Immigration Detention: An Anglo Model

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Abstract

Over the last twenty-five years, immigration detention policies and practices have proliferated around the globe. We look at four liberal democratic countries with the largest immigration detention systems—Australia, Canada, the United Kingdom, and the United States—and identify components of an immigration detention policy 'package' as well as historical parallels in the early adoption of detention in these countries. This 'Anglo model' of detention is based on three main features: (1) the existence of indefinite and/or mandatory immigration detention policies; (2) the use of private security actors and infrastructure; and (3) the use of creative legal geographies in order to interdict and detain people offshore. Past scholarship on detention has focused on single national case studies or assumed the leadership of the US as the primary innovator in the field. Our paper establishes the empirical and theoretical grounds for considering these countries as a group and suggests a more complex process of policy adoption among them. Identifying an Anglo model of detention lays the critical groundwork for understanding the expansion of immigration detention and the transnational diffusion of detention policies among these countries, as well as where and how countervailing pressures to detention might form.

Immigration Detention: An Anglo Model

Introduction

Interdisciplinary scholarship on immigration detention has grown significantly in the last decade. Driven by the expansion of detention systems around the world, this scholarship has largely mapped and theorized from single country cases (e.g. Bosworth 2014; Dastyari 2015; Doty and Wheatley 2013; Mainwaring 2012a; Mountz and Loyd 2014; Silverman 2012; Welch 2002). More recently, scholars have published edited volumes that bring together different case studies (Nethery and Silverman 2015) and include thematic analyses of, for instance, intimate economies (Conlon and Hiemstra 2017), transnationalism (Furman et al 2016), and human rights (Guia et al 2016) in detention systems. Still, explicit comparative analyses remain limited (Bosworth and Turnbull 2015; Flynn 2014; Menz 2011; Mountz et al 2013; Welch and Schuster 2005a; 2005b; Wilsher 2012).

The immigration detention systems in Australia, the United Kingdom, the United States, and to a lesser extent, Canada, are prominent in this burgeoning scholarship. Although these studies provide important analyses and rich empirical detail, there is often insufficient justification for the choice of cases. In this article, we build on the existing literature to establish the empirical and theoretical grounds for considering the immigration detention systems in Australia, Canada, the UK, and the US as a group that is distinct from other countries. We identify components of a similar detention policy package in these four countries, as well as similar processes, actors, and contexts that explain these similarities.

We argue that there are grounds to analyze these cases together for several reasons. First, the countries maintain the largest and most developed detention systems in the world. In all four cases, immigration detention has expanded during the 21st century. Second, these countries are early adopters of immigration detention, as well as innovators and leaders in the transnational policy field. Third, the four states are powerful actors whose policy choices are arguably less affected by coercive exogenous factors, thus allowing us to probe why states adopt and sustain policies that often fail to produce explicit policy goals (Flynn 2014). Fourth, they represent liberal democracies with ostensible commitments to human rights protection and the rule of law, commitments that are central to the nationalism projects in all four countries. The practice of immigration detention, a policy with substantial human rights challenges, is inconsistent with these commitments.

Indeed, detention practices in all four countries contravene international human rights standards. According to international law, detention must be reasonable, proportional, non-arbitrary, non-punitive, adhere to due process, and be used only after non-custodial alternatives prove to be inadequate. Moreover, detention should not be used as a deterrent. Further safeguards exist for those deemed vulnerable, such as children and asylum seekers. For instance, under international guidelines, asylum seekers should only be detained as 'a measure of last resort', and for the shortest time possible. Children should not be detained at all. Despite these international standards, all four countries routinely detain asylum seekers and children and use detention to punish and deter (Bosworth and Turnbull 2015: 93; IDC 2011).

We refer to the similar immigration detention policy package in these countries as an 'Anglo model' of immigration detention. Our use of the term 'Anglo' identifies these four countries as predominantly Anglophone[1] and points to the racial imaginaries that underpin the growing use of immigration detention. In all four countries, hegemonic notions of a white national identity are both deeply embedded in justifications for immigration detention and also perpetuated by detention systems (Mountz and Hiemstra 2014; Nevins 2010). Common to all four cases is a racial hierarchy with 'whites' at the top, and a detainee population comprised largely of people of color from the third world (Hage 2000).[2] In using the term 'Anglo', we also stress structural similarities, such as neoliberal economic and government arrangements that favor privatization (Menz 2011), as well as a 'kinship' among these countries that is reflected in their joint membership in several economic and security partnerships. We employ the term 'model' to refer to a simplified representation of a system, to facilitate clearer understanding of its key components, and for purposes of comparison.

An Anglo Model of Immigration Detention

We identify a contemporary Anglo model of detention in four countries—Australia, Canada, the United Kingdom, and the United States—based on three main features: (1) indefinite and/or mandatory immigration detention policies; (2) the use of security actors and infrastructure to manage and house the detainee population, including private security companies, prisons, and military bases; and (3) the use of creative legal geographies in order to interdict and detain migrants offshore.

We also highlight historical parallels in the early adoption of immigration detention in these countries. Here we consider: (1) the role of constructed migration crises in laying the groundwork for the implementation and expansion of immigration detention, and (2) the implementation of initial detention policies as temporary and exceptional measures that endure beyond these 'crises'.

These historical developments and contemporary features are not uniform across all four cases, as each country is influenced by its particular history, geography, and politics. Yet, the parallels between countries are striking, signaling not only endogenous developments but also processes of exchange and diffusion across borders. The features of these national detention systems become parts of a policy package that is at once embedded in national law, institutions, and politics *and* shared with other governments as core components of a menu of policy options, a 'blueprint' of immigration detention.

Identifying an Anglo model of immigration detention is valuable on several fronts. First, it calls attention to the striking similarities of immigration detention in these countries that set them apart from most others. Despite the widespread adoption of immigration detention around the globe and the existence of aspects of the Anglo model in other countries, few countries possess all of the features we identify. For example, although other countries may defend detention as a solution in

[1] We include Canada as part of our Anglo model while also recognizing its official bilingualism and the existence of a significant French-Canadian community.

[2] Migrant populations are also increasingly constructed as security concerns, further reinforcing the association between race, on the one hand, and criminality and terrorism on the other (De Genova 2016).

times of migration 'crises' (e.g. Mainwaring 2012a; Mountz and Hiemstra 2014), few have adopted mandatory or indefinite detention or extensively privatized their detention systems.

Second, the Anglo model allows us to compare these countries and document the rise and spread of immigration detention practices beyond a specific national context. Often missing in scholarship on immigration controls (Wong 2015: 7-8), a comparative approach reveals how vested interests and racialized imaginaries of crisis are used to expand the state's power to detain across time and space, different geographies, and political contexts, despite substantial evidence that detention is costly and ineffective. Indeed, governments often justify detention on the basis that it deters 'illegal migration', although evidence suggests that it does not (Edwards 2011: 13; Mainwaring 2012a: 693-94; Sampson 2015; Wong 2015: 119, 153).

Third, recognizing these similarities among Anglo-model countries opens important avenues for future research to contribute further to our knowledge about the continued expansion of immigration detention and thus highlight opportunities for reform and abolition. For example, it is the first step to analyzing the diffusion of policies across these countries, where coercion is less likely to account for policy adoption, yet where the specific processes, actors, and mechanisms of diffusion have not been studied in detail.[3] Fourth, identifying an Anglo model of detention allows us to move away from looking at the US as the primary innovator or leader in the field of immigration detention (Flynn 2014). The model thus suggests a more complex process of policy adoption and diffusion among these states. Some important practices, such as the privatization of immigration detention, were initiated in countries other than the US. Moreover, other countries do not simply replicate US immigration detention policies and practices; they adapt them and implement innovations that are in turn adopted elsewhere. Moving beyond a 'US model' also highlights the importance of non-state actors, such as private security corporations, in accounting for the rise and spread of immigration detention.

Finally, such a comparison is useful for both academics and activists. It shows where both groups have failed to persuade policymakers of the serious failings of immigration detention. It also signals where and how countervailing pressures to the use of detention might form, and indicates an opportunity for activists to cooperate across national borders in their campaigns against detention.

We begin by reviewing the historical parallels, followed by a discussion of each of the contemporary features of the Anglo model of detention.

The Rise of Immigration Detention: A Temporary 'Crisis'?

In all four countries, immigration detention was initially framed as an emergency or temporary measure that was subsequently made permanent. Although maritime arrivals were particularly salient in creating a climate of "crisis" conducive to the expansion of detention, unauthorized land and maritime border crossings were both constructed as a direct affront to the image of order and control along sovereign borders. Governments exploited these moments, encouraging notions of chaos at the border to reassert control through tougher migration policies (Mountz 2010: 1-21; Mountz and Hiemstra 2014).

[3] We analyze the diffusion of detention policies amongst these four cases in a separate, forthcoming paper.

In the US, the birth of the contemporary immigration detention system can be traced to the introduction of mandatory detention in 1978 as an exceptional measure aimed at Haitians (Flynn 2014; Ghezelbash 2014: 148; Mountz and Loyd 2014). Worsening economic and political conditions in Haiti caused more than 47,000 Haitians to enter the US in the 1970s, many of whom applied for asylum. In response, the US introduced detention to reduce the backlog of Haitian asylum claims and expedite deportation. In 1980, more than 125,000 Cubans and 25,000 Haitians arrived by boat in southern Florida over a period of a few months, further fueling the 'immigration emergency'. Mitchell (1997: 52) writes that their arrival was 'an influential episode—... almost... a trauma—for policymakers'. It encouraged policymakers to detain all asylum seekers interdicted at sea to 'create a fear of being detained' and deter further 'mass migration' (Mountz and Loyd: 392-93). In 1981, President Ronald Reagan also instructed the US Coast Guard to interdict vessels carrying 'undocumented aliens', and referred to the 'illegal migration by sea' as a 'serious national problem detrimental to the interests of the United States' (Dastyari 2015: 15-16). The US Migrant Interdiction Program was thus born, allowing for the interdiction of Haitians on the high seas and their return to Haiti. In 1994, the program was extended to Cubans interdicted outside of US territorial waters, who were taken to detention facilities in Guantánamo Bay, Cuba (Dastyari 2015: 43-45).

In Australia, the government seized on the arrival of Indochinese in the early 1990s to introduce mandatory and indefinite detention. The 1992 Migration Amendment Act ushered in mandatory detention and eliminated the possibility for parole. Only detainees who were granted a visa or deported would be released from detention (Wilsher 2012: 99-100). The policy was initially seen as a temporary and exceptional measure, specifically designed to handle the increase in Vietnamese and Cambodian boat arrivals, deter further boats, and allay public fears (Ghezelbash 2014: 148; Flynn 2014). Gerry Hand, the Minister for Immigration at the time, explained the rationale behind the policy:

> The Government is determined that a clear signal be sent that migration to Australia may not be achieved by simply arriving in this country and expecting to be allowed into the community ... *[T]his legislation is only intended to be an interim measure*... As such it is designed to address only the pressing requirements of the current situation (emphasis added) (Hand 1992).

Nonetheless, two years later, the Migration Reform Act of 1994 extended mandatory detention to all 'unlawful' non-citizens, and removed the 273-day detention limit that applied under the previous legislation. In contrast, asylum seekers who arrived lawfully and were not considered a flight or security risk could apply for a bridging visa while their files were assessed. Visa overstayers, therefore, largely avoided detention while those arriving by boat did not (Phillips and Spinks 2013: 5-8; cf. Wilsher 2012: 101).

Almost a decade after mandatory detention was first introduced in Australia, the government used another migration 'crisis' to significantly expand detention. During a hotly contested election campaign in 2001, Prime Minister John Howard introduced the 'Pacific Solution', a set of policies that aimed to intercept vessels at sea and disembark and detain migrants in offshore facilities. Howard capitalized on the *Tampa* incident to justify the new policies: in August 2001, a standoff

occurred between the Australian government and a Norwegian ship after the captain took on the 438 passengers of a distressed fishing vessel and sought to disembark them at the nearest port in Australia. Although the government suspended the 'Pacific Solution' in 2007, the new Labor government reintroduced a similar policy in 2012. Despite the crisis rhetoric, the number of asylum seekers arriving by boat to Australia was relatively small throughout this period (Mountz and Hiemstra 2014: 387; Phillips 2014).

Canadian politicians also exploited the arrival of a relatively small number of migrants by boat to justify further restrictions and expand the government's power to detain. In 1999, 599 Chinese migrants arrived on Canada's west coast on four ships, an episode known as 'the summer of boats', which the media and politicians portrayed as a crisis. Although 500 migrants applied for refugee status, 492 were held in detention for long periods, in some cases for two years. Policymakers used the boat arrivals to argue that Canada needed 'to "close the back door" to irregular migration in order to "open the front door" to legal immigration' (Mountz 2010: 17), and to pass the Immigration and Refugee Protection Act of 2002 that allowed for more extensive use of detention (Mountz 2010: 13-17). A decade later, the Canadian government would respond to the arrival of two boats carrying Sri Lankan Tamils by again expanding its power to detain.

The United Kingdom's contemporary immigration detention system traces its origins to 1971, when the Immigration Act transformed the power to detain from an emergency wartime measure into a more expansive mechanism (Bosworth 2014: 22; Silverman 2012). Nevertheless, its intent was still to only briefly detain those refused entry into the UK, pending their removal. The routine detention of migrants and asylum seekers would develop after the 1990s (Griffiths 2015: 13-14; Bacon 2005: 5). Despite this practice, the UK Home Office's *Enforcement Instructions and Guidance Manual* still states that, 'Detention must be used sparingly, and for the shortest period necessary' (Home Office 2015: Chapter 55.1.3).

Successive governments in the UK have also constructed and exploited images of uncontrolled borders—notably, those of migrants attempting to enter via the tunnel under the English Channel—to justify further migration restrictions. During the 1990s, the increase in asylum seekers arriving in the UK, often via the Channel tunnel, prompted the government to pass the 1999 Immigration and Asylum Act, which expanded the category of detainable non-citizens to include asylum seekers (Griffiths 2015: 13-14). The government also pointed to Calais in France, as a site of chaos and the source of a 'swarm' of migrants, to justify further restrictions. In August 2015, UK Foreign Secretary Philip Hammond commented on the camps in Calais: 'So long as there are large numbers of pretty desperate migrants marauding around the area, there always will be a threat to the tunnel security' (Perraudin 2015).

In all four of our cases, we locate the origins of contemporary immigration detention in moments that were constructed as migration crises, with racialized populations as their protagonists. Detention was initially implemented as a temporary or exceptional measure, yet, as we demonstrate below, it has not only endured but also expanded beyond these historic 'crises'.

The Anglo Model: Contemporary Features

In this section, we turn to the main features of a contemporary Anglo model of detention and

show how they contribute to expansive detention systems in these four countries. We also highlight how the Anglo model differs from detention policies in other liberal democracies.

Immigration Detention: Mandatory, Indefinite, and Expanding

In all four Anglo-model countries, detention is either mandatory, indefinite, or both. Two years after the US introduced the mandatory detention of Haitians in 1978, a district court ruled the policy unconstitutional because it discriminated against Haitian asylum seekers based on their nationality. Rather than scrap the policy, the government expanded it to include all asylum seekers interdicted at sea (Mountz and Loyd 2014: 392-93). Later, the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) established 'expedited removal,' the deportation of any non-citizen arriving without proper documents, without a hearing or right of appeal.[4] Non-citizens undergoing expedited removal must be detained (AIC 2017). The Act also expanded the category of 'aggravated felonies', the commission of which subjected non-citizens to mandatory detention prior to deportation.[5] In this way, even minor offences committed by resident legal immigrants became grounds for deportation. Moreover, the provision could be applied retroactively to include offenses committed before 1996. Asylum seekers entering the US without authorization are also detained pending review of their asylum case (Flynn 2014: 171-72; Menz 2011: 128).

The possibility of indefinite detention was introduced in the 1990s. Prior to 1990, detention was limited to six months. However, that year, an exception was made for 'aggravated felons', a category later expanded by the IIRAIRA. As a result, the number of non-citizens subject to indefinite detention rose significantly. Although the average length of time in detention is about 34 days (US Department of Justice 2016: 88), some people are held for much longer. In December 2012, for instance, 4,793 detainees had been held for over six months; twelve of these individuals had been in detention for more than six years, and one person had been detained for over 17 years (TRAC Immigration 2013).

Australia has also adopted a mandatory and indefinite detention policy. The 1992 Migration Amendment Act authorized mandatory detention for all those arriving in Australia without a valid visa, including asylum seekers (Phillips and Spinks 2013: 5-8). Australia's policy of not allowing asylum seekers held offshore to come to Australia, even after receiving refugee status, results in lengthy detention stays. In 2015, the average length of time in detention reached a record high of 446 days. Over 23 percent of detainees spent more than 750 days, over two years, in detention. These averages make Australian detention policies among the most punitive among advanced democracies (Anderson 2016; Whyte 2015).

Although the UK does not have a mandatory detention policy, immigration detention is indefinite

[4] Although the law stipulates that expedited removal also be applied to those present in the US for less than two years, it has typically been limited to those arriving at ports of entry, by sea, or those found within 100 air miles of the southern border who have been in the US for 14 days or less (Siskin and Wasem 2005). In 2013, 44 percent of all deportations from the US were expedited removals. The Trump administration has called for its expanded use (AIC 2017).

[5] 'Aggravated felonies' now included both immigration offences, such as illegal reentry after deportation, and criminal misdemeanors, such as forgery, perjury, non-violent theft, drug offences, receipt of stolen property, and tax evasion (Bosworth and Turnbull 2015: 101).

and has no legal time limit. The UK's position outside the Schengen zone allowed it to opt out of the EU Returns Directive (2008), which set an 18-month time limit on detention. Therefore, although many are held for less than two months (81 percent in 2016), it is not uncommon for individuals to be detained for many years (Silverman 2017).

Canada similarly maintains an indefinite, but not mandatory detention policy. In 2015-2016, the average length of detention was 23 days. However, like the UK, a minority of detainees is held for much longer: out of the 6,596 people detained that year, 33 had been held for more than one year, 17 for more than two years, and nine for more than three years (Kennedy 2017). After the arrival of 492 Sri Lankan Tamils on Vancouver Island in 2010, the Conservative government introduced Bill C-31, 'Protecting Canada's Immigration System Act', which allowed for the mandatory 12-month detention of particular groups of non-citizens. The Act, which was passed in 2012, gives the Minister of Public Safety the power to detain any group of non-citizens by designating them as 'irregular' arrivals if the Minister suspects that a smuggler has aided them (Cleveland 2015: 82).

Indefinite and mandatory detention policies set these four countries apart from other advanced industrial democracies. In EU member states, for example, time in detention is limited to six months by the recast Returns Directive (2011), with the possibility of a 12-month extension in 'exceptional cases'. Under the Reception Conditions Directive, asylum seekers should be held in detention for 'as short a period as possible' and not longer than 12 months. Other Anglophone countries, such as South Africa and New Zealand, have neither indefinite nor mandatory detention policies (Amit 2015: 146-147).[6]

In all the Anglo-model countries, mandatory and indefinite detention policies have resulted in large and expanding detention systems. Over time, all four countries have detained more people and spent more money on detention. These detention systems continue to primarily target and thus criminalize racialized populations. In 2006, the US Congress passed a 'bed mandate' that stipulated that Immigration and Customs Enforcement (ICE) must detain a minimum of 34,000 migrants per day (Miroff 2013). In 2016, this resulted in 352,882 immigrant detainees, more than four times the number in 1994 (81,707). The number of detainees is expected to rise even further in the wake of President Trump's executive orders aimed at increasing the detention and deportation of non-citizens. Indeed, a 2017 White House memo called for doubling the number of migrants held by ICE from 40,000 a day—already a historic high—to 80,000 (Sainato 2017).

In Australia, the detainee population increased from 188 in 1991-1992 to 19,376 in 2011-2012, over a 10,000 percent increase (Phillips and Spinks 2013: 40)! After peaking in 2013, the annual number of detainees declined, as boat arrivals fell. In 2016-2017, for example, 1,749 people were detained. The majority of these detainees were being held in third-country offshore facilities on Manus Island (Papua New Guinea) and Nauru, a remote island republic over 4,000 kilometers from Sydney (Australian Border Force 2017).[7] Despite such fluctuations, the overall trend since the 1990s has been an increase in the country's capacity to detain larger numbers of people.

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[6] New Zealand introduced the possibility of indefinite detention in times of 'mass arrivals' by boat in the Immigration Amendment Act of 2013. However, New Zealand has experienced no boat arrivals to date (Ghezelbash 2014: 149).

[7] In April 2016, the Papua New Guinea Supreme Court ruled that the Manus Island detention facility was unconstitutional and that detainees must be moved. Detainees resisted the transfer to other facilities on the island, where they felt they would be at the mercy of a hostile local population (Davidson 2017).

Similarly, the number of immigration detainees in the UK was low until the early 1990s—approximately 200-300 people at any one time—and asylum seekers were rarely detained (Welch and Schuster 2005b: 337). However, after the passage of the 1999 Immigration and Asylum Act, the daily population increased dramatically, from 250 detainees in 1993 to over 2,260 in 2003, over an 800 percent increase (Griffiths 2015: 14). In 2015-2016, a total of 32,163 people were detained (Home Office 2016).

Canada's detainee population also increased since the 1990s. In 1996-1997, Citizenship and Immigration Canada detained 6,400 people; this number increased to 11,503 individuals by 2002-2003 (Pratt 2005: 43). Under Stephen Harper's Conservative government (2006-2015), an average of 11,792 people were detained each year between 2006 and 2012, over 40 percent of whom were asylum seekers (Global Detention Project 2012; Nakache 2011: 41). Although the Liberal Trudeau government has so far detained fewer people than the Harper government, there has been no meaningful change to immigration detention policy. Indeed, in 2016, the Trudeau government announced a CA$138-million expansion of detention centers in Vancouver, Montreal, and Toronto (Kennedy 2017).

Governments in all four countries have pointed to moments of high arrivals to justify the expansion of detention. However, detention systems have continued to expand even when numbers are low. Accordingly, governments have made broad and unsubstantiated claims about the need to 'retain mandatory detention to support the integrity of [the] immigration program' or to 'ensure the effective control and management of [a country's] borders' (Phillips and Spinks 2013: 7; cf. Bacon 2005: 5).

As the number of detainees in these countries has grown, spending on detention has also increased. The US currently spends more on immigration detention than it did ten years ago, when more people were crossing the border (Lowenstein 2016). The annual cost of running immigration detention in the US was US$2 billion in 2014, or $5.46 million per day (Moreno 2014). In Canada, the Canadian Border Services Agency (CBSA) spent more money on detention each year between 2005 and 2015. In 2015-2016, the agency spent over US$45 million (CA$58 million), up from US$16 million (CA$21 million) in 1994-1995. Moreover, the Canadian government also paid provinces over US$20 million (CA$26 million) in 2013 to detain migrants in provincial jails (Gros and van Groll 2015: 76-77; Kennedy 2017; Pratt 2005: 49-50). The UK government spent US$183 million (£137 million) on immigration detention in 2014-2015 (McGuinness and Gower 2017: 13). Due to its practice of detaining migrants and refugees on remote islands, Australia boasted the highest detention costs at US$2.5 billion (AU$3.3 billion) in 2013-2014 (National Commission of Audit 2014: 113). Daily costs also remain high in the four cases. Recent estimates of the average cost of detaining one person for one day are US$501 (AU$655) in Australia,[8] US$127 in the US, US$194 (CA$250) in Canada, and US$115 (£86) in the UK (IDC 2015: 11; Fleischner 2016; Kennedy 2017; Silverman 2017).[9]

[8] This cost is for onshore detention. Offshore detention is much more expensive and estimated at US$1,150 per person per day in 2016 (Amnesty International 2016: 4).

[9] Daily costs for all countries are for 2016-2017, except for Australia, which is for 2013-2014. All currency conversions throughout this paragraph were calculated on 16 December 2017 with www.xe.com to allow for comparison.

In contrast, international organizations promote more humane and cost-effective alternatives to detention that still meet the goals put forward by states to justify detention.[10] Such alternatives include reporting or residency requirements, financial guarantees, community supervision, electronic monitoring, and home curfew (Edwards 2011; IDC 2015; Costello and Kaytaz 2013). In the US, wearing a tracking device and reporting twice a week to a parole officer costs US$8 per day (Moreno 2014). Although all the countries in our Anglo model provide alternatives to detention for those deemed most vulnerable, alternative programs remain limited and governments have been unwilling to expand them.

Criminalizing the Detainee: Private Security Actors and the Use of Prisons

All four countries employ private security firms to run detention centers and to provide services within them. They also use prisons and jails to detain migrants and asylum seekers. In 1970, the UK set a precedent when it contracted a private company to run two detention centers: Securicor (now G4S)[11] was paid to run Harmondsworth detention center at Heathrow airport and a smaller facility at Manchester airport (Bacon 2005: 6). The US government followed suit, signing its first major contract with Corrections Corporation of America (CCA) in 1983 (Menz 2011).

CoreCivic (formerly CCA), Geo Group Limited (formerly Wackenhut Corrections Corporation), G4S Secure Solutions, and Serco are among the handful of multinational for-profit companies that dominate the current global immigration detention market (Arbogast 2016; Menz 2011).[12] CoreCivic and Geo Group are among the largest private prison companies in the world, with annual revenue of US$1.85 billion and US$2.18 billion, respectively, in 2016.[13] Although they are also involved in criminal incarceration, immigration detention generates hundreds of millions of dollars of their profit (National Immigration Forum 2013; Sainato 2017). Indeed, in response to the decline in the US prison population, for-profit prison companies expanded their immigration detention capacity, including provision of related services in detention and the detention alternatives market (Fernandes 2017).[14]

Both CoreCivic and Geo Group own a number of US detention centers and rent out space to the US government; they also manage centers through government contracts. In 2015, 62 percent of immigrant detention beds were in for-profit facilities, an increase from 49 percent in 2009 (Carson and Diaz 2015). In comparison, only eight percent of US prisoners were held in private prisons (Patler and Golash-Boza 2017: 3). State and county jails are also regularly used to detain immigrants. Trump's electoral victory signaled a likely further expansion of the detention industry: the stock value of private prison companies soared the day after the November 2016 election and

[10] The International Detention Coalition (IDC 2015) reports that the implementation of alternatives to detention in Canada and Australia produced significant financial savings. Moreover, in a study assessing thirteen alternative programs, compliance was between 80 and 99.9 percent, much higher than in an analogous criminal setting. Nonetheless, these alternatives involve varying degrees of restrictions on liberty and should therefore also be subject to human rights safeguards; the ultimate alternative is no detention at all (Edwards 2011).

[11] In 2004, Securicor merged with Group 4 Falck and was rebranded as G4S (Group 4 Securicor).

[12] In addition to these big players, Tascor and Mitie operate in the UK and continental Europe (Arbogast 2016).

[13] As reported by Nasdaq (see nasdaq.com).

[14] The Obama administration announced a phase-out of private prison contracts in 2016. The Trump administration reversed this directive (Zapotosky 2017).

responded positively to the administration's immigration enforcement crackdown in 2017 (Sainato 2017).

Across the Atlantic, the UK boasts the most privatized detention system in Europe: private companies, such as Mitie, G4S, and Serco run most UK detention centers (Arbogast 2016: 22), and 72 percent of detainees are held in privately-run facilities (Conlon and Hiemstra 2016: 3). Moreover, an estimated 12 percent of the detainee population is held in prisons—363 people in March 2016 (Home Office 2016). Although a policy change in 2001 was designed to end the confinement of asylum seekers in prisons, 'non- compliant' detainees and former foreign offenders are still routinely held in prison facilities. After 2002, detention centers were also built or refurbished to architectural standards used in high security prisons (Bosworth and Turnbull 2015: 93-94).

In both the US and the UK, the privatization of immigration detention predated the privatization of prisons (Menz 2011: 124, 127). The subsequent boom of the private prison industry during the 1990s and 2000s encouraged further privatization of immigration detention as security companies expanded their size and influence (Lowenstein 2016; Menz 2011; Wilsher 2012). In the US, after laws were passed in 1996 expanding the grounds for mandatory detention and deportation, private prison companies lobbied Congress to fill the growing demand for detention capacity. Private prison companies also played a significant role in lobbying for the bed mandate passed in 2006 (Miroff 2013; Carson and Diaz 2015).

In Australia, the entire detention system is privatized (Conlon and Hiemstra 2016). However, the privatization of detention facilities began in 1997, later than in the UK and the US, under the conservative Howard government. That year, the Department of Immigration and Australian Citizenship signed its first 10-year contract with the Australasian Correctional Services (ACS), a subsidiary of the US-based Wackenhut Corrections Corporations (now GEO Group), which was tasked to manage seven of Australia's detention centers. After sustained criticism of ACS's operations, the government ended the contract in 2003, but quickly signed a new agreement with Group 4 Falck (now G4S) to manage eleven of Australia's detention centers as well as oversee the transportation of detainees. A Group 4 Falck subsidiary until it was sold in 2004, Global Solutions Limited also operated prisons and detention facilities in Australia, as well as the UK and South Africa. In 2008, it was re-acquired by G4S. In 2009, the Labor government signed a AU$370 million contract with Serco to run twelve high-security detention centers, while G4S moved to running low-security detention facilities. Despite a series of scandals surrounding the provision of care in detention, Serco signed another contract with the government at the end of 2014, estimated to be worth AU$1.67 billion, the world's largest single detention contract (Kollewe 2014; Menz 2011; Morris 2017: 63). Immigrants have also been detained in prisons across Australia, but the usual practice has been to hold them in dedicated detention centers (Global Detention Project 2008).

Canada has also privatized immigration detention and systematically uses prisons to hold detainees. The country has three dedicated immigration detention centers in Toronto, Laval (a suburb of Montreal), and Vancouver, with bed space for 200, 150, and 27, respectively. Although the CBSA oversees these centers, most services, such as food, maintenance, and security are contracted out to private firms (Cleveland 2015: 82-83). Moreover, Corbel Management

Corporation has managed the detention center in Toronto since 2003, and G4S provides security at the facility (Poynter 2012). In 2015, Corbel won another CA$37.8 million contract to provide a new facility as well as housekeeping, maintenance, and food services for the Toronto detention center (CBSA 2015). Private security companies such as Serco have also actively lobbied the government to further privatize immigration detention, especially in the wake of the expansion of the government's detention powers in 2012 (Poynter 2012). Given the limited space in Canadian detention centers, provincial prisons are increasingly used to detain migrants and asylum seekers: in 2010-2011, 35 percent of all detainees were held in such facilities (Cleveland 2015: 84). By 2017, more than two-thirds of immigrant detainees were being held in maximum-security jails (Kennedy 2017).

Although detention in these four countries is legislated as an administrative measure, the growing use of prisons and private security companies contributes to the criminalization of migrants. Even in immigration detention centers, migrants and asylum seekers are routinely subjected to lengthy detention periods in prison-like conditions that are designed to punish and deter, in contravention of international standards. Indeed, 'there is little practical difference between many of the features of immigration detention and imprisonment...' (Groves 2004). Moreover, administrative detention does not carry the legal safeguards found in criminal law (Stumpf 2006; Parkin 2013).

While the criminalization of migrants serves to justify the state's expansion of punitive migration controls, the privatization of detention outsources legal, moral, and political liability for events and conditions inside detention (ACLU 2014; Bacon 2005; Lowenstein 2016). Rather than a contraction of the state, this delegation of responsibility to the private sector becomes a new tool in the art of governing, expanding the state's power to detain (Doty and Wheatley 2013; Flynn 2016; Guiraudon 2001; Guiraudon and Lahav 2000). This increased state capacity dovetails both with the expansion of the penal state, designed to incarcerate the urban poor and complement economic deregulation and welfare contraction (Bosworth 2014: 49; Wacquant 2008; 2009), and also with the 'war on terror', in which migrants are constructed as a security threat. Framing migrants as a security threat reinforces the association between race and criminality, and in doing so paints all (non-white) minorities as suspicious and gives grounds for the broad expansion of the penal state (De Genova 2016). As Wacquant (2008: 51) reminds us, 'penal management of foreigners elicits less resistance and even generates support for such punitive policy among the precarious fractions of the native working class that constitute its main foil'.

Although privatization and outsourcing are commonplace throughout the capitalist world, these practices are more entrenched and widespread in Anglo-model countries than in other developed countries. If we align advanced democracies along a continuum of privatization practices, the Anglo-model states operate at one end, where private companies are entrusted with the management of detention centers, albeit to different degrees. On the other end of the privatization continuum are France and other EU countries, including Spain, Portugal, Germany, and Belgium, where the management of immigration detention remains primarily with the public sector.[15] Italy lies somewhere in the middle and engages in public-private partnership arrangements. Private entities manage the day-to-day running of detention centers while the state is in charge of security,

[15] In Sweden, private companies were involved in immigration detention before 1997. After hunger strikes and suicides called attention to inhumane conditions in detention, the government decided to no longer involve private companies in immigration detention (Arbogast 2016: 41).

including identification and surveillance (Arbogast 2016: 26-41).[16] The outsourcing of services seen in other countries' detention systems is also markedly different from the wholesale privatization of detention, and is consistent with service privatization seen throughout developed economies.

In our Anglo-model countries, extensive privatization has contributed significantly to the entrenchment and expansion of immigration detention. Indeed, governments in the Anglo-model countries continue to give large contracts to private companies despite the growing number of scandals that surround them, and mounting evidence of abuse and poor conditions in privatized detention centers (Morris 2017: 63).

Creative Legal Geographies: Interdiction, Excision, and Off-shoring

All four countries make use of creative legal geographies to circumvent national and international laws and detain large numbers of migrants and asylum seekers for long periods of time. These four countries have implemented and championed offshore detention through various measures, such as the excision of territory, interdiction at sea, the use of islands as detention sites, and the creation of legal and geographic buffer zones in the form of 'transit processing centers' and 'long tunnels'. These legal maneuvers enable states to process and detain migrants offshore in interstitial zones, on islands, and in neighboring countries. The offshoring of detention is part of a larger suite of what Jennifer Hyndman and Alison Mountz (2008) call 'neo-refoulement' practices that externalize border controls beyond a state's territory in order to deter migrant arrivals.

The US initiated the practice of offshore border enforcement in the late 1970s and 1980s, with the interdiction of Cuban and Haitian asylum seekers in the Caribbean (Mountz and Loyd 2014). From 1981 to 1990, 22,940 Haitians were interdicted at sea, of whom only 11 were deemed eligible to apply for asylum (Wasem 2011: 3-4). After the coup against Haitian President Aristide in 1991, the US briefly stopped returning Haitians intercepted at sea and instead held them at Guantánamo Bay. However, as the number of Haitian detainees rose to over 12,000, George H. Bush signed an executive order in 1992 that limited the application of *non-refoulement* to US territorial waters and allowed the practice to resume. This policy led to a sharp decline in the number of Haitians departing for the US (Mountz and Loyd 2014: 394; Frenzen 2010: 383).

The US continued to expand its offshore interdiction and detention efforts. By the summer of 1994, 16,000 Haitians and 23,000 Cubans were being held at Guantánamo. Crowding there led the US to build additional 'safe haven' camps in Antigua, Dominica, St. Lucia, Suriname, and the Turks and Caicos, and to use a US military base in Panama to detain 9,000 Cubans (Koh 1994: 154-155; Mountz and Loyd 2014). In 1995, the Clinton administration amended the longstanding Cuban Adjustment Act (1966) that had given Cubans arriving in the US the right to apply for residency and ultimately citizenship. The new policy, known as 'wet foot, dry foot', only gave those Cubans who reached US territory access to residency; those intercepted at sea were returned to

[16] Historically, the Italian government outsourced the management of detention to 'social co-operatives' or non-profit organizations, such as the Red Cross. Private companies entered the Italian detention market in 2012 (Arbogast 2016: 26-41). Although also controversial, the involvement of non-profit actors in detention is guided by a different logic from that of private companies: non-profits are not as financially invested in the expansion and continued privatization of immigration detention, and many hold principled objections to detention (Morris 2017).

Cuba or a third country (Dastyari 2015: 49-51). To this day, most persons interdicted at sea are repatriated, while those with a 'credible fear' of persecution are held at Guantánamo for further processing. Even after gaining refugee status, detainees are still not admitted to the US mainland, but are held at Guantánamo until they can be resettled in a third country (Dastyari 2015: 3-4).

In Australia, the Howard government amended the Migration Act in 2001 to introduce a set of policies that would become known as the 'Pacific Solution'. The new policies allowed the Australian navy to intercept vessels and transfer asylum seekers to offshore 'processing centers', where they were unable to access the Australian immigration and asylum system. The amended Act also 'excised' part of Australian territory—namely, the islands along the northern coast—for purposes of immigration. Any migrant reaching these territories would also be held offshore on Manus Island or Nauru. Although the Rudd government halted the 'Pacific Solution' in 2008, an increase in boat arrivals and deaths at sea led the Gillard government to reinstate arrangements with Papua New Guinea and Nauru in 2012. In 2013, Parliament passed a bill excising the *entire mainland*, which allowed Australia to detain all asylum seekers arriving by boat offshore and prohibited any possibility of their resettlement to Australia. The Labor government framed the bill as a deterrence measure that would 'save lives' (Barlow 2013).

Canada legally re-designated its territory to avoid obligations under national and international refugee law. The Chinese migrants who arrived during Canada's 'summer of boats' in 1999 were detained on a naval base on Vancouver Island, where most made asylum claims. The government designated the base a 'port of entry', which limited these asylum seekers' rights, including the right to access a lawyer. Immigration officials dubbed this strategy the 'long tunnel thesis', whereby asylum seekers were treated as if they had not yet landed on Canadian soil and were instead walking through long tunnels at international airports (Mountz 2010).

Although shielded from boat arrivals by its geographic position, the UK has nevertheless extended its border regime into France, and promoted the offshoring of EU detention centers. In 2003, the UK, together with Denmark and the Netherlands, put forward a proposal to establish 'transit processing centers' and 'regional protection zones' outside of the EU to deter refugees from traveling to Europe to apply for asylum (Noll 2003: 303-304). The unsuccessful proposal would have allowed EU states to return asylum seekers to these 'processing centers' before their claims were assessed. In a leaked draft of their proposal, the UK government maintained that the idea was a 'pro-refugee but ant-asylum [sic] seeking strategy.'[17] Other EU member states criticized the proposal for undermining refugee protection (Ward 2004: 30-33).

Unable to establish 'processing centers' outside the EU, the UK has continued to champion the externalization of EU migration controls and to insist that refugees should apply for asylum in 'safe' first countries outside of the Europe and wait to be resettled. The UK has roundly refused to participate in the relocation of refugees within the EU, and it has been a strong advocate of the EU-Turkey deal, which draws on the UK's 2003 proposal (Travis 2017). The UK's externalization of migration controls has also produced de facto, offshore migration camps in Sangatte and Calais, France. In 2003, UK Prime Minister Tony Blair signed an agreement with French President Jacques Chirac that allowed UK border officials to carry out controls in northern France, before

[17] Available at: http://www.proasyl.de/texte/europe/union/2003/UK_NewVision.pdf

travelers cross the English Channel. Even with Brexit, the UK government remains intent on maintaining these 'juxtaposed' border controls (UK Parliament 2016).

Many liberal democracies now employ an array of externalization measures, including visa requirements, readmission agreements, the funding of migration controls in transit countries (including detention), and interception at sea. For example, EU member states have engaged in offshoring and interdiction practices and funded immigration detention in African countries, such as Libya, Morocco, and Mauritania (Flynn 2016; Human Rights Watch 2014). In 2009, Italy intercepted migrant boats on the high seas in the Mediterranean and returned them to Libya. However, the European Court of Human Rights (2012) ruled that the practice was contrary to the principle of *non-refoulement*. In this way, European courts act as a restraint on national and regional attempts to externalize migration controls.

EU policies also push migration controls towards its periphery, a form of internal externalization (Mainwaring 2012b), manifest most recently in 'hotspots', EU-funded detention centers in Italy and Greece. Although these practices lie along the same continuum as the offshoring we have identified in the Anglo model and may be inspired by Anglo practices, we argue that they are not as entrenched as in the Anglo-model countries. Moreover, whereas other states have helped fund offshore detention centers, they have not placed their own detention centers offshore, as have the US and Australia, nor have they legally re-designated territory in order to exclude migrants and asylum seekers, as have Australia and Canada. Even where other states have adopted similar policies, the Anglo-model countries were early adopters of these practices.

The creative legal geographies practiced in our Anglo-model countries expand their detention regimes and create another material layer of exclusion: even when migrants and refugees arrive on or near their territories, they are excluded from full rights and protections.

Conclusion

Mainstream theories of immigration policymaking in liberal democracies have argued that governments balance competing pressures for greater immigration restrictions from the public, on the one hand, and for greater openness by human-rights and liberal market forces, on the other, in ways that produce an equilibrium, albeit one in perpetual tension (e.g. Hollifield 2004; Joppke 1998). Yet recent developments in immigration policy and, especially, in immigration detention, reveal a cumulative escalation of restrictions—even a breach of the bonds of civility—that does not find ready explanation in earlier theories. In our country cases, each one a liberal democracy with ostensible commitments to human rights and multiculturalism, immigration detention policies have not (yet) encountered the countervailing pressures that would contain this escalation or lead governments to acknowledge this breach. In defining an Anglo model of detention and tracing its rise and expansion, we reveal the features of a system that, while exerting influence on the world, is also distinctive and self-reinforcing. We also uncover factors that have worked against the emergence of a less punitive approach.

The countries that comprise our Anglo model share similar histories of immigration detention. Detention was initially adopted as a temporary and exceptional measure in the context of a migration 'crisis', and subsequently became a permanent and central feature of the state's

migration controls. These countries further developed similar features, which we highlight as key to the Anglo model: (1) indefinite and/or mandatory detention; (2) extensive privatization of detention, alongside the use of security infrastructure, such as prisons and military bases, to detain migrants; and (3) the use of creative legal geographies to detain people offshore and limit access to asylum.

Conceptualizing the rise and spread of immigration detention in this manner draws our attention to a pattern of migration 'control' that is at once embedded in these countries and distinctive from the rest of the world. Although other countries may deploy some of the same policies, the 'package' of features we identify is found among the Anglo model countries alone. These policies have contributed to creating the biggest detention systems in the world, despite their failure to deter migration, uphold human rights, and deliver cost-effectiveness.

It has not been our goal here to explain the persistence of this system of immigration detention, yet the features we identify in the Anglo model point to possible answers. For example, mandatory and indefinite detention policies contribute to a large detention estate with powerful vested interests. The expanding role of a for-profit security industry and bureaucratic apparatus likely generates a path dependency that makes deviation from the policy difficult. The higher costs associated with a model of immigration detention that confines individuals for lengthy periods and contracts with private detention companies are eclipsed by the enormous profits of these companies, the 'sunk costs' of a (private) criminal incarceration industry that spill over into immigration detention, and the extensive lobbying by private actors. Moreover, the use of security actors (especially private companies) and creative legal geographies help to render invisible the violence inherent in detention systems, thereby limiting public opposition.

Further, corporate lobbying helps to frame the 'problem' and its 'solution' for policymakers, in turn defining the menu of available policy options in ways that expand private immigration detention. These countries have not only adopted similar detention policies, but also assumptions about migration and how to 'manage' it that are embedded in crisis rhetoric, a neat yet flawed package of 'problems' and 'solutions'. In these ways, the Anglo model's functionality and embeddedness at the national level are essential for understanding why immigration detention policies persist, despite their costs and contradictions with liberal democratic values.

At the same time, identifying the distinctive pattern of immigration detention policies in these countries establishes important groundwork for future research. In particular, the Anglo model also suggests that policy diffusion among these countries fuels the expansion of immigration detention. Most diffusion studies about immigrant detention thus far have focused on coercive policy transfers between stronger and weaker states. Future research might examine diffusion mechanisms and processes in more detail, to understand more precisely how the adoption and adaptation of detention policies take place, in non-coercive ways, across countries with similarly strong states. Here, not only public actors (politicians, bureaucrats, policing units) but also private ones (private prison companies, security technology companies, international organizations) may serve as agents of diffusion.

More extensive comparisons among these countries would also help to refine the features of the Anglo model. For instance, the Canadian case is not as 'extreme' on the key characteristics of the

model as are the other cases: what might explain Canada's more limited use of private detention companies? Studies might also focus on comparisons between Anglo-model countries and countries that have developed different detention systems or even alternatives to detention.

Finally, the Anglo model highlights how immigration detention has grown substantially over the last 25 years despite the efforts of activists and scholars to reform, resist, and, ultimately, end immigration detention. In this way, the Anglo model points to areas of research that can inform broader activism, including transnational campaigns to end detention. For example, in what ways are efforts by scholars and activists (in)effective at changing important aspects of detention systems in these countries, and why? Such a focus on the prospect of change would underscore the contentious, dynamic, and arguably contradictory nature of a punitive detention regime that violates human rights, yet is shared by liberal democracies that claim such rights as core values.

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