



NOHA Master's Program - University of Groningen

Stop the Border: Exploring the criminalisation of people accused of driving 'small boats' in the Hostile Environment

Master's Thesis

This thesis is submitted for obtaining the Master's Degree in International Humanitarian Action. By submitting the thesis, the author certifies that the text is from their hand, does not include the work of someone else unless clearly indicated, and that the thesis has been produced in accordance with proper academic practices.

Moira Grant McLoughlin
Dr. Senka Neuman-Stanivukovic
Submitted: 1 July 2023

“He admitted to UK authorities that he had taken a turn steering the boat because he “didn’t want to die at sea” and was sentenced to two years and two months in prison in January this year at Canterbury crown court.”

From the case of Fouad Kakaie.

After spending 17 months in a UK prison, an appeal court ruled that the law had been misinterpreted in his case and his conviction was overturned.

This led to the overturning of further convictions against other people who had also been wrongfully charged upon entering the UK.

The UK state response to this was to alter their language in policy and create a new crime to continue criminalising people for their mobility.

(quote from Grant, 2021)

Acknowledgements

Thank you to my family and friends for the endless support during this process. I am forever grateful for all of the incredible humans in my life.

To my NOHA classmates, with a very special shout-out to the RUG class - I couldn't have asked for a better home university class, very grateful for you.

To borderline-europe, particularly the criminalisation team for bringing me on to write alongside you and guiding my research starting point. To Vicky for the endless support, advice, & just checking in. To everyone who took the time and energy to participate in my research in various ways. And to my supervisor Senka for showing interest in my work and ideas from before there were any words on paper.

Finally, to all of the individuals, networks, and organisations involved in efforts to 'Stop the Borders' in any capacity or role, I find hope knowing all of these forms of solidarity that exist.

Preface

"That doesn't usually happen". These words were spoken by my bus driver after we crossed the French and then UK border from Calais to Folkestone and boarded the bus again. He was referring to the fact that we had all successfully returned to the bus after the two border control points.

While I couldn't immediately travel to the UK to work with my Canadian passport, what I did have were safe, legal, and accessible routes to apply for a visa that allowed me to do so. This was not lost on me as I began my research process in the Middle East, planning my travel to the UK to conduct my research on the criminalisation of people making journeys without the same access to safe and legal routes to travel, much less to claim asylum.

These blatant double standards are not only outrageous, but they are also dangerous and deadly. While I crossed this border safely and securely, others risked their lives trying to reach the same safety and security. These experiences show a key point of positionality in approaching this thesis, namely that I experience a bordered world from a place of privilege.

This sticks with me as I echo calls for an end to systems of harm such as criminal systems of injustice, violent borders, and humanitarian responses focused on control. Rejecting these shouldn't be a radical call but rather a simple and clear one.

Table of Contents

Acknowledgements	3
Preface	3
Table of Contents	4
List of Figures	6
Abbreviations	7
Abstract	8
'STOP THE BOATS'?	8
Boat Migration to the UK	10
International Cooperation: A Race to the Bottom	12
The Criminalisation of Facilitation	13
Facilitation as Solidarity	15
Scapegoat, Smuggler, Solidarity?	16
Conclusion	20
The Criminalisation of Boat Drivers	18
THE HOSTILE ENVIRONMENT	21
From the British Empire to Brexit	22
Policies and Legal Frameworks	22
Immigration Act of 1971	23
The Kakaei Appeal	23
The Nationality and Borders Act (NABA)	23
Illegal Migration Bill (IMB)	25
Policies of hostility	25
Everyday Bordering	26
A Hostile Border	26
Narratives of Hostility	28
Conclusion	29
A STRUCTURE OF VIOLENCE	30
Structural Violence	31
Borders	31
Dominant Discourses	32
Crimmigration	35

Production of Illegality	37
Forms of Criminalisation	37
The Smuggler	38
The Criminalisation of Boat Driving in the Hostile Environment	40
Theoretical Framework	41
Conclusion	43
METHODOLOGY	44
Data Collection	46
Limitations	48
Ethical Considerations	49
Positionality	49
THE CRIMINALISATION OF (UN)SAFE PASSAGE	50
CRIMINAL PROCESS	51
Arrested and Charged	52
Charges	53
Evidence	53
Bail	54
Sentences	54
Sentencing Remarks	54
Justification	55
Age Disputes in the Criminal Justice System	56
Date of Birth	58
Real Doubt	58
Visibility	61
Looking Forward	62
Conclusion	63
FIGHT BORDERS, NOT SMUGGLERS	64
Constructing a Scapegoat	64
Law as Political	65
Identifying a culprit	66
Risk and Blame	69
Seeing like the State	70
(In)Visibility	70

Deterrence	71
FREE THE CAPTAINS	75
Recommendations	75
CONCLUSION	76
REFERENCES	77
Cases	77
Work Cited	77
APPENDIX	93
1. RUG Ethical Clearance	93
2. Sample Participant Information and Consent Forms	95
3. Immigration Act 1971 – Section 24 and 25	99

List of Figures

1. Stop the Boats (Sunak, 2023a)
2. Defer, Enforce, Reform (Sunak, 2023a)

Abbreviations

Article 31: Article 31 of the Refugees Convention

CJS: Criminal Justice System

CPS: Crown Prosecution Service

DOB: Date of Birth

FOI: Freedom of Information Request

IMB: Illegal Migration Bill

NABA: Nationality and Borders Act

Section 24: Immigration Act 1971, Crime of Arrival

Section 25: Immigration Act 1971, Crime of Facilitation

STOP THE BORDER: EXPLORING THE CRIMINALISATION OF PEOPLE ACCUSED OF DRIVING ‘SMALL BOATS’ IN THE HOSTILE ENVIRONMENT

Abstract

The criminalisation of boat drivers has emerged across European contexts as part of a wider project to block certain people’s mobility. While people are increasingly being convicted for boat driving, this occurrence often continues to be overlooked within wider discussions of the criminalisation of facilitation and of solidarity. This research has sought to understand how this criminalisation is occurring in the ‘Hostile Environment’ of the UK. It focusses on the impact of the introduction of the ‘crime’ of arrival, and thereby of the facilitation of this arrival, through the Nationality and Borders Act. Methodologies employed include courtroom ethnography and courtwatching. Research findings show that despite initially being charged for facilitation, people are often actually being convicted under the lesser ‘crime’ of arrival. Concerningly, people being charged in these cases include young people with open age disputes. Furthermore, while this criminalisation is being justified by the state as necessary for its (unproven) deterrent impact and as a method to ‘fight smuggling’, it remains largely hidden and not spoken about in dominant discourses. This thesis aims to shift the focus from ‘stop the boats’ to ‘stop the borders’, with a focus on the need to free the Captains.

Keywords

Criminalisation, Facilitation, Smuggling, Migration, Hostile Environment

CHAPTER 1

‘STOP THE BOATS’?

“Stop the Boats” was one of UK Prime Minister Rishi Sunak’s five promises for 2023. With this, he pledged to stop boat migration in the Channel (see Figure 1). By framing his promise in a way that presents the issue as the boats, Sunak plays to the idea of migration as a problem that must be stopped. This obscures a reality where people seeking protection are being denied safe passage and forced to turn to increasingly precarious routes across border zones. It's not the first time this promise to ‘stop the boats’ has been made. This same phrase was used verbatim by former Australian Prime Minister Tony Abbott in 2013 (Turnball, 2023). Australia’s immigration response focused on deterrence and blocking asylum continues to be a warning for what not to do from many as the nation has received heavy criticism for its cruel and inhumane approach to migration (see Hodge, 2015; Missbach, 2015). Despite this, the UK appears to be

mirroring this approach, from the phrasing to practices such as proposing to offshore people while their asylum claims are adjudicated on and introducing policies targeted at deterrence.

The UK approach to immigration policy has become known as the ‘Hostile Environment’ approach. This approach itself is said to aim to deter people from coming to the UK. One facet of this approach has been the increasing convergence of immigration and criminal practices to create a “cimmigration control system” (Bowling & Westenera, 2020). Within this crimmigration context, there is an increasing criminalisation of migration as criminal law is used to extend immigration enforcement including through historically criminal practices such as detention and the introduction of novel ‘immigration crimes’ (Aliverti, 2012b). As borders serve to mark some people crossing them as illegal, there is an increased production of illegality for certain groups regarded by states as *undesirable* (De Genova & Roy, 2020).



Figure 1: Stop the Boats

Criminalisation has taken various forms including the criminalisation of facilitation. While the criminalisation of facilitation is often justified by states as necessary to target and stop organised criminal gangs and the figure of ‘the people smuggler’, in practice it can often end up being used against people seeking protection themselves. One such group are people who pilot, steer, or drive boats across sea borders, namely the Captains. Ricard-Guay (2018) explored the treatment of people crossing the Mediterranean who enter this role of boat driver, arguing that this targeting of individuals through criminalisation neither addresses any issues related to migration nor smuggling. The criminalisation does serve another purpose though for the states look for someone to hold responsible for border violence and harm, including for deaths and disappearances during sea crossings, and as a further mode of deterrence and blocking of movement. Criminalising boat drivers offers a target for states to use as a scapegoat for the violence of their borders.

In the UK, the criminalisation of facilitation remains largely hidden and unknown in practice due to various factors. This research aims to uncover this process, exploring how the criminalisation of facilitation is occurring in the UK context focussing on this criminalisation of boat drivers. It aims to shift the focus from ‘stop the boats’ to ‘stop the borders’, with a focus on the need to free the captains. This research will be situated within the hostile environment in the UK, looking at how the illegalisation of people seeking asylum is occurring as a form of this hostility. Firstly, it is important to understand the context of this research. This first chapter will cover an overview of the history of boat migration to the UK, contesting it as a novel phenomenon. It will then examine international cooperation as a ‘race to the bottom’ looking to understand how nations are mirroring one another’s practices of securitisation and ignoring their international obligations. This chapter will continue by exploring the criminalisation of facilitation, including how facilitation can be conceptualised as a form of solidarity, before focussing on this criminalisation of boat driving. Finally, this research will be introduced and situated within these discussions. This chapter will conclude with an overview of this thesis.

Boat Migration to the UK

Despite the UK Home Office’s claims that the nation’s “safe and legal routes are some of the most generous anywhere” (n.p. Cumiskey, 2023), in reality these routes exist for very few people attempting to reach the UK (Parker et al, 2022). As such, many people trying to enter the UK have been forced to turn to increasingly precarious journeys. Since 2018, there has been an uptick of people arriving in the UK in small boats (Maggs, 2019; Parker et al, 2022; Jacobs 2020). This came as border controls have intensified along previously used routes such as the Eurotunnel (Parker et al, 2022). While these small boat crossings to the UK have been presented as a novel threat (Maggs, 2019), a history of arrival via this sea border does exist. This includes a day in the summer of 1914 when around 16,000 people landed in the Folkestone Harbour from Belgium seeking safety in the UK (Kemp, 2020). Thus, despite it not being a common route in the years leading up to 2018, it does have historical precedent.

DETER	ENFORCE	REFORM
INTERNATIONAL DIPLOMACY	RWANDA PARTNERSHIP	ILLEGAL MIGRATION BILL
UPSTREAM DETERRENCE CAMPAIGN	ILLEGAL WORKING RAIDS	BRINGING DOWN THE BACKLOG
PEOPLE SMUGGLING RAIDS	DETAIN & REMOVE POWERS	LEGAL CHALLENGES FROM THIRD COUNTRY
PEOPLE SMUGGLING CONVICTIONS	RETURNS DEALS	END LAST-MINUTE CLAIMS
REDUCING HOTEL USE	RETURNING PEOPLE WITH NO RIGHT	SAFE AND LEGAL ROUTES

Figure 2: Deter, Enforce, Reform

Responses to these small boat crossings have been increasingly hostile including in the media (Jacobs, 2020; Parker et al 2022) and in policies, as outlined in Figure 2, which was shared by Sunak in his efforts to ‘stop the boats’. Even though nearly all people arriving in the UK in small boats have made asylum claims (Home Office 2023b), they have overwhelmingly been labelled as ‘illegal’ by British politicians (Maggs 2019). Discussions of illegality have been reflected in these discussions of ‘bogus’ asylum seekers as well as claims of people ‘skipping the queue’ (Sunak, 2023a). This ‘illegality’ in turn is used to justify their treatment on arrival. Hostile reception can include practices of criminalisation and detention (Dadusc, 2017; Bosworth &

Guild 2008). These hostile responses reflect a clear logic of deterrence. While Sunak (2023a) has claimed that ‘deterrence works’, the Home Office’s own research shows otherwise (Wright, 2022).

Policy responses have included the introduction of the Nationality and Borders Act (NABA) as well as the Illegal Migration Bill (IMB) which is currently¹ a proposed act, both of which seek to block unwanted asylum-seeking. The NABA introduced a two-tier asylum system, allowing certain groups to claim asylum and blocking others from accessing this right based on their mode of arrival into the UK². It has further introduced the ‘crime’ of arrival, thereby producing the illegality of the movement of entire groups of people. This includes those arriving

¹ Currently refers to the time this research was being conducted; this Bill has since passed into law
² This has recently been temporary suspended due to issues with its workability in practices (Scottish Refugee Council, 2023)

in the UK in small boats, and further feeds the idea of the ‘criminal’ asylum seeker. While touted as an effort to ‘fix the broken asylum system’ (Home Office, 2021b), the NABA has been criticised for violating the UK’s international obligations as well as threatening to worsen the current ‘culture of hostility’ in the UK (4 Hynes, 2022). This is particularly clear when referring to Article 31 of the Refugee Convention (referred to hereafter as ‘Article 31’) which outlines that no one should be penalised for their mode of entry into a place they are seeking asylum.

What has notably been absent from the UK approach to small boat arrivals has been any focus on protection or international obligations. Despite an asylum backlog that has seen a more than four time increase in people waiting for decisions on their asylum decisions over the past six years (Sasse et al, 2023), Sunak has placed his enter focus on *stopping the boats*.

International Cooperation: A Race to the Bottom

The international Refugee system is based on principles of international protection for people who have been forced to leave their own country. Yet, even when states violate their international legal obligations, they are rarely held responsible (Dadusc & Mudu 2022). While there have been underwhelming levels of cooperation in upholding a global system of protection, a form of cooperation that has emerged internationally has been the use of increasingly violent and militarised responses to migration including through bordering practices, policies, rhetoric, and asylum regimes. This *race to the bottom* reflects a disregard for the international laws of refugee protection. As states continuously abuse or ignore their international obligations as signatories of international conventions, these conventions themselves lose power. Furthermore, a mirroring effect is created as states validate one another’s migration responses through their own, such as through the illegalisation of entry (Aliverti 2012b) and cooperate in their targeting of migration including through biometric data sharing (Belloni, 2016) and transnational efforts to block smuggling (see van Liempt, 2022; Bruwer, 2022; Carling et al, 2015).

As previously noted, Sunak’s call to ‘stop the boats’ directly echoes the Australian pledge to do the same (Hodge 2014; Missbach, 2015; Carling et al 2015). In achieving this promise, the Australian government launched ‘Operation Sovereign Borders’ employing practices of offshoring detention to now infamous immigration centres in Nauru and Manus, criminalising people seeking asylum, and introducing information blackouts on their operations at sea (Hodge, 2014; Moreno-Lax et al, 2019). These practices were again justified by this framing of migration

as a threat and asylum seekers themselves as criminals or even an enemy to be fought (Hodge, 2014). The Australian response to migration can offer a warning as these efforts to deter failed both in their human rights record and additionally to stop migration (Tubakovic et al, 2023). Despite this, it has too often been taken not as such, but rather as an example for migration deterrence by other states.

Calls for better cooperation to support migrants have often focused on calls for improved 'burden' sharing between EU countries, especially wealthier ones (see Cusumano & Pattison, 2018). While international cooperation is needed, this framing of migrants as a burden needs to be further problematised. Whether people seeking asylum in Europe have been framed as either a humanitarian emergency or a security threat, both discourses problematise migration as something to be solved (Dadusc, 2017). These discourses of humanitarianism and militarisation further overlap in a logic of care and control, as humanitarian responses of care often serve to justify practices promoting and manufacturing dependency and control (Dadusc & Mudu, 2022).

The UK further continues its colonial relationships through care from afar as it focusses its humanitarian efforts outside of its borders while focusing on racialised securitisation at home (Ibrahim & Howarth 2018). Borders themselves serve to maintain this distance. This distancing is furthered through the processes of border externalisation including practices of offshore detention and extensions of border controls such as the UK's juxtaposed controls in France. This is especially relevant as to claim asylum in the UK, for many people their only option is to do so on UK soil. This results in a sort of Catch-22 as people seeking to come cannot access any safe and legal routes to reach the UK to claim their right to seek protection there, with arrival without authorisation, including to claim asylum, having been made a crime. This has opened space for reliance on forms of facilitation for movement (see Mengiste, 2022), which in turn has been increasingly criminalised.

The Criminalisation of Facilitation

The criminalisation of facilitation can be situated alongside crimmigration discourses as it often involves the meeting of criminal and immigration policies to mark people who facilitate movement, such as a smuggler, as a criminal figure (Bruwer, 2022). It is important to note that these crimes of facilitation can be identified first and foremost as crimes against the state (Garver-Affeldt, 2023). While people smugglers are generally the target of and justification for

this criminalisation, in practice it has been applied to many other acts that have been argued to facilitate border crossing or support someone to stay in a place in relation to their crossing outside state border controls. For instance, in the UK context British MP Lee Anderson has suggested that organisations supporting migrants in Calais are “just as bad as people smugglers” referring to them as enablers for migration across the Channel (Turner, 2023). There have been further references to the role of ‘lefty lawyers’ as further enablers through their actions supporting people being criminalised for facilitation (Turner, 2023)

Control over mobility is commonly understood to be the role of the state, with it often being presented as not only a state’s responsibility but as a state’s right. In the UK, this has been demonstrated as Sunak argues that “[t]his country – and your government – should decide who comes here, not criminal gangs” (Sunak, 2023b). This is all part of the discourse that supports the criminalisation of those who evade or circumvent state controls, regardless of their situation or reasons. The NABA was passed even though the majority of people arriving via the routes it targets have been found to ultimately be granted refugee status, additionally further refuting this narrative of ‘bogus’ claims that the UK needs to be protected against. (Refugee Council, 2023).

When people arrive outside of state border controls, they resist this state control and thus challenge state power. In response, the state justifies their criminalisation, including through anti-smuggling discourses. Stopping smugglers is often presented as a solution to the ‘crisis’ of migration (van Liempt, 2022) while the people smuggler is portrayed as a public enemy (Gazzotti, 2022). By targeting smugglers, states additionally target the ability of people to traverse borders as many rely on smuggling services to move. This can again be tied back into these discourses of care and control as the militarisation of borders is presented as essential to protect those in vulnerable positions along them. The resulting criminalisation of facilitation is justified as being a deterrent for migration, although like in other cases of deterrence noted in this chapter, research shows a lack of evidence that these efforts are actually blocking smuggling practices (Raineri, 2022; Baird & van Liempt, 2016). While anti-smuggling legislation does not appear to prevent smuggling, it has been shown to further produce the precarity it claims to address (Sharma, 2022). As smuggling spaces are limited and criminalised, the dangers to people engaging with smuggling services increase as routes being used are increasingly hidden and risky (Sanchez, 2017; Spener, 2008; UNODC, 2022; Gazzotti, 2022). This comes as while

smuggling is ferociously targeting, there is an ongoing failure to address the lack of safe passage available for people who are engaging with smugglers most frequently (see Sharma, 2022).

Facilitation as Solidarity

While the criminalisation of facilitation is often justified through its targeting of smugglers, in practice it is often used against people acting in solidarity with migrants. While a ‘humanitarian clause’ was introduced to protect those whose actions are motivated by humanitarian intentions from criminalisation, its definition remains broad and its application optional (Carling et al 2015). This criminalisation has served to target unwanted forms of assistance, including those that support people who are resisting state forms of control. This can include acts that reject the classic hierarchical charity-based approach to humanitarian assistance in favour of mutual support and equal sharing, such as acts of ‘autonomous solidarity’ (Dadusc & Mudu, 2022). The broad definitions of ‘facilitation’ and ‘humanitarian’ provide many openings for different acts to fall into this scope and thus under the potential criminalisation of the state. It remains unclear what is ‘humanitarian’ and acceptable or ‘facilitation’ and criminal (see Van Liempt 2022).

This criminalisation of acts of solidarity has emerged as a concerning trend in migration management and has been receiving increasing attention. What is often overlooked in these discussions is the potentially life-saving actions of the people crossing borders themselves, including as boat drivers. Cases and trials fail to receive the same media coverage or public attention as European solidarity actors (Caprioglio et al 2022; Arci Porco Rosso et al, 2021). This is despite thousands being arrested for facilitation in Mediterranean countries of arrivals such as Italy and Greece over the past decade (Caprioglio et al 2022). Gendrot & Dadusc (2023) note that differentiating between solidarity with and solidarity of people on the move, can “perpetuate power structures and white saviourism, where white people’s lives and freedom are placed above, and valued more” (n.p.). These actions can furthermore challenge persisting power dynamics in humanitarian thinking which overwhelmingly continue to rely on some form of benefactor/beneficiary relationship (Pincock et al, 2020). The acts of solidarity of people migrating themselves counter this dynamic of control as they themselves resist border controls and state power. This can take various forms including through the everyday actions of people migrating together as they offer ongoing autonomous solidarity and mutual support. The

participation of people in facilitating their own movement across borders further complicates dominant discourses of smuggling (Mengiste, 2018).

Scapegoat, Smuggler, Solidarity?

Within the wider criminalisation of facilitation, one group who has increasingly been a target is the people who drive the boat while crossing sea borders outside of state controls, also known as boat drivers, pilots, or captains. Ricard-Guay (2018) has identified this as under-researched in their work on the criminalisation of boat drivers in the Mediterranean. This is despite over 2500 people having been arrested for related charges in Europe in the last decade including in Italy, Greece, Spain, the Canary Islands, and the UK (Arci Porco Rosso et al 2021).

“Find me a culprit!”

The focus on finding a driver on a boat can become the focus of the reception for small boats, such as was exemplified in a case where coast guards were said to have issued instructions to ‘go and find me a culprit!’ (Arci Porco Rosso et al, 2021). Boat drivers are portrayed as villainous figures responsible for people arriving as well as for those dying or facing disaster at sea (Arci Porco Rosso et al 2021). People have been identified in this role due to their proximity to a boat’s motor (Baffi, 2022), through testimony, technology, or even racial profiling if someone is from a different ethnic group than other passengers (Arci Porco Rossi et al 2021). These strategies have a high risk of misidentification. In practice, efforts to identify a boat driver can additionally increase the precarity of sea crossings. This can include people moving away from the motor while at sea when approached by boats to not be identified by proximity. In one case a satellite phone was thrown overboard to avoid it being used to identify someone as a captain resulting in them losing communication which ultimately contributed to the deaths of over 360 people on that boat (Arci Porco Rosso et al 2021).

This focus on identifying someone to blame has a further clear adverse impact on justice as it has resulted in calls for high sentences, people entering criminal systems without sufficient understanding of the charges they face and being given duty lawyers with insufficient understanding of the context or laws of facilitation, denied translation in a preferred language, and pushed to sign plea deals they may not understand (Arci Porco Rosso et al 2021). It is important to acknowledge that for people accused of this ‘crime’, the impact of these sentences

Stop the Border

can extend beyond their detention including with the potential negation of their ability to claim asylum, access essential services for asylum seekers after release, and through an increased risk for deportation. (Arci Porco Rosso et al 2021).

Specific protection concerns include the treatment of children, as reports have emerged of minors being criminalised in this role. This includes the case of a 16-year-old who was found upon arrival in Italy and was brought to prison, despite informing them that he was a minor (BBCAfrica 2022). When in adult prison, he met others like him and younger. Ferrara & Gennaro (2022) have further reported that it is unknown how many minors have been arrested, tried, and convicted in Italy in the adult system.

State of necessity

Another important consideration is how people end up in this position driving the boat (Ricard-Guay, 2018). Arci Porco Rosso et al (2021) outline a spectrum of motivations for people entering this role including those forced through threats, due to the necessity after encountering danger at sea, in exchange for some form of remuneration as part of their own journey, and those whose involvement is primarily economically motivated and not part of their own onward journey. Ricard-Guay (2018) notes the importance of this as factors here could impact or negate ultimate criminality liability, particularly when this act comes from a state of necessity. This is particularly relevant as reports continue of people ending up in this role under duress (Ricard-Guay, 2018). Furthermore, there is the potential for this act to constitute a form of forced labour as people have cited being forced to pilot the boats by circumstances such as the threat of violence or financial debt (Ricard-Guay, 2018). This complicates the role of choice and agency in entering this role thus opening the situation to trafficking concerns (Arci Porco Rosso et al, 2021; Ricard-Guay, 2018).

Scapegoat

In sentencing in these cases, it is clear the boat driver serves as a potential scapegoat for the deaths resulting from a crossing. This though overlooks the very conditions that led to these deaths in the first place, namely securitised borders and mobility restrictions. In practice, cases of this have included a case in Greece of ‘the Samos 2’ where a man was charged with ‘endangering the lives’ of the passengers on the boat he drove for at least a portion of the journey

as well as ‘causing the death of one’ as a young boy died on the crossing. He faced a combined potential sentence of 230 years plus life in prison.³ On this young boy’s grave it reads: “It wasn’t the sea, it wasn’t the wind, it was the policies and fear” (Free the Samos Two, n.d.).

It is important to understand the criminalisation of boat drivers as an active choice, not an inevitability (Arci Porco Rosso et al 2021). It is a clear effort on the part of the state to find someone to hold responsible for the violence of borders. This criminalisation often further overlooks the ways people criminalised as boat drivers often in fact also experienced harm at the hands of those who organised journeys in the Mediterranean context (Arci Porto Rosso & borderline-europe, 2023). It further complicates the distinction of who is a smuggler uncovering reality as more complex than the state likes to present it. The process shines a light on the absurdity of the criminalisation of facilitation as laws intended to target criminal organisations profiting off exploitative and violent practices are used to charge and sentence people seeking protection who end up in facilitation role during their journeys, for instance as a boat driver (Arci Porco Rosso et al 2021). This has been acknowledged by legal experts in cases, such as a judge in the recent appeal trial for the Paros 3 which saw their sentence reduced by hundreds of years state “it is extremely worrying that I have three innocent people on trial and everyone is happy because they only have to sit in prison for ‘a bit’” (borderline-europe, 2023).

In the UK

In approaching this topic in the UK, this criminalisation has occurred, although an Appeal found the law to have been misapplied resulting in the overturning of tens of decisions. Following this, the NABA introduced new crimes targeting boat drivers, which is where this research falls.

The Criminalisation of Boat Drivers

There is an increasing use of criminalisation in responding to migration, including the criminalisation of facilitation. The criminalisation of boat drivers is one form that is currently under-researched. As a smuggling discourse is used to shape and justify the illegality of this

³ In this case, the father of this child was also charged with ‘endangering’ his son’s life after his death. Both men are now free, Hasan (the driver) was given 1 year and 5 months on probation while N. (the father) was acquitted. Before this they were forced to wait for their trial with N. being forced to stand trial for death of his own son: <https://freethesamostwo.com/court-case/>

supposed crime (Sanchez, 2015), a lack of clarity in the figure and role of the smuggler (Achilli, 2015) leaves the door open for who can be criminalised in relation to this role. Boat drivers are an easy target as ‘smugglers’ as they arrive directly in the country and often actively identify themselves to authorities to make asylum claims. Their criminalisation serves the ongoing criminalisation of migration as both a supposed deterrent and as evidence of the state’s ‘tough on migration’ approach. It additionally creates a scapegoat for the crimes of the border. However, through this focus on these boat drivers, states fail to address the conditions that have led to people making their journeys in the first place.

When some research has been done on the criminalisation of boat drivers, it has focused on the Mediterranean (Richard-Guay 2018; Arci Porco Rosso et al 2021). This research aims to begin to address this gap by focusing on the UK. In approaching this topic, the focus will be on exploring the criminalisation of boat drivers and looking at how this is happening as positioned within the wider structure of the UK’s Hostile Environment. While this research gap is clear, it is important to note that this work is not standalone but is rather informed by the networks supporting people being criminalised as Captains both in the UK and across Europe. These efforts of solidarity have pre-dated this research and will continue after. Further, this research is not comprehensive but rather offers an overview of the context and what is happening within limited scope and time aiming to present as such.

Thesis Outline

This research seeks to answer the question of: How can the criminalisation of people who drive ‘small boats’ be seen and understood within the UK’s Hostile Environment?

In exploring this, Chapter 1 has offered an overview of this focus of the criminalisation of boat driving as situated in discussions of boat migration, the criminalisation of migration and solidarity, as well as the criminalisation of facilitation more specifically. Chapter 2 contextualises this research by mapping the Hostile Environment of the UK. This includes exploring the colonial legacy that persists, outlining the key policies and laws that inform the topic of this research as well as bordering practices, both externally and internally. Finally, it looks at how this language of hostility is expressed in the UK context. Chapter 3 offers a review of relevant literature beginning with considering literature focusing on structural violence including the discourses of threat and risk, as well as crimmigration, the production of illegality,

and on smuggling and the smuggler. Chapter 4 provides an overview of the methodology of this research including the data collection approach, research, process, and key considerations such as ethics and researcher positionality. Chapters 5 and 6 are empirical chapters. Chapter 5 summarises the key findings of this research, presenting processes and key considerations relating to this criminalisation. Chapter 6 then situates these findings in previously discussed literature. Chapter 7 offers concluding thoughts as well as research limitations and future considerations for the discussions of the thesis.

Conclusion

This chapter has introduced the topic of the criminalisation of facilitation focussing on boat drivers. It has offered considerations of relevant factors which can be understood with the wider structural violence of the ‘war on migration’ (1207, Dadusc & Mudu, 2022). In understanding this as structure, Maggs (2019) writes that “we also cannot afford to forget how deeply the UK is implicated in producing the conditions for the crisis from which it so violently insulates itself” (84). It is important to resist and reject state narratives that obscure its own culpability and scapegoat migrants themselves, including as boat drivers.

THE HOSTILE ENVIRONMENT

This idea of the hostile environment has been attributed to Theresa May's 2012 stated aim to "create here in Britain a really hostile environment for illegal migration" (Grierson, 2018). Today this hostility extends beyond individual acts, and policies, to encompass a wider space across various spheres and levels. It emerges at state and institutional levels, while also infiltrating everyday actions, interactions, and settings (Mosselson 2021). Policies and legal frameworks offer a further structure for this hostility to occur within (De Norohna, 2019). The importance of taking this hostile environment, or *system*, as a whole has been argued by Bowling & Westetra (2020). They examine the hostile environment in the UK focussing on the intersection between criminalisation and immigration, or crimmigration. In their work, they focus on the relationship and interactions between the law, the prison system, and policing acknowledging how hostility extends across them and impact each in relation to one another.

The hostile environment has proven to be dangerous and even deadly. Over 200⁴ people have been reported dead or missing attempting to cross the Channel into the UK since 2014 (IOM, 2023). In the UK, a further 95 people were reported to have died in asylum accommodations between 2016 and 2021 (Purkiss et al 2021). The hostility in the UK perpetuates a devaluation of human life and it does this along racialised and colonial lines. The devaluation and utter disregard for the value of certain lives in the UK context is clearly not new and can be seen throughout the history of the British Empire. It thus is important to situate current considerations, including those related to the current crimmigration system, in relation to history. As such, this chapter will offer an overview of the hostile environment beginning first with a brief overview of a few historical considerations. It will then move to examine the way this hostile environment has been manufactured considering policies and legal frameworks, the relationships between France and the UK, before looking to how this emerges through everyday practices of bordering and in language. Finally, it will offer a brief consideration of how this hostility is being resisted.

⁴ It is important to understand that given the lack of transparent and thorough monitoring or recording of data, this number must be understood to be an estimate of reported deaths and disappearances. It is likely lower than reality.

From the British Empire to Brexit

The UK is a nation whose history is characterised by racism and imperial violence. While colonialism is often discussed as a thing of the past, the present in the UK continues to be defined by the nation's history as an empire as well as by continued colonial racism through state actions and rhetoric (Virdee & McGeever 2018). The practices and impacts of colonialism persist, including through bordering practices which focus on restricting the movement of certain groups of people seen by the state as undesirable (Davies et al 2021).

The UK places a strong emphasis on border security and controls. They opted out of the European Schengen Agreement and exited the EU, with both decisions being heavily influenced by the desire to maintain their border and protect the nation from a supposed threat posed by immigration facilitated by the lack of movement controls between Schengen countries (Ibrahim & Howarth, 2018). This emphasis on immigration control and securitisation can be identified as a form of racism further underpinned by continued notions of British international power and superiority (Virdee & McGeever 2018).

The British history of racism can be identified not only in the actions of the UK outside of its borders and through its relationships with other states but also within its own borders. This includes the nation's treatment of the Windrush Generation, who first arrived in the UK as Commonwealth citizens after World War II to support the nation to rebuild. While they arrived as citizens, many years later a burden of proof was placed on individuals to produce extensive documentation to prove their citizenship as legitimate. Those who failed to produce sufficient documentation lost their rights as citizens including access to social services, employment, and housing with many even facing deportation to other countries, regardless of their connection to the place (see Patel & Gardner, n.d.). As such, people who had been citizens became illegalised within this hostile environment (De Norohna, 2019).

This historical overview is in no way been a comprehensive overview of the important historical considerations of the UK but rather points to how colonial racism and British imperialism continue to inform and define today's hostile environment.

Policies and Legal Frameworks

It is important to understand the policies and legal frameworks which inform, create, and uphold this hostile environment. Those included here refer to these considerations for how they impact

Stop the Border

people arriving in the UK seeking asylum, particularly those arriving in ‘small boat’ as is relevant to this research.

Immigration Act of 1971

This Act is notable as it introduced the ‘immigration crimes’ of facilitation (Section 25) and entry (Section 24) in the UK⁵. These laws have been used to criminalise people as boat drivers.

The Kakaei Appeal

Fouad Kakaei was charged under Section 25 of the Immigration Act for facilitation after he was accused of driving the small boat he arrived in the UK on. In an April 2021 appeal, his lawyer argued that as the law had been applied incorrectly pointing out that while the law required someone to ‘enter’ the UK without valid entry clearance, anyone who was intercepted at sea or disembarked at an immigration control point and did not leave the immigration control area has not *entered* the UK, but rather *arrived* (see R v Bani, paragraph 4). On this distinction, if someone arriving to claim asylum did so before passing through immigration controls, they had not committed any offence under this law. This was understood to be the correct interpretation of the law and this legal distinction was further upheld in R v. Bani, with the Appeal Judges in the case noting that it “was not novel interpretation or ‘change of law’ case, but rather [the] law had been misinterpreted” [paragraph 86]. In considering this misinterpretation, they additionally concluded that “the complexity of the 1971 Act also made its contribution, as did the fact that it was not drafted with the current emergency in mind.” [paragraph 86]. Thus, Kakaei’s conviction was overturned as well as numerous other people’s convictions (Dearden, 2022). This included that of Nima Bari, a young Iranian man who had been sentenced to a three-year custodial sentence who said, “I lost 20 months of my life for no reason.” (n.p. Dearden, 2022). The state responded by adjusting the law to clarify this distinction to allow for the continued criminalisation of boat drivers.

The Nationality and Borders Act (NABA)

While the focus of this Act was to introduce a two-tier asylum system, it additionally introduced new crimes and extended sentences. This Act increases the maximum penalty for

⁵ See Annex for further information.

‘illegal’ entry from the previous 6 months to 4 years (Home Office, 2021b). It also offers the possibility to forcibly remove people to third countries to have their asylum claims processed, such as to Rwanda (Bulman, 2022).

This Act targets ‘small boat pilots’, further criminalising facilitation⁶ and raising the maximum punishment for this offence to a life sentence (Home Office, 2022). Concerns have been raised by UNHCR (2021) as under this Act, a person can be charged with facilitation regardless of if they make an asylum claim upon arrival.⁷ This Act additionally creates an extension of power under the Immigration Act of 1971 through the introduction of the new offence of illegal *arrival* for people arriving without entry clearance, making them subject to criminalisation regardless of whether they go on to make an asylum claim. With this distinction, in practice, this law could be used to charge virtually everyone arriving in ‘small boats’ under this charge, thus illegalising their arrival to the UK.

While this Act mirrors the language of the Refugee Convention, its contents are at odds with international refugee law which does not support differentiating between different groups of refugees or penalising people seeking asylum for their mode of entry (UNHCR 2021). Furthermore, despite Home Office claims that it will “break the business model of trafficking networks” (Home Office 2022), the NABA ultimately serves to punish people seeking asylum rather than targeting those who run or profit from this facilitation. Patel’s warning that this Act “will enable us to crack down on abuse of the system and the evil people-smugglers” (Home Office, 2022) masks a reality where those being targeted are people who have made asylum claims upon arrival.⁸ Following countless warnings by experts that this Act would be unenforceable and likely to further overwhelm state capacities, along with being cruel and inhumane, its primary purpose of separating those arriving in two categories has been suspended less than a year after passing (Scottish Refugee Council, 2023).

⁶ Which is first criminalised under Section 25 of the Immigration Act of 1971.

⁷ A similar case in the Canadian Supreme Court (B010 v Canada) was found to be in violation of the Refugee Convention. Here it was found that criminalising an asylum seeker under anti-smuggling law for helping others arrive by boat was incompatible with both Article 31 and the Smuggling Protocol.

⁸ Home Office data shows that 98% of people crossing the Channel will claim asylum with a majority likely to be recognised as needing protection (Reference to Home Office data in Syal, 2021).

These new crimes introduced in the NABA are applicable to people regardless of if they make an asylum claim on arrival. This was outlined in *R v Mohamed*, which held that whether a claim was found to be ‘genuine or not’ [para 81-94] and regardless of if they have any options to get entry clearance to the UK to make an asylum claim [paragraphs 130-132]. While this ruling was not binding, it was outlined with the hope to “assist judges who are grappling with the same points in other cases” [paragraph 30].

In this case, the judge also suggested that “[w]here the evidence suggests that the suspect was acting to safeguard other passengers, it may be in the public interest to charge the lesser section 24 offences rather than section 25” [para 54]

Illegal Migration Bill (IMB)

This bill again targets people arriving in the UK without entry clearance. It proposes to further criminalise the act of entering the UK without valid entry clearance by preventing anyone who arrives as such from being able to claim asylum, regardless of the eligibility of their claim, or to ever settle in the UK as a citizen. Experts have warned that this Bill is likely to leave people in immigration limbo as it holds the possibility for indefinite detention, which is additionally a violation of international law (UNHCR 2023a). It also risks violating the principle of *refoulement* by allowing the removal of a person to a country deemed to be safe without assessing their reasons for seeking asylum, such as for Albanians many of whom may not be safe in Albania despite it being deemed a ‘safe’ country (UNHCR 2023a).

Policies of hostility

The clear aim of recent UK policies is not to improve the immigration system to better support people seeking asylum but rather to deter arrival by creating hostility. There is a clear use of criminal law to extend the reach of immigration enforcement, as is characteristic of a crimmigration system. The hostile environment is an ongoing active choice on the part of the government. Through the UK’s continued actions to block asylum seekers from even attempting to claim asylum there, it is overwhelmingly failing in its obligations under the principles of international cooperation as is the basis of international refugee law (UNHCR, 2023a). As Bowling & Westenra (2020) write ‘there is clearly no crimmigration *justice* system’ (177). As people’s actions are made illegal through the creation of crimes that illegalise their actions, such as arriving, practices such as immigration detention, surveillance, and the denial of access to

social services become justified against these illegalised groups. Through this, the hostile approach itself becomes normalised as an approach to migration (Bowling & Westera, 2020).

Everyday Bordering

The UK's hostile policies have been found to bring the border into the everyday. This everyday bordering extends into public spaces including banks, healthcare centres, and educational institutions (Mosselson, 2021). The Immigration Acts of 2014 and 2016 introduced new immigration controls which impacted everyday life in areas such as housing and employment (Hynes 2022; Weller et al, 2019). This included extending the controls of the border into the public sphere and increasing the responsibilities of UK citizens as everyday border guards (Yuval-Davis et al, 2018).

Yuval-Davis et al (2018) examine this bordering in employment as employers are required to act as “untrained border guards” and to determine and police the belonging of the people they employ according to their immigration statuses (Yuval-Davis et al 2018). Underlying experiences of this everyday bordering is a state of limbo that people seeking asylum find themselves stuck in (see e.g. Brun 2015). This state of immigration limbo is further hostile as people experience racism throughout their daily lives including in interpersonal interactions, interactions with the state, and through their very access to a space (Meier 2020). This everyday bordering expands throughout many spaces, with certain groups experiencing the resulting racialised hostility to different degrees.

Alongside these daily encounters, many asylum seekers find themselves experiencing layers of distrust. Hynes (2022) outlines how people find themselves being questioned and distrusted while making asylum claims. This lack of trust manifests in various ways including as asylum-seeking children have their ages questioned and are subjected to age assessment processes (Hynes, 2022). The consequences of distrust for the non-citizen are impacted by their immigration status, including through this potential threat of deportation or the denial of care required for young people.

A Hostile Border

This hostile environment is not unique to the UK but is also mirrored across the Channel in France. French authorities and state actors have created their own hostile environment, further

reinforcing the hostility of the France-UK border itself. The UK also funds this hostility and militarisation in France (Maggs 2019). This includes support to fortify the border to prevent people from crossing the Channel (Parker et al 2022). A recent new immigration package between the two countries saw the UK promise £478 million and additional personnel to France over the next 3 years for immigration control (Blewett, 2023). Agreements between the two nations have included the introduction of *juxtaposed controls* allowing France and the UK to carry out immigration controls on each other's land thus confirming this externalised border (Maggs, 2019).

This hostile border has proven to be fatal (Maggs 2019). When considering the crossing itself, it is important to note that crossing the Channel from France is not inherently difficult nor dangerous as there are multiple access points including by car, train, boat, or bus. Despite this, many people seeking protection in the UK are excluded from any of these and left to take increasingly precarious modes of travel, which has had fatal consequences (Maggs 2019). Regardless, proposed state responses have focused solely on further deterrence. This focus serves to increase already risky journeys where death becomes a very real possibility (Jacobs, 2020). This deadly inevitability was noted in 2018 as a Border Force Officer was quoted saying 'this is a dangerous crossing. Sooner or later there is (sic) going to be bodies in boats. There aren't yet. It hasn't happened, or not that we know of, but it will eventually' (BBC, 2018). Yet since then, as people continue to die as a result of the border, the UK response has been to increase the very factors which increase the risk of further death.

On 27 November 2021, the failure of the French and British authorities to respond to distress calls at sea led to the deaths of 27 people. Legal challenges were made against both states for their inaction (Taylor & Henley 2021). These challenges included accusations of 'involuntary manslaughter' and 'failure to help people in need' (Bulman, 2021). This inaction was not a solitary occurrence, but rather 19 boats in distress were found to have been 'effectively ignored' in the days leading up to this disaster (Walawalkar et al, 2023). Early this year, another rubber dinghy carrying 38 people without life jackets was at sea for over 16 hours in winter conditions after breaking down and being left floating as UK authorities stood by at sea waiting for the boat to drift back to French waters (Alarmphone, 2023). In response to these November deaths, then Prime Minister Boris Johnson said he was "shocked, appalled, and saddened" (Bryne, 2021). Referring to this shipwreck as a 'disaster', he used it as justification for the need to '[break the]

business model of gangsters who are sending people to sea” and “literally getting away with murder’ and further for the need for the NABA to be passed (Bryne, 2021). This reflects the state focus as they use people organising and facilitating journeys as scapegoats for deaths on state borders.

Narratives of Hostility

Language can have a powerful impact on public perceptions of an event or phenomenon (Mulvey, 2010). This can include normalising racism through language choices and framings (Virdee & McGeever 2018). In responding to an increase in Channel crossings by sea, a ‘discourse of ‘risk’’ (Jacobs 2020) was utilised as these crossings were labelled a crisis (Parker et al 2022). While UK officials condemn risky Channel crossings encouraging people to simply arrive via safe and legal routes, this discourse masks the reality that these safe and legal routes don’t exist for most, as previously discussed. Within this state narrative of *safe and legal routes* as well as that of *stop the boats*, a key feature is this deferral of blame to deflect away from the government’s own dominant role in creating these ‘conditions of risk’ (43, Jacobs, 2020).

Ibrahim & Howarth (2018) discuss the state narrative of migrants’ complicity in creating risky situations through their interactions with smugglers. The deferral of blame, this time to smugglers, again obscures the actions of the very government which creates the conditions where people are forced to turn to smugglers to cross borders (Parker et al 2022). The underlying truth of this blame is exemplified in the case of a young man who died while attempting to cross the Channel. Former Home Secretary, Priti Patel blamed smugglers and criminal gangs for the death of this young man. This was despite no smuggler being involved in his death as he had attempted the crossing alone with an inflatable beach toy (Tyerman & Van Isacker, 2020). Patel’s efforts to use this narrative of smugglers as the problem further reflects this ongoing deflection of blame for the irreparable harm and violence caused by the active securitisation of borders.

The Home Office has further been criticised for false assertions that do not reflect the reality of the situation. This includes their continued use of narratives of ‘undeserving’ migrants coming to the UK, often through contrasting economic migrants in opposition to the ‘genuine’ asylum seeker (Townsend, 2023) When asked to provide evidence for claims that “70% of individuals on small boats are single men who are effectively economic migrants”, the Home Office has admitted to not having the information to prove this claim (Townsend, 2023). What the Home

Office's data does show is that contradictorily, in 2022 at least six of every ten people arriving to the UK by small boats would be recognised as refugees (Refugee Council, 2023). This narrative of 'bogus' asylum seekers has further extended to target 'bogus' child refugees. The figure of the child has been constructed as a threat through narratives such as Patel's warnings against men "masquerading as children" (Syal, 2023). This reframing of the issues of protection of as secondary to the need for securitisation against this child migrant is extremely concerning and dangerous.

In the current UK political sphere, Home Secretary Suella Braverman's language in particular has been labelled as frightening even by other right-wing politicians in Europe (Blackall, 2023). This comes after she referred to seeing a plane take asylum seekers to Rwanda as her 'dream' and 'obsession' (Dearden, 2022). She was further called out for inflammatory language after suggesting that 'billions' of immigrants would attempt to come to the UK in an attempt to justify the Illegal Migration Bill (Good Morning Britain, 2023). This was called out by television show hosts who pointed out that this number was widely different from a reality where of the 100 million people who have been forcibly displaced internationally, over half remain in their countries of origin and where only tens of thousands arrived in the UK in 2022 (Good Morning Britain, 2023). Reflecting here, it is important to consider state discourses critically, particularly those that are being used to justify the treatment of migrants including criminalisation through discourses of illegality and threat.

Conclusion

Throughout this chapter, an overview of the Hostile Environment has been offered to give a context to the climate for people arriving in the UK seeking protection as well as to understand this illegalisation and criminalisation of 'pilots' in the UK context. It is important to understand how the UK's colonial history continues to inform today's hostile environment and the treatment of people coming to the UK seeking asylum. It is further important to consider how this framing of the asylum seeker as a threat and a risk creates the conditions for their illegalisation, even for their own entry.

A STRUCTURE OF VIOLENCE

In approaching this topic, it is important to consider the relevant literature and discourses that this thesis can be situated within. There is a clear gap in the literature on this topic of boat driving as has already been mentioned. The research that does exist on this topic has focused on the Mediterranean region (Richard-Guay, 2018; Arci Porco Rosso et al, 2021). In the UK context, there has been mention made that people are being criminalised as boat drivers (2318, Davies et al, 2021) and a recent blog post has outlined various additional considerations for how this criminalisation is happening in the UK (Taylor, 2023). While it remains under-researched, this topic has clear relevance as it has immense potential to impact people's lives, particularly as they are used as scapegoats for the violence of the border.

Despite this gap, there is considerable relevant literature. In situating this research, it is important to first consider the structure of the state, namely the Hostile Environment. Previous work on migration has often referred to this Hostile Environment, as was discussed through Chapter 2 (see Maggs, 2019; Mosselson, 2021; Murray & Gray, 2023; Psinos, 2023; Hynes, 2022; Weller et al, 2019; Meier, 2020; De Norohna, 2019; Sigona et al, 2021; Bowling & Westerra, 2020). This has included discussions of how this hostility promotes an enabling environment for increasing distrust (Hynes, 2022), discomfort, and emotional exhaustion (Meier, 2020). Despite the cruelty of this approach, it has been touted by the government to be “simply... an aspect of the good management of migration” (178, Bowling & Westerra).

In approaching existing literature, the focus will first be on structural violence and the role of the state in creating this structure. This includes state bordering practices and dominant discourses, such as those based on threat, risk, and blame which are used to produce and justify the illegalisation of certain groups of people. The second area of literature to consider is that on crimmigration, as this crimmigration control system is central to both the creation of ‘immigration crimes’ as well as to the experiences of migrants arriving in the UK. This includes the production of illegality as well as on wider trends of criminalisation in relation to immigration including the criminalisation of facilitation and of solidarity. Finally, discourses of smuggling and ‘the smuggler’ will be explored. Literature here includes that which aims to

problematise dominant discourses and consider the relationship between smuggling and solidarity. Finally, boat driving as a form of facilitation that is being criminalised will be situated within this literature and this chapter will offer a theoretical framework for this research before coming to a close.

Structural Violence

In approaching practices of criminalisation in the Hostile Environment, they can be understood as a form of border violence within the structure of the state. In considering the violence of borders, this has been conceptualised as structural violence by Spener (2008)⁹. They outline a ‘global apartheid’ along borders, discussing violence as it occurs from a system of power imbalances and unequal opportunities (Spener, 2008)¹⁰. In their work, they explore facilitation focussing on the social process of ‘coyotaje’ and the role of the coyote along the Mexico-US border. They point to the dominance of state narratives in controlling how this process and those involved are understood and viewed in public spheres. They found that public coverage often made hypervisible accounts of violence and death related to coyotaje with few if any accounts of ‘successful’ journeys being shared (Spener, 2008). This in turn feeds the narrative of coyotes as violent and dangerous, thus serving the purpose of the state in blaming them for border violence and while situating the state as protectors against this violence (Spener, 2008). Spener (2008) is careful not to overlook the violence and exploitation that can be present in coyotes’ practices but rather conceptualises this personal violence within (and facilitated by) the system created by the state, further comparing it to the violence of an individual Border Patrol officer. This has been echoed by Gendrot & Dadusc (2023) who acknowledged the “interpersonal violence” that can exist in smuggling practices while also arguing that it “needs to be contextualised within the violence and coercion of global inequality and immobility regimes” (n.p.).

Borders

A key part of the structure is the border itself. A state’s border is where it asserts and makes visible its sovereignty (Chowdhury, 2022). Borders work to produce an external Other, in

⁹ Spener (2008) further refers to the work of Galtung (1969) in their conceptualisation of structural violence.

contrast to the insider citizen (Ibrahim & Howarth, 2018). In considering who is included or excluded by British borders, it is important to again draw on the UK's colonial history (Virdee & McGeever 2018), as well as its contemporary forms this colonialism takes (Davies et al, 2021). Borders are not only external but are also present through bordering practices within a state (see Yuval-Davies et al, 2018; De Genova & Roy, 2020; Anderson et al, 2011; De Noronha, 2019). Borders are further not static but rather dynamic, adapting and changing both over time as well as in different settings and for different people (Keshavarz & Khosravi 2022).

As long as borders have existed, so too have people acted to facilitate mobility across them (Carling et al 2015). Increasing controls have proven to be ineffective in blocking mobility as they fail to acknowledge or address the reasons people migrate in the first place (Mengiste, 2022). Rather, as the border is increasingly securitised and border controls are strengthened, the dangers for those crossing without entry clearance also increase (Achilli, 2015). A focus on securitisation does not stop mobility but rather creates the conditions where people turn to smugglers to navigate border areas. While people crossing borders themselves are presented by the state and media as either criminals or helpless victims of smugglers (Maggs 2019; Dadusc & Mudu 2022; Mainwaring, 2016), both discourses serve the state's purpose as they are used to justify the need to securitise borders in the name of protection and control.

Goodman et al (2016) identify how the very lives of people seeking asylum are seen as of less value than the "comfort of Europeans" (112). This occurs as bordering practices create the conditions for mass deaths of people crossing borders (see De Genova, 2018). This production of 'disposability' enables a reality where the increasing numbers of deaths of people on the move are made possible because of bordering (De Genova & Roy 2020). Hodge (2014) discusses this further arguing that through policies focused on border securitisation and mobility control people crossing these borders "do not appear as lives, but as the threat to life" (129).

Dominant Discourses

In envisaging this structure, narratives of the powerful serve to further and cement inequalities. Here it can be useful to consider the work of Palestinian poet Mourid Barghouti (2004) who writes of the potential for those in power to frame a story to their benefit by 'starting with secondly'. This refers to starting at a story's second instance, for instance by starting with the 'arrows' of Indigenous populations and skipping over the arrival of colonisers, a narrative is

created which aims to justify colonial violence as a response with colonisers being portrayed as victims (Barghouti, 2004). Considering this in terms of migration, it is clear how the state frames their response as essential against this ‘threat’ of migration. Starting with the second instance of people making dangerous and ‘illegal’ journeys overlooks the border and bordering practices that make this precarious journey necessary in the first place as well as produce its illegality. This framing of the powerful can be discussed as ‘seeing like the state’ (see Sharma, 2022; Keshavarz & Khosravi, 2022). In rejecting the state perspective as fact, it can be beneficial to consider taking a step back, reflecting on Barghouti’s work, and identifying causality beyond state framings. Campana & Varese (2016) echo this sentiment arguing that it is important to remember that states do not simply respond to distress and violence at its borders, but rather set the conditions for this violence, such as through restrictions on entry.

It is important to identify how certain narratives and discourses become dominant and are treated as fact, while other accounts and experiences are questioned and disbelieved. Bhatia (2020) considers this in the UK asylum system, pointing to how people seeking these services are met with distrust and suspicion. They note that this ‘bureaucratic disbelief’ can have negative impacts including mental health problems, distress, and suicide. Within the Hostile Environment, actors and agencies are given ‘permission to be cruel’ despite the UK’s claim to be a refugee champion, which can lead to increased forms of violence (Monish, 2020). Hynes (2022) further considers this role of institutional mistrust in the UK outlining how its policies worsen hostility.

Dominant discourses are often mirrored in mainstream media which can serve to extend institutional or state power including through this use of certain narratives (Cristiano et al 2023). As the media presents people migrating outside of state border controls, they often draw on discourses referring to them as criminals, threats, enemies, and as crisis producing (see Hodge, 2014). Many have considered this in terms of the UK media specifically (Parker et al, 2022; Jacobs, 2020; Charteris-Black, 2006; Gabrielatos & Baker, 2008; Goodman et al, 2016). People seeking asylum are often presented as a singular collective (Ibrahim & Howarth, 2018) and denied individuality (Bosworth & Guild, 2008), agency (Anderson et al 2011), or diverse reasons for and experiences of their journeys (Sigona et al 2021). Goodman et al (2016) discussed the importance of the social process of categorisation where some people are marked as deserving and in need and worthy of protection, while others are cast as undeserving, such as the ‘bogus’ asylum seeker. Bosworth & Guild (2008) consider how this occurs as asylum seekers and

‘illegal’ entrants are presented as one and the same. This framing is used to justify the need for border controls due to this perceived danger that is posed by some, and is thus extended to all arriving.

Throughout these discourses of the ‘threat’ of migration, there is an overwhelming failure to acknowledge the threats to people crossing borders outside of controls, as they themselves are instead presented as a threat to the state (Hodge, 2014; Jacobs, 2020). Under this guise, calls to strengthen borders are prioritised over people’s calls for protection (Goodman et al, 2016).

Discourses of Risk and Blame

In addressing migration, other dominant discourses are that of risk and blame. Parker et al (2022) conducted a review of media representations of Channel crossings drawing on crisis and threat discourses and identifying dominant framings including that of ‘smuggling is immoral’. This focus on smuggling has been used to justify practices such as border securitisation while also allowing the state to defer ‘blame’ for migration to smugglers (Parker et al, 2022). In Jacobs’ (2020) exploration of the language in both media and state discourse, they further point to the racialisation of this risk noting that “the racialised Other becomes a risk that must be contained and bordered; while the groups to whom this risk is ‘undeservedly’ posed are often implicitly coded as white Western citizens” (41).

They discuss this discourse of risk noting how people seeking asylum are presented as threats due to their ‘reckless’ decision-making (Jacobs, 2020). This idea of asylum seekers as creating risk through their choices overlooks the lack of alternatives available to someone seeking asylum and instead fuels the narrative of migration and migrants themselves as a threat (Jacobs, 2020). This idea of risk was further taken up by Ibrahim & Howarth (2018) in the political discourses of the UK. They identified how discussions of ‘risky bodies’ are used to justify state responses of control and securitisation as a ‘risk management’ solution (Ibrahim & Howarth, 2018). These discourses aim to attach responsibility for very precarity of border regions to the people crossing them rather than acknowledging state culpability as the creator and enforcer of the borders that create the structure that necessitate this risk in the first place (see Jacobs, 2020). People are blamed for their engagement with smugglers and ‘choice’ of unsafe routes with their actions often framed as an attempt to ‘exploit’ the system (Jacobs, 2020). Considering the UK’s own history and contrasting the narrative of explorers going outwards to discover new lands while conquering and pillaging compared to this framing of people seeking

protection and security as an invading threat to their country is very telling. While risk-taking is celebrated for some, for others it is criminalised (Jacobs, 2020).

Pallister-Wilkins (2015) considers humanitarianism justifications for bordering and this care/control dynamic in humanitarian governance, pointing to the discourse of people who are both ‘at risk’ and ‘a risk’, in need of both care and control. The response to boat migration, particularly in the Mediterranean has also been taken up by Andersson (2012) who argue that militarised responses are justified as lifesaving drawing on the discourse of risk when outlining European efforts to control clandestine migration through an ‘illegality industry’ (7). This can be further related the use of narratives of care to justify state control (van Liempt, 2022).

The framing of migrant journeys as risky overlooks how it can be seen a ‘necessary risk’ as well as how *not* taking these journeys can also be a risk (Kyle & Siracusa, 2005). Dominant discussions of ‘risky’ journeys often overlook this risk of not moving. Carling et al (2015) argue that people’s risk assessment is further often misunderstood as while these migrants’ journeys can be extremely dangerous, many people do ultimately make it. Belloni (2016) offers another perspective on migratory decision-making presenting people as ‘gamblers’ who run a risk/reward analysis in their migration decisions based on their awareness of the systems in place, emphasising the role of ‘luck’ in this.

Crimmigration

Criminal law has increasingly been used to further immigration enforcement (Aliverti, 2012b) as institutional practices are employed to control people’s mobility (Bowling & Westetra, 2020). Stumpf’s (2006) foundational work on ‘the crimmigration crisis’ outlines how criminal law is used to facilitate and extend immigration enforcement including through practices of exclusion or inclusion, such as deportation. The UK’s ‘crimmigration control system’ has evolved since the 1970s in pursuit of the ‘criminalised migrant’ changing and expanding since then as “crimmigration law continues to be a site of legal creativity, expansion and exploitation.” (169 Bowling & Westetra, 2020). This expansion has involved the increasing production of illegality (De Genova, 2002) including through the introduction of novel immigration-criminal offences or ‘immigration crimes’ such as unlawful entry or crimes of facilitation (Aliverti, 2012b, see also Bowling & Westetra, 2020). The creation of new immigration crimes further produces the *threat* of criminalisation and criminal punishment thus expanding the limits of immigration law. This is

then justified as necessary in order to prevent the arrival of people who have been rendered as criminals through their very potential for very criminalisation (Aliverti, 2012b).

While these immigration crimes are often not actually persecuted in practice, their existence has been justified a form of ‘symbolic control’ over immigration or as a convenient tool to be able to get and show results, for instance through deportation numbers (Aliverti, 2012b). Furthermore, Stumpf (2013) discusses how the ‘process becomes the punishment’, referring to when the ‘cost’¹¹ of the process is more than that of a guilty plea offering the example of where a person may be offered a shorter sentence if they plead guilty than the time it will take them to wait and go to trial regardless of if they get acquitted.

An ongoing discussion in relevant literature here relates to the use of the criminal justice system against non-citizens. This includes questions of the protection of rights for non-citizens within criminal systems (Aas, 2013; Zedner, 2013; Bosworth, 2011). This is further relevant as criminal law is intended to be based on the idea that citizenship comes with an obligation to the state. Therefore, the use of this law for immigration ‘crimes’ raises concerns (Zedner, 2013). Additionally, a lack of citizenship can entail additional punishments not experienced by citizens facing criminal punishment including the risk of deportation (Bowling & Westenra, 2020; De Norohna, 2019).

In considering an international perspective, Bowling & Westenra (2020) further focus on how the domestic use of practices to control ‘suspicious’ populations can be understood within global systems of social control. They argue for the importance of understanding this as an increasingly integrated whole (Bowling & Westenra, 2020). In considering a system-wide approach, it can be important to look not only at the criminalisation of individuals but additionally to look to the bigger picture, particularly as the target of these processes of illegalisation are often groups or networks rather than individuals (see Cristiano et al, 2023). Within this criminalisation of groups, a focus on individual culpability persists as a feature of Western legal systems which focus punishment based on individual culpability (see Iris Young in Spener, 2008). This individual liability has been situated by Spener (2008) back within a wider structure of (state) violence.

¹¹ They note this cost to include time as well as money or anxiety (Stumpf 2013)

Production of Illegality

The illegality of certain people's migration is not random nor is it inevitable but rather it is the direct result of immigration laws (De Genova, 2002). Practices and discourses of illegality create the very conditions for criminalisation within immigration approaches (see Hodge, 2014). It is further important to understand that this production of illegality occurs through the law itself (De Genova, 2002; De Genova, 2013). De Genova & Roy (2020) contribute to this discussion by outlining how illegalisation can come both from the making of laws as well as from border practices. Furthermore, as an increasing number of immigration-related crimes are introduced, an increasing number of people become 'criminals' (Stumpf, 2013). Relatedly, De Genova (2013) outlines how the idea of the 'bogus' asylum seeker can become a self-serving prophecy as shrinking asylum spaces result in fewer people being eligible to make asylum claims. This can additionally feed into producing illegality as people fail to meet increasingly stringent national asylum restrictions (De Genova, 2013). The use of criminal practices against migrants is thus justified in discourse as a necessary protection against the perceived danger posed by migration and migrants themselves (Bosworth & Guild, 2008). Here again, discourses of risk and understandings of asylum seekers as 'risky' populations are used to justify the prioritisation of security over protection in asylum reception (Bosworth & Vannier 2020).

This can be seen in what De Genova (2002) has referred to as the 'Border Spectacle' of enforcement, which focuses on increasing the visibility of the illegality of certain people trying to cross. Through this process and visibility, their status of illegality is further normalised (De Genova, 2013). Borders can be involved in producing illegality, as states define and enforce legality and illegality across border spaces (Chowdhury, 2022; Campana & Varese, 2016; Nugent 2022). Internationally, those whose illegality is being produced in these border zones are overwhelmingly racialised as Black and Brown (De Genova & Roy, 2020). Practices of criminalisation can further be used to defer blame for perceived 'migration crisis' as well as for the related human suffering, for instance to the people smuggler (Sanchez, 2017).

Forms of Criminalisation

The criminalisation of migration has often been presented as a 'solution' to the 'problem' of migration (Dadusc & Mudu, 2022). In justifying this criminalisation, an overarching logic is that of deterrence. Immigration policies focus on success in terms of numbers with the goal of

limiting the number of people arriving in the UK via certain routes, as explained by Mulvey (2010). Criminalisation can offer a way to create these numbers by cracking down on new ‘immigration crimes’. Golash-Boza (2009) further situated this meeting of the criminalisation of migration and immigration law enforcement within considerations of the immigration industrial complex. They discussed how the interests of powerful actors can serve to emphasise a focus on the risk of the Other, a figure whose identity shifts with the interests of those in power.

This has emerged in various ways in the UK, including through the introduction of the crime of arrival (Aliverti, 2012b). Another form this criminalisation can take is through the criminalisation of facilitation. Considering the history of facilitation, Brigden (2019) outlines how various forms of may be marked as illegal but also celebrated, problematising the idea of heroes and villains. In considering facilitation, it is also important to note that there is not one clear definition of what it entails or a clear line of what forms of facilitation are acceptable or not or of what forms are labelled, for instance, as ‘humanitarian’ or as ‘smuggling’ (Brigden, 2019).

Discussions of facilitation can be related to conversations of solidarity. This can include various acts identified as enabling someone’s migration in any way (Fekete, 2017). Despite a humanitarian tradition based on the prevention and alleviation of suffering wherever it is found, the increasing focus on securitisation in Europe has led to a decreasing respect for the original stated aims of humanitarianism (Fekete, 2017). While it remains unestablished that this criminalisation deters migration, what it has deterred is people’s willingness to engage in potentially lifesaving acts (Van Liempt, 2022). This has included people living in border areas who have historically helped migrants becoming hesitant to become involved and be labelled a ‘smuggler’, which can also result in these services shifting away from traditional networks of support and becoming more professionalised (Galemba, 2018). When considering various forms of criminalisation, it is important to recognise how related discourses both interact and overlap, as too often only certain people’s actions are framed, for instance, as ‘in solidarity’ (see Gendrot & Dadusc, 2023). In considering the actions of migrants themselves, this case of boat driving can be situated at this intersection of the criminalisation of migration, facilitation, and solidarity.

The Smuggler

The figure of the smuggler has emerged as the target of border securitisation efforts and as a scapegoat for deaths and violence along state borders (Kyle & Siracusa 2005). Discourses of the

smuggler are generally racialised and gendered focusing on men of colour from the Global South as this criminal Other (Sanchez, 2017a). As the ‘smuggler’ is portrayed as the main threat to migrants, the role of the state in creating the conditions and need for smuggling in the first place is obscured (Gazzotti, 2022; Caprioglio et al, 2022; Sharma, 2022). In contrast, the state portrays itself as a protector, protecting against the threat posed by the smuggler (Carling et al, 2015).

It is important to problematise this construction and to understand that this figure is not one singular thing (Gallien & Weigand, 2022). While dominant discourses present the smuggler as a ‘cruel and reckless criminal driven exclusively by profits’ (83 Achilli, 2015), they have also been portrayed as saviours (Mengiste, 2018; Keshavarz & Khosravi 2022), heroes (Keshavarz & Khosravi 2022), service providers (Mengist, 2022; Garver-Affeldt, 2023; Achilli, 2015; Achilli 2018), businesspeople (Galemba, 2022), workers (Parsa, 2022), life savers (Sharma, 2022; Keshavarz & Khosravi 2022), entrepreneurs (Sanchez, 2017), or ordinary people (Sanchez, 2017; Zhang et al, 2018). Galemba (2022) explores how the smuggler is ‘produced’ and made possible by the state through its borders, then in turn used to justify the border (see also Mengiste, 2022). The smuggler is further defined by the state through their naming of them as such (Sharma, 2022) and constructed as a criminal figure by the state’s laws and criminal response (Brachet, 2018). While international law outlines that people have the right to claim asylum, they often cannot do so until physically outside of their country (Carling et al 2015) and thus smuggling can be the sole means for many to access their rights including this right to asylum (van Liempt, 2022). Dominant narratives continue to ignore the fact that as long as borders block movement, smugglers will respond and adapt to facilitate mobility across them (see Achilli, 2015). Achilli (2018) furthers this discussion arguing that people who engaged with smugglers understood “human smuggling was perceived as part of a system of protection within the context of asymmetric distributions of power where people in certain countries have overarching incentives to move but few legal avenues to do so” (83). Efforts to stop smuggling expectedly fall short as they fail to provide alternative solutions for people who rely on them to migrate (see Sharma, 2022).

Despite dominant narratives that depict people engaging with smugglers as passive victims (Raineri, 2022), people often enter voluntarily into this agreement (Baird & van Liempt, 2016). Campana & Varese (2016) argue for the importance of the distinction between smuggling and trafficking, pointing to the potential for smuggling to become trafficking, and thus for the

importance of understanding what each is independent of one another in order to be able to identify this shift.

This is not to deny the violence that can occur at the hands of smugglers or be a part of their operating strategy (Sharma, 2022; Sanchez, 2017; Garver-Affeldt, 2023; Gazzoti, 2022). However, this position of precarity is created first and foremost by the state through its mobility controls. As states decrease mobility options, they create a dependency on smugglers (Sanchez, 2017a). State controls can result in people paying more for journeys which can further create debt and dependency (O’Connell Davidson, 2016) which can create potential for exploitation (Carling et al 2015). As blame for this precarity is focused onto smugglers and smuggling, states are able to defer the focus from their own role in producing the context where people turn to smugglers to cross borders (Maggs, 2019; Parker et al, 2022; Gazzotti, 2022).

When considering its criminalisation, smuggling can be understood as crime against the state rather than against people (Garver-Affeldt, 2023; Campana & Varese, 2016). While borders serve to maintain a hierarchical system, smuggling can challenge this system (Keshavarz & Khosravi (2022). It is important to understand the relationship as more than simply the legality of the state and the illegality of the smuggler (see e.g. Gallien & Weigand, 2021), particularly as the state defines its own legality. Here, one should see not merely ‘as a state’, but rather also acknowledge perspectives of, for instance, smugglers (see Kehavarz & Khosravi, 2022) and of the people who enter into agreements with them (see Zhang et al, 2018; UNODC, 2022; Garver-Affeldt, 2023). This can be more difficult in practice, as the state perspective is often dominant and is the most widely disseminated (Spener, 2008).

The Criminalisation of Boat Driving in the Hostile Environment

In situating my research, first and foremost there is a clear gap relating to the role of people who are themselves migrating in solidarity with one another as well their criminalisation as such (see e.g. Dadusc & Mudu, 2022, Gendrot & Dadusc, 2023). Within this, the role and subsequent criminalisation of boat drivers, or Captains¹², has been further under-researched, with a virtual absence of research in the context of the UK. In their work on the Mediterranean, Ricard-Guay

¹² Captain is a term used by people who have been criminalised for driving boats to refer to themselves. Throughout this paper, I will use this term as well as people driving/steering/piloting boats and boat drivers.

(2018) note that while there is attention to ‘humanitarian smuggling’ in relation to SAR NGOs or individuals such as fishermen, there is a gap in considering the criminalisation of migrants themselves. They frame this criminalisation as a state approach to dealing with smuggling, presenting criminalised boat drivers as having been ‘sacrificed’ within the fight against smugglers (12, Ricard-Guay, 2018). This role is often not understood despite people being increasingly criminalised for related charges often with high punishments.

Along with Arci Porco Rosso’s (2021) report, this criminalisation of boat drivers has additionally been mentioned in the work of networks such as *borderline-europe*, who support people being criminalised for facilitation in Europe. They have followed and shared various cases of people charged under this including involvement in the report ‘From Sea to Prison’ (Arci Porco Rosso et al, 2021, see also Baffi, 2022; Arci Porco Rosso & *borderline-europe*, 2023; & *Borderline Sicilia*, 2022). While this role of boat drivers has been identified as under-researched in the Mediterranean, there is a near absence of research in the UK context. Mentions of the criminalisation of boat drivers have appeared in at least one academic article (2318, Davies et al, 2021), as well is in a blog post (Taylor, 2023), and throughout some media reporting (e.g. Dearden, 2022). This research will seek to address this gap focussing on this criminalisation since the Kakaei Appeal and the resulting NABA law change. While it will in no way suggest to offer a comprehensive understanding of this occurrence, it aims to establish that this criminalisation is occurring in the UK and to introduce relevant considerations to open the door for continued and future research and attention on the topic.

Theoretical Framework

In positioning my research theoretically, I will begin by conceptualising this criminalisation as a form of structural violence by and within the state (Spener, 2008). Further violence of individuals can be understood as interpersonal violence as enabled by this structure. For this research, the structure is envisioned as the ‘Hostile Environment’ of the UK. Borders and bordering practices offer a framework for this structure, particularly as they can be used to produce and mark illegality and exclusion, following the interests of those with power over them. The crimmigration control system (Bowling & Westera, 2020) is additionally key to this structure, as criminal law and practices are used for immigration enforcement, including through the introduction of ‘immigration crimes’. Power dynamics are further re-enforced as those in

power produce the illegality of those they see as undesirable. This in turn is used to justify the border and bordering practices as necessary to protect from the threat of this constructed criminal threat.

Central to this structural violence is the dominance of certain discourses. In approaching my research, I have aimed to resist ‘seeing like a state’ and to look beyond the narratives of those in power. This includes challenging dominant narratives relating to migration, facilitation, and blame. Here, I identify the state’s culpability and reject state framings from the ‘second instance’, which can be used to defer responsibility (Barghouti, 2004). This includes where the state presents itself as the protector in responding to threats at the border, justifying its control through discourses of care (see Pallister-Wilkins, 2015). Through this, migrants find themselves being made scapegoats for the violence of the state and its borders. This can include being cast into the role of facilitator, smuggler, or boat driver. They are portrayed as responsible for creating the precarity and danger in their journeys due to their ‘risk-taking behaviours’ (Jacobs, 2020), a narrative which overlooks the role of the state structure in creating the conditions that necessitate this risk.

In approaching my research, I will focus on role of people migrating themselves, who are inherently central in these discourses yet whose actions are often overlooked and undervalued. When calling for the end of this criminalisation of boat drivers in the UK, I situate my call within a wider call to end the criminalisation of facilitation as well as to abolish state structures of violence through borders, crimmigration, and power imbalances. In approaching this research, my aim is to move beyond looking at who should be criminalised for what, to instead question the very process of criminalisation itself, thus rejecting binary thinking of for instance who is a ‘real criminal’ or not (Cristiano et al, 2023). This research will present the criminalisation of solidarity, facilitation, and migration not as separate, but rather as intersecting and often overlapping manifestations of a crimmigration system that all need to be resisted. In considering this, I echo Arci Porco Rosso et al’s (2021) call that ‘the abolition of this regime rather than the criminalisation of those who are challenging it, represents the only adequate response to our current situation’ (n.p).

Conclusion

This chapter has offered an overview of relevant literature and identified the clear gap that this research seeks to begin to address. This chapter has further offered a theoretical framework outlining the approach this research will take place within in relation to this literature. Moving forward, Chapter 4 provides an overview of the research methodology before proceeding to the empirical chapters.

METHODOLOGY

This research has been conducted as a mini ethnographic study. This has been done both in the UK in person as well as remotely. This research has consisted of qualitative data collection which has been approached inductively (Bryman, 2012). The primary research methods within this have been court observation complemented by qualitative interviews, and non-systematic discourse analysis. In engaging in ethnographic observation, I have assembled my own research field as relevant to my research questions, aiming to consider relevant perspectives, knowledge, and experience as well as information from various sources. I have collected primary data, including through participant observation as a member of the public in the courtroom, as well as through engaging with secondary sources such as media reports and public legal cases.

This research has been conducted alongside *borderline-europe*, where I have been an active member during this thesis process. This practical component of my research was important to me, as I wanted to ensure my research had concrete value such as through supporting solidarity efforts¹³. This research topic first emerged from a discussion in relation to *borderline-europe*'s work as they support people criminalised for facilitation including boat drivers primarily in Greece and Italy. They directed my attention towards the UK context as it was one that was less understood in these European networks of support¹⁴. Thus, I approached this research with a very open-ended question and proceeded from there.

Research Questions

This research aimed to begin to answer the question of: **How can the criminalisation of facilitation of people who drive 'small boats' in the Channel be situated in relation to the UK's Hostile Environment?**

¹³ see Bryman (2012) for further considerations of the value of a practical approach to research.

¹⁴ I do want to note, that these connections between the UK and European solidarity networks very much do exist, my role was not in creating connections but rather in strengthening transnational networks and knowledge sharing.

In beginning to address this question, I first identified public information regarding this topic including the Kakaei Appeal and the passing of the NABA. My research starting point was thus considering how this criminalisation had been influenced by these events. In outlining my research sub-questions, I have grouped them and briefly explained my research journey throughout.

1. Is this criminalisation occurring?
 - a. How has the Kakaei Appeal and NABA impacted the criminalisation of boat drivers and is it still occurring?
 - b. If so, how many people are being criminalised and under what laws?

In approaching these initial questions, I contacted activists on the ground in the UK to link with them. While some difficulties arose here in communication, I did eventually connect with people who were involved with following this criminalisation and supporting people being criminalised. Throughout this period, I additionally conducted online media searches and reports. Through this I identified one active case that has been published about. Through these, I established that these cases were still ongoing as a result of the NABA. Around this point I additionally arrived in the UK and began to observe in the courtroom. I had additional questions in approaching this space.

2. What sentences are being given?
 - a. What impact do these sentences have on people's future after prison?
3. How is this criminalisation being justified?
4. How are people being talked to and treated in the courtroom?
5. What trends are present throughout this criminalisation?

Through my time in the courtroom, these questions were addressed and countless further questions emerged (many of which remain unanswered). For my research, I will present my findings based on the above sub-questions as they relate to my Research Question. While I spent most of my research observing in the court, I additionally followed media reports, state publications, and organisational updates and attended various talks and events as well as

conducted interviews to better inform my understanding and approach. Throughout these questions, I continued to consider how this was occurring within the wider state structure of the UK's Hostile Environment and to contextualise what I was seeing within this wider context.

Data Collection

Here I will briefly outline my data collection methods.

Court Observation

I conducted court observations in the public galleries of the Kent courts from April – early June, 2023. I carried out the bulk of my observations in Canterbury Crown Court while also sometimes attending Folkestone Magistrates Court.

In considering this research approach, Bögelein et al (2022) take up the question of 'courtroom ethnography' advocating for a multi-analysis approach as they focus on trials related to terrorism charges (for further discussion of courtroom ethnography see e.g. Walenta, 2020; Bens, 2018; Travers, 2021; Klosterkamp, 2022). They caution about being aware of reproducing courtroom power structures as well as the importance of an intersectional approach (Bögelein et al, 2022). Here, I engaged with this in considering the role of dominant discourses, particularly those of the state, as they appeared in the courtroom and challenged them throughout my research. The role of observation research in the context of the courtroom has been further outlined by Anleu et al (2015) who researched the role of emotions and interactions in this space. They wrote about the importance of understanding how the individual interpretation of proceedings may differ from person and person (Anleu et al, 2015). Reflecting on this in my own research, I was careful to not base arguments and facts merely on my observations but aimed to take a well-rounded approach informed by various factors including interviews and document analysis. Dahlberg (2009) further conceptualises the courtroom as a theatre-like space, noting the role of emotions here even when court proceedings are presented through discourses of unbiased fact (Dahlberg, 2009). They further argue for the courtroom to be understood as a space with its own 'social rules' (202, Dahlberg, 2009).

Finally, I situate my approach as a form of 'court-watching' (Gill & Hynes, 2021). This is particularly relevant as court-watching is a grassroots approach which draws on activism related

Stop the Border

to questions of visibility and witnessing in the courtroom (Gill & Hynes, 2021). This can involve monitoring how ‘justice’ is occurring, opposing injustices, and increasing visibility (Gill & Hynes, 2021).

Discourse Analysis

I used non-systematic discourse analyses to complement and inform my findings. This included engaging with legal discourses as outlined in relevant laws, publicly available formal sentencing remarks, and work by legal experts. I further explored the role of the media. This included regularly searching for relevant news reports. While I found countless reports related to immigration and ‘small boats’, there was often an absence of coverage on this criminalisation of facilitation. While I began various times to do a systematic media review, there was a clear gap in what had been reported on. Finally, I also followed state discourses including listening to speeches related to the introduction of the IMB, reading parts of policies, following political member’s social media updates, and examining Home Office publications. This was again not systematic, but rather an ongoing complementary process to inform my findings and understanding.

Interviews

I have conducted 7 qualitative interviews. My goal with these interviews has been to understand what knowledge exists on the Channel as well as about the criminalisation of facilitation that may be relevant to this criminalisation of facilitation and the various aspects, actors, and considerations involved. To best address this, participants were identified using a non-probability purposive sampling technique as well as snowballing as it occurred naturally (Bryman, 2012). Interviews were semi-structured (Bryman, 2012) and with each participant, I aimed to focus the interview on their expertise. I have talked with people involved in various interacting roles on this topic including as activists, academics, practitioners, and experts with knowledge of the Channel, the wider criminalisation of facilitation and solidarity, and the UK immigration and criminal systems. Of these interviews, some focussed more on the context this criminalisation exists within (reflecting what knowledge is present) while the others focus on specific expertise in relation to this criminalisation of facilitation and of boat drivers specifically. This reflects the fact that this criminalisation of boat driving can be less known about, particularly in the UK.

Some interviews were used explicitly throughout my research, while others are mentioned but served more to fill gaps and add context to my wider understanding and approach to my topic.

Autonomous solidarity networks and spaces

My research has been informed by my involvement in autonomous solidarity spaces including the work of *borderline-europe*. I have also connected to other networks including the Captain Support Network and a course on the Criminalisation of Facilitation during my research period organised by the Feminist Autonomous Centre for Research. While these were not spaces of data collection, as I intentionally did not enter them as a researcher, they did inform my perspective and approach to the topic. I mentioned the importance of the role of activism alongside my research for me. This has also further been discussed by Arci Porco Rossi (2022) as they discuss the same relationship between activism and research.

Limitations

In terms of my approach, the clearest limitation is that this research did not include direct interaction with people who have lived experience of many key themes in this research including being criminalised for facilitation, navigating borders as denied access by states, or being forced to flee one's home. The main reasons for this exclusion are first and foremost, this was not part of the ethical clearance for this research. This is not to say these perspectives have been ignored, but rather have been engaged with through secondary sources as interpreted by me as the researcher. Thus in situating myself as a researcher, I fall into the role of investigating subject, as outlined by Spivak (1988), where my role is to draw attention to an under-researched topic in order to promote visibility and understanding.

Another clear limitation relates to timing. Due to the nature of the research period, I have only been able to offer a brief snapshot of what is occurring in these courtrooms and can make limited conclusions about long-lasting trends, instead pointing to what I saw during this period. Finally, in looking at the limitations of this proposed research it is important to note that as there are many gaps in the information available on this topic and a potentially limited number of relevant cases, this research has limited reach. Herein though lies the very value of this research as it is justified through this lack of available information.

Ethical Considerations

One key point I want to reiterate here is the importance to ensure informed consent is not simply a step but rather should be an ongoing process that is continuously being reaffirmed. The onus here is on the researcher. A key part to this is creating a safe, open, and supportive dialogue with anyone engaged with my research that supports an environment where someone feels comfortable to change their mind, question my research practices (particularly those related to their involvement), and put conditions on their participation as they feel is appropriate. This can be done by establishing different levels of confidentiality, as outlined in my consent form (see Annex). Furthermore, given the nature of this topic it was clear to me that certain things were not beneficial to share in my research, regardless of them being shared in a public setting. This was further relevant as some cases I observed were ongoing or involved young people. As such, I have been careful in my approach both in what I have shared as well as making sure to only share information as general and non-identifiable.

Positionality

When considering my positionality with this research, a key distinction for me was maintaining an awareness of the boundaries in my role as a researcher or my role as an activist. This included ensuring that information that was shared outside of the public sphere or a set research space (such as an interview with written consent) was not included in my research. As such, I have been careful to ensure the information shared in this thesis is either publicly available, shared in a public trial, or has been shared with me with the explicit purpose of informing my research (i.e. in an interview or follow-up conversation where written informed consent has been obtained). In approaching this research, I began as an outsider within this network as I was new to the UK context as well as to work supporting people being criminalised for facilitation. While I did have relevant knowledge, particularly related to migration contexts in Europe, sea border crossings, and the criminalisation of migration, there was a learning curve in understanding some key discourses as well as this UK context.

Finally, in any work discussing this criminalisation of migration, it is important to note that I am approaching this as someone without lived experience of this or of being unable to move as I want due to borders because of my passport and where I was born. While I seek to understand these experiences, my understanding will also be second to that of lived experience.

THE CRIMINALISATION OF (UN)SAFE PASSAGE

It is clear that as the NABA introduced the ‘crime’ of arrival, and thereby the ‘crime’ of the facilitation of this arrival. People arriving in the UK in ‘small boats’ are again being charged in relation to their actions, or supposed actions, driving or steering the vessel they travelled in. These cases have been referred to as hand on the tiller, steering, piloting, or boat-driving cases. While the criminalisation of arrival has a longer history in the UK, after the increase in ‘small boat’ crossings in late 2018, CPS began to charge people for boat driving in 2019 (interview). The Kakaei Appeal (as outlined in Chapter 2) led to around 40 cases being overturned (interview) before the NABA was passed creating this new crime of ‘arrival’.

For people arriving in ‘small boats’ who presumably do not have valid entry clearance to the UK, this change has meant that they could all be charged for their ‘illegal’ entry regardless of any asylum claim. This said, charging everyone who arrived in this way would be unrealistic and unworkable, particularly considering the ongoing strains on the UK court and prison systems. This was noted by the CPS who have accepted that it is not in the ‘public interest’ to arrest, charge, and imprison every person to whom this law could be applied, but rather only ‘the most egregious cases’ (interview). Currently, the cases where people are being criminalised appear to be those related to re-entry and boat driving (observations, interview).

When considering the context this criminalisation occurs within, one person I interviewed noted that while British politicians may speak of a “proud history” of welcoming refugees, in reality, there is a clear “history of hostility” towards people arriving in the UK without entry clearance, including people seeking asylum. Another spoke of the ongoing efforts to “disrupt” certain people’s mobilities discussing how borders are employed as the “most effective” way to stop unwanted mobility. They explained this to include visa regulations as well as the introduction of criminal offences where people are ‘punished’ for their mode of travel. This criminalisation can be understood as ‘part of this bigger project of ending the right to asylum in the UK’ (interview). This bordering while targeting “migrants who the state doesn’t want to

move” has “inevitably started to wrap up people of all different statuses” including citizens (interview).¹⁵

In outlining my findings, I will first give an overview of the criminal proceedings in these cases from how people end up in this role of the driver to the Courtroom, before focussing on the cases of age-disputed children being criminalised as this emerged as recurring in cases I observed. Finally, I will consider the visibility of these cases and of the criminalisation process before considering the future.

CRIMINAL PROCESS

In considering why people may enter the role of boat driver, there can be various reasons including having nautical experience, experiencing duress, or encountering trouble at sea (interview, R v Mohamed). This duress can include interpersonal threats and violence (R v Mohamed). In considering the journey at sea itself, one defendant was quoted describing their experience in the Channel as “the most terrifying time of his life” explaining that it was dark and started raining while they were at sea in an underinflated boat (observations). A lawyer discussed his client’s role as a boat driver urging the judge to account for the fact that “he along with [others in the boat who also drove] played his part in *keeping them alive* yet he is the one [here]” (observations, my emphasis). One person I interviewed pointed out that the people being criminalised also often do not think they did anything wrong stating “they took over in the sea because they thought this was the only way to get to the UK safely... they see themselves as helping not doing something deeply wrong”. In another case, a defendant was quoted as having admitted to their role as the boat driver in the port stating, “I am a victim of an offence, I came to apply for asylum” (observations). This same defendant upon being asked their plea in court pleaded “guilty and I’m sorry” (observations).

In considering this act of driving the boat, in an interview one person noted that the people charged with driving the boats in this context are not “part of the broader organised criminal network” but rather are “seeking safety or a better life just as everyone else in the boat” (interview).

¹⁵ Two interviewees referred to Windrush in related discussions noting a notable way in which these changing borders can impact citizens as well (interviews).

Arrested and Charged

Upon arrival in the UK, people are charged relatively quickly. After a boat is intercepted, each person has their details recorded and checked against Home Office records before being transferred to Manston (observation). Someone facing facilitation charges is generally arrested soon after this and undergoes a formal interview before being brought to the Magistrate court. From there, they will generally be sent to the Crown Court for sentencing. In an interview, one person noted the demand and confusion of this process outlining how people who have been in a boat for hours are left in “detention conditions”, potentially forced to undergo an initial age assessment upon arrival, and are given limited yet complicated legal information before being brought to prison (interview). This confusion can be exacerbated due to factors including language barriers and advice from duty lawyers who may have limited awareness of immigration law (interview, observations). This can lead to misinformation that can cause further distress including people who have been told that they will be deported (interview). In terms of language barriers, while people have the right to interpretation in their first language, this did not always occur. In the court, I observed instances where interpreters were booked for a person’s second language, the wrong dialect, or could only communicate with them over a video link (observations). One time, the court failed to book any interpreter and a defendant was left in the cells while his case was heard and was updated by his lawyer after the proceedings (observations). Further misinformation can include incorrect reference to and misuse of international law including in a case where a judge told the defendant in front of them that the reason they were being prosecuted was because they should have claimed asylum in the first safe country they reached, despite this not being true (interview).

For age-disputed young people, there can be additional confusion as they have their ages questioned on arrival (interview). An interviewee noted that it is important to identify young people who may have had their ages wrongfully assessed by the Home Office upon arrival. They explained that young people arriving may not know that they should dispute their age in the UK, particularly as they may not be aware of what benefits this could bring them and additionally may not want to draw attention to themselves in this “heightened hostile environment” (interview).

Concerns with this process were echoed by a interviewee who spoke about the treatment of boat drivers in other European contexts. They explained how this can occur as people have to

Stop the Border

undergo questioning to determine who drove a boat after having experienced their journeys, some of which included shipwrecks or other traumatic events. They argued that this is “a very dehumanising and completely disproportionate way of criminalising” (interview). As people arrive in the UK and “think they’re going to be safe”, they instead find themselves taken apart for a “seemingly an arbitrary reason” (interview).

Charges

People being criminalised as boat drivers face charges under Section 24 and Section 25 of the Immigration Act 1971 as amended by the NABA (see Annex). Section 24 outlines the crime of entry as well as of arrival as updated by the NABA (hereafter ‘arrival’). Section 25 refers to the facilitation of a breach of Section 24, namely of unlawful entry (hereafter ‘facilitation’). In practice, while most people are initially charged with facilitation, by the time they actually face the judge in the Criminal Court they are often actually sentenced for the lesser charge of their own arrival after pleading guilty to this (observations). Most cases I observed in the Canterbury Court reflected this. In cases where the prosecution was still pursuing a charge of facilitation, the judge often pushed prosecutors to either provide evidence for this or to substitute arrival as an alternative charge (observation). In a case where people on the boat in question died, one person was additionally being charged with manslaughter for their act of driving and accused of “unlawfully killing” each of the people who had been confirmed to have drowned (observations).

Evidence

People are often identified through imagery including photos taken by UK Border Force long-range cameras or drone footage (observations, interview). Further evidence can include testimony, such as from an officer present (observations). This can result in the misidentification of a driver, due to factors such as similar clothing (interview). Other people have been arrested for touching the tiller (interview), proximity to the engine (interview) or despite being observed as one of multiple drivers (observations). Despite accounts of multiple people having driven in some cases, I only ever observed a single driver be charged from each boat (observations). This was noted by a defence lawyer who stated in one case that despite multiple people having “took the tiller” at various points, their client was the only one facing charges (observations).

In identifying someone as a driver and initially charging them, there seems to be a low burden of proof regarding their role in the journey including how long they drove for or if their

Stop the Border

proximity to the engine was due to their driving or coincidental (observations). One person I spoke to reflected on this stating that “one of the ways to stop people moving has been if you touch the tiller or steering device, then you are a smuggler” (interview). This question of evidence may explain, at least partly, why people are being convicted for arrival despite being initially charged for facilitation (interview).

Bail

None of the cases I observed had a defendant be granted bail if an application was even made. Reasons for this included their lack of connections to the UK being of “no fixed abode” and a “risk of flight” and of potential “failure to surrender” (observations).

Sentences

In considering the length of sentences being seen, before Kakaei, sentences for facilitation had ranged from between 16 months to four and a half years (interview). After the law was changed under the NABA, in June 2022, there was a period of lesser sentences, fines, or suspended sentences given in the Magistrates Court (interview). This was during a period where Magistrates were granted extended powers for a period due to backlogs in the UK courts. In December 2022, a Canterbury judge laid out sentencing guidelines for charges of arrival setting a starting point of 12 months if the case was decided before a jury. This resulted in sentences of around eight to nine months when reduced to reflect a defendant’s early guilty plea¹⁶ (observations, interview). One person noted in an interview that while these guidelines are not binding, they have generally been followed, noting that these cases were a “politically contentious issue”.

In terms of sentences for facilitation cases, these have been limited since the NABA. Of those that have occurred, one person was given 15 months, while another was found not guilty by a jury (interview).

Sentencing Remarks

Many cases were heard before the same judge who used consistent justification in their sentencing remarks as they addressed the defendant. The judge would state something similar to:

¹⁶ With half of this time to be served in custody

“You are one of thousands within the last year or so who have attempted to gain illegal entry into the UK by navigating the English Channel in a small overcrowded and unseaworthy vessel – in doing so [you have] put yourself and others in danger and forced authorities to commit considerable time and resources in having to rescue you”
(observations)

Another time they added mention to the fact that “mercifully the craft was intercepted and you and other occupants were able to be taken to place of safety on UK mainland” (observations). Key in this justification is the judge’s invoking of a narrative of risk and blame as they tell the defendant - *you* put risk to others. In a case of re-entry where a person was being charged under Section 24 for their own arrival, a judge echoed a similar narrative of blame this time for the defendant’s actions as a passenger stating that they “placed [them]self and others in considerable danger” before being intercepted and brought to safety (observations). It is noteworthy that this blame is not just attached to the driver for their actions, but rather appears to extend to anyone who has been in a ‘small boat’ in the Channel.

Continuing, this judge often refers to four key points in justifying the need for a deterrent custodial sentence. They state that the defendant’s actions have a “clear capacity to undermine the nation’s security” as well as “undermine public confidence in the asylum system” noting that “this method of circumventing immigration controls is costing the state enormous sums to police” and finally, that this is a route that helps to “fund serious and organised international criminal gangs”. In noting additional factors in sentencing, the judge would sometimes refer to the fact the defendant had an open asylum claim and recognise that they would serve their prison sentence in a foreign country and thus away from the support of family and friends
(observations).

Justification

In considering who is charged in these cases, there is a need to justify charges as being in the ‘public interest’ as was accepted by the CPS (interview). In considering this, one interviewee offered two potential justifications. The first is deterrence, although they noted that this is interesting when considering the lack of visibility these cases have had, particularly in

comparison to other responses focussed on deterrence such as ‘stop the boats’ or the prison barges. The second potential justification they offered was that this criminalisation was part of actions against smuggling, despite it being generally recognised that the boat driver is generally not part of the smuggling networks but rather “just happened to be the person that’s driving the boat” (interview). This mirrors justification from across Europe, as discussed by another person who argued that the use of this smuggler narrative is a ‘strong tool’ that can be used as a justification to punish people arriving without permission. They noted that the punishment of this figure of the smuggler is accepted by many, referring to how ‘smuggling’ itself has become a buzzword (interview).

In considering the justification for this criminalisation, a judge did offer further reasons in their sentencing remarks where they stated the need for deterrence and referenced the need to protect the state from this risk and burden posed by this ‘crime’ of arrival. In considering criminalisation more generally, another interviewee discussed the potential deterrent power of the very threat of criminalisation. They discussed the “threat of criminalisation and the atmosphere that that engenders”, describing how this threat can create anxiety which is “contagious” and thus even when criminalisation itself does not occur, the threat persists (interview). They noted how the law itself serves as something that can be used to control and intimidate (interview).

Age Disputes in the Criminal Justice System

A concerning trend that has emerged with these boat driving cases is the criminalisation of young people with open age disputes who are appearing in courts and the adult prison system, despite their age remaining a ‘live issue’ (observations). This comes as many children have found themselves having the age they give be ‘disputed’ by the Home Office upon arrival in the UK.

Home Office Assessments & Age Disputes

Home Office age assessments are well established to be flawed as they rely on factors such as physical appearance (interview). One interviewee described how the exact same characteristics were often repeated for different individuals including references to big hands, broad shoulders, a prominent Adam’s apple, evidence of shaving and demeanour, including if a young person

seemed confident, comfortable around adults, and even if they answer the questions they are asked.¹⁷ Despite being flawed, these assessments continue to carry weight in the Criminal Justice System (CJS), with a judge in one case stating that this “age assessment is undertaken by the Home Office and Border Force with some care already” (observations). Another concern raised by a judge in court was how someone who was a child would have been able to make the journey to the UK alone and unsupported (observations).

In considering the treatment of children, it is important to note that there is a very well-established and clear process for how to deal with an age-disputed child including how to perform a “lawful and fair” age assessment (interview). When a child’s age is disputed by the Home Office they should immediately be referred to the local authority who then has an obligation to provide them with accommodation where they can have a period of rest to settle in and recover from their journey before anything else (interview). An interviewee explained that it is “unfair and unlawful to put them through that [age assessment process] if they haven’t had this” especially as the age assessment process itself is “gruelling”. They noted though that in practice even this referral to the local authority often does not happen.

While experts on children’s law have been cited in court urging the court that it is required to order a Merton compliant assessment, the judge has stated that they are “not in a position to do that nor do I consider that the law requires me to do that” (observations). Here, there were often references to the potential risk posed by a young person if they were bailed to the local authorities including a risk of flight and a risk they posed to the other young people accommodated by the local authority if they were accommodated there and found not to be a child (observations).

This came as young people in some cases were sometimes (but not consistently) released to the local authority for bail (observations, interview). Considering this question, one person I interviewed argued that there is “essentially no lawful way for an age assessment [to be carried out] in prison” noting the importance of giving a young person time to recover from their journeys as well as the “ongoing experience of “living in the hostile environment”. Further

¹⁷ In court, I heard further factors that were taken into account including ‘broken voice’, ‘moustache’, ‘receding hairline’, ‘developed frown lines by eyes’, ‘hardcore stubble’, and ‘broad’ or ‘well developed adult shoulders’ (observations).

Stop the Border

considerations in the prison system include that there is a lack of understanding of what to do when a young person with an open age dispute is there as this is a ‘novel’ occurrence (interview)

Date of Birth

A concern that was often raised by the court referred to ‘inconsistencies’, particularly concerning a defendant’s date of birth (DOB) (observations). This included cases where differing dates were provided including from the young person themselves and from Home Office initial assessments (observations). These dates could be very different, as in a case where four DOBs ranging over 10 years were referenced in the courtroom (observations). One defence lawyer raised a consideration that an unclear exact date was not necessarily uncommon or unexpected given their client’s geographical and socioeconomic background (observations).

Jurisdiction

A main point raised in these discussions related to court jurisdiction. This question of jurisdiction has further resulted in at least one young person accepting they were 18 for the purposes of sentencing after the judge in the case stated that if they continued to assert they were a child the court would need to adjourn resulting in the defendant spending more time in custody than if they pleaded guilty as an adult (observations). I observed further concerns relating to jurisdiction being raised including the question of whether it is “really in the public interest to prosecute a child” with a judge noting that if they had a child in front of them it is “wrong” to keep them in custody (observations). This judge further questioned why if they were dealing with someone under the age of 18 the alarms hadn’t been “rung like [the] Big Ben at the Magistrate’s Court” when this issue was first raised (observations).

Real Doubt

While an assertion from a young person that they are a child should be enough to warrant this assessment, this often did not occur in practice (interview). The question that was often discussed in court in relation to these cases was that of ‘real doubt’. In considering these cases in

the court, a judge referred to Section 99 of the Children and Young Persons Act¹⁸ in their formal sentencing remarks noting that if a “person before the court... appears [to be a] child or young person” then the court is expected to make “due inquiry” and if there is “real doubt” to their age only then should a Merton compliant age assessment take place (observations). How this ‘real doubt’ could be reached remained somewhat unclear. What was not recognised as enough was a claim by a young person to be a child. This was stated directly in one case I observed where a judge asserted that where there was a simple “bold unsupported assertion from a person that [they are] a child”, this was not sufficient (observation). One solution offered was for an independent social worker to make their own assessment and should they subsequently have ‘genuine doubt’ about the young person’s age then the court *may* be prepared to order a Merton compliant assessment (observations). In considering whose doubt was sufficient, this judge indicated that what they were told by “someone from a charity” was not necessary enough, later mentioning they would be more likely to accept it if it was raised by an “independent” source such as “a prison guard, social worker, or the local authority” (observations).

Shifting discourses: blame & burden

Throughout these cases, there was a clear shift from the first case I observed where questions of a young person’s age came up and the judge referred to the defendant and said “this is not your fault”¹⁹, meanwhile in later cases they shifted this responsibility they placed onto the young person. This shift was exemplified when one young person was informed indirectly²⁰ in the court that if they continued to assert that they were a child they would be remanded into custody and that “this is going to take longer” than being sentenced as an adult (observations). There was a further reference to a loss of credit for a guilty plea, which was included in the judge’s sentencing notes where they stated that “if [this] individual is not telling truth about [their] age and putting [the] state to considerable costs... [there will be] consideration to whether

¹⁸ The age assessment process is outlined in the UK Law under Section 99 of the Children and Young Persons Act 1933. The key points to consider under this legislation include that assessments are to be carried out in compliance with Merton principles.

¹⁹ Although this judge still failed to order a Merton compliant age assessment or to have this young person be bailed to the local authority

²⁰ By indirectly, I mean it was said in court referring to the defendant in the third person while they sat in the courtroom with an interpreter live interpreting the proceedings for them rather than that it was directed to them.

any credit to guilty plea would have to be consider” noting if they are found not to be a child, this should reduce any reduction for a guilty plea (observation).

This discourse of burden was present throughout these cases. A judge referred to forms of this burden including the burden on the court in dealing with “constant claims of childhood”, on the local authority’s limited resources, on the public through “public expenses” for these “fantastically expensive” assessments, and even on the judge themselves as they noted their frustration facing this cases stating that the “court [is] entitled to voice frustration” and on another occasion that “despite the lack of notice and time for [this] complex and important dispute” they had adjourned another case, gotten an interpreter, and “agreed to sit for these before the holiday” (observations).

Considering this discourse of ‘burden’, what was never acknowledged was the burden of this process on the young people themselves, particularly as they were being subjected to the criminal system simultaneously. An interviewee referred to this calling the impact of these age disputes on young people as “brutal brutal things”. They spoke of young people asking ‘are they calling me a liar? Calling my family liars?’ (interview). They further noted the potential trauma and distress of having to go through this process while in prison (interview).

Establishing Procedure

Many of these cases ended up in the same court in front of the same judge, who after facing a number of these stated in one case this was “far from unusual indeed in this particular court” referring to “young men charged with this offense claiming [to be] children [with] alarming regularity” and asserting that “applications of this sort [are] so regular [as] to be almost automatic” (observations). This reference to ‘young men’ contradicted the fact that the ‘live issue’ of age had not been resolved in any of these recent cases being referred to.

As these cases have occurred, there has been evidence in the court of trying to establish a procedure to respond to them, with one judge often referring to the fact that this was a learning process and that they were open to guidance or correction that their approach was wrong (observations). This sometimes took precedence over the individual case in front of the judge, as there were sittings where the judge spoke about considerations of age disputes without allowing the defence lawyer to speak on the specifics of their client’s case (observations). Furthermore, in one later case, the judge adjourned to allow them time to offer formal remarks, which could be

used to inform in future cases (observations). Despite these considerations, the young people in question were generally left in adult prisons throughout these proceedings (observations).

Visibility

In considering the visibility of this criminalisation in an interview, one person discussed how even within the refugee sector in the UK, there was a lack of understanding of what was happening in the courts as people seeking asylum were facing criminal charges upon arrival in the UK. They noted that while there was some coverage of these cases, particularly in print news, there was no indication of the fact that people are being charged in relation to facilitation on a weekly basis (interview). This comes as the Home Office refuses to release the number of people criminalised as boat drivers for public access (interview). While the exact rate of this criminalisation remains unconfirmed, in March 2023, the Home Office (2023) released that 87 people have been arrested for ‘piloting small boats’ since the NABA while an MP also stated that “162 people, including 34 small boat pilots, have been convicted” (Raab, 2023). Another publication put the rate of criminalisation at around one person for every five or six boats based on their calculations (Taylor, 2023).

In the Media

Another place these can be made visible is in the media. In searching the media, what was most clear was that these cases were not receiving much attention. Of course, this in itself was a finding, so while I do not suggest that my media review was in any way comprehensive, it was telling for what was being talked about, or in this case largely not. This was seconded by a participant who further noted how much less coverage these cases were receiving compared to other immigration responses such as the Rwanda scheme and calls to ‘stop the boats’. They suggested that maybe this was due to the comparatively low number of people being criminalised compared to the number of arrivals, noting that the lack of publication could relate to the state not wanting to appear weaker than their aimed ‘tough’ approach to migration (interview). While there did seem to be a somewhat higher coverage of cases before the Kakaei Appeal as well as of related appeals, I focussed my search during the period I was researching in. Some cases did receive more coverage than others including one where people drowned during a crossing as well as coverage of recent facilitation charges where cases have gone to trial with a jury.

Of Operations

In considering the visibility of this criminalisation itself, interviewees discussed how the nature of the Channel as a sea border serves to obscure some of these operations responding to boats arriving. This invisibility can be increased in different ways including as Border Force can turn to 'Channel 0' during operations which cannot be monitored by the public creating a sort of invisibility (interview). In considering the importance of seeing these hidden practices, one person I interviewed spoke of the importance of providing counter-narratives to the government's 'weaponisation' of narratives of, for instance, 'riskier journeys' in the Channel. Another referred to previous observations in the Channel being used to take the government to court using "knowledge as a form of advocacy" to hold them accountable.

Where practices are more hidden, at least as a member of the public, seems to be from the interception of boats in the Channel to the Magistrate's court. In the Magistrate's court, court proceedings are not necessarily shared but they are open to the public offering an opportunity to identify people who have been charged with an 'immigration crimes'.

One additional way cases are being publicised outside of the UK is that as some cases of criminalisation receive more attention, generally those involving white Europeans, the people charged have used their platform to challenge the laws allowing this criminalisation, such as the Iuventa crew, who have also advocated for the need for interpretation for legal processes into a defendant's first language (interview). Additionally, Carola Rackete, a German captain who was charged, used the attention she received to write a book and shared the proceeds to support people receiving less support for similar criminalisation (interview).

Looking Forward

When considering the impact of this criminalisation, it is not yet clear as the people I have observed be sentenced remain in custody. Moving forward, there is a need to consider the impact this criminalisation may have on their asylum claims and potential for deportation. This is particularly true for those charged with facilitation as sentences over 12 months can result in an automatic deportation order in the UK (interview). In an interview, one person noted that this will have a disproportionate impact on some people depending on their nationality, giving the example of someone from Albania who would likely be automatically deported due to return

agreements that the UK has in place with their country of origin (interview). Another person discussed the impact of these charges in other European contexts, noting that in following the people criminalised as ‘scapegoats’ of these policies they see “lives are literally being destroyed” (interview). In considering this impact, I did observe one case where a person had been charged for their arrival²¹ the UK last year, then struggled after being released from prison only to end up back in the court after being charged as they attempted to leave to France hoping for a better life.

In considering what is being done, there are continued efforts to support people being criminalised in various ways (interview). When considering what needs to change, two people I spoke to separately referenced their hopes for what could be “in an ideal world”, while also noting current actionable steps that needed to occur. This included calling for the NABA to be repealed, for an end to Home Office age assessments and for there to be an end to the criminalisation of asylum seeking and entering the UK without entry clearance (interviews). Another person discussed the need to avoid normalising these practices, noting that what once seemed unimaginable can become reality and subsequently accepted.

Finally, reflecting on the ‘criminalisation of solidarity’, one person discussed the importance of understanding this criminalisation of facilitation as part of a ‘bigger picture’ of related criminalisation (interview). They noted that they don’t differentiate between ‘migrants who help each other, which is the most common kind of help, and citizens or people with a secure status... because I think that as soon as you think about this for a few minutes, you realise that it’s so complex in terms of the status of different people, their relationships to each other.’.

Conclusion

It is clear that the criminalisation of boat drivers has continued since the NABA was passed. However, it is less clear how many people have been charged or why these cases are not being more publicised in the public domain, beyond occurring in courts with public access. Further concerning trends have emerged in this criminalisation including the presence of age-disputed children in the courtroom and recurring issues including providing adequate interpretation for a defendant’s needs.

²¹ It was unclear whether this initial charge was related to boat driving.

FIGHT BORDERS, NOT SMUGGLERS

In the UK, the criminalisation of boat drivers emerged in 2019 as the number of people crossing the Channel in ‘small boats’ increased. Laws that had existed for decades were used to target people arriving by sea, with a focus on the ‘boat driver’. This changed with the Kakaei Appeal when the application of these legal frameworks was found to be unlawful with tens of convictions being overturned. In response, the state introduced new crimes related to arrival through the NABA. These allowed them to continue their practices of the criminalisation of people arriving. They additionally increased the potential punishments for people charged with these crimes.

In discussing these findings, it is useful to first refer back to the initial question posed in this research. How can the criminalisation of the people who drive ‘small boats’ be understood within the Hostile Environment of the UK? This discussion will consider how boat drivers are constructed and subsequently criminalised as scapegoats, drawing on considerations of relevant state practices and discourses. These findings will then be situated within wider discussions of the need to re-frame discourses of facilitation.

Constructing a Scapegoat

With the introduction of the new ‘crime’ of arrival, essentially anyone crossing the Channel in ‘small boats’ is illegalised. This said, the criminalisation of every individual arriving in the UK in small boats would be both impracticable and unfeasible. In considering who is actually criminalised upon arrival, the boat driver has emerged as an easily identifiable and justifiable target, particularly through the use of smuggling discourses (see Sanchez, 2015). Considering smuggling as having reached a ‘buzzword’ status, it has often been publicly accepted as a justification for the need for this criminalisation (interview). It is important to understand how the role of ‘public interest’ can further be defined by those in power including in criminal processes when looking at who assesses and determines ‘public interest’ in a case. The judge is a clear example of who holds this power in their role in the courtroom.

Through their criminalisation, people who drive the boats are used as scapegoats for the state. By focussing on and criminalising their actions, the state defers from its own role and

responsibility in creating the risk in the Channel. As previously noted, it is not inherently risky to cross the Channel from France to the UK. The very risk of this journey is manufactured by the state through border securitisation as well as through hostile reception practices. This deferral of blame onto boat drivers occurs despite many people reporting having driven the boat they travelled in under duress or due to a state of necessity. In considering this ‘criminal’ act, it can thus be useful to consider the role of the mental element as people label their actions as necessary, or even “lifesaving”, but not criminal (observations).

Here, it is clear that the state has the means to create and justify a narrative that serves their interests as they cast someone into the role of ‘smuggler’, portraying them as a figure of criminality and risk. The criminalisation of boat drivers reflects this as laws which claim to target ‘smugglers’ to prevent harm are used to criminalise the very people whom they claim to be protecting. This criminalisation is a further violation of international law as under Article 31, no one should be penalised for how they cross a border when seeking asylum. It also confuses the binary of *evil smugglers* and *helpless victims*, tropes which are often invoked by state actors. In considering the state's reliance on the figure of the smuggler as a scapegoat, it is notable to recall how a smuggling discourse has been invoked even in cases where the only person involved in an attempted Channel crossing was the individual attempting to cross themselves (see Tyerman & Van Isacker, 2020).

Law as Political

In considering the creation of crimes, it is clear that the law is not natural, neutral, or unbiased. The very creation of a crime sheds light on the ability of certain groups to illegalise and subsequently criminalise actions and groups that they deem undesirable. Here, this serves to further the UK government’s aim to ‘stop the boats’ and block certain forms of migration across the Channel. It is further clear that this criminalisation is not accidental nor inevitable, but rather an active choice (see Arci Porco Rosso et al, 2021). The element of choice was further clear when after the Kakaei Appeal ended the ability of the state to criminalise people arriving without entry clearance, instead of working to make amends for the injustices caused by the wrongful application of a law the government instead altered the law²² to introduce a new crime to

²² By introducing the NABA.

continue their same criminalisation. Furthermore, it is notable that this power to change, or even to appeal, a law is one that only certain groups have the power to do (De Genova, 2013). In considering how these processes move into and are reflected in the court, it is clear that the courtroom itself is an inherently political space. This is further evidenced as, for instance, the judge mirrors state rhetoric in the courtroom. This include the discourses of risk and blame that are present in the judge's sentencing remarks outlined in chapter 5.

The law can thus be used to further the interests of those in power including through the detention of people arriving as they are kept in prison-like conditions and by denying young people access to fair and legal age assessments, or even simply trust for the age they state. The law can also serve to create an environment of anxiety and hostility both as people face the threat of criminalisation and as others furthermore are left without adequate information or explanations about the charges they are facing. This criminalisation of arrival can be understood as this piece in the “bigger project of ending the right to asylum in the UK” (interview).

Identifying a culprit

In considering who is identified and charged in this boat driving role, it is worth noting that even in cases where multiple people have been reported or even observed driving a boat, only one person seems to ever be criminalised as the driver. This indicates that this criminalisation could be argued to serve a sort of box-ticking practice as one culprit is identified, charged, and sentenced for a boat, regardless of the characteristics of their case (or of how many people may have driven). In this search for a scapegoat, there is an element of luck in who is selected as the culpable. The very blurring of roles between smuggler, migrant, and boat driver in the criminalisation process points to the fact that this criminalisation is more complex than the state likes to present it as. This is evidenced as people are cast into this role of ‘smuggler’ because they touched the tiller of a boat or even sat near it. This reflects this idea of ‘find me a culprit!’ (Arci Porco Rosso et al 2021) wherein the primary focus is on finding someone to charge in this role. This focus on finding a ‘smuggler’ further marks the whole group as suspicious (Liempt & Sersli, 2013).

Following the focus on identifying a ‘culprit’, there is further evidence of the efforts to standardise legal processes in the courtroom as cases appeared to follow similar patterns including in repeated sentencing remarks and lengths, again regardless of individual case details.

This standardisation has further started emerging in cases with age disputes. In considering the resulting ease of sentencing, this can be potentially point to part of the reasoning for the recurring decision to ultimately charge people under the lesser crime of arrival. While the lower level of evidence required for this charge is likely key to this decision, it is also not a stretch to consider how this charge could also benefit the court process. When a person pleads guilty to their own arrival and has their facilitation charge dropped, it saves the court from having to go through a trial and allows them to deal with the case quicker. It simultaneously secures the defendant with a shorter sentence. This can be connected to Stumpf's (2013) discussion of when the process becomes the punishment, as pleading guilty here results in a shorter sentence than the wait to go to trial if someone pleads not guilty might take. This could thereby incentivise guilty pleas to the lesser charge as people want to get out of prison as early as possible. Additionally, in relation to immigration enforcement, this serves the purpose of the state in successfully convicting a boat driver, albeit for their arrival rather than facilitation. Hereby, those in power have created the conditions that push people into guilty pleas as the least strenuous and time-consuming route out of the criminal system. What bears to be seen here is the impact of these sentences on people's futures in the UK.

In considering this idea of the process as punishment, this can additionally be observed in the cases of age-disputed young people as they are warned in the courtroom that if they maintain they are a child they will face long waits in prison while the court determines the course of their case as well as being threatened with a loss of credit for any guilty plea they might make. Thus again, this idea of the process being used as punishment is present as they are forced to decide if they plead guilty a receive a relatively short sentence in an adult prison or if they maintain their age as a child and be kept in custody (often in an adult prison) while the court determines its next steps. In considering the treatment of young people in the CJS, it can further be understood within the wider Hostile Environment as an enabling space for distrust as young people have their ages systematically questioned and disbelieved.

(Dis)Trust

The dominance of distrust in asylum processes was discussed by Hynes (2022), who also pointed to this ongoing distrust of young people stating they are children. While mechanisms exist to support young people who have their ages disputed to have a lawful and fair age assessment,

systematic distrust in practice is used to justify denying them access to these processes. This distrust can cause additional distress and further trauma. This includes as these young people are being forced to decide if they want to proceed with age assessments against court pressure or if they will ‘accept’ being 18 or over for the purposes of sentencing all with limited information and knowledge of systems.

In considering the role of trust, it is important to consider who is trusted or deemed trustworthy. This includes as Home Office age assessments have been cited as trustworthy in the court, despite having been found to be overwhelming inaccurate (Helen Bamber Foundation et al, 2023). Furthermore, in considering who could be trusted in establishing ‘real doubt’, the judge has ranked the opinion of adult prison guards, a role which does not require any expertise on working with children, over charity workers who are trained to work with children. This seems to contradict the same judge’s trust which was placed in social workers and the local authorities due to their expertise. The clearest figure who is distrusted throughout these processes though is the young person themselves as they are forced to undergo distressing and potentially traumatising processes as their age is disputed.

Another facet of this trust is who is expected to trust, namely people being criminalised themselves who are expected to trust the system, the judge, and their lawyer. This includes young people who have found themselves to be systematically disbelieved. They are forced to rely on others in the setting of the courtroom including their lawyer, who may or may not have knowledge of immigration law, and interpreters, who may be online and speak a different dialect than them or even their second language. Trust is forced despite the existence of clear reasons to distrust including the ongoing institutional distrust that faces them. Those in power can thus create the conditions which necessitate people with less power to trust in systems that are designed to distrust them.

Burden

In these cases of young people facing age disputes, the discourse of burden additionally persisted. This included references to the burden they place on the courts, the local authorities, the public, and on the judge themselves. Over a few cases, a shift could be observed in this discourse of burden as age disputes came to be discussed as if they were the direct result of the young person’s ‘decision’. This is despite the fact that these disputes are actually the result of a

choice by the Home Office to distrust the age provided by a young person. Here again, this consideration can be seen as an instance of ‘starting at secondly’ (Barghouti, 2004) as young people face the blame for a problem created by state actors. This comes as the Home Office systematically disbelieves and disputes the ages of young people arriving in the UK, despite being well-evidenced to often be wrong (Helen Bamber Foundation et al, 2023). This discourse of burden was also clearly present in other cases in the courtroom including when a judge stated that the defendant in front of them had ‘forced authorities to commit time and resources to rescue [them]’ and had ‘cost the state enormous sums to police’ in response to their crossing of the Channel (observations).

As previously discussed, while calls for international cooperation can be important, framing migration responses as a *burden*-sharing, also serves to feed this narrative of migration as a burden. Thus, this discourse must be problematised. Alongside this discourse of burden, is an accompanying discourse of risk and thus blame.

Risk and Blame

This discourse of risk in the UK media and state discourses has been identified by Jacobs (2020). This was further reflected in the courtroom including as defendants were blamed for the risk they created by coming to the UK in ‘small boats’. This discourse of risk was present in cases of boat drivers, as well as one where a person had been a passenger on the boat and was facing criminalisation due to re-entry. Here, this discourse of risk was used not only for steering or controlling the boat but rather for the act of being on the boat. Thus, this discourse of risk can be seen extended to everyone who travels by ‘small boat’. When considering this framing, the discourse of risk can be understood as the result of a person’s choice to engage with smugglers. This clearly defers the blame from the actors that blocked all other options for movement in the first place, namely the state. Thus, individual risk-taking behaviours are presented as responsible for producing the precarious conditions a person faces crossing a border (Jacobs 2020). This in turn further feeds this discourse of risk attached to certain people’s migration.

This idea of ‘risky bodies’ as a threat to borders (1474) places the state in a ‘risk management role’ (1468 Ibrahim & Howarth, 2018). This risk management framing can be used to justify practices of criminalisation as necessary. Further efforts to control this risk were mentioned throughout court proceedings as the possibility of bail was denied due to a person’s

supposed ‘risk of flight’. Young people were also denied being bailed to local authorities due to the risk they posed to other young people being accommodated there. Thus, discourses of risk can be used to justify blocking people from services and protections, such as the conditions for a fair lawful age assessment to be carried out.

The state can again be identified here as crucial in determining whose risk-taking is illegalised or celebrated (Davies et al, 2021; Jacobs, 2020). While people are being criminalised for their perceived role in creating risky situations through their journeys, the state’s risk-taking in response is justified as essential. This includes ongoing experimentation with various policies, such as the NABA which has already been suspended (Scottish Refugee Council, 2023) or with the application of criminal law, as was seen when facilitation charges for *entry* were carried out, despite this later being found to be a misinterpretation of the law resulting in the wrongful criminalisation of at least tens of people before the Kakaei Appeal. Thus it appears experimentation in and with the crimmigration system to block migration is often understood as an acceptable risk.

Seeing like the State

Whether it’s May’s call to create a ‘hostile environment’, Sunak’s narrative surrounding ‘stop the boats’, or Braverman’s ‘dream’ of sending people to Rwanda, state discourse play a central role in how migration is understood and how subsequent responses are justified. This includes the very framing of people arriving in ‘small boats’ as the issue as well as considerations of who is to be criminalised and for what. The role of state discourses can further be tied back to Spener’s (2008) discussion of how structural violence can involve the narratives of those in power being used to control. The state can further control discourses by instrumentalising visibility.

(In)Visibility

In considering questions of visibility, it is relevant to note how much of this criminalisation process remains invisible. Forms of invisibilisation can include the obscuring of state operations in detecting and intercepting boats in the Channel, such as by conducting operations on secret radio channels. This mirrors Australian practices of ‘blackouts’ for water operations (Hodge, 2014). In considering this invisibilisation, it is further evident throughout media coverage. There

is a clear disconnect between the number of people being charged with ‘immigration crimes’, including as boat drivers, and the coverage of this criminalisation. What reporting does occur tends to focus on cases with a *sensationalised* factor such as where people have drowned. This further reflects Spener’s (2008) discussions of the coverage of coyotaje in the media where they noted the hypervisibility of cases with violence or death. These cases of selective reporting fit with narratives which aim to show facilitation as dangerous and border enforcement as spectacular.

When considering this lack of visibility, it is important to consider how this impacts the justification of these sentences as necessary for deterrence. It remains unclear how these sentences have a deterrent impact if they are not known about.

Deterrence

The focus on deterrence in the UK is evidenced through calls such as “stop the boats”, which focusses on preventing certain people from reaching the UK. This has led to an increasing reliance on crimmigration controls for immigration enforcement (Bowling & Westenra, 2020). The target of this criminalisation is often acts of facilitation or smuggling as these acts threaten the idea of the state as having absolute control over its borders. This was reflected in a judge’s comments where they referenced the potential that arriving without entry clearance as well as facilitating this arrival have to “undermine the nation’s security”. The state further portrays its actions as essential for migration control, casting itself as a protector. This was mirrored in court discourses as a judge referenced the ‘merciful’ rescuers who have been ‘forced’ to use their time and resources to meet a ‘small boat’ in the Channel

In these two examples, there are clear references to the person arriving as a risk and a burden to the nation-state through their entry. By casting the state as the rescuer and injured party, this can further be seen to reflect this idea of ‘starting with secondly’ (Barghouti, 2004). By starting with the risk and violence of these journeys, blame can be attached to, for instance, the person who drove the boat or the smugglers who may have organised the journey, overlooking the role of the state in creating the conditions the necessitated this journey. Here, state narratives serve to re-enforce power imbalances through framing choices (see Spener, 2008). The state can additionally create the conditions for their narratives to become true such as when they claim someone is ‘illegal’ for circumventing controls, then make this true through

policies such as the NABA. Furthermore, it is noteworthy that this control over the border does not go just one way, but rather extends to those being criminalised both for their efforts to enter the UK as well as to leave. This was seen in a case where a person had received a custodial sentence related to their arrival in the UK and after struggling upon their release from prison attempted to leave seeking a better life only to find themselves back in the court facing another sentence. Here this control over the border is not just to keep certain people out, but additionally to prevent unauthorised exit. The state can use its discourses to attempt to justify the criminalisation of anyone attempting to cross the border without state permission.

Whether it's Australia's Operation Sovereign Borders or the UK's Hostile Environment, many similarities can be identified in immigration regimes focused on deterrence and securitisation. Related practices can in turn necessitate the need for people to turn to alternative ways to traverse borders available to them, such as by engaging with smugglers. Thus, in states' 'fight' against smuggling, they can create the very conditions that require people to turn to smuggling to cross borders in the first place (Missbach 2015). As one route is blocked, people are forced to take increasingly dangerous journeys evading state control (Carling et al, 2015). In the UK, this has been seen as the blocking of the Eurotunnel has not stopped people coming to the UK, but rather has forced people to turn to new routes, such as crossing the Channel by sea. Reflecting on these narratives of the powerful, the role they have in upholding the structure of the state and justifying its practices is clear. It is thus important to resist and reject simply seeing like the state. This brings this discussion back to the need to reject dominant discourses as well as the criminalisation of facilitation itself.

Re-Framing Facilitation Discourses

When criticising the criminalisation of boat drivers, it is important to not only criticise the criminalisation of one particular group but rather to reject the very criminalisation of facilitation itself. While acts of facilitation are often framed in a binary of the altruistic humanitarian or the evil smuggler, this is oversimplified. In reality, practices are much more complex.

In challenging state discourses, it is important to look beyond these restrictive understandings of whose actions can be qualified as what. This is reflected in discussions of whose actions get to be considered humanitarian (Pincock et al, 2020) or activism (Cristiano et al, 2023), or even in solidarity (Gendrot & Dadusc, 2023). While these roles lack clear definitions, states continue to

use them for their own interests. This can result in them being used in ways that re-create and reinforce existing power imbalances.

In looking to the criminalisation of facilitation, it is important to look beyond binaries of ‘good’ or ‘bad’ forms. In considering the different forms of smuggling or facilitation that exist, there is no clear line of when it should be celebrated or criminalised (see Brigden, 2019). What is clear, is that acts of both smuggling and facilitation are both necessitated by the structure of the state which focuses on blocking and controlling movement. The border itself both creates and necessitates related roles and actions (Sanchez, 2017a). When states criminalise these practices they purposefully overlook the lack of mobility options for people turning to smugglers thus failing to target the actual problem of borders. Not only does this fail to stop movement, increasing attempts to block these routes can also increase the risk to people migrating along them (Galemba, 2022). This can include producing the conditions which perpetuate the potential for interpersonal violence within the violent structure created by the state (Gendrot & Dadusc, 2023; Spener, 2008). A cycle can be identified as when borders become increasingly sophisticated, smuggling practices follow suit, which leads to continuously increasing risk for people navigating these borders.

In challenging dominant discourses of smuggling, it is important to identify and reject related practices of control that have become normalised. This includes the very existence of the crimmigration control system as well as of borders themselves. As journeys are being forced to more precarious routes, there is a further normalisation of the inevitability that people will die attempting to cross borders. This must be rejected. Furthermore, as people are forced to pause their lives awaiting asylum decisions, time itself continues which can have damaging consequences as people are left in a sort of limbo. Most clearly, the hostile environment approach itself has become understood to be a normal and appropriate response to immigration (Bowling & Westendra, 2020). In considering these, as well as other practices which have become increasingly normalised, people are resisting them through practices of autonomous solidarity. This includes as people who have been criminalised use their platform to challenge structures of criminalisation, as an entire boat of people states that they each were the driver in protection of one another, as activists work to make visible processes that states seek to obscure, including through witnessing; and as people continue to resist securitised borders and hostile receptions.

CONCLUSION

The criminalisation of boat drivers is being used by the state to further their own interests, including in showing themselves to be tough on smuggling. The impact that this criminalisation has is clearly distressing. As states seek to maintain absolute control over their borders, preventing any movement without their explicit permission, there is a need to resist the idea of state control over mobility as natural and to resist seeing like the state. It is important to focus responses not on targeting individual actors, but rather on the violent structure of the nation-state.

FREE THE CAPTAINS

In reflecting on these findings and bringing this thesis to a close, I want to highlight the need for a shift from ‘stop the boats’ to rather ‘stop the border’. Within this shift is a call for the end of the criminalisation of facilitation but also of the very need for facilitation in the first place.

Participants in this research spoke of and envisaged an ‘ideal world’, outlining ideas for how could be. As people continue to work towards a better future, this offers hope. In identifying this action in practice, it can be seen as people work in solidarity across and against borders, sharing experiences and knowledge.

What is clear is that something needs to change and that this change is not coming from states nor from those currently holding power within the structure of the state. In moving forward, it is important to consider the dominance of state power and to act in a way which resists rather than reinforces violent bordering systems, including those that mask actions and practices of control in narratives of ‘care’. When faced with a situation where young people are being threatened in the courtroom for maintaining that they are a child and others are apologising as they plead guilty for the crime of arriving seeking safety which they did not know existed before being charged with it, this ideal world can feel far away. It is here that these networks based on solidarity, reciprocity, sharing, and mutual support are so important in resisting this hostility and offering hope. In considering what needs to change, there is a need to identify practices of criminalisation and violence that have become normalised and challenge them. It is not that radical to question these practices nor to resist them in working towards a better future where something like ‘safe passage’ is more than a call but rather a reality for every person and where no one faces criminalisation, including for migration, facilitation, or solidarity. It is within these considerations of this need to shift to an approach of stopping the border, that one can situate the call to free the Captains once and for all.

Recommendations

In considering future research, there is a need to continue to follow these processes of criminalisation and particularly to identify and understand the potential consequences of this criminalisation on individual people. There could further be value in taking a more systematic

approach in considering related discourses in media, policy, and legal documents. Additional areas of interest could include taking up the question of whether boat driving can be understood as a form of forced labour or trafficking. In considering future research, on this topic, I would advocate for the importance of connecting research with work that is already occurring on the ground thereby giving any research practical value (see Bryman, 2012). These links between activism and academia are important to ensure that academic approaches do not disconnect too far from practice. This can include being present and witnessing, such as in court (Gill & Hynes, 2021).

Being present in the courtroom, as well as practices which aim to amplify the visibility of and resistance to state practices, remain important. Furthermore, there is a need to continue to challenge laws that allow for this criminalisation wherever possible. In this context, the Refugee Convention, particularly Article 31, offers a clear point to continue to challenge this current use of criminal law in the UK, despite having been thus far overruled.

CONCLUSION

There is a need to resist and reject state practices that aim to control others, legitimise violence, and illegalise certain people's mobilities. It is not that radical to call for an end to state structures of hostility and exclusion in favour of safe passage and free movement for all. In looking beyond framings that obscure state culpability, this call to stop the borders can further be understood to stop the very need for boats.

REFERENCES

Cases

R v Kakaei [2021] EWCA Crim 503

R v Bani [2021] EWCA Crim 1958

R v Mohamed [2022] EWCA Crim 211

Work Cited

Aas, K.F. (2013) The Ordered and the Bordered Society: Migration Control, Citizenship, and the Northern Penal State. In *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Eds Aas, K.F & Bosworth, M. 20-39. Oxford University Press.

Achilli, L (2015) The smuggler: hero or felon? *Migration Policy Centre, EUI, 10*. DOI: 10.2870/36445

Achilli, L (2018) The “Good Smuggler”: The Ethics and Morals of Human Smuggling among Syrians. *The Annals of the American Academy of Political and Social Science, Vol 676, Migrant Smuggling as a Collective Strategy and Insurance Policy: Views from the Margins: 77-96*. Access: <https://www.jstor.org/stable/10.2307/26582296>

Alarmphone (29 Apr 2023). The drifting politics of HM Coastguard: from life-saving agency to border police. Channel regional report. *Alarmphone*. Accessed 1 May 2023 at https://alarmphone.org/en/2023/04/29/the-drifting-politics-of-hm-coastguard-from-life-saving-agency-to-border-police/?post_type_release_type=post

Aliverti, A (2012b) Making people criminal: The role of the criminal law in immigration enforcement. *Theoretical Criminology, 16*(4): 417-434. DOI: 10.1177/1362480612449779

Aliverti, A (2012a). Exploring the Function of Criminal Law in the Policing of Foreigners: The Decision to Prosecute Immigration-related Offences. *Social & Legal Studies, 21*(4): 511-527. DOI: <https://doi-org.ucd.idm.oclc.org/10.1177/0964663912455447>

Anderson, B, Sharma, N, & Wright, C. (2011). Editorial: Why No Borders? *Refuge, 26*(2): 5-18. DOI: <https://doi.org/10.25071/1920-7336.32074>

- Andersson, R (2012). A game of risk: Boat migration and the business of bordering Europe. *Anthropology Today*, 28(6): 7-11. Accessed: https://raionlineibrary.wiley.com/doi/epdf/10.1111/j.1467-8322.2012.00910.x?saml_referrer
- Anleu, S.R., Blix, S.B., Mack, K., & Wettergren, Å. (2015) Observing judicial work and emotions: using two researchers. *Qualitative Research*, 16(4): 375-391. DOI: <https://doi.org/10.1177/1468794115579475>
- Arci Porco Rosso & borderline-europe (10 Jan 2023). As Long As You Can Still Listen: The Criminalization of Migrant Boat Drivers in 2022. *Borderline-europe*. Accessed 17 Jan 2023 at <https://www.borderline-europe.de/unsere-arbeit/long-you-can-still-listen-criminalization-migrant-boat-drivers-2022>
- Arci Porco Rosso, Alarm Phone, Borderline Sicilia, & borderline-europe. (2021) From Sea to Prison: The Criminalization of Boat Drivers in Italy. Report *Arci Porco Rosso*. Accessed 18 Dec 2023 at <https://fromseatonprison.info/introduction/>
- Arci Porco Rosso. (28 Mar 2022). From Sea to Prison-Beyond the Research. Quarterly Report. *Borderline-europe*. Accessed 17 Jan 2023 at <https://www.borderline-europe.de/Quartalsbericht>
- borderline-europe (15 June 2022). A rising tide lifts all boats – From Sea to Prison Quarterly Report. Quarterly Report. *Borderline-europe*. Accessed 17 Jan 2023 at https://www.borderline-europe.de/A_rising_tide_lifts_all_boats
- Borderline Sicilia. (4 Feb 2022). A boy from Chad behind bars: Is this justice?. *Borderline Sicilia*. Accessed 17 Jan 2023 at <https://www.borderlinesicilia.it/en/news-en/a-boy-from-chad-behind-bars-is-this-justice/>
- Baffi, C. (24 Nov 2022). “Find me a culprit!”: how the Italian police sent two Turkish men to prison without any proof. *Borderline-europe*. Accessed 17 Jan 2023 at <https://www.borderline-europe.de/unsere-arbeit/„findet-mir-einen-schuldigen-wie-die-strafverfolgungsbehörden-zwei-junge-türken-ohne?l=en>
- Baird, T & van Liempt, I (2016) Scrutinising the double disadvantage of knowledge production in the messy field of migrant smuggling. *Journal of Ethnic and Migration Studies*, 42(3): 400-417. DOI: 10.1080/1369183X.2015.1103172
- Barghoti, M (2004) *I Saw Ramallah*. Bloomsbury.

- BBC. (28 Nov 2018). Migrant boats: Smugglers targeted from intelligence centre in Calais. *BBC*. Accessed 6 June 2023 at <https://www.bbc.co.uk/news/uk-england-kent-46375361>
- BBCAfrica (31 Mar 2022). The Africa migrants who Italy accuses of people smuggling. *BBC*. Accessed 17 Jan 2023 at <https://www.bbc.co.uk/news/world-africa-60492918>.
- Belloni, M (2016) Refugees as Gamblers: Eritreans Seeking to Migrate Through Italy. *Journal of Immigrant & Refugee Studies*, 14(1):104-119. DOI: 10.1080/15562948.2015.1060375
- Bens, J (2018). The courtroom as an affective arrangement: analysing atmospheres in courtroom ethnography. *The Journal of Legal Pluralism and Unofficial Law*: 1-20. DOI: <https://doi.org/10.1080/07329113.2018.1550313>
- Bhui, H.S. (2013) Introduction: Humanizing Migration Control and Detention. In *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Eds Aas, K.F & Bosworth, M Oxford University Press.
- Blewett, S (10 Mar 2023). Sunak to hand France almost £500 million to tackle small boat crossings. *Independent*. Accessed 30 Apr 2023 from <https://www.independent.co.uk/news/uk/emmanuel-macron-people-france-tim-loughton-president-b2298215.html>
- Bögelein, N., Eppert, K, Roth, V., & Schmidt-Kleinert, A. (2022). Courtroom Ethnography in the Context of Terrorism: A Multi-Level Approach. *International Journal of Qualitative Methods*, 21: 1-11. DOI: 10.1177/16094069221090059
- Borderline Sicilia (4 Feb 2022). A boy from Chad behind bars: Is this justice? *News*. Accessed 17 Jan 2023 at <https://www.borderlinesicilia.it/en/news-en/a-boy-from-chad-behind-bars-is-this-justice/>
- borderline-europe e.V. [borderline_europe] (8 June 2023). Today after a long day in court. Accessed 8 June 2023 at https://www.instagram.com/p/CtPtf_rtJ-T/?igshid=ZWQyN2ExYTkWZQ==
- Bosworth, M (2011). Human rights and immigration detention in the United Kingdom. In *Are Human Rights for Migrants?: Critical Reflections on the Status of Irregular Migrants in Europe and the United States*, Eds Dembour, M-B, & Kelly, T. 165-184 Taylor & Francis Group.
- Bosworth, M & Guild, M (2008) Governing through Migration Control: Security and Citizenship in Britain. *The British Journal of Criminology*, 48(6): 703-719. DOI: 10.1093/bjc/azn059

- Bosworth, M & Vanier, M (2020). Blurred lines: Detaining asylum seekers in Britain and France. *Journal of Sociology*, 56(1): 53-68. DOI: <https://doi-org.ucd.idm.oclc.org/10.1177/1440783319882534>
- Bowling, B. & Westenra, S. (2020) ‘A really hostile environment’: Adiaphorization, global policing and the crimmigration control system. *Theoretical Criminology*, 24(2): 163-183. DOI: 10.1177/1362480618774034
- Brachet, J (2018) Manufacturing Smugglers: From Irregular to Clandestine Mobility in the Sahara. Crimes of Solidarity in Mobility. *The Annals of the American Academy of Political and Social Science*, Vol 676, *Migrant Smuggling as a Collective Strategy and Insurance Policy: Views from the Margins*: 16-35. Access: <https://www.jstor.org/stable/10.2307/26582296>
- Brigden, N.K. (2019). Underground Railroads and coyote conductors: brokering clandestine passages, then and now. *Int J Migration and Border Studies*, 5(1/2): 29-43. DOI: ??
- Brun, C. (2015). Active Waiting and Changing Hopes: Toward a Time Perspective on Protracted Displacement. *Social Analysis: The International Journal of Anthropology*, 59(1): 19-37. Stable URL: <https://www.jstor.org/stable/24718356>
- Bruwer, C (2022) Blue Frontiers: In pursuit of smugglers at sea. In *The Routledge Handbook of Smuggling*. Eds Gallien, M & Weigand, F. Taylor & Francis Group.
- Bryman, A. (2012). *Social Research Methods*. Oxford University Press.
- Bulman, M (14 Apr 2022). UK condemned Rwanda for human rights abuses months before signing deal to send asylum seekers there. *Independent*. Accessed 30 Apr 2023 from <https://www.independent.co.uk/news/uk/home-news/rwanda-asylum-deal-home-office-uk-b2058273.html>
- Bulman, M (20 Dec 2021) British and French Officials face action over ‘failure to act’ during drowning in Channel. *Independent*. Accessed 30 Apr 2023 at <https://www.independent.co.uk/news/world/europe/channel-france-deaths-manslaughter-utopia-56-b1979412.html>
- Byrne, C (2022). Boris Johnson ‘shocked, appalled and deeply saddened’ by migrant deaths in Channel. *Independent tv*. Accessed 3 June 2023 at <https://www.independent.co.uk/tv/news/boris-johnson-shocked-appalled-and-deeply-saddened-by-migrant-deaths-in-channel-b2182293.html>

- Campana, P & Varese, F. (2016). Exploitation in Human Trafficking and Smuggling. *Eur J Crim Policy Res*, 22: 89-105. DOI: 10.1007/s10610-015-9286-6
- Caprioglio, C., Montella, T., & Rigo, E. 19 July 2022. Solidarity With Migrants is not a Crime but a Necessary Struggle. *Border Criminologies*. Accessed 17 Apr 2023 from: <https://blogs.law.ox.ac.uk/blog-post/2022/07/solidarity-migrants-not-crime-necessary-political-struggle>
- Carling, J, Gallagher, A.T. & Horwood, C. (2015). Beyond Definitions: Global migration and the smuggling-trafficking nexus. *RMMS Discussion Paper No:2 : Beyond Definitions*. Danish Refugee Council, Regional Mixed Migration Secretariat. Access:
- Chana, J (2015) Sir Nicholas Winton, the ‘British Schindler’ Who Saved Hundreds of Jewish Children, Dies at 106. *Tablet Magazine*
- Charteris-Black, J. (2006). Britain as a container: immigration metaphors in the 2005 election campaign. *Discourse & Society*, 17(5): 562-581. Access: <https://www.jstor.org/stable/42889076>
- Chowdhury, D (2022) Contesting Common Sense: Smuggling across the India-Bangladesh Border. In *Seeing like a smuggler: Borders from below*, eds. Keshavarz, M & Khosravi, S. Pluto Press: London.
- Cristiano, F, Dadusc, D, Davanna, T, Duff, K, Gilmore, J, Rossdale, C, Rossi, F, Tatour, A, Tatour, L, Tufail, W, & Weizman, E. (2023). Criminalisation of political activism: a conversation across disciplines. *Critical Studies on Security*. DOI: <https://doi.org/10.1080/21624887.2023.2188628>.
- Cusumano, E. and Pattison, J. (2018). The non-governmental provision of search and rescue in the Mediterranean and the abdication of state responsibility. *Cambridge Review of International Affairs*. 31(1): 53-75. DOI: 10.1080/09557571.2018.1477118
- Dadusc, D. 25 July 2017. How refugees are fighting back against border controls. *The Conversation*. Accessed 13 Apr 2023 from <https://theconversation.com/how-refugees-are-fighting-back-against-border-controls-81343>
- Dadusc, D. and Mudu, P. (2022). Care without Control: The Humanitarian Industrial Complex and the Criminalisation of Solidarity. *Geopolitics*, 27(4): 1205-1230. DOI: 10.1080/14650045.2020.1749839.

- Dahlberg, L (2009) Emotional Tropes in the Courtroom: On Representation of Affect and Emotion in Legal Court Proceedings. *Law and Humanities*, 3(2): 175-205. DOI: <https://doi.org/10.1080/17521483.2009.11423767>
- Davies, T, Isakjee, A, Mayblin, L & Turner, J (2021) Channel crossings: offshoring asylum and the afterlife of empire in the Dover Strait. *Ethnic and Racial Studies*, 44(13): 2307-2327. DOI: 10.1080/01419870.2021.1925320
- Dearden, L (8 Feb 2022) Convictions quashed for asylum seekers wrongly jailed for steering dinghies across Channel. *Independent*. Accessed 3 June 2023 at <https://www.independent.co.uk/news/uk/home-news/channel-crossing-court-appeal-jail-b2010191.html>
- De Genova, N (2018) The “migrant crisis” as a racial crisis: do *Black Lives Matter* in Europe? *Ethnic and Racial Studies*, 41 (10): 1765-1782. DOI: 10.1080/01419870.2017.1361543
- De Genova, N (2013) Spectacles of migrant ‘illegality’: the scene of exclusion, the obscene of inclusion. *Ethnic and Racial Studies*, 36(7): 1180-1198. DOI: 10.1080/01419870.2013.783710
- De Genova, N. 2002. Migrant “Illegality” and Deportability in Everyday Life. *Annual Review of Anthropology*, 31: 419-447. Access: <https://www.jstor.org/stable/4132887>
- De Genova, N & Roy, A (2020). Practices of Illegalisation. *Antipode*, 52(2): 352-364. DOI: 10.1111/anti.12602
- De Norohna, (2019). Deportation, racism and multi-status Britain: immigration control and the production of race in the present. *Ethnic and Racial Studies*, 42(14): 2413-2430. DOI: <https://doi.org/10.1080/01419870.2019.1585559>
- Dijstelbloem, H & Walters, W (2021) Atmospheric Border Politics: The Morphology of Migration and Solidarity Practices in Europe. *Geopolitics*, 26(2): 497-520. DOI: 10.1080/14650045.2019.1577826.
- Fekete, L (2017) Introduction in Humanitarianism: the unacceptable face of solidarity. Institute of Race Relations. Accessed 10 Feb, 2023 at https://s3-eu-west-2.amazonaws.com/wpmedia.outlandish.com/irr/2017/11/10092853/Humanitarianism_the_unacceptable_face_of_solidarity.pdf
- Free the Samos Two. (n.d.) The real crime is the border regime – Justice for N. & Hasan. *Free the Samos Two*. Accessed 13 June 2023 at <https://freethesamostwo.com>

- Gabrielatos, C & Baker, P (2008) Fleeing, Sneaking, Flooding: A Corpus Analysis of Discursive Constructions of Refugees and Asylum Seekers in the UK Press, 1996-2005. *Journal of English Linguistics*, 36(1): 5-38. DOI: 10.1177/0075424207311247
- Galemba, R.B. (2018) 'He used to be a *Pollero*' the securitisation of migration and the smuggler/migrant nexus at the Mexico-Guatemala border. *Journal of Ethnic and Migration Studies*, 44(5): 870-886. DOI: 10.1080/1369183X.2017.1327803
- Galemba, R.N. (2022) Smugglers and the State Effect at the Mexico-Guatemala Border. In *Seeing like a smuggler: Borders from below*, eds. Keshavarz, M & Khosravi, S. Pluto Press: London.
- Gallien, M & Weigand, F (2021) Channeling Contraband: How States Shape International Smuggling Routes. *Security Studies*, 30(1):79-106. DOI: 10.1080/09636412.2021.1885728
- Garver-Affeldt, J (2023). Human rights in the context of smuggling Perceptions and experiences of migrants in Mali and Niger. *Mixed Migration Centre*. Accessed: <https://mixedmigration.org/resource/human-rights-migrants-smuggling-mali-niger/>
- Gazzotti, L (2022) The "War on Smugglers" and the Expansion of the Border Apparatus. In *The Routledge Handbook of Smuggling*. Eds Gallien, M & Weigand, F. Taylor & Francis Group.
- Gendrot, C & Dadusc, D (12 June 2023) Criminalising the Facilitation of Freedom of Movement: Introduction. *Border Criminologies*. Accessed 12 June 2023 at <https://blogs.law.ox.ac.uk/border-criminologies-blog/blog-post/2023/06/criminalising-facilitation-freedom-movement>
- Gill, N & Hynes, J (2021). Courtwatching: Visibility, publicness, witnessing, and embodiment in legal activism. *Area: Oxford, England*, 53(4): 569-576. DOI: 10.1111/area.12690.
- Golash-Boza, T (2009) The Immigration Industrial Complex: Why We Enforce Immigration Policies Destined to Fail. *Sociology Compass*, 3(2): 295-309. DOI: 10.1111/j.1751-9020.2008.00193.x
- Grant, H (14 May 2021). Iranian asylum seeker cleared of Channel smuggling charges. *The Guardian*. Accessed 15 May 2023 at <https://www.theguardian.com/global-development/2021/may/14/iranian-asylum-seeker-cleared-of-channel-smuggling-charges>

- Grierson, J. (27 Aug 2018). Hostile environment: anatomy of a policy disaster. *The Guardian*. Accessed 30 Apr 2023 from <https://www.theguardian.com/uk-news/2018/aug/27/hostile-environment-anatomy-of-a-policy-disaster>
- Helen Bamber Foundation, Asylum Aid, & Human for Rights Network. (2023). Disbelieved and denied: Children seeking asylum wrongly treated as adults by the Home Office. *Helen Bamber Foundation*. Accessed: https://www.helenbamber.org/sites/default/files/2023-04/Children%20treated%20as%20adults_HBF_HFRN_AA_April23.pdf
- Hodge, P (2014) A grievable life? The criminalisation and securing of asylum seeker bodies in the ‘violent frames’ of Australia’s *Operation Sovereign Borders*. *Geoforum*, 58: 122-131. DOI: <http://dx.doi.org.10.1016/j.geoforum.2014.11.006>
- Home Office. (21 Apr 2023). New measures to stop the boats in Illegal Immigration Bill. *Gov.uk*. Accessed 30 Apr 2023 from <https://www.gov.uk/government/news/new-measures-to-stop-the-boats-in-illegal-immigration-bill>
- Home Office. (23 Feb 2023b). Irregular migration to the UK, year ending December 2022. *Home Office*. Accessed 3 May 2023 at [https://www.gov.uk/government/statistics/irregular-migration-to-the-uk-year-ending-december-2022#:~:text=The%20majority%20of%20small%20boat%20arrivals%20claim%20asylum,in%20the%20UK%20in%202022.](https://www.gov.uk/government/statistics/irregular-migration-to-the-uk-year-ending-december-2022/irregular-migration-to-the-uk-year-ending-december-2022#:~:text=The%20majority%20of%20small%20boat%20arrivals%20claim%20asylum,in%20the%20UK%20in%202022.)
- Home Office. (28 June 2022) Life sentences for small boat pilots come into force. News story. Accessed: <https://www.gov.uk/government/news/life-sentences-for-small-boat-pilots-come-into-force>
- Home Office. 6 July 2021b. Nationality and Borders Bill: factsheet. Policy Paper. Accessed: <https://www.gov.uk/government/publications/the-nationality-and-borders-bill-factsheet/nationality-and-borders-bill-factsheet>
- Hynes, P. (2022). Exploring the Interface between Asylum, Human Trafficking and/or ‘Modern Slavery’ within a Hostile Environment in the UK. *Social Sciences*, 11(246). DOI: <https://doi.org/10.3390/socsci11060246>
- Ibrahim, Y & Howarth, A. (2018). Communicating the ‘migrant’ other as risk: space, EU and expanding borders. *Journal of Risk Research*, 21(12): 1465-1486. DOI: 10.1080/13669877.2017.1313765

- Ibrahim, Y. (2020). The child refugee in Calais: from invisibility to the ‘suspect figure’. *Journal of International Humanitarian Action*, 5(19). DOI: <https://doi.org/10.1186/s41018-020-00087-z>
- IOM (2023). Missing Migrants Project. Accessed 30 Apr 2023 at <https://missingmigrants.iom.int/>
- Jacobs, E. (2020). ‘Colonising the Future’: Migrant Crossings on the English Channel and the Discourse of Risk. *Brief Encounters*, 4(1): 37-47. DOI: <https://doi.org/10.24134/be.v4i1.173>
- Kemp, O (30 Sep 2020). Folkestone welcomed thousands of Belgian refugees crossing the Channel in makeshift boats and ships in 1914. *KentOnline*. Accessed 4 June 2023 at <https://www.kentonline.co.uk/kent/news/the-day-16-000-refugees-arrived-in-kent-234609/>
- Keshavarz, M & Khosravi, S. (2022) Introduction: To See Like a Smuggler. In *Seeing like a smuggler: Borders from below*, eds. Keshavarz, M & Khosravi, S. Pluto Press: London.
- Khan, N (2022). Aurelian Dreams: Gold Smuggling and Mobilities across Colonial and Contemporary Asia. In *Seeing like a smuggler: Borders from below*, eds. Keshavarz, M & Khosravi, S. Pluto Press: London.
- Klosterkamp, S (2022). Affectual intensities: toward a politics of listening in court ethnography. *Gender, Place, & Culture*, 1-23. DOI: <https://doi.org/10.1080/0966369X.2022.2089096>
- Kyle, D & Siracusa, C.A. (2005) Seeing the State Like a Migrant: Why So Many Non-criminals Break Immigration Laws. In *Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalization*, eds van Schendel, W. & Abraham, I. Indiana University Press.
- Liempt, I. v. & Sersli, S (2013). State Responses and Migrant Experiences with Human Smuggling: A Reality Check. *Antipode*, 45(4):1029-1046. DOI: 10.1111/j.1467-8330.2012.01027.x
- Maggs, J. (2019). The ‘Channel Crossings’ and the borders of Britain. *Institute of Race Relationships*, 61(3): 78-86. DOI: 10.1177/030639681982467
- Mainwaring, C (2016) Migrant agency: Negotiating borders and migration controls. *Migration Studies*, 4(3): 289-308. DOI: 10/1093/migration/mnw013

- Meier, I. (2020) Affective border violence: Mapping everyday asylum precarities across different spaces and temporalities. *Emotion, Space and Society*, 37.
- Mengiste, T.A. (2022) Smuggling as a Collective Enterprise: Ethiopian/Wollo Migration to Saudi Arabia. In *Seeing like a smuggler: Borders from below*, eds. Keshavarz, M & Khosravi, S. Pluto Press: London
- Mengiste, T.A. 2018. Refugee Protections from Below: Smuggling in the Eritrea-Ethiopia Context. *The Annals of the American Academy*, 676. DOI: 10.1177/0002716217743944
- Missbach, A (2015) People Smugglers in Indonesia: Definitely Not Out of Business. *Border Criminologies*. Accessed: <https://blogs.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2015/11/people-smugglers>
- Monish, B (2020). The Permission to be Cruel: Street-Level Bureaucrats and Harms Against People Seeking Asylum. *Dordrecht*, 28(2): 277-292. DOI: 10.1007/s10612-020-09515-3
- Mosselson, A. (2021). Cities of Sanctuary in Environments of Hostility: Competing and Contrasting Migration Infrastructures. *Antipode*, 53(6): 1725-1744. DOI: 10.1111/anti.12739
- Mulvey, G (2010) When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK. *Journal of Refugee Studies*, 23(4): 437-. DOI:10.1093/jrs/feq045
- Murray, R & Gray, H. (2023). Forced migrants in higher education: ‘sanctuary scholarships’ in a hostile environment. *Journal of Ethnic and Migration Studies*, 49(3): 795-812. DOI: 10.1080/1369183X.2020.1816814.
- Nugent, P (2022). Making Borders, Closing Frontiers and Identifying Smuggling: Comparative histories. In *The Routledge Handbook of Smuggling*. Eds Gallien, M & Weigand, F. Taylor & Francis Group.
- O’Connell Davidson, J (2016) De-canting ‘Trafficking in Human Beings’, Re-centring the State. *The International Spectator*, 51(1): 58-73. DOI: 10.1080/03932729.2016.1121685
- Pallister-Wilkins, P (2015) The Humanitarian Politics of European Border Policing: Frontex and Border Police in Evros. *International Political Sociology*, 9(1): 53-69. DOI: <https://doi.org.ucd.idm.oclc.org/10.1111/ips.12076>
- Panebianco, S. (2020). The EU and migration in the Mediterranean: EU borders’ control by proxy. *Journal of Ethnic and Migration Studies*. DOI: 10.1080/1369183X.2020.1851468

- Parker, S., Bennett, S., Cobden, C.M., & Earnshaw, D. (2022). 'It's time we invested in stronger borders': media representations of refugees crossing the English Channel by boat. *Critical Discourse Studies*, 19(4): 348-363. DOI: 10.1080/17405904.2021.1920998
- Parsa, A (2022) Kolbari: Workers not Smugglers. In *Seeing like a smuggler: Borders from below*, eds. Keshavarz, M & Khosravi, S. Pluto Press: London
- Patel, C & Gardner, Z (n.d.) Windrush Lessons Learned Review. *The Joint Council for the Welfare of Immigrants*. Accessed 30 Apr 2023 from <https://www.jcwi.org.uk/windrush-lessons-learned-review>
- Pincock, K, Betts, A, & Easton-Calabria, E. (2020). The Rhetoric and Reality of Localisation: Refugee-Led Organisations in Humanitarian Governance. *The Journal of Development Studies*. DOI: 10.1080/00220388.2020.1802010
- Porras, Raúl Márquez (2021) A call for ethnographing the judiciary (beyond the courtroom). *The Journal of Legal Pluralism and Unofficial Law*, 53(3): 419-423. DOI: 10.1080/07329113.2021.2004840
- Psoinos, M. (2010). Forced migration and psychosocial health: meaning-making through autobiographical narratives in the UK. *Migration Letters*, 7(1): 79-90. ACCESS
- Purkiss, J, Gidda, M, Walawalkar, A & Townsend, M (24 Oct 2021) Asylum accommodation deaths 'twice as high' as Home Office admitted. *The Guardian*. Accessed 30 Apr 2023 at <https://www.theguardian.com/uk-news/2021/oct/24/asylum-hotel-deaths-twice-as-high-as-home-office-admitted#:~:text=The%20steep%20rise%20in%20deaths,drew%20heavy%20criticism%20from%20campaigners.>
- Raineri, L. (2022) Migrant Smuggling and the social organisation of cross-border mobility. In *The Routledge Handbook of Smuggling*. Eds Gallien, M & Weigand, F. Taylor & Francis Group.
- Refuge Council. (31 Jan 2023). Majority of people on small boats crossing Channel last year are refugees, new analysis shows. *Refugee Council*. Accessed 15 Mar 2023 at <https://www.refugeecouncil.org.uk/latest/news/majority-of-people-on-small-boats-crossing-channel-last-year-are-refugees-new-analysis-shows/>

- Richard-Guay, A. (2018). Criminalizing migrants who steer the dinghies in the Mediterranean: A collateral effect of migration management? (EUI Working Papers). *Robert Schuman Centre for Advanced Studies*. Accessed: <https://hdl.handle.net/1814/55645>
- Ruiz-Benitez de Lugo, L.B. (2022) Human Smuggling in the Time of COVID-10: Lessons from a pandemic. In *The Routledge Handbook of Smuggling*. Eds Gallien, M & Weigand, F. Taylor & Francis Group.
- Sanchez, G (2015) On Departures, Transits and Destinations: The Facilitation of Human Smuggling. *Border Criminologies*. Accessed: <https://blogs.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2015/11/departures>
- Sanchez, G (2017) Critical Perspectives on Clandestine Migration Facilitation: An Overview of Migrant Smuggling Research. *Journal on Migration and Human Security*, 5(1): 9-27.
- Sanchez, G (2017a) Beyond the matrix of oppression: Reframing human smuggling through intersectionality-informed approaches. *Theoretical Criminology*, 21(1): 46-56. DOI: 10.1177/1362480616677497
- Scottish Refugee Council (9 June 2023) UK Government to remove two-tier asylum system. *Scottish Refugee Council*. Accessed 15 June 2023 at <https://scottishrefugeecouncil.org.uk/uk-government-reveals-plans-to-remove-two-tier-asylum-system/>
- Sharma, N. (2022). Afterword: Seeing Freedom. In *Seeing like a smuggler: Borders from below*, eds. Keshavarz, M & Khosravi, S. Pluto Press: London
- Sigona, N, Kato, J, & Kuznetsova, I. (2021). Migration infrastructures and the production of migrants' irregularity in Japan and the United Kingdom. *Comparative Migration Studies*, 9(31). DOI: <https://doi.org/10.1186/s40878-021-00242-4>
- Spener, D (2008). Global Apartheid, *Coyotaje*, and the Discourse of Clandestine Migration: Distinctions between Personal, Structural, and Cultural Violence. *Migración y Desarrollo*.
- Spivak, Gayatri Chakravorty. 1988. 'Can the Subaltern Speak?' *Marxism and the Interpretation of Culture*, edited by C. Nelson and L. Grossberg. 271-313. Basingstoke: Macmillan Education.

- Stumpf, J.P. (2013). The Process is the Punishment in Crimmigration Law. In *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Eds Aas, K.F & Bosworth, M Oxford University Press.
- Stumpf, J. (2006). The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power. *American University Law Review* 56: 2 (357-419). DOI: <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1274&context=aur>
- Sunak, R [@RishiSunak]. (14 June 2023a). We're stopping the boats. Here's how. *Twitter*. Accessed 17 June 2023 at <https://twitter.com/RishiSunak/status/1669050778294575133?s=20>
- Sunak, The Rt Hon R MP (2023b) PM statement on the Stop the Boats Bill: 7 March 2023. *Speech*. Accessed 7 June 2023 at <https://www.gov.uk/government/speeches/pm-statement-on-the-stop-the-boats-bill-7-march-2023>
- Syal, R (10 Jan 2023) Age-check X-rays risk harming child asylum seekers, government warned. *The Guardian*. Access 30 Apr 2023 at <https://www.theguardian.com/politics/2023/jan/10/age-check-x-rays-risk-harming-child-asylum-seekers-government-warned>
- Syal, R. (17 Nov 2021). Most people who risk Channel boat crossings are refugees – report. *Guardian*. Accessed 30 Apr 2023 from <https://www.theguardian.com/uk-news/2021/nov/17/most-people-who-risk-channel-boat-crossings-are-refugees-report>
- Taylor, D & Henley, J. (20 Dec 2021). ‘Serious failings’ during rescue may have contributed to Channel deaths. *The Guardian*. Accessed 30 Apr 2023 at <https://www.theguardian.com/uk-news/2021/dec/20/channel-deaths-report-finds-failings-in-rescue-effort-as-legal-action-begins>
- Taylor, V (2023). Evidence from courtwatching: documenting the criminalisation of people seeking asylum in the UK. *Border Criminologies*. Accessed 19 June 2023 at <https://blogs.law.ox.ac.uk/border-criminologies-blog/blog-post/2023/06/evidence-courtwatching-documenting-criminalisation>
- Torpey, J (2000) Introduction. In *The Invention of the Passport: Surveillance, Citizenship, and the State*. Cambridge University Press.

- Townsend, M (8 Apr 2023) Home Office admits no evidence to support key claim on small boat crossings. *The Guardian*. Accessed 30 Apr 2023 from <https://www.theguardian.com/uk-news/2023/apr/08/home-office-admits-no-evidence-to-support-key-claim-on-small-boat-crossings>
- Travers, M (2021). Court Ethnographies. In *The Oxford Handbook of Ethnographies of Crime and Criminal Justice*. Eds Bucerius, S.M., Haggerty, K.D., & Berardi, L. Oxford Academic: Online Edition. 512-26.
<https://doi.org/10.1093/oxfordhb/9780190904500.013.25>
- Tubakovic, T, Murray, P, & Matera, M (10 Mar 2023). The UK’s “stop the boats” policy shows a failure to learn from Australia’s mistakes. *London School of Economics*. Accessed 7 May 2023 at <https://blogs.lse.ac.uk/politicsandpolicy/the-uks-stop-the-boats-policy-shows-a-failure-to-learn-from-australias-mistakes/>
- Turnball, T. (18 Mar 2023). How Australia wrote the ‘stop the boats’ playbook. *BBC News*. Accessed 13 May 2023 at <https://www.bbc.co.uk/news/world-australia-64898507>
- Turner, C. (18 Feb 2023). Calais refugee charities ‘just as bad as people smugglers’, says Lee Anderson. *The Telegraph*. Accessed 9 June 2023 at <https://www.telegraph.co.uk/politics/2023/02/18/lee-anderson-calais-refugee-charities-bad-people-smugglers/>
- Tyerman, T & Van Isacker, T (2020) Border Securitisation in the Channel. *Border Criminologies*. Accessed 30 Apr 2023 at <https://blogs.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2020/10/border>
- UNHCR (2023) Legal observations on the illegal migration bill 11 April 2023a – accessed: <https://www.unhcr.org/uk/media/65155>
- UNHCR. Oct 2021. UNHCR legal observations Nationality and Borders Bill - Oct 2021. Accessed: <https://www.unhcr.org/uk/media/unhcr-legal-observations-nationality-and-borders-bill-oct-2021>
- UNODC. (2022). Smuggling of Migrants in the Sahel. *Transnational Organized Crime Threat Assessment – Sahel*. United Nations Office on Drugs and Crime. Accessed: https://www.unodc.org/documents/data-and-analysis/tocta_sahel/TOCTA_Sahel_som_2023.pdf

- Van Liempt, I. (2022) Humanitarian Smuggling in a Time of Restricting and Criminalizing Mobility. In *The Routledge Handbook of Smuggling*. Eds Gallien, M & Weigand, F. Taylor & Francis Group.
- Virdee, S. & McGeever, B. (2018). Racism, Crisis, Brexit. *Ethnic and Racial Studies*, 41(10): 1802-1819. DOI: 10.1080/01419870.2017.1361544
- Walawalkar, A, Rose, E, & Townsend, M. Coastguard (29 Apr 2023). 'Effectively Ignored' 19 Reports of Small Boats Before November 2021 Tragedy. *Liberty Investigates*. Accessed 1 May 2023 at <https://libertyinvestigates.org.uk/articles/coastguard-effectively-ignored-19-reports-of-small-boats-before-november-2021-tragedy/>
- Walenta, J (2019) Courtroom Ethnography: Researching the Intersection of Law, Space, and Everyday Practices. *The Professional Geographer*, 72(1): 131-138. DOI: <https://doi.org/10.1080/00330124.2019.1622427>
- Weller, S.J., Crosby, L.J., Turnbull, E.R., Burns, R., Miller, A., Jones, L., & Aldridge, R.W. (2019). The negative health effects of hostile environment policies on migrants: A cross-sectional service evaluation of humanitarian healthcare provision in the UK. *Wellcome Open Research*, 4(109). DOI: 10.122688/wellcomeopenres.15358.1
- Wright, O. (25 Nov 2022). Creating 'hostile' environment for asylum seekers does not deter migrants. *The Times*. Accessed 4 June 2023 at <https://www.thetimes.co.uk/article/creating-hostile-environment-for-asylum-seekers-does-not-deter-migrants-0pmlp80qn>
- Yeo, C. (2021). Does the policy of deterring asylum seekers actually work?. *Free Movement*. Accessed 6 June 2023 at <https://freemovement.org.uk/does-the-policy-of-detering-asylum-seekers-actually-work/>
- Yuval-Davis, N., Wemyss, G., and Cassidy, K. (2018). Everyday Bordering, Belonging and the Reorientation of British Immigration Legislation. *Sociology*, 52(2): 228-244. Access: <https://www.jstor.org/stable/10.2307.26558701>
- Zedner, L. (2013). Is the Criminal Law Only for Citizens? A Problem at the Borders of Punishment. In *The Borders of Punishment: Migration, Citizenship, and Social Exclusion*. Eds Aas, K.F & Bosworth, M. 40-57. Oxford University Press.
- Zhang, S.X. Sanchez, G.E., & Achilli, L (2018) Crimes of Solidarity in Mobility. *The Annals of the American Academy of Political and Social Science*, Vol 676, *Migrant Smuggling as a*

Stop the Border

Collective Strategy and Insurance Policy: Views from the Margins. Access:

<https://www.jstor.org/stable/10.2307/26582296>

APPENDIX

1. RUG Ethical Clearance



university of
 groningen

faculty of arts

noha

Ms Moira Grant McLoughlin

NOHA Ethics Committee
noha-ethicscommittee@rug.nl

PO Box 716
9700 AS Groningen
The Netherlands

Cc
Dr Senka Neuman-Stanivukovic

Handled by
S.P.B. Ootjers

Date
6 March 2023

Our reference

Subject
Ethical approval for your thesis research "Into the 'Hostile Environment': An exploration of how the criminalization of boat drivers is emerging as an element of the increasing criminalization of migration and development of a "Hostile Environment" in the UK (characterized by state violence)"

Dear Moira,

This is to confirm that the above research, which will be carried out as part of your MA degree in International Humanitarian Action, has been approved by the NOHA Ethics Committee as it meets the University of Groningen's requirements for the ethical approval of research

It is your responsibility to ensure that:

- › The research is carried out in line with the information provided in the forms you have submitted;
- › The research is carried out in consultation with your supervisor;
- › You regularly re-consider the ethical issues that may be raised in generating and analysing your data;
- › You discuss your approach to research ethics in your MA thesis;
- › You comply with national regulations and measures aiming at preventing the spread of the COVID-19 in your data collection activities.

Please note that this letter has to be appended as an annex to your MA thesis.

Wishing you every success in your research,

On behalf of the Ethics Committee,

Dr Nadine Voelkner

2. Sample Participant Information and Consent Forms

PARTICIPANT INFORMATION FORM



3 May 2023

Participant Information Form

First and foremost, thank you for your interest in participating in my research. Here I have outlined some key information and contact information should you have any follow-up questions.

Researcher: Moira Grant McLoughlin

Associated University: University of Groningen (Netherlands), NOHA Masters Program

Research Working Title: Hostility through Illegalisation: An exploration of the criminalisation of facilitation in the Channel

Introduction

My name is Moira Grant McLoughlin and I am a current Master's student completing the NOHA Masters in Humanitarian Action at the University of Groningen in the Netherlands. I have experience supporting people on the move in European contexts at a grassroots level including in Lesvos, Greece; Calais, France; and virtually in communications and advocacy based roles. I am conducting my research alongside [borderline-europe](#), who are engaged in civil resistance against European migration and border policy.

Purpose of this research

For my research project, I am exploring how people arriving in the UK to claim asylum are being criminalised for facilitation. I aim to address the current gap in literature regarding this criminalisation, focusing on those who are charged in relation to boat driving in the Channel. I am situating my research within the hostile environment in the UK, looking at how the illegalisation of people seeking asylum is occurring as a form of this hostility. I aim to contribute to literature in solidarity with those who migrate seeking protection and to that which rejects discourses of securitisation and hostility.

With my research, I hope to gather information to better understand and inform how this criminalisation is occurring and how people seeking asylum can be better supported in this face of this hostility.

What is the potential impact of this research?

This research will have a potential impact as information from it may be used to create resources for *borderline-europe*. Furthermore, it is being done as part of a transnational network that exists across Europe and the MENA region supporting people on the move who are being criminalised for their movement. Strengthening these networks in solidarity can be important for supporting people as they migrate.

What does participation entail?

Your participation will entail a 30-40 minute interview with me, the researcher. It is important to note that at any point you can revoke your consent and all previous answers can be deleted, including after the interview has happened. You have full control over choosing to answer any questions or declining and also have the option to share information that you do not want to be included in my research by clarifying it as such.

Why have you been invited to take part?

[personalized]

What are the potential risks of your participation?

There are no foreseeable risks to participants in this research. Please do feel free to reach out with any concerns you may have and I am happy to answer or adjust to them.

What happens to the information from this research?

The data collected will be gathered, stored, and processed in accordance with the RUG guide to storing and preserving data following the General Data Protection Regulations (GDPR). Data will be used anonymously and treated with key ethical principles including integrity and do no harm. The findings of my research will be published on my university thesis database. With your consent, I may additionally use my findings to create an informational resource for *borderline-europe*, either in the form of an internal document or for publication.

CONSENT FORM



This research will be undertaken by Moira Grant McLoughlin as the thesis component of her Master's degree at the University of Groningen. It is additionally conducted alongside [borderline-europe](#), and may be used to inform their work.

Consent for participation in research interview

I volunteer to participate in a research project conducted by Moira Grant McLoughlin from the University of Groningen (Netherlands). I understand that the project is designed to gather information on the criminalisation of facilitation in the Channel focussing on the criminalisation of boat drivers. My interview will be used as part of an ethnographic exploration of this topic.

1. I have received sufficient information about this research project and understand my role in it. The purpose of my participation as an interviewee in this project and the future processing of my personal data has been explained to me and is clear.

2. My participation in this project is voluntary. There is no explicit or implicit coercion whatsoever to participate. I understand that I will not be paid for my participation. I may withdraw and discontinue participation at any time without penalty. If I decline to participate or withdraw from the study, there will be no consequences for me.

2. I understand my participation is dependent on my own comfort and at any point I can choose to decline any question or end the interview. I can furthermore request anything I have said to be off the record, including retroactively. I understand that my participation has the opportunity for levels of confidentiality, meaning I can choose to share information that I do not wish to be included in the final research or stored. If I feel uncomfortable in any way during the interview session, I have the right to withdraw from the interview and ask that the data collected prior to the withdrawal will be deleted.

3. Participation involves being interviewed by Moira Grant McLoughlin from the University of Groningen. The interview will last approximately 30-40 minutes. I allow the researcher(s) to take notes during the interview.

- a. I allow the recording of the interview and subsequent dialogue. It is clear to me that not consenting to this will not impact my participation or treatment.

YES, I consent to this interview being recorded

NO, I do not consent to this interview being recorded

Selection can be made by highlighted or circling your preference

4. I understand that I can request to see my answers at any point during the research process and can inquire about how they are being used at any point or alter my consent.

5. I understand that the researcher will not identify me by name in any reports using information obtained from this interview, and that my confidentiality as a participant in this study will remain secure. Subsequent uses of records and data will be subject to standard data use policies which protect the anonymity of individuals and institutions.

6. I was assured that this research project has been reviewed and approved by the NOHA Ethics Committee at the University of Groningen. The NOHA Ethics Committee may be contacted through (noha-ethicscommittee@rug.nl) for any questions concerning ethics. They may be contacted with any concerns about this research. For additional concerns about the research, please contact the researcher directly (m.g.grant.mcloughlin@student.rug.nl) or the NOHA department (noha@rug.nl) if you wish your concern to be brought to her anonymously

7. I have carefully read and fully understood the points and statements of this form. All my questions were answered to my satisfaction, and I voluntarily agree to participate in this study.

8. I consent to my answers being used for the purpose of a publicly available Master's thesis.

9. I understand this research may be used as part of work supporting people who are seeking protection in Europe and the UK specifically. I consent to my answers being used for awareness-raising and advocacy related work by Moira Grant McLoughlin created for [borderline-europe](http://borderline-europe.com)

YES I consent to my answers being used for this purpose

MAYBE I consent to my answers being used for this but would like to be informed and updated before this is done

NO I do not consent for my answers to be used in any additional manner.

10. I consent to my data and the information shared through my participation to be stored by the researcher. I have been adequately informed of the researcher's adherence to Data Protection regulations and had any questions satisfactorily answered. I understand that at any point I can choose for any or all of my data and the information I shared to be deleted.

8. I obtained a copy of this consent form co-signed by the interviewer.

My Signature (Participant)

Signature of Researcher

My Name (printed)

Name of Researcher
Moira Grant McLoughlin

Date Signed

Date Signed

3. Immigration Act 1971 – Section 24 and 25

24 **Illegal entry and similar offences.** Accessed:

<https://www.legislation.gov.uk/ukpga/1971/77/section/24>

(A1) A person who knowingly enters the United Kingdom in breach of a deportation order commits an offence.

(B1) A person who—

(a) requires leave to enter the United Kingdom under this Act, and

(b) knowingly enters the United Kingdom without such leave, commits an offence.

(C1) A person who—

(a) has only a limited leave to enter or remain in the United Kingdom, and

(b) knowingly remains beyond the time limited by the leave, commits an offence.

(D1) A person who—

(a) requires entry clearance under the immigration rules, and

(b) knowingly arrives in the United Kingdom without a valid entry clearance, commits an offence.

(E1) A person who—

(a) is required under immigration rules not to travel to the United Kingdom without an ETA that is valid for the person's journey to the United Kingdom, and

(b) knowingly arrives in the United Kingdom without such an ETA, commits an offence.

25. **Assisting unlawful immigration to member State or the United Kingdom** Accessed:

<https://www.legislation.gov.uk/ukpga/1971/77/section/25>

(1) A person commits an offence if he—

(a) does an act which facilitates the commission of a breach or attempted breach of immigration law by an individual who is not national of the United Kingdom.

(b) knows or has reasonable cause for believing that the act facilitates the commission of a breach or attempted breach of immigration law by the individual, and

(c) knows or has reasonable cause for believing that the individual is not a national of the United Kingdom.

(2) In subsection (1) “immigration law” means a law which has effect in a member State or the United Kingdom and which controls, in respect of some or all persons who are not nationals of the State or, as the case may be, of the United Kingdom, entitlement to—

(a) enter or arrive in the State or the United Kingdom.

(b) transit across the State or the United Kingdom, or

(c) be in the State or the United Kingdom.