

Whose law is it anyway?

Nadine El-Enany, *(B)ordering Britain: Law, Race and Empire* (Manchester: Manchester University Press, 2019). 312pp., £20.00 hb., 978 1 52614 542 0

On the 11th August 2020, in the midst of a tabloid maelstrom around people travelling from Calais to Dover in small boats, the UK Home Office released a statement that departed from their usual bureaucratic evasiveness: ‘We want to see migrants who have illegally and dangerously crossed the Channel returned to mainland Europe. While we are unable to comment on ongoing legal proceedings, it is the case that the current legal framework is often abused by activist lawyers to frustrate the government’s attempts in this regard.’ The phrase ‘activist lawyers’ caused a ripple in certain legal circles, where the tacit rules of the game preclude such open criticism between the government, civil service and legal profession. The Tories, so keen to position themselves as the party of ‘law and order’, were framing certain laws, and lawyers, as somehow of the ‘the left’. A few days later it emerged that Home Secretary Priti Patel had told a meeting of Conservative MPs that she was planning to fix the ‘broken’ asylum system with laws that would ‘send the left into meltdown’, complaining again about ‘judicial activism’ where laws were ‘exploited by leftie Labour-supporting lawyers.’

The response from NGOs and legal firms to this framing of ‘illegal crossings’ was to use the law to push back, pointing out that such a phrasing is a legal misnomer, as the current asylum and immigration system has definitive protections for those who make such journeys to Britain. Many argued that it was in fact the Home Office’s attempt to remove people at speed, during a pandemic that many felt the ‘crisis’ in the Channel was being constructed to obscure, that was breaking laws and regulations. While the Home Secretary made clear her ambitions to change the existing legal structure, the ‘lefties’ she wanted to send into ‘meltdown’ turned back to those very laws. The picture is the same at a far more everyday level, as campaigners, NGOs and legal firms working with people in the system utilise an ever-narrowing set of asylum and immigration criteria to try and justify individual claims for humanitarian protection, refugee status and wider citizenship. While many mount open criti-

cisms of the provisions within such legislation, this most often manifests in reactive moves against particular government measures, rather than attempts to unpack the wider asylum and immigration system itself. Through all these contestations, and attempts to accuse or reclaim a sense of the lawyer as ‘activist’, the left position around immigration law often remains unclear. Just as worryingly, such debates seem to obscure the experiences of those actually crossing into Britain, and the histories that underpin this.

As such, Nadine El-Enany’s *(B)ordering Britain* could hardly be more timely. That rare thing, an academic monograph that has quickly become a word-of-mouth sensation, passed around reading groups and campaigning organisations well outside the academy, the book is a brilliant exposition of British immigration law’s role in a violent system of racial and colonial exclusion. At its core, *(B)ordering Britain* argues for a profound shift in how we consider what and who constitutes Britain, offering what El-Enany calls a ‘counter-pedagogy’ to that of law, framed in terms of racial justice and a reckoning with Britain’s colonial past and present. The book begins with an invitation to the ‘racialised others’ who have been denied access to Britain’s concentration of colonial wealth:

Law’s lesson is that some people are entitled to space, presence, resources and opportunities and others are not. Immigration law in particular teaches white British people that Britain and everything within it is rightfully theirs. ‘Others’ are here as their guests. Yet Britain would not be the wealthy, plentiful place that it is without its colonial history. We should not wait for the law to rule on our entitlement to colonial spoils. Even when we are granted access, we are not seen as belonging in Britain. And yet a Britain understood as the spoils of empire already belongs to us.

El-Enany sets up her audience for the book in such a way because *(B)ordering Britain* fundamentally speaks to those who, in the famous phrasing often attributed to Ambalavaner Sivanandan, might say, ‘we are here be-

cause you were there'. While readers from across the social sciences, history and law will gain much from reading *(B)ordering Britain*, it is with those who have been partially and violently interpolated by the colonial project of Empire that El-Enany anchors the book.



(B)ordering Britain's cover – a picture of the British Isles without Ireland, floating in white space – speaks to one of the book's central questions: 'can we imagine Britain without its colonies?' Clearly, argues El-Enany, we cannot and should not. While these islands have become the locus for a centrifugal regime of colonial extraction that pooled 'resources, healthcare, welfare, security and opportunities, all of which can be understood as modern-day manifestations of stolen colonial possessions', it is only a pervasive colonial amnesia that allows people to imagine Britain as somehow separate from such processes.

(B)ordering Britain thus positions the country as a repository of colonial wealth, 'a young nation state, but an old imperial power', that has established its shifting national boundaries and access to these resources through historical and deeply racialised categorisations of 'subject', 'citizen' and 'refugee'. El-Enany invites the reader

to reconsider the borders of Britain in a temporal and spatial sense, but also through analogy to those normatively white settler-colonies that are less quickly scrubbed from British history. Drawing on how a range of scholars of indigeneity in the contexts of Canada, Australia and the US have attempted to reckon with the legacies of violent settler colonialism, El-Enany argues that Britain itself should be contested in similar ways, for instance in a rejection of white supremacist regimes of legal status recognition. As she explains, 'while there are important and complex historical differences between settler and non-settler colonial contexts, British immigration law is part of a colonial legal system' that creates similarly 'colonised subjects' who are forced to engage in limited processes of legal recognition that tacitly reinforce the colonial state. Such comparisons, along with the notion of a 'neocolonial' present, could become flattening in a less deft analysis, reducing different contexts and historical moments to a blurry similarity – but situated within El-Enany's counter pedagogical project they productively evoke the shared if distinct threads which have upheld the British state as a colonial project throughout its history.

With this theoretical structure in place, the main bulk of *(B)ordering Britain* works as a sweeping counter-history of immigration law. El-Enany goes as far back as the 1705 Aliens Act and 1707 Act of Union to consider Britain as a formatively colonial enterprise, before examining how considerations around preserving the movement of 'free white men' and Britain's dwindling Empire influenced the establishment of the foundational Aliens Act of 1905 and British Nationality Act of 1948. While the latter is often presented as a generous act of inclusion, or economically motivated post-war push to fill gaps in the labour market, El-Enany argues that it was predominantly an attempt 'hold together what remained of the British Empire and the Commonwealth' and to maintain 'white British supremacy', in the face of countries like Canada putting in place their own citizenry frameworks, which were seen as a threat to the primacy of the 'British Subject'. The subsequent arrival of racialised members of the new category of 'Citizen of the United Kingdom and Colonies', including those on the HMS *Windrush*, was treated as an unexpected and unwelcome effect by the majority of those in government. As racist agitation around these arrivals mounted, legislators moved from

the officially 'race neutral' notion of equity in the eyes of the Empire's 'motherland', to more explicit protections of whiteness. The 1971 Immigration Act, argues El-Enany, 'made whiteness intrinsic to British identity' through a patrilineal clause – which meant that 'only patrials, those born in Britain or with a parent born in Britain, had a right of abode, and therefore a right of entry and stay in Britain.' At this time, El-Enany points out, despite decades of colonial rhetoric of 'inclusion', those eligible for the patrilineal clause were 98% white, ensuring the exclusion of racialised colonial subjects. It is then only with the 1981 British Nationality Act that Britain's 'post-colonial' separation from its colonies is formally enacted in law, with the first distinct legal conception of British citizenry, no longer automatically granted to those born on British soil. El-Enany goes on to critique how legal frameworks of asylum and refugee provision then moved to position Britain as a magically wealthy and benevolent host to 'spontaneous' arrivals from countries that had formed a part of the British colonial polity for decades.

Underpinning El-Enany's analysis are a range of insights from critical race theory and colonial studies, with a focus on 'racial capitalism', whereby migrants are 'shunted into precarious labour market conditions or excluded from the market entirely' through a system of racialising differentiation and exclusion. El-Enany is clear that this manifests in acute material forms, arguing that immigration law is 'racialising violence' in itself, drawing on Ruth Wilson Gilmore's definition of racism to argue that, 'inside Britain's borders, the racialised poor are differentially yet systematically vulnerable to being marginalised, controlled, policed, deported and killed.' Such a seemingly materialist approach, with its focus on resources, exploitation, and extraction, could lend itself to an exploration of reparations. Yet, while El-Enany does speak at various points through the book about 'redistributive and reparative justice', her focus is more on the conceptive shifts of her 'counter-pedagogic' project. Partly this must be down to scope – *(B)ordering Britain* is an expansive and ambitious piece of work and it would be wrong to begrudge El-Enany for not going wading into the lengthy debates around reparations – but the book is also clear about the importance of a 'radically altered subjectivity in the Fanonian sense of what people desire, consider themselves as entitled to and understand themselves to be.' This implies a question of

emphasis: can subjectivity be altered in advance of material redistribution? How might anti-racist movement address both the discourse of entitlement, and material inequalities on the ground? El-Enany's reading of this problem leads her to a cautious celebration of 'irregularised migration' as 'radical, anti-colonial' resistance and reparation in itself – rejecting the assimilationist frameworks of legal recognition in favour of a reclamation of stolen wealth. While critics may argue such an approach risks exposing migrants to the very violence El-Enany vividly depicts, her argument speaks to a long history of critical self-organisation amongst people in the asylum and immigration system, many of whom balance a range of tactics including strategic narratives of colonial entanglement, practical 'irregularised' support networks and ways of moving, and attempts at legal recognition where necessary. El-Enany is not arguing against the strategic utility of the legal recognition, rather that it can be 'counterproductive', diminishing movements for migrant justice when it becomes the sole focus. While 'activist' lawyers may do great individual casework, a left reliance on Immigration Law, so clearly built through the scaffolding of colonialism and violent exclusion, is a dangerous cul-de-sac.

El-Enany partly focuses on the reinforcing ways law and 'common sense' visions of collective entitlement overlap because this has been such a key feature of right-wing nationalism in the decades since 1971. Politicians ranging from Jack Straw to Priti Patel know the power of ensuring a racialised sense of entitlement to Britain's resources amongst key parts of the populace, regardless of how narrowly such resources may actually be distributed. This is often interwoven with a tacit and partial understanding of legal frameworks, for instance with the EU's Dublin Regulations, which allows countries like Britain to send people back to peripheral EU countries if they were fingerprinted for asylum there en route. Such laws, while materially harmful for those moving through 'fortress Europe' when drawn on by the state, also buttress an opaque racist sense of 'illegal' migration on the ground. Despite the regulations' complexity (involving shifting time-frames and varying legal procedures), and relative newness (the current iteration only came into place in 2013) countless tabloid comments sections and vox-pops are now full of complaints around how 'genuine' asylum seekers would claim in the 'first safe country' they

passed through – as the legal and everyday blur into one another. El-Enany demonstrates how ‘street and state racial terror are thus mutually reinforcing’, prefiguring how the Covid-19 pandemic has seen far right groups increasingly positioning themselves in Britain as an auxiliary police and border control force, protecting colonial statues, patrolling the English Channel, and attacking those they deem ‘illegal’. It remains to be seen how this may mutate in the aftermath of Britain’s departure from the EU, but specific policies like the Dublin Regulations will presumably be re-drawn, creating heightened contexts for racist violence on the ground, but also room for anti-racist counter-arguments that must avoid a romanticisation of EU law.

In a wider sense, Theresa May’s Hostile Environment policies were an extension of the way that British governments have repeatedly used vague and shifting immigration controls as a tool to encourage a sense of ‘good’ citizenry as predicated on the everyday policing of borders, in ways that go far beyond the actual terms of legislation. As the recent narratives around ‘activist lawyers’

prove, the government is well aware that law is a contingent and shifting thing, though it operates through a pretence of fixity, with the effects of new legislation (of which there will be plenty by the start of 2021) percolating through people’s everyday lives, as much as through the grand halls of law. Contesting such moves through the domain of immigration legislation alone will only allow the state to continue to position itself as both arbiter and moral critic of an ahistorical ‘law’, that, when it comes to force, gunboats and border guards, it will always control. While recent ‘left’ push-backs to the unending so-called ‘migrant crisis’, have been to call for more safe legal migration routes, a return to ‘free movement’ (for some) within the EU, or for variants of an exclusionary ‘civic nationalism’ – the need for a far more ambitious, anti-racist, internationalist and critical approach is clear. *(B)ordering Britain* is a vital building block for a such a project, demonstrating how any vision of a truly ‘post’ colonial future must reckon with the violence, exclusion and extraction that has sustained the British state since its inception.

Joel White

The sociality of theory

Fadi A. Bardawil, *Revolution and Disenchantment: Arab Marxism and the Bonds of Emancipation* (Durham: Duke University Press, 2020). 280pp., £83.00 hb., £21.99 pb., 978 1 47800 616 9 hb., 978 1 47800 675 6 pb.

A Flood in Baath Country, the 2003 documentary by Syrian filmmaker Omar Amiralay, opens with a stark confession on the director’s behalf. His career had begun in the early 1970s with a panegyric to the Baathist project of modernisation glorifying the construction of the Tabqa Dam on the Euphrates, near the northern Syrian city of Raqqa. Revisiting his directorial debut, Amiralay assumes personal responsibility for echoing the state’s once alluring rhetoric of progress: ‘I blame myself for what I did’, he reflects forty years later. This acts as the premise for his return to the towns and villages neighbouring the dam, half of which – in a poignant allegory for the history of Syria under the Assad dynasty – now languish underwater due to the deliberate flooding caused by its construction. Far from idiosyncratic, Amiralay’s self-critique chimes with the dominant sentiments of those Arab intellectuals,

militants and artists whose political coming of age intersected with the high tide of postcolonial state-socialism of the 1950s and 60s.

Whilst the director might have sought atonement for his self-avowed complicity in state violence, the organisational legacy of democratic centralism, paired with a lingering theoretical economism, were the object of no less remorse from members of more outwardly oppositional groups in Syria, Egypt and Lebanon, who began processing their failure to deliver on the promise of post-colonial emancipation at the start of the 1990s. The recently translated memoirs of the Egyptian Marxist feminist Arwa Salih are but the most recent example of this retrospective clairvoyance and anguish, rendered all the more painful if read against the backdrop of the brutal reaction that swept Syria and Egypt in the second half