

The criminalisation of migration

Barbara Hudson argues that migrants seeking a new life are being unfairly criminalised by the states receiving them.

People have always travelled in search of a better life: seeking increased opportunities for prosperity, for religious and cultural freedom, for freedom from persecution, from war, from famine, from natural and human-made disasters. While there is nothing new in the phenomenon of migration, there is something new and alarming in the levels of hostility towards migrants, and in the criminalisation of migration.

In their efforts to manage migration, states are creating new criminal categories of illegal, irregular and undocumented migrants, and are associating migrants with a range of crimes. States erect ever stronger barriers to entry, including tests of language proficiency and common values prior to migrants being able to acquire these through living in the destination community; conditions for asylum are interpreted ever more narrowly, and access to benefits, legal employment and state protection are restricted, and for many immigrants, unavailable.

While wars, famines, natural disasters and other drivers of migration show no sign of letting-up, migrants fleeing persecution or impoverishment are less and less welcome in the affluent nations of Western Europe, Australia and North America (Melossi, 2003; Young, 2003). Rich nations seek the benefits of migration – filling shortages of skilled labour; looking after the sick and elderly; capital investment – without dealing with any of the political pressures associated with influxes of unpopular groups of migrants.

Emigration and immigration

Article 13(2) of the Universal Declaration of Human Rights states that 'Everyone has a right to leave any country, including his own....'. As well as being embodied in the Declaration, the right to emigrate has long been acknowledged in the West, and popular and political opinion has been highly critical of countries such as the USSR and East Germany, which restricted the rights of citizens to leave. Demolition of the Berlin Wall was greeted with rejoicing, and any easing of restrictions on leaving China, North Korea and other repressive countries now, is similarly welcomed. Alongside this public approval, however, destination countries in the West have erected barriers that come close to preventing emigration as well as criminalising immigration. The Processing of potential migrants in the source countries such as India, Pakistan and Bangladesh are barriers to migration for those seeking to come to Britain; processing in source countries and sea patrols in the Mediterranean and the Pacific Ocean

restrict movement to Southern Europe and Australia respectively (Gewcock, 2007).

European Union immigration and asylum policy includes passing responsibilities to Morocco and Libya to control movement across the Mediterranean and to Spanish enclaves in North Africa. Rodier (2006: 20) also notes the arrest by Senegalese authorities of 1,500 'potential emigrants', and quotes an EU Interior Ministers' conference press release which welcomes 'the efforts of the countries of the southern Mediterranean to contain illegal emigration to Europe'. Restriction of the right to leave is contrary to the letter and to the spirit of the Universal Declaration of Human Rights.

A right to leave cannot be exercised without a corresponding right to enter another country, and there is no general right to immigrate enshrined in laws or conventions. The Geneva Convention imposes obligations on states to admit those with a realistic fear of persecution; states reserve to themselves the right to decide which applicants meet Convention requirements. There are considerable variations in different countries' approaches to persecution by non-state actors (religious persecution, racial or sexual persecution, for example), and even being from a country plagued by civil wars or serious inter-communal violence does not guarantee that asylum will be granted. There is no generally acknowledged right to migrate for so that a human can flourish; the quest for a better life is one that can only be followed by the affluent or those possessing valued skills.

Citizenship, rights and criminality

States differentiate between citizens and non-citizens in the allocation of rights. Whereas some rights should be honoured everywhere and for everyone, even the most widely endorsed fundamental human rights – the right to life and the right to freedom from torture – are not universally upheld. The UK countenances deportation of non-citizens who have not been granted Geneva Convention status to countries which are known to practice the death penalty and torture, provided agreements are entered into that this will not happen to individuals returned from this country.

Other states (for example Canada) regard these agreements as unenforceable and unverifiable. States also differ widely in their adherence to the supposedly fundamental right to freedom from loss of liberty without due process: detention under

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immigration law does not require the due process standards of criminal law. Other rights, such as the right to work, and rights to social security benefits, to education and healthcare, are given only to citizens, or to certain categories of non-citizens.

The criminalisation of immigration and emigration, the withholding of rights from non-citizens, and the precarious and vulnerable lives of impoverished migrants, make migrants vulnerable to being both victims and perpetrators of a range of crimes and injustices. Many of the transgressions committed by migrants are *status offences*: offences defined by the status of the actors, acts that would not be crimes if committed by citizens or 'legal' immigrants. Over-staying visa limits; being in the country without authorisation; working without a work permit, are examples of status offences. Other transgressions, such as claiming benefits to which they are not entitled; vagrancy and begging; prostitution; are some of the acts of survival that migrants must engage in to keep themselves and their dependants alive. Fear of deportation persuades many immigrants to work for exploitative wages and in abusive conditions.

As Bosworth (2007: 171) argues, the detention of irregular immigrants for status offences costs the state relatively little, but identifies non-citizens as always and already criminal. Detention in prison-like institutions reinforces ideas of migrants as threats to the economic prosperity, social cohesion, and even physical security of the state. The linkages and interdependences between the immigration system and criminal justice system establish in the mind of large sections of the public that drug-importation, sex-trafficking, and most forms of organised and 'vice crime' are problems of migration. While undoubtedly there are non-citizens involved in such crimes, these forms of crime were carried out before the current patterns of migration were established. The association of immigration and criminality means that victims of sex-trafficking are treated as offenders (of migration offences even if they are not prosecuted for prostitution) and are discouraged from seeking help because of fear of reprisals not only by the pimps and traffickers, but also by the agents of the state.

State sovereignty and human rights

Migration looks different if viewed through the alternative perspectives of state sovereignty and universal human rights. From a perspective of sovereignty, states have the right to determine their own criteria for citizenship, and to defend their borders against unwanted categories of migrants. On the other hand, from a perspective of human rights, all persons have a right to leave, and have a right to basic rights wherever they reside. Proponents of 'cosmopolitan justice', which would allow free movement of peoples across the globe, argue that fundamental human rights should include the right to 'flourish' as well as to be free from persecution, and also argue that only a right to freedom of movement

would stimulate the rich nations to follow trade and aid policies that would substantially reduce global inequalities (Hudson, 2007).

In the present climate there is little prospect of moves in the direction of open borders, but at least there should be an end to the intertwining of the immigration and criminal justice systems so that 'status offences' are not conflated with criminal offences, and so that migrants who are the victims of crimes such as forced prostitution and abuse by employers can receive the protection of the state. Immigration and asylum policies seek to manage migration to attract the highly skilled, to give protection to limited numbers of 'deserving' vulnerable people, and to keep out 'human waste' (Bauman, 2004). Policies, processes and political discourses which project those who are unwanted as undeserving, criminal and potentially dangerous, need to be challenged and reversed.

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