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Title: LAW, NATION AND RACE

**Subtitle: EXPLORING LAW'S CULTURAL POWER IN DELIMITING
BELONGING IN ENGLISH COURTROOMS**

Abstract:

This article explores the place of law and legality in the formation of British national identity and its reproduction (and contestation) inside the courtroom. It draws on socio-legal scholarship on legal culture, legal consciousness, and 'law and colonialism' to shed light on the cultural power of the law to forge national subjectivities. The law does more than adjudicating justice and imposing sanctions. Its symbolic power lies in its capacity to construct legal subjectivities, of both individuals and nations. Through the law and its categories, people make sense of the social world and their position in it. The law can articulate national identities by expressing who we are and who we would like to be as a nation. By exploring the place of the law in discourses of British nationhood, this article contributes to our understanding of the ideological role of the law in reifying racial and global hierarchies. It also sheds light on how the boundaries of belonging can be unsettled through law's power.

**Keywords: criminal courts; civility; legality; Empire; legal consciousness;
foreignness**

INTRODUCTION

This article explores the place of the law and legality in the formation of British national identity and its reproduction (and contestation) inside the courtroom. In Britain, the language and the imagery of the law articulates the character and boundaries of the nation which in turn are underscored by notions of race, culture, crime and civilization. The relationship between law, race and nationhood has a long history. The rhetoric of the law served to legitimize colonial expansion and produced enduring social and global hierarchies based on the standards of the colonizers. As postcolonial scholars showed, colonial domination left long-lasting marks not only on the people and places colonized by European powers but also on the colonizers as they learned the tropes of mastering others and internalized their sense of superiority (Hall 2002, Fanon 2017 [1986]). The most enduring legacy of empire is the ideological apparatus which continues to shape the self-identity of former colonial powers. Cultural theorist Paul Gilroy (2004, 164) observed that '[t]he empires were not simply out there... in the torrid zones of the world at the other end of the colonial chain. Imperial mentalities were brought back home long before the immigrants arrived and altered economic, social, and cultural relations in the core of Europe's colonial systems'.

In shoring up colonial thinking and mentalities, the law demonstrates its symbolic power to constitute subjectivities, relations and nations. Indeed, the law is not just a tool to achieve particular outcomes like reducing crime. Beyond its instrumental, formal function, the law's force is predicated upon its capacity to mold social life by creating a normative order (Halliday and Morgan 2013, Ewick and

Silbey 1998). Through legal categories, we give meaning to the raw material of social life and make sense of the world (Silbey 2005, 327, Ruskola 2002, 202). As socio-legal scholars argued (Nelken 2004, Kurkchian 2010), societies construct their own sense of social order and differ in the centrality they attach to the law in securing that order. Thus, the meaning, content and roles bestowed to law are contextual and vary from one society to another. In turn, the national legal culture informs the way people perceive and interact with the law and legal institutions in their everyday life (Kubal 2013, Hertogh and Kurkchian 2016).

In this paper, I explore law's constitutive function for delimiting the boundaries of the nation. In contemporary Britain, the law is evoked in political discourses and in popular culture to spell out the moral character and limits of the nation. In asserting the rule of law as a distinctive British value and invoking its standards for stamping out the 'uncivilized' behavior of cultural others, these discourses revive the ideological work of the law in multicultural Britain (Thompson 2013 [1975], McBarnet 1981a). The nexus between law, nation and race surfaces inside the criminal courtroom where the court's clientele contest their outsider status and claim belonging through the language of the law. Whilst court operators frame the criminality of some 'migrant' groups as a product of their deficit in rule of law culture, these defendants challenge their characterization as unruly and align to social and moral expectations about the 'good citizen'. In doing so, they challenge the criminal charges against them and their civic exclusion.

Before elaborating on the substantive arguments in the paper, a note on the methodology used and its limitations is in order. This article draws on empirical

material from a research project which investigated the legal and social construction of citizenship by criminal court staff, and its relevance for criminal justice adjudication.ⁱ Focused on Birmingham's Crown and Magistrates' courts, the project involved interviews with court operators (including crown judges, magistrates, defense lawyers, prosecutors and probation officers), observation of court hearings and analysis of court files. The interview data was supplemented by observations in the magistrates' court by two researchers between March and August 2015. On average, observations took place on three full days per week.ⁱⁱ When possible, cases of interest –those involving foreign national defendants- were followed through until completion. At a subsequent stage, we requested and analysed court files for cases of interest. We selected cases which involved non-British national defendants according to a number of proxies –including whether defendants required assistance by a court interpreter and/or based on references to their immigration status or nationality made during proceedings. In total, we followed up and analysed 88 cases, and interviewed 18 criminal justice operators.

Although the project was not designed to 'follow' interview participants through court proceedings, some of the interviewees were parties to or presided over the hearings observed (and reported in this article). Because court observations were useful to identify interviewees, the solicitors and barristers interviewed for the study intervened as representatives in the cases observed and some of the questions we asked them related to aspects of the cases observed. However, observations were less useful for identifying crown prosecutors and members of the judiciary, for whom formal applications to the Crown Prosecution Service and Her Majesty Courts

and Tribunals Services, respectively, are required. Having obtained such permission, they volunteered to be interviewed for the project. There was no intention to observe the hearings in which they intervened.

The purpose of the project was not originally set out to investigate the relationship between legality, legal consciousness and national identity. It was designed to explore court operators' understandings of citizenship and the importance they attach to it in dealing with the court clientele. Further, the focus was on legal actors rather than on defendants, who were not interviewed for the project. Defendants' interventions during court hearings were generally mediated by their legal representatives, particularly in proceedings before the Crown Court, and were carefully crafted to obtain a favourable outcome. These court users often remained silent or spoke with the aid of an interpreter. Formal and practical constraints to communication within the criminal courts made their iterations in court partial and incomplete. Because this paper is based only on their interventions within the criminal court process, further research needs to be conducted to understand 'migrant' defendants' interpretation of and experience with the law, and the meanings they attach to it both in the criminal courts and in other institutional fora.

The findings reported in this paper should be read in light of the above considerations and limitations largely stemming from the non-everyday life nature of the fieldwork (De Certeau 1984, Ewick and Silbey 1998). The paper does not claim to provide an in-depth account of participants' experiences and perceptions of the law. Rather, it is an initial exploration on how court operators and users talk about the nation through the language of the law, and it aims at stimulating further socio-

legal research on the interconnections between legality and national belonging.

While this was not the original topic of my research, the hearing in the trial of Mr Saeed (of which more details below) offered an insight into the perceptions of and interactions with the law by ‘migrant’ court litigants. It encouraged a deeper examination into the idiosyncratic place of the law in British national identity and its content and symbolic power for delimiting belonging in the courtroom and beyond.

The article proceeds as follows. In the first section, I explore the cultural power of the law for nation-building during British colonial expansion. In the second section, I trace contemporary discourses of nationhood around the law and its role for delimiting belonging in multicultural Britain. In the final section, I investigate how these taken-for-granted knowledge and assumptions linking law, race and nation surface in the everyday life of the court to delimit and unsettle the boundaries of belonging. I focus on litigants’ strategic invocation of legality to contest their outsider status.

By examining law’s power for forging British national identity and delimiting belonging, this paper contributes to the socio-legal scholarship on legal ideologies, legal consciousness and legal culture, and to contemporary debates on cultural difference, citizenship and integration in Britain and elsewhere. In the context of mass migration and globalization, the cultural power of the law is crucial for delimiting the nation’s moral boundaries. The construction of legality is tied to historical processes, most notably colonization. The law does not work in a vacuum, it is deeply shaped and shapes relationships of power both within nations and globally. Thus, exploring the ‘doing’ of the law historically and beyond the nation-

state can shed light on its contemporary significance (Brown 2017, Aas 2012).

LAW, CIVILIZATION AND NATIONAL FORMATION

The rhetoric of the rule of law has endowed classes and nations with moral authority to exercise power and legitimized their rule. The rule of law, political philosopher Jeremy Waldron (2002) explained, confers on human political power the semblance of legality, 'making it less objectionable, less dangerous, more benign and more respectful' (Waldron 2002, 159). Critical legal scholars and legal historians observe that by constructing the law as objective, neutral, rational and principled, the ideology of the law has been crucial for sustaining the hegemony of the ruling classes domestically and for expanding power extraterritorially (Norrie 2001, Hay 1975, Gomez 2000, Mukherjee 2003, Thompson 2013 [1975]).

Legal scholar Lindsay Farmer argued that the 'making' of the modern English criminal law has been guided by the objective of securing civility and civil order at home and abroad (Farmer 2016). Underpinned by a highly racialized logic, the civilizing potential of the criminal law justified imperial rule away from the metropolis on people and places perceived as barbaric and uncivilized. At the same time, the spread of English criminal law outward was conditional upon the degree of civilization of the colonial territories and people. The law, in other words, was applied differently to 'civilized' and 'barbarous' people (Kostal 2005). In tracing the relationship between criminal law, territory and sovereignty, Farmer identified how the law as an aspect of the modern civilizing project contributed to shape the current

global order:

While British subjects were to be judged by what was understood to be a higher standard, because of Britain's place in the world, the broader aim of criminal law was to exert a form of control. The position, though, was clearly different between nations adjudged to be civilized, where jurisdiction was based on reciprocity between equal nations. (Farmer 2016, 132)

By asserting the racial and moral superiority of the colonizers, law as a tool of colonial expansion created enduring global hierarchies. Judged by the spread of the British legal system throughout the globe,ⁱⁱⁱ British laws became the standard against which nations and people were to be assessed. As such, it constitutes one of the most important legacies of British colonial rule.

The rhetoric of the law was instrumental in producing the Orient as backward, primitive and lawless, and in contra-position to the West (Said 2003, Radhakrishna 2008, Dorsett and McLaren 2015, Ruskola 2002). Yet, the ideological construction of Britain's self-identity around the law and legality is a partial and insular account of its national history, which has required a strict differentiation between British domestic history and the history of the British Empire. The British Empire 'as an empire founded on military conquest, racial subjection, economic exploitation and territorial expansion- rendered it incompatible with metropolitan norms of liberty, equality and the rule of law, and demanded that the Empire be exorcised and further differentiated from domestic history' (Armitage 2000, 3). This dissection alluded to by historian David Armitage was necessary to avoid the

contradictory nature of law under colonial ruling (Mawani 2015, Rabin 2014). As historians of the British Empire showed, martial laws were an indispensable 'legal arsenal' of British white settlers to discipline the majority black population and to disrupt the frequent insurgencies by the vernacular populations (Simpson 2002, Hussain 2003, Kostal 2005).

In the metropole, historian Catherine Hall (2002) has documented that colonial violence and the widespread use of martial law to placate resistance were opposed through the appeal to English freedoms. In the aftermath of the Morant Bay massacre in Jamaica (1865), progressive Brummie politicians and religious leaders claimed that the rule of law should apply equally to all British subjects. They also reminded the government that British rule can only be justified 'in the fact that we can hold out to them the enjoyment of a higher liberty, the protection of more just and equal laws, the administration of more enlightened rulers than they could themselves secure' (quoted in Hall 2002, 423).

Yet, as EP Thompson acknowledged, the law is not merely an instrument of the powerful to legitimize their rule: 'law has not been imposed upon men from above: it has also been a medium within which other social conflicts have been fought out'. Law's cultural power resides in its capacity to accommodate and vindicate subaltern agencies. Its ideology and legitimacy requires that on occasions this is actually just (Thompson 2013 [1975], 263). The values of universality and equity that the rule of law enshrines were central for a sense of Englishness of eighteenth century working men and women who took their cases to the courts of law in the hope that those standards will be upheld (also Frank 2004, 418). Thus,

Thompson emphasized this collective dimension of law and legal ideology, but also the constitutive function of the law for nationhood.

The law and its lexicon has been instrumental for challenging colonial rule and more contemporary struggles over equality, rights and justice (Gomez 2000, Mawani 2015, Comaroff 2001). Renisa Mawani (2012) explored how Indian migrants relied on the language of equality and universality underpinning British citizenship to contest the unequal access to white settler colonies by white and 'coloured' British subjects in the early twentieth century. In claiming their rights as 'imperial citizens' to immigrate to Canada, they drew comparisons with white Britons and sought to distinguish themselves from Canadian 'natives' in whose name British Indians were disallowed entry to Canada. In doing so, they mobilized racial hierarchies within the British empire to claim belonging and recognition and exposed the 'racial unevenness of Imperial belonging' sanctioned by immigration laws. They premised their right to abide in Canada on their degree of civilization as Aryan Asians, which they argued placed them closer to white British subjects and above indigenous Canadians. Colonial encounters were not just about oppression and force. They contributed to shape aspirations and desires of colonial subjects and enfolded them into the reproduction of racial antagonisms and hierarchies through which colonial power operated. Mediated by the language of the law, struggles for colonial inclusion of Indians and Africans often relied on their proximity to the civilized British rulers. Through these struggles, they partake in reaffirming racial-colonial taxonomies and subjectivities.

During the rise of the Empire in the Victorian era and after its demise in the

second half of the twentieth century, the rule of law played an important role in delimiting identities back in the metropole as Britain grappled with the racial diversity and mingling driven home by imperial mobility (Rabin 2014). The ‘internal others’ –Africans, Asians, Irish and Jews- who came to England to settle in the nineteenth century utilized the law to reclaim status as ‘freeborn Englishmen and women’ challenging their legal treatment as outsiders and seeking to redraw the line between English, British or imperial (Rabin 2017).

After exploring the centrality of law for the formation the British nation and for mediating belonging, the next section turns to examine how the historical interplay between law, civilization and nation informs more contemporary debates and policies on citizenship, integration and belonging in post-colonial multicultural UK.

LEGALITY, CIVILITY AND BELONGING

Historically, British national identity has been constructed around the law as a civilizing agent. As I showed above, the law as a civilizer, legitimized the British imperial project during colonial expansion, and served to restrict the mobility of colonial people bound to Britain. The link between legality, civility and empire endures as the boundaries of belonging to Britain are being reinforced in tandem with mass migration. Both in official documents and popular culture, the rule of law is asserted as one of the defining values of Britishness. Parliamentary democracy, an independent judiciary and the courts, and a strong civic attachment to the law recur

in the revival of British nationalism since the late 1990s.

In recent years, concerns about social fragmentation, lack of integration and religious fundamentalism linked to perceived uncontrolled migration have triggered an outburst of British parochialism and patriotism around the rule of law (Gilroy 2012) and resulted in changes to citizenship policies. In 2002, the UK government introduced a 'citizenship test' as a statutory requirement for naturalization to appraise aspirants about the fundamental values and principles of British life (including democracy, the rule of law, individual liberty, tolerance and civic participation) (Bassel et al. 2017). A recent report on social cohesion commissioned by the government recommended that migrants pledge an 'integration oath' and were educated on British values, laws and history in school to improve their social integration (Casey 2016, 18). When defending the report before Parliament, its author Louise Casey stated that immigrants should know the 'rules of the game', adding: 'It was interesting to go round the country and hear that nobody had talked to them about our way of life here and when to put out the rubbish, nobody had told them when to queue or be nice. As part of the package that would be no bad thing'.^{iv} In linking civility, legality and citizenship, Casey resorted to the authority of the law, as secular, neutral, objective and superior to other normative systems, to solve the tensions of multicultural conviviality and as a measurement of belonging.

In the same vein, following the Trojan Horse allegation,^v former British Conservative Prime Minister David Cameron (2014) suggested that social and cultural isolation were the product of a timid, hesitant, weakened patriotism, and recommended as a solution a more confident and less apologetic assertion of

Britain's values –what he termed 'muscular liberalism' (Cameron 2011). In reminding the audience of Britain's global contribution to the rule of law, he spoke of the Magna Carta as a founding charter whose 'principles shine as brightly as ever, and they paved the way for the democracy, the equality, the respect and the laws that make Britain, Britain'. In a previous speech on radicalization and terrorism, he explicitly linked the commitment to the rule of law to national belonging:

a genuinely liberal country... believes in certain values [Freedom of speech, freedom of worship, democracy, the rule of law, equal rights regardless of race, sex or sexuality] and actively promotes them... It says to its citizens, this is what defines us as a society: to belong here is to believe in these things.

(Cameron 2011)

After the London bombings of July 2005, his predecessor, Labour Prime Minister Tony Blair, had similarly foregrounded civic values –'the belief in democracy, the rule of law, tolerance, equal treatment for all, respect for this country and its shared heritage' - as the core of Britishness, urging migrants: 'conform to [them]; or don't come here'. Embracing the notion of 'active citizenship' (Zedner 2010), he reminded prospective applicants for naturalization that British citizenship is a privilege which must be earned and comes with duties, like paying taxes, learning English, obeying the law and integrating into the British way of life. Obeying the rule of law, Blair lectured Britain's ethnic minorities, is not optional and should take precedence over religious and cultural affiliations and identities (Blair 2006).

Leaving aside the paradox involved in wielding 'British values' –freedom, tolerance and respect- for compulsory assimilation and acculturation, Blair's and

Cameron's words articulate and resurrect a folk version of British patriotism constructed around its laws and legal system. In singling out the rule of law as distinctively British, these discourses of nationhood conveniently elide the place of the law in colonial domination while masking the contribution of the anti-colonial and independence movements in advancing civil, social and political freedoms and rights (Mawani 2015, Kannabiran and Singh 2008). By suggesting that crime, radicalization, intolerance and misogyny are products of a deficit in rule of law culture, they also extra-territorialize and racialize 'bad behavior' (Volpp 1996, 2000, Author 2017a). As Gilroy (2002, 91) explained, the construction of national identity around legality avows perceptions of black criminality as un-British and legitimizes an authoritarian and 'muscular' form of governance which implicitly relies on racial categorizations to single out sources of disorder and threats (also Hall et al. 1978, McBarnet 1981b). As the UK grapples with its postcolonial children and the new immigrants from elsewhere, the law as civilizer continues to be evoked in public discourse and policies for setting standards of behavior and for delimiting who should fall within the boundaries of belonging. Reminiscent of empire, hierarchies of civility and belonging are articulated through the language of the law. At the same time, the frontiers of the 'moral community of citizens' are delineated by ideas of active and 'neo-liberal' citizenship -such as economic self-sufficiency, civic responsibility and readiness to integrate- which in turn underpin normative subjectivities (Ramsay 2012, Anderson 2013, Menjivar and Lakhani 2016). As such, the law mediates belonging.

The centrality of the law and legality in national identity is important for

understanding collective legal consciousness in Britain. Respondents to a survey on this topic reported high levels of trust in the law and the legal system, highlighting them as a source of national pride and feelings of superiority in relation to their European compatriots and EU institutions. In their analysis, Hertogh and Kurkchian (2016) found UK respondents to be more confident in their legal system and more reluctant to abide by EU law, in comparison to respondents from Poland and Romania, and observed that

most people in the UK seemed fairly positive about domestic law and their own legal system. Consequently, they did not feel that the UK could learn much from the laws of the EU or the laws of other countries. The dominant view was that “it is the other way round. They should look at ours that has been set in stone and has worked for years and years”. (Hertogh and Kurkchian 2016, 412)

In talking about the law, these respondents not only described the law’s quality; they utilized it to speak about their collective identity *vis a vis* other national groups and entities. In doing so, they engaged in what Ruskola (2002) called ‘legal orientalism’.

Collective legal consciousness, as we will see in the next section, is intimately connected to national consciousness, identity and belonging. Through law’s language, authority and standards people communicate the limits and character of the nation. The construction of British national identity around the rule of law is important for understanding its symbolic power for social ordering in contemporary UK. Birmingham’s criminal courthouses offer a glimpse into the centrality of law for delimiting identities in multicultural Britain. It is to the analysis of these court

interactions that I now turn.

DEMARKATING AND CHALLENGING THE LIMITS OF THE NATION THROUGH LAW

Second only to London, Birmingham is one of the most ethnically diverse cities in the UK. During the nineteenth century, the city grew as one of the world's top industrial hubs attracting workers from other parts of Britain and from further afield, especially the British colonies. Unlike other major English cities like London and Liverpool whose economic development was linked to their strategic location near a harbour, Birmingham drove industrial innovation and expansion from the heart of England; thus its branding as the 'workshop of the world' (Hall 2002, 270). Specialized in the crafting of metals, its factories profited from British colonial expansion as they stocked colonial armies with weapons, and advanced the civilizing project through the exportation of goods like watches and cutlery (Hall 2002, Elias 2000 [1939]).

Before the 1960s, Birmingham's migrant population was mostly made of people born in Ireland, Jamaica and India. In the following decades, migration from Ireland and Jamaica receded, while new arrivals hailed from India, Pakistan and Bangladesh. Since the 2000s, nationals from Eastern European countries – particularly Poland and Romania- outnumbered other national groups. Today, Birmingham is home to a population more likely to have been born outside the UK and less likely to be white British than the national average (Birmingham City

Council 2013). The last census in 2011 showed that 22.2 per cent of Birmingham's residents were born abroad, compared to the national average of 13.8 per cent; nearly half of them arrived in the UK between 2001 and 2011. Pakistan, India, Ireland, Jamaica and Bangladesh were the most reported countries of birth outside the UK among Birmingham residents (Birmingham City Council 2014).

The city's courthouses mirror its demographic diversity and serve as a platform for the ventilation of convivial tensions springing from it. Lawyers, prosecutors and court staff often nostalgically voice their disquiet about community changes brought by migrant groups and link them to the spatial and moral decay of the city. Differing 'cultural' norms are pinpointed as the main reason why they get into trouble (Author 2017a, 2017b). In court cases involving 'migrant' defendants, notions of crime, race and incivility mingle to draw the boundaries of national belonging. The law, its authority, language and standards are constantly evoked in the assertion and contestation of these boundaries.

In this section, I explore the invocation of the law and legality inside the courtroom to delimit the boundaries of national belonging. The criminal courts are key sites in which the authority of the law is staged and where Britain's self-image as strong, sovereign and governed by the rule of law is communicated. Even in the less formal space of the lower court, visitors and clients are continuously reminded of its majesty and authority through symbols adorning the courthouse, its grand architecture, its ceremonial language and rituals, and the stiff attires worn by its staff (Rock 1993, Carlen 1976, Jacobson et al. 2015). This physical embodiment of the law plays a key role in the ideological construction of legality as supra-human,

immutable, and severed from the messiness of the social world it regulates. The criminal courts are civic forums where court participants are appraised against civic expectations and values, and assert their belonging to the nation by aligning themselves to those civic parameters (Author, 2017). The courts shape social attitudes towards the law and are an important source of public knowledge about it (Sarat and Felstiner 1989). As Yngvesson (1988, 411) observed, 'it is through the interaction of criminal justice officials with local citizens that "the practical meaning of the law"[...] is shaped and the patterns of dominance in court and community are reproduced and occasionally challenged'. Court operators and the people who appear before them evoke the law, its categories and imagery, to talk about themselves and to differentiate themselves from others. Legal discourse constitutes subjectivities in ways that are both gendered and racialized (Eaton 1986, Hannah-Moffat and Maurutto 2010).

This constitutive function of the law for delimiting belonging transpired during court hearings involving non-British defendants. In the mechanic and ritualistic routine of the court, judges often paused to remind participants of the significance of the law and legal institutions in British democracy –the court system, the trial by peers, due process protections and the adversarial system. In one of the cases observed, the Crown Court judge thanked the jury in a trial involving two men from Poland who were found guilty of burglary. He highlighted the importance of being judged by peers rather than professional judges: 'The jury service is a fundamental part of our democracy'. Being judged by peers, the judged implicitly reminded jurors and parties, has historically signaled Britain's commitment to

democracy, freedom and rule of law principles and featured prominently in Britain's self-consciousness as 'the greatest defenders of liberty within Europe' (Armitage 2000, 197, also Rabin 2017, 5).

Other judges took the opportunity to hint at the lawless world participants left behind. In a slightly patronizing tone, a magistrate told Mr. Munro that he was not allowed to go back to Zimbabwe for Christmas before his trial. The man had successfully claimed asylum in the UK fifteen years ago. 'I hate to ruin anybody's Christmas plans -the magistrate continued- but I cannot sympathize with a person who wants to return to a country he once fled from, a country that once persecuted him. Mugabe is going to be President till he dies, won't he? Governments will change all over the world, but not in Zimbabwe'. In other cases, some judges felt the need to emphasize the importance of abiding by the law as a civic responsibility of new migrants and to promote the respect for the law through sentencing. During a hearing where a man from Poland pleaded guilty to driving under the influence of alcohol, the district judge asked his solicitor why his client was driving in that condition. The lawyer speculated: 'perhaps is a cultural thing. We see this in certain communities -binge drinking'. In his sentencing remarks, the judge reminded Mr. Griska of the seriousness of his offence and imposed a 12 month suspended sentence, disqualification from driving and a community order to perform unpaid work and attend a course to quit drinking. Echoing the lawyer in linking his offending to broader community attitudes and norms, the judge addressed him and his compatriots: 'People have to understand that drink driving is like being in a possession of a weapon... You will say to all your friends that you have been very

lucky [to be spared an immediate custodial sentence]’.

Assumptions about the unruliness of ‘foreigners’ and their disregard for the law surfaced in other court cases. In one of them, a man was in the public gallery waiting for his brother to appear in court accused of theft. When his brother emerged from the stairs into the dock, he took a picture of him with his phone. The man was immediately removed from the room and charged with contempt of court. Later on, he returned to the courtroom as a defendant. In his defense, the duty solicitor who represented him claimed that Mr. Stanescu was not aware of the prohibition to take pictures inside the courthouse and he was naïve about what was acceptable in the UK, implying that back in his home country –Romania- there are no such restrictions. Ignorance of UK laws is no excuse, the district judge ruled and declared his guilt without much fanfare. She told the man, who relied on a Romanian interpreter during his brief hearing, that he was duly warned by (English only) court signage throughout the building that the recording of proceedings was not allowed inside the courthouse. Different normative standards and lack of familiarity with UK laws is often couched in terms of deficit in rule of law culture. Narratives about foreigners’ criminality by court operators link crime to ‘culture’ and cultural attitudes to the law (Author, 2017). Implicit in these accounts are assumptions and normative judgements about certain national groups’ collective legal consciousness. They show how legal discourse and the narrative of legality is central for the construction of ‘otherness’ and the racialization of certain groups.

Discourses of nationhood inside the courtroom portray the law as a source of strength and moral superiority. At the same time, the attachment to the law makes

the nation weak, a target of abuse, as this female magistrate reckoned: 'I think there's a perception [among foreigners] that perhaps in the UK that we are not quite as harsh in our justice system so they think that they can get away with it more... So their better life that meant perhaps that they come to a country where it isn't as harsh or perhaps as difficult'. For this woman, the law evokes fairness, restraint, equality and proportionality. Through the implicitly gendered representation of the law, she perceives the nation as feeble, soft, vulnerable to the rapacity of unscrupulous outsiders. The use of gendered and racialized attributes and metaphors to characterize the nation is, according to Sara Ahmed, a 'narrative of truth': 'The risk of being "soft touch" for the nation... is not only the risk of becoming feminine, but also of becoming "less white" by allowing those who are recognised as racially other to penetrate the surface of the body' (Ahmed 2014, 3). Through figurative and emotional discourse, this narrative powerfully conveys the risks of softness and implicitly compels the British 'public' to support a more masculine, harder, less emotional response to the plight of others.

While legality is a vehicle for demarcating the boundaries of national belonging and casting out uncivilized people and places, some of the court participants deployed the law and its categories for shifting and unsettling those boundaries, as in the trial of Mr. Saeed.

Mr. Saeed was charged with the offense of driving through a 'no way street' and racially aggravated assault against a police officer. During his trial, he sat quietly but attentively beside a court interpreter who assisted him during part of the hearing. The complainant, Mr. Singh, gave evidence first. Mr. Singh, a police officer,

told the bench of magistrates that he summoned the defendant to move his car from the pavement warning him that he would face a fine if he refused. Subsequently Mr. Saeed threatened to report him while making the engine of his car sound loudly and pulling out his phone to record the incident. At that point, the officer requested assistance. He recalled walking away from the encounter when he saw the defendant driving toward him and shouting at him. In his version of events, Mr. Saeed got out of his car and started to speak on the phone in Kurdish. Although he was not able to listen to the full conversation, he heard 'Indian boy', 'gun', 'shoot' and that 'we have to show him the Kurdish way'. The officer assumed this was a threat.

The second witness, who came to assist his colleague, said that he arrested the defendant and took him to the police station on his patrol with a third officer. While driving, he mentioned that Mr. Saeed was very agitated talking about a conspiracy of the three Indian police officers towards the Iraqi Muslim community and referred to him and his colleagues as 'puppets of the British government'. According to the witness, Mr. Saeed also mentioned: 'It was not to be another Duggan and he will speak to high people to take officers to court', referring to the case of Mark Duggan who was shot dead by the police in Greater London in 2011 and whose death sparked riots across the country. He read the transcribed interview to Mr. Saeed, who complained about having been arrested illegally and arbitrarily: 'you arrested me like I was a terrorist' he protested 'You arrested me because I am Iraqi, I am Muslim'. A third police officer who assisted in the arrest and interrogation of Mr. Saeed agreed with his colleagues, recounting a similar version of events. Throughout

their testimonies, they suggested that Mr. Saeed had difficulties in abiding by the rules and respecting authority, and he had 'issues with certain people, members of certain communities'.

When the police officers were cross-examined by the defendant's solicitor, it transpired that the row was instigated by something Mr. Singh said to the defendant. According to Mr. Saeed, he shouted at him: 'This is not Iraq, you cannot park the car on the pavement!' The defendant denied threatening the officer suggesting that Mr. Singh had misunderstood the conversation and used his testimony to disavow the picture of him as a disobedient and uncivilized foreigner. Speaking without the assistance of the interpreter, he told the court he had been a professional bus driver for seven years and grew up 'in this country'. He never had a criminal conviction and he had always abided by the law: 'As a professional driver, I teach my family to drive safely in this country. I wouldn't drive on a "no way" street'. Recalling the alleged fault that triggered the incident, he explained, 'Sometimes we do here in the United Kingdom when there is no room we park on pavement'. That morning, he told the bench, he went to a garage to change the tires of his car, as he was told by the 'Indian MOT'. 'I have nothing against Indians', he added, trying to deny any racial animosity towards the police officers. He explained that he filmed the officer because he thought Mr. Singh was acting arbitrarily in fining him and addressing him in a disrespectful manner, even after he moved the car as was ordered. Mr. Saeed admitted being offended by the way the police addressed him not only because he shouted at him. Being characterized as both a 'foreigner' and 'unruly' was particularly humiliating.

In his deposition, he rebutted this portrayal by asserting his alliance to the law. Mr. Saeed was dazzled by the law, while at the same time disappointed by it. 'I loved the law', he expressed with certain disaffection in the past tense. The reference to Mark Duggan and the perceived discriminatory and arbitrary treatment he endured by the police tainted the image of the law as supra-human, objective, impartial, and uncorrupted. At the same time, his testimony revealed a tension between these two contradictory views. On the one hand, he complained about the police cover-up while ascribing his maltreatment to these three police officers and suggesting an ethnic comradery between them: 'I said I wish there is an independent police, not friends coming together. I am a human and I didn't like how you treated me'. He denounced the officers for clothing their power in the language of the law. On the other hand, he expressed renewed faith in the law as an antidote to police misbehavior by asserting his rights as a citizen and criminal suspect. He questioned the grounds for his arrest, he asked to be interviewed by different officers who had previously not intervened in the arrest and requested a lawyer to be present during it. He complained about being cautioned for the driving offense and then being interviewed for a different charge, the racially aggravated assault.

On its face, the incident involved a mundane neighborhood altercation over the use of public space. Yet, as the trial of Mr. Saeed progressed, the primary accusation for a driving offense faded into insignificance as the underlying issues that triggered the dispute between the two men took center stage. The court setting became the forum for ventilating tensions in multicultural conviviality and competing ideas of civic inclusion. Their row involved broader questions about

authority, civility and national belonging, and the claims for recognition which were articulated through the language and authority of the law. The invocation of the law evoked the Empire and its legacy for buttressing and undermining its authority. It also brought home its power to delimit identities in contemporary multicultural Britain. For Mr. Saeed, the law conjured at the same time fairness and oppression, a normative ideal and a tool of domination, and elicited admiration and resentment. In his eyes, the law was white. The wielding of its power by brown police officers cast doubts on its authority and legitimacy.

While these competing ideas about the law surfaced during the trial, they were skillfully effaced by the parties in framing the incident as a trivial interpersonal dispute. By personalizing (and racializing) the conduct of the police officer and circumscribing it as an instance of abuse of power, Mr. Saeed prevented his first-hand experience of the law from tainting law's normative ideal as objective, impartial and rational. In so doing, he contributed to its hegemony (cfr. Silbey 2007, 343)

The staging of the incident in the courtroom ultimately shows how these men utilized the authority of the law in conflicting ways while simultaneously trying to deflect its power. The bench of magistrates declared Mr. Saeed not guilty of the driving offense and guilty of racial abuse, a finding that might have confirmed his belief in law's equity. The strategic alignment to the law by these men ultimately reveals its power for social ordering.

Like Mr. Saeed, other litigants utilized law's language to contest the charges against them and claim belonging. The court's clientele gathers together a range of

populations for whom the law is 'all over' (Sarat 1990, Ewick and Silbey 1991, Cowan 2004). Its pervasive presence in the everyday life of the marginalized urban poor constitutes them as welfare dependents, delinquents or migrants, or a combination of them. At the same time, their marginalized status makes them legally powerless. Unsurprisingly, marginalized and disempowered populations are often skeptical and cynical about the law and of its promises. As Agnieszka Kubal documented in her research with return migrants to Ukraine, their subordinate social position in the hosting country informed their attitudes to and perception of the law. For them, the law 'resonates not necessarily with the comfort and protection that compliance with the law can give, but with a fear of falling foul of the law, demonstrating law's power to exclude and punish those who transgress it...' (Kubal 2015, 77).

The foreign clientele of the court combine different forms of disadvantage due to racial, socioeconomic and civic subordination. Some of them, particularly recent arrivals, have little or no practical knowledge of the law. Their body language often conveys their puzzlement and submission, as they sit silently and obediently during hearings. A young man originally from Vietnam, who was found by the police in a dismantled apartment full of cannabis plants, conveyed this legal powerlessness. As the lawyers were busy trying to establish how he got into the UK and what his role in the larger chain of marijuana dealing was, Mr. Dang sat beside a woman interpreter, looking down, and muttering a few words. For him, it appeared, the law, its language and its institutional embodiment, were just too overwhelming and inaccessible.

Likewise, Mr. Akram found it hard to understand why it got in his way. Unable to decipher it, he perceived the law as an obstacle, an imposition, an amorphous shadow chasing him. 'What kind of law is this?', he said to the Kurdish interpreter in English, 'What is the issue? I went to the police station for help [and I ended up in court]. Nobody is asking me'. Mr. Akram was brought to court due to an incident in a coffee shop where he allegedly threw a cup and broke a window. His hearing had to be adjourned several times because he was agitated and shouted at the judge. Ignoring an anxious district judge who demanded his plea to continue the proceeding, Mr. Akram desperately tried to tell his story: 'I am homeless. I am not here for benefits, what are the issues here?', he complained in broken English. Dismissed as mad, he refused to follow the apparently evident logic of the law. For him, the broken glass was irrelevant. Convinced that he was caught by the law because of his foreignness, he tried to deflect its power by claiming he was mistaken for the wrong migrant.

While some of the court's foreign clients struggled with court proceedings, others displayed a remarkable ability to decode social expectations. In strategically mobilizing the law, these people sought to distance themselves from negative connotations of 'foreigners' and to contest essentialized categories while aligning to social and moral expectations about the 'good citizen' (Abrego 2011, Delgado 2016, Author 2016). One of them, a man convicted for driving while disqualified and without insurance, told the probation officer he was sorry for not abiding by his disqualification. He highlighted his self-worth as a law-abiding citizen and diligent worker adding that 'he respected the laws of the country' and had been 'industrious

and hard working' since he arrived in the UK. Mr. Bugawski's pre-sentence report recounted his migration journey from Poland to the UK, his efforts to learn English and his work ethic in a bid to persuade the magistrates of his civic capital and to pass a lenient sentence. In trying to tilt the law to their side, the men who appeared before the court drew on their manly credentials as 'respectable poor', breadwinners, workers, and law-abiding, to contest their outsider status. Given the strong incentives to plead guilty, for many of them, the sentencing stage is their only opportunity to be heard and offer a more complex and individuated self-portrait, albeit mediated by their lawyers, than their standardized, impersonal and faceless representation captured in police records and presented to the court by the prosecutor (Lynch 2015).

By translating their worthiness into the language of the law, these defendants showed an ability to utilize the markers of neoliberal citizenship to contest their devalued identities (Menjívar 2011, García 2014). In turn, this strategic utilization of the law for claiming civic inclusion demonstrates the law's power in normative ordering. These self-assertion strategies can be conceptualized as practices or acts of citizenship (Isin and Nielsen 2008, Isin 2009, Però 2011). Citizenship is not just a passive, formal status granted by the state. It can also be conceived of as a verb, a form of political participation through which people constitute themselves as civic and political actors and actively claim recognition as right bearers (Bosniak 2000, 479, Volpp 2014, 81). The notion of citizenship as an act or a practice acknowledges the performative and agentive side of citizenship, its fluidity and its potential for resistance and anti-subordination (Lewicki and O'Toole 2017).

In taking up the language of 'active citizenship', these defendants offer a more expansive notion of citizenship than that delimited by the government and mandated in bureaucratic processes, and which is not reduced to vote, pay taxes and learn English. Albeit not always deliberate, these claims for recognition and belonging constitute creative breaks in the dominant discourse linking crime, incivility and migration. In doing so, these men enact themselves as citizens even when the law does not recognize them as such.

CONCLUSION

In this paper, I explored the symbolic and cultural power of the law for producing the nation. The rule of law has been a defining feature in British national formation. More recently, it has been shored up to instruct 'outsiders' about standards and expectations that comes with being a citizen, and the limits of civic inclusion. It also surfaces in the more banal space of the lower criminal court where its clientele is increasingly populated by 'foreign nationals' and 'migrants'. Inside the courtroom, court operators remind the people who come before them about the supremacy of the rule of law and its institutions in Britain. The architecture and formality of the criminal courtroom reinforces the identification between nation and law's supremacy. Despite the increased bureaucratization and downgrading of criminal proceedings through summary justice policies (Ashworth and Zedner 2008), the criminal courts remain imposing spaces. Like the police (Loader and Mulcahy 2003), they occupy a privileged position in the national iconography of treasured and

revered institutions.

The idiosyncratic place of law for British national formation and its centrality for delimiting the boundaries of belonging in contemporary UK is important for understanding how the law is perceived and consumed by ordinary people, and how it shapes British collective legal consciousness. While legal consciousness research has shed light on the central place of the law for constituting subjectivities and relations within society, it has paid less attention to the law's role in constituting social boundaries and national identity. Legality and its construction is thus implicitly circumscribed by national borders. Collective legal consciousness, however, is part of the national culture and serves to constitute national boundaries. By assuming 'as a discursive frame the internal life of a bounded political community' (Volpp 2014, 71), this work neglects the link between law, nation and power, particularly the place of the law in enforcing the borders of the nation. Socio-legal work on migrants' legal consciousness has questioned the national frame of reference of much legal consciousness scholarship highlighting how perceptions of law and legality among immigrants are informed by their legal status (Abrego 2011) and their experience with the law in the host country (Kubal 2015), as well as how immigrants' interactions with the legal system force more plural understanding of the law and unsettle hegemonic legal frameworks (Dundes Renteln 2004, Kubal 2013). This paper contributes to this emergent literature on legality and transnationality, while shedding light on the relationship between legality, civility and nationhood.

The association between law and nation is important for understanding how

those cast as foreigners perceive the law and use it to contest their outsider status. Notwithstanding their skepticism and cynicism, some of the court participants in my study tactically enlisted the law on their side pleading allegiance to it or claiming to accommodate its civic demands. In doing so, they contested not only their charges but also their alleged foreignness. Others just felt overwhelmed by its sheer, mystifying power. They knew too well that their precarious status made them legally powerless. Still others remained faithful to its promises of due process and equality, hanging on to the momentary and impermanent victories of the powerless. For all of them, the law was tied to the British nation and evoked its power and authority. Their legal consciousness was fraught with contradictions and ambivalence and shaped by their 'foreignness'. The law embodied the sovereign in whose behalf power is exercised. It evoked contradictory ideas and emotions. For them, the law was both a source of protection and subordination; a resource and a constraint; elusive, rigid, abstract, game-like and pliable.

While isolated, small acts of contestation can provide breathing space and moments of dignity, the best they can hope for is to contest the law on its own terms and go along with it. By borrowing its language and categories to claim inclusion and recognition, they might risk reinforcing gendered and classed expectations and asserting the conditionality of migrants' incorporation upon their capacity to assimilate (Volpp 2014, 91). Still, by subverting and unsettling categories through which the law is exercised, these acts of citizenship may also be able to shift the 'map of power' (Merry 1995). In doing so, as Mr. Saeed revealed, these strategies can potentially punctuate and interrupt dominant discourses. Despite the difficulties

encountered by these defendants in being heard, their brief and often timid interventions within the space of the courtroom shed light on the symbolic power of the law, its colonial legacies^{vi} for producing global order and its role for delimiting identities in multicultural Britain. However, there is a recognition that further and more in-depth research is needed to make justice to these defendants' experiences and perceptions of the law. This article has been written in the hope of stimulating that enquiry.

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ⁱⁱ An additional period of observations was done between November and December 2016 at the magistrates’ court.

ⁱⁱⁱ This includes the Common Law system, statutory laws and judicial institutions. The Judicial Committee of the Privy Council, which was established in 1833 as the appeal court of the colonial territories during the British Empire, still retains jurisdiction to hear appeals from courts of Commonwealth countries. Despite growing opposition from countries in the Caribbean, the Privy Council’s judicial authority in the region was justified by its role as ‘impartial dispenser of the rule of law’. Cfr (Kikby 2017).

^{iv} As reported in (Travis 2017).

^v The scandal was triggered by anonymous allegations of a systematic and planned Islamization of at least three state-funded schools in Birmingham in March 2014. While a report ordered by the Department of Education found evidence of ‘a sustained, coordinated agenda to impose

segregationist attitudes and practices of a hardline, politicised strain of Sunni Islam', an investigation by Birmingham City Council denied such a concerted plan to promote extremism and radicalization (Huffington Post 2014). The incident nevertheless revived calls for the promotion of 'British values' in schools. On patriotism, multiculturalism and education in modern Britain see (Osler 2009, Struthers 2016).