**Demonising Immigrants: How a Human Rights Narrative Has Contributed to Negative Portrayals of Immigrants in the UK Media**

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**Abstract**

Immigrants of all types – asylum-seekers, refugees, EU migrants, reunified family members – have suffered at the hands of a predominantly hostile press. Language is incendiary; the factual basis of stories is questionable; negative events dominate reporting. In this chapter, we explore the role of human rights in stories about migrants in the UK media. Through this exploration, we argue that a human rights narrative has exacerbated the negativity surrounding immigrants in the UK press. This may seem somewhat counter-intuitive given that human rights are often the very mechanism by which migrants have resisted aggressive control of borders and rampant destruction of non-nationals’ legal status by European nation states. In support of our core thesis, however, we advance a series of arguments which demonstrate that the legal architecture of human rights and their failings as a grassroots project have shaped a rhetoric which, in turn, has had a decidedly negative impact upon popular perceptions of immigration in the UK media.

**Introduction**

Immigrants of all types – asylum-seekers, refugees, EU migrants, reunified family members – have suffered at the hands of a predominantly hostile press. Language is incendiary; the factual basis of stories is questionable; negative events dominate reporting. In this chapter, we explore the role of human rights in stories about migrants in the UK media. Through this exploration, we argue that a human rights narrative has exacerbated the negativity surrounding immigrants in the UK press. This may seem somewhat counter-intuitive given that human rights are often the very mechanism by which migrants have resisted aggressive control of borders and rampant destruction of non-nationals’ legal status by European nation states.[[1]](#footnote-1) In support of our core thesis, however, we advance a series of arguments which demonstrate that the legal architecture of human rights and their failings as a grassroots project have shaped a rhetoric which, in turn, has had a decidedly negative impact upon popular perceptions of immigration in the UK media.

In order to explore these dynamics, it is useful, first, to examine a now infamous example of media and political deception around immigration and human rights.[[2]](#footnote-2) In October 2011, Theresa May (at that time, the Home Secretary of the United Kingdom) used her speech at the Conservative Party conference to slam the use of Article 8 of the European Convention on Human Rights (ECHR) by migrants to resist deportation. She told the now-infamous story of an ‘illegal immigrant’ who could not be deported ‘because he had a pet cat’: ‘I am not making this up’ she declared, to jeers and laughter from the floor.[[3]](#footnote-3) The genesis of May’s story was a series of factually dubious and incendiary press reports at the time of the original Asylum and Immigration Tribunal decision: ‘Migrant facing deportation wins right to stay in Britain…because he’s got a cat’ (*The Daily Mail*);[[4]](#footnote-4) ‘Immigrant allowed to stay because of pet cat’ (*The Daily Telegraph*.[[5]](#footnote-5) These headlines have come to represent the pinnacle of the absurdity of human rights reporting in the UK press, cited often by commentators as a particularly egregious example of inaccurate coverage of human rights in the UK media.[[6]](#footnote-6) The case was an appeal to the Asylum and Immigration Tribunal at which the Home Office conceded that it had erroneously applied the law relating to the partners of British citizens.[[7]](#footnote-7) The appellant in the case was a Bolivian man in a long-term relationship with his British partner. In the initial application, the couple had presented numerous pieces of evidence that they were in an enduring relationship, joint ownership of a pet cat being just one of these. The idea that this case created a legal precedent that immigrants can resist deportation on the basis of ownership of a cat, as suggested by many newspaper reports, is absurd. It is, however, reflective of an attitude prevalent in the UK press that immigrants’ enjoyment of human rights is unfettered and a threat to British society, very often underpinned by a racist, xenophobic and divisive tone. Its repetition by May at the Conservative Party conference – and surrounding media furore – assured the case entry into the UK press’s sorry history of immigration folklore, underpinning the symbiotic relationship between xenophobic rhetoric in UK politics, on the one hand, and the media’s editorial choices around balance and tone, on the other.[[8]](#footnote-8)

Beyond the hostile reporting of human rights in many parts of the press, any serious analysis will tell you that human rights play an important role in shaping the legal status of migrants.[[9]](#footnote-9) Indeed, non-nationals in the UK have found legal solace in, amongst others, their right to family life, to be free of inhuman and degrading treatment and to claim asylum when fleeing persecution.[[10]](#footnote-10) These are rights which are protected in international instruments, which have been interpreted and elaborated by domestic and international courts and which now allow migrants resident in the UK to engage more meaningfully with life in their host country than might otherwise be the case. That said, the failings of human rights law in relation to immigration are multifarious, with scholars having pointed to, amongst others, the limited ability of rights framework to protect non-members of a political society, stemming from Hannah Arendt’s writings on the “right to have rights”;[[11]](#footnote-11) the inherent tension between state securitisation and border control, on the one hand, and the full and enthusiastic recognition of the rights of individual migrants, on the other;[[12]](#footnote-12) and, the failure of human rights to prevent ongoing migration-related humanitarian crises.[[13]](#footnote-13) Our focus here, however, moves beyond these critiques, offering an analysis of how a human rights dimension impacts the reporting of immigration-related stories within the media. We argue that a human rights angle increases the level of negativity in reporting. We do not suggest that this makes human rights a bad thing for immigrants, instead we use the treatment of immigrants in the UK media to explore some of the weaknesses of the European human rights project of the past sixty years. This chapter, therefore, adds a new dimension to a rich literature scrutinising the relationship between immigration and human rights by considering, not just how these two legal frameworks map onto each other, but by assessing their relationship in popular rhetoric, as played out in the UK press. Crucially, we do this through a legal lens, seeking to understand what it is about law’s structures which facilitates such toxic reporting in relation to the human rights of immigrants, with an eye always on the wider social and cultural context of the UK media.

First, we identify a tone of what we are terming ‘dual foreignness’ to stories around immigration and human rights. We point to the tendency of human rights in the UK to be seen as not truly ‘British’. When these rights, foisted on us by Europe, are used by non-citizens to enhance their legal status, the press cries ‘foreign!’: foreign rights from a foreign legislature for the benefit of foreign people. Second, we argue that what we term the ‘legal anatomy’ of human rights cases structures these claims such that they fuel a ‘them and us’ undertone to press coverage. In short: a human rights claim requires the applicant to pit their interests against those of the state, providing fertile ground for press reporting which emphasises the un-Britishness of migrants’ human rights. Finally, we point to the failure of human rights as a grassroots cause, highlighting the absence of a belief in their value for ‘everyday folk’. If rights are for ‘other’ people, a divisive undertone is particularly apt to take root when these individuals are not British. To support this argument, we consider the generally more positive tone of stories about migrants in local news media. These stories rarely mention human rights, something we argue reflects the perception that human rights are foreign, distant and for other people. Our conclusion, therefore, is that despite the many positive contributions that human rights instruments have made to the lives of immigrants resident in the UK, they have done nothing to soften the treatment of this group by the press.

Before we move onto our main analysis, a few notes on methodology and terminology in this chapter are necessary. First, we have made use of a rich literature from experts on media and communication to support our observations around the treatment of migrants in the UK press, but our analysis remains very much legal. Where we note ‘trends’ in reporting, we offer supporting literature, if appropriate, but some of our observations are more tentative – they are impressionistic and are used to support our analysis of the law, rather than to make any methodologically rigorous contribution to media and communication studies literature (though we hope we ask questions and raise issues of interest to this discipline). Second, whilst we use the word ‘media’ as an umbrella term to denote ‘newspapers, radio and television, regarded collectively’ (Oxford English Dictionary), our emphasis is on newspapers (or the equivalent term, the press). We have sought to include both tabloid and broadsheet newspapers in our analysis, however the focus has inevitably fallen on the former. This chapter addresses an incendiary attitude to immigration and disregard for accuracy in reporting which is more common amongst tabloid newspapers, particularly those on the right. Furthermore, tabloid newspapers have higher circulation: the three most popular tabloids (*The Daily Mail*, *The Daily Mirror* and *The Sun*, and their Sunday counterparts) all have more readers than the most popular broadsheet (*The Guardian*).[[14]](#footnote-14) Indeed, amongst those who read a daily newspaper, no single broadsheet is accessed by more than 10% of the population.[[15]](#footnote-15) We use the terms ‘immigrant’ and ‘migrant’ largely interchangeably to denote anyone who does not enjoy an unconditional right of abode in the UK,[[16]](#footnote-16) and where necessary we distinguish between various categories, primarily that of European Union (EU) citizen,[[17]](#footnote-17) work/study-based migrant and family-based migrant etc. Furthermore, we make reference to particular issues around reporting of stories relating to asylum-seekers - those who have fled persecution and have applied for refugee status, within the meaning of the Refugee Convention[[18]](#footnote-18) – and ‘refugees’ – those who have been granted this status.[[19]](#footnote-19)

**The Demonising of Immigrants in the UK Press**

Immigration is a prominent issue in UK politics and news reporting, and has therefore generated significant academic scrutiny. In this section, we draw out key trends in this literature to build a picture of press treatment of immigrants, supplemented with examples from news stories. The tone of reporting on immigrants in the UK media is overwhelmingly hostile, which is perpetuated by repeated use of dehumanising metaphors. There is a particular focus on the most marginalised group, asylum-seekers, but this is underpinned by a general dislike of all migrants and blurring of groups so that an issue with one seeps into the wider sense of distrust and negative perception of all. The potential impact of such negative trends is significant when evidence of the extent to which public opinion is shaped through news reporting is considered.

Discussion of immigration in the UK media is widely acknowledged to be characterised by negativity and even hostility. Balch and Balabanova refer to the ‘broadly negative tone of public debate’ of the UK’s immigration policy.[[20]](#footnote-20) Strabac *et al.* describe a press that presents ethnic minorities in negative and stereotypical terms and migrants as the embodiment of various threats to society.[[21]](#footnote-21) Examples of such hostile reporting abound, including claims that migrants attempting to cross from Calais to Dover were not only a threat to the economy by delaying imports and exports, but also that the migrants were contaminating food: ‘Millions of pounds worth of food are being destroyed because of contamination by migrants jumping into lorries’.[[22]](#footnote-22)

This hostility is frequently conveyed through dehumanising metaphors. Cisneros explains that the most commonly used metaphors in reporting migration refer to images of ‘flood’, ‘infestation’ and ‘burden’,[[23]](#footnote-23) and argues that ‘pollutant’ might also be added to this list.[[24]](#footnote-24) None of these metaphors presents migrants and migration in a positive, or even neutral, light. The metaphor of “flood” was particularly prevalent in reporting of the “refugee/migrant crisis” in 2015-2016, transferring the disastrous threat to stability and security of a flood to migrants. For example, the Daily Express published an article titled: ‘Migrant crisis getting worse: While politicians dither thousands more flood Europe’, compounding the idea by accompanying it with pictures of overcrowded boats surrounded by water.[[25]](#footnote-25) The Sunday Express used news of ‘Illegal migrants flooding into EU’ to support its campaign to have the UK leave the European Union.[[26]](#footnote-26) The Daily Mail reported on a ‘flood of young male migrants’, which it linked to higher rates of ‘aggression and, in particular, sexual violence’.[[27]](#footnote-27) A particularly notorious example of the use of dehumanising metaphors is the British right-wing commentator Katie Hopkins’ description of migrants crossing the Mediterranean as ‘cockroaches’.[[28]](#footnote-28) These metaphors represent migrants as non-human or less than human. This adds to the dominant message that migrants are a threat and are to be looked down upon, and it creates a space for questioning whether migrants, if non-human, are deserving of human rights.

News media have been particularly hostile to asylum seekers. Philo *et al.* identify ‘persistent and overwhelmingly hostile coverage of refugees and asylum’ in national news media, including newspapers and television broadcasts, but note that these groups are largely confused with other groups of migrants.[[29]](#footnote-29) There are many examples of this coverage, including a Daily Express article published a few days before Christmas in 2016 that proclaimed: ‘“The children were PETRIFIED” Asylum seeker STORMS nativity play to read from the Koran’,[[30]](#footnote-30) or ‘Muslim asylum seeker jailed for life after killing “infidel” landlady in Germany’.[[31]](#footnote-31) Through such reporting, the term “asylum seeker” has become a pejorative way of describing a migrant, regardless of whether the person falls within the relevant legal definition.[[32]](#footnote-32) The right to seek asylum is long enshrined in international law, intimately connected to the humanitarian aim of providing refuge for persecuted persons unable to access effective legal protection in their own state,[[33]](#footnote-33) but under the gaze of such headlines, the term has become somewhat detached from its legal meaning and has become politicised, transformed into a label for a suspect and hated ‘other’. Similar to the way in which ‘Muslim’ is used in in the examples of newspaper reports we have cited in this section, what starts out as a neutral term to describe a conceptually clear group becomes a flag for racism, xenophobia and, in the case of these and similar examples, Islamophobia.

Balabanova argues that care should be taken with the terminology used to describe refugees and asylum seekers in particular, with some phrasing implying negative preconceptions.[[34]](#footnote-34) Some commonly-used phrases are simply incorrect, such as “illegal asylum seeker”. Under a correct reading of the law, everyone has the right to claim asylum so it cannot be illegal for person to lodge an application for asylum.[[35]](#footnote-35) Beyond this, the Refugee Convention recognises that it may not always be possible for an asylum seeker to get advanced permission from her host country to seek asylum there, and so prohibits the imposition of penalties on refugees for illegal entry or residence.[[36]](#footnote-36) In UK law, this is manifested in a legal defence to criminal charges relating to irregular entry where the entrance was to seek asylum.[[37]](#footnote-37) In recognition of this, the National Union of Journalists advises against the use of legally inaccurate terminology,[[38]](#footnote-38) though the steadfast endurance of such terms indicates that this guidance is not universally heeded.[[39]](#footnote-39) Even putting these aside, Balabanova suggests that by referring to “asylum seekers” rather than “refugees”, ‘we raise a question regarding the authenticity of that individual’s claim against the state, thus (re)asserting or privileging the state’s role as the ultimate arbiter over the individual’s status’.[[40]](#footnote-40)

This is illustrated in a press article that refers in its headline to a ‘young asylum seeker’ whose family had been permitted to join him in the UK.[[41]](#footnote-41) However, as the text of the article makes clear, the case, in fact, concerned a refugee in respect of whom the rules regarding family reunification had been (correctly) re-interpreted to include parents. The tone of the article is negative, questioning the wisdom of this decision both on the basis that this would mean that other refugee children would also be permitted to bring their parents to the UK and, more perniciously, that we should question the veracity of the teenager’s original asylum application. The article reports that he ‘fled his native Eritrea where his father had been “imprisoned for political reasons”,’ using quotation marks to cast doubt on the basis for his refugee claim. The article creates the space to raise questions by selecting the descriptor ‘asylum seeker’, a less definitive term – both linguistically and legally – than that of refugee. By positing the illegitimacy of the boy’s right to asylum, the article suggests that this is a situation in which human rights have exceeded their legitimate reach, as indicated by its inclusion of remarks from Lord Green on Deddington, chair of Migration Watch: ‘Human rights considerations are important, but cannot be given free reign’.

In the wider context of migration across European media, Bennett *et al.* identify four themes in news stories about migrants: negative labelling and ‘fuzzy’ group designations; dominant portrayal of migrants negatively, including as victims; underrepresentation of migrants themselves and the overrepresentation of officials; and the relative absence of the European context in the discussion of migration.[[42]](#footnote-42) Similarly, Wodak argues that the many factors that differentiate migrants are ignored in favour of constructing a single target for negative attention:

Sometimes, however, all foreigners are assumed to belong to one single group and are classified as ‘migrants or foreigners’ although they arrive from different countries, with different motives and goals, with various educational backgrounds, religious and political affiliations, and (gendered) cultural traditions. Right-wing populist rhetoric attempts to merge all foreigners into one homogeneous group, which is subsequently stigmatized as a negative ‘other’.[[43]](#footnote-43)

This dehumanises migrants in the media further by removing personal and distinguishing characteristics. It is illustrated well by a report in *The Daily Telegraph* on the terminology used to discuss migrants. Its headline is: ‘Don’t call them “illegal immigrants”, says Europe human rights commissioner’, and the article proceeds to explain briefly the reasons behind this request – namely that “illegal” implies criminality and denies humanity, and so “irregular” is preferred – before detailing the Government’s defiant rejection of this request.[[44]](#footnote-44) In support of the Government’s stance, the article offers long quotations from Conservative MP, Phillip Hollobone, through which the criminality implication is made explicit via direct allegations: ‘This can be very much to the detriment of women, Jews and gay people in this country and others, as we saw in Cologne earlier this year when women were sexually assaulted by gangs of men’. The article then expands this threatening image to cover all migrants (as a homogeneous group) by reporting on projected numbers of overstaying international students, without explaining any link between this and the terminology issue at hand. By including reference to this group at the end, the message that all migrants are the same and all present a threat is reinforced. The European Commissioner for Human Rights’ argument is in turn presented as over-sensitive and far removed from reality, or, as Hollobone is quoted as saying: ‘The niceties and delicacies of the language this man suggests are lost on my constituents’.

This negativity is particularly significant when viewed in the context of a growing literature demonstrating the influence of the media’s presentation and framing of migrants on public opinion. A 2011 Ipsos MORI poll demonstrated that people rely heavily on the media for information about immigration: news programmes on the television or radio, television documentaries, tabloid newspapers, and broadsheet newspapers were the top four most relied-upon sources, each ranked as more influential than personal experience or word of mouth.[[45]](#footnote-45) Boomgaarden and Vliegenthart demonstrate that increased intensity of reporting on immigration issues in the news had a significant positive effect on support for anti-immigration parties in the Netherlands.[[46]](#footnote-46) Although the study considers the salience of particular topics in the news rather than analysis of their tone, the impact of news about these topics leaves the authors confident in assuming that increased reporting often collides with negative reporting.[[47]](#footnote-47) Together with the findings of a similar study conducted in Belgium,[[48]](#footnote-48) they argue that these conclusions are transferable across European democracies.[[49]](#footnote-49) Schemer’s research supports the thesis that the tone of media reporting (negative or positive) impacts on the opinions of television viewers and newspaper readers,[[50]](#footnote-50) but qualifies this with the finding that this influence is greater on less, or moderately, informed people and has less influence on the opinions of those well-informed about the issue at hand, namely immigration.[[51]](#footnote-51)

On the other hand, Kaye argues that is the repetition of negative stereotypes and phrases by the media *in itself* that is influential in creating or encouraging negative attitudes towards migrants, regardless of the tone of the article in which they appear.[[52]](#footnote-52) Even if the piece is criticising the use of negative terminology such as “bogus” in relation to asylum seekers, through repetition ‘the reader becom[es] socialised to reading them, and com[es] to assume that the “genuineness” of refugees is a significant question’.[[53]](#footnote-53) Greenslade explains that racist and xenophobic reporting on immigration is grounded in editors’ belief that this reflects that attitudes of their readership:[[54]](#footnote-54) ‘A xenophobic press for a xenophobic people’.[[55]](#footnote-55) He argues that such negative reporting is dangerous precisely because it arouses feelings that might otherwise lie dormant,[[56]](#footnote-56) a conclusion that seems to be supported by psychological research on the same topic.[[57]](#footnote-57)

Philo et al. are similarly convinced about the outcome of media’s ‘monstering’ of asylum seekers:[[58]](#footnote-58) division and hostility, particularly in those communities that are already facing the rough end of wealth inequalities.[[59]](#footnote-59) Irrespective of which of these accounts, of how media influences public perceptions of immigration, is more convincing, there is clear evidence to support the conclusion that the media is influential in cultivating, validating and encouraging attitudes that understand migrants as ‘other’; as different to, and worse than, ‘us’.

The media presents migrants as a homogenous group that should be regarded with suspicion and contempt. It does this by using dehumanising metaphors, by undermining migrants’ legitimacy, particularly in respect of asylum seekers, and by implying criminality. This is especially damaging given the impact the media have on public perception of migrants and the public understanding of migration. The following sections explore how this negativity attached to ‘otherness’ or ‘foreignness’ offers fertile ground for growing a symbiotically ‘anti-migrant’ and ‘anti-human rights’ media.

**The ‘Dual Foreignness’ of Human Rights and Immigrants in the UK Media**

We argue in this section that press negativity in relation to immigration is exacerbated when a human rights element is introduced into the story. Human rights are presented as ‘foreign’ in both nature and origin, and, therefore, a threat to tabloid-fuelled notions of Britishness. The combination of ‘foreign’ human rights and ‘foreign’ beneficiaries (the immigrants who rely upon them in legal arguments) creates a ‘dual foreignness’ which leads to particularly toxic reporting. There are two particularly potent ways in which the press invokes ‘foreignness’ in relation to human rights, which we identify to support our analysis: emphasis of the European, and, therefore, non-British, origin of rights; and, the use of language which evokes a threat from abroad when describing rights.

Human rights are very often cast in the tabloid press as being inherently un-British and, by extension, as threatening national identity.[[60]](#footnote-60) The Human Rights Act 1998 – as the UK expression of the European Convention on Human Rights 1950 – is presented as an unwelcome interference in the domestic legal system by a European body, the Council of Europe (often confused or conflated with the equally unpopular EU).[[61]](#footnote-61) Press coverage tends to invoke ‘Europeanness’ in its most pejorative form, pitting Britishness against Continental European ideas about human rights which are depicted as being as alien to the UK as bull fighting, siestas and salami. When, in the run-up to the 2015 UK general election, the Conservative Party announced its intention to repeal the Human Rights Act 1998 and renegotiate the terms of the UK’s membership of the Convention, right wing tabloids celebrated: ‘Human rights madness to end: Europe’s judges to be stopped from meddling in our affairs’ (*The Daily Express*).[[62]](#footnote-62) *The Daily Mail* declared it a ‘triumphant week for British values’.[[63]](#footnote-63)

Criticisms of human rights in the UK press often invoke what are presented as quintessentially British values, such as fairness, common sense and financial propriety, and present ‘European’ human rights as a threat to these. In a 2015 editorial criticising a High Court decision in which a suspected terrorist’s monitoring conditions were relaxed on the basis of his rights under Articles 3 and 8 ECHR (the prohibition of torture and the right to respect for private and family life, respectively), *The Daily Telegraph* argued that ‘Britain needs to return some *common sense* to these vexatious legal proceedings’.[[64]](#footnote-64) Words such as ‘quango’ have been used in relation to human rights and related institutions by politicians to suggest excesses of administration,[[65]](#footnote-65) invoking problematic traits such as ‘…shedding personal responsibility, rewarding friends, expanding the corporate state, diminishing the responsibility of Parliament…encourag[ing] patronage and invit[ing] corruption’.[[66]](#footnote-66) This is linked to suggestions that the European Convention on Human Rights and its Strasbourg institutions are the cause of financial excesses which place a strain on the UK. Frequent reference is made to the cost to the public purse of a case which goes to the Strasbourg Court, and the burden of paying compensation when the UK loses, as though human rights are an indulgence which can scarcely be tolerated.[[67]](#footnote-67) In a similar vein, the un-Britishness of the Convention and the Strasbourg Court is emphasised through painting these legal institutions as a threat to Parliament and parliamentary sovereignty. This was seen most acutely in the coverage of decisions around prisoners’ voting rights, where the Strasbourg Court was presented as undermining Parliament’s legislative autonomy and, thus, threatening a most-British institution: ‘European judges rode roughshod over British sovereignty yesterday by ruling that prisoners must be allowed to vote’.[[68]](#footnote-68)

The un-British trope attached to human rights is further fuelled by suggesting a foreign threat, through the use of language not dissimilar to that which, we have observed above, is used to describe immigrants. This is evidenced, for example, in straightforwardly racist presentation of Strasbourg judges. *The Daily Mail* columnist, Max Hastings, in an article calling upon his readers to ‘remain angry’ about ‘Human Rights lunacy’ (original capitalisation), writes: ‘It seems intolerable that 16 Strasbourg judges should dictate to Britain how it addresses crime and punishment’, emphatically adding, ‘And what judges!’.[[69]](#footnote-69) He then goes on to list the names of judges from Greece, Serbia, Georgia and Montenegro, all of whom have distinctly un-Anglo-Saxon names and hail from the Eastern and Mediterranean fringes of the European territory. The un-subtle suggestion is that these judges, with their foreign names and foreign training, lack the skills, qualifications and civilised values of their British counterpart(s). Emphasis is also placed on the unelected status of Strasbourg judges, as though this indicates their lack of accountability to the UK populous. This, of course, ignores the fact that judges are not elected in the UK either, but nonetheless succeeds in driving a wedge between ‘them’, judges with foreign values and interests, and ‘us’, the UK populous, the unwilling recipients of their decision-making.

Further negative language around the foreign threat of human rights is found in accusations about the ‘creep’ of the Convention. That is, the suggestion that through the zeal and creativity of its judges, the Convention’s influence extends to ever increasing areas.[[70]](#footnote-70) Thus, the Convention’s status as a ‘living instrument’, one which can grow with the changing demands of the protection of human rights in Europe, provides fruitful ground for criticising its contemporary reach and influence.[[71]](#footnote-71) The ‘creep’ of the European Convention mirrors the metaphor of a migrant population which also ‘creeps’ across Europe as it makes its way to British shores, one frequently invoked by tabloid newspapers when highlighting the threat of large scale migration.[[72]](#footnote-72) Crucially, the word ‘creep’ (as defined by the Oxford English Dictionary) denotes both quiet and stealth movement, as well as the aim of eluding observation. It is a word, therefore, that very effectively suggests a threat which is especially menacing because it might slip under the radar if, these stories might suggest, readers do not remain vigilant.

These allusions - and, indeed explicit references - to the ‘foreignness’ of the Convention and its Court, underpinned by the use of language which evokes a threat from abroad, bear a striking resemblance to characterisations of the ‘bad immigrant’ played out in the UK press. Nikesh Shukla, as he introduces his seminal collection of essays exploring immigrant experience in the UK, cites Musa Okwanga on this polarising rhetoric: ‘…the biggest burden facing people of colour in this country is that society deems us bad immigrants – job-stealers, benefit-scroungers, girlfriend-thieves, refugees…’.[[73]](#footnote-73) The threatening language and constant othering – through emphasising difference and deviance – that underpins this depiction is very similar to what we have identified in relation to human rights in the UK press. The caricature is as follows: human rights creep steadily from continental Europe towards the UK, subsuming themselves in ever increasing areas of daily life; they might have embedded themselves in the UK’s legal institutions, but they continue to betray their foreignness through a failure to uphold British values; the strain on the UK public purse is intolerable, wasting money and threating vital public services. This is remarkably similar to the ‘bad immigrant’ characterisation we have identified in this chapter. Indeed, we might substitute the word human rights for immigrants in the previous sentence and have an accurate summary of the dominant way of reporting of immigration in the UK press. The threat comes from Europe, either in the form of EU free movement rights, or in a failure of Mediterranean countries to stem the flow of refugees into Europe. The ‘bad immigrant’ is foreign, he (for he is a ‘he’) steals, scrounges, thieves (jobs, benefits and women, respectively),[[74]](#footnote-74) fails to assimilate to a British way of life and places a burden on public finances through a reliance on social welfare. The use of the same rhetorical devices by the press in relation to both immigrants, on the one hand, and human rights, on the other, creates a symbiosis when the two are used together in a story: all the negative connotations of one are invoked by the use of the other, and vice versa. Thus the potency of each (human rights, immigration) is enhanced when they are used in combination (the human rights of immigrants); they become greater than the sum of their parts: more othered, more threatening and more distant. This is the ‘dual foreignness’ which, we argue, is a crucial factor in explaining why the UK press’s treatment of immigrants becomes especially toxic in stories which involve a human rights element.

**The ‘Them and Us’ Anatomy of a Human Rights Claim as Played Out in the UK Media**

Two structural features of human rights within the UK immigration framework fuel the UK press’s preoccupation with ‘foreignness’ and deviance when reporting cases in the area. Non-EU migrants’ permission to enter and reside in the UK is governed by domestic law, principally the Immigration Rules.[[75]](#footnote-75) The Immigration Rules, whilst submitted to very limited parliamentary supervision,[[76]](#footnote-76) are subject to change by the Secretary of State for the Home Department.[[77]](#footnote-77) In *Pankina*, their legal status is described as ‘not merely unusual but unique’[[78]](#footnote-78): despite being a non-legal source, they are considered to be binding on immigration decision makers.[[79]](#footnote-79) Though these rules sometimes reflect human rights considerations – such as granting leave to remain for those facing human rights abuses should they be returned to their countries of origin,[[80]](#footnote-80) or for family members who would not qualify on other grounds[[81]](#footnote-81) – human rights neither motivate nor wholly explain the Immigration Rules. Indeed, they respond variously to security concerns, the exercise of state control through enforcement, and economic concerns. Applications for leave to enter and remain are determined by UK Visas and Immigration, a branch of the Home Office, under these rules. This framework has two important implications for the reporting of human rights and immigration in the media that are unpacked in this section. First, all immigration cases are challenges against a decision of the state, which pitches the state’s interests against those of the migrant, dichotomising ‘Britishness’ and ‘foreignness’. Second, human rights are a last resort in immigration law, governing those cases which are by definition exceptional, those that do not fall within the standard parameters of the Immigration Rules. This allows the press to focus disproportionately on extreme cases and behaviour, which is in turn presented as inherently un-British. The legal anatomy of immigration cases based on human rights, therefore, contributes to their negative portrayal in the UK media.

Immigration decisions are an exercise of public law powers, carried out in the name of the Secretary of State. Immigration cases question these decisions, either on appeal or through judicial review, such that these cases are fundamentally set up as a challenge to the British state by a migrant. This immediately sets the migrant against the state and necessarily dichotomises their respective interests, framing the applicant’s request as a contradiction to the will of the British people as represented by their political institutions.[[82]](#footnote-82) This conceptual segregation is deepened by the legal limits that define the circumstances in which an appeal may be brought. Whilst previous provisions allowed for a wider variety of decisions against which appeal was permitted,[[83]](#footnote-83) the Immigration Act 2014 limited the right to appeal to cases in which the Secretary of State has refused a protection claim, refused a human rights claim or revoked a protection status.[[84]](#footnote-84)These remaining grounds for appeal only envisage appeals for human rights based applications, including asylum claims, excluding many everyday decisions on migration for work, study or family reasons from standard appeals procedures. This restriction responds both to ‘anti-migrant’ feeling as expressed in the press and the essential dichotomy imagined in immigration cases between the interests of migrants and ‘Britishness’. According to the logic of this divide, restricting appeal rights and limiting the challenges that can be brought against the state strengthens its hand against its ‘opponent’, the migrant appellant. The reduction of grounds also forces migrants who have received a negative decision in cases outside those listed to channel their complaints into the language of human rights in order to access a judicial assessment of their case.

Human rights play a residual role in immigration law, offering grounds to challenge decisions taken in line with the Immigration Rules, rather than acting as the primary basis for a decision. The Human Rights Act 1998 provides at section 6 that public authorities must act in accordance with the incorporated human rights, which includes officials making immigration decisions.[[85]](#footnote-85) Section 84(1)(c) of the Nationality, Immigration and Asylum Act 2002 confirms that an immigration decision may be appealed on the basis that the decision is incompatible with the appellant’s human rights. This means that all human rights claims by migrants are, by definition, exceptional (as standard applications are covered by the Immigration Rules) and a challenge to the British state by questioning its earlier decision.

An illuminating way to explore how these two factors – the dichotomising of state and individual interests, and the last resort nature of human rights claims – skew reporting is through deportation cases challenged under Article 8 ECHR, particularly where the applicant has a criminal record. This type of case is a press favourite: ‘More than 1,300 foreign criminals, including killers, rapists and paedophiles have used human rights laws to stay in the UK’;[[86]](#footnote-86) ‘Victory for Theresa May after drug dealer convicted of attempted murder loses human rights bid to avoid deportation’;[[87]](#footnote-87) and, less emotively, ‘Tunisian criminal loses Supreme Court deportation challenge’.[[88]](#footnote-88) These reports invariably emphasise the deviant behaviour of the applicant, highlighting their immigration status and their reliance on (foreign and un-British) human rights. The legal anatomy of such claims disproportionately focuses newspaper reporting on examples of behaviour which is both extreme and which the law requires us to classify as un-British through its emphasis upon state interests.

When a deportation decision is appealed under Article 8 ECHR, the court considers whether the right to respect for private and family life is engaged and interfered with and, if so, whether such interference is necessary to pursue a legitimate aim and whether the decision in question is proportionate to pursuing this aim.[[89]](#footnote-89) Recent changes to the Immigration Rules direct judicial reasoning in cases challenging the deportation of people who have been convicted of criminal offences, significantly restricting the circumstances in which such appeals will be accepted.[[90]](#footnote-90) The importance accorded to the ‘public interest in deportation’ is paramount, with the Rules emphasising that this will only be outweighed by ‘very compelling circumstances’ which fall outside situations normally envisaged by the provisions. [[91]](#footnote-91) Further stringent requirements relate to: a narrow reading of what constitutes a family member; significant duration of residence in the UK to be able to claim family life warrants protection; the exclusion of those with longer sentences from family life claims.[[92]](#footnote-92)

The imposition of such stringent standards responds to the monstering of migrants and their human rights in the media, but it also perpetuates this approach. The test pits the interests of the British people against those of the applicant, by insisting that by default deportation will be in the public interest. It also sets the exceptions at such a high threshold that it ensures that cases testing them will be those with unusual circumstances. This has led to a skewed impression, within press reporting, that cases involving the sort of extreme circumstances that arise within the narrow confines of the current Article 8 framework are in some way indicative of the normal immigrant experience of the UK legal system.

This strictness has been tempered to a degree by the courts continuing to refer back to the case law preceding the changes. *JO (Uganda)*, decided in 2010, required the courts to consider all the relevant facts on a case by case basis in Article 8 cases.[[93]](#footnote-93) In *Nagre* in 2013, the court rejected a challenge to the legality of the change to the Immigration Rules, but held that the framework for decision-making from case law pre-dating the change to the Rules should still be followed.[[94]](#footnote-94) Similarly, in *MF (Nigeria)*, the court held that although the new rules did not expressly require the court to address all relevant factors in assessing proportionality, they did expressly envisage a balancing of the public interest in removal against ‘other factors’.[[95]](#footnote-95) These factors, the court held, implicitly included all relevant factors, even those not named in the provisions.[[96]](#footnote-96) These judgments show the continued influence of Strasbourg jurisprudence on proportionality, which, in the media, is represented as the judges conspiring with immigrants in a plot to undermine the will of the British people and their Government. For example, in *The Daily Telegraph* three immigration judges who had allowed appeals based on Article 8 ECHR were named and criticised: ‘plans by Theresa May, the Home Secretary, to crack down on the way foreign criminals use human rights to avoid being deported risk being undermined in the courts’.[[97]](#footnote-97) The ability of the court to refer back to the previous case law was further weakened by the repetition of the new standards in primary legislation.[[98]](#footnote-98)

This example of the rules governing the deportation of foreign nationals convicted of criminal offences serves to demonstrate an important point for the role of human rights in UK immigration law and its reporting in the media. Despite the residual role they play in immigration law, human rights have become a significant target for popular discontent, spearheaded by right-wing media. This has resulted in tangible political efforts by the Government to restrict the scope for its decisions to be challenged on human rights grounds. The effect of this is that the legal anatomy of a human rights challenge to an immigration decision produces stories and arguments that are increasingly exceptional, making more atypical cases for the media to report. Thus we can observe a vicious circle: the legal framework encourages the press to focus on extreme cases, media outrage at these extreme cases follows, increasing public pressure to further restrict immigration regulation. Furthermore, this focus on cases at the margins of the legal framework, coupled with the toxic impact of ‘dual foreignness’ which we outlined in the previous section, results in an acutely ‘othering’ tone to stories on the human rights of immigrants. The focus of stories is on difference, deviance and distance – all three of which are found in popular rhetoric around both human rights and immigration, and which are facilitated by the legal anatomy of human rights claims within immigration law.

**Human Rights Aren’t for Everyday Folk: Immigration and Human Rights in the Local Press**

Our arguments so far have focused on national reporting of stories around immigration and human rights, exploring some of the reasons for their overwhelming negativity. In this section, our focus shifts to the local media. We identify a more positive tone to reporting of immigration-related stories at this level. Crucially, these stories almost never contain a reference to human rights. Whist there are structural and geographic reasons for this – not least that human rights claims tend to arise in appeal courts, whose work is most often the subject of analysis by the national media – it is also symptomatic of a failure of human rights to embed themselves at a grassroots level. The othering of immigrants is further achieved by an underlying perception that human rights are for people who ‘aren’t like us’, are often deviant in some way, and are at the fringes of society. This is seen in two, interconnected ways. First, human rights have negative connotations in press reporting, therefore where the local press choose to run positive stories about immigration (often pointing to conduct on the part of non-nationals which makes them seem more ‘like us’) human rights language is avoided (either consciously or subconsciously) because of the damaging impact it may have on the tone and angle of the story. The journalist does not reach for human rights vocabulary because of its distancing effect. Second, human rights are less reported at a local level because they are not seen as being available in a grassroots sense: their mechanisms, their institutions and their vocabulary are not democratised. After exploring the treatment of immigrants by local press, we draw upon wider critiques of the failure of human rights at grassroots level to explore these arguments.

*Immigration and the Local Press: A More Sympathetic and Humanitarian Angle*

Stories about migrants are generally more positive in the local press. This is not to suggest that none of the ills of incendiary reporting, questionable facts and dominance of negative events are found in regional newspapers – far from it – rather that, for a number of reasons, the local press is generally more willing to report good news stories about immigrants and asylum-seekers and to pay closer attention to appropriate journalistic standards in this context. Studies which have reached this conclusion have focused on various regions – Scotland, South Wales, Bristol, for example – with this comment from a 2005 study carried out in London neatly encapsulating the different approach of local media to stories about refugees: ‘[London’s local newspapers] do not tend to comment on policy and are mainly concerned with positive local interactions between individual asylum seekers/refugees and host community members’.[[99]](#footnote-99)

Perhaps the most significant factor explaining the higher number of positive stories in the local press is a greater awareness of the impact on community cohesion of inflammatory pieces. The following observation was made in the context of a project which engaged migrants and representatives of the media to explore difficulties in reporting refugee and asylum issues at a local level:

It was argued that local media have a heightened sense of their ethical obligations precisely because they are ‘local’. They are part of the community, living amongst the people they serve, known by them and accountable to them. They can therefore be more responsive to people’s feelings and are able to adapt their reporting when necessary.[[100]](#footnote-100)

Similarly, a regional newspaper editor argued that there was simply no appetite for inflammatory reporting at a local level: ‘If we produced a racist newspaper it won’t sell in this city. Anything we do we have to live with it unlike the national newspapers.’[[101]](#footnote-101) Indeed, this latter comment hints at a wider issue: that inaccurate reporting is straightforwardly harder to get away with at a local level because people are more immediately able to check the accuracy of a story against their own lived experiences. This can be particularly pronounced in relation to stories about immigration where a popular rhetorical device is that of ‘floods’ of immigrants placing an untenable burden on public services. Where this is reported nationally, it can easily stoke fears, even where the threat remains distant and hypothetical; if this is reported locally, readers can easily reference their own community-based experiences and question the story’s veracity.

In some regions, we see examples of local newspapers going further and carrying-out an activist role through participation in projects which engage media in activities to promote integration of immigrants. In South Wales, the Merthyr Tydfil Council public affairs department worked with local press to foster greater support for and understanding of migrants following the recruitment of many Polish and Portuguese workers by a local meat production factory.[[102]](#footnote-102) *Wales on Sunday*, for example, published stories which highlighted the migrants’ contribution to the Welsh economy through a willingness to take on jobs that local residents did not want and their desire to learn English.[[103]](#footnote-103) Similarly, the Asylum Positive Images Project in Scotland targets local media to influence content and portrayal of asylum, with activities including media awards, education of media students, training for asylum seekers and refugees on engaging with the media and community outreach activities.[[104]](#footnote-104) Furthermore, Oxfam, the Refugee Council, Amnesty International and the National Union of Journalists have produced a guide for journalists working in Scotland on accurate and balanced reporting in relation to the asylum and refugee issues.[[105]](#footnote-105) This was followed up by guidelines from the National Union of Journalists for the rest of the UK, however it is widely reported that the local media are keener observers of press regulatory standards than their national counterparts, particularly the tabloid newspapers.[[106]](#footnote-106)

In addition to a greater awareness of community cohesion and a stronger inclination to observe good standards of journalism, local newspapers tend to focus on human interest stories which emphasise immigrants as individuals. These stories cover areas such as cultural contributions, achievements in school (‘Syrian refugee who arrived in the UK in a chip van wins place at Oxford University’),[[107]](#footnote-107) work in the local community (‘Foreign Workers Take Jobs Welsh Don’t Want’)[[108]](#footnote-108) and cultural integration (‘This Kurdish refugee took his wedding vows in Welsh after fleeing persecution and finding a home’).[[109]](#footnote-109) Equally, local newspapers are more likely to focus upon the hardship suffered by migrants, using a sympathetic and humanitarian lens, than national newspapers which cast immigrants as threatening. So, for example, we see stories on the negative lived-experiences of refugees or on support shown by local communities for immigrant populations (‘Campaign to Save 10-Year-Old Glasgow Orphan from Deportation’).[[110]](#footnote-110) Similarly, pieces which depict threats of deportation are often found in the local press and tend to emphasise links that immigrants have forged with the local community (‘Anger as Liverpool Asylum Family and Disabled Son Detained and Set to be Deported’).[[111]](#footnote-111) What stories in the local press very rarely feature, however, is any discussion of the human rights of migrants, a striking conclusion given the focus upon individuals.

*Human Rights, Immigration and the Local Press: Do Human Rights Fail at a Local Level?*

A simple review of local media coverage of migrants, refugees and asylum-seekers reveals virtually no stories which contain any discussion of human rights. Migrants’ everyday lives can be shaped in multifarious ways by rights derived from a number of international instruments: whether as the basis for the individual’s residence in the UK, to resist deportation, to enjoy family life, or to access education, amongst others. In one respect, it is surprising that the local press – characterised by their tendency towards a human interest angle – does not provide a natural home for a focus on rights. Indeed, it is the very foundation of liberal human rights that they are enjoyed on an individual basis.[[112]](#footnote-112) However, the stories referred to above do not, for example, celebrate the right to access education of a child asylum seeker who goes on to gain a place to study at Oxford University. Nor is there acknowledgement of the right to be free from torture, human or degrading treatment or punishment, or the right to claim asylum from persecution, or the right to a private and family life, which can form the basis of a claim to resist deportation. In short, the local press with their focus on stories about individual migrants, have not extended the goodwill shown in some aspects of their coverage immigrants, to a sympathetic discussion of the contribution that human rights play in shaping the lives of these individuals.

Of course, the legal anatomy of a human rights claim in the immigration context, as outlined above, goes some way to explaining their lack of coverage in the local press. Human rights claims occupy a residual role in UK immigration law. As such, they are most often used to challenge immigration decisions and are, therefore, the fodder of appeal courts. Legal reporting in local news outlets tends to focus upon first instance courts, with discussion of higher court rulings and supranational judgments falling to the national press. This is indicative of a broader tendency not to cover national or international immigration policy in the local press. And, in many ways, this is unsurprising: scrutiny of Westminster powers, and the influence of European and international law, is naturally going to fall to national newspapers. The result is that we see a contrast between grievances around hard legal rules derived from a ‘foreign’ source and applied by distant appeal courts, on the one hand, and far softer, more banal reporting of human interest stories drawn from the locality and containing relatable details, on the other. This distinction between the distant national news and the familiar local news is unsurprising – and is played out in relation to many areas, not just immigration stories – but its potential impact on perceptions of human rights is interesting.

First and foremost, it belies an underlying assumption that human rights are not something to be enjoyed on an everyday basis, nor something from which individuals who do not suffer routine human rights abuses benefit. If human rights condition state power, allowing individuals to live their lives through the enjoyment of liberties,[[113]](#footnote-113) they are, by their very nature, extremely banal, local and everyday. Yet, this is not the public perception they enjoy. The infamous statement of Philip Davies, Conservative MP, that the ECHR is ‘a charter for illegal immigrants and criminals’ is indicative of a belief that human rights are simply not relevant to most people.[[114]](#footnote-114) As Davies also said: ‘I'm not aware of my decent law-abiding constituents running off to the European Court of Human Rights.’ Of course, the straightforward explanation for this is that those who enjoy a secure residence status in the UK, who do not come into contact with the criminal justice system, who are not members of minorities etc, are simply much less likely to suffer violations of their human rights. The reason they do not ‘run off to Strasbourg’ is not because human rights are not something they benefit from, it is because they are fortunate enough not to suffer human rights abuses. What is noteworthy here is that the human rights project of the twentieth and twenty-first century has largely failed to convey this message. Makau Matua, writing on the distinction between ‘civil rights’ and ‘human rights’ in a US context, makes the following observation: ‘…human rights problems” do not apply to “people like us” but rather to “backward” peoples or those who are “exotic”…’.[[115]](#footnote-115) The civil rights/human rights distinction is admittedly not one which readily translates to the UK context, but his observations here are nonetheless prescient. Where human rights are associated only with foreigners or those who engage in deviant behaviour, it becomes particularly easy to ‘other’ not just the individuals who benefit from them, but the content and the validity of the rights themselves.

Indeed, this observation resonates with some of the arguments of rights-sceptics around the failure of the post-Second World War human rights project to embed itself meaningfully at grassroots level and its association with political and legal elites.[[116]](#footnote-116) David Kennedy has written, in the context of the international humanitarian movement, about the Western-centric nature of the modern human rights movement and its tendency to favour those with existing political and economic means.[[117]](#footnote-117) Human rights language, people and activities are often better established among social elites, this results in a lack of knowledge about human rights laws, concepts and mechanisms amongst the very people they ought to serve.[[118]](#footnote-118) The result, therefore – presented as a fundamental failing of human rights by some commentators[[119]](#footnote-119) is a lack of consciousness within poor and marginalised communities of the rights that individuals enjoy.[[120]](#footnote-120) Banya comments: ‘[j]ust because human rights *information* is concentrated among elites, human rights *protections* should not be similarly biased’(original emphasis), pointing to the need to involve disadvantaged groups in human rights planning and implementation.[[121]](#footnote-121) Much of the work on the failures in human rights as a grassroots movement has been carried out in the context of developing countries, pointing to the limitations of an international movement which is the bread and butter of a Western, metropolitan elite, but has made limited inroads in the lives of ‘the poor, the powerless and the oppressed’ in Ghana, Mexico, Colombia, Morocco and India, for example.[[122]](#footnote-122) This critique is fairly fatal to any view of the post-Second World War human rights movement as a success, pointing, as it does, to an enduring global and social inequality which was the very thing the movement sought to address.

For many, human rights have failed to embed themselves at a grassroots level and this is evidenced in part by the relative paucity of coverage of human rights within the local press. The failure of human rights at grassroots level has two consequences. First, that they are an insufficiently mobilising force for the individuals who suffer the most violations. Second, that there is limited cognisance amongst those who do not routinely suffer rights violations that human rights nonetheless benefit them. This benefit comes not via the capacity to challenge state activity in the face of a violation, but instead through enjoying a life free of violations by virtue of living in a country whose legal structures uphold those rights on an ongoing basis.[[123]](#footnote-123) When we set this observation within the context of a local press that seems largely to overlook a human rights angle when covering immigration-related stories, we see that this is part of a wider tendency to downplay their value in everyday life. In short, we argue that human rights suffer from a PR crisis. Indeed, Moyn points to a lack of a rallying call, as compared to other globalising ideologies (citing, in particular, Christianity, nationalism and socialism): ‘human rights have not succeeded in offering the world breviaries, flags or anthems’.[[124]](#footnote-124) He argues, further, that this is a consequence of the relative infancy of the human rights movement, on the one hand, and the inevitable top-down nature of legal principles which require ‘the propagation of norms of international law to domestic mobilisation’, on the other. What is important here is that we see, once again, that the legal anatomy of human rights claims makes them seem removed from and irrelevant to the daily lives of most people. This offers some insight into the tendency of the local press not to give much coverage to the human rights angles of stories, particularly those of immigrants who are themselves often perceived as ‘different’ from the majority community.

Our observation that human rights dimensions rarely feature in positive news stories around immigration at local level has allowed us to identify a further factor which shapes press attitudes towards immigration, namely the limitations of a grassroots movement around human rights. That the language and philosophy of human rights has never really embedded itself in popular rhetoric in a local, community sense further distances this legal framework from those individuals who are the natural consumers of local media. This distancing effect is a further potent influence on the othering of immigrants: where they rely upon rights, this can simply be cast as further evidence that they are not ‘everyday folk’. If the ECHR is ‘a charter for illegal immigrants and criminals’ then reliance upon human rights must imply some sort of deviant behaviour. This third conclusion, therefore, is a natural corollary to the arguments made in previous sections, focusing as they did on recurring themes of deviance, difference and distance.

**Conclusion**

This chapter engages with the overwhelmingly hostile reporting of human rights in relation to immigrants in the UK media, and uses it is a base from which to explore reasons for it that are peculiar to the specific context – namely the ‘dual foreignness’ expressed by such cases and their particular legal anatomy – as well as how this fits into broader problems with the human rights project and its failure to gather grassroots support.

First, we identify that the tone of reporting on immigration in the UK press is overwhelmingly negative, noting key trends from media and communications literature, namely: the wide use of dehumanising metaphors; the particular focus on asylum seekers as an object of hostility, but in the context of inaccurate terminology and blurring of migrant groups together; and the strong role played by news reporting in shaping readers’ opinion of immigration. This hostile landscape is the foundation of our analysis in the rest of this chapter: how does the idea of human rights fit in, and interact, with stories of immigrants in the UK media?; and how can casting a critical *legal* eye over the interaction between human rights and immigration law offer new insights into the uncomfortable relationship between the two in the UK media?

As is established across this volume, hostile reporting of human rights is a feature across a number of contexts in the UK media. In the second and third sections of this chapter, we explored why this hostility is so potent when those human rights are attached to non-citizens, that is immigrants, and their permission to enter and reside in the UK. We first identified a perception of ‘dual foreignness’ in immigration-based human rights cases, which intensifies negative reporting, particularly in the right-wing press. Despite being a longstanding component of the UK’s international obligations and an integrated part of the domestic legal landscape, the press continues to represent human rights as being imposed from ‘outside’, from ‘Europe’, and as failing to represent or respect ‘British values’. When applied for the benefit of a person who is also considered to be ‘outside’ and ‘un-British’, we argue that this combination of overlapping spheres of ‘otherness’ makes for particularly toxic press coverage.

The second reason for the heightened hostility in the report of immigration human rights cases is the legal anatomy of such cases themselves, which we argue is structurally skewed towards negative reporting. Human rights are used as a way of challenging the state’s immigration decisions to protect the interests of the appellant. This framework immediately creates an ‘us and them’ divide, through which the state’s attempts to protect British values and British people as represented through the media, are pitched against the threat of the migrant trying to secure protection for their human rights. In this way, upholding a human rights appeal is seen as damaging to the UK in a zero-sum game created by the division. In addition, restricting appeals to human rights grounds, and limiting the circumstances in which those human rights appeals can be successful excludes most day-to-day cases and shifts focus to the more exceptional and unusual cases. Thus, the legal construction of these cases feeds into the extreme negativity with which they are presented by the UK media.

In our final section, we observe that these two issues do not seem to be reproduced in the local press. There is a difference between the subject matter reported in local and national news, but this notwithstanding we identify more positive treatment in the local reporting on immigrants due to closer observation of press standards and a much closer eye on the impact of what is written on community cohesion in the local area. However, it is interesting to note that whilst this can be seen to address some of the problems we see in the reporting on immigrants found at national level, it does nothing to touch the portrayal of human rights. The positive stories about immigrants are not presented through a human rights lens, and the human rights aspects of their stories are not discussed. Rather, in trying to present migrants as ‘like us’ and people to be celebrated, local news removes their need for human rights in the same way ‘we’ do not rely on human rights.

The failure of human rights as a grassroots project, that is, the failure to communicate and convince people of the banality of human rights as existing in the background of normal life not as wiggle room in exceptional circumstances, is well attested. We argue that this is played out in the positive reporting of immigrants in the local press, where human rights are noticeably absent, as well as in the negative national press which presents the ‘dual foreignness’ of human rights and immigrants as a problem, spurred on by the legal anatomy of these cases. Human rights, despite the legal role they have often played in improving the lives of immigrants to the UK, do nothing to alleviate their harsh treatment in the UK news media.

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1. On this point, Costello cites Advocate-General Maduro of the Court of Justice of the European Union (in his Opinion on Case C-327/02 *Panayotova* [2004] ECR I-11055) who argues the importance of judicial protection of fundamental rights of third-country nationals under European Union law precisely because their minority status puts them outside the political community which determines their legal entitlements (C. Costello, *The Human Rights of Migrants and Refugees in European Law* (OUP 2006) 9. [↑](#footnote-ref-1)
2. For further exploration of ‘misreporting, misconception and misconstruction’ by the media in relation to human rights, see Mead in this volume: D. Mead, ‘"They offer you a feature on stockings and suspenders next to a call for stiffer penalties for sex offenders”: do we learn more about the media than about human rights from tabloid coverage of human rights stories? in M. Farrell, E. Drywood and E. Hughes (eds), *Human Rights in the Media: Fear and Fetish* (Routledge 2018). See, also: D. Mead, ‘“You Couldn’t Make It Up”: Some Narratives of the Media’s Coverage of Human Rights’ in K. Ziegler, E. Wicks and L. Hodson (eds.), *The UK and European Human Rights: A Strained Relationship* (Hart, 2015). [↑](#footnote-ref-2)
3. A. Wagner, ‘Catgate: Another Myth Used to Trash Human Rights’ *The Guardian* (London, 4 October 2011) <https://www.theguardian.com/law/2011/oct/04/theresa-may-wrong-cat-deportation> accessed 12 June 2018. [↑](#footnote-ref-3)
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6. See, for example: Wagner (n 3); E. Balabanova, ‘Human Rights and Public Debate: The Media as a Scapegoat?’ in M. Farrell, E. Drywood and E. Hughes (eds), *Human Rights in the Media: Fear and Fetish* (Routledge 2018). [↑](#footnote-ref-6)
7. For an excellent summary of both the appeal and the first-tier decisions, see D. Campbell ‘”Catgate” and the Challenge to Parliamentary Sovereignty in Immigration Law’ [2015] Public Law 426. It has not been possible to provide a reference to the original judgment. Indeed, the reference provided by Campbell to the Asylum and Immigration Tribunal website is no longer active and has been replaced by a database that does not contain this decision, such that his secondary narrative (based upon primary documents) is the most comprehensive summary available at this time (July 2018). [↑](#footnote-ref-7)
8. R. Greenslade, ‘Seeking Scapegoats: The coverage of asylum in the UK press’, Asylum and Migration Working Paper 5 (Institute for Public Policy Research May 2005). [↑](#footnote-ref-8)
9. See, for example: Costello (n 1); N. Blake and R. Husain, *Immigration, Asylum and Human Rights* (OUP 2003) [↑](#footnote-ref-9)
10. Rights drawn from, respectively: Article 8 European Convention on Human Rights 1957, Article 3 European Convention on Human Rights 1957, 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol. [↑](#footnote-ref-10)
11. For example: S. Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (CUP 2004); H. Arendt, *The Origins of Totalitarianism* (Harcourt, Brace and Jovanovich, 1968 [1951]). [↑](#footnote-ref-11)
12. For example: V. Moreno-Lax, *Accessing Asylum in Europe: Extraterritorial Border Controls and Refugee Rights under EU Law* (OUP 2017); Costello (n 1). [↑](#footnote-ref-12)
13. For example: C. Harvey, ‘Refugees and Human Rights: the Future of International Protection in the United Kingdom’ (2015) 6 European Human Rights Law Review 603; B. McCloskey, ‘Third-Country Refugees: the Dublin Regulation/Article 8 ECHR Interface and Judicial Remedies’ (2017) 29(4) International Journal of Refugee Law 641. [↑](#footnote-ref-13)
14. Ofcom, ‘News Consumption in the UK: 2016’ (29 June 2017) <https://www.ofcom.org.uk/\_\_data/assets/pdf\_file/0016/103570/news-consumption-uk-2016.pdf> accessed 12 July 2018. [↑](#footnote-ref-14)
15. *ibid*. [↑](#footnote-ref-15)
16. Immigration Act 1971, ss. 1 and 2. [↑](#footnote-ref-16)
17. For further discussion of the treatment of EU citizens post-Brexit by the UK press, see Reynolds in this volume: S. Reynolds, ‘It’s Not Me, It’s You: Examining the Print Media’s Approach to ‘Europe’ in Brexit Britain’ in M. Farrell, E. Drywood and E. Hughes (eds), *Human Rights in the Media: Fear and Fetish* (Routledge 2018) [↑](#footnote-ref-17)
18. In UK law, an asylum seeker is a person who has submitted an application for permission to stay in a country other than her own as a refugee (Immigration Rules, 23 May 1994, HC 395 (as amended), para 327). [↑](#footnote-ref-18)
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21. Z. Stabac, K. Thorbjørnsrud and A. Todal Jenssesn, ‘News Consumption and Public Opposition to Immigration Across Countries’ in T. Aalberg and J. Curran (eds), *How Media Inform Democracy: A Comparative Approach* (Routledge 2012) 176-188, 176-177. [↑](#footnote-ref-21)
22. ‘Daily Mail Comment: It is time to end this migrant madness’ *The Daily Mail* (London 30 July 2015), <http://www.dailymail.co.uk/news/article-3179339/DAILY-MAIL-COMMENT-time-end-migrant-madness.html> accessed 12 July 2018. [↑](#footnote-ref-22)
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24. *ibid*, 589-590. [↑](#footnote-ref-24)
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33. J. Hathaway and M. Foster, *The Law of Refugee Status* (CUP 2014). [↑](#footnote-ref-33)
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36. Geneva Convention on the Status of Refugees 1951, Article 31. [↑](#footnote-ref-36)
37. Immigration and Asylum Act 1999, s. 31. [↑](#footnote-ref-37)
38. National Union on Journalists, *Fair Play: Refugees and Asylum Seekers in Scotland: A Guide for Journalists* (Oxfam, revised 2007), 13. Use of such terms is also in breach of s.1 of the Independent Press Standards Editors’ Code of Practice (<https://www.ipso.co.uk/editors-code-of-practice/> accessed 8 August 2016). [↑](#footnote-ref-38)
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47. *ibid*. [↑](#footnote-ref-47)
48. S. Walgrave and K. de Swert, ‘The making of the (issues of the) Vlaams Blok: the media and the success of the Belgian extreme-right party’, (2004) 21(4) Political Communication 479-500. [↑](#footnote-ref-48)
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70. ‘European Court of Killers’ Rights’, *The Sun* (17 August 2015). [↑](#footnote-ref-70)
71. See *Tyrer v United Kingdom* (1978) 2 EHRR 1, para 31: ‘…the Convention is a living instrument which…must be interpreted in the light of present-day conditions’. For a critique of the ‘living instrument’ approach of the European Court of Human rights, see: S. Theil, ‘Is the ‘Living Instrument’ Approach of the European Court of Human Rights Compatible with the ECHR and International Law?’ (2017) 23 (3) European Public Law, 587. [↑](#footnote-ref-71)
72. n 22, 25 and 26. [↑](#footnote-ref-72)
73. N. Shulka (ed), The Good Immigrant (Unbound 2016). [↑](#footnote-ref-73)
74. *ibid.* [↑](#footnote-ref-74)
75. Immigration Act 1971 ss. 1(2) and 1(4); Immigration Rules, 23 May 1994, HC 395 (as amended). [↑](#footnote-ref-75)
76. Technically in accordance with Immigration Act 1971 s. 3(2). [↑](#footnote-ref-76)
77. Immigration Act 1971 s. 3(2). [↑](#footnote-ref-77)
78. *Pankina v Secretary of State for the Home Department*[2010] EWCA Civ 719, [13]. [↑](#footnote-ref-78)
79. *ibid*; confirmed in *R (on the application of Alvi) v Secretary of State for the Home Department* [2012] UKSC 33. [↑](#footnote-ref-79)
80. Immigration Rules Part 11: Asylum, paras 326A-352H. [↑](#footnote-ref-80)
81. Immigration Rules Part 8: Family Members, paras A277-319Y, Appendix FM and Appendix FM-SE. [↑](#footnote-ref-81)
82. This dichotomy might also be observed in other types of public law cases, such as social security appeals (recently, see, for example *Secretary of State for Work and Pensions v Carmichael* [2018] EWCA Civ 548; T. Royston and C. O’Brien, ‘Court of Appeal Declares That Tribunals Must Apply Any Secondary Legislaiton That Breaches Human Rights’ (2018) 25(2) Journal of Social Welfare and Family Law D49). However, it is particularly acute in the example of immigration given the way that this framing is reproduced in media reports of these cases and the way in which questions as to the human rights of migrants have attracted media, political and popular attention. [↑](#footnote-ref-82)
83. Previously, appeals could also be made against many other decisions: refusal of leave to enter the UK; refusal of entry clearance, refusal of a certificate of entitlement (under s.10 Nationality, Immigration and Asylum Act 2002); refusal to vary leave to enter or remain if the result leaves the person with no leave to enter or remain; variation of leave to enter or remain if the result leaves the person with no leave to enter or remain; revocation of indefinite leave to enter or remain; removal decisions; decision to make a deportation order; refusal to revoke a deportation order. [↑](#footnote-ref-83)
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87. ‘Victory for Theresa May after drug dealer convicted of attempted murder loses human rights bid to avoid deportation’ *The Daily Telegraph* (London 25 May 2016) <https://www.telegraph.co.uk/news/2016/05/25/drug-dealer-convicted-of-attempted-murder-loses-human-rights-bid/> accessed 12 July 2018. [↑](#footnote-ref-87)
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89. *Razgar v SSHD* [2004] UKHL 27; *Huang and Kashmiri* [2007] UKHL 11. [↑](#footnote-ref-89)
90. Immigration Rules paras A398-399A. [↑](#footnote-ref-90)
91. Immigration Rules, para 398(c). The legal authority of this test was fortified by the Immigration Act 2014, which inserted equivalent provisions into the Nationality, Immigration and Asylum Act 2002. It states that the more serious the offence committed the greater the public interest in deportation is (Nationality, Immigration and Asylum Act 2002, s. 117C). [↑](#footnote-ref-91)
92. See, read together: Nationality, Immigration and Asylum Act 2002, s. 177C(5); Immigration Rules, para 399A. [↑](#footnote-ref-92)
93. *JO (Uganda) and JT (Ivory Coast) v SSHD* [2010] EWCA Civ 10, [28]. [↑](#footnote-ref-93)
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95. *MF (Nigeria) v SSHD* [2013] EWCA Civ 1192, [38]-[39]. [↑](#footnote-ref-95)
96. *ibid*. [↑](#footnote-ref-96)
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106. n 101, 80. [↑](#footnote-ref-106)
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109. B. White, ‘This Kurdish refugee took his wedding vows in Welsh after fleeing persecution and finding a home’ *The Western Mail* (Cardiff, 21 September 2016) <https://www.walesonline.co.uk/news/wales-news/kurdish-refugee-took-wedding-vows-11919698> accessed 12 July 2018. [↑](#footnote-ref-109)
110. S. McNab, ‘Campaign to Save 10-Year-Old Glasgow Orphan from Deportation’ *The Scotsman* (Edinburgh, 1 June 2018) <https://www.scotsman.com/regions/glasgow-strathclyde/campaign-to-save-10-year-old-glasgow-orphan-from-deportation-1-4748565> accessed 12 July 2018. [↑](#footnote-ref-110)
111. L. Thorp, ‘Anger as Liverpool Asylum Family and Disabled Son Detained and Set to be Deported’ *Liverpool Echo* (Liverpool 5 April 2018) <https://www.liverpoolecho.co.uk/news/liverpool-news/anger-liverpool-asylum-family-disabled-14495412> accessed 12 July 2018. [↑](#footnote-ref-111)
112. Articles 1 and 2 Universal Declaration of Human Rights (Universal Declaration of Human Rights (10 Dec. 1948), U.N.G.A. Res. 217 A (III) (1948). Critiques of the individual and universalist nature of human rights abound. See, notably: J. Bentham, *Anarchical Fallacies* (1789), as discussed in H. Bedau, ‘”Anarchichal Fallacies”: Bentham;s Attack on Human Rights’ (2000) 22(1) Human Rights Quarterly 261. [↑](#footnote-ref-112)
113. This view of rights as conditioning state power corresponds broadly to Dworkin’s idea of rights as trumps (R. Dworkin, *Taking Rights Seriously* (Harvard University Press 1977), but the observation is factual, rather than ideological. [↑](#footnote-ref-113)
114. Dixon (n 67). [↑](#footnote-ref-114)
115. M. Mutua ‘The Ideology of Human Rights’ (1996) 36 Virginia Journal of International Law 589, 609. [↑](#footnote-ref-115)
116. For a useful summary of recent trends in human rights critiques, see O. Pedersen and C. Murray ‘Examining Critical Perspectives on Human Rights: An Introduction’ in R. Dickson et al (eds), *Examining Critical Perspectives on Human Rights* (CUP 2016). [↑](#footnote-ref-116)
117. D. Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton University Press 2004) ch 8; see, also, in this volume, Gordon on the role of the media in challenging elitism, whether through human rights scrutiny, or wider democratic government accountability: M. Gordon, ‘Instrumentalism in Human Rights and the Media: Locking Out Democratic Scepticism?’ in in M. Farrell, E. Drywood and E. Hughes (eds), *Human Rights in the Media: Fear and Fetish* (Routledge 2018). [↑](#footnote-ref-117)
118. M. Banya, ‘Human Rights for Whom? A Closer Look at Elitism and Women’s Rights in Africa’ (*Open Democracy*, 2 December 2013) < https://www.opendemocracy.net/openglobalrights/moiyattu-banya/human-rights-for-whom-closer-look-at-elitism-and-women’s-rights-in-a> accessed 10 July 2018. [↑](#footnote-ref-118)
119. Open Global Rights, a website which facilitates learning and critical thought in relation to a range of human rights topics, hosts a discussion forum on the question of ‘human rights: mass or elite movement?’ with links to a range of articles debating this theme: < https://www.openglobalrights.org/human-rights-mass-or-elite-movement/> accessed 10 July 2018. [↑](#footnote-ref-119)
120. Bell offers a passionate rebuttal to some of Kennedy’s ideas on an ‘international human rights movement’ made up of professionals, international NGOs, bureaucratic machinery and governments, identifying instead her own experiences as part of ‘a movement of local activists…ordinary people, often marginalised in terms of their politics and their identity, ethnicity or gender…’, and citing the importance of human rights paradigms in activism (C. Bell ‘Human Rights and the Struggle for Change: A Study in Self-Critical Legal Thought’ in . Dickson et al (eds), *Examining Critical Perspectives on Human Rights* (CUP 2016). [↑](#footnote-ref-120)
121. Banya (n 18). [↑](#footnote-ref-121)
122. J. Ron, D. Crow and S. Golden, ‘The Struggle for a Truly Grassroots Human Rights Movement’ (*Open Global Rights*, 18 June 2013) < https://www.openglobalrights.org/struggle-for-truly-grassroots-human-rights-move/> accessed 12 July 2018. [↑](#footnote-ref-122)
123. We can, of course, observe that there is no country which benefits from the kind of utopian human rights framework which assures a violation-free existence for all individuals within its jurisdiction. Our point here is instead that the majority experience rights violations on a far less frequent basis than minority groups. Thus, rights become less relevant to their day-to-day existence not because they do not need the protections they offer, but because they already enjoy them. [↑](#footnote-ref-123)
124. S. Moyn ‘Human Rights Are Superficial’ (*Humanity Journal*, 10 June 2014) <http://humanityjournal.org/blog/human-rights-are-superficial/> accessed 12 July 2018. [↑](#footnote-ref-124)