

**Sussex
Centre for
Migration
Research**

Sussex Migration Working Paper no. 20

Control and Deterrence

Discourses of detention of asylum-seekers

Mari Malmberg
University of Sussex
January 2004

Abstract

Discourse theory implies that it is not sufficient to view language as something neutral or objective. Language should rather be seen to represent a certain perspective and aim. Michel Foucault claims in his theoretical elaborations on discourse, that a social and political context affects language and that language on the other hand shapes and constructs realities. Essential and entangled in this process of construction is power. This paper uses these theorisations to look at how the UK Government describes its policy on detention of asylum seekers and how this policy is practised. The analysis is related to a framework of 'humane deterrence', which contains the logic of how states can discourage people from migrating.

Table of Contents

1. INTRODUCTION	3
2. THEORETICAL BACKGROUND.....	3
2.1 Genealogy.....	3
2.2 Discourse Theory and Discourse Analysis	4
3. METHOD.....	4
3.1 Research aim and questions.....	4
3.2 How was the research conducted?	4
4. DETENTION OF ASYLUM SEEKERS IN THE UK: 1970-2003	5
4.1 Powers to detain	5
4.2 The practice of detention.....	6
4.3 Increase in detention.....	7
4.3.1 Statistical increase	7
4.3.2 Extension of the detention estate	8
4.4 New purpose for detention?.....	9
5. DETENTION AS DETERRENCE	9
5.1 'Humane deterrence'	9
5.1.1 Detention as a 'humane deterrence' measure	10
5.2 Critique of 'humane deterrence' policies according to Weiner (1995:194).....	10
5.2.1 Non-humane	10
5.2.2 Non-deterrence	11
5.2.3 Non-protection of refugee status	12
6. GENEALOGY OF THE UK STATEMENTS AND PARLIAMENTARY.....	12
6.1 Political Context	12
6.2 Discourse 1 – Criminalisation.....	13
6.3 Discourse 2 – Guilty until proven innocent	14
6.4 Discourse 3 – Shift of blame	16
6.5 Discourse 4 – A game with words.....	16
7. CONCLUSIONS.....	17
BIBLIOGRAPHY	19

1. Introduction

People who flee human rights violations and persecution and come to seek refuge in the UK risk being imprisoned while their application for asylum is being processed. The vast majority of these people have not committed any crime, but can still be deprived of their freedom for an unlimited period of time.

The policy of detaining asylum seekers has developed alongside an increase in asylum applications in the UK. When analysing government statements and parliamentary debates about detention, it is clear that UK governments consistently have tried to extend the use of detention. This has been challenged both by some MPs and by the non-profit sector, but such contributions are seldom paid attention to and rarely met with any explanations or answers. Rather, the Government has argued that detention is essential for the control of immigration.

The objective of this paper is to analyse the government statements and parliamentary debates on detention of asylum seekers, and find out what 'truths' about asylum seekers are constructed and used to legitimise a policy of increased detention. This is done through a review of relevant political and parliamentary documents from the 1970s until present time. The discourses will be compared to current practice and the framework of 'humane deterrence'.

I begin by briefly outlining the chosen methodology, genealogy. It is not so much a methodology as a theoretical framework for the understanding of knowledge and research. Following this theoretical section I describe how the research was carried out. I explain how the sample was selected and present some of the questions I posed while reading the texts. After this, I look at the legal basis and the practice of detention in the UK. Some indicators showing how the practice has increased and changed are also looked at in this section. The same chapter also introduces the question of whether the practice of detention in the UK is starting to shift towards deterrence rather than immigration control. Following this chapter, I review the history, concept and framework of 'humane deterrence'. This is included to give an understanding of the framework of how detention is talked about in academia and by the non-profit sector. Next, I lay out the research outcomes of the discourse analysis. I present this as four themes, which each represent one identified discourse.

This paper argues that discourses on detention tend to converge with the logic behind 'humane deterrence'. I argue that the Government has tried to promote acceptance of their detention policy by hooking onto discourses that tend to criminalise and blame the asylum seekers. They thus emphasise that the asylum system is abused and that this requires restrictive action. The analysed sample suggest that two successive Labour Governments have sought to discourage asylum seekers from coming to the UK, but that they are also aware that using detention as a measure of deterrence is questionable in terms of international human rights law.

2. Theoretical background

The primary focus of this section is to review the theoretical background of the methodology of this research, which is genealogical analysis. It will include a description of the methodology and a discussion of its theoretical foundation.

2.1 Genealogy

Genealogy is the method that Michel Foucault developed from studying the relations between power, knowledge and discourse¹ in different social phenomena (Foucault, 1973; 1977). The aim of genealogical research is to historically trace how social practice and power relations produce discourses and knowledges and in what way this has shaped the modern world. (Foucault 1984: 59) In short, the genealogist examines the political and historical construction of objectivity. This examination is done through a combined discourse analysis and a study of procedures, practices and institutions that are involved in the production of discourses. The concern is how knowledges and discourses are interconnected with and how they support systems of power. (Carabine 2001: 276-277)

The genealogical methodology does not come with any clear 'rules', but instead the guidance is found in the theoretical framework of discourse analysis.

¹ I use the word discourse in the sense of it being a certain system of language; a language with particular terminology that is used in relation to a specific topic. (Tonkiss 1998:248)

2.2 Discourse Theory and Discourse Analysis

In a simplistic way, discourse analysis can be defined as the close study of language in use. (Taylor 2001: 5) This definition does not say much about how the research should be conducted or its aim, but the method is intimately intertwined with a theoretical framework of fundamental assumptions about language, power and knowledge and these assumptions are essential for understanding what discourse analysis is.

The main underlying assumption of discourse analysis is that it is not sufficient to understand language as neutral, transparent information, but it should rather be seen as constitutive. This means that language is a site where meanings and knowledges about the social world are created, changed and transformed into truths. (Taylor 2001: 6, Tonkiss 1998: 246) Hence, texts are seen as historical reflections where truths are constructed and made neutral. The consequences of such accounts are found in present societies. The aim of discourse analytical research is to show how such truths (sometimes also referred to as knowledges) are produced by the use of language. (Foucault 1984: 73) By critically approaching the use of language in social settings and by identifying patterns and practices of it, techniques and strategies used to produce a taken-for-granted status of certain aspects of society are revealed and questioned. (Taylor 2001:9, Tonkiss 1998: 245) Underlying this understanding is that people (as language users) are not detached from language but instead they are always positioned and immersed within it. This results in subjective accounts and interpretations that are linked to a social context. (Taylor 2001: 10)² Language in use is consequently inherently positioned but made neutral to form the objects of which it is spoken, and this is what Foucault refers to as discourses.

The words truth and knowledge used above requires closer examination. These words refer to products of discourses. The language used about a certain object shapes and reproduces that particular object. What is told about the object is presented as knowledge and as true. Entangled and essential in this process of knowledge construction is power. Truths and knowledges are produced, selected and sustained by power. In return, knowledges and truths reinforce and support power. This implies that power and

knowledge are mutually dependent on each other, and cannot exist independently. (Foucault 1984: 74, Foucault 1977: 27-28) From this theoretical standpoint it becomes clear that a study of how objects of knowledge are historically produced will shed light on the power relations. This is genealogy.

The theoretical framework of discourse analysis and genealogy gives a rather clear epistemological standpoint. Epistemology refers to the status of knowledge. Discourse theory's recognition that knowledge and truths are constructed through power also applies to the research of discourse analysts and genealogists. Instead of presenting their research as truths, discourse analysts emphasise that they present an interpretation of a phenomena, guided by the framework of discourse theory. All knowledge obtained by research is recognised to be partial, situated and relative both to the context it exists in and to the scholar who conducts the research. (Taylor 2001: 12)

3. Method

Foucault's theoretical framework for power, knowledge and discourse and the interdependent relationship between these, is the spine of genealogical analysis and will be guiding in this analysis. An interpretative analysis of chosen documents will be presented together with a contextual analysis. This section explains the process of selecting documents for the discourse analysis. The questions that guided me when reading and analysing the sample also presented.

3.1 Research aim and questions

The aim of this research is to investigate how the discourse about detention of asylum seekers has changed over time and relate this to changes in practice. By doing this I aim to be able to theorise on how detention has been made into an accepted measure. In the process of doing this I try to answer how detention of asylum seekers and immigrants is discussed in the UK parliament. Is the debate different today compared to the 1970s? Also I explore how detention has been used during this time. What discrepancies exist between discourses and practice? To add another perspective I will compare government and parliamentary discourse and see how it differs from how academia and the non-profit sector describe the Governments policy?

3.2 How was the research conducted?

I have chosen the year 1971 as the starting point of this analysis. This is because the current

² This does of course also apply to the discourse analyst.

powers to detain immigrants were consolidated in the Immigration Act of that year. The power to detain existed before this legislation, but was not as wide and did not explicitly provision for detention of asylum seekers. Since 1971, five further Immigration Acts have been passed³. The Acts of 1988, 1993 and 1996 were discontinued since they did not introduce any new amendments to the 1971 legislation regarding detention. Thus, focusing on 1971, 1999 and 2002, the White Papers that preceded the chosen Acts were read, as well as the debates on the Bills' second readings in parliament. The second reading of a Bill is relevant since it is at a second reading that the Government defends its policy and answers questions about it and there is generally a wide debate. (Blackburn et al 2003:321-323, 332-333) In addition to the second readings, a general search was made on the word 'detention centre/detention' in the general debate in the House of Commons during the period 1970-2003. The results of that search were read and both patterns of discourses and statistics were located in this way.

4. Detention of asylum seekers in the UK: 1970-2003

In 1999, the UNHCR Executive Committee expressed concern about a general increase of institutionalisation of detention of asylum seekers; they were particularly alarmed by the arbitrariness of the practice. It was argued that this arbitrariness was partly a result of a failure to distinguish between socio-economic migrants and asylum seekers, thereby exposing asylum seekers and possibly refugees to control measures not intended for them. (ExCom 1999: §1(1-3)) This section will review the legal basis for detention of asylum seekers in the UK and also show how the use and practice of detention has increased and changed since the early 1970's. The aim is to establish if there are reasons for concern in the case of the UK.

4.1 Powers to detain

The statutory provisions for the current powers to detain asylum seekers are found in the 1971 Act. The legislation gives individual immigration officers discretionary power to detain without regulation by any court. The Government assures that detention is only used as a last resort and that there is a presumption in favour of temporary admission. (Home Office 1998: §12(3); Hansard 22 February 1999: 40) Only when there are no

other alternatives and when there are good grounds for believing that the person will not comply with the conditions of temporary admission, will detention be used. Having said this, immigration officers are empowered to detain asylum seekers pending the determination of a claim. If an immigration officer doubts that a person is entitled to enter the UK with the documents shown, he/she can detain the person for further examination⁴ to establish his/her identity or travel route.⁵ This kind of detention often takes place at the airport/seaport etc.⁶ If, after this examination, the person is still not admitted but given a refusal of leave to enter, he/she can be continuously detained pending removal to country of origin or a safe third country.⁷ (JCWI 1999: 321)

Immigration officers also have the power to detain persons pending deportation.⁸ This applies to persons that have been convicted for a crime in the UK and served a sentence in prison, and then recommended for deportation by a court. It can also apply to persons that overstayed a visitor's or a student's visa or people that the Home Office judges to be a threat to the public good or the national security.⁹ (Ashford 1993: 21-26)

Further, asylum seekers can be subject to detention during their determination procedure if an immigration officer has reasonable grounds for believing a person is likely to abscond or not appear at the time and place required by the immigration service.¹⁰ This implies that detention can commence at any time during the procedure, not only at the beginning. The Home Office has guidelines for when to consider there to be a risk of an asylum seekers absconding or not co-operating with the authorities. For example, if the person has previously absconded, has been in general non-compliant with immigration law such as 'illegal entry' or the use of forged documents, it is assessed to be risky. Also, if the person is very likely to be rejected or if she/he does not have family ties in the UK, suspicion of non-compliance

⁴ Immigration Act (I.A. 1971), Schedule 2, Paragraphs 16(1)

⁵ The travel route is important due to 'safe third country' regulation and the Dublin Convention. These pieces of legislation determine which country is responsible for a certain asylum application.

⁶ A debate concerning the legal status of this kind of detention has emerged. Detention places in airports are being referred to as 'international zones' and 'waiting areas' and it is questioned if this should be seen as detention as defined. (Hughes & Field 1998: 20)

⁷ I.A.1971, Schedule 2, paragraph 8 and 16(2)

⁸ I.A.1971, Schedule 3, paragraph 2(1)

⁹ I.A.1971, section 3(5) (b) and 15(3)

¹⁰ I.A.1971, Schedule 2, Paragraph 24 (1)

³ In 1988, 1993, 1996, 1999, 2002.

is high. The assessment is also based on the presumption that a risk of non-compliance is higher at the end of an asylum procedure and the likelihood of admission to stay is low. Detention of this kind is sometimes referred to as preventive detention. (Hughes and Field 1998: 21-22, 24)

Detention as such was not a big issue when the 1971 Act was introduced, and it was not until the mid-1980s that asylum seekers were detained in significant numbers. The debate in parliament prior to the introduction of the 1971 Act also indicates that detention was not a big consideration or concern.¹¹ The powers to detain that were provisioned in that Act were intended as a measure of immigration control of visitors, students or workers who were refused to enter Britain or who had overstayed their visas. It was not intended as a routine measure against asylum seekers. (Hayter 2000: 116; See also Hansard 8 March 1971)

In 1999, the Immigration and Asylum Act extended the powers of immigration officers. The circumstances when detention is justified remained the same but new powers were given for the practical implementation of detention. The 1999 Act provides a statutory framework for the management and operation of detention centres.¹² The 1999 immigration legislation also introduced automatic bail hearings for all detained asylum seekers, taking place 7 and 35 days after the initial detention.¹³ This change meant that an adjudicator would review all cases of detention. However, this measure was never implemented and the legislation was repealed in 2002 through the Nationality, Immigration and Asylum Act. The system was said to be too complex, too expensive and that it would divert resources from the processing of asylum applications. (Hansard 24 April 2002: 431) The 2002 Act also emphasised the purpose detention has for the removing of failed asylum applicants. To clarify this connection, and for the realisation of an intensified removal policy, detention centres were renamed 'removal centres'.¹⁴

All along, there has never been any time restriction on detention. As a general principle though, *'it should continue for no longer than necessary'*. (Hansard 19 November 2001: 97) Such wording is open to interpretation and does not restrict the practice at all, which has meant

that the length of detention sometimes has come to exceed two years. (Amnesty 1996: 11)

4.2 The practice of detention

Even if the grounds for detention are given in legislation, the practice is accused of being arbitrary. The charity 'Bail for Immigration Detainees' (BID) claim that the practice is not within the frames of the domestic law. In 2002 they wrote a submission to the UN Working Group on Arbitrary Detention (BID 2002) saying that the recommendations that the Working Group gave the UK Government in 1998 were being ignored. Below I review some of the points they raised.

In the last couple of years, the UK Government has begun to focus on the removal of rejected asylum seekers and the importance of detention to facilitate the implementation of removal decisions. (2002 Act) Although this is constantly being repeated, BID's experience is that a large proportion of the people being detained are detained upon arrival or long before the asylum application is completed. The Government does not give any statistics that specify when asylum seekers are detained. However, at the time of the fire at the detention centre Yarl's Wood (14 February 2002) it was revealed that only 12% of the 385 detainees had been notified about removal. (BID 2002: 10,14,23) A survey carried out by Amnesty in 1996 showed that 82% of all detained persons were detained after applying for asylum upon arrival. Only 7.3% were detained when they had exhausted all appeal rights and were liable for removal. (Amnesty 1996: 14)

BID also points out that since there is no full disclosure of reasons and criteria for detention it is hard to assess if detention is lawful. Criteria are found in the immigration service's Operation Enforcement Manual (OEM) but some are named 'special exercise' criteria and these secret criteria are subject to change by the immigration service without parliamentary scrutiny. Research carried out by the Cambridge Institute of Criminology (Weber and Gelsthorpe referred to in BID 2002) showed that immigration officers tended to base their decision on 'common sense' and experience rather than the criteria outlined by the OEM. (BID 2002: 12,15,20-22) Both Hughes and Field (1998: 19) and Hayter (2000: 119) point out that the number of available places in detention centres also affects the immigration officers' decisions to detain.

Apart from the criticism that the criteria are not followed, BID points out that the foundation of some of the criteria is weak. The most common justification for detention is the risk of

¹¹ See debate on Immigration Bill in parliament, before the second reading of it, on the 8th of March 1971.

¹² Part VIII and Schedule 12

¹³ Part III

¹⁴ Article 66(1)

absconding. There is no research suggesting that asylum seekers would abscond in high numbers if not detained. Instead research suggests the opposite (Bruegel and Natamba, 2002 and Vera Institute of Justice, 2000 referred to in BID 2002) The UK Government itself has not commissioned any research on the topic of absconding rates. (BID 2002: 14,43) Although no studies have been carried out on the issue, MPs in the debate reviewed refer to estimates on several occasions. The numbers referred to range between 20,000 and 50,000, but it is not made clear if this is a total figure or if it is the number for a certain period. (Hansard 22 February 1999: 75,95)

4.3 Increase in detention

Hughes and Field (1998) have identified some indicators to assess if detention of asylum seekers is on the increase. The reason such indicators are needed is that the majority of states, including the UK, claim to keep the use of detention of asylum seekers to an absolute minimum, but official statistics do not disclose a coherent picture. (Hughes and Liebaut 1998: 1) In the case of the UK, statistics are not broken down into categories or added to give a comprehensive picture. Especially difficult to find are historical figures that are comparable to the present. This is due to the use of different statistical categories. The lack of detailed statistics is justified by the claim that such figures only can be obtained by examining individual files and only at disproportionate cost. (For example see: Hansard 20 March 2002: 410; 28 November 2001: 959; 16 October 2001: 1194)

The statistical disorder leads to confusion and it is difficult to draw any confident conclusions. Due to the problems of finding comprehensive figures, Hughes and Field suggest that a historical comparison of the existing statistics should be supplemented with studies of the extension of facilities intended for detention, together with an analysis of amendments made in national legislation and policies. (1998: 16) The national legislation and policy of the UK is discussed above and should be kept in mind for this analysis.

4.3.1 Statistical increase

Recently, the Government estimated that at any one time, only 1.5% of all asylum seekers are detained. (Hansard 11 July 2001: 265) NGOs claim the figure is 12.5%. (Hughes and Field 1998: 16) There is a big discrepancy between these two figures, which causes concern. Neither of the parties reveals their point of reference. Hayter claims that the official government figure

is obtained by taking the numbers detained as a percentage of the total backlog of people with unresolved claims, which dates back several years. The NGOs figure shows the share of new asylum seekers that are detained during a year. (2000: 118)

In 1973 (which was the year when the 1971 Act came into force) 95 persons were detained under immigration powers. (Table 1) In 1995, the same figure was a little more than 10,000. From this year and onwards, the Government presents statistics in snapshots of how many asylum seekers are detained on a certain date instead of general annual totals of all people detained. An important difference between these two categories is that the general annual total does not distinguish between persons detained under immigration powers and those detained under dual powers, hence the figures represent all detainees.¹⁵ The Government rarely releases figures concerning the share of asylum seekers in detention. Neither does it tell if the detained asylum seekers are awaiting an initial decision or an appeal.

Even though both columns in table 1 show an increase in detention of asylum seekers the categories given by the Government makes comparison impossible. Only with crude manipulation of the given figures can an estimate of the present annual total be reached. Such an estimate is made in the table for 2003, based on the assumption that the snapshot figures that I have chosen are representative for the entire year. Table 1 assumes that the increase that is shown in the snapshot statistics of asylum seekers is proportional to an increase of the annual total of detained persons. It is also assumed that the average time spent in detention has remained the same.¹⁶ A comparison of the snapshots from 1995 and 2003 shows that detention has increased with 137%.¹⁷ By adding the same increase to the annual total of 1995, it can be estimated that around 24,000 persons were detained in 2003.

¹⁵ Persons detained under dual powers would still have been detained even if the immigration detention order was withdrawn. Other powers, usually criminal, are keeping them in custody.

¹⁶ These assumptions are of course not correct, as can be seen in the year 1994 and 1995 where the snapshot decreased and the annual total increased. What is illustrated though is that it is only under these assumptions that an estimate can be reached at all.

¹⁷ The increase: $1355-572=783$. The increase in percentage of initial snapshot:
 $783/572=1.37 \times 100 = \sim 137\%$

Table 1. People detained in the UK under immigration powers during 1973-2003

	Annual total of detained persons. ¹⁸	Snapshot (at date) of asylum seekers in detention. ¹⁹
1973	95	-
1974	138	-
1975	188	-
1976	374	-
1977	781	-
1978	822	-
1979	781	-
1980	1304	-
1981	851	-
1982	927	-
1983	684	-
1984	915	-
1985	1,086	-
1986	1,571	-
1987	2,166	-
1988	2,823	-
1989	3,138	-
1990	3,297	-
1991	4,455	-
1992	5,658	-
1993	5,778	-
1994	7,390	616 (31/5)
1995	10,240	572 (13/1)
1996	-	733 (31/1)
1997	-	777 (27/3)
1998	-	817 (31/1)
1999	-	741 (4/1)
2000	-	1,107 (30/4)
2001	-	1,280 (29/12)
2002	-	1,370 (30/3)
2003	23,940*	1,355 (28/6)

Source: Home Office's Quarterly Statistical Bulletin, *Control of Immigration Statistics* and *Asylum Statistics*.

Note: *Estimate. See text for explanation.

This simplistic calculation is built on the assumption that the average duration of detention is constant. However, table 2 shows that this is not the case, but rather that the average time spent in detention was shorter in 2003 than in 1995. This could mean that even more individuals and asylum seekers are detained every year. As emphasised, the above estimate of the annual total of detained persons is not a precise calculation. The only confident conclusion I can draw is that the total annual number of detained

¹⁸ These figures represent all people held in detention under immigration powers, including those held under dual powers. It also includes detained people who were temporarily released during this time.

¹⁹ These figures represent all people held in detention solely under immigration powers, hence excluding those held under dual powers and those in police cells. The figure includes those held at detention centres, short term holding facilities, prison establishments and Oakington where that is relevant.

persons and asylum seekers seems to have increased.

Table 2. Time spent in detention, as % of the total number of detainees.

Year	1995	2003
Less than 1 month	24	48
Between 1-2 months	17	18
Between 2-(4-6) ²⁰	41	14
More than 4(6) ²¹	18	19

Source: Home Office, *Asylum Statistics*, 1995 (annual) and 2003 (2nd quarter)

The calculated estimate can be juxtaposed with another estimate given by Neil Gerrard (Labour MP). He claimed that 15,000 individuals were detained during the year 2000. (Hansard 11 July 2001: 258) It would make sense that the figure has increased since then, since the capacity of detention facilities has been extended during this period.

4.3.2 Extension of the detention estate

The third indicator of the trend in detaining more asylum seekers is the building of new detention centres, removal centres and other facilities for the practice of detaining people. (Hughes and Field 1998: 16) The trend is quite clear in the case of the UK.

Before 1993, the only permanent place designed for detention of people for longer than five days was Harmondsworth detention centre, near Heathrow airport. Harmondsworth has been in use since the 1970s. For short-term incarceration, temporary holding areas at airports²² and numerous different local prison service establishments were used. (Hansard 23 February 1993: 488-9) During the 1980s, an increase in the 'need' (or wish to use) for detention spaces led the Government to desperate solutions. For example in 1987, 100 Sri Lankan Tamils were detained on a disused ferry, MC Earl William, in Harwich harbour. (Ashford 1993: 65-7) Due to this increased 'need', the Secretary of State decided to extend its immigration detention facilities. An old prison service establishment at Campsfield was redeveloped during 1993 and provided 200 additional places for detainees. (Hansard 24 May 1993: 434-5) In 1994 and 1995 two wings of the Rochester prison were redesignated to immigration detention with a

²⁰ The figures for 1995 range between 2-6 rather than 2-4 as for 2002.

²¹ The figures for 1995 are for 4+ rather than 6+ as for 2002.

²² Queen's Building at Heathrow, Beehive at Gatwick and detention area at Stansted and Manchester airport

capacity of 198. In 1996, Tinsley House, a purpose-built detention centre for 150 people, was opened. (Hayter 2000: 121-2)

Plans to curtail the use of prison accommodation for those detained solely under immigration act powers were initiated in the White Paper of 1998. It was after a HM Chief Inspector of Prisons that the Government promised to reduce its reliance on prison facilities and instead increase the detention estate further. (Home Office 1998: 12(12-14)) In 2001 three new detention centres opened: Yarl's Wood, Dungavel, Harmondsworth. These facilities extended the detention capacity with 1490 places. (Hansard 25 March 2001:694-5) Due to a fire at Yarl's Wood (which provided 900 places) in February 2002, the plans to reduce the usage of prison services were postponed. In the process of reducing the reliance on prison services, in February 2002, Prisons Haslar and Lindholme were redesignated formally as immigration removal centres and are now operating under detention centre rules rather than Prison Rules. (Hansard 4 March 2002: 49-50) The current total capacity is 1609 places. Additional to this is the fast-track centre at Oakington, which opened on 20 March 2000, and provides further 400 places. (Hansard 30 of April 2002: 707-8; 1 May 2001: 618-9)

In the White Paper for the 2002 Act, the Government reveals its intention to increase the detention capacity by a further 40%, to 4000 places ready for use in spring 2003. (Home Office 2002: 4(75)) The fire at Yarl's Wood changed these priorities, and resources have been reallocated to rebuild this centre and also to improve the security situation at other detention facilities. Amongst other measures, sprinkler systems are being installed both at Yarl's Wood and at Harmondsworth.

4.4 New purpose for detention?

It seems like the concerns of the UNHCR Executive Committee are valid in the case of the UK. Detention of asylum seekers is on the increase and decisions to detain appear to be arbitrary. Weber and Gelsthorpe claim that this practice is the result of an extension of the purposes for which detention is used, to not only be used as immigration control but now also as a deterrent. (Referred to in BID 2002: 15, 21) Amnesty argues that the fact that detention is not used for the purposes and aims it is claimed to be used for, strengthens a belief that it is used for deterrence. (1996: 39) Several other authors are drawing the same conclusions. (Hayter 2000: 119; Harvey 2000: 190,306; Hughes and Field

1998: 48) What is meant by deterrence, and how detention is connected to this, will be the topic of the next chapter.

5. Detention as deterrence

This section reviews the way in which detention of asylum seekers has come to be seen by some academics and NGOs. The practice of detention used to be seen solely as a measure of immigration control, but is increasingly referred to as a measure of deterrence. The policy of detention is located in relation to the concept of 'humane deterrence', which is the term initially given to such measures.²³ In this section, the logic underlying 'humane deterrence' policies is presented as well as the arguments of critics, which are mainly based on international human rights law.

5.1 'Humane deterrence'

In the 1980s, policies to reduce the numbers of immigrants were introduced in several host states all around the world. This did not necessarily imply new measures, but the effort to aim them at asylum seekers was a recent phenomenon. Amongst some measures included in the understanding of 'humane deterrence' are visa restrictions, extensive border controls, first safe country regulations²⁴, poor reception conditions and detention. (McNamara 1990:123-4)

The concept of 'humane deterrence' can in particular be traced back to the Southeast Asian response towards Indo-Chinese immigrants in the early 1980s. The influx of asylum seekers reached what was regarded by some as uncontrollable levels and desperation led the debate to new grounds. It was thought that conditions in camps and good prospects of resettlement (to the USA) attracted people to cross borders. Implicit in this reasoning was the assumption that the asylum seekers were not refugees or people in need of protection. They were searching for a better life, which did not legitimise assistance. To reverse this trend, camps were closed down, the services provided for the asylum seekers were reduced, detention was introduced and resettlement schemes cancelled. New arrivals were also expelled at the border due to a more restrictive

²³ States do not normally use this concept. It is mainly used by academics and NGOs. The term will be used to label policies that aim to deter asylum seekers.

²⁴ This regulation aims to prevent 'asylum shopping' (choice of host country) and implies that a person is sent back to the first safe country he/she travelled through on the way to the country in question.

screening procedure. (McNamara 1990: 123-6) The logic behind these policies was that their reputation would discourage more people from coming.

One argument advanced for 'humane deterrence' is that it protects the status of refugees. This is based on the reasoning that large numbers of unfounded asylum claims have strained the entire system of protection. The attitude in host countries is becoming more hostile and sceptical towards immigrants and the system is being questioned. It is argued that if the genuineness of the people admitted can be guaranteed, (through more restrictive and thorough screening policies) the protection system will survive. (Weiner 1995: 193)

The main point of 'humane deterrence' is that it is thought to make migration attractive only to people who are genuinely concerned for their safety, and discourage those who migrate for economic reasons. Such policies are built on the perception that the asylum system is being abused. (Goodwin-Gill 1985: 194)

5.1.1 Detention as a 'humane deterrence' measure

Traditionally, detention of asylum seekers was mainly seen as a way of controlling immigration. It facilitates expulsion and ensures people to not abscond during the determination process. Another purpose is to promote public security. More recently, detention of immigrants has been used and justified for its deterring effects on immigration. The rationale behind this is that detained asylum seekers will be encouraged by indefinite detention to leave the territory but it is also supposed to discourage others from coming to a country that detains asylum seekers. (Helton 1990: 136-7)

5.2 Critique of 'humane deterrence' policies according to Weiner (1995:194)

"The moral efficacy of specific humane deterrence policies ultimately rests on two issues: whether the conditions are indeed humane and whether such policies will effectively deter people who are not fleeing persecution and violence while enabling genuine refugees to obtain protection."

However, critics question if the measures indeed are humane. It is also contested if they fulfil the promised aims of deterring people from migrating and protecting refugee status.

5.2.1 Non-humane

The humane nature of many of the measures included in the concept 'humane deterrence' is questionable. These policies in general, and detention as such, can be claimed to be in violation of international human rights law.²⁵ Poor conditions of detention is one aspect that is often up for inspection and criticism,²⁶ but here I will primarily give an account of how detention in itself as a practice, violates human rights law.

Detention derives from a sovereign state's power to determine who is allowed to enter its territory. This competence of control might require detention to be effective, but most states have legislated that this kind of deprivation of liberty must be in accordance with domestic law. Goodwin-Gill argues this is not satisfactory, since arbitrariness of detention will not disappear just because the practice is in accordance with domestic law. Instead it

'should be reviewed as to its legality and necessity, according the standards of what is reasonable and necessary in a democratic society. Arbitrary embraces not only what is illegal, but also what is unjust'. (Goodwin-Gill 1998: 248)

This is where international human rights law enters the discussion.

International human rights law does not prohibit detention, but it states on what grounds detention is permitted. Article 31:1 of the 1951 Refugee Convention²⁷ prohibits from Contracting States from imposing penalties on refugees²⁸ because of illegal entry or presence, provided they present themselves without delay to the authorities and show good cause²⁹ for their illegal entry or presence. Detention pending an asylum procedure for examination of identity is not seen as a penalty within the definition of the 1951 Convention since it is not connected with the offence of illegal entry or similar. (Giakoumopoulos 1998: 165) However, it can be

²⁵ International human rights law is here seen as an instrument that sets the minimum standards for what is regarded as humane and what is not.

²⁶ See for example Hughes & Field (1998) and UNHCR ExCom (1999)

²⁷ The 1951 Convention relating to the Status of Refugees.

²⁸ The 1951 Convention refers to refugees, but is not limited to those formally recognised. Therefore asylum seekers, persons rejected for asylum or refused access to the determination procedure are also included. (Landgren 1998: 149)

²⁹ Definition of "good cause" for illegal entry discussed in Landgren 1998: 146.

argued that if administrative detention is used as deterrence, (and not as immigration control) it can be defined as a form of punishment since it deprives innocent people of their liberty for no other reason than that they are seeking asylum. (Helton 1990:137)

The use of detention in the context of article 31 of the Refugee Convention has not really led to any debate, and hence questions remains unanswered, (Landgren 1998: 147) although, the UNHCR's Executive Committee commented on article 31 of the Refugee Convention in their conclusions³⁰ in 1986. They expressed their deep concern about the large numbers of refugees and asylum seekers that are detained and stated that detention normally should be avoided. At the same time, they recognised the necessity of detaining asylum seekers at certain times, such as when identity needs to be verified, the determination of elements for an asylum application, when travel documents have been destroyed or fraudulent documents used to mislead the authorities, or to protect the security of the nation. (ExCom 1986)

The refugee Convention and the ExCom Conclusions only offer limited protection against detention, but other human rights law instruments tend to go further. (Goodwin-Gill 1998: 248) The Universal Declaration of Human Rights (UDHR) from 1948 offers protection to life, liberty and security of all persons,³¹ and guarantees freedom from torture, cruel, inhumane or degrading treatment or punishment.³² It also declares freedom from arbitrary arrest, detention and exile, along with freedom of movement and the right to seek asylum.³³ (Goodwin-Gill 1986:198) The right to seek asylum is relevant in the sense that it is a right, and should therefore not be seen as abusive or as a crime to be punished.

The UDHR is not a legally binding document, but it is widely recognised as a universal guideline for international human rights standards. Additionally, almost all the above-mentioned rights and freedoms are protected by the 1966 International Convention of Civil and Political Rights (ICCPR)³⁴ and the 1950 European Convention of Human Rights (ECHR).³⁵

³⁰ ExCom Conclusions No. 44 (1986)

³¹ Article 3.

³² Article 5.

³³ See article 9, 13 and 14.

³⁴ See article 10, 13, 14(1), 26 of ICCPR.

³⁵ See article 5 of ECHR. For details on this article see Giakoumopoulos, C (1998).

These conventions provide individuals with some protection against detention, especially against arbitrary detention and arrest. The same conventions give states the opportunity to derogate from their obligations if necessary and in case of exceptional circumstances.³⁶ 'Necessary' restriction of movement or measures adopted under 'exceptional circumstances' means the measures are essential or indispensable to national security or public health.³⁷ (Goodwin-Gill 1986: 199-200) Grahl-Madsen adds that measures cannot be legitimised by it being convenient for the authorities, but really has to be necessary. (Quoted in Landgren 1998: 151) For a situation to justify derogation from these prohibitions there must be a relationship of proportionality between the end and the means. (Goodwin-Gill 1986: 202, 211) For example, the use of detention as a deterrent to asylum seekers would always be inconsistent with these principles. (Landgren 1998: 151)

These regulations by international human rights law are said to set the acceptable standards for detention of asylum seekers. Consequently, if these standards are not followed, as some critics claim they are not, the humane aspect of detention can be questioned.

Additionally, Helton argues that it is extremely cruel to detain asylum seekers for something that is inherent in their situation. By this he means that refugees are forced to cross borders secretly and in an irregular manner both due to their fear of persecution and because of regional restrictive measures like visa restrictions and carrier sanctions. (Helton 1990: 140)

5.2.2 Non-deterrence

A second question is whether 'humane deterrence' measures such as detention deter people. The measures seemed to work in Southeast Asia in the 1980s, where the influx decreased by 90% in two years. (McNamara 1990: 128) Critics argue that this decrease should not be seen as a result of deterrence, but was a result of increased expulsions at the borders.

However, the main issue is that deterrence cannot be measured. How can you tell how many people would have come if the measures were not adopted? The point of reference for a comparison in numbers is very uncertain. How can you tell how many people decided not to migrate, or who

³⁶ See article 4 of ICCPR, article 15(1) of ECHR, article 9 & 31(2) of the 1951 Convention.

³⁷ UK has used this opportunity through the Anti-terrorism, Security and Crime Act 2001.

chose to migrate to another country? Did people choose to stay because of an improved situation in the country or did they choose to migrate to another country because of social networks or because of deterrence measures? Did they choose the country themselves or did a smuggler choose the destination? These are all immeasurable factors. One can of course speculate and argue, as Helton and McNamara do, that since deterrent measures do not address the reasons why people migrate they will not stop people crossing borders. It is more likely they instead divert flows elsewhere. (Helton 1990: 139; McNamara 1990: 132)

Helton fears that 'humane deterrence' measures will lead to a wave of more restrictive policies and this will consequently damage the international protection regime. He also fears it will feed antagonism between nations. (Helton 1990: 139-140) This leads onto the third question: Are 'humane deterrence' measures a safeguard for the refugee regime?

5.2.3 Non-protection of refugee status

As mentioned above, it is also argued that 'humane deterrence' measures protect the refugee status by screening out asylum seekers that are not seen as having legitimate grounds for protection. This is generally not the case. Refugees are asylum seekers before they are recognised as refugees. They are subjected to all these screening measures as well. In the case of detention, many asylum seekers are detained during their procedure. This implies that refugees are exposed to the same inhumane treatment as asylum seekers. (Weiner 1995: 193)

It might also be, as Helton points out, that if 'humane deterrence' measures work, they might lead to refugees returning to a country in which they fear persecution or that they never leave such a country. It might also mean that refugees are discouraged from using the legal channels to seek protection and end up as 'illegal' immigrants. (1990: 137) This would suggest the refugee regime fails completely in giving protection to people who need it.

To sum up, 'humane deterrence' is based on a presumption of disbelief. This results in a general approach towards all asylum seekers and does not effectively screen out refugees from other asylum seekers. The measures do not seem to be humane (since it would not work if it was) and there is no way to measure if it works or not.

6. Genealogy of the UK statements and parliamentary

This section presents the results of the genealogical analysis carried out on the UK government statements and parliamentary debates on the detention of asylum seekers. Attention is given to the language used primarily by Government spokespersons but also by members of the opposition parties. The main questions are: How is detention talked about? Has the debate changed, and if it has - how? I have localised four thematic discourses that will be presented separately, even though they are very much interlinked. The account is by no means complete, but rather selected for the contribution to the analysis. The themes are related to the practice and framework presented above. Before introducing the themes, the context of two points in time will be considered.

6.1 Political Context

The Conservative Party came into power in 1970 after a six-year long period of Labour rule. In their manifesto "A Better Tomorrow" for the 1970 general election, the Conservatives pointed out that social problems had developed in towns and cities where large numbers of immigrants had settled. To reduce these problems the Tories proposed a new system of immigration control. This new system was designed to reduce the numbers of immigrants and the party promised that 'there will be no further large scale permanent immigration'. (Conservative Party 1970: 24) It was argued that if further immigration was reduced, and focus put on the people already in the UK, race relations would improve. (Hansard 8/3-1971: 42-3)

The 1971 Act was fully rejected by the Labour party. They condemned the Conservatives' policy for being xenophobic and discriminatory and claimed it would bring more problems to race relations than solutions. Labour argued when in power, they would implement a "humane, rational and non-discriminatory" immigration policy. (Labour party 1972: 7) The Labour Party ruled for five years in the 1970s (1974-79), but during this time no new immigration law was produced.

The two most recent immigration Acts (1999 and 2002) are both products of a Labour government. Labour regained power in 1997 after 18 years of Conservative rule. They inherited an immigration system, described as being a 'shambles' after the mismanagement of the Tories, and initiated new legislation on immigration. It was argued that the old immigration system, which had not gone

through any major changes since 1971,³⁸ was not equipped to deal with the high numbers of asylum seekers that had evolved along the years. The 1999 Act aimed to reform the system to make it fairer, faster and firmer. Primarily, the aim was to tighten controls on illegal immigration and against abuse of the asylum process. (Hansard 22 February 1999: 37-38, 43) Then in 2002, Labour presented a new Bill before the parliament. The attempt to establish order in the immigration system had failed. The decision-making procedure had not become faster and applications waiting for decisions were piling up. The number of asylum seekers that had been rejected but still were in the country was also increasing. Structural changes such as the introduction of accommodation centres, reception centres and removal centres were suggested to improve the situation. (Hansard 24 April 2002; Home Office 2002: §4(15-41))

Detention was a sparsely used measure in the 1970s, and consequently not an issue of much debate. Over time, as the disbelief of asylum seekers has grown and the practice of detention increased, it has also developed as a topic of debate. The historical process of practice and linguistic usage has shaped the present conception of immigrant detention.

6.2 Discourse 1 – Criminalisation

When analysing recent debates in parliament it is rather clear the language used by both government ministers and opposition parties is criminalising asylum seekers. The straightforward understanding of the term 'criminalisation' is that something is becoming criminal and unlawful. Rules set to regulate a certain issue have been violated, and the person doing this is labelled a criminal. I would argue, with support from other authors, (Hayter 2000: 95; Harvey 2000: 186, 197), that there are no fixed understandings of what is criminal, but that by introducing new laws these understandings change. This means that the nature of criminality is relative to a constructed and accepted framework.

In the 1971 Act the words 'detention' and 'imprisonment' are used interchangeably regarding people who have been sentenced for criminal offences. (Paragraph 7(3)) In the same Act the word 'detention' is chosen to also refer to the restriction of movements of immigrants held for further examination. Similar patterns can be seen in the general debate in the House of

Commons; for example in the 1970s and 1980s, the word 'detention centres' was the name of the places for the correction and punishment of young offenders. Words like 'prisoners', 'inmates' and 'criminals' were used to describe the people that were accommodated in these centres. (A few examples: Hansard 12 February 1970: 388-9w; 8 June 1978: 202-3w, 29 January 1986: 521w) To use the same word for two such different things as punishment of criminals and control of immigrants has established a link between the two matters.

Another link between criminality and immigration can be traced back to the 1970s when detention also was related to suspected terrorists from Northern Ireland. People were detained for security reasons and the protection of the nation. (A few examples: Hansard 6 July 1972: 187w; 14 December 1972: 178-9w, 598-9) This same justification has today been brought up in the context of immigration. The terrorist attacks on the USA on 11 September 2001 spurred global action against terrorism, and one major issue of concern was how suspected terrorists could abuse the asylum system to gain their aims. To prevent this, tougher border restrictions and more thorough examination of asylum seekers were recommended. (UN Security Council 2001) In line with the international protective measures, the UK introduced legislation against terrorism through the Anti-terrorism, Crime and Security Act 2001. This Act derogates some of UK's obligations under international law and makes detention of suspected international terrorists lawful. This kind of detention of suspected terrorists is provisioned under the 1971 Act, which is the same power that applies to immigrants. (Anti-Terrorism Act 2001: paragraph 23(1-2); Home Office 2002: §62(15)) Such linguistic and technical connections further suggest and emphasise that there is an association between criminality, terrorism and immigration.

With this in mind, I argue that the history of the word 'detention' has affected the perception of detention of asylum seekers, and established and reinforced a link between criminality and immigration. Other researchers have also expressed their concern for these kinds of criminalising discourses. For example Hughes and Field (1998: 6) say that

'asylum seekers have been "contaminated" by long association with "terrorists", "illegals" and other "undesirable aliens", to the extent that the very act of seeking asylum is at risk of becoming criminalised in the public imagination'

³⁸ 'The Bill represents the most fundamental reform of immigration and asylum law for decades' (Hansard 22 February 1999:37).

Other patterns of criminalisation can be located in the debates in parliament and in governmental policy papers. When introducing their policy on detention in the 1998 White Paper, the Government justified it by saying: 'effective enforcement of immigration control requires some immigration offenders to be detained.' §12(1)) They further argued that detention is needed when 'there is a systematic attempt to breach the immigration control' (§12(3)). Four years later, in the succeeding White Paper, the same pattern can be found. Even though the rationale behind detention has been slightly changed (from being immigration control to emphasising the use of it in the process of removal) the use of criminality as justification is the same: '[d]etention has a key role in the removal of failed asylum seekers and other immigration offenders'. (§4(74)) All these examples highlight that immigrants and even failed asylum seekers are violating laws and that they are offenders. This perception is repeated by the Secretary of State on the second reading of the 1999 Bill. He justifies detention with that it is a measure for 'tightening controls on illegal immigration and against the abuse of the asylum process' (§43) and '[t]hose who undermine asylum by making abusive claims are to be condemned.' (§123) This use of the words 'abuse', 'illegal' and 'condemned' in relation to detention of immigrants establishes further associations to criminality.

Apart from discursively relating immigrants to crimes, and talking about immigrants as criminals and illegals, the practice in the UK adds force to this criminalising label. Detained immigrants were for long, more often put in prisons than in specially provided detention facilities. Even though the Government stated they would prefer to detain people in detention facilities, they kept their options open by saying that '[i]t is likely that even in the long run, for reasons of geography, security and control, a number of detainees will need to be held in prisons.' (Home Office 1998: §12(12-13); also Hansard 20 July 2001: 655w). Still, in 1999 when the capacity of detention centres had increased, (and the Government had stated that they aimed to cease to use prisons) the number of immigrants detained in prisons was slightly higher than the number in detention centres.³⁹ (Hansard 27 July 1999: 272) The number of immigration detainees in prisons continued to increase along with the increase of persons being detained in general and in the summer of 2001, more than 1200 persons were detained in prisons. (Hansard 11 July 2001: 266WH) In mid-January 2002, the practice of

detaining immigrants in prisons finally ceased. But as mentioned, there is an opt-out clause that can be used in case of national security or emergency. This clause was used just a month later when the detention facilities in Yarl's Wood were destroyed by a fire caused by disturbances. On the 28th of June this year, 125 asylum seekers were still detained in prisons. (Home Office, *Asylum Statistics*, 2003, 2nd quarter)

The government's actions and discourse are not unchallenged. MPs of both the opposition parties and the Labour party have criticised the practice of detention and also pointed out the use of unsuitable language. For example in a debate on asylum in parliament on 11 July 2001, the use of prisons for detaining asylum seekers was widely criticised. The association of immigrants and asylum seekers with criminality has also been critiqued within the Labour party. On the second reading of the 1999 Bill, a Labour MP, Ms Julia Drown, pointed out '[they are] in detention because [they are] in the asylum process, not because [they have] committed a crime.' (115) She also brought up the issue of construction of illegality:

'It is almost impossible for someone who is seeking asylum to get here lawfully. I hope that the Minister will [...] find a way to ensure that asylum seekers are not made into criminals because they try to flee persecution.' (115)

To sum up, the construction of a restrictive legal framework has established a perception of asylum seekers as 'illegals'. Together with the language and logic of the criminal punishment system and the characterisation of asylum seekers as criminals, this has transformed asylum seekers into a threat rather than people in need. Important to recognise though, is that this is the result of a widely adopted discourse, which is not only used by the Government but also by other MPs.

6.3 Discourse 2 – Guilty until proven innocent

Immigration officers have the power to detain asylum seekers whom they suspect are likely to break the conditions of temporary admission or of bail from detention. The presumption should be in favour of temporary admission and the officer has to have reasonable grounds to believe that the person will slip out of the hands of the immigration service to exercise the power. The way detention is talked about suggests that the opposite applies.

³⁹ 456 in detention centres and 506 in prisons.

One can repeatedly find statements asserting that most people who come to the UK are not in need of protection. Examples of this are to be found in the second reading of the 1999 Bill. The Secretary of State at that time, Jack Straw, said in relation to alleged abuse of judicial reviews, that 'this harms those of our constituents with genuine and justifiable cases for going for judicial review, but they are few and far between.' (42) On the same occasion, he also claimed that the immigration system is being 'exploited' and 'abused'. (37,43) This discourse is not solely used by the Government, but also some opposition MPs. For example Sir Norman Fowler (Conservative) expressed in his speech on the Bill, that '[w]e must accept the fact [...] that the majority of those seeking political asylum are not entitled to it. There is no doubt about that.' (52-3) This disbelief is also found in the Government's most recent White Paper, where it is said that the UK hospitality is being abused. (8(1)) This kind of language suggests that people, who are not refugees, seek asylum. It is alleged that these people are seeking a better life, but are not in need for protection from persecution. They are socio-economic migrants who are using the asylum route to get to the UK. It is rather common for these people to be referred to as 'bogus asylum seekers' or 'false applicants' and compared to 'genuine asylum seekers', both by Labour MPs and opposition MPs. (Hansard 24 April 2002: 402; 22 February 1999: 59) The use of these words, together with the reasoning that the majority of those seeking asylum are not in need of protection, shapes an understanding that these people are doing something that is not allowed. But as far as I understand, all people that seek asylum are asylum seekers until their application has been assessed. After that, one might be able to label them as socio-economic migrants, refugees or something else. That such premature judgements are made by MPs of the Government's party is shown in this quote of Schona McIsaac:

'It may assist the debate if the hon. Lady were to distinguish between asylum seekers and economic migration. She keeps referring to asylum seekers, but many of the people coming in through the channel tunnel are economic migrants [...]'. (Hansard 24 April 2002:402-3)

This shows a wish to label people before their cases have been assessed.

There is obvious confusion concerning categories and labels in the parliamentary debate. Sometimes it gets all mixed up, as shown in this quote of Mr Malins (Conservative) 'although some

asylum seekers are genuine, the vast majority – as confirmed by the Home Secretary – are economic refugees.' (Hansard 22 February 1999:76)

The discourse about mistrusting asylum seekers is fundamental in the logic of detention. This is evident not only in terms of the validity of an asylum claim, but also when it comes to suspecting that asylum seekers will abscond, which is one of the main grounds upon which detention is legitimised. As mentioned earlier, absconding rates are estimated and guessed at, without any backing of research. This 'culture of disbelief'⁴⁰ has become institutionalised in the UK immigration system. One example is the Oakington reception centre, which opened in March 2000. Here, asylum seekers whose applications are judged to be manifestly unfounded are detained, while their application is being processed on site. The application goes through a fast-track procedure, which would normally take between 7 and 10 days. (Home Office 2002: 4(69-72)) The basis upon which these cases are assessed to be unfounded is most often nationality. A country is defined as being safe to return people to and hence there is no ground for protection. Applications from these countries are suspected to be unfounded even before an assessment has been made.

Another indication of the so-called 'culture of disbelief' can be found in the practice of judicial bail hearings:

'The presumption in a bail hearing in general courts is that the court should be in favour of release, with the officers involved required to demonstrate why the individual should be held. We believe that that presumption should similarly apply in detention cases where the immigration service is required to demonstrate its reasons for detention, rather than the detainee having to try to work his or her way round whatever the guidelines are to try to secure release.' (Hansard 22 February 1999:67)

By saying this, Mr Allan (Liberal Democrat) suggests that the burden of proof falls on the detained asylum seeker and not the authorities that deprived the person of his/her freedom. The presumption in favour of release seems to be disregarded and is instead used the other way around.

The 'culture of disbelief', which I have portrayed using examples of how the Government suspects most asylum seekers to be economic migrants

⁴⁰ Used by Harvey 2000:148,215,331; Amnesty 1996:1

and that they will abscond if not detained, closely resembles the logic behind 'humane deterrence'. The asylum system is perceived as being abused by people who do not have legitimate claims and the adoption of certain deterring measures is thought to correct this. (See section 5:1)

To wrap up this discussion I would like to quote Mr Allan again, who very illustratively said:

'[t]he ethos of the Bill is that because some people abuse the system, it should be made tough for everyone. It is like a teacher giving the entire class detention because someone who cannot be identified stole the chalk.' (Hansard 22 February 1999:65)

6.4 Discourse 3 – Shift of blame

In parliamentary debate and government policy papers from the late 1990s and the early 2000, there is a tendency towards blame shifting. It is claimed that asylum seekers (or 'bogus asylum seekers') are themselves to blame for the long periods they have to spend in detention and the fact that they have to wait for such long time for their applications to be processed. By blaming detainees and asylum seekers in general, responsibility for the inadequate practice is lifted from the Government.

Jargon that suggests this is for example found in the 1998 White Paper of the Labour Government, where it is stated:

'Often detainees are held for longer periods only because they decide to use every conceivable avenue of multiple appeals to resist refusal or removal. A balance has to be struck in those circumstances between immediately releasing the person and running the risk of encouraging abusive claims and manipulation.' (12(11))

The same is apparent in the succeeding White Paper from the same Government:

'The induction of human rights appeals also meant that some of those who had exhausted all other appeal rights before the coming into force of the Act in October 2000 used them simply as a means to delay removal. This has led to the appeal system becoming clogged up and unable to deal effectively with the new appeals in a timely way.' (Home Office 2002: 4(61))

In the same way, the Secretary of State, David Blunkett, indicated partial blame to asylum seekers when presenting the 2002 Bill to the parliament: 'The whole system is riddled with delay, prevarication, and, in some cases,

deliberate disruption of the appeals process.' (Hansard 24 April 2002:355)

Instead of admitting that the asylum appeals system is not working effectively, such a discourse blames detainees for using the rights that they are given by the system. A similar discourse blames the number of 'bogus asylum seekers' for the slow processing of the asylum procedure. A quote by a Labour MP (Mr Stinchcombe) recalls this kind of logic:

'The Government continues to affirm their absolute determination to fulfil all our obligations, both legal and moral, to genuine refugees; however, they also say, rightly, that the present system is being abused. They say that the claims of some of those who are claiming asylum are not genuine; that such claimants undermine support for genuine refugees; and that they increase the delays with all the claims that are made. The Government appear to claim that it is in part that which lies behind the chaos and shambles at Lunar house.' (Hansard 22 February 1999: 97)

By using this 'shift of blame' logic, the Government disclaims responsibility. They create the impression that asylum seekers are to blame for the ineffective immigration system in the UK, and hence deserve the treatment they get. This discourse was seen in relation to the introduction of the 1971 Bill. At that time immigration was blamed for bad race relations and growing social problems in cities where many immigrants had settled. Already then there was a tendency to identify immigrants as scapegoats.

6.5 Discourse 4 – A game with words

The 2002 Act introduced several new features in the British immigration policy. One apparent change was the renaming of detention centres as removal centres. In the Act a removal centre is defined as 'a place which is used solely for the detention of detained persons but which is not a short-term holding facility, a prison or part of a prison.' (Paragraph 66) This is exactly the same definition that was given to describe detention centres in the 1999 Act. (Paragraph 147) When explaining this renaming, the Government claims that even though the name of the institutions has changed there will be no change in their function. The new name is just adopted to illustrate the Government's aim to reduce the backlog and remove all failed asylum seekers. (House of Commons Library 2002: 42)

As the practice shows though, it is not only asylum seekers who are awaiting removal that are

detained in these centres. Many are detained at arrival and have not even received a first decision on their application. (See section 4:2) Mr Hughes (Liberal Democrat) brought attention to this contradictory practice on the second reading of the 2002 Bill.

'The Bill reflects a real confusion about detention and removal. The Government propose to create new removal centres, but under the existing arrangements many of the people in such centres have not completed all the processes – not the initial process, and certainly not the appeals process.' (374)

There was no reply or explanation to this contribution by the Government.

Several organisations have also reacted on this cosmetic change and the Immigration Law Practitioners' Association (ILPA) believes:

'that detention centres are being renamed removal centres in an attempt to assure the public about the Government's ability to control immigration. In reality, many of those in removal centres have only just made their applications and have not even been served with any decision, let alone a refusal. This stigmatises asylum seekers and undermines their confidence in the asylum process, as they are made to feel that a refusal of their application is almost inevitable.' (Quoted in House of Commons Library 2002: 55)

The Refugee Council and the Immigration Advisory Service (IAS) have expressed similar concerns. IAS fears that this change in names is 'an example of the Government playing to the populace rather than being concerned about the feelings of those detained.' (Quoted in House of Commons Library 2002: 58)

Similar games with words can also be found in the Government's policy. The new fast-tracking centre at Oakington is named 'reception centre'. As ILPA points out, it would be more logical to call it a detention centre or a removal centre, since this is what it is. It detains people that are most likely to get rejected. ILPA also suggests that the word reception centre would be better used for the induction centres, which also are introduced under the most recent immigration Act. (House of Commons Library 2002: 54) The purpose of the induction centres is to initially receive asylum seekers and explain how the asylum procedure works. Information about the accommodation centre or the place the asylum seeker is dispersed to will also be provided together with some other services. (Home Office 2002: §4(20-23) To name something in a way that does not properly

describe the practice of the institution creates confusion and is designed to win acceptance of public.

7. Conclusions

The four discourses identified all have in common their support of the officially articulated aims of the Government. They tend to shape and construct knowledges and truths about the object the Government aims to control, i.e. asylum seekers. The themes of the debate justify the Government's policy of detaining asylum seekers. By creating mental links between asylum seekers and criminals, detention becomes logic. By emphasising that asylum seekers abuse the asylum system and have intentions to abscond, detention becomes a justified response. Through shifting the blame of a system in chaos to 'economic migrants' or 'bogus asylum seekers', long periods spent in detention are explained and responsibility for it is alleviated. And when detention gets concealed behind words like 'reception' and 'removal' centres, it will not be perceived as detention.

These discourses give detention an aura of legitimacy, objectivity and common sense. The imprisonment of innocent people becomes an acceptable measure, and the practice will not be challenged. As shown, both opposition MPs, Labour MPs and the non-profit sector have questioned the discourses of the Government, but they are not really in the position to disturb the established discourse. The Government is in a powerful position, which enables them to construct knowledges and truths. For example, they produce statistics and they chose when and what figures to release. They also choose what figures not to release. They present discourses as objective and true, which are accepted by the public. In turn, these discourses reinforce the power of the Government and they can implement policies that they believe will increase their control and their possibility to deter future immigration.

On the one hand the discourses of the government can be seen as rhetoric for the purpose of convincing an audience, but I understand these discourses as constructive. They create the understanding that detention is necessary, but at the same time they create reasons for detaining people. For example, illegality is extended by further restrictions in immigration law; and by defining countries as safe, asylum claims can be assessed to be unfounded. This creates justifications for increased detention of asylum seekers.

The main concern I am left with after completing this research is that Government officials have on occasions stated that mandatory detention is in contravention to international human rights law. Having said this, both current practice and discourses of government ministries support the suspicion that detention of asylum seekers is on the increase. Additional to this, the strong disbelief in the genuineness of most asylum seekers and subsequent premature labelling of them, being for example 'economic migrants' or 'bogus asylum seekers', strengthen the rationale behind increased detention. This suggests that there are reasons for concern that detention is re-shaped and re-named and consequently accepted, even under international human rights law.

The discourse used by the government and many UK parliamentarians resembles the framework of 'humane deterrence' in many ways. The Government is rather blunt in its belief that the vast majority of asylum seekers are abusing the system and that they are not in need of protection. Also, a general anxiety about numbers is clear in the parliamentary debate. The need to screen out the 'genuine' refugees is cited and for this reason the use of detention is extended.

A genealogical analysis of the Government's policy and discourse on detention of asylum seekers supports the hypothesis that there is a shift towards using detention as a deterrent. It also sheds light on the techniques the Government uses to legitimise this policy. This analysis should not be viewed in any way as conclusive on the subject, but it does indicate that the discourse theoretical framework and its connected methodologies are useful and can contribute to analyses of social and political phenomena. I argue that it is of great importance that these kinds of analyses are carried out and that more attention is given to similar misleading techniques and strategies.

To end with, I would like to repeat an alternative discourse to the one that has been the focus of this research, as expressed by labour MP, Fiona Mactaggart:

'In common humanity, we should accept a fundamental truth – that it is worse wrongly to refuse a genuine applicant than to admit one who is not entitled to enter under the rules.' (Hansard 22 February 1999: 103)

Bibliography

Primary sources

International legal documents

1948 Universal Declaration of Human Rights (UDHR).

1950 European Convention on Human Rights and Fundamental Freedoms (ECHR).

1951 Convention relating to the Status of Refugees.

1966 International Covenant of Civil and Political Rights (ICCPR).

UNHCR Executive Committee (ExCom) Conclusion (1986) *Detention of Refugees and Asylum Seekers*. No 44 (XXXVII).

UNHCR Executive Committee (1999) *Detention of Asylum Seekers and Refugees: The framework, the problem and recommended practice*. EC/49/SC/CRP.13.

UN Security Council (2001) Resolution 1373, 'Anti-terrorism resolution' (28 September, 2001)

British legal documents

Aliens Restriction Act 1914.

Commonwealth Immigrants Act 1962.

Immigration Act 1971.

Human Rights Act 1998.

Immigration and Asylum Act 1999.

Anti-terrorism, Crime and Security Act 2001.

Nationality, Immigration and Asylum Act 2002.

Policy documents

Home Office (1971a) *Immigration Bill – Draft Immigration Rules: Control on Entry*. CM 4606.

Home Office (1971b) *Immigration Bill – Draft Immigration Rules: Control after Entry*. CM 4610.

Home Office (1998) *Faster, Fairer and Firmer: A Modern Approach to Immigration and Asylum*. CM 4018.

Home Office (2002) *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*. CM 5387.

Home Office, Immigration and Nationality Directorate (1994-2003) *Asylum statistics*. Details about date are specified in text.

Home Office, Immigration and Nationality Directorate (1984-2003) *Control of immigration: Statistics*. Details about date are specified in text.

House of Commons Library (2002) *The Nationality, Immigration and Asylum Bill: Immigration and Asylum*. Research Paper 02/26, April 2002

The Conservative Party (1970) *A Better Tomorrow – The Conservative Programme for the next 5 years*.

The Labour Party (1972) *Citizenship, Immigration and Integration*. An Opposition Green Paper. London: The Labour Party.

Debate in the House of Commons

Hansard, House of Commons - 8 March 1971, Debate on Immigration Bill 1971, 2nd reading. Columns 42-164.

Hansard, House of Commons – 22 February 1999, Debate on Immigration and Asylum Bill 1999, 2nd reading. Columns 37-123.

Hansard, House of Commons – 24 April 2002, Debate on Nationality, Immigration and Asylum Bill, 2nd reading. Columns 341-432.

Hansard, House of Commons - Written and oral questions and answers from the period 1986-2003. (Date and column is specified in the text)

Secondary sources

Amnesty International (1996) *Cell Culture. The Detention and Imprisonment of Asylum-seekers in the United Kingdom*. London: Amnesty International British Section.

Ashford, M (1993) *Detained without trial. A Survey of Immigration Act Detention*. London: Joint Council for the Welfare of Immigrants.

- BID (Bail for Immigration Detainees) (2002) *Immigration Detention in the United Kingdom*. (Submission to the United Nations Working Group on Arbitrary Detention) London: BID
- Blackburn, R., Kennon, A. and Wheeler-Gooth, M. (2003) *Parliament. Functions, Practice and Procedures*. (2nd edition) London: Sweet and Maxwell.
- Carabine, J (2001) Unmarried Motherhood 1830-1990. A Genealogical Analysis, pp 267-310 of Wetherell et al (eds) *Discourse as Data*, London: Sage Publications Ltd.
- Foucault (1973) *The Birth of the Clinic. An Archaeology of Medical Perception*. London: Tavistock publications.
- Foucault, M (1977) *Discipline and Punish. The Birth of the Prison*. London: Penguin Books.
- Foucault, M. (1984) Truth and Power, pp. 51-75 of Rabinow, P. (ed) *The Foucault Reader*, New York: Pantheon.
- Giakoumopoulos, C (1998) "Detention of Asylum Seekers in the light of Article 5 of the European Convention on Human Rights, pp. 161-182 of Hughes, J and Liebaut, F (eds) *Detention of Asylum Seekers in Europe: Analysis and Perspectives*, The Hague: Kluwer Law International.
- Goodwin-Gill, G. S. (1986) International Law and the Detention of Refugees and Asylum Seekers in *International Migration Review*, Volume 20, pp. 193-219.
- Goodwin-Gill, G. S. (1998) *The Refugee in International Law*, Oxford: Clarendon Paperbacks.
- Harvey, C (2000) *Seeking asylum in the UK. Problems and Prospects*. London: Butterworths.
- Helton, A. C. (1990) The Detention of Refugees and Asylum Seekers. A Misguided Threat to Refugee Protection, pp. 135-140 of Loesher, G. and Monahan, L. (eds) *Refugees and International Relations*. Oxford: Clarendon Press.
- Hughes, J and Field, O (1998) "Recent trends in the Detention of Asylum Seekers in Western Europe" pp. 548 of Hughes, J and Liebaut, F (eds) *Detention of Asylum Seekers in Europe: Analysis and Perspectives*, The Hague: Kluwer Law International.
- JCWI (Joint Council for the Welfare of Immigrants) (1999) *Immigration, Nationality and Refugee Law Handbook*, London: JCWI.
- Landgren, K (1998) "Comments on the UNHCR Position on Detention of Refugees and Asylum Seekers", pp. 141-160 of Hughes, J and Liebaut, F (eds) *Detention of Asylum Seekers in Europe: Analysis and Perspectives*. The Hague: Kluwer Law International.
- London Detainee Support Group (LDSG) (2002) *Annual Report for 2002-2003*.
- McNamara, D (1990) The Origins and Effects of 'Humane Deterrence' Policies in South-East Asia, pp. 123-133 of Loesher, G. and Monahan, L. (eds) *Refugees and International Relations*. Oxford: Clarendon Press.
- Mediansky, F (1998) Detention of Asylum Seekers: The Australian Perspective, pp. 125-140 of Hughes and Liebaut (eds) *Detention of Asylum Seekers in Europe: Analysis and Perspectives*. The Hague: Kluwer Law International.
- Sayyid, B. and Zac, L (1998) Analysis in a world without foundations, pp 249-267 of Scarbrough, E. and Tanenbaum, E (eds) *Research Strategies in the Social Sciences. A guide to new Approaches*. Oxford: Oxford University Press.
- Taylor, S. (2001) Locating and Conducting Discourse Analytic Research, pp. 5-40 of Wetherell et al (eds) *Discourse as Data*. London: Sage Publications Ltd.
- Tonkiss, F (1998) Analysing discourse, pp 245-260 of Seale, C. (ed) *Researching Society and Culture*, London: Sage Publications Ltd.
- Weiner, M (1995) *The Global Migration Crisis. Challenges to States and to Human Rights*. New York: Harper Collins College Publishers.