

Punishment, Citizenship and Identity: An Introduction

Mary Bosworth, Ines Hasselberg, and Sarah Turnbull

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Mary Bosworth, PhD

Professor in Criminology
Centre for Criminology, University of Oxford
Manor Road Building, Manor Road
Oxford, OX1 3UQ
Tel: +44 (0)1865 274455
Email: mary.bosworth@crim.ox.ac.uk

Mary is Professor in Criminology and Fellow of St Cross College at the University of Oxford and, concurrently, Professor of Criminology at Monash University, Australia. She examines how prisons and immigration detention centres uphold notions of race, gender and citizenship and how those who are confined negotiate their daily lives. She is currently leading a 5 year European Research Grant on the changing nature of punishment under conditions of mass mobility, and a 3 year Leverhulme International Network on External Border Control.

Ines Hasselberg, PhD

Postdoctoral Research Fellow
Centre for Criminology, University of Oxford
Manor Road Building, Manor Road
Oxford, OX1 3UQ
Tel: +44 (0)1865 274445
Email: ines.hasselberg@crim.ox.ac.uk

Ines is a postdoctoral research fellow at the Centre for Criminology, University of Oxford. She is undertaking a multi-year comparative study of foreign-national prisoners in the UK and Portugal as part of a broader European Research Council funded project led by Mary Bosworth.

Sarah Turnbull, PhD

Postdoctoral Research Fellow
Centre for Criminology, University of Oxford
Manor Road Building, Manor Road
Oxford, OX1 3UQ
Tel: +44 (0)1865 281922
Email: sarah.turnbull@crim.ox.ac.uk

Sarah is a postdoctoral research fellow with the Centre for Criminology at the University of Oxford. Her current research examines immigration detention and deportation in the United Kingdom, with specific focus on the experiences of confinement and removal in relation to affective issues of home, belonging, and identity in postcolonial, multicultural Britain. This

research is part of a broader European Research Council funded project led by Mary Bosworth.

Abstract:

This collection of articles addresses the interconnections between punishment, citizenship and identity. As immigration and crime control measures have intersected, prisons in a number of countries have ended up housing a growing population of foreign-national offenders and immigration detainees. It is somewhat surprising that criminologists have traditionally spent so little time exploring the relationship between the prison and national identity. With notable exceptions, scholars almost universally treat the prison as an institution bounded by and within the nation-state. This special issue seeks to disrupt that convention of prison studies and criminology more broadly. Focusing on the incarceration of foreign nationals in diverse contexts, the contributions to this issue collectively argue that the prison is a projection of national sovereignty and an expression of state power. It is also a concrete space where global inequalities play out. When considered through the lens of citizenship, our understanding of imprisonment shifts to include other geographical sites both within the nation-state and elsewhere, the prison's intersections with other legal frameworks, and enduring matters of race, gender and class. The contributions capture these dimensions by weaving together policy analysis and first-hand narratives from around the world.

Keywords: Punishment; Citizenship; Prison; Race; Gender; Foreign-national Prisoners; Sovereignty

Overview

The prison is changing. The increasing intersection between criminal and immigration law is enforcing new consequences to punishment, new purposes to prison, and new characteristics to imprisonment. In England and Wales, for instance, since the passage of the UK Borders Act 2007, foreign offenders born outside the European Economic Area (EEA) face mandatory deportation if their criminal sentence is more than twelve months, or if over the past five years their sentences add up to twelve months. While exceptions are made for human rights protections, this new policy radically alters the outcome of imprisonment for many of those born outside Britain.

Similarly, over the past two decades, the British government, like many others, has brought in a series of new pieces of legislation that have criminalised activities only committed by foreigners (Aliverti, 2013). These matters, such as entering on a false passport, working with false documents, or overstaying a visa, which used to be simple immigration violations, can now result in a criminal conviction and time behind bars. Many of these offences attract a

twelve month sentence, triggering the mandatory deportation rule. On a more extreme and exceptional level, many states, including Britain, have also recently given themselves new powers to strip citizenship from those suspected or convicted of terrorism. Without citizenship, such individuals become subject to border control as well as or instead of criminal justice penalties, allowing the state to expel or deny them entry (Zedner, 2016).

Finally, a number of countries have been, for quite some time, aggressively pursuing criminal justice solutions abroad. Such initiatives, which, in Britain are often funded under the returns and reintegration fund (RRF), range from reforming criminal justice practices abroad to erecting whole new penal establishments overseas. Such policies, which are occurring under the rubric of 'managing migration', go hand in hand with more vigorous attempts to return serving prisoners under prisoner transfer agreements (Bosworth, forthcoming).

In all these ways, the state has been giving itself new powers against those born abroad, deploying immigration law powers within the criminal justice system and vice versa. In this special issue we focus on the effects of such developments on the prison. In so doing, we follow colleagues in the nascent field of border criminologies who argue that such developments call for a rethink of key criminological concepts and methods. What is the meaning of rehabilitation when prisoners are being prepared not for release but for deportation? What exactly is punishment when a criminal conviction includes more than one kind of incarceration, as foreigners may be detained in immigration removal centres prior to deportation (Bosworth, 2014)? Where is punishment located (and when does it cease) when a prison sentence may lead to deportation? Who is administering the penalty and to what end (Bosworth et al., forthcoming)? These are the questions animating this special issue. Before turning to them in more detail, it is important to understand the context.

Statistical accounts tell us that a growing number of foreign national prisoners are incarcerated throughout the penal systems of Europe, North America and elsewhere. Across Europe, foreign-nationals account for an average of 20% of the incarcerated population. In some countries, however, the tally is far higher. Thus, in Switzerland (73%), Luxembourg (72.3%), Greece (60.4%), Cyprus (53.2%), and Austria (50.9%) foreigners make up more than half of the confined (International Centre for Prison Studies, 2015). Although there will be many explanation of these sums, the figures alone are startling. At the very least, they draw into question assumptions of the moderation of European penalty (Snacken, 2010). Human rights protections—long held up as the source of Europe's lower reliance on the prison than the United States or England and Wales—appear to offer fewer protections for those born abroad (Van Zyl Smit and Snacken, 2009; Bosworth, 2011).

Citizenship and Criminology

For the most part, scholars in prison studies—and criminology, more generally—have paid little attention to foreign prisoners. Nor have they explored the implications that ‘foreignness’ has for our understanding of penal power and legitimacy. In this special issue we fill this gap in the literature, demonstrating the relevance of citizenship and migration to our understanding of imprisonment while noting the overlaps with long-standing matters of gender, ethnic, and racial difference. In so doing, we aim to contribute to a growing body of literature on the intersections between nationality and punishment (see, for example, Bhui, 2004, 2007; Bosworth and Kaufman, 2011; Bosworth, 2011; Kaufman and Bosworth, 2013; Kaufman, 2012, 2013; Barker, 2012; Bosworth et al., forthcoming; Aas, 2013) and further advance the academic dialogue in this field. If, as it turns out, prison has changed for a significant proportion of those confined, then some of our assumptions about the incarceration of citizens may also need updating. Nationality is relevant not just for those born abroad but also for those at home.

Contributions to this special issue address the punishment of foreign-nationals from a variety of standpoints. Issues of race and ethnicity are evidently important. How, if at all, do the experiences of foreign-national prisoners differ from native-born minority populations? While some foreigners in prison are white, most are from the global south. How do various prison systems negotiate diversity, citizenship, and cultural cohesion? Concentrating on citizenship also directs our attention in new ways to the cultural and symbolic effects of these developments (Garland, 2001; Kaufman and Bosworth, 2013). What does the increasing number of foreign-nationals in prison tell us about the role of the prison in carving out national identity? Is the prison aiding regimes of border control?

Above all, the essays that follow demonstrate the power of testimony in understanding incarceration. How do prisoners respond to these experiences? Are there differences in women’s and men’s experiences? How does ‘deportability’ shape how foreign-national prisoners ‘do time’? How do foreign-national prisoners differently contend with their ‘foreigner’ identities and act to improve their life chances, along lines of gender, race, and class?

Drawing on a variety of methods and disciplinary fields, the contributions cover a wide spectrum of political contexts and geographical sites: Western Europe, Latin America, North America and the Indian subcontinent. They show that the incarceration of foreign-nationals is of particular relevance in the context of national and regional security agendas in which foreigners have been increasingly conceptualised as a ‘risk’, and national immigration policies have been tightened, making it harder for migrants to arrive legally and easier for states to remove unwanted noncitizens.

These processes have implications for the nature of the prison population as well as for how imprisonment is experienced and justified. They also affect how we study prison. As growing numbers of the prison population face deportation at the end of their sentence (Gibney, 2013), traditional concepts of prison sociology—decency, legitimacy, rehabilitation, even

punishment—look and feel different (see, for instance, Hasselberg, 2015). At times these concepts may no longer apply. At other times they may be changing significantly. By placing foreign-national prisoners at the centre of analysis, rather than at the margins where they are usually located, this special issue explores the implications of these developments for our understanding of incarceration, and the theoretical frameworks and methodologies we employ. In so doing, it contributes both to prison studies and to the emerging field of border and migration studies within criminology (Aas and Bosworth, 2013).

Settler countries have always built prisons as one of their first orders of business, not only to hold offenders, but also to mark out the symbolic and actual limits of the nation-state (Bosworth, 2010). In times of war, prisons expand as new institutions of confinement spring up to hold enemy combatants, refugees displaced by conflict and prisoners of war (see, for example, Bashford and Strange, 2002; Campisi, 2005; Loyd, 2015). More recently, as immigration and crime control measures have intersected, prisons in a number of countries have ended up housing a growing population of foreign national offenders and immigration detainees (see Nethery and Silverman, 2015; Colombo, 2013; Light, 2015), which brings additional challenges and responsibilities to prison staff. In England and Wales, and Norway, prison staff must identify foreign-nationals and liaise with immigration authorities. Prisons also face new challenges in dealing with large numbers of prisoners struggling with immigration issues, many of whom will not be fluent in the official language(s) (Ugelvik, 2014b).

The contributions to the special issue collectively argue that prison is a projection of national sovereignty and an expression of state power. It is also a concrete space where global inequalities play out (Bowling, 2013; Wacquant, 2008; Sudbury, 2005a). When considered through the lens of citizenship, our understanding of imprisonment shifts, to include other geographical sites both within the nation-state and elsewhere, the prison's intersections with other legal frameworks, and enduring matters of race, gender, and class.

Given this range of examples, it is somewhat surprising that criminologists have traditionally spent so little time exploring the relationship between the prison and national identity. With notable exceptions (Kaufman, 2015; Bhui, 2007; Bosworth and Guild, 2008; Bosworth and Kaufman, 2011; Sudbury, 2005a; Phillips, 2012; Ugelvik, 2014a), scholars almost universally treat the prison as an institution bounded by and within the nation-state. This special issue seeks to disrupt that habit of prison studies. The articles draw primarily on ethnographic data from around the world to speak to issues of punishment, national identity and citizenship. Covering a variety of geographical contexts—Northern Ireland, Portugal, England and Wales, India, Spain, and France—the contributions explore the unique manifestations of 'foreignness' within each geographical locale and site of punishment.

The Essays

The first article of the special issue, by Hindpal Singh Bhui, provides a contextual and conceptual frame that guides the remaining contributions. Race and racism, in their intersections with class, religion, and gender, Bhui argues, are integral to understanding imprisonment and immigration detention. Drawing together key texts from criminology and postcolonial and critical race theory, he underscores the links between historical and contemporary nationalisms and nation-building, and racialised border control practices. Penal power reinforces national identities, yet cannot be de-coupled from longer histories and contemporary manifestations of racism against both citizens and foreigners.

In line with Bhui's assertions, Rimple Mehta explores the gendered experiences of borders and bordering among young Bangladeshi women imprisoned in India for their 'illegal' border crossings. Adopting a feminist analytic that attends to issues of power, marginality, and normativity, she gives 'voice' to her informants' understandings and sense-makings of the Indo-Bangladeshi border and the criminalisation of their mobility across this border. The narratives of Mehta's informants call into question the legitimacy of bordering practices resulting in their punishment. In so doing, they offer a range of alternative understandings of their actions and of borders themselves, which they use to negotiate their identities and their everyday lives in prison. Mehta's contribution underlines the pertinence of analysing prison, and the imprisonment of women in particular, beyond the borders of the nation to consider those transnational processes which result in the disproportionate numbers of racialised women in the prisons of the global north (Sudbury, 2005b). Foreign-national women in prison face particular vulnerabilities and have specific needs. Their pathways to prison also differ from those of men, as is well examined here also in the contributions by Raquel Matos and Natália Corazza Padovani.

Previous work by Bhui (2007), Kaufman (2015), Ugelvik (2014a), and others has highlighted the particular challenges that foreigners face in prison. They tend to be more isolated than citizen prisoners, facing language and cultural barriers, and experiencing difficulties in obtaining information about life in prison and the overall criminal justice system. Foreign-national prisoners are also more likely to encounter additional obstacles in maintaining contact with their families, some of whom may have uncertain immigration status in the host country, while others may remain in the country of origin. Furthermore, these challenges, in addition to untreated mental illnesses, may render this segment of the prison population particularly vulnerable to suicide and self-harm (Borrill and Taylor, 2009). Picking up on this literature and drawing on fieldwork in a male foreign-national prison in the UK, Jason Warr updates Gresham Sykes (1958) 'pains of imprisonment' to include the lack of certitude, legitimacy, and hope in prisoners' carceral and post-carceral lives. Warr's research highlights the exceptional situation of foreigners in prison due to their noncitizen status—and related precarity that stems from the spectre of deportation—and suggests that these pains can lead to both personal and institutional problems. The article also

further underscores the expansive reach of immigration enforcement into the prison estate, thereby pointing to contemporary shifts in traditional practices of punishment.

Consistent with Warr's arguments, Carolina Boe and Agnieszka Martynowicz reveal how prison life for foreign-national prisoners is shaped by concerns about isolation, deportation, and uncertain futures. Boe's ethnographic fieldwork with foreign-national prisoners in France examines the trajectories of two categories of foreign-nationals—young foreign-nationals from the *banlieues* (economically disenfranchised suburbs) and undocumented migrants. Caught between criminal justice and immigration enforcement, her findings emphasise the disciplining of racialised, noncitizen bodies in prison due to their deportability. Boe's research supports the argument that people's status as deportable foreign-nationals profoundly shapes their experiences of imprisonment and options available after release.

In contrast to prison environments rich in ethnic, cultural, and religious diversity (as in the case studies of Warr and Boe), Agnieszka Martynowicz examines how 'foreignness' is experienced in a prison system in which there is almost no ethnic and racial diversity. Looking at the experiences of (white, catholic) male Polish prisoners in Northern Ireland, she shows how the prison system continues to bear the marks of the country's history of violent sectarian conflict. In this context, the 'not so multicultural prison' environment—contrasting with the multicultural spaces of Phillips' (2012) research sites—and Polish prisoners' sense of isolation drew them together around a shared national identity based on language. Martynowicz highlights the prison system's current inability to meet the specific needs of 'diverse' foreign-national prisoners, including linguistic and immigration-related issues, thereby impacting how Polish prisoners 'do time'. In essence, their extreme isolation contributed to making them feel as if they lived in a prison inside prison.

The pathways to custody of foreign-national women differ from those of men—an issue further explored here by Raquel Matos and Natália Corazza Padovani. Matos draws on interviews with foreign-national women confined in Portuguese prisons to improve understanding of their pathways to custody and processes of identity (re)construction based on their experiences during imprisonment. The participants indicated a range of migratory paths to Portugal and to prison that are reflective of the intersections of gender, race, class, and citizenship in women's lives. Matos shows how foreign-national women prisoners' identities shape how they experience their imprisonment, what they hope and plan for their post-prison lives, and how they are treated by staff and other prisoners.

In a similar vein, in her article on Brazilian women imprisoned in Spain, Padovani explores women's trajectories in and through the transnational drug trade and sex markets in Barcelona, the Catalanian prison system, and the 'helping' relationships they develop with men they encounter during their incarceration. Her informants negotiate life in prison through the strategic uses of gender and sexual attributes linked to their nationality, allowing them to improve their conditions in prison and even enabling some to gain

permanent residence in Spain. Padovani makes clear that gender, race, class, and nationality are important factors in shaping how women enter into and experience imprisonment, as well as the opportunities available to them after release.

Conclusion

The articles in this special issue highlight the importance of citizenship and migration for our understanding of imprisonment. They also emphasise how gender, ethnic, and racial difference matter. Such matters also affect prison researchers. Scholars of prison studies today are likely to encounter a large number of foreign-nationals while collecting data in/of prison. This particular group may or may not have a different perception and experience of the issue at hand, be that prisoner-staff relations, health, recidivism, and so on. Yet, on account of language (and other social and cultural) barriers foreign-national prisoners are often excluded altogether from research samples (Yildiz and Bartlett, 2011).

Conducting research in prison is always ethically demanding. Confinement draws into question issues of informed consent and confidentiality. Research with foreign-national prisoners raises additional ethical concerns: this group of prisoners may have experienced or witnessed traumatic events either in their country of origin or in their migration journeys. If they are known to the immigration authorities, they are likely to have been interrogated on multiple occasions, not only on account of the criminal conviction(s) that led to their incarceration, but also on account of their immigration circumstances. Qualitative research means submitting them to yet another round of questions, asking them to once again retell their stories (Bosworth et al., forthcoming). There are also issues of access. Language barriers have already been mentioned, but to what extent are foreign-national prisoners fighting deportation orders more or less inclined to participate in academic research? And how can we make sense of their behaviour and accounts when so much is at stake for them (see Boe's contribution to this issue)? How can we fully grasp the relationships between incarceration and deportation without following ex-prisoners back to their countries of origin?

Including foreign-nationals in studies of prison is not merely about taking their thoughts and experiences into consideration. Rather, as the articles in this special issue emphasise, the increasing incarceration of foreign-nationals draws into question traditional concepts of punishment. So we end this introduction with the questions we raised at the very start: What is the meaning of rehabilitation when prisoners are being prepared not for release but for deportation? What exactly is punishment when a criminal conviction includes more than one kind of incarceration (see Bhui's contribution to this issue)? Where is punishment located (and when does it cease) when a prison sentence may lead to deportation? Who is administering the penalty and to what end? Our understanding of penal power today must take into consideration the increasing intersection of criminal and immigration law. Only then can we aim for a broader view of the prison and its changing characteristics (Kaufman and Bosworth, 2013). We hope that the special issue encourages new and evolving

scholarship on citizenship (and its intersections with race and gender) in prisons studies and punishment more broadly.

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