



## **Punished for Persecution**

### **An Analysis of the Criminalization of the Asylum Seeker in the United Kingdom**

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## **Declaration Form**

The work I have submitted is my own effort. I certify that all the material in the Dissertation which is not my own work, has been identified and acknowledged. No materials are included for which a degree has been previously conferred upon me.

Signed: *Molly G. Haglund*

Date: *20 May 2012*

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I dedicate this dissertation to the many individuals seeking sanctuary within the United Kingdom—both those I have personally encountered and the countless others who are criminalized in their pleas for protection.

## **Abstract**

Far from a welcoming and humane reception, those seeking asylum within the United Kingdom are confronted with obstacles at all levels of their search for protection. Rather than fulfill their responsibilities to refugees, the UK has sought to avoid its international legal obligations through the implementation of deterrence policies—practices that seek to evade and deny the offering of protection at various levels of the asylum process. These policies not only actively oppose the best interest of the asylum seeker and deny this fundamental human right, they simultaneously classify these vulnerable individuals as deviant outsiders. The externalization of immigration controls through the employment of containment strategies, widespread use of detention, the passing of legislation that facilitates destitution, as well as the negative depiction of asylum seekers in the popular press all combine to effectively criminalize refugee claimants. But how is that individuals fleeing persecution and requesting refuge within the UK have come to be viewed and treated as criminals? The following work seeks to answer this question. In addition to illustrating the various means by which the asylum seeker in Great Britain is criminalized, a contextualization of this process within the theoretical framework of Howard Becker's labeling theory allows for deeper introspection into both how and why this phenomenon is occurring.

**Key words:** Asylum Seeker, Asylum, Deviance, Criminalization, United Kingdom, Deterrence, Refugee Claimant

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# PART I: The Criminalization of Asylum Seekers

## CHAPTER 1: Introduction

### 1.1: Context of Study

In 2002, asylum applicants comprised 49% of net migration<sup>1</sup> to the United Kingdom, peaking at an all time high of 84,130 asylum applications (Blinder, 2011b). By the end of 2011, this number had drastically dropped by well over three quarters, with a grand total of 19,804 applications for the year (Home Office 2011). Despite this heavy decline, however, “the asylum seeker” remains at the forefront of the immigration question within the United Kingdom. On the 16<sup>th</sup> of October 2011, the Migration Observatory based at the Centre of Migration, Policy and Society (COMPAS) at the University of Oxford released a report entitled, *Thinking Behind the Numbers: Understanding Public Opinion on Immigration in Britain*. The survey, conducted between the 2<sup>nd</sup> and 8<sup>th</sup> of September of 2011, asked a series of questions regarding immigration and immigrants to a sample of 1,002 adults living in Britain. The survey sought to address two separate elements of the immigration debate, asking: “First, who do people have in mind when thinking and answering questions about ‘immigrants’? Second, do people’s views about reducing, increasing or maintaining the number of immigrants coming to the UK vary across specific groups of immigrants?” (Migration Observatory 2011: 3). Its results found that the majority of the population (69% to be exact) favored a reduction in immigration numbers—a concern directed primarily toward *illegal* immigration. Additionally, and most importantly for purposes of this dissertation, it found that an overwhelming 62% of those surveyed said that they thought of asylum seekers when referring to immigrants *in general*. This is an impressive number when compared to the mere 4% of immigrants to the United Kingdom that asylum seekers currently comprise (Migration Observatory 2011). So what may account for such a visible role that the asylum seeker has come to play in the immigration realm? How is it that individuals who have fled their homelands in fear for their lives have come to be viewed so negatively? It is the argument of this dissertation that the criminalization of the asylum seeker has contributed to these curious statistics.

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<sup>1</sup> “Net migration” is defined by the Organization for Economic Cooperation and Development as: “The difference between immigration into and emigration from the area during the year (net migration is therefore negative when the number of emigrants exceeds the number of immigrants)” (OECD 2005).

The use of terms such as “illegal,” “alien” or “undocumented”—all titles employed in referring to the unauthorized or irregular migrant—and that of “asylum seeker” have blended to such an extent that their meanings, though distinct, are no longer distinguishable. Asylum and any individual seeking to claim this basic human right have come to be synonymous with illegality—operating within a discourse of criminality and securitization as opposed to one of humanitarian concern and respect. The confusion of these terms in the mind of the public has been fueled by the press, particularly the tabloids, which interchangeably utilize them. While the mystification of these terms has been greatly aided by the media and political rhetoric, perhaps more seriously is the little distinction made between these different types of migrants at the level of policy and enforcement. The unfair processing of asylum claims, enactment of increasingly restrictive legislation, limited recourse to work or other means of survival for those who are awaiting or appealing decisions on their asylum claims, and the widespread confinement of asylum seekers within prisons and immigration removal centres (IRCs) across the United Kingdom appear to punish those fleeing persecution rather than protect them. Another reason this befuddlement may occur is because commonly, asylum seekers *are* unauthorized at some point in their asylum-seeking process, either before or after they have made their claim. Because asylum seekers may be both categories simultaneously, this further complicates clarity in properly distinguishing them from other migrant groups (Story 2005). Despite this seemingly inevitable lack of clarity with regard to the precarious circumstances of individuals who oftentimes come here without documents, illegally enter the country with false papers or through smugglers, or delay making an official asylum claim for fear of detention or deportation, the following research contends that deliberate methods and premeditated strategies are in place to encourage and exacerbate this confusion and flow of misinformation. The blurring of asylum seekers with irregular migrants, migration with criminality in general, and policies that take a stance of mistrust, security and control and which actively and intentionally portray the asylum seeker as criminal has increased significantly in the last decade. Indeed, equating asylum seekers with criminality is a common practice that is regularly reproduced in the wider public discourse.

Despite continual lip service to a so-called “noble” tradition of offering protection, the UK consistently circumscribes and avoids its obligations to the asylum seeker. It is the central assertion of this dissertation that the criminalization of those seeking refuge within the United Kingdom is one of the primary instruments of this circumvention, carried out in a variety of



ways. The following research seeks to identify the different avenues through which this criminalization process is occurring by answering the following, over-arching question: *How has the asylum seeker in the United Kingdom come to be criminalized?*

This analysis will be carried out on two separate, though highly interconnected levels. First, the primary means of criminalization will be analyzed. This will include specific aspects of the criminalization process that find their roots in the legal framework of policy and legislation, as well as at the enforcement and processing stages. In addition to the primary means, a discussion of the secondary means by which the asylum seeker is criminalized will be conducted. This will include a brief discussion of the media discourses that perpetuate and reinforce the misconstrued connection between asylum seekers and deviance. The distinction of “primary” and “secondary” means of criminalization has been made for research and clarity purposes. In order to fully grasp this process in its entirety, however, it is essential to keep in mind the consistent overlap and symbiotic relationship that the primary and secondary means of criminalization share. Part III will examine the means of criminalization within the theoretical framework of labeling. By doing so, the reader gains a greater understanding of *how* those seeking sanctuary within the United Kingdom came to be a focal point of public attention. Finally, an investigation as to *why* this process is occurring will be presented in Part IV. This will allow for deeper introspection into the motives and reasons underlying the stigmatization and the generally negative feeling toward the asylum seeker.

## ***1.2: Research Design***

In January of 2011, I began interning with Detention Action (formerly known as the London Detainee Support Group), a London-based charity that provides emotional and practical support to immigration detainees held in the Harmondsworth and Colnbrook Immigration Removal Centres. I worked from the office for over six months in 2011 and, after a period outside of the country, returned to my role with the organization in January of 2012 where I have remained since. Throughout the year that I have been volunteering with Detention Action, I have had frequent contact with asylum seekers from across the globe at various stages of the asylum process. Hundreds of personal phone conversations and numerous visits to detention centres have illuminated a treatment of asylum seekers by the UK not unlike that received by criminals. In witnessing the prison-like environment in which vulnerable individuals are held for

limitless periods of time, and through regular exposure to their emotional trauma and horrifying experiences via story and conversation, the dismal reality of the asylum seeker's search for security was presented to me on a personal, human level. Indeed, it is the traumatic experiences of the individuals I have encountered in the last year and a half and the blatant violation of their humanity that prompted this dissertation's topic and has inspired its examination of both how and why the asylum seeker in the UK is criminalized.

I have utilized certain, specific examples of individuals I have encountered from my internship with Detention Action for illustrative purposes only. My work with the organization has, from the start, derived from a capacity of support. In conversations with asylum seekers living in detention, I did not explain my personal research, as I did not want to risk blurring the boundaries of my role as service provider. Interacting with individuals engaging with the asylum system in the UK—both those explicitly mentioned in my writing and those unreferenced—have provided much insight into the reality of those directly experiencing the effects and consequences of the criminalization process. Due to the naturally precarious situation of individuals living in detention and their transient, mobile states (regularly removed or deported from the UK, transferred between different detention centres, or released from detention), maintaining consistent contact with the whereabouts of these individuals can be a problematic, complicated task. This has proven to be the case for those cited in this work. For this reason, the names of any asylum seekers who I have encountered and later referred to in my writing have been changed to maintain their anonymity and to protect their identities. Permission to utilize these statements was granted from Detention Action.

While my experience within the immigration detention domain has exposed me to contemporary asylum and immigration policies fundamental to this social research process, my work with (and any reference to) Detention Action acts as supplementary support to more in-depth, secondary research. The published findings of investigations conducted by support organizations engaging with asylum seekers in Great Britain have been essential to the documentation of practices that put desperately vulnerable individuals on a par with felons. Similarly, the writings of migration and refugee researchers, political scientists, sociologists, criminologists, and philosophers have provided the base by which I have both analyzed and critically questioned the criminalization process—greatly assisting in my examination of the question of how and why the asylum seeker in the UK has come to be seen as deviant. With the

awareness that countless individuals have and will experience a plight similar to those I have met in my work with Detention Action, this dissertation hopes to make a positive contribution to the ongoing body of work regarding the criminalization of the asylum seeker in the United Kingdom and to shed additional light on this unjust social process.

### *1.2.1: Methodology*

My research is embedded within the theoretical framework of labeling theory. Investigative research for this dissertation has included a thorough and critical reading of the available literature,<sup>2</sup> observations from my work with asylum seekers and my internship with Detention Action, and analysis of the sentiments and discussion surrounding asylum and immigration expressed by members of the public in everyday interactions, on the internet, and through the media. Studying the sentiments expressed in these discourses together with the United Kingdom's treatment of the asylum seeker, I evaluate the implications of these attitudes in the context of a broader ideology. Through critical textual analysis, informed by labeling theory, I illustrate and analyze the social process by which the asylum seeker is criminalized.

Michel Foucault argued that the way in which language relates to a given subject acts as a frame through which we understand it: "The discourse forms a version of it. Moreover, the version of an object comes to *constitute* it...In this way, a discourse is much more than language as such: it is constitutive of the social world that is a focus of interest or concern" (Bryman 2008: 499). In examining the discourses enmeshed in the literature, popular press, political rhetoric, public sphere and from the mouths of the individuals implicated within these discourses themselves, one discovers great discrepancy between the reality of persecuted individuals in search of protection and the threat they have been painted to be. By looking through the theoretical lens of labeling theory, the reader comes to understand how the discourse and policies surrounding asylum seekers inform the labeling of these individuals as deviant—thereby contributing to their cyclical criminalization.

### *1.2.2: Literature Review*

The literature involved in the research and documentation of the criminalization of the asylum seeker in the UK can be divided into three categories—each of which illustrates and

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<sup>2</sup> See the literature review below, as well as the bibliography on page 42 for a full outline of the sources utilized throughout this research.

supports the social process examined here. Work specifically pertaining to the criminalization of asylum seekers and migrants in general, both in and outside the UK, is included within the first category. It is upon these academic studies that I will elaborate in this section—locating my own work in relation to theirs. Theoretically informed texts relevant to how those seeking sanctuary have come to be perceived, treated, and made to be deviant outsiders comprise the second category of literature utilized in this research. The work of Howard Becker and Edwin Lemert regarding labeling theory, in addition to that of sociologists Stanley Cohen, Zygmunt Bauman, and Mary Douglas provide the theoretical base utilized throughout the writing and research of this dissertation. The social processes by which the asylum seeker came to be associated with deviance will be contextualized within their work in Part III—where an in-depth explanation of the theory itself will also be given. The final distinction I make regarding the literature utilized in my analysis is that of the extensive work of asylum support and other human rights organizations that have investigated and written reports about various facets of the criminalization process. Despite the fact that these aspects are not discussed within the broader context in which the asylum seeker is made to be criminal, their work has been central to my illustration of this cycle and will be utilized throughout the entirety of this work.

In “The Criminalisation of Asylum Seekers and Asylum Policy,” James Banks employs criminological and penal theory to examine the UK’s policy responses to the asylum seeker. By examining the state’s treatment of refugee claimants, Banks argues that the UK’s actions may only be considered appropriate if asylum seekers are problematized as dangerous (2008). Brett Story’s “Politics as Usual: The Criminalization of Asylum Seekers in the United States” discusses a similar process in the US in which the asylum seeker has been framed within a context of security. By comparing US asylum policy to domestic crime control, Story illustrates the de facto criminalization of refugee claimants within the United States. Furthermore, he addresses the functions of asylum politics and state motives in their implementation (Story 2005). In “Deterrence Measures and the Preservation of Asylum in the United Kingdom and United States,” Lisa Hassan argues that contemporary asylum and immigration controls act as a means by which the UK and US actively avoid their obligations to the 1951 Refugee Convention—discouraging, deterring, and denying protection to those seeking refuge (2000). Migration and refugee researcher Matthew Gibney identifies the point at which asylum came to be an urgent issue in the UK public mind and the “deportation turn” that came about because of

this heightened focus on refugee claimants in “Asylum and the Expansion of Deportation in the United Kingdom” (2008). He also provides important insight into the fundamental role that electoral democracy has in the implementation of deterrence policies and the cyclical criminalization of the asylum seeker in “The state of asylum: democratization, judicialization and evolution of refugee policy in Europe” (Gibney 2001).

In keeping with the analyses of James Banks and Brett Story, this research similarly examines the UK’s treatment of asylum seekers from a perspective of security and control. Lisa Hassan’s discussion of state deterrence policies also provides helpful support in demonstrating the United Kingdom’s intentional evasion of its duties to refugee claimants. Finally, the work of Matthew Gibney regarding the underlying motives of the UK’s stance toward the asylum seeker has been critical to this dissertation’s exploration of the same. While largely complementary of the current research regarding the criminalization of the asylum seeker, the application of labeling theory to the asylum seeker is my unique contribution to the body of work surrounding this phenomenon. Analyzing this criminalization in light of Howard Becker’s labeling theory provides important insight into this social process in various ways. I am able to illustrate how the asylum seeker has come to be viewed and treated as a culpable, deviant individual—building upon a purely demonstrative illustration of the criminalization process by delving into deeper questions regarding how this cycle came to be and why it is able to continue. As previously mentioned, this theory and its application to the asylum seeker will be revisited and explained in detail in Part III. In order to engage with the criminalization process within this theoretical context, however, it is important that the reader first understand the various ways in which the asylum seeker has been made or perceived to be criminal in the United Kingdom. These means of criminalization will be examined throughout Part II yet, prior to doing so, an overview of the UK’s legal obligations to the refugee will be given in the following chapter.

## **CHAPTER 2: The UK’s Legal Obligations to the Asylum Seeker**

The fourteenth article of the 1948 United Nations’ Universal Declaration of Human Rights states that, “Everyone has the right to seek and to enjoy in other countries asylum from persecution” (UN 1948). This basic right has been, and continues to be, essential to the very survival of countless individuals across the globe. Arising out of the struggles, fear and chaos confronting those fleeing the destruction and death of the Second World War, the 1951 United

Nations Convention Relating to the Status of Refugees (also known as the “Refugee Convention”) was born. Its sole amendment, the 1967 protocol, expanded the convention by erasing its geographic and temporal limitations so as to include all non-Europeans, in addition to extending its protection to events beyond 1951 (UN 1967). The United Kingdom ratified the Convention in 1954 and its Protocol was acceded on the 4<sup>th</sup> of September 1968 (UN 2011). Bound by international law to both the Convention and its Protocol, the United Kingdom is obliged to provide refuge to the vulnerable individuals who reach its shores in search of sanctuary. Similarly, under the terms and conditions of the 1987 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the 1950 European Convention on Human Rights (incorporated into law through the Human Rights Act of 1998), the UK is legally required to provide humanitarian protection of some form to those who can demonstrate a real risk of “inhuman or degrading treatment or punishment” should they be returned to their country of origin (ECHR).<sup>3</sup> This is known as the principle of non-refoulement.

A refugee, according to the 1951 Convention Relating to the Status of Refugees, is:

A person who is outside his or her country of nationality or habitual residence; has a well-founded fear of persecution because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail himself or herself of the protection of that country, or to return there, for fear of persecution (UN 1951).

The title of “refugee,” however, is one that only states have the power to confer upon individuals. When a person enters another state in hopes of seeking asylum, it is up to the receiving state to decide whether or not to recognize that individual as a refugee, thereby granting protection of some form. Until the state chooses to give this recognition, however, the individual is considered an “asylum seeker”—a person in the midst of making their asylum claim or having their claim processed. If the host state chooses not to recognize the asylum applicant as a refugee and denies their asylum claim, the individual is then considered to be a “failed” or “refused asylum seeker”.<sup>4</sup> According to the United Nations High Commissioner for Refugees

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<sup>3</sup> This citation is taken from article 3 of the European Convention on Human Rights. The same principle is specified in article 3 of the Convention Against Torture in addition to article 33 of the Convention Relating to the Status of Refugees.

<sup>4</sup> For general purposes, these terms are synonymous, however, there is an important distinction between the two. While asylum seekers who have had their claims refused are generally referred to by the Home Office as “failed asylum seekers,” from a human rights perspective (that adopted by most organizations carrying out refugee-related research or providing asylum support), use of the word “failed” to describe an asylum seeker is considered incorrect and unfair. A more appropriate term is “refused asylum seeker.”

(UNHCR) Handbook, however, this should not be the case: “He does not become a refugee because of recognition, but is recognized because he is a refugee” (UNHCR 1979: 7). Despite this crucial stipulation, until a refugee receives official state recognition of his or her status, protection will not be granted. In this case, the individual will be asked to leave the country as soon as possible or, upon failure to do so, will be forcibly removed.<sup>5</sup>

The overwhelming majority of initial decisions on asylum claims within the UK—dating from 1994 onwards—have been refusals. In 2010, 74% of claims were refused while only 25% were initially accepted (Blinder 2011b). After an asylum application has been initially refused, however, the decision can be appealed to the First Tier or Upper Tribunal of an independent judicial body known as the Asylum and Immigration Tribunal (AIT). Among the total number of asylum claims made between 2004 and 2010, 76% of rejected applicants lodged appeals. 23% of those appeals were successful. In 2009, the total appeal success rate increased to 28%, before dropping to 27% in 2010 (Blinder 2011b: 5). These significant statistics call into question the quality of initial decision making by UK authorities. “The large proportion of negative decisions made by the Home Office and overturned on appeal by immigration judges has also fed a perception that the UK government may be more interested in limiting the number of successful claims than in ensuring that those that are truly endangered receive protection” (Gibney 2011: 3). This raises serious concerns regarding the United Kingdom’s duty to safeguard this important human right in addition to the countless individuals whose lives have been put at serious risk, or even lost, as a result.

Military conflicts and crises across the planet force hundreds of thousands to flee their homelands annually, but just where asylum seekers are coming from depends very much on the political climate of the time. In 2010, the five leading groups of asylum seekers coming to the UK were from Iran, Afghanistan, Zimbabwe, Pakistan, and Sri Lanka (Gibney 2011). While many asylum seekers make their claims immediately upon arrival (by doing so either at the port of entry or presenting themselves to authorities after already having entered the UK), many others choose not to do so. “[R]estrictive controls can increase the incentives for those with legitimate asylum claims to bypass the formal UK refugee system altogether and disappear underground, seeking a kind of informal asylum as undocumented migrants” (Gibney 2011: 4).

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<sup>5</sup> Despite a minor distinction between the terms “deportation” and “enforced removal,” the two are generally used interchangeably. For purposes of this dissertation, both will be used to mean the same thing: removal from a state by the border agency.

Faced with the very real alternatives of possible deportation or indefinite detention, many would-be asylum seekers prefer to risk their chances on their own rather than making themselves known to the UK Border Agency—choosing illegality as the most rational option when taking into consideration the asylum measures in place. This sentiment was echoed in a Migration Observatory report:

If it is true that asylum seekers respond to incentives and disincentives, very punitive policies may have the effect of making life outside the state's purview and control increasingly desirable, especially if one has little trust in the state's ability to judge asylum claims with equanimity (Gibney 2011: 4).

These policies will be examined in more depth in the following chapters.



## **PART II: The Process of Criminalization**

### **CHAPTER 3: A Tradition of Deterrence**

On the 10<sup>th</sup> of October 2011, Prime Minister David Cameron gave a speech on immigration, proposing systemic reforms so as to reduce net migration to “the order of tens of thousands each year, not the hundreds of thousands every year that we’ve seen over the last decade” (Cameron 2011). This suggested blanket on the total number of individuals allowed entry into the UK implies an urgent need on behalf of the Prime Minister to address migration anxieties, as well as a treatment of migrants that inherently favors a general reduction in the number of people coming to the UK. “Yet what is all too easily forgotten in such rhetorical gestures is the fact that lives are at stake in such decisions; the meeting of targets is crucially also the casting of lives as either legitimate or illegal” (Darling 2009: 650). Matthew Gibney’s “Asylum and the Expansion of Deportation in the United Kingdom” details the consequences of past migration concerns on the asylum seeker:

It is perhaps no coincidence that a period of government anxiety over asylum numbers since the early 2000s has been accompanied by legislative and policy changes that have withdrawn in-country appeal rights for certain categories of applicant, reduced legal aid for the preparation of asylum cases, and introduced the fast-tracking of asylum claims deemed unlikely to succeed (Gibney 2011: 3).

The combination of the British government’s pressure to respond to a public that continually points to the asylum seeker as problematic and the legal obligation to abide by its refugee responsibilities has resulted in the United Kingdom’s focused attention on tactics surrounding one main theme: deterrence. In its effort to control and limit the number of potential asylum seekers entering the nation state, the UK has imposed serious impediments upon individuals in genuine need of protection—riding a fine, technical line between violation of and compliance with the Refugee Convention. Compelling at-risk individuals to risk still more, these practices serve to criminalize the asylum seeker.

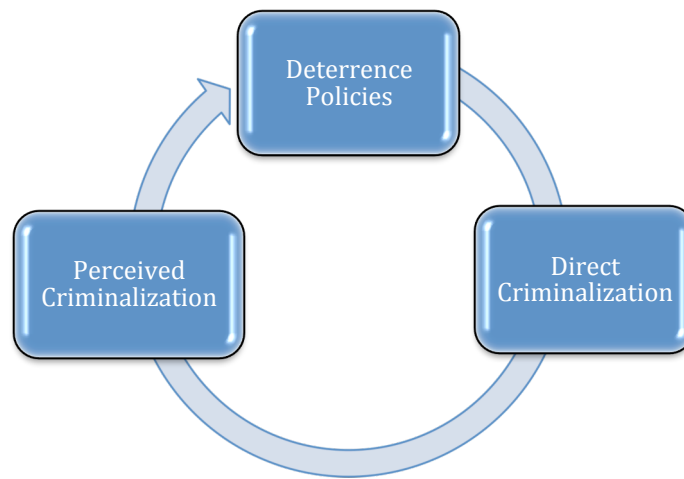
With so few options available within a shrinking zone of legality, many asylum seekers are forced to resort to the only avenue open to them: criminality. Increased legislation that forces asylum seekers into working illegally or acquiring false documents to do so converts hard-pressed individuals hoping to survive into certified offenders. Indeed, many asylum seekers find themselves in circumstances in which the criminal option is not only the best option—it’s the *only* option. In addition to this very literal and direct form of criminalization, the use of

fingerprinting, compulsory biometric measurements, restraint with handcuffs, sedation, and the widespread confinement of asylum seekers within prisons and immigration removal centers are practices more frequently associated with the treatment of individuals convicted of serious crimes than with those seeking refuge. These policies, enacted and enforced by the United Kingdom, appear to act as a deterrent to the asylum seeker rather than a humane reception. For purposes of this dissertation, these practices—ones that make and treat the asylum seeker as criminal—are referred to as the “primary” means of criminalization and will be examined in more depth in the following chapter.

The criminalization process is provoked and further exacerbated in the representation of asylum seekers, unauthorized migrants, and migrants in general by politicians and the popular press—the “secondary” means of criminalization to be discussed in Chapter 4. The consequential conflation of “asylum seeker” and deviance as perceived by the general public implies that the issue of asylum has come to be seen and treated as a matter of security rather than one of humanitarian concern. This, in turn, provides the necessary base of support for increasingly draconian deterrence policies and, as Figure 3.1 on the following page illustrates, feeds a continuous cycle of criminalization. By taking such an attitude toward the asylum seeker, the UK has adopted practices and policies that would more aptly apply to the criminal—a stance that this dissertation contends is not unintentional.

Deterrence policy is a central feature of the United Kingdom’s circumvention of its responsibilities to the asylum seeker—and of the subsequent criminalization of those in hope of protection. On the one hand, these policies *discourage* potential asylum seekers from coming or attempting to come to the UK. The containment strategies detailed in the following section attest to this direct form of discouragement, in addition to the natural dissuasion transmitted by those who indirectly hear of the rough reality that often accompanies seeking sanctuary within the UK. For those who do make it to the UK, there are incentives in place meant to *encourage* asylum seekers to leave the state. These incentives not only take serious steps to sidestep the granting of protection, they effectively criminalize the asylum seeker in the process. The remaining sections of Part II will identify and elaborate upon these practices.

*Figure 3.1: The Criminalization Cycle*



## **CHAPTER 4: Primary Means of Criminalization**

### ***4.1: Containment***

A variety of strategic mechanisms serve to deny access to the United Kingdom. Some of these procedures, implemented before individuals have even left their country of origin, comprise what is commonly referred to as “containment.” Its purpose is simple: prevention. By preempting the very entry of migrants, the UK avoids its legal obligations to those who may be urgently trying to gain entry so as to claim protection. This sidestepping of the state’s human rights obligations is carried out via stringent visa requirements, carrier sanctions upon all those responsible for irregular migrants’ means of transport, as well as the “third country rule” as stipulated in the Dublin II Regulation. These policies are meant to “contain” the flow of migrants—restricting movement beyond the country or region of origin. While meant, in theory, to deter those claimants who may consider using the asylum system as a means of bypassing traditional immigration controls, the restrictions fail to make any distinction between “abusive” and “genuine” claimants (Hassan 2000). Indiscriminately applied, all who endeavor to access the United Kingdom come face-to-face with these repressive policies.

Despite the seemingly contradictory nature of these practices in light of the United Kingdom’s obligations under international and European human rights conventions, there is no direct conflict with liberal legal norms—at least not technically. Francis Webber, a barrister

specializing in immigration-related cases, offers the following explanation: “While the Convention prohibits returning refugees to the country of their persecution, it says nothing about allowing them in in the first place” (Webber 1995: 2). If the United Kingdom is able to halt or slow the inflow of migrants from beyond its shores, the state technically avoids any derogation from its duties stemming from the Refugee Convention. In combination with tighter border controls at home, the UK—along with much of Western Europe—has appropriately been deemed a “fortress.” Because the Convention’s protection does not cover asylum seekers *prior* to arrival in the sought country of refuge, Western states actively exploit this legal loophole; freeing themselves of their obligations under the principle of non-refoulement. Without regard for the human costs and suffering incurred by such measures, the often impenetrable United Kingdom regularly refuses much needed protection—denying the opportunity to so much as ask for such assistance.

By pursuing policies that confine potential asylum seekers to the very region from which their persecution originates, the UK effectively extends its sphere of influence beyond its borders. The use of carrier sanctions is one of the primary means of doing this. By holding crew and staff members of any air or ground transport service responsible for the delivery of unauthorized migrants, the UK actively incorporates members of the public into its containment policies. In addition to air and ground transport companies, private security guards, immigration officials, as well as police officers are called upon to aid in the enforcement of these policies—extending immigration matters far beyond the realm of the border agency. Keeping in mind that asylum seekers are fleeing for their lives, the time and requirements needed to obtain a visa are frequently an impossibility. With no such visa, asylum seekers are deemed “unauthorized,” thereby denying any means of secure transport that might have been available to them. For this reason, these very policies have made way for the vast expansion of dangerous and often fatal “underground” means of acquiring access to Her Majesty’s coveted kingdom. In the words of Francis Webber:

It is the governments of Europe which, by criminalizing entry for refuge, have created the smuggling rings which they are now acting so vigorously against. They have in the process caused large numbers of deaths. As stowaways, refugees have been killed and thrown overboard by captains unwilling to pay the fines for them. They have been left to float or drown in tiny dinghies cast off from Russian ships in the bitter seas of the Baltic, or in the small boats used to take them across the Straits of Gibraltar from north Africa to Spain. They have

died swimming the icy Oder to get into Germany from Poland. They have suffocated to death in sweltering metal containers, or have died from breathing noxious fumes used to clean the containers (Webber 1995: 3).

Asylum seekers have been forced to resort to illegality to gain entry to “Fortress Europe.” By pursuing such policies, the United Kingdom criminalizes the asylum seeker in two ways. First, by coercing individuals into pursuing unsafe and illegal transportation, the asylum seeker has broken the law and may technically be considered a criminal. Second, because asylum seekers are given no alternative but to act in subversive, clandestine ways, first and second-hand perception of these vulnerable individuals is naturally dubious.

The Dublin II Regulation, previously known as the Dublin Convention and commonly referred to as the “safe third country rule,” was signed in Dublin in 1990 and came into force for the first twelve signatories—of which the United Kingdom was included—in 1997. As part of the “Dublin System,” those states subject to EU law must determine the EU member state responsible for a given asylum application. With the exception of Denmark, all member states in the EU (in addition to Norway) take part in the Dublin II Regulation. According to this regulation, asylum seekers must claim asylum in the first European state they set foot in (with a few exceptions such as Greece and the Balkan states where asylum processing is nearly impossible or non-existent). Should a person pass from one EU member state to another and then claim asylum, the individual will be returned to the country of his or her original entry. EURODAC (also known as the “EURODAC Regulation”), the other component of the Dublin System, is a fingerprinting database used across Europe for the identification and documentation of unauthorized migrants in the European Union (European Council on Refugees and Exiles 2011). All those found within the UK to have been fingerprinted in another EU member state prior to their arrival in the UK will be refused protection within the United Kingdom and returned to the country of his or her original port of entrance. Instead of providing protection without further delay of application processing, it appears that those signatories to the Dublin Regulation give more importance to passing asylum seekers off on the member states of initial entrance. These practices—whether they strive to “contain” migration just beyond the UK’s shores or beyond those of the European continent—illuminate the reality that asylum is not, like so many states espouse, something they aspire to provide but rather something they seek to avoid. For those individuals who do acquire entrance to the United Kingdom, there are a series

of additional deterrence mechanisms they will confront upon or after their arrival. As the following sections demonstrate, further exclusion, containment, and criminalization is most likely in store for asylum seekers once they reach the United Kingdom.

## ***4.2: Immigration Detention***

### *4.2.1: The Power to Detain*

The United Kingdom's vast detention estate is among the largest networks of detention facilities in the whole of Europe (Silverman 2011). Approximately 28,000 people were detained under Immigration Act powers in 2009 alone while another 26,000 spent varying periods in IRCs throughout 2010 (Silverman 2011). Removed from the general public's view, between two to three thousand migrants are detained at any given time in one of the state's eleven remotely located immigration removal centres, residential short-term holding facilities, or within the pre-departure accommodation for families (Silverman 2011). In addition to these centres, individuals may be held under immigration powers within prisons. There are, on average, 635 immigration detainees in prisons at any time (AVID 2012). Amounting to an additional 18 to 20% of the immigration detention population, those confined in prisons are not counted among the 3,397 residential detention spaces within the UK as of February 2012 (AVID 2012). Out of sight, these generally unknown and frequently forgotten individuals include men, women, children, unaccompanied minors, and families—the vast majority of whom are seeking asylum. This extensive use of immigration detention is a centerpiece of the United Kingdom's overriding policy of deterrence.

Under the Immigration Act of 1971 (as amended by the Immigration and Asylum Act 1999), there are various instances in which people subject to immigration control may be detained (HJT Training 2010). Individuals seeking protection within the United Kingdom fall into these categories at various stages of the asylum process. The first instance in which an asylum seeker may be detained is during the initial examination by an immigration officer to decide whether or not to grant leave to enter. Most asylum seekers falling within this category will be processed under what is known as the “Detained Fast Track” (DFT) or simply, “fast track.”<sup>6</sup> This accelerated form of processing asylum applicants is meant to give a decision as

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<sup>6</sup> This system, launched in 2000, was created with the intention of addressing a growing backlog of asylum applications. Individuals allocated to the fast track are meant to be held in detention for as minimal a period as possible, with the UKBA reaching a decision on claims between seven to fourteen days. Between the time spent

quickly as possible and is applied to those individuals thought to have “straightforward” cases. Asylum seekers on the fast track are held in detention throughout the course of their asylum applications’ processing, for the “administrative convenience” of the UKBA (HJT Training 2010: 338). 99% of claims assigned to the DFT will result in refusals—73% of those will be forcibly returned to their countries of origin (Travis 2012). In the words of Roland Shilling, United Nations High Commissioner for Refugees representative to Britain:

There is a presumption by UKBA that most asylum claims can be decided quickly, but in UNHCR's view, the process of determining whether someone has a well-founded fear of persecution is not only very complex but an extremely important procedure, which should not be taken lightly (Travis 2012).

This form of handling asylum applicants has been investigated and condemned by various human rights organizations that claim the DFT is unfair, insensitive, and unnecessary.<sup>7</sup>

Those asylum seekers who have not been fast-tracked may have been detained for any of the three basic justifications for detention (HJT Training 2010). The first and most common reason to detain is to effect removal. Some have had their applications refused, thereby making them refused asylum seekers and subject to return to their countries of origin. Generally, these individuals have exhausted all of their appeal rights and are awaiting removal. Foreign national prisoners who have previously been granted some form of leave to remain but later commit a crime are also liable to be deported after serving their sentence.

Secondly, detention may be utilized to establish a person’s identity or the basis of their claim (HJT Training 2010). Those who have used false identification or who do not have travel documents may be forced to remain in detention while their identity is determined or emergency travel documents issued. Migrants who have sought “informal asylum” within the UK and are later discovered by the authorities often fall within this category. Some may have come on a valid visa and overstayed while others may have entered the UK unknown and remained anonymous prior to detention. Other asylum seekers may have been caught illegally entering the

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awaiting their substantive interview and receiving an initial decision, however, asylum seekers may spend weeks, months and, in some cases, years awaiting a decision on their claim. Additionally, the initial screening process that allocates individuals to the Detained Fast Track carries far too much weight in the resulting outcome of a claim. Considering the refusal rate of those on the DFT is 99%, this initial screening interview has a major impact on decisions and is based on little to no information on the basis of the claim (Detention Action 2011). “As a result, the decision to route an asylum-seeker onto the Detained Fast Track is based on rules of thumb and guesswork” (Detention Action 2011: 30).

<sup>7</sup> Detention Action’s *Fast Track to Despair*, Bail for Immigration Detainee’s *Refusal Factory*, and Human Rights Watch’s *Fast-Tracked Unfairness* are a few examples of the research surrounding the fast tracking of asylum claims and the human rights abuses inherent to such a system.

UK and detained upon arrival. In all of these cases, it is not uncommon that an asylum claim is submitted from detention. From the perspective of the UKBA, however, failing to make an asylum claim shortly after entry seriously damages the credibility of the individual and—regardless of the merits of his or her claim—chances for a successful outcome are greatly reduced. Finally, where there is reason to believe that a person will fail to comply with any of the conditions required of them should they be released, detention is considered appropriate.

Any person detained under Immigration Act powers has a right to apply for bail using a British address of their own choosing or one that, after a successful application, the government provides. Despite this entitlement, many are not aware of their right to apply for bail. Others, despite several applications and years behind detention center walls, will continually be denied bail and detained for prolonged periods of time.

#### *4.2.2: Human Rights Violations*

While the license to detain is extensive, there are limitations on this power. Detention's primary purpose is to facilitate the removal of individuals who are not legally permitted to reside within the United Kingdom. The Secretary of State, however, *must* intend to deport the person taken into custody on these grounds and may only use the power to detain for that purpose (HJT Training 2010). Additionally, the period of detention must be “reasonable” in all cases. Should the Secretary of State be unable to effect deportation within a reasonable period (or it becomes apparent that the Home Secretary will be unable to do so before the expiry of a reasonable period), the use of detention is unlawful and the power to detain should not be exercised. But how does one define what constitutes a “reasonable” period? The vaguely defined parameters of these restrictions allow for great leeway in both their interpretation and practice. Take, for example, the fact that waiting periods in immigration detention have no defined limit—ranging anywhere from weeks to *years*. This sharply contrasts with the treatment of individuals suspected of terrorism who, despite 2008 government efforts to increase the total number of days to 42, cannot legally be detained more than 28 days (Library of Congress 2008). Immigration detainees, on the other hand, may be held *indefinitely*. The Immigration Act of 1971 widened the Home Secretary's power to detain asylum seekers and other migrants with greater ease and with fewer restrictions than in any criminal matters: “[N]o prior judicial authorization is required, no prompt and automatic judicial oversight of the decision to detain exists, no



automatic judicial reviews of the continuance of detention occur, and there are no maximum time limits of the length of detention” (Amnesty International 2005: 7). As Amnesty International’s Report *Seeking asylum is not a crime: detention of people who have sought asylum* has stated, this seriously calls into question the UK’s respect of another fundamental human right: that of liberty.

Due to recurring difficulties issuing travel documents, the UKBA’s ability to remove individuals within a reasonable period oftentimes becomes a clear impossibility. Despite the unlawful nature of continued detention, however, the border agency continues to detain people in these circumstances—holding them captive in what many have referred to as “administrative limbo” (Detention Action 2011). State embassies habitually refuse to recognize the nationality of its citizens or issue travel documents without proper evidence. Acquiring proof of citizenship from one’s country of origin can be an extremely long and difficult process—one often exacerbated by the natural constraints of detention. Take, for example, the current state of Iranian detainees. The Iranian embassies in the UK have been abandoned and shut down. It is therefore unfair to detain Iranians awaiting travel documents when their removal is currently impossible and their detention outside the scope of a “reasonable” period of time. Despite these circumstances, however, the United Kingdom continues to detain asylum seekers from Iran.

While all individuals held in immigration detention have the right to apply for bail and may do so an unlimited number of times, those who have previously violated the law will often be denied bail on the grounds that—due to their previous convictions—they are not considered trustworthy to comply with the appropriate bail conditions. Many negative decisions resulting from bail hearings cite the risk of absconding or re-offending as reason for their denial—even in the case of minor convictions such as working illegally, using false papers, or shoplifting. Regardless of the severity of one’s crime or the fact that the individual has already served the allocated sentence, protracted detention is exercised under this premise. Contrary to the exception for illegal entry granted in the Refugee Convention, illegal entry may similarly be used as justification for prolonged detention.<sup>8</sup> A case study from the Campaign to Close Campsfield’s recent report *Immigration Bail Hearings: A Travesty of Justice?* documented the denial of bail

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<sup>8</sup> Article 31 of the Refugee Convention states: “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence” (UN 1951).

by one judge for this very reason. His decision read: “X has demonstrated little regard for Immigration Laws in the past having arrived in the UK clandestinely. The fact that he was willing to do this would suggest that no reliance might be placed on him complying with Immigration control in the future” (Campaign to Close Campsfield 2011: 1). While indefinite sentences in the name of public protection require safeguards such as government demonstration of ongoing risk, immigration proceedings do not have such stipulations.<sup>9</sup> It is at this point that indefinite detention—and the mental and physical difficulties inherent therein—becomes a harrowing reality for the asylum seeker.

The natural human costs of incarceration have serious implications on the physical and mental well-being of individuals held in immigration detention. Many asylum seekers processed on the fast track have later been discovered to be victims of torture, trafficking, and rape. Having fled brutal treatment and oftentimes forced imprisonment prior to their arrival to the UK, asylum seekers suffer still more psychological trauma as a result of further incarceration—adding further pain to still raw, sensitive injury. The natural anxiety and depression evoked by a confined, prison-like environment make suicide attempts, hunger strikes, and self-harm commonplace in detention.<sup>10</sup> The unlawful detention case of Wang, a Chinese man who had been detained for 30 months while awaiting a travel document the Chinese government refused to issue, illustrates the severity of the psychological costs of incarceration. The judge ruled in favor of Wang, stating: “It is a disturbing feature of this case that a young man who apparently did not suffer from any mental condition when taken into detention now does so and that his continued detention may be a contributory cause to the development and continuance of that condition” (Detention Action 2010: 16). Despite potential risk to one’s life, the often-unbearable experience of detention has provided enough incentive for many to voluntarily return to their countries. The following case study is a testament to this onerous decision.

An Iraqi client from the Kurdistan region of the country shared his feelings regarding detention by the UKBA: "They kill me everyday. We're dying in here. I want to be dead back home because I know why I am dead. Because I want to die in freedom; not in here."

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<sup>9</sup> The Working Group on Arbitrary Detention pointed out in the case of Mr. Mustafa Abdi that “simply by pointing to the offence that gave rise to his conviction” unfairly provided sufficient grounds for indefinite detention. (Detention Action 2010: 19).

<sup>10</sup> According to Medical Justice, there were eight suicides in British Immigration Removal Centres between the years of 2000 and 2007 alone (Medical Justice 2008).

Mohammed<sup>11</sup> had already been in the UK for eight years when he was detained. He had been issued indefinite leave to remain before committing an offense. After serving his sentence, he was held under immigration powers and transferred to detention where he currently resides. His past offense has continually obstructed the possibility for his release on bail. After nearly two years in detention, Mohammed has said he would like to go back to Iraq. In spite of his willingness to return, he has yet to be issued travel documents. Just as containment may be used to discourage would-be asylum seekers from coming to the UK, the measures in place for those who actually make it to the UK are meant to encourage asylum seekers to leave the country once they have arrived. “[T]urn the camps into prisons and the refugees will prefer to stay home” (Ryscavage 1998 cited in Hassan 2000: 192). After extensive periods in detention, many—like Mohammed—come to prefer running the risk of death in freedom to their controlled, confined, continued existence in IRCs.

Others, despite a deep desire to return to their countries, prefer continued detention to the thought of facing removal. Aziz,<sup>12</sup> a client from Afghanistan, said that he would rather die in detention than be murdered before the eyes of his children—a fate he considered a certainty should he be removed. “If they want, I can stay in this jail for all my life. I have six kids there. I don't want to go back. I don't want to die in front of my family.” Since operating machinery for US personnel in Afghanistan, Aziz was pursued by the Taliban. Fearing for his life, he fled, leaving behind his wife and children for the UK. Once Aziz made it to the UK, he was placed on the detained fast track. Upon receipt of his refusal letter, he somberly stated, “The Home Office has killed me now.” Aziz has since been returned and his status is unknown. The seriousness of this situation becomes clear when taking into account the quantity of individuals who would prefer to waste away in the disturbing conditions of detention than go home—often to places where families and loved ones have been left behind. *Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka*, a report by the UK-based organization Freedom from Torture, relates the many stories of Sri Lankans who have similarly been removed from the UK only to be tortured upon return. Beyond solely denying protection to individuals in desperate need of it, by returning refused asylum seekers to countries in which further persecution is imminent, the United Kingdom has and continues to violate the international principle of non-refoulement

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<sup>11</sup> His name has been changed for purposes of this report.

<sup>12</sup> His name has also been changed for purposes of this report.

enshrined in both the Convention Relating to the Status of Refugees, the Convention Against Torture, and the European Convention on Human Rights.

#### 4.2.3: Criminal Treatment

The case of *Saadi v. United Kingdom* tried before the European Court of Human Rights in Strasbourg found that in order for detention not to be arbitrary and contrary to Article 5 of the ECHR (one's right to liberty and security), "[T]he place and conditions of detention should be appropriate, bearing in mind that 'the measure is applicable *not to those who have committed criminal offenses* but to aliens who, often fearing for their lives, have fled from their own country'" (*Saadi v. UK*, italics added: 26). The use of facilities that have been built to category B prison standards such as the Colnbrook and Brook House IRCs (near Heathrow and Gatwick Airports respectively), however, imply that this is not the case. The Home Office's hiring of the HM Prison Service to run detention centres such as Haslar IRC near Portsmouth and Lindholme near Doncaster is similarly disconcerting. Perhaps even more unsettling is the fact that the most recent addition to the detention estate, that of Morton Hall in Lincolnshire, was formerly a prison.<sup>13</sup> While much of this treatment is quite similar to that provided to individuals convicted of serious crimes, by utilizing prison-like facilities, former prisons, and even prisons themselves, it is understandable how the asylum seeker becomes criminal in the public's mind.

In addition to imprisonment, the use of handcuffs, fingerprinting, compulsory biometric measurements, sedation, surveillance, and other disciplinarian treatment are also used on asylum seekers. Many, surprised to have been handled "like a criminal," defend themselves and their reputations in conversations with Home Office representatives, solicitors, and support organizations—a clear demonstration of the conflicting nature of this conduct and its impact on refugee claimants. The shame associated with such practices had one HIV positive individual in detention refusing to receive his antiretroviral drugs on the basis that he was to be taken to the hospital in handcuffs. Utilizing the same technologies as those applied to criminals naturally breeds the conclusion that individuals in detention have done something wrong. As Hassan succinctly stated, "In the public eye, only criminals are incarcerated" (Hassan 2000: 195).

It does not come as a surprise that asylum seekers may be interpreted to be a threat to the public, or considered untrustworthy and therefore prone to abscond, when taking into account the

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<sup>13</sup> It was re-opened as an immigration detention center on the 18<sup>th</sup> of May 2011 (AVID 2012).

criminalizing treatment they receive. As documented in *A nice judge on a good day*, a report by the organization Bail for Immigration Detainees (BID), there appears to be an attitude of distrust on the part of clerks and judges at bail hearings: “[T]he fact that the applicant is guarded by several officers and placed behind a screen can do nothing but suggest that the applicant is of a violent or dangerous disposition” (BID 2010). Taking such defensive precautions implies a reason to do so, thereby making these individuals out to be a dangerous threat to security from which protection is required. In addition, a remarkable lack of legal aid and poor representation on the part of those who *are* provided solicitors has a significant impact on the ultimate success or failure of an asylum claim. Many asylum seekers, without proper knowledge of the UK’s asylum procedures and lacking proficiency in English, are given no choice but to represent themselves. Without a proper voice, these individuals are commonly refused protection and forcibly removed to their countries—made out to be little more than “bogus” asylum seekers.

As of 2010, the average daily cost of one bed per day in the UK’s immigration detention estate was £110. Alternatively, government provided housing and support for asylum seekers processed outside of IRCs totaled £12.66 per day. Taking into account the extraordinary expense of indefinite confinement, together with the £7.5 million paid per year in unlawful detention payouts, the UK’s liberal use of detention is not an economically convenient option (Marsh, Venkatachalam, and Samanta 2012: 11). The high cost of detention both for the asylum seeker and the state generates legitimate concerns and questions regarding its widespread use. “[I]f it cannot be proven that detention is useful in administrative ways, it therefore must be useful in other, non-administrative ways” (Hassan 2000: 189). The implications of this statement will be deliberated upon further in Part IV of this work.

### ***4.3: Forced Destitution***

As of 2002, refugee claimants are not legally allowed to work within the United Kingdom (Asylum Aid 2007). They may only apply to do so if they, through no fault of their own, have been waiting over 12 months for an *initial* decision on their claim (House of Commons Library 2011). While the appeals process may take much longer, the great majority of initial decisions are made within a year’s time—meaning very few individuals are actually able to benefit from this limited exception (Asylum Aid 2007). Without an alternative recourse to earning a living, refugee claimants are given no choice but to depend on the assistance of charity,

family, friends, or the government. The government assistance available to asylum seekers is called “section 95 support” and is administered by the UKBA. The section 95 support scheme is separate from mainstream welfare benefits—of which refugee claimants are excluded from claiming—and consists of housing and/or basic living expenses, generally in the form of vouchers. In order to qualify for this form of support a refugee claimant must meet what is known as the “destitution test.” An individual is considered “destitute” if he or she does not have accommodation or sufficient funds to pay for living expenses (and those of any dependents) at the time of applying or within 14 days of the application for support (ASAP 2011b).

The level of support provided to asylum seekers depends on the individual circumstances of the claimant. A single person of 18 years of age or over receives the weekly rate of £36.62—70% of normal income support levels for adults (ASAP 2011b).<sup>14</sup> All accommodation support is provided outside of London on a no choice basis, under the Home Office’s dispersal policy. After all appeal rights have been exhausted, any form of support that a refused asylum seeker receives will be terminated 21 days after the final negative decision of their claim.<sup>15</sup> In the case of accepted asylum seekers, asylum support ends 28 days after a successful application at which time they are then eligible to work and access mainstream benefits. Refused asylum seekers may, however, be eligible for what is known as “section 4 support.” This support is available for those individuals who are subject to be removed but, due to the current circumstances of their countries of origin, difficulties in issuing travel documents, health problems or other reasons are unable to do so. Those denied protection and who choose to remain in the UK despite the refusal of their claim have no access to support.

Several asylum support organizations have called attention to the unfair decision-making of the UKBA in refusing support to destitute asylum seekers.<sup>16</sup> According to the Asylum Support Appeals Project (ASAP), this is evident in the fact that 80% of destitution refusals are

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<sup>14</sup> See the UKBA’s website for details of “cash support” for other categories, including lone parents, qualifying couples and minors (UKBA, 2012).

<sup>15</sup> The only exception to this rule is if the refused asylum seeker has a dependent child at the time. In this case, they will continue to receive support.

<sup>16</sup> See the Asylum Support Appeals Project’s reports *Not Destitute Enough* and *No Credibility: UKBA Decision Making and Section 4 Support* or any of the Joseph Rowntree Charitable Trust’s several publications regarding this worsening problem in *Destitution in Leeds*, *More Destitution in Leeds*, and *Still Destitute*. Still Human Still Here’s *At the end of the line* and The Children’s Society’s *‘I don’t feel human’* also document the situation of destitute asylum seekers and refugees across the UK.

overturned on appeal (ASAP 2011a). The Joseph Rowntree Charitable Trusts' *Destitution in Leeds: The Experiences of People Seeking Asylum and Supporting Agencies* states:

In Britain today there are people who have no recourse to public funds or services, but do not have the right to work either. With no source of income they are forced into destitution, forced either to rely on charity or work in the shadow economy. They sleep rough, in squats, in charity shelters or on the floors of friends' homes. What makes this a scandal is that they find themselves in this position as a direct result of government policy (JRCT 2007 cited in Darling 2009: 649).

In 2007, the Joint Committee for Human Rights similarly concluded that “the government has indeed been practicing a deliberate policy of destitution of this highly vulnerable group” (JCHR 2007 cited in Darling 2009: 651). When taking into consideration the options available to those seeking safety in Britain, it is not difficult to understand why associations of the asylum seeker with illegality or with the abuse of the British welfare state are common.

The stipend provided to a single asylum seeker over the age of 18 means that he or she must survive on just over £5 pounds a day. This has proven impossible to live off of for countless asylum seekers. Unable to afford *not* working, individuals who have resorted to other means of survival are considered to have broken the law and, in doing so, are made to serve a prison sentence before being transferred to a detention center where they will most likely remain until they can be deported. In addition to working illegally, using false papers, shoplifting, or any other offense resorted to as a means of survival effectively makes the asylum seeker criminal. A study carried out by Meredith Griffiths in Campsfield IRC found that “Some informants felt the withholding or withdrawal of government support whilst refusing a right to work was a tactical attempt to force asylum seekers to break the law, so that they could then be treated as criminals and deported more easily” (Griffiths 2010: 4). Others who have breached their asylum claim's conditions and fear these very consequences, may go “underground”—absconding because “informal asylum” comes to be seen as the only means by which they will be able to remain in the country. Desperate individuals may be forced to resort to desperate measures, particularly when they are taken in the name of life preservation. In this way, many asylum seekers have come to see their situation as a matter of choice between three highly unpleasant options: detention, destitution, or deportation.

The idea that asylum seekers are simply living off the government and taking advantage of the UK's excessive hospitality is an unfair presumption. In fact, most asylum seekers would

prefer to work but must rely on subsistence such as that offered through section 95 support not because they want to, but because they have been given no other means of earning a living. Asylum Aid's *Right to Work* dossier illustrates many of the frustrations of asylum seekers who have been waiting years for their claims to be processed and who would like to be able to contribute their skills and their time to the British community (Asylum Aid 2007). Their findings indicate that refugee claimants are highly motivated to work and do not want to be dependent on the state, the support of which many find to be insufficient in providing for their essential living needs. Asylum seekers also expressed the negative impact their inactivity has had on their mental health and their ability to interact and relate with British society. The actual circumstances in which refugee claimants find themselves are often quite different from those imagined by the public, and the media has played no small part in these misconstrued perceptions. The following chapter will address the significant role of the popular press in the asylum seeker's cyclical criminalization.

## **CHAPTER 5: Secondary Means of Criminalization: The Role of the Popular Press**

Since the 2002 peak in the quantity of refugee claimants, the number of asylum applications to the United Kingdom has fallen by 79% (Detention Action 2011). Despite this drastic reduction, however, asylum seekers remain one of the least popular groups of migrants among British citizens, with a 56% majority in favor of reductions (Migration Observatory 2011). Perhaps most curious and quite contradictory, however, is that the same survey revealed that while 65% of British nationals said that Britain should accept fewer asylum seekers, 64% of those same respondents simultaneously recognize that "we must protect refugees who need a place of safety in Britain" and 73% believe "we must protect genuine asylum seekers who need a place of safety in Britain" (Migration Observatory 2011: 13). What may account for this strange discrepancy in public opinion? This dissertation contends that the mass media has a powerful role to play in this confusing disparity.

Dr. Scott Blinder of the Migration Observatory pointed out in his briefing *UK Public Opinion toward Migration: Determinants of Attitudes* that "opposition to immigration comes from feelings of threat to one's group" (2011a: 2). Fears associated with migration in general (the welfare state's capacity to provide for its own citizens, the availability of work and housing,



etc.) are often exaggerated in the popular press, foreshadowing a looming crisis on a national and personal level. But why is it that these fears so heavily emphasize a group that comprises only 4% of migrants to the United Kingdom? The high profile presence of the “bogus” asylum seeker in the tabloid press acts as a gasoline to the emotive fires of these public fears. James Souter addresses the use of this highly contentious term and its function in calling excessive attention to those seeking safety:

The notion of the “bogus” asylum seeker has done a good deal to weaken public support for asylum, heavily restricting the political space for more inclusive policies which would provide greater protection to refugees. At the same time, the culture of disbelief is one stage in an unjust process of exclusion which frequently leads to their destitution and deportation (Souter 2011a).

It is beyond the scope and capacity of this research to conduct an extensive analysis of British reporting with regard to asylum seekers, however, the work of others in this regard has been extremely useful in identifying the aforementioned role of the media in constructing the association between asylum and deviance.<sup>17</sup> The Oxfam report *Asylum: The truth behind the headlines* demonstrates the impact that negative press coverage of asylum seekers can have on the public. Gross exaggeration in the numbers of refugee claimants in combination with the use of language generally associated with natural disasters contributes to the idea of the asylum seeker as a mass problem. Words such as “flood” or “wave” insinuate an uncontrollable force—one that naturally implies the need for restraint and control. Take, for example, the *Telegraph* article “Labour’s tough curbs fail to stem flood of asylum seekers” (Johnston 2000) or the *Daily Mail* report shortly after the destruction of a makeshift migrant camp in Calais, France entitled, “Razed to the ground: Jungle migrant camp emptied after raid by Calais police (but will it stop asylum seekers *flooding* into Britain?” (*Daily Mail* 2009, emphasis added). “Such descriptions dehumanise asylum seekers and shift the focus of the debate away from the reasons why people are seeking asylum in the UK towards how many people are applying for asylum” (Oxfam: 10).

In 2000, a Reader’s Digest survey found that 80% of adults surveyed believed that refugees came to Britain because they believed it to be a “soft touch” (Ipsos MORI 2000). In addition, most respondents highly overestimated the amount of financial aid that asylum seekers

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<sup>17</sup> Oxfam’s report *Asylum: The truth behind the headlines*, Hanyes, Devereux, and Breen’s article “A Cosy Consensus on Deviant Discourse: How the refugee and asylum seeker meta-narrative has endorsed an interpretive crisis in relation to the transnational politics of the world’s displaced persons,” and Finney and Robinson’s “Local press, dispersal and community in the construction of asylum debates” are just a few that have researched and discussed the role of the media in the negative connotation associated with the asylum seeker.

were eligible to receive—believing it to be £113 pounds per week as opposed to the £36.54 that a single asylum seeker over 25 received at that time (Oxfam 2001: 4). Tabloid headlines often encourage the idea that asylum seekers are economic migrants in disguise or are here only to “sponge” off the welfare state. Take, for example, the *Scottish Daily Express* article that stated: “Unfortunately, due to a bungle by the London borough of Wandsworth, many turned out to be ‘economic migrants’—beggars to the rest of us. Such bogus refugees have to be dealt with swiftly and decisively.” (Oxfam 2001: 11). The June 2011 *Daily Mail* article “Human right to sponge off UK: 3,200 criminals, failed asylum seekers and benefit tourists can’t be kicked out because of right to family life” (Slack 2011) similarly associates the asylum seeker with deviance—grouping criminals and “benefit tourists” with refused refugee claimants while simultaneously implying the need for them to be “kicked out”.

“Local press, dispersal and community in the construction of asylum debates” by Nissa Finney and Vaughan Robinson argued: “The way the local press represents and constructs local identity sets the framework for reactions to dispersal; and that the operation of the local press within local networks of power and information shapes the extent to which established discourses can be challenged (Finney and Robinson 2008: 1). Similarly, the Oxfam report found that negative press coverage has helped to create a climate in Britain where the policies of containment, detention, and forced destitution have flourished. In some cases, this type of media coverage has even resulted in the intimidation and harassment of asylum seekers—individuals assumed to have adversely affected the quality of services, access to housing, or jobs by their mere presence (Oxfam 2001). Additionally, the post-9/11 atmosphere has added another dynamic to the slur of labels associated with the asylum seeker. An article by the *Sun* titled “We have an open invitation to terrorists to live off our benefits” combines fear of the foreigner, advantageous freeloaders of the British welfare state, and terrorists for a lethal combination (Bauman 2004: 54). A report by the *Daily Mail* emphasized the UK’s “soft touch” saying “had Hitler come to Britain in 1944 he would have been entitled to asylum” (Bauman 2004: 54). Articles such as these play off fears—feeding into perceived threats ranging anywhere from one’s cultural or financial security to that of one’s physical safety.

Furthermore, negative decisions on asylum claims are often cited as evidence of economic migrants, scroungers, terrorists, and other “bogus” refugees hiding behind a smoke screen of asylum. Lying or a “lack of credibility” is a common justification for refusals, often

perceived to be proof of one's undeserving need for protection. "The tabloids and the Home Office are united in one key respect: their assumption that to be dishonest in an asylum claim is to be undeserving of protection. Both effectively assume that if asylum seekers are insincere, they face no risk on return" (Souter 2011a). Taking this even further, Souter argues, "The threshold for what counts as persecution is set so high that the Home Office could readily concede that asylum seekers will be returned to a dire situation, while concluding that it is just not quite dire enough" (Souter 2011a). Some asylum seekers fear making claims that are not strong enough and may lie in hopes of assuring protection, others may have a difficult time sharing past traumatic experiences and fail to tell the entire truth, while still others are unable to gather sufficient evidence for their application. These reasons, however, do not constitute fraudulent efforts to secure asylum protection. Similarly, because many of these individuals may find themselves in situations such as those discussed in the previous section, they may be perceived to be "scroungers" when they would in fact like to work.

A "culture of disbelief" permeates Britain in which asylum seekers—regardless of their genuineness—are assumed to be "bogus" before their claims have even been heard:

[T]hey are considered to be merely 'asylum seekers' (a popular but legally unfounded category), not 'refugees' who have rights under the Convention. Asylum seekers are not given the benefit of the doubt. Whereas a criminal is considered innocent until proven guilty, an asylum seeker is considered abusive until proven to be a refugee (Hassan 2000: 199).

This secondary means of criminalization—a criminalization by way of the attitudes taken toward the asylum seeker as opposed to the direct criminalization through treatment or policy—acts as justification for the primary means of criminalization previously addressed. In the words of David Garland, "Public knowledge and opinion about criminal justice are based upon collective representation rather than accurate information; upon a culturally given experience of crime, rather than the thing itself" (Garland 2001: 158). The social distance between the asylum seeker and the public contributes to the credence often given to tabloid headlines. Little interaction with the asylum seeker on the part of the public in combination with the limited ability of asylum claimants to work, their placement in remote locations as a result of the UK's dispersal policy, and their total confinement in detention feed the cycle of criminalization. With few means of counteracting this gap in understanding, a view of the asylum seeker premised on subjective perception is often mistaken for the truth.

## **PART III: The Criminalization of Asylum Seekers within a Theoretical Framework**

### **CHAPTER 6: The Construction/Production of the Deviant Asylum Seeker**

An examination of the criminalization of the asylum seeker through the UK's use of deterrence policies—operating within a framework of security—has been presented in the fourth chapter. The use of containment strategies, detention, and forced destitution directly criminalize those in search of safety. Similarly, the negative public perception of the asylum seeker, provoked and encouraged by the popular press, further demonizes refugee claimants—contributing to a view of the asylum seeker as fraudulent and devious. When, however, did granting protection to refugees become a social *problem* for Britain, rather than an opportunity to supply safe haven for those fleeing oppression? At what point did policies once exclusively associated with the criminal justice system come to be seen an appropriate means of handling asylum seekers? To aid us in understanding the recurring, cyclical criminalization of those seeking refuge illustrated throughout Part II, we must situate this cycle within the context of labeling theory. In order to do so, let us first be clear about what this theory implies.

#### ***6.1: Defining Labeling Theory***

Labeling theory is a transactional approach toward deviance which maintains that deviance is created by way of social process, rather than a quality or characteristic inherent to a specific deed or individual. Deviance is *bestowed upon* an act—the relative significance of which is a consequence of the value a group or society has assigned the act over time, through a number of interactions. Howard Becker explains the concept of deviance in relation to labeling:

*[S]ocial groups create deviance by making the rules whose infraction constitutes deviance, and by applying those rules to particular people and labeling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender.' The deviant is one to whom the label has successfully been applied; deviant behavior is behavior that people so label (Becker 1963: 78).*

The very fact that the asylum seeker—an individual requiring a compassionate, humanitarian approach—is examined through a framework of security that correspondingly requires a criminological perspective, naturally gives rise to the question of why. The use of labeling theory provides the basis by which this phenomenon may be understood.

Mary Douglas's exploration into the concept of dirt in *Purity and Danger* powerfully illustrates how the stigma associated with a specific item or individual stems from a social process that assigns value and, therefore, influences one's perception of that item or individual (1966). Elaborating upon Douglas, Zygmunt Bauman emphasized: "[N]o objects *are* 'waste' by their intrinsic qualities, and no objects can *become* waste through their inner logic. It is by being assigned to waste by human designs that material objects, whether human or inhuman" become waste at all (2004: 22). In the same way, the labeling of the asylum seeker as deviant (through any of the many titles used—"bogus," "scrounger," "freeloader," "illegal immigrant," etc.) transpired by way of social process. An individual seeking refuge was refashioned into someone to be doubted, a suspect person most probably hoping to "freeload" off Britain's generous welfare state, an illegal immigrant willing to take any job at the expense of others' employment—in other words, a *deviant* outsider. By painting asylum as anything but the actual asking of protection, the very claiming of this basic human right has been deemed deviant behavior:

[T]he figure of the 'asylum seeker', once prompting human compassion and spurring an urge to help, has been sullied and defiled, while the very idea of 'asylum', once a matter of civil and civilized pride, has been reclassified as a dreadful concoction of shameful naivety and criminal irresponsibility (Bauman 2004: 57).

Asylum became the rule "whose infraction constitutes deviance"—the act out of which another deviant classification found its origins (Becker 1963: 78). Seeking sanctuary, therefore, has come to make rule breakers out of individuals claiming refuge.

## **6.2: *The Construction of a Moral Panic***

Never before has the United Kingdom taken such a harsh stance toward the asylum seeker—nor to such magnitude. While negative public attitudes toward asylum seekers may be traced back as far as the Refugee Convention's inception, the degree to which the state has recognized and responded to these attitudes has never been greater. At what point, then, did the deviant label come to be associated with the asylum seeker to such a degree that it resulted in the deterrence policies of present day? The increasingly draconian measures discussed throughout the third chapter find their beginnings in the election of Tony Blair's Labour administration in 1997.

Three years after the election of the Blair administration, asylum applications had more than doubled from 32,500 in 1997 to 71,000 in 1999 (Gibney 2008: 155). William Hague, leader of the Conservative opposition at the time, brought these statistics to the attention of the press and the public. In doing so, he simultaneously depicted those seeking refuge as economic migrants with the singular intention of taking advantage of the UK's benefit system. Shadow home secretary, Ann Widdecombe, made similar statements attacking the Blair government for its "soft touch" on border and immigration control—a government "unable or unwilling to stem the tide of those whose entry threatened social harmony and the welfare state" (Gibney 2008: 155). These sentiments were echoed and expressed throughout the pages of the tabloid press, persistently directing attention toward the asylum seeker and planting seeds of anxiety in the public mind. Long processing times for claimants and low removal rates for those refused protection were cited as examples of Labour's inability to efficiently and effectively run the Home Office. The Blair government, without contesting the accusations made against the asylum seeker or opposing the negative, slanted press coverage toward refugee claimants, seemed to accept the image disseminating throughout the media. In fact, "[t]he government, and the prime minister in particular, viewed its credibility with tabloid-reading England (a group that had been assiduously courted in the move to government) as threatened by the perception that it was weak on asylum" (Gibney 2008: 156). It is within this political and social context that the United Kingdom's deterrence policies took root.

Between 2001 and 2004, missed removal targets continued to stoke the fires of Blair government criticisms. A moral panic ensued. An Ipsos MORI poll of political attitudes in Great Britain for May 2002 revealed that immigration and asylum had risen to such a level of significance that it rated second amongst the biggest issues of concern to the British public—coming just after health care (Ipsos MORI 2002a). Another poll just one month later demonstrated the public's gross overestimation of the number of refugees and asylum seekers in Britain. Despite the meager 1.98% of the world's total hosted by the UK at that time, the general public believed Britain to host nearly a quarter (23%) of all asylum seekers and refugees—an estimate more than 10 times higher than reality (Ipsos MORI 2002b). Depiction of the asylum seeker as "bogus," "economic migrants" who have come to take British jobs, or—worse still—"scroungers" who have come to take from the public purse, evoke an emotive reaction. Taking from Becker, Cohen recalls:

The media play on the normative concerns of the public and by thrusting certain moral directives into the universe of discourse, can create social problems suddenly and dramatically. This potential is consciously exploited by those whom Becker calls 'moral entrepreneurs' to aid them in their attempt to win public support (Cohen 1987: 17).

Political rhetoric in the lead up to the 2005 election, in tandem with the alarm bells set off by the British media crystallized the asylum "issue" in the minds of the public, making it a sudden problem that desperately needed to be addressed.

"The apportioning of blame for crime, economic failings, and societal disintegration to asylum seekers and refugees is likely to facilitate the unification of public support for punitive policies to deal with such elements" (Banks 2008: 48). The moral panic instigated from these circumstances, resulted in a public demand for something to be done. A rapid introduction of tougher controls shortly followed and, with the Prime Minister's personal oversight in reducing numbers, the amount of new claims steadily decreased while that of removals rapidly grew. By 2005 Tony Blair proudly stated, "for the first time in Britain, we will remove more each month than apply and so restore faith in a system that we know has been abused" (Gibney 2008: 157). The Blair government's response to this public panic resulted in the creation of many of the criminalizing deterrence policies previously described in their current forms. A statement by sociologist W.I. Thomas' affirms the great power words carry: "What people believe to be real, will be real in its consequences" (1923 cited in Welch & Schuster 2005b: 402). As illustrated throughout Part II, asylum seekers within the UK have suffered very real consequences as the result of a fabricated, formulated label.

### ***6.3: Primary and Secondary Deviation***

Taking this criminalization of asylum seekers a theoretical step further, Edwin Lemert's concept of primary and secondary deviation may also be incorporated into this analysis. Lemert distinguishes between a primary deviation focused upon how deviant behavior originates and a secondary deviation more concerned with "how deviant acts are symbolically attached to persons and the effective consequences of such attachment for subsequent deviation on the part of the person" (Lemert 1967: 17). This has important implications for the deviance (i.e. criminalization) associated with asylum seekers. Unlike secondary deviation, primary deviation comes about in a wide variety of social contexts and environments and "does not lead to

symbolic reorganization at the level of self-regarding attitudes and social rules” (Lemert 1967: 17). Secondary deviation, on the other hand, is that deviant behavior that results as a consequence of the label assigned. In this way, the original causes of deviance that primary deviation is concerned with are overshadowed by what Lemert argues to be the more important consequences of society’s reaction to the group labeled deviant. In this way, Lemert contends that—rather than acting as its source—deviance is actually *produced* by social control (Cohen 1987: 15). Deviance may, therefore, be viewed “as a consequence of the extent and form of social control” (Lemert 1967: 18).

Adopting Lemert’s concept of primary and secondary deviation, the stigmatization of seeking asylum may be considered the point of primary deviation. The deterrence policies that have come as a result of the various labels associated with this stigmatization have added yet another element to the concept of the asylum seeker as deviant. As we have seen, the blending of crime and immigration policy has blurred the two to such an extent that criminality has also come to be associated with asylum seekers. As a result of the UK’s implementation of policies meant to deter individuals from seeking protection within its borders, as well as to avoid its responsibilities to the Refugee Convention and to the ECHR, the asylum seeker has been *treated* as criminal. This treatment has natural consequences on the public, contributing to a perception of asylum seekers that mirrors the treatment they receive. Moving beyond this, however, the asylum seeker is also *made* to be a criminal. Entering the country in a clandestine manner, the use of false papers, working illegally, or any other offense committed in the name of survival all effectively earn the asylum seeker yet another deviant title: “criminal.” “To be labeled a criminal one need only commit a single criminal offense, and this is all the term formally refers to. Yet the word carries a number of connotations specifying auxiliary traits characteristic of anyone bearing the label” (Becker 1963: 81). Despite the reasons certain illegal acts are carried out—false papers are the only means by which to escape one’s country of persecution or feeding oneself may be impossible without working—the very fact that an offense was committed allows for the writing off of these individuals as little more than common criminals. And who would argue with the deportation of criminals or delinquents? These offenses act as perfect justification for the removal of desperate individuals—seeing only what is believed to be a lack of respect for the British law rather than the dire circumstances that push human beings to act in such a way.



This then acts as further cause for the labeling of the asylum seeker and the continued use of deterrence policies. It is here that the concept of secondary deviation comes into play.

According to Lemert's definition, "Secondary deviation is deviant behavior, or social roles based upon it, which becomes means of defense, attack, or adaptation to the overt and covert problems created by the societal reaction to primary deviation" (Lemert 1967: 17). As a consequence of the initial labeling of the asylum seeker as deviant by way of various titles, and the deterrence policies enacted in response to the loudly voiced angst evoked by this labeling, a system has been established that pushes those in hope of refuge to illegality. In this way, the asylum seeker technically becomes the deviant outsider he or she has been labeled to be. While I argue that the labeling of the asylum seeker as deviant and the UK's application of crime control tactics to the asylum and immigration realm has both forced and encouraged asylum seekers to resort to deviant behavior, my position differs slightly from that of Lemert's in that I argue these harsh mechanisms are intentionally in place to serve this very purpose. By doing so, the asylum seeker is effectively labeled "criminal" and the UK's deterrence policies and the rhetoric used against refugee claimants find their continued justification. Furthermore, I argue that both the perceived and direct criminalization of the asylum seeker do not result from the internalizing of their deviant label but rather from the specific policies implemented by the UK that provide no other means of survival. As a result of labeling, the individual deemed deviant is made to be the very thing that he or she is described as being—though, in the case of asylum seekers, it is not out of choice so much as the lack thereof. It is the production of deviance in the name of its very prevention.

In conclusion, the labeling of the asylum seeker comes at great cost. It has a large role to play in the loss of lives of those who, processed through an unfair system, are sent to the very place of their persecution as well as in the unnecessary suffering of those wading through the asylum process. Furthermore, this deviant label—acting as impetus for the hardline policies of the UK government—actually promotes deviance. This further criminalization of the asylum seeker not only prevents countless individuals from desperately needed refuge but also forces many to illegal means of survival. Britain's criminalizing policies act as an encouraging invitation to break the law, pursue "informal asylum" or abscond. This should not be the case. The establishment of a system that encourages this type of behavior, particularly one having to do with one of the planet's most vulnerable populations, naturally spurs speculations as to *why*.

While it is strangely comforting to assume that it is purely a matter of a poorly structured system, mismanaged by disjointed bureaucratic levels of operation, there may be other factors at play. Judging from the United Kingdom's use of deterrence policies and the criminalization cycle embedded within the various levels of these evasive mechanisms, this dissertation contends that Britain's stance on asylum is not a mistake. The asylum seeker in the United Kingdom—deemed deviant outsider—may be likened to Mary Douglas's concept of dirt: "Dirt is the by-product of a systematic ordering and classification of matter, in so far as ordering involves rejecting inappropriate elements...[O]ur pollution behavior is the reaction which condemns any object or idea likely to confuse or contradict cherished classifications" (Douglas 1966: 48). The UK's rejection of asylum seekers may be similarly viewed within a context of classification and a systemic ordering of environment.

## **Part IV: The Criminalization Process in Structural Context**

### **CHAPTER 7: Why Criminalize the Asylum Seeker?**

While the contemporary ease with which goods, individuals, and ideas may traverse the globe has greatly augmented international interdependencies through both social and economic exchange, this seemingly shrinking planet has simultaneously posed a threat to the sovereignty of nation states. The state mechanisms and social processes that have contributed to what David Garland deems a “culture of control” within the UK and the US have been influenced in no small part by the challenges presented to state governments in an increasingly globalized world. He argues, “The risky, insecure character of today’s social and economic relations is the social surface that gives rise to our newly emphatic, overreaching concern with control and to the urgency with which we segregate, fortify, and exclude” (Garland 2001: 194). With the fate of the free market dictated by “free-floating global economic forces,” state governments have essentially been made, in the words of Zygmunt Bauman, a “collateral casualty of economic progress” (Bauman 2004: 90). Incapable of shielding nations from the insecurities and consequences resulting from unregulated neoliberal capitalism, the purpose and legitimacy of state governments have been called into question. The urgent need of governments to assert the legitimacy of nation states has been fundamental in the criminalization of migrants and the security context within which they have come to be framed. In the words of James Banks, “The ability to dictate population movement across its borders may be considered one of the few elements of sovereignty that Britain maintains...asylum and immigration policies may be seen as a renationalizing antidote to the denationalizing effects of globalization” (Banks 2008: 46).

Foucault states in *Discipline and Punish* that, “harsh punishments have been used as public displays of a ruler’s power, designed to reaffirm the force of law and reactivate the myth of sovereignty” (Foucault 1977 cited in Banks 2008: 48). Just as British state sovereignty was established by way of severe sentencing in the past, this dissertation maintains that exclusion on the premise of security serves a similar function for modern day Great Britain. This exclusion is made easier by the criminalization of the asylum seeker and of the foreigner in general.

The use of exclusion naturally implies a hierarchy of individuals—those awarded full rights within the polity, those who have only certain restricted entitlements and, finally, those who are denied inclusion altogether. It is in the creation of this hierarchy that the UK is able, like other developed nation states, to assert its alleged primacy in the eyes of its citizens. The

criminalization of the asylum seeker, in addition to the security framework within which the migrant is framed, act as one of the means by which these gradations of worth are created. The direct exclusion of the asylum seeker by way of containment strategies, confinement in detention centres, and policies that provide little alternative to destitution, as well as the public's perceived criminalization through the media's depiction of the asylum seeker as deviant, contribute to the idea that certain individuals have a deserved entitlement to specific rights while others simply do not. This feeds the idea that the British government has a responsibility to allocate these rights appropriately and fuels the demand by UK citizens for the state to do just this. Matthew Gibney aptly explains this hierarchical function:

In order to win the support of those that they have striven to rule, elites have looked for ways of convincing reluctant, divided and diverse peoples that they have an interest in consenting to their rule... State leaders often do not have the interests and needs of their citizens at heart. And even when they do, there will always be neglected and disenchanted sections of their populations who, quite justifiably, feel that their interests do not receive the attention they deserve. How, then, can a state make this claim credible? At a very minimum, any state must convince a substantial section of its citizenry that even if their interests are not particularly high in the state's calculations, *they are at least more important than those of foreigners* (Gibney 2001: 10, italics added).

In this way, the exclusion of the asylum seeker (and the lot of deterrence policies used against him or her) finds justification in the eyes of the people. With the great help of political rhetoric and the tabloid press, citizens have come to view asylum seekers as a competitive threat to the economic, social, and political goods that they enjoy or to which they aspire (Gibney 2001). Citizens come to believe that they will unfairly “miss out” if asylum seekers are granted protection by a “soft touch” Britain. The criminalization process, therefore, aids the UK government in its assertion of state legitimacy.

As previously illustrated in section 6.2, the moral panic that surrounded asylum seekers in the run up to the 2001 general election made a group of individuals who had previously received minor attention a blaringly important issue in need of urgent attention—the remnants of which can still be found in the surveys and polls of present day. Despite an emphasis on behalf of the public for increased control of *illegal* migration, the inherent difficulties in calculating the number of individuals residing in the UK without permission make demonstrating the state's effectiveness at solving the problem extremely difficult. Asylum statistics, on the other hand, are more readily available and the number of refugee claimants detained, denied protection, and

removed to their countries may be more easily calculated and demonstrated in monthly figures. The British government, therefore, can publicly use these statistics as a means of showing their effectiveness in addressing the issue, as well as support for continued use of exclusionary deterrence policies in asserting state legitimacy. “Ironically, then, the institution of asylum, while established to serve humanitarian goals, has become, in early twenty-first-century Britain, a justification for boosting the coercive powers of the state” (Gibney 2008: 167).

Apart from the serious violation of human rights through the use of deterrence policies such as those documented throughout Part II, perhaps even more disconcerting is the fact that—in the face of international legal obligations to the asylum seeker—the UK government has chosen to illegally deny desperately needed protection in the name of meeting citizen’s demands. The amount of money poured into the UK’s extensive detention estate attests to the preference given meeting often hysterical public demands over the legitimate requirements of human rights obligations enshrined in international conventions to which the United Kingdom is a signatory. Despite the millions of pounds in taxpayer money wasted as a result of unnecessary incarceration and unlawful-detention lawsuit payouts, the UK continues to generously exercise its use of detention. In this way, the asylum seeker becomes the “immigration victim” of a state grappling for control. Much like Tony Blair’s reaction to public pressure prior to his re-election in 2001, in the pursuit of political power, politicians continually put the rights of excluded individuals second to their political aspirations. “One is tempted to say that were there no immigrants knocking at the doors, they would have to be invented...Indeed, they provide governments with an ideal ‘deviant other’, a most welcome target for the ‘carefully selected campaign issues’” (Bauman 2004: 56). Rather than fulfilling the UK’s legal and moral obligation to refugees, the criminalization of the asylum seeker and the pursuit of deterrence policies take precedence over the potentially detrimental impact on one’s political reputation in doing the right thing. “The principle of electoral democracy is thus deeply implicated in the rise and maintenance of restrictive asylum policies” (Gibney 2001: 17).

## **CHAPTER 8: Conclusion**

This dissertation’s topic was prompted by the confusion and astonishment I experienced upon discovering that an individual choosing to leave behind a painful, persecuted present could suffer further human rights violations upon arrival to the very place sought out in search of a safe

future. Fueled by a desire to understand the seemingly irreconcilable combination of refugee claimants and penal practices, this dissertation set out to answer the question, “how has the asylum seeker in the United Kingdom come to be criminalized?” The use of containment strategies that force individuals without alternative recourse to resort to clandestine means to reach UK borders, the detention of these very individuals once they do, and laws that leave many asylum seekers destitute demonstrate the United Kingdom’s criminalization of asylum seekers through the implementation of deterrence policies. By situating those seeking refuge within a context of security, the UK actively denies protection—subverting the state’s legal and moral responsibilities to the asylum seeker. The regular depiction of the “bogus” asylum seeker in the pages of the popular press similarly presents those soliciting protection as a public threat—further aiding in the association of the asylum seeker with deviance while simultaneously fostering support for state use of deterrence policies. Exemplified throughout Part II, the perception of asylum seekers as deviant stems both from their treatment and portrayal as criminal, as well as from the lack of any alternative choice to criminality. By making it illegal to work, individuals who have already gone to great ends in the name of survival are often *made* offenders in their continued efforts to stay alive. These practices contribute to the entrapment of vulnerable individuals within a cycle that treats, depicts, and literally makes criminals out of those who sought little more than safety.

Moving beyond the means of criminalization presented, the contextualization of this cycle within Howard Becker’s labeling theory in Part III provides insight into how this vicious cycle began. We see that—through social processes—deviance came to be bestowed upon the concept of asylum itself and, consequently, all those attempting to claim this basic human right find themselves caught up in its stigmatization. Moral panic born out of exaggerated fears and used as means for political advantage augmented the asylum seeker’s criminalization and have resulted in demands for action by the state. In this way, deterrence policies came to find their justification. The illegal activities of those who formally and informally seek sanctuary within the United Kingdom is a direct result of deterrence policies that give vulnerable individuals no other option. Edwin Lemert’s concept of primary and secondary deviation supports this theory by showing that deviance is actually produced by social control.

Finally, in Part IV, an exploration into the purpose of criminalizing the asylum seeker was presented. In seeking to assert the state’s legitimacy, the asylum seeker (and the foreign

migrant, in general) acts as an excellent means by which to demonstrate the people's supposed need for the government. By presenting the foreigner not only as someone undeserving of the state's resources but also as a threat, a demand is made by the British public for something to be done. The draconian deterrence policies that result are, therefore, supported and the state is able—through asylum-related statistics—to appear to be “handling the problem.” By actively excluding the asylum seeker in the name of its own legitimacy, the United Kingdom fails to abide by its international asylum obligations and denies desperately needed refuge to individuals soliciting the state's protection.

The social distance between the asylum seeker and the public naturally makes alternatives to the overpowering voices of politicians and the popular press difficult to counter, however, it is common experience that the appearance of things tends to be very different from their reality. The late Cardinal Basil Hume, former Archbishop of Westminster and President of the organization Shelter, once said: “It seems to me that the reception given to those applying for asylum is an illuminating indicator of the state of a society's moral health” (Shelter 2001: 3). The deterrence policies enacted and continually expanded by the United Kingdom find their support in its people. To redress this serious problem, a closer look at the situation of those arriving at British shores is desperately needed. If the issue were to be examined objectively, one would find—as this research has—that the vast majority of asylum seekers are not advantageous cheats seeking to steal jobs, benefits, or housing, or dangerous criminals who deserve to be locked up but, rather, individuals who are quite unfairly punished for their own persecution.

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