



## An Expanded Analytical Gaze on Penal Power: Border Criminology and Punitiveness

**José A. Brandariz**

Universidade da Coruña, Spain

### Abstract

Border criminology authors have recently called for an expansion of criminological conceptions on penal power to include migration law enforcement devices. An amplified analytical gaze on penalty is critical to challenge mainstream notions of punitiveness—an academic effort that is particularly relevant because incarceration rates are declining in many Global North jurisdictions. This paper explores various implications of this border criminology contribution to academic debates on punitiveness by investigating the interrelation of incarceration rate changes with detention and deportation data. In so doing, it contributes to the burgeoning theoretical debate on the impact of immigration enforcement policies on current penal changes.

### Keywords

Punitiveness; border criminology; penal power; immigration enforcement.

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## Introduction

An exploration of penal changes over the last decades inevitably must consider the growing relevance of non-citizens for the criminal justice system. This shift, partly nurtured by the increasingly widespread effects of international mobility phenomena, is being felt across many regions of Europe and elsewhere. The penal system, until recently, prevalently targeted destitute segments of the national (male) population involved in illegal markets. Over the last decades, non-citizen groups, often rank-and-file workforce for illegal economies, have increasingly replaced those more integrated segments of the population as targets of the criminal justice apparatus (Melossi 2015).

The scale of this change is particularly noteworthy. In 2019, foreign inmates accounted for more than 20 per cent of the general prison population in 18 of the 32 European Economic Area (EEA) countries, and in some of them (Austria, Greece, Luxembourg and Switzerland) this share was above 50 per cent (Aebi and Tiago 2020). In addition, in 2018, non-citizens accounted for over one quarter of the arrested and cautioned individuals in many EEA jurisdictions such as Austria, Belgium, Denmark, Germany, Greece, Italy, Luxembourg, Spain and Switzerland (Eurostat n.d.a).

The implications of this change are no less relevant. The ways in which the penal power handles citizen groups and non-citizen groups are remarkably different. Since many national criminal justice systems are giving increasing preference to deportation measures in managing their foreign clientele, a new model of bifurcated or dual penalty is emerging across Europe and elsewhere (Stanley 2018; Turnbull and Hasselberg 2017; Ugelvik and Damsa 2018; Weber 2015). In this model, nationality criteria deeply condition every step of criminalisation procedure (Beckett and Evans 2015; Eagly 2010; Vázquez 2017). This wide-ranging change has been scrutinised in various strands of the literature in migration and penalty. This article contributes to that academic endeavour by reflecting on the implications of adopting an expanded analytical gaze on the penal power on punitiveness accounts. More precisely, the article explores the consequences of this recent shift for our conceptions of state and public punitiveness.

The paper begins by examining the recent theories calling for an amplification of the academic gaze on the penal field, a proposal that is crucially energised by the border criminology literature. Subsequently, it explores the implications of this proposal to consider immigration enforcement policies and measures for current conceptions of punitiveness. To this end, it addresses academic perspectives that give critical relevance to crimmigration schemes in characterising the current penal landscape. Finally, the paper summarises some conclusions that may refine the current academic conversation on punitive changes.

## Expanding the Analytical Gaze on Penal Power

A compelling debate on the need to redefine and broaden the analytical perspective on the penal power has gained traction in criminology, punishment and society and socio-legal academic milieus in recent years. This burgeoning literature argues that scholarly understandings of punishment, penalty and punitiveness cannot be determined by strict legal definitions based on the legal nature of the phenomena under study (Beckett and Murakawa 2012; Bowling 2013; Carvalho, Chamberlen and Lewis 2020; Velloso 2013). In an increasingly complex social and legal landscape, crime prevention schemes are inextricably linked to many legal arrangements, policing rules and coercive measures regulated by civil law and administrative law provisions, which unambiguously amplify the scope of state coercion (Beckett and Murakawa 2012; Velloso 2013; Zedner 2016). These hybrid manifestations of legal control show that legal boundaries are particularly porous (Hudson 2018; see also Weber and McCulloch 2019). By overlooking this reality, academic analyses provide incomprehensive and misleading accounts on the penal power, its scope and its current instantiations (Carvalho, Chamberlen and Lewis 2020; Di Molfetta and Brouwer 2020; Velloso 2013).

This shortcoming has led some authors to craft notions that are wider, more heterogeneous and less legally determined than punishment, such as the 'carceral state' (Gottschalk 2013), and what United States (US)

social scientists Katherine Beckett and Naomi Murakawa (2012: 222; see also Beckett 2018) have called the 'shadow carceral state'. Invariably, these contributions mention immigration enforcement as one of the critical phenomena falling under the radar of mainstream accounts on penalty (Beckett and Murakawa 2012; Carvalho, Chamberlen and Lewis 2020; Velloso 2013; Zedner 2016). The emerging border criminology literature has particularly elaborated this claim (Bosworth 2017, 2019; Bosworth, Franko and Pickering 2018). This body of scholarship argues that crime prevention and immigration enforcement policies and practices have become so narrowly interwoven in recent decades that any analysis on the penal power needs to consider its expanding border control dimension. This widened analytical lens is even more urgent because in many Global North jurisdictions, immigration law breaches are being turned into criminal offences (Stumpf 2013, 2015). Further, crimes perpetrated by non-citizens are increasingly leading to immigration law consequences, namely detention and deportation.

Border criminology scholars infer from these assumptions four critical conclusions. First, by broadening their theoretical perspective, criminology and punishment and society studies may overcome their narrow domestic boundaries to perceive the increasingly global and centrifugal nature of securitisation processes and crime control agendas (Aas 2013; Bosworth, Franko and Pickering 2018; Bowling and Sheptycki 2015; Bowling and Westenra 2020; Franko 2017, 2020). In contrast to age-old punitive institutions such as the prison apparatus, bordered penalty (Aas 2014; see also Todd-Kvam 2019) inherently involves various national jurisdictions, since deportations are dependent not only on the immigration enforcement system of the deporting country but also on the legal and political structures of the country of destination (Bosworth 2013, 2016; Weber 2015). In extending the effect of sentencing practices beyond national borders, the penal system is called upon to perform gatekeeping tasks and to serve nation-building purposes (Stumpf 2006; Ugelvik 2013). Consequently, crime control policies are increasingly aimed at both strengthening national sovereignty and policing membership, identity and ultimately race (Barker 2013; Bosworth and Guild 2008; Bosworth 2017, 2019; Gibney 2013; Gundhus and Jansen 2020).

Second, a renovated and heterogeneous viewpoint on penalty should account for the exclusive tenets of penalty, which are becoming increasingly apparent. These tenets give rise to what the Norwegian criminologist Katja Franko Aas (2014: 521) has termed a model of 'abnormal justice'. The penal subsystem has been crafted for non-citizen groups, giving preference to banishment measures such as deportations; as such it is destined to develop an exclusive model to treat these populations (Aas 2013, 2014; Barker 2017b; Bosworth, Franko and Pickering 2018; Bowling and Westenra 2020; Franko 2020). This shift is having an impact on the operation of every criminal justice agency and on every phase of criminal adjudication and sentencing procedures. It stands in stark contrast to the long-consolidated penal-welfarism schemes operating in many jurisdictions (Aas 2014; Barker 2017b, 2018; Bosworth, Franko and Pickering 2018; Franko 2020), some of which are even enshrined in constitutional provisions. The extent to which crimmigration changes challenge liberal and humanitarian models of penalty is no less noteworthy (Aliverti 2015; Barker 2017b). Evidently, the actual significance of this recent turn varies from one jurisdiction to another, crucially conditioned by the political currency and practical influence of right-based arrangements and penal welfarism principles. However, the massive insertion of foreign populations into many national criminal justice systems is fostering—in all of them—a transformation in an exclusive direction. This is ultimately leading to the division of the criminal justice system into two different penal subsystems, separated by membership criteria (i.e., citizenship; Aas 2014; Bosworth 2016; Ugelvik and Damsa 2018).

Third, beyond what has been outlined so far, an expanded analytical gaze on the penal power may focus attention on an additional implication of bordered penalty changes. The crimmigration literature has stressed that the construction of a specific crime control apparatus for non-citizens is the outcome of the gradual merging of criminal law and immigration law: two legal branches that, until recently, were largely unrelated (Legomsky 2007; Sklansky 2012; Stumpf 2006, 2020). This legal fusion has resulted in a bilateral process, in which both legal fields are increasingly influencing each other. Consequently, it has enabled both a 'criminalisation' of immigration law and an 'immigrationisation' of criminal law (Miller 2003; van der Woude and van Berlo 2015). By contrast, some authors have recently noted that in practical terms the

relevance lies not in the merging of two distinct legal realms into a new crimmigration order but in the permanent differentiation between immigration and criminal law enforcement procedures and practices (Moffette 2020; see also Chacón 2015; Menjívar, Gómez Cervantes and Alvord 2018; Stanley 2018; van der Woude 2020a). This insightful perspective unveils the reach of the crimmigration turn, which leads criminal justice actors to mobilise various legal instruments depending on the specific needs of the corresponding case (Aas 2014; Chacón 2015; Gundhus 2020; Moffette 2020), in a conspicuous manifestation of what David Sklansky has called ‘ad-hoc instrumentalism’ (2012: 161).

Fourth, traditional analyses on both public punitiveness and state punitiveness need to be revised since dominant discourses tend to paint crime and social disorder as linked to immigration, and criminal justice systems are dealing with non-citizen groups using tools such as immigration detention and deportation. This last aspect of border criminology theory, which has an evident effect on punitiveness debate, is further scrutinised in the following section.

### **Border Criminology and Punitiveness**

The border criminology literature has recently inspired academic debates on state and public punitiveness, their meaning, indicators and measurement (Barker 2017b; Bosworth 2017, 2019; Bosworth, Franko and Pickering 2018; Pickering, Bosworth and Aas 2015). This literature has elaborated a widened perspective on penal power, arguing that the scale and intensity of migration enforcement measures, namely detention and deportation, should be considered to provide an accurate and fine-grained assessment of state punitiveness. Consequently, this body of scholarship regards incarceration rates as an incomplete and misleading indicator of the severity of a given criminal justice system (Aas 2014; Bosworth, Franko and Pickering 2018; Franko 2020; Pickering, Bosworth and Aas 2015; see also Carvalho, Chamberlen and Lewis 2020). By adopting this theoretical lens, the border criminology literature has shed new light on deeply entrenched conclusions on punitiveness and penalty. Interestingly, it has challenged the so-called ‘Scandinavian exceptionalism’ thesis (Barker 2017a, 2018; Franko 2020; see also Weber 2015). By expanding their gaze on penal power arrangements, border criminologists have underlined that certain penal systems, such as those of the European Union (EU) and especially the Northern EU states, are revealed as much less tolerant, welfarist and humanitarian than is generally assumed. The inclusive traits of these systems are largely restricted to national populations, whereas non-citizens are managed in a much more punitive and exclusive way (Aliverti 2015; Franko 2020; Turnbull 2017; van der Woude 2020b; Weber 2015).

This fresh perspective on punitiveness issues is still in the making. Border criminology theses in this field have been largely focused on a handful of jurisdictions. This is a shortcoming that should be overcome. For border criminology conclusions have effect, they need to be tested via comparative cross-national analyses (Bosworth, Franko and Pickering 2018; van der Woude, Barker and van der Leun 2017). This perspective would provide a comprehensive and sensible picture on the topics under examination, for as Katja Franko recently stated, ‘there are, in practice, numerous national variations of bordered penalty and crimmigration control’ (2020: 87). Indeed, cross-national analyses may allow scholars to ascertain whether immigration enforcement policies and practices are significantly influencing punitiveness and penalty changes across wide continental or sub-continental regions. To contribute to this type of comparative analysis, the next sections address several theses elaborated by border criminology scholars that scrutinise the changing relationship between the prison field and the bordered penalty field and their implications in terms of state and public punitiveness.

### ***Is There an Ever-Expanding Immigration Enforcement Field?***

Border criminology authors have frequently claimed that immigration enforcement policies have gained traction in recent decades, leading to a significant expansion of migration control practices and measures, namely detention and deportation (Bosworth and Kaufman 2011; Turnbull 2017, van der Woude, van der Leun and Nijland 2014). This claim is indisputably valid from a long-term perspective. Some exceptions aside (such as the well-known Ellis Island and Angel Island detention facilities in the US; García Hernández

2019), no Global North jurisdiction had a stable and relatively wide-ranging immigration detention estate until the late twentieth century (Bloch and Schuster 2005; Bosworth and Turnbull 2015; García Hernández 2014; Leerkes and Broeders 2010). As far as deportation practices are concerned, their wide-scale enforcement is also a relatively recent phenomenon (Anderson, Gibney and Paoletti 2013; Gibney 2008).<sup>1</sup> However, the conclusion that the immigration enforcement system has been continually expanding in the recent past appears to be less tenable as soon as a short-term perspective is adopted (see also Weber 2015).<sup>2</sup>

National and subnational prison systems in Europe confine remarkable numbers of non-citizens. The percentage of foreign national prisoners has soared over the last 20 years in many European countries, especially in Austria, Bulgaria, Denmark, Estonia, Finland, Latvia, Norway, Romania and Spain (Aebi and Tiago 2020). In contrast, for some jurisdictions, the relative percentage of this segment of the prison population has remained stable (e.g., Belgium, Cyprus, France, Hungary, Ireland, Luxembourg, the Netherlands, Slovakia and Switzerland) or even declined (e.g., the Czech Republic, Poland, Sweden) since the turn of the millennium. In addition, in certain national prison systems such as those of Cyprus, Portugal, Spain and Sweden, the percentage of foreign national inmates has noticeably dwindled in the last few years. What is more, when the relative size of the foreign residing population is considered, the alleged increasing impact of the prison system on non-citizen groups cannot be confirmed. In fact, in the vast majority of EEA nations, foreign prison population rates have conspicuously declined over the last 10 to 20 years (own elaboration, based on SPACE I and Eurostat population data; Aebi and Tiago 2020; Eurostat n.d.b). The astonishingly high incarceration rates of over 1,000 foreign prisoners per 100,000 non-citizen inhabitants witnessed in the early 2000s in countries such as the Czech Republic, Italy, Malta and Poland are long over.

This last point might suggest that the relatively declining role played by the prison system in the management of unwanted foreign populations has been due to the increasing scale of immigration enforcement devices. Still, European official data do not allow us to corroborate this claim unambiguously. Global Detention Project (GDP) data show that immigration detention populations significantly escalated in various European jurisdictions (e.g., Bulgaria, Estonia, Hungary, Latvia, Luxembourg and Sweden) from the late 2000s to the late 2010s (Global Detention Data n.d.). However, the number of detainees significantly shrank in the Czech Republic, Germany, Ireland, Italy, the Netherlands, Slovakia, Spain and Switzerland over the same period. Moreover, as an added confirmation of the salient diversity of the immigration detention landscape in Europe, detention rates have been extremely high in several—mainly Eastern—jurisdictions (e.g., Bulgaria, Croatia, France, Greece, Hungary and Slovenia) in recent years, but the Czech Republic, Germany, Ireland, Italy, Luxembourg, Spain and Switzerland have had detention rates lower than 200 detainees per 100,000 residing foreigners over the same period (own elaboration, based on GDP data).

Eurostat deportation data (Eurostat n.d.c)<sup>3</sup> add a new layer of complexity to this already puzzling continental scenario. Despite an evident surge in deportations in 2015 and 2016, the number carried out by EU28 member states largely declined from 2008 to 2019. Nevertheless, over these 11 years, removals soared in Bulgaria, Denmark, Finland, Germany, Poland, the three Baltic nations and apparently Norway. By contrast, marked downward trends characterised deportation changes in other nations, including Cyprus, Greece, Ireland, Portugal, Romania and Spain. In this regard, the United Kingdom (UK) was a particularly relevant case, for it arguably has the most comprehensive deportation machine (Fekete 2005)—both in terms of scope and effectiveness—of all European nations. In Britain, an average of 55,338 deportations was enforced per year from 2008 to 2010, while an average of 34,505 deportations was enforced per year over the last three years. Compounding this picture even further, some European jurisdictions (e.g., Belgium, France, Greece, Italy, the Netherlands and Spain) have long had—and still have—very low deportation enforcement rates; that is, they only enforce between one out of six and one out of three issued removal orders (Eurostat n.d.a). Finally, deportation data cannot be scrutinised without considering population changes because the number of non-citizens residing in EU28 states rose by 39.2 per cent from 2008 to 2019 (Eurostat n.d.b). Therefore, it is unsurprising that in most EEA countries—

including top deporting jurisdictions such as France, Greece, Poland, Spain and the UK—deportation rates were lower in 2019 than in the late 2000s.<sup>4</sup>

In sum, the available data do not allow one to conclude that the immigration enforcement apparatus has been broadening its scope continually in recent decades, at least in Europe. On the contrary, they lay bare an unstable and changing bordered penalty landscape. The only relatively widespread pattern that seems to emerge from the analysed official data unveils that certain European regions witnessed a surge in immigration enforcement practices—like Southern Europe in the 2000s and Eastern Europe in the mid to late 2010s—when human mobility phenomena began to have a significant impact on them. Subsequently, these practices have tended to level off and eventually decline.

### *Is the Immigration Enforcement Apparatus Challenging the (Former) Pivotal Role Played by the Prison System?*

What has been discussed so far suggests that the immigration enforcement scenario in Europe is as volatile as it is diverse. This makes the task of reaching general conclusions particularly elusive.

The difficulties in making general conclusions are even more relevant with regard to another recent border criminology thesis, which deserves to be closely explored. In examining the implications of the surge of immigration control policies and practices in low-incarceration rate ‘Northern state’ (Aas 2013; Franko 2020) jurisdictions, a strand of the border criminology literature has stressed that in certain national cases, the immigration enforcement apparatus is challenging the long-standing pivotal role played by the prison system in the penal field. This is indisputable in qualitative terms since bordered penalty is eroding the penal welfarism arrangements that have proven to be particularly resilient in certain national criminal justice systems (Aas 2014; Todd-Kvam 2019; Ugelvik 2013). However, the gradual consolidation of a bordered penalty subsystem apparently has added implications in quantitative terms, since the amplifying scale of detention and deportation practices risks to outnumber that of the prison (sub)system (Barker, 2018: 14, 98, 131; see also Bosworth, Franko and Pickering 2018; Franko, 2020).

This literature is correct in pointing out that in Sweden, a wide-scale immigration enforcement apparatus is almost outpacing the correctional prison system, since the number of enforced deportations has been higher than that of prison admissions in the last years (Aebi and Tiago 2020). However, the scenario has been different in Denmark, Finland and Norway, where prison admissions remarkably outnumber detention and deportation practices.

This gap is even broader elsewhere. In the US, the number of prison inmates has been five to seven times higher than that of non-citizens deported per year and annually confined in immigration detention facilities over the last decade (Bureau of Justice Statistics n.d.; Department of Homeland Security 2020). In Europe, an average of 585,484 individuals was imprisoned per year (stock) in EU28 prison facilities from 2014 to 2019, and 707,059 individuals were admitted per year to the EU28 prison estate (flow) from 2013 to 2018 (Aebi and Tiago 2020).<sup>5</sup> Conversely, an average of 213,347 non-citizens—EU nationals aside—were deported per year from EU28 member states from 2014 to 2019 (Eurostat n.d.a),<sup>6</sup> and approximately 160,000 non-citizens were confined per year in the EU immigration detention system in recent years (Global Detention Project n.d.).

In sum, a penal landscape in which a relatively small prison system is supplemented with a burgeoning and far-reaching immigration enforcement apparatus is still a marginal phenomenon in Europe. However, the aforementioned border criminology claim may inspire a different exploration aimed at analysing the respective roles played by the prison system and the immigration enforcement system in managing undesired non-citizen populations. In the US, the correctional apparatus plays a comparatively minor part in tackling potentially troublesome non-citizen groups, the only exception being the narrow-ranging federal prison system (Chazaro 2016; Ewing, Martínez and Rumbaut 2015; Vázquez 2017). Consequently, the percentage of foreign national prisoners confined in US correctional facilities is strikingly low (6.5 per cent in 2016; UNODC 2017). In this case, both undocumented and criminalised foreign national

contingents are prevailingly managed by the immigration enforcement system, the scope of which is markedly broader than those of European nations.<sup>7</sup> By contrast, as was previously stated, in Europe the national and subnational prison systems take centre stage in the field of bordered penalty. Aside from a few exceptions (e.g., Ireland), foreign national prison population rates in the EU are significantly higher than national prison population rates. Further, the remarkable number of non-citizens behind bars in Europe has led national prison systems to implement innovative correctional arrangements, such as the creation of ‘foreign nationals-only’ prison facilities and prison wings with correctional practices targeted to foreign nationals in some jurisdictions (Kaufman 2015; Pakes and Holt 2017; Ugelvik 2015).

Despite the methodological issues arising from comparing stock and flow data, the available information confirms that both in Scandinavia and in many other European countries, the number of imprisoned non-citizens has been consistently lower than those of detained and deported immigrants in the recent past. As has been previously highlighted, an average of 213,347 non-citizens was removed per year from EU28 member states from 2014 to 2019, and approximately 160,000 non-citizens were annually detained in EU28 immigration detention facilities in the last years. By contrast, on average EU28 correctional systems imprisoned approximately 110,000 foreign national inmates in any given year from 2014 to 2019 (Aebi and Tiago 2020).<sup>8</sup> This gap between incarceration rates and deportation and detention rates is particularly broad in Eastern European jurisdictions recently affected by the so-called ‘migration crisis’ such as Bulgaria, Croatia, Cyprus, Greece, Hungary, Latvia, Poland and Slovenia, but also broad in the Netherlands, Norway, Sweden and the UK, in stark contrast to the low immigration enforcement-rate countries such as the Czech Republic, Ireland and Italy.

To sum up, in many Global North jurisdictions, the immigration enforcement apparatus still has a long way to go before it outpaces the size of the prison system and challenges its pivotal role in the penal field. However, the extent to which the immigration enforcement apparatus coercively handles unwanted foreign national groups is much more relevant. The number of enforced deportations and detained immigrants is noticeably higher than the number of imprisoned non-citizens, both in Europe and—especially—in the US.

### *Are Immigration Enforcement Practices Counterbalancing the ‘Prison Decline’?*

The dimensions of the relationship between bordered penalty and ‘regular’ penalty and their respective contributions to state punitiveness explored so far resonate with an additional thesis regarding ‘decarceration’ and recent prison changes. Many Global North criminal justice systems are arguably going through what the US legal scholar Jennifer Chacón has insightfully called an ‘EliAsian moment’ (2015: 746). Indeed, from 2008 to 2019, incarceration rates declined by more than 20 per cent in numerous EU countries, such as Croatia, Cyprus, Estonia, Finland, Latvia, Luxembourg, Malta, the Netherlands, Romania, Spain and Sweden (Aebi and Tiago 2020) as well as in Organisation for Economic Co-operation and Development nations such as Chile, Israel and Mexico (UNODC n.d.). The US incarceration rate plummeted from 765 prisoners per 100,000 population in 2007 to 650 in 2018, while state prison population rates declined by more than 30 per cent in nine US states over the same period (Bureau of Justice Statistics n.d.). Elsewhere, incarceration rates dwindled by more than 30 per cent in Armenia, Georgia, Japan, Kazakhstan, Russia and Ukraine in the last 10 years (Aebi and Tiago 2020; UNODC 2018).

In examining this new penal scenario, a strand of punishment and society literature has stressed that the decline in prison population has given rise to a ‘transcarceration’ process, in which punitive efforts and social control resources have been focused and reinvested in immigration enforcement (De Giorgi 2015; Platt 2015; see also Dünkel 2017; Xenakis and Cheliotis 2019), thereby nuancing and somewhat challenging the ‘EliAsian’ thesis.

This transcarceration claim is unconvincing, at least if it is explored from a cross-national viewpoint. Indeed, in the US, the use of immigration control devices was significantly ramped up during the Obama administration (Aviram 2015; Gottschalk 2015; Kanstroom 2012; Macías-Rojas 2016). The number of removals carried out annually by the US Government rose by 53.9 per cent from 2006 to 2013, and the

number of non-citizens confined in immigration detention facilities escalated by 80.8 per cent from 2006 to 2012 (Department of Homeland Security 2020). However, the expansion of US immigration enforcement came to a halt some years ago, and the Trump administration has had a hard time keeping pace with the detention and deportation figures of the early 2010s (Platt 2018), essentially because it dealt with declining irregular border-crossing contingents (Johnson 2015) and it diversified its border control agenda (Chacón 2017; Wadhia 2019) to focus increasingly on asylum-seeking flows.<sup>9</sup> The number of removals enforced per year dwindled by 16.7 per cent between 2013 and 2019, and the number of detentions per year only surpassed its former 2012 zenith in 2019 (Department of Homeland Security 2020).

In addition, the ‘transcarceration’ thesis falls short of providing a suitable account of the current penal climate elsewhere, namely in the EU. As was previously elaborated, European countries have not witnessed a general, continent-wide expansion of their national migration enforcement apparatuses in recent years. Indeed, the number of both enforced deportations and detained immigrants in Eastern European countries has noticeably increased in the last few years. In stark contrast, removal practices have been on the decline in various European jurisdictions over the last decade, including top deporting countries such as Greece, Spain and the UK. In addition, in line with the prison estate, the immigration detention estate has also shrunk in several European nations, including Germany, Italy, the Netherlands, Slovakia, Spain and Switzerland, from the late 2000s to the late 2010s.

In sum, no substitution or transcarceration effect is underway. Prison downsizing trends are not being compensated by the amplified scale of detention and deportation measures. On the contrary, prison systems and immigration enforcement systems are evolving in disparate ways.

### *State Punitiveness and Public Punitiveness*

Drawing on the various punitiveness aspects scrutinised in the previous subsections, it is not adventurous to conclude that while border criminology theses may help refine punitiveness accounts, not least by challenging the validity of incarceration rate indicators, this contribution is not especially critical in the field of state punitiveness, at least not in quantitative terms. By contrast, criminology of mobility insights are much more useful from a public punitiveness perspective. By considering the border control arrangements that have had lethal consequences in the Mediterranean Sea, the Sonoran Desert and elsewhere and that have nurtured far-right platforms across Europe and the US, one can conclude that immigration and more precisely the social representations of human mobility and the narratives designed to draw political gains from migration issues provide a fresh and more nuanced picture of current penalty. Migration control appears to be performing the same kind of social and political roles usually associated with (standard) penalty. In Global North regions such as the US and Europe, moral orders currently seem to be less based on crime and punishment issues than on (renovated) racial and xenophobic boundaries and stratifications (see also Aliverti 2020, Bosworth and Turnbull 2015; Franko 2020; Green 2015; Gundhus 2020). To put it bluntly, today being tough on crime means above all being tough on immigration (Bosworth, Franko and Pickering 2018) and vice versa.

Empirical data confirm this thesis. In line with Trump’s high-profile anti-immigration agenda (Provine 2020; Wadhia 2019), according to Gallup estimations the number of US residents considering immigration as the most important problem faced by the country escalated after 2015 and recorded its highest point (27.0 per cent) in July 2019, concomitantly with the widest support verified for anti-immigration measures (Jones 2019; see also Gallup News 2020b). However, other Gallup longitudinal surveys showed much less straightforward anti-immigration attitudes (see Gallup News 2020a).<sup>10</sup>

As far as European countries are concerned, Eurobarometer surveys showed that, as can be expected, public concerns over immigration peaked in the EU in the second half of 2015 and have dwindled ever since (European Commission n.d.).<sup>11</sup> However, the number of surveyed individuals selecting immigration as one of the two most important problems faced by EU countries rose from 14.7 per cent between 2005 and 2009 to 24.4 per cent between 2015 and 2019, ranking well above crime concerns in the latter period.



Eurobarometer data also illustrated that xenophobic sentiments were mainly on the rise in countries that have, until recently, been largely unaffected by human mobility flows, such as Bulgaria, the Czech Republic, Hungary, Poland and Slovakia, but also Germany, Greece, Italy, the Netherlands and Sweden.

In short, it does seem that immigration is increasingly playing the proxy role of a 'condensation symbol' (Loader, Girling and Sparks 2000), representing other social anxieties in many global jurisdictions (Aliverti 2020).

## **Conclusion**

The emerging significance of migration enforcement policies and practices is markedly changing the punitive field. In calling for an expanded analytical gaze on the penal power, border criminology authors are supplying a wide range of insightful perspectives to examine current penalty. This literature has made a compelling case for the gradual consolidation of a dual criminal justice system, in which non-citizens are purposefully excluded from the remaining penal welfarism practices. A new crimmigration scheme featuring exclusive and increasingly transnational penal arrangements is gaining traction across many jurisdictions, in which law enforcement agencies are engaged in policing membership boundaries. This article has laid bare that, in scrutinising this burgeoning crimmigration model, the border criminology literature makes a significant contribution to challenge mainstream accounts on punitiveness.

However, this literature risks overemphasising certain changes effected by the emergence of bordered penalty policies in various Global North nations and regions. This paper has concluded that although immigration enforcement practices are on the rise in numerous jurisdictions, this is not a global phenomenon. In fact, in many European law enforcement systems, the rates of 'immcarceration' (Bowling 2013), detention and deportation have either levelled or declined in the recent past. In addition, some Scandinavian exceptions aside, in the vast majority of European jurisdictions, the prison system retains its long-standing pivotal role in the penal field, for prison practices still grossly outnumber bordered penalty practices. Moreover, this paper emphasises that although detention and deportation measures should undoubtedly be considered when analysing punitiveness indicators, no 'transcarceration' turn can be generally confirmed in the framework of the recent decarceration impulse. However, immigration phenomena and migration control policies are unambiguously gaining momentum in the field of social anxieties and collective concerns, ultimately transforming public punitiveness perceptions and demands. By this very fact alone, scholars may have much to gain from expanding their gaze on the penal power in line with what has been advocated by the border criminology literature.

Having said that, the general trends portrayed in this paper need to be further examined to unveil their differential impact on a variety of non-citizen groups. In this regard, the gendered consequences of bordered penalty are an underexplored dimension of current border criminology debates (see though Dingeman et al. 2017; Golash-Boza and Hondagneu-Sotelo 2013; Hartry 2012; Matos 2016). By contrast, a burgeoning literature has scrutinised race and the racial stratifications underpinning, and being cemented by, recent immigration enforcement policies (see Bhui 2016; Bosworth, Parmar and Vázquez 2018; Isom Scott 2020; Parmar 2020). However, this race-based perspective needs to be further teased out through cross-national research. This comparative effort will help uncover the markedly diverse ways in which race is interwoven with various other critical discriminants such as citizenship, culture, religion, post-coloniality and gender in the field of bordered penalty (see Franko 2020: 81-82). This exploration may reveal why some racialised groups are particularly targeted by border control measures in certain jurisdictions, whereas they are largely overlooked by similar bordered penalty arrangements in other geographical settings. This paper aimed to present new viewpoints on immigration enforcement and punitiveness to further energise global conversations in this thriving field of research. Exploring the gendered and racialised dimensions of bordered penalty comparatively may be a promising next step of this research agenda.

*Correspondence:* José A. Brandariz, Associate Professor of Criminal Law and Criminology, Facultade de Dereito, Campus de Elviña, s/n, 15071, A Coruna, Spain. Email: [jabrandariz@yahoo.de](mailto:jabrandariz@yahoo.de)

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- <sup>1</sup> Even the far-reaching US immigration enforcement has only been enforcing more than 100,000 removals per year since 1997 (Department of Homeland Security 2020).
- <sup>2</sup> The Covid-19 crisis has dramatically changed the immigration enforcement policies and practices scrutinised in this and coming subsections. However, in line with the re-bordering processes triggered by anti-coronavirus policies, every jurisdiction has addressed public health concerns differently in immigration control. In stark contrast to the correctional field, almost no wide-encompassing comparative exploration has been conducted on the impact of Covid-19-based measures on bordered penalty (see though Chew, Phillips and Yamada Park 2020; Global Detention Project 2020). However, official sources and media articles report that significant contingents of immigration detainees have been released since Spring 2020 in numerous European jurisdictions, such as Belgium, France, Germany, Italy, Sweden and the UK (ECRE 2020a, 2020b; Majkowska-Tomkin 2020; Piser 2020). Spain even emptied and closed its seven detention facilities in May 2020 (Majkowska-Tomkin 2020; Piser 2020; Roman 2020). In other countries, only formerly incarcerated non-citizens have been kept in detention (ECRE 2020a). These measures have been fostered mainly by travel bans preventing return operations (ECRE 2020a, 2020b), national legal provisions setting maximum terms of detention (Piser 2020; Roman 2020) and judicial decisions overturning detention orders and giving preference to alternative legal measures in the framework of the public health crisis (ECRE 2020a; Roman 2020). It remains to be seen whether these new policies will be retained in the post-pandemic scenario.
- <sup>3</sup> Unfortunately, these Eurostat data do not consider deportations targeting EU nationals, the number of which is not negligible in some European countries (see Brandariz, forthcoming).
- <sup>4</sup> Note also that deportation rates vary significantly between European countries. In 2019, they were markedly high (more than 1,000 deportees per 100,000 non-citizen residents) in various low-immigration Eastern European nations, but also in Finland, Greece, the Netherlands and Sweden. In stark contrast, deportation rates were lower than 200 deportees per 100,000 non-citizen residents in the Czech Republic, Ireland, Italy, Luxembourg and Portugal in 2019.
- <sup>5</sup> These are five-year estimations since the SPACE I database does not provide prison population data for 2017 and prison admission data for 2016. Unfortunately, these numbers are underestimated because some national data are missing in specific years.
- <sup>6</sup> In order to provide a reliable estimation for comparison with the prison data, these deportation data refer to 2014, 2015, 2016, 2018 and 2019.
- <sup>7</sup> In 2019, 359,885 non-citizens were removed from the US (Department of Homeland Security 2020), while 194,180 non-citizens were removed by EU28 immigration control authorities—excluding deportations targeting EU nationals (Eurostat n.d.a). Concerning immigration detention practices, 510,854 non-citizens were admitted into US detention facilities in 2019 (Department of Homeland Security 2019). EU immigration detention data are not that accurate. However, GDP data reveal that slightly over 150,000 non-citizens have been confined by the EU detention system per year in the recent past.
- <sup>8</sup> A more precise estimation for these five years is not feasible, because certain critical national data (e.g., those of France and Germany) are missing in specific years. The SPACE I database does not provide correctional data for 2017.
- <sup>9</sup> I thank Nancy Wonders (Northern Arizona University, US) for having called my attention to these two aspects of the current US immigration control landscape.
- <sup>10</sup> I am grateful to Raymond Michalowski (Northern Arizona University, US) for having made me aware of this significant nuance.
- <sup>11</sup> This sharp decline has also been witnessed in the US case, where immigration concerns have dramatically plummeted since late 2019 (Gallup News 2020b).

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