

'The objectives of European asylum systems are about control not humanitarian obligations'. Discuss in relation to the detention and deportation of asylum seekers in one or more countries.

The rhetoric of humanitarianism and altruism is used in reference to the treatment and admission of refugees in the 1967 resolution of the Council of Europe on Asylum to Persons in Danger of Persecution, stating that governments must 'act in a particularly liberal and humanitarian spirit in relation to persons who seek asylum on their territory' (Hayter, 2000, pp.67). However, as refugees have become the focus of political concern the conditions of entry, rather than their protection, have dominated debate and policy making in Europe (Duke *et al*, 1993). This paper will explore the ways in which Europe, and specifically the United Kingdom, continues to implement tougher immigration controls without regard for its humanitarian obligations.

'Until the mid-1980s there were few direct attempts to prevent the admission of refugees to Britain' (Hale, 1993, pp.275). But the collapse of Communism across Eastern Europe and the war in Yugoslavia created a sense of crisis in Europe and the perceived need for controls. 'The rising number of asylum seekers arriving at the end of the 1980s placed the issue of asylum high on the policy agenda' (Bloch 2000, pp.29), constructing 'asylum as a political issue' (Sales, 2002, pp.457) and permanently linking asylum to immigration control which separated asylum seekers from recognised refugees. While the open borders within the European Union are celebrated its external frontiers have been increasingly fortified, hence the term, 'Fortress Europe'. The result is that 'asylum is often the only means of gaining access to Europe' (Sales, 2002, pp.457). There seems to be the 'over-riding view that without border controls, the state [...] would collapse' (Bloch 2000, pp.41). United Nations High Commissioner for Refugees has underlined that detention should only be resorted to in cases of necessity such as 'to protect national security' (Wilkinson, 1999) and there is currently no war in Europe. Various Western governments, including Britain, have even admitted that migration is needed to fill the labour shortages but inflammatory language is still employed to generate fear and validate the use of more and more rigorous controls.

In Britain, migration has always been viewed negatively rather than as a benefit to the economy or society. Following on from this, 'asylum policy has been seen primarily

in terms of controlling entry rather than the settlement of those allowed to remain' (Sales, 2002, pp.457). Over the last decade the 'increasingly draconian response to asylum seekers' (Schuster, 2005, pp.1) as seen the use of detention and deportation as tools for managing migration become so normalised that while numbers decrease ways of legislation to control migrants is at an all time high even compared to in times of war 'indicating that the crisis itself has little to do with numbers' (Bloch *et al*, 2005). What becomes clear is that, while justifications such as race relations, 'bogus' refugees and failed asylum seekers absconding maybe wheeled out at various opportune times, the British government is manifestly only interested in the control of its borders.

With this in mind I will analyse the use of detention and deportation in Europe, focusing on the United Kingdom. The first section examines deportation and section two detention exploring how the legislation supporting both has been built up to its present day levels, the impact of public pressure and international influence, who is targeted and under what circumstances and the problems associated with this.

Deportation

Deportation, the first mechanism of control, was introduced in Britain with the 1905 Aliens Act when immigration officers in Britain gained the power to remove immigrants. East European Jews, arriving at the beginning of the 20th century, were painted as a social, political and economic threat and public hostility towards them grew. Over the years, public attitudes have influenced greatly the British government's inclination for increasingly stringent immigration controls. Anti-alien hysteria generated by World War I pushed through the 1914 Aliens Registration Act in one day (Bloch *et al*, 2005). At the end of the war, political expediency prompted Lloyd George's election promise to remove the 'enemy alien presence' (Bloch *et al*, 2005). During World War II, the lack of capacity for internment lead to the deportation of 8000 German, Austrian and Italian prisoners of war to Canada and Australia but the sinking of the ship carrying them caused a change in public opinion and so policies became less restrictive, for a time.

'UK post-war migration policy can be characterised as largely reactive' (Boswell, 2003). The government's powers of deportation were augmented with the 1962 and

the 1968 Commonwealth Acts, the 1969 Immigration Appeals Act and the 1971 British Nationality Act which was introduced in response to a 'perceived crisis of control' (Bloch *et al*, 2005, pp.495) with the arrival of East African Asians, taking up their right to enter and settle as British subjects under the 1948 Act. The UK became 'host to increasing numbers of asylum seekers after the mid 1970s, at a time of economic recession and rising unemployment' (Boswell, 2003, pp.317). This increased social tensions as the 'public became increasingly concerned about the perceived social and economic costs of receiving and hosting asylum seekers' (Boswell, 2003, pp.317). British immigration policy became racialised with the 1968 Act, 'rushed through in just two days in an atmosphere of outright panic [which] stands out as the most blatant example of a policy dictated by public hostility toward coloured immigrants' (Joppke, 1999, p.108). Additionally, the 1971 Act differentiated between passports issued in the UK and elsewhere in the Commonwealth and introduced the concept of patriality, forever racialising immigration control by targeting black and Asian immigrants (Solomos 2003, Bloch 2000).

The 1988 Immigration Act under the Conservatives limited the scope for appeal against deportation removing the right to challenge expulsion before an independent body resulting in a rise in the numbers of deportation at the end of the 1980s (Bloch *et al*, 2005). Both Conservative and Labour governments 'have argued in favour of increasingly restrictive immigration controls as a means of maintaining good race relations' (Bloch, 2000, pp.29). However, the opposite occurs as 'research shows that such legislation damages race relations because it sends a signal that migrants are to be feared' (Brochman, 1992 in Bloch, 2000, pp.39).

While no convention specifically prohibits deportation, the Article 33 of the 1951 Geneva Convention states that states cannot return (*refouler*) a refugee to a territory where his life will be in danger due to race, religion, nationality, and political affiliation or membership of a social group. The UK ratified the Geneva Convention in 1954 but there is no legislation which to legally place it in domestic law (Sales, 2002). If an asylum seeker has passed through a country which could have offered protection, due to the 'country of first asylum' rule the claimant risks being sent back to the country from which they fled and this has 'contributed to an increase in the number of deportations' (Joly, 1992, pp.40). Most EU governments would maintain

that people are only deported once their claim has been rejected and only when they are satisfied that the country to which they will be returned is safe. The decision by Britain to remove the moratorium on deporting Zimbabwean asylum seekers in November 2004 was taken despite the 'worsening human rights situation' and evidence to suggest that those returned would be 'tortured, beaten and killed by [President Mugabe's] security forces' (Ekklesia, 2005). Manuel Bravo from Angola, detained at Yarl's Wood despite the fact that his appeal was still being processed, 'took his own life in despair at his imminent deportation and in a desperate final attempt to prevent the expulsion of his son' (Refugee Council, 2005).

Deportation, part of the government's 'cruel and inhumane immigration laws' (NCADC, 2006) is expensive and distressing for those being deported and also those who witness the process. When a 23 year old Zairean refugee, Salim Rambo, was due to be deported from London to Frankfurt passengers 'resorted to civil disobedience to prevent the forced deportation' after being given leaflets about Salim by CAGE, the anti-prison network (No Racism, 2000). The forced deportation of Iraqi refugees raised concerns not only about the real safety of sending people to what the government claims are 'areas not affected by insurgent action', strongly objected to by UNHCR, but also about the cost of chartering a plane to transport only 20 deportees (Travis, 2005). A BBC question and answer website stated that the Home Office alleged the UNHCR had 'advised that returns were "feasible" to certain parts of Iraq' but added that 'this is not entirely the whole story. The UN says voluntary returns are feasible -to three northern Kurdish areas - but opposes forced returns' (BBC, 2005). The Home Office explanation: 'It's important for the integrity of the asylum system that anyone found not to be in need of protection is required to leave the UK' (Bowcott, 2005).

As part of the Nationality, Immigration and Asylum Bill 2002 the government introduced measures aimed at protecting women from trafficking. Experience of the English Collective of Prostitutes suggests that anti-trafficking legislation is more often used to deport women (Adams, 2003, pp.135). Six women who were 'rescued' from a brothel in Birmingham in October 2005 were held in Yarl's Wood detention centre on the 'grounds that they were not victims of trafficking and were in the country illegally' (Bindel, *et al*, 2005). The reasons why they might not want to immediately

want to admit to having been trafficked, such as fear of the authorities or threats against their families, were not taken into account. These new powers have even been used to deport immigrant women working for themselves (Adams, 2003). It is obvious that the protection of these women is not a government policy priority.

Detention

Detention, or internment, was first used extensively in the UK during World War II to control enemy aliens. Not long after the outbreak of war all Germans of military age were rounded up. It has been noted that the numbers interned 'fluctuated according to the fortunes of war, the level of public panic and the amount of available detention space' (Cohen quoted in Bloch *et al*, 2005). This shows how the government has long used detention as a means of control spurred on by public pressure.

Until the 1990s, detention was only used in exceptional cases and correspondingly no suitable centres for detention existed. Under the Immigration Act 1971 detention was seen as an administrative measure to aid identification and issuing of documents for removal and to prevent absconding (Bloch *et al*, 2005). The first act dealing specifically with asylum, the Asylum and Immigration Appeals Act 1993, 'was like other immigration legislation, concerned primarily with controlling entry' (Sales, 2002, pp.462). The policy of restricting entry as a means of control has been added to with time. 'Since the mid-1980s, the government has sought to prevent the influx of primary refugee migrants through the refusal to accept further quotas, of refugees, legislation such as the Immigration (Carriers Liability) Act 1987 and the narrowing of criteria for family reunion' (Hale, 1993, pp.275). Visas were introduced for asylum seekers and people seeking family reunion in the 1980s. The Carrier's Liability Act 1987 imposed fines on anyone who transported people to the UK without the required documentation (Bloch, 2000).

These measures ignore the circumstances in which many asylum seekers flee their home country and the difficulty in obtaining travel documents. Disregarding the reasons why many might not declare themselves immediately on entry, such as fear of authorities, no English language ability or lack of knowledge of the procedures, the Conservative government argued that only a bogus asylum seeker would wait and apply in country, while genuine applicants would do so on arrival (Bloch 2000)

allowing politicians to label asylum seekers as ‘immigrants in disguise’ (Joly, 1992, pp.140). With regards to the case brought against an Algerian, an Iraqi Kurd and an Albanian in 1999, the Judge ‘ruled that the government was in breach of Article 31 of the Geneva Convention which states that asylum seekers should not be penalised for entering a country illegally’, adding that the combination of visa requirements and carriers’ liability makes it virtually impossible for refugees to enter any other way (Hayter, 2000, pp.99). Still, the Asylum and Immigration Act 2004 has now made it illegal to enter the UK without valid travel documents.

‘Prior to the 1988 Act asylum seekers averaged 4000 a year and were rarely deported or detained’ (Bloch *et al*, 2005). Many came as part of organised resettlement programmes, such as the Vietnamese and Hong Kong refugees in the 1960s and 1970s. They received a relatively warm welcome from the politically sympathetic government, and the public who perceived them as victims. Since the 1990s, however, detention has become progressively widespread across Europe. ‘In Britain anywhere between 750 and 850 people are held at anyone time’ (Wilkinson, 1999). Detention is actually forbidden in international law except in certain cases, including ‘facilitating the control and removal of aliens’ (Bloch *et al*, 2005). The UNHCR states that ‘Detention of asylum seekers is... inherently ‘highly undesirable’ especially in the case of vulnerable groups such as single women, children, unaccompanied minors and people in need of special care’ in its guidelines on *Detention of Asylum Seekers*, 1996 (Wilkinson, 1999).

In the UK, migrants are detained if they have either violated their immigration terms, have entered illegally, or are asylum seekers awaiting a decision. The guidelines also state that if asylum seekers must be detained it should be for the minimum time necessary, they must be given a reason, legal assistance and the right to challenge the decision in front of a impartial board (Hayter, 2000). Additionally, ‘people under the age of 18 should not be detained and [...] asylum seekers should not be held with convicted criminals’ (Hayter, 2000, pp.113). Unfortunately, ‘families with children under 18, pregnant women, victims of torture and the seriously ill are detained’ (Jackson, 2003, pp.118).

Despite the all-new purpose built detention centres (Oakington March 2000, Harmondsworth October 2001, Yarl's Wood November 2001) many people are still housed in prisons due to the increased preference of detention as a measure to control. In 2002, 15 per cent of asylum seekers were held in prisons (Bloch *et al*, 2005). This fuels the idea that the detainees have done something wrong. Sir David Ramsbottom, Chief Inspector of Prisons, stated that 'exposing detainees to custody alongside some elements of the prison population is not only a corrupting experience but cannot be justified on safety grounds' (Wilkinson, 1999). The British government alleges that detention is used only at the end of an asylum claim to facilitate removal and prevent the claimant disappearing. However, in Britain, France, Germany and Italy, some people have been detained immediately upon entry as well as throughout the entirety of their asylum appeal process (Bloch *et al*, 2005). According to the Home Office's Statistical Bulletin in 1998-99 'around 40 per cent of those detained had applied for asylum at ports of entry' (Hayter, 2000, pp.116) and so were not, even technically, illegal immigrants. In *Cell Culture*, a report for Amnesty International, Richard Dunstan found that 82 per cent of asylum seekers have been continuously held since the time of application and 87 per cent had been held before any decision had been made on their case (Hayter, 2000). Bail for Immigration Detainees (BID) has 'even been contacted by people who had won their asylum appeal before an Adjudicator, but were still in a so-called 'Removal centre'' (Jackson, 2003, pp.119).

Another cause for concern is the length of time that a refugee can be held without knowing their fate. In France, the maximum a claimant can be held is 30 days, Italy 60 days and Germany 18 months. In the UK, there is no legal time limit for detention and people have been held up to three years, contrary to recommendations by the UN Working group on Arbitrary Detention (Bloch *et al*, 2005). 'The absence of any release date for detainees [...] is one of the hardest and most demoralising aspects of detention' (Hayter, 2000, pp.117).

While in detention it is almost impossible for detainees to access legal representation. Lawyers are often reluctant to take on asylum cases because it is difficult to speak to people in detention centres, visiting them is time consuming and it is almost impossible for detainees to gather the necessary evidence while under lock and key. The right to automatic bail hearings, promised with the Immigration and Asylum Act

1999, was removed without ever being implemented with the Nationality, Immigration and Asylum Act 2002 (Bloch *et al*, 2005). Detainees need to be informed of their rights if they are to exercise them but few know what these are and even fewer know people who can guarantee sureties for them.

The detention of children is a very contentious issue and yet another example of the desire for control being firmly placed above the need for humanitarian protection. The power to detain families with children was included in the Immigration Act 1971 but this was at a time when detention was still used very rarely and for short periods only. The first detention centre for families was opened at Oakington in 2000 without any new legislative powers being granted by Parliament (Bloch *et al*, 2005). It is claimed that even families with children are likely to abscond and thus need to be locked up. The UK is a signatory to the 1989 Convention on the Rights of the Child, which details a child's right to liberty and family life, but the government made a reservation excluding asylum seekers and others without leave to enter the UK (Jackson, 2003, pp.120).

Detention has serious repercussions for children's mental and physical development and opposition to the detention of families has come from NGOs, church leaders, children's charities and protection agencies. Anne Owers, Her Majesty's Inspector of Prisons was reported as being "particularly concerned" about the welfare of children detainees. The inspection found that education for older children was inadequate and that some children were being "damaged" by detention' (Escobales, 2005). Ms Owers has also stated that 'children should not be detained for more than seven days' however, imposing time limits would be 'completely impractical' and 'would enable people evade removal' (Bloch *et al*, 2005). BID has no evidence to believe that families are likely to go 'underground' (Jackson, 2003, pp.120) and the UNHCR study says that 'this official argument has not been justified by studies on the rate of absconding' suggesting there are 'other motives behind these government actions' (Wilkinson, 1999).

The conditions of detention vary amongst European countries. In France, the *Sans-papiers* were reported to have been held in a room 10 metres square with 17 mattresses, 10-17 people at a time, no possibility of phoning out and with dogs being trained right outside, barking all day and night (Hayter, 2000). In Germany, many

people have been held at the Polish border, for a maximum of 48 hours, and then expelled without the chance to contact lawyers or apply for asylum, while in Switzerland it is reported that people have been beaten to make them confess from which country they came (Hayter, 2000).

The Campsfield Immigration Detention Centre in Britain opened in 1993, has a 20-foot high mental fence topped with razor wire. There are 42 surveillance cameras on the fence and inside. The centre is run by a private security company with guards that are not trained in dealing with traumatised people, only in control and restraint techniques. The education, sports and medical facilities are inadequate. Reports by Her Majesty's Inspectorate of Prisons found a 'prevailing sadness' and a 'settled misery' among detainees (Hayter, 2000, pp.125) heightened by the threat of and actual removal to other prisons. The government's policy states that people should not be detained where there is independent evidence that they have been tortured' (Jackson, 2003, pp.121) but the burden of proof is placed on the victim, assuming that all torture can be documented. In the UK, between 1987 and 2000 at least nine asylum seekers committed suicide or died of other causes whilst in detention. The mental as well as physical health consequences of abusive detention, often reflecting the situations from which the refugees have fled, are clearly inhumane.

The Prevention of Terrorism Act 2002 is another example of a measure driven by fear and distrust of strangers, showing how the government and the media can strongly influence public opinion (Joly, 1992). The ruling of the Law Lords against the government's Anti-terrorism, Crime and Security Act 2001, under which people had been held without charge for nearly three years, because their human rights had been breached (Amnesty International, 2004) and recent the failure of the government to pass all its new legislation to increase the Home Secretary's powers of detention, over-riding the European Convention of Human Rights, is small comfort. (Bloch *et al*, 2005). The conflation of terrorism and asylum seeker in much of the public discourse has grave implications for the safety of asylum seekers' (Sales, 2002, pp.473).

The government's newest move, the 'Five-year strategy for immigration and asylum', for which new legislation was not required, 'will see a third of all asylum seekers being placed in detention centres for the fast-track processing of their claims' (Travis,

2006). Those not detained may be subject to electronic tagging, a measure associated with criminal activity which will further stigmatise asylum seekers. An additional worry is the 'White List' of 14 countries that the government deems to be safe, such as China and Sri Lanka, to which asylum seekers 'can be sent back before any appeal has to be heard' (Travis, 2006). The Refugee Council is concerned that 'the government has become so preoccupied with the perceived need to appear to be in control of asylum that it is resorting to ever tougher measures at the expense of fairness' (Refugee Council, 2005).

Gibney and Hansen have stated that deportation is, from the State's point of view, both ineffectual and essential' (2003, quoted in Bloch *et al*, 2005, pp.497). Detention and deportation are simultaneously used as a deterrence technique and to 'signal to Britons that something is being done' (Bloch *et al*, 2005, pp.497). The UNHCR Guidelines state that 'detention of asylum seekers which is applied...as part of a policy to deter future asylum seekers in contrary to the principles of international protection' (Hayter, 2000, pp.112). The arbitrary nature of who is and who is not detained or deported also adds to the conclusion that these can only be deterrent methods. The British government's attitude to the refugee issue has been 'symptomatic of the lack of weight of normative human rights principles have in official thinking' and 'has sharply exposed the humanitarian limits of most of the enlightened Western regimes' (Favell, 2001, pp.209).

Conclusion

Attacks on the rights of asylum seekers by politicians and sections of the media affect all refugees, including those with Convention status and the normalisation of legislation only confirms to the public that refugees are a threat and to be feared, which in turn reinforces the legislation's legitimacy and providing an excuse for further measures. It is important to remember that the economic, social, political reasons, for the many displaced people in the world are indirectly and often directly linked to the political actions of the (Western) governments bemoaning them. The language of control and fear, misusing the term asylum seeker, maintains the dividing line between economic and political refugees and 'allows the tabloid newspapers their pious distinction between the deserving and undeserving' (Alldred, 2003, pp.152). With the introduction of even more restrictive legislation (the British government's

new points-based immigration system, Travis, 2006, b.) making it even harder for migrants wishing to work in Britain legally, forcing them to enter illegally, it appears that even tougher times are ahead for refugees and asylum seekers. For now and the indefinite future, European countries will continue to struggle with a basic dilemma: 'how to uphold their legal and moral obligations towards asylum seekers while satisfying public worries over immigration' and their desire for control (Wilkinson, 1999).

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