

## Introduction: Britain as the spoils of empire

In answer to a question about why annual net immigration was above the Conservative Party's tens of thousands target in 2012, the Home Secretary Theresa May stated that her aim was to 'create, here in Britain, a really hostile environment for illegal immigrants'.<sup>1</sup> 'What we don't want', she said, 'is a situation where people think that they can come here and overstay because they're able to access everything they need.'<sup>2</sup> The notion of the unjustly enriched migrant has long been at the heart of British immigration policy. It is spurred on by a widespread and concerted refusal to understand contemporary British politics in the context of Britain's colonial history. The failure to connect the presence of many racialised<sup>3</sup> people in Britain to the destruction and dispossession of British colonialism is as profound as it is pervasive. Absent from mainstream political discourse is any acknowledgement that the making of Britain's modern state infrastructure, including its welfare state, was dependent on resources acquired through colonial conquest. At the same time, people with personal, ancestral or geographical histories of colonisation cannot escape their condition of coloniality. There is a direct causal link between colonialism and

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ongoing global wealth disparity and inequality in income and land distribution in former colonies.<sup>4</sup> Poverty, dispossession and exponentially high mortality rates are lasting legacies for populations in Britain's former colonies.

Meanwhile, for the racialised poor living in the heart of the imperial metropole, insecurity and a disproportionate vulnerability to premature death is a long-standing and everyday experience.<sup>5</sup> The 2017 Grenfell Tower fire and the 2018 Windrush scandal are illustrative of Britain as a domestic space of colonialism in which the racialised poor find themselves segregated and controlled, vulnerable to deprivation, exile and death. The abstraction of day-to-day life in Britain from its colonial history means that immigration law and policy, whether in the form of the hostile environment, visa requirements or other external border controls, are not seen as ongoing expressions of empire. Yet this is what they are; part of an attempt to control access to the spoils of empire which are located in Britain. British colonialism is thus an ongoing project, sustained via the structure of law. It is Britain that has been unjustly enriched through centuries of colonialism, and immigration law is the tool that ensures that dispossessed peoples have no claim over what was stolen from them.

Britain is a place produced by colonialism and slavery, which were key to its industrialisation and the growth of its capitalist economy.<sup>6</sup> In 1833 Britain abolished slavery and raised the modern-day equivalent of £17 billion through taxation and loans to pay compensation to British slave-owners for the loss of their 'property'. The compensation scheme was the largest state-sponsored pay-out in British history until it was superseded by the bank bailouts of 2008.<sup>7</sup> The funds paid out built and infused Britain's commercial, cultural, imperial and political institutions.<sup>8</sup> The scheme is just

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one example of a direct financial link between slavery and imperialism and the place that is Britain today. The reinvestment of profits from slavery and post-abolition compensation are demonstrative of place-making in a most material sense. On the eve of the abolition of slavery in Britain, over a third of investors in the West India and London docks were active in the slave trade, whether by owning slaves or in shipping, trading, financing or insuring slave produce.<sup>9</sup> The redeployment of profits from slavery and compensation in commercial and industrial activities and physical infrastructure occurred over the nineteenth century and into the twentieth and even twenty-first.<sup>10</sup> Wealth derived from British slave-ownership has by no means been evenly distributed in Britain. It has helped to enrich and sustain elite institutions, individuals and families and has sewn inequality deep into the fabric of British society, helping to make it the most unequal place in Europe.<sup>11</sup> Yet Britain's healthcare system, welfare state, transport infrastructure, cultural and educational institutions, battered and unequally accessible as they are in the wake of privatisation and austerity policies, are colonially derived, along with the private wealth amassed over the course of the British Empire and retained after its defeat via systems of inheritance.

Britain is a young nation-state, but an old imperial power. The task of bordering Britain is an ongoing and centuries-old process. Britain's borders, articulated and policed via immigration laws, maintain the global racial order established by colonialism, whereby colonised peoples are dispossessed of land and resources. They also maintain Britain as a racially and colonially configured space in which the racialised poor are subject to the operation of internal borders and are disproportionately vulnerable to street and state racial terror. Britain is thus not only bordered, but also racially and

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colonially ordered, through the operation of immigration control – hence the title of this book: *(B)ordering Britain*.

The 1960s, 1970s and 1980s are particularly important decades in the story of immigration law and the making of modern Britain. Over the course of these decades immigration law played a crucial role in Britain's transition from an empire to a sovereign, bordered nation-state. As colonial populations drove the British from their territories, winning their independence, British politicians were forced to come to terms with the defeat of the British Empire. The myth of imperial unity and equality was fast abandoned by British lawmakers as they moved to introduce controls targeted at racialised subjects and Commonwealth citizens. This legislation culminated in the 1981 British Nationality Act, which raised for the first time the spectre of a post-imperial, territorially defined and circumscribed Britain. It severed a notionally white, geographically distinct Britain from the remainder of its colonies and Commonwealth.

The move was both materially and symbolically significant. A territorially distinct Britain and a concept of citizenship that made Britishness commensurate with whiteness made it clear that Britain, the landmass and everything within it, belongs to Britons, conceived intrinsically as white. The effect of the 1981 Act along with changes to immigration legislation in the course of the 1960s and 1970s was to put the wealth of Britain, gained via colonial conquest, out of reach for the vast majority of people racialised through colonial processes, most of whom had geographical or ancestral histories of British colonialism. The 1981 Act did not signify an end to British colonialism but was itself a significant colonial manoeuvre. It was an act of appropriation, a final seizure of the wealth and infrastructure

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secured through centuries of colonial conquest. British immigration law, in serving to legitimise ongoing theft of colonial wealth, must therefore be understood as being on a continuum of colonialism. It is through immigration law's policing of access to colonial spoils that the racial project of capitalist accumulation is maintained, a project which I argue is legitimised through judicial rulings in immigration and asylum cases.

Immigration law is also the prop used to teach white British citizens that what Britain plundered from its colonies is theirs and theirs alone. Racial place-making projects like that of bordering Britain, and before it the expansion of the British Empire, rely on the institution of racial terror.<sup>12</sup> State racial terror, as Sherene Razack has argued, 'evicts from the circle of law and humanity those persons deemed unable to progress into civilisation'.<sup>13</sup> Once the enactment of racial terror is initiated by the state it is a task assumed by citizens. They are taught, in part through immigration law, that the parameters of the imperial, and national, project of ensuring white entitlement to wealth gained in the course of colonial conquest are theirs to enforce. Immigration law is not therefore the seemingly harsh but fair mode through which the deserving are separated from the undeserving. Instead, it is a crucial mechanism for ensuring that colonial wealth remains out of the hands of those from whom it was stolen. A case which powerfully demonstrates the way in which access to colonial spoils is withheld from people with geographical or ancestral histories of colonisation is that of *N*, which I discuss in Chapter 4.<sup>14</sup> *N*'s life depended on access to medical treatment in Britain and she sought to challenge a removal decision to Uganda on the basis of Article 3 of the European Convention on Human Rights (ECHR), which protects people from being sent to

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places where they would be at risk of torture or inhuman or degrading treatment or punishment. In ruling that Article 3 does not 'oblige' states to grant migrants access to their healthcare systems, the Supreme Court effectively handed N a death sentence. The court adopted the rationale that a decision in favour of N would have risked more people seeking to travel to Britain to access vital healthcare to which they are not entitled. The judges employed a depoliticising logic, arguing that wealth inequalities between nations and illnesses are natural or chance occurrences. The effect is to obscure colonial powers' role in producing global wealth and health disparities and their reparative obligations towards colonised populations.

Racialised people thus remain the foremost target in Britain's ongoing imperial project, their lands and their bodies ongoing sites of colonial extraction and expulsion. Although we are more familiar with how such extractive processes occur in formally colonial regimes, I argue for the urgency of tracing the colony as it shapes the metropole's space over time. Britain cannot be understood as a bounded nation space. Since colonialism it has been a space shaped by its colonies. As such, it achieves its coherence as a nation by maintaining its inner space, the island(s) of Britain, as one of order, privilege and entitlement, and its outer space, its former colonies, as one in which insecurity, poverty, illness and violence are the norm. Yet inside Britain's borders, the racialised poor are differentially yet systematically vulnerable to being marginalised, controlled, policed, deported and killed. For instance, embodied in the amendments introduced in the 2014 Immigration Act, which rolled out the hostile environment, is both the reification of secure status in the form of citizenship, and the precarisation of racialised life whereby people who

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do not have a secure status live under the threat of expulsion. In Chapter 4 I discuss the Supreme Court's ruling in the 2018 case of *Rhuppiah*, in which the meaning of a 'precarious' status, as per amendments made by the 2014 Immigration Act, was held to include all temporary statuses.<sup>15</sup> The judgment means that courts will attach 'little weight' to the private life established by people on a status other than indefinite leave to remain in cases where they challenge a removal decision on the basis of Article 8 of the ECHR, which protects the right to a private and family life. The effect of legislative changes along with the decision in *Rhuppiah* is that familial and close personal relationships cannot be safely created by those with a temporary status. I show how even racialised people who attain the status of indefinite leave to remain or British citizenship remain disproportionately vulnerable to being deprived of what might appear to be a secure legal status.

Law's violence in the context of immigration is dual. It serves as the means of obstruction of the vast majority of racialised people from accessing wealth accumulated via colonial dispossession, as well as being the primary means of recognition for those seeking a legal status. Regimes of legal status recognition whereby British authorities determine entitlement to statuses such as citizenship, settlement or indefinite leave to remain or refugee status serve to legitimise the claim that colonial wealth, as it manifests in Britain, belongs behind its borders, only to be accessed with permission. The result is that people with histories of colonisation have found themselves trapped in regimes of recognition. Invited to petition for inclusion, whether by applying for citizenship, refugee or another legal status, they find themselves legally rebuffed again and again, even as their efforts enable the racial state to characterise itself as

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post-colonial. The bestowal or extension of British subjecthood, or citizenship in its current guise, can never be anything other than a colonial act. In the colonial era British subjecthood was held up as a superior category from which the civilising benefits of British rule flowed. Yet British colonialism involved genocide, mass murder, slavery, dispossession of land, exploitation of labour and theft of resources, all predicated on white British supremacy. Even so-called 'free' British subjects seeking to move to different parts of the British Empire were met with racist immigration laws in places such as Canada and Australia, which, as I discuss in Chapter 1, heavily influenced Britain's first immigration law, passed in 1905. British subjecthood did not, therefore, protect racialised subjects from the violence of white British supremacy. Its very existence as a legal category was a manifestation of that violence.

Whenever it has suited the British government, it has treated its subjects as aliens for legal purposes, evicting them from the scope of legal status and protection with devastating consequences. The effect of the hostile environment policy, for instance, was to deny long-settled former colonial subjects and their descendants access to healthcare, housing, employment and other vital services, and to detain and expel them. The 2018 Windrush scandal illustrates well the challenges posed by recognition-based arguments for migrant solidarity and the inclusion of racialised people within the colonial state, for example the assertion that the Windrush generation were British citizens and should be recognised as such by the government.<sup>16</sup> This argument raises important legal, ethical and strategic questions in a context in which changes to British immigration law and policy have had the effect of disproportionately stripping racialised people of their rights. Although insisting on the



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immediate reinstatement of legal entitlements denied to the Windrush generation is crucial, it is equally important not to elide the colonial context in which legal status is bestowed. Citizenship, as the primary contemporary legal status signalling belonging to the British polity, is a legal structure that maintains a racially and colonially ordered Britain. The same can be argued for other legal status recognition regimes which carve out entitlement to access resources in Britain for select groups of people according to narrow criteria, such as refugee law. *(B)ordering Britain* thus offers a critique of law and the politics of recognition in the context of immigration. By tracing the colonial origins of processes of legal categorisation I show how decisions to include and exclude certain people from legal status, whether in the form of recognition as a refugee or through the bestowal or revocation of citizenship, are intricately tied to processes whereby colonial power is legitimised. The recognition trap obscures and legitimises the colonial structures underlying British immigration, asylum and citizenship law. It also hinders the articulation of more radical, empowering and redistributive claims to stolen colonial wealth and resources, material and temporal.

### Method and structure of the book

If British immigration law is the colonial state at work, any analysis of it must take into consideration Britain's colonial history and identity. Yet the bearing of the colonial on the emergence of Britain's administrative and legal immigration regime is rarely acknowledged in legal scholarship in the field of migration. Although there are works that consider the relationship between the British Empire and aspects of its citizenship and immigration law regimes,<sup>17</sup>

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this book departs from them in significant ways both conceptually and empirically. *(B)ordering Britain* centres race in the analysis, the relevance of which, along with the colonial history that produced it, has long been neglected in legal literature on migration.<sup>18</sup> The method of legal analysis I adopt is informed by critical race and postcolonial theories. While in other disciplines the use of theories of race and racialisation as core analytical tools is established, this is less so for law, which has tended to rely on narrower analytical frameworks that make race implicit or peripheral rather than central and explicit. Racism tends to be left out of legal discourse and replaced instead with soft signifiers such as discrimination, which is to be addressed within the frameworks of human rights and anti-discrimination law. These fields construct racism as being an aberration from legal norms and as perpetuated by individuals, rather than being structurally produced and sustained in part through law. Yet ideas about racial superiority continue to carry purchase in all corners of the world. Legacies of colonialism have meant that the majority of racialised people have neither inherited 'the reachability'<sup>19</sup> of crucial resources, nor the power to determine their management and material distribution.

Due in part to the way in which asylum, immigration and border control are governed, legal research on migration has tended to treat them as distinct, albeit related, fields. While immigration and border control are generally considered to lie within the discretionary purview of the state, the refugee is protected by various international and human rights law instruments. While the link between refugee protection norms and immigration and border control measures has been acknowledged,<sup>20</sup> legal scholars have tended not to consider the former in the context of the latter,<sup>21</sup> focusing

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instead on either immigration or asylum law.<sup>22</sup> However, in spite of the distinctive features and seeming separateness of the two fields, they are inextricably intertwined. It is not only migrant experiences that defy arbitrarily drawn legal categories; the histories of these fields are connected and must be studied together.

In the decades immediately preceding and following the 1981 British Nationality Act, Britain was establishing itself as a post-imperial nation-state. Legislative developments made in this period laid the groundwork for contemporary immigration and asylum law. In *(B)ordering Britain*, I take legal categories by turn and subject them to race-critical analysis, drawing on a range of primary and secondary material, tracing the connections between colonial processes of categorisation and the emergence of contemporary immigration law practices. The objective is to challenge mainstream acceptance of these categories both in and outside academia. The traditional acceptance of legal categories as defined in international and domestic law has the effect of concealing the law's role in producing racialised subjects and racial violence. It further impedes an understanding of law *as* racial violence. Take, for example, the category of the refugee, relatively valorised as compared with the irregularised migrant.<sup>23</sup> Individuals falling outside the legal definition of a refugee are often described as 'illegal', 'irregular' or 'economic migrants', and are at risk of removal and denied access to healthcare, housing and work. A decision to deny legal status carries serious, sometimes fatal, consequences, and can be a politically expedient move on the part of a government seeking to apportion degrees of belonging, entitlement and exclusion among populations under its control. Addressing the historical contingency and artificiality of legal categories, the violence in their

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production and their ongoing material effects allows us to understand how Britain remains colonially and racially configured. Understanding how legal categorisation is central to processes of colonisation and racialisation also helps to militate against the appeal of demands for state recognition and opens the way for the development of emancipatory and reparative discourses and strategies for migrant solidarity and racial justice.

The categories that form the springboard for my analysis are aliens, subjects, citizens, migrants, asylum seekers, refugees, European Union (EU) citizens and third country nationals. Although I take them in turn, the book is offered holistically. In order to meaningfully understand the content and effects of one category, each must be considered in terms of its relationship to the others. What becomes apparent is not only the interconnectedness of legal categories, but their violent histories and effects. Immigration law emerges as being on a continuum of colonial violence and an important means through which Britain continues to assert colonial power.

I begin the book by setting out the racial infrastructure of Britain's immigration law regime in Chapter 1, explaining the relationship between colonialism, migration and law. British imperial administrations depended on the exploitation of hierarchies based on supposed differences between categories of people. The use of race as an ordering principle played an important part in enabling and justifying colonialism. I trace the line between the honing of processes of categorisation in the colonial era and immigration law as a practice of racial ordering in modern Britain. I argue that British immigration law is a continuation of British colonial power as enacted in the former British Empire. The categorisation of people into those with and without rights of

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entry and stay sustains and reproduces colonial racial hierarchies. Contemporary immigration law thus maintains the global racial order established by colonialism, whereby racialised populations are disproportionately deprived of access to resources, healthcare, safety and opportunity and are systematically and disproportionately made vulnerable to harm and premature death.<sup>24</sup> In this context recognition and refusal decisions in relation to claims for immigration status in Britain are the everyday work of the colonial state.

In Chapter 2 I provide an account of the emergence of the legal category of alien and question the idea that there is a clear distinction between the categories of subject and alien in colonial contexts. The legal category of alien contributed to the institutionalisation of a hierarchy of people in a context of British colonial expansion. Immigration laws passed in the colonies which targeted racialised subjects were at times clumsily disguised through the use of apparently race-neutral provisions. Such concealment of racism was in the service of maintaining the lie of the unity of the British Empire. In the early 1900s, mirroring immigration legislation in the colonies, the 1905 Aliens Act was passed in Britain with the purpose of preventing the entry of poor Jewish people fleeing persecution in Russia and Eastern Europe. Although British subjects in the colonies were not the Act's targets, it was a product of the British Empire and legislators did not forget its mechanisms when it came to the task of drafting future immigration legislation targeted at racialised colony and Commonwealth citizens.

Chapter 3 tracks the years between 1948 and 1981, during which the rights of British subjects expanded and retracted drastically. Over the course of these decades legal statuses associated with the British imperial polity proliferated, their content and meaning shifting according to fluctuating

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imperial ambitions. The year 1948 marked the rolling out of the colonial status of Citizenship of the United Kingdom and Colonies, part of an effort to hold together what remained of the British Empire and the Commonwealth. In casting the nationality net wide, Britain's priority was the maintenance of global white British supremacy in the form of its imperial relationships with the white settler colonies. An unintended consequence of the 1948 Act was the facilitation of the movement of racialised colony and Commonwealth citizens to Britain, which British governments sought to quell. In the face of the defeat of the British Empire, as colonial populations ousted British rule and won their independence, British authorities quickly cast off the myth of imperial unity and equality, passing a series of immigration laws in the 1960s and 1970s which specifically targeted racialised colony and Commonwealth citizens for control. Racialised subjects were treated as aliens for legal purposes in the traditional manner of expedient imperial rule. These legislative moves culminated in the 1981 British Nationality Act, which drew a border around the British mainland, physically marking out for the first time a Britain distinct from the remainder of the colonies and the Commonwealth. The effect of these statutory changes was to create Britain as a domestic space of colonialism in which colonial wealth is principally an entitlement of Britons, conjured as white, and in which poor racialised people are disproportionately policed, marginalised, expelled and killed.

In Chapter 4 I examine the categories of refugee, migrant and asylum seeker in the context of the post-1981 newly conceptually and geographically configured Britain. People who were previously legally associated to the British polity with rights to enter Britain were now categorised as refugees, migrants and asylum seekers. Much of the migration

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studies literature refers to people seeking asylum in Britain following the 1981 British Nationality Act as spontaneous arrivals.<sup>25</sup> Yet these arrivals were entirely predictable. The descriptor 'spontaneous' feeds an ahistorical understanding of contemporary migratory movements, erasing the connection between migration to Britain and its colonial history. The refugees and asylum seekers of today were the British subjects of yesterday, colonised, alienated and barred from access to wealth stolen from them. I show how courts function within a framework of state sovereignty within which they cannot challenge the legitimacy of Britain's post-colonial articulation of its borders and their dispossession effects for colonised populations. I demonstrate this point through an analysis of Supreme Court case law including the 1987 case of *Bugdaycay*<sup>26</sup> in which the Supreme Court recognised that the 'life or death' situation that refugees find themselves in requires careful scrutiny of the decisions of immigration officials, but nevertheless rubber-stamped the closure of Britain's borders to racialised subjects and their 'alienation' via immigration law processes.

Chapter 5 explores Britain's turn towards the European Economic Community (EEC), now the European Union, in the 1960s, which coincided with the introduction of immigration controls against racialised colony and Commonwealth citizens. In the face of the defeat of the British Empire, the British government began to look elsewhere for power and riches. Britain's economic and political prospects were argued by some to lie in European cooperation. Britain first applied to join the EEC in 1961, and ultimately became a member on 1 January 1973. Britain's EEC membership did not amount to a rupture with its colonial past. The EEC was accommodating of Britain's and other Member States' colonial ambitions in so far as these were compatible with

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its own. The result was that Britain avoided a process of reflection and accountability in respect of its history. The transition from empire to European integration has allowed imperial nostalgia and amnesia to fester in Britain. Decades later, in the course of the 2016 referendum on Britain's EU membership, the argument was made that leaving the EU would allow Britain to regain the global influence ostensibly diminished as a consequence of EU membership. Yet this was the very same rationale that drove Britain to apply to join the EU decades earlier.

I conclude by considering the way in which immigration law and its violent enforcement is both authorised and reinforced by street racial terror. State and street racism is in part propelled by the idea that Britain is a place divorced from its colonial history. Immigration law casts the British Empire into shadow, obscuring its role in making Britain and driving people to move in its direction. I offer a counter-pedagogy to that of law, one that rejects immigration law's lesson of differentiation in human worth and instead understands 'host states' as colonial spaces and irregularised movement as anti-colonial resistance. This reframing troubles white supremacist structures, challenges mythological narratives about British colonial history, rejects a politics of recognition, and paves the way for a more empowering and radical politics of racial justice and migrant solidarity.



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### Notes

- 1 Amelia Hill, “‘Hostile environment’: the hardline Home Office policy tearing families apart”, *The Guardian*, 28 November 2017, [www.theguardian.com/uk-news/2017/nov/28/hostile-environment-the-hardline-home-office-policy-tearing-families-apart](http://www.theguardian.com/uk-news/2017/nov/28/hostile-environment-the-hardline-home-office-policy-tearing-families-apart) (accessed 26 September 2019).
- 2 James Kirkup and Robert Winnett, “Theresa May interview: ‘We’re going to give illegal migrants a really hostile reception’”, *The Telegraph*, 25 May 2012, [www.telegraph.co.uk/news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html](http://www.telegraph.co.uk/news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html) (accessed 26 September 2019).
- 3 In acknowledgement of Britain as a white supremacist context, I use the term ‘racialised’ to refer to people who are non-white.
- 4 See Daron Acemoglu and James A. Robinson, ‘The economic impact of colonialism’, in Stelios Michalopoulos and Elias Papaioannou (eds), *The Long Economic and Political Shadow of History, Vol. 1: A Global View* (CEPR Press, Vox.org, 2017), 81–7, <https://voxeu.org/content/long-economic-and-political-shadow-history-volume-1> (accessed 21 October 2019); Luis Angeles, ‘Income inequality and colonialism’, *European Economic Review* 51.5 (2007), 1155–76; E. H. P. Frankema, ‘The colonial origins of inequality: the causes and consequences of land distribution’, research paper, Groningen Growth and Development Centre, June 2006, [http://siteresources.worldbank.org/INTDECINEQ/Resources/1149208-1147789289867/IIIWB\\_Conference\\_Colonial\\_Origins\\_of\\_InequalityREVISED.pdf](http://siteresources.worldbank.org/INTDECINEQ/Resources/1149208-1147789289867/IIIWB_Conference_Colonial_Origins_of_InequalityREVISED.pdf) (accessed 21 October 2019).
- 5 See Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley, CA: University of California Press, 2006), 28. I elaborate on my use of Ruth Wilson Gilmore’s definition of racism at pp. 24–6 below.
- 6 See Eric Williams, *Capitalism and Slavery* (Chapel Hill, NC: University of North Carolina Press, 1944); Joseph E. Inikori, *Africans and the Industrial Revolution in England: A Study in International Trade and Economic Development* (Cambridge: Cambridge University Press, 2002); Nicholas Draper, ‘The City of London and slavery: evidence from the first dock companies 1795–1800’, *Economic History Review* 61.2 (2008), 432–66.
- 7 See Legacies of British Slave-ownership (Centre for the Study of the Legacies of British Slave-ownership), [www.ucl.ac.uk/lbs/](http://www.ucl.ac.uk/lbs/).

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- 8 Ibid.
- 9 Draper, 'The City of London and slavery'.
- 10 See Legacies of British Slave-ownership (Centre for the Study of the Legacies of British Slave-ownership), [www.ucl.ac.uk/lbs/](http://www.ucl.ac.uk/lbs/).
- 11 See Danny Dorling and Sally Tomlinson, *Rule Britannia: Brexit and the End of Empire* (London: Biteback Publishing, 2019).
- 12 See Sherene Razack, 'Racial terror: torture and three teenagers in prison', *Borderlands* 13.1 (2014), 1–27.
- 13 Ibid., 4.
- 14 *N v. Secretary of State for the Home Department* [2005] UKHL 31.
- 15 *Rhuppiah v. Secretary of State for the Home Department* [2018] UKSC 58.
- 16 See, for example, Gurminder K. Bhambra, 'Turning citizens into migrants', *Red Pepper*, 19 April 2018, [www.redpepper.org.uk/talking-about-migrants-is-a-dogwhistle-way-of-talking-about-race/](http://www.redpepper.org.uk/talking-about-migrants-is-a-dogwhistle-way-of-talking-about-race/) (accessed 26 September 2019); David Lammy, 'Don't let Rudd's departure distract from a toxic policy that needs to die', *The Guardian*, 30 April 2018, [www.theguardian.com/commentisfree/2018/apr/30/amber-rudd-departure-toxic-policy-windrush-generation-home-secretary-david-lammy](http://www.theguardian.com/commentisfree/2018/apr/30/amber-rudd-departure-toxic-policy-windrush-generation-home-secretary-david-lammy) (accessed 26 September 2019).
- 17 See Rieko Karatani, *Defining British Citizenship: Empire, Commonwealth and Modern Britain* (Abingdon: Routledge, 2003); Randall Hansen, *Citizenship and Immigration in Postwar Britain* (Oxford: Oxford University Press, 2000).
- 18 Literature exists on the politics and governance of migration and its relationship to race and colonial history in fields other than law. See, for example, Bridget Anderson, *Us and Them? The Dangerous Politics of Immigration Control* (Oxford: Oxford University Press, 2013); Hansen, *Citizenship and Immigration in Postwar Britain*; Lucy Mayblin, *Asylum after Empire: Colonial Legacies in the Politics of Asylum-Seeking* (Lanham, MD: Rowman and Littlefield International, 2017); Karatani, *Defining British Citizenship*.
- 19 Sara Ahmed, 'A phenomenology of whiteness', *Feminist Theory* 8.2 (2007), 149–68 (p. 154).
- 20 Gina Clayton, *Textbook on Immigration and Asylum Law* (Oxford: Oxford University Press, 2nd edn, 2010), 409–15.
- 21 Exceptions include Maria O'Sullivan and Dallal Stevens (eds), *States, the Law and Access to Refugee Protection: Fortresses and Fairness* (Oxford: Hart Publishing, 2017); Marie-Bénédicte Dembour and Tobias Kelly (eds), *Are Human Rights for Migrants?*

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*Critical Reflections on the Status of Irregular Migrants in Europe and the United States* (Abingdon: Routledge, 2011).

- 22 A number of studies have looked specifically at the impact of border control on migrants' ability to access territory, but there is a need to consider how immigration and asylum law are intricately connected and to study them as such. See, for example, Frances Webber, 'Border wars and asylum crimes', research paper, Statewatch, 2006, <https://www.statewatch.org/analyses/border-wars-and-asylum-crimes.pdf> [accessed 21 October 2019]; Thomas Spijkerboer, 'The human cost of border control', *European Journal of Migration and Law* 9 (2007), 127–39; Thomas Gammeltoft-Hansen and H. Gammeltoft-Hansen, 'The right to seek – revisited. On the UN Human Rights Declaration Article 14 and access to asylum procedures in the EU', *European Journal of Migration and Law* 10.4 (2008), 439–59; T. Gammeltoft-Hansen, 'The refugee, the sovereign and the sea: EU interdiction policies in the Mediterranean', Danish Institute for International Studies Working Paper no. 2008/6, 1–32; Silja Klepp, 'A contested asylum system: the European Union between refugee protection and border control in the Mediterranean Sea', *European Journal of Migration and Law* 12.1 (2010), 1–21; Thomas Gammeltoft-Hansen, *Access to Asylum: International Refugee Law and the Globalisation of Migration Control* (Cambridge: Cambridge University Press, 2011); Stefanie Grant, 'Irregular migration and frontier deaths: acknowledging a right to identity', in Marie-Bénédicte Dembour and Tobias Kelly (eds), *Are Human Rights for Migrants? Critical Reflections on the Status of Irregular Migrants in Europe and the United States* (Abingdon: Routledge, 2011), 48–70; Stefanie Grant, 'Recording and identifying European frontier deaths', *European Journal of Migration and Law* 13.2 (2011), 135–56. See also Wayne A. Cornelius, 'Controlling "unwanted" immigration: lessons from the United States, 1993–2004', *Journal of Ethnic and Migration Studies* 31.4 (2005), 775–94.
- 23 See Nadine El-Enany, 'Asylum in the context of immigration control: exclusion by default or design?', in Maria O'Sullivan and Dallal Stevens (eds), *States, the Law and Access to Refugee Protection: Fortresses and Fairness* (Oxford: Hart Publishing, 2017), 29–44.
- 24 See note 6 above.
- 25 See, for example, David A. Martin, 'The new asylum seekers', in David A. Martin, *The New Asylum Seekers: Refugee Law in the 1980s* (Dordrecht: Martinus Nijhoff, 1988), 1–20; Alexander Betts, 'Proliferation and the global refugee regime', *Perspectives*

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on *Politics* 7.1 (2009), 53–8; Erika Feller, 'Asylum, migration and refugee protection: realities, myths and the promise of things to come', *International Journal of Refugee Law* 8.3–4 (2006), 509–36.

26 *R v. Secretary of State for the Home Department ex parte Bugdaycay* [1987] AC 514.