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Historicising Australian Deportation of *Suspect* and *Undesirable* Migrant Communities

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Abstract

The overall aim of the paper is to present evidence on the factors underpinning historical deportation cases, by exploring the reasons, explanations and patterns related to deportation in Australia. The purpose is to consider whether these historical factors are antecedent to current forms of deportation occurring in Australia, and to bring to the fore potential recurring patterns. Deportation is currently conceptualised by border criminologists as a punitive tool of discipline and control, within the realm of penal powers. Some of this work on the 'deportation regime' asserts that certain migrants, or groups of migrants, are undesirable: their identity, (not)belonging and punishment have become inherently intertwined, and their mobility has become politicised and criminalised. This article theorises that deportation has been used in Australia, now and in the past, to expel individuals who are viewed as detrimental to the 'health' of the host society. The 'deportation categories' demonstrate that migrants' desirability has historically been a temporary condition, shifting over time in line with the state's requirements. They also demonstrate the historical regime of criminalisation of undesirable others enacted through Australia's border control regime.

Keywords: Deportation; border control; border historisation; crimmigration; undesirable.

Introduction

This article offers an analysis of historical cases of deportation from Australia between 1902 and 1972, spanning nearly the entire era of the White Australia Policy. The profiling and targeting of *suspect* and *undesirable* populations using border control mechanisms have been the focus of much contemporary discussion within border criminology, including discussion of the intersections and increasing convergence between criminal justice and immigration control.[1] The article's core argument is that historical deportations were based on a conflation between the status of non-citizens and their undesirability, framed in terms of their illegality and/or delinquency as defined by law. The passage from a state of illegality or perceived delinquency to criminality was a short one, whereby delinquency was understood not only as a potential predictor of criminality but also as a precursor to it. Hence, the association between non-citizens' undesirability and criminality, which is at the forefront of the current Australian Government's migration regime, has deep roots in Australian history. This process has not been occurring in a vacuum and is not a new phenomenon; it has layered foundations in the history of Australian border control (Marmo 2022; Varnava, Marmo and Smith 2022).

Deportation is the preferred term used in this paper. Terms such as *expulsion* and *deportation* refer to a state's unilateral act of ordering a person to leave its territory and, when deemed necessary, forcefully removing them. The terminology used at the domestic or international level is not uniform, but there is a clear tendency to call the legal order to leave the territory of a state *expulsion* and the implementation of such an order in cases where the person concerned does not follow it voluntarily *deportation*. In Australia, the *Migration Act 1958* (Cth) (1958 Migration Act), and in general, contemporary Australian

immigration law, employs the term *deportation* to refer to the act or order of deportation from Australia (Foster 2009). However, in some Australian policy guidelines, the term *expulsion* may be employed because this word is more commonly used in international treaties, such as the *International Covenant on Civil and Political Rights* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, as well as in other national legislative provisions (such as those in France). Expulsion and deportation as unilateral acts of the state must be distinguished from extradition, which is the surrender of a person accused or convicted of a criminal act from one country to another at the latter's request.

Considerable research has been published on contemporary deportation policies and practices, especially that which employs a criminological lens. Mary Bosworth (2019: 82) referred to contemporary deportation as the 'apex' of the border securitisation regime, which has led to a growing convergence of criminal law and immigration law, in a process Juliet Stumpf (2006) terms 'crimmigration'. Indeed, the recent merger between these two distinct legal domains has resulted in a significant expansion in unchecked executive power, with negative effects on human rights (van der Woude, Barker and van der Leun 2017). In this context, deportation remains a symbolic gesture of state power in the governance of global migration (Aas 2014; Fekete and Webber 2010; Wacquant 2008; Weber 2014). The perception that certain migrants are undesirable is central to the deportation regime, as their identity, (not)belonging and punishment have become inherently intertwined (Peutz and De Genova 2010) and their mobility has become politicised and criminalised so that they are subjected to 'harsh displays of state power' (Bowling and Westenra 2018: 165; van der Woude and Staring 2021). Therefore, deportation is now conceptualised by border criminologists as a punitive tool of discipline and control within the realm of penal powers (Bosworth, Franko and Pickering 2017). Further, within the operations of bordered penality, the use of complex and expensive technologies has seemingly become necessary to deport 'undesirable' migrants (Franko 2019).

In Australia, the extent of this power, and the accompanying hostile sentiment towards targeted migrant cohorts, was evident in the comments of former Minister for Home Affairs Peter Dutton in March 2021 when he described deportation as 'taking the trash out' (Wahlquist 2021: para. 1). In recent years, in this country, there has been a steep rise in visa cancellations and the deportation of convicted non-citizens from Australia, particularly following amendments to Section (s) 501 of the 1958 Migration Act in December 2014. The consequences of this are evident in the number of people who have had their visas cancelled on character grounds, which rose from 76 people in the 2013–14 financial year (FY) to a peak of 1018 people in the 2019–20 FY—representing a 13-fold increase—and remained high in the following 2020–21 FY, in which 946 deportations were recorded (Department of Home Affairs n.d.).

These 2014 legislative changes to s 501 resulted in the introduction of mandatory visa cancellations for those sentenced to a term of imprisonment of 12 months or more (convicted non-citizens), as well as the power to cancel a visa in the absence of any conviction (for example, due to a migrant's severe health issues). This suddenly increased a *pre-crime* category aimed at predicting future crime, which justified surveillance and profiling of those non-citizens perceived to display 'risky' behaviours, as per s 501 of the 1958 Migration Act (Stanley 2018; Weber and Powell 2020). This has been made possible through the interpretation of certain provisions of the 1958 Migration Act, such that more people are being expelled from Australia based on their 'character', defined unilaterally by Department of Home Affairs officials as 'bad' (Billings 2019; Grewcock 2014).

However, Nicholls (2007: 10) argued that contemporary scholars had turned a 'blind eye' to the historical, personal, juridical and political factors shaping Australian deportation. This paper endeavours to fill this vacuum and to make a case for strengthening the sub-discipline of historical border criminology. As discussed in more detail below, historically, deportation had its roots in criminal law, and the current Australian crimmigration process is about returning the immigration regime to its original legal underpinnings.

In the first section of this paper, the historical background to the Australian border control system and deportation generally is introduced, together with the methodology adopted in this paper. The archival extraction of deportation cases, drawing on the available digital records of the National Archives of Australia from 1902 to 1972, is briefly explained as an approach that enables an understanding of deportation via a broader lens, allowing for a macro-level analysis of patterns. A total of 866 records were considered, all of which were available via remote access in 2020.

In the next section, the reasons for historical deportation are analysed and grouped into 10 categories across the period. These categories speak volumes about the historical development of the legal and administrative roots of border control mechanisms designed to detect and reject undesirable migrants according to the state's changing needs over time. Of the 10 categories of reasons for deportation, two are explored in detail in this section: deportation due to political affiliations and political wartime internees/refugees and deportation due to health reasons.

The subsequent section presents those deportations categorised with embedded criminality, such as deportation due to criminal conduct and deportation due to criminalised status. Here, we observe historical approaches to the detection of criminality based

not only on the migrant's *conduct* but also on their *status*—a point of interest when we consider the current border control regime and the merger between criminal law and administrative migration law.

Inspired by the work of Julia Kristeva (1982) and Imogen Tyler (2013), we argue that deportation has been used in Australia, now and in the past, to expel individuals who are viewed as detrimental to the *health* of the host society. Hence, the overall aim of this paper is to present evidence on the factors underpinning historical deportation cases by systematically exploring the reasons, explanations and patterns related to deportation in this country. The purpose of this exercise is to consider whether these historical factors are antecedent to current forms of deportation occurring in Australia and to bring to the fore potential recurring patterns. These deportation categories demonstrate that migrants' desirability has historically been a temporary condition, the definition of which has shifted over time. They also demonstrate the historical regime of the criminalisation of undesirable others enacted through Australia's border control regime.

The Australian Border Control System in Historical Context: Background and Methodology

Background

The practices that reflect the overlap between immigration control and criminal justice have been occurring in Australia since the early twentieth century (Finnane and Kaladelfos 2019; Grewcock 2011). In the first year of the formation of the Australian Federation in 1901, alongside powers preventing individuals from entering Australia, powers of deportation were written into the *Immigration Restriction Act 1901* (Cth) (1901 Immigration Restriction Act). These powers pertained to individuals who were perceived as contravening the 1901 Immigration Restriction Act itself, as well as any alien (those who were not a British subject by birth or naturalisation) 'convicted of any crime of violence against the person' (s 8). This legislation, together with the *Pacific Island Labourers Act 1901* (Cth), *Naturalisation Act 1903* (Cth) and s 15 of the *Post and Telegraph Act 1901* (Cth),[2] formed the basis for a strict border control regime that regulated both the entry and exit of undesirables, targeting non-white migration. So, since the beginning of the Australian Federation, this powerful set of laws has shaped the immigration policy referred to as the White Australia Policy, which had a broad and significant impact in the first half of the twentieth century.

As Finnane and Kaladelfos (2019: 23–25) have demonstrated, border control mechanisms were used to attempt to keep out migrants and visitors with criminal records and to subject those who breached immigration rules to penalties meted out by the criminal justice system. It was standard Australian practice for eligible migrants to have to produce a police report, including a summary of their police record, on their suitability as workers, as well as a health report, including X-rays (Bashford 2002; Finnane and Kaladelfos 2017; Varnava 2022). Additionally, certain migrant groups were deemed *suspect* or *undesirable*, associated with criminal, subversive or deviant behaviour, which incurred their monitoring by the police, the security services and other state agencies. Those deemed to be involved in deviant or subversive political activities were reported on by the police and excluded if seen as necessary, usually on a case-by-case basis (Finnane 2013; Piccini 2016: 113–146; Smith 2022). However, as Dutton (2002: 117) showed, exclusion prior to entry was preferred by the Australian authorities because deportation 'meant removing a person from their adopted place of residence, their assets, their employment or businesses, and their network of personal and professional relations'; thus, usually requiring more substantial grounds for deportation, especially regarding the migrant's political activities or affiliations. Lake and Reynolds (2008) charted how settler colonialist countries across the anglophone world, such as Australia, the United States of America, Canada, New Zealand, South Africa and the United Kingdom, have implemented similar border control systems designed to exclude migrants who are considered *undesirable* (Smith, Varnava and Marmo 2021).

Nevertheless, of relevance to this article, alongside the deportation of convicted criminals, many migrants, such as Pacific Islanders, were removed from the country because of their alleged violation of such laws, not for any deviant or criminal conduct but for *becoming* undesirables (McNeill and Marmo 2023). Becoming unwell was also captured by this regime of deportation: several scholars have shown that Australia deported many people suffering from mental illness and tuberculosis throughout the first half of the twentieth century (Kain 2019; Martyr 2011; Smith 2018). The border has often been seized as fair political game, as Brookes (2010: 6) noted when highlighting that Alfred Deakin, the second prime minister of Australia and the architect of the White Australia Policy, sought to mobilise voters in the 1903 election by excluding 'undesirable and coloured aliens'.

By the late 1940s, a series of 'deportation controversies' had made the headlines, including one involving striking Indian seamen and other men from various Asian countries who had married white women in Australia, which, at the time, fell afoul of the White Australia Policy (Goodall 2018; Piccini and Money 2021). The Australian Government never truly moved away from the initial approach. In his speech to the Parliament of Australia (1958: 1396) when introducing the 1958 Migration Act, Minister for Immigration Alexander R Downer even recognised the deep pre-Federation roots of the immigration regime as follows:

> Control of immigration has deep roots in Australian history. So far back as 1855, the Victorian Parliament imposed restrictions on the entry of Chinese, an example which was followed within the ensuing twenty years by New South Wales and Queensland. Subsequently, all the Australian colonies, as they then were, passed fairly comprehensive immigration laws, the most notable of which, for our purposes here, were those of New South Wales, Western Australia, and Tasmania in 1897, incorporating the dictation test. This ingenious, but contentious, device had been first applied in the colony of Natal earlier in the same year and, if my researches are correct, originated in the mind of that inspired liberal imperialist, Joseph Chamberlain, who was then the Colonial Secretary in Lord Salisbury's British Government. As the House will recall, the first Commonwealth Parliament seized upon this precedent, and the dictation test was enshrined in 1901 in section 3 of the Immigration Act, where it still remains.

Therefore, contemporary Australian border policies and practices have acquired the status and power that they enjoy today because border control processes have been laid down and practised for more than a century in this country, since the Federation. Australia's border regulatory mechanisms have been established through repeated dominant cultural and legal performativity that has allowed their foundation to be maintained through historical repetition. These processes and practices are characterised by border continuity (from the nineteenth century to the present day) and border durability (able to withstand various pressures for change) (Marmo 2022). The repeated performance of race and gender norms of subjectivity at the border has been central to establishing the legal and cultural context of securitisation that we observe today. Thus, the historical iteration of the white patriarchal state through border policies and practices has laid the basis for the elaborate forms of abuse inflicted upon the undesirable *other* observed at the contemporary border.

Deportation is central to Australia's border control mechanisms as an embedded (continuous and durable) and flexible tool of selective exclusion/inclusion (Mezzadra and Neilson 2013). Indeed, more recently scholars have been looking at the exclusionary nature of the border control system, which seeks to prevent *undesirable* migrants and visitors from entering the host nation, as well as the ways in which this system maintains the power to expel *undesirable* people already present in the country who have been deemed a threat in some way to Australia and its people (Aas and Bosworth 2013).

As Nicholls (2007) demonstrated, these powers were expanded over the twentieth century as Australia sought to deport people perceived to represent a political or criminal threat. Finnane and Kaladelfos (2017: 340) stated that in the post-war era, deportation was a 'common mode of dealing with migrants who committed crimes after they entered Australia'. Such research demonstrates that historians have explored the various reasons why certain individuals were deported from Australia during the White Australia Policy years. However, to date, very little longitudinal primary data has been considered for analysis.

Methodology

The archival method adopted in this study consisted of identifying and analysing as many records of deportation in the National Archives of Australia as possible, using remote digital access to the national archives' catalogue. The aim of this approach was to offer a broad-strokes picture of the use of deportation as a tool to manage undesirability from 1902 to 1972.

The period under study covers 70 years of Australian migration policies and practices. By selecting 1902 as the first year of our study period, we were able to capture the first few deportations resulting from the first legislative enactments related to migration, issued in 1901 by the newly established Commonwealth. Concluding the period with the year 1972 permitted us to offer a significant overview of the ways in which deportation was used in the first 70 years of the Commonwealth. The archival analysis was part of a wider Australian Research Council–funded research project covering the period, titled Managing Migrants and Border Control in Britain and Australia, 1901–1981.[3] The project was designed to find evidence demonstrating that modern migration policies and practices have their origins in the border controls implemented in the first seven decades of the twentieth century. This paper aims to analyse deportation, via archival materials, as a unilateral tool used by the state to implement its migration policies.

The decision to examine a prolonged period—in this case, 70 years—has the disadvantage of not allowing the researcher to examine a particular point in time and the main events and policy interventions of that time in detail or to analyse individual personal records. Such analyses would enable the development of a more context-specific narrative around deportation records. Nevertheless, the method adopted in this paper permits the researcher to discover patterns in deportation over a longer period of time. In turn, this enables the identification of emerging categories of deportation and the analysis of their significance in terms of which group(s) of migrants are perceived as undesirable, or no longer desirable, and why.

The aim was to extract a minimum of 300 cases of deportation from 1901 to 1972. However, once the target number of 300 cases was collected, and a better knowledge of the available material was formed, the strategy was changed to identify all cases

of deportation that were digitally available in the first quarter of 2020. In total, 866 cases were collected for the period. Most of the records are physically located in Canberra.[4]

In terms of content, most of the records were internal government documents detailing intra-agency correspondence of up to a few pages in length, although some were a little longer. The shortest records (half a page or one page) presented limited information, but these files were not in the majority. The codification of the extracted material involved classifying each record according to personal data and other details of relevance, such as gender, nationality, age, port of departure and arrival, the reason for expulsion, and others believed worthy of mention as a standalone category or a side note. A thematic analysis was then carried out that drew on these details.

Codifying the Archival Records: Reasons for Deportation

Through the codification of records, patterns emerged more clearly. Initially, personal characteristics were considered. Two personal characteristics emerged as significant from the outset. First, the Australian historical deportations mostly targeted male migrants (91 per cent of all records); and second, the vast majority of those subjected to an expulsion order were non-British migrants.

These data are of particular interest because they align with the patterns of deportation identified in contemporary border studies. For example, Bosworth (2019: 82) pointed out in relation to contemporary deportation that 'the majority of those subject to the intrusive state interventions carried out in the name of border control are not white and nearly all those detained and deported are men'.

Currently, in Australia, as in the past, male migrants attract most of the state's attention. For example, Claire Loughnan (2020: para. 4) reflected on current events in the Australian detention regime, identifying that 'men at Manus have typically been discursively framed as the masculinised savage'. In the historical record, unwanted masculinity was found to extend to and affect women as well. Many of the 9 per cent of cases involving women referred to the deportation of women who were married to an undesirable male migrant, commonly women married to a South Pacific man in the early twentieth century or an Asian man post-1946. Among these cases of women being deported, some had been born in Australia.

Another notable pattern emerged when we classified the records according to reasons for deportation. Within this group, we divided the 866 records across 10 colour-coded categories to simplify the reading of the data (see Figure 1).

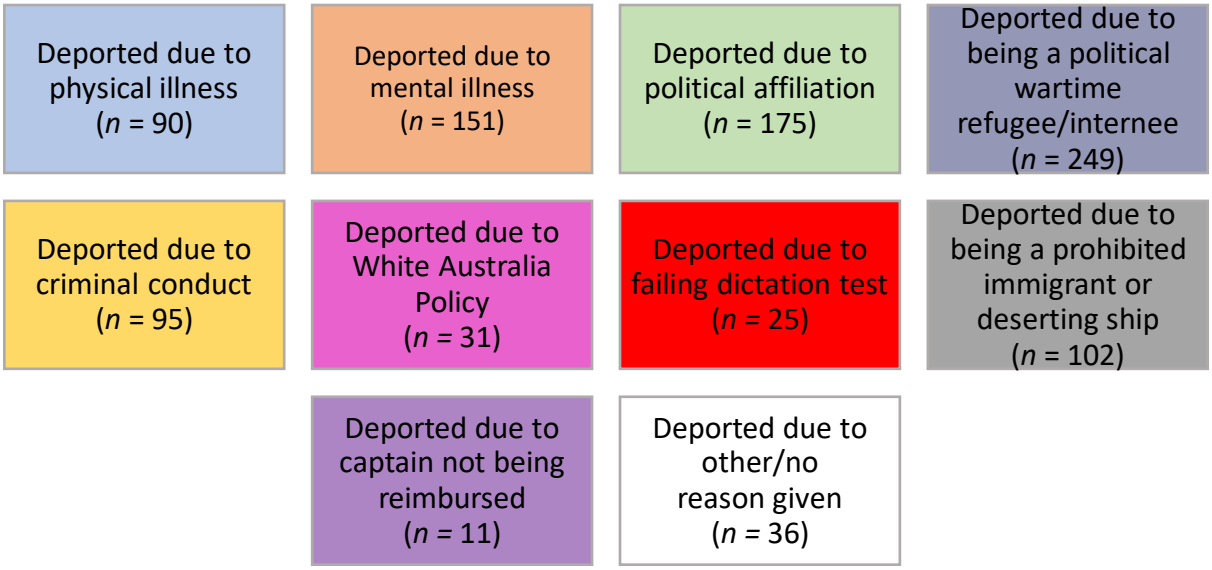

Figure 1: Reasons for deportation

These 10 categories were then grouped according to the following themes:

- two categories related to health (physical illness and mental illness)
- two categories related to strategic political enemy identification (one on political affiliation and one on wartime internees/refugees)
- one category related to deportation due to criminal conduct
- one category related to deportation due to the White Australia Policy
- one category related to deportation due to failing the dictation test
- one category related to deportation due to being a prohibited immigrant
- two less obvious categories—one titled 'captain not reimbursed' and another where either no reason was officially given or the reasons were multiple and overlapping.

These two final categories are not explored further in this paper. The category of 'captain not reimbursed' had the smallest number of deportations.

Deportation Due to Political Affiliation and Political Wartime Internees/Refugees

Deportations under the two categories of political affiliation and wartime internee/refugee reached peak numbers around the two world wars, representing the highest numbers across the sample ($n = 424$). As argued by Nicholls (2007: 40), 'deportation was used against those considered to be disloyal in a period of national crisis', targeting those labelled enemies of the state for the purposes of national security. The vast majority of those deported within these two categories were interned as *enemy aliens* during one of the two world wars and/or were nationals of a country deemed to be the enemy (primarily Germany, Austria or Japan).

Of those deportations due to political affiliation, 36 occurred in 1917 and 1918 among members of the Industrial Workers of the World (IWW), a left-wing organisation that opposed fighting in the First World War (WWI) (Burgmann 2017). Due to the IWW's opposition to the war and alleged subversion within the trade union movement, the Hughes government introduced the *Unlawful Associations Act 1916* (Cth) (amended in the following year), which made the IWW a proscribed organisation and allowed the deportation of foreign-born members of the organisation. The digitised file of the Commonwealth Investigation Branch in Adelaide (D1915 SA22399) gives the names of 33 people identified as 'fit subjects to be considered for deportation', although it is unclear whether all of these deportations were carried out. Burgmann (2017: 182) stated that 12 IWW members were deported from Australia, while Beaumont (2019: 218) wrote that 'perhaps 20 IWW members who had not been born in Australia were deported after serving their sentences'.

Alongside these IWW members, a small number of *socialists*, communists and other anti-British activists (sympathisers with Sinn Féin during the Irish revolution) were also deported or identified for deportation between the wars. This came in the wake of the Russian Revolution and rising concerns about Bolshevism in Australia. For numerous Australian governments in this period, socialism was viewed as a foreign threat and synonymous with alien attempts at subversion, which led the authorities to seek to limit the arrival of left-wing activists in Australia (Dutton 1998; Macintyre 1999, 102-103; Nichols 2007, 58-60). This occurred on a case-by-case basis, with the authorities denying entry, preventing naturalisation, monitoring and/or deporting individuals deemed to have *undesirable* politics (Finnane 2013; Macintyre 1999; Smith 2022). As a number of scholars have shown (Brawley and Shaw 2009; Piccini 2016: 113–146; Smith 2020), the government has sought to regulate individuals linked to *subversive* or *dangerous* political ideologies since WWI, with the perception of the threat posed by ideologies changing over time.

The *enemy of the state* narrative, designed to exclude based on lack of political or military loyalty, dominates the contemporary Australian deportation regime, with examples including cases of alleged terrorism (Roach 2007). This illuminates how certain political ideologies or affiliations have long been intertwined with criminality and, thereby, have been the target of national security and immigration control efforts. Characterising crime along these lines permits us to understand more clearly how terrorism arises beyond the border to fit with a broader national political narrative but uses the border as a tool. Thus, the association between border control and securitisation reconfigures common criminality. Understanding the historical roots of these relationships sheds light on why contemporary politicians do not need to justify their policies on securitisation, because these policies are entrenched in the border configuration.

Deportation Due to Health

The two categories of health-related reasons for deportation refer to physical and mental illness. At 241 deportations, these two groups together comprised just over a third of the total number of deportations in the sample. However, interestingly, a significant number of these 241 records involved individuals of British nationality. Undesirable British migration was a

contentious issue but nonetheless not uncommon. There were few categories through which the Australian Government could reject British people without receiving a negative response from the British Government. Health was used to represent a somewhat neutral criterion for deportation, intended to minimise criticism, including criticism from the British.

Not only were eligible potential migrants subject to medical reporting and X-rays, but many who came to Australia were deported for health problems that only emerged once they were in Australia. Bashford and Howard (2004: 103) showed that immigration laws introduced just before WWI allowed individuals to be deported 'if found to be suffering from a prohibited disease or condition within three years of entering the country'. Later, after the Second World War (WWII), several Maltese people were deported based on health assessments soon after arriving. Despite having an assisted passage agreement with the Government of Malta from 1948, the Australian authorities were reluctant to let too many in, and one reason for this, as stated by T.H.E. Heyes, was that the Department of Health was 'uneasy at their generally poor physique and the number suffering from eye disease, he thought trachoma' (FCO141/10521, Cockram to Trafford Smith, 21 November 1953, The National Archives, UK). Bashford and Power (2005) revealed that the power to deport people with prescribed diseases, as well as those admitted to mental hospitals and public charitable institutions, was retained in the new 1958 Migration Act and existed until the 1980s before being amended.

The health-related categories for deportation highlight the fragility of any migrant's status of desirability insofar as this status is dependent on the receiving country's labour needs rather than the wellbeing of the migrant. The narrative around a duty of care towards those who have been utilised in the labour market and have suffered from work-related injuries or mental illness is absent. Instead, in relation to this category, the potential risks and costs to the state dominate the agenda. In contemporary cases of deportation for reasons of health, we can see traces of historical antecedents conceptualised around the notion of the *medical border* (Dehm 2021). This term invokes the objectivity of medicine, which obfuscates the subjectivity of the undesirable body, in this case, by drawing on racialised notions of illness and contagion that must be contained to achieve collective wellbeing. Here, medicine is central to enacting a politics of inclusion/exclusion and to state authorisation of particular forms and subjects of human mobility at border sites.

Parallels to the Australian past can be drawn with the current practice of cancelling a visa through the withdrawal of sponsorship for temporary visa workers in response to them suffering serious work-related injuries. In South Australia, there is emerging evidence that visa sponsors consider work-related injuries to be an impediment to fulfilling other types of skilled or unskilled temporary visa conditions under the working holiday visa scheme or international student visa scheme, even when the injuries occur while work is being undertaken as part of the visa. Anecdotal evidence collected for another project of ours suggests that temporary visa holders who are hospitalised due to severe injuries may receive notification that their sponsorship has been dropped (Marmo 2019a). In such cases, they become classified as aliens while hospitalised and may then be subject to deportation.

With the 2014 amendments to s 501 of the 1958 Migration Act, the automatic cancellation of visas for non-citizens can include those subjected to a court order regarding a 'residential program for the mentally ill', which amounts to imprisonment on the basis of a determination of bad character (s 501(9)(b)). Further, s 116(e), on the 'Power to Cancel', states that:

> The Minister may cancel a visa if he or she is satisfied that:
> (e) the presence of its holder in Australia is or may be, or would or might be, a risk to:
> (i) the health, safety or good order of the Australian community or a segment of the Australian community; or
> (ii) the health or safety of an individual or individuals.

Indeed, the category of health remains relevant to investigations into contemporary border control mechanisms, as observed in the context of the COVID-19 pandemic. As pointed out by Boon-Kuo et al. (2020: 77), in the Australian context, 'COVID policing intensifies existing policing practices directed towards the "usual suspects", reinforcing a criminalisation rather than a public health paradigm'. In this regard, McNeill (2021: 278) highlighted that in Australia, since the onset of the COVID-19 pandemic, 'it could be assumed that the worldwide border restrictions would limit deportations too; however, this was not the case'.

Therefore, the migrant's health still operates as a reason for cancellation of their visa, rendering the subject detainable and deportable if they do not comply with the order to leave the country. This category also demonstrates the inherent historical link between legality, public health and security.

Deportation Due to Categories of Embedded Criminality

Deportation due to *embedded criminality* are those categories where an apriori assumption of criminogenic condition is not just 'perceived', but is inscribed into the systems of laws and policies. Four categories are considered in this paper and are linked to deportation due to criminal conduct or to a status resulting from:

- being subjected to the White Australia Policy;
- failing the dictation test upon arrival or completion at a later time;
- being classified as a prohibited immigrant.

A clarification is needed here. In the archive, *prohibited immigrant* as a reason for deportation is noted as a standalone category alongside some other groupings that are, in fact, subcategories set out in s 3 of the 1901 Immigration Restriction Act. According to this Act, a prohibited immigrant encompasses many subcategories that are listed in this paper as different reasons for deportation because of the way they have been described in the records. In the 1901 Immigration Restriction Act, s 3 states that:

> the immigration into the Commonwealth of the persons described in any of the following paragraphs of this section (hereinafter called 'prohibited immigrants') is prohibited, namely:
> (a) Any person who when asked to do so by an officer fails to write out at dictation and sign in the presence of the officer a passage of fifty words in length in a European language directed by the officer;
> (b) any person likely in the opinion of the Minister or of an officer to become a charge upon the public or upon any public or charitable institution;
> (c) any idiot or insane person;
> (d) any person suffering from an infectious or contagious disease of a loathsome or dangerous character;
> (e) any person who has within three years been convicted of an offence, not being a mere political offence, and has been sentenced to imprisonment for one year or longer therefor, and has not received a pardon;
> (f) any prostitute or person living on the prostitution of others;
> (g) any persons under a contract or agreement to perform manual labour within the Commonwealth: Provided that this paragraph shall not apply to workmen [sic] exempted by the Minister for special skills required in Australia or to persons under contract or agreement to serve as part of the crew of a vessel engaged in the coasting trade in Australian waters if the rates of wages specified therein are not lower than the rates ruling in the Commonwealth.

In the records, *prohibited immigrant* is explicitly adopted as a reason for deportation in reference to a person who is not allowed to arrive in the country and who, if they do arrive, is immediately expelled. Between 1902 and 1903, the nationalities of deportees classified as *prohibited immigrants*were reported as Indian, Japanese, Egyptian, Javanese, Afghan, Malay and Chinese, among other Asian nationalities. These people were reported as staying in Australia for only a very short period of time—a few weeks or months.

After this clarification, two further points for reflection regarding these four categories are needed: they represent the historical roots of the current regime, and they are to be understood as flexible tools of state intervention enacted via immigration officers' discretionary powers.

The first point above, in relation to historical origins, affirms that these categories were established early on: indeed, Australia had, even prior to the formation of the Commonwealth,[5] a category of *prohibited immigrant*, which was used to repel or expel migrants, making this category already established into the border regime by 1901. This means Australia has long established and maintained a border regime that facilitates the process of profiling and targeting undesirability through the application of immigration policies and practices.

Yet, the far-reaching effects of the White Australia Policy became clearer only when the newly formed Commonwealth Parliament in 1901 introduced three acts: the *Post and Telegraph Act 1901* (Cth), the *Pacific Island Labourers Act 1901* (Cth) and the 1901 Immigration Restriction Act. The 1901 Immigration Restriction Act provided the design of the overall approach to border restriction in relation to non-white peoples in Australia. At the turn of the century, there was an overlap between being a *prohibited immigrant* and being subjected to the newly introduced White Australia Policy. For example, there was a case of someone whose nationality was not identified but who was *sufficiently* described as a 'colour member of the crew' (SP42/1 C1903/4412, Letter from the Department of External Affairs to the Acting Collector of Customs, Sydney, 30 March, 1903, NAA, Sydney),[6] which then justified their expulsion.

Via the *Pacific Island Labourers Act 1901* (Cth), the deportation of Pacific Island citizens began in the years 1907 to 1909.[7] According to the available records, the people deported under this Act had been in Australia for at least four months and, in

some cases, up to 20 years or more. This cohort was the first to be deported under the White Australia Policy, and their treatment set the tone for the way deportation was to be used in the subsequent century and beyond. Most saliently, it led to the Australian Government using deportation as a tool to exert power over its borders, as well as developing a greater awareness of the effects of this power in terms of serving Australia's immediate interests. This has left a legacy that has had a deep influence on Australian border policies and practices (Finnane and Kaladelfos 2019; Jupp 2002; Piccini and Smith 2019). Indeed, the deportation of Pacific Islanders to New Zealand has been increasing since 2014 (Weber and Powell 2020), reflecting the cyclical nature of the policy (McNeill and Marmo 2023).

Further demonstrating the influence of early-twentieth-century legislation on the contemporary deportation regime in Australia, deportation for reasons of criminal conduct was cited by the Minister for Immigration and Border Protection (2017: para. 42) as grounds for exclusion of judicial intervention in *Falzon v Minister for Immigration and Border Protection*:[8]

> The history of Commonwealth migration law is also telling. Since 1901, aliens have been liable to removal or deportation after being found guilty of an offence. It has long been recognised that excluding or expelling an alien on that basis does not constitute punishment for an offence, and therefore does not involve an exercise of judicial power.

Thus, deportation has been central to the Australian immigration regime since the early days of colonialism and white settlement. However, it was only in the 1950s that the inclusion of the concept of humanitarianism in the Australian border control regime was used to justify inequality and hierarchies of humanity (Fassin 2012). Humanitarianism is a tool used to convince the general public that the state's power to deport is necessary to protect the best interests of all, including the deportee, rather than being an act of arbitrary state violence grounded in nationality, whiteness and undesirability.

The contemporary exploitation of the humanitarian discourse invokes a sentimental but racialised idea of state intervention via border control mechanisms. The historical antecedents of humanitarianism have been explored in other contexts (Damousi 2018; Silverstein 2020), but little has been proffered about the link between historical deportation and humanitarianism. We can observe traces of this link in Downer's speech to the House of Representatives (Parliament of Australia 1958: 1397):

> It is the practice of all nations, especially those of the new world seeking to build-up their populations, to arm themselves with mandatory powers of deportation. For this purpose, great authority is vested in the particular Minister, and his [sic] is the solemn responsibility to wield it in a manner which, whilst preserving the security of his [sic] country, is *at the same time humane and just to the individuals concerned*.[9]

The second point to highlight about the deportation categories is that, alongside *fixed* categories (such as health-related ones), certain categories are flexible tools that can be tailored by government agents, such as immigration officers, according to the requirements or government priorities of the day. This proves that deportation provisions are political and are concerned with desirable identity. This not only strengthens the discretionary powers of immigration officers but also reinforces the precariousness of non-citizens.

In this regard, the category of *failing the dictation test* is revealing. The test involved the dictation of a passage of 50 words in any European language to a person seeking entry to Australia, and the choice of language was at the discretion of the immigration officer. Because any language could be used in the test, the discretion exercised by the immigration officer effectively empowered the intervention of the state, providing flexibility around fulfilling the need for deportation in each case. Thus, the dictation test represented a flexible control mechanism that was used repeatedly between 1901 and 1958 to target people deemed undesirable. Indeed, as pointed out by Yarwood (1958: 24), after the reading of the 1901 Immigration Restriction Bill by the Senate, a clear point emerged that:

> the Customs officer would select a language with which the intending undesired immigrant was unfamiliar. If any further assurance were needed …, it was given when the Senate rejected (by 22:3) a motion that the test should be in a language known to the immigrant.

This set the scene for numerous cases in which the dictation test[10] was used as a tool of exclusion, targeting non-Europeans in particular but also Europeans for political purposes (see Davies 1997; Deery 2005; McNamara 2005: 351; Varnava 2022; York 1992). Interestingly, after Chinese people, Maltese and Italians were the most targeted groups in any single year: 'Chinese (459 persons excluded in 1902); Maltese (214 persons excluded in 1916) and Italians (132 persons excluded in 1930)' (Ndhlovu 2008: 8, citing York 1992: 16, 33, 51).

There are many historical examples of the manipulation of the dictation test to obtain a certain result, but two of the most infamous are that of Egon Kisch in the 1930s and Jimmy Anastassiou in the 1950s. Both were communists who arrived in Australia on either side of WWII, and attempts were made to remove them by using the dictation test when other means had

failed. Kisch, a communist writer from Czechoslovakia, had been denied entry at Fremantle but jumped ship at Port Melbourne, and once he was in the country (and attracting particular sympathy from those warning about fascism in Europe), the government ordered him to take the test in Scottish Gaelic, which he failed. However, this decision was challenged in the High Court of Australia, and Kisch was allowed to remain in Australia (Monteath 1992). Anastassiou arrived in Australia from British Cyprus after WWII and became active in the Communist Party of Australia. On 18 November 1952, he was arrested, subjected to the dictation test in Italian, which he failed, and then held in custody with a view to being deported. The substantial public backlash, owing to his British Cypriot nationality and service in the British force during WWII, forced the Minister for Immigration, Harold Holt, to withdraw the proceedings. As a result, the Cabinet decided in early 1953 that people who were deemed *undesirable* because of their political activities would not be deported unless those activities were subversive (Varnava 2022). Dutton (2002: 121–122) and Nicholls (2007: 58–60) showed that the Australian Government had sought powers to deport potential subversives throughout the interwar period, but in most cases, it could only do so when they had been convicted of a crime (unless the dictation test was used).

In the digitised files that we examined, it was clear that the dictation test was used to declare a group of Javanese and Malay men who had fled imprisonment in Dutch New Guinea to be prohibited immigrants in 1929 (BP 243/1 SB 1930/663). Four men had escaped the infamous Boven-Digoel concentration camp, built by the Dutch after communist uprisings in Indonesia in the mid-1920s. Apprehended on Thursday Island, the men were deported aboard a Dutch vessel a month later.

History shows that the dictation test was used as a tool by border officials with significant discretion between the Federation and the 1950s as a means of keeping out or removing undesirable individuals. In contemporary border studies, the ever-expanding discretionary powers of Australian immigration officers, which are now approaching the powers held by police, have been described as problematic, not least of all because immigration staff do not undergo the rigorous training undertaken by police (Marmo 2019b).

Status Categories

Some border control mechanisms are created not to target certain conduct but a status. The very fact of being a prohibited immigrant or failing a dictation test can cause expulsion. For example, a criminal offence could be created by, and based on, the failure of a dictation test. In this regard, failing a dictation test is considered a demonstration of one's mental status rather than one's conduct. However, the dictation test is, in fact, applied to those perceived as *undesirable*, whether at the border or already in the country, as a mechanism to justify their deportation.

These two categories—prohibited immigrant and failing a dictation test—were historically established to *catch* as many individuals or groups of people as possible and were, therefore, designed to be flexible and easily adapted to new situations and needs. They are aimed at profiling and targeting status and so are not connected to conduct, which in many ways needs to be a predetermined classification (such as murder or other crime). Status offences have proven to be reliable border control tools, whereas the other, stricter categories could not be expanded to fit emerging or shifting needs as effectively. These offences are paradigmatic of the current border control regime while also having deep historical roots.

This highlights how criminal guilt has been associated with the migratory status of a person rather than with their criminal or political conduct since before the beginning of the Federation in Australia. Assigning a label of guilt purely on the basis of the status of an undesirable migrant is central to the contemporary border control regime, and this labelling has frequently occurred historically. Indeed, targeting a migrant's status rather than their conduct can be considered another flexible tool of state intervention because border security has always been deployed to achieve the state's selective aims. While these aims may superficially appear rational, they are aligned with the possessive logic of the dominant settler state, enabling a state of exception via the enactment of border control mechanisms. Being a prohibited migrant or failing a dictation test extends the point of flexible power in the hands of immigration officers.

According to s 7 of the 1901 Immigration Restriction Act, titled 'Unlawful Entry of Prohibited Immigrants', it was a punishable offence for a *prohibited immigrant* to be found within Australia:

> Every prohibited immigrant entering or found within the Commonwealth in contravention or evasion of this Act shall be guilty of an offence against this Act, and shall be liable upon summary conviction to imprisonment for not more than six months, and in addition to or substitution for such imprisonment shall be liable pursuant to any order of the Minister to be deported from the Commonwealth.

Because the aim of this law was to limit non-white immigration to Australia, it embedded in the Australian system a legally sanctioned differential treatment (Aliverti 2016) that produced the criminality of non-white immigrants, with or without criminal conduct.

Status of Prohibited Immigrant as Recurrent Criminal Offence

Of further interest to contemporary studies in crimmigration is that, up until the 1950s, being a prohibited immigrant was considered a criminal offence (*Chu Shao Hung v R* (1953) 87 CLR 575, 583 (Williams ACJ); see also Boon-Kuo 2018; Moore 2020). However, the 1958 Migration Act did little to change the criminality attached to certain status categories.

Two pieces of evidence need to be read together to appreciate this. The first is that under 'Interpretation' (s 5(1)), the Act declares that ' "crime" includes any offence'. The second is found in Division 4 on 'Offences in Relation to Entry', so any offence in relation to entry is indeed a crime. With this consideration, s 27(1) of the Act also defines the offences related to an immigrant's status:

> An immigrant who—
> (a) enters Australia in such circumstances that he [sic] becomes a prohibited immigrant by virtue of section six of this Act;
> (b) becomes a prohibited immigrant by reason of being a person to whom paragraph (a) or (c) of sub-section (3) of section eight of this Act applies; or
> (c) enters Australia after having produced to an officer, for the purpose of securing entry into Australia, a permit, certificate, passport, visa, identification card or other document which was not issued to him [sic] or was forged or was obtained by false representations,
> shall be deemed to be guilty of an offence against this Act punishable upon conviction by imprisonment for a period not exceeding six months.

In contrast to the past, in the present day, being an unlawful non-citizen in Australia is regulated as an administrative matter rather than a criminal matter. This means that being an unlawful non-citizen in Australia is a violation of administrative law and that non-citizens are liable to administrative detention until they are either granted a visa or *removed* from Australia. However, more recently there has been a return to the previous process by which non-citizens become criminalised: the line between administrative law and criminal law has consequently become increasingly blurred, profoundly changing both substantive and procedural due process rights. Thus, in contemporary cases of deportation, bearing the status of non-citizen rather than one's criminal conduct continues to have consequences in the criminal law, despite the law referring to conduct only. We argue that this crimmigration process is effectively reinstating the historical roots of the Australian immigration system. This proves the heavy influence of the past into the current border regime, where the status of prohibited immigrant is a recurrent category punishable as a criminal offence.

Conclusion

Satvinder Juss (2017: 146) pointed out that 'Australia is the laboratory of the world' in reference to immigration policies. This paper argues that this laboratory is a long-term project when it comes to the deportation of undesirables.

From the Australian laboratory on deportation, we learn that desirability fluctuates because it is a temporary condition: at any time, any migrant can be reclassified as unwanted and rejected. Therefore, the analysis of profiling and targeting for the purpose of deportation is crucial to understanding the historical roots of the expansion of Australia's contemporary executive-led border control mechanisms and powers, as well as the growing convergence between criminal law and immigration law. Such analysis can provide evidence to support the claim that the Australian deportation system, past and present, has been characterised by continuity and durability and primarily affects undesirable male others.

In contemporary border criminology, the merging of administrative and criminal law regimes of penalties has been discussed as two systems of law that have become co-constitutive of each other (Bosworth 2019). This paper reveals that at the time of the Federation in Australia, within the first year of the government building its legal apparatus, deportation was borne out of criminal law as an explicit and expedient tool to facilitate differentiation and exclusion. This coercive measure was debated in the newly established Parliament of Australia in unfiltered logic of racism and ideology—a trend the contemporary Australian Government appears to wish to regain by using abusive terms such as labelling recent deportees as 'trash' (Wahlquist 2021: para. 1).

This historical overview of policies and practices of expulsion in Australia demonstrates the 'parallels of undesirability' between past and present, whereby migratory status and/or conduct has become the object of a punitive intervention by the

state in the form of removal of the migrant's legal right to be in Australia, rendering them an alien to be ejected. Because the policies and practices of this crimmigration regime have their origins in the early twentieth century, this study reveals the antecedents of contemporary crimmigration processes in Australia.

Present-day border regulatory mechanisms are an expression of contemporary sovereignty yet are also grounded in a process of historical continuity and durability. Then and now, deportation can be understood as a powerful border control mechanism—indeed, as the apex of the immigration system— used to send a message to people both outside and inside Australia about the significance of being a migrant in this country. The message is clear—it conveys the precariousness of migrants, the hierarchies and priorities decided by the nation-state, and how non-citizens are always assessed according to their loyalty, utility, function and role in society via a selective process of inclusion and exclusion.

What is also apparent in the contemporary context is how this Australian laboratory on deportation is embedded in the Global North's regime of punishment and selective exclusion, whereby the undesirable migrant is subjected to coordinated practices of surveillance, coerciveness and punitiveness. Indeed, there are wider processes occurring at the transnational level that affect how and when undesirable migrants are targeted.

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[1] The term *suspect* is drawn from both Hillyard's (1993) writing on 'suspect communities' and Weber and Bowling (2008) in their work on 'suspect citizens' and refers to the identification of certain migrant groups as *suspect*, resulting in greater policing. Also see Smith and Varnava (2017) and Smith (2022) for a discussion of historicising this concept.
[2] Requiring ships carrying Australian mail to employ only white labour.
[3] The subsequent period—from 1972 to the present day—is worthy of a similar analysis, and it remains a gap in the literature on Australian deportation.
[4] As COVID-19 restrictions were introduced in Australia in mid-2020, the task of searching the archive more closely was postponed.
[5] For example, at the 1896 Intercolonial Conference of Australia, it was decided to extend the *Chinese Immigration Restriction Act 1888 (Vic)* to 'all coloured races', and even to alter the original s 15, which precluded their application to British-Indian subjects (Yarwood 1958: 20).
[6] Also see, National Archives of Australia file numbers A8 1902/189/1; BP342/1 13175/599/1902; SP42/1 C1903/4412; A1 1903/6296.
[7] See, e.g., A1, 1907/4198, NAA.
[8] [2018] HCA 2.
[9] Emphasis added.
[10] See, e.g., *Chu Shao Hung v R* (1953) 87 CLR 575, 583 (Williams ACJ). On this point, we agree with Ryan and Mcnamara (2011: 181) in arguing that the Australian citizenship test belongs to the 'sorry tradition … of [the] language test', proving its transformation rather than discontinuity with the past.

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