

'Punishing those who do the wrong thing': Enforcing destitution and debt through the UK's family migration rules

EVE DICKSON
AND RACHEL ROSEN

University College London, England

Abstract

In 2012, the 'no recourse to public funds' (NRPF) condition was extended to long-standing migrant families in the UK who had previously achieved rights to residence and welfare through human rights mechanisms. Through close examination of policy, political statements, and media coverage, we make the case that the NRPF extension was - and continues to be - intentionally subjugating and punitive, most aptly understood as a policy of enforced destitution and debt imposed on negatively-racialised post-colonial subjects. In drawing out the implications of our argument, we point to time, destitution, and debt as core technologies of the UK's migration regime, alongside everyday bordering, detention, and deportability. Denying support through NRPF serves to exclude putatively included migrants while normalising conditional approaches to social support. Our article reveals why moral arguments against NRPF based on destitution fail and suggests that challenging welfare bordering requires a more systemic appraisal of policy frames, intentions and effects.

Corresponding author:

Rachel Rosen, University College London, Room 301, 18 Woburn Square, London, WC1H 0NR, UK.
Email: r.rosen@ucl.ac.uk

Key words

bordering, deportability, migration regime, 'no recourse to public funds' (NRPF), undocumented migration

Destitution is one of the most common terms associated with 'no recourse to public funds' (NRPF) in the limited scholarship on this conditionality placed on migrants 'subject to immigration control' in the UK. Yet rather than addressing the evident problems created by the NRPF policy, or its limited success in meeting its questionable aims of 'controlling' immigration and producing 'voluntary' return, in 2012 the British state extended NRPF to migrant families who were exercising Article 8 rights. These 'rights to private and family life', outlined in the European Convention on Human Rights, had previously accorded migrant families the right to both stay and access social support alongside other UK residents.

In this article, we consider why the NRPF policy was applied to families exercising Article 8 rights, and how to best characterise the extension, through analysis of government statements, policy documents and media coverage.¹ While previous research has focused on the detrimental impacts of NRPF on undocumented migrants (Jolly, 2018) and those with leave (Anitha, 2010), there has been limited attention to theorising the policy's providence and shifting application. Building on the work of critical policy and migration scholars, we understand 'welfare chauvinism' (Guentner et al., 2016), or the denial of social support to particular groups who are rendered undeserving outsiders, as a form of internal bordering. However, migrant families who are neither desirable to the state nor (readily) deportable have an ambiguous position here, simultaneously included through human rights mechanisms and excluded through bordering practices. As such, this is an important case for considering bordering processes that work across migration and welfare regimes.

Our article begins by contextualising NRPF as part of the 'multiplication of borders' (Mezzadra and Neilson, 2013) at the interface of the UK's welfare and migration regimes, before moving on to describe the 2012 changes that targeted families regularising their immigration status through Article 8 rights. This is followed by an analysis of how the 2012 changes were justified and framed. Focusing on the criminalisation of migrant families and the engineering of citizenship on highly restrictive notions of the neoliberal British nation, we show how long resident migrant families regularising through Article 8 were constructed as a 'social problem' that prescribed particular solutions. In so doing, we make the case that NRPF was a punitive and exclusionary post-hoc measure where negatively racialized mothers from former British colonies, and their children, were made to 'pay' for their 'undesirability' through a draconian policy that denied them the means of

life. We contend that destitution and debt were, and continue to be, *enforced* through NRPF. We conclude by drawing out the broader implications of our argument for conceptualising and challenging bordering policies and technologies.

NRPF at the interface of the UK's welfare and migration regimes

The NRPF rule, first introduced by the Immigration Act 1971, was initially used to control entry at the border by requiring those entering to prove financial self-sufficiency, but later became a key mechanism to restrict migrants' access to welfare support. The current iteration of the NRPF policy is contained in the Immigration and Asylum Act 1999 and imposes the condition on people 'subject to immigration control'. This includes undocumented migrants and most migrants with time-limited leave to remain. The condition prohibits access to local authority housing assistance and most welfare benefits, as well as other forms of support tied to benefits, such as free school meals and extended childcare services.

NRPF sits at the interface of welfare and migration regimes in the UK. The two may be analytically separable but are thoroughly entwined in practice (Williams, 2014). In the past three decades, the UK's welfare regime has been marked by rapid marketisation, privatisation and contracting out (Brennan et al., 2012). Alongside these systemic shifts, the UK's neoliberalising welfare regime individualises risk and responsibility, requiring individuals to be increasingly self-sufficient (Kilkey, 2017). Support is increasingly targeted, rather than purporting – if never actually fulfilling – a universal commitment, only available to those limited few who meet a series of restrictive conditionalities (Lambie-Mumford and Green, 2015).

In combination with over a decade of austerity measures and central government retrenchment following the 2008 financial crisis and ensuing 'global slump' (McNally, 2010), an increasingly nativist discourse has emerged as to who is part of the 'community of value' (Anderson, 2013), and therefore deserving of its support, and who is to be excluded. In many ways, this is a century long story of exclusion, rather than a new phenomenon. The UK's first modern immigration legislation (Aliens Act 1905) sought to control entry into the UK as a way of limiting access to welfare support, in that case to impoverished eastern European Jews, and subsequent laws set on deterring long-term settlement forced negatively racialised commonwealth subjects into the vagaries of the private housing market (Hayes, 2002). Indeed, deservingness, argues Shilliam (2018), has been racialised in Britain from 'abolition to Brexit' to serve 'elite' interests (176 Kindle), a historical process embedding whiteness as a constitutive feature of working-class respectability, with

‘the ‘slave’ – and thereby the condition of blackness’ (185 Kindle) – representing the quintessential undeserving.

Recent decades, however, have borne witness to a ‘multiplication of borders’ (Mezzadra and Neilson, 2013), moving borders ‘from the margins into the centre of political and social life’ (Yuval-Davis et al., 2019: 1). Boundaries around Europe have been deterritorialised and externalised via increasingly sophisticated technologies and security measures. Most importantly for our purposes here, in current years there has also been a proliferation of internal everyday borders, in what Van Der Leun (2006) describes as the shift from ‘gatekeeping at the border’ to ‘gatekeeping access to services’. This process has co-opted teachers, health care professionals, social workers, and landlords into the role of border guard, implicated in shoring up the internal boundaries around support and services necessary for daily life.

The multiplication of borders leads to highly racialised, classed and gendered forms of subjugation (El-Enany, 2020; Shutes, 2017). Sirriyeh’s (2015) examination of the 2012 changes to family migration are a case in point. High minimum income thresholds for sponsorship set class-based criteria for migration, making transnational family life a possibility only for the privileged. This disproportionately affects women and people of colour who are more likely to be impoverished and in low wage work in the UK.

In delineating multiplication, Mezzadra and Neilson (2013: 7, emphasis ours) argue that borders are not simply walls, barriers or blockages, but are ‘equally devices of *inclusion* that *select* and *filter* people and different forms of circulation in ways no less violent than those deployed in exclusionary measures’. Rather than viewing irregular migration as a policy failure, then, it can be understood as part and parcel of the neoliberal governance of migration, involving ‘the radical commodification of migrants as pure labour-power: their rights to leave, to entry or to stay in a country depend preponderantly on their economic usefulness according to market rules’ (Oliveri, 2012: 796). This way of apprehending the ‘partial inclusions’ of migrants, at once within geopolitical borders whilst still being heavily regulated, restricted, subordinated and rendered as ‘second class’ even when granted legal citizenship and the right to reside, is a crucial point we develop within this article. For the purposes of Mezzadra and Neilson (2013) and others, this partial inclusion is about the stratification of labouring bodies, reminiscent of De Genova’s (2002) notion of ‘deportability’, where the capitalist state and its corporate partners use even the distant threat of deportation in an effort to render migrant labour cheap and pliable.

The notion of deportability certainly applies to those who are undocumented and have NRPF by default, as they are stranded in the liminal space of ‘non-existence’, both physically present and yet legal non-entities (Gonzales et al., 2019). What we add to this discussion is a reflection on what happens to those who have not been selected for entry or settlement as ‘pure

labour power' by the neoliberal UK state through processes of filtration and control, and yet still find themselves amongst the partially included within its geo-political borders. Indeed, the right to private and family life serves as an important legal mechanism for migrants resisting expulsion (Desmond, 2018). As such, it represents a particular frustration to neoliberal migration regimes, as in the case of the UK.

The 2012 extension of NRPF

NRPF has consistently been shown to trap migrants in conditions of destitution (Jolly, 2018), with single-parent families, mainly headed by mothers, most negatively impacted by the policy (Anitha, 2010; Price and Spencer, 2015). Mothers with NRPF are heavily reliant on informal networks and may become 'subject to coercive control' or made homeless and destitute when this support is unavailable or fractured, for instance by domestic violence (Dudley, 2017).

In theory, destitute families with NRPF should be able to access local authority support under section 17 of the Children Act 1989. Though not originally intended for the purpose, local authorities can provide accommodation and financial support to some families with NRPF under this legislation. Approximately 5,900 children from families with NRPF across England and Wales were supported under section 17 in 2012-2013 (Price and Spencer, 2015). However, the overall number of destitute families with NRPF is likely to be much higher. As well as legal restrictions in the Nationality, Immigration and Asylum Act 2002 excluding some families from section 17 support, frontline workers' conceptions of 'deservingness' are a key determinant of who is able to access support (Jolly, 2018). High numbers of families who try to access local authority support are wrongly turned away and those who do manage to access support are often provided with exceptionally low levels (Dexter et al., 2016).

As O'Neill et al. (2019) observe, black mothers and children from former British colonies who are already economically marginalised are particularly affected by NRPF. Similarly, Price and Spencer (2015) found that Nigerian and Jamaican nationals made up 51% of parents with NRPF who sought local authority support, with a significant number of others coming from Ghana and Pakistan.

In 2012, the government made significant changes to the family migration rules, which, amongst other things, extended the NRPF condition to families granted legal status on Article 8 grounds. Prior to these changes, where removal was deemed to breach an individual's right to family and private life, discretionary leave to remain (DLR) was granted outside of the normal immigration rules. This status permitted residence for three years, during

which families had access to public funds. Once individuals accrued six years of DLR, they could apply for permanent residence.

The 2012 changes, which purportedly brought Article 8 within the immigration rules, imposed a narrow interpretation of the right on decision-makers and the courts. These changes ended the process of granting DLR to those whose Article 8 rights had been recognised and set out new routes to settlement, which were more stringent and punitive. The most relevant grounds for making an application under the new rules for undocumented families already resident in the UK were seven years of residence by a child or being the parent/carer of a British citizen child.

'Probationary' periods were extended for all, with shorter routes to settlement reserved for those who met 'eligibility' requirements. These requirements included stipulations that applicants must not have 'overstayed' by more than 28 days and that they must be financially self-sufficient, which were, and are, particularly difficult for families applying for legal status from the position of being undocumented. Those who did not meet the eligibility requirements, but who could not be removed due to Article 8, were subject to the most arduous and costly route to settlement: the 10-year route. Migrants placed on this route were, and continue to be, required to make four separate applications for temporary status ('limited leave to remain') over 10 years, which is usually subject to NRPF, before they can apply for permanent residence. Home Office (2020) data shows that the majority of those on the 10-year route are from Africa or Asia and in a recent sample review, most applicants were Nigerian, Ghanaian, Pakistani, Jamaican or Bangladeshi nationals.

Constructing the 'problem' and the 'solution'

As critical policy scholars point out, 'social problems' do not pre-exist policy, but policy is part of what creates them (Taylor, 2006; Schön, 1993). This is not to say that there is no material basis for policy interventions, but that things which come to be seen as 'problems', and the ways that these 'problems' are named and framed, create particular possible responses. Along with 'policy silences' (Freedman, 2010), this makes other responses unsayable, even unimaginable.

In this section we trace and analyse the way the 2012 extension of NRPF was framed and justified by the UK state in response to the purported 'problem' of uncontrolled migration, to lay the ground for our argument that the policy extension was intentionally punitive. Compared to other changes to the family migration rules in 2012, the extension of NRPF and the creation of the 10-year route to settlement received limited attention, less scrutiny and, by extension, less resistance than other changes. At the same time, families

with Article 8 rights were subsumed within the broader rhetoric justifying the family migration changes. Our discussion, therefore, moves between general framing of the 2012 family migration changes and specific reference to families previously granted DLR. We point here to ways that migrant families were rendered as criminals and citizenship was engineered based on highly restrictive and neoliberal notions of the British nation.

Leading up to the 2012 changes, migration to the UK was built up as a problem for Britain by both media and state, with then Immigration Minister, Damian Green, commenting: 'For too long the immigration system was allowed to get *out of control*. This Government will tackle abuse of the system and get net migration back down to the tens of thousands in the lifetime of this parliament.' (Dawar, 2011: our emphasis). The overwhelming sense was that there was a 'numbers problem' which urgently needed addressing, so that immigration could be brought back 'under control'.

Media coverage and government statements focused on high profile cases which combined to paint a picture of a broken, incoherent, and out of control immigration system. 'We all know the stories. . .,' stated Theresa May (2011), then Home Secretary, during her party conference speech. 'The violent drug dealer who cannot be sent home because his daughter – for whom he pays no maintenance – lives here. The robber who cannot be removed because he has a girlfriend. The illegal immigrant who cannot be deported because – and I am not making this up – he had a pet cat. . .' Sensationalised headlines in the right-wing press decried 'sham marriages' and a system 'sabotaged' (Slack, 2011) by human rights law, where 'alarming cases including foreign killers allowed to stay in the country despite committing horrendous crimes' (Doyle, 2011).

Alongside making it more difficult to enter the UK legally, Theresa May turned to family migration routes to 'mak[e] it harder for long term migrants to settle in the UK and chang[e] rules about bringing family members into the country' (Dawar, 2011). The Home Office launched a public consultation on family migration on 13 July 2011, which was mentioned over 50 times in UK media coverage before the changes were announced in parliament on 13 June 2012, amplifying a sense that there was a problem with family migration but that a solution was on its way.

During the period, government spokespeople began a discursive shift away from simply reducing net migration to that of a system designed to 'work for Britain' (Green, 2012). At its heart, this implied that immigration needed to be *controlled by the state*. In what follows, we highlight more specifically how this logic was mobilised in relation to the 2012 extension of NRPF.

Criminalising migrant families

Writing in the *Brentwood Gazette*, Conservative Councillor Tony Ball (2011) asserted:

Those who want to contribute and make a life here with their family are welcome, but too often in the past the family route has been abused as a means to bypass our immigration laws. That includes too many times where we have seen Article 8 used to place the rights of criminals and illegal migrants above the rights of the British public.

Throughout the period, phrases concatenating ‘criminals’ and ‘illegals’, like Ball’s, were used consistently, serving to discursively link, even equate, irregular immigration status with criminality and thereby justify migrants’ expulsion or refusal. On launching the family migration consultation, Damian Green pledged to redress ‘the [favouring of] rights of criminals and illegal migrants above the rights of the British public’ (Woodhouse, 2011) and the consultation document stated: ‘Those who remain in the UK unlawfully, either overstaying their leave or entering without leave, are also breaking the law’ (Home Office, 2011).

While the families affected by the 2012 extension of NRPF were in most cases previously undocumented, the state’s frustration with their presence in the UK related precisely to the fact that they had achieved *the legal right to stay* in the country through Article 8. The criminalisation of these families was not only achieved through discursive elision but through widespread framing of Article 8 rights being used to ‘abuse the system’. As in Tony Ball’s statement above, family migration was singled out as serious route for abuse: ‘A MAJOR review of the human right to a ‘family life’ will be launched this week amid mounting evidence that it is undermining Britain’s immigration system’ (Doyle, 2011). In its consultation document, the Home Office (2011) implied that people were ‘gaming’ the system: ‘Settlement in the UK is a privilege. It should not be achieved simply by evading our detection for a number of years.’

In these accounts, one branch of policy (immigration rules) was understood as ‘the law’, while another (human rights) was portrayed as a means to evade the law. This framing rendered human rights, and the migrants who mobilised them, a social, even criminal, problem necessitating a ‘crackdown on abuse of the family route’ (Home Office, 2011). Framing these families as ‘criminals’ implied a victim, in this case the British public, with headlines screaming about the ‘Human Right to Sponge off UK’ (Slack, 2011). Also depicted as a victim were ‘rule following’ migrants, who were rendered ‘deserving’ because of their compliance. In its consultation document, the Home Office (2011) wrote:

We do not think it is right that a person who remains in the UK unlawfully should be able to gain advantage by only informing us of their private or family life when they face removal from the UK. We will seek to ensure that in future those who apply through the proper channels are in a better position than those who do not. Those who want to rely on the law should comply with the law.

The sense that non-compliance resulted in undeserved rewards, over and above those granted to people who met the immigration rules, was echoed in the Home Office's (2012b) *Statement of Intent: Family Migration*: 'A grant of Discretionary Leave provides automatic access to public funds and places the person in a better position than those who meet the rules.' The end result was that the Home Office (2012b) proclaimed: 'We shall end the situation where those claiming the right to enter or remain in the UK on the basis of ECHR Article 8 – the right to respect for private and family life – do so essentially without regard to the Immigration Rules.'

Our point is *not* to (re)instantiate a distinction around 'deservingness' by emphasising the *legal* immigration status families gained through Article 8, in order to make a case that they should be considered amongst the 'deserving' of settlement rights. Our point is that '*illegality*' is a *political not an existential status*, one that is produced through changing legalised routes to mobility and settlement (Crawley and Skleparis, 2017; De Genova, 2002). Most fundamentally, Britain used its 1981 Nationality Act to limit or deny negatively racialised, commonwealth citizens – upon whom its wealth was built – access to legal routes to residence and citizenship (El-Enany, 2020). In the specific case we focus on, families who had previously had a means for achieving legal status (DLR) and survival, either through work and/or access to services and support, became discursively criminalised. As we discuss further below, long routes to settlement combined with recurring high application costs and no access to social provision are impossible for many families, thereby producing 'illegality'. This sits in sharp contrast to the depiction of 'illegality' as an ontological state-of-being in the state's framing of criminal, system abusers.

Engineering the racialised neoliberal British nation

In keeping with its emphasis on making immigration 'work for Britain', much government rhetoric focused on ideas of 'selection'. 'Reducing net migration and ensuring community cohesion is not just about reducing the numbers coming to the UK; it is also about being more selective about those who stay permanently,' argued Damian Green (2011). Such sentiments ostensibly accept liberal multicultural presumptions that settlement, belonging and even citizenship are open rather than determined by birth right. However, here we argue that the logic of selectivity, *always* on the state's terms, represents a classed, raced and gendered engineering of the British nation.

The state's framing of selectivity was based on representations of migrants as coming from two distinct groups. One group was depicted as undesirable and problematic. This group was painted as 'a burden on the taxpayer' repeatedly by government ministers, or what was derogatorily referred to as

engaging in 'benefit tourism' (Slack, 2011), 'unable and on occasion unwilling to integrate into British life' (Green, 2011), uncompliant and abusing the system.

In contrast, another group of migrants was depicted as desirable for Britain, those 'who will benefit Britain, not just those who will benefit from Britain' (Green, 2012). Core to desirability were ideas about legal compliance with immigration law, over and above human rights law, something financially and politically out of reach of many family migrants. In contradistinction to the 'undesirables' were ideas about economic contributions and status, epitomized by the slogan of 'attracting the brightest and best global talent to Britain'. Amongst those deemed desirable were 'foreign investors and entrepreneurs', 'the best teachers, researchers and students', and 'talented doctors and nurses' (Cameron, 2011).

The rendering of particular groups of migrants as 'economic burdens' and others as 'hardworking, wealth creators who can help us to win in the global race' (Cameron, 2013) can be understood as part and parcel of the logic of the UK's neoliberalising welfare-migration regime. This logic is evident in the reduction of human mobility and its governance to economic rationalities, exemplified by the invocation of cost-benefit calculations. Seemingly reasoned and evidenced, such analyses were always on the state's terms or in the interest of a mythic British nation: 'Reducing the volume of people eligible to claim these benefits/credits, through reducing the volume of family migrants coming to the UK and increas[ing] the time before which they can settle, equates to a saving to the UK Government' (Home Office, 2012a). In reducing immigration to neoliberal rationalities, other ways of framing responses to migration were silenced: for instance, human rights to land, life, livelihood, and mobility or reparations for colonial appropriations.

In this framing, the solution to the 'social problem' of 'undesirables' was seen to be greater state control over immigration, and indeed the makeup of the nation. This was to be achieved through cherry-picking those migrants considered desirable and 'breaking the link between temporary migration and permanent settlement' (Green, 2011) for those who were not considered desirable for settlement.

It is worth noting that whether referred to explicitly or not, both these groups of migrants were set over and against the British public and British ways of life. 'Excessive immigration also brings pressures, real pressures, on our communities up and down the country,' Cameron (2011) stated. 'Our communities' might be read as a reference to people who were already in the UK, as distinct from those outside seeking to immigrate. Such a naïve reading, however, belies the more complex and historically laden assumptions about just who the 'British public' is, and what constitutes 'British ways of life', including who has a right to the resources, support, and spaces within the UK's national borders. As Yuval-Davis et al. (2019: 16) argue, an 'autochthonic

politics of belonging' has become increasingly hegemonic in Britain, serving as 'social and political triggers to 'reborder' the state and to keep its resources exclusively for those who 'really belong'. Based on little more than the assertion that "I was here before you" (Yuval-Davis et al., 2017), this claim to belonging is vague at best, but more likely violently restrictive, not only for those who seek to enter the UK but also those who are already here.

The families we take as a case study for this article exemplify this point. They were already living in communities across the UK, attending schools, working, participating in social and religious life and so forth. Yet in this 'policy silence', these families are constructed as outsiders always external to 'our communities'. This is a highly racialised process, points out El-Enany (2020: 5), rooted in the contemporary extension of Britain's colonial empire through immigration law: 'Immigration law is also the prop used to teach white British citizens that what Britain plundered from its colonies is theirs and theirs alone. "Others" are here as guests.' As noted above, the majority of families affected by the 2012 changes are from former British colonies, deeply affected by the colonial present of the migration regime

The positioning of these families as 'undesirable', yet un-removeable due to Article 8 rights, is also deeply classed and gendered. Notably, the majority of the families facing destitution because of NRPF are headed by a single mother (Woolley, 2019) with highly gendered responsibility for young children. Denied access to childcare and other forms of social support, combined with gendered inequalities in incomes, mean that such financial requirements are particularly prohibitive (see also Shutes, 2017). In combination with the financial requirements and elision of 'brightest and best' with entrepreneurs and investors, family migration is effectively a privilege of the well-off (Sirriyeh, 2015) and the 2012 extension of NRPF is deeply classed, raced, and gendered.

Enforced destitution and punitive debt as immigration control

If the UK state's framing of the 2012 extension of NRPF was as a 'rational' policy solution to immigration control and towards a mythic British nation, its effects, we argue here, were purposely punitive towards unremovable migrants whose presence the state was forced to accept. Indeed, the language of 'punishment' for those who failed to comply with the rules was explicitly used by Theresa May (2011) in her speech for the Conservative Party conference:

The meaning of Article Eight should no longer be perverted. So I will write it into our immigration rules that when foreign nationals are convicted of a

criminal offence or breach our immigration laws: when they should be removed, they will be removed. [. . .] I will never be ashamed to say that we should do everything we can to reward those who do the right thing, and I will never hesitate to say we should punish those who do the wrong thing.

The introduction of the 10-year family route, and the default position that leave granted on the route be subject to NRPF, was one of the ways in which this sentiment was enacted. Migrant families who were unable to meet the Home Office's eligibility requirements but who could not be removed due to Article 8 received the punishment of a longer, 10-year route to settlement. Although the 10-year route was precisely for those who were not deemed financially self-sufficient, NRPF was nonetheless automatically imposed. While in principle the policy provided discretion to grant recourse to public funds in 'exceptional circumstances', in practice families were forced into destitution (Woolley, 2019).

The connection between destitution and NRPF, already well established, was well known to the Home Office, who had long been informed of it by local authorities supporting destitute migrant families under section 17 of the Children Act 1989. In 2009, responding to the recommendation made by local government bodies that local authorities be reimbursed for the costs they incurred supporting people with NRPF, Lin Homer, then Chief Executive of the UK Border Agency, stated:

the priority must be to tackle the problem at source by addressing the presence or status in this country of these individuals concerned rather than perpetuating and risking exacerbating the problem by making specific additional financial provision for local support services for this category. (LGA Asylum and Refugee Task Group, 2009)

Here Homer invokes the idea that welfare support operates as a 'magnet' incentivising migration from non-citizens deemed undesirable by the state, claiming that if local authorities were adequately funded to provide support to those with NRPF, it would exacerbate 'the problem' (the presence of undocumented migrants). The denial of the means of life for migrant families was thus represented as shoring up both internal and external borders. Working in tandem with austerity measures, refusal to reimburse local authorities for the costs of providing a 'parallel welfare system' (Price and Spencer, 2015) to migrants with NRPF can be understood as an implicit policy of *enforcing destitution* as a mechanism of immigration control. In response, under-funded councils attempted to deter migrants with NRPF from seeking support through 'gatekeeping' tactics such as threatening to remove children from parents (Dennler, 2018), and, where forced by advocates to provide support, offered only minimal levels. The extension of NRPF in 2012 compounded

these issues, which the Home Office had been explicitly warned of by the NRPF Network in response to its family migration consultation.

Discussions of ‘enforced destitution’ as a tool of immigration policy have tended to focus on asylum seekers, but these insights are also relevant to other groups of migrants. Enforced destitution serves as an attempt to starve out unwanted migrants who are within the nation state (Chakrabarti, 2005); as a more explicit form of coercion, where access to support is tied to ‘voluntary return’ (Kirkwood et al., 2016); and as part of the state’s efforts to deter future migration (Mayblin, 2020). Speaking to the Education Committee (2012), Damian Green stated on the one hand that, ‘[d]estitution is very explicitly not used as a tool’, and on the other, that it was essential for the government to counter the idea, ‘[g]et to Britain illegally and the streets are paved with gold’. Green continued by arguing that deportation was the most effective method for preventing migration. The (unofficial) policy of enforcing destitution through NRPF can thus be seen to work alongside the deportation regime in ‘sending a message’ on immigration.

The 2012 extension of NRPF perpetuated the already existing exclusion of those who were only ever ‘partially included’ even as they moved into a legitimated legal status within the migration regime. Where before the transition from irregular to regular status had provided access to support and services, and therefore the alleviation of destitution – a common plight of the undocumented (Gonzales et al., 2019) – the new family migration rules meant that impoverishment would continue regardless of legal status. The changes in 2012 can thus be understood as ‘ongoing expressions of empire’ (El-Enany, 2020: 2) that, through the denial of access to Britain’s colonial spoils, produce and enforce destitution on predominantly black, Asian and working class families from countries formerly colonised by the British empire.

The impossibility of the 10-year route

The extension of the NRPF condition works alongside other punitive requirements of the 10-year route, such as high renewal fees, which combine to subordinate and impoverish families relying on Article 8 to stay in the UK. The fact that the overall cost of the 10-year route is significantly higher than the other, shorter routes suggests that these families are being made to ‘pay’ for their undesirability. Through a drawn-out process of extraction, those on the 10-year route are expected to pay the application fee (currently £1033 per person) four times, alongside a fifth fee for permanent residence (Indefinite Leave to Remain). In addition, the immigration health surcharge must be paid upfront – currently £1560 per application. Although it is possible to apply for a fee waiver, rejection rates are high. Between 2013–2018, 72–90% of applications were rejected (Mohdin, 2019). There is no fee waiver for the

final application for Indefinite Leave to Remain, which is currently £2389 per person. The sheer cost of the route, therefore, renders many families destitute and indebted. In turn, with loans as *the* means to obtain and maintain legal status and survival, destitution is enforced through long-term debt and debt servicing, which serves to regulate and impoverish families well beyond the life of the 10-year route (Dickson et al., forthcoming).

This effect is intensified by other requirements for maintaining leave, which ensure 'legality' and permanent residence are kept out of reach for many. For example, the rules specify that if a person on the 10-year route 'overstays by more than 28 days, they will have broken their continuous leave and have to restart the route if they continue to qualify for it' (Home Office, 2012b). This means that something as minor as forgetting to include passport photographs with an application could result in illegalisation and restarting the route entirely. The rule is particularly punitive for families refused fee waivers, who are given just 10 working days to submit an application and pay the fee. The requirement, which effectively means that those on the 10-year route are just one step away from losing their legal status, both produces 'illegality' and further enforces destitution and debt by making it highly likely that families will 'fall off' the route and be forced to start again.

There is also a serious question about whether permanent residence will ever actually be achieved by many families on the route. In some cases, years of destitution and debt may ultimately end in deportation. According to the Home Office (2012b):

to continue on or complete the route, the migrant parent or carer will have to satisfy the UK Border Agency at the next application stage that, where the child has turned 18, there continues to be a reason why it would breach Article 8 for the migrant parent/carer to be removed from the UK.

If parents of children who were born in the UK have waited for their children to turn 10 – whereupon they become eligible to register for British citizenship – before applying for legal status, they may face considerable difficulties over the course of the 10-year-route in continuing to prove that their removal would constitute a breach of Article 8 once their children turn 18. This may also be an issue for those who applied at an earlier stage in their children's lives if they 'fall off' the route and have to restart. As the policy is in its infancy, it remains to be seen whether parents/carers will be given deportation orders when their children turn 18. In other cases, permanent residence may be unobtainable because of the extortionate cost of the final application, or because of difficulties passing the 'knowledge of language and life in the UK' test. Families will thus be trapped in a cycle of perpetual bouts of 'limited leave to remain' without access to public funds, confined to being (forever) temporary.

Together, these factors make it highly likely that many people on the 10-year route will be subject to the perennial threat of destitution, debt and illegalisation. The formal inclusion of these families within the immigration rules can therefore be understood as a 'process of exclusion through inclusion' (Mezzadra and Neilson, 2013: 148). Bringing Article 8 within the immigration rules ensured on the one hand that the right to private and family life would be narrowly interpreted, meaning that fewer families would be able to achieve regularised status, and on the other, that greater regulation, restriction and control could be exerted over those who the state had to (unwillingly) grant legal status. This subjugation involved negatively racialised, working-class migrant families being internally included, while at the same time excluded from the welfare state, impoverished and subjected to punitive debt.

Conclusion

In this article, we have argued that the impossibility of the 10-year route and the extended use of the NRPF condition function as punitive post-hoc measures to subjugate 'undesirable' migrant families whose presence threw into question the efficacy of the state's controlled migration regime. Forced to juridically accept these families who had neither 'complied' with the immigration rules, nor were able to meet its neoliberal requirements, exclusion was and is re-asserted through state produced and enforced destitution and punitive debt. Constructing these families as non-self-sufficient at the same time as effectively reducing their ability to support themselves, regardless of whether they 'contribute' to the nation (Erel, 2018), created the situation where removal or exclusions from social support were presented as always in the best interests of the nation. Further, the 2012 changes which served to make life unbearable for negatively racialised, classed and gendered migrant families from former British colonies also worked to violently extract profit through immigration fees and long-term debt-servicing.

This in-depth analysis of the 2012 extension of NRPF and creation of the punitive 10-year route to settlement contains broader implications for scholars of migration and social policy. Precarious immigration status, and the associated NRPF condition, is not just a time limited status in the UK's migration regime, where settlement is achieved once one has 'put in their time'. Between the exorbitant cost of renewals, enforced destitution and punitive debt, as well as the impossibility of completing the route, it is evident that the UK's 'hostile [immigration] environment' operates in the long durée. For migrant families regularising their status through Article 8 rights, this is a cumulative process where the promise of inclusion, e.g., full settlement, is constrained so much as to be impossible.

Time deferred, then, can be understood as a bordering technology. Above we highlight chronological features of time in bordering, such as duration and pace, apparent in the 'unliveability' of time in destitution and waithood, punctuated by moments of intense and rapid time when payment for immigration applications are due. For the families we take as a case in this article, waiting characterises both time lived in 'illegality' (e.g., waiting to accrue Article 8 rights through long residence) and 'legality', where permanent residence and recourse to public funds are (forever) postponed.

In this sense, time deferred can be understood as a technique of governmental exclusion where regularised settlement and 'recourse' become *impossibilities* of potentially infinite dimension, what Mayblin (2020) might call the 'slow violence' of destitution time. Where socio-spatial borders do not exclude, time deferred plays a similar role, constraining these families with NRPF to a time apart from the citizenry, a denial of 'coevalness' (Fabian, 1991). But this is too simple an analysis of time, with its multi-dimensional, contradictory and socially imbued character (Mezzadra and Neilson, 2013). For we catch glimpses in the 2012 changes to the family migration rules of the ways that migrant families not only come to terms with time as a bordering technology, but in 'waiting it out' with fortitude, persistence and planning put time to work in aid of their desires and claims to belonging. Indeed, the introduction of the 10-year route and the extension of NRPF, as we have pointed out above, is precisely a state response to the frustration of their efforts to control migration through selecting desirable neoliberal subjects. The point here is that time, like space, and in their interface, may be harnessed as a bordering technology but this is never a smooth and seemingly process; time can be, and is, mobilised as a 'weapon of the weak' and serves as an ongoing reminder of the fragility of repressive border regimes and the desires and movements that exceed them.

The process of bordering is often framed in terms of detention and deportation, with some attention to gatekeeping of services. Our discussion has highlighted that when ambiguously positioned migrants are neither 'desirable' nor deportable, it is necessary to attend to the imposition of enforced destitution and punitive debt as equally violent, and intentional, tactics of bordering. Destitution, debt, detention, deportability and deferred time are not mutually exclusive, however; they work together in deportability regimes, actuated in relation to differently positioned migrants in response to contradictory and shifting policy frames.

Finally, we concur with Guentner et al. (2016) that policies like NRPF which limit access to welfare provision for migrants can serve to embed a neoliberal logic of welfare retrenchment and conditionality more broadly. As we have highlighted, the 2012 NRPF extension demands that migrants present as self-sufficient while reinforcing the idea that requiring support makes someone a 'burden', and that only some are deserving of welfare

services in such circumstances. While this may have received public support from (white) citizens and anti-migrant media outlets, ultimately this trialling of policies of exclusion and immiseration affects all in need. Our point is not that the issue only becomes relevant because it impacts British citizens, but to recognise that NRPF is a classed, raced and gendered project of neoliberalisation at its core. This certainly points to the limitations of challenging welfare exclusions based on arguments of 'deservingness', which always already maintain the presence of an underserving other. Further, our article reveals why moral arguments against NRPF, which decry the ill-effects of impoverishment, are bound to fail. Enforced destitution and punitive debt are precisely the objectives of the 2012 extension of NRPF. Challenging welfare bordering requires a more systemic appraisal of policy frames, intentions and effects, an effort in which critical scholars of migration and policy have a crucial role to play.

Funding

The author(s) disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: This work was supported by a British Academy/Leverhulme Small Research Grant (grant number SRG19\190192 s).

Note

1. This article analyses material from the period of January 1, 2011, six months before the consultation on family migration rules to enable exploration of discursive framing, to August 31, 2012, one month after the new rules were officially passed. A media search on Lexis Nexus with 'family migration' or 'no recourse to public funds' generated 137 articles in UK-based media. Government statements, MPs' speeches, and debates in the commons relating to NRPF, Article 8 (ECHR) and changes to the family migration rules were identified through Hansard, open internet searching, and citation tracking through media coverage and academic publications. We also reviewed all directly related policy documents e.g., the family migration consultation document and final report, including any publicly available responses to the consultation; the Home Office 'Statement of Intent: Family Migration'; the Immigration Rules prior to and after the 2012 change; and policy equality statements. Our analytic approach was informed by critical discourse analysis (Fairclough, 2003) and involved close attention to frequency, valence and framing of coverage and specific terminology, as well as silences, in relation to an analysis of the broader material and discursive contexts in which these emerged.

References

- Anderson B (2013) *Us and Them? The Dangerous Politics of Immigration Control*. Oxford: Oxford University Press.

- Anitha S (2010) No recourse, no support: State policy and practice towards South Asian women facing domestic violence in the UK. *British Journal of Social Work* 40(2): 462–479.
- Ball T (2011) Government consultation plans to aid migration: Points of view. *Brentwood Gazette*, July 20.
- Brennan D, Cass B, Himmelweit S et al. (2012) The marketisation of care: Rationales and consequences in Nordic and liberal care regimes. *Journal of European Social Policy* 22(4): 377–391.
- Cameron D (2011) Speech on immigration. Available at: <https://www.theguardian.com/politics/2011/apr/14/david-cameron-immigration-speech-full-text>
- Cameron D (2013) Speech on immigration and welfare reform. Available at: <https://www.gov.uk/government/speeches/david-camerons-immigration-speech>
- Chakrabarti S (2005) Rights and rhetoric: The politics of asylum and human rights culture in the United Kingdom. *Journal of Law and Society* 32(1): 131–147.
- Crawley H and Skleparis D (2017) Refugees, migrants, neither, both: categorical fetishism and the politics of bounding in Europe's 'migration crisis'. *Journal of Ethnic and Migration Studies* 44(1): 48–64.
- Dawar A (2011) Bid to cut influx into UK doomed. *The Express*, June 21.
- De Genova N (2002) Migrant 'illegality' and deportability in everyday life. *Annual Review of Anthropology* 31: 419–447.
- Dennler KT (2018) Re/making immigration policy through practice. *Migration and Society* 1(1): 82–95.
- Desmond A (2018) The private life of family matters: Curtailing human rights protection for migrants under Article 8 of the ECHR? *European Journal of International Law* 29(1): 261–279.
- Dexter Z, Capron L and Gregg L (2016) *Making Life Impossible: How the Needs of Destitute Migrant Children are Going Unmet*. London: The Children's Society.
- Dickson E, Rosen R and Sorinmade K (forthcoming) Hunger or indebtedness? Enforcing migrant destitution, racializing debt. In: Bourne C, Gilbert P, Haiven M, et al (eds) *Imagining the Unseen: 20 Pictures of Debt's Empire, Then and Now*. Manchester: Manchester University Press.
- Doyle J (2011) Ministers target migrant abuse of 'right to family life. *Daily Mail*, July 4.
- Dudley RG (2017) Domestic abuse and women with 'no recourse to public funds': the state's role in shaping and reinforcing coercive control. *Families, Relationships and Societies* 6(2): 201–217.
- Education Committee (2012) Minutes of evidence, 4 July. London: House of Commons.
- El-Enany N (2020) *(B)ordering Britain: Law, Race and Empire*. Manchester: Manchester University Press.
- Erel U (2018) Saving and reproducing the nation: Struggles around right-wing politics of social reproduction, gender and race in austerity Europe. *Women's Studies International Forum* 68: 173–182.

- Fabian J (1991) *Time and the Other: How Anthropology Makes its Object*. New York: Columbia University Press.
- Fairclough N (2003) *Analysing Discourse: Textual Analysis for Social Research*. London: Routledge.
- Freedman D (2010) Media policy silences: The hidden face of communications decision making. *International Journal of Press-politics* 15(3): 344–361.
- Gonzales RG, Sigona N, Franco MC et al. (2019) *Undocumented Migration*. Cambridge: Polity Press.
- Green D (2011) Family migration. Available at: <https://www.gov.uk/government/speeches/immigration-damian-greens-speech-on-family-migration>
- Green D (2012) Making immigration work for Britain. Available at: <https://www.gov.uk/government/speeches/damian-greens-speech-on-making-immigration-work-for-britain>
- Guentner S, Lukes S, Stanton R et al. (2016) Bordering practices in the UK welfare system. *Critical Social Policy* 36(3): 391–411.
- Hayes D (2002) From aliens to asylum seekers: A history of immigration controls and welfare in Britain. In: Cohen S, Humphries B and Mynott E (eds) *From Immigration Controls to Welfare Controls*. Abingdon, Oxon: Routledge.
- Home Office (2011) Family migration: A consultation. London: Home Office.
- Home Office (2012a) Impact assessment: Changes to the family migration rules. London: Home Office.
- Home Office (2012b) Statement of intent: Family migration. London: Home Office.
- Home Office (2020) Policy equality statement. London: Home Office.
- Jolly A (2018) No recourse to social work? Statutory neglect, social exclusion and undocumented migrant families in the UK. *Social Inclusion* 6(3).
- Kilkey M (2017) Conditioning family-life at the intersection of migration and welfare: The implications for 'Brexit families'. *Journal of Social Policy* 46(4): 797–814.
- Kirkwood S, Goodman S, McVittie C et al. (2016) Destitution, detention and forced return. In: Kirkwood S, Goodman S, McVittie C, et al (eds) *The Language of Asylum*. London: Palgrave Macmillan, pp. 162–179.
- Lambie-Mumford H and Green MA (2015) Austerity, welfare reform and the rising use of food banks by children in England and Wales. *Area*. DOI: 10.1111/area.12233. n/a-n/a
- LGA Asylum and Refugee Task Group (2009) NRPF cost implications for local authorities report, 18 June.
- May T (2011) Speech to the Conservative party conference. Available at: <https://www.politics.co.uk/comment-analysis/2011/10/04/theresa-may-speech-in-full>
- Mayblin L (2020) *Impoverishment and Asylum: Social Policy as Slow Violence* London: Routledge.
- McNally D (2010) *Global Slump: The Economics and Politics of Crisis and Resistance*. Oakland, CA: PM Press/Spectre.
- Mezzadra S and Neilson B (2013) *Borders as Method, or, The Multiplication of Labor*. Durham and London: Duke University Press.

- Mohdin A (2019) More than 70% of UK immigration fee waiver requests by destitute are rejected. *The Guardian*, April 4.
- O'Neill M, Erel U, Kaptani E et al. (2019) Borders, risk and belonging: Challenges for arts-based research in understanding the lives of women asylum seekers and migrants 'at the borders of humanity'. *Crossings: Journal of Migration & Culture* 10(1): 129–147.
- Oliveri F (2012) Migrants as activist citizens in Italy: Understanding the new cycle of struggles. *Citizenship Studies* 16(5/6): 793–806.
- Price J and Spencer S (2015) *Safeguarding Children from Destitution: Local Authority Responses to Families with 'No Recourse to Public Funds'*. Oxford: Compas.
- Schön D (1993) Generative metaphor: A perspective on problem-setting in social policy. In: Ortony A (ed.) *Metaphor and Thought*. Cambridge: Cambridge University Press, pp. 137–163.
- Shilliam R (2018) *Race and the Undeserving Poor: From Abolition to Brexit*. Newcastle upon Tyne: Agenda Publishing.
- Shutes I (2017) Controlling migration: The gender implications of work-related conditions in restricting rights to residence and to social benefits. In: Hudson J, Needham C and Heins E (eds) *Social Policy Review* 29. Bristol: Bristol University Press.
- Sirriyeh A (2015) 'All you need is love and £18,600': Class and the new UK family migration rules. *Critical Social Policy* 35(2): 228–247.
- Slack J (2011) Human right to sponge off UK. *Daily Mail*, June 17.
- Taylor S (2006) Critical policy analysis: Exploring contexts, texts and consequences. *Discourse: Studies in the Cultural Politics of Education* 18(1): 23–35.
- Van Der Leun J (2006) Excluding illegal migrants in The Netherlands: Between national policies and local implementation. *West European Politics* 29(2): 310–326.
- Williams F (2014) Making connections across the transnational political economy of care. In: Anderson B and Shutes I (eds) *Migration and Care Labour: Theory, Policy and Politics*. Houndsmill, Basingstoke: Routledge, pp. 11–30.
- Woodhouse C (2011) Curbs on migration to target sham weddings. *The Evening Standard*, July 13, 2011.
- Woolley A (2019) *Access Denied: The Cost of the 'No Recourse to Public Funds' Policy*. London: Unity Project.
- Yuval-Davis N, Wemyss G and Cassidy K (2017) Everyday bordering, belonging and the reorientation of British immigration legislation. *Sociology*. DOI: 10.1177/0038038517702599
- Yuval-Davis N, Wemyss G and Cassidy K (2019) *Bordering*. Cambridge: Polity.

Author biographies

Eve Dickson is a Research Assistant at UCL, where she works on the British Academy/Leverhulme-funded research project: Social reproduction in the shadows: migrant mothers and children with 'no recourse to public funds' (SHADOWS) and SOLIDARITIES: Negotiating

migrant deservingness. She has a PhD in psychoanalysis and literature from Queen Mary University of London. Previously she worked as a Policy Officer for Project 17, which provides advice, advocacy and support for migrant families experiencing exceptional poverty in the UK.

Rachel Rosen is an Associate Professor in the UCL Social Research Institute. Her scholarship focuses on unequal childhoods, migration and stratified social reproduction. She is Principal Investigator on Social reproduction in the shadows: Migrant mothers and children with NRPF, co-leading an ESRC-funded project: Children Caring on the Move, and Co-Investigator on SOLIDARITIES: negotiating migrant deservingness. She is co-author of *Negotiating Adult-Child Relationships in Early Childhood Research* (2014, Routledge), and co-editor of *Reimagining Childhood Studies* (2019, Bloomsbury Academic), *Feminism and the Politics of Childhood: Friends or Foes?* (2018, UCL Press), and a special issue of *Families, Relationships and Societies* (2020) entitled Childhood, parenting culture, and adult-child relations in global perspectives.