

## Passports and pandemics: strategies of exclusion through the ‘medical border’<sup>1</sup>

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Although borders are conventionally understood as the territorial lines dividing nation states, in practice, borders are experienced and enforced both as an official institution and as a set of bordering practices within a state’s territory. Borders are thus always dynamic, rather than fixed in their operation and effects; and they manifest in myriad sites, both institutional and embodied, wherever practices of inclusion and exclusion are articulated, determined, enforced or resisted. As Shahram Khosravi (2020) has emphasised, attending to this multitude of actors, practices and histories allows us to appreciate ‘the border’ as a ‘ritualised performance’ of differential inclusion. In this short piece, we are interested in how the passport comprises one of the many techniques for instituting and ritualising the border in pandemic times. As we examine below, the COVID-19 pandemic prompted states to institute particular bordering practices in order to exclude ‘undesired’ non-citizens through new visa restrictions, while largely welcoming their own citizens, even if not tested or vaccinated. In order to contextualise such COVID-19 response, here we briefly examine the history of the passport as a technique of exclusion (even while it promises greater mobility for some) and reflect, in closing, on the impact of so-called ‘COVID-19 passports’, and related pandemic restrictions, on prospects for refugee justice and resettlement.

### Global and national responses

After the global onset of COVID-19 infections, it has become clear that the pandemic, and government responses to it, have operated in tandem *with* borders, with accompanying effects on the contours of ‘spatial and social injustice’ (Casaglia, 2021, p. 695). While states in the Global North have long created and maintained a racialised ‘hierarchy of mobility’ through their exclusionary immigration regimes, pandemic response measures have had further chilling effects on freedom of movement. From March 2020 onwards, states quickly moved to drastically tighten their border controls, with air travel diminishing to a point where airports were emptied of people instead becoming parking lots for vast numbers of stationary planes. While states sought to justify such measures on the basis of purportedly ‘protecting’ their citizens, conversely, those seeking protection, were denied it (Vogl et al., 2020). The UNHCR refugee resettlement program was temporarily suspended, nominally resuming again in August 2020. Border closures impacted adversely on migrant and refugee movement (Foster, Lambert and McAdam, 2021). Numbers of ‘irregular arrivals’ fell dramatically in Europe (Casaglia, 2021, p. 697). Border closures also put limits on those wanting to apply for asylum, not just

for those already granted it, who have also endured long waits for resettlement (Casaglia, 2021, p. 698; Banulescu-Bogdan et al., 2020). As Anna Casaglia (2021, p. 696) has insisted, the intensification of border control measures, including the turn to adopting ‘COVID passports’ in order to facilitate and privilege travel and movement by vaccinated individuals, thus became a technique for reinforcing experiences of ‘mobility injustice’ for those already experiencing discrimination and marginalisation.

Internal restrictions were also imposed through measures like home quarantine, and periodic lockdowns. Many of these manifested distinctly racialised effects *within* the border – as well as *at* the border – exemplified by the intensified policing of racialised communities, and the de facto exclusion of non-white citizens from returning to Australia, especially vis-à-vis India (see Macklin, 2020). Borders are thus ‘key makers of global injustice’ (Casaglia, 2021, p. 700). For our purposes here, the introduction of what has become referred to as the ‘COVID passport’ – an umbrella term for any kind of official proof that a person has been vaccinated or has some kind of COVID-19 clearance or immunity – has clearly had distinctly differential impacts on some populations compared to others, both within, at and beyond state borders. Globally, refugee communities have been and may continue to be among the last populations to receive COVID-19 vaccines, despite their demonstrated need for such healthcare and their heightened vulnerability to the virus (Ferdinand et al., 2020; World Vision International, 2021). Through COVID passports, this global failure to provide equal access to healthcare to all, has in turn, shored up pre-existing global hierarchies of mobility.

Nonetheless, the rationale behind a system of COVID passports has been justified in terms of both public health outcomes and economic benefits: domestically, COVID passports promised to make it easier for vaccinated or otherwise immune people *en masse* to interact safely in pre-pandemic day-to-day activities, thereby allowing social and economic activity to resume within a state; and internationally, COVID passports promised to enhance the mobility of certain travellers and facilitate travel between states for vaccinated or other immune people without the need for strict quarantine restrictions that were imposed in some states like Australia. While such quarantine restrictions to enter states have largely now eased, especially for citizens within some jurisdictions (Parveen, 2022), the requirements to provide proof of vaccination in order to access certain places such as hospitals and aged care facilities within states remain widely applied, with the EU Digital COVID certificate still required, as of early 2022, in many such settings across EU states as well as for cross border travel (European Commission, 2022). Nonetheless, the use of restrictive passports, largely based on immunisation, has clearly shone a light on the capacity for passports to operate in racially exclusionary ways, a trend which also has a much longer history.

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## Historical strategies of exclusion: disease and the passport

Although the introduction of COVID passports appears to represent a new bordering practice, the use of vaccine passports or certificates as a means of regulating human mobility within and between states is far from novel (Patel, 2021). Writing about the historical use of quarantine, Alison Bashford (2004, p. 36) has reflected on the use of bodily markers such as scars on a traveller's arms or faces (as a sign of having survived smallpox) in order to administer the Imperial Vaccination Act of 1867 (UK), arguing that such markers effectively functioned as 'passports into and out of certain zones.' Additionally, during the US smallpox epidemic at the turn of the 20<sup>th</sup> Century, vaccine certificates became a form of 'internal passport' required for regulating the movements of *particular* populations, especially racialised minorities such as African Americans (Willrich, 2011).

The historical link between pandemics and passports required for international travel is also illustrated by the enforcement of passport restrictions after the onset of the Spanish flu in the early part of the 20<sup>th</sup> Century (Kavalski and Smith, 2020). Similarly, concerns about privacy that have been articulated regarding the use of (digital) passports are not entirely new: at the 1926 Passport Conference in Geneva, delegates voiced concerns that the use of finger printing and other measures could comprise a breach of an individual's privacy rights (Kavalski and Smith, 2020).

The connection between 'disease', vaccination and human mobility also persists in a range of contemporary contexts. For example, some states routinely require proof of yellow fever vaccination (often a handwritten entry in a WHO 'yellow card' vaccination booklet) in order to travel to or re-enter from a particular region. Indeed, the US *Immigration and Nationality Act* renders a person ineligible for entry into the USA if they are not vaccinated for certain vaccine-preventable diseases such as mumps, measles, rubella, polio, tetanus, diphtheria, pertussis, influenza type B and hepatitis B (Wasem, 2011).

This history of vaccine certification to enable or curtail individual mobility across and within state borders needs to be understood within this much longer historical context of conventional state passports effectively functioning as gendered and racialised border technologies.<sup>2</sup> Yet, current proposals for, and the use of, COVID passports appear categorically different on two key levels: first, through the use of big data technology in COVID passports; and second, the diffuse use of COVID passports (i.e., no longer simply checked at point of entry into a state, or at a railway port, but used to regulate and determine access to places and services in everyday life such as restaurants, schools, universities and sporting facilities). Although the enforcement of these mandates is diminishing, they remain applicable to

people employed in particular industries and occupations (Kolovos, Rose and Ore, 2022), as a condition of entry to many venues (European Commission, 2022) and for international travel in certain contexts.

## Ensuring safeguards during the 'emergency'

The proposal for a vaccine passport, like many other responses to the pandemic, has been defended as crucial to deal with this 'emergency'. However, states need to take time to ensure that their responses are accompanied by careful consideration of the purposes of vaccine passports, and of the necessity of the data sought. At the very least, such measures ought to be accompanied by 'effective remedies to protect rights' and ensure 'technical and organisational safeguards' (Gstrein 2021, p. 11). This is important, we argue, since the health of a state's population is also dependent on how it treats those at the margins. A response which is fundamentally informed by human rights is critical for mobility justice. Vaccine nationalism, immune-privilege and the policing of a person's vaccine status are likely to limit enjoyment of fundamental human rights for those at the margins (Heller, 2021, p. 122). Without such attention to the implications for the human rights of refugees, as Matiangai Sirleaf (2021, pp. 93-4) has cautioned, the treatment of those on the margins of society (Hall and Studdert, 2021) is likely to amount to a global 'moral failure' of sorts. Caution is also warranted in relation to the use of the vaccine passport as an emergency response given the ease with which the use of the standard passport has become normalised (Kavalski and Smith, 2020) and the impact that this has had on limiting freedom of movement for some, typically those without access to resources, legal, economic and otherwise. Those seeking refuge for example, who are without an internationally recognised passport, typically face numerous obstacles to the successful processing of their applications for asylum.

In many respects then, the pandemic and the introduction of vaccine passports point to the proliferation of 'highly uneven and contradictory global mobility entanglements' that are marked by the privileging of particular kinds of movement and bodies: those with the 'right passport' and 'the right amount of cash' (Heller, 2021, pp. 113, 114). At the same time, it has been those with privilege who have had the luxury of remaining safely immobile during the pandemic (Heller, 2021, p. 117).

There are also questions around who and what is being served by COVID passports. At its most basic level, these passports are defended by governments as a way of opening up the borders again. But who and what are the borders being opened to, and what is obscured by these narratives? Importantly, this raises potential concerns around rights to mobility, and the possibility that, rather than open borders, a COVID passport might serve to

<sup>2</sup> On the gendered and racialized histories of 'the passport', see Dehm (2022).

reinforce global hierarchies, between those who can move and those who cannot (Macklin, 2020). As Charles Heller remarks (2021, p. 125)

Those who cannot stay where they are, because of wars, political and economic crisis, and the lack of prospects to fully realise their lives, will continue to move no matter what restrictions states impose, and they *must* have the right to travel with safe and legal means.

### A time of 'racial reckoning'?

The function of state-issued passport has long served both to enable and limit movement, and as a tool of governments to exercise control over their territorial borders. Yet the extent to which the emergence of COVID passport systems will limit mobility for some, and enable it for others, remains to be fully tested. But it is crucial to consider, especially in relation to refugee movement, given the historical limitations imposed by the conventional state-issued passport, let alone one which is arguably designed to 'liberate' the world from the pandemic. This is a time also of 'racial reckoning' (Sirleaf, 2021, p. 72), in which control is differentially exercised depending on who is moving across borders. The 'pathologisation' of some forms of mobility illustrates how 'moral geographies' accompany and reinforce the physical border (Casaglia, 2021, p. 696). In this vein, COVID-19 and COVID passports have revealed how 'access to health' functions as a 'gatekeeping practice' for some but not others (Casaglia, 2021, p. 698). Importantly, it is also clear that unlike state-issued passports, the vaccine passport will have a limited life of one to two years and may have to be regularly renewed in order to secure the right to travel and, potentially, the right to goods and services. In many respects, the pandemic and responses to it, such as the introduction of COVID passports, illustrate the materialisation of unequal access to *mobility*, overshadowing the border as such. Regular and timely access to the vaccine, as a form of 'immunoprivilege' (Liz, 2021), is also likely to be critical to the enjoyment of mobility justice.

The pandemic, and the COVID passport, have been characterised by growing distinctions between the access to human rights by citizens and by non-citizens, recalling Hannah Arendt's (1951) insight that to enjoy human rights, one must first enjoy the 'right to have rights'. In many respects then, the response to the pandemic in the form of vaccine passports reflects the intensification of national borders. Like state-issued passports, and state borders more generally, COVID passports and the bordering practices they introduce set a precedent. And although in many jurisdictions we are seeing the relaxation of COVID passports, and of requests for proof of vaccination (Parveen, 2022), the use of such measures will always remain available for re-appropriation in the future. As we note above, there is also a persistence of measures such as the EU Digital COVID Vaccination Certificate (European Commission, 2022).

Importantly, despite the relaxation of quarantine mandates, and vaccine passports for those travelling for work or leisure, many states have not returned to pre-COVID resettlement

numbers for those seeking refuge. Two years after the pandemic was declared, there has been a marked reluctance by many states to provide protection to those seeking asylum, often relying on 'restrictive public health practices' that have been retained as 'security measures' (UNHCR, 2022). Those seeking refugee protection and forced migrants more generally, are made vulnerable when they lack possession of a passport. A mundane, somewhat innocuous document for those of us who enjoy uncomplicated freedom of movement, not having one closes off such possibilities. Accordingly, we call for careful vigilance on how state responses to the pandemic contribute to an expansion in borders which benefit some while disadvantaging others, as all state borders do.

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