The Politics of Social Exclusion: Asylum Support Provisions in the UK's Draft Immigration Bill 2009

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A little-discussed Draft Immigration Bill (DIB), which appeared in November 2009 under the previous UK's Labour government, seems to have vanished from the policy circuit almost as soon as it appeared. However, despite its abandonment by the current administration, the document is significant in indicating the direction of British asylum policy, which seems unlikely to change under Prime Minister David Cameron. Ostensibly based around a simplification of immigration legislation, and a less-publicised but equally important desire to deter asylum applications, these two arguments seem incomplete in explaining the asylum support provisions within the DIB. Instead, a more insidious motivation of exclusion of the outsider seems to have been the main driving force.

The basis of current asylum and immigration law lies in the 1971 Immigration Act, with 17 pieces of primary legislation having been published since then, including the DIB. Until the 1993 Asylum and Immigration Appeals Act, however, no specific asylum law existed. From this point, support for asylum seekers was tightened in all subsequent legislation, and in 2002, Section 55 of the *Nationality, Immigration and Asylum Act* introduced the denial of welfare support for individuals who failed to apply for asylum "as soon as is reasonably practicable after... arrival in the United Kingdom" (Home Office 2002: clause 55). Following a review of the immigration and asylum system in 2006, a "Simplification" project was adopted by the Home Office, aiming to increase transparency, efficiency, clarity and public confidence (Home Office 2007).

The 20-part DIB was published by the Government on 12 November 2009, with a view to replacing the 17 pieces of primary legislation produced since 1971, along with numerous items of secondary legislation. The DIB reaffirms an exceptionally powerful role for the executive, and a reliance on secondary legislation in order to clarify primary legislation (ASAP 2010:5). Since 1971, this has been a recurring characteristic of asylum and immigration legislation, leading to a lack of democratic accountability (Sales (1997:155). The consultation document *Reforming asylum support - effective support for those with protection needs*, released alongside the DIB, sets out the Labour government's agenda for support of asylum seekers. Two issues emerge as key when analysing documents produced by NGOs and refugee-related organisations in response to this consultation: firstly, the detrimental effects that will result from a continuation of the voucher system (albeit in the different form of payment cards), and secondly, the fact that the reinstatement of a condition reminiscent of Section 55 will deny support "where the Secretary of State is not satisfied that the protection application in question was made as soon as reasonably practicable after the protection applicant's arrival in the UK" ((Home Office 2009a:73).[1] In its previous

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[1] Benefit payments for asylum seekers have, as of 1999, been issued in the form of vouchers and, more recently, payment cards. These cards are only accepted in certain retail outlets and cannot be used for certain essentials such as travel. The cards have a limit on how much can be stored on them at any one time, making saving for more expensive items impossible. The scheme, expensive and highly bureaucratic to run, has been widely criticised by migrants' rights NGOs.

version, this provision was the cause of widespread destitution amongst asylum seekers and was eventually challenged in the High Court with the *'Limbuela'* case, which severely limited the circumstances under which Section 55 could be used (ASAP 2010b:2).

The government's purported aim for the introduction of the DIB was the simplification of a system of legislation that, since 1971, has become increasingly complex and unnecessarily bureaucratic. However, the changes to asylum support provisions proposed in the DIB seem unlikely to lead to a simplified system. The failure of the DIB to amalgamate Section 4 and Section 95 support, both introduced in 1999, means the maintenance of two separate systems of support for failed asylum seekers on the one hand and those still in the process on the other, at considerable extra expense. The preservation of a voucher system will also prove costly and complicated to administer, if the current system is its founding example (Schuster 2003:149).

However, nor does the other most obvious explanation for the DIB – deterrence – seem adequate in explaining its creation. The idea that reduced welfare provisions will be a deterrent to asylum seekers is not a new one. Indeed, in 2000 the Home Secretary, Jack Straw, stated that "'cash benefits in the social security system are a major pull factor that encourage fraudulent claims'" (Schuster 2003:29). Previous legislation, introduced by Conservative and Labour governments alike, has been based on the idea that a majority of applications for asylum are not 'genuine', and therefore that a harsher system will combat abuse of asylum provision (Cunningham and Tomlinson 2005:254-255). This was the idea behind the introduction, in 1999, of the dispersal and voucher systems.[2] However, studies which assess asylum seekers' motivations to choose a particular country almost unanimously conclude that the assumption that welfare acts as a magnet for asylum seekers is without empirical justification.[3] So, reduction in welfare support has little effect in reducing asylum applications, but nevertheless the government's response has been to reduce the standards of living of asylum applicants.

So how to explain the evolution of this policy document? It seems apt to point here to Weber's identification of exclusion as a form of social closure, with one group attempting to secure for itself a privileged position at the expense of another through a process of subordination (see Hills et al. 2002:1). If we consider that the welfare state "acts... as an agent that defines who is a member of the nation state and who is not" (Bloch and Schuster 2002:395), in the case of asylum support the denial of welfare is an exclusionary tactic that applies widely both to asylum seekers who will later be granted refugee status and to those who will not. Section 55 is the most clearly indiscriminate provision in its applicability to a large share of asylum seekers, regardless of how their case will be decided. The voucher system, too, is targeted at all asylum applicants and its implications for social exclusion and stigmatisation are

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[2] The dispersal system, introduced in the 1999 legislation, is the scheme whereby asylum seekers are sent to various areas in the UK outside of the South East in order to ease housing pressures in London and surrounding areas. Asylum seekers are given no choice as to their dispersal destination.
[3] Instead, it is structural factors such as migrant networks and perceptions about the "liberalness" of a country, along with possibilities of working, that prove to be more significant considerations (Thielemann 2003:28; see also Bloch and Schuster 2002; Robinson and Segrott 2002).

clear. Concerns have frequently been raised that asylum seekers are singled out in the mere act of using their vouchers (now cards): they are prevented from shopping anywhere other than in large chains which accept the cards and furthermore cannot use public transport because the cards do not provide for travel. 'Welfare' for asylum seekers, rather than being administered through ordinary routes, is administered by the Home Office, and this sense of separation is exacerbated by a kind of "feudal cashless economy" introduced by the voucher system and which persists in the DIB (Cohen 2003:163).

Importantly, this policy of exclusion does not just apply to 'bogus' asylum seekers but in fact impacts upon almost all applicants due to the maintenance of Section 55 conditions regarding support. In-country asylum claims are common due largely to the fact that visas are required in order to arrive legally in the UK, leading many people to either enter illegally or on a temporary visa. However, in-country applications have not been found to be generally more spurious, and in fact positive refugee status determination rates for applications of this kind of were, as of 2007, higher than those made before entry (Sales 2007:150). Nonetheless, Section 55 support proves to be a *de facto* blanket restriction on the majority of asylum seekers, no matter how strong their claim. The culture of disbelief and denial predominates, and the exclusionary aspects of the DIB tend to be almost universal in their treatment of all asylum applicants, no matter what the outcome of their case may prove to be.

The use of welfare as an instrument of inclusion, and so its denial as a form of social exclusion, seems to be predicated in the case of asylum seekers on their 'otherness', and indeed the late Steve Cohen pointed to the conflation of 'asylum seekers' and 'immigrants' and then to the fact that the term 'immigrant' is "itself a barely disguised word for 'blacks'" (1994:90). This is further reflected in a conflation both in discourse and in legislation of asylum seekers and immigrants. Interestingly, in the late 1990s Home Secretary Douglas Hurd applied the government's old immigration policy slogan to its new asylum policy: 'firm but fair' (Joppke 1999:128). The fact that this was the slogan of the previous government's approach also shows the extent of cross-party agreement on this issue.

The DIB seemed unlikely to fulfil its main stated aim, the simplification of immigration and asylum policy, at least in the domain of its asylum support provisions. Nor did deterrence seem to be behind the creation of the bill, despite the explicit role it plays in the government's discourse on asylum seeker support. It is thus not unreasonable, and indeed plausible, to propose that the government's underlying motives included a more menacing aspect of social exclusion than the mere discouragement of 'bogus' asylum applications.

It remains to be seen how the current government will respond to the asylum system. However, for the time being at least the Home Office has dropped asylum simplification as a priority. It is difficult, though, to be optimistic about the future of asylum support provisions which have been continually undermined by successive British governments, no matter the party. There already exists a strong precedent of exclusion of the 'outsider' with regards to the welfare state, particularly in the case of undocumented migrants. The evolution of this precedent to apply to asylum seekers is a dangerous extension concerning human rights and it reduces the quality of life of those who come to the UK to seek sanctuary.

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