Facilities at airports and ports, a special pre-departure facility for families at Gatwick Airport and police cells. While there is significant variation in the physical estate, and the restrictions imposed on

detainees, there exists a consistent concern about security that mirrors the prison system. Some are built to restrictive Category B prison security standards, while several Immigration Removal Centres are situated in former or current penal institutions, or are run by former prison governors. Detention is nevertheless held up to be a matter of administrative convenience, thus circumventing the automatic judicial oversight that imprisonment attracts.

Conclusion

The various aspects to the 'crimmigration control system' have been observed and addressed by numerous scholars across a range of fields, in a range of Western countries. What is emerging, however, is a global trend towards a transnational 'crimmigration control system' that immobilizes the purportedly 'undesirable' sector of our global society. The institutionalised use of crime control techniques within a regulatory system of population management demands critical analysis. In the current political environment, this theoretical, empirical, and practical project is all the more pressing.

References

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