

PENAL HUMANITARIANISM? SOVEREIGN POWER IN AN ERA OF MASS MIGRATION

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Since creating the Returns and Reintegration Fund in 2008, the British government has financed a variety of initiatives around the world under the rubric of “managing migration,” blurring the boundaries between migration control and punishment. This article documents and explores a series of overlapping case studies undertaken in Nigeria and Jamaica where the United

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Kingdom has funded prison building programs, mandatory prisoner transfer agreements, prison training programs, and resettlement assistance for deportees. These initiatives demonstrate in quite concrete ways a series of interconnections between criminal justice and migration control that are both novel and, in their postcolonial location, familiar. In their ties to international development and foreign policy, they also illuminate how humanitarianism allows penal power to move beyond the nation state, raising important questions about our understanding of punishment and its application.

Keywords: *Punishment, mass migration, sovereignty, Jamaica, Nigeria, penal humanitarianism, colonialism*

INTRODUCTION

When people are sent to prison in the UK we should do everything we can to make sure that if they're foreign nationals, they are sent back to their country to serve their sentence in a foreign prison. And I'm taking action in Government to say look we have strong relationships with all of the countries where these people come from. Many are coming from Jamaica, many from Nigeria, many from other countries in Asia. We should be using all of the influence we have to sign prisoner transfer agreements with those countries. Even if necessary frankly helping them to build prisons in their own country so we can send the prisoners home.

—David Cameron, April 25, 2013, Cardiff (Doyle, 2013)

In 2012, the British government funded the construction of a new wing and guard tower in Kirikiri prison in Lagos, Nigeria. They also contributed money to assist in the training of prison officers and the purchase of new equipment for the Nigerian Prison Service (Iroegbu & Oyedele, 2012; Ijioma, 2013). That year, in Jamaica, the British High Commission released a DVD entitled “Coming home to Jamaica” with a revised booklet of the same title aimed at those removed or deported from Britain. Through the Returns and Reintegration Fund (RRF), they supported the fledgling National Organisation for Deported Migrants (NODM) while also paying for a variety of prison programs throughout the island, from pastry courses for young female offenders to chicken farming in an all-male sex offender facility. Three years later, in 2015, British Prime Minister David Cameron announced plans, while visiting Kingston, to invest £25 million in a new prison as part of an agreement

with the Jamaican Parliament for a new mandatory prisoner transfer agreement (PTA).

These examples reveal an increasing policy trend located at the intersection of criminal justice, migration control, and foreign policy, in which the penal state radiates well beyond the confines of the nation. Emblematic of Britain's devotion to the tactics of "soft power" (House of Lords, 2013) and humanitarianism, these policies and practices also link into much older pathways evident in the origins of the buildings and criminal justice systems invested in today, many of which date to the colonial era (Saleh-Hanna, 2008a). Similar programs with equivalent postcolonial ties can be found elsewhere and in engagements with other parts of the criminal justice system (Ryan & Mitsilegas, 2010). Ben Bowling (2010), for instance, has written a detailed account of the investment in policing and security in the Caribbean by a variety of countries, and legal scholars have described the Australian investment offshore in detention sites in Nauru and Manus Island (e.g., Dauvergne, 2016). Supranational organizations like the United Nations and the European Union also fund and operate initiatives through pooled funds like the European police organization FRONTEX (Aas & Gundhus, 2015). This article focuses on British policies.

Criminologists have begun to explore the effects of globalization and increased global mobility within the walls of prisons and other carceral institutions (see, for example, Kaufman, 2015; Bosworth, 2014; Hasselberg, 2016; Warr, 2016; Bhui, 2016; Kruttschnitt, Dirkzwager, & Kennedy, 2013). In a related field, a small number have paid attention to the geographical spread of penal power (Aas, 2013; Brotherton & Barrios, 2011). This article seeks to conjoin these areas of scholarship by reflecting on the implications and effects of overseas sites of British involvement and humanitarian aid for our understanding of sovereignty and punishment.

I. PENAL POWER AND SOVEREIGNTY

It is widely accepted that punitive practices and carceral institutions are inherently contradictory. Punishment has always had a variety of goals. From claims that it rehabilitates or deters, that it is a deserved response to wrongdoing, or merely incapacitation, its impact and justification is never straightforward (O'Malley, 1999).

On the one hand, punishment is a clear expression of state power. The extent to which the government may interfere in the lives of those who break the law is significantly higher than it is for those who do not. On the other hand, penal power is always precarious. Punishment, David Garland (1996) argued twenty years ago, thus reveals the limits of sovereign power. No matter how hard it tries, the government cannot eradicate crime. Penal practices remain inherently contested. They are supported for and by some while simultaneously eschewed for and by others.

In the literature on punishment, attempts have been made to shift the debate in light of other changes to state sovereignty. The impact of globalization and mass migration has not gone unnoticed, particularly among scholars in the nascent field of border criminology (Aas, 2014; Bosworth, 2012; Barker, 2013; Kaufman, 2015). For these authors, penal practices are changing, and our understanding of what counts as punishment needs to shift as well. Therefore, while there remain good analytical and empirical reasons to retain a focus on the criminal process of specific jurisdictions (Zedner, 2013; Duff, 2010), we also need to take a wider perspective (Aliverti, 2016). Practices outside the criminal justice system not only feel punitive to those subject to them, but they have similar justifications and effects. These administrative powers also shape people's lives in spaces and places well beyond the prison (Kaufman & Weiss, 2015; Golash-Boza, 2015).

Globalization and migration are not the only relevant factors in the shifting nature of state power (Hannah-Moffat & Lynch, 2012). The government increasingly shares responsibility for crime control and punishment with individual offenders and the private sector. Governing at a distance, it retains the right and the duty to punish, while divesting itself of some of the messier aspects of enforcing order. In this way, a host of new kinds of courts, in which guilt is already admitted before the trial begins, have sprung up, and access to parole has narrowed. The involvement of the private and voluntary sectors across the criminal justice arena has also expanded (Jones & Newburn, 2002; Tomczak, 2014). From private prisons to partnerships with NGOs, under neoliberal hegemony, the state rarely operates alone in the administration of justice. In some institutions, like immigration detention centers, it may be hard to find it at all, having handed over responsibility for daily operations to others (Bosworth, 2014).

Foreign offenders are subject to sovereign power in particular ways (Kaufman, 2015). A criminal sentence is likely to trigger administrative powers of detention and deportation, profoundly shaping the experiences

of incarceration and adding significant new consequences of this group (Warr, 2016; Bhui, 2007). It engenders new levels and sites of governance (Kaufman & Bosworth, 2013). A criminal offense committed in one jurisdiction may cause foreigners to fall under the purview of a second sovereign state: their country of citizenship.

All these matters play out each day across police stations, courts, prisons, and immigration detention centers. They also can be found much further afield, in so-called sending countries, beyond the jurisdiction where the original crime or punishment occurred. In those places, which are the focus of this article, the state takes yet another form, partnering not only with the foreign government, but also with the private sector, international agencies, and local and international NGOs. The British government, in these external sites, also works with itself as the Home Office, the Ministry of Justice, and the Department for International Development (DFID) act through and with the Foreign & Commonwealth Office (FCO) to secure the border against past and future offenders.

Even as these practices resonate with other, more familiar forms of penal power and concerns about risk and security, in their focus on foreign citizens and in their location offshore, they take new forms and are animated by distinct goals and rhetoric. The targets of British offshore strategies are not destined for reintegration in the United Kingdom. Funding and expertise is used to expel and keep them out. In order to return them and make them stay, these strategies must not only set up a process of expulsion, but also make the case about where certain people “belong.” In so doing, they do not simply alter the constraints and logic of the criminal process, by subjecting foreigners to differential outcomes for their crimes than citizens, but they designate people to a place (Barker, in press).

In “bordering” and “reordering” (Aas, 2013, 2014; Barker, 2013), the state cannot rely solely on rhetoric and practices of security or punishment. Instead, they persuade countries to accept their returning citizens through investment and policy exchange. As border control and punishment merge, in other words, penal power and humanitarianism increasingly work together (Agier, 2011). The sections below map the origins of these developments in U.K. criminal justice and migration policies before turning to Nigeria and Jamaica.¹

1. As with much government policy, matters in this area are fluid. In April 2016, many of the tasks formerly undertaken by the RRF were absorbed into the Conflict, Security and

II. SECURING THE BORDER AT HOME AND ABROAD

Currently 9,300 foreign nationals are serving prison sentences in England and Wales (HMIP, 2015). Accounting for 11 percent of the total incarcerated population, this sum has stabilized over the past few years, after expanding rapidly in the first decade of the twenty-first century. Until 2006, foreign offenders rarely figured in public debate about crime or punishment. Yet, that year, following extensive coverage in the British tabloid press, then Home Secretary Charles Clark lost his job when it was discovered that, over the previous decade, one thousand foreign prisoners had been released without being considered for deportation. The political and media outcry over this relatively small number successfully presented foreign national prisoners as deserving harsher treatment by mobilizing familiar and more novel concerns about risk and belonging (Kaufman, 2012, 2013, 2015; Bhui, 2007). Fears about economic migration merged seamlessly with narratives about terrorism and radicalization, constructing foreign national offenders as fundamentally unwelcome and always, already, potentially dangerous.

Such concerns and ways of thinking about foreign offenders have had a profound impact on legislation and policy, radically shifting how the courts and the prison service deal with them (Bosworth, 2007; Bhui, 2007; Kaufman, 2015; Warr, 2016). From “the forgotten ones” (Prison Reform Trust, 2004), foreign offenders appear ubiquitous. Relabelled as a security threat, they have been excluded from various work and drug treatment programs in prison; considered an escape threat, they are rarely sent to open conditions. In both cases, their immigration status trumps their conviction and rehabilitative needs.

In addition to constraining the experiences of foreign nationals during their sentence, the British government has sought to eject as many of them as possible through voluntary prisoner transfer agreements (Evans, 2010; see also van Zyl Smit & Mulgrew, 2012). Legal scholar, Jamil Mujuzi notes,

The United Kingdom can now exchange offenders with several countries on three bases: on the basis of the bilateral agreement between the UK and the

Stability Fund (CSSF), under the strategic direction of the National Security Council. This development expanded the pool of government departments and agencies working together to include the Ministry of Defense, thereby further entrenching the securitization of migration issues. This article covers the period before this new arrangement.

relevant country, and on the basis of the Council of Europe Convention on the Transfer of Sentenced Persons which has been ratified not only by European countries but also countries outside Europe, and on the basis of the Scheme for the Transfer of Convicted Offenders within the Commonwealth which has been ratified by a few Commonwealth countries. (2012, p. 381)

Those who agree to go home can apply for financial assistance under various forms of Assisted Voluntary Return (AVR) schemes (Poppleton & Rice, 2010). They also benefit from a sentence reduction of up to 270 days (Evans, 2010).

“The political dream of assisted return schemes,” political theorist William Walters observes, “is to provide a sufficient level of material inducement such that the migrant places themselves on the plane, without the need for guards, restraints or any spectacle of enforcement” (2016, p. 438). Yet, in the United Kingdom at least, few men or women take up these offers. Although official statistics are hard to find, in 2014, *The Telegraph* reported scornfully that “just 17 foreign criminals have been sent home to serve their sentences under a treaty that was intended to clear Britain’s jails of mainland European offenders” (Holehouse, 2014). “The EU Prisoner Transfer Agreement was signed by Britain and 17 other member states and came into force in December 2011,” the article goes on. “Since then three Belgians, a Latvian, a Maltese and 12 Dutch prisoners have been sent home. Ten were guilty of drugs offences, three of sexual offences, one for causing death by dangerous driving and one for a stabbing” (Holehouse, 2014). The Commonwealth Scheme for the Transfer of Convicted Offenders has been even less effective, the Minister for Prisons recently acknowledged, resulting in the transfer of just one person (Wright, 2014).

Reflecting the utility (and reach) of administrative powers (Thomas, 2011; Costello, 2015), deporting foreign offenders post-sentence has been considerably more effective than transferring them during their confinement. Since the UK Borders Act 2007, all non-EEA (European Economic Area) offenders sentenced to twelve months, or whose sentences over the past five years add up to that amount, face automatic deportation, unless there are human rights prohibitions preventing it. EEA citizens are harder to deport, although they too maybe expelled if they are serious or prolific offenders (Bosworth, 2011; Home Office, 2015a). All foreign offenders, even those without a custodial sentence, should be considered for deportation.

Official figures suggest such powers have had some effect, although not as much, a 2015 report from the House of Commons Committee of Public Accounts makes clear, as some politicians had hoped:

The number of foreign national offenders removed from the UK peaked at 5,613 in 2008–09 and has not matched that level since. Indeed the figure fell to 4,539 in 2011–12 and despite an improvement to 5,097 in 2013–14 remains below the 2008–09 levels. This is despite the fact that the number of staff working on foreign national offender cases has risen from less than 100 in 2006 to over 900 in 2014. (House of Commons, 2015, p. 5)

The House of Commons report notes, rather impatiently, that the Home Office attributes “the lack of progress . . . to the inherent complexity of the system and overall policy framework and an increase in the number of appeals by foreign national offenders” (p. 5). Such appeals are likely to lessen, as the Immigration Acts of 2014 and 2016 have both targeted a number of perceived barriers to deportation, removing the right of many foreign offenders to an in-country appeal, and making it more difficult for them to access human rights protections related to family life. Nonetheless, at the time of writing, despite considerable investment in the bureaucracy of deportation, the number forced out of the country has not significantly increased.

Given the low uptake of voluntary transfer agreements, the cost of imprisoning foreigners, and the difficulties of enforcing deportation, the British government has, alongside others in the European Union, sought to forcibly repatriate serving prisoners by creating a series of mandatory prisoner transfer agreements. Whereas “most of the prisoner transfer agreements to which the UK is a party require the consent of sentenced person concerned as well as that of both States involved,” a recent memorandum explains, “international prisoner transfer agreements are moving away from the idea that prisoners should have to consent to transfer” (Wright, 2014, p. 2). The Additional Protocol to the Council of Europe Convention on the Transfer of Sentenced Persons 1997 “provides for the transfer of prisoners without their consent where they would otherwise be deported at the end of the sentence” (p. 2). Ratified by the United Kingdom in 2009, the logic of this protocol can also be found in the Framework Decision on the transfer of prisoners between Member States of the European Union that was adopted by the U.K. government on November 28, 2008, and came into force on December 5, 2011. Such policies, as their

names suggest, operate at the state level, bypassing the individual. Once the Treaty is in place, both states are expected, under normal circumstances, to accept their citizens put forward for return by their partner.² Britain currently has compulsory transfer agreements with Albania, Ghana, Nigeria, Somaliland, Libya, and Rwanda.

With some notable exceptions, criminologists and legal scholars have paid scant attention to these developments. Yet, prisoner transfer agreements and deportation are now an everyday part of criminal justice systems around the world (van Zyl Smit & Mulgrew, 2012; Mujuzi, 2012). Although deportation is not, in itself, a form of punishment because it is an administrative action, a deportation order may be handed down as part of a criminal sentence. Along with PTAs, deportation is also referenced in debates and policies about border control alongside statistics of annual migration rates (Chorley, 2013), refugees, and asylum seekers. In these examples the reach of penal power is made clear.

In addition to pursuing bilateral agreements and entrenching their enhanced powers of expulsion, the British government invests in numerous schemes abroad designed to stop those they expel from coming back. These same programs also seek to dissuade others who might otherwise be tempted to travel. Some overseas projects focus on incarcerated populations, others on deportees, and still others more broadly on the poor and vulnerable. Administered and often funded by the FCO, these local initiatives are run by a range of voluntary sector organizations as well as by the criminal justice system. In Nigeria the British Council delivers much of the program material under a multifaceted project entitled Justice 4 All.³

Part of a more general trend within the international donor community toward the “justice sector” (Pichon, 2005), until it was replaced in April 2016 by the Conflict, Security, and Stability Fund, many of these schemes were financed by the Returns and Reintegration Fund. This reserve, Lord Davies of Oldham explains in a written response to a Parliamentary question from Baroness Northover in the House of Lords on March 13, 2009,

aims to increase the number of failed asylum seekers and foreign national prisoners who are returned to their country of origin and helps to tackle illegal immigration to the UK. It delivers projects in overseas countries

2. It is, in other words, a reciprocal arrangement.

3. See the British Council website for further information: <https://www.britishcouncil.org/partner/track-record/justice-for-all-programme>

which face challenges in accepting back and reintegrating their nationals; provides rehabilitation and reintegration assistance to individuals who return voluntarily; and helps improve the process of removal from the UK.

The fund began on 1 April 2008 and is a pooled fund, comprising the Foreign and Commonwealth Office (FCO), Department for International Development, Ministry of Justice and UK Borders Agency financial resources and expertise, managed by the FCO.

Projects are identified with overseas governments and/or by government departments which are party to the fund. At the end of 2008, we were financing or had in development 83 projects in a wide range of countries to which the UK is returning people. (Hansard, 2009)

Unlike the voluntary return schemes that offer financial incentives to individuals to return, the RRF paid and trained overseas state and local governments, agencies, and NGOs to make people stay. It was from this fund, the BBC reported in 2012, that the British government spent £3 million to “improve prisons in Jamaica and Nigeria in order to send inmates in UK jails back to their home countries” (BBC, 2012). The sections below discuss these two case studies in more detail.

III. NIGERIA

According to the FCO, there are currently between 800,000 and 3 million Nigerians resident in the United Kingdom (FCO, 2015). A former colony, Nigeria retains a number of economic, cultural, and legal ties to Britain. Part of the Commonwealth, it is one of the most populous and diverse states in Africa. It is also oil-rich. Governed by a powerful and wealthy elite, Nigeria continues to struggle with inter-ethnic violence, corruption, terrorism, and extensive poverty (Home Office, 2015b).

Nigerians make up one of the largest groups of foreign national prisoners in England and Wales. They also account for a considerable proportion of the population held in immigration detention. For many years, the British government has sought to return these individuals, to free up space and reduce the cost of running prisons and immigration removal centers. It has also attempted to reduce (irregular) migration from Nigeria. In such attempts, targeted at its former colonial subjects, the British government draws on the combined force and expertise of DFID, the FCO, and increasingly, the Ministry of Justice and the Home Office. In 2009, DFID summarized the situation:

HMG [Her Majesty's Government] migration policy in Nigeria has a number of strands including return of end of sentence Foreign National Prisoners (FNPs) and Failed Asylum Seekers, as well as building the capacity of the Nigerian authorities to manage migration effectively and to deter irregular migration. Another priority is the high numbers of Nigerian Foreign National Prisoners (FNPs) in UK jails—the second highest foreign national population. In line with the Prime Minister's policy the UK is seeking to agree a without-consent prisoner transfer agreement with Nigeria to provide a mechanism for transfer and reintegration of prisoners to serve out their sentences in Nigeria. (DFID, 2009, para. 129)⁴

Although DFID has no statutory duty to reduce migration, the report went on, it “recognises that its programmes may have spin off benefits in helping to address factors which may encourage individuals to migrate, such as poverty, conflict and bad governance” (DFID, 2009, para. 130).

Notwithstanding considerable investment, Britain's attempts to rid itself of serving prisoners and irregular migrants from its former colony, without disrupting economic ties with the current regime, have been only partially successful. It has had to overcome a number of legal, practical, and political barriers at home and in Nigeria. It has been more successful in some areas than others.

For many years, there were simply insufficient constitutional safeguards within the Nigerian criminal justice system to allow Britain to forcibly repatriate their citizens. More narrowly, the Nigerian 1963 Prisons Act and the Transfer of Convicted Offenders (Enactment and Enforcement) Act (2004) had to be amended, as they “provided that the offender could only be transferred with his or her consent and that such consent had to be

4. The following paragraph from the 2009 report notes: “In view of the high priority of HMG migration objectives in Nigeria, DFID has seconded a ‘Return and Reintegration Advisor’ to work with the High Commission on these issues. The advisor is paid for by UKBA [UK Border Agency] and their primary function is to advise on designing relevant programmes for the non-ODA cross-Whitehall Return and Reintegration Fund. The advisor works in a cross government team, using DFID technical and programming experience to support cross HMG objectives. Programme activity has focused on identifying capacity constraints in the Nigerian Prison Service (NPS) and considering ways in which HMG can support the NPS to carry out its functions more effectively and be better equipped to reintegrate returned FNPs. The team has also considered how to put in place preventative measures to stem irregular migration from Nigeria to the UK.” (DFID, 2009, para. 130). More broadly, in these joint funds, the Home Office takes the lead on managing migration and former foreign offenders.

verified by the administering country to ensure that it was given voluntarily” (Mujuzi, 2012, p. 385; see also Iroegbu & Oyedele, 2012). Finally, conditions in Nigerian prisons were so dire that Britain risked court interventions at home and from Strasbourg if they tried to return people forcibly (Mujuzi, 2012; Jefferson, 2005).

The first issue was resolved in September 2011 when, as part of a series of changes, the Federal Parliament amended large parts of Section IV of the 1999 Nigerian constitution, concerning Fundamental Rights, to reflect international human rights norms. Section 34(a) specified an entitlement “to respect for the dignity of human person, and accordingly no person shall be subjected to torture or to inhuman or degrading treatment,” and sections 35(1–2) protected the rights to personal liberty and to silence. Other amendments promised transparency for the grounds of arrest or detention (section 35(3)), prompt criminal charging (34(4–5)), and compensation for ill treatment (35(6)). Section 36(4–6) established the requirements of a “fair hearing” in “a reasonable time” in “a court of law” and, under normal circumstances, in public. People were to be presumed innocent until proven guilty.⁵

One month later, after extensive lobbying from the British government, the Nigerian Parliament also removed “the consent requirement [for prisoner transfers] from their national law” (Mujuzi, 2012, p. 386). From this point onward, the legal barriers to repatriation appeared to have been resolved. In the third and final area to do with prison conditions, however, matters have stalled.

Overwhelming evidence suggests that Nigerian prisons remain violent, overcrowded, filthy, and dangerous (Omale, 2014). Under these conditions not only are voluntary transfers highly unlikely, but mandatory ones remain vulnerable to legal challenge under human rights claims. Numerous reports by Amnesty International (2014), Human Rights Watch (2015), the British Home Office (2013), and U.S. government (2014) attest to widespread overcrowding, violence, and inadequate living standards. Constitutional protections have also been only minimally successful, as the vast majority (around three-quarters) of prisoners are held without sentence, some of them for many years at a time. According to the U.S. State Department,

5. For more details, see the full text of the Constitution of the Federal Republic of Nigeria, 1999: <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>

Prison and detention center conditions remained harsh and life threatening. Prisoners, a majority of whom had not been tried, were subject to extrajudicial execution, torture, gross overcrowding, food and water shortages, inadequate medical treatment, deliberate and incidental exposure to heat and sun, and infrastructure deficiencies that led to wholly inadequate sanitary conditions and could result in death. Reports indicated guards and prison officials extorted inmates or levied fees on them to pay for good, prison maintenance, and prisoner release. In some cases female inmates faced the threat of rape. Female prisoners pregnant at the time of incarceration gave birth to and raised their babies in prison. (U.S. State Department, 2014, p. 6)

In a bid to circumvent the legal constraints such matters placed on their ability to send prisoners back to Nigeria, the British government has invested in multiple criminal justice initiatives from human rights training for correctional officers and the police, to funding a whole new prison wing in Kirikiri prison in Lagos. If the Nigerians could not reform their criminal justice system, the British would do it for them. In what turned out to be a premature announcement,⁶ then chief Executive of the U.K. Border Agency Lin Homer explained the situation to Parliament in 2009: “We are in negotiations with Nigeria to help them establish better prison conditions . . . it is about helping them generate a structure that can cope. We are prepared to invest if that would enable us to send people home” (Travis, 2009; see also Oyedele, 2013).

In fact, the mandatory transfer agreement was not signed for another five years (FCO, 2014, 2015).⁷ So, too, it turned out, it did not apply to all Nigerians in British prisons. In contrast to the British High Commission in Abuja, which proclaimed that the PTA “will allow Nigerians who commit crimes in the United Kingdom, and Britons who commit crimes in Nigeria, to serve their sentences in their own country, where they can be properly prepared for release into the community in which they will live following their release” (British High Commission, Abuja, 2014), the Explanatory Memorandum to the Treaty was more precise. “The consent of the sentenced person [to transfer] is not required,” this document set out, “when that person is subject to an order for expulsion deportation or removal”

6. According to a 2011 article in *The Telegraph*, drawing on WikiLeaks cables, the 2009 plans for the new prison were derailed when the United Kingdom refused to drop corruption charges against a member of the ruling party (Blake, 2011).

7. It was signed on January 9, 2014, entering into force nine months later.

(Wright, 2014, p. 1). Only those under Immigration Act powers in Britain, in other words, are subject to mandatory repatriation to Nigeria.

Notwithstanding the expansive nature of the U.K. Borders Act 2007 rule for mandatory deportation, two years since the agreement was signed, it is unclear whether Nigeria has received a single transfer. Instead, local reports suggest, the new wing of Kirikiri prison is being used for Nigerian prisoners.⁸

It is not only in the sphere of criminal justice that repatriation has been difficult to arrange. In late 2015, the British and Nigerian press reported critical comments from the Nigerian High Commissioner about British expulsion policies in general. According to Olukunle Akindele Bamgbose, the acting High Commissioner to the United Kingdom, “the embassy was being asked to help remove people who were sick, had immigration appeals outstanding, had no ties to Nigeria, after living for many years in the UK and who in some cases were not even Nigerian” (cited in Grant & Wheeler, 2015).

Attempts to determine the reasons for the delay in transferring prisoners have been unsuccessful. Yet, interviews I conducted with civil servants in 2014 suggest that the international agreement was beset by problems from the beginning, as British delegations were met with suspicion and antagonism. Their role as former colonial masters was explicitly mentioned and critiqued. Some felt ridiculed. Their Nigerian counterparts, these civil servants allege, attended meetings irregularly, making it difficult to build personal ties. Meetings were cancelled. Different people were sent than were expected. There were also tensions within the British delegation. Those in the Home Office believed they were more motivated to pursue the agreement than their colleagues in the FCO. Different cultural practices were hard to reconcile. From the perspective of those familiar with the immigration detention system in Britain, the FCO was overly concerned with diplomacy. Their goals were not quite the same.

All told, the official rhetoric about British influence in Nigeria seems to have been distinct from the reality. Yet, the government remains resolute in its desire to expel, setting aside ongoing funds “to support prison reform in

8. Whereas colleagues in the Nigerian NGO, PRAWA (Prisoners Rehabilitation and Welfare Action) (personal correspondence) claim that nobody has been sent back, the security minister of Jamaica is cited referring to one man (Bunting, as cited in *The Gleaner*, 2015).

Nigeria and the return of prisoners from the UK to Nigeria” (Wright, 2014, p. 3). So, too, despite little evidence of the success of the Nigerian PTA or the training and reform programs, Britain announced in 2015 that it would fund a new prison in Jamaica under similar terms.

IV. JAMAICA

Britain has been trying to persuade the Jamaican government to sign a mandatory prison transfer agreement for nearly a decade. As they did in Nigeria, they have invested considerable sums through the RRF in local correctional practices, funding training programs in a series of Jamaican penal establishments. From 2010, they have also contributed financially to the NGO, the National Organisation for Deported Migrants (NODM) to help resettle deportees.

An official document from 2015 lists the achievements of their Rehabilitation and Reintegration Program (RRP) from 2008 to 2014. In it, the British High Commission in Kingston makes clear that migration control and punishment are interconnected. At a cost of £4.6 million over the six-year period, the RRP

financed a wide range of projects to assist Jamaican Nationals deported from the UK settle back into life in Jamaica and rehabilitate local ex-offenders through two primary outcomes;

1. The provision of adequate and appropriate support services to reintegrate and rehabilitate deportees and immigration offenders
2. Improve effective management of the prison population by the Department of Correctional Services.

(British High Commission, Kingston, 2015)

The brief handout is one of the few sources of information, other than the High Commission’s blog⁹ about British policies in Jamaica. It reveals considerable and detailed involvement. The U.K. High Commission assisted the Jamaican Department of Correctional Services (DCS) in a range of operational matters including “business planning, implementing management frameworks, conducting audits and completing prison inspections.” They also funded a series of prison programs, including “vocational skills

9. See for example, West (2013).

training, literacy programmes and sports initiatives,” while improving procedures “to handle incidents such as fire, security, suicide and self-harm.” Britain also paid to “improve the use and effectiveness” of noncustodial matters like community service orders and to increase the “capacity of the parole board to review and supervise cases” (British High Commission, Kingston, 2015).

The High Commission was equally busy in supporting deportees and their removal from the United Kingdom. British taxes “improved procedures to safely and securely receive and process returnees at both international airports” and to “transport [them] from the airport.” The High Commission paid for “emergency accommodation,” “help in finding family members,” and “assistance in clearing personal goods from customs.” As they did in prison, they funded “training in vocational skills including barbering, cosmetology and IT.” Finally, the list ends, with “Counselling and support.” (British High Commission, Kingston, 2015)

Until recently, such small-scale interventions were all that the United Kingdom had managed to achieve. The Jamaican government was adamantly opposed to a mandatory PTA. In 2014, their Prime Minister made clear that the responsibility for dealing with those who broke the law rested with the sovereign state where the crime occurred. Yet, just one year later, on 30 September 2015, during a visit to the island state, Prime Minister David Cameron announced a breakthrough. Eight years after the drafting of the original voluntary agreement, he had persuaded the Jamaican government to take back at least some of their citizens serving prison sentences in Britain without first requiring their consent. “More than 300 Jamaican prisoners serving time in British jails will be returned back to Jamaica to serve their sentence” after the agreement comes into effect in 2020, the press release broadcasted (Prime Minister’s Office, 2015).

As in Nigeria, the British government has agreed to build a new prison in Jamaica, providing “£25 million from the governments’ existing aid budget to help fund the construction of a new 1500 bed prison” (Prime Minister’s Office, 2015). This arrangement, the official statement noted, overcame “one of the sticking points in the negotiations which had been the conditions in existing prisons in Jamaica.”

On the same day the British government publicized the new PTA, Cameron addressed the Jamaican Parliament, unveiling £300 million in new financial commitments to the Caribbean, more than quadrupling Britain’s previous support and making the United Kingdom the largest

donor to the region (Cameron, 2015). “As well as seizing opportunities together,” Cameron urged,

we must both face up to big global challenges together as well. We face common security threats like drug-running, crime, gangs. Inevitably, the close links between the UK and Jamaica mean that criminal activity here also has reverberations in the UK—and vice versa. Our crime can affect you. . . . So I say let us do this together. (Cameron, 2015)

In case the ties between neoliberalism and punishment had escaped them, he went on to urge his Jamaican colleagues to: “Invest together. Grow together. Support development together. Tackle climate change together. If we do this now—as I passionately believe that we should—then we can keep our partnership strong now and for the next 100 years to come” (Cameron, 2015).

Two weeks after Cameron’s announcement of an agreement with Jamaica, local media reports emerged suggesting matters were not so clear-cut. Many Jamaicans were opposed to the PTA (*Jamaica Observer*, 2015). They were outraged about the refusal of the British government to pay slavery reparations. The Jamaican government was forced to respond. Peter Bunting, the Security Minister, announced in Parliament that,

Unfortunately, communications from the UK government, which has been carried in British and local media, may have left an impression in the public mind that Jamaica has signed a prisoner transfer agreement. This is not the case.

The fact is, we have agreed to commence a process which may or may not result in a prisoner transfer. We have brought these inaccuracies to the attention of the British high commission locally and trust that it will be corrected. (Mason, 2015)

All they had signed was a non-binding Memorandum of Understanding.

Bunting’s speech, which was reported in detail by Jamaican newspaper *The Gleaner*, crystallized the contested nature of these international agreements by revealing the paradoxical range of rhetoric that animates and constrains them (Myers, 2015). From human rights to economic pragmatism, Bunting offers a series of justifications—all of which minimized the pain of deportation and denied the scale of British intervention in Jamaican sovereignty.

Much of the initial public outcry over the PTA was caused by Cameron’s refusal to consider paying slavery reparations. Bunting downplayed

that connection, by pointing out that Parliament “has joined the call for reparatory justice.” The Prisoner Transfer Agreement, he said, “had been on the table for about a decade, long before the recent round of reparations discussions,” and should be considered separately (*The Gleaner*, 2015).

The problem was not a legacy of slavery, he urged, but a question of human rights. “Building a modern, maximum-security prison for this administration,” Bunting asserted, “is first and foremost an issue of Human Rights for our inmates right here in Jamaica! It is about securing our global reputation by establishing correctional facilities that meet international conventions and standards.” The current prisons, Tower Street Adult Correctional Centre and St. Catherine Adult Correctional Centre, built under British rule, “are literally falling apart. They are outdated and dilapidated with limited scope for rehabilitation, severely overcrowded, substandard and inhumane.” Bunting said that Jamaicans who castigated Britain for refusing to pay reparations but did not support the PTA were hypocritical: “We have traditionally shown little public sympathy for the incarcerated, with many of us believing that offenders should be punished and made to endure harsh conditions, arguably worse than what obtained on the plantations during slavery” (*The Gleaner*, 2015).

Having made the case for the PTA and the new prison in terms of human rights, Bunting turned to the language of economic and political pragmatism for those who remained unconvinced. Negotiations had been long and difficult. It was time to resolve the matter. Only those citizens “who would have been subject to deportation at the end of their sentences will be eligible for transfer to Jamaica.” It was not as though these people would not be sent back. “There are hundreds of Jamaicans deported every year to Jamaica,” Bunting reminded his audience, “having served prison sentences for drug related or violent offences in the USA or the UK, without the benefit of a structured reintegration process. Accelerating the return of a small percentage of these Jamaicans through a structured rehabilitation and reintegration process is a reasonable trade-off for a dramatic improvement in our prison conditions” (*The Gleaner*, 2015).

Finally, this canny politician sought to reassure the public about the scale of operations. Not only does the PTA allow no more than 300 spaces in the new prison for returnees, but “in reality,” he noted, “the numbers are likely to be much less.” In Nigeria, after all, “which is in its second year,” the United Kingdom “has only transferred one prisoner so far with another 16 in process. Nigeria has a higher number of prisoners in UK prisons than

Jamaica” (*The Gleaner*, 2015). The mandatory PTA, Bunting concluded, is nothing to worry about.

V. HUMANITARIANISM IN THE SHADOW OF COLONIALISM: RETHINKING PUNISHMENT AND SOVEREIGNTY

As this article has demonstrated, Britain plays an active role in the criminal justice systems of Nigeria and Jamaica. At least in Jamaica, through NODM, the British government is also keenly engaged in funding service provision for those whom they have expelled. In both places the legislative and policy framework conjoins migration control and criminal justice through humanitarian goals and rhetoric.

For some, these projects are nothing new. “I did not witness historical colonialism or new colonialism in Nigeria,” Viviane Saleh-Hanna asserted in her study of Nigerian prisons:

I witnessed expansion and abstraction in who maintains the colonial status quo. . . . They came dressed in Human Rights caps looking to reform and strengthen European criminal justice in Africa through foreign aid. They came dressed in police uniforms reinforcing a status quo that keeps poor people in prison. (Saleh-Hanna, 2008b, p. 21).

In the prisons that the new wings and institutions would replace, connections to the past take other forms. As Nigerian criminologists Uche and colleagues (2015, p. 165) note dryly, the colonial-built prisons, where most people still reside, “were not designed for reformation or rehabilitation[,] rather prisons were intended to be punitive.” “Native” criminals during the colonial era were the subjects of intense control (Saleh-Hanna, 2008a).

In these arguments the shadows cast by colonialism on contemporary policy interventions can be detected. Colonialism reminds us why the British are in these places, as well as why their policies are not always greeted enthusiastically by those whom they claim (and may even wish) to assist. The same history reminds us why Nigerians and Jamaicans find themselves in prisons and detention centers throughout the United Kingdom, as they make up two of the biggest groups of migrants in the country (Hall, 2001).

The international donor community has been pursuing “justice” as one of its key targets for at least a decade (Piron, 2005; Saleh-Hanna, 2008a;

Agier, 2011). In the funding models of these agencies, penal power becomes intricately linked to humanitarianism, one of several outputs and measures of reform. Within a postcolonial locale like Lagos or Kingston, the sites and personnel being reorganized and redeveloped, as well as the goal of reform itself, are interdependent. As the speech by the Jamaican Security Minister made clear, human rights rhetoric and practices can justify the exercise of coercive state powers, even if their supporters wish it were otherwise (Bunting, 2015; see also Barker, *in press*; Aas & Gundhus, 2015; Fassin, 2007, 2011; Walters, 2011). The ease with which matters of security become recast or reimagined as questions of humanitarianism (and vice versa) suggests a close conceptual tie between the two. Penal humanitarianism, in other words, allows the expansion of sovereign power over familiar, racialized subjects and places, reasserting control, or at the very least, reimagining it, in places where Britain once ruled.

CONCLUSION

As states around the world restrict the means of legal entry to their territory, they have also shored up mechanisms for enforcing exit and preventing return. These powers do not merely exist on a continuum but often directly intersect. In their offshore practices, states rely on, reinforce, and link ideas of security, risk, and punishment, with humanitarianism, belonging, and development.

Such practices have a direct impact on the practices and impacts of punishment. A penal sentence is no longer limited—if it ever was—to the jurisdiction where it is passed. Although this article has focused on British policies in former colonies, other examples could be cited: from Norway, where, since 2015, prisoners may serve out their sentences in a Dutch prison; to Spain, whose criminal code requires convicted foreign nationals to spend only a fraction of their sentence in the host country. In them all, punishment meted out “at home” influences places and people “abroad.” Penal expertise and practice are not contained within a nation state, but rather practitioners, policy makers, and other experts travel the globe, implementing “reforms” originally designed in one place in another.

On the one hand, these initiatives suggest that, in detaching from the nation state and stepping outside the boundaries of the criminal justice system, penal power has become more expansive and fluid. In this expansion

penal power is often greatly aided by the elision of race, citizenship, and belonging, qualities made plain in the postcolonial setting of these programs. On the other hand, however, this article has highlighted numerous obstacles Britain faces in expelling those without the right to remain and securing its borders. In these cases, penal humanitarianism appears to rest on a more vulnerable form of sovereign power (Bosworth, 2008). Forcing people to go is difficult; persuading other countries to take them, expensive.

The extension of penal power does not occur without resistance (Campesi, 2015). Not only is it difficult to remove unwanted offenders, who may have considerable ties in the United Kingdom, but as studies of deportees have shown, their home countries may be reluctant to take them back as they are often stigmatized and considered dangerous and disreputable (Golash-Boza, 2015; Brotherton & Barrios, 2011; Bowling, 2010; Pennington and Balaram, 2013). The mandatory transfer agreement with Nigeria, for now at least, is far more impressively coercive on paper than it is in practice. So, too, the passionate debate in Jamaica about British plans to fund a new prison suggests that the PTA will take some time to implement. Pastry-making classes for incarcerated young women or training in IT seem far removed from the heated debate over migration and belonging in the United Kingdom.

How to resolve these contradictions is not straightforward. Like other policies pertaining to border control and criminal justice, penal humanitarianism may well promise more than it can deliver. In its bid to influence policy abroad, Britain must balance its desires for migration control with its need to trade and influence. Penal power, in these instances, abuts other spheres of control. Outside its territory, Britain is not sovereign. At the same time, for those deported, or awaiting expulsion in immigration removal centers, the long reach of the British state can feel overwhelming (Bosworth, 2014).

Without overlooking the possibility that foreign-funded reforms will, sometimes, be welcome and even necessary (Jefferson & Gaborit, 2015), the sheer invisibility of these overseas programs and their ensuing limited accountability raise questions. The claim is not that the actions of DFID or other government departments are entirely beyond scrutiny or follow no ethical guidelines; various publications explain the limits they should observe (see, for example, DFID, 2010; May, 2015). Rather, it is that in the variety of programs, and the range of stakeholders and partner organizations, the British government is creating a form of governance that is

both novel and familiar in which migration, punishment, and development meld, and humanitarianism reactivates colonial pathways to identify, coerce, and exclude (Agier, 2011). It is time to include such matters more squarely in our analysis of punishment.

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