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## **From prison to detention: The carceral trajectories of foreign-national prisoners in the United Kingdom**

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**Abstract:** The United Kingdom (UK) has taken an increasingly punitive stance towards ‘foreign criminals’ using law and policy to pave the way for their expulsion from the country. Imprisonment, then, becomes the first stage in a complex process intertwining identity, belonging and punishment. We draw here on research data from two projects to understand the carceral trajectories of foreign-national offenders in the UK. We consider the lived experiences of male foreign-nationals in two sites: prison and immigration detention. The narratives presented show how imprisonment and detention coalesce within the deportation regime as a ‘double punishment’, one that is highly racialised and gendered. We argue that the UK’s increasingly punitive response to foreign-national offenders challenges the traditional purposes of punishment by sidestepping prisoners’ rehabilitative efforts and denying ‘second chances’ while enacting permanent exclusion through bans on re-entry.

**Keywords:** Prison, immigration detention, punishment, rehabilitation, reintegration, foreign-national prisoners, citizenship, United Kingdom

### **Introduction**

Over the past two decades, the United Kingdom (UK) has taken an increasingly punitive stance towards ‘foreign criminals’ through both law and policy. These reforms have paved the way for the automatic expulsion<sup>1</sup> of foreign-nationals who have been convicted and sentenced to terms of imprisonment greater than twelve months.<sup>2</sup> Such law and policy changes are shifting both the purposes and experiences of punishment in the UK through the production of deportable subjects whose rights to remain begin to unravel upon conviction. Imprisonment is often the first stage in a complex process in which identity, belonging and punishment intertwine in the lives of those enmeshed in what Peutz and De Genova (2010) term the deportation regime. For many non-citizen residents of the UK, the consequences of criminal convictions are increasingly serious and life-shattering, potentially undoing long histories of habitation, familial relations and livelihoods.

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<sup>1</sup> In the UK, expulsion is permitted through two legally distinct categories, removal and deportation, although both involve the ejection of individuals to another country and restrictions on re-entry. The category of deportation applies to foreign-nationals who have been convicted of criminal offences.

<sup>2</sup> For convicted European Economic Area (EEA) nationals, the sentence must be greater than 24 months’ custody (Bosworth, 2011).

The punitive targeting of 'foreign criminals' in the UK underscores the importance of citizenship in studies of punishment and the ever-increasing role of penal power in the governance of global migration (Aas and Bosworth, 2013; Aas, 2014). The intersection of immigration and crime control measures can be seen in the growing numbers of foreign-nationals confined in the prisons of a number of European countries (Wacquant, 1999; Colombo, 2013; Ugelvik, 2014a; International Centre for Prison Studies, 2015; Bosworth et al., 2016), along with concerns about their treatment (Zedner, 2013; Kaufman, 2015; Light, 2016; Aliverti, 2016; Martynowicz, forthcoming) and focused state efforts at deportation (Wacquant, 2008; Fekete and Webber, 2010; Aas, 2014; Stumpf, 2013). As Gibney (2013: 218) observes, the apparent hostility to 'foreign criminals' may be 'rooted in a widespread view that non-citizens convicted of crimes are particularly undeserving of sympathy because they have betrayed the hospitality of the society that let them enter and live in the state'. Gendered, racialised and classed discourses about criminality, belonging and desert factor into the perceived deportability of this group and are connected to historical and contemporary practices of bordering and punishment in postcolonial Britain (Fekete, 2001; Weber and Bowling, 2008; Earle and Phillips, 2013). In this context, citizenship – and the lack thereof – serves as a 'legitimate sorting device' for penal responses while concealing the ways in which 'foreignness' is constituted vis-à-vis ideas about gender, race, ethnicity, culture and class (Aliverti, 2016: 125; Wacquant, 1999).

This paper brings together research data from two distinct projects to help understand the carceral trajectories of foreign-national prisoners in the UK.<sup>3</sup> It considers the lived experiences of male foreign-nationals in two custodial sites, prison and immigration detention, highlighting how imprisonment and detention coalesce within the UK deportation regime and change the character and experience of confinement for those who are not British citizens. At the same time that immigration enforcement is ever more present in the prison system, confinement for foreign-

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<sup>3</sup> The first project, led by Hasselberg, involves research with male foreign national prisoners at Her Majesty's Prison (HMP) Huntercombe. The second project, led by Turnbull, includes fieldwork with male detainees, including former foreign national prisoners, in three immigration removal centres (IRCs): Campsfield House, Colnbrook, and Dover. See also Kaufman and Bosworth (2013) who have previously linked these two sites.

nationals extends well beyond sentence time. For these men, punishment extends outwards, through the gates of the prisons in which they serve their sentences, past the immigration detention centres where they are then held as they face deportation, and beyond the airplanes in which they are banished – often permanently through re-entry bans – to other countries. Most importantly, we show how these carceral trajectories are altering the nature and meaning of punishment for foreign-nationals, signalling an erosion of the rehabilitative ideal for this particular segment of the prison population. We argue that foreign-nationals are subject to a bifurcated penalty in which ‘second chances’ via rehabilitation and reintegration are largely denied, and susceptibility to immigration detention and deportation produce perceptions of ‘double punishment’. These practices, we demonstrate, are also highly gendered, racialised and classed, and connect to broader, punitive strategies of border control in a global world.

Such processes of exclusion are evocative of trends long identified in the ‘new penology’ literature (e.g., Feeley and Simon, 1992; De Giorgi, 2006) in which ‘incorrigible’ classes of criminals are identified for excision (through imprisonment) from the body politic. Yet, in the case of foreign-national offenders in the UK, their incorrigibility is linked primarily to their non-citizen status, thereby enabling their exclusion from the *national* boundaries (Kaufman, 2015) of punishment of which rehabilitation and reintegration are key. Importantly, this paper contributes to furthering our understanding of how contemporary practices of ‘bordered penalty’ (Aas, 2014) are shifting both the nature and experience of punishment for non-citizens.

### **Overview: Punishing ‘foreigners’**

Following a foreign-national prisoner ‘crisis’ in 2006, the British government introduced a new policy on foreign-national prisoners in 2009 called ‘hubs and spokes’ (Kaufman, 2013). This crisis, which has been discussed in detail by Bhui (2007) and Kaufman (2013, 2015), led to a review of the then Immigration and Nationality Directorate following concerns that over one thousand foreign-national prisoners were released without being considered for deportation (Thorp, 2007). The hubs and

spokes policy foresaw the creation of special prisons for non-citizen prisoners with immigration officials implanted in these institutions to carry out administrative functions, including the facilitation of deportation orders. Additionally, the new policy required prisons to retain non-citizen prisoners past the end of their criminal sentences (Kaufman, 2013). Such a policy approach legally sanctioned the differential treatment of foreign-nationals (Aliverti, 2016), further enmeshing immigration enforcement in the realm of British penalty.

At the time of Hasselberg's field research, HMP Huntercombe was the only functioning prison exclusive to foreign-nationals in the UK. It was a Category C/D<sup>4</sup> semi-open establishment with the capacity to hold 430 prisoners. Education and vocational training activities were developed in accordance to the perceived needs of foreign-nationals. For instance, English for speakers of other languages and programmes on literacy and numeracy were widely accessible. Also on offer were the vocational training programmes thought to be of use in the reintegration of foreign-nationals in their country of origin, with emphasis given to blue collar skills, information and communications technology, and business enterprise. There was, however, no consistent onsite Home Office presence.<sup>5</sup> Instead, immigration officials visited the establishment twice per week (Her Majesty's Chief Inspector of Prisons (HMIP), 2013).

Many foreign-national prisoners – including those from HMP Huntercombe – end up in one of the UK's nine immigration removal centres (IRCs) after completing the custodial portion of their sentences. Some may be transferred to detention after spending additional, sometimes lengthy, stints in prison under Immigration Act powers through an IS91,<sup>6</sup> whereas others may be sent more hastily to an IRC. Former prisoners are a unique sub-population in the British detention estate, housed alongside asylum seekers, visa over-stayers, individuals who are accused of breaking the

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<sup>4</sup> In England and Wales, prisoners are allocated a security category. Category C (Cat-C) prisoners are those not yet ready for open conditions but unlikely to abscond. Category D (Cat-D) prisoners are those ready and trusted for open conditions in preparation for their release.

<sup>5</sup> The Home Office often faces difficulties in allocating permanent staff to the remote locations of some prisons. Such was the case of HMP Huntercombe.

<sup>6</sup> IS91 refers to the authority to detain under immigration powers on the expiry of the custodial sentence (Ministry of Justice, 2011).

conditions of their visas, and undocumented migrants. What is surprising, however, is the lack of academic attention paid to this sub-population in detention, particularly when much more has been written on asylum seekers (but see Bosworth, 2011, 2014; Kaufman and Bosworth, 2013). In the context of broader discourses reflecting and reinforcing a dichotomy of 'deserving' and 'undeserving' migrants, former prisoners emerge as a particularly unpopular group (Anderson, 2013), tending to fall on the undeserving side of this binary.

According to the most recent figures, approximately one quarter of individuals detained across the British detention estate are foreign-national offenders, whom the Home Office (2013) defines as non-citizens who have been given custodial sentences in the UK. In 2012, on any given day, 828 (or 27%) of the 3,091 people held in immigration detention were foreign-national offenders (Home Office, 2013). The majority were male (94%) and compared to other detainees, were more likely to be detained for longer than three months (Home Office, 2013). For instance, in 2012, 22% of foreign-national offenders were detained for between three to six months, 21% for between six to twelve months, and 16% were detained for 12 months and longer (Home Office, 2013). At any given time, an additional 400 foreign-national offenders may be held in prison as immigration detainees (HMIP, 2015).

Part of the UK's border security and immigration apparatus, IRCs are unique quasi-penal institutions with architectures and security practices that mimic those of prisons, even as detainees are typically allotted greater freedom than prisoners. Their primary purpose, as per the Detention Centre Rules 2001, is to provide 'secure but humane accommodation', with the end goal of facilitating detainees' expulsion. Because they are ostensibly going to be removed from the UK, detention is primarily about 'holding' people, rather than 'including' them in the community or investing in their 'futures' (Leerkes and Broeders, 2010; HMIP, 2015). However, since there is no time limit on the duration an individual can be 'held', immigration detention is indefinite and thus marked by uncertainty (Griffiths, 2013, 2014; Bosworth, 2014). These key features of immigration detention not only have a

profound impact on how foreign-national ex-prisoners experience their post-sentence confinement but when combined with the expansion of immigration enforcement inside prison facilities, also work to intensify the blurriness between these two practices and institutions of confinement (see also Bosworth and Turnbull, 2015).

The political rationale for the deportation of foreign-national offenders from the UK springs from four imperatives: (1) the protection of the public from possible future offences; (2) to deter crime; (3) to demonstrate society's revulsion (especially in cases of incest and paedophilia) (Macdonald and Toal, 2009); and (4) to cut costs and free up spaces in prisons (Committee of Public Accounts, 2015). Deportation may be appealed at an immigration and asylum tribunal on human rights grounds, with most cases relying on Article 3 of the European Convention on Human Rights (ECHR), which prohibits torture and inhumane treatment, and/or Article 8, based on the right to family life. Until recently, appeal rights were suspensive, meaning that a foreign-national could not be deported while an appeal was ongoing. However, the Immigration Act 2014 introduced out-of-country Article 8 appeals, a process informally known as 'deport first, appeal later'. This new rule is likely to change once again how foreign-nationals experience confinement and punishment.

In this paper, we draw on qualitative data collected by Hasselberg at HMP Huntercombe over the course of four months in 2013, and by Turnbull in three IRCs – Campsfield House, Colnbrook and Dover – over the course of 12 months spanning between 2013 and 2014. We were both granted full access to the facilities and were thus able to engage freely with prisoners/detainees and staff. Although formal semi-structured interviews were conducted, our method was mostly ethnographic counting on a vast amount of encounters, observation and engagements.<sup>7</sup> Turnbull, for example, spent 107 days of fieldwork across the three field sites, while Hasselberg spent 30 days at HMP Huntercombe. Both projects considered similar research questions around participants' migratory

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<sup>7</sup> At HMP Huntercombe Hasselberg conducted 35 semi-structured interviews. Turnbull undertook 28 semi-structured interviews with male detainees across Campsfield House, Colnbrook and Dover IRCs who self-identified as foreign-national offenders.

paths and time in the UK, feelings of belonging and issues of identity such as gender and race in relation to these themes and to the day-to-day experiences of confinement. The data (interview transcripts and fieldnotes) were analysed using the qualitative software program NVivo. The names and details of participants have been anonymised. In this paper, we privilege our participants' accounts of their experiences and how they make sense of their punishment, foregrounding what is experienced and perceived to be delivered by the state, 'regardless of whether it is intended as punishment and/or is approved or acknowledged' as such (Sexton, 2015: 118).

### **The expansion of incarceration for foreign-nationals**

Foreign-nationals are liable to spend more time in confinement than their British counterparts. More specifically, they are very likely to be (a) imprisoned on remand while awaiting trial and sentencing (Banks, 2011; Aliverti, 2013), (b) given longer custodial sentences (Richards et al., 1995; Bhui, 2007; Fekete and Webber, 2010), (c) refused re-categorisation to more open prison conditions, (d) detained after sentence under immigration powers, and (e) refused bail from immigration detention on account of their previous conviction(s). In this way, one's status as a foreigner shapes, at the outset, how one moves through the criminal justice system, reflecting a bifurcated penalty on the basis of citizenship (see also Wacquant, 2008; Fekete and Webber, 2010; Zedner, 2013; Aliverti, 2016). Through the melding and interaction of both penal and immigration practices, however, the carceral trajectories of foreign-national offenders are neither predictable nor certain.

Like British citizens, foreign-nationals are punished for their convictions by the courts. Whereas some receive indication at the time of sentencing of the state's intention to deport, other do not.<sup>8</sup> Foreign-nationals sentenced to custody often experience their incarceration differently than British citizens. As foreign-nationals, this group is likely to be heterogeneous and also face some of the same issues as incarcerated ethnic minority citizens (Phillips, 2012; Kaufman and Bosworth, 2013;

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<sup>8</sup> The sentencing judge may recommend that the offender be deported but it is ultimately the Home Office's decision to issue a deportation order or not. However, under the automatic deportations, foreign-national offenders may now expect a deportation order if sentenced to 12 months or more in custody.



Ugelvik, 2014a). Foreign-nationals are more likely than British citizen prisoners to suffer isolation in prison, both due to language difficulties and a lack of connections to outside communities, as their families and social networks at large may be located abroad. They are also less likely to understand the penal system, their rights and even the mundane daily rules and routines of prison life. Foreign-national prisoners are also more vulnerable to suicide and self-harm (Borrill and Taylor, 2009). Furthermore, whether or not they wish to stay in the UK upon the end of their sentence, their immigration status is likely to remain undetermined for a large part of their incarceration, dotting their lives in prison with overwhelming uncertainty (Bhui, 2007; Ugelvik, 2014a; Kaufman, 2015).

While progressing through their sentences foreign-nationals are less likely to qualify for open custodial conditions – a consequence of the above-noted foreign-national prisoner crisis of 2006 (Bhui, 2007). At HMP Huntercombe, limited access to such conditions (i.e. Cat-D) was a source of frustration amongst participants. Prisoners constantly complained that they were denied access to less restrictive conditions even though they were advancing through their sentences. The fact that this denial was seemingly justified by a possible interest that immigration authorities might have in the prisoner only served to exacerbate feelings of anti-foreigner discrimination. Such sentiments were compounded by the widespread belief among prisoners at HMP Huntercombe that only those who agree to participate in voluntary return schemes are approved for open conditions. Although not corroborated by the existence of any official policy, this common perception worked to make prisoners feel punished for being ‘foreign’ and wanting to remain in the UK. Along with the IS91 order, the restriction against moving on to more open conditions remained a hot topic of conversation among prisoners and a source of resentment towards the Prison Service.

It is through the IS91 that a prisoner remains in prison as an immigration detainee. Prisoners and detainees have different legal statuses with different rules and privileges. Prisoners held at HMP Huntercombe under immigration powers have to waive their privileges as detainees as the establishment does not have the capacity to fulfil these privileges (HMIP, 2015). For instance,

detainees in IRCs may possess mobile phones, have longer social visits and typically spend less time confined to their cells.

Most prisoners in HMP Huntercombe wished to be taken to an IRC upon the end of their sentence, not only because of the larger pool of benefits and better location of IRCs for family visits, but also simply because they were, technically, no longer prisoners. This was especially significant for how post-sentence time was spent in prison. As Nick (early forties, Caribbean, in prison) said:

When we finish our sentence we are no longer prisoners, we are civilians. We should not be kept in prison, we should be taken to detention.

This statement provides some clue over the importance of being treated as a 'civilian' and of prisoners' efforts in contesting the state's assertion that their deportation is in the best interest of the public good. It also reflects the wish to be recognised as someone who has successfully completed the custodial sentence and is no longer a 'prisoner' nor a 'criminal', as someone who has served his time and should now be regarded as a regular member of society. Moving to an IRC allows foreign-national prisoners like Nick to distance themselves from the prison and all it entails.

And yet, perhaps most notable and disconcerting, Nick's statement is revealing of how imprisonment is experienced differently by this particular segment of the prisoner population. Foreign-national prisoners in HMP Huntercombe perceive only two possibilities upon the end of their sentences, both of which are outside of their control and neither pertain to reintegration in the British community: remain in prison as an immigration detainee or be transferred to an IRC.<sup>9</sup> It is especially telling that HMP Huntercombe prisoners no longer hope, let alone expect, to be released to society upon the end of their sentences. For 'foreigners' housed in specialist prisons like HMP

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<sup>9</sup> Once detained, foreign-nationals may apply for bail from immigration detention. If the application is denied, they may apply again every 28 days. This option, however, is not perceived as a realistic scenario for foreign-national prisoners. Furthermore, the most recent inspection report of HMP Huntercombe found the legal services available to prisoners to be 'underdeveloped and insufficiently promoted' (HMIP, 2013: 34), raising the possibility that prisoners' perceptions in this regard are shaped by the lack of access to legal representation and thus to the bail process.

Huntercombe, the implications of the intersection of border control with penalty in the UK is especially acute, eroding the traditional purposes of punishment, including rehabilitation and reintegration, through the linked practices of immigration detention and deportation.

The expectation of continued confinement upon the end of the sentence is most pronounced in those prisoners serving time in prisons exclusive to foreign-nationals, especially amongst those contesting their deportation. In HMP Huntercombe, prisoners saw others served with IS91 orders remaining incarcerated post-sentence or being transferred to an IRC. Prisoners talk to each other and being all foreign-nationals they become acutely aware that their time in prison is not limited to the length of their sentences and that they are liable to detention before deportation. Indeed, most prisoners from HMP Huntercombe were deported from IRCs with few released from the prison to the community (HMIP, 2013). In contrast, detainees that were transferred to IRCs from 'regular' prisons were often shocked to learn of their immigration problems leading up to, or at the time of, their date of release upon the completion of their custodial sentences (see also HMIP, 2015). Release from prison is eagerly anticipated and planned for, both by the prisoner and his family. Learning that they are to unexpectedly remain in prison under administrative power or to be transferred to an IRC shortly before the release date is often experienced as highly disruptive and even debilitating. This is compounded by the knowledge that they are now facing deportation and possible permanent separation from their families, friends and lives in the UK.<sup>10</sup>

In relation to being detained, Alex (early twenties, West Africa, detained in an IRC) narrated how he was surprised and confused that just one week prior to his release he was told he would be detained:

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<sup>10</sup> Although the re-entry ban attached to a deportation order is time-limited (e.g. ten years), in practice, it is unlikely that a deported foreign-national will meet the entry requirements to return to the UK, which has established barriers to entrants with criminal histories. It is also likely that the linked 'stain' of conviction and deportation will function to preclude, or make much more difficult, future migratory aspirations.

The thing that hit me is when it was a week before my release date, they told me I'm getting detained, that's about it, but I was thinking, 'Why are they gonna try and deport me?'  
[Pause] I don't know, man. People are funny to be honest, they do some silliness.

Alex's words underscore his shock at being detained and disbelief about what could come next: deportation. Antoine (mid-thirties, West Africa, detained in an IRC) was informed of his detention order as he was being released from prison. He was actually at the prison gate, ready to leave, when a fax came in with the orders to detain him. Being served with an IS91 on release day, or very close to it, was not uncommon among our research participants and has been found in previous research (e.g. Kaufman, 2013, 2015). Some were simply confused at the Home Office's apparent inefficiency, whereas others were angry at what they saw as 'mind games' designed to further punish them. For instance, Harry (early twenties, citizenship contested, detained in an IRC), reported how his deportation order was unexpectedly served while in prison:

They [Home Office] come to you when your sentence finishes, that's when they come to you. [...] they'll hold you back, innit. So they'll wait, innit, 'til you've gone over your sentence and then they'll give you a deportation order.

At HMP Huntercombe, the element of surprise narrated above was replaced with one of uncertainty and dread. Prisoners' expectation that they will not be freed upon the end of their sentence was constantly shaken by a small but ongoing glimmer of hope that, against all odds, they might actually be released. This was exacerbated by the fact that prisoners, too, are often served with an IS91 close to their release date, sometimes on the eve, or the actual day, of release.

Nuno (early thirties, South America), a prisoner at HMP Huntercombe, was on edge in the week leading up to the end of his custodial sentence. He tried not to be optimistic, but as the day approached and there was no IS91 for him, hope started to grow. Every day after work he would go straight to his wing's Prison Officers' office to check whether an IS91 had arrived. And every day, the

relief of having received no post was short-lived and soon overtaken by the anxiety of uncertainty. In the end, Nuno was served with the IS91 on his actual day of release, after he had packed his bags and said his farewells. He was devastated, as was his family, frustrated that he had allowed himself to hope after all he had seen.

The IS91 and Cat-D classification were the two major grievances of prisoners at HMP Huntercombe, both pertaining to extended – and potentially disproportionate – periods of incarceration. Transfers to immigration detention were also disruptive and frustrating, especially for those prisoners who expected they would be released. Although current policy indicates a presumption of release of foreign-national prisoners from immigration detention, fears of another 2006 scandal means that, in practice, foreign-national offenders face more difficulties in obtaining bail from immigration detention, even though many are long-term residents in the country and can easily fulfil the criteria for bail, such as having an address and multiple sureties (Independent Chief Inspector of the UK Border Agency (ICIUKBA), 2011).

### **Experiencing ‘double punishment’**

Imprisonment, detention and deportation may be distinct legal practices but they are nevertheless significantly intertwined. Foreign-national offenders find themselves administratively detained post-sentence on account of deportation orders that are a direct consequence of their criminal convictions, supporting the argument that foreignness results in ‘an aggravation of punishment’ (Wacquant, 2008: 50). As Stumpf (2011) has convincingly observed, the fate of non-citizen offenders is forever tied to the moment of the crime, eschewing the possibility of rehabilitation, reintegration or the production of ‘good citizens’. In this section, we show how immigration detention is perceived as a second or double punishment, and is a lived experience that neither ‘makes sense’ nor is perceived as legitimate. The spectre of deportation also bears greatly upon on how imprisonment and then detention are experienced, influencing how deportability is lived and understood (see also Hasselberg, 2016).

For former prisoners, detention in an IRC was typically experienced in comparison to their time in prison. Participants commonly reported that confinement in a detention centre presented an array of challenges and pains that imprisonment did not. These pertained to the indefinite nature of detention, the lack of purpose and legitimacy and their ever-present immigration predicament, issues that we discuss below. Yet, at the same time, detention allowed for certain privileges that made life 'easier' than prison.

It is important, however, to note here that the expansion of immigration enforcement in the criminal justice system and subsequent establishment of prisons exclusive to foreign-nationals means that today the experiences of foreign-nationals in prison and in detention are no longer so clearly distinguished (cf. Hasselberg, 2014). For instance, the indeterminate nature of immigration detention was particularly difficult for research participants (Griffiths, 2013, 2014; Bosworth, 2014; Turnbull, 2016). Detainees have no way to estimate how long they will be detained for: detention can last for days, weeks, months and sometimes years.<sup>11</sup> This feature of immigration detention in the UK starkly contrasts with the practice of determinate sentencing, such that prisoners know how much sentence time there is left to do. Yet, and as mentioned above, prisoners at HMP Huntercombe may know well how much sentence time they have left to serve, but they also know better than to expect to be released after its completion. In this sense, sentence time in a foreign-national prison, like immigration detention, is also characterised by uncertainty, as the above-detailed case of Nuno clearly illustrates.

Many of the foreign-national offenders we spoke with were long-term UK residents with significant ties to Britain, including having spouses, children and family members there. Several had come to the UK as young children, growing up there and receiving the regularised status of indefinite leave to remain. Such situations often resulted in lengthy and expensive legal battles to cancel their

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<sup>11</sup> A degree of certainty, however, can be achieved if they 'cooperate' with their deportation, such as participating in a voluntary return scheme (e.g. the Early Removal Scheme or Facilitated Return Scheme for former prisoners).

deportation orders. Many spoke of the frustration of having deportation orders that could not ever practicably be fulfilled, such as in situations where they were no longer recognised as citizens by their countries of origin.

Indeed, prisons and IRCs are thus sites from which foreign-nationals fight their deportation orders, and/or may become 'stuck' when the Home Office cannot obtain Emergency Travel Documents for them (ICIUKBA, 2014; Turnbull, 2016), yet opposes their release on temporary admission or bail because of their criminal histories.<sup>12</sup> Prisons exclusive to foreign-nationals, much like IRCs, were designed to expedite the deportation process on the assumption that such a system would enable foreign-national prisoners to appeal their deportation cases while serving their sentences so that upon sentence expiry, they are either released or deported, thus minimising time in (and state expenditure on) detention. In practice, however, there are often significant delays in the processing of immigration files; at best, prisoners are able to submit their deportation appeals a few months prior to the end of their sentences. It is therefore very unlikely that the appeal process will be finished by the release date. Consequently, this process extends through detention time, whether it is served in prison, in an IRC or 'tagged' (i.e. electronically monitored) whilst on immigration bail.

Although detention is a more likely place to become stuck when travel documentation is difficult to obtain, foreign-nationals may be left in such circumstances in prison. Such was the case of Julio (forties, Latin America, detained in prison), who had signed all of the papers to return voluntarily to his country of origin more than a year prior to the end of his sentence, yet remained confined at HMP Huntercombe several months past his sentence time. This situation was particularly difficult for him, as the main incentive for accepting voluntary return was the nine month reduction in his sentence. However, due to difficulties in procuring travel documents, Julio ended up spending more time in prison as an immigration detainee than he would otherwise have had to serve as a prisoner.

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<sup>12</sup> Of course, not all foreign-nationals liable to detention and/or deportation are detained; many deal with their immigration cases in the community. However, IRCs can become familiar sites through which former prisoners cycle in and out, facing repeated detentions as their cases proceed.

Despite his many requests to be transferred to an IRC, he remained in prison on account of his 'imminent' departure.

Time spent as a detainee, whether in prison or IRC, did not make sense like time spent as a prisoner. Sentence time is served more easily than detention time because it is accepted as the consequence of conviction. Unlike detention, sentence time is largely deemed legitimate (see Bosworth, 2013). In addition, sentence time serves a purpose as prisoners have sentence plans to go through that may give them focus and aim, including rehabilitative programming and vocational training. Time in immigration detention was thus different. As Harry (early twenties, citizenship contested, detained in an IRC) put it,

Every day I'm thinking about the outside, when I'm going to get out. It's just boring, innit.

Jail, I knew what I was there for; here I don't know what I'm here for.

Detention, in comparison, as Harry indicates, seems nonsensical. This challenge is compounded by the fact that detention is experienced as boring and unproductive as there is not much to do other than wait for the outcome of the immigration process (see Turnbull, 2016). Indeed, IRCs were seen to offer little in the way of meaningful activities, particularly for former prisoners. Samson (mid-twenties, Caribbean, detained in an IRC), for instance, had been detained for eight months. He found detention to be very stressful because of a lack of beneficial activities to occupy his time:

In prison, at least they have a routine, there's more constructive things. You can do trades, you can do courses. In detention you can't do nothing. So, in my eyes if you're really looking to benefit yourself, detention is a very bad option.

Samson tried to keep busy by working at the IRC and studying mathematics, but felt discouraged at the lack of opportunities to improve himself. Compared to the prison and its rehabilitative programming, post-sentence confinement in an IRC offered nothing 'constructive'.



In sum, for many former prisoners detained under immigration powers, either in prison facilities or IRCs, detention was viewed as a second punishment and thus illegitimate because they had already served their custodial sentences. Deportation (or the threat of) was similarly perceived as an excessively punitive and disproportionate response to their particular wrongdoing, especially as they had already paid their debt to society (see also Hasselberg, 2016). 'Why am I having two punishments instead of one?', asked Marco (mid-thirties, Western Europe, detained in an IRC). 'Is that fair? It's double punishment for me.' This 'double punishment' countered former prisoners' expectations about their punishment, resulting in perceptions of unfairness and illegitimacy as to their carceral trajectories.

### **No second chances**

In addition to the 'double punishment' of detention, the carceral trajectory towards expulsion from the UK denied many participants the 'second chances' promised through their imprisonment. Antoine (mid-thirties, West Africa, detained in an IRC) highlighted the pain of a potential forced return via deportation:

To be honest with you, this is my life. This is my life. My mum and dad is here. My daughter's here. So, like, how... To me, it's like they're messing with people's lives, Sarah, to be honest with you. Know what I mean? 'Cause how you gonna split the dad from his mum, and his kid? You know what I mean? But to me, they're messing up people's lives. It's not right. They should have consideration. Say, 'okay, he's done this. Let's give him a chance.' But, but in a way, they're not giving me no chance.

Second chances, as Antoine's words highlight, do not seem to be accessible to foreign-national offenders in the UK. This particular rehabilitative trope, and the promise it holds, is unavailable to him. The punishment Antoine is experiencing goes far beyond that accorded to him via his sentence of imprisonment in a criminal court. His punishment as a non-citizen is much broader and expansive,

extending past his initial prison term to his lengthy confinement in immigration detention, to the revocation of his indefinite leave to remain and his fight against deportation, and to the potential risk of being separated from his child, his family and the life he has known since migrating to the UK as a young child.

Some participants pointed to the perverseness of a prison system that prepared them for a life after release to which, due to their detention and deportation orders, they were subsequently unentitled. At HMP Huntercombe, many were aware of this paradox even as they progressed through their sentences. The words of Igor (fifties, Eastern Europe, in prison) illustrate clearly the perceived pointlessness of rehabilitation for foreign-nationals:

Prison is prison. But if you are British in prison you get enhanced prison. They give you chance to improve your situation. [...] UK prisoners have future, they can improve. [...] I want to go back to [British] society and be a good member. But as foreign they don't care because they try to send you to a different society. I don't have future in this sentence. No future in sentence.

In both prison and detention, several men observed that their efforts to rehabilitate themselves were not recognised by immigration judges or the Home Office as enough proof that they no longer posed a danger to society. Both Russell (late thirties, Caribbean, detained in an IRC) and Carter (early forties, Caribbean, detained in an IRC), who had served time at HMP Huntercombe, explained how they had undergone drug treatment while in prison and were now 'clean', but felt that this was not taken into account. Thus, like many first-time prisoners and others like Antoine and Igor, Russell and Carter believed they were denied a 'second chance' because of their foreigner status.

Similarly, Terry (late thirties, Caribbean, detained in IRC) lamented how the Home Office can

see that I'm a reformed person, my past life is behind me, but they said when they weigh up both issues, the kids on one hand, the public safety on the other hand, it is best for them to

separate me from my kids because my threat I pose to the public outweighs the kids by far. I don't know how they work that one out, despite the fact they had me that I'm a reformed character. So the whole thing is just contradicting if you ask me.

For Terry, this logic did not make sense. How could he be reformed enough to be 'released' from prison and yet still pose such a danger to society that he had to be banished from the country? Like Russell and Carter, Antoine (mid-thirties, West Africa, detained in an IRC) wanted another chance:

... to be honest with you, I think they should give me a chance, Sarah. I've changed. I've changed, Sarah. I've done, I've done courses. I've done anger-management. I've done my art. I've done everything, Sarah. Healthy living. Know what I mean? [...] 'Cause the way I was at that time, and now, it's two different person. That old person is gone. This is a new and improved person now. But that's what they don't seem to want to believe, that I've changed.

Here, Antoine clearly conveys his sense of frustration for doing much self-work while in prison but having none of it recognised. His efforts continued into immigration detention as he worked multiple jobs as a 'buddy' helping other detainees and in the laundry, while also participating in arts and crafts and other activities that demonstrated he was a 'model' detainee, and thus possessed the attributes of a 'good citizen'.

The narratives presented here thus highlight the unique challenges of experiencing punishments that do not contain the anticipated rehabilitative and reintegrative logics seemingly available to British citizens. The denial of second chances and reformed (British) futures, and the double punishments of detention and deportation, produce different and highly painful experiences of punishment along the lines of citizenship.

## **Rethinking British penalty**

The men in our studies raise pertinent questions about the treatment of foreign-national offenders and broader issues in relation to the traditional purposes of punishment: How is 'foreignness' – through the lack of formal citizenship – shifting British penalty? Are we witnessing, as several scholars have suggested (e.g. Wacquant, 2008; Aas, 2014; Aliverti, 2016), the emergence of a two-tiered system of criminal justice that sorts people on the basis of nationality? How are immigration detention and deportation redefining what punishment means for foreign-nationals and how it is experienced? And what does it mean that these penal subjects are primarily poor men of colour? Although detention and deportation are not official penal sanctions, they are largely experienced as such, as the narratives of our participants presented here indicate (see also Kaufman and Bosworth, 2013). For the foreign-national offenders we spoke with, deportation and detention are subjectively perceived and experienced as excessively punitive and discriminatory practices that do not 'fit' with their understandings of punishment, of which rehabilitation and reintegration are key. These men feel they are denied the opportunities that are available to British prisoners. The men's legal status as foreign-nationals, and their criminal convictions, negated their efforts at reform and denied them a second chance, instead constituting them as dangerous others and thus deportable subjects.

Several participants viewed the double punishment of immigration detention and deportation as unfair because it was not evenly distributed among all those who served custodial sentences in the UK. Citizenship was the dividing line that resulted in their post-sentence detentions while British prisoners were free to go home to their families. Citizenship was also what made their counterparts exempt from the British state's deportation power. Whereas the difference in rights and entitlements available to formal citizens versus long-term legal residents are, in practice, negligible (Gibney, 2013; Hasselberg, 2015), in the event of a criminal conviction, the distinction of citizenship is immensely important. In fact, at HMP Huntercombe, prisoners felt less defined in relation to their own citizenship than to that which they did not have: British citizenship (see also Bosworth et al.,

2016). Finding themselves in a prison exclusive to foreigners added to their sense of vulnerability: they felt targeted and discriminated against. A prison dedicated solely to foreigners resonated in them images of ghettos and concentration camps – forms of segregation that at the very least made them feel uneasy. Prisoners were well aware that they were serving time at that particular establishment only because they were non-British (see also Kaufman, 2015).

In an interview with Russell (late thirties, Jamaica, detained in an IRC) and Carter (early forties, Jamaica, detained in an IRC), both former HMP Huntercombe prisoners, the men argued that when British people commit the same crime and do the same time, their sentences finish but foreign-nationals are subsequently detained and viewed as a high risk to the public. For them, this practice was unfair and discriminatory. Russell and Carter did not like being treated as foreigners, especially since both had indefinite leave to remain and felt they belonged. Like many other prisoners and detainees who participated in our studies, Russell and Carter also viewed detention and deportation as racist and illegitimate, noting that, in their particular case, the Queen is Jamaica's head of state.

Indeed, the racial character of British citizenship was not lost among many of the men we spoke with in prison and detention. For those from countries of the so-called 'New Commonwealth',<sup>13</sup> like Russell and Carter above, the benefits of British Empire were not shared evenly, particularly as former colonials were excluded from the important perk of citizenship (see Weber and Bowling, 2008). A number of participants from New Commonwealth countries, like Jamaica, Nigeria, and Ghana, stressed the ways in which their own personal and familial migratory trajectories stemmed from Britain's relationship with their countries of origin, leading both to their presence in the UK and shaping their sense of their right to belong (see also Kaufman, 2012; Bosworth and Turnbull, 2015). Others, like Adit (late forties, South East Asia, in prison), emphasised how Britain's colonial past is mirrored in current policies towards foreigners:

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<sup>13</sup> This term refers to countries such as India, Pakistan, Jamaica, Nigeria, Bangladesh and Sri Lanka which attained self-government after 1945.

They are destroying people's lives. British prisoners have different rules. [...] This is discrimination. [...] But we have experience with the British because they ruled India for two hundred years. They come with the best intentions, but then they just steal. The same policy, divide and rule, they apply here. They separate families. They say you can keep family ties on Facebook.

Participants' narratives of this particular sense of injustice are also revealing of the gendered impacts of imprisonment, detention and deportation. Several spoke of feeling emasculated in this process that removed them from their families and denied them the (heteronormative) ability to act as 'breadwinners', potentially forcing them to parent and otherwise maintain families ties via Facebook and other social media from afar, as Adit describes above. Indeed, many of the men were fathers as well as spouses and they raised numerous concerns about how the state's attempt to deport them, along with associated practices of segregation and detention, affected their children and partners (see also Hasselberg, 2016). For both prisoners and detainees, the penal and immigration systems were perceived as stacked against them, thereby aggravating and prolonging their punishment.

Thus, for many participants with families and significant ties to the UK, the Home Office's insistence in deporting them was puzzling. As Jesse (thirties, South America, detained in an IRC) explained,

what I'm trying to say to Immigration is if I'm the one who works in my family, for my wife and my kids. So if they deport me, who will actually pay the bills in my house? Are my kids gonna be homeless then? Will my family be homeless? And they said literally, 'Oh well, the government will provide for her.' So they literally gonna turn it around to say that, to say 'Take the government's money.' My money that was paying for tax, to help my family out.

Jesse was incensed at the state's preference to deport him and provide social assistance to his family over letting him stay in the UK as the main provider. This irony did not go unnoticed among other participants, who could not understand how their deportation, allegedly for the greater good, would

result in one less income-earning tax-payer and one more family dependent on government support (see also Hasselberg, 2016). Combined with their rehabilitation efforts while in prison and their official release from prison as *prisoners* (even if as detainees), how the UK at large benefited from their deportation was beyond their understanding. Again, such moves by the British state were experienced as unfair and as exacerbating their punishment.

## **Conclusions**

The interrelated practices of imprisonment, detention and deportation are productive exercises of state power. On the one hand, the confinement and expulsion of 'unwanted' foreigners reformulates and reaffirms state sovereignty. On the other, these practices are constitutive of political subjectivities including those of 'citizen', 'resident', 'immigrant' and 'foreigner' (Peutz and De Genova, 2010; Ugelvik, 2014b). Given the apparent emergence of a bifurcated system of justice that is directed at foreign-nationals in the UK, it is important to consider how this particular aspect of British penalty is subjectively experienced 'on the ground' (Kaufman and Bosworth, 2013; Bosworth and Turnbull, 2015). Overall, the narratives here presented reveal how the merging of imprisonment with detention and deportation is felt by foreign-nationals as highly punitive and unfair – as 'double punishment'. The carceral trajectories of our participants point to the erosion of the rehabilitative ideal and the denial of second chances, signalling the production of a penal subject who is destined for elsewhere, outside of the national boundaries of British penalty (Kaufman, 2015). The imbrication of race, gender and class in these practices raises further questions about how the targeting of noncitizen 'criminals' (re)produces and maintains longer standing processes of exclusion.

This paper thus urges a rethinking of ways in which we consider punishment. How can we make sense of punishment when in the UK a criminal conviction for foreign-nationals – including long-term residents – may not only lead to more than one kind of incarceration but may also extend to a different nation altogether, as in the case of deportation? And what becomes of the traditional

purposes of punishment, including rehabilitation and reintegration, when the Home Office insists on the dangerousness – and incorrigibility – of the released prisoners? Considering the current global context in which human mobility is increasingly restricted and criminalised – along familiar lines of race, gender and class – it is vitally important to consider how practices of penal power are both enacted and lived.

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