

PRIVATISATION OF MIGRATION CONTROL

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**PRIVATISATION OF
MIGRATION CONTROL:
POWER WITHOUT
ACCOUNTABILITY?**

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INTRODUCTION

Devyani Prabhat

This special issue is the second part of a two-part edited collection on the privatisation of migration. In Part 1, we have analysed the conceptual framework for understanding private participation in immigration control in the UK. There are clear links with national security concerns but these are always necessary for heightened immigration control. In the ordinary and everyday situations as well it is possible to engage in pervasive immigration control. Since 2010 the UK government has increased internal immigration controls by involving private individuals who control access to essential resources like health care, travel, housing, and employment. Individuals such as employers, landlords and medical professionals have been given incentives to report on immigration status as well as threatened with sanctions in case of failure to report immigration status of those whom they come in contact with during the course of their work or lives. Such practices have created fractures in British society and set up internal borders. The resulting atmosphere of hostility towards irregular migrants was initially termed the 'hostile environment'. Following news-stories of wrongful deportations of people who had the right to remain in the UK, such as in the Windrush scandal, the hostile environment was relabelled the 'compliant environment'.

Irrespective of choice of name, the new environment has brought into sharp focus how immigration and nationality laws categorise people according to their date of entry, national origin, length of residence and attainments while in residence. These attributes confer legality if people come within relevant categories but exclude those who do not. It is easy to get these details wrong and even when the information are accurate, these categories reify and perpetuate various forms of inequality already faced by irregular migrants. Ethnic and racial minorities are often deemed or presumed to have irregular status and come under heightened scrutiny.

Law has been essential in this changing landscape of migration control. A series of Immigration Acts (2014 and 2016) excluded many irregular migrants from basic resources and services. These Acts introduced new requirements to check documents for establishing a right to work in the UK and even whether one can live in rented accommodation through deputisation of state functions to individuals. Charities and local governments have also been asked to report on

migration station with their budgets at risk of financial sanction in case of failure to comply with such requests. In the context of Brexit, such information has led to increased deportations of EU nationals who have been found sleeping rough or have some irregularities in their paperwork. Others such as asylum seekers have also found their lives becoming even more precarious as services are cut back or become sub-standard. The process of deputation is a continuation of the crimmigration project. People who commit minor offences have suddenly become targeted with renewed vigour. Immigration control today is a replication of the military–industrial or prison–industrial complex where accountability of private actors is missing or minimal.

It is in this broad context that the chapters in the first section of this volume are on the private stakeholders in migration control. Private actors such as transport companies have been involved in immigration control since the early twentieth century, for instance in the United States through the Passenger Act 1902. In 1944, through the Convention on International Civil Aviation, nearly all (the now) EU countries increased carrier responsibility. The Asylum and Immigration Act 1999 warrants a regime of financial sanctions impossible against owners or agents of ships or aircrafts, who carry an individual who fails to produce a valid identification document, and where necessary, a visa. In Chapter 1, Aleksandra Wegera examines sanctions placed on carriers which lead to barriers to entry for asylum seekers. Wegera writes that carrier sanctions oblige commercial entities to check the validity of passengers' documents and deny boarding where no valid documents are shown, or where fraud is suspected. This law has meant that many male asylum seekers are deterred from safe journeys and lawful entry into the UK. Wegera places the spotlight on male migrants because she finds that most migrants who seek asylum are male: men accounted for 72% of asylum applications in 2017. But migration literature tends to overlook male migrants and their life experiences. Literature on male asylum seekers is often confined to their participation within the labour market, and little is written about the impact of migration journeys on men. Women and children are 'conceptualised of categories of vulnerability', and are seen as 'in need of additional support', so the focus is usually on their life situations.

In Chapter 2, Isabella Bertolini evaluates the role of medical professionals in implementing the hostile environment. She discusses the Memorandum of Understanding (MoU) between NHS Digital and the Home Office. Doctors and others in the medical profession organised to oppose the agreement and its effects. Challengers brought up issues of legality, effects on public health and wider economic implications as well as ethical issues. Yet the case study of the doctors and the memorandum also establishes how easily, and even without legislative authority, it was possible for the Home Office to gather data and deport people accessing health care.

In the next two chapters, Emily Rigler Gillingham and Harriet Parfitt write about employers and the responsibilities placed on them to report on employees and their immigration status. Gillingham writes that ethnocentrism is woven into the UK's approach to controlling irregular migration. Since January 1997, the UK has imposed sanctions on employers found to be employing irregular

workers. Coercing employers into conducting immigration status checks makes it increasingly difficult for irregular migrants to secure employment opportunities, thus restricting their ability to sustain a tolerable life in the UK. The deputisation of employers, as well as other private entities, such as landlords, has become a pivotal element of what is commonly known as the 'hostile environment', an attempt to make UK life unbearable for irregular migrants. Gillingham finds that dehumanisation and exclusion are the two manifestations of ethnocentrism. Parfitt also focusses on employment but in the context of the agricultural industry and the Modern Slavery Act 2015. She finds that the vulnerabilities faced by irregular migrants are reinforced through the xenophobic narrative embodied within the law and the courts. The lack of priority afforded to modern slavery on the UK Policy Agenda has allowed a 'grey labour market' to develop. The government allows the commodification of workers within the supply chain to profit British businesses.

Overall, the chapters in the first section reveal that private parties perform a greater number of government like functions in the new environment and they do so with much less accountability. Privatisation reaches beyond individual participation in migration control in private capacity. To demonstrate how privatisation fundamentally alters the manner in which human capacity is viewed, the second section is on the political economy and commodification of migration. Innovations in capitalist modes of production have led to greater commodification of migration such as the role of the limited liability company in colonisation and the creation of investment routes to citizenship status. In Section II of this volume there are two chapters, one by Oppon and another by Kamber, which give further examples of the commodification of migration and migration measures.

Akosua-Rose Oppon traces from history how trade and the corporate structure have assisted imperialism in the case of the East India Company. The East India Company was a hybrid corporation. This merchant-state hybridity refers to the private function of the company as a joint-stock corporate established to trade and make profit for its shareholders, whilst simultaneously exercising public state governance as rulers of India. As the Company strived for profits, this was inherently contradictory to ruling a state of people. Its increasing public role alienated both Indians and the British government as it faced increasing criticism. Eventually state intervention increased until the Company operated as an agent for British imperialism, and its status continued to decline until the company was replaced by British rule. Oppon finds that the legacy of the East India Company represents the incompatibility of private actors taking on state responsibility.

Another example of commodification is found in the last chapter of this volume where Isobel Kamber looks at the British Tier 1 (Investor) visa. She asks if the Tier 1 visa has become a 'golden ticket' for obtaining residency and citizenship in the UK. The scheme offers an exclusive route to temporary residency in the UK in return for a £2 million investment in Britain. Kamber contends that the government has consistently underestimated the continual detrimental effects of offering such a scheme due to its economic advantages. Kamber claims that the scheme has imparted social disadvantage, highlighting the prevalence of inequality and the existence of a hierarchy of desired migrants and even

increasing threats to public's safety. The problems with the scheme are 'lack of transparency,' 'inability to return any benefit to UK residents,' and for 'transforming the UK into a safe haven for money launderers'. Kamber does not stop at merely identifying these shortcomings, she argues that the overarching effect of offering such a visa is the marketisation of migration and commodification of secure migration status.

SECTION 1

PRIVATE STAKEHOLDERS IN MIGRATION CONTROL

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CHAPTER 1

HOW ARE MIGRANTS, ESPECIALLY MALE ASYLUM SEEKERS, DETERRED FROM SAFE JOURNEYS AND LAWFUL ENTRY INTO THE UK THROUGH CARRIER SANCTIONS?

Aleksandra Wegera

ABSTRACT

Carrier sanctions oblige commercial entities to check the validity of passengers' documents and deny boarding where no valid documents are shown, or where fraud is suspected. The necessity to flee to safer countries at a time of particular political unrest has necessitated the use of fraudulent documents, which the sanction regime and subsequent case law have attempted to curtail. However, increased investigation into legitimacy of travel documents has induced the taking of dangerous routes to reach Britain. In particular, danger is posed by oncoming traffic, and where entry is attempted clandestinely, within lorries. Men, accounting for the majority of irregular entrants, are more likely to experience danger. Due to the very nature of their precarious position, potential asylum seekers may not hold travel documents, which induce the taking of dangerous routes to make asylum applications once in Britain. This chapter will attempt to link carrier sanctions, danger, and humanitarian obligations.

Keywords: Male migrants; carriers; sanctions; private actors; non-state agents; identification documents

1. INTRODUCTION

The control of immigration has been privatised through the involvement of non-state agents in managing of migration in, and out of, the UK. The role that has traditionally been performed exclusively by the state, and has demonstrated an element of sovereignty over a nation's borders, is now partially realised by private entities in lieu of public authorities (Menz, 2011). However, it is by no means an abdication of the state's sovereignty over the control of national borders, and carrier sanctions are better understood as an attempt to control migration flows, in particular of 'less desirable' groups, such as potential asylum seekers. This raises questions of the regime's legitimacy in light of international humanitarian obligations towards individuals fleeing persecution, many of whom are males. By discouraging undocumented or fraudulent entry through aeroplanes, the sanctions induce the making of life-threatening journeys through the English Channel. However, the link between the need to claim asylum, dangerous journeys, and carrier sanctions, has not yet been made in any English court, and the attempt to link the former two elements has been rejected by the Court of Appeal, due to the limited wording of legislation.

The Asylum and Immigration Act 1999 warrants a regime of financial sanctions imposable against owners or agents of ships or aircrafts, who carry an individual who fails to produce a valid identification document, and where necessary, a visa.¹ Sanctions inevitably induce carriers to participate in immigration control (Ruff, 1989) due to the threat of financial repercussions, which come as a direct result of carrying unauthorised passengers, and also indirectly, through the need to meet accommodation and deportation costs of passengers.

The first and second part of this chapter will explore the concept of masculinity within migration, and will suggest that male migrants are likely to take dangerous routes to reach their goal destination. The rationales for carrier sanctions will be scrutinised in the third part of this chapter, and it will be suggested that the regime seeks to indirectly limit the entry of 'undesirables', in particular asylum seekers. The fourth section will assess the impact of carrier sanctions imposed through Section 40 of the Immigration and Asylum Act 1999 on the actions of airline personnel. It will be suggested that the sanction regime induces an anxious and vigilant approach to the checking of passengers' documents and eligibility to travel, and that this task is carried out by non-specialist staff. Lastly, the compatibility of international obligations and the carrier sanction regime will be considered. Overall, it will be argued that strict immigration controls, strengthened by sanctions in Section 40, are likely to compel male migrants to engage in illegal and dangerous means of entry, in light of carriers' enforcement of entry requirements.

2. THE CONCEPT OF 'MASCULINITY' IN MIGRATION

Literature on male asylum seekers is often confined to their participation within the labour market (Chavez & Altman, 2017), and little is written about the impact of migration journeys on men. Instead, women and children are 'conceptualised